

The Virgin Islands Consortium

Territorial Voting Rights Lawsuit Faces Setback As Election Nears

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Judge dismisses challenge to discriminatory federal law, leaves open state law challenge; constitutional amendment proposed

Six U.S. citizens living in Puerto Rico, Guam, and the U.S. Virgin Islands saw their hopes of being able to vote for President in November take a step backward as a federal court [ruled on Tuesday](#) that Congress can deny the right to vote for state residents who move to certain U.S. territories while protecting it for those who move to other territories or a foreign country.

Still pending are plaintiffs' claims that a similar Illinois law also violates equal protection. Lead plaintiff Luis Segovia, a U.S. citizen who lives in Guam, served an 18-month tour in Iraq with the U.S. Army followed by a 10-month tour in Afghanistan as part of the Guam National Guard, yet as things stand he won't be able to vote for President in November. Three other plaintiffs are also veterans – two from Puerto Rico and another from Guam. Also joining the lawsuit is the Iraq Afghanistan and Persian Gulf Veterans of the Pacific, based in Guam, and the League of Women Voters of the Virgin Islands. The case is part of a broader effort to secure voting rights in U.S. territories and the District of Columbia through a new constitutional amendment.

Under the federal Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") and Illinois' Military and Overseas Voter Empowerment ("MOVE") law, a former resident of Illinois who is now a resident of the Northern Mariana Islands, American Samoa, or a foreign country can continue voting for President and voting representation in Congress in Illinois by absentee ballot. But plaintiffs – each a former resident of Illinois – have lost full enjoyment of their right to vote by virtue of living in Puerto Rico, Guam, or the U.S. Virgin Islands.

"It defies the Constitution's promise of equality that Luis Segovia – who has served deployments in both Iraq and Afghanistan – cannot vote for President because he lives in Guam, but could if he lived 135 miles away in the Northern Mariana Island. The right to vote as a U.S. citizen should not depend on where you happen to live," said Neil Weare, co-counsel for plaintiffs and President and Founder of We the People Project, which advocates for equal rights and representation for the nearly 5 million Americans living in U.S. territories and the District of Columbia.

"We are hopeful that the court will still allow Luis and the other plaintiffs to vote for President in November based on the still pending state law challenges," said Attorney Geoffrey Wyatt, who also represents plaintiffs along with Attorneys Luis Marin Rivera (Puerto Rico), Semaj Johnson (Virgin Islands), and Leevin Camacho (Guam).

Before reaching its decision, the court acknowledged ([on pages 20-21](#)) statements by Senator Elizabeth Warren at a Senate Hearing where she called the denial of voting rights to Americans in the territories "absurd" and noted how the "second class citizen" status has "real implications" in these Americans' lives. As evidence of this impact, the court cited a [PBS documentary](#) highlighting the struggles of veterans in Guam that "asks if they have been forsaken by the country they swore to defend." HBO comedian John Oliver's [powerful segment](#) on the denial of voting rights in U.S. territories was also cited by the court as an example of the "popular criticism" these issues have received.

Nonetheless, the court rejected plaintiffs' claims that strict scrutiny should apply, relying on the controversial Insular Cases to rule that laws affecting voting rights in U.S. territories are subject only to rational basis review. The court went on to conclude there is a rational basis for allowing former state residents to continue voting for President in the Northern Mariana Islands but not other territories, since UOCAVA was enacted several months before the NMI became a part of the United States in 1986. How this continues to justify such a distinction today, nearly 30 years later, is unclear.

Plaintiffs are considering whether to appeal the court's decision to the Seventh Circuit. Case materials are available [here](#).

Advocating for a New Voting Rights Amendment

The lawsuit is part of a broader effort to build on the Twenty-Third Amendment and guarantee representation and the right to vote for President to all Americans, whether they live in a State, territory, or the District of Columbia.

Neil Weare, President of We the People Project, explained the outlines of such an amendment and the surprising political prospects it may have in a [Huffington Post piece](#) when Segovia was initially filed. The Stetson Law Review will be publishing an article by Mr. Weare explaining the details of the amendment in an upcoming [Symposium](#) issue. Draft language of the amendment is available [here](#).

"The right to vote for federal officials who make the laws we must all follow is as American as apple pie. It's time the Constitution is amended so that America's democratic principles fully apply to all Americans, including the nearly 5 million who live in the Territories and the District of Columbia," said Mr. Weare.