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NOTE

RETURNING HAWAIIAN LAND TO HAWAIIAN HANDS

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NOTE

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Journey Alexia Hikialani Matos^{*}

Native Hawaiians, or “Kānaka Maoli,” have faced numerous obstacles in recent years to maintaining their cultural tradition of keeping a close physical and spiritual relationship with their ancestral land in Hawaii.¹ Before the arrival of missionaries, Hawaiians had for centuries practiced a polytheistic religion that had roots in the environment around them.² For all features of the islands—from the volcanos to the shape of the mountains to the flowers on the trees—there are creation stories that tie in gods and goddesses that live within the natural world.³ Many Hawaiians, even today, see their land as alive and see themselves as stewards charged with protecting that land to honor its spirit.⁴

The Kingdom of Hawaii was overthrown illegally with the assistance of the United States.⁵ Following an investigation ordered by President Grover

^{*} JD, May 2025, University of Pittsburgh School of Law. Thank you to my mother, grandmother, and aunty for sharing their stories in service of this Note. Thank you to my husband for his love and support of me. Thank you to the student and faculty editors of the *Pittsburgh Tax Review* for their comments and edits on this Note.

¹ Telephone Interview with Lo Kaimulua, Oahu Native and oceanfront property owner (Oct. 3, 2023) (on file with author).

² *Native Hawaiian Culture*, OFF. NAT’L MARINE SANCTUARIES, <https://hawaii.humpbackwhale.noaa.gov/heritage/native-culture.html#:~:text=Indigenous%20peoples%20have%20profound%20connections,their%20ancestral%20lands%20and%20seas> (last visited Mar. 10, 2025) (citing whales’ importance to Hawaiian culture).

³ *Pele*, NAT’L PARK SERV., <https://www.nps.gov/articles/pele.htm> (last visited Mar. 10, 2025).

⁴ Sylvia Hussey, *Stewardship Instead of Ownership*, KA WAI OLA (May 1, 2023), <https://kawaiola.news/oha/ceo/stewardship-instead-of-ownership/>.

⁵ H. EXEC. DOC. NO. 53-70, at 34–35 (1894).

Cleveland, the conclusion was that the United States had overstepped its authority in assisting in dispossessing the presiding monarch, Queen Lili‘oukalani, of power.⁶ Eventually, Hawaiians were issued a formal apology from the U.S. Congress in 1993, acknowledging the hundredth anniversary of the overthrow of the Kingdom of Hawaii.⁷ This apology recognized that prior to colonization, annexation, and statehood, Hawaii existed in a “[h]ighly organized, self-sufficient, subsistent social system based on communal land tenure with a sophisticated language, culture, and religion.”⁸

The apology goes on to acknowledge that the United States Minister assigned to sovereign Hawaii “conspired with a small group of non-Hawaiian residents of the Kingdom of Hawaii, including citizens of the United States, to overthrow the indigenous and lawful government of Hawaii.”⁹ The apology pledged to Hawaiians that the United States government was committed to acknowledging the ramifications of the overthrow of the Kingdom of Hawaii.¹⁰

The efforts of the United States government and the State of Hawaii have not redressed the ramifications of the Kingdom of Hawaii’s loss of sovereignty. Hawaiians are some of the poorest¹¹ people in Hawaii with many being forced to choose between moving away to less expensive areas of the country, crowding a home with multiple generations, or becoming homeless.¹² The Hawaiian Homelands program, a trust designed to restore land to Natives, is largely considered a failure because Hawaiians spend

⁶ *Id.* at 43.

⁷ Act of Nov. 23, 1993, Pub. L. No. 103-150, 107 Stat. 1510.

⁸ *Id.* at 1510 (emphasis added).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Hawai‘i: *ALICE Demographics 2022*, UNITED FOR ALICE (2022), <https://unitedforalice.org/demographics/hawaii>.

¹² Keli‘i Akina, *Priced Out of Paradise*, GRASSROOT INST. HAW. (Feb. 26, 2023), <https://www.grassrootinstitute.org/2023/02/priced-out-of-paradise/>.

decades waiting for land; the lucky few who receive land find themselves burdened with poor infrastructure.¹³

The State of Hawaii and the federal government owe it to Kānaka Maoli to do more. One way to redress the ongoing ramifications of Hawaiians' loss of sovereignty is to expand tax-relief programs like the 'Āina Kūpuna bill¹⁴ across the islands and to prioritize tax relief for Kānaka Maoli above tax-related and other assistance for non-Native residents and tourism-related property interests. Native Hawaiians are struggling to hold onto their own land, and the programs designed to aid them are too broad or defunct to provide any meaningful assistance.

This Note argues that Native Hawaiians are in need of narrow, substantive aid in order to own their land. Part I discusses the population of Hawaii and Hawaiians' present need for financial relief in holding onto their land. Part II discusses the tax relief programs intended for Natives and their many flaws. Part III discusses the future of Hawaiians struggle in their homeland and potential remedies.

I. HISTORY OF THE LAND AND THE STATE OF THINGS

When King David Kalākaua signed the Bayonet Constitution in 1887, he did so under the threat of violence by the "Hawaiian League."¹⁵ The League, also known as the Annexation Club, was comprised of White businessmen, missionaries, and others who shared the goal of overthrowing the King.¹⁶ The Constitution hamstrung the King's power, stripping him of authority and transferring power to non-Native politicians and businessmen.¹⁷ While this Constitution was signed under duress, it was never

¹³ Rob Perez, *These Native Hawaiians Waited Years for Homes on Their Ancestral Land. Then the Problems Began*, PROPUBLICA (Mar. 3, 2022, 5:00 AM), <https://www.propublica.org/article/these-native-hawaiians-waited-years-for-homes-on-their-ancestral-land-then-the-problems-began>.

