

Equal Justice Society, JACL-Hawai‘i and Centro Legal de la Raza File Brief in Support of Kamehameha Schools

*Civil rights groups’ brief says admissions policy of private school
for Native Hawaiian children “does not violate civil rights”*

SAN FRANCISCO (Aug. 30, 2005) – Eric K. Yamamoto, a professor with The William S. Richardson School of Law at the University of Hawai‘i, and Hawai‘i civil rights lawyer David Forman, today announced that three civil rights groups have filed an *amicus curiae* (“friend of the court”) brief in support of Kamehameha Schools’ petition for a rehearing *en banc* by the Ninth Circuit Court of Appeals on *Doe v. Kamehameha*.

The San Francisco-based Equal Justice Society, Japanese American Citizens League-Hawai‘i Chapter and Centro Legal de la Raza filed the brief to inform the court that civil rights groups with roots in communities of color see Kamehameha Schools’ admissions policy as restorative justice for an indigenous people whose culture, property and self-governance were nearly destroyed by 19th and 20th century colonialism.

“Our brief says that the Kamehameha Schools’ admissions policy does not imperil the civil rights of racial minorities,” said Yamamoto, who is counsel to the three *amici* and also a board member of the Equal Justice Society. “The Native Hawaiian experience is unique and these civil rights groups support restorative justice for Native Hawaiians.”

“There is a critical difference between an affirmative action or diversity program and the efforts of a private institution to help an indigenous people almost wiped out by Western influence,” added Forman, who is also a member of the JACL-Hawai‘i board. “The civil rights of Americans are not threatened with a program by Native Hawaiians designed to uplift their own people.”

The brief contends that the appeals court panel was incorrect in comparing the Schools’ admissions policy to an affirmative action diversity program in private businesses. Unlike programs by other ethnic groups, a private program for indigenous peoples that uses race as a determining factor is legitimate as long as it is crafted as a “restorative response” to the devastation of colonialism. Both Congress and other court cases have supported this distinction.

The brief cites a 1974 Supreme Court decision in *Morton v. Mancari* that hiring preferences favoring Native Americans, do not conflict with the Constitution. “The Indian preference does not constitute ‘racial discrimination’ or even ‘racial’ preference,” said the high court in that ruling.

“Indeed race/ancestry had to be an integral factor in the political restoration process because race/ancestry had been key originally in the U.S.’s justification for the confiscation of land ... and the destruction of culture and self-governance,” said the brief about *Morton*.

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Ninth Circuit Judge Susan Graber, in partially dissenting from the three-judge appeals court panel argued that Congress has expressly considered Native Hawaiians as a unique group. “In the absence of more specific Supreme Court guidance, we should look directly to congressional intent,” wrote Graber. “Congress intended that a preference for Native Hawaiians, in Hawaii, by a Native Hawaiian organization, located on the Hawaiian monarchy’s ancestral lands, be upheld because it furthers the urgent need for better education of Native Hawaiians...”

To download the brief as a PDF, visit www.equaljusticesociety.org/kamehameha.

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