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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

EARL F. ARAKAKI, et al,)	CIVIL NO. 02-00139 SOM-KSC
	)	(Declaratory Judgment)
Plaintiffs,)	
	)	SUPPLEMENT TO OFFICE OF
vs.	)	HAWAIIAN AFFAIRS' MOTION
	)	FOR JUDICIAL NOTICE OR IN
BENJAMIN J. CAYETANO, et al.,	)	THE ALTERNATIVE FOR PARTIAL
	)	SUMMARY JUDGMENT FILED
	)	03/07/02; DECLARATION
	)	OF MELODY K. MACKENZIE;
Defendants.	)	EXHIBIT A; AMENDMENT
	)	TO EXHIBIT G; CERTIFICATE
	)	OF SERVICE
)	
	)	DATE: April 29, 2002
	)	TIME: 9:00 a.m.
	)	JUDGE: Hon. Susan O. Mollway

SUPPLEMENT TO OFFICE OF HAWAIIAN AFFAIRS DEFENDANTS'
MOTION FOR JUDICIAL NOTICE, OR IN THE
ALTERNATIVE, FOR PARTIAL SUMMARY JUDGMENT FILED 03/07/02

Defendants OFFICE OF HAWAIIAN AFFAIRS, ROWENA AKANA, HAUNANI APOLIONA, DONALD CATALUNA, LINDA DELA CRUZ, CLAYTON H. W. HEE, COLETTE Y. MACHADO, CHARLES OTA, OSWALD K. STENDER, and JOHN D. WAIHE'E, IV, in their official capacity as Trustees of the Office of Hawaiian Affairs (hereafter "OHA Trustees"), hereby respectfully supplement their Motion for Judicial Notice, or in the Alternative, for Partial Summary Judgment, filed on March 7, 2002, by adding the latest enactment of the U.S. Congress relating to Native Hawaiians,

the Native Hawaiian Education Act, attached hereto as Exhibit A.

I. THE NATIVE HAWAIIAN EDUCATION ACT, PUB. L. 107-110, WAS ENACTED ON JANUARY 8, 2002, AFTER THE DECISION IN RICE V. CAYETANO, AND RECOGNIZES AND REAFFIRMS THE POLITICAL STATUS OF NATIVE HAWAIIANS, THE UNIQUE STATUS OF NATIVE HAWAIIANS AS INDIGENOUS PEOPLES, THE TRUST RELATIONSHIP BETWEEN NATIVE HAWAIIANS AND THE UNITED STATES OF AMERICA, AND THAT CONGRESS HAS DELEGATED BROAD AUTHORITY TO THE STATE OF HAWAI'I TO ADMINISTER A PORTION OF THE FEDERAL TRUST RESPONSIBILITY

On January 8, 2002, President Bush signed into law the "No Child Left Behind Act," Pub. L. 107-110, 115 Stat. 1425. Title VII of that law is entitled "Indian, Native Hawaiian, and Alaska Native Education," while Part B of Title VII is the "Native Hawaiian Education Act." The Native Hawaiian Education Act of 2002, supercedes and replaces the provisions of the Native Hawaiian Education Act of 1994, cited in the OHA Trustees' Motion for Judicial Notice, or in the Alternative for Partial Summary Judgment.

Among the findings that Congress makes, in Sec. 7202 of the Native Hawaiian Education Act of 2002, are the following:

- (1) Native Hawaiians are a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archipelago, whose society was organized as a nation and internationally recognized as a nation by the United States, Britain, France, and Japan, as evidenced by treaties governing friendship, commerce, and navigation.
- (2) At the time of the arrival of the first nonindigenous people in Hawaii in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient subsistence social system based on a communal land tenure system with a sophisticated language, culture, and religion.
-
- (5) In 1893, the sovereign, independent, internationally recognized, and indigenous government of Hawaii, the Kingdom of Hawaii, was overthrown by a small group of non-Hawaiians, including United States

citizens, who were assisted in their efforts by the United States Minister, a United States naval representative, and armed naval forces of the United States. Because of the participation of United States agents and citizens in the overthrow of the Kingdom of Hawaii, in 1993 the United States apologized to Native Hawaiians for the overthrow and the deprivation of the rights of Native Hawaiians to self-determination through Public Law 103-150 (107 Stat. 1510).

-
- (10) The United States has recognized and reaffirmed that—
- (A) Native Hawaiians have a cultural, historic, and land-based link to the indigenous people who exercised sovereignty over the Hawaiian Islands, and that group has never relinquished its claims to sovereignty or its sovereign lands;
 - (B) Congress does not extend services to Native Hawaiians because of their race, but because of their unique status as the indigenous people of a once sovereign nation as to whom the United States has established a trust relationship;
 - (C) Congress has also delegated broad authority to administer a portion of the Federal trust responsibility to the State of Hawaii;
 - (D) the political status of Native Hawaiians is comparable to that of American Indians and Alaska Natives; and
 - (E) the aboriginal, indigenous people of the United States have--
 - (i) a continuing right to autonomy in their internal affairs; and
 - (ii) an ongoing right of self-determination and self-governance that has never been extinguished.

