

**IN THE SUPREME COURT OF THE VIRGIN  
ISLANDS DIVISION OF SAINT CROIX**

Johann A. Clendenin,	)	
	)	
Petitioner	)	CIVIL NO.: <b>SCT-CIV-2024-0116</b>
	)	
v.	)	
	)	
THE ELECTIONS SYSTEM OF	)	
THE VIRGIN ISLANDS,	)	
	)	
Respondent	)	
	)	
	)	

---

**PETITION TO CHALLENGE THE ELECTIONS SYSTEM OF THE  
VIRGIN ISLANDS  
UNJUST DENIAL OF UNITED STATES VOTING RIGHTS**

COMES NOW, Petitioner, Johann A. Clendenin (*Petitioner or Appellant Clendenin*), in his capacity as a citizen of the United States and the United States Virgin Islands, by and through himself as a Petitioner *pro se*, seeking the abrupt termination of actions by the Executive, Judicial, and Legislative authority of the USVI Government that, individually and together, constitute an ongoing

violation of Section VI of the 1916 Danish Treaty rising from The Elections System of the Virgin Islands continued denial of an opportunity to vote in U.S. presidential elections as set forth here (The Petition).

The United States Supreme Court may review final judgments or decrees rendered by the Supreme Court of the Virgin Islands by writ of certiorari in cases where the validity of a United States statute or treaty is drawn into question, a Virgin Islands statute is drawn in question on the ground that it is repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege or immunity is set up or claimed under the Constitution, treaties, or laws of the United States. See 28 U.S.C. § 1260.

The Revised Organic Act vests the judicial power of the U.S. Virgin Islands in an appellate court as may be established by the Legislature. See 48 U.S.C. § 1611(a). Pursuant to this authority, the Legislature has established the Supreme Court of the Virgin Islands as the appellate court of last resort. See 4 V.I.C. § 2(a).

**I. INTRODUCTION TO ISSUES PRESENTED:**

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the Virgin Islands:

I, Johann A. Clendenin, *pro se*, respectfully submits this petition to challenge the

United States Virgin Islands (USVI) election system, which unjustly prevents me as a USVI citizen from voting in U.S. Presidential elections despite provisions in the 1916 Danish Treaty which, under the Supremacy Clause of the US Constitution and clauses in the Constitution governing treaties approved by the US Senate or are self-executing, take precedence over the continuity of the Insular Acts which, in the case of the USVI laws governing elections, deny me the right to vote.

***Summary of the Argument.***

The 1916 Treaty is an intentional treaty ratified by the Senate approving a contractual purchase in the Danish 1916 Treaty that *inter alia* grants the USVI citizens a right to vote in all elections. By contrast, the *Insular Acts of Congress*, on which the present USVI election law rests, are a particular and odious enactment of Congress that denies all Territories a right to vote even though the unique circumstances of the 1916 Treaty governing the USVI preserve a right to vote that is not set out in other treaties governing the other territories including, *inter alia*, the Spanish-American Treaty of 1898. The application of the general prohibition against voting applied to the USVI violates the 1916 Treaty as it applies to the USVI. The 1916 Treaty approved by the US Senate and as a self-executing treaty guaranteed the right to vote. This guarantee arises as a matter of the Senate's authority over treaties under the Constitution as opposed to the

general authority of Congress to enact federal legislation under Article I, including the Insular Acts. The preference for the Insular Acts arising under Congress ignores the *sui generis* situation of the USVI when it comes to the right to vote compared to other situated territories that are also governed by the same Insular Acts. The end result constitutes an unconstitutional violation of the US Constitution power over treaties and reflects a form of colonialism in refusing to remedy the systemic denial of the right to vote under the Treaty of 1916. This refusal to elevate the right to vote and the 1916 Treaty over the restrictive denial of a right to vote in the Insular Acts is part of the U.S. Virgin Islands' history marked by colonialism, slavery and economic deprivation. Education has also been impacted by racial ideologies, with precarious citizenship rights, particularly the right to vote, denied to its citizens.

