

East-West Center
University of Hawaii
August 22, 1998

Statement of John W. Goemans, Esq. to the
Hawaii Advisory Committee of the
U.S. Commission on Civil Rights
(by audio conferencing from Washington, DC)

Re: Status of Native Hawaiian Civil Rights Five Years After the Passage of
Public Law 103-150

I. Introduction

I am requested to address the Civil Rights implications of PL 103-150, the so-called Apology Resolution. I can say categorically that those implications were, at the time of the Resolution's adoption and are today, -- Disastrous. What we can see, now, increasingly clearly, many in Congress anticipated five years ago. Senator Gorton of Washington, speaking for those prescient legislators stated, "It divides the citizens of the State of Hawaii who are of course citizens of the United States into two distinct groups - Native Hawaiians and all other citizens." He observed that Hawaii is the single multi-ethnic community in the entire world in which a multitude of people from many other backgrounds live together in peace and friendship. He saw Hawaii as an example to the world. He lamented however that this Resolution was the beginning of division among the peoples of Hawaii. He quoted Abraham Lincoln regarding "the true American heritage that all men are created equal and deserve equal treatment." That heritage he saw as being undercut by this divisive Resolution. Likewise, Senator Danforth of Missouri calling attention to the motto carved in marble in the Senate Chambers - E Pluribus Unum - from many, one - decried the race discrimination, bigotry and divisiveness inherent in this Resolution.

I moved to Hawaii fresh out of Law School the year 87% of the people of Hawaii voted to become the 50th State - 1959. I was attracted of course by the physical beauty of the Islands but also, and more importantly, by its multi-racial society and its potential to lead the way for Americans and the world toward the illusive goal of social harmony. There was not then nor is there now a majority race in Hawaii. That for me was its charm and potential. That potential is now destroyed. Over time, beginning with the State Constitutional Convention of 1978, a stream of governmental action - State and Federal (PL 103-150 being only a point on an unfortunate continuum) has systematically created a special class of citizens with rights and privileges denied citizens not of that class.

II. The Effects of PL 103-150 on the Civil Rights of the Citizens of Hawaii

Enough time has passed since the Resolution's adoption to assess its effects. It has been used to legitimize past governmental action singling out members of the Hawaiian race and also to serve as authority for yet more such action. It is part and parcel of the whole universe of racial preferences existent in Hawaii and it is inseparable therefrom.

It may be difficult for other Americans to accept, but what's been created in Hawaii, during the last two decades, is a place where if you are a member of a particular race

- You can get discounts from certain stores and service providers
- You can attend the University without paying tuition.
- You can get loans not available to other races
- You alone can attend certain public funded classes
- You can be preferred for public employment
- You can get free health care not available to your non-Hawaiian neighbors
- You have had one of the 8 Hawaiian Islands part of the public lands of Hawaii, by Statute committed to the ownership and control of yourself and others of your race
- You get special rights on private land not owned by you and to public waters and other natural resources of the State
- You have the right to vote in certain State elections which right is specially denied your fellow citizens of other races
- Interestingly if you are 50% Native Hawaiian or more you have access to \$1 billion of public funds and over 200,000 acres of public land dedicated solely for your benefit and to the 20,000 or so other 50%ers.

All of these preferences are in certain violation of not only the Federal and State Constitutions but of the gamut of Civil Rights legislation enacted since the Civil War.

And it isn't just governmental action which is objectionable. For instance, there exists in Hawaii a public trust with some \$10 billion in assets. As a public trust its beneficiaries are the citizens of Hawaii. That trust operates educational institutions, admission to which is strictly restricted by race in direct disregard of U.S. Supreme Court decisions concerning race discrimination in education. And each year that trust illegally claims exemption from State and Federal taxation in violation of IRS regulation and Civil Rights law.

The Apology Resolution itself has been used or cited in various context to further the Alice-in-Wonderland environment which is modern Hawaii.

For instance:

- to challenge traffic citations and criminal prosecution
- to avoid mortgage obligations
- to justify Court decisions granting extraordinary rights in the private property of others
- as the basis for the proposition that the State of Hawaii is illegal and its laws inoperative

III. How Did It All Happen?

Underpinning this universe of pernicious nonsense are certain basic MYTHS which have been widely disseminated and are unfortunately accepted as true by many credulous citizens.

First, that Native Hawaiians were deprived of sovereignty upon the overthrow of the monarchy in 1893. In fact full and complete sovereignty reposed in the various monarchs of the Kingdom including Queen Liliuokalani not in the citizens of the Kingdom, as attested to by the Supreme Court of the Kingdom in *Rex v Booth* (1863). No Hawaiian citizen had any claim to sovereignty until the establishment of the territory of Hawaii in 1900 when citizens of the Republic of Hawaii became subject to the U.S. Constitution which reposes all sovereignty in the people.

Second, that Native Hawaiians had land stolen from them in 1893. In fact, any Native Hawaiian who owned land in Hawaii in 1893 had a deed thereto which was most probably recorded in the Bureau of Conveyances and that deed was in no way affected by the overthrow. Lands transferred in 1893 to the Republic of Hawaii and in 1898 to the U.S. government in trust for the inhabitants of Hawaii were the public lands of the monarchy not the property of any individual, group or race.

Third, that Native Hawaiians are Native Americans. What was annexed to the United States in 1898 was the Republic of Hawaii - a multi-racial foreign nation. None of its citizens were or could become "Native Americans" by annexation of that foreign nation to the United States

Fourth, a myth created out of the whole cloth by someone somehow to serve as legal justification for the existing Panoply of Preferences is the proposition that collectively Native Hawaiians have been and are VICTIMS - victims of racial discrimination as citizens of the Territory and State of Hawaii. This myth flies in the face of fact. Native Hawaiians were by far the largest voting bloc for the first 50 years of territorial government and effectively controlled the legislature during that period and have served in disproportionate numbers as public officials, Representatives to Congress, members of the judiciary and the legislature. No reasonable case can be made that Native Hawaiians as a group are or have been victims of racial discrimination.

PL103-150 reflects this mythology in its mention of the inherent sovereignty of the Native Hawaiian people and the rights of Native Hawaiians to self determination. The illogicality of the entire exercise is clear when one asks why should the United States apologize to Native Hawaiians - a minority of the population of the Kingdom of Hawaii in 1893 for acts done in furtherance of the Kingdom's overthrow and likewise not apologize to all other citizens of that Kingdom?

IV Where Do We Go From Here?

Because of the existence of PL 103-150 Native Hawaiian activists believe that their federally acknowledged rights to self determination and self governance will now be realized by Congressional action establishing a Native Hawaiian government. Nonsense, this may be but to a few thousand Native Hawaiians it is all too plausible.

As a Native Hawaiian leader, U.S. Federal Court Judge Sam King, son of a former Governor of Hawaii, recently stated "This (i.e. the Apology Resolution) was essentially a cynical action by an uninterested Congress equivalent to apologizing to George III for the American Revolution. The mischief caused by this ill-considered resolution will plague us for many years."

And so it has! It is time Congress revisited this illogical, non-sensual and divisive legislation.