

ASSOCIATION OF HAWAIIAN CIVIC CLUBS

A RESOLUTION

No. 2018 – 40

CONDEMNING THE USE OF THE SUPREME COURT DECISION ON *RICE V. CAYETANO* TO UNDERMINE THE SELF-DETERMINATION OF NATIVE AND INDIGENOUS PEOPLE AND EXPRESSING URGENCY FOR RE-ESTABLISHING A NATIVE HAWAIIAN GOVERNING ENTITY

WHEREAS the United States enacted the Hawai‘i Admissions Act on March 18, 1959, which included a compact with the State of Hawai‘i to administer the federal trust responsibility to Native Hawaiians; and

WHEREAS, the people of Hawai‘i voted to ratify the Admissions Act on June 27, 1959, and President Eisenhower signed the official proclamation admitting Hawai‘i as the 50th state on August 21, 1959; and

WHEREAS in 1978, through a constitutional convention, the State of Hawai‘i created the Office of Hawaiian Affairs to better administer the federal trust responsibility to Native Hawaiians, and in an effort to support the self-determination rights of Native Hawaiians, the State of Hawai‘i required those seeking and electing the offices of Trustee to be of Native Hawaiian descent; and

WHEREAS, on February 23, 2000, in *Rice v. Cayetano*, 528 U.S. 495, the United States Supreme Court found the State of Hawai‘i’s voting scheme for the Office of Hawaiian Affairs violated the 15th Amendment in creating a race-based voting qualification, stating, “Even were we to take the substantial step of finding authority in Congress, delegated to the State, to treat Hawaiians or native Hawaiians as tribes, Congress may not authorize a State to create a voting scheme of this sort.”; and

WHEREAS, the United States Congress has exercised its Indian Affairs powers to enact over 150 pieces of legislation, including the Hawaiian Homes Commission Act, the Native Hawaiian Education Act, the Native American Housing and Self-Determination Act, and the Native American Programs Act, to implement the federal trust responsibility to the Native Hawaiian people; and

WHEREAS, to further clarify the political status of Native Hawaiians and provide for procedures for reestablishing a formal government-to-government relationship with the Native Hawaiian community, the United States Department of the Interior published 43 CFR Part 50 on October 14, 2016; and

WHEREAS, on October 4, 2018, United States District Court Judge Reed O'Connor, in *Brackeen v. Zinke*, No. 4:17-cv-00868-O (N.D. Tex. Oct. 4, 2018), cited *Rice v. Cayetano* in finding that the Indian Child Welfare Act of 1978 ("ICWA") is unconstitutional because it uses ancestry as a proxy for race; and

WHEREAS, this ruling in *Brackeen v. Zinke* selectively ignored Supreme Court Indian law precedent and is the first ruling in the country to find that ICWA, in its entirety, is unconstitutional and if upheld, it could invalidate numerous federal laws enacted by the United States Congress based on its special trust responsibilities to Native nations and tribes; and

WHEREAS, on October 10, 2018, a panel of the United States Court of Appeals for the Ninth Circuit heard oral argument in *Davis v. Guam*, a case challenging the right of Native inhabitants of Guam to express, by plebiscite, their desired future political relationship with the United States, and the plaintiff's arguments are also based on the *Rice v. Cayetano* decision; and

WHEREAS, the precedent set in these court cases and proceedings are harmful and detrimental to Native Hawaiians and to Native and indigenous people across the United States; and

WHEREAS, it is regretful that court decision originating in Hawai'i on a Native Hawaiian matter, has a negative impact on other Native and indigenous communities; and

WHEREAS, the Association of Hawaiian Civic Clubs has a long-standing record of supporting and advocating for Native Hawaiian self-determination, self-governance and the federally-recognized special trust relationship with the United States; and

WHEREAS, the establishment of a Native Hawaiian governing entity can further protect Native Hawaiian rights and programs, and federal Indian law, rights and programs relied on by all Native and indigenous communities in the United States.

NOW, THEREFORE, BE IT RESOLVED, by the Association of Hawaiian Civic Clubs at its 59th Annual Convention in Kalapaki, Kaua'i, in the malama of Welehu and the rising of 'Oleapau, this 17th day of November 2018, condemn the use of the Supreme Court decision on *Rice v. Cayetano* to undermine the self-determination and self-governance of Native and indigenous peoples;

BE IT FURTHER RESOLVED, that the Association of Hawaiian Civic Clubs engage other Native Hawaiian Organizations to file an amicus curiae brief in the *Brackeen v. Zinke* case; and

BE IT FURTHER RESOLVED, that the Association of Hawaiian Civic Clubs, in recognizing the urgency of re-establishing a Native Hawaiian governing entity, elevate its advocacy for the urgent development of a Native Hawaiian governing entity; and

BE IT FURTHER RESOLVED, that a certified copy of this resolution be transmitted to the members of the Hawai'i Congressional Delegation, as well as the Governor of the State of Hawai'i, President of the State Senate, Speaker of the State House of Representatives, Chair of

the State Senate Committee on Hawaiian Affairs, Chair of the State House Committee on Ocean, Marine Resources & Hawaiian Affairs, Chair of the Board of Trustees of the Office of Hawaiian Affairs, and all County Mayors.



The undersigned hereby certifies that the foregoing Resolution was duly adopted in the malama of Welehu and the rising of 'Olepau on the 17th day of November 2018, at the 59th Annual Convention of the Association of Hawaiian Civic Clubs in Kalapaki, Kaua'i.


Annelie C. Amaral, President