***Background to the Petition.***

The U.S. Virgin Islands (USVI) is an “unincorporated” territory of the United States, acquired by purchase from Denmark in 1917 under an intentional Treaty ratified by the Senate. By law, this international Treaty grants a right to vote to USVI whose residents are birthright citizens of the United States. This right to vote preserved by the 1916 Treaty reflects the fact that they live in the United States; they work in the United States; they fight and die in defense of the

United States.

I served as a United States Marine Officer for over thirty-eight years in the active and reserve forces of our nation. Despite this, after retiring home to the U.S. Virgin Islands after voting in Presidential elections for forty years, I have been systematically denied my right to vote in Presidential election notwithstanding the 1916 Treaty guarantee of that right as a sixth generation Crucian.

In the USVI, this Treaty violation results in an unwarranted and degraded constitutional status. Virgin Islanders are routinely denied federal rights and benefits solely because of their residence in a U.S. Territory. There is a century-long tradition of treating the Territories' U.S. citizens as a separate and disfavored class and treating all unincorporated territories alike when it comes to the right to vote notwithstanding the 1916 Treaty that result arises from the infamous "Insular Cases," is rooted not in the Constitution but in some amorphous "continuity" of explicitly racist and colonialist nineteenth-century ideology reflected in laws enacted by the House of Representatives. These congressional laws are then appropriately governed by the authority of the United States

The US Senate, not the Congress which can enact particular federal laws,

has jurisdiction over treaties and sales which, in the case of the U.S. Virgin Islands, is the Treaty of 1916. The international Treaty of 1916 preserved and granted a right to vote related to a sale of the USVI to the USA by Denmark. This puts the USVI in a *sui generis* position *vis a via* the other Territories governed by other treaties and The Insular Acts.

The Virgin Islanders are not subject to the same limitations on the right to vote as occurs under The Insular Acts of other territories or their separate treaties. Those other unincorporated territories were acquired in a distinctly different manner and their right to vote is controlled by the House of Representatives. Our history with slavery under Danish rule is distinctly different than the circumstances and bias resulting in the Insular Acts elsewhere. We currently vote in presidential primary elections in the USVI and select delegates to the various political party presidential conventions where our vote fully counts consistent with the Treaty of 1916. However, when it comes to the subsequent right to vote under the same Treaty of 1916, we are denied the right to vote in the Presidential elections.

This Honorable Court should carefully apply the constitutional “law of the case” contained in Danish Treaty of 1916, the U.S. Constitution, the Insular Acts (1900-1932), the Nationality Act of 1940, the Electoral Count Reform Act of 2022, *Missouri v. Holland* (1920), *Downes v. Bidwell* (1901), and *McGirt v. Oklahoma*

(2020) as we seek justice for our citizens. The only way to ensure that justice is to enforce the right to vote granted and preserved by the Treaty of 1916 as opposed to denying that same right to vote under the subsequent Insular Acts of Congress.

## **II. FACTUAL BACKGROUND**

In 1865, it was the Confederacy's use of the Danish West Indies as a coaling station during the War Between the States that first prompted President Abraham Lincoln and Secretary of State William Seward to seek a port in the West Indies for strategic reasons. Moreover, the United States did not want these islands to fall into the hands of any other power.

There were several failed attempts to transfer ownership from Denmark to the United States. While a general interest continued to be expressed, it was not until 1915 that the United States once again initiated serious discussions about the acquisition of the islands. This time, it was clearly the concern over the potential of Denmark coming under control of Germany, or of Germany requiring Denmark to cede control of the islands, which made the U.S. take action that resulted in the execution of this international Treaty of 1916 ratified by the Senate. Further, an increasing concern to the United States was the fact that the Panama Canal had recently opened, and the Danish West Indies was considered a strategic location in the defense of the Canal, should this become necessary. Today, with increased

trade in an improved Panama Canal, the U.S. Virgin Islands is essentially the third border of the United States and with its separate customs jurisdiction, a strategic component of 21st Century supply chains.

