



**UNITED STATES
COMMISSION ON
CIVIL RIGHTS**

624 Ninth Street, N.W.
Washington, D.C. 20425

August 13, 2012

President Barack Obama

Re: Guam Political Status Plebiscite Voter Registration Requirements

Dear President Obama:

We write to you in our individual capacities as three members of the U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole.¹ The Territory of Guam has adopted voter registration requirements for a plebiscite regarding the island's future political status. This plebiscite is intended to help determine Guam's future relationship to the United States, and is therefore of great interest and import to all residents of Guam.² Unfortunately, it appears that Guam has adopted voter registration requirements in regard to this plebiscite that violate the civil rights of numerous United States citizens who reside in the Territory. We believe that these voter registration requirements likely violate the Fifteenth Amendment and Section 2 of the Voting Rights Act of 1965.

1 G.C.A. 1, Chapter 21, which contains some of the provisions relating to this plebiscite, is entitled "Commission on Decolonization for the Implementation and Exercise of Chamorro Self-Determination." "Chamorro" is the term generally used for the racial group that is the earliest-known settler of Guam. This chapter, by its very title, is solely focused on Chamorro self-determination, as opposed to self-determination by all residents of Guam, and establishes the Commission to represent only Chamorro interests. This Commission is also charged with determining the date of the Political Status Plebiscite in conjunction with the Guam Election Commission.³

3 G.C.A. § 20001 directs the Guam Election Commission to establish the "Guam Decolonization Registry" for purposes of registering those eligible to vote in the plebiscite. Only those registered with the Guam Decolonization Registry are eligible to vote in the Political Status Plebiscite.⁴ Only "Native Inhabitants of Guam," defined as those who became U.S. citizens by virtue of the 1950 Organic Act and their blood

¹ The U.S. Commission on Civil Rights is an independent, bipartisan agency that makes appraisals of the laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin, or in the administration of justice. 42 U.S.C. § 1975(a).

² 1 G.C.A. § 2105; 1 G.C.A. § 2109.

³ 1 G.C.A. §2109.

⁴ 3 G.C.A. §21000; 3 G.C.A. §21000.

descendants, are eligible to register with the Guam Decolonization Registry.⁵ Section 4, the pertinent section of the Organic Act, extended U.S. citizenship only to people who resided on Guam on April 11, 1899 and their descendants.⁶ Therefore, a person who was a resident of Guam in 1950 but who already held U.S. citizenship is excluded from registering. A person who moved to Guam between 1899 and 1950 and acquired American citizenship is excluded from registering. Likewise, a resident of Guam who acquired U.S. citizenship after June 27, 1952, when Section 4 of the Organic Act was repealed, is excluded from registering. By this definition, an American citizen soldier who fought to liberate Guam from Japanese occupation during World War II and who has continuously resided on Guam since the end of World War II would be ineligible to register to vote in the Political Status Plebiscite. On the other hand, a person who has never set foot on Guam, but whose infant grandfather received U.S. citizenship through the Organic Act, would be eligible to register with the Guam Decolonization Registry and vote in the plebiscite.⁷

Although the legislative findings of Section 21000 aver that the Guam Decolonization Registry is not racially based, it is difficult to avoid concluding that the purpose of the requirements for designation as a “Native Inhabitant of Guam” is to maximize Chamorro representation while minimizing representation of other races. The legislative findings repeatedly refer to the “native inhabitants,” in contrast to “Spain” and “the United States,” which implies that the legislature does not consider those of Spanish or other descent to be “native inhabitants.” The purpose of the definition of “Native Inhabitants of Guam” seems to be to approximate, as closely as possible, those people the Guam legislature considers “native inhabitants.” As the U.S. Supreme Court noted in striking down another racially-discriminatory voting requirement, “Ancestry can be a proxy for race.”⁸

Arnold Davis, a United States citizen who is a long-term resident of Guam, but who does not fall within the definition of “Native Inhabitants of Guam,” attempted to register with the Guam Decolonization Registry. Davis’ application was denied, and he sought legal relief. In formal legal pleadings for the government of Guam, the Assistant Attorney General largely admitted that the purpose of the plebiscite is to represent the views of Chamorros and not the many U.S. citizen residents of Guam unlucky enough to belong to another ethnic group,⁹ writing, “How are Congress and the government of Guam ever going to begin to address the interests of a colonized people whose racial identity coincides with their political identity?”¹⁰ Regardless of Assistant Attorney General Weinberg’s concerns, the Fifteenth Amendment controls in Guam, and contains no exception for racial groups that were once colonized. Denying U.S. citizen residents of

⁵ 3 G.C.A. §21001.

