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WRITTEN TESTIMONY

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Office of Hawaiian Affairs

Committee on Indian Affairs
United States Senate
Hearing on S. 1011,
The Native Hawaiian Government Reorganization Act
Thursday, August 6, 2009

Nā'Ōiwi 'Ōlino

E ō e nā 'Ōiwi 'Ōlino 'eā
Nā pulapula a Hāloa 'eā
Mai Hawai'i a Ni'ihau 'eā
A puni ke ao mālamalama 'eā ē

Ku'ē au i ka hewa, ku'ē!
Kū au i ka pono, kū!
Ku'ē au i ka hewa, ku'ē!
Kū au i ka pono, kū!

Answer, O Natives, those who seek knowledge
The descendants of Hāloa
From Hawai'i island in the east to Ni'ihau in the west
And around this brilliant world

I resist injustice, resist!
I stand for righteousness, stand!
I resist injustice, resist!
I stand for righteousness, stand!

INTRODUCTION

E nāalakaʻi a me nā lālā o kēia Kōmike o nā Kuleana o ka ʻAhaʻōlelo Nui o ʻAmelika Hui Pū ia, aloha mai kākou. He loa ke ala i hele ʻia e mākou, nā ʻŌiwi ʻōlino o Hawaiʻi, a he ala i hehi mua ʻia e nā aliʻi o mākou, e laʻa, ʻo ka Mō ʻī Kalākaua, ke Kamaliʻiwahine Kaʻiulani, a me ka Mōʻīwahine hope o ke Aupuni Mōʻī Hawaiʻi, ʻo ia ko mākou aliʻi i aloha nui ʻo Liliʻuokalani. A he nui no hoʻi nā Hawaiʻi kūnou mai ai i mua o ʻoukou e nānā pono mai i ke kulana o ka ʻōiwi Hawaiʻi, kona nohona, kona olakino, ka hoʻonaauao a pēlāwale aku.

Ua pono ka helena hou a mākou nei a loaʻa ka pono o ka ʻāina, ke kulaiwi paʻa mau o ka lāhui ʻōiwi o Hawaiʻi paeʻāina, ʻo ia wale nō ka Hawaiʻi. No laila, eia hou no ka ʻōiwi Hawaiʻi, he alo a he alo, me ka ʻAhaʻōlelo Nui.

ALOHA

Chairman Dorgan, Vice Chairman Barrasso, Senator Inouye, Senator Akaka, and Members of the Committee on Indian Affairs, my name is Haunani Apoliona and I serve as the Chairperson of the Board of Trustees for the Office of Hawaiian Affairs (OHA), a body corporate established in 1978 by the Hawaiʻi State Constitution and implementing statutes.

The mission of the Office of Hawaiian Affairs is to protect and assist Native Hawaiian people and to hold title to all real and personal property in trust for the Native Hawaiian people.

OHA is working to bring meaningful self-determination and self-governance to the Native Hawaiian people, through the restoration of our government-to-government relationship with the United States.

I testify today in support of enactment of S. 1011, and its companion legislation in the U.S. House of Representatives, H.R. 2314.

Federal Policy of Self-Determination and Self-Governance

As this Committee well knows, on July 8, 1970, President Richard M. Nixon, announced that from that day forward, the policy of the United States would recognize and support the rights of America's indigenous, native people to self-determination and self-governance. In the ensuing 39 years, each succeeding U.S. President has reaffirmed this policy as the fundamental basis upon which Federal law and Federal actions affecting this nation's First Americans would be premised.

In carrying out this Federal policy, six U.S. Presidents have assured all Americans that there will be equal status and equal treatment under Federal law accorded to the three groups that make up this nation's population of indigenous, native people – American Indians, Alaska Natives and Native Hawaiians.

The Evolution of Self-Determination and Self-Governance Policy in the State of Hawai'i

1959 – Hawaii Admissions Act – Establishment of a Public Trust

In 1959, the State of Hawaii was admitted into the Union of States as the 50th State. As a condition of its admission, the United States called upon the new State to accept, in trust, the transfer of lands set aside for Native Hawaiians under Federal law – the Hawaiian Homes Commission Act of 1921 – lands which had, up until that time, been held in trust for Native Hawaiians by the United States. In addition, the United States retained the exclusive authority to initiate enforcement action should there be any breach of the homelands trust. As an additional condition of it admission into the Union, the provisions of the Hawaiian Homes Commission Act were incorporated into the State's Constitution.

The United States also ceded to the State of Hawai'i lands that had been previously transferred to the Federal government, and imposed upon the State a requirement that those lands be held in a public trust for Native Hawaiians and the general public, and further provided that the revenues derived from those lands be used for five authorized purposes, one of which was the betterment of the conditions of Native Hawaiians.