¹⁴ Maui Cnty., Haw., Ordinance 5307 (Dec. 6, 2021).

¹⁵ *Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States (1898)*, NAT'L ARCHIVES (Sept. 30, 2024), <https://www.archives.gov/milestone-documents/joint-resolution-for-annexing-the-hawaiian-islands> [hereinafter *Joint Resolution for Annexation*].

¹⁶ *Id.*

¹⁷ *Id.*

formally ratified in the Hawaiian legislature.¹⁸ The Constitution consolidated power in the hands of American and European men by limiting the voting rights of Native Hawaiians and naturalized Asians in the islands.¹⁹ When Kalākaua died, his sister Lydia Lili‘uokalani became queen, and Native Hawaiians asked her for a new constitution.²⁰

At this stage, the Committee of Safety (a group of non-Natives with business interests in Hawaii’s sugar exports) planned a *coup d’état*.²¹ The Queen relinquished the throne following the pressure of plantation owners and the arrival of marines on the warship U.S.S. Boston, which made it clear that this coup was backed by the United States, as the Minister to Hawaii supported the overthrow.²² One of the key members of the coup, Sanford Dole, became president of the new Hawaiian Republic.²³ In 1900, President McKinley made Hawaii a territory, and Dole became the first governor.²⁴ In 1959, despite years of racism-tinged opposition, Hawaii became the fiftieth state of the United States.²⁵

Turning to the present, according to the United States Census, more Native Hawaiians now live outside of Hawaii than on the islands.²⁶ Native Hawaiians comprise 46.7% of the state population, which is down almost ten

¹⁸ Interview of F. Wundenberg, in FOREIGN RELATIONS OF THE UNITED STATES: AFFAIRS IN HAWAII app. II, at 1041 (1894), <https://history.state.gov/historicaldocuments/frus1894app2/d345>.

¹⁹ 1887: “Bayonet Constitution” Strips the Hawaiian Monarchy of Much of Its Power, NATIVE VOICES, <https://www.nlm.nih.gov/nativevoices/timeline/372.html> (last visited Mar. 10, 2025).

²⁰ Interview of F. Wundenberg, *supra* note 18.

²¹ *Joint Resolution for Annexation*, *supra* note 15.

²² *Id.*

²³ *Id.*

²⁴ Kelli Y. Nakamura, *Hawaii’s Long Road to Becoming America’s 50th State*, HISTORY (Apr. 17, 2024), <https://www.history.com/news/hawaii-50th-state-1959>.

²⁵ Barbara Spunt, *Simmering Disputes over Statehood Are About Politics and Race. They Always Have Been*, NPR (Aug. 21, 2020, 4:36 PM), <https://www.npr.org/2020/08/21/902334807/simmering-disputes-over-statehood-are-about-politics-and-race-they-always-have-b>.

²⁶ Ben Gutierrez, *Census Shows Majority of Native Hawaiians Now Live Outside of Hawaii*, HAW. NEWS NOW (Sept. 22, 2023, 4:58 PM), <https://www.hawaiinewsnow.com/2023/09/22/us-census-shows-majority-native-hawaiians-now-live-outside-hawaii/>.

percent from the 2010 census.²⁷ Many Native Hawaiians who choose to leave their native land feel pushed out by skyrocketing cost of living, property taxes, and competition for space with non-Natives.²⁸ Per the Cost of Housing Index 2024 (fourth quarter data), Urban Honolulu of Hawaii (the state capital), was the second most cost-burdened market, with 74% of the average families' income needed for a mortgage payment.²⁹ For a low-income family, 148% of their income would be needed for a mortgage payment.³⁰ The median home price was \$1,103,100.³¹

As for property tax rates, on paper, Hawaii has some of the lowest property tax rates in the country.³² Hawaii has four counties—Hawaii, Kauai, Maui, and Honolulu—and each county has a different property tax rate.³³ On the island of Oahu, in Honolulu County, the residential tax rate for owner-occupied homes is 3.50 per \$1,000 of property value. The average single-family home on Oahu during 2024 sold for roughly \$1 million dollars.³⁴ This means that, without potential tax breaks, the amount in property taxes would be \$3,500. So while Hawaii's property taxes may seem low, residents pay property taxes in amounts comparable to those of the District of Columbia

²⁷ *Id.*

²⁸ *Id.*

²⁹ NAHB/Wells Fargo Cost of Housing Index (CHI), NAT'L ASS'N HOME BUILDERS, <https://www.nahb.org/news-and-economics/housing-economics/indices/cost-of-housing-index> (last visited Mar. 10, 2025).

³⁰ *Id.*

³¹ *Id.*

³² Jonathan Helton, *Is Honolulu's Property Tax Really One of the Lowest in the U.S.?*, GRASSROOT INST. HAW. (June 15, 2023), <https://www.grassrootinstitute.org/2023/06/what-you-need-to-know-about-property-taxes-in-hawaii/>.

³³ HAW. DEPT. TAX'N, TAX FACTS 31-1, LICENSING AND TAX INFORMATION FOR NEW BUSINESSES (2023). Hawaii also has one quasi-county, Kalawao. *About State Government*, STATE OF HAWAII: DEP'T BUDGET & FIN., <https://budget.hawaii.gov/budget/state-of-hawaii-background-information/> (last visited Apr. 5, 2025).

