

In The  
**Supreme Court of the United States**

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JOHN DOE, A MINOR, BY HIS MOTHER  
AND NEXT FRIEND, JANE DOE,

*Petitioner,*

v.

KAMEHAMEHA SCHOOLS/BERNICE  
PAUHI BISHOP ESTATE, ET AL.,

*Respondents.*

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**On Petition For Writ Of Certiorari To  
The United States Court Of Appeals  
For The Ninth Circuit**

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**AMICUS CURIAE BRIEF OF EARL F. ARAKAKI  
AND OTHER RESIDENTS OF HAWAII  
IN SUPPORT OF PETITIONER**

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**AMICUS CURIAE BRIEF OF EARL F. ARAKAKI  
AND OTHER RESIDENTS OF HAWAII  
IN SUPPORT OF PETITIONER**

This *amicus curiae* brief is submitted on behalf of Earl F. Arakaki, Evelyn C. Arakaki, Robert M. Chapman, Sandra Puanani Burgess, Patricia A. Carroll, Toby M. Kravet, James I. Kuroiwa, Donna Malia Scaff, Jack H. Scaff, and Thurston Twigg-Smith.<sup>1</sup>

**I. INTEREST OF AMICI CURIAE**

The *amici curiae* are individual citizens of the United States and the State of Hawaii. All are home owners, registered voters and taxpayers. Their ancestries reflect the overall population of Hawaii and include Japanese, English, Filipino, Hawaiian, Irish, Chinese, Scottish, Polish, Jewish, Okinawan, French and more.

Along with many other Hawaii residents, *amici* are weary, and wary, of Hawaiian activists “acting mad” and demanding superiority. *Amici* seek to re-instate in Hawaii the idea that, in the eyes of the government, we are just one race here. We are American.

Most of the *amici* were plaintiffs in *Arakaki v. Hawaii*, 314 F.3d 1091 (9th Cir. 2002) which struck down Hawaii’s racial restriction on running for and, if elected, serving as trustee of the Office of Hawaiian Affairs (“OHA”). All of them are plaintiffs in *Arakaki v. Lingle*, 477 F.3d 1048 (9th Cir. 2007) in which the mandate of the Ninth Circuit is about to issue remanding the case to the district court.

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<sup>1</sup> The consent of the parties to the filing of this *amicus curiae* brief was Express mailed to the office of the Clerk of this court on April 2, 2007.

No counsel for a party authored this brief in whole or in part and no person or entity, other than the *amici curiae* or their counsel made a monetary contribution to the preparation or submission of this brief.



*Amici* plan to continue to pursue that suit vigorously. In addition, one or more of *amici*, and others similarly situated, are likely to file other suits, if necessary, until the U.S. Constitution's promise of Equal Protection of the laws is once again the law of the land in Hawaii.

This Court's decision to accept or reject certiorari will impact the quest of *amici*, and others similarly situated, for Equal Protection. What would be the result, if this Court declines certiorari?

Explicit racial discrimination by a huge, tax-subsidized charity with a virtual monopoly on political power in Hawaii and pursuing an agenda of disassimilation, will continue unabated with the blessing of the federal judiciary. Even more ominous would be the encouragement of demands for racial supremacy now increasingly dividing Hawaii.

## II. SUMMARY OF ARGUMENT

Kamehameha Schools/Bernice Pauahi Bishop Estate ("KSBE") is a charitable, not private, trust. If it were "purely" private, as it so zealously claims here, it would have failed long ago under the rule against perpetuities. Like all charitable trusts, KSBE is a public trust required to operate in compliance with public policy and the Constitution. Both the trial and appeals courts erroneously assumed, in the context of their decisions, that it was "purely" private.

They similarly erred in where they looked to learn history. When racial discrimination is the issue, courts do not defer to legislative findings but rigorously scrutinize them. The claims of past injustices to the Hawaiian people that must be atoned for is a myth, unsupported by history. The relationship between the U.S. and the people of Hawaii is a success story for Hawaiians. It is ironic that the estate whose vast land holdings were amassed by

subjugating and slaughtering Hawaiians now blames the United States or its citizens for their supposed shortcomings. History shows that even well-intended racial preferences do more harm than good especially to the intended beneficiaries. Hawaiians, like everyone else, do better when, as in sports, everyone plays the game by the same rules.

