

Testimony of Williamson B.C. Chang
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June 23, 2014
Hawaii State Capitol
Honolulu, Hawaii

Re: Comments on Advance Notice of Proposed rulemaking; Solicitation of Comments; Office
of the Secretary, Department of Interior Regulation Identifier Number 1090-AB05

The Department of Interior of the United States Government is “seeking input solely on questions related to the potential administrative rule to facilitate the re-establishment of a government-to-government relationship with the Native Hawaiian community.” The Department is seeking specific comments on five threshold questions. All questions are directed at the establishment of a government to government relationship. DOI does not propose a specific rule in this request. Nonetheless, it is evident that the Department is seeking comments on whether Native Hawaiians should be recognized as a Federally Recognized Indian Tribe by administrative process. If this is correct, the goal is to achieve what the “Akaka” bill proposed. Congress refused to pass that bill. It appears that the Department is seeking to change certain administrative rules that prevent Native Hawaiians from being administratively recognized. It is assumed that this is the underlying nature and objective of DOI’s request.

I. Introduction:

I have been a Professor of Law at the University of Hawaii School of Law since 1976 and teach in the areas of Hawaiian Legal History, Legal Aspects of Water Rights in Hawaii, Conflicts of Law and Business Associations. I will supplement these comments within the noted time frame with further written testimony.

I have a very brief moment to make my comments here so I will limit my remarks to one main point. The United States Department of Interior lacks subject matter territorial jurisdiction over the Hawaiian Islands. This is not a claim based on International Law, but one that rests in the laws of the United States. Specifically, three laws of the United States affirmatively and explicitly state that the Department, as well as the United States in general, as well as the State of Hawaii does not possess subject matter jurisdiction, namely territorial jurisdiction over the Hawaiian Islands.

Of course, this lack of subject matter jurisdiction has been universal, applicable to all acts of the United States, its courts, and executive agencies, as well as State and County political

subdivisions for a very long time. The failure to note this defect does not mean that its applicability is waived or it has less effect today. Subject matter jurisdiction is always at issue. It can be raised at any time. It can be raised even after transactions or actions have been undertaken and completed. The failure of residents of the Hawaiians to object to subject matter jurisdiction does not deny them that ability to do so today.

Native Hawaiians, in particular, have only begun to learn of this defect. This fact is borne out in the letter sent by Chief Executive Officer of the Office of Hawaiian Affairs, Dr. Crabbe, to Secretary of State John Kerry on May 5, 2014, which listed four questions.¹ Those questions are based on testimony and presentations given at a forum held on April 17, 2014 which challenges the jurisdiction of the United States under both International and United States law. I was one of those who testified on April 17th. I present to this body, in a shortened version, the points I made on April 17th.

The lack of jurisdiction of the United States and the Department of Interior is based on two very simple points. First, the United States claims jurisdiction over the territory of Hawaii based on the legal effect of the Joint Resolution of 1898, 30 Stat 750. Second, the United States claims jurisdiction by way of the Act of Admission of 1959, admitting Hawaii as a State. This testimony asserts that:

- 1) The Joint Resolution of 1898 had no power to acquire the Hawaiian Islands as territory of the United States, and that;
- 2) Section Two of the Act of Admission by which the Territory of Hawaii was admitted as a State confirms and thus admits that the State of Hawaii does not include the Hawaiian Islands.

II. The Joint Resolution of 1898 had no power to acquire the Hawaiian Islands as territory of the United States.

The Joint Resolution was not a treaty. A Treaty of Annexation drafted and signed by representatives of Hawaii and the United States² was proposed in 1897 but was never ratified by

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- ¹ First, does the Hawaiian Kingdom, as a sovereign independent State, continue to exist as a subject of international law?
 - Second, if the Hawaiian Kingdom continues to exist, do the sole-executive agreements bind the United States today?
 - Third, if the Hawaiian Kingdom continues to exist and the sole-executive agreements are binding on the United States, what effect would such a conclusion have on United States domestic legislation, such as the Hawai'i Statehood Act, 73 Stat. 4, and Act 195?
 - Fourth, if the Hawaiian Kingdom continues to exist and the sole-executive agreements are binding on the United States, have the members of the Native Hawaiian Roll Commission, Trustees and staff of the Office of Hawaiian Affairs incurred criminal liability under international law?"