1978 – Amendment to State Constitution – Office of Hawaiian Affairs Established

Less than twenty years later, in 1978, the citizens of the State of Hawai'i participated in an historic statewide referendum in which they voted to amend the Constitution of the State of Hawai'i to provide for the establishment of the Office of Hawaiian Affairs, as a means for Native Hawaiians to give expression to their rights to self-determination and self-governance. The action taken by the citizens of Hawai'i was a natural outgrowth of the responsibilities assumed by the State of Hawai'i upon its admission into the Union of States.

The 1978 amendments to the State's Constitution establishing the Office of Hawaiian Affairs, authorized the Office of Hawaiian Affairs to hold title to all real and personal property then or thereafter set aside or conveyed to it and required that the property be held in trust for Native Hawaiians.

The Constitutional amendments further provided for a nine-member Board of Trustees that would be responsible for the management and administration of the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for the benefit of Native Hawaiians, including all income and proceeds from the pro rata portion of the public trust, as well as control over real and personal property set aside by state, federal or private sources and transferred to the Office of Hawaiian Affairs for the benefit of Native Hawaiians.

Finally, the 1978 amendments to the State Constitution charged the Board of Trustees of the Office of Hawaiian Affairs with the formulation of policy relating to the affairs of Native Hawaiians. The amendments also reaffirmed the State's commitment to protect all rights, customarily and traditionally exercised by Native Hawaiians for subsistence, cultural and religious purposes and which were possessed by those Native Hawaiians who were descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778 – which was the date of the first recorded European contact with the aboriginal, indigenous, native people of Hawai'i – subject to the right of the State to regulate those rights.

Later, statutory provisions were enacted into law to implement the State's constitutional amendments which provided that:

"**Declaration of Purpose.** (a) The people of the State of Hawai'i and the United States of America as set forth and approved in the Admission Act, established a public trust which includes among other responsibilities, betterment of conditions

for native Hawaiians. The people of the State of Hawai'i reaffirmed their solemn trust obligation and responsibility to native Hawaiians and further declared in the state constitution that there be an office of Hawaiian affairs to address the needs of the aboriginal class of people of Hawai'i."

The duties of the Board of Trustees of the Office of Hawaiian Affairs, as defined by statute are extensive, and over the past 31 years of its existence, the Office has been recognized not only within the State of Hawai'i, but nationally and internationally, as the principal governmental voice of the Native Hawaiian people.

Dismantling of the Original Native Hawaiian Government

For nearly a century before the forced annexation of the Kingdom of Hawai'i in 1898, the United States, Great Britain and France were amongst the many nations that recognized the Native Hawaiian government as sovereign, and entered into treaties and agreements with the Native Hawaiian government. Later, those who engineered the overthrow of the government of the Kingdom of Hawai'i on January 17, 1893, engaged in a systematic effort to dismantle the native government, and by their actions, severely compromised the ability of Native Hawaiians to manage their own affairs.

Notwithstanding the illegal overthrow of their government, Native Hawaiians steadfastly resisted the efforts to divest them of their rights to self-determination, and when the Provisional Government and its successor, the Republic of Hawai'i, sought the United States' annexation of Hawai'i – Native Hawaiians turned out in large numbers to register their opposition to annexation through petitions signed by tens of thousands of Native Hawaiians. (***See*** The Hui Aloha Aina Anti-Annexation Petitions, 1897 - 1898, compiled by Nalani Minton and Noenoe K. Silva (UHM Library KZ245.H3 M56 (1998)).

Within a little over 20 years of annexation, the Native Hawaiian population had been decimated. Native Hawaiians had been wrenched from their traditional lands, compelled to abandon their agrarian and subsistence ways of life, forced into rat-infested tenement dwellings, and were dying in large numbers. Those who survived disease and pestilence never gave up their quest for self-determination, and sought, through their delegate to the U.S. Congress, the enactment of a law that would enable them to be returned to their lands.

Hawaiian Homes Commission Act of 1921

That law, the Hawaiian Homes Commission Act of 1921, set aside approximately 203,500 acres of land on the five principal islands comprising the Territory of Hawai'i, for homesteading and farming and the raising of livestock by Native Hawaiians. Upon statehood, the Hawaiian homelands that were held in trust by the United States for Native Hawaiians, were transferred to the State of Hawai'i, and a provision of the compact between the United States and the State of Hawai'i required that the State assume a trust responsibility for the homelands.

