RECENT CASES

CONSTITUTIONAL LAW — TERRITORIES — NINTH CIRCUIT HOLDS THAT GUAM'S PLEBISCITE LAW VIOLATES FIFTEENTH AMENDMENT — *Davis v. Guam*, 932 F.3d 822 (9th Cir. 2019).

The application of constitutional law to the permanently inhabited unincorporated United States territories[1] carries tensions between measures meant to safeguard indigenous populations and constitutional rights for nonindigenous individuals.[2] These tensions are salient in Guam and the Commonwealth of the Northern Mariana Islands (CNMI).[3] The Ninth Circuit has at various times either defended or curtailed the legal protections that these territories' indigenous populations receive.[4] Recently, in *Davis v. Guam*,[5] the Ninth Circuit held that a Guam statute restricting the right to vote in a plebiscite to "Native Inhabitants of Guam" violated the Fifteenth Amendment by using ancestry as a proxy for race.[6] In its reasoning, the court claimed to leave unresolved whether, in nonvoting contexts, "Native Inhabitants of Guam" constitutes a political classification rather than a racial one.[7] Political status would not only insulate policies that preference Guam's indigenous population from the strict scrutiny "applied to race-based affirmative action laws,"[8] but could also grant Guam wider self-governance over its indigenous peoples by using ancestry-based classifications as policy tools.[9] However, the court's logic itself precludes that possibility by implying that political status is inappropriate in Guam's context.

After the Spanish-American War, Spain ceded Guam to the United States in the 1898 Treaty of Paris, which declared that the "civil rights and political status" of Guam's inhabitants "shall be determined by the

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[1] These territories are Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, and the U.S. Virgin Islands. *Developments in the Law — The U.S. Territories*, 130 HARV. L. REV. 1616, 1617 (2017). Case law on Hawaii is also relevant since it was a territory prior to its incorporation as a state in 1959, and Native Hawaiians have yet to exercise a "separate right to self-determination." *See* Jon M. Van Dyke et al., *Self-Determination for Nonself-governing Peoples and for Indigenous Peoples: The Cases of Guam and Hawai'i*, 18 U. HAW. L. REV. 623, 624–25 (1996).

[2] Rose Cuison Villazor, *Problematizing the Protection of Culture and the* Insular Cases, 131 HARV. L. REV. F. 127, 128 (2018).

[3] *Id.*

[4] *See id.* at 128 & n.11.

[5] 932 F.3d 822 (9th Cir. 2019).

[6] *Id.* at 825.

[7] *Id.* at 842 n.18.

[8] Addie C. Rolnick, *The Promise of* Mancari*: Indian Political Rights as Racial Remedy*, 86 N.Y.U. L. REV. 958, 963–64 (2011).

[9] *See id.* at 994 n.161 (noting that preferential policies for American Indians in the 1970s were part of an era that promoted "strengthening tribal autonomy and self-government").

Congress."[10] In the 1950 Organic Act of Guam,[11] Congress designated Guam as an unincorporated territory.[12] Since then, Guam's political status continues to be subject to federal oversight.[13] In 1997, the Guam legislature passed a plebiscite law that established a commission to conduct a "political status plebiscite" asking voters which "political status option[]" they preferred for fulfilling their "right to self-determination."[14]

Guam's indigenous population is commonly referred to as the Chamorro.[15] Participation in the plebiscite was limited to "Chamorro People," defined as "[a]ll inhabitants of Guam in 1898 and their descendants who have taken no affirmative steps to preserve or acquire foreign nationality."[16] In 2000, Guam amended the plebiscite law, replacing all references to "Chamorro" with "Native Inhabitants of Guam."[17] The law also stated that it intended to allow Guam's native inhabitants to exercise the right to self-determination and that it carried no race-based intent.[18] The law was amended again in 2010 to grant automatic registration for the plebiscite to "individuals who received or had been preapproved for a Chamorro Land Trust Commission (CLTC) property lease."[19] Such a lease was only available to "Native Chamorros."[20]

Arnold Davis, a "non-Chamorro resident of Guam," intended to register as a voter for the political status plebiscite.[21] He was denied from registering because he did not qualify as a "Native Inhabitant of Guam."[22] In 2011, he sued Guam, claiming that the 2000 plebiscite law's voting restriction violated the Fourteenth and Fifteenth Amendments, the Voting Rights Act of 1965, and the Organic Act of Guam.[23]

The district court granted Davis's motion for summary judgment on Fifteenth and Fourteenth Amendment grounds and permanently

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10 Treaty of Peace, Spain-U.S., art. IX, Dec. 10, 1898, 30 Stat. 1754.

