

The Virgin Islands Consortium

Case To Determine Whether Citizens From U.S. Territories Can Vote For President Receives Boost From Seven Amicus Briefs

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ST. CROIX -- On Wednesday, an impressive and diverse array of academics, current and former territorial officials, and civil rights groups represented by top national law firms filed a total of seven “friend of the court” briefs asking the Supreme Court to grant review of a D.C. Circuit decision denying recognition of birthright citizenship in U.S. territories based on the controversial Insular Cases, a series of early 1900s decisions the Ninth Circuit recently explained have “been the subject of extensive judicial, academic, and popular criticism.”

The briefs were filed in support of a petition for certiorari submitted last month by prominent Supreme Court attorney Theodore B. Olson on behalf of a group of passport-holding Americans denied recognition as U.S. citizens because they were born in American Samoa. *Tuaua v. United States* makes the case that Congress cannot legislate an exception to the Citizenship Clause of the Fourteenth Amendment to withhold citizenship from persons born in U.S. territories.

“This surge of interest and support demonstrates why after more than a century of waiting it is time for the Supreme Court to finally answer whether citizenship for people born in America’s overseas territories is a right guaranteed by the Constitution or a mere privilege to be extended or retracted by Congress based on the political winds,” said Mr. Olson, a Partner at Gibson, Dunn & Crutcher LLP and former U.S. Solicitor General who has argued more than 60 cases before the Supreme Court. “The Supreme Court now has an opportunity to correct an historic injustice.”

“I think the Supreme Court will take note that prominent liberal and conservative law professors are actually in agreement that the Citizenship Clause applies in U.S. territories and that it is time to turn the page on the controversial Insular Cases doctrine of ‘separate and unequal’,” said Neil Weare, who argued the case before the D.C. Circuit, and is President and Founder of We the People Project, a non-profit organization that advocates for equal rights and representation for the over 4 million Americans living in U.S. territories. “We are hopeful the diverse array of individuals and organizations supporting the case will encourage the Supreme Court to grant review.”

Brief of Current and Former Territorial Officials, represented by Bancroft PLLC:

Leading public officials from U.S. territories, both current and former, argue that the Supreme Court should take this opportunity to clarify the constitutional rights of the more than 4 million Americans living in U.S. territories. Amici include current elected officials Congresswoman Stacey Plaskett (U.S. Virgin Islands) and Congresswoman Madeleine Bordallo (Guam). Former elected officials include former Governors Pedro Rosselló (Puerto Rico), Felix Camacho (Guam), Carl Gutierrez (Guam), Joseph Ada (Guam), Charles Turnbull (Virgin Islands), John de Jongh, Jr. (Virgin Islands), and former Congresswoman Donna Christensen (Virgin Islands). Former federal officials include Assistant Secretary of Interior Tony Babauta who hails from Guam and oversaw the Office of Insular Affairs from 2009-2012.

Brief of Citizenship Scholars, represented by King & Spaulding LLP:

A distinguished array of academics with a wide array of ideological perspectives argue that both the approach and conclusion of the D.C. Circuit cannot be squared with the common law principle of jus soli adopted by the Fourteenth Amendment that the Supreme Court has long looked to as the touchstone for interpreting the Citizenship Clause. Amici include Professors Sam Erman (USC), Nathan Perl-Rosenthal (USC), Holly Brewer (University of Maryland), Linda Bosniak (Rutgers), Kristin Collins (Boston University), Rose Cuison-Villazor (UC Davis), Stella Elias (University of Iowa), Linda Kerber (University of Iowa), Torri Hester (St. Louis University), Mary Mitchell (University of Pennsylvania), Michael Ramsey (University of San Diego), and Rogers Smith (University of Pennsylvania), Katherine R. Unterman (Yale), and Charles Venator-Santiago (University of Connecticut).

Brief of Scholars of Constitutional Law and Legal History, represented by Wilmer, Cutler, Pickering, Hale and Dorr LLP:

Leading scholars on the Insular Cases from a diverse array of ideological perspectives argue that the D.C. Circuit's broad application of the Insular Cases "incorporation" doctrine goes far beyond what the Insular Cases actually held, and that given the controversial racial assumptions that underly the Insular Cases, they should be narrowly held to their facts rather than applied to new factual and legal questions. Amici include Professors Christina Duffy Ponsa (Columbia), Gary Lawson (Boston University), Sanford Levinson (University of Texas), and Andrew Kent (Fordham).

Brief of Civil Rights Organizations, represented by Jenner & Block LLP:

Prominent national civil rights groups argue that it is time for the Insular Cases, like Plessy Ferguson, to be removed from the Supreme Court's jurisprudence. Amici include the League of United Latin American Citizens (LULAC), Asian Americans Advancing Justice | AAJC, and the National Asian Pacific American Bar Association (NAPABA).

Brief of Retired Judges, represented by Boies, Schiller & Flexner LLP:

Retired Judges from U.S. territories argue that the judge-made rules in the Insular Cases are unworkable and grounded in long-rejected beliefs of racial inferiority. Amici include retired Chief Judge Hector Laffitte (federal district court for Puerto Rico), Judge Thomas Moore (federal district for U.S. Virgin Islands), retired Chief Justice of the Guam Supreme Court B.J. Cruz, and retired Chief Justice of the Guam Supreme Court Peter Siguenza, Jr.

"The Insular Cases should have been removed from American law long ago – the Supreme Court has an opportunity to bring its jurisprudence back in line with America's core constitutional values," said retired Judge Thomas Moore (federal district for U.S. Virgin Islands).

Brief of Scholars of International Law, represented by Simpson, Thacher & Bartlett LLP:

Distinguished Professors of International Law argue that the D.C. Circuit's opinion draws the wrong lessons from foreign and international law, emphasizing that the United States' denial of citizenship in American Samoa creates stark tensions with America's international legal obligations. Amici include Professors Peter Spiro (Temple), Kal Raustiala (UCLA), and Ediberto Roman (Florida International University).

Puerto Rican Bar Association of New York, represented by Mayer Brown LLP:

The Puerto Rico Bar Association of New York argues that the Insular Cases are products of their time that the Supreme Court should take this opportunity to overturn them. The deadline for the United States and Intervenor to file is April 1, 2016.

A decision by the Supreme Court on whether it will take up the case is expected by the end of the term, which ends in June.