



"Hawaii has a rich and diverse cultural history, and the Senate should reject this attempt to segregate the state by legislative sleight of hand."

Hawaiian Secession

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Editorial

As farewell presents go, few lawmakers get to redistribute an entire state's wealth based on race. That was the send-off for Representative Neil Abercrombie, who is retiring this week to run for Governor of Hawaii. For his campaign literature, he'll take the Native Hawaiian Government Reorganization Act, which was whooped through the House on Tuesday 245-164.

The bill would create a sovereign tribal entity made up of some 400,000 Hawaiians. Supposedly designed to mimic the legal structure created for Native Americans, the bill breaks new ground—requiring the federal government to create a tribe based on a loosely defined racial identification. Not yet scheduled for a vote in the Senate, the bill may face opposition from Republicans, including a filibuster. South Carolina's Jim DeMint says he'll use "all the tools possible" to prevent the bill from becoming law, and we hope he does.

This wasn't the law's first trip around the Hill, though it was the most outrageous. The version passed Tuesday includes last-minute changes by Mr. Abercrombie to evade normal legislative vetting. In a letter to House leaders, five members of the U.S. Commission on Civil Rights expressed their "profound disappointment" at a bill that was "negotiated behind closed doors" and "released less than 48 hours prior to the expected House vote."

And no wonder. While land transfers will still need to be negotiated with the state, the bill could affect public land covering 38% of Hawaii. The new tribe would be immediately vested with such "inherent powers" as sovereign immunity, the right to regulate its members and to be released from various state taxes and regulations. That's a departure from the original plan, which required consultation with the state government and Congress on tribal powers.

The changes are so egregious that even Hawaii Governor Linda Lingle, who had been an ardent supporter, withdrew her approval. "This structure will, in my opinion, promote divisiveness and litigation, rather than negotiation and resolution," Governor Lingle wrote.

In an effort to dispel concerns that the creation of a race-based tribe violates the Constitution's Equal Protection Clause, Mr. Abercrombie added a six-page list of membership criteria that could include non-Hawaiian state residents. But the provision contains a self-destruct clause—as soon as the tribe is officially recognized, it can extend

and deny membership based on any criteria it sees fit. And if this runs into legal trouble, the legislation requires the Justice Department to designate an attorney to fight all challengers to the new tribe.

Many Hawaiians support some legal recognition for the state's native residents, but the separatism being pushed by Democrats is far less popular. Under the House's hodgepodge, nonnative citizens may face higher taxes to pay for the new tribal entity and cope with the loss of state revenue on land ceded to the new native nation.

President Obama has said he'll sign the bill if it gets to his desk, but the Supreme Court has already rejected attempts to hold elections based on race. Hawaii has a rich and diverse cultural history, and the Senate should reject this attempt to segregate the state by legislative sleight of hand.

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