³⁴ *Median Sales Price*, HONOLULU BD. REALTORS, <https://www.hicentral.com/> (last visited Mar. 10, 2025).

and states like California.³⁵ Considering the colonial history of Hawaii and the ramifications of the loss of sovereignty, it may be unreasonable to charge a property tax to Hawaiians who have achieved homeownership in their homeland, especially given that sixty-four percent of Native Hawaiians rent their homes (which is above the national average) and, of that sixty-four percent, fifty-one percent are “cost-burdened,” meaning they spend more than thirty percent of their income on housing.³⁶

For those Natives who stay, natural disasters coupled with financial insecurity create a perfect storm. The deadly wildfire in Lahaina, Maui, put Hawaii in the news cycle in the summer of 2023 as the state was rocked by a humanitarian disaster.³⁷ The emergency was compounded by multiple failures of the State of Hawaii to properly warn residents of the spreading fire and to efficiently organize aid after the fire.³⁸ Native Hawaiians took things into their own hands, orchestrating an impressive distribution of donated supplies by land, sea, and air.³⁹ In the aftermath of the fires, the IRS announced administrative tax relief to aid the victims of the wildfire.⁴⁰ The IRS announced an extension of the tax filing deadline for wildfire victims until February 2024 to file returns and make payments.⁴¹

Days after the fire, when the media began criticizing the Hawaiian government’s failure to warn Maui residents of the fires through the islands emergency siren system, Hawaii Governor Josh Green made a large

³⁵ Molly Grace & Aly J. Yale, *Property Taxes by State: Guide to Understanding Rates and Exemptions*, BUS. INSIDER (Nov. 26 2024, 3:32 PM), <https://www.businessinsider.com/personal-finance/mortgages/property-tax-by-state>.

³⁶ *Quality Housing*, OFF. HAWAIIAN AFF., <https://www.oha.org/economic-self-sufficiency/housing/> (last visited Mar. 10, 2025).

³⁷ Reis Thebault, *Native Hawaiians Organize Aid for Maui Fire Victims as Government Lags*, WASH. POST (Aug. 12, 2023, 8:18 PM), <https://www.washingtonpost.com/nation/2023/08/12/maui-fires-lahaina-native-hawaiians-disaster-relief-boats/>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *IRS Announces Expansive Tax Relief for Victims of Wildfires in Parts of Hawaii*, INTERNAL REV. SERV. (July 3, 2024), <https://www.irs.gov/newsroom/irs-announces-expansive-tax-relief-for-victims-of-wildfires-in-parts-of-hawaii>.

⁴¹ *Id.*

promise.⁴² He vowed to protect Native Hawaiians from predatory disaster capitalists who are vying to purchase land in Maui that had been destroyed.⁴³ Interestingly, not even a month later, Green made a statement that doing so would be “tricky” and possibly not “doable.”⁴⁴ Those statements were made in August 2023.⁴⁵ Then, in December, the housing crisis across Hawaii was highlighted when 6,000 disaster victims struggled to find long-term shelter and were forced to live in nearby hotels.⁴⁶ Hundreds of people protested on a popular tourist beach with signs saying, “short-term rentals gotta go!” and “we need housing now!”⁴⁷

The reality is that it has long been past time to address the housing crisis in Hawaii.⁴⁸ The islands simply do not have the resources to accommodate so many non-Native people flocking to its shores year after year.⁴⁹ The pressure that the dense population of people put on the islands’ resources is becoming apparent with each new disaster.⁵⁰ The fire in Lahaina is just one of the most recent examples.⁵¹ In the months before the wildfire, “over-

⁴² ASSOCIATED PRESS, *Hawaii Governor Vows to Block Land Grabs as Fire-Ravaged Maui Rebuilds*, NPR (Aug. 17, 2023, 5:13 AM), <https://www.npr.org/2023/08/17/1194351587/hawaii-governor-vows-to-block-land-grabs-as-fire-ravaged-maui-rebuilds>.

⁴³ *Id.* (quoting Gov. Green, “My intention from start to finish is to make sure that no one is victimized from a land grab.”).

⁴⁴ David R. Baker, *Hawaii Governor Says “Tricky” to Stop Outsiders Buying Land*, BLOOMBERG L. (Aug. 18, 2023, 8:19 AM), https://www.bloomberglaw.com/product/blaw/bloombergterminalnews/bloomberg-terminal-news/RZL3QLDWX2PS?criteria_id=94936321f2d2db477c6ccc797f13109.

⁴⁵ *Id.*

⁴⁶ *After Fires, Maui Struggles to Find Balance Between Encouraging Tourism and Compounding Trauma*, CBS NEWS (Dec. 29, 2023, 12:13 PM), <https://www.cbsnews.com/news/maui-hawaii-wildfire-trauma-tourism-lahaina/>.

⁴⁷ *Id.*

⁴⁸ Jessica Terrell, *Hawaii Has Been Facing a Housing Crisis for Generations*, CIV. BEAT (Sept. 17, 2023), <https://www.civilbeat.org/2023/09/hawaii-has-been-facing-a-housing-crisis-for-generations>.

⁴⁹ *Id.*

⁵⁰ *Fires and Other Disasters Are Increasing in Hawaii*, U.S. NEWS (Aug. 16, 2023, 3:07 PM), <https://www.usnews.com/news/us/articles/2023-08-16/trouble-in-paradise-ap-data-analysis-shows-fires-other-disasters-are-increasing-in-hawaii>.