In the Native Hawaiian Education Act of 2002, Pub. L. 107-110, the U.S. Congress has stated in crystal clear language that it recognizes the political status of Native Hawaiians, the unique status of Native Hawaiians as indigenous peoples, the trust relationship between Native Hawaiians and the United States of America, and the fact that it has delegated to the State of Hawai'i broad authority to administer a portion of the Federal trust responsibility. This statute reconfirms that a "political relationship" exists between the United States and Native Hawaiians and that Congress legislates on behalf of Native Hawaiians NOT

because of their race, but because of their "unique status as indigenous peoples of a once sovereign nation as to whom the United States has established a trust relationship."

As the most recent expression of Congressional authority and policy relative to Native Hawaiians, the OHA Trustees ask that this Honorable Court take judicial notice of or grant partial summary judgment as to the facts and conclusions established in the Native Hawaiian Education Act of 2002, Pub. L. 107-110. The specific facts of which the OHA Trustees wish this Court to take judicial notice or grant partial summary judgment are more particularly set out in the attached Amendment to Exhibit G. (Exhibit G was attached to the OHA Trustees' Motion For Judicial Notice or in the Alternative for Partial Summary Judgment, filed on March 7, 2002.) Moreover, because the Native Hawaiian Education Act of 2002 supercedes the earlier Native Hawaiian Education Act of 1994, any reference in Exhibit G to the Native Hawaiian Education Act of 1994 should be deleted.

II. CONCLUSION

For the reasons set forth in the OHA Trustees' Memorandum in Support of Motion for Judicial Notice or in the Alternative for Partial Summary Judgment, this Honorable Court should take judicial notice of the findings and legal conclusions set forth in the

Native Hawaiian Education Act of 2002, Pub. L. 107-110, or grant partial summary judgment as to these facts and conclusions.

DATED: Honolulu, Hawai'i, April 2, 2002.

Sherry P. Broder

SHERRY P. BRODER
Attorney for Defendant
OFFICE OF HAWAIIAN AFFAIRS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

EARL F. ARAKAKI, et al,) CIVIL NO. 02-00139 DAE-KSC
) (Declaratory Judgment)
 Plaintiffs,)
 vs.) DECLARATION OF MELODY K.
) MACKENZIE
 BENJAMIN J. CAYETANO, et al.,)
)
)
 Defendants.)
)

DECLARATION OF MELODY K. MACKENZIE

MELODY K. MACKENZIE, hereby declares under the penalty of perjury that:

1. I am an attorney licensed to practice in the State of Hawai'i and before the U.S. District Court for the District of Hawai'i.

2. The Native Hawaiian Education Act of 2002, Title VII, Part B., of Pub. L. 107-110, attached hereto as Exhibit A, is a true and correct copy.

3. The proposed facts established in the Native Hawaiian Education Act of 2002, Pub. L. 107-110, of which OHA seeks to have this Honorable Court take judicial notice, are found in "Amendment to Exhibit G," which is attached hereto and is a true and correct copy.

DATED: Honolulu, Hawai'i, April 2, 2002.



MELODY K. MACKENZIE

Public Law 107-110, 115 Stat. 1425 (codified at 20 USC § 7512, et seq.) (2002)
January 8, 2002

B "PART B--NATIVE HAWAIIAN EDUCATION

"Sec. 7201. SHORT TITLE.

"This part may be cited as the 'Native Hawaiian Education Act'.

"Sec. 7202. FINDINGS.

"Congress finds the following:

"(1) Native Hawaiians are a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archipelago, whose society was organized as a nation and internationally recognized as a nation by the United States, Britain, France, and Japan, as evidenced by treaties governing friendship, commerce, and navigation.

"(2) At the time of the arrival of the first nonindigenous people in Hawaii in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient subsistence social system based on a communal land tenure system with a sophisticated language, culture, and religion.

"(3) A unified monarchical government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii.

"(4) From 1826 until 1893, the United States recognized the sovereignty and independence of the Kingdom of Hawaii, which was established in 1810 under Kamehameha I, extended full and complete diplomatic recognition to the Kingdom of Hawaii, and entered into treaties and conventions with the Kingdom of Hawaii to govern friendship, commerce and navigation in 1826, 1842, 1849, 1875, and 1887.

