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No. 04-15044

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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN DOE, a minor, by his mother
and next friend, JANE DOE,

Plaintiff/Appellant,

v.

KAMEHAMEHA SCHOOLS/BERNICE
PAUAHI BISHOP ESTATE, et al.,

Defendants/Appellees.

On Appeal from the United States District Court for the District of Hawaii
Honorable Alan C. Kay, Senior District Judge

AMICUS CURIAE BRIEF
OF KAMEHAMEHA SCHOOLS ASSOCIATION OF TEACHERS &
PARENTS, KAMEHAMEHA SCHOOLS FACULTY ASSOCIATION,
NA KUMU O KAMEHAMEHA, KAMEHAMEHA
SCHOOLS ALUMNI ASSOCIATION — BOARD OF PRESIDENTS,
KAMEHAMEHA SCHOOLS ALUMNI ASSOCIATION—OAHU REGION
AND NA PUA A KE ALI I PAUAHI, INC. SUPPORTING APPELLEES
KAMEHAMEHA SCHOOLS/ BERNICE PAUAHI BISHOP ESTATE;
and CONSTANCE H. LAU, NAINOA THOMPSON, DIANE J. PLOTTS,
ROBERT K.U. KIHUNE, and J. DOUGLAS ING, in their capacities
as Trustees of the Kamehameha Schools/Bernice Pauahi Bishop Estate

CERTIFICATE OF SERVICE

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Kamehameha Schools Alumni
Association—Oahu Region,
and Na Pua a Ke Ali'i Pauahi, Inc.

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Plaintiff/) KAMEHAMEHA SCHOOLS
Appellant,) ASSOCIATION OF TEACHERS &
) PARENTS, KAMEHAMEHA
v.) SCHOOLS FACULTY ASSOCIATION,
) NA KUMU O KAMEHAMEHA,
KAMEHAMEHA SCHOOLS/) KAMEHAMEHA SCHOOLS ALUMNI
BERNICE PAUAHI BISHOP) ASSOCIATION — BOARD OF
ESTATE; and CONSTANCE H.) PRESIDENTS, KAMEHAMEHA
LAU, NAINOA THOMPSON,) SCHOOLS ALUMNI ASSOCIATION—
DIANE J. PLOTTS, ROBERT K.U.) OAHU REGION AND NA PUA A KE
KIHUNE, and J. DOUGLAS ING, in) ALI'I PAUAHI, INC. SUPPORTING
their capacities as Trustees of the) APPELLEES KAMEHAMEHA
Kamehameha Schools/Bernice) SCHOOLS/ BERNICE PAUAHI
Pauahi Bishop Estate,) BISHOP ESTATE; and CONSTANCE
) H. LAU, NAINOA THOMPSON,
Defendants/) DIANE J. PLOTTS, ROBERT K.U.
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AMICUS CURIAE BRIEF

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NA KUMU O KAMEHAMEHA, KAMEHAMEHA
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OAHU REGION AND NA PUA A KE ALI'I PAUAHI, INC. SUPPORTING
APPELLEES KAMEHAMEHA SCHOOLS/ BERNICE PAUAHI BISHOP
ESTATE; and CONSTANCE H. LAU, NAINOA THOMPSON, DIANE J.
PLOTTS, ROBERT K.U. KIHUNE, and J. DOUGLAS ING, in their capacities as
Trustees of the Kamehameha Schools/Bernice Pauahi Bishop Estate

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I. INTEREST OF AMICI CURIAE

Kamehameha Schools Association of Teachers & Parents,
Kamehameha Schools Faculty Association, Na Kumu O Kamehameha,
Kamehameha Schools Alumni Association—Board of Presidents, Kamehameha
Schools Alumni Association—Oahu Region, and Na Pua a Ke Ali'i Pauahi, Inc.
(collectively, “the Ohana Council”) respectfully submit this brief as amici curiae in
support of Appellees, urging this Court to affirm the District Court’s ruling that
“Kamehameha Schools has a legitimate justification for its admissions policy,
which serves a legitimate remedial purpose, and that the policy reasonably relates
to this purpose.” Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate, 295
F. Supp.2d 1141, 1146 (D. Haw. 2003).¹

Each member of the Ohana Council has a strong interest in the
perpetuation of Kamehameha Schools’ mission and the legacy of Princess Bernice
Pauahi Bishop (“Princess Pauahi”), and, accordingly, each has a strong interest in
the outcome of this case.²

¹ The amici rely on evidence produced in the District Court by the Defendants, as well as the District Court’s findings and rulings, to supplement their own knowledge about the remedial needs facing Native Hawaiians and the role that Kamehameha plays in meeting those needs.

