Congress of the United States

Washington, DC 20515

November 3, 2026

The Honorable Scott Bessent
Secretary
U.S. Department of Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

The Honorable Frank Bisignano
Chief Executive Officer
Internal Revenue Service
1111 Constitution Ave NW
Washington, DC 20224

Re: Comments to the Notice of Proposed Rulemaking, Racial Nondiscrimination in Private Schools (REG–119986–25)

Dear Secretary Bessent and Mr. Bisignano:

We write in opposition to the proposed rule, "Racial Nondiscrimination in Private Schools," published in the Federal Register on September 3, 2026 (REG-119986-25). As a matter of policy, we fundamentally disagree that the IRS has the authority to revoke tax-exempt status from any institution based on legally permissible preference policies. The federal tax code cannot, and should not, be used as a device to discourage private institutions from supporting students or to control admissions and programmatic decisions that best serve their communities. However, should this rule be finalized, we are concerned that it would limit educational opportunities in the State of Hawaii, result in widespread closure of schools, and disenfranchise students and families of all racial and socioeconomic backgrounds. We urge the administration to withdraw its proposed rule.

The proposed rule would have an especially detrimental effect on the Native Hawaiian Community, with whom the United States has a special political and trust relationship that is reflected in over 150 federal laws. Among these laws, Congress has expressly affirmed the ability for Kamehameha Schools (KS)[1] to fulfill its mission of supporting the education of Native Hawaiian students through its preferential admissions practice and other programs. Notably, Congress has not only approved KS' continued research and assessment activities and urged

[1] KS was founded by devise in 1887 by Bernice Pauahi Paki Bishop, one of the final royal descendants of King Kamehameha who established the Kingdom of Hawaii in 1810.

Kamehameha Schools to "redouble its efforts to educate Native Hawaiian children,"[2] it has also passed legislation reaffirming that it is "lawful for [Kamehameha Schools] to continue to offer its educational programs and services to Native Hawaiians…first and to others only after the need for such programs and services by Native Hawaiians has been met."[3]

Accordingly, the Treasury Department and IRS should ensure that any final regulations accommodate organizations that provide preferences for Native Hawaiians in their educational programs and services. Such an approach would be consistent with legislation passed and supported by Congress in recognition of the special political and trust relationship between the United States and the Native Hawaiian Community, including laws authorizing KS' admissions practices and other programs specifically for members of the Community. [4]

Indeed, the proposed rule's own preamble cites such an approach. As discussed there, the Supreme Court in *Bob Jones University v. United States*[5] looked to actions taken by all three branches that established a fundamental public policy against racial discrimination in private schools. Finding actions and authorities across all three branches supported the Court's determination that "there can no longer be any doubt that racial discrimination in education violates deeply and widely accepted views of elementary justice."[6] As in *Bob Jones*, repeated actions for the benefit of Native Hawaiians taken by Congress,[7] the federal judiciary, and the executive branch have established a fundamental public policy supporting Native Hawaiian preference, including through KS' admissions practice and programming. This policy stands alongside, and is consistent with, the separate and distinct policy against racial discrimination in schools.

In sum, we urge the Treasury Department and IRS to withdraw its proposed rule; however, any final regulations, if issued, should reflect the clear and longstanding public policy supporting the special political and trust relationship between the United States and the Native Hawaiian

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[2] H.R. Rep. No. 107-63(I), at 333 (2001).

[3] 42 U.S.C. § 11705(c)(4).

[4] Legislation that demonstrates Congress's historical and legal obligation to the Native Hawaiian people include the Native Hawaiian Education Act, Hawaiian Homes Commission Act, Hawaiian Statehood Admission Act of 1959, Native Hawaiian Health Care Act of 1988, Native Americans Languages Act, Native American Programs Act of 1974, American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act, and the National Historic Preservation Act. In 2004, Congress established the Office of Native Hawaiian Relations within the Office of the Secretary of the Interior. 118 Stat. 445 (Jan. 23, 2004). Earlier this year, Congress continued to appropriate funding for major Native Hawaiian programs including in education. See Pub. L. No. 119-74 (Consolidated Appropriations Act, 2026).

[5] 461 U.S. 574 (1983).

[6] *Id.* at 592.

[7] Congress has expressly found that it "does not extend services to Native Hawaiians because of their race, but because of their unique status as the indigenous people of a once sovereign nation as to whom the United States has established a trust relationship." 20 U.S.C. 7512(12)(B). Those findings distinguish the longstanding federal public policy toward Native Hawaiians from racial exclusion cited in *Bob Jones* and the practices that are the focus of the proposed regulations.

Community by including an accommodation for organizations providing preferences for Native Hawaiians in their educational programs and services.

Sincerely,

Brian Schatz
United States Senator

Mazie K. Hirono
United States Senator

Ed Case
Member of Congress

Jill Tokuda
Member of Congress