

TESTIMONY OF D. NOELANI KALIPI
BEFORE THE
UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS
Oversight Hearing on Advancing the Federal-Tribal Relationship
Through Self-Governance and Self-Determination

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2:15 p.m.

Aloha Chairman Akaka, Vice-Chairman Barrasso and Distinguished Members of the Senate Committee on Indian Affairs. Thank you for providing me with the opportunity to testify this afternoon.

My name is D. Noelani Kalipi and I serve as the President for TiLeaf Group, a native social enterprise that works with native and non-native companies and organizations focused on projects, services and programs that contribute to the well-being of native communities. A substantial portion of our activity is focused on community-based economic development and empowerment in native communities across the nation.

The federal policy of self-governance and self-determination empowers native peoples because it recognizes in policy and in practice the right of native peoples to govern themselves and their resources. The success of these policies is evidenced by the steady growth of sustained economic development across the nation among native governments. As described by Stephen Cornell and Joseph Kalt in reference to impoverished Indian nations:

“.. a growing number of those nations have broken out of the prevailing pattern of poverty. They have moved aggressively to take control of their futures and rebuild their nations, rewriting constitutions, reshaping economies, and reinvigorating Indigenous communities, cultures, and families. Today they are creating sustainable, self-determined societies that work in all dimensions – economic, social and political.”¹

Accountability is a vital element in the success of the federal policy of self-governance and self-determination. When given the opportunity to self-govern, native decision makers are held accountable for their choices and their consequences – both good and bad. According to Cornell and Kalt, this accountability makes for more quality decisions and results in Native nations being “better decisions makers about their own affairs, resources, and futures because they have the largest stake in the outcomes.”²

Native governments are at different points in the continuum of self-governance and self-determination. What remains fundamental, however, is their *access* to the federal policy that empowers them to engage in self-governance and self-determination. Mr. Chairman, thank you for

¹ Cornell, Stephen and Kalt, Joseph P., “Two Approaches to the Development of Native Nations, One Works, the Other Doesn’t,” Rebuilding Native Nations: Strategies for Governance and Development, 2007, p 6.

² *Id.*, p. 21.

your tireless effort over the past thirteen years to extend these policies to Native Hawaiians, who have been repeatedly recognized by the United States as Hawaii's indigenous peoples. S. 675, the Native Hawaiian Government Reorganization Act of 2012, provides the process for the extension of the federal policy of self-governance and self-determination through a federally recognized government-to-government relationship between Native Hawaiians and the United States.

Through your leadership, many of us in Hawaii better understand and appreciate the fundamental tools that these federal policies provide. Native Hawaiians are already recognized by the United States as Hawaii's indigenous peoples, as evidenced by the 150-plus federal statutes addressing the conditions of Native Hawaiians. As our history has demonstrated, without access to the federal framework of self-governance and self-determination, however, Native Hawaiians don't have the same tools available to manage and control their resources. Enacting S. 675 provides the United States will the ability to better fulfill its responsibilities to Native Hawaiians as its indigenous peoples.

In the absence of a federally recognized government-to-government relationship between the United States and Native Hawaiians, the State of Hawaii has created mechanisms to help manage the Native Hawaiian land trusts and resources. This effort, while well-intentioned, does not allow for self-governance and self-determination by Native Hawaiians. Instead, it has resulted in the State of Hawaii managing native lands and resources on behalf of Native Hawaiians. Native Hawaiians, as a people, want to and need to manage their own resources.

The Hawaiian Homes Commission Act of 1920 (HHCA) was enacted by the U.S. Congress in 1921 and set aside 200,000 acres of land for homesteading, agricultural and pastoral use by Native Hawaiians. The Act was based on prevailing federal policies towards Native peoples at the turn of the century which focused on assimilation and allotment. The Dawes Act and Burke Act focused on providing eligible Indians with allotments of lands for residential, ranching, and agricultural purposes. The general concept behind this policy was to return Native people to the land. The Hawaiian Homes Commission Act was modeled after these Indian General Allotment Acts as it sought to "rehabilitate" the Native Hawaiian people by placing them back on their ancestral lands. Learning from tragic circumstances that resulted in American Indians losing some of their lands, the HHCA created a federal land trust that provided for 99-year leases to qualified Native Hawaiians, thereby ensuring the longevity of the trust lands to benefit the Native Hawaiian people.