Racial tensions in Hawaii are simmering. The Supreme Court must say firmly and soon, that the U.S. Constitution and its promise of equal protection of the laws for every person, applies with full force in Hawaii and especially to the giant tax-subsidized charitable public trust that has corrupted and dominates Hawaii's government.

### III. ARGUMENT

#### A. KSBE IS A CHARITABLE, NOT PRIVATE, TRUST

The fundamental distinction between private trusts and charitable trusts is that, in the case of a private trust, property is devoted to the use of specified or described persons who are designated as beneficiaries of the trust; in the case of a charitable trust, property is devoted to purposes the law deems appropriately beneficial to the public. Restatement, Third, Trusts §§1c and 28; Black's Law Dictionary, 8th Ed. (2004), **public trust**. See *charitable trust*; **charitable trust**. A trust created to benefit a specific charity, specific charities, or the general public rather than a private individual or entity.

KSBE argued, and the trial and *en banc* appeals court accepted, that KSBE is a "purely" (App. 21a; Opp.Br. 12 & 22) "wholly" (App. 38a; Opp.Br. 1, 15) and "truly" (App. 190a) "private" trust. If that were so, KSBE would have expired long ago because it violates the rule against perpetuities.

*Duration of charitable trusts.* A charitable trust is not invalid although by its terms it is to continue for an indefinite or unlimited period of time. This is unlike the rules for private trusts, in which the interests of beneficiaries must vest within the period of the applicable rule against perpetuities. Restatement, Third, Trusts §28d.

It is not uncommon for provisions to be included in various types of charitable trusts, especially those created for educational or health purposes or for the relief of poverty, limiting the direct benefits to persons of a particular racial or religious group. These restrictions are ordinarily invidious and unenforceable. The doctrine of *cy pres* may be applied to remove the provision which is unlawful or contrary to public policy. *Id.* §28f.

**B. IN CASES INVOLVING ALLEGED RACIAL DISCRIMINATION, COURTS DO NOT ACCEPT LEGISLATIVE ALLEGATIONS OR CONCLUSIONS BUT RIGOROUSLY SCRUTINIZE THEM.**

What deference, if any, a court should accord legislative findings is not a question of “judicial notice” in the sense covered by the Federal Rules of Evidence but a question of constitutional law. For purely economic legislation judged by the minimal scrutiny of the rational basis test, the courts are deferential to legislative findings unless they are plainly false or irrational. See, e.g., *Railway Express v. New York*, 336 U.S. 106 (1949). But when the issue is whether the statute uses a suspect classification, such as race, or infringes a fundamental right, the courts do not defer to legislative findings but rigorously scrutinize them. This is true even if the government denies in the statute itself that it is discriminating based on a suspect classification or infringing a fundamental right. Otherwise a legislature could utterly frustrate

protection of constitutional rights by adding tendentious findings of “fact” to immunize its laws from independent judicial review. “Under our written Constitution, . . . the limitation of congressional authority is not solely a matter of legislative grace.” *U.S. v. Morrison*, 529 U.S. 598, 615 (2000).

This Court in *Rice v. Cayetano*, 528 U.S. 495, 514-516 (2000) has determined that the definitions of “Hawaiian” and “native Hawaiian” are racial classifications. These are the classes that the admission policy at KSBE is intended to benefit. Consequently, the “most rigid scrutiny” applies to any attempt to justify use of these classifications, whether by alleged fact-finding or otherwise.

The legislative statements that KSBE cites to establish the facts on which its summary judgment rests (The 2002 Native Hawaiian Education Act, 20 U.S.C. § 7512 and the 1993 Apology Resolution, Pub. L. 103-150, 107 Stat. 1510 (1993)) suffer from an additional defect: they are not part of the statute on which this suit is based, the Civil Rights Act of 1866, and so are irrelevant to this case.