"(5) In 1893, the sovereign, independent, internationally recognized, and indigenous government of Hawaii, the Kingdom of Hawaii, was overthrown by a small group of non-Hawaiians, including United States citizens, who were assisted in their efforts by the United States Minister, a United States naval representative, and armed naval forces of the United States. Because of the participation of United States agents and citizens in the overthrow of the Kingdom of Hawaii, in 1993 the United States apologized to Native Hawaiians for the overthrow and the deprivation of the rights of Native Hawaiians to self-determination through Public Law 103-150 (107 Stat. 1510).

"(6) In 1898, the joint resolution entitled 'Joint Resolution to provide for annexing the Hawaiian Islands to the United States', approved July 7, 1898 (30 Stat. 750), ceded absolute title of all lands held by the Republic of Hawaii, including the government and crown lands of the former Kingdom of Hawaii, to the United States, but mandated that revenue generated from the lands be used 'solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes'.

EXHIBIT A

"(7) By 1919, the Native Hawaiian population had declined from an estimated 1,000,000 in 1778 to an alarming 22,600, and in recognition of this severe decline, Congress enacted the Hawaiian Homes Commission Act, 1920 (42 Stat. 108), which designated approximately 200,000 acres of ceded public lands for homesteading by Native Hawaiians.

"(8) Through the enactment of the Hawaiian Homes Commission Act, 1920, Congress affirmed the special relationship between the United States and the Native Hawaiians, which was described by then Secretary of the Interior Franklin K. Lane, who said: 'One thing that impressed me . . . was the fact that the natives of the island who are our wards, I should say, and for whom in a sense we are trustees, are falling off rapidly in numbers and many of them are in poverty.'

"(9) In 1938, Congress again acknowledged the unique status of the Hawaiian people by including in the Act of June 20, 1938 (52 Stat. 781, chapter 530; 16 U.S.C. 391b, 391b-1, 392b, 392c, 396, 396a), a provision to lease lands within the National Parks extension to Native Hawaiians and to permit fishing in the area 'only by native Hawaiian residents of said area or of adjacent villages and by visitors under their guidance.'

"(10) Under the Act entitled 'An Act to provide for the admission of the State of Hawaii into the Union', approved March 18, 1959 (73 Stat. 4), the United States transferred responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii but reaffirmed the trust relationship between the United States and the Hawaiian people by retaining the exclusive power to enforce the trust, including the power to approve land exchanges and amendments to such Act affecting the rights of beneficiaries under such Act.

"(11) In 1959, under the Act entitled 'An Act to provide for the admission of the State of Hawaii into the Union', the United States also ceded to the State of Hawaii title to the public lands formerly held by the United States, but mandated that such lands be held by the State 'in public trust' and reaffirmed the special relationship that existed between the United States and the Hawaiian people by retaining the legal responsibility to enforce the public trust responsibility of the State of Hawaii for the betterment of the conditions of Native Hawaiians, as defined in section 201(a) of the Hawaiian Homes Commission Act, 1920.

"(12) The United States has recognized and reaffirmed that--

"(A) Native Hawaiians have a cultural, historic, and land-based link to the indigenous people who exercised sovereignty over the Hawaiian Islands, and that group has never relinquished its claims to sovereignty or its sovereign lands;

"(B) Congress does not extend services to Native Hawaiians because of their race, but because of their unique status as the indigenous people of a once sovereign nation as to whom the United States has established a trust relationship;

"(C) Congress has also delegated broad authority to administer a portion of the Federal trust responsibility to the State of Hawaii;

"(D) the political status of Native Hawaiians is comparable to that of American Indians and Alaska Natives; and

"(E) the aboriginal, indigenous people of the United States have--

"(i) a continuing right to autonomy in their internal affairs; and

"(ii) an ongoing right of self-determination and self-governance that has never been extinguished.

"(13) The political relationship between the United States and the Native Hawaiian people has been recognized and reaffirmed by the United States, as evidenced by the inclusion of Native Hawaiians in--

"(A) the Native American Programs Act of 1974 (42 U.S.C. 2991 et seq.);

"(B) the American Indian Religious Freedom Act (42 U.S.C. 1996);

"(C) the National Museum of the American Indian Act (20 U.S.C. 80q et seq.);

"(D) the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.);

"(E) the National Historic Preservation Act (16 U.S.C. 470 et seq.);

"(F) the Native American Languages Act (25 U.S.C. 2901 et seq.);

"(G) the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4401 et seq.);

"(H) the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.); and

"(I) the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.).

"(14) In 1981, Congress instructed the Office of Education to submit to Congress a comprehensive report on Native Hawaiian education. The report, entitled the 'Native Hawaiian Educational Assessment Project', was released in 1983 and documented that Native Hawaiians scored below parity with regard to national norms on standardized achievement tests, were disproportionately represented in many negative social and physical statistics indicative of special educational needs, and had educational needs that were related to their unique cultural situation, such as different learning styles and low self-image.

