

October 23, 2007

United States House of Representatives
Washington, DC 20515

Dear Representative:

On behalf of the American Bar Association, I urge your support for the Native Hawaiian Government Reorganization Act of 2007, H.R. 505, introduced by Representative Neil Abercrombie (D-HI).

The ABA, as the national voice of the legal profession, has a long standing interest in the legal issues concerning America's native and indigenous peoples. Over the past twenty years, our House of Delegates has adopted numerous policies supporting self-determination and self-governance for American Indians and Alaska Natives. In 2006, we adopted policy supporting the right of Native Hawaiians to seek federal recognition of a native governing entity within the United States similar to that which American Indians and Alaska Natives possess under the Constitution.

The ABA supports H.R. 505. It is a conservative measure drafted to provide an ordered process that would lead to renewed self-determination for the Native Hawaiians. The goal is the creation of a political entity within U.S. borders developed by the indigenous Hawaiian people to serve, maintain and support their unique cultural and civic needs, including advocacy on their behalf on the federal and state level.

This would represent a return to self-determination for the Hawaiian people and a renewal of federal support for their unique history. For 1,000 years prior to the overthrow of the Hawaiian monarchy, the people who we now know as the Native Hawaiians lived under an organized political framework governed by the rule of law. This kingdom had a written constitution and was recognized by the U.S. Government as a sovereign nation. Congress ratified treaty agreements with it and recognized its representatives.

In 1893, U.S. agents acting without official sanction orchestrated a coup against this sovereign state and overthrew Hawaii's last queen. Acknowledging this crime and the continuing effect it had on Queen Liliuokalani's subjects, Congress

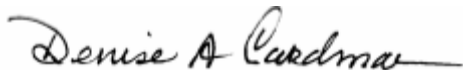
chose to intercede by taking a managerial posture towards the kingdom's assets and accepting a fiduciary duty to the Native Hawaiians and their progeny. This was the beginning of a unique relationship between Congress and the Hawaiian people. In 1993, the destruction of the Hawaiian nation's last government was acknowledged with regret in U.S. law (Public Law 103-150, also known as the Apology Resolution). HR 505 would allow the Hawaiian people the right to govern their own destiny by replacing the Congressional mandate with Native Hawaiian governance within the state of Hawaii.

Opponents of this legislation claim that allowing Native Hawaiians the right to self governance would imperil the constitutional rights of non-Native Hawaiians to equal protection under the law. They point to the former Kingdom's wealth and claim that self-determination will create a system of benefits disadvantaging those who are not of Native Hawaiian heritage. However, Native Hawaiians, in seeking rights and privileges that other indigenous people of the United States enjoy under our system of law, are not compromising the rights of others but exercising their own rights to property, to self-determination and to be recognized as an indigenous people by Congress.

The right of Native Hawaiians to use of the property held in trust for them and the right to govern those assets is not in conflict with the Equal Protection Clause since it rests on independent constitutional authority regarding the rights of native nations contained within the text of Articles I and II of the Constitution. The constitutional framers recognized the existence of native nations within the United States that predated our own democracy and created a system for federal recognition of indigenous nations within our then expanding borders. The framers empowered Congress through the Indian Commerce Clause and the Treaty Clause to maintain relations between the U.S. federal government and the governments of these native nations. Our courts have upheld Congress' power to recognize indigenous nations and have specifically recognized that this power includes the power to re-recognize nations whose recognition has been compromised in the historical past. Thus, the Native Hawaiians have the right to be recognized by this body, this right is not in conflict with the rights of others, and this recognition may be renewed despite historical lapses.

I urge you to support the rights of Native Hawaiians to self-determination by voting for H.R. 505 and against any weakening amendments.

Sincerely,

A handwritten signature in cursive script that reads "Denise A. Cardman". The signature is written in black ink and is positioned above the typed name and title.

Denise A. Cardman
Acting Director