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.

Finding (11) asserts that Native Hawaiians continue to maintain other distinctively native areas in Hawaii. Racial discrimination in housing, however, is illegal under the Fair Housing Act, the Civil Rights Act of 1871, and the Equal Protection Clause of the Fourteenth Amendment if state action is implicated.

Finding (12) notes the enactment of the Apology Resolution, which is riddled with falsehoods and mischaracterizations as amplified above.

Finding (13) repeats falsehoods in the Apology Resolution. Contrary to its assertions, the Monarchy was overthrown without the collusion of the United States or its agents; the Native Hawaiian people enjoyed no more inherent sovereignty under the kingdom than did non-Native Hawaiians; in any event, sovereignty at the time of the overthrow rested with Queen Lilioukalani, not the people; the public lands of Hawaii belonged no more to Native Hawaiians than to non-Native Hawaiians; and, there was never a legal or moral obligation of the United States or the Provisional Government after the overthrow to obtain the consent of Native Hawaiians to receive control over government or crown lands. No Native Hawaiian lost a square inch of land by the overthrow.

Finding (14) repeats the Apology Resolution's nonsense of a need to reconcile with Native Hawaiians when there has never been an estrangement, as testified to by the 1994 remarks of Senator INOUYE.

Finding (15) corroborates the obvious: namely, that the United States Constitution fully protects Native Hawaiians in celebrating their culture, just as it does the Amish or any other group desiring to depart from the mainstream.

Findings (16), (17), and (18) similarly corroborates that the United States Constitution guarantees religious or cultural freedom to Native Hawaiians as it does for any other distinctive group. On the other hand, the finding falsely asserts that Native Hawaiians enjoy a right to self-determination, i.e., a right to establish an independent race-based nation or sovereignty. The Civil War definitively established that no individual or group in the United States enjoys a right to secede from the Union, including Native American Indian tribes.

Finding (19) falsely asserts that Native Hawaiians enjoy an ''inherent right'' to reorganize a Native Hawaiian governing entity to honor their right to self-determination. The Constitution denies such a right of self-determination. A Native Hawaiian's lawsuit to enforce such a right would be dismissed as frivolous. Further, there has never been a race-based Native Hawaiian governing entity. An attempt to reorganize something that never existed would be an exercise in futility, or folly, or both.

Finding (20) falsely insinuates that Congress is saddled with a greater responsibility for the welfare of Native Hawaiians than for non-Native Hawaiians. The Constitution imposes an equal responsibility on Congress. Race-based distinctions in the exercise of congressional power are flagrantly unconstitutional. See Adarand Constructors, supra.

Finding (21) repeats the false insinuation that the United States is permitted under the Constitution to create a racial quota in the administration of public lands, contrary to Adarand Constructors, supra.

Finding (22) also brims with falsehoods. Subsection (A) falsely asserts that sovereignty in the Hawaiian Islands rested with aboriginal peoples that pre-dated Native Hawaiians, i.e. that the aboriginals were practicing and preaching government by the consent of the governed long before Thomas Jefferson's Declaration of Independence. But there is not a crumb of evidence anywhere in the world that any aboriginals believed in popular sovereignty, no more so than King Kamehameha I who founded the Kingdom of Hawaii by force, not by plebiscite.

Subsection (B) falsely insinuates that Native Hawaiians as opposed to non-Native Hawaiians enjoyed sovereignty or possessed sovereign lands. The two were uniformly equal under the law. In any event, sovereignty until the 1893 overthrow rested with the Monarch. Sovereign lands were employed equally for the benefit of Native Hawaiians and non-Native Hawaiians. [See Appendix page 3 paragraphs 3, 4]

Subsection (C) falsely asserts that the United States extends services to Native Hawaiians because of their unique status as an indigenous, native people. The services are extended because Native Hawaiians are United States citizens and entitled to the equal protection of the laws. The subsection also falsely insinuates that Hawaii previously featured a race-based government.