² In June of 1897 four representatives from the Republic of Hawaii travelled to Washington to negotiate a second treaty of annexation with the United States. The first had been drafted in February of 1893; a few short weeks after the Provisional Government had overthrown the Kingdom of Hawaii. In 1893, the United States Secretary of State was John W. Foster, who supported the annexation cause. In 1897, the Secretary State was an aging John Sherman

the United States Senate. Article VII of that Treaty required United States consent be in the form of formal Senate ratification as required by Article II of the United States Constitution. The failure of the Treaty led the McKinley Administration to seek a Joint Resolution of Congress to acquire Hawaii.³ The only basis by which the United States or any country can acquire additional territory is by the 1) the doctrine of discovery, 2) conquest or 3) Treaty. The doctrine of discovery does not apply as Hawaii was a sovereign nation. It had full dominion over its own lands. The United States did not “conquer” Hawaii as understood by international law of the time. The United States has never claimed that it conquered the Hawaiian Islands. There is no treaty of annexation between the United States and Hawaii.

After the failure of the Treaty of 1897, the McKinley administration pulled an “end run” choosing to acquire Hawaii by joint resolution. A joint resolution requires a mere majority of both houses to become law. The United States declared war on Spain in April of 1898. The McKinley administration sought Hawaii as a base necessary for the invasion of the Spanish Colony, the Philippines. A special advisor to the President, John Foster, suggested a Joint Resolution--a bill or act, simply declaring that Hawaii was territory of the United States.⁴ Foster had floated this idea in a speech in 1895 on the basis that the annexation of Texas established a precedent. Foster was wrong. Texas was not annexed by Joint Resolution. Texas was acquired

who did not, personally, support annexation. The newly elected president, William McKinley, however, was much influenced by his vice-president, Theodore Roosevelt and party leader Henry Cabot Lodge. McKinley was persuaded to draft a second treaty of annexation. Sherman simply relied on the 1893 draft. The 1897 version was signed on June 16, 1897 by representatives of both nations

³ This treaty was ratified by the Hawaiian Senate. It was not, however, ratified by the United States Senate. In large part the failure to ratify by the United States was due to the overwhelming opposition by the people of the nation of Hawaii. The United States Senate never actually voted on the Treaty of 1897. During the winter and spring of 1898, the treaty lay dormant in the Senate. It was clear to the McKinley administration, sponsors of the treaty that the treaty would never gain the two-third majority of Senators present, as required by the Constitution, to achieve ratification.

⁴ John W. Foster, who had visited Hawaii after leaving the administration, had become a proponent of annexation by joint resolution. Foster was retained by the Republican McKinley administration and asked to work with William Rufus Day, the Assistant Secretary who replaced Sherman. Foster drafted the joint resolution and used the two treaties as a starting point. He rearranged the first article such that the resolution appeared to be a document prepared and ratified by two parties. Thus, the Resolution began with the following words:

"Whereas the Government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies,

This article referred to Article 32 of the Constitution of the Republic of Hawaii which authorized the President of the Republic to negotiate a treaty of “political” or “commercial” union with the United States. By that term the Republic had not “consented” to any particular treaty or terms. There is no record of Foster having consulted with President Dole or any representative from Hawaii. Identical copies of the joint resolution were introduced, one in the Senate in March of 1898, one in the House in May by Representative Newlands of Nevada.

by an unwritten treaty, valid under the law of nations, by which there was a complete and perfect meeting of the minds of the United States and the Republic of Texas. Under Article IV of the United States Constitution it is Congress that has the power to admit new states. The constitutional power to admit Texas as a state is vested in Congress, not in the President and the Senate under the foreign affairs power. Texas was a Republic. It was a separate independent nation from the United States. Texas could not become a State and part of the United States except by treaty. Such a treaty was concluded when Texas agreed to the terms of statehood and Congress accepted those terms.