Since 1921, the Hawaiian Homes Commission Act and the lands set aside under the Act have been administered by the Hawaiian Homes Commission, whose board is composed of predominantly Native Hawaiian commission members, and an agency of the State of Hawai'i, the Department of Hawaiian Homelands.

Apology Resolution – One Hundred Years After the Dismantlement of the Native Hawaiian Government

In 1993, the United States Congress adopted and the President signed a joint resolution extending an apology to the Native Hawaiian people for the United States' involvement in the overthrow of the Kingdom of Hawai'i, and acknowledging that the United States' annexation of Hawai'i in 1898 resulted in the "deprivation of the rights of Native Hawaiians to self-determination." (***See*** Apology Resolution, Public Law No. 103-150, 107 Stat. 1510 (1993), ***see also*** Robert N. Clinton, Arizona State Law Journal, "There is Not Federal Supremacy Clause for Indian Tribes," *Symposium on Cultural Sovereignty,* Spring 2002, 34 Ariz. St. L. J. 113, 165.)

Also acknowledging the impact of annexation on Native Hawaiian self-determination, the U.S. Departments of Justice and Interior called upon the Congress to "enact further legislation to clarify Native Hawaiians' political status and to create a framework for recognizing a government-to-government relationship with a representative Native Hawaiian governing body." U.S. Departments of Justice and Interior, ***From Mauka to Makai: The River of Justice Must Flow Freely*** at 4 (Report on the Reconciliation Process Between the Federal Government and Native Hawaiians, Oct. 23, 2000).

Notwithstanding the Dismantlement of Their Government, Political Organization Amongst Native Hawaiians Continues

Since the time of the overthrow of the Kingdom of Hawai'i, Native Hawaiians have given expression to their political leadership through organizations like the Royal Societies, the Hawaiian Civic Clubs, hula halaus, and Kau Inoa.

Royal societies have continued to function from their founding to the present day and wield considerable political and cultural influence within the Native Hawaiian community. These royal societies formally link the modern day Native Hawaiian community with the Kingdom of Hawai'i. There are four societies -- the Royal Order of Kamehameha; 'Ahahui Ka'ahumanu; Hale O Nā Ali'i O Hawai'i; and Māmakakaua, Daughters and Sons of Hawaiian Warriors.

While each of the four royal societies has their own history and role, they share certain aspects. All have royal origins, which are reflected in unique insignia and regalia which remain in use today and distinguish the four societies to Native Hawaiians. Each is also led by descendants of the royalty and chiefs who served at the society's founding and each currently has members (approximately 1,155 as of 2009) and active chapters statewide. Formal leadership resides in these modern day successors to the royal families and chiefs.

Another manifestation of Native Hawaiians' desire to maintain a distinct Native Hawaiian role in the evolution of Hawai'i's society, was the establishment of a Hawaiian Civic Club in Honolulu in December of 1917, initiated by Hawai'i's delegate to the U.S. Congress and a Native Hawaiian, Prince Jonah Kūhio Kalaniana'ole. This first club was dedicated to the education of Native Hawaiians, the elevation of their social, economic and intellectual status as they promote principles of good government, outstanding citizenship and civic pride in the inherent progress of Hawai'i and all of her people.

Today, there are 52 Hawaiian Civic Clubs across the United States, with approximately 3,000 members nationwide, through which Native Hawaiians actively contribute to the civic, economic, health and social welfare of the Native Hawaiian community, by supporting programs of benefit to the people of Hawaiian ancestry, providing a forum for full discussion of all matters of public and political interest, honoring, fulfilling, protecting, preserving and cherishing all sources, customs, rights and records of the Native Hawaiian ancient traditions, cemetery areas and the historic sites of Native Hawaiians. One of the Hawaiian Civic Clubs, Ke Ali'i Maka'āinana, is named in honor of Prince Jonah Kūhio Kalaniana'ole,

and is primarily composed of members from Virginia, Maryland and the District of Columbia. There are an estimated 723 hula halaus throughout the United States that are dedicated to preserving Native Hawaiian cultural practices and dance.

Another expression of Native Hawaiian self-determination is found in the Hawaiian Homestead Associations, which were established in the 1980's to provide a means of expressing the collective voice of those Native Hawaiians residing on the homelands so that they might address issues common to all homesteaders and to make their concerns known to the Department of Hawaiian Homelands. The State Council of Hawaiian Homestead Associations is made up of 24 organizations representing over 30,000 Native Hawaiian homesteaders.

There are also a number of Native Hawaiian trusts that provide for the education of Native Hawaiian students (Kamehameha Schools – with at student population of 29,500 and an alumni population of 25,000), health care for Native Hawaiians (Queen Emma Foundation), care and housing for elderly Native Hawaiians (Lunalilo Trust), and Native Hawaiian children (Queen Liliu'okalani Children's Center through the Liliu'okalani Trust).

