

OPENING STATEMENT OF
SENATOR BYRON L. DORGAN
OVERSIGHT HEARING ON THE
NATIVE HAWAIIAN GOVERNMENT REORGANIZATION ACT
OF 2007
MAY 3, 2007

Good morning. Today the Committee will hear testimony from witnesses on S.310, the Native Hawaiian Government Reorganization Act.

This legislation is intended to establish a process to reconstitute a Native Hawaiian government. My colleagues and good friends from Hawaii, Senators Inouye and Akaka, have introduced similar legislation since the 106th Congress. Each of these proposals has generated aggressive discussion here in the Senate and elsewhere, and each time the Senators from Hawaii have reached out to the concerned parties to try and develop compromises. Considerable compromises have been made, and the bill that is before this Committee today contains those compromises. As with any compromise, neither side is completely satisfied, but the ultimate goal of establishing a process to reorganize a Native Hawaiian government is still achieved in this legislation.

I continue to support the efforts of my colleagues to reorganize a Native Hawaiian government. I think the process set forth in this bill is reasonable and prudent. It allows for the Native Hawaiian people to once again have an opportunity at self-governance and self-determination. The bill also enables the Federal, State and Native Hawaiian governments to develop a working relationship in order to address many longstanding issues such as the transfer of lands to Native Hawaiians, jurisdiction, governmental authority, and other matters.

Native Hawaiians, just like the Indian Tribes, are the first Americans. They were here long before my ancestors showed up. They had their own governments and provided for the

general welfare of their people. In fact, their governments worked so well, that the founders of the United States modeled our Constitution after the governments of the first Americans.

But similar to our treatment of the Indian tribes, the federal government's historical treatment of the Native Hawaiians is not a proud moment in our history:

- Before any Americans settled on the Hawaii islands, there existed a sovereign Native Hawaiian government.
- The United States recognized this sovereign Native nation, and negotiated 4 treaties with it.
- Once non-natives began settling in Hawaii, the Native Hawaiian government allowed them representation in the government.
- But the non-natives wanted control of the Hawaiian government.
- In 1893, the United States Minister utilized American soldiers to assist non-native revolutionaries in overthrowing the Native Hawaiian government.
- Although President Grover Cleveland urged Congress to restore the Native Hawaiian Queen to power, the Senate Foreign Relations Committee ratified the actions of the non-native revolutionaries. The Senate justified its ratification by describing the Native Hawaiian government as a domestic dependent nation, the same description given by the United States Supreme Court to Indian tribes in 1831.

Although the United States ratified the overthrow of the Native Hawaiian government, we have always recognized a special relationship with the Native Hawaiians. I'm sure that the Senators from Hawaii will describe this relationship in more detail, but suffice it to say that Congress has always

recognized Native Hawaiians as the indigenous people of Hawaii with whom we have certain obligations. As evidence of this relationship, Congress has enacted over 150 statutes dealing with Native Hawaiians, and providing them with certain benefits. More, in 1993, Congress passed the Native Hawaiian Apology Resolution.

I strongly prefer that our indigenous groups go through the Federal Acknowledgement Process at the Department of the Interior in order to establish a government-to-government relationship with the United States. However, that administrative process is not available to Native Hawaiians. The regulations governing the process state that the process is only available to American Indian groups indigenous to the contiguous 48 states and Alaska. Native Hawaiians are excluded. The 9th Circuit Court of Appeals has upheld the exclusion of Native Hawaiians from this process. I will make the federal regulations and that court case a part of the hearing record.

One could argue that the solution is to amend the federal administrative process to allow Native Hawaiians to participate, but that is like trying to a square peg into a round hole. The federal administrative process was not developed to evaluate indigenous groups like the Native Hawaiians. The process was designed to evaluate Indian groups that did not previously have a political relationship with the United States. The Native Hawaiians clearly had a previous political relationship with the United States. The regulations also were not intended to cover indigenous groups who were the subject of congressional action or legislative termination. Numerous Indian tribes that were the subject of legislative termination had to come to Congress or the judiciary to be restored. In the case of Native Hawaiians, it was congressional approval of the illegal acts of others that led to the demise of the Native Hawaiian government. Thus, the administrative process cannot adequately evaluate the status of Native Hawaiians.

To the extent that people feel that Native Hawaiians should go through some sort of process in order to obtain a government-to-government relationship with the United States, those people should take comfort in that S.310 proposes to do exactly that – establish a process in which the Native Hawaiian people will work with the Federal and State governments to reconstitute a Native Hawaiian government; a government that would continue to exist today had it not been for the illicit acts of the United States. S.310 does not recognize a Native Hawaiian government. Rather it sets forth a process to allow Native Hawaiians to reorganize. The entity that is reconstituted will need to be certified by the federal government. Every step of the way, the federal and state governments will be involved in the process.

Unfortunately, I will need to leave this morning, but I will submit written questions to our witnesses.