The Danish Treaty of 1916 was ratified by the U.S. Senate on September 7, 1916. This treaty, also known as the Convention between the United States and Denmark for cession of the Danish West Indies, marked the transfer of sovereignty of the Virgin Islands from Denmark to the United States for \$25 million in gold.

After the Senate's ratification, the treaty moved forward for further approvals. A Danish referendum was held on December 14, 1916, followed by the Danish parliament's ratification on December 22, 1916. U.S. President Woodrow Wilson ratified the treaty on January 16, 1917, and the formal exchange of ratifications took place in Washington, D.C. on January 17, 1917.

In return for the gold transfer in the sale, the U.S. received the three main islands, the adjacent islands and rocks and all property rights in public, government and Crown lands. Danish citizens retained all property rights and could decide whether they wished to remain or leave. However, the international Treaty was not followed in granting U.S. citizenship. This issue would not be resolved until 1927, when a congressional enactment granted U.S. Citizenship to several categories of Virgin Islanders, and in 1932, when a further Act filled the

gaps left by the 1927 Act.

On March 3, 1917, the U.S. Congress, made provisions for the VI government. It was decided that the colonial form of government introduced into the territory by Denmark though the Colonial Law of 1906 should remain, including the two Colonial-municipal councils. Executive power was vested in the President of the US, but he could delegate his power to a governor and such person or persons as he may appoint. Because of the VI's unincorporated territory status, and its military importance, officers of the United States Navy were designated to run the government.

This form of government was intended to be a temporary measure, until the next session of Congress could put in place a permanent set of procedures. Due to a number of factors, and even though a number of attempts were made to adopt a Constitution (Organic Act), Naval rule continued until 1931. The Organic Act was not adopted until 1936. The current sixth constitutional convention seeks to resolve key issues of citizenship. It is essential that clarity over the supremacy of the Treaty be provided when it comes to the islander's right to vote specifically recognized and affirmed in the international treaty.

New treaties made by the United States supersede prior federal statutes due to the Supremacy Clause of the U.S. Constitution, which establishes treaties as the "law of the land" alongside acts of Congress. This means that treaties are

considered equivalent to federal statutes and can override conflicting state laws or conflicting federal legislation. When in conflict, the actions of the US Senate under its Treaty authority, in this case the Treaty of 1916, are international in nature and must take precedence over the more particular and national acts of Congress, in this case the Insular Acts.

Key Principles are: 1. Treaty Supremacy: Treaties are deemed supreme over federal statutes when they directly conflict. 2. Self-Executing Treaties: Some treaties are self-executing, meaning they become law without requiring additional legislation, and 3. Senate Approval: Treaties require a two-thirds majority in the Senate for ratification.

Landmark Cases include: 1. *Foster v. Neilson* (1829): Established that treaties are the law of the land and can supersede state laws. 2. *Head Money Cases* (1884): Clarified that treaties can contain provisions that confer rights on individuals, and 3. *Medellin v. Texas* (2008): Held that treaties do not automatically become domestic law unless Congress has enacted implementing statutes or the treaty itself conveys an intention to be self-executing.

These principles and cases demonstrate how the new Treaty of 1916 takes precedence over prior federal statutes (Insular Acts) in the United States. The Treaty has specific and intentional self-executing clauses regarding citizenship and

voting negotiated between the nations fully aware of the acquisition of previous territories notwithstanding the Insular Act legislation. Almost immediately under Naval rule, the territory was inappropriately governed as if acquired by war.

The Supremacy Clause was crystallized within Article VI, Clause 2 of the Constitution, stating that “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the Land; and the Judges in every State shall be bound thereby.” Federal statutes and treaties dominate state laws representing a response to the administrative difficulties caused by conflicting state legislations.

