

LATE

HCR-73

Submitted on: 3/21/2023 6:57:12 PM

Testimony for CAI on 3/22/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Edward Halealoha Ayau	Hui Iwi Kuamo'o	Support	In Person

Comments:

Aloha nui,

I am the former Executive Director of Hui Mālama I Nā Kūpuna O Hawai‘i Nei and its successor organization Hui Iwi Kuamo‘o. The former is named in State and Federal law as having recognized expertise in native Hawaiian burial matters. For the past 33 years, our organizations have worked on repatriation and reburial matters including 5 repatriation cases pursuant to the National Museum of the American Indian Act (NMAIA), 98 cases pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA), and 35 international repatriation cases where there was no express authority to repatriate and we was left to advocate the values of Hawaiian humanity. To date, our repatriation work has involved the return and reburial of the ancestral remains of 6,482 individuals and 297 funerary possessions and the return and curation and care of 157 sacred objects and cultural items. In addition, I am the current Chair of the national NAGPRA Review Committee, having been appointed by U.S. Secretary of Interior Deb Haaland.

While I support the intent of this measure, its current framework is highly problematic especially the premise that OHA and SHPD would co-chair the working group. I testify in support conditioned on adoption of the following amendments:

- 1) There is a need to define cultural items because without a definition it is unclear whether human remains and funerary objects are being included, as is the case with the definition of cultural items in the Native American Graves Protection and Repatriation Act (NAGPRA).

- 2) In 2021, two legislative resolutions called for the establishment of a Burial Sites Working Group that included OHA and SHPD to review allegations of chronic mismanagement of the Burial Sites Program by SHPD and to provide a report to the legislature. I served as the Vice Chair of that Working Group and neither SHPD nor OHA had any meaningful participation or input into the report, which documented three decades of mismanagement by SHPD, which was recently approved by a majority of the working group members. SHPD has a long record of mistreatment of ancestral Hawaiian skeletal remains in favor of development and putting them in the lead to determine the treatment of cultural items is highly objectionable. I would also point out that OHA has repeatedly declined to accept any responsibility to manage the Burial Sites Program citing cost as its main objection to accepting the sacred responsibility to care for and protect the ancestral foundation. I would not recommend either organization for a leadership role with this working group. I would instead recommend the non-profit organization Kali‘uokapa‘akai Collective, which is an organization that includes practitioners, experts in the

fields of anthropology and archaeology and other fields of historic preservation. They are also not a state agency like OHA and SHPD.

3) There would be a legal conundrum whenever repatriation of cultural items from a federally funded museum in the United States occurs because that would represent the exercise of a federal legal right by a qualified native Hawaiian organization and therefore attempting to regulate the treatment of the repatriated items under state law could run afoul of the constitutional supremacy clause test since federal law is supreme to state law. If the working group provides guidelines and facilitates communication for curation, that may be helpful but it cannot impose its position over a native Hawaiian organization exercising authority to repatriate pursuant to NAGPRA or the NMAIA.

4) The resolution seems to be premised on a misunderstanding that museums are simply giving cultural items back, which could not be further from the truth. The repatriations I described earlier required advanced advocacy, an understanding of the applicable laws and Hawaiian cultural values and intense commitment to their return. Some of these cases took years to resolve, especially the international repatriation cases. Perhaps limiting the scope of the working group to help establish guidelines consistent with existing law with museums in Hawai'i and for private collections where the owners are willing to cooperate may be a good place to start and then build from there.

Mahalo for the opportunity to provide this testimony.

Ola nā iwi,

E. Halealoha Ayau

Executive Director, Hui Iwi Kuamo'o

HCR-73

Submitted on: 3/21/2023 7:16:01 PM

Testimony for CAI on 3/22/2023 10:00:00 AM



Submitted By	Organization	Testifier Position	Testify
Nicole	Individual	Oppose	Written Testimony Only

Comments:

Aloha,

I would like to testify in opposition HCR73.

SHPD and OHA have a record of desecrating ancestral Hawaiian skeletal remains as a necessary evil for development, even though so many ways to develop without desecration exist. With that said I do not think ANY state agency is even remotely qualified to speak to let alone pick the people who speak to repatriation of any kind. These organizations and experts already exist and have been doing the work IN SPITE of state agencies like SHPD and OHA.

All HCR73 would be doing is making even more of a headache for the current orgs who are already doing the work.

Mahalo

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HCR-73

Submitted on: 3/22/2023 8:06:32 AM

Testimony for CAI on 3/22/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Shirley Lam	Individual	Support	Written Testimony Only

Comments:

I support HCR73 because it is important to form a working group to create a plan regarding the return of cultural artifacts. The working group would be creating a plan to figure out how to return Hawaiian artifacts housed abroad back to Hawai'i, and likewise, to return any other artifacts housed in Hawai'i back to their place of origin.