"(15) In recognition of the educational needs of Native Hawaiians, in 1988, Congress enacted title IV of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (102 Stat. 130) to authorize and develop supplemental educational programs to address the unique conditions of Native Hawaiians.

"(16) In 1993, the Kamehameha Schools Bishop Estate released a 10-year update of findings of the Native Hawaiian Educational Assessment Project, which found that despite the successes of the programs established under title IV of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, many of the same educational needs still existed for Native Hawaiians. Subsequent reports by the Kamehameha Schools Bishop Estate and other organizations have generally confirmed those findings. For example--

"(A) educational risk factors continue to start even before birth for many Native Hawaiian children, including--

"(i) late or no prenatal care;

"(ii) high rates of births by Native Hawaiian women who are unmarried; and

"(iii) high rates of births to teenage parents;

"(B) Native Hawaiian students continue to begin their school experience lagging behind other students in terms of readiness factors such as vocabulary test scores;

"(C) Native Hawaiian students continue to score below national norms on standardized education achievement tests at all grade levels;

"(D) both public and private schools continue to show a pattern of lower percentages of Native Hawaiian students in the uppermost achievement levels and in gifted and talented programs;

"(E) Native Hawaiian students continue to be overrepresented among students qualifying for special education programs provided to students with learning disabilities, mild mental retardation, emotional impairment, and other such disabilities;

"(F) Native Hawaiians continue to be underrepresented in institutions of higher education and among adults who have completed four or more years of college;

"(G) Native Hawaiians continue to be disproportionately represented in many negative social and physical statistics indicative of special educational needs, as demonstrated by the fact that--

"(i) Native Hawaiian students are more likely to be retained in grade level and to be excessively absent in secondary school;

"(ii) Native Hawaiian students have the highest rates of drug and alcohol use in the State of Hawaii; and

"(iii) Native Hawaiian children continue to be disproportionately victimized by child abuse and neglect; and

"(H) Native Hawaiians now comprise over 23 percent of the students served by the State of

Hawaii Department of Education, and there are and will continue to be geographically rural, isolated areas with a high Native Hawaiian population density.

"(17) In the 1998 National Assessment of Educational Progress, Hawaiian fourth-graders ranked 39th among groups of students from 39 States in reading. Given that Hawaiian students rank among the lowest groups of students nationally in reading, and that Native Hawaiian students rank the lowest among Hawaiian students in reading, it is imperative that greater focus be placed on beginning reading and early education and literacy in Hawaii.

"(18) The findings described in paragraphs (16) and (17) are inconsistent with the high rates of literacy and integration of traditional culture and Western education historically achieved by Native Hawaiians through a Hawaiian language-based public school system established in 1840 by Kamehameha III.

"(19) Following the overthrow of the Kingdom of Hawaii in 1893, Hawaiian medium schools were banned. After annexation, throughout the territorial and statehood period of Hawaii, and until 1986, use of the Hawaiian language as an instructional medium in education in public schools was declared unlawful. The declaration caused incalculable harm to a culture that placed a very high value on the power of language, as exemplified in the traditional saying: 'I ka 'olelo no ke ola; I ka 'olelo no ka make. In the language rests life; In the language rests death.'

"(20) Despite the consequences of over 100 years of nonindigenous influence, the Native Hawaiian people are determined to preserve, develop, and transmit to future generations their ancestral territory and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions.

"(21) The State of Hawaii, in the constitution and statutes of the State of Hawaii--

"(A) reaffirms and protects the unique right of the Native Hawaiian people to practice and perpetuate their culture and religious customs, beliefs, practices, and language;

"(B) recognizes the traditional language of the Native Hawaiian people as an official language of the State of Hawaii, which may be used as the language of instruction for all subjects and grades in the public school system; and

"(C) promotes the study of the Hawaiian culture, language, and history by providing a Hawaiian education program and using community expertise as a suitable and essential means to further the program.

"Sec. 7203. PURPOSES.

"The purposes of this part are to--

"(1) authorize and develop innovative educational programs to assist Native Hawaiians;

"(2) provide direction and guidance to appropriate Federal, State, and local agencies to focus

resources, including resources made available under this part, on Native Hawaiian education, and to provide periodic assessment and data collection;

"(3) supplement and expand programs and authorities in the area of education to further the purposes of this title; and

"(4) encourage the maximum participation of Native Hawaiians in planning and management of Native Hawaiian education programs.

"Sec. 7204. NATIVE HAWAIIAN EDUCATION COUNCIL AND ISLAND COUNCILS.

"(a) Establishment of Native Hawaiian Education Council.--In order to better effectuate the purposes of this part through the coordination of educational and related services and programs available to Native Hawaiians, including those programs receiving funding under this part, the Secretary is authorized to establish a Native Hawaiian Education Council (hereafter in this part referred to as the 'Education Council').

