

VOTER ELIGIBILITY REPORT

prepared by

THE V.I. COMMISSION ON STATUS AND FEDERAL RELATIONS

for the

GOVERNOR AND THE 19TH LEGISLATURE OF THE VIRGIN ISLANDS

July 1992

INTRODUCTION

The Nineteenth Legislature of the Virgin Islands passed BILL NO. 19-0053 on May 29, 1991, which was signed into law as ACT NO. 5712 by Governor Alexander A. Farrelly on June 13, 1991. SECTION 3. of the ACT authorized and directed the V.I. Commission on Status and Federal Relations to do the following:

"...study the issue of eligibility requirements for voting on the status referendum and submit a report on its findings to the Governor and Legislature within 180 days of the effective date of this Act."

SUMMARY OF FINDINGS

The information received by the Commission seems to indicate that there are at least two basic positions on the issue of voter eligibility for the status referendum scheduled for September 7, 1993. The proponents of each of them define the referendum differently and disagree on which set of laws are applicable. The following is a summary of each of these viewpoints.

One position is that the status referendum is purely a domestic consultation between the Virgin Islands and the United States as has been shown by the precedents set for unincorporated territories of the United States when they conducted status referenda. Examples are Guam and Puerto Rico. Therefore only U.S. and V.I. laws are applicable.

This means that the current requirements for voting in general elections must be used to determine eligibility for voting in the status referendum. The legal basis for this position is contained in SECTIONS 3 and 4 of the Revised Organic Act, which provide protection from discrimination and define the qualifications for voting.

Proponents of the second position view the referendum as an act of self determination. Self determination is defined as the right of a people to choose its own form of government without outside interference. As such, international law is applicable based on Resolution 1514 of the General Assembly of the United Nations and other applicable international law. Resolution 1514 includes criteria that member states of the United Nations are to follow with respect to the people in their non-self-governing territories who have not exercised their right of self determination. The United States is a member state and the U.S. Virgin Islands is a non-self-governing territory where the people have not made an act of self determination regarding political status.

According to Dr. William Boyer of the University of Delaware, the U.S. Constitution itself obligates the United States to comply with international agreements because they are considered part of the supreme law of the land. (See ARTICLE VI, Clause 2 of the U.S. Constitution.)

Resolution 1514 of the U.N. states that all powers are to be transferred to the peoples of non-self-governing territories. Inherent in this is the principle that all peoples have equal rights including the right of self determination which should be respected. This means that nothing should interfere with a people's national unity and territorial integrity when they are engaging in a legitimate act of self determination. Thus any laws which preclude the establishment of reasonable eligibility requirements for voting in the status referendum and thus imperil the national unity and territorial integrity of the Virgin Islands can be construed as permitting external interference into the process. This raises questions of whether the referendum is a legitimate exercise of self determination under international law.

The Eighteenth Legislature in SECTION 3,(E) of ACT NO. 5612 determined that the status referendum result would be binding. The bills describing the features of the options would however be nonbinding. Whether the language in the above referenced ACT makes the political status referendum purely a domestic exercise, an act of self determination or something else may still need to be determined by the Legislature. Once this is decided, the Legislature would be in a better position to decide whether to maintain the current requirements for voting or to modify them for the referendum.

CURRENT REQUIREMENTS IN THE V.I.

To vote in the Virgin Islands of the United States one must meet each of the following three citizenship, residency and age criteria:

1. Citizenship - U.S.
2. Residency - V.I. (90 days)
3. Age - 18

U.S. PRECEDENTS

The Interior Department provided information from 14 states and the Northwest Territory, which illustrated that there exist several precedents for non U.S. citizens to vote in elections. (See attachment.)

A September 7, 1991 article in the Washington Post indicated that voters in Takoma Park, Maryland decided in a referendum to permit residents who were not U.S. citizens to vote in city elections. It also stated that leaders in Washington and Virginia indicated that they would introduce legislation of a similar nature in their jurisdictions. (See attached article.)

Status referenda in insular areas which were or are currently under U.S. jurisdiction have always permitted any one who could qualify to be a registered voter to participate in these elections. In the Northern Mariana Islands the residency requirement is 45 days. In American Samoa the residency requirement is two years. In Guam, the residency requirement for voting in its status referendum was 30 days.

The above illustrates that several different precedents have been set within the U.S., some of which permitted non citizens to vote and others which allowed only registered voters to participate. However, in no case were U.S. citizens who were registered voters prevented from voting in any elections.

International Precedents

The United Nations has observed several political status referenda in dependent territories over the last 37 years. A synopsis of the voter eligibility requirements in six of these areas is enclosed with this report. The results indicate that where a residency requirement is included, the minimum length has been one year - (Togoland), and the maximum ten years - (New Caledonia).

The findings also reveal that indigenes who were nonresidents were permitted to vote in elections - (Western Samoa and Western Sahara).

Conclusion

The issue of voter eligibility is ambiguous. It depends on several factors including the definition of the type of election involved and whether international law or only domestic law should be relevant. Several precedents exist which indicate that flexibility has been exercised in special circumstances within the United States. Whether the U.S. Virgin Islands has sufficient unique circumstances to justify changing the criteria for eligibility still has to

be determined by the Legislature and the Governor.

Although the findings herein are not exhaustive, they cover the major components included in legal debates and should provide a sufficient basis for determining the criteria to be utilized for participation in the Virgin Islands political status referendum.

Respectfully submitted,

Senator Lorraine L. Berry
Co Chairman

Marilyn F. Krigger
Co Chairman