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U.S. SENATE COMMITTEE ON INDIAN AFFAIRS – OVERSIGHT HEARING ON
“A CALL TO ACTION: NATIVE COMMUNITIES’ PRIORITIES IN FOCUS FOR THE 117TH CONGRESS”

February 24, 2021

Aloha e Chairman Schatz, Vice Chairman Murkowski, and the Members of the U.S. Senate Committee on Indian Affairs.

Mahalo nui loa (Thank you very much) for inviting me to testify on behalf of the Office of Hawaiian Affairs (OHA) and our beneficiaries—the Native Hawaiian community. I extend my aloha and congratulations to Chairman Brian Schatz and Vice Chairman Lisa Murkowski on your new leadership positions on the U.S. Senate Committee on Indian Affairs. This Committee has a long history of bipartisanship and collegiality among its Members. That spirit is critical to elevating the voices of Native leaders and fulfilling the federal government’s trust responsibility owed to all Native people of the United States. Your work here empowers the Native community to continue exercising true self-determination—our right to chart our own course and maintain our distinct traditions, cultures, and Native ways.

Chairman Schatz, OHA recognizes your work on behalf of our families in Hawai‘i. You have been a champion on stopping the trafficking of Hawaiian women and children, including Native perspectives in federal climate action, and addressing disparities for Native Hawaiians in health, education, broadband access, and food security. We are particularly grateful for your recent efforts to ensure that Native Hawaiians were eligible for federal Coronavirus Disease (COVID-19) relief, and that you provided us with the information we needed to obtain federal resources. We deeply appreciate your strong support to fund federal programs providing health care, housing, education, and other essential services to Native Hawaiians.

Background on OHA and its standing to represent Native Hawaiians

Established by our state’s Constitution¹, OHA is a semi-autonomous agency of the State of Hawai‘i mandated to better the conditions of Native Hawaiians. Guided by a board of nine publicly elected trustees, all of whom are Native Hawaiian, OHA fulfills its mandate through

¹ Haw. Const., art. XII, §5 (1978).

advocacy, research, community engagement, land management, and the funding of community programs. Hawai‘i state law recognizes OHA as the principal public agency in the state responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians.² Furthermore, state law directs OHA to advocate on behalf of Native Hawaiians³; to advise and inform federal officials about Native Hawaiian programs; and to coordinate federal activities relating to Native Hawaiians.⁴

Priorities for the 117th Congress

Your inclusion of Native leaders in your first oversight hearing is reassuring. Allowing us to share—in our own words—how the Committee and the Congress can best meet the federal government’s continuing trust responsibility to our people is an important part of honoring it.

In preparation for this hearing, OHA met with other Native Hawaiian organizations to ensure that the broad needs of our diverse community are represented. These partners include Papa Ola Lōkahi (POL), the Department of Hawaiian Home Lands (DHHL), and the Native Hawaiian Education Council (NHEC). Together, we provide health, housing, economic development, and education, among other services to Native Hawaiians. The priorities OHA presents today align with one guiding principle—furthering self-determination for Native Hawaiians.

To accomplish this, we ask this Committee to: (1) honor the federal government’s trust responsibility to the Native Hawaiian people by ensuring that Native Hawaiians are included in all federal consultation policies; (2) support federal programs for Native Hawaiians, by reauthorizing, strengthening, and expanding federal programs focusing on the health care, housing, economic development, and education of Native Hawaiians; and (3) ensure parity in the treatment for all Native Americans, including American Indians, Alaska Natives, and Native Hawaiians.