⁶ 48 U.S.C. §14211, repealed by Act of June 27, 1952, c. 477, Title IV, §403(a)(42), 66 Stat. 280.

⁷ 3 G.C.A. § 21005.

⁸ *Cayetano v. Rice*, 528 U.S. 495, 514 (2000).

⁹ Central Intelligence Agency, *The World Factbook*, Guam. The population of Guam is approximately 37% Chamorro, 26% Filipino, other Pacific Islander 11%, white 7%, other Asian 6%, “other” 2%, and “mixed” 10%. <https://www.cia.gov/library/publications/the-world-factbook/geos/gg.html>

¹⁰ Reply to Opposition to Motion to Dismiss, January 10, 2012, at 8, available at http://www.cir-usa.org/legal_docs/davis_v_guam_mtd_reply.pdf.

Guam who do not qualify as “Native Inhabitants of Guam” the ability to register with the Guam Decolonization Registry also likely violates Section 2 of the Voting Rights Act of 1965, as registration is a “prerequisite to voting” on the plebiscite.¹¹

The Supreme Court weighed in on a similar situation in *Cayetano v. Rice*.¹² In that case, the Court held that limiting the right to vote for certain state officials to people whose ancestors lived in the Hawaiian Islands in 1778 was a racial classification and violated the Fifteenth Amendment.¹³ Just like Arnold Davis and many other citizens in Guam today, Harold Rice’s application to vote was denied because he was the wrong race. Likewise, in *Guinn v. United States*, the Supreme Court struck down an ostensibly race-neutral law that provided an exemption from literacy tests for descendants of people eligible to vote on January 1, 1866.¹⁴ As in those cases, the Guam statute is ostensibly race-neutral, but in reality is racially discriminatory.

As we have discussed, there is a strong likelihood that the government of Guam is violating both the Fifteenth Amendment and Section 2 of the Voting Rights Act. We would have expected Attorney General Holder and the Civil Rights Division of the Department of Justice to have conducted an investigation of this possible violation, especially after Mr. Davis’s complaint to the Department of Justice.¹⁵ Unfortunately, in the three years since Mr. Davis complained to the Department of Justice regarding this infringement of his right to vote, no action has been taken. Regrettably, no action has been taken. In fact, Attorney General Holder recently visited Guam but did not so much as mention the possibility that the qualifications for registering with the Guam Decolonization Registry are both unconstitutional and violate the Voting Rights Act.

It is most regrettable that the government of a territory with a multi-racial society and a proud history has stooped to divvying up its residents by race. This is especially true when the question at issue is of such import as to whether United States citizens could find themselves strangers in a strange land. To quote Justice Kennedy, the government of Guam embraces “the demeaning premise that citizens of a particular race are somehow more qualified than others to vote on certain matters.”¹⁶

Given these concerns, we respectfully request that you reply to let us know what Attorney General Eric Holder or the Department of Justice has done to investigate and stop this apparent Fifteenth Amendment violation.. If neither has yet acted please explain why or indicate that you will be directing the Attorney General to act shortly.

¹¹ 42 U.S.C. § 1973.

¹² 528 U.S. 495 (2000).

¹³ *Id.* at 499-500, 514.

¹⁴ 238 U.S. 347 (1915).

¹⁵ Hans A. von Spakovsky, *DOJ Ignores Guam Voting Discrimination*, NATIONAL REVIEW ONLINE (Nov. 22, 2011, 4:00 AM), <http://www.nationalreview.com/articles/283749/doj-ignores-guam-voting-discrimination-hans-von-spakovsky>.

¹⁶ *Cayetano* at 523.

If you would like any further information or we can do anything else to assist you, please do not hesitate to ask. We can be reached through Commissioner Kirsanow's special assistant, Carissa Mulder, at (202) 376-7626 or at cmulder@usccr.gov.

Thank you for your attention.

Sincerely,



Peter Kirsanow
Commissioner



Gail Heriot
Commissioner



Todd Gaziano
Commissioner

cc: The Honorable Patrick Leahy, Chair, Senate Judiciary Committee
The Honorable Chuck Grassley, Ranking Member, Senate Judiciary Committee
The Honorable Lamar Smith, Chair, House Judiciary Committee
The Honorable John Conyers, Jr., House Judiciary Committee
Assistant Attorney General Thomas E. Perez