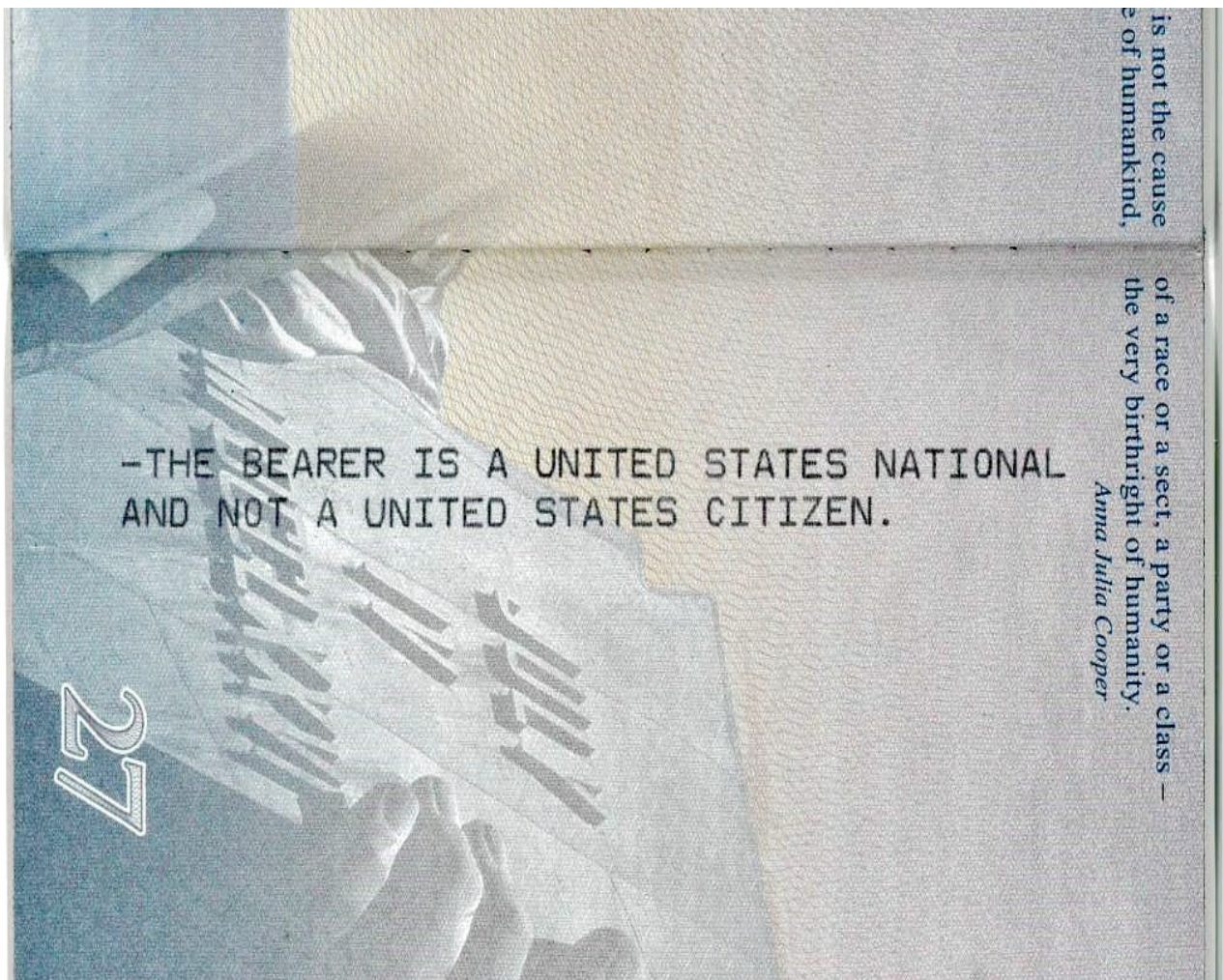


The Virgin Islands Consortium

Lawsuit Challenges Whether Congress Can Deny Citizenship In U.S. Territories

VIC News / **Published On March 28, 2018 03:22 PM /**

Staff **March 28, 2018**



Does Congress have the power to defy the Fourteenth Amendment's guarantee that all persons born on U.S. soil and subject to U.S. jurisdiction are citizens of the United States by birth? This is the question raised by a federal lawsuit filed in the U.S. District Court for the District of Utah yesterday on behalf of a group of passport-holding, tax-paying Americans denied recognition as U.S. citizens and the right to vote simply because they were born in American Samoa, a U.S. territory since 1900. *Fitisemanu v. United States* makes the case that Congress cannot redefine the Citizenship Clause of the Fourteenth Amendment to deny citizenship to persons born on U.S. soil, whether born in a state, a territory, or the District of Columbia.