² Princess Bernice Pauahi Bishop was a private citizen and a direct descendant of Kamehameha I, the unifier of the Hawaiian Islands. Doe, 295 F. Supp.2d at 1154. As a leader within the Hawaiian community, she observed the devastation suffered by the people of her ethnicity and culture following contact with Western

A. Kamehameha Schools Association of Teachers & Parents

Comprised of Kamehameha Schools' parents, legal guardians, sponsors, teachers, staff, and administrators, this non-profit association is committed to perpetuating the legacy and vision of Princess Pauahi and helping Kamehameha Schools' students become "life-long learners and contributing members of their Hawaiian community and society."

B. Kamehameha Schools Faculty Association ("KSFA")

Representing Kamehameha Schools' teachers under the National Labor Relations Act, KSFA exists to articulate the professional concerns of Kamehameha Schools' teachers, to express their strength and pride, and—in partnership with the schools' trustees, administration, and parents—to place the educational needs of the students above all others.

C. Na Kumu O Kamehameha

This association of Kamehameha Schools' faculty, staff, and administrators, promotes educational excellence and professional integrity by

civilization. Tens of thousands of her people were dead or dying from introduced diseases while more tens of thousands were living in poverty, homeless, and despondent. *Id.* at 1154-55. Mrs. Bishop also observed the devastation visited upon other native peoples by competitive colonialism. *Id.* In order to level the playing field and give Hawaiians an equal chance to survive and compete in a rapidly changing new world, Mrs. Bishop willed the bulk of her property to a trust for the education of her people. *Id.* It was her vision that by doing this she could correct an imbalance in the community of Hawai'i and produce "good and industrious young men and women" of Hawaiian ancestry. *Id.* at 1156.

honoring the distinctive culture, traditions, and history of Kamehameha Schools.

D. Na Pua a Ke Ali'i Pauahi, Inc.

A non-profit corporation founded in 1997, Na Pua's mission is to support the Kamehameha Schools in providing quality education in a nurturing environment. Na Pua's mission statement reads: "As those who have received the benefit of the legacy of Ke Ali'i Pauahi, we believe that we are the beneficiaries of her estate and are morally obligated to ensure that the Kamehameha Schools continue to carry out its mandate to produce good and industrious men and women. The creation and maintenance of right relationships within the greater Kamehameha family and the larger Hawai'i community is central to the accomplishment of our mission."

E. Kamehameha Schools Alumni Association—Board of Presidents

Representing Kamehameha Schools' alumni located in thirteen (13) regions including the State of Hawai'i, Alaska, the Continental United States and in countries abroad, these alumni associations through the "Board of Presidents" seek to perpetuate Princess Pauahi's legacy, to support programs benefiting the health, civic, economic, educational, and moral welfare of the community at large and Native Hawaiians, and to preserve and perpetuate the native culture of Hawai'i.

F. Kamehameha Schools Alumni Association (“KSAA”)—Oahu Region

Representing Kamehameha alumni located on the Island of Oahu, KSAA-Oahu Region was founded around 1910. Its mission statement states: “Considering that all of Kamehameha’s alumni have partaken of the Princess’ dream to improve the social welfare of her people, this alumni organization cannot deny the fact that our larger responsibility also lies in the need for us to uplift our own communities.”

Members of the KSAA-Oahu Region are dedicated to the promotion of the academic and professional goals of Native Hawaiian students. Major activities of the KSAA-Oahu Region include projects relating to Kamehameha School admissions, alumni affairs, professional recruitment, community service, and academic support. These alumni have pioneered the way for Native Hawaiian presence in top business and leadership positions in this State and have helped other Native Hawaiian children to reach their educational goals and to foster growth in the Hawaiian community.

As alumni, these former students are in a unique position to explain some of the significant educational advantages and the resulting employment opportunities attributable to the Kamehameha Schools’ admissions program. These former students have participated in and graduated from Kamehameha School, and therefore have first-hand knowledge of the school’s admission

program and its positive influence on the Native Hawaiian population, as well as the Hawai'i community in general.