(1) Honor the federal government’s trust responsibility owed to Native Hawaiians

Native Hawaiians are owed the same trust responsibility as any other Native American group. To meet this obligation, Congress—oftentimes through the bipartisan work of this Committee and its Members—has created policies to promote education, health, housing, and a variety of other federal programs that support Native Hawaiian self-determination. Similar to American Indians and Alaska Natives, Native Hawaiians have never relinquished our right to self-determination despite the United States’ involvement in the illegal overthrow of Queen Lili‘uokalani in 1893 and the dismantling of our Hawaiian government. In fact, over 150 Acts of Congress consistently and expressly acknowledged or recognized a special political and trust relationship to Native Hawaiians based on our status as the Indigenous, once-sovereign people of Hawai‘i. Among these laws are the Hawaiian Homes Commission Act, 1920 (42 Stat. 108) (1921), the Native Hawaiian Education Act (20 U.S.C. § 7511) (1988), the Native Hawaiian Health Care Improvement Act (42 U.S.C. § 11701) (1988), and the Hawaiian Homelands Homeownership Act codified in the Native American Housing Assistance and Self Determination Act, Title VIII (25 U.S.C. § 4221) (2000).

² Haw. Rev. Stat. § 10-3(3).

³ Haw. Rev. Stat. § 10-3(4).

⁴ Haw. Rev. Stat. § 10-6(a)(4).

While the federal trust responsibility has many facets, one of the most critical safeguards of effective self-determination is the ability to consult with the federal government. Under President Clinton’s Executive Order 13175, and subsequent memoranda from the Bush, Obama, and now Biden Administrations, the U.S. Government recognizes the right to sovereignty and self-determination of this nation’s Native people. While this is a step in the right direction, the omission of Native Hawaiians from federal consultation requirements has stifled and limited Native Hawaiian voices from being able to comment upon and inform federal projects and programs for the past two decades. Despite our exclusion from these executive orders, Congress’s thoughtful inclusion of Native Hawaiians in key legislation like the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001) and the National Historic Preservation Act (NHPA) (16 U.S.C. § 470 et seq.) have demonstrated that Native Hawaiians can be effectively included in consultation now, with representation through Native Hawaiian organizations. Indeed, OHA receives and reviews approximately 240 requests for federal consultations each year, including Section 106 NHPA and NAGPRA reviews. The federal government takes many more actions affecting the Native Hawaiian community than are covered by these two statutes without ever giving Native Hawaiians an opportunity to consult. This must change.

Ensuring Native Hawaiians are informed of all proposed federal actions and allowed to voice their comments and perspectives on them will help to correct this country’s historic wrongs against Native Hawaiians. Moreover, this will also improve the quality of federal undertakings and projects. Federal consultation with entities that serve Native Hawaiians such as OHA, DHHL, NHEC, POL, and the Native Hawaiian Health Care Systems enables Native Hawaiians to access this basic tenet of self-determination—having a meaningful say in our own governance. We urge this Committee to pass legislation requiring meaningful federal consultation across the entire federal government and to extend these rights to all Native Americans, including Native Hawaiians.

(2) Support federal programs for Native Hawaiians

While consultation is critical to self-determination, so is the provision of the resources and governmental programs to provide for the health, housing, education, and economic well-being of Native Hawaiians. Chairman Schatz and the other members of our congressional delegation have ensured that Congress continues to fund our essential federal programs annually; however, three of these acts must now be reauthorized, strengthened, and expanded by the Congress.

Over the past several decades, the Native Hawaiian Health Care Improvement Act (NHHCIA), the Hawaiian Homelands Homeownership Act (HHHA), and the Native Hawaiian Education Act (NHEA) have enabled Native Hawaiians to receive culturally appropriate services relating to health, housing, and education. These Acts have delivered services to tens of thousands of Native Hawaiians through diverse programs including revitalizing the Native Hawaiian language, building and maintaining homes and infrastructure, and providing telehealth services during a global pandemic. Further, the Native Hawaiian Revolving Loan Fund (NHRLF)—administered by OHA—and the U.S. Treasury’s Community Development Financial Institutions Fund’s (CDFI Fund’s) Native American CDFI Assistance Program have supported the emergence and growth of thousands of Native Hawaiian businesses. We urge this committee to reauthorize, strengthen, and expand all these programs to further support Native Hawaiian self-determination.

