"Real Rationality" Judicial Review

Native Hawaiians have the same right as other native groups to have separate and preferential programs established for their benefit evaluated under "*rational-basis*" review.

In order to ensure that this more lenient scrutiny does not become a carte blanche for bizarre programs that have nothing to do with their heritage and cultural autonomy, it is appropriate to ensure that the governmental program is in fact rationally related to promoting or protecting native "*land, tribal status, self-government, or culture*," as long as these terms are interpreted generously to include *other native resources* and *economic self-sufficiency*.

Once a real link to these goals is demonstrated, courts should defer to the judgments of the political branches of government and allow the programs to function.

See *Williams v. Babbitt*, 115 F.3d 657 (9th Cir. 1997).

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Do *Adarand (1995)* and *Croson (1989)* Affect the Applicability of "*Rational-Basis*" Judicial Review to Programs for Native People?

NO.

Within days after *Adarand*, in *Oklahoma Tax Comm'n v. Chickesaw Nation*, 115 S.Ct. 2214 (1995), the Supreme Court unanimously reaffirmed the legitimacy of a preferential program for a native group (an immunity from state taxation on native lands) without any reference to *Adarand* or any requirement that the government demonstrate a compelling interest to support the preference.

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