Rice v. Cayetano (2000)

The concurring opinion of ***Justice Breyer*** (joined by ***Justice Souter***) demonstrates an even greater lack of understanding of what has actually happened, and is now happening, in Hawaii. Justice Breyer says that the voting structure for the Office of Hawaiian Affair would allow someone with ***only one-five-hundredth*** Native Hawaiian blood to vote for the OHA Trustees.

He arrived at this figure by imagining ***nine generations*** of intermarriage since Captain James Cook's arrival in the islands in 1778.

His generations apparently occur every 24 ½ years, less than the 30 years normally utilized to mark generational shifts, and he apparently imagines substantial intermarriage occurring from the moment Captain Cook's sailors hit the beach. In fact, the numbers of nonHawaiians remained small in the islands until about 1865.

Intermarriage did start to become common at this point, but we have seen only four and a half generations since then, so almost all part-Hawaiians have at least one-sixteenth native blood, and most have much more.

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<u>Rice v. Cayetano</u> (2000)

Although the spectre of a person with ***one-five-hundredth native blood*** is a theoretical possibility, ***the decision of the people of Hawaii to allow even that person to vote for the OHA Trustees was nonetheless logical***, because ***the purpose of OHA was to facilitate decision-making by the Hawaiian people***, in particular the important decision of ***defining their own membership.***

Justice Breyer acknowledges that all native groups have the power to define their own membership, and surely all people with some native blood should participate in that crucial decision.

How else can that goal be accomplished except by bringing them together in an organization designed to allow them to debate and decide how to define themselves?

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Carroll/Barrett

In denying a motion to intervene, on Feb. 9, 2001, Judge Ezra wrote:

"In the recent Supreme Court case Rice v. Cayetano, 528 U.S. 495 (2000)(on which this overall case is largely based), the Court recognized that native Hawaiians are not a "tribe" and, thus, Morton [v. Mancari, 417 U.S. 535 (1974)] did not apply."

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The *Barrett* and *Carroll* Cases

* They attack the validity of all the trusts and programs established for people of Hawaiian ancestry, including traditional and customary rights.

* John Carroll has challenged the constitutionality of Article XII, Sections 5 and 6 of the State Constitution as well as H.R.S. Chapter 10.

* Patrick Barrett filed a similar (but broader) challenge shortly after Carroll. He seeks an injunction preventing any "preferential treatment to any person or class of persons based upon Article XII of the Hawaii Constitution, the Hawaiian Homes Commission, the Office of Hawaiian Affairs, or Hawaiian gathering rights."

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