In sum, each and every member of the Ohana Council has an interest in this case because each is wholly committed to maintaining the vision of Princess Pauahi and the education of her children, the children of the Native Hawaiians. The filing of this brief is authorized by the executive board of each member of the Ohana Council.

II. ARGUMENT

The Ohana Council agrees that the District Court applied the appropriate standard of review, and concurs with the District Court's key findings:

The Court finds the plan has a legitimate justification and serves a legitimate remedial purpose by addressing the socioeconomic and educational disadvantages facing Native Hawaiians, producing Native Hawaiian leadership for community involvement, and revitalizing Native Hawaiian culture, thereby remedying current manifest imbalances resulting from the influx of western civilization...At present, Native Hawaiians continue to suffer from economic deprivation, low educational attainment, poor health status, substandard housing, and social dislocation.

Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate, 295 F.Supp.2d 1141, 1172 (D. Haw. 2003).

As the U.S. Supreme Court recently made clear, “context matters” when examining the legitimacy of race-based preferences. Grutter v. Bollinger, 123 S. Ct. 2325, 2338 (2003) (stating it is “imperative that generalizations, based

upon and qualified by the concrete situations that gave rise to them, must not be applied out of context in disregard of variant controlling facts”). Moreover, in holding that a critical element of a state university’s compelling interest in diversity is producing a more racially diverse leadership, the Court stated: “In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity.” Grutter, 123 S. Ct. at 2341 (emphasis added).

Thus, when determining the legitimacy of any race preference, a Court must look to the entire context of unique facts, including: the historical prejudice against and deprivations of the racial group; the current social and economic struggles and suffering of the disadvantaged group; and—most important for this brief—the perception of the community in which the preference operates³.

One fact a Court may consider is whether the preference has

³ Appellant’s Opening Brief mocks the District Court’s consideration of the “exceptionally unique historical circumstances” that surround Kamehameha Schools and the history of Hawai’i. Appellant’s Brief at 33. Appellant disrespects history and disregards the law: every remedial program or preference is judged in the context of its unique facts and history. Cf. Higgins v. City of Vallejo, 823 F.2d 351 (9th Cir. 1987) (examining history of city’s hiring since 1964 and affirming city’s affirmative action plan for its fire department); Cotter v. City of Boston, 323 F.3d 160, 169-74 (1st Cir. 2003) (outlining “history of discrimination” and noting that its decision that the defendant was “justified in taking race-based remedial action is based strictly on these unique circumstances”).

“legitimacy in the eyes of the citizenry,” cf. Grutter, 123 S. Ct. at 2341; that is, whether the community in fact perceives that the preference has a legitimate remedial purpose. Such perception is particularly important where, as in this case, a private educational institution with an internal preference (guided by its founder’s will) seeks to remediate the continuing effects of past wrongs done to Native Hawaiians and produce good citizens and leaders who will then go out into the community at large to help Native Hawaiians achieve a better quality of life. The relevant community here, of course, is the State of Hawai’i—a state with a history and tradition unlike any other in the United States.

Members of the Ohana Council know that able counsel have submitted extensive legal authorities and arguments in support of Kamehameha Schools’ policy. But the Ohana Council submits this amicus brief, in part because it is difficult to fully articulate what Kamehameha Schools means to those who have benefited from Princess Pauahi’s vision and grace. Kamehameha Schools’ teachers see it in the pride in their students’ faces as they learn about their culture; parents of Kamehameha Schools’ students see it in the hope in their sons’ and daughters’ eyes; and alumni of Kamehameha Schools see it in the heartfelt thanks they receive when they work in and “give back” to the community.

A. Kamehameha Schools Has Positively Impacted the Native Hawaiian People and the Community at Large

Kamehameha Schools is able to provide a high quality education to Native Hawaiians in an environment that embraces their indigenous culture and is free from stigmas that often follow them elsewhere in society. Moreover, Kamehameha Schools funds the vast majority of this education (and for many students the entire costs of this education), thus providing access to a top-notch education that otherwise would be unattainable for many Native Hawaiians. In short, Kamehameha Schools provides both opportunity and hope to many Native Hawaiian children who otherwise would have neither.