Legislative statements in a preamble may help a court interpret the operative clauses of a particular statute by clarifying the legislative intent relating to the statute to which the preamble is attached, but they do not legislate facts or confer rights. Singer, Sutherland on Statutory Construction, §20.03 (5th ed. 1993). A preamble does not clarify the intent of a legislature that enacted a different statute decades earlier. Congress enacted the Civil Rights Act of 1866 and amended it in 1991. Congress was of course not relying on the “whereas” clauses found in the 1993 “Apology Resolution,” *supra*, or the 2002 Native Hawaiian Education Act, *supra*, or the other laws KSBE cites.

KSBE and the trial court and the appeals court rely chiefly on the “whereas” clauses to the so-called “Apology

Resolution.” Because that resolution has no legally operative provisions and is not the subject of this lawsuit, these “whereas” clauses do not determine the intent or effect of the statute on which Plaintiff relies.

Congress intended no change in the status quo by passing the Apology Resolution. The resolution expressly does not resolve any claims. 107 Stat. 1510 §3. The Senate Committee Report informed Congress that the resolution would have no regulatory impact and “will not result in any change to existing law.” S. Rep. 103-126. There were no fact-finding hearings or floor debate about the accuracy of the factual claims. It can hardly be compared to the social science research used in *Brown v. Bd. of Education*, 347 U.S. 483, 494, n.11 or a “Brandeis brief.”

The resolution’s sponsor, Senator Daniel K. Inouye, assured the Senate that it is only “a simple resolution of apology.” He emphasized this point to reassure his colleagues that the resolution would have no effect on any controversial questions:

As to the matter of the status of Native Hawaiians, as my colleague from Washington knows, from the time of statehood we have been in this debate. Are Native Hawaiians Native Americans? This resolution has nothing to do with that. This resolution does not touch upon the Hawaiian homelands. I can assure my colleague of that. It is a simple apology.

Congressional Record Vol. 139, S14477, S14482 (Oct. 27, 1993). Thus, the Resolution has no bearing on the status of Native Hawaiians or the Civil Rights Act of 1866 or this case.

All of the laws cited by KSBE, including the Native Hawaiian Education Act, *supra*, have preambles that closely resemble each other and the “whereas” clauses of the Apology Resolution. Each repetition of this language is more remote in time from the Civil Rights Act of 1866 and

more clearly an attempt to use post-hoc findings to shore up a race-based scheme from constitutional challenge.

### **C. VICTIMHOOD CLAIMS UNJUSTIFIED. U.S. SUCCESS STORY FOR HAWAIIANS**

The civil rights movement of the 1960's (which triggered the "Hawaiian Renaissance") also had a negative spin as peoples everywhere became increasingly sensitive to racial differences not only as sources of inequity and injustice but as opportunities for individual self-aggrandizement. Claims to compensation for group injustices began to be advanced around the globe by ethnic leaders.<sup>2</sup>

But correcting for past injustices is a special problem for racial groups, such as Hawaiians, not justified in claiming to be victims. The foul deeds committed against their ancestors since 1778, as before, were almost all committed by other Hawaiians. Nevertheless, despite the demerits of their claims of racial injustice, Hawaiians with increasing frequency put themselves forward in the public arena as champions of a victimized race whose status and civil rights had been denied, and who might therefore claim compensatory entitlements. This led to "Hawaiianizing" the trustees of Bishop Estate and turned the estate to a policy of disassimilation contrary to the Princess's goal of integration. *Id.*

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<sup>2</sup> Condensation of text from *Testamentary Incorrectness: A Review* by Paul D. Carrington, Vol. 54 Buffalo Law Review 693, 705-706 Dec. 2006.

America's acceptance in 1898 of the Republic of Hawaii's offered Treaty of Annexation<sup>3</sup> was the logical culmination of the friendly and mutually beneficial trading relationship between the two countries. The United States is Hawaii's closest large neighbor, even more so after 1850 when California became a state. The irresistible mutual attraction between the people of Hawaii and the people of America, Europe and Asia, is a fact of history.

