

Brief Response to
U.S. Commission on Civil Rights Report
on S 147, the Akaka Bill

1. The Commission's report and its conclusion evidence a complete lack of understanding of this country's longstanding practice of dealing specially with its native peoples. It ignores the undisputed history of suffering, and political and cultural devastation foisted upon the Native Hawaiian people. And under the guise of lessening discrimination, it ironically ends up effecting the most patent discrimination by denying the Native Hawaiian people the recognition and self-governing structure that virtually all other native peoples have had for decades.

2. The report wrongly suggests the Akaka Bill creates a race-based government and segregates people by race. In fact, participation in the Native Hawaiian Governing Entity is limited to descendants of the native indigenous people of the Hawaiian Islands, a status Congress has itself characterized as being non-racial, and which is consistent with over a century of United States Supreme Court precedent upholding the special status of this country's other native peoples. Native Hawaiians, like Native Americans and Alaska Natives, have been recognized by Congress as having a special political relationship with the United States.

3. The Commission's emphasis on the Supreme Court's Rice v. Cayetano decision plainly misses the mark, as Rice made no distinction whatsoever between American Indian tribes and Native Hawaiians. Rice therefore provides no justification for denying Native Hawaiians the same recognition other Native Americans long ago received.

4. Hawaiians are not asking for "special" treatment -- they're simply asking to be treated the same way all other indigenous Americans are treated in this country. Congress has recognized the great suffering American Indians and Alaska Natives have endured upon losing control of their native lands, and has, as a consequence, provided formal recognition to those native peoples. Hawaiians are simply asking for comparable recognition, as the native peoples of the Hawaiian Islands who have suffered similar hardships, and who today continue to be at the bottom in most socioeconomic statistics.

5. The Constitution gives Congress broad latitude to recognize native groups, and the Supreme Court has declared that it is for Congress, and not the courts, to decide which native peoples will be recognized, and to what extent. The only limitation is that Congress may not act "arbitrarily" in recognizing an Indian tribe. Because Native Hawaiians are not only indigenous, but also share with other Native Americans a similar tragic history of dispossession, cultural disruption, and loss of full self-determination, it would be "arbitrary" to not recognize Native Hawaiians.

6. The commission suggests that Native Hawaiians do not fall within Congress's power to deal specially with "Indian Tribes," because Native Hawaiians cannot be deemed "Indian Tribes," given the lack of a continuously existing self-governing entity. If Native Hawaiians do not have a continuously existing self-governing structure today, it is only because the United States participated in the elimination of that self-governing entity, by facilitating the overthrow of the Hawaiian Kingdom, and later annexing the Hawaiian Islands. Unlike other Native Americans who were allowed to retain some measure of sovereignty, Congress did not leave Native Hawaiians with any sovereignty whatsoever. It cannot be that the United States' complete destruction of Hawaiian self-governance prevents Congress from ameliorating the consequences of its own actions by trying to restore some small measure of sovereignty to the Native Hawaiian people. (Note: the terms "Indian" and "tribe" at the time of the framing of the Constitution simply referred to distinct aboriginal inhabitants of our frontiers, which Native Hawaiians surely are.)

7. The commission ignores the fact that Congress has already recognized Native Hawaiians to a large degree, by not only repeatedly singling out Native Hawaiians for special treatment, either uniquely, or in concert with other Native Americans, but by acknowledging on many occasions a "special relationship" with, and trust obligation to, Native Hawaiians. In fact, Congress has repeatedly stated that "the political status of Native Hawaiians is comparable to that of American Indians." The Akaka Bill simply takes this recognition one step further, by providing Native Hawaiians with the means to re-organize a formal self-governing entity, something Native Americans and Native Alaskans have had for decades.

8. The commission suggests that because the government of the Kingdom of Hawaii was itself not racially exclusive, that it would be inappropriate to recognize a governing entity limited to Native Hawaiians. This objection is absurd. The fact that Native Hawaiians, over one hundred years ago, were enlightened enough to maintain a government that was open to participation by non-Hawaiians, should not deprive Native Hawaiians today of the recognition they deserve. Indeed, it is quite ironic that those who oppose the Akaka Bill as racist would use Native Hawaiians' historical inclusiveness as a reason to deny Native Hawaiians the recognition other native groups receive. (Note: American Indian tribes have often included non-Indians within their tribes, too, yet non-Indian tribal members have been permissibly excluded from having special status.).

9. The commission also expresses concern that there is nothing to ensure that the Native Hawaiian Governing Entity will protect civil rights, but in fact the Secretary of the Interior must certify that civil rights are protected before certifying the organic governing documents.

10. In sum, there is simply no legal or moral distinction between Native Hawaiians and American Indians or Alaska Natives, that would justify denying Native Hawaiians the same treatment other Native American groups in this country currently enjoy. As a result, the commission's reasoning poses a threat to American Indians and Alaska Natives as well, which perhaps explains in part why these groups are overwhelmingly in support of the Akaka Bill.

11. Formal recognition will help preserve the language, identity, and culture of Native Hawaiians, and ultimately ensure the survival of this great people. The commission turns a blind eye to the sufferings of the Native Hawaiian people, and attacks a bill that merely seeks to provide some remedy for that suffering.