For example, Aaron Akamu grew up in a poor household in an isolated, low-income community on the Big Island of Hawai'i; his father was a sugar cane truck driver, his mother a pantry worker. See Defendants/Appellees' Supplemental Excerpts of Record ("SER"), p. 577, Akamu Declaration ¶ 1. In the seventh grade Akamu was given the opportunity to attend Kamehameha Schools on a scholarship, and he made the most of that opportunity. He went on to graduate from Dartmouth College, then returned to Hawai'i to manage a program that encourages low-income youth to stay in school and make the choices that will help them to go to college. Id. at ¶¶ 2, 4, 5.

Similarly, Chiyome Fukino, the second oldest of eight children, grew up in her grandfather's house in a poor section of Honolulu while she attended

Kamehameha Schools from 1956 to 1968. SER, p. 566-67, Fukino Declaration, ¶ 2-4. In her words: “Kamehameha provided me a protected environment, a true *ohana* (family), where I learned and became proud that I was a Hawaiian. . . .

Kamehameha gave me the confidence that, even as a Hawaiian woman, I could go to college and succeed.” Id. at ¶¶ 2-4. Fukino went to college, and then to medical school, and is now Director of the Hawai’i State Department of Health, overseeing more than 100 programs that promote and protect the health of all of Hawai’i’s people. Id. at ¶ 1.

Micah Kane lost his mother at age 4, and attended Kamehameha Schools with financial assistance from 1978 to 1987. SER, p. 572-74, Kane Declaration, ¶¶ 1, 2, 6. Kane states: “I still remember many of my teachers at Kamehameha Schools, and the essence of what they taught me: humble but assertive leadership. I have used those leadership skills in every position I have attained.” Id. at ¶ 6. Kane is now Director of the Hawai’i State Department of Hawaiian Homelands. Id. at ¶ 5. Dennis Gonsalves, born and raised in a tiny sugar plantation town, believes his high school education at Kamehameha Schools “taught me discipline and opened an entire world to me that I would likely not have encountered if I had not gone to Kamehameha.” SER, p. 560, Gonsalves Declaration, ¶¶ 1-2. Gonsalves went on to become an accomplished plant pathology professor at Cornell University. Id. at 561-62, ¶ 5.

It might be easy to dismiss these examples as anecdotal, as somehow insignificant against the weight of hardbound lawbooks. But that misses the point: The pride and well-being of the Native Hawaiian people are being rebuilt one student, one graduate, one community leader, at a time. The process will take time and a lot of hard work, and Kamehameha Schools' graduates are doing that work: Dr. Fukino has devoted her life to improving health care and health education, including AIDS awareness, for Native Hawaiians. SER, p. 568-71, Fukino Declaration, ¶¶ 8-13. Gonsalves helped develop a genetically engineered papaya that saved Hawai'i's papaya industry. SER, p. 562, Gonsalves Declaration, ¶ 6. Kane is leading the State's efforts to build homes for Native Hawaiians. SER, p. 573-74, Kane Declaration, ¶ 5. Akamu works every day with students from Native Hawaiian families that have never been to college, to help prepare them on the difficult road to higher education. SER, p. 579-80, Akamu Declaration, ¶¶ 6-8. Studies show 63 percent of Kamehameha Schools' graduates are involved in community leadership activities, and Kamehameha alumni are almost twice as likely to serve in key decision making roles as Native Hawaiians who are not Kamehameha alumni. SER, p. 303-04, Kanaiaupuni Declaration, ¶ 18.

B. Kamehameha's Alumni Occupy Community and Business Positions That Provide a More Diverse Leadership and a Native Hawaiian Voice in Community and Business Operations

Kamehameha Schools' "Leadership Model" seeks (among other things) to increase the number of Native Hawaiians receiving college and advanced degrees, improve Native Hawaiian representation in professional, academic, and managerial positions, and provide leaders committed to improving the lives of all Native Hawaiians. SER, p. 058-59, Ing Declaration, ¶ 60. Unlike some remedial programs, this is not abstract theory; this is a model that works. More than three-fourths of Kamehameha Schools' graduates attend or graduate from college; Kamehameha Schools' graduates have enjoyed substantially higher standards of living and better jobs than Native Hawaiians as a whole; and Kamehameha Schools' alumni directory features more than 100 graduates who have become leaders in business, education, law, medicine, government, and the military. *Id.* at p. 060-62, ¶¶ 64-66. Community leaders all across the State of Hawai'i attest to the critical role Kamehameha Schools plays in providing a more diverse leadership and a Native Hawaiian voice in business and community affairs.