**Hawaii's Economic System in 1778.** After 500 years of isolation, the Hawaiian islands were "discovered" in 1778 by British explorer, Captain James Cook. What Cook found was the most hierarchical of the Polynesian chiefdoms.<sup>4</sup> Each of the major Hawaiian islands was separately ruled by a paramount chief or *ali'i nui*. The ruling classes generally did not engage in economically productive work, except for the managerial skills of the *konohiki*, lesser chiefs who served as property managers. Chiefs, from the head of the smallest *ahupuaa* (land district) to the *ali'i nui*, basically lived off the labor of the *maka'ainana* (commoners or tillers of the soil), as did their courtiers, warriors, priests, administrators, policemen, servants and hangers-on. Estimates vary as to the size of the tax burden that commoners bore to support this upper structure, ranging from more than half to about two-thirds of the fruit of the commoners' labor.<sup>5</sup> In these social formations, "high rank holds the rule and possesses the land title: commoners are subject and landless."<sup>6</sup>

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<sup>3</sup> September 9, 1897 the Senate, Republic of Hawaii ratified the proposed treaty of annexation. <http://tinyurl.com/yofozz>. This was accepted by the U.S. by the Annexation Act, 30 Stat. 750, 1898.

<sup>4</sup> Kirch, *On the Road of the Winds* at 247, Univ. of California Press, 2000.

<sup>5</sup> Hitch, *Islands in Transition, The Past, Present and Future of Hawaii's Economy* at 15, First Hawaiian Bank, 1992.

<sup>6</sup> Kirch, *On the Road of the Winds, supra*, at 249.

In 1778, the United States consisted of the 13 former British colonies on the Atlantic seaboard of America still engaged in the Revolutionary war triggered, among other grievances, by the British monarchy's oppressive taxation. The economy of the new United States soon intertwined with Hawaii's as merchant ships carrying furs from Alaska and the Pacific Northwest to China began taking on sandalwood from Hawaii, as well as provisions. Then, as the ships carrying off the sandalwood of Hawaii disappeared, a new kind of vessel began arriving at the ports of the kingdom, the New Englanders hunting whales to light the lamps of America.<sup>7</sup>

**Hawaii's Search for Security in an Insecure World.**

Kamehameha I (who would later unite the islands and become their first king) had seen Cook's British men of war in 1778, La Perouse's two French naval vessels that visited in 1786 and Vancouver's warships in 1792, 1793 and 1794. It was obvious to Kamehameha that the continued independence of his little kingdom hinged on having one of these powers as a protector. In 1794 he agreed with Vancouver to a "solemn cession" of the Island of Hawaii (which was all he controlled at the time) to Great Britain, which would own the island but not interfere in domestic affairs. The British crown never took official cognizance of this agreement but until his death in 1819, Kamehameha felt that he had a solid defensive alliance with Great Britain.<sup>8</sup>

In 1819, shortly after the death of Kamehameha the Great, his son Liholiho, the new King, broke the *Kapu*, dismantled the Heiau and burned the wooden idols. Into this religious vacuum, the first American missionaries arrived the next year, 1820, and soon Kaahumanu took

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<sup>7</sup> Hitch, *Islands in Transition*, *supra*, at 40, 41.

<sup>8</sup> *Id.* at 32.



charge of Christianity, made it the new *Kapu*, displacing *Lono* and *Ku* as the path to *mana*.<sup>9</sup>

By 1830 the United States had replaced Great Britain as the accepted friend and most likely protector of the little kingdom. The expansion of American interests into this region was a by-product of the transpacific trade in furs and sandalwood. Manufactured goods destined for California and Oregon were distributed from Honolulu and exports from those territories were sent to Honolulu for transshipments to Europe or to the United States. The trade which linked Honolulu, Monterey, and the mouth of the Columbia in an economic interdependence was carried almost exclusively in American vessels and was controlled by American merchants, many of whom resided either in Honolulu or in California.<sup>10</sup>

As Stanford University Professor Harold Bradley concluded,<sup>11</sup> in reference to the time period 1789 – 1843, this development of a Polynesian kingdom with Western institutions was, in part, the result of the location of the Hawaiian Islands astride the principal trade routes of the northern and central Pacific. It had been possible only because of the ready amiability with which the Hawaiian chiefs and commoners had welcomed all classes of foreigners to the Islands. The principal forces in the creation of the new Hawaiian kingdom, however, had been the few score of American traders and missionaries who had made the Islands their home and whose energy in the introduction of the political, religious, and economic ideals of their native land had established an American frontier in Hawaii.

