

Hawaii Reporter

Hawaii's Race-Based Tax Exemptions Are Unconstitutional

October 19th, 2011

BY ILYA SHAPIRO - Hawaii continues to think that it's not quite part of the United States and thus not fully subject to U.S. law.

In the 2000 case of *Rice v. Cayetano*, the Supreme Court struck down race-based voting requirements for certain Hawaii state officers because government schemes that distinguish between “native Hawaiian” and “Hawaiian” are racial classifications that must pass “strict scrutiny” to be deemed constitutional; they must be narrowly tailored to achieve a truly “compelling” purpose (a standard nearly impossible to meet).

Yet that exact same category of “native Hawaiian” — whose frighteningly archaic definition is “any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778” — was used in the Hawaii Homes Commission Act to distinguish those who can hold certain leases that are subject to little or no property tax.

A group of Hawaii residents who do not meet the state's definition of “native Hawaiian” and therefore suffer under the explicitly race-based law decided to challenge these property-tax exemptions. After paying their taxes, these plaintiffs sought refunds on the grounds that the classification scheme violates the Fourteenth Amendment's Equal Protection Clause.

The Supreme Court of Hawaii, however, ruled that they didn't have standing — a legal doctrine that determines who can bring a claim — to challenge the taxes on the ground that they had not yet asked for the leases (for which they were indisputably ineligible due to not having enough “blood of the races” flowing through their veins).

A lower state court had even ruled that the classification was not race-based—that it merely distinguishes leaseholders and non-leaseholders, even though Hawaiians without the sufficient “blood quantum” cannot be leaseholders.

The group of taxpayers now seek review in the U.S. Supreme Court. Cato, joined by the Pacific Legal Foundation, the Grassroot Institute of Hawaii, the Goldwater Institute, and Professor Paul M. Sullivan, filed a [brief](#) urging the Court to take the case and rectify Hawaii's explicitly unconstitutional taxation scheme.

We argue that, after Hawaii's state judiciary refused to address the issue of racial discrimination head-on, only the U.S. Supreme Court is in a position to guarantee the constitutional protections that Hawaiians have lived under for over a century (since Hawaii became a territory).

Only by taking this case and overturning the racially charged definition can the Court continue to ensure that Hawaii is a state that "neither knows nor tolerates classes among citizens."

The Supreme Court will likely decide by the end of the year (or in early 2012) whether to hear this case, *Corboy v. Louie*.