Native Hawaiian Health Care Programs

Native Hawaiian self-determination in health care means that Native Hawaiians have the power to choose the health care services most needed in their communities. Similar to our Native relatives on the continent, Native Hawaiians face disproportionate threats to our physical and mental health, including poverty,⁵ suicide and depression,⁶ infant mortality,⁷ alcohol abuse,⁸ homelessness,⁹ and prejudice. Native Hawaiian infants are twice as likely to die (infant mortality rate of 7.9 per 1,000 live births) than their White peers (infant mortality rate of 3.5 per 1,000 live births) in the State of Hawai‘i.¹⁰ Native Hawaiians are also more likely to suffer from coronary heart disease, diabetes, and asthma than non-Native Hawaiians in the State.¹¹ Nearly 16,000 Native Hawaiians suffer from diabetes and more than 36,000 suffer from asthma.¹²

To address the major health disparities then apparent, Congress enacted the precursor to NHHCIA in 1988, which was most recently reauthorized in 2009. The NHHCIA established the Native Hawaiian Health Care program, which funds the Native Hawaiian Health Care Systems administered by POL. Together the five Systems on the islands of Kaua‘i, O‘ahu, Maui, Moloka‘i, and Hawai‘i provide primary health care, behavioral health, and dental services. They also offer health education to manage disease, health related transportation, and other services. The Systems serve tens of thousands of patients across the State each year. NHHCIA also established the Native Hawaiian Health Scholarships Program for Native Hawaiians pursuing careers in designated health care professions. It supports culturally appropriate training and the placement of scholars in underserved Native Hawaiian communities following the completion of their education. More than 300 scholarships have been awarded through this program and more than 98 percent of program alumni are now licensed and practicing in Hawai‘i.

According to POL, the pandemic has highlighted the urgent need for several amendments to the NHHCIA. OHA and POL have advocated for increased funding to the Systems and removing the matching requirements in parity with other Native health care centers; applying 100 percent of the Federal Medical Assistance Percentage (FMAP); expanding Federal Tort Claims Act coverage to POL, the Systems, and their employees in parity with other Native health care centers; allowing federal program funding to be used to collect and analyze health and program data which currently falls under the ten percent administrative cost cap for the program; allowing the Systems to be eligible for supplemental federal funding streams; and providing a tax exemption for the scholarships program. Additionally, POL has established partnerships with other

⁵ Anita Hofschneider, *Poverty Persists Among Hawaiians Despite Low Unemployment*, HONOLULU CIVIL BEAT (Sept. 19, 2018), <https://www.civilbeat.org/2018/09/poverty-persists-among-hawaiians-despite-low-unemployment/>.

⁶ NATIVE HAWAIIAN MENTAL HEALTH AND SUICIDE, OFFICE OF HAWAIIAN AFFAIRS (Feb. 2018), http://www.ohadatabook.com/HTH_Suicide.pdf.

⁷ Ashley H. Hirai et al., *Excess Infant Mortality Among Native Hawaiians: Identifying Determinants for Preventive Action*, AM. J. OF PUB. HEALTH (Nov. 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3828695/pdf/AJPH.2013.301294.pdf>.

⁸ NATIVE HAWAIIAN HEALTH STATUS, OFFICE OF HAWAIIAN AFFAIRS 22 (July 2019), <http://www.ohadatabook.com/NHHS.html>.

⁹ ISSUE BRIEF: COVID-19 AND NATIVE HAWAIIAN COMMUNITIES, NATIVE HAWAIIANS OVER-REPRESENTED IN COVID-19 AT-RISK POPULATIONS, OFFICE OF HAWAIIAN AFFAIRS 2 (2020).

¹⁰ Hirai, *supra* note 7.

¹¹ OFFICE OF HAWAIIAN AFFAIRS, *supra* note 9 at 2.

