

# The Virgin Islands Consortium

## It May Take A Constitutional Amendment Before USVI Residents Can Vote For President, Justice Sotomayor Says

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ST. CROIX -- U.S. Supreme Court Associate Justice Sonya Sotomayor, above, who was invited to the territory by the District Court of the Virgin Islands and is hosting events on St. Thomas and St. Croix dubbed, "An Evening with the Honorable Sonya Sotomayor", spoke to a packed room at the Juan F. Luis Hospital Cardiac Center on Wednesday night, mostly speaking about her journey to the Supreme Court of the United States after being nominated by President Barack Obama.

The justice did not answer political questions, as District Court Judge Curtis Gomez warned from the onset of the event that Justice Sotomayor would not speak on any matters ongoing or matters that may come before the court. But she did respond to a question relative to the inability of residents of the U.S. Virgin Islands to vote for president of the United States.

Justice Sotomayor explained that when the founding fathers of the U.S. created the Constitution, the document only allowed for states to participate in the electoral process. The U.S. territories are not states, and therefore it would take a constitutional amendment to change the current process, she said.

The issue has been a vexing one for citizens of U.S. territories, and the quest for what many call full citizenship has seen victories as well as setbacks.

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 last November take a step backward following a [federal court ruling in August](#) that said Congress could 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. Almost [two years earlier](#), a brief filed by the Obama administration argued that being a citizen of the United States of America is not a fundamental right of people born in the U.S. Virgin Islands. The filing was in response to a lawsuit about the citizenship rights for unincorporated territories that is now pending before the courts.

The federal government's response to the lawsuit contended that the law makes plain that outlying U.S. possessions gives people born to non-U.S. citizens parents the classification of nationals, but not citizens, and that changing the status is the U.S. Congress's job and not that the federal government, U.S. Attorney Ronald Machen said.

"The responsibility of Congress to govern this nation's territories has long been recognized and respected by the Courts," Mr. Machen said in the brief.

"In fact, the Third Circuit held in *Ballentine v. United States*, 486 F.3d 806, 813-14 [3rd Circuit 2007], that Congress was within its authority to determine that the U.S. Virgin Islands was unincorporated and therefore a person born there was not automatically a citizen who could vote in U.S. presidential elections," he added.

The effort to gain full rights for citizens of U.S. territories has been spearheaded by Neil Weare, who is president of We the People Project, an organization that works to achieve equal rights for residents of U.S. territories.

Luis Segovia, a lead plaintiff in the latest case, is a member of the Guam Army National Guard, serving two deployments to Afghanistan. He also was deployed to provide security during the 2005 Iraqi Elections. "Veterans and Soldiers from Guam and other U.S. Territories have pledged allegiance to the flag and fought to protect and defend our country only to be denied the right to vote," Mr. Segovia said. Also serving as plaintiffs in Guam are Anthony Buntin, also a Veteran, and the Iraq, Afghanistan and Persian Gulf Veterans of the Pacific. Guam attorney Leevin Camacho, who is co-counsel in the case, added, "Residents of Guam have been denied the right to vote and the right to meaningful representation in the federal government for more than 115 years."

Pamela Colon, a criminal defense lawyer in St. Croix who is a plaintiff in the case, explained “Virgin Islanders are required to follow federal laws, shouldn’t we have a say in making those laws? Voting rights would mean having a say in who our President is, who our federal judges are, and what laws we are required to follow.” Also serving as plaintiffs in the U.S. Virgin Islands are Lavonne Wise and the League of Women Voters for the Virgin Islands. St. Croix attorney Semaj Johnson, who is co-counsel in the case, added, “As the Virgin Islands commemorates 100 years as part of the United States, it’s about time we have the same voting rights as other Americans.”

Jose Antonio Torres, a disabled Vietnam-era Veteran living in Puerto Rico who also served for 22 years in the U.S. postal service, explained “Puerto Rican service members are equal on the battlefield, it’s time we are treated as equal at the ballot box. It’s shameful that I am treated as a second-class citizen even after spending a career in public service.” Tomas Ares, another Vietnam-era Veteran living in Puerto Rico, is also a plaintiff.

The Segovia plaintiffs are appealing a district court decision that relied on the controversial Insular Cases to hold for the first time that the right to vote is not a “fundamental right” in U.S. territories. In doing so, it upheld federal and state laws that allow former state residents to continue voting for President by absentee ballot if they live in the Northern Mariana Islands, American Samoa, or a foreign country, but not Guam, the U.S. Virgin Islands, or Puerto Rico.

“The message we have for the rest of the country is that where you live should not impact your right to vote for President or have voting representation in Congress,” Mr. Weare said.