



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 7, 2006

The Honorable Bill Frist  
Majority Leader  
United States Senate  
Washington, D.C. 20510

Dear Mr. Leader:

The Administration strongly opposes passage of S. 147. As noted recently by the U.S. Civil Rights Commission, this bill risks "further subdivid[ing] the American people into discrete subgroups accorded varying degrees of privilege." As the President has said, "we must...honor the great American tradition of the melting pot, which has made us one nation out of many peoples." This bill would reverse that great American tradition and divide people by their race. Closely related to that policy concern, this bill raises the serious threshold constitutional issues that arise anytime legislation seeks to separate American citizens into race-related classifications rather than "according to [their] own merit[s] and essential qualities." Indeed, in the particular context of native Hawaiians, the Supreme Court and lower Federal courts have invalidated state legislation containing similar race-based qualifications for participation in government entities and programs.

While this legislation seeks to address this issue by affording federal tribal recognition to native Hawaiians, the Supreme Court has noted that whether native Hawaiians are eligible for tribal status is a "matter of dispute" and "of considerable moment and difficulty." Given the substantial historical, structural and cultural differences between native Hawaiians as a group and recognized federal Indian tribes, tribal recognition is inappropriate for native Hawaiians and would still raise difficult constitutional issues.

Sincerely,

A handwritten signature in black ink that reads "William E. Moschella".

William E. Moschella  
Assistant Attorney General

cc: The Honorable Harry Reid  
Minority Leader