¹² *Id.* at 1–2.

organizations to reach Native Hawaiians living across the country, offering capacity building, technical assistance, and workshops to promote holistic health and well-being as Native Hawaiians. Through POL's partnerships, it can care for all Native Hawaiians, including those unable to access the Systems in Hawai'i. We urge the Committee to support increased funding for, reauthorization of, and expansion of the NHHCIA, including these amendments so that POL and the Systems may be able to expand what they can accomplish.

Native Hawaiian Housing Programs

The HHA facilitates Native Hawaiian self-determination by supporting part of DHHL's mission—to develop and deliver land and housing to Native Hawaiians. Congress enacted the HHA in 2000. The HHA established the Native Hawaiian Housing Block Grant (NHHBG) program and the Section 184A Loan Guarantees for Native Hawaiian Housing. The NHHBG provides much needed funding to DHHL to deliver new construction, rehabilitation, infrastructure, and various support services to beneficiaries living on DHHL lands. The 184A Loan Guarantee program provides eligible beneficiaries with access to construction capital on DHHL lands by fully guaranteeing principal and interest due on loans. The program currently serves owner-occupant single family dwellings on the DHHL lands. Together, these programs help DHHL to carry out the vision of our Prince Jonah Kūhiō Kalaniana'ole, who as the then-Territory of Hawai'i's Congressional Delegate 100 years ago, spearheaded one of the first Acts of Congress implementing the trust responsibility to Native Hawaiians.

Like other Native communities, housing has become even more vital during this pandemic. Prior to the pandemic, Native Hawaiians faced one of the most expensive housing markets in the country. In fact, Native Hawaiians made up nearly half of the homeless population on the island of O'ahu,¹³ whose population accounts for approximately two thirds of all State residents. To address housing needs, DHHL has used NHHBG funds for emergency rental assistance for eligible Native Hawaiians; rental subsidies for lower income elderly; rehabilitation of homes primarily for elderly or disabled residents; homeownership opportunities for lower income working families; and homeownership and rental counseling to address barriers experienced by Native Hawaiians.

Despite these efforts, DHHL estimates that they would need \$728 million over the next two fiscal years to develop a minimum of 1,700 homestead lots statewide, provide needed loan financing, and carry out rehabilitation projects by which the general welfare and conditions of Native Hawaiians can be improved. Unfortunately, even that sum is not enough to provide every DHHL applicant with a parcel. OHA appreciates Chairman Schatz's active role in ensuring that DHHL is included in COVID-19 relief for housing and related assistance. We urge this Committee to support increased funding for, reauthorization of, and expansion of the NHHBG and 184A Loan Guarantee programs as well.

Programs Supporting the Economic Well-Being of Native Hawaiians

Economic well-being and opportunity are central to the ability of any community to exercise self-determination. Unfortunately, the pandemic has devastated Hawai'i's job market. Unemployment in the State has skyrocketed, and recovery efforts continue to lag. The U.S. Bureau

¹³ OFFICE OF HAWAIIAN AFFAIRS, *supra* note 9 at 2.

of Labor Statistics reports that as of December 2020, Hawai‘i had the highest unemployment rate in the United States at 9.3 percent.¹⁴ Unemployment is unlikely to decrease significantly in the near future because one of our biggest industries—tourism—continues to be severely impacted. According to preliminary statistics released by the Hawai‘i Tourism Authority’s Tourism Research Division, visitor arrivals were 75.2 percent lower in December 2020 compared to a year ago.¹⁵ Given that nearly one in four Native Hawaiians are employed in the service industry closely tied to tourism,¹⁶ Native Hawaiians will likely continue to be disproportionately affected during the State’s economic recovery.