11 Pub. L. No. 81-630, 64 Stat. 384 (1950) (codified as amended at 48 U.S.C. §§ 1421–28 (2012)).

12 *Davis*, 932 F.3d at 825.

13 *Id.*

14 *Id.* at 827 (citing Guam Pub. L. No. 23-147, § 10 (1997) (codified at 1 GUAM CODE ANN. § 2110 (2019)), *repealed in part by* Guam Pub. L. No. 25-106, § 11 (2000)).

15 *Id.* at 825.

16 *Id.* at 827 (alteration in original) (quoting Guam Pub. L. No. 23-147, § 2(b)).

17 *Id.* at 827–28. The definition of "Native Inhabitants of Guam" was "those persons who became U.S. Citizens by virtue of the authority and enactment of the 1950 Organic Act of Guam and descendants of those persons." *Id.* at 828 (quoting Guam Pub. L. No. 25-106, sec. 2, § 21001(e) (codified at 3 GUAM CODE ANN. § 21001(e)) (2019)).

18 *See id.* at 828. (quoting 3 GUAM CODE ANN. § 21000).

19 *Id.* (citing Guam Pub. L. No. 30-102, sec. 3, § 21002.1 (2010) (codified at 3 GUAM CODE ANN. § 21002.1)).

20 *Id.* (citing 21 GUAM CODE ANN. § 75107(a) (2019); *see also* 21 GUAM CODE ANN. § 75101(d) (defining "Native Chamorro" as "any person who became a U.S. citizen by virtue of the authority and enactment of the Organic Act of Guam or descendants of such person").

21 *Davis*, 932 F.3d at 828.

22 *Id.*

23 *Id.*

enjoined Guam from conducting a plebiscite that restricted participation to native inhabitants.[24] The district court held that the plebiscite qualified as an election subject to the Fifteenth Amendment because it would decide a public issue of interest to every Guam resident: Guam's future political relationship with the United States.[25] The district court also ruled that Guam's voting restriction used ancestry to create racial classifications because the law "excludes nearly all persons whose ancestors are not of a particular race."[26] With further evidence from the automatic registration of "Native Chamorros" with CLTC leases, the court found that the legislature sought to treat the Chamorros as "a distinct people."[27]

On appeal, the Ninth Circuit affirmed the district court's ruling solely on Fifteenth Amendment grounds.[28] Writing for a unanimous panel, Judge Berzon[29] agreed with the district court that the plebiscite addressed a public issue for Fifteenth Amendment purposes.[30] Judge Berzon held that courts are to "err on the side of inclusiveness" for the Fifteenth Amendment.[31] Because the plebiscite would guide Guam to take a course of action on its sovereignty, it was a "matter of 'governmental polic[y]'" and "public issue."[32]

Judge Berzon then found that the plebiscite law used ancestry as a proxy for race in violation of the Fifteenth Amendment.[33] In her analysis, she distinguished instances where ancestry classifications were unconstitutional proxies for race from instances where such classifications were valid.[34] For the former, she relied on *Rice v. Cayetano*.[35] In *Rice*, the Supreme Court ruled on the constitutionality of a Hawaii law that restricted eligibility to vote for trustees of the Office of Hawaiian Affairs to "Hawaiians," described as descendants of Hawaii's native inhabitants residing in the Hawaiian Islands in 1778 and thereafter.[36] The Court invalidated the law on Fifteenth Amendment grounds.[37] *Rice*'s analysis of the history of the definition of "Hawaiians" and the legislative history

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[24] *Id.* at 829 (citing Davis v. Guam, No. 11-00035, 2017 WL 930825, at *1 (D. Guam Mar. 8, 2017)).

[25] *Davis*, 2017 WL 930825, at *11–12 (citing Terry v. Adams, 345 U.S. 461, 468 (1953)).

[26] *Id.* at *6. The district court noted that since the definition for "Native Inhabitants of Guam" included only those persons who received U.S. citizenship through the 1950 Organic Act of Guam and their "descendants," blood relations to those persons were required for inclusion. *Id.* at *5–6.

[27] *Id.* at *8 (quoting Rice v. Cayetano, 528 U.S. 495, 515 (2000)).

