

GET Committee

From: Brandon Makaawaawa <bird.bran07@gmail.com>
Sent: Monday, September 16, 2019 11:46 PM
To: GET Committee
Cc: Ian Chan Hodges; shay.chanhodges@gmail.com; Kanahele Dennis
Subject: Testimony in strong support of resolution 19-337

September 16, 2019

Aloha Chair Molina and GET Committee Members:

My name is Brandon Makaawaawa and I am the Vice-President of Na Po'e Kokua and I am in strong support of resolution 19-337 entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL TO INVESTIGATE AND LITIGATE ACTIONABLE CLAIMS AGAINST BANK OF AMERICA AND THE BANKING AND MORTGAGE INDUSTRY."

As part of my testimony I am including emails I made to Deputy AG Ryan Kanaka'ole regarding the internal memo that Ryan sent to the Maui GET committee and the Maui Corp Counsel on 8/6/19 stating that the AG's office did not have enough evidence to go after Bank of America for not fulfilling their \$150 million dollar commitment to the Hawaiian people. There was also an article in the Star-Advertiser this past Monday entitled "State won't pursue bank on \$150 million commitment to Hawaiian Homelands" talking about this memo.

We are asking that in light of the AG's stance that they will not pursue Bank of America on behalf of the Hawaiian people's \$150 million dollar unfulfilled commitment, that it is imperative that Maui County move forward with this resolution to seek more information to hire a special counsel and by passing this resolution we hope it also encourages the other county's to take similar actions to finally help bring justice to our people for this \$150 million dollar promise broken.

Mahalo for your support,
Brandon Makaawaawa
Vice-President of Na Po'e Kokua

Email to Ryan On 8/6/2019:

Aloha Ryan,

My name is Brandon Makaawaawa. I am vice president of the board of Na Po'e Kokua and a member of the Hawaii Fair Lending Coalition. I also serve as deputy head of state for the Nation of Hawaii and I live on Hawaiian Homelands in Waimanalo.

On Tuesday, August 6, 2019, I traveled to Maui to testify before the Maui County Council's Governance, Ethics, and Transparency Committee on matters related to Bank of America's record of foreclosure fraud and relating to the Federal Reserve System's order requiring Bank of America to provide \$150 million in FHA-247 mortgages on Hawaiian Home Lands. The testimony that I gave to the Maui Council follows:

We've heard a lot about the rule of law recently when it comes to TMT's so called rights to build what it wants on our Mauna.

But when it comes to big banks what Hawaiians have learned over the past quarter century is that the rule of law does not always apply to us and it is selectively enforced. The three page timeline that Chairman Molina provided in County Communication 19-107 makes this very clear. Bank of America believes it is above the law and the government often supports that belief. Yesterday I sent a chart to the GET committee which adds more detail to Chair Molina's timeline from 2003. Does everyone have a copy?

Take a look at the third box down to the right of the bank of America logo. I'll read it:

In March of 2003, Micah Kane [Who at that time was chair of the department of Hawaiian Home Lands] meets with Bank of America executives three weeks after Hawaiian homelands beneficiaries are forcibly evicted by 80 law enforcement officers — as a matter of "principle" — over \$250,000 in overdue mortgages.

This is what I mean by selective enforcement of the law. Despite the fact that Bank of America admits in writing that it completed only 2% of its commitment by the deadline, the Lingle administration was eager to work things out with Bank of America. Hawaiian Homelands beneficiaries including Kupuna and Mo'opuna didn't receive the same treatment and were forcibly evicted in an early morning raid for a manini amount of money.

When you look over the rest of the chart, you don't need to be a lawyer to understand that the Lingle administration continually put Bank of America's corporate agenda before the urgent needs of the Hawaiian people repeatedly and we're not even looking at what happened in later years, particularly in 2007. But I only get 3 minutes so what happened in 2007 will need to wait.