Fortunately, several economic development and access to capital programs are already in place to serve Native Hawaiian communities. The Native American CDFI Assistance Program and NHRLF are both widely recognized as being effective. Continued support for these and similar programs are critical to minimizing the negative economic impacts of this pandemic. For example, in its nearly three decades in operation under OHA’s administration, NHRLF has closed around 2,700 loans valued at more than \$63 million of lending to Native Hawaiian businesses and individuals. With this in mind, OHA asks the Committee for its support of Native CDFIs and for programmatic fixes to NHRLF, including ending the demonstration status of the program, removing restrictions on outdated unallowable loan activities, and reducing the Native Hawaiian ownership percentage requirement from 100 to 50.

In spite of these successes, more programs to support the economic well-being of Native Hawaiians are needed. OHA asks that the Committee explore opportunities to promote economic development and access to capital in Native communities. For example, OHA supports Chairman Schatz’s PLACE Act, introduced last Congress. OHA also asks that the Native Hawaiian community be included in these kinds of programs now serving Native American communities.

Native Hawaiian Education Programs

The self-determination framework supports the reclamation and revitalization of Native identity through culture-based education and language programs supported through programs like the NHEA. Congress passed the NHEA in 1988 and most recently reauthorized the Act in 2015. The NHEA established the Native Hawaiian Education Program (NHEP). This program offers competitive grants to fund the development of innovative education programs to assist Native Hawaiians and to supplement and expand Native Hawaiian cultural-based education. Evidence shows that educating students through the use of their own culture and language leads to better academic and behavioral outcomes for students.

In 2011, Ms. Nāmaka Rawlins of ‘Aha Pūnana Leo, a renowned ‘Ōlelo Hawai‘i (Hawaiian language) immersion preschool and the oldest Native American language immersion non-profit in the United States, testified before the Committee about the successes of their preschool and the language immersion movement generally. At the time, Ka Haka ‘Ula o Ke‘elikōlani at the

¹⁴ *Unemployment Rates for States*, U.S. BUREAU OF LABOR STATISTICS (Jan. 26, 2021), <https://www.bls.gov/web/laus/laumstrk.htm>.

¹⁵ *Hawai‘i Visitor Statistics Released for December 2020*, HAWAI‘I TOURISM AUTHORITY (Jan. 28, 2021), <https://www.hawaiiitourismauthority.org/media/6395/december-2020-visitor-statistics-press-release-final.pdf>.

¹⁶ OFFICE OF HAWAIIAN AFFAIRS, *supra* note 9 at 3.

University of Hawai‘i at Hilo offered the only Ph.D. in the world that focused solely on Native language and culture revitalization.

This Hawaiian language college provides curriculum for various levels of immersion education, including a laboratory school for Kindergarten through 12th Grade. Their rate of success is stunning. Hawaiian immersion laboratory school had a 100 percent high school graduation rate and an 80 percent college entrance rate. These rates have remained steady for more than ten years, supporting the conclusion that culture-based education and Indigenous language programs are reliably and overwhelmingly successful.

Moreover, Native Hawaiian language advocates like Ms. Rawlins and other pioneers in ‘Ōlelo Hawai‘i education have played critical roles in Native language revitalization efforts. They are ambassadors of aloha throughout Indian Country, even serving in leadership positions at the National Indian Education Association (NIEA) and affiliated tribal organizations intent on revitalizing their Native languages.

The successes of the Native Hawaiian education movement are understood throughout the community. According to conversations with NHEC, in 2017 and 2018 alone, the 38 NHEP grantees served 95,458 individuals, including 74,311 students, 18,429 parents, and 2,718 teachers. They surpassed their target number for participants by approximately 65 percent. Additionally, all 38 grantees targeted serving Native Hawaiian communities and formed almost 700 strategic partnerships with schools, government agencies, or cultural organizations to expand the number served and to increase the overall impact of their programs.