"(b) Composition of Education Council.--The Education Council shall consist of not more than 21 members, unless otherwise determined by a majority of the council.

"(c) Conditions and Terms.--

"(1) Conditions.-- At least 10 members of the Education Council shall be Native Hawaiian education service providers and 10 members of the Education Council shall be Native Hawaiians or Native Hawaiian education consumers. In addition, a representative of the State of Hawaii Office of Hawaiian Affairs shall serve as a member of the Education Council.

"(2) Appointments.-- The members of the Education Council shall be appointed by the Secretary based on recommendations received from the Native Hawaiian community.

"(3) Terms.-- Members of the Education Council shall serve for staggered terms of 3 years, except as provided in paragraph (4).

"(4) Council determinations.-- Additional conditions and terms relating to membership on the Education Council, including term lengths and term renewals, shall be determined by a majority of the Education Council.

"(d) Native Hawaiian Education Council Grant.--The Secretary shall make a direct grant to the Education Council to carry out the following activities:

"(1) Coordinate the educational and related services and programs available to Native Hawaiians, including the programs assisted under this part.

"(2) Assess the extent to which such services and programs meet the needs of Native Hawaiians, and collect data on the status of Native Hawaiian education.

"(3) Provide direction and guidance, through the issuance of reports and recommendations, to appropriate Federal, State, and local agencies in order to focus and improve the use of resources, including resources made available under this part, relating to Native Hawaiian education, and serve, where appropriate, in an advisory capacity.

"(4) Make direct grants, if such grants enable the Education Council to carry out the duties of the Education Council, as described in paragraphs (1) through (3).

"(e) Additional Duties of the Education Council.--

"(1) In general.-- The Education Council shall provide copies of any reports and recommendations issued by the Education Council, including any information that the Education Council provides to the Secretary pursuant to subsection (i), to the Secretary, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Indian Affairs of the Senate.

"(2) Annual report.-- The Education Council shall prepare and submit to the Secretary an annual report on the Education Council's activities.

"(3) Island council support and assistance.-- The Education Council shall provide such administrative support and financial assistance to the island councils established pursuant to subsection (f) as the Secretary determines to be appropriate, in a manner that supports the distinct needs of each island council.

"(f) Establishment of Island Councils.--

"(1) In general.-- In order to better effectuate the purposes of this part and to ensure the adequate representation of island and community interests within the Education Council, the Secretary is authorized to facilitate the establishment of Native Hawaiian education island councils (hereafter in this part referred to as an 'island council') for the following islands:

"(A) Hawaii.

"(B) Maui.

"(C) Molokai.

"(D) Lanai.

"(E) Oahu.

"(F) Kauai.

"(G) Niihau.

"(2) Composition of island councils.-- Each island council shall consist of parents, students, and

other community members who have an interest in the education of Native Hawaiians, and shall be representative of individuals concerned with the educational needs of all age groups, from children in preschool through adults. At least three-fourths of the members of each island council shall be Native Hawaiians.

"(g) Administrative Provisions Relating to Education Council and Island Councils.--The Education Council and each island council shall meet at the call of the chairperson of the appropriate council, or upon the request of the majority of the members of the appropriate council, but in any event not less often than four times during each calendar year. The provisions of the Federal Advisory Committee Act shall not apply to the Education Council and each island council.

"(h) Compensation.--Members of the Education Council and each island council shall not receive any compensation for service on the Education Council and each island council, respectively.

"(i) Report.--Not later than 4 years after the date of enactment of the No Child Left Behind Act of 2001, the Secretary shall prepare and submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Indian Affairs of the Senate a report that summarizes the annual reports of the Education Council, describes the allocation and use of funds under this part, and contains recommendations for changes in Federal, State, and local policy to advance the purposes of this part.

"Sec. 7205. PROGRAM AUTHORIZED.

"(a) General Authority.--

"(1) Grants and contracts.-- The Secretary is authorized to make direct grants to, or enter into contracts with--

"(A) Native Hawaiian educational organizations;

"(B) Native Hawaiian community-based organizations;

"(C) public and private nonprofit organizations, agencies, and institutions with experience in developing or operating Native Hawaiian programs or programs of instruction in the Native Hawaiian language; and

"(D) consortia of the organizations, agencies, and institutions described in subparagraphs (A) through (C),

to carry out programs that meet the purposes of this part.

"(2) Priorities.-- In awarding grants or contracts to carry out activities described in paragraph (3), the Secretary shall give priority to entities proposing projects that are designed to address--

"(A) beginning reading and literacy among students in kindergarten through third grade;

"(B) the needs of at-risk children and youth;

"(C) needs in fields or disciplines in which Native Hawaiians are underemployed; and

"(D) the use of the Hawaiian language in instruction.