In 1959, when Hawaii entered into statehood, prevailing federal policies towards Natives were to delegate authorities over Natives to state governments. As a condition of Statehood, therefore, the State of Hawaii agreed to administer the Hawaiian Home Lands trust. Section 4 of the Hawaii Admissions Act (P.L. 86-3, 73 Stat 4) specifically provides that "As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of said State ... subject to amendment or repeal only with the consent of the United States ...". The federal government retains oversight of the Hawaiian Homes Commission Act to ensure that the original intent of the HHCA is maintained; clear evidence of its effort to retain its trust responsibility towards Hawaii's indigenous peoples.

The State of Hawaii established the Department of Hawaiian Home Lands (DHHL) in 1961 to fulfill its mandate to administer the Hawaiian Home Lands trust. DHHL is governed by nine Commissioners who are appointed by the Governor. The DHHL Director serves as the Chairman of the Hawaiian Homes Commission, and also as a member of the Governor's cabinet.

Beneficiaries of the HHCA govern themselves through the existence of beneficiary organizations called homestead community associations. These organizations, which have existed as long as homestead communities, have representative leadership through democratically elected processes for each homestead area. Homestead associations are important partners that help the State of Hawaii to fulfill its responsibilities under the HHCA because they know their communities and lands, and are best able to engage their communities and to communicate with state and federal policymakers to address issues of priority. If one were to analogize the state framework to the federal framework, DHHL is a managing agency similar to the Bureau of Indian Affairs, and the homestead community organizations are the tribes - governing entities at the community level who work to address their community's needs and resources.

The difference here is that DHHL is a state agency whose inherent responsibility is to the state rather than to the beneficiaries. The strength of the relationships between DHHL and the beneficiaries and homestead community associations are largely based on the state appointed officials who run the agency. In certain situations, there can be a conflict in terms of what is in the best interest of the State versus what is in the best interest of the beneficiaries and the administration of the Hawaiian Home Lands trust. The current framework sometimes puts Commissioners in the awkward position of having the responsibility to make decisions in the best interest of the Hawaiian Home Lands trust while facing the reality that they are political appointees of the Governor and sometimes advised to make decisions in terms of the best interests of the State of Hawaii. These situations best illustrate the challenges faced by Native Hawaiians and the consequences of not being afforded the opportunity to federal policies that encourage and empower native peoples to manage their lands and resources within the federal framework of self-governance and self-determination.

As another condition of Statehood, the State of Hawaii took title to 1.4 million acres of land that had been ceded to the United States by the Republic of Hawaii upon annexation to the United States. Section 5(f) of the Hawaii State Admissions Act provides that revenues from these lands shall be utilized for five purposes, one of which is for the betterment of native Hawaiians. In 1978, Hawaii held a Constitutional Convention. The constitutional convention delegates voted to establish the Office of Hawaiian Affairs (OHA) as a means to utilize the portion of the said revenues from the ceded lands for the betterment of Native Hawaiians. This action was taken in support of Native Hawaiians and their lands and resources, utilizing the tools available at the state level. The Hawaii electorate ratified the delegates' decision to create OHA, reflecting the widespread view among Hawaii residents that its indigenous peoples should have a mechanism to manage Native Hawaiian resources. The agency is governed by a nine member Board of Trustees which elected statewide by all Hawaii voters.

While Native Hawaiians have been elected to govern OHA and are appointed by the Governor to serve on the Hawaiian Homes Commission, both OHA and DHHL are state agencies. While based on good intentions and best efforts, the management of Native Hawaiian resources within the state framework does not result in self-governance and self-determination by Native Hawaiians, nor does it result in Native Hawaiian control and management of resources – a fundamental element of self-rule under the federal framework. The enactment of S. 675, the Native Hawaiian Government Reorganization Act of 2012, would address this inequity and provide for Native Hawaiian control, management and accountability of native lands and resources, thereby providing parity in federal policies towards American Indians, Alaska Natives and Native Hawaiians.

The State of Hawaii continues to support greater self-governance for Native Hawaiians. As recently as 2011, the Hawaii State Legislature passed and the Governor enacted into law Act 195 which

establishes a Native Hawaiian Roll Commission. Act 195 recognizes the Native Hawaiian people as the only indigenous, aboriginal population of Hawaii and expresses the State's support for the continuing development of the reorganization of the Native Hawaiian governing entity for a federally recognized government-to-government relationship with the United States. The legislation was unanimously passed by the State's House of Representatives and was approved by 23 of 25 votes in the Hawaii State Senate.

