
Additional Views on H.R. 835, the "Hawaiian Homeownership Opportunity Act of 2007"

The underlying Native Hawaiian housing program that we are set to reauthorize is one of many benefits that currently flow from the federal government to Native Hawaiians--there are roughly 160 current statutes that confer such benefits. However, in 2000, the Supreme Court put many of these benefits in jeopardy with its decision in *Rice v. Cayetano*.

The Court's decision in *Rice* has led many to conclude that the current configuration of justices would likely strike down most federal benefits flowing to Native Hawaiians as a racial set-aside, if given a chance. As a result, the Hawaiian Congressional delegation has championed separate legislation to provide a process for the United States to recognize Native Hawaiians as a governing entity, i.e., a tribe that is political in nature. Instead of recognizing a currently-existing political entity that has authority over its members, the legislation (H.R. 505) would create one from scratch.

While the Financial Services Committee is not considering the sovereignty bill (H.R. 505), the Native Hawaiian housing bill (H.R. 835) should nonetheless give us pause before we reauthorize funding programs that are more than likely unconstitutional. This bill, H.R. 835, which reauthorizes federal funding for Native Hawaiian housing, should not be construed by any future court as Congress using its power under the Indian Commerce Clause to indirectly confer tribal status on the Native Hawaiian people.

America is a melting pot of cultures from around the world. Justice Kennedy noted as much in his opinion in *Rice v. Cayetano*. 'As the State of Hawaii attempts to address these realities, it must, as always, seek the political consensus that begins with a shared purpose. One of the necessary beginning points is this principle: The Constitution of the United States, too, has become the heritage of all the citizens of Hawaii.'

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