McKinley followed Foster's advice and sought to acquire the Hawaiian Islands and the nation of Hawaii by a joint resolution. A joint resolution, called the "Newlands resolution," was introduced in the House of Representatives in May of 1898. The Resolution passed the House by a majority. It moved to the Senate in June. The President was confident that, in a time of war, he could secure a majority of the Senate to approve the joint resolution. A treaty acquiring Hawaii required a two thirds vote of the Senate. A bill purporting to acquire Hawaii required a mere majority.

Opposition in the Senate was vigorous. Senators filibustered to block the joint resolution. Some 21,000 Native Hawaiians had signed petitions opposing the annexation treaty. Their petition was presented in the debate on the joint resolution. The majority of the electorate in Hawaii was opposed to becoming part of the United States.

The most important argument against the Joint Resolution was the simple observation that a Joint Resolution has no power to acquire the Hawaiian Islands.⁵ The Joint Resolution was not a treaty. Only a treaty could acquire the territorial dominion of another sovereign and independent nation.⁶ This point was made repeatedly by a number of Senators.⁷ Only two Senators

⁵ Moreover, as one constitutional scholar wrote:

"The constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act. . Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force--confined in its operation to the territory of the State by whose legislature it is enacted."

Westel Woodbury Willoughby, *The Constitutional Law of the United States* § 239, at 427 (2d ed. 1929).

⁶ Allen, on July 4, spoke to the limitations of legislation:

"Mr. Allen: Mr. President the Constitution must begin and end with the territorial jurisdiction of the United States: It cannot reach beyond the boundaries of our Government. It would be as lifeless and impotent as a piece of blank paper in Canada or in the Hawaiian Islands; and so with a statute or joint resolution.

A Joint Resolution if passed becomes a statute law. It has no other or greater force. It is the same as if it would be if it were entitled "an act" instead of "A Joint Resolution." That is its legal classification. It is therefore impossible for the Government of the United States to reach across its boundary into the dominion of another government and annex that government or persons or property therein. But the United States may do so under the treaty making power, which I shall hereafter consider. All territory, including Texas, had been added by treaty:

And Mr. President, if we turn to the history of our country: Alaska came to us by treaty from Russia March 30, 1867. Arizona was included in the Territory of New Mexico ceded to the United State by Mexico by treaty of February 2, 1848. Its boundary was extended south by the Gadsden Treaty of December 3, 1851. California came to

supported the Joint Resolution.⁸ One, from Ohio, claimed that the resolution was a treaty-and only needed the ratification of one party—that of the United States.⁹ Another Senator from Nevada made the ridiculous claim that the United States could “annex the world.”¹⁰

On July 6, 1898, the Joint Resolution passed by a majority in the Senate, but did not obtain the two thirds of Senators present as required for a treaty. The President signed the Joint Resolution on July 7th. Ceremonies were held in Hawaii on August 12, 1898 which purported to transfer sovereignty and public property from the Nation of Hawaii to the United States.

Over the past 100 years the United States has relied on three theories as to how the Joint Resolution acquired the Hawaiian Islands. Each theory asserts that the Joint Resolution was in

us from Mexico primarily by conquest in 1846-47 followed by the Treaty of February 2, 1848. Florida came to the United States by Treaty from Spain, February 22, 1819. Louisiana came to us from France by treaty of April 30, 1803. New Mexico came to the United States from Mexico by Treaty of February 2, 1848. Santo Domingo was proposed to be annexed by treaty in 1868 but failed. That treaty contained a clause for the assent or vote of the people which was taken in March 18709 and they voted 1006 to 9 against. In 1897 the United States negotiated a treaty with Denmark for St. Thomas, and St. Johns and the assent of the people of those islands was made a condition precedent and they voted “aye” about January 1868, but the treaty failed.”