"(3) Authorized activities.-- Activities provided through programs carried out under this part may include--

"(A) the development and maintenance of a statewide Native Hawaiian early education and care system to provide a continuum of services for Native Hawaiian children from the prenatal period of the children through age 5;

"(B) the operation of family-based education centers that provide such services as--

"(i) programs for Native Hawaiian parents and their infants from the prenatal period of the infants through age 3;

"(ii) preschool programs for Native Hawaiians; and

"(iii) research on, and development and assessment of, family-based, early childhood, and preschool programs for Native Hawaiians;

"(C) activities that enhance beginning reading and literacy in either the Hawaiian or the English language among Native Hawaiian students in kindergarten through third grade and assistance in addressing the distinct features of combined English and Hawaiian literacy for Hawaiian speakers in fifth and sixth grade;

"(D) activities to meet the special needs of Native Hawaiian students with disabilities, including-

"(i) the identification of such students and their needs;

"(ii) the provision of support services to the families of those students; and

"(iii) other activities consistent with the requirements of the Individuals with Disabilities Education Act;

"(E) activities that address the special needs of Native Hawaiian students who are gifted and talented, including--

"(i) educational, psychological, and developmental activities designed to assist in the educational progress of those students; and

"(ii) activities that involve the parents of those students in a manner designed to assist in the

students' educational progress;

"(F) the development of academic and vocational curricula to address the needs of Native Hawaiian children and adults, including curriculum materials in the Hawaiian language and mathematics and science curricula that incorporate Native Hawaiian tradition and culture;

"(G) professional development activities for educators, including--

"(i) the development of programs to prepare prospective teachers to address the unique needs of Native Hawaiian students within the context of Native Hawaiian culture, language, and traditions;

"(ii) in-service programs to improve the ability of teachers who teach in schools with concentrations of Native Hawaiian students to meet those students' unique needs; and

"(iii) the recruitment and preparation of Native Hawaiians, and other individuals who live in communities with a high concentration of Native Hawaiians, to become teachers;

"(H) the operation of community-based learning centers that address the needs of Native Hawaiian families and communities through the coordination of public and private programs and services, including--

"(i) preschool programs;

"(ii) after-school programs;

"(iii) vocational and adult education programs; and

"(iv) programs that recognize and support the unique cultural and educational needs of Native Hawaiian children, and incorporate appropriately qualified Native Hawaiian elders and seniors;

"(I) activities, including program co-location, to enable Native Hawaiians to enter and complete programs of postsecondary education, including--

"(i) provision of full or partial scholarships for undergraduate or graduate study that are awarded to students based on their academic promise and financial need, with a priority, at the graduate level, given to students entering professions in which Native Hawaiians are underrepresented;

"(ii) family literacy services;

"(iii) counseling and support services for students receiving scholarship assistance;

"(iv) counseling and guidance for Native Hawaiian secondary students who have the potential to receive scholarships; and

"(v) faculty development activities designed to promote the matriculation of Native Hawaiian

students;

"(J) research and data collection activities to determine the educational status and needs of Native Hawaiian children and adults;

"(K) other research and evaluation activities related to programs carried out under this part; and

"(L) other activities, consistent with the purposes of this part, to meet the educational needs of Native Hawaiian children and adults.

"(4) Special rule and conditions.----

"(A) Institutions outside hawaii.--The Secretary shall not establish a policy under this section that prevents a Native Hawaiian student enrolled at a 2- or 4-year degree granting institution of higher education outside of the State of Hawaii from receiving a scholarship pursuant to paragraph (3)(I).

"(B) Scholarship conditions.--The Secretary shall establish conditions for receipt of a scholarship awarded under paragraph (3)(I). The conditions shall require that an individual seeking such a scholarship enter into a contract to provide professional services, either during the scholarship period or upon completion of a program of postsecondary education, to the Native Hawaiian community.

"(b) Administrative Costs.--Not more than 5 percent of funds provided to a recipient of a grant or contract under subsection (a) for any fiscal year may be used for administrative purposes.

"(c) Authorization of Appropriations.--

"(1) In general.-- There are authorized to be appropriated to carry out this section and section 7204 such sums as may be necessary for fiscal year 2002 and each of the 5 succeeding fiscal years.

"(2) Reservation.-- Of the funds appropriated under this subsection, the Secretary shall reserve \$ 500,000 for fiscal year 2002 and each of the 5 succeeding fiscal years to make a direct grant to the Education Council to carry out section 7204.

"(3) Availability.-- Funds appropriated under this subsection shall remain available until expended.

"Sec. 7206. ADMINISTRATIVE PROVISIONS.