[28] *Davis*, 932 F.3d at 824 n.1.

[29] Judge Berzon was joined by Judge Wardlaw and Judge Rawlinson.

[30] *See Davis*, 932 F.3d at 830.

[31] *Id.* ("The text of the Fifteenth Amendment states broadly that the right 'to vote' shall not be denied.").

[32] *Id.* at 831 (alteration in original) (quoting Terry v. Adams, 345 U.S. 461, 467 (1953)).

[33] *Id.* at 834.

[34] *Id.* at 834, 836–37.

[35] 528 U.S. 495 (2000).

[36] *See id.* at 509 (quoting HAW. REV. STAT. § 10-2 (1993)). The year 1778 marks when Captain James Cook first "made landfall in Hawaii." *Id.* at 500.

[37] *Id.* at 499.

of the voting law determined that the classification of "Native Hawaiians" incorporated a "racial definition . . . for a racial purpose."[38] Judge Berzon conducted the same analysis with respect to Guam, finding that "Native Inhabitants of Guam" was a proxy for "Chamorro," which the law sought to set aside as a distinct people in a racial classification.[39]

For constitutionally permissible ancestry classifications, Judge Berzon cited *Morton v. Mancari*.[40] There, the Supreme Court assessed whether a Bureau of Indian Affairs employment preference for "Indians" constituted racial discrimination.[41] The Court upheld the federal classification of "Indians" as "political rather than racial in nature" and exempted policies that preference members of tribes from racial discrimination claims.[42] The Court did so while relying on the "history and purposes of the preference and the unique legal relationship between the Federal Government and tribal Indians."[43] Judge Berzon then distinguished the Guamanian voting context from that in *Mancari*. She noted that the Supreme Court and the Ninth Circuit had previously declined to apply *Mancari* in the Fifteenth Amendment context to non-Indian indigenous groups in Hawaii and the CNMI, respectively.[44] However, following the narrow precedents from the Hawaii and CNMI voting cases, Judge Berzon wrote that the Ninth Circuit "reserve[d] judgment on whether the *Mancari* exception may apply to the 'Native Inhabitants of Guam' classification outside the Fifteenth Amendment context."[45]

In *Davis*, the court departed from its own precedent and the Supreme Court's jurisprudential approach by expansively reading the "special relationship" that animated the Court's ruling in *Mancari*. By leaving open the possibility that indigenous Guamanians could have a special relationship to the United States in nonvoting contexts,[46] the court appears to have allowed Guamanians the opportunity to design policies that serve their unique cultural rights and interests.[47] However, such a venture may prove troublesome for the court to provide given its lack

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[38] *See id.* at 514–15. Many scholars lament *Rice* for failing to acknowledge a special political status for Native Hawaiians. *See, e.g.*, Chris K. Iijima, *Race Over* Rice*: Binary Analytical Boxes and a Twenty-First Century Endorsement of Nineteenth Century Imperialism in* Rice v. Cayetano, 53 RUTGERS L. REV. 91, 97–98 (2000).

[39] *Davis*, 932 F.3d at 840.

[40] 417 U.S. 535 (1974); *Davis*, 932 F.3d at 837.

[41] *Mancari*, 417 U.S. at 547.

[42] *Id.* at 553 n.24; *see also id.* at 552 (validating legislation that establishes special treatment for "tribal Indians living on or near reservations").

[43] *Id.* at 550.

[44] *Davis*, 932 F.3d at 842 (first citing Rice v. Cayetano, 528 U.S. 495, 518–20 (2000); and then citing Davis v. Commonwealth Election Comm'n, 844 F.3d 1087, 1094 (9th Cir. 2016)).

[45] *Id.* at 842 n.18.

[46] *See id.* at 842 n.17.

[47] *See* Villazor, *supra* note 2, at 140–41.

of engagement with *Mancari*'s implicit "special relationship" doctrine in a non–American Indian context, the distinct character of federal Indian law vis-à-vis the U.S. territories, and Guam's own unique legal status. In sum, the Ninth Circuit's decision arguably left little doctrinal room for Guam's indigenous peoples within the *Mancari* framework.