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<sup>9</sup> *Native Lands and Foreign Desires*, Kama'eleihiwa 154-157.

<sup>10</sup> Bradley, *The American Frontier in Hawaii* at 392-394.

<sup>11</sup> *Id.* at 465-466.

**Hawaii's Economic System in 1890.** Between the death of Kamehameha I in 1819 and the death of King Kalakaua in January 1891, the *ali'i nui* themselves had abolished the *kapu* system; adopted a Bill of Rights laying the legal basis for a free-enterprise economy, under which the people of Hawaii were set free to work and otherwise manage their affairs as they wanted and to accumulate personal property and pass it along to their heirs; provided Hawaiians with a written form of their previously oral language and established widespread public schools and an exemplary level of literacy among all classes; adopted an American-style constitution giving commoners an institutional voice in the government and guaranteed a regime of law for business transactions and property holding; Kamehameha III and 245 chiefs had agreed among themselves how much land should go to the crown and how much to the chiefs and in 1850 the legislature had ordered grant of fee-simple titles to native tenants for their *kuleanas*, the parcels of land cultivated by them. By the end of the *mahele*, or land division, in 1855, less than 30,000 acres were awarded to the native tenants. However, these tracts of land consisted chiefly of taro lands and were considered the more valuable lands in the Islands.<sup>12</sup> The *kuleana* grants put land into the hands of about two out of every three Hawaiian families, said to be “a record of fee simple ownership among natives unique in the early 19th century.”<sup>13</sup>

**Overthrow.** On Saturday January 14, 1893, when Queen Liliuokalani, in violation of her oath just two years earlier to uphold the existing constitution, and shortly after she had secured passage of a lottery law and one

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<sup>12</sup> Chinen, *The Great Mahele, Hawaii's Land Division of 1848*, University of Hawaii Press, 1848 at 31.

<sup>13</sup> Hitch, *Islands in Transition, supra*, at 30.

legalizing importation of opium and another for a distillery, announced her intention to promulgate a new constitution giving herself more absolute power,<sup>14</sup> much of the kingdom's business and political establishment revolted. On Sunday January 15th notices were posted for mass meetings of the opposing sides for the following Monday and uncertainty prevailed. On Monday January 16th, Captain Wiltse on the U.S.S. Boston, just back from a training voyage, found an interregnum – uncertainty about who, if anyone was in charge. (Put into morganreport.org search window the word “interregnum.”) He sent 162 sailors and marines ashore, to protect American lives and property. The marines went to the U.S. legation at Nuuanu and School Streets and the consulate at Merchant Street. The sailors marched down King Street, dipped their colors respectfully to the Queen as they passed Iolani Palace and continued on to King and Alapai Streets. They were quartered that night at Arion Hall out of sight from the Palace and separated from it by the Music Hall on King Street.<sup>15</sup> The troops did not cooperate with the revolutionists' committee of safety and the committee had no more knowledge than did the Queen's Government where the troops were going nor what they were going to do.<sup>16</sup> On Tuesday January 17th, the committee occupied the government building, Aliiolani Hale, read a proclamation deposing the Queen, abrogating the monarchy and establishing a provisional government until the terms of

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<sup>14</sup> Russ, *The Hawaiian Revolution (1893-94)* at 66, 67, Susquehanna University Press (1959); Kuykendall, *The Hawaiian Kingdom*, Vol. 3 at 586 summarizes proposed changes which would “give the Queen more power and influence over the government than had been possessed by Kalakaua at the beginning of his reign.” Also, morganreport.org, Emerson testimony at 536-537.

<sup>15</sup> Russ, *supra*, at 82; Kuykendall, *supra*, at 595.