Native Hawaiians participate in a range of employment training programs, early childhood education, financial literacy, at-risk youth and adults programs, elderly services, and library services through a statewide Native Hawaiian service institution known as Alu Like, Inc.

Native Hawaiian health care services are provided through a system of health care programs that are administered by Native Hawaiian health care professionals on each island and coordinated through Papa Ola Lokahi, a health care board that is comprised of the State's agencies, such as the State Department of Health, community health centers, and academic institutions, such as the University of Hawaii, that have a principal role in the provision of health care services or the study of health conditions. Traditional Native Hawaiian health care practices, including the use of medicinal herbs and roots, healing practices, and the transfer of traditional knowledge are integral aspects of the health care provided through the Native Hawaiian health care systems.

Native Hawaiian educational programs are administered not only by private institutions, but are fully integrated in the University of Hawaii and public school educational system. Programs for gifted and talented Native Hawaiian students, early childhood education, private Native Hawaiian language immersion programs from pre-school through university and master's degrees levels, as well as Native Hawaiian language immersion programs in the public schools are just some of the programs that make up a statewide effort to assure that Native Hawaiian children

have the opportunity to enhance their academic performance through culturally-relevant initiatives.

Since 2003, over 105,000 Native Hawaiians have documented their Native Hawaiian ancestry and registered to participate in the reorganization of a Native Hawaiian government through the Hawai'i Maoli Kau Inoa initiative.

Native Hawaiians maintain distinct Native communities throughout the State with over 8,000 Native Hawaiians residing on Hawaiian homestead lands, and over 24,000 Native Hawaiians on a waiting list for an assignment of a residential, agricultural or pastoral lease of land.

Traditional Native Hawaiian aquaculture and fish ponds serve to maintain and preserve the subsistence lifestyle of Native Hawaiians, and Native Hawaiian hunting, fishing and gathering rights are recognized under Hawaii State law.

30,000 Native Hawaiians have documented their Native Hawaiian ancestry for purposes of eligibility for programs and services administered by the Office of Hawaiian Affairs as authorized by section 10.19 of the Hawaii Revised Statutes.

As the instrument of self-determination and self-governance that the citizens of Hawaii established it to be, the Office of Hawaiian Affairs is still the largest governmental entity representing the interests and needs of Native Hawaiians, which U.S. Census figures indicate include 401,102 Native Hawaiians residing in Hawai'i and the continental United States.

Restoration of the Native Hawaiian Government

Like our brothers and sisters in Indian country whose Federally-recognized tribal status was being terminated at the very time our State was being admitted to the Union of States, we seek Congress' action in restoring to the Native Hawaiian people that which the Congress has restored to the so-called "terminated" tribes – the Federal recognition of our governmental status, and a reaffirmation of the continuing political and legal relationship we have with the United States of America.

It is well documented that throughout the United States, Native governments are best suited to ensure the perpetuation of their people and their cultures through the development of educational and language programs, culturally-sensitive social services, and the preservation of traditional cultural practices. In Hawai'i, where

our native culture is the primary attraction in a tourist industry that fuels the State's economy, preservation of Native Hawaiian culture is an economic imperative.

We believe that the restoration of our Native government will provide the Native Hawaiian people with the tools we need to achieve self-sufficiency, economic security, and provide for the health and welfare of our people.

Political and Legal Relationship with the United States

As Native Hawaiians, we believe that our continuing legal and political relationship with the United States is not in doubt. It is manifested in treaties and given expression in well over one hundred Federal laws.

Since 1910, the United States Congress has enacted over 160 Federal statutes that are designed to address the conditions of Native Hawaiians. As we have described, the Hawaiian Homes Commission Act of 1921 set aside over 200,000 acres of land in our traditional homeland – the Islands of Hawai'i – so that we might return to the land, build homes, grow our traditional foods, raise livestock and cattle, and teach our children the values that are so closely tied to our respect for the ***'āina*** (land), and our desire to care for the land, ***mālama 'āina***.

The Act by which Hawai'i gained its admission into the Union of States is, of course, a Federal law – a compact between the United States of America and the State of Hawai'i – which explicitly recognizes the distinct status of Native Hawaiians under both Federal and State law and the State's constitution, and which expressly provides for the protection of the Native Hawaiian people and the preservation of resources to provide for the betterment of the conditions of Native Hawaiians. No other group of citizens in the State of Hawai'i has this unique status.

The Hawaiian Homes Commission Act of 1921 and the Hawai'i Admissions Act of 1959 are but two of the Federal statutes that serve to define the contours of the political and legal relationship that Native Hawaiians have with the United States.