"(a) Application Required.--No grant may be made under this part, and no contract may be entered into under this part, unless the entity seeking the grant or contract submits an application to the Secretary at such time, in such manner, and containing such information as the Secretary may determine to be necessary to carry out the provisions of this part.

"(b) Special Rule.--Each applicant for a grant or contract under this part shall submit the application for comment to the local educational agency serving students who will participate in the program to be carried out under the grant or contract, and include those comments, if any, with the application to the Secretary.

"Sec. 7207. DEFINITIONS.

"In this part:

"(1) Native hawaiian.-- The term 'Native Hawaiian' means any individual who is--

"(A) a citizen of the United States; and

"(B) a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii, as evidenced by--

"(i) genealogical records;

"(ii) Kupuna (elders) or Kamaaina (long-term community residents) verification; or

"(iii) certified birth records.

"(2) Native hawaiian community-based organization.-- The term 'Native Hawaiian community-based organization' means any organization that is composed primarily of Native Hawaiians from a specific community and that assists in the social, cultural, and educational development of Native Hawaiians in that community.

"(3) Native hawaiian educational organization.-- The term 'Native Hawaiian educational organization' means a private nonprofit organization that--

"(A) serves the interests of Native Hawaiians;

"(B) has Native Hawaiians in substantive and policymaking positions within the organization;

"(C) incorporates Native Hawaiian perspective, values, language, culture, and traditions into the core function of the organization;

"(D) has demonstrated expertise in the education of Native Hawaiian youth; and

"(E) has demonstrated expertise in research and program development.

"(4) Native hawaiian language.-- The term 'Native Hawaiian language' means the single Native American language indigenous to the original inhabitants of the State of Hawaii.

"(5) Native hawaiian organization.-- The term 'Native Hawaiian organization' means a private nonprofit organization that--

"(A) serves the interests of Native Hawaiians;

"(B) has Native Hawaiians in substantive and policymaking positions within the organization;
and

"(C) is recognized by the Governor of Hawaii for the purpose of planning, conducting, or administering programs (or portions of programs) for the benefit of Native Hawaiians.

"(6) Office of hawaiian affairs.-- The term 'Office of Hawaiian Affairs' means the Office of Hawaiian Affairs established by the Constitution of the State of Hawaii.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

EARL F. ARAKAKI, et al,	)	CIVIL NO. 02-00139 SOM-KSC
	)	(Declaratory Judgment)
Plaintiffs,)	
	)	AMENDMENT TO EXHIBIT G
vs.	)	FACTS AND CONCLUSIONS OF
	)	LAW FROM FEDERAL AND STATE
BENJAMIN J. CAYETANO, et al.,	)	STATUTES AND ANNOTATIONS
)	
)	
Defendants.)	
)	
)	
)	

**AMENDMENT TO EXHIBIT G
FACTS AND CONCLUSIONS OF LAW FROM
FEDERAL AND STATE STATUTES AND ANNOTATIONS**

Defendants OHA Trustees respectfully submit this Amendment to Exhibit G with annotations noted below from the Native Hawaiian Education Act of 2002, Pub. L. 107-110, Title VII, Part B (hereafter "Education Act of 2002"). Because the Education Act of 2002 supercedes the Native Hawaiian Education Act of 1994, any reference in Exhibit G to the Native Hawaiian Education Act of 1994 should be deleted. Finally, many of the findings in the Education Act of 2002 are similar or identical to those findings previously made by Congress and submitted by the OHA Trustees through Exhibit G. Nevertheless, because the Education Act of 2002 represents the most recent statement of Federal policy towards Native Hawaiians and clearly affirms Congressional authority to legislate on behalf of Native

Hawaiians, the OHA Trustees have included those findings even though they may be duplicative.

EXHIBIT G

OHA' S PROPOSED JUDICIAL NOTICE OF FACTS

60. Native Hawaiians are a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archipelago, whose society was organized as a nation and internationally recognized as a nation by the United States, Britain, France, and Japan, as evidenced by treaties governing friendship, commerce, and navigation. (See, Education Act 2002, Findings, par. 1.)

61. At the time of the arrival of the first nonindigenous people in Hawaii in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient subsistence social system based on a communal land tenure system with a sophisticated language, culture, and religion. (See, Education Act of 2002, Findings, par. 2.)