⁵¹ *Id.*

tourism” caused the island to suffer from water shortages.⁵² While residents in Maui were asked to conserve their water, the hotels and resorts lining the beach remained “lush and green.”⁵³ Between tourism and the continual stream of new residents, natural disasters are the islands’ way of flashing a “check-engine light”—something needs to change, and fast, before the small number of Natives are completely wiped out, whether financially or worse.

To assess the environmental and tax provisions, it is necessary to take a closer look at Hawaii’s population. The 2020 United States Census showed that Hawaiians are now a minority in their own homeland.⁵⁴ According to the Census, Hawaii’s population is comprised primarily of 25% of residents who identify as “White alone” and another 21.5% of residents who are “White alone not Hispanic or Latino.”⁵⁵ The next largest demographic consists of those who identify as “Asian alone,” making up 37.3% of the population.⁵⁶ Native Hawaiians “alone” comprise only 10.3% of the population.⁵⁷ This is a problem because Natives are being pushed out of the islands, primarily because they cannot afford to rent or own a home.

II. THE HONOLULU TAX CODE IS TOO BROAD TO HELP NATIVES

In Honolulu County, there are several real property tax exemptions, such as taxpayer age exceptions and those for homeowners residing in their principal home.⁵⁸ For example, taxpayers in Hawaii who are sixty-five years or older may have \$160,000 of their home value exempted from taxation.⁵⁹ Some in the Hawaiian government and the Honolulu County have suggested

⁵² Christine Hitt, “Hurting for Water”: Hawaii Resorts Worsen Maui’s Water Shortage, SFGATE (July 25, 2023, 1:24 PM), <https://www.sfgate.com/hawaii/article/hawaii-resorts-worsen-maui-water-problems-18210790.php>.

⁵³ *Id.*

⁵⁴ *QuickFacts: Hawaii*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/HI/PST045222> (last visited Mar. 10, 2025).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See generally HONOLULU, HAW., REV. ORDINANCES ch. 8, art. 10 (2024).

⁵⁹ *Id.* § 8-10.3(d).

modifying tax exemptions for residents in order to alleviate the strain imposed by the skyrocketing cost of living.⁶⁰ Part of the problem is that the tax exemptions, and even the new modifications, are overly broad, and they statistically tend to aid mainly the non-Native demographics of the islands.

A. Bill 37

In July 2023, Honolulu County enacted two property tax reforms that took effect in 2024.⁶¹ The first, Bill 37, raised the threshold for the real property tax credit from \$60,000 to \$80,000 in annual income.⁶² Bill 37 made changes to section 8-13.2, which laid out the framework for real property tax credits on Oahu, in part according to titleholder income.⁶³ Under Bill 37, the County totals the \$80,000 based on the income of “titleholders of the property.”⁶⁴ The issue with this shift is that it indiscriminately widens the pool of people who are eligible for the tax exemption.⁶⁵ The median family income for residents who identify one of their ethnicities as Native Hawaiian is \$84,699—less than \$5,000 over the new threshold.⁶⁶ It takes many members of a Hawaiian family to combine enough income to live in Hawaii.⁶⁷ Native Hawaiians culturally live multiple generations to a home to offset small individual incomes, as a result of lower education.⁶⁸ Some Natives have argued that the modifications are a result of the islands’

⁶⁰ Bill 40 (2022): *Protect Homeowners by Increasing Property Tax Exemption*, GRASSROOT INST. OF HAW. (Apr. 3 2023), <https://www.grassrootinstitute.org/2023/04/bill-40-2022-protect-homeowners-by-increasing-property-tax-exemption/>.

⁶¹ Ian Bauer, *Honolulu City Council Oks Property Tax Relief Measures*, HONOLULU STAR-ADVERTISER (July 11, 2023), <https://www.staradvertiser.com/2023/07/11/hawaii-news/honolulu-city-council-oks-property-tax-relief-measures/>.

⁶² Honolulu, Haw., Ordinance 23-22 (July 19, 2023) (codified at HONOLULU, HAW., REV. ORDINANCES § 8-13.2).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Noelle Fujii-Oride, *Here’s Which Ethnic Groups Make the Most Money in Hawai’i*, HAW. BUS. MAG. (May 11, 2022), <https://www.hawaiibusiness.com/income-by-ethnic-group-hawaii-wealth-money/>.

⁶⁷ Telephone Interview with Katherine Kumukoa (Aug. 8, 2023) (on file with author).

⁶⁸ Telephone Interview with Jodi Kumukoa (Aug. 13, 2023) (on file with author).

wealthier residents complaining of the cost of living, when they chose to come to the islands amidst an ongoing land and resource crisis.⁶⁹

While many—tourists and non-Native residents alike—see Hawaii as a playground or a vacation-home destination, the reality is that the mass influx of non-Natives to the islands is crippling the state’s Native population.⁷⁰ Many of Hawaii’s natural wonders that are so sought after by tourists and residents are now overly crowded or have strict limits on how many people can visit because they have been overrun. The housing crisis in Hawaii is impossible to ignore, and non-Natives are beginning to realize it.

