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mtuohey@brownrudnick.com

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William.hubbard@nelsonmullins.com

GOVERNMENTAL AFFAIRS OFFICE

DIRECTOR
Thomas M. Susman
(202) 662-1765
susmant@staff.abanet.org

DEPUTY DIRECTOR
Denise A. Cardman
cardmand@staff.abanet.org

SENIOR LEGISLATIVE COUNSEL
R. Larson Frisby
frisby@staff.abanet.org

LEGISLATIVE COUNSEL
Ann Carmichael
carmicha@staff.abanet.org

Kristi Gaines
gainesk@staff.abanet.org

Kirra L. Jarratt
jarrattk@staff.abanet.org

E. Bruce Nicholson
nicholsonb@staff.abanet.org

LEGISLATIVE COUNSEL/
DIRECTOR OF STATE LEGISLATION
Kenneth J. Goldsmith
goldsmithk@staff.abanet.org

INTELLECTUAL PROPERTY
LAW CONSULTANT
Hayden Gregory
gregoryh@staff.abanet.org

LEGISLATIVE COORDINATOR/
DIRECTOR FOR GRASSROOTS OPERATIONS
Jared D. Hess
hessj@staff.abanet.org

September 28, 2010

United States Senate
Washington, D.C. 20510

Dear Senator:

On behalf of the American Bar Association, which has nearly 400,000 members nationwide, I urge your support for H.R. 2134, the Native Hawaiian Government Reorganization Act of 2010. The legislation, as amended, passed the House of Representatives with bipartisan support early in the session and was placed on the Senate calendar where it is still awaiting Senate floor action. As amended, H.R. 2314 is supported by the White House, the Department of Justice, Hawaii's Congressional Delegation and the Governor of Hawaii.

The ABA 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, the ABA adopted policy specifically 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 U.S. Constitution.

H.R. 2314 would establish a process that would lead eventually to the formation of a native governing entity that would have a government-to-government relationship with the United States. Developed by Native Hawaiians, this federally recognized entity would serve, maintain and support their unique cultural and civic needs and advocate on their behalf at the federal and state levels.

Prior to the overthrow of the Hawaiian monarchy in 1893 by U.S. agents acting without official sanction, 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 addition to establishing a lasting trust relationship with the Native Hawaiian people after the coup, Congress acknowledged the illegal overthrow of the Kingdom of Hawaii, issued a formal apology to the Native Hawaiian people in 1993, and has consistently supported reconciliation efforts. Congressional

support for legislation that would lead to a process for federal recognition for Native Hawaiians is the next logical step.

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 are not in conflict with the Equal Protection Clause since they rest on independent constitutional authority regarding the rights of native nations contained in 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 terminated in the past. Thus, the Native Hawaiians have the right to be recognized by the Congress, this right is not in conflict with the rights of others, and this recognition may be renewed despite historical lapses.

The American Bar Association urges you to support the rights of Native Hawaiians to self-determination by voting for H.R. 2314.

Sincerely,

A handwritten signature in black ink that reads "Thomas M. Susman". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Thomas M. Susman