Act 195 serves as clear evidence of the State of Hawaii's recognition of and continued support for self-governance and self-determination of the Native Hawaiian people. Thank you, Members of this Committee, for modifying S. 675 last week in your consideration of the substitute amendment to S. 675, to reflect the State of Hawaii's action in establishing the Native Hawaiian Roll Commission in support of increased self-governance and self-determination for Native Hawaiians.

In 1993, President Clinton signed P.L. 103-150, commonly referred to as the "Apology Resolution" into law. The Apology Resolution apologizes to Native Hawaiians for the participation of the United States in the overthrow of the Kingdom of Hawaii and commits the United States to a process of reconciliation with Native Hawaiians. In 1999, representatives of the Departments of the Interior and Justice traveled to Hawaii to begin the reconciliation process, which is a continuing dialogue between federal representatives and Native Hawaiians to discuss longstanding issues resulting from the overthrow of the Kingdom of Hawaii.

Public meetings were held on most islands and representatives visited a number of sites including Native Hawaiian charter and language immersion schools, educational facilities, health care facilities, cultural centers, hula halau, native fish ponds and Hawaiian homestead communities and projects. Federal representatives concluded Native Hawaiians have maintained a distinct community and certain government structures since the overthrow of the Kingdom of Hawaii and that Native Hawaiians continuously tried to find ways to manage their resources and to address the needs of their communities through self-governance and self-determination.

As a result of their consultations in Hawaii, the Departments of the Interior and Justice published a report, "From Mauka to Makai: The River of Justice Must Flow Freely," in 2000, which concluded:

"that the Native Hawaiian people continue to maintain a distinct community and certain governmental structures and they desire to increase their control over their own affairs and institutions. As a matter of justice and equity, this Report recommends that the Native Hawaiian people should have self-determination over their own affairs within the framework of Federal law, as do Native American tribes."³

The report references actions taken by United States to recognize the rights and promote the welfare of Native Hawaiians as indigenous peoples. It recommends that in an effort to safeguard and enhance Native Hawaiian self-determination over their lands, cultural resources, and internal affairs, Congress should enact 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."⁴

³ Report published by the Department of the Interior and the Department of Justice, " Mauka to Makai: The River of Justice Must Flow Freely, " (2000) p.4

⁴ Id.

S. 675 reaffirms the legal and political relationship between Native Hawaiians and the United States by providing a process for the reorganization of the Native Hawaiian government for the purposes of a government-to-government relationship. The bill is consistent with the recommendations made by the Departments of the Interior and Justice as part of the reconciliation process more than a decade ago. S. 675 is important to the Federal-Tribal relationship, Mr. Chairman, because it provides parity in federal policies addressing our nation's indigenous peoples.

The terms "Indian" and "Tribe" are terms of art that refer to native peoples as individuals, "Indian" or collectively, "Tribes." There are hundreds of different native groups with different languages, cultures, and traditions, who are indigenous to the United States. The fact that they are from different regions of the United States and speak different languages does not change the fact that they are indigenous peoples with whom the United States executed treaties, took lands into trust on their behalf, and has a special responsibility to promote their welfare through the federal policy of self-governance and self-determination. The reference to native groups as Indians or Tribes is a reflection of their status as indigenous peoples.

S. 675 provides parity by treating Native Hawaiians equally with the same terminology under federal law, thereby ensuring that American Indians, Alaska Natives and Native Hawaiians are empowered to the same extent to preserve and perpetuate their cultures and languages and to address the needs of their communities under the federal policy of self-governance and self-determination. By extending federal recognition of a government-to-government relationship to Native Hawaiians and providing access to the same laws as other Indian Tribes, S. 675 provides the parity recommended as part of the reconciliation process.

Mr. Chairman, thank you and your Committee for your tireless efforts over the tenure of your career in the United States Congress to support the Federal-Tribal relationship through self-governance and self-determination. Whether it has been through your support for the Native 8(a) program which is one of the few effective federal policies working to promote economic development in native communities, or financial literacy and access to capital for native peoples through New Market Tax Credits, or helping to educate policymakers about the importance of the federal trust responsibility and its foundation for so many federal policies involving native peoples, your efforts have created opportunities for sustained economic development for this Nation's First Peoples. Your mere presence as the Native Hawaiian Chairman of this distinguished committee is a source of inspiration for our youth and great pride for all native peoples. We thank you and pledge to ensure that your legacy will never be forgotten.