<sup>16</sup> Kuykendall, *supra*, Vol. 3 at 594.

annexation were negotiated with the United States.<sup>17</sup> After learning the provisional government was in possession of the government building, U.S. Minister Stevens recognized the provisional government as the *de facto* government of Hawaii. The Queen then surrendered under protest.<sup>18</sup>

**Republic, then Annexation, then Statehood.** Sanford B. Dole, President of the new Provisional Government, promptly sent a delegation to Washington seeking annexation, but the new President, Grover Cleveland, opposed annexation and tried to restore the Queen. But he reversed himself upon receipt of the *Morgan Report*, of February 26, 1894 refusing requests from the Queen for further aid in her restoration, and acknowledging both the Provisional Government and Republic of Hawaii as the legitimate successors to the Kingdom. Queen Victoria of Great Britain, a friend of the former Queen Liliuokalani, also recognized the Republic as the lawful government of Hawaii.<sup>19</sup> In 1897, after President Cleveland had left office, the Republic of Hawaii again proposed a treaty of annexation. At first the Senate was unable to muster the 2/3rds vote for ratification, but following the outbreak of the Spanish American War in 1898, the U.S. Congress passed a joint resolution accepting the Republic of Hawaii's proposed treaty of annexation.<sup>20</sup> The vote was 42-21 in the Senate and 209-91 in the House. The Organic Act in 1900<sup>21</sup> gave all citizens of the former Republic, including Native

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<sup>17</sup> Russ, *supra*, at 86-90.

<sup>18</sup> Russ, *supra*, at 95, 96.

<sup>19</sup> Russ, *The Hawaiian Republic (1894-98)* at 47, Susquehanna University Press (1961), recognition granted to the new Government by Queen Victoria Nov. 15, 1894.

<sup>20</sup> Newlands Resolution (Annexation Act) 30 Stat. 750, July 7, 1898.

<sup>21</sup> Organic Act, 31 Stat. 141, April 30, 1900.

Hawaiians, full U.S. citizenship. The Territory of Hawaii's first Delegate to Congress, Native Hawaiian Robert Wilcox, was elected on the promise that "The first bill I shall introduce will be one to admit Hawaii to Statehood."<sup>22</sup> In 1903, the first Legislature of the Territory of Hawaii, with more than 70% of its members being Native Hawaiian, unanimously resolved to ask Congress to convene a constitutional convention to create a constitution for the proposed State of Hawaii.<sup>23</sup> In 1919 Hawaii's elected Territorial Delegate Prince Jonah Kuhio Kalakaua Kalaniana'ole (heir to the throne if the Kingdom had continued) introduced in Congress the first bill for Hawaii statehood. As of 1954, thirty three bills for statehood for Hawaii had been introduced in Congress by Hawaii's Territorial delegates since 1919.<sup>24</sup> In the 1940 Hawaii Statehood plebiscite, two out of three Hawaii voters said Yes for Statehood but Congress was not yet ready. In 1959, the people of Hawaii finally achieved their long sought goal. Congress proposed, over 94% voted Yes and Hawaii became the 50th State of the Union. Results of Votes Cast, T.H. 1959, <http://tinyurl.com/2rbx79>.

#### **D. HAWAIIANS WANTED CHILDREN TO BE TAUGHT ENGLISH TO OPEN UP WIDER OPPORTUNITIES.**

KSBE's Brief in Opposition asserts at 7, "In 1896, the use of the Hawaiian language was banned as a method of instruction in the schools, a ban that was lifted only in 1986."

The law in question was Act 57, sec. 30 of the 1896 Laws of the Republic of Hawai'i, which read as follows:

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<sup>22</sup> The Evening Bulletin, July 12, 1901.

<sup>23</sup> S.L.H. 1903 at 377.

<sup>24</sup> Senate Report 886 of January 27, 1954.

“The English Language shall be the medium and basis of instruction in all public and private schools, provided that where it is desired that another language shall be taught in addition to the English language, such instruction may be authorized by the Department, either by its rules, the curriculum of the school, or by direct order in any particular instance. Any schools that shall not conform to the provisions of this section shall not be recognized by the Department.” See web site Answers.com available at <http://www.answers.com/topic/hawaiian-language> (last visited on 3/23/2007), which notes that “[t]his law established English as the main medium of instruction for the government-recognized schools, but it did not ban nor make illegal the Hawaiian language in other contexts. The law specifically provided for teaching languages ‘in addition to the English language.’ Hawaiian-language newspapers were published for over a hundred years, right through the period of the supposed ban. . . . The longest run was that of *Ka Nupepa Kuokoa*: about 66 years, from 1861 to 1927.”