Today, the second resolution you are considering is entitled "Authorizing the Employment of Special Counsel to Pursue Sanctions and Other Remedies for Fraudulent Foreclosures." I'm not a lawyer but my fiancé is. She specializes in housing discrimination law and I've learned a few things from her.

First, lawyers like my fiancé who fight discrimination and injustice and work for the people are somewhat rare because the odds are stacked against them and banks and other corporations pay better.

Second, there was an article published on Law.com six weeks ago with the headline: Maui County Officials Consider Recruiting Miami Litigator Bruce Jacobs in Affordable Housing Fight. An early draft of the resolution you are considering today was included with the article and considered authorizing the employment of the Bruce Jacobs' firm as special counsel to pursue sanctions and other remedies for fraudulent foreclosures.

Third, I have spoken directly with Bruce Jacobs and I believe him to be the type of lawyer who is committed to ensuring that even a corporation as powerful as Bank of America with more than \$2 trillion in assets needs to be held accountable to the rule of law.

Bank of America should not be allowed to continue to default on its commitments and commit fraud on the courts.

Finally, this is the Governance, Ethics, and Transparency Committee. I would ask that you keep your deliberations on the special counsel transparent and not close them off to the public by denying Corporation Counsel's likely request that you go into executive session.

I submitted the chart which I referenced in my testimony (see attached) to the Maui Council the day before the hearing so the council members had it available for review. What the council members did not have available for their review before last Tuesday's hearing was your email to Maui County's Corporation Counsel regarding Bank of America which you sent on August 5 at 1:35pm. In fact, your email was distributed as the hearing was well underway and after public testimony was closed.

If your email regarding your views on Bank of America had been made publicly available prior to the hearing, here are the questions I would have raised during my testimony:

1. Why did you apologize to Maui County's Corporation Counsel for your "late response" claiming that "matters on the Big Island" — as you refer to the enormity of what is happening on the Mauna — "have been taking much of my offices resources lately"?
2. Why are you not instead apologizing to the Kupuna — not just the Kupuna that your office had arrested on the Mauna — but also the Kupuna who stood up to Bank of America 25 years ago and those who are now Kupuna a quarter of a century later and who continue the work of holding Bank of America accountable to the rule of law?
3. My understanding is that your division within the office of the Attorney General is responsible for Hawaiian Home Lands, Housing and Public Safety. Why are you focused on arresting or ignoring Kupuna rather than working with them to hold Bank of America accountable for its long overdue commitment to housing on Hawaiian Homelands?
4. During your office's "review" of Bank of America's failure to fulfill its commitment to federal banking regulators that it would make \$150 million in FHA-247 loans between 1994 and 1998, why didn't you contact Na Po'e Kokua and the Hawai'i Fair Lending Coalition? Both Governor Ige's April 18, 2018 letter to Bank of America and the stated policy of the Hawaiian Homes Commission (which the Governor included in his letter and Jobie Masagatani reiterated during her testimony) along with resolutions passed by three county councils and the state senate make it clear that NPK/HFLC have a central role in holding Bank of America accountable for fulfilling its Hawaiian commitment. NPK/HFLC have hundreds of documents relevant to Bank of America's Hawaiian commitment and we have repeatedly requested a meeting with the attorney general.
5. Why did the Attorney General delete key elements of the FOIA appeal which the Governor's office submitted for review before it was submitted to the Federal Reserve Board?

We have many additional questions for the Attorney General, but I would ask you to answer theses first five by the end of the day tomorrow. I am also requesting an in person meeting with the Attorney General.

Aloha,
Brandon Makaawaawa
VP Na Po'e Kokua

Email to Ryan Kanaka'ole on 8/19/19:

On Aug 19, 2019, at 5:19 AM, Brandon Makaawaawa <bird.bran07@gmail.com> wrote:
Aloha Ryan:

I am following up on my email of August 12, 2019, which I sent to you following the August 6, 2019 Governance, Ethics, and Transparency Committee hearing on Maui, at which your email of August 5, 2019 was distributed at the hearing after public testimony was taken and without prior notice to the GET committee staff.

