

No. 17-1463

In The
Supreme Court of the United States

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LUIS SEGOVIA, et al.,

Petitioners,

v.

UNITED STATES OF AMERICA, et al.,

Respondents.

—◆—
**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit**

—◆—
**BRIEF OF *AMICUS CURIAE*
UNITED STATES VIRGIN ISLANDS
IN SUPPORT OF PETITIONERS**

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INTEREST OF THE *AMICUS CURIAE*¹

The Territory of the United States Virgin Islands respectfully submits this brief as *amicus curiae* in support of Petitioners. United States citizens who choose to reside in the United States Virgin Islands enjoy significantly fewer rights than those who reside in the 50 states, foreign countries, or even other U.S. territories. This petition is in the interest of the Government of the United States Virgin Islands as we seek to expand voting rights and democratic accountability in all U.S. territories.

As discussed in detail by Petitioners, the provisions of the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. §§ 20301 *et seq.* (“UOCAVA”), and certain provisions of the Illinois Military and Overseas Voters Empowerment Act, 10 Ill. Comp. Stat. 5/20-1 *et seq.* (“MOVE”), unconstitutionally deprive U.S. citizens in this Territory, Puerto Rico and Guam of absentee voting rights that are provided to other U.S. citizens living outside the 50 states. There is no justification for this disparate and antiquated treatment.



¹ Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part, and no such counsel or party or any other person other than *amicus curiae*, its members, or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2(a), counsel of record for all parties have received notice of the Territory of the United States Virgin Islands’ intention to file this brief at least 10 days prior to its due date.

SUMMARY OF THE ARGUMENT

While the United States Virgin Islands fully supports the petition for certiorari, this brief focuses on the impact to Virgin Islands residents and the diminution of Equal Protection rights of particular U.S. citizens based on their choice of home. That choice deprives U.S. citizens of the right to vote based entirely on the choice of making the United States Virgin Islands their home, rather than living in the Northern Mariana Islands, American Samoa, or a foreign country.

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ARGUMENT

I. This case presents issues of fundamental importance to the United States Virgin Islands

The United States Virgin Islands has been a territory of the United States since 1916 when the islands were purchased from Denmark for \$25 million in gold of which formal possession occurred in 1917. 48 U.S.C. § 1541. In 1952, the Immigration and Nationality Act established that “all persons born in [the United States Virgin Islands] on or after February 25, 1927, and subject to the jurisdiction of the United States, are declared to be citizens of the United States at birth.” See Pub. L. No. 414 § 306(b), 66 Stat. 163, 237 (June 27, 1952), codified at 8 U.S.C. § 1406(b). The islands were administered by the U.S. Navy until 1931 and then transferred to the Department of the Interior. The islands gained slightly more autonomy under civilian

governors who were appointed by the President of the United States. With the revision of the Organic Act of the Virgin Islands, the first popularly elected governor took office in 1970. To date, the United States Virgin Islands has a non-voting member of Congress and no right to vote in the presidential election. Residents of the United States Virgin Islands lack the kind of democratic accountability other Americans enjoy, even as the federal government has greater say in decisions that affect their daily lives.

This lack of representation and inclusion affects citizens daily. For example, United States Virgin Islands residents pay the same Social Security and Medicare taxes as any other U.S. resident but may not participate in the Supplemental Security Income program. 42 U.S.C. § 1382c. The United States Virgin Islands also is denied the same type of participation in the Affordable Care Act. 42 U.S.C. § 18001 *et seq.* (2010); *see also* Josh Blackman, “Government by Blog Post,” 11 FIU L. REV. 389, 414-15 (Spring 2016) (explaining how the United States Virgin Islands is not subject to the individual mandate or the guaranteed-issue and community-rating provisions of the ACA).

UOCAVA and MOVE further limit the voting rights of those who have chosen the Virgin Islands as their home. UOCAVA was designed to preserve the rights of eligible American voters as they travel and work overseas, but while it protects the absentee voting rights of Americans who move to the Northern Mariana Islands or a foreign country, it does not protect the voting rights of Americans who are similarly

situated in the United States Virgin Islands, Puerto Rico or Guam.

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 their 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 importance to all United States Virgin Islanders that this case presents is that no matter whether you are born here or choose to live here, you are a U.S. citizen. Denying plaintiffs' claims perpetuates the treatment of United States Virgin Islanders as being something less than a citizen; ruling in their favor would not create what the United States Court of Appeals for the Seventh Circuit couched as a "super citizen." *Segovia v. United States*, 880 F.3d 384, 391 (7th Cir. 2018). It is simply absurd that U.S. citizens can move from a state to anywhere on this planet and maintain the right to vote, *except* for the United States Virgin Islands, Puerto Rico and Guam.

II. Equal protection rights should not be diminished by residency in the United States 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. The decision of the circuits in *Segovia*, 880 F.3d at 391; *Igartúa De La Rosa v. United States*, 32 F.3d 8, 10 (1st Cir. 1994); and *Romeu v. Cohen*, 265 F.3d 118, 124 (2d Cir. 2001), perpetuate a second-class treatment of U.S. citizens who reside in the territories that is incompatible with the Constitution.

The United States Virgin Islands, in particular, is governed by the U.S. Constitution and the Revised Organic Act of 1954. 48 U.S.C. § 1541; *see also* Revised Organic Act of the Virgin Islands, Pub. L. No. 517, 68 Stat. 497 (July 22, 1954). Section 3 of the Revised Organic Act explicitly extends the Equal Protection Clause to residents of the Virgin Islands. *See* 48 U.S.C. § 1561. Moreover, this Court has consistently stated that the right to vote is a fundamental right under the Constitution. *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886); *Reynolds v. Sims*, 377 U.S. 533, 554 (1964); *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972); *Harper v. Virginia Board of Elections*, 383 U.S. 663, 670 (1966). 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 fact that the Petitioners are former residents of Illinois and now residents of the United States Virgin Islands should be of no moment. The Seventh Circuit's focus on the federal voting rights of residents of the territories and not the voting rights of the Petitioners as former residents of Illinois is misplaced. All their rights should be intact. Although this case does not hold the potential for completely resolving the United States Virgin Islands' exclusion from the federal electorate or its lack of voting representation in Congress, it is clear that at minimum a citizen moving to the United States Virgin Islands should enjoy the same voting rights as a citizen moving to the Northern Mariana Islands, American Samoa, or a foreign country.

“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens we must live. Other rights, even the most basic are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). The equal protection of the law must fully extend to U.S. citizens everywhere no matter their locality.



CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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