

Testimony of Richard Naiwieha Wurdeman, Esq.
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On Behalf of the Native Hawaiian Bar Association

S. 65, The Hawaiian Homeownership Opportunity Act of 2011

United States Senate Committee on Indian Affairs
Hearing in Honolulu, Hawaii—April 13, 2012
Oahu Veterans Center

Chairman Akaka, Vice Chairman Barrasso, and distinguished members of the U.S. Senate Committee on Indian Affairs:

On behalf of the Native Hawaiian Bar Association, I would like to thank this Committee for the invitation to present testimony on S. 65, The Hawaiian Homeownership Opportunity Act of 2011.

The Native Hawaiian Bar Association is an association of lawyers, judges and other legal professionals of Native Hawaiian ancestry which seeks to promote unity, cooperation and the exchange of ideas among its members. Formed in 1992, NHBA strives for justice and effective legal representation for all people of Native Hawaiian ancestry. NHBA represents attorneys whose practice range from solo practice to large firms, corporations, legal services organizations, non-profit organizations and governmental agencies. NHBA has trained over 30 practitioners of traditional Hawaiian peacemaking through its Ho'oponopono Project. These haku are active today in our community. NHBA has also convened symposia and meetings on the issues affecting our Hawaiian community today: sovereignty, access and gathering protection, water usages guaranteed under State law, Hawaiian Home Lands and ceded lands breach of trust claims.

As this Committee is aware, the Native American Housing and Assistance and Self Determination Act of 1996 (NAHASDA) reorganized the system of housing assistance provided to Native Americans through the Department of Housing and Urban Development by eliminating several separate programs of assistance and replacing them with a block grant program. The legislation authorized for Indian tribes two programs--the Indian Housing Block Grant program and Title VI Loan Guarantees which provided financing guarantees to Indian tribes for private market loans to develop affordable housing. Similar opportunities were extended to Native Hawaiians when NAHASDA was amended in 2000. Loan guarantees for Native Hawaiian Housing was added to provide access to sources of private financing on Hawaiian Home Lands. The Native Hawaiian Housing Block Grant

Program has allowed for numerous families to receive home buyer education and has allowed for the development of affordable homes for low-income native Hawaiian families who are beneficiaries of the Hawaiian Homes Commission Act of 1920. A number of success stories can be told by the Department of Hawaiian Homelands and various other organizations which are currently serving qualifying native Hawaiian families through the programs that were extended to Native Hawaiians with the amendments to NAHASDA in 2000. However, far too many Native Hawaiian families still remain on the Hawaiian Homes waitlist and still far too many need to be reached. The reauthorization of NAHASDA funding to Native Hawaiians and the extension of programs that will occur with passage of this Act are very important and the trust obligation of the United States Government to the Native Hawaiian people, including the trust obligation to those direct recipients or those intended direct recipients under this Act, is well established.

Under the treaty making power of the United States, Congress had exercised its constitutional authority to confirm treaties between the United States and the Kingdom of Hawaii, and from 1826 until 1893, the United States had entered into treaties and conventions with the Kingdom of Hawaii to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887; and the United States had recognized the sovereignty of the Kingdom of Hawaii and had accorded full diplomatic recognition to the Kingdom of Hawaii.

In 1993, the United States Congress “on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawaii on January 17, 1893,” extended an apology on behalf of the United States to the Native Hawaiian people for the United States’ role in the overthrow of the Kingdom of Hawaii. See Public Law 103-150 (107 Stat. 1510). The Apology Resolution acknowledged that the overthrow of the Kingdom occurred with the active participation of agents and citizens of the United States and, further, Congress “expresse[d] its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people...” Id. Congress also acknowledged in the Apology Resolution 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, either through their monarchy or through a plebiscite or referendum.” Id.

Following the Newlands Resolution in 1898 (which was passed after the failure of the Treaty of Annexation in 1897 and the protest of Queen Lili’uokalani) and the Organic Act of 1900 and, by 1919, the Native Hawaiian population had declined tremendously (from an estimated 1,000,000 in 1778), and in recognition of this severe decline in the population, Congress enacted the Hawaiian Homes Commission Act of 1920 (42 Stat. 108), which designated approximately 203,500 acres of public lands for the welfare and rehabilitation of native Hawaiians. See Native Hawaiian Education Act; Keaukaha-Panaewa Community Association v.

Hawaiian Homes Commission, 588 F.2d 1216 (1978). Congress enacted the Hawaiian Homes Commission Act which mandated that certain lands, designated the Hawaiian home lands, be held in trust for the benefit of native Hawaiians. Keaukaha-Panaewa Community Association v. Hawaiian Homes Commission, 739 F.2d 1467 (1984). Under the Admission Act in 1959, Section 4 of that Act required that the provisions of the Commission Act be incorporated into the Constitution of the State of Hawaii. Id. at 1469. This incorporation was described “as a compact with the United States.” Id. While the responsibility for the administration of the Hawaiian Home Lands was transferred to the State of Hawaii, the United States retained the exclusive right to consent to any actions affecting the lands included in the trust and any amendments to the Hawaiian Homes Commission Act of 1920 enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act.

Also, under the Admission Act in 1959, public lands that were transferred from the United States to the State of Hawaii were to be held as a public trust for five purposes, one of which was “for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended.”

In addition to the special trust relationship between the United States and the Native Hawaiian people being recognized and reaffirmed through the Hawaiian Homes Commission Act of 1920 and then the Admission Act, other Acts of Congress have also recognized and reaffirmed this special relationship through the passage of the Native Hawaiian Education Act, and with the inclusion of Native Hawaiians in such legislation as the American Indian Religious Freedom Act, the National Museum of the American Indian Act, the Native American Graves Protection and Repatriation Act, and other legislation.

The Native Hawaiian people continue to maintain their separate identity as a distinct native community through cultural, social, and political institutions, and to express their rights as native people to self-determination, self-governance, and economic self-sufficiency. The Native Hawaiian people also, once again, never relinquished their claims to their inherent sovereignty as a people or over their national lands and to their claims of their national lands. Although the passage of this Act is certainly just one step in the reconciliation process and is far from adequately addressing what the United States did to and what it legally and politically owes to the Native Hawaiian people, the loan guarantees and the Native Hawaiian Housing Block Grant Program does, as our esteemed Congresswoman from Hawaii, Representative Colleen Hanabusa, stated last year during the introduction of H.R. 2648, “help [to] fulfill a trust obligation this Congress created in 1920 that recognized it was necessary to return Native Hawaiians to the land in order to preserve their culture, their tradition and values.”

Chairman Akaka and Honorable Members of this Committee, I respectfully urge your passage of the Hawaiian Homeownership Opportunity Act of 2011. Thank you very much for this opportunity to testify on this important matter before this Committee.

Mahalo nui loa,

/s/ Richard Naiwieha Wurdeman
RICHARD NAIWIEHA WURDEMAN