⁷ Senator White of California was equally eloquent:

“Mr. President, when we reflect as to the lines which demark the jurisdiction of the legislature, we must confine that department to our nation. We cannot as I said before extend our legislative right to act without until there has been some authority by which that which is without is brought within. Whence do acts of Congress go? Upon whom do they operate?-- Upon the people of the United States. They have no efficacy beyond the United States except in so far as the influence the conduct of her people in certain excepted cases and those exceptions are more apparent than real. They are impotent to affect the title or the status of the people of who live upon alien soil. Where, then do we obtain the authority to annex unless by some treaty provision?”

⁸ The report accompanying the resolution did not specify how the resolution would acquire the Hawaiian Islands. During the Senate Debates four different theories were urged, three by Senator Foraker and one by Senator Stewart of Nevada. No one desired to, or could, explain how the joint resolution would operate.

⁹Foraker ultimately conceded that this theory was unworkable. He admitted that the Joint Resolution could not acquire the Hawaiian Islands.

“Mr. ALLEN. When we pass this resolution and it becomes a law, the transaction is consummated except the delivery of the property.

Mr. FORAKER. It would have to be accepted on the other side. This is not the ratification of a treaty. *We cannot by a joint resolution annex Hawaii.[emphasis added]*

Mr. ALLEN. But the joint resolution says so.

Mr. FORAKER. We can recite the fact that they have manifested a willingness, as shown by the treaty which we had in mind. When that joint resolution was drafted, to make a cession to us; but when we do not ratify the treaty, but does something else, namely, pass a joint resolution, the transaction is not consummated until they agree to it.”

¹⁰ Finally, the administration, embarrassed by the lack of support summoned Senator Stewart to speak on behalf of the resolution. Stewart’s theory, that the United States, by joint resolution could acquire the Hawaiian Islands, was merely a form of “conquest in disguise.”

fact a kind of “treaty” by which there is an offer of cession from Hawaii, and later, an acceptance of that offer by the United States.

First, if one looks at the language of the joint resolution, the first two paragraphs were copied from the Treaty of 1897. The joint resolution incorporates the language of the treaty by asserting, in paragraph one that the Nation of Hawaii, “has already ceded to the United States, by the Constitution of the Republic of Hawaii, the sovereignty and public lands of Hawaii.” Thus, Hawaii having offered sovereignty and these lands, the United States need only “accept” such an offer.

Yet, there is no offer of cession by the Republic of Hawaii. The United States, in the Joint Resolution claims that the offer of a cession can be found in the Constitution of the Republic of Hawaii. Yet, the Constitution of Hawaii provides no such “cession.” The Constitution of the Republic of Hawaii simply authorizes the President of the Republic to enter into a draft treaty of a political or commercial nature with the United States.¹¹ The Republic of Hawaii ceded nothing prior to the enactment of the Joint Resolution. It is the Joint Resolution; in paragraph one that claims Hawaii cedes its dominion to the United States. That Resolution and that language were drafted by the United States.

Second, some have asserted that the Joint Resolution and the Treaty must be read together. These persons argue that the while the United States never ratified by the Treaty of 1897, the Joint Resolution completes that ratification. In other words, by putting the two instruments together a treaty of cession was completed. This “two instruments” claim is easily defeated. Article VII of the Treaty of 1897 requires that the United States specifically ratify the treaty by the terms in the United States constitution---by a vote of two thirds of the Senators present.¹² Instead the United States passed a joint resolution---by a majority of the House and the Senate. The United States itself, by the terms of the Treaty agreed to Article VII.¹³ Thus Article

¹¹Foraker’ s theory was that article 32 of the Constitution of the Republic of Hawaii provided a irrevocable, pre-existing, standing “offer” to the United States:

The President with the approval of the Cabinet shall have the power to make Treaties with Foreign Governments, subject to the ratification of the Senate.

The President with the approval of the Cabinet is hereby expressly authorized and empowered to make a Treaty of Political of Commercial Union between the Republic of Hawaii and the United States of America, subject to the ratification of the Senate.

