these officials, is very small, it is now very clear that this universe is indeed expanding, if not exploding. In fact, in a response I received from the distinguished ranking member, Senator BIDEN, and Senator DODD, we have gone from the innermost planets in our solar system of their concern to include the entire Milky Way. I have informed my colleagues that I could not support such a request because it appears to be more of an effort to preserve this issue, this stalemate, this what some people call a filibuster, than an effort to resolve it.

I also informed Senators BIDEN and DODD, however, that I could recommend a more focused request that is consistent with their public statements in their minority views. I believe that such a request could be a basis for moving this process forward, a goal I hoped we all shared to get the process moving.

In the interest of moving forward, I urged my colleagues to reconsider the scope of their request. The response quite frankly was, no, thank you. That is probably the nicest way I can put it. I believe their bottom line is now: Give us all of the names we have now put in play or no deal.

As members of the legislative branch, we have all been in the position of requesting information from the executive branch and being told no. That is not pleasant. That is not what we would like to hear from the executive branch. But we do understand—I think, I hope—that there are limits to what we can demand and expect to receive. That is just a fact of life as we negotiate the separation of powers between the two branches of Government.

My colleagues know full well that an absolutist will inevitably lead to a stalemate, and that is what has happened. That is why we tried to work in good faith to address our concerns while recognizing each branch's responsibility and their prerogatives.

In my experience, a middle ground is usually achievable. It may take time, but usually we can achieve it. In this case, I believe the administration was willing to meet my colleagues halfway. In other words, if they would provide a reasonable list of names based on actual findings by the committee, perhaps they could be assured that those names were not contained in the reports and their concerns would be simply allayed, while at the same time it would permit the executive to preserve its prerogative to control the dissemination of very sensitive information.

Let me just say that signals intelligence and intercepts is in the highest compartmented criteria in regards to intelligence information. So this is very sensitive.

Once again, I think that the middle ground, unfortunately, proved very elusive. I am sympathetic to my colleagues' desire to see information they deem necessary to their consideration of Mr. Bolton's nomination. I do not believe, however, that they should be imposing their standard on the entire Senate. The last cloture vote clearly demonstrated that a clear majority believes that the Senate does possess the sufficient information to vote on Mr. Bolton's nomination, and vote we should.

With that said, I am prepared to go one step further, in one last good-faith effort, to try to alleviate the concerns expressed by my colleagues across the aisle. Because my colleagues would not share their list of names with me, I have taken what may be viewed as the somewhat unorthodox step of compiling a list of names that I believe do actually reflect the universe of individuals who fall within the parameters set by my colleagues' public statements and their minority views.

I am not doing this with temerity. I am trying to make a good-faith effort, and I hope people appreciate my intent in the doing of this. I want my colleagues to know that I have done this in a sincere effort to move this process forward. I do not in any way wish to substitute my judgment for my colleagues', but I do hope we can reach some sort of an accommodation. So I have submitted my list of names to the Director of National Intelligence, John Negroponte, and he has assured me that none of them are among the names requested by Under Secretary Bolton.

The names I submitted included Carl Ford, Assistant Secretary of State for Intelligence and Research, his name is not in the intercepts; Christian Westermann of the INR, State Department intelligence branch, not in the intercepts; the individual known as Mr. Smith, not in the intercepts; Rexon Ryu, State Department official, not in the intercepts; Charles L. Pritchard, special envoy for negotiations with North Korea, not in the intercepts.

There were two other individuals referenced in the minority views whose names have not been made public, and I will not do so now. However, I did submit their names, and they were not in the intercepts. I am more than willing to share the two names with my colleagues on the Foreign Relations Committee, but I will not discuss them publicly.

Finally, the Foreign Relations Committee's minority views also referenced two other unnamed individuals. I understand, however, that the committee itself is not aware of who these people are, and therefore it is highly unlikely that those names would be part of anybody's list. They were certainly not on mine.

I strongly believe this compromise represents the best middle ground and should more than satisfy the concerns of my colleagues. These are the names that were mentioned in the minority views. These are the names that were mentioned in regard to the people who were interviewed. These are the names that have been referred to in the press and the media over and over again. That is what this universe is about.

I am very hopeful that this should more than satisfy the concerns of my colleagues, unless, of course, they are not interested in being satisfied, and if that is the case, there is really nothing further anybody can do to move this process forward.

I believe it is high time that we vote on this nomination, up or down, whichever way the chips fall. I urge my colleagues on both sides of the aisle to take the next step, whether they are in favor of Mr. Bolton's nomination or not, whether they are for him or they are opposed. We have made some strides recently, it seems to me, in moving nominations to a vote. It seems to me we should continue that trend with Mr. Bolton's nomination and get on with the business of the Senate.