If you drive down Kamehameha highway in Waimanalo, you see two worlds. On the side of the street closest to the ocean, there are beautiful mansions owned by the rich and wealthy. Even former president Barack Obama recently bought land on Oahu to build a large compound, much to the dismay of locals. Across the street from these polished vacation homes are the homes of locals. Referred to as “god’s country,” Waimanalo is home to multigenerational landowners, whose families have resided on the same land for many years. Many of these houses are in desperate need of repair. Some are on the brink of collapse. But these families would rather live in these decrepit houses than sell the land and move to the mainland because *this* is their *home*. They want to teach their kids to swim in the same waters where they learned. It is their birthright. Yet, as the cost of living skyrockets, every year fewer and fewer Natives can afford to keep the lights on.⁷¹ According to the U.S. Department of Housing and Urban Development’s 2023 homeless assessment report, Hawaii had the highest percentage of people experiencing chronic homelessness.⁷² And despite only accounting for a low percentage of

⁶⁹ Okaykakaako, Comment to *Honolulu Property Owners Would Get Quick Relief with Tax Measures Passed by City Council*, CIV. BEAT (July 9, 2023, 2:39 PM), <https://www.civilbeat.org/2023/07/honolulu-property-owners-would-get-quick-relief-with-tax-measures-passed-by-city-council/>.

⁷⁰ This section is based on observations from interviews with Katherine Kumukoa and Jodi Kumukoa. See *supra* notes 67–68.

⁷¹ NAHB/Wells Fargo *Cost of Housing Index (CHI)*, *supra* note 29.

⁷² TANYA DE SOUSA ET AL., U.S. DEP’T HOUS. & URB. DEV., THE 2023 ANNUAL HOMELESSNESS ASSESSMENT REPORT (AHAR) TO CONGRESS 80 (2023), <https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf>.

the population, fifty-one percent of the homeless people on Oahu identify as Native Hawaiian or Pacific Islander.⁷³

Indiscriminately raising the income threshold likely will help the non-Native demographics on Oahu more than Natives. In a place where land and resources are severely limited and running out⁷⁴ this overall could exacerbate Native Hawaiian homelessness.⁷⁵

B. Bill 40

The other program, Bill 40, increased the portion of the assessed value of an owner's principal home that is exempt from property tax from \$100,000 to \$120,000 and, for low-income, elderly residents, from \$140,000 to \$160,000 for those between seventy-five and eighty years of age and up to as much as \$200,000 for those ninety years of age or older.⁷⁶ Even though the passage of these bills moved the needle a tick in the right direction, the changes could only save a homeowner up to \$700 a year.⁷⁷ Because of Oahu's dense population⁷⁸ and popularity as a permanent residence with non-Natives,⁷⁹ tax exemptions should aim to target Native Hawaiians more exclusively.

⁷³ Noah Jordan Magbual, *Paradise for Tourists, a Struggle for Natives: Native Hawaiian Homelessness in the Hawaiian Islands 1* (unpublished manuscript) (on file with the Stanford Medical Magazine).

⁷⁴ Jessica Terrell, *Hawaii Has Been Facing a Housing Crisis For Generations*, CIV. BEAT (Sept. 17, 2023), <https://www.civilbeat.org/2023/09/hawaii-has-been-facing-a-housing-crisis-for-generations/>.

⁷⁵ *Id.*

⁷⁶ Honolulu, Haw., Ordinance 23-23 (July 19, 2023) (codified at HONOLULU, HAW., REV. ORDINANCES § 8-10.3 (2024)).

⁷⁷ Ben Angarone, *Honolulu Property Owners Would Get Quick Relief with Tax Measures Passed by City Council*, CIV. BEAT (July 7, 2023), <https://www.civilbeat.org/2023/07/honolulu-property-owners-would-get-quick-relief-with-tax-measures-passed-by-city-council>.

⁷⁸ *How Has the Population Changed in Honolulu County?*, USA FACTS (July 2022), <https://usafacts.org/data/topics/people-society/population-and-demographics/our-changing-population/state/hawaii/county/honolulu-county/>.

⁷⁹ Kaile Hunt, *List: Who Keeps Moving to Hawaii?*, KHON2 (June 19, 2022), <https://www.khon2.com/local-news/list-who-keeps-moving-to-hawaii/>.

For Oahu residents, a hefty property tax exemption is extended to *all* homeowners sixty-five years or older.⁸⁰ Under that exemption, for those sixty-five and older (regardless of income), \$160,000 is deducted from the total property value assessed for property tax purposes, and homeowners are taxed on the remaining balance.⁸¹ Oahu is the most populated island in the chain.⁸² The median sale price of a home in Hawaii is currently \$742,600.⁸³

Interestingly, 12.2% of the White population in Hawaii is over sixty-five years of age, while only 8.3% in that age group are Native Hawaiian (alone or in combination with another racial group).⁸⁴ Further, Native Hawaiians have the shortest life expectancy out of most ethnic groups on Oahu. According to one study, Native Hawaiians have 62.2 healthy years of life, compared to 72.1 healthy years for Caucasians living in Hawaii.⁸⁵ As a result, there is a very small pool of Native Hawaiians who can take advantage of this tax exemption. The tax exemption is far likelier to benefit non-Natives who come to Hawaii to retire than the few Natives who manage, against all odds, to afford a home and hold onto it in their old age.

C. Community Member Comments on the Proposed Tax Exemptions

The following are comments from Hawaii residents concerning the proposition of Bill 40⁸⁶:

Comment 1:

A small consolation to skyrocketing assessments, which is the root cause of this issue, but better than nothing. The city needs to reassess their systems in an ever changing environment of monster homes, TOD zones and loosening building

⁸⁰ *Help and Resources*, CITY & CNTY. HONOLULU, <https://realproperty.honolulu.gov/help-resources/faq/> (last visited Mar. 10, 2025).