¹² Article VII of Treaty of 1897 states:

“This treaty shall be ratified by the President of the Republic of Hawaii, by and with the advice and consent of the Senate, in accordance with the Constitution of said Republic on the one part; and the by the President of the United States by and with the advice and consent of the Senate, on the other; and the ratifications hereof shall be exchanged at Washington, as soon as possible.”

¹³ Only a treaty could acquire the Hawaiian Islands. The explicit treaty had failed. Senator Foraker offered two versions of an implied treaty. Both relied on the claim, made by the United States, in the joint resolution, that Hawaii had already ceded, irrevocably the Hawaiian Islands. Foraker first claimed that the Treaty of 1897 constituted that irrevocable cession. It did not of course. More important, the Treaty of 1897 cannot be ratified by the joint resolution. Article VII of the Treaty negates that possibility. Senator Lindsay pointed this out:

“Mr. LINDSAY. Mr. President

VII is binding on the United States. There is only one method by which the United States could ratify the treaty: ratification by the Senate as required by the Constitution.

The third view uses the precedent of Texas¹⁴ as the basis for a treaty between Hawaii and the United States.¹⁵ As in the case of Texas, it is argued that Hawaii became territory of the United States because there was an unwritten treaty between the United States and the Republic of Hawaii.¹⁶ Such an unwritten treaty requires a perfect meeting of the minds. However, the historical record shows that there were vast disagreements between the Republic of Hawaii and

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Kentucky?

Mr. FORAKER. Certainly.

Mr. LINDSAY. If it will not disturb the Senator, I should like to present this idea to him.

Mr. FORAKER. I am answering a question and I hope not to get too far away from it.

Mr. LINDSAY. This will be pertinent, I think, to the question.

Mr. FORAKER. Very well.

Mr. LINDSAY. The cession named in the act is the cession provided for in the treaty, as I understand it.

Mr. FORAKER. Yes, sir.

Mr. LINDSAY. Article 7 of the treaty provides:

This treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate, on the one part.

I wish to ask the Senator whether a joint resolution, concurred in by the two Houses but passed through the Senate by less than a two-thirds majority, can be treated as equivalent to the ratification of a treaty by the President of the United States, by and with the advice and consent of the Senate.

Mr. FORAKER. It is not precisely the same thing, but the legal effect of the whole transaction is necessarily the same, according to the view I entertain of the power of Congress with respect to that particular matter, because the result is an absolute cession of the territory belonging to the Republic of Hawaii and an absolute acceptance of it on the part of the United States. Now, I shall show why that is so.”

¹⁴The acquisition of Texas was not precedent that Congress, by legislation can acquire territory. Texas was not annexed by a joint resolution of Congress. Texas was admitted as a State of the Union by Congress, which has that power has enumerated in Article IV of the Constitution. Texas and the United States concluded a treaty, implied from the Texas Constitution of 1845 and the joint resolutions of Congress. Prior to the submission of the Texas Constitution to the United States, Congress set forth, by resolution, the terms for admission. Subsequent to the submission of the Texas Constitution of 1845, Congress, by joint resolution, deemed those conditions met by Texas and admitted Texas. As to the United States the admission of Texas became effective as of December 29, 1845. Texas, however, is deemed to have accepted those terms and become a member state of the union on February 16, 1845 when its delegation to Congress was properly seated and when a State Government was established.

¹⁵ The Legal Advisor to the United States Department of State, finally conceded, in 1988, that Texas was not an appropriate precedent. In a 1988 memorandum on the power of the President or Congress to expand the territorial waters of the United States Douglas Kmiec corrected this longstanding error and admitted that he could not identify the constitutional power by which Hawaii had been acquired.