I hope I have been helpful. I hope people do not take my actions in the wrong way. I am acting in good faith in the very best way I know how to reach a compromise to alleviate the concerns of my friends across the aisle. I hope that has been the case in regards to my remarks this evening.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO THE LATE SENATOR JIM EXON OF NEBRASKA

• Mr. HARKIN. Mr. President, with the passing of former Senator Jim Exon on Friday, a giant oak in the forest of public service has fallen. Political historians will remember him as a dominant force in Nebraska politics across nearly 3 decades, serving two terms as Governor and three as Senator. Those of us who were privileged to be his friend remember him, first and foremost, as a man of enormous decency, integrity, and common sense. We remember his quick mind; his slow, gravelly voice; his Midwestern directness and unpretentiousness.

Here on the Senate floor, I am privileged to sit at the same desk that Senator Exon used during the last of his 18 years in the Senate. I inherited it upon his retirement in 1996, and I have always considered it a special honor to carry on where he left off.

Of course, for people in Iowa, Jim Exon was a next-door neighbor. Over the years, Iowans got to know him well

as a stalwart friend of family farmers; as a tireless promoter of rural economic development; and, a time when the bioeconomy was in its infancy, as a true believer in the future of ethanol and other home-grown, renewable sources of energy.

Jim Exon was not just present at the creation of the ethanol industry, he was an important midwife of that industry. He took office as Governor in 1970, and in 1971 he created the Nebraska Ethanol Board. In the ensuing years of ethanol's infancy, it was Nebraska and Iowa that led the way in establishing this industry. At every step, Jim Exon was there as an advocate and champion.

I will always remember my partnership with Senator Exon and Senator John Melcher of Montana on the 1985 farm bill. We fought long and hard to fend off attacks on safety-net programs for family farmers. Night after night, we kept the Senate in session into the early hours of the morning. And, thanks to Jim's leadership and sheer relentlessness, we carried the day.

Throughout his political career, Jim Exon prided himself on reaching across party lines and forging bipartisan consensus. This is very much a Nebraska tradition, going back to the legendary George Norris, who founded the State's unicameral Legislature. Jim succeeded as a Democrat in an overwhelmingly Republican State because he knew how to reach out, how to unite people around shared interests. Senator BEN NELSON, a long-time friend and protégé of Jim Exon, prides himself on continuing this tradition of bipartisanship and bridge-building.

They didn't call him Big Jim for nothing. He was big physically, tall and imposing. He was big politically—the only Nebraskan since George Norris to win five consecutive statewide elections. And Jim was big-hearted, a tough, relentless man, but also a compassionate person who cared deeply about other people and their wellbeing.

As a public official, he was an old-fashioned fiscal conservative. He railed against what he called ''wild-eyed spenders.'' As Governor, he repeatedly vetoed the Legislature's spending bills, 141 vetoes in all. And, here in the Senate, he took on Republicans and Democrats alike who, in his eyes, were being reckless with the taxpayer's dollar.

Senator Jim Exon has been lying in state in the Rotunda of the Nebraska Capitol. Funeral services will be held this afternoon at the same location. So, today, the Senate says farewell to a truly distinguished former member. Jim was a good friend to me, and he was much beloved in this body. Today, our thoughts are with him, his family, and the people of Nebraska. May Jim rest in peace.●

AGAINST RACE-BASED GOVERNMENT IN HAWAII, PART II

Mr. KYL. Mr. President, I rise today to ask unanimous consent that the following analysis of S. 147, the Native Hawaiian Government Reorganization Act, prepared by constitutional scholar Bruce Fein, be entered into the RECORD following my present remarks.

Mr. Fein's analysis of the act builds on his analysis of the 1993 apology resolution, which was printed in the RECORD yesterday. Mr. Fein's present analysis ably demonstrates why the Native Hawaiian Government Act is at war with the U.S. Constitution's guarantees of rights and its limits on governmental power. The bill is particularly offensive to the fundamental principle of equal protection of the laws. I commend Mr. Fein's analysis of the act to my colleagues.

There being no objection, the material ordered to be printed in the RECORD, as follows:

[From the Grassroot Institute of Hawaii
June 1, 2005]
(By Bruce Fein)

HAWAII DIVIDED AGAINST ITSELF CANNOT STAND—AN ANALYSIS OF THE AKAKA BILL

The Akaka Bill pivots generally on the same falsehoods and mischaracterizations as the Apology. It further celebrates a race-based government entity in flagrant violation of the non-discrimination mandates of the Fifth, Fourteenth and Fifteenth Amendments.

Section 1 misleads by naming the Act the ''Native Hawaiian Government Reorganization Act of 2005.'' As amplified above, there has never been a government in Hawaii for Native Hawaiians alone since Kamehameha established the Kingdom in 1810. Something that has never been cannot be reorganized.

Section 2 makes twenty-three findings that are either false or misleading.