⁸¹ HONOLULU, HAW., REV. ORDINANCES § 8-10.3(d).

⁸² *Eight Major Islands*, HAW. VISITORS & CONVENTION BUREAU, <https://www.hvcb.org/school-report/eight-major-islands/> (last visited Mar. 10, 2025).

⁸³ *Hawaii Housing Market*, REDFIN, <https://www.redfin.com/state/Hawaii/housing-market> (last visited Mar. 10, 2025).

⁸⁴ DEP'T BUS., ECON. DEV. & TOURISM, DEMOGRAPHIC, SOCIAL, ECONOMIC, AND HOUSING CHARACTERISTICS FOR SELECTED RACE GROUPS IN HAWAII 3 (2018).

⁸⁵ *Study: Native Hawaiians Have Fewer Healthy Years than Others*, ASSOCIATED PRESS (Nov. 11, 2019, 9:33 AM), <https://apnews.com/general-news-ab42360a5b9248a18c95f17aac872311>.

⁸⁶ Angarone, *supra* note 77.

restrictions. But the bottom line is actually on the other side of city government, spending to the tune of \$3.2B in the coming year.

Does anyone feel we get \$3.2B in city services, not even counting rail? The constant complaint about roads and parks being unmaintained, run down facilities, buildings and exorbitant visions for more new projects while older structures crumble with deferred maintenance are real. It makes you wonder where the money goes, when the city can't even keep the weeds down on the medians of those pot holed streets.

Comment 2:

Something deeply wrong when the very wealthy owners of very valuable property can cry to local government about how—through zero effort on their part—their very valuable property's value ballooned even more over the past few years, and get rewarded with tax breaks, in a place where taxes are already at a rock bottom low.

While the average Hawai'i resident drifts ever farther from the dream of ever owning property themselves.

D. The Case for Expanding the 'Āina Kūpuna Bill to Oahu

At the end of 2021, Maui County Mayor Michael Victorino signed the 'Āina Kūpuna Bill into law.⁸⁷ The goal of the bill was to alleviate the growing tax burden that Native Hawaiian landowners have been facing in recent years.⁸⁸ The climbing property values in Hawaii have resulted in a proportional increase in property taxes, which are difficult for Native Hawaiians to afford.⁸⁹ The bill permits Native Hawaiian families to commit to not selling their property for ten years in exchange for paying the legal minimum property tax rate of \$350 dollars annually during that ten-year period.⁹⁰ To qualify, property owners must have been lineal descendants of

⁸⁷ Ku'uwehi Hiraishi, *Longtime Maui Families Invited to Apply for the 'Āina Kūpuna Property Tax Relief Program*, HAW. PUB. RADIO (Dec. 20, 2021, 3:28 PM), <https://www.hawaiipublicradio.org/local-news/2021-12-30/'aina-kupuna-tax-relief-program-on-maui-housing>.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

the original property owners and the property must have been held in the family for at least three generations.⁹¹

Native property owners on Oahu feel that they need parallel relief from property taxes, including oceanfront property owner Lo Kaimulua, who feels the strain even more so as she and her husband have retired and become Kūpuna, the elder generation of Hawaiians.⁹² She said that paying the property taxes on Oahu has been an increasingly uphill battle.⁹³ She mentioned that the couple puts their property tax on a credit card because it is the only way that they can manage the expense.⁹⁴ Kaimulua mentioned that the only reason that she and her husband have been able to own a home is because their parents gave them the one that they own today.⁹⁵ She says that they rented all their lives until property was passed to them.⁹⁶

Katherine, a generational owner of property on Oahu, mentioned that property taxes skyrocket every year and that she is concerned for the future.⁹⁷ She and her husband are also Kūpuna, and two of their children and their two grandchildren live with them as a result of the high cost of living.⁹⁸ When she learned of the tax exemption on Oahu, Katherine said that she wished Oahu residents could share in that relief.⁹⁹

According to one calculation, for a hypothetical fifty-year-old homeowner, the new tax exemption would only save them \$700 a year.¹⁰⁰ Given the fact that Hawaiians have an education rate ten percent lower than

⁹¹ *Id.*

⁹² Interview with Lo Kaimulua, *supra* note 1.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Interview with Katherine Kumukoa, *supra* note 67.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Angarone, *supra* note 77.

the average U.S. population (twenty-five years and older)¹⁰¹ and Oahu's high rate of homelessness,¹⁰² it is unlikely that that \$700 a year would go very far—or that many Hawaiians can even afford a home in order to qualify for the tax exemption.

While many Hawaiians are homeless and many Hawaiian schools are underfunded and in heavy need of repair, the Hawaiian government still actively funds a “rail system,” which has an operational budget of \$85 million dollars a year.¹⁰³ The islands also bring in many millions of dollars in tourism each year.¹⁰⁴ Locals are left wondering why they must pay such high property taxes, for living on their own land, when Hawaii has plenty of money that could be used to heavily subsidize housing for Natives.

E. Hawaiian Homes Commission Act

The Hawaiian Homes Commission Act¹⁰⁵ was intended to improve the lives of Native Hawaiians by allowing them to reclaim their own land, but only if they qualify to do so.¹⁰⁶ In order to receive property, Hawaiians must have fifty percent Native Hawaiian blood and be willing to wait decades in line.¹⁰⁷ Many Native Hawaiians perceive the fifty percent Hawaiian blood-

¹⁰¹ AM. COUNCIL ON EDUC., RACE AND ETHNICITY IN HIGHER EDUCATION SPOTLIGHT: NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER STUDENTS 2, https://www.equityinhighered.org/wp-content/uploads/2020/05/rehe-spotlight-nhpi-students_final.pdf (last visited Apr. 5, 2025).

