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Hawaiians deserve to vote, not just Congress

By Rep. Doc Hastings

The Daily Caller

February 23, 2010

In March, 1959, Congress passed and with the stroke of a pen President Dwight D. Eisenhower signed into law, the Hawaii Admission Act, which pending approval of the Hawaiian residents, designated Hawaii as America’s 50th state. On June 27 of the same year, 94.3 percent of Hawaiians voted in favor of the Hawaii Admissions Act and joining the union as one unified state.

That historic vote gave the residents of Hawaii all rights, privileges and freedoms associated with being an American citizen. Unfortunately, Congressional Democrats are prepared to deeply divide the state by establishing new, sovereign rights to Native Hawaiians in violation of the U.S. Constitution.

Today, Democrats in the House of Representatives are trying to push the [Native Hawaiian Government Reorganization Act of 2009](#), introduced by Rep. Neil Abercrombie (D-HI), which would recognize Native Hawaiians as a race-based, sovereign governing entity. With this newly anointed status by the Federal Government, over 400,000 Native Hawaiians, spread across the country, would be furnished with special privileges comparable to those currently enjoyed by Indian tribes.

With passage of this bill, Native Hawaiians would gain the ability to take ownership of lands currently owned by the state, set their own civil and possibly criminal jurisdictions separate from the State of Hawaii, and become exempt from some taxation.

The implementation of this bill will likely lead to serious real world implications. For example, because the bill potentially pre-empts civil regulatory and tax jurisdiction without consent from the state, special tax breaks and regulatory structures could be given to Native Hawaiian owned businesses. This would force non-Native business owners in Hawaii who have been operating under equal rules and regulations into a competitive disadvantage with Native-owned businesses. Incentives for non-Native businesses would diminish, weakening competition, which would eventually limit consumer options and drive up prices.

Hawaii’s Governor and Attorney General, both strong supporters of Native Hawaiian recognition, now have serious concerns with the latest version of the bill. In a statement

released last night, Governor Lingle [announced her opposition](#) to the bill, “Ultimately...the current draft of the bill is not one I can support.” The Governor cited clauses in the revised bill that would immediately grant the Native entity “broad governmental powers and authorities” and remove state and county authority. If this legislation doesn’t satisfy two of the most ardent supporters of Native recognition, Congress shouldn’t be trying to pass it.

Race-based distinctions with special privileges do a disservice to the fundamental rights guaranteed by our Constitution and are completely antithetical to individual freedoms so inherent and valued in American society. Further, subdividing Americans based on race raises serious constitutional questions as to whether or not Congress has the authority to treat Native Hawaiians as an Indian tribe.

With respect to dividing people based on race or ethnicity, the U.S. Commission on Civil Rights, less than pleased with the concept of the legislation, expressed their dissatisfaction in an August 2009 [letter to Congress stating](#) they oppose any “legislation that would discriminate on the basis of race or national origin and further subdivide the American People into discrete subgroups accorded varying degrees of privilege.”

In 2000, the U.S. Supreme Court considered *Rice v. Cayetano*, a case related to the separation of American citizens into race-related classifications. The lawsuit involved a Hawaii state law that limited to Native Hawaiians the eligibility to vote in elections for trustees of the Office of Hawaiian Affairs (OHA). In a 7-2 decision the Supreme Court held that such a restriction is race-based and therefore prohibited by the 15th Amendment to the Constitution. Though the case did not involve a Native Hawaiian entity specifically recognized by Congress, the majority opinion noted that such a proposition “would raise questions of considerable moment and difficulty. It is a matter of some dispute ...whether Congress may treat the native Hawaiians as it does the Indian tribes.”

According to a December 2009 Zogby Poll, only 34 percent of Hawaiians support the concept of the Federal Government imposing a new racially based sub-population of citizens on the islands. Like their fellow Hawaiians who voted overwhelmingly for statehood in 1959, Hawaiians today want a say in the future of their archipelago—the same poll found that 58 percent want a statewide vote on the issue. I have an amendment that will be voted on by the House that would require such a statewide vote, and I hope all Representatives will join me in support of it.

Fifty-one years ago, 94.3 percent of Hawaiian residents voted to join the United States of America, surely this Congress owes the citizens of the State of Hawaii the ability to cast their vote on whether or not to create a new race-based governing body within their own state. Hawaii voted to join the union as one unified state, if Congress is going to divide them, then the people of the State of Hawaii deserve to have their say.

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