¹⁶ Whatever “meeting of the minds” that may have existed from the ceremonies of August 12, 1898 quickly gave way to open disagreement. These differences arose from fundamentally different views of annexation. The leaders of the Republic of Hawaii sought a unique relationship with the United States. They desired to be “geographically within,” but “politically without” the United States. On one hand, this meant that Hawaii would be territory of the United States for the purposes of other sovereign nation. On the other hand, although a territory of the United States, Hawaii would not be wholly subject to the laws of the United States. In particular, the leaders of the Republic sought to avoid the application of the thirteenth and fifteenth amendments in Hawaii.

the United States.¹⁷ The United States never ratified the Treaty. The Republic of Hawaii¹⁸ was never a party consenting to the Joint Resolution. There were numerous disagreements and objections by the Republic of Hawaii to the Joint Resolution. The historical record does not demonstrate the perfect meeting of minds necessary for such an unwritten treaty. The disagreements between the two nations resulted in confusion. The confusion after 1898 as to whether United States law applied or the law of the Republic remained led to a breakdown in civil society. This led to an “interregnum and a plea to Congress to pass the Organic Act quickly.”¹⁹ In conclusion, the Joint Resolution of 1898 30 Stat. 750 had no power to acquire and did not acquire the Hawaiian Islands as territory of the United States.

¹⁷ The Papers of A.S. Hartwell, Archives of State of Hawaii] contain a typewritten draft of a speech [date given unknown] in which Hartwell expresses his views, again, that the Newlands Resolution and the Treaty of 1897 have different terms and speak to a different intent on the part of the United States and the Republic of Hawaii.

“The Newlands resolution in the main follows the wording of the Treaty. There is, however, one divergence. The treaty provided for Hawaii being annexed to the United States as an integral portion thereof under the name of the Territory of Hawaii, the resolution simply declaring the Hawaiian Islands to be annexed to the United States.

The preamble of the treaty recites the express desire of the government of the Republic of Hawaii that those islands should be incorporated into the United States as an “integral part thereof,” and the two countries “have determined to accomplish by treaty, an object so important for their mutual and permanent welfare. I have referred to the discrepancies in the wording of these documents to show that Hawaii has agreed not to be “Part of the territory of the United States,” but to be annexed to the United States of America under the name of the Territory of Hawaii, and as mentioned in the preamble of its treaty, to “be incorporated into the United States as an integral part thereof. I do imagine however, a sovereign state, as for instance in the case of Texas, and now in the case of Hawaii comes into the United States, as an integral part thereof, and not as an outlying possession, and under a distinct political status, as a territory under the name of Hawaii and not merely as “territory”, I think that such distinct body politic is entitled to be considered in a different way from “possessions” and should receive at the hands of Congress legislation on a broader and higher basis than if it were merely into the nature of a military reservation to the United States, but not as integral portion of the United States.”

¹⁸ The Republic of Hawaii was a “republic” in name only. It was governed by a small minority of white citizens, subjects and denizens of the Republic. The large majority of Hawaiians had become disenfranchised by the overthrow of 1893. While Hawaiians and Part-Hawaiians constituted a plurality of the electorate prior to 1893 they had been reduced by obstacles to the franchise, to a minority by the Constitution of the Republic of Hawaii. In the election immediately prior to the overthrow of 1893 there were 9,931 Hawaiians entitled to vote of a total of 14,217 registered voters. Under the laws of the Provisional Government, only 745 Hawaiians, of a total voting population of 3,852 were entitled to vote. After the formation of the Republic, in September 1897, 1,126 Hawaiians were entitled to vote out of a total of 2, 683 registered voters.

¹⁹ A. S. Hartwell, minister to the United States from the Republic noted the confusion as to which of two laws was applicable in Hawaii: the laws of the Republic of that of the United States.

“Meanwhile it has become apparent that there is much doubt of the extent of power granted to the local government of Hawaii by the provisions of the joint resolution, and that in many important respects there is something like an interregnum in Hawaii.

Many doubtful questions of admiralty and maritime jurisdiction have arisen, as well as of criminal procedure, rendering it uncertain whether there is now any tribunal for the decision of important questions affecting property, and any existing method by which criminals may be indicted or legal juries empanelled for their trial.