62. From 1826 until 1893, the United States recognized the sovereignty and independence of the Kingdom of Hawaii, which was established in 1810 under Kamehameha I, extended full and complete diplomatic recognition to the Kingdom of Hawaii, and entered into treaties and conventions with the Kingdom of Hawaii to govern friendship, commerce and navigation

in 1826, 1842, 1849, 1875, and 1887. (See, *Education Act of 2002, Findings, par. 4.*)

63. In 1893, the sovereign, independent, internationally recognized, and indigenous government of Hawaii, the Kingdom of Hawaii, was overthrown by a small group of non-Hawaiians, including United States citizens, who were assisted in their efforts by the United States Minister, a United States naval representative, and armed naval forces of the United States. Because of the participation of United States agents and citizens in the overthrow of the Kingdom of Hawaii, in 1993 the United States apologized to Native Hawaiians for the overthrow and the deprivation of the rights of Native Hawaiians to self-determination through Public Law 103-150 (107 Stat. 1510). (See, *Education Act of 2002, Findings, par. 5.*)

64. In 1898, the joint resolution entitled 'Joint Resolution to provide for annexing the Hawaiian Islands to the United States', approved July 7, 1898 (30 Stat. 750), ceded absolute title of all lands held by the Republic of Hawaii, including the government and crown lands of the former Kingdom of Hawaii, to the United States, but mandated that revenue generated from the lands be used 'solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes'. (See, *Education Act of 2002, Findings, par. 6.*)

65. By 1919, the Native Hawaiian population had declined from an estimated 1,000,000 in 1778 to an alarming 22,600, and in recognition of this severe decline, Congress enacted the Hawaiian Homes Commission Act, 1920 (42 Stat. 108), which designated approximately 200,000 acres of ceded public lands for homesteading by Native Hawaiians. (See, *Education Act of 2002, Findings, par. 7.*)

66. Through the enactment of the Hawaiian Homes Commission Act, 1920, Congress affirmed the special relationship between the United States and the Native Hawaiians, which was described by then Secretary of the Interior Franklin K. Lane, who said: 'One thing that impressed me . . . was the fact that the natives of the island who are our wards, I should say, and for whom in a sense we are trustees, are falling off rapidly in numbers and many of them are in poverty.'. (See, *Education Act of 2002, Findings, par. 8.*)

67. Under the Act entitled 'An Act to provide for the admission of the State of Hawaii into the Union', approved March 18, 1959 (73 Stat. 4), the United States transferred responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii but reaffirmed the trust relationship between the United States and the Hawaiian people by retaining the exclusive power to enforce the trust, including the power to approve land exchanges and amendments to such Act affecting the

rights of beneficiaries under such Act. (See, *Education Act of 2002, Findings, par. 10.*)

68. In 1959, under the Act entitled 'An Act to provide for the admission of the State of Hawaii into the Union', the United States also ceded to the State of Hawaii title to the public lands formerly held by the United States, but mandated that such lands be held by the State 'in public trust' and reaffirmed the special relationship that existed between the United States and the Hawaiian people by retaining the legal responsibility to enforce the public trust responsibility of the State of Hawaii for the betterment of the conditions of Native Hawaiians, as defined in section 201(a) of the Hawaiian Homes Commission Act, 1920. (See, *Education Act of 2002, Findings, par. 11.*)

69. The United States has recognized and reaffirmed that--

(A) Native Hawaiians have a cultural, historic, and land-based link to the indigenous people who exercised sovereignty over the Hawaiian Islands, and that group has never relinquished its claims to sovereignty or its sovereign lands;

(B) Congress does not extend services to Native Hawaiians because of their race, but because of their unique status as the indigenous people of a once sovereign nation as to whom the United States has established a trust relationship;

(C) Congress has also delegated broad authority to administer a portion of the Federal trust responsibility to the State of Hawaii;

(D) the political status of Native Hawaiians is comparable to that of American Indians and Alaska Natives; and

(E) the aboriginal, indigenous people of the United States have--

(i) a continuing right to autonomy in their internal affairs; and

(ii) an ongoing right of self-determination and self-governance that has never been extinguished. (See, *Education Act of 2002, Findings, par. 12.*)

70. Despite the consequences of over 100 years of nonindigenous influence, the Native Hawaiian people are determined to preserve, develop, and transmit to future generations their ancestral territory and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions. (See, *Education Act of 2002, Findings, par. 20.*)

71. The term 'Native Hawaiian' means any individual who is--

(A) a citizen of the United States; and

(B) a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now

comprises the State of Hawaii, as evidenced by--

- (i) genealogical records;
- (ii) Kupuna (elders) or Kamaaina (long-term community residents) verification; or
- (iii) certified birth records. (See, *Education Act of 2002, Sec. 7207, Definitions, par. 1,*)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

EARL F. ARAKAKI, et al,	)	CIVIL NO. 02-00139 DAE-KSC
	)	(Declaratory Judgment)
Plaintiffs,)	
	)	CERTIFICATE OF SERVICE
vs.)	
)	
BENJAMIN J. CAYETANO, et al.,)	
)	
)	
Defendants.)	
_____)	

CERTIFICATE OF SERVICE

The undersigned hereby certify that a copy of the foregoing document was duly served upon the following parties at their last known addresses by hand-delivery or U.S. Mail:

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