By 1850 a strong desire existed among many of the Hawaiians to have their children taught English in order to open to them wider avenues for advancement. In 1854 a law was enacted by the Kingdom legislature “for the encouragement and support of English schools for Hawaiian youth.” “This was the beginning of a movement which ended many years later with the complete abandonment of the Hawaiian language as a medium of instruction in the public schools of Hawaii.”<sup>25</sup>

Princess Bernice Pauahi Bishop herself was fully in accord. Clause Thirteenth of her will requires her trustees to “provide first and chiefly a good education in the common English branches.” The Schools’ 1885 Prospectus observed: “The noble minded Hawaiian chiefess who

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<sup>25</sup> Kuykendall, *The Hawaiian Kingdom*, Vol. 1 at 360-362.

endowed the Kamehameha Schools, put no limitations of race or condition on her general bequest. Instruction will be given only in English language, but the Schools will be opened to all nationalities.”<sup>26</sup>

#### **E. HAWAIIANS PROSPER WITH EQUALITY**

The 2005 American Community Survey (ACS) for California, recently released by the U.S. Census Bureau, confirms Native Hawaiians’ ability to prosper without special government programs. The estimated 65,000 Native Hawaiian residents of California, with no Office of Hawaiian Affairs or Hawaiian Homes or other such race-based entitlements, enjoyed higher median household (\$55,610) and family (\$62,019) incomes, relative to the total California population (\$53,629 and \$61,476 respectively) despite having smaller median household and family sizes. “Hawaiians do better without entitlements” by Jere Krischel, Honolulu Advertiser, January 9, 2007. <http://tinyurl.com/ytryoz>.

#### **F. KSBE HAS CORRUPTED HAWAII’S GOVERNMENT, PURSUES HEREDITARY SUPERIORITY, DISASSIMILATION**

A remarkable book has revealed the trustees of KSBE have so corrupted the political process in the State of Hawaii that the legislative, executive and judiciary powers have been, and still seem to be, concentrated in the hands of those who facilitated “A World Record for Breaches of Trust” by trustees and others of high position, without surcharge or accountability. *Broken Trust: Greed, Mismanagement &*

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<sup>26</sup> *Doe v. Kamehameha Schools*. 416 F.3d 1025, 1028 (9th Cir. 2005).

*Political Manipulation at America's Largest Charitable Trust*, King and Roth, 2006.

*Sixty Minutes* called it “The biggest story in Hawaii since Pearl Harbor; KSBE was characterized by the *New York Times* as “A feudal empire so vast that it could never be assembled in the modern world”; and by Howard M. McCue III, the Chairman of the Charitable Planning Committee for the American College of Trust and Estate Counsel, as the most significant legal dispute of our time . . . a tale of unbridled ambition, infectious greed, and high drama. . . (from the books’ web site [www.brokentrustbook.com](http://www.brokentrustbook.com).)

Corruption within Bishop Estate Reached the Highest Levels of Government, But Major Records Still Under Seal *Six Prominent Community Leaders Share Their Part in the ‘Broken Trust’ Controversy, Call for Release of More Than 1 Million Pages of Documents Kept Secret by the Court* By Malia Zimmerman, 7/10/2006 <http://tinyurl.com/pwsgg>.

KSBE put legislators on its payroll and used its alumni association as its proxy to lobby. Hawaii Reporter, *What Does Broken Trust Book Say About Ed Case and Dan Akaka?*, <http://tinyurl.com/3x9fho>.

The Honolulu Star-Bulletin Special Series Edition at <http://starbulletin.com/specials/bishop.html> provides links to stories illustrating KSBE’s activist role in promoting segregation. See, for example, Aug. 4, 2005, “Rallies show school support.” At one of the rallies organized by KSBE, one speaker, a tenured professor at U.H. Manoa, had this to say, “Some white men against us say they have been here seven generations. Big deal. We won’t assimilate and we won’t go away, so sooner or later, America will have to deal with us.”

