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Congress of the United States

House of Representatives

February 22, 2010

House to vote on rewritten Native Hawaiian Recognition Bill *Text is “fundamentally changed” from last Congress*

Dear Colleague:

This week the Democrat Leadership is bringing H.R. 2314 to the Floor, a bill to extend tribal recognition to a Native Hawaiian “governing entity.” In the 110th Congress, a previous version of this legislation (H.R. 505) passed 261-153. All Members should be aware that the House will vote on a version of this bill (an Abercrombie substitute) that is fundamentally changed from that passed in the last Congress. The new version is a rewrite drafted in secret and rushed to the Floor without Committee review or markup. It contains revisions that give real reason for those who voted for the bill in 2007 to reconsider their vote.

I should first make clear that I oppose this bill in any form. In my view, H.R. 2314 creates a separate, race-based government in Hawaii, at taxpayer expense. Proponents believe the United States has mistakenly failed to acknowledge Native Hawaiians as an ethnically separate, Native-based government. But this view is historically and legally wrong. Native Hawaiians do not share the fundamental legal and political history as that of the many Indian tribes recognized by Act or Treaty. It is important to note that in *Rice v. Cayetano*, the Supreme Court questioned the power of Congress to extend federal tribal recognition to Native Hawaiians.

While I respect the views of Members who voted for Native Hawaiian recognition in the last Congress, they should exercise caution this week because H.R. 2314 has been secretly rewritten and it is impossible to properly assess what the new bill does when it is provided with such short notice before the House vote.

Since the bill’s introduction, proponents have said their goal is to extend recognition now, but to refrain from endowing the governing entity with the kind of lands, benefits, powers, and immunities common to Indian tribes. Such matters were to be subject to future negotiations with the State of Hawaii, the Congress, and the Executive Branch, and subsequent Acts of Congress and the State Legislature.

But last December in a Committee markup of H.R. 2314, a substitute was secretly drafted and disclosed on very short notice. The substitute radically altered the bill and immediately vested the entity with Indian tribal powers, privileges and immunities. This break with the previous commitments to negotiate these grave matters with Hawaii incurred the strong opposition of the Governor and Attorney General. To his credit, the bill sponsor, Rep. Neil Abercrombie, withdrew the amendment to afford the minority, and Hawaii’s State leaders, an opportunity to have meaningful participation in debating any rewrite. Unfortunately, the bill on the Floor this week is the product of another backroom rewrite.

In the interest of fairness, transparency, and caution, I strongly urge all Members to oppose this bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Doc Hastings', written over a printed name.

Doc Hastings
Ranking Member
House Natural Resources Committee