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**U.S. House of Representatives**  
**Committee on Natural Resources**  
**Washington, DC 20515**

**Opening Statement of Ranking Member Hastings**  
**Before the Committee on Natural Resources**  
**On Thursday, June 11, 2009**  
**Legislative hearing on**  
**H.R. 2314 (Abercrombie),**  
**“Native Hawaiian Government Reorganization Act of 2009”**

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Mr. Chairman, thank you for scheduling this hearing on H.R. 2314, the Native Hawaiian Government Reorganization Act of 2009 sponsored by our good friend from Hawaii, Mr. Abercrombie.

If effort and persistence were all that were necessary to enact a bill, this would have become law the first year Mr. Abercrombie sponsored it. Because of my high regard for him and his bipartisanship in pursuing enactment of this bill, it is with a sense of regret that I find myself in the opposition.

Mr. Chairman, the House debated identical legislation in the 110th Congress in Committee and on the Floor, subsequent to which the full House passed it. At the time, I was a Member of the Rules Committee and managed the Rule for the consideration of this bill for the Republicans.

As in the last Congress, I am opposed to enacting this bill for the same reasons I described on the Floor then. No new circumstantial or legal evidence has come to light to change my opinion.

If anything, the latest 9-0 Supreme Court ruling in Hawaii v. Office of Hawaiian Affairs, decided March 31, 2009, casts a larger shadow than before on the doubtful proposition that Congress constitutionally can and should extend recognition to a governing entity for Native Hawaiians.

It bears noting that the Bush Administration threatened to veto the bill. Though President Obama is not bound by this, the previous Administration's position largely rested on constitutional concerns raised by the Department of Justice, constitutional concerns with granting recognition to an entity that is effectively based on race.

Unfortunately, because no one from the Departments of Justice and Interior and the White House are here today, we really have no idea how President Obama came to the conclusion that this bill does not cross a constitutional boundary line separating recognition of an Indian tribe from recognition of a race-based government prohibited under the 14th Amendment.

In 2006, the Department of Justice sent letters to the Senate expressing deep concern that this legislation would 'divide people by their race' and that the Supreme Court and lower Federal

Courts have been invalidating certain state laws providing race-based qualifications for certain state programs.

It would be helpful to have someone from the Justice Department present today to expand on these concerns. Their absence only makes one wonder if the White House does not want the Justice Department's prior legal analysis to trump the President's political support for Native Hawaiian recognition."