“I was born on U.S. soil, have a U.S. passport, work hard, and pay my taxes. But based on a discriminatory federal law I’m denied citizenship and the right to vote. I cannot understand how I can be a passport-holding American, but not be recognized as a U.S. citizen.” said John Fitisemanu, lead plaintiff in *Fitisemanu v. United States*, who lives in Woods Cross, Utah. “This isn’t just unfair, it’s unconstitutional.”

Mr. Fitisemanu’s U.S. passport includes a disclaimer stating in capital letters that “THE BEARER IS A UNITED STATES NATIONAL AND NOT A UNITED STATES CITIZEN.” Other individual plaintiffs include Pale and Rosavita Tuli, who reside in Kearns, Utah and have faced barriers to employment opportunities and other challenges because they are not recognized as U.S. citizens.

“Thousands of American Samoans living in Utah and other states are denied voting rights and job opportunities because they are labeled with the second-class status of ‘non-citizen U.S. national.’ It’s 2018 – we should no longer have two separate classes of Americans,” said Susi Lafaele, co-founder of the Southern Utah Pacific Islander Coalition (SUPIC), a non-profit that advocates for greater empowerment of the Pacific Islander community in Southern Utah and is a plaintiff in the case.

Plaintiffs are represented by Equally American, a non-profit that advocates for equality and civil rights in U.S. territories, attorneys at Gibson, Dunn, & Crutcher LLP, and Charles V. Ala’ilima, a prominent American Samoan attorney.

“Since 2016 we have heard from more than five hundred American Samoans living throughout the United States who want to be recognized as U.S. citizens without having to go through the costly and burdensome naturalization process,” said Neil Weare, President and Founder of Equally American. “If someone has a birth certificate showing they were born on U.S. soil, they shouldn’t have to jump through any more hoops to be recognized as a U.S. citizen.”

“The text and history of the Citizenship Clause demonstrate beyond doubt that the Constitution’s guarantee of birthright citizenship applies in States and Territories alike,” said Matthew McGill, a partner at Gibson, Dunn, & Crutcher LLP, who is joined by Gibson Dunn associates Jacob T. Spencer and Jeremy M. Christiansen. “It is important that federal courts make clear that Congress has no power to redefine the Constitution’s guarantee of birthright citizenship or to create two classes of Americans.”

“American Samoa’s leaders believed in 1900 when the American flag was raised over their islands that with U.S. sovereignty came a right to U.S. citizenship,” said attorney Charles V. Ala’ilima. “We plan to show they were right, and in so doing ensure that American Samoans living in Utah and other states are able to enjoy the same rights as other Americans.”

In 2016, Equally American (then “We the People Project”) and former Solicitor General Theodore B. Olson sought Supreme Court review of a ruling by the D.C. Circuit in [Tuaua v. United States](#) holding that Congress may deny citizenship to persons born in U.S. territories. The D.C. Circuit’s [opinion](#), authored by Judge Janice Rogers Brown and joined by Senior Judges Laurence H. Silberman and David B. Sentelle, broadly expanded the reach of the *Insular Cases*, a series of controversial decisions that have been [criticized](#) by First Circuit Judge Juan Torruella and [others](#) as creating a doctrine of

“separate and unequal” status for residents of U.S. territories. An 8-Justice Supreme Court declined to review [the much-criticized decision](#), despite [seven amicus briefs](#) filed by a diverse array of academics, former judges, current and former officials from U.S. territories, and civil rights groups. As a result, the question of whether citizenship is a constitutional right or congressional privilege for the nearly 4 million Americans living in U.S. territories remains unresolved outside the D.C. Circuit.

“In the absence of recognition as U.S. citizens, people born in American Samoa are citizens of nowhere. Our people deserve better,” **said Loa Pele Faletogo, President of the Samoan Federation of America, an LA-based community organization that was one of the plaintiffs in *Tuaua*.**

The impact of the denial of citizenship on the American Samoan community living in the states has been featured in a [documentary short film](#) and [HBO's Last Week Tonight with John Oliver](#).