

Editorial | Island Voices

Scheme to recognize Native Hawaiians as ‘tribe’ still a threat

By Keli'i Akina

June 23, 2016



COURTESY PHOTO

Keli'i Akina, Ph.D., is CEO of the Grassroot Institute of Hawaii (disclosure: he also is a candidate for Office of Hawaiian Affairs trustee). He writes as an individual, not as a representative of the other plaintiffs or on behalf of the lawsuit referenced.

The future of the state government's effort to build a Native Hawaiian government is in limbo, and its statements on it are contradictory and confusing.

Strangely, this might be exactly what the state wants.

It began with Act 195 and the establishment of the Native Hawaiian Roll Commission.

Then the enrollment process was resoundingly ignored by the Hawaiian community — overwhelming evidence that the Native Hawaiian Roll and the state's scheme for a race-based tribe lacked support.

Nonetheless, the state proceeded, extending the enrollment period and pouring millions of public dollars into the campaign to establish a tribal government for Native Hawaiians.

When an election for delegates to an aha (convention) that would write a new constitution for the Hawaiian people was announced, four Native Hawaiians and two non-Hawaiian locals filed a lawsuit against the state, charging that a public election based on race (using the Native Hawaiian Roll) was unconstitutional.

That case was heard last week by the U.S. 9th Circuit Court of Appeals, and its disposition will soon be announced.

The defendants claim that the suit is moot: No election is planned for ratification of the Native Hawaiian constitution, and the group that was to sponsor the election, Na'i Aupuni, has been dissolved.

This claim is smoke and mirrors, designed to obscure one simple fact: At this moment, we are closer to the establishment of a government-created Hawaiian tribe than we have ever been.

In order to petition the federal government for recognition of a Native Hawaiian government under the rule proposed by the U.S. Department of the Interior last year, there needs to be a vote from the Hawaiian people.

While the state Office of Hawaiian Affairs (OHA) and Na'i Aupuni have said they are not currently planning to pursue a vote, that has no weight.

Only a permanent injunction from a court can stop such an election.

In fact, over the course of this case, Na'i Aupuni has tried again and again to evade the legal repercussions of its actions.

It began by announcing the election with a short time frame, making it difficult to file a challenge.

Presented with a temporary injunction from U.S. Supreme Court Justice Anthony Kennedy to halt the counting of votes, it extended the voting period.

When that injunction was affirmed by the entire court, it dispensed with the election altogether and announced that “everyone wins.”

Now, as the challenge to the state’s nation-building effort persists, it has tried to make things go away by dissolving one of the defendants. However, the constitutional issues at stake cannot be eliminated so easily.

We have always known that Na’i Aupuni was acting for the state and OHA — by one count, about 18 percent of delegates at the Constitutional Convention were current or former employees of OHA or the Native Hawaiian Roll Commission.

As quickly as Na’i Aupuni was eliminated, a new organization can be created in its place and an election can be held to ratify the Native Hawaiian Constitution and seek federal recognition.

It is difficult to believe that OHA has suddenly decided that it is no longer interested in nation-building after so many years and untold millions of dollars.

Which is more likely — that OHA and the lobbyists for federal recognition have given up on creating a Native Hawaiian tribe, or that they hope this latest stunt can prevent an adverse decision in court?

The failed and flawed nation-building plan has cost the Native Hawaiian people dearly — not only in terms of wasted funds that could have been better spent on health care, housing, education and job training, but also by promoting a divisive message that does not resonate with the majority of Native Hawaiians and the general population.

We can only hope that the court will see through the Na’i Aupuni ruse and put an end to the pursuit of a government-created, race-based tribe.