¹⁰² Annalisa Burgos, *Federal Report: Hawaii Has Nation's Highest Rates of Chronic Homelessness, Youth Without Shelter*, HAW. NEWS NOW (Dec. 16, 2023, 10:38 AM), <https://www.hawaiinewsnow.com/2023/12/16/fed-report-shows-hawaii-has-highest-rates-chronic-homelessness-youth-without-shelter/>.

¹⁰³ Bryce Moore, *Hawaii Rail Could Cost Taxpayers \$54 Per Passenger*, KHON2 (July 13, 2023, 6:30 PM), <https://www.khon2.com/skyline/hawaii-rail-could-cost-taxpayers-54-per-passenger/>.

¹⁰⁴ Shannon Wianeki, *Rebooting Hawai'i's Visitor Industry*, UNIV. HAW. SEA GRANT, <https://seagrant.soest.hawaii.edu/rebooting-hawaiis-visitor-industry> (last visited Mar. 10, 2025).

¹⁰⁵ See generally Hawaiian Homes Commission Act of 1920, Pub. L. No. 67-34, 42 Stat. 108 (1921).

¹⁰⁶ U.S. DEP'T INTERIOR, REFERENCE GUIDE TO THE HAWAIIAN HOMES COMMISSION ACT, 1920 AS AMENDED, at 1 (2018), https://www.doi.gov/sites/doi.gov/files/uploads/doi_hhca_reference_guide_september_2018_revision.pdf.

¹⁰⁷ Telephone Interview with Lo Kaimulua, *supra* note 1.

quantum to receive land as unrealistic,¹⁰⁸ given the extent to which the Native Hawaiians are now multiracial.¹⁰⁹ Some argue that the blood quantum requirement is a way of narrowing the pool of Natives who may get a scrap of land, because the Hawaiian government makes objectively more money selling land to the wealthy and to the military. In fact, the United States military occupies roughly twenty percent of the total land area of the Hawaiian islands.¹¹⁰ The U.S. military also has a history of negatively impacting the islands, such as the jet-fuel leak water crisis in 2021.¹¹¹

The Hawaiian Homelands Act website contains endless pages of names on the waitlists. On just the Oahu waitlist, there are 170 pages of names written in size eleven font. The list is organized in the order of longest waiting time, and the next person in line has been waiting since September 15, 1979.¹¹²

F. Tribal Sovereignty and Tax Immunity

In the United States, federally recognized Indigenous tribes have land held in trust in response to the fallout from the General Allotment Act.¹¹³ The federal government established the trust process in an effort to help tribes regain lost lands and promote tribal self-determination.¹¹⁴ Most tribal lands today are trust lands, which are under the control of tribal governments.¹¹⁵

¹⁰⁸ *Id.*

¹⁰⁹ Seiji Yamashita et al., *Trouble in Paradise: Native Hawaiians Being Forced Out of Expensive Island Life*, ABC NEWS (June 8, 2023, 2:42 PM), <https://abcnews.go.com/US/trouble-paradise-native-hawaiians-forced-expensive-island-life/story?id=99896657>.

¹¹⁰ *Military Occupied Areas in Hawai'i*, NOHO HEWA, <https://nohohewa.com/occupied-areas/> (last visited Mar. 10, 2025).

¹¹¹ Li Cohen, *3 Active-Duty Service Members File Claims Against Federal Government over Jet Fuel Leak: "Poisoned by the Navy in Their Own Homes,"* CBS NEWS (Mar. 29, 2023 2:19 PM), <https://www.cbsnews.com/news/active-duty-service-members-legal-claims-federal-government-2021-red-hill-jet-fuel-leak-poisoned-by-the-navy/>.

¹¹² APPLICANT WAITING LIST, DEP'T HAWAIIAN HOME LANDS 1 (2022), <https://dhhl.hawaii.gov/wp-content/uploads/2023/07/DHHL-Oahu-Waitlist-FINAL-12-31-22.pdf>

¹¹³ *Benefits of Trust Land Acquisition (Fee to Trust)*, U.S. DEP'T INTERIOR: INDIAN AFFS., <https://www.bia.gov/service/trust-land-acquisition/benefits-trust-land-acquisition>.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

There are currently over fifty-six million acres of land held in trust by the federal government for this purpose.¹¹⁶ In the United States, for federally recognized indigenous tribes (not currently including indigenous Hawaiians), land held in trusts on “behalf” of these groups are exempt from state property taxes.¹¹⁷ These protected tribal lands are protected at the federal level against taxation, sale, and mismanagement by states.¹¹⁸ Federal tribes also have sovereign nation status, which gives them a degree of autonomy.

Native Hawaiian land is held in a trust—Hawaiian Homeland Lands—but that trust belongs to the state of Hawaii, which has repeatedly and egregiously mismanaged the lands.¹¹⁹ The Hawaiian Homelands program also imposes a blood quantum of fifty percent Native Hawaiian blood, whereas many federally recognized Indian tribes are permitted to decide what blood quantum means among themselves, with some tribes doing away with it completely.¹²⁰ Scholars argue that similar principles should apply to Native Hawaiians, given their unique historical status and the illegal overthrow of the Hawaiian Kingdom. Once land is put into the trust for federally recognized nations, it remains there permanently unless Congress removes it. The amount of land set aside for these tribes dwarfs the 200,000 acres set aside for Native Hawaiians.