The *Davis* court relied on *Mancari*'s conception of a "special relationship" between the U.S. government and American Indian tribes as the basis for a political classification.[48] Judge Berzon noted that despite *Mancari*'s being "premised on the recognized quasi-sovereign tribal status of Indians," Congress and the Supreme Court had never formally made tribal membership the basis of special treatment.[49] The court cited to previous assertions that U.S. colonial history, in which tribes were forcibly displaced from their lands, was the basis of special treatment under federal law.[50] By doing so, the *Davis* court rooted the *Mancari* political classification not merely in federal tribal recognition, but also in the "historical and legal context" of U.S. conquest that requires policies "explicitly designed to help only Indians."[51]

In doing so, *Davis* departed from the Ninth Circuit's previous understanding of *Mancari*. The court has repeatedly limited the application of *Mancari* only to American Indian tribes or, at least, to "quasi-sovereign group[s] distinct from the whole citizenry of [a] state."[52] Stepping *Mancari* in the special relationship doctrine makes the inclusion of the territories' indigenous populations more feasible.[53] Notably, a formulation of *Mancari* that requires federal tribal recognition would be unhelpful to Guam's self-determination ambitions because the indigenous populations of the territories, along with Native Hawaiians, cannot

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[48] *Mancari*, 417 U.S. at 552 (recounting U.S. subjugation of American Indians and the seizure of their lands, and finding that the United States assumed a protective role with "the authority to do all that was required to perform that obligation and to prepare the Indians to take their place as independent, qualified members of the modern body politic" (quoting Bd. of Cty. Comm'rs v. Seber, 318 U.S. 705, 715 (1943))).

[49] *See Davis*, 932 F.3d at 842 n.17 (quoting Doe v. Kamehameha Schs., 470 F.3d 827, 851 (9th Cir. 2006) (en banc) (Fletcher, J., concurring), which referenced federally recognized terms that "encompass Indians who are not members of federally recognized tribes").

[50] *See Kamehameha Schs.*, 470 F.3d at 851 (Fletcher, J., concurring) (first citing *Seber*, 318 U.S. at 715; and then citing United States v. Kagama, 118 U.S. 375, 384 (1886)).

[51] *Mancari*, 417 U.S. at 552–53. The Court found that invalidating these laws for racial discrimination would erase Title 25 of the U.S. Code and the "solemn commitment of the Government toward the Indians." *Id.* at 552.

[52] *See* Davis v. Commonwealth Election Comm'n, 844 F.3d 1087, 1094 (9th Cir. 2016). No example of a non-Indian, quasi-sovereign group is given, but the court notes that "people of Hawaiian and Native Hawaiian descent" are not such entities. *Id.* (citing Rice v. Cayetano, 528 U.S. 495, 518 (2000)); *see also* Kahawaiolaa v. Norton, 386 F.3d 1271, 1280 (9th Cir. 2004); Malabed v. N. Slope Borough, 335 F.3d 864, 868 n.5 (9th Cir. 2003).

[53] *See* Stuart Minor Benjamin, *Equal Protection and the Special Relationship: The Case of Native Hawaiians*, 106 YALE L.J. 537, 537–39 (1996).

legally seek federal tribal status.[54] Thus, *Davis*'s dictum appears to create a pathway for the territories' indigenous groups to attain *Mancari* political classifications if the case can be made that they, too, have a special relationship to the United States despite their lack of tribal status.

The *Davis* court's departure could prove to be determinative in a future nonvoting case. The District Court of Guam tried recasting *Mancari* in *United States v. Government of Guam*,[55] which partly assessed whether Guam's administration of the CLTC for Chamorros constituted racial discrimination in violation of the Fair Housing Act.[56] In its denial of the federal government's partial motion for judgment on the pleadings, the court held that the Fifteenth Amendment cases did not necessarily determine whether the term "native Chamorro" was a racial or political classification for broader preferential purposes.[57] The court noted that, even without federally recognized tribal status, it remains a question of fact whether *Mancari*'s "special relationship doctrine" could stand for granting a political classification to "native Chamorros" based on federal policy considerations.[58] Land-related preferential policies are particularly relevant because the Chamorro Land Trust Act,[59] which animates Guam's administration of the CLTC, is also intimately related to the history of U.S. seizure of land from native inhabitants.[60] The district court's framework for the *Mancari* question may therefore have considerable impact. If this case proceeds to the Ninth Circuit, it would force the court to directly confront the issue of whether Chamorros are entitled to political status outside of the voting context.

