

The Virgin Islands Consortium

U.S. Virgin Islands and Guam Residents Challenge Discriminatory Overseas Voting Laws in Ninth Circuit Court

Federal / **Published On September 24, 2023 06:49 AM /**

Staff Consortium **September 24, 2023**



Residents of the U.S. Virgin Islands, Guam, and other territories are escalating their fight against federal and state overseas voting laws that they believe discriminate against them. The recent development in the *Borja v. Nago* case filed before the U.S. Court of Appeals for the Ninth Circuit aims to challenge these laws.

This week, the plaintiffs urged the court to counter the U.S. Justice Department's stance that voting is not a "fundamental right" for residents of U.S. territories. The Justice Department's viewpoint is that these residents could vote for the president by absentee

ballot in their previous state of residence if they resided in any foreign nation or the Northern Mariana Islands. However, this right is denied if they reside in places like Guam or the U.S. Virgin Islands.

Furthermore, the Justice Department believes that, even if these laws are deemed unconstitutional, the federal government is immune from lawsuits. They argue that states like Hawaii could remedy any harm stemming from federal discrimination. The department also suggests that the right approach to fixing this discrimination might be to revoke overseas voting rights in the Northern Mariana Islands rather than ensuring equal rights to all.

Neil Weare, co-director of Right to Democracy, expressed disappointment in the Justice Department's stance. "This is just another example of how the federal government continues to diminish democracy, self-determination, and political power in U.S. territories," he said. He emphasized that the right to vote is essential irrespective of one's place of residence.

Parker Rider-Longmaid, representing the Borja plaintiffs, criticized the Justice Department's defense of the federal law, stating that it is the federal government's responsibility to address the discrimination caused by the law.

Last year, a challenge to these laws was rejected by a Hawaii district court. As per existing regulations, residents of states like Hawaii who move to a foreign nation or the Northern Mariana Islands retain the right to vote for the president via absentee ballot. But this privilege is not extended to those relocating to Guam, the U.S. Virgin Islands, or other territories.

The case is now awaiting oral argument before the Ninth Circuit, which is anticipated to occur early next year.

In connection with this legal battle, Right to Democracy has initiated a Territories Art Competition for youth aged 12-17. They are encouraged to convey their understanding of democracy through visual arts, words, or music. Prizes will be awarded to winners from each territory. The submission deadline is set for October 10, 2023.

Neil Weare hopes that the youth in each territory will use this platform to express their views on democracy, even as the Justice Department continues to oppose such a right in U.S. territories.