Finding (1) asserts that Congress enjoys constitutional authority to address the conditions of the indigenous, native people of the United States. But the finding fails to identify the constitutional source of that power, or how it differs from the power of Congress to address the conditions of every American citizen. Congress does not find that Native Hawaiians were ever subjugated or victimized by racial discrimination or prevented from maintaining and celebrating a unique culture. Moreover, the United States Supreme Court explicitly repudiated congressional power to arbitrarily designate a body of people as an Indian tribe in *United States* v. *Sandoval* 231 U.S. 28, 45 (1913). As Alice Thurston unequivocally stated arguing for Interior Secretary Babbitt in *Connecticut* v. *Babbitt* 228 F.3d, 82 (2nd Cir. 2000) ''When the Department of the Interior recognizes a tribe, it is not saying, 'You are now a tribe.' It is saying, 'We recognize that your sovereignty exists.' We don't create tribes out of thin air.'' [Footnote: Jeff Benedict, Without Reservation (New York: HarperCollins Publishers, 2000) 349.]

Finding (2) asserts that Native Hawaiians are indigenous, native people of the United States. The finding is dubious. Native Hawaiians probably migrated to the Islands from other lands and remained as interlopers.

Finding (3) falsely asserts that the United States ''has a special political and legal responsibility to promote the welfare of the native people of the United States, including Native Hawaiians.'' No such responsibility is imposed by the Constitution or laws of the United States. No decision of the United States Supreme Court has ever recognized such a responsibility. Indeed, Congress would be acting constitutionally if it abolished all tribal sovereignty that it has extended by unilateral legislation.

Finding (4) recites various treaties between the Kingdom of Hawaii and the United States from 1826 to 1893. The finding is as irrelevant to the proposed legislation as the heliocentric theory of the universe.

Finding (5) falsely declares that the Hawaiian Homes Commission Act (HHCA) set aside approximately 203,500 acres of land to address the conditions of Native Hawaiians in the then federal territory. In fact, the HHCA established a homesteading program for only a small segment of a racially defined class of Hawaii's citizens. Its intended beneficiaries were not and are not now ''Native Hawaiians'' as defined in the Akaka bill (i.e., those with any degree of Hawaiian ancestry, no matter how attenuated), but exclusively those with 50 percent or more Hawaiian ''blood''—a limitation which still applies with some exceptions for children of homesteaders who may inherit a homestead lease if the child has at least 25 percent Hawaiian ''blood.''

The HHCA was enacted by Congress in 1921 based on stereotyping of ''native Hawaiians'' (50% blood quantum) as characteristic of ''peoples raised under a communist or feudal system'' needing to ''be protected against their own thriftlessness''. The racism of *Plessy* v. *Ferguson*, 163 US 537, (1896) was then in its heyday. If that derogatory stereotyping were ever a legitimate basis for Federal legislation, *Adarand Constructors* v. *Pena*, 515 U.S. 200 (1995) and a simple regard for the truth deprive it of any validity today.

Finding (6) asserts that the land set aside assists Native Hawaiians in maintaining distinct race-based settlements, an illicit constitutional objective under *Buchanan* and indistinguishable in principle from South Africa's execrated Bantustans.

Finding (7) notes that approximately 6,800 Native Hawaiian families reside on the set aside Home Lands and an additional 18,000 are on the race-based waiting list. These racial preferences in housing are not remedial. They do not rest on proof of past discrimination (which does not exist). The preferences are thus flagrantly unconstitutional. See *Richmond* v. *J.A. Croson Co*., 488 U.S. 469 (1989); *Adarand Constructors*, supra.

Finding (8) notes that the statehood compact included a ceded lands trust for five purposes, one of which is the betterment of Native Hawaiians. As elaborated above, the 20 percent racial set aside enacted in the 1978 statue violates the general color-blindness mandate of the Constitution.

Finding (9) asserts that Native Hawaiians have continuously sought access to the ceded lands to establish and maintain native settlements and distinct native communities throughout the State. Those objectives are constitutionally indistinguishable from the objectives of whites during the ugly decades of Jim Crow to promote an exclusive white culture exemplified in Gone with the Wind or The Invisible Man. The United States Constitution protects all cultures, except for those rooted in racial discrimination or hierarchies.

Finding (10) asserts that the Home Lands and other ceded lands are instrumental in the ability of the Native Hawaiian community to celebrate Native Hawaiian culture and to survive. That finding is generally false. The United States Constitution fastidiously safeguards Native Hawaiians like all other groups in their cultural distinctiveness or otherwise. There is but one exception. A culture that demands racial discrimination against outsiders is unconstitutional and is not worth preserving. Further, as Senator Inouye himself has proclaimed, Native Hawaiians and other citizens are thriving in harmony as a model for other racially diverse communities under the banner of the United States Constitution.