

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

KELI'I AKINA, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	Civil Action No.: 15-00322
v.)	
)	
THE STATE OF HAWAII, <i>et al.</i>)	
)	
<i>Defendants.</i>)	

DECLARATION OF DR. KELI'I AKINA

Keli'i Akina, for his declaration, pursuant to 28 U.S.C. § 1746, states as follows:

1. I am over the age of 18 and I am of sound mind and am fully competent and authorized to make this declaration.
2. I am a citizen and resident of the State of Hawaii. My address is 135 Prospect Street, Honolulu, Hawaii, 96813. I am a registered voter in the State of Hawaii.
3. I am President and CEO of the Grassroot Institute of Hawaii, an independent research and educational institution devoted to promoting the principles of individual liberty, the free market, and limited and accountable government throughout the state of Hawaii and the Pacific Rim. The Institute, a 501(c)(3) nonprofit organization, seeks to educate and inform Hawaii's policy-makers, news media and the public at large on public policy issues.
4. I am an expert in East-West Philosophy and ethics. I have taught or lectured at universities in China and the United States and am an adjunct instructor at Hawaii Pacific University.

5. The historical background of the Hawaiian people and islands and the United States' relationship to them is well summarized in the opening section of the U.S. Supreme Court's decision in *Rice v. Cayetano*, 528 U.S. 495 (2000), at pages 500-511, which account I respectfully recommend to this Court.
6. Act 195 became law in Hawaii in July 2011. It established the Native Hawaiian Roll Commission and gave it responsibility for maintaining a list of "qualified" Native Hawaiians. The term "qualified" Native Hawaiians in Act 195 has a racial component, in that it is limited to "a descendant of the aboriginal peoples who, prior to 1778, occupied and exercised sovereignty in the Hawaiian islands" or one of the "indigenous, native people of Hawaii who was eligible in 1921 for the program authorized by the Hawaiian Homes Commission Act, 1920, or a direct lineal descendent of that individual." It also requires a Native Hawaiian to have "a significant cultural, social, or civic connection to the Native Hawaiian community."
7. I am a descendant of the aboriginal peoples who, prior to 1778, occupied and exercised sovereignty in the Hawaiian Islands.
8. I can provide verification of my Native Hawaiian ancestry.
9. I have significant cultural, social, and civic connections to the Native Hawaiian community and can confirm such ties.
10. I attempted to register online for the Kana'iolowalu Roll, but was denied registration.
11. During the online registration process, I was asked to confirm the following declaration, which was called Declaration One: "I affirm the unrelinquished sovereignty of the Native Hawaiian people, and my intent to participate in the process of self-governance."
12. I object to the statement and the principles asserted in Declaration One. I object on the grounds that the purported "unrelinquished sovereignty" of the Hawaiian people is

historically counter-factual in light of the abdication of sovereignty by the last monarch of the Hawaiian Kingdom in 1895 and its annexation in 1898 and the subsequent admission to U.S.A. statehood in 1959. Moreover, as a loyal citizen of the United States of America, I cannot in good conscience affirm or declare allegiance to any other national sovereignty. Therefore, I could not truthfully confirm Declaration One.

13. Declaration One appears on the following webpage of the Native Hawaiian Roll Commission's online registration website: <https://www.kanaiolowalu.org/registernow/>.
14. Attached as Exhibit A is a true and correct copy of a screenshot of this webpage. It looks exactly as it did on the day I tried to register.
15. Once I declined to confirm Declaration One on the online registration form, I was unable to register to vote on the Kana'iowalu Roll.
16. I would like to register and vote in the election that those on the Kana'iowalu Roll are eligible to vote in.
17. I was denied the right to register and vote in that election because I do not agree with the principles asserted in the registration form for the Kana'iowalu Roll.
18. I was discriminated against in the registration process for the Kana'iowalu Roll because of my viewpoint regarding Declaration One.
19. I would like to run for delegate to the 'Aha.
20. Because I cannot register for the Roll, I cannot run as a delegate.
21. I am being discriminated against in my ability to run as a candidate for election to the 'Aha because of my viewpoint regarding Declaration One.
22. Registration for the Roll was opened in about July 2012, then closed and reopened a couple of times since then.

23. On information and belief, based on numerous media reports, only about 40,000 Native Hawaiians in total signed up for the Roll, so the Native Hawaiian Roll Commission, “[t]o bolster the numbers . . . incorporated names from previous native Hawaiian registries, such as Kau Inoa, Operation Ohana and the Hawaiian Registry.” “Certified Native Hawaiian roll posted online with 95,690 names,” by Susan Essoyan, the Star Advertiser, July 28, 2015.
24. Whatever the reason, the Native Hawaiian Roll Commission has confirmed that it transferred names from other rolls. On its website, in answer to the question “Who is on the Hawaiian Roll,” the Commission responds: “Anyone who registered directly with Kana‘iolowalu as well as ancestrally-confirmed persons who registered with Kau Inoa, Operation ‘Ohana and the Hawaiian Registry through the Office of Hawaiian Affairs (“OHA”) are on the Roll.” (It also notes that “Persons who are deceased remain on the Roll because their descendants may have future rights as a result of their kupuna being on the Roll.”) Attached as Exhibit B is a screenshot of this webpage, which is available online at <http://kokua.kanaiolowalu.org/support/solutions/articles/192212-who-is-on-the-hawaiian-roll->.
25. On July 5, 2015, I first learned through a media report about a planned schedule for the election of delegates to the ‘Aha – including dates for applying to be a candidate, for mailing ballots to registered voters, and for receiving and counting ballots. Before that time there had been various general reports in the media from time to time about when an election might be held, but no schedule.
26. On Na‘i Aupuni’s website, at the web address <http://www.naiaupuni.org/news.html>, under the heading “Key Documents,” are four contracts relating to the planned election.