Subsection (D) falsely asserts a special trust relationship of American Indians, Alaska Natives, and Native Hawaiians with the United States arising out of their status as aboriginal, indigenous, native people of the United States. The United States has accorded American Indians and Alaska Natives a trust relation in recognition of existing sovereign entities and a past history of oppression and subjugation. The trust relationship, however, is voluntary and could be ended unilaterally by Congress at any time. Native Hawaiians, in contrast, have never featured a race-based government entity. They have never suffered discrimination. They voted overwhelmingly for statehood. And they have flourished since annexation in 1898, as Senator INOUYE confirms. If Native Hawaiians alleged a constitutional right to a trust relationship, they would be laughed out of court.

Finding (23) falsely insinuates that a majority of Hawaiians support the Akaka Bill based on politically correct stances of the state legislature and the governor. The best polling barometers indicate that Hawaiian citizens oppose creating a race-based governing entity with unknown powers. If the proponents of the Akaka Bill genuinely believed Finding (23), they would readily accede to holding hearings and a plebiscite in Hawaii as a condition of its effectiveness on the model of the statehood plebiscite. But they are adamantly opposed because they fear defeat.

Section 3's definition of ''Native Hawaiian'' in subsection (8)(A) falsely insinuates that Native Hawaiians exercised popular sovereignty in Hawaii on or before 1893. Sovereignty rested with the Monarch; and, Native Hawaiians never operated a race-based government.

Section 4 is replete with falsehoods. Subsections (a)(1) and (2) falsely maintain that the United States has a special political and legal relationship with Native Hawaiians. No such special relationship is recognized in the United States Constitution, which requires equality among citizens. Subsection (a)(3) falsely maintains that the congressional power to regulate commerce ''with the Indian Tribes'' empowers Congress to create a race-based government for Native Hawaiians. Creating a race-based government is not a regulation of commerce; and, Native Hawaiians, unlike Indian Tribes, never organized a government exclusively for Native Hawaiians. No court has ever sanctioned the subsection's far-fetched interpretation of the Indian Commerce Clause. Article IV of the Constitution provided the congressional authority for the Hawaiian Homes Commission Act of 1920 and for Hawaiian statehood. The many several federal laws addressing the conditions of Native Hawaiians are not based on the Indian Commerce Clause. To the extent they embrace racial distinctions, they are unconstitutional.

Subsection (a)(4) falsely asserts that Native Hawaiians sport an inherent right to autonomy in their internal affairs; an inherent right to self-determination and self-governance; the right to reorganize a Native Hawaiian governing entity; and, a right to become economically self-sufficient. None of these asserted rights is recognized by the Constitution or federal statutes. All have been concocted by proponents of the Akaka Bill with no more legitimacy than the right of the Confederacy to secede from the Union.

Subsection (b) falsely asserts that the purpose of the Akaka Bill is to provide a process for the ''reorganization'' of the Native Hawaiian governing entity. As explained above, there has never been a race-based Native Hawaiian governing entity. Something that has never been cannot be reorganized.

Section 7 is flagrantly unconstitutional in its erection of a race-based government in violation of the non-discrimination mandates of the Fifth, Fourteenth and Fifteenth Amendments. It directs the Secretary of Interior to appoint nine Native Hawaiian Commissioners to prepare and maintain a roll of Native Hawaiians to participate in the bogus ''reorganization'' of a Native Hawaiian government. The race-based appointments violate the equal protection component of the Fifth Amendment. Preparing and maintaining a race-based electoral roll violates the same equal protection command. See Rice v. Cayetano, supra.. As Justice Anthony Kennedy explained in that case:

''The ancestral inquiry mandated by [Hawaii] is forbidden by the Fifteenth Amendment for the further reason that the use of racial classifications is corruptive of the whole legal order democratic elections seek to preserve. The law itself may not become the instrument for generating the prejudice and hostility all too often directed against persons whose particular ancestry is disclosed by their ethnic characteristics and cultural traditions. 'Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.' Hirabayashi v. United States, 320 U.S. 81 (1943). Ancestral tracing of this sort achieves its purpose by creating a legal category which employs the same mechanisms, and causes the same injuries, as laws or statutes that use race by name.'' Cayetano, at 517.