In anticipation of Congressional action, the election to fill vacancies in the Hawaiian Senate was not held last year, and there is, therefore, no legislative power for appropriating money for public purposes.

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III. Section Two of the Act of Admission by which the Territory of Hawaii was admitted as a State confirms and thus admits that the State of Hawaii does not include the Hawaiian Islands.

As to this point, this is the testimony on Section Two of the Act of Admission that I presented at a form held at the University of Hawaii School of Law, April 17, 2014 as to “Alternate Visions of Sovereignty.

“I am here tonight to tell you that the United States does admit that it has no legal jurisdiction, no *de jure* jurisdiction over the Hawaiian Islands. This admission, this admission against *de jure* sovereignty rests in the most important law passed by the United States as to Hawaii--the Act of Admission. This is the first time you shall hear this: The Act of Admission, by its section two did not acquire the Hawaiian Islands as territory of the State of Hawaii. The proof lies in the act itself, section two of the Act Admission---that purports to define the boundaries of the State of Hawaii says as follows:

Section 2 of the Act of Admission

Section 2. *The State of Hawaii shall consist of all the islands*, together with their appurtenant reefs and territorial waters, *included in the Territory of Hawaii on the date of enactment of this Act*, except the atoll known as Palmyra Island, together with its appurtenant reefs and territorial waters, but said State shall not be deemed to include the Midway Islands, Johnston Island, Sand Island (offshore from Johnston Island), or Kingman Reef, together with their appurtenant reefs and territorial waters.

What was admitted in 1959---as territory of the State? There is no mention of the main islands: Oahu, Maui, Hawaii, Lanai, Molokai, or Kauai. The only islands mentioned are those that are to be excluded.

If we study this section carefully, it states that the islands and waters in the new State of Hawaii were the islands included in the Territory of Hawaii. In order to discover what islands were included in the Territory of Hawaii one must look back to 1900 and the Organic Act. There, in section two of that act, Congress defined what was in the Organic Act: We find that the only islands included in the Territory of Hawaii were those islands which the United States acquired from Hawaii by Joint Resolution:

In many respects the business affairs of the Territory are brought to a standstill. Many Americans have bought government land since annexation on which they have built residences and planted crops, but their land titles are now in dispute and not be settled until the passage of this bill.

* * * *

The presence in that city of the bubonic plague is calling for drastic measure by the Hawaiian authorities, involving the expenditure of hundreds of thousands of dollars. In order to provide for these expenditures and to compensate the owners of buildings which have been burdened in the effort to suppress the pestilence, it is proper and just that a territorial legislature be provided by Congress with no unnecessary delay.

Section Two: Territory of Hawaii. *That the islands acquired by the United States of America under an Act of Congress entitled Joint Resolution* to provide for annexing the Hawaiian Islands to the United States, approved July seventh, eighteen hundred and ninety-eight, shall be known as the “Territory of Hawaii.”

Now, as stated earlier the joint resolution did not acquire the Hawaiian Islands as territory of the United States. No nation can, by a mere act of its legislature or parliament, pass a law acquiring the dominion of another sovereign nation. Sovereignty is the absolute legal power of each nation over its own territory. The United States has absolute sovereignty. The Nation of Hawaii has such sovereignty. Neither one can, by its own law, acquire the territory of the other. That is the equality of sovereignty. This is what is missing as we move forward. We have the apology resolution. But that is not enough. That is the overthrow. Yet, we have no explanation as to how Hawaii was acquired. There is no jointly ratified treaty-- the treaty was never ratified by the United States. I say again, the treaty was never ratified by the United States. It is the United States, by the terms of its constitution that could not acquire Hawaii---it didn't and those who drafted the Organic Act in 1900 and the Act of Statehood in 1959---knew this as well. So, the agents of the United States engaged in deception—writing and passing statutes that appear to acquire the Hawaiian Islands---but did not.