This is why some argue that Native Hawaiians should be federally recognized as a “tribal nation” to increase their protections or that the land in Hawaiian Home Lands should be placed into a federal trust.¹²¹ It is important to note that life for indigenous groups on the lands from the Tribal Trust Land

¹¹⁶ *Id.*

¹¹⁷ *FAQs for Indian Tribal Governments Regarding Miscellaneous Issues*, INTERNAL REV. SERV. (Aug. 19, 2024), <https://www.irs.gov/government-entities/indian-tribal-governments/faqs-for-indian-tribal-governments-regarding-miscellaneous-issues>.

¹¹⁸ *Benefits of Trust Land Acquisition*, *supra* note 113.

¹¹⁹ *Kalima v. State of Hawai‘i: What You Need to Know About the Lawsuit*, KA WAI OLA (Nov. 1, 2022), <https://kawaiola.news/ea/kalima-v-state-of-hawai%CA%BBi-what-you-need-to-know-about-the-lawsuit/>.

¹²⁰ *Blood Quantum and Sovereignty: A Guide*, NATIVE GOVERNANCE CTR., <https://nativegov.org/resources/blood-quantum-and-sovereignty-a-guide/> (last visited Mar. 10, 2025).

¹²¹ Keli‘i Akina, *Federal Recognition of Hawaiian Sovereignty: One People, Many Views*, KA WAI OLA (Feb. 1, 2023), <https://kawaiola.news/oha/trustees/federal-recognition-of-hawaiian-sovereignty-one-people-many-views/>.

Program is not idyllic.¹²² Native Americans lost their way of life by being confined to reservations, and nowadays many suffer from poor health and poor infrastructure in their communities.¹²³ There was a bill, the Native Hawaiian Government Reorganization Act, which would have recognized the “right of Native Hawaiian people” to reorganize themselves under a constitution of their own creation.¹²⁴ This bill would have allowed Native Hawaiians to create their own government, and permitted that entity to be an Indian tribe eligible for the benefits the federal government affords to other federally recognized tribes.¹²⁵

An issue that dooms potential solutions like these is how to classify Native Hawaiians in a way that reduces alienation only to the extent necessary to protect Native rights. Blood quantum, which is currently used by the state to determine land trust eligibility, is referred to by some Natives as a mere construct of colonialism that does not reflect Hawaiians’ perception of their identity.¹²⁶

III. WHAT LIES AHEAD AND WHAT CAN BE DONE

Currently, Hawaii has no restrictions against non-Natives buying land. Interestingly, there are several states and countries where there are restrictions. In New Zealand, foreigners face a more difficult pathway to buying a house or land.¹²⁷ To do so requires declaring an intention to be a permanent resident and obtaining government permission.¹²⁸

While it would be ideal to declare that non-Natives should not be permitted to buy land or homes in Hawaii, this would likely create many

¹²² *Tribal and Native American Issues*, U.S. GOV’T ACCOUNTABILITY OFF., <https://www.gao.gov/tribal-and-native-american-issues> (last visited Mar. 10, 2025).

¹²³ *Id.*

¹²⁴ Native Hawaiian Reorganization Act, S. 675, 112th Cong. (2011–2012).

¹²⁵ *Id.*

¹²⁶ Megan Ulu-Lani Boyanton, *The Blood Quantum Controversy Through Hapa Hawai’i Eyes* (Mar. 1, 2023), <https://kawaiola.news/ea/the-blood-quantum-controversy-through-hapa-hawaii-eyes/>.

¹²⁷ *Buying Residential Property to Live*, in TOITU TE WHENUA, <https://www.linz.govt.nz/guidance/overseas-investment/buying-residential-property-live> (last visited Mar. 10, 2025).

¹²⁸ *Id.*

issues. Many Hawaiians do not believe in a blood quantum. As such, demonstrating that one has enough “Hawaiian-blood” to be Hawaiian could be difficult. Non-Natives who wish to reside in Hawaii could also try to claim that they face discrimination under such a law.¹²⁹

A possible solution would be to require applicants for tax exemptions and those who wish to purchase land to demonstrate a deep cultural tie to the land. An example would be if all generations of a family have lived in Hawaii, and there is a Hawaiian family name that ties back generations as well. This would narrow exemptions to Hawaiians and stem the mass emigration to the mainland.

Another potential solution would be to implement a wealth tax similar to the one recently proposed in Vermont.¹³⁰ The Vermont legislation would separately tax the state’s wealthiest residents.¹³¹ In Hawaii, the profits from such a tax could work to discourage mainlanders from purchasing property and fund affordable-housing initiatives for locals.

The logistics of trying to narrow the tax code and the ability to buy property in Hawaii are complex and deeply divisive. Even so, the people of Hawaii are struggling to survive the physical and financial legacy of colonialism. They should not be fighting to afford a home on their own land. The State of Hawaii must do better to prioritize its Natives, because there are simply not enough resources to support the volume of people who wish to make Hawaii their home. Native Hawaiians are struggling to own homes in their homeland, and that is unacceptable.

¹²⁹ See generally *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023).

¹³⁰ David W. Chen, *Vermont Becomes Latest State to Propose Wealth Taxes*, N.Y. TIMES (Jan. 23, 2024), <https://www.nytimes.com/2024/01/23/us/wealth-tax-vermont-legislature.html?smid=nytcore-ios-share>.

¹³¹ *Id.*