Despite the great work of NHEP grantees in recent years, the effects of the pandemic still threaten the survival of some grantees and widen existing disparities between Native Hawaiian students and their non-Hawaiian counterparts. Even before the pandemic, data collected in 2015 demonstrated that fewer Native Hawaiian students attained proficiency in math and reading than their non-Hawaiian counterparts.¹⁷ Compounding matters, Hawai‘i is considered the state “most prone to academic risks during the coronavirus outbreak” and faces the “widest gap in the amount of teacher interaction with lesser-educated households compared with more-educated ones.”¹⁸

Non-profit education programs, particularly language immersion programs, have faced unique hardships amid the pandemic. With the arrival of new COVID-19 strains in Hawai‘i, Native Hawaiian students face a precarious situation. To further aggravate this risk, nearly ten percent of Native Hawaiian households do not have a computer in their homes, while nearly 20 percent do not have Internet access.¹⁹ During the pandemic, many families have been unable to afford the cost of new equipment and broadband service because formerly working adult parents are now unemployed.

OHA again appreciates Chairman Schatz’s leadership in finding ways to assist Native Hawaiian educators through these difficult times. Unfortunately, despite these efforts, our

¹⁷ A NATIVE HAWAIIAN FOCUS ON THE HAWAI‘I PUBLIC SCHOOL SYSTEM, SY2015, OFFICE OF HAWAIIAN AFFAIRS 9 (2017).

¹⁸ Alex Harwin & Yukiko Furuya, *Coronavirus Learning Loss Risk Index Reveal Big Equity Problems*, EDUCATIONWEEK (Sept. 1, 2020), <https://www.edweek.org/policy-politics/coronavirus-learning-loss-risk-index-reveals-big-equity-problems/2020/09>.

¹⁹ OFFICE OF HAWAIIAN AFFAIRS, *supra* note 9 at 3.

programs and keiki (children) are still at risk. We urge the Committee to ensure that Native Hawaiian programs and service providers be included in all future federal relief efforts, that the NHEA be reauthorized, that its scope be expanded, and that its annual funding be increased.

(3) Ensure parity in the treatment of all Native Americans, including American Indians, Alaska Natives, and Native Hawaiians

Again, through more than 150 Acts, Congress has established its trust responsibility to Native Hawaiians based on our status as the Indigenous, once-sovereign people of Hawai‘i. As a result of those Acts, this Committee has the duty to ensure that the federal government implements the trust responsibility fully and equally to all Native Americans, including Native Hawaiians. As Chairman Schatz recently stated, the trust responsibility “should be the guiding light” of this Committee’s work. While the federal trust responsibility may be implemented differently to Native Hawaiians because of our unique history with the United States, that trust responsibility nonetheless still exists.

As a Native Hawaiian leader elected to ensure the well-being of the Native Hawaiian community, I urge this Committee and the Congress to ensure that Native Hawaiians have the same opportunities as other Native Americans to engage in self-determination. OHA asks you to empower all Native Americans, including Native Hawaiians, with the same opportunity to choose their own path—understanding that each tribe, band, nation, pueblo, village, or community is best served through their unique, self-determined means. This necessarily includes extending access to federal programs implementing the trust responsibility to Native Hawaiians where appropriate, and where consistent with Native Hawaiians’ unique history and evolving political relationship with the United States.

OHA celebrates our involvement with the Alaska Federation of Natives, the National Congress of American Indians, and the NIEA, and we pledge to support and work with our Native cousins across the continent and in Alaska because all of us—American Indians, Alaska Natives, and Native Hawaiians—are strongest when we stand and work together.

In closing, I wish to express my appreciation and gratitude to both the Chairman and the Vice Chairman for taking on this responsibility. It has been an honor to have had this opportunity to address you and your Committee members. I have included OHA’s previous testimony from your December 9, 2020 hearing and am incorporating it by reference.

I stand ready to assist you in accomplishing this most important work, both now and in the future. A hui hou. Until we meet again.

Attachment: OHA Testimony for the U.S. Senate Committee on Indian Affairs’ December 9, 2020, Oversight Hearing on “From Languages to Homelands: Advancing Tribal Self-Governance and Cultural Sovereignty for Future Generations”

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