The *Davis* court's acknowledgement of the special relationship rationale for the political classification may not result in the desired outcomes for native inhabitants of Guam for three reasons. First, there are no criteria for what constitutes a special relationship between a group and the United States outside of the "guardian-ward" relationship from the American Indian context.[61] For nearly two decades, jurists have pointed to legislative history for the suggestion that Native Hawaiians

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[54] *See* Villazor, *supra* note 2, at 141 (noting federal restrictions that permit only indigenous groups in the forty-eight contiguous states and Alaska to seek federal recognition); *see also Kahawaiolaa*, 386 F.3d at 1283 (validating the exclusion of Native Hawaiians from federal tribal recognition).

[55] United States v. Gov't of Guam, No. 17-00113, 2018 WL 6729629 (D. Guam Dec. 21, 2018).

[56] 42 U.S.C. §§ 3601-3619 (2012); *id.* at *1.

[57] *See id.* at *14–16.

[58] The court denied the federal government's motion primarily because it had pleaded insufficient facts on the racial versus political classification question. *Id.* at *16–18.

[59] 21 GUAM CODE ANN. § 75107(a) (2017).

[60] U.S. seizure of land in Guam occurred during and after World War II, and native inhabitants received little to no compensation, even when the land was returned to Guam in 1952. *Id.* at *1. Years later, Guam passed the Chamorro Land Trust Act to distribute leases of land "mostly [to] Chamorro people." *Id.*

[61] Morton v. Mancari, 417 U.S. 535, 551 (1974).

have a special relationship with the United States.[62] However, this position has yet to find significant traction in the courts.[63] Moreover, this approach has largely attempted to cast Native Hawaiians as being "constitutionally analogous" to American Indian tribes based on history.[64] The *Rice* court declined to affirm this approach because it involved "some beginning premises not yet established in . . . case law."[65]

Second, the distinctiveness of Federal Indian Law also spurs the question of whether it is advisable to bring groups like the Chamorro fully under its purview.[66] Scholars on both Hawaii and the territories have problematized attempts to cast legal similarities to American Indian tribes as possibly being counterproductive to self-determination efforts.[67] Notably, the Chamorro self-determination movement has yet to be validated legally, even by the *Davis* court.[68] Based on the court's previous denial of Native Hawaiians' eligibility for federal tribal recognition, the Ninth Circuit may not be willing to act on matters that may incorporate non–American Indian groups into the tribal framework without a federal directive.[69]

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[62] *See, e.g.*, Rice v. Cayetano, 528 U.S. 495, 533 (2000) (Stevens, J., dissenting) (describing the "well-established federal trust relationship" with Native Hawaiians); *id.* at 548 (Ginsburg, J., dissenting) (noting that Congress has given Native Hawaiians special status across "numerous statutes"); *see also Gov't of Guam,* 2018 WL 6729629, at *16 ("Federal recognition may arise from treaty, statute, executive or administrative order, or from a course of dealing with the tribe as a political entity." (quoting Kahawaiolaa v. Norton, 386 F.3d 1271, 1273 (9th Cir. 2004))).

[63] *See Rice,* 528 U.S. at 518. A concurrence in *Doe v. Kamehameha Sch.*, 470 F.3d 827, 851 (9th Cir. 2006) (en banc), that proposed that a private high school's preference for students of Native Hawaiian ancestry could be upheld via *Mancari*, *id.* at 851 (Fletcher, J., concurring), sparked intracircuit conflict. Five judges joined the concurrence and seven judges joined a dissent, which denied that *Mancari* applies outside of the tribal context per *Rice*, *id.* at 880–84 (Bybee, J., dissenting).

[64] *See* Benjamin, *supra* note 53, at 581–82.

[65] *See Rice*, 528 U.S. at 518.

[66] For analysis of the unique character of constitutional law for American Indians, see generally Maggie Blackhawk, *Federal Indian Law as Paradigm Within Public Law*, 132 HARV. L. REV. 1787, 1789–1806 (2019).

[67] *See, e.g.*, Benjamin, *supra* note 53, at 586 (noting actions taken by the United States "pursuant to the special relationship that seriously harmed Indian tribes"); Rose C. Villazor, *Blood Quantum Land Laws and the Race Versus Political Identity Dilemma,* 96 CALIF. L. REV. 801, 815–17 (2008).

[68] *Davis*, 932 F.3d at 843 ("Our decision makes no judgment about whether Guam's targeted interest in the self-determination of its indigenous people is genuine or compelling."); *see also* Van Dyke et al., *supra* note 1, at 627 ("[T]he United States government . . . has suggested that the Chamorro-only self-determination movement is unconstitutional.").

