

The Virgin Islands Consortium

AG Walker Files Brief In Support Of Voting Rights For Virgin Islands Residents

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ST.THOMAS -- Attorney General Claude Walker on Thursday filed an amicus brief with the United States Supreme Court seeking voting rights for Virgin Islands residents, the V.I. Department of Justice (D.O.J.) has announced.

The amicus curiae was submitted in support of eight former Illinois residents currently living in the Virgin Islands who took their case to the Seventh Circuit Court of Appeals, challenging federal and states statutes that do not allow them to obtain absentee ballots for federal elections in Illinois, while other former Illinois residents who move to some territories can still vote in federal elections in that state, according to D.O.J. They argued that this result was a violation of their equal protection rights and their rights to travel

protected by the Due Process Clause. The appeals court, in its Jan. 18 decision, rejected the plaintiffs' claims and held that there was a rational basis for the inclusion of some territories but not others in the definition of the United States.

Mr. Walker is now seeking redress from the Supreme Court and has filed a writ of certiorari, petitioning the justices to hear the case. AG Walker contends that for decades, American citizens living in the Virgin Islands have not been allowed to exercise their full voting rights as their counterparts on the mainland, although the Immigration and Nationality Act of 1952 established that all persons born in the U.S. Virgin Islands on or after Feb. 25, 1927, are U.S. citizens at birth.

"How is it that we, as Virgin Islands residents, have the right to vote for the President when we live in Atlanta or Orlando, but as soon as we hit Cyril E. King Airport, that right is stripped from us? That is certainly not fair and we should not stay on the sidelines and allow this to continue," the attorney general said. "As we celebrate the Fourth of July, I am appealing to the Supreme Court to grant Virgin Islands residents our full voting rights; we are not asking for anything special, we are only seeking what other US citizens have."

The brief, prepared by Solicitor General Pamela Tepper and Assistant Attorney General Su-Layne Walker, stresses the need for equal protection rights, as guaranteed by the U.S. Constitution, to be exercised locally. It also highlights the disparities in voting and the lack of parity between U.S. citizens in 50 states versus citizens of the territory, D.O.J. said.

"In general, a person born in the United States Virgin Islands can relocate to the contiguous United States, become a resident of that state and then register to vote. On the other hand, a person born in one of the 50 states can work in the United States Virgin Islands, live on a neighboring island, such as Tortola, British Virgin Islands, and still maintain his or her right to vote. Seemingly absurd, but that minor geographical anomaly permits that U.S. citizen the full voting rights and representation in a U.S. election," the brief states.

The brief further argues that equal protection rights should not be diminished by residency in the Virgin Islands, Puerto Rico or Guam.

"This case also is of importance to the United States Virgin Islands because it provides the Court with the opportunity to clearly find that U.S. citizens in the territories have the same right to equal protection under the laws as U.S. citizens living in the 50 states... Section 3 of the Revised Organic Act explicitly extends the Equal Protection Clause to residents of the Virgin Islands. Moreover, this Court has consistently stated that the right to vote is a fundamental right under the Constitution. Thus, the extension of fundamental voting rights to former U.S. citizens residing in some U.S. territories but not others plainly raises the most serious equal protection concerns," the brief states.

The case is scheduled to come up for hearing before the Supreme Court later this year and the court is expected to make its decision in September. If the Supreme Court were to find in favor of the petitioners, it would be one step closer to rectifying the disenfranchisement of Virgin Islands residents as part of the federal electorate.