There is the Native Hawaiian Education Act, first enacted into law by the Congress, in 1988. It authorizes funding for preschool through university

educational programs, including programs for the gifted and talented, and Native Hawaiian language immersion instruction and curricula – all of which have contributed to the improvement in educational performance and achievement of Native Hawaiian students, and the reduction of school drop-out rates.

There is the Native Hawaiian Health Care Improvement Act, also enacted by the Congress in 1988, which provides support to the Native Hawaiian health care systems that oversee the operation of clinics and outpatient facilities serving predominantly Native Hawaiian communities on the five principal islands of Hawai'i.

Title VIII of the Native American Housing Assistance and Self-Determination Act authorizes funding for the construction of housing for low-income Native Hawaiian families who are eligible to reside on the Hawaiian homelands and Federal loan guarantees for the development of housing projects on the homelands.

The Native Hawaiian Homelands Recovery Act enables the Department of Hawaiian Homelands to reclaim lands that become surplus to the needs of the United States and add them to the inventory of lands set aside for Native Hawaiians under the authority of the Hawaiian Homes Commission Act.

Nationwide, the Comprehensive Employment and Training Act has had its most successful implementation through a statewide nonprofit Native Hawaiian organization known as Alu Like, Inc., and other employment and training initiatives administered by the U.S. Department of Labor have helped to reduce the still high unemployment rates amongst Native Hawaiians.

The Native American Veterans' Housing Act provides support to Native Hawaiian veterans in enhancing homeownership opportunities.

Under the authority of the National Museum of the American Indian Act, Native Hawaiians were the first group of Native Americans to repatriate the human remains of their ancestors from the Smithsonian Institution.

The Native American Graves Protection and Repatriation Act provides Federal authorization for Native Hawaiians to repatriate human remains from military installations in Hawai'i and to reacquire precious Native Hawaiian artifacts from museums and scientific institutions across the country and in Europe.

The Native American Languages Act was one of the first sources of Federal funding for the Native Hawaiian language immersion education programs that now serve as the basis not only for language immersion programs in Hawai'i's public schools but also as a national model for Native language instruction, curriculum development, and Native language preservation across the United States.

The Native American Programs Act and the support it provides through the Administration for Native Americans for the social and economic development of Native communities has enabled Native Hawaiian farmers to recapture the large-scale practice of growing taro root – an integral staple of the traditional Native Hawaiian subsistence diet. As Native Hawaiians have been able to return to their native foods, rates of diabetes, hypertension, heart disease and cancer have plummeted. This Act has also served as a principle impetus for the start-up of small Native Hawaiian businesses, particularly in rural areas of Hawai'i, where development capital and financial institutions are scarce.

The establishment of the Office of Native Hawaiian Relations in the U.S. Department of the Interior is one of the first institutional steps the Federal government has taken in fulfilling the mission of the Apology Resolution to effect a reconciliation between the United States and the Native Hawaiian people.

And years ago, the Congress anticipated the restoration of the Native Hawaiian government when it enacted legislation to transfer an island in Hawai'i, Kaho'olawe, that had previously been used by the U.S. for military practice as a bombing range, to the State of Hawai'i. Pursuant to State statute, upon the reorganization of the Native Hawaiian governing entity, the Island of Kaho'olawe will be transferred to the Native Hawaiian government.

Conclusion

Across this great world of ours, there is a common history that the aboriginal, indigenous, native people and their descendants share. It is a history of conquest and domination over the lives of native people – it is a history of disenfranchisement and forced assimilation. It has resulted in the demoralization of native people and fostered a dependence on government that is alien to the natural ways of native people, regardless of where they reside.

What history has also shown is that given the opportunity, native people will readily and willingly cast aside the shackles of dependence and seize the initiative to take care of themselves and their families and their communities.

Some who have not experienced a similar history or the same hardships question why native people seek the right to shape their own destinies, control their own institutions, care for their children and provide for their future generations through the restoration and recognition of their governments. Perhaps they take these rights for granted and assume that all Americans enjoy the same opportunities. Sadly, they do not.

Through the enactment into law of S. 1011, the Native Hawaiian people seek the restoration of their government, because they know and have witnessed how the Federal policy of self-determination and self-governance has not only had a dramatic impact on the ability of Native communities to take their rightful place in the American family of governments, but also how that policy has enabled Native people to grow and thrive.

The Native Hawaiian people want to assure a brighter future for their children, and the opportunity to participate in the larger society on the equal footing that better health care, access to quality education, safe communities, and preservation of their institutions and traditional cultural values affords.