[69] *See* Kahawaiolaa v. Norton, 386 F.3d 1271, 1283 (9th Cir. 2004). Admittedly, the Ninth Circuit extended *Mancari* to Native Alaskans before they were federally recognized. United States v. Gov't of Guam, No. 17-00113, 2018 WL 6729629, at *15 (D. Guam Dec. 21, 2018) (citing Alaska Chapter, Assoc. Gen. Contractors of Am., Inc. v. Pierce, 694 F.2d 1162 (9th Cir. 1982)). However, *Pierce*'s contrasts between Alaskan Natives and "other American Indians," and federal regulations defining "State" to include "Indian tribes, band[s], groups[,] and Nations, including Alaska Indians, Aleuts, and Eskimos," suggest that the government may have treated Alaskan Natives as American Indians. 694 F.2d at 1163 n.1, 1168 n.10 (quoting 42 U.S.C. § 1437a(7) (2012)). Thus, the *Pierce* court may have followed the executive branch. *Pierce* may also have limited application since Native Alaskans are now considered American Indian tribes. Villazor, *supra* note 65, at 805 n.19.

Lastly, Guam's political status further complicates the reconciliation of the special relationship rationale with Guam's indigenous population. Guam is an unincorporated territory and is thus not on the typical path to statehood.[70] Guam also does not have commonwealth status.[71] This prevents Guam from exercising self-government comparable to the CNMI.[72] It is also not guaranteed that Guam and the CNMI would be equated on *Mancari* questions in nonvoting contexts. For example, *Wabol v. Villacrusis*,[73] a Ninth Circuit case that upheld CNMI's restricting the right to own land or hold long-term leases to people of Northern Marianas descent, is noted for favoring a territory's indigenous population over the application of the equal protection doctrine.[74] However, even the logic in *Wabol* may not be applicable to Guam since the opinion's reasoning was so deeply rooted in the historical context of the covenant establishing CNMI as a Commonwealth.[75] Guam faces a more open question of whether the court could interpret the island's history as animating rights meriting protection.[76]

While the court has limited available pathways given its restrictive conception of *Mancari* in the past, there are still creative alternatives to the precedent. Many aspects of Guam's history and legal status suggest an incompatibility with the analytical frameworks used for American Indians, Native Hawaiians, and even Northern Mariana Islanders. Accordingly, despite the *Davis* court's optimistic view, it could elect to craft for Guam what the legal context calls for: a distinct framework for the island territory that is unshackled from those of other groups and that takes stock of its history,[77] the Treaty of Peace,[78] and perhaps the movements for self-determination and commonwealth status.[79]

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[70] *See* Jon M. Van Dyke, *The Evolving Legal Relationships Between the United States and Its Affiliated U.S.-Flag Islands*, 14 U. HAW. L. REV. 445, 449–50 (1992).

[71] *Id.* at 451. Guam is seeking commonwealth status. *Id.*; *see also id.* at 449 n.9 ("Alaska and Hawai'i were . . . formally incorporated into the United States before they became states.").

[72] *See id.*; *see also* Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, 48 U.S.C. § 1801 (2012).

[73] 958 F.2d 1450 (9th Cir. 1990).

[74] *See* Benjamin, *supra* note 53, at 589 n.209.

[75] *Wabol*, 958 F.2d at 1461 ("The legislative history of the Covenant and the Constitution indicate that the political union of the Commonwealth and the United States could not have been accomplished without the restrictions.").

[76] *But see* Villazor, *supra* note 2, at 149–50 (offering a defense of the CLTC that centers its goal of "protecting the property rights of the indigenous people of Guam").

[77] *See id.*

[78] *See* Nicole Manglona Torres, Comment, *Self-Determination Challenges to Voter Classifications in the Marianas After* Rice v. Cayetano*: A Call for a Congressional Declaration of Territorial Principles*, 14 ASIAN-PAC. L. & POL'Y J. 152, 197 (2012).

[79] *See* DICK THORNBURGH, PUERTO RICO'S FUTURE 21–23 (2007); Joe T. San Agustin, *The Quest for Commonwealth: "New Chapter in Guam's History," in* ISSUES IN GUAM'S POLITICAL DEVELOPMENT: THE CHAMORRO PERSPECTIVE 119–203 (1996); *see also* Villazor, *supra* note 2, at 148–49 (arguing that indigenous groups' push for cultural protections should fold into a larger demand for the right of self-determination).