

Morton v. Mancari (1974)

Plaintiffs (non-Indian employees of the BIA) argued that there was conflict between the 1934 Indian Reorganization Act (which granted a preference to Indians in federally-recognized tribes) and the 1972 Equal Employment Act (which prohibits discrimination on the ground of race).

If such a conflict did exist, what result?

Latest in time governs, and federal district court so ruled.

But Supreme Court said we should assume that Congress wanted such a conflict to be recognized, and the primary duty is to interpret the statutes so that they are consistent--8L

What were the purposes of the 1934 Act

1. Promote self-governance.
2. Recognize the government's trust obligation to Indians--<sup>27/28</sup> discuss--see long quote on 297L. And quote on ~~302~~ (302). Bad stuff between US and Indians. See reference to "guardian-ward" status--what does that mean?

Discuss role of Congress.

Longstanding preferences for Indians--<sup>20</sup> RB.

Title VII of 1964 Act--[predecessor of 1972 Act which extended it to the federal government]--does have an exemption for Indians.

Is it realistic to view this as a political rather than a racial preference?

302R. (25)

Is the analogy to residence requirements a good analogy?  
302R2/3.

Would it be different if this were a blanket preference for Indians in the federal civil service? 303L1/3 (26)

Test?

Rational basis. 303R2/3

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What kind of preference was established here?

2947 L hiring & promotion

Why did Congress establish the preference?

296 L to promote self government

How does the Court justify this preference?

301-02 Special Constitutional powers  
Art I § 8 cl 3

Is it a racial preference in fact? Logical goals

302 R & n. 24  
Tribal?  
Political?

How should this reasoning apply to the Office of  
Hawaiian Affairs?

Are Native Hawaiians comparable to Native Americans?

Is there any difference in a state granting a  
preference than the federal government?

2714  
What about Livingston v. Ewing? Should the compelling  
state interest or rational basis test apply here? Is it  
crucial that the <sup>10th Circuit</sup> court viewed this as an employment preference?  
Are there any limits on the types of preferences that can  
be granted to native groups?

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~~3628~~  
~~3628~~  
~~in file~~

~~Is this the same as DeFuria?~~

Note Blackman's attempt to differentiate them?

- (1) Not all Indians are eligible 302 (S, S, S)
- (2) More a residency requirement than a racial preference, 302 R<sup>2/3</sup>
- (3) Constitution gives Congress special power to deal with Indians! 301 R Commission?

What if it were a preference for all Indians?

Save

What about Veterans preference?  
Discriminates against women  
& C.O.'s

Does this case mean that preferences for Native Hawaiians might be treated differently from preferences for other nonwhites?  
Hawaiian Homes Commission?  
Kamehameha Schools?

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Facts

Test -

Is this a racial classification?  
or a political classification?

Reasons for treating natives differently - -

- (1) No mother country elsewhere
- (2) No agreement to live in multicultural society
- (3) Endangered culture (will disappear if not protected)
- (4) History of political abuse - - debts are owed to natives.

Hypos: (?)

Livingston v. Ewing, 601 F.2d 1111 (10th Cir. 1979)

Matielua v. State, Civ. No. 90-00063DAE (D. Haw. May. 29, 1990).

Constitutionality of OHA / Hawaiian Homes Commission /  
Kamehameha Schools

UH Law School Pre-admission Program

OHA Scholarships to UHs attending UH

Livingston v. Ewing (DNM 1978)

Portal of the Palace of Governors in Santa Fe  
Explicit written preference for Indians (but not limited to  
any specific Indians)--828 n.1.

Purpose--

1. Promote culture of Indians
2. Promote self-determination of Indians
3. Protect culture of Indians so non-Indians can experience  
it at the museum.
4. Promoting tourism 832L 1/2 Analogy to French Quarter  
in New Orleans--statute protected existing vendors but prevented  
new ones--New Orleans v. Dukes (1976) 829R

Is it burdensome on Livingstons? 829LT

Do they have other outlets? --inferior quality and lacking  
in authenticity. 829L1/5.

Do they have any First Amendment rights here?

Test?

Rational basis--830RT

Is separate status necessary in order to protect the culture  
of the Indians?

Livingston v. Ewing (10th Cir. 1979)

How is this decision different?

Focuses on the Museum policy as an "employment preference"  
protected by Congressional statute.

Is this employment? No salary or commission?

Court of Appeals argues yes. 831L 1/4

Does court look for least drastic alternative?

Reverse Discrimination?

No stigma. No suspect class. 1115~~A~~ 2/3

Strong state interest 1115BR

Education of public and promotion of Indian crafts.  
Compelling? 1115/1116

Ahuna v. DHHL (Haw. 1982)

Discuss DHHL program  
To Promote Rehabilitation of Hawaiians.  
Ward-trustee statement ~~21~~<sub>40</sub>-2T

Is analogy between Hawaiians and other native Americans  
sound? ~~24/25~~. Persuasive?  
Duties of fiduciary?

40/41

Nalielua v. State of Hawaii (D.Haw. 1990)

Is DHHL constitutional?  
Yes.