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Hastings Floor Statement on Native Hawaiian Recognition Bill

WASHINGTON, D.C. – House Natural Resources Committee Ranking Member Doc Hastings (WA-04) delivered the following floor statement (as prepared for delivery) on H.R. 2314, the Native Hawaiian Government Reorganization Act of 2009:



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“Mr. Speaker, I rise in opposition to H.R. 2314 and the Substitute text sponsored by Mr. Abercrombie.

At the outset of this debate, it is important for all Members to understand that the substitute text they will ultimately be voting on today is fundamentally changed from the original, underlying bill that the House voted on in 2007.

This rewritten text, the Abercrombie substitute, was drafted behind closed doors, away from public view. It was unveiled less than 48 hours before we in the House were to be debating and voting on it. Regrettably, this lack of transparency has become standard operating procedure for this Democrat controlled House.

I’m certain we will hear appeals from the bill’s advocates that the vote on this bill should not be a partisan matter. I would agree this is not a partisan matter. Rather, it is a question of what is right and constitutional. But, appeals to nonpartisanship ring hollow when this bill was rewritten in secret by just one party, and then rushed to the Floor with

little time for scrutiny by the minority. But more importantly, little time for scrutiny by the American people or the citizens of Hawaii.

There's nothing more troubling about the House voting on a fundamentally rewritten bill than the position made public by the Governor of Hawaii. Something is very wrong when that Governor, a longtime vocal advocate of Native Hawaiian recognition, feels compelled to issue a statement last night, that she can't support the rewritten bill.

The Governor and I disagree on the fundamental question of recognition – just as I fundamentally disagree with my friend from Hawaii, Mr. Abercrombie. But, I also strongly disagree with the House acting to impose a changed bill on one of the fifty states over their Governor's objections, especially when this Governor has long supported the concept of Native Hawaiian recognition and the original text of the bill.

Let me explain the difference between the underlying bill, which is basically what the House passed in the 110th Congress, and the Abercrombie amendment in the nature of a substitute.

The original bill extended recognition to the Native Hawaiian entity but withheld any tribal powers and privileges, such as immunity from lawsuit and State jurisdiction, until after negotiations with – and the consent of – the State of Hawaii and the Congress. Though this does not resolve my fundamental objection to the bill, it was this arrangement that drew the strong support of the Governor.

In contrast, the Substitute alters this fundamental nature of the bill. Let me quote the words that the Governor of Hawaii, Governor Lingle, used to describe this re-write:

“The current bill establishes that the Native Hawaiian governing entity would start with broad governmental powers and authorities, with negotiations to follow.”

Again, the original bill starts with negotiations, followed by a grant of powers and authorities that are subject to the consent of the State. But the Substitute starts with the grant of powers and authorities without the consent of the State, followed by negotiations for yet more benefits and powers.

Section 9 of the Substitute clearly spells out the powers granted to the Native Hawaiian governing entity before negotiations, without the consent of the State. It is immunity from any lawsuit in any Federal or State court, with only minor exceptions.

And it is that “governmental” activities pursued by the entity or its officers and employees shall not be subject to State regulatory or taxation authority. The wording of this section suggests that the State criminal authority will not even apply to officers and employees of the Native Hawaiian governing entity as long as they are acting within the scope of their duties.

To again quote from the Governor of Hawaii's statement from last night:

“I do not believe such a structure, of two completely different sets of rules – one for

'governmental' activities of the Native Hawaiian governing entity and its officers and employees, and one for everyone else – makes sense for Hawai'i...

"In addition, under the current bill, the Native Hawaiian governing entity has almost complete sovereign immunity from lawsuits, including from ordinary tort and contract lawsuits, and I do not believe this makes sense for the people of Hawai'i."

Without question, this rewritten bill strikes at the heart of the State of Hawaii's authority to enforce health and environmental regulations, taxes and criminal law enforcement equally among its citizens.

Congress should not be party to imposing this upon this state or any state.

Yet, despite the State of Hawaii's concerns with the rewritten bill, here we are, debating it in the House of Representatives.

This legislation violates, in my view, the United States Constitution, because it establishes a separate, race-based government of Native Hawaiians.

The authors and advocates for this bill have argued that Native Hawaiian recognition is no different than Congress recognizing an Indian tribe, and yet there are very important and real differences.

Native Hawaiians are not and never have been members of an Indian tribe. Native Hawaiians do not share the same political and legal history as federally recognized Indian tribes. The historical record is clear on this point.

For example, in the Hawaii Organic Act of 1900, Section 4 states that all persons who were citizens of the Republic of Hawaii in 1898 were declared citizens of the United States and citizens of the Territory of Hawaii. If Congress then believed it was recognizing the existence of a separate, Native Hawaiian community, the Organic Act would have expressly reflected this. Instead, all Hawaiians were recognized as full citizens. This is in stark contrast to our nation's history of less than equal treatment of individual Indians and Indian tribes.

But try as they might, Congress cannot revise historical and political facts. H.R. 2314 attempts to do just this ... to rewrite legal history.

This observation is shared by constitutional and civil rights experts. For example, in its 7-2 decision, the Supreme Court in Rice v. Cayetano, commented on the proposition of Native Hawaiian recognition, saying that it "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."

Just yesterday, the U.S. Commission on Civil Rights reiterated its standing opposition to 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 1959, a vote was taken in Hawaii on the question of becoming state. Over 94 percent voted in favor of statehood. In other words, citizens of Hawaii voted overwhelmingly to join our union as one unified state.

Today, under this bill, Congress will vote on dividing the State of Hawaii through the creation of a separate governing entity based solely on race. If Congress is going to impose this division on Hawaii over the objections of its Governor,... then the citizens of Hawaii themselves deserve to have a vote on this matter.

In a Zogby poll from December, 2009, only 34 percent of Hawaiians supported 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 offered that would require just such a statewide vote, and I hope all Members will join me in its adoption.

As I noted at the outset of my remarks, the House last voted on a Native Hawaiian recognition bill in 2007.

I want to reiterate to all Members that we will be voting on a different bill today.

The 2007 legislation has been rewritten.

I believe the changes today are so fundamentally different that those Members who voted YES in 2007, should take the time to reconsider their vote today.

There is another compelling need for reconsideration when the Governor of Hawaii has gone from an enthusiastic supporter of the 2007 bill to not supporting this rewritten text.

I hope many of my colleagues will recognize this dramatic change.

The Governor remains a committed supporter of Native Hawaiian recognition. Her position has not changed – it is the bill that has been changed and fundamentally rewritten.

Like the Governor, those who supported the 2007 bill have very good reason to oppose this rewritten version today

Before concluding my opening statement, I want to take a moment to publicly state that I have a great deal of respect for my colleague, Neil Abercrombie. He is departing the House at the end of this week, and I do regret that I am leading the opposition to his bill in his final days here in the House.

To be honest, I'd much rather be here on the Floor supporting his bipartisan bill to write

into law a five-year plan to develop America's offshore oil and gas resources. Regrettably, such reasonable legislation stands no chance of making it to the Floor in this Congress.

I hope my friend knows that my opposition to this recognition bill is based on my view of this matter, and not a reflection of the high regard in which I hold him as a friend.

Mr. Speaker, I reserve the balance of my time."

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