For instance, at least nine Kamehameha Schools' graduates are employed as vice presidents at one of Hawai'i's largest banks, First Hawaiian Bank. SER, p. 538-39, Dods Declaration, ¶ 8. Walter Dods, the bank's chief executive, notes that the increased diversity in leadership provided by

Kamehameha's graduates benefits the larger society, and not just Native

Hawaiians. Id. at ¶ 6. Dods adds:

For Hawaii's first people to take a greater role in their state's 21st Century society, they need more leaders in private-sector business. By training young Hawaiians to succeed in business and other fields, Kamehameha Schools insures Hawai'i employers a supply of leaders for the future – leaders who can inspire others and improve the socioeconomic status of this disadvantaged segment of our society.

Id. at ¶ 7. Other business and education leaders echo those sentiments. See

Declaration of Randy Hitz, Dean of College of Education at the University of Hawai'i-Manoa, SER, p. 555-57, ¶¶ 8-12 (noting the need for diversity among school faculty and the important role played by Kamehameha alumni on the University of Hawai'i's faculty, and stating that "the loss of Kamehameha Schools as it now exists would be a significant step back in our efforts to increase the number of Native Hawaiian students in the University of Hawai'i system"); Declaration of Michael O'Neill, Bank of Hawaii Chief Executive, SER, p. 583-84, ¶¶ 5-6 (recognizing the need for Native Hawaiian leaders and the roles played by Kamehameha alumni at the Bank of Hawaii); Declaration of Keith Vieira, Director of Operations-Hawaii for Starwood Hotels & Resorts, SER, p. 550-52, ¶¶ 7-10 (discussing the importance of having Native Hawaiians in prominent roles in the tourism industry and concluding: "To lose Kamehameha Schools' education of future Hawaiian leaders would be an irreplaceable loss to the future development

of Hawai'i's tourism industry, given its importance and impact to all the people of Hawai'i").

Native Hawaiians by far have greater health care problems than any other population in the State of Hawai'i: as a group, they have higher rates of obesity and diabetes, nutritional deficiencies, and more heart and endocrine-related problems than any other group. SER, p. 544, Declaration of Roger Drue, ¶ 5. Hawai'i Pacific Health, which has four hospitals and 24 outpatient centers on four islands, is one of the state's principal providers of health care to Native Hawaiians. Id. at p. 542-44, ¶¶ 2, 4. Hawai'i Pacific Health's chief executive Roger Drue believes that Kamehameha Schools' preference policy is "absolutely essential to improving the health care of Native Hawaiians as a group." Id. at p. 545, ¶ 6.

Drue states:

From a health care perspective, Native Hawaiians are a population severely in need of good examples and leadership. Kamehameha Schools provides both. After receiving an education from one of the finest schools in Hawai'i, Kamehameha Schools students and graduates can, and do, return to the Native Hawaiian community and show their fellow Hawaiians a healthier and better way to live. The Native Hawaiian health care crisis cannot be solved by technology, or by hospitals or doctors alone. To a large degree the problem must be addressed in the community where Native Hawaiians live, by showing and teaching them how to practice good health care habits, how to get healthy and stay healthy. Based upon what I have observed, the graduates of Kamehameha Schools play an integral role in that process.

Id. Hawai'i Pacific Health also employs approximately 50 Kamehameha Schools' graduates. Id. at p. 545-46, ¶ 7.

C. Kamehameha Schools Helps To Preserve and Perpetuate Indigenous Hawaiian Culture and Traditions

Kamehameha Schools' campus-based program strives to "restore self-identity, integrate Native Hawaiian culture, heritage, language, and traditions into the educational process." SER, p. 058-59, Ing Declaration, ¶ 60. It may be difficult for someone outside of Hawai'i to understand just how important the restoration of Native Hawaiian culture, language, and identity is to the socio-economic revitalization of the Native Hawaiian people. As the former three-term governor of the State of Hawai'i, George Ariyoshi, states: "[Y]ou cannot separate education from pride. Without pride, a person cannot really achieve. . . . Kamehameha Schools is teaching, and must continue to teach, the Hawaiian values and culture that build self-worth in being Hawaiian." SER, p. 533, Ariyoshi Declaration, ¶ 9.

