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New Federal Lawsuit Seeks to Expand Voting Rights in Virgin Islands, other Territories

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Laura Castillo Nagi and Ravi Nagi

Ahead of one of the most important elections in recent history, six U.S. citizens living in the U.S. Virgin Islands and Guam have filed a federal lawsuit challenging federal and state laws that deny them the right to vote for President and voting representation in Congress, while protecting full enjoyment of the right to vote for citizens living in other U.S. territories and in foreign countries, announced Equally American on Monday, a nonprofit that advocates for equality and voting rights for the nearly 4 million Americans living in U.S. territories. Equally American has joined the plaintiffs in the lawsuit.

“As a civilian contractor living in Germany at the end of the Cold War, I was able to vote for President by absentee ballot. But when the Federal Aviation Administration assigned me to Guam, I was no longer able to vote for President, even as colleagues who were assigned to the Northern Mariana Islands continue to be afforded the right to vote for President by absentee ballot,” said Randy Reeves, the lead plaintiff in *Reeves v. United States*. “Picking and choosing which citizens can vote for President based solely on where they happen to live is not just wrong, I believe it is unconstitutional.”

“In 2008, I met Barack Obama and supported his campaign to win the primary in the U.S. Virgin Islands, but I couldn’t vote for him in the general election. Yet if I instead lived in Tortola in the British Virgin Islands or even in the U.S. territory of the Northern Mariana Islands, I actually would be able to vote for President by absentee ballot in my former state of Hawaii,” said Ravi Nagi, one of the plaintiffs in the case. “That’s not just absurd, but I believe it is unconstitutional.”

Absentee ballots have become one of the hot-button issues of the 2020 election. However, citizens who move to certain U.S. territories are treated unequally when it comes to being able to vote for President by absentee ballot. Under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and state overseas voting laws, former state residents who are now residents of the Northern Mariana Islands or a foreign country are able to continue voting for President and voting representation in Congress by absentee ballot in their former state of residence. But plaintiffs – each former residents of Hawaii – have lost full enjoyment of their right to vote by virtue of living in Guam or the U.S. Virgin Islands.

“In a roller coaster year where the President and Congress are making life-and-death decisions related to COVID-19 and other critical issues, it is unjust and absurd that U.S. citizens in the Territories have no voice in these fundamental issues simply because of where they live,” said Neil Weare, president and founder of Equally American. “Where you live shouldn’t cost you the right to vote.”

Plaintiffs in the U.S. Virgin Islands include Ravi Nagi and Laura Castillo Nagi, two attorneys who have raised their children in St. Thomas after moving there from Hawaii 15 years ago. Ravi Nagi is the co-founder of BoltNagi PC, one of the biggest law firms in the Virgin Islands. Laura Castillo Nagi’s practice focuses on family law, and she is also a Wellness Consultant and Coach.

“My older son will soon turn 18, at which point he will have to register for selective service, making him eligible to be drafted to serve in the U.S. Armed Forces. But unlike everywhere else in the United States, this right of passage will not come with him being able to vote for his Commander-in-Chief,” said Laura Castillo Nagi, another plaintiff. “If people in the Virgin Islands have the responsibilities that come with U.S. citizenship, we should also have the rights, especially the right to vote.”

The four plaintiffs who are residents of Guam include Randy Reeves, Ben Borja, Dr. Fred Schroeder, and Patti Arroyo, according to Equally American. Mr. Reeves is an Air Force veteran, who lost his right to vote for President after the Federal Aviation Administration assigned him to Guam, where he has now lived for more than 20 years. Mr. Borja served for 28 years in the U.S. Navy, volunteering to serve in 1969 after it was clear he would be drafted. Dr. Schroeder has practiced family medicine on Guam for decades, seeing first-hand how a lack of voting rights has contributed to disparities in federal healthcare programs that have denied island residents of much-needed care. Patti Arroyo is a popular talk show host whose program regularly discusses federal policy issues impacted by the denial of voting rights.

Plaintiffs in the case are represented by attorneys Pamela Colon, an attorney in the U.S. Virgin Islands who was a plaintiff in a similar lawsuit, *Segovia v. United States*; TJ Quan, who grew up on Guam and now practices law in Hawaii; Vanessa Williams, an attorney on Guam; and a team of pro bono attorneys based in Washington, D.C., several of whom were involved in the previous *Segovia* litigation.

“I am honored to represent the plaintiffs in this important case after having served as a plaintiff myself in *Segovia v. United States*,” said Pam Colon. “So long as we are required to follow federal law, we should have a say in what that federal law is. No one should be denied the right to vote for President or voting representation in Congress because of their Zip Code.”

The lawsuit is part of Equally American’s broader advocacy to fight for full voting rights for every U.S. citizen, whether one lives in a state or territory. In July, Equally American’s President Neil Weare testified before an historic congressional hearing on territorial voting rights that was held by the House Administration Committee’s Subcommittee on Elections, according to the release.

“The next Congress may have an historic opportunity to finally address the denial of voting rights to the nearly 4 million U.S. citizens who live in territories,” Weare said. “Whether it takes statehood or a constitutional amendment, Congress and the President must act to end over 120 years of disenfranchisement.”

This new voting rights lawsuit comes after a string of major court victories in favor of current and former residents of U.S. territories who have been discriminated against because of where they live or where they were born. Last December, a federal district court in Utah ruled in *Fitisemanu v. United States* that – contrary to the position of the federal government – people born in U.S. territories have a constitutional right to U.S. citizenship. Decisions in two cases out of Puerto Rico and one case out of Guam have ruled in landmark decisions that the denial of federal healthcare benefits, including Supplemental Security Income (SSI), violates the Constitution’s guarantee of equal protection. Ultimately, all of these issues may need to be resolved by the U.S. Supreme Court.

The population of the five U.S. territories is nearly 4 million, which is greater than nearly half the states, and larger than the five smallest states combined. Yet these U.S. citizens are denied any voting representation in Congress. And while they can vote for President in the Primary Election and enjoy full participation at the Republican and Democratic National Conventions, they will not be allowed to vote for President in November 2020.

With more than 98% of the residents of U.S. territories racial or ethnic minorities, the continued disenfranchisement of these Americans presents an important civil rights and racial justice issue, Equally American said. The territories also have a history of service and sacrifice to the United States, with more than 100,000 veterans currently living in U.S. territories. Residents of the territories pay more than \$3.5 billion a year in federal taxes, but have no say in how those tax dollars are spent.

Politically, each of the territories has a history for voting across party lines. While the current Governor of Guam is a Democrat, its immediate past two Governors were Republican. The current Governor of the Virgin Islands is a Democrat while its last Governor was a former Republican who ran as an Independent. In Congress, Puerto Rico and American Samoa are represented by Republicans, while Guam, the Virgin Islands, and the NMI are represented by Democrats.

While residents of U.S. territories can't vote, those who move to a state can. There is now a territorial diaspora of more than 5 million Americans living in the states who have ties to the territories, whether through family or having actually lived in a territory. This territorial diaspora may prove key in determining who wins the 2020 presidential election, with the territorial diaspora in key states like Florida and Pennsylvania greatly exceeding the margin of victory from 2016. More than 750,000 U.S. citizens of voting age with ties to the Territories live in Florida, 340,000 in Pennsylvania, 75,000 in North Carolina, 70,000 in Georgia, 40,000 in Wisconsin, and 30,000 in Arizona and Michigan.

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