I called your division within the Attorney General's office last Wednesday to confirm that you had received my email and was told that your office was drafting a response.

I have yet to receive that response.

Meanwhile, as you may be aware, the Honolulu City Council Executive Matters and Legal Affairs Committee is hearing a Resolution regarding Bank of America on Tuesday, August 20, 2019 at 1pm. Bank of America lobbyist Ivan Lui-Kwan of Starn O'Toole Marcus & Fisher has already submitted your August 5 email to the City Council along with the following interpretation:

"The State of Hawaii Office of the Attorney General has determined that there is no legal basis to pursue BoA on its \$150 million commitment. Please see attached an e-mail dated August 5, 2019 from the Office of the Attorney General to the Maui County Council. This determination by the State of Hawaii office of the Attorney General follows meetings which BoA has had with Governor David Ige as follows..."

As I'm sure you are aware, Governor Ige has not made any statements that indicate that the position of his administration has changed from what the Governor stated in his April 18, 2018 letter to Bank of America's Cathy Bessant.

Therefore, please answer the five initial questions I sent you in my email last Monday along with the following additional questions by Tuesday, August 20 at 10am.

Is Ivan Lui-Kwan's characterization and interpretation of your August 5, 2019 email to Maui County's Corporation Counsel accurate?

Was your August 5, 2019 to Maui County's Corporation Counsel reviewed by anyone in the Office of the Attorney General who has expertise and experience in federal bank regulation?

If so, why didn't you provide the position on official letterhead? If not, what prompted you to submit the email to the Maui County's Corporation Counsel?

Was Attorney General Clare Connors made aware of the views expressed in your August 5 email before you sent it? Have you communicated with AG Connors since you sent the email?

Was Governor David Ige or anyone in his office advised of your August 5 email before it was sent? Has anyone from the Governor's office contacted you since August 5 regarding Bank of America?

Have you had communication with anyone at Starn O'Toole Marcus & Fisher regarding Bank of America, including but not limited to former Hawai'i AG Doug Chin and BofA lobbyist Ivan Lui-Kwan?

Again, please answer all the questions I sent you in my email last Monday (see below) along with the additional additional questions above by Tuesday, August 20 at 10am.

Aloha,
Brandon

Email to Ryan Kanaka'ole on 8/23/19:

From: Brandon Makaawaawa <bird.bran07@gmail.com>

Sent: Friday, August 23, 2019 3:44 PM

To: Kanaka'ole, Ryan KP <ryan.kp.kanakaole@hawaii.gov>

Cc: DHHL.Director <dhhl.director@hawaii.gov>; Masagatani, Jobie K <jobie.k.masagatani@hawaii.gov>;
get.committee@mauicounty.us; hulul@oha.org; Connors, Clare E <clare.e.connors@hawaii.gov>; Oku, William F
<William.F.Oku@hawaii.gov>; kehau.filimoeatu@gmail.com

Subject: Re: Follow up email to 8/12/19 and 8/19/19 email Kūpuna Bank of America and the rule of law

Aloha Ryan

I am following up about my two emails I sent to you on August 12th and August 19th with questions pertaining to the Bank of America unfulfilled \$150 million dollar commitment and your personal opinion of its validity. We would like to have our questions answered because currently the Maui County Council is using your email you sent to the Council on August 5th as the official position of the Attorney Generals office regarding the commitment. We would like to know for sure where the AG's office stands officially regarding this commitment because the Maui Council will be hearing a resolution to seek hiring special counsel to go after Bank of America on September the 14th.

This commitment is drastically needed in our community, the lack of housing is one of the fundamental obstacles stopping the progress of our lahui. Anytime we can all work together to seek justice for our people we should all be in support.

Aloha,
Brandon Makaawaawa
Vice-President Na Po'e Kokua

Sent from my iPhone