Native Hawaiian culture, language, and values are "infused throughout (Kamehameha Schools') educational program." SER, p. 499, Hoe Declaration, ¶ 5. Morning routines incorporate Hawaiian prayer and music; Hawaiian values are posted and discussed in class; Hawaiian protocols are used daily in class; and all students attend weekly classes in Hawaiian language and culture, including the study of Hawaiian chants, hula, literature, genealogy,

geography, geology, art, and history. Id. at p. 499-502, ¶¶ 6-7. Indeed, when applicants are asked “Why do you want to attend Kamehameha Schools?”, the most frequent answer is: “Because I want to learn more about my culture and heritage.” Id. at p. 507, ¶ 17.

That sense of cultural pride and self-esteem is a critical part of Kamehameha Schools’ mission, as racial and cultural identity are essential to overcoming the socio-economic disadvantages of a marginalized minority. SER, p. 441-42, Kanaiaupuni Declaration, ¶¶ 232-33. In a survey of 4,000 Kamehameha Schools’ alumni, 90 percent responded that they have a “strong sense of being Hawaiian”, and nearly 70 percent have spent time trying to learn more about Native Hawaiian culture and their Native Hawaiian roots. Id. at p. 444-45, ¶¶ 237-39.

Due to the deep sense of pride and self-esteem of Kamehameha Schools’ students, “shame and insecurity about being Native Hawaiian, and expectations of failure are difficult to find at Kamehameha Schools.” SER, p. 520, Thompson Declaration, ¶ 22. “Kamehameha Schools is an institution of hope and healing for the Native Hawaiian community.” Id. at p. 521, ¶ 25.

D. Hawaiians, Both Native and Non-Native Alike, Support Kamehameha Schools’ Admissions Policy

Support for Kamehameha Schools’ mission to improve the socio-economic status of Native Hawaiians and restore Hawaiian culture cuts across all

demographic lines, whether political, financial, or ethnic. Remarkably, at the District Court level, both the State of Hawai'i's current Governor, Linda Lingle, and the state's long-time former Governor, George Ariyoshi, submitted declarations in support of Kamehameha Schools' Admissions Policy.

Governor Lingle stated: "Based upon my experience . . . I also believe that our state needs a qualified and racially and ethnically diverse group of leaders, to ensure that all voices and viewpoints are heard and respected as we plan for our state's future, for the benefit of all of our citizens. Kamehameha Schools provides an essential training ground for the education and development of our future native Hawaiian leaders." SER, p. 527, Lingle Declaration, ¶ 12. Governor Lingle has appointed three Kamehameha Schools' graduates to her staff, and believes that "for our state to reach its potential . . . Kamehameha Schools must be a part of that future." Id. at ¶¶ 12-13.

Governor Ariyoshi, who was governor of Hawai'i from 1974 to 1986, fondly recalls visiting students on the Kamehameha Schools' campus, and seeing the pride in the students' faces as they talked about what they were being taught. SER, p. 533, Ariyoshi Declaration, ¶ 9. But Governor Ariyoshi also warns:

When I was governor, I used to visit schools and tell the students, "If you study hard, any one of you can be governor, or even president." The sad truth is that as of today, not every native Hawaiian has that opportunity. Kamehameha Schools gives its students that opportunity. Native Hawaiians are now reclaiming some of the pride that has been so painfully

diminished. That pride, and the community, would suffer a tremendous loss if Kamehameha Schools as we know was eliminated.

Id. at p. 534, ¶ 13.

In late August 2003, members of the Ohana Council organized a petition campaign to gather signatures in support of Kamehameha Schools' Admissions Policy, to show the broad-based community support for Kamehameha Schools and its remedial mission. At locations throughout the state, people were asked if they would sign a petition reading: "I support Kamehameha Schools' policy of giving admissions preference to applicants of Hawaiian ancestry which improves the capability and well-being of Hawaiians and benefits the Hawai'i community as a whole." The petition included an optional box, where the signer could indicate whether he or she was of Hawaiian ancestry or not.