Under Section 7, the enrolled race-based members are empowered to elect an Interim Governing Council from one of their own, another race-based voting distinction that violates the Fifteenth Amendment and equal protection. The Fifteenth Amendment (which promises the right to vote shall not be denied on account of race) includes any election in which public issues are decided or public officials selected. The Council establishes race-based criteria for citizenship in the Native Hawaiian governing entity, subject to a race-based plebiscite, and otherwise cobbles together an organic governing document. The Secretary of Interior then certifies the organic race-based charter under which race-based elections are held to the Native Hawaiian governing entity. That certification would violate the Secretary's solemn oath to protect and defend the Constitution without mental reservation. It seems highly improbable that the Native Hawaiian commissioners would allow an electoral role for non-native Hawaiians. The bill itself anticipates a ''native Hawaiian governing entity' which would be a misnomer if non-native Hawaiians were included.

Section 8 establishes an open-ended negotiating agenda between the United States, the

State of Hawaii, and the unconstitutional Native Hawaiian governing entity to fix the powers and immunities of the latter. Nothing is excluded. For example, the Native Hawaiian entity might exercise criminal and civil jurisdiction over non-Native Hawaiians. It might be exempt from all federal, state, and local taxes. It might be shielded from all federal, state, and local regulatory, health, welfare, labor, zoning, and environmental laws. It might be free of restraints imposed by the United States Constitution, and violate freedom of speech, press, religion, or association with impunity. It might be empowered to exercise eminent domain over land both within and without its geographical boundaries. It might be authorized to exempt Native Hawaiians from military service and to evict the United States Navy and Army from their current Hawaiian bases. Proponents of the Akaka Bill adamantly refuse to exclude these horrors by explicit language.

CHARLES TAYLOR AND NIGERIAN DEBT RELIEF

Mr. LEAHY. Mr. President, I want to call attention to an important, yet often overlooked, provision of law that governs the relationship of the United States with nations that harbor individuals who have been indicted by the Special Court for Sierra Leone or the International Criminal Tribunal for Rwanda. This provision, section 585 of the Foreign Operations Appropriations Act, which was signed into law by President Bush in January 2004 and reauthorized about a year later, makes it clear that the Unites States stands for the rule of law in Africa. This is not a partisan issue. Democrats and Republicans understand the importance of the rule of law, which is a cornerstone for peace, democracy, justice and development in Africa—and around the world. In fact, Senator JUDD GREGG, a Republican from New Hampshire, coauthored this provision with me.

I see my friend from Illinois, Senator OBAMA, on the floor and am wondering if he agrees.

Mr. OBAMA. I agree with the senior Senator from Vermont about the importance of upholding the rule of law in Africa and around the world. I would also like to add my support for the efforts of the Special Court for Sierra Leone to bring to justice some of the worst war criminals of the 20th century. While the Special Court has not been perfect, there is no question that the Court is doing vitally important work of promoting peace and reconciliation, increasing accountability, and strengthening the rule of law throughout West Africa. I also want to discuss a related issue—the case of Charles Taylor. I know the Senator from Vermont has been working for years on this issue.

I will simply say that Charles Taylor is an indicted war criminal, and he needs to be transferred to the Special Court to stand trial as soon as possible. The Government of Nigeria has allowed Charles Taylor to live in exile, within its borders, with the support of the international community, including the United States, since August 2003. While we owe Nigeria a debt of gratitude for helping prevent further bloodshed in Liberia, it is time for Mr. Taylor to be transferred to the Special Court.

No nation should be permitted to willfully ignore an indictment issued by this tribunal. Moreover, there are credible reports that Mr. Taylor has broken the terms of his exile, is a threat to the Liberian peace process, and continues to meddle in the internal affairs of Liberia—just a few months before the Liberian elections.

I wonder if the Senator from Vermont shares my views?