27. Attached as Exhibit C is a true and correct copy of a document posted on Na‘i Aupuni’s website, entitled “Agreement Between Election-America, Inc. and Na‘i Aupuni,” and signed by those two parties. This agreement, which was fully executed on June 22, 2015, contains the dates I referred to above.

28. Attached as Exhibit D is a true and correct copy of a document posted on Na‘i Aupuni’s website, entitled “Fiscal Sponsorship Agreement Between Akamai Foundation and Na‘i Aupuni,” and signed by those two parties on April 27, 2015.

a. Recital A of that agreement states that the Akamai Foundation, as “Sponsor,” will “act, for the duration of this Agreement, as the fiscal sponsor of restricted funds from the Office of Hawaiian Affairs (OHA) for the Project pursuant to the grant agreement with OHA dated April 27, 2015 that is incorporated herein by reference . . .”

b. OHA is referred to throughout and has certain defined rights. For example, paragraph 5 on page 3, entitled “Termination,” provides that “In consultation with OHA, this Agreement shall terminate if and when Sponsor and OHA determine that the objectives of the Project can no longer be reasonably accomplished . . .”

c. Attachment “A” to that document is a projected budget. The last line refers to a “TOTAL BUDGET (as set forth by OHA 1/12/15)” of \$2,598,000.

29. Attached as Exhibit E is a true and correct copy of a document posted on Na‘i Aupuni’s website, entitled “Grant Agreement Between the Akamai Foundation and the Office of Hawaiian Affairs for the Use and Benefit of Na‘i Aupuni,” which was signed by representatives from OHA, the Akamai Foundation, and Na‘i Aupuni, and was fully executed on May 4, 2015.

- a. The final “Whereas” clause on page 1 states that “OHA has committed to allow the use of its grant funds by AF [the Akamai Foundation] for the benefit of NA [Na‘i Aupuni] under the terms and conditions set forth below to allow Hawaiians to pursue self-determination . . .”
 - b. In paragraph 1 on page 2, it states that the Akamai Foundation “will direct the use of the grant to NA [Na‘i Aupuni] so it may facilitate an election of delegates, election and referendum monitoring, a governance ‘Aha, and a referendum to ratify any recommendation of the delegates arising out of the ‘Aha.”
30. Attached as Exhibit F is a true and correct copy of a document posted on Na‘i Aupuni’s website, entitled “Letter Agreement Between Office of Hawaiian Affairs, Na‘i Aupuni, and Akamai Foundation,” which was signed by those three parties and was fully executed on May 8, 2015. It concerns the “method and timing of the disbursement of the approved grant funds by OHA to the Akamai Foundation . . . for the benefit of Na‘i Aupuni . . .”
31. Attached as Exhibit G is a true and correct copy of the minutes of OHA’s Board of Trustees’ meeting of February 26, 2015.
32. Attached as Exhibit H is a true and correct copy of the first page, page 7, and page 35 of the August 2013 edition of Ka Wai Ola, the newsletter of the Office of Hawaiian Affairs. The entire issue is available online at OHA’s website, at http://issuu.com/kawaiola/docs/kwo0813_web.
- a. Page 7 of that issue (emphasis in the original) states that

Native Hawaiians who choose not to be included in the official roll risk *waiving their right, and the right of their children and descendants*, to be legally and politically acknowledged as Native Hawaiians and to participate in a future convention to reorganize the Hawaiian nation . . . and as a result may also be excluded from being granted rights of inclusion (citizenship), rights of participation (voting), and rights to

potential benefits that may come with citizenship (e.g., land use rights, monetary payments, scholarships, etc.).

- b. Page 35 of that issue contains a form to allow a Native Hawaiian to decline to have his or her name transferred from another list to the enrollment list. That form contains the following text at the bottom:

By signing this form, I release and discharge OHA from any and all liability, claims, and demands arising out of OHA's withholding of my name and my other information based upon this written request, including the possible loss of rights and recognitions conferred upon members of the official roll created under Act 195.

33. Attached hereto as Exhibit I is a screenshot of webpages from the website of the Office of Hawaiian Affairs, available at <http://www.oha.org/> (under "Governance") and at <http://www.oha.org/governance/>. On these pages, the Office of Hawaiian Affairs talks openly about its goals relating to the election process based on the Kana'iolowalu Roll. It says, among other things:

- a. That a "key goal of our efforts is to facilitate a process that gives Hawaiians the opportunity to re-develop a government that reaffirms Native Hawaiians as a political rather than racial group."
- b. In response to the question "What is our aim?," that it is "the legal transfer of assets and other resources to the new Native Hawaiian governing entity."
- c. That the "emergence of a Native Hawaiian government is extremely important to the Office of Hawaiian Affairs."

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 25, 2015



Keli'i Akina