IV. The Plebiscite of June 27, 1959

Despite the evidence showing the United States lacks both de jure and de facto jurisdiction, many have stated that the plebiscite of 1959 reveals that an overwhelming number of the people of the Hawaiian Islands, and Native Hawaiians as well, supported Statehood and United States jurisdiction.

The truth is that the effect of the plebiscite has been misrepresented. While it is true that the first question in the plebiscite did ask if the voter supported statehood, the second question, took away United States jurisdiction. The section question effectively asked the people of Hawaii to approve the new section two of the Admission Act---which excluded the Hawaiian Islands as territory of the United States.

On June 27, 1959, the people of Hawaii were asked to vote in a so-called “plebiscite” as to whether they approved statehood. 94 per cent responded by voting “yes” as to all three questions. Yet, the plebiscite was required because the Admission Act changed the territorial boundary descriptions as to those proposed by the Proposed Constitution for the State of Hawaii, adopted in the 1949 constitution. Thus, the three questions voted on as of June 27, 1959 were:

- 1) “Shall Hawaii be admitted immediately into the union as a State?”
- 2) “Do you approve of the new boundaries of the state as fixed by the statehood bill?”
- 3) [As described in an article by Fred Bennion of the Honolulu Advertiser] “Question no. 3 is more comprehensive, it requests approval of numerous provisions of the statehood act. The most important of these pertains to disposition of land owned or controlled by the United States.

As to question two, which was critical for the admission of the state, Mr. Bennion stated: “The danger lies in the possibility that the voter having answered the first question in the affirmative, may leave the other two propositions unanswered. A majority vote approving all three is required. One “No” on any of the questions is equivalent to a vote against statehood.”

Mr. Bennion goes on to say about Question Two: “The voter should have no objection to the boundaries. They are practically the same as for the Territory. All eight major islands are included. . . [This last statement is clearly false].”

The approval of the three questions was submitted by the United States to the General Assembly of the United Nations such that the Decolonization Committee of the General Assembly would remove Hawaii from the list of “non self-governing territories.” Efforts are being made by independence groups to have that decision of the United Nations rescinded, Recognition that Question Two was misleading will add strength to that claim.”

VI. Conclusion:

The United States Department of Interior has come to Hawaii basically asking how it can help in establishing a government to government relationship with the Hawaiian people. It can “help” by first acknowledging and admitting certain truths:

First, Hawaii was a state in international law and had a government to government relationship with the United States---as equal states under the law of nations.

Second, the United States enacted congressional legislation that it claimed acquired the Hawaiian Islands as territory of the United States. This is false and the United States has admitted this in two key sections of its laws as to Hawaii: Sections two of the Organic Act and the Act of Admission. Both acts explicitly exclude the Hawaiian Islands from the territory of the United States and the State of Hawaii.

Third, the Department of Interior comes here today to seek advice as to rules that would ignore these truths and supposedly re-establish a government to government relationship with the Native Hawaiian people with Native Hawaiians as a subjugated community, not independent and not equal to the United States.

In essence, the Department of Interior asks us to help them draft rules by which we, as Native Hawaiians go backwards, ignore the existence of the Kingdom of Hawaii, ignore, the failure of the United States to acquire the Hawaiian Islands, ignore the effective occupation of the Hawaiian Islands by the United States, and give them our stamp of approval for what they have done to us over the past 120 years.

Perhaps we were ignorant of the truth for the past 120 years. Perhaps we have forgotten and now only now remember what our kupuna in the Kue petitions fought for and won. Yet, today we have a new generation of scholars and leaders. We have learned of the tricks and the lies, and the misrepresentations. If the future of Hawaii must begin sometime, and someplace, it shall begin here. We are not an Indian tribe, and we don't want to be “recognized” as one by the

Williamson B.C. Chang, Professor of Law, University of Hawaii School of Law; Comments on
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United States. Where once we said “yes” “yes” “yes” we now say “no” “no” “no”---no to
federal help, no to federal recognition and no to occupation.

Imua! Aloha Ke Akua!