In less than eight weeks, the Ohana Council gathered 83,950 signatures on the petition. See Declaration of Jan E. Hanohano Dill, ¶ 5, attached to the Ohana Council's Amicus Brief filed with the District Court November 10, 2003. The names of every person who signed the petition have been entered into a computer database, to ensure there is no "double counting" of persons who signed the petition. Id. Of the 83,950 who signed the petition and disclosed their ancestry, 56 percent, or 46,708 signatures, were of Hawaiian ancestry, and 44 percent, or 37,213 signatures, were of non-Hawaiian ancestry. Id.

The Ohana Council is not suggesting this is a popularity contest; it is not. But by any measure, it is an extraordinary feat to gather more than 83,950 signatures in less than eight weeks in support of a private school admissions policy. Respectfully, in no other state in this great country could you find such an overwhelming response by its citizens. By the same token, no other school in the country has the same privilege, and heavy burden, of restoring the well-being of the state's native people. This tremendous response demonstrates the community's awareness and support of the role that Kamehameha Schools plays in helping to remedy the continuing negative effects that forced Westernization and the overthrow of the Hawaiian Monarchy continue to have on the Native Hawaiian people.

Indeed, the more than 83,950 signatures collected on the Ohana Council's petition are strong evidence that the broader Hawai'i community perceives Kamehameha Schools' Admissions Policy to have a legitimate justification—i.e., that the schools' remedial mission of “improving the capability and well-being of Hawaiians” has “legitimacy in the eyes of the citizenry.” It has such legitimacy in part because, as the petition states, improving the health and socio-economic welfare of the Native Hawaiian people “benefits the Hawaii community at large.”

III. CONCLUSION

In United Steelworkers of America v. Weber, 443 U.S. 193 (1979), private employers and the union looked out into society, the broader community, and saw that there were very few African-Americans represented in the skilled crafts. To remedy the imbalance, they adopted a skilled craft training program and limited fifty percent of the places to African-American workers. Id. at 197. Fifty percent was far more than the number of African-Americans in the skilled crafts, or in the local labor force. Id. at 198-199. The Supreme Court of the United States approved this disproportionate use of race, saying:

It would be ironic indeed if a law triggered by an agent's concern over centuries of racial injustice and intended to improve the lot of those who have 'been excluded from the American dream for so long' constituted the first legislative prohibition of all voluntary private race conscious efforts to abolish traditional patterns of racial segregation and hierarchy.

Id. at 204 (internal citations omitted).

It would indeed be ironic for this Court to eradicate the vision of a private person who, looking outward into Hawaiian society, saw the devastation of her people. Princess Pauahi intended by her gift of education to correct the imbalances that were physically and spiritually destroying the Native Hawaiian people..

The Ohana Council simply asks this Court to permit Princess Pauahi's vision of balancing the competitive playing field to continue, to allow Native

Hawaiians an equal opportunity to achieve the American dream as intended by 42 U.S.C. § 1981.

Make no mistake: The decision in this case will help shape the future of the State of Hawai'i, and all Native Hawaiians. Kamehameha Schools, though its mission and its work, is our state's most powerful symbol of hope for the rebirth of the Native Hawaiian people. The Ohana Council cannot put into words how devastating it would be for Kamehameha Schools to be denied the right to give any preference in admissions to children of Native Hawaiian ancestry. As Kamehameha Schools' Trustee Nainoa Thompson states: "If the Kamehameha Schools were to be denied the right to give any preference in admissions to the children of Native Hawaiian ancestry" the decision would "constitute a serious setback to the process of remedying past injustice and imbalances" and "would deepen the wounds and increase the indignity that Native Hawaiians already feel, rather than serving as the proper foundation for remedying past injustice and present imbalances." SER, p. 522-23, Thompson Declaration, ¶¶ 27-28. Such a decision "would bring deep hurt at a time when we need healing." Id.

In the Hawaiian language, the word *pono* means to do what is right, what is just. In the interest of all who work for and with Kamehameha Schools, and in the public interest of Hawai'i's community at large, members of the Ohana Council now respectfully and humbly ask this Court to do what is *pono*, and

preserve the Admissions Policy of Kamehameha Schools—not for their sake, but for the generations of Native Hawaiian children to come.

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