

Could Preferential or Separate Programs for Native Hawaiians Pass the Strict-Scrutiny Test?

Does the Government have a “compelling interest” for such programs?

(1) To acknowledge their status as native, aboriginal, and indigenous people and to facilitate and support their quest for self-determination and self-governance, and

(2) To provide compensation for their loss of land and resources, or to promote the return of those lost lands and resources.

Is the Government’s program “narrowly tailored” to its goal? Has the Government used the “least drastic alternative”?

How else can self-determination and self-government be provided except through a separate and exclusive program?

How else can property be returned to its rightful owners, when the owners are defined by their ancestry?

Can Programs for Native Hawaiians Meet the “Strict-Scrutiny/Compelling-State-Interest” Test?

Yes – The Department of Hawaiian Home Lands, for instance, is carefully designed to promote the self-governance and self-sufficiency of the native people, which is certainly an overriding goal of our nation, reinforced by emerging norms of international law.

The right to self-determination is the most basic of human rights under federal and international law, and efforts to facilitate the exercise of this right are mandated by fundamental principles of human rights and human decency.