Even today, KSBE seems to have learned nothing. The trustees continue to turn their backs on Pauahi, the IRS and the Constitution, by actively supporting the Akaka bill S.310/H.R.505 (which would “recognize” Native Hawaiians



as a privileged class; establish a process for them to create their own sovereign government and allow the state government, still dominated by KSBE, to negotiate with the new Native Hawaiian government, also certain to be dominated by KSBE, to negotiate for the breakup and giveaway of much of the domain of the State of Hawaii).

KSBE openly flaunts its association with others in supporting passage of the Akaka bill. KSBE and its Alumni Associations of Northern and Southern California are members of CNHA, Council for Native Hawaiian Advancement, <http://www.hawaiiancouncil.org/members.html>. The [nativehawaiians.com](http://www.nativehawaiians.com) website, lists the co-conspirators: CNHA, the Kamehameha Alumni Association, the prominent entities [many under KSBE's hegemony] that support the Akaka bill; and a number of questionable groups such as the National Council of La Raza, the organization that seeks to "liberate" the SouthWest. <http://www.nativehawaiians.com/listsupport.html>.

#### **G. RACIAL TENSIONS ARE SIMMERING IN HAWAII'S MELTING POT**

So said the headline on the first page of USA Today 3/7/07 describing the attack Feb. 19th in the parking lot of the Waikele mall on Oahu, when a Hawaiian family beat a young soldier and his wife unconscious while their three year old son sat in the back seat of their car. The attack, "unusual for its brutality," sparked impassioned public debate.

The USA Today article and related links may be found at <http://tinyurl.com/2jle2e>. See also, *The Gathering Storm*, Chapter 1 of *Hawaiian Apartheid: Racial Separatism and Ethnic Nationalism in the Aloha State* by Kenneth R. Conklin, PhD <http://tinyurl.com/2f7p8b>.

The brutality at Waikele mall is a flashing red light. Over 1 million American citizens in Hawaii are under

siege by what can fairly be called an evil empire dedicated to Native Hawaiian Supremacy. That empire is dominated by KSBE, the nation's largest charitable trust, which has already conquered Hawaii's government and much of its business establishment. Even the United States supports this invidious discrimination by annually funding multiple Hawaiian entitlements; and by failing to disavow the Hawaiian homelands compact in the Admission Act which mandates that the State of Hawaii keep on discriminating on the basis of race.

Professor Carrington, referring to KSBE, puts it this way:

As the ambition to achieve disassimilation rose, the instinct of the state's citizens who lacked the appropriate ancestor was to humor those who did, seemingly in the hope that tolerance and modest support would enable all to remain amiable neighbors. Few if any citizens stepped forward to question efforts to assign White Guilt to the polychromatic people of the state when in 1993 Congress was asked to apologize for "the crime of 1893" and did so, with the possible implication that some further apology to a defiled group might be in order. . . . It discounted the possibility that its unwarranted apology might elevate the racist sentiment, as may have happened.

*Testamentary Incorrectness: A Review* by Paul D. Carrington, Vol. 54 Buffalo Law Review 693, Dec. 2006.

Thomas Sowell's *Affirmative Action Around the World* describes in chilling detail the consequences of "indigenous" movements in many countries strikingly similar to the events unfolding now in Hawaii. Sri Lanka, for example, is an island state that in 1948 was spoken of as an oasis of stability, peace and order. Within a decade, as a result of politicizing intergroup differences and instituting

preferential policies, there were race riots, and ultimately civil war and horrible atrocities.

In 1785 James Madison said “it is proper to take alarm at the first experiment on our liberties . . . The freemen of America did not wait till usurped power had strengthened itself by exercise and entangled the question in precedents.”<sup>27</sup>

Taking alarm and opposing this evil empire are John Doe and the *amici* who support him. Though few in number and vastly out-financed, they nevertheless should prevail if the Constitution of the United States of America is still the law of the land in the State of Hawaii.

#### IV. CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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<sup>27</sup> James Madison: Remonstrance against Religious Assessments. 2 Writings of James Madison 183 (Hunt ed. 1901).