

## Hawaii Reporter

# Taxpayers of the Wrong Race: Corboy v. Louie

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Imagine if a state were to enforce a tax scheme that resulted in property owners paying different tax rates—not based on the value of their property—but on their race. Further imagine state courts rejecting a challenge to this discriminatory practice by refusing to consider the equal protection issue.

Sound inconceivable in this day and age?

Welcome to Hawaii, where the state and its counties enforce race-based property tax schemes, and the state supreme court recently affirmed the dismissal of a challenge to the laws by avoiding the equal protection claim. That decision is [here](#).

To bring an end to Hawaii’s race-based tax schemes, PLF filed an [amicus brief](#) this week in the U.S. Supreme Court asking it to review Hawaii’s tax laws in a case called *Corboy v. Louie*. Joining PLF in its brief are the [Cato Institute](#), the [Grassroot Institute of Hawaii](#), the [Goldwater Institute](#), and Professor Paul M. Sullivan.

In 1921, when Hawaii was still a U.S. territory, Congress passed the [Hawaiian Homes Commission Act](#), setting aside land to be used as homestead property exclusively for native Hawaiians. The Act’s purpose was to encourage individual native Hawaiians to take up farming by providing them with a homestead lease at the rate of \$1 per year, for 99 years. Congress required Hawaii to adopt the Act in its constitution as a condition of statehood in 1959.

The Act, now incorporated in Hawaii’s constitution, exempts lease holders from paying all property taxes for the first seven years of the lease. Each of Hawaii’s four counties extend the exemption, or levy only nominal rates, for the entire duration of the lease. As a consequence, the annual property taxes paid by nonnative Hawaiians are higher than the amounts paid by many native Hawaiians.

The problem is that the Act defines a “native Hawaiian” specifically in racial terms: A “native Hawaiian” is “any descendent of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.”

In *Corboy v Louie*, nonnative Hawaiians paid their property taxes under protest and filed an action alleging the lease exemptions violated the [Equal Protection Clause](#). But the Tax Appeal Court dismissed their challenge on the grounds that the tax exemption is based on whether a taxpayer is a homestead lessee, and not on a taxpayer's race. On appeal, the Supreme Court of Hawaii avoided the equal protection claim and held petitioners lacked standing to challenge the tax exemptions because they never applied for homestead leases. Of course, both courts ignored the fact that petitioners are ineligible for the homestead leases because they are taxpayers of the wrong race.

This is not the first time PLF attorneys have become involved in Hawaii's unconstitutional racial classifications. PLF filed an amicus brief in *Rice v. Cayetano*, where the Supreme Court held the term "native Hawaiian" is a racial classification and that a state voting scheme prohibiting nonnative Hawaiians from voting on certain matters violated the Fifteenth Amendment. PLF also filed an amicus brief in *Hawaii v. OHA*, a case concerning state sovereignty where the Office of Hawaiian Affairs contended that "native Hawaiians"—again defined by race—have exclusive rights to certain public lands. The Court resolved the case without addressing the equal protection issue.

As Justice O'Connor stated in her [dissent](#) in *Metro Broadcasting, Inc. v. FCC*, racial classifications "endorse race-based reasoning and the conception of a Nation divided into racial blocs, thus contributing to an escalation of racial hostility and conflict." Let's hope the Supreme Court agrees to hear this case and requires Hawaii to abandon its racial classifications and treat its citizens with the equality to which they are all entitled under the Constitution.