Mr. LEAHY. I absolutely share the Senator's views of the situation. Charles Taylor's actions are a breach of his promises to Nigerian President Obasanjo. And, I believe that if Nigeria does not hand over Charles Taylor for trial, it could constitute a threat to Liberian peace, justice in Sierra Leone, and the rule of law throughout West Africa. This is why the provision of law that I mentioned earlier is so important. It is the law of the United States that there shall be no assistance to the central government—including debt relief—for countries harboring fugitives from the Special Court for Sierra Leone. There is strong bipartisan support in the U.S. Congress to reauthorize this provision in fiscal year 2006, which means that unless President Bush issues a waiver, Nigeria will not be eligible for U.S. debt relief or military assistance, or any other assistance to the central government, until it sends Charles Taylor to the Special Court for trial.

I would point out that President Bush can exercise the waiver authority in the law by simply submitting a plan in writing on how the Administration will get Mr. Taylor to the Special Court to stand trial.

Mr. President, it is not in the interests of the people of West Africa, including Nigeria, or the United States, to continue to shelter Charles Taylor from justice. As a strong supporter of debt relief, I believe there is a strong case to be made that Nigeria's debt should be forgiven—but not until President Obasanjo again demonstrates leadership and hands over Charles Taylor for trial. At that point, I will strongly support debt relief for Nigeria and actively lobby the administration and Congress to make it a reality.

Mr. OBAMA. I thank the Senator from Vermont, the ranking member of the Appropriations Subcommittee on State, Foreign Operations, because he makes a crucial point. Debt relief from the United States is not automatic. In the past, debt relief has come with conditions, including making progress in fighting corruption and on economic reform, to ensure that this relief achieves the maximum results.

For Nigeria, this means turning over Charles Taylor—an indicted war criminal who has the blood of thousands on his hands and threatens, once again, to destabilize the region—to the Special Court. Like the Senator from Vermont, I strongly believe that Nigeria is a worthy candidate for debt relief and a key U.S. partner in West Africa. When Charles Taylor is turned over, there is no doubt in my mind that I will be a forceful advocate for debt relief for Nigeria. I would also like to praise the Government of Nigeria for its leadership on other issues, especially their efforts to lead the African Union force in Darfur. I want nothing more than to see the Taylor issue successfully resolved so we can focus our attention on other important issues with the Nigerians.

I would also reiterate what the Senator said about the waiver authority contained in section 585. The President can waive these restrictions, including those pertaining to Nigerian debt relief, by formulating a plan to get Mr. Taylor to the Court.

Mr. LEAHY. I thank the Senator from Illinois and refer all Senators to section 585, entitled ''War Crimes in Africa,'' of Public Law 108–447, the Foreign Operations Appropriations Act, 2005. I yield the floor.

NATIONAL HISTORY DAY

● Mr. BOND. Mr. President, I rise to recognize June 15, 2005 as National History Day. The National History Day Program is an annual celebration to recognize the importance of a strong history curriculum in schools in Missouri and across the country. This celebration is also a showcase for students across the Nation to present their knowledge and interest in particular events in history through performances, documentaries, and exhibits.

This year, Missouri has 5 exemplary students selected from a group 2,000 finalists to perform and present their projects at the Smithsonian American Art Museum. Kate LaRose, a student at Jefferson Junior High School in Columbia, MO, was recognized for her project ''Martha Graham: The Power of Communication through Dance.'' Robert Adams, Raeed Chowdhury, Rui Du, and Yun-Han Huang, all students at Rolla High School in Rolla, MO, were also recognized for their exhibit titled ''Controversial Art: Thomas Hart Benton's Communication Tool.''

I congratulate Katie, Robert, Raeed, Rui, and Yun-Hun for this honor and commended them for their dedication, commitment, and hard work.●

Mr. LIEBERMAN. Mr. President, I rise to take note of the 25th annual National History Day and express my strong support for the goals of the National History Day program. A basic knowledge of history is essential for our Nation's children to become informed participants in our democracy. National History Day promotes history education in Connecticut and throughout the Nation.

The National History Day Program encourages students to think critically