Treaty commitments of the United States are of two kinds. As Chief Justice Marshall wrote in 1829: “A treaty is, in its nature, a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished; especially, so far as its operation is infra- territorial; but is carried into execution by the sovereign power of the respective parties to the instrument. In the United States, a different principle is established. Our constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself, without the aid of any legislative provision.

Article VI, paragraph 2, makes treaties the supreme law of the land on the

same footing with acts of Congress. The clause was a direct result of one of the major weaknesses of the Articles of Confederation. Although the Articles entrusted the treaty-making power to Congress, fulfillment of Congress's promises was dependent on the state legislatures.

In *Ware v. Hylton*<sup>323</sup> the Court struck down the state law as violating the treaty that Article VI, paragraph 2, made superior. Justice Chase wrote: "A treaty cannot be the supreme law of the land, that is, of all the United States, if any act of a state legislature can stand in its way. If the constitution of a state . . . must give way to a treaty, and fall before it; can it be questioned, whether the less power, an act of the state legislature, must not be prostrate? It is the declared will of the people of the United States, that every treaty made by the authority of the United States, shall be superior to the constitution and laws of any individual state; and their will alone is to decide."

Sometimes the nature of a treaty will determine whether it requires legislative execution or "conveys an intention that it be 'self-executing' and is ratified on these terms." (*Medellin v. Texas*, 128 S. Ct. 1346, 1356 (2008), quoting *Ingartua-De La Rosa v. United States*, 417 F.3d 145, 150 (1st Cir. 2005) (en banc)). One authority states that whether a treaty is self-executing "depends upon whether the obligation is imposed on private individuals or on public authorities"

“Treaty provisions which define the rights and obligations of private individuals and lay down general principles for the guidance of military, naval or administrative officials in relation thereto are usually considered self-executing. Thus treaty provisions assuring aliens equal civil rights with citizens, defining the limits of national jurisdiction, and prescribing rules of prize, war and neutrality, have been so considered . . . .” The individual right to vote set forth in the Danish Treaty of 1916 is a self-executing treaty governing a private individual’s right to vote and is a general principle that must guide administrative officials in the Elections System of the Virgin Islands implementing that right to vote.

Here are more landmark cases demonstrating the supremacy of these self-executing treaty provisions: 1. *Ware v. Hylton* (1796): The Supreme Court struck down a Virginia law contradicting the Treaty of Peace of 1783, which protected British creditors' property rights. 2. *Hopkirk v. Bell* (1801): The Court held that a Virginia statute of limitations couldn't bar collection of antecedent debts under the same treaty. 3. *Hauenstein v. Lynham* (1879): A Swiss citizen's right to inherit and sell real estate in Virginia was upheld under the 1850 treaty with Switzerland. 4. *Oyama v. California* (1948): California's legislation excluding aliens from owning real estate was deemed conflicting with the Equal Protection Clause and a treaty, and 5. *Missouri v. Holland* (1920): The Supreme Court established that treaties ratified under the U.S. Constitution supersede conflicting state

stipulations.

Additionally, the Supremacy Clause has been applied in various contexts: 1. *McCulloch v. Maryland* (1819): Federal statutes and treaties take precedence over state laws. 2. *Gibbons v. Ogden* (1824): Federal authority over interstate commerce supersedes conflicting state enactments. 3. *Arizona v. United States* (2012): Federal immigration laws preempt conflicting state regulations.

The petition does not deny the validity of the Insular Acts as to the right to vote in other unincorporated territories that may lack the same right to vote granted and preserved in the USVI's Treaty of 1916. This Petition relies on the express provision of the Danish Treaty of 1916 on the right to vote as citizens because it pertains only to the USVI and is an exception to the prohibition on the right to vote in the Insular Acts applied to other territories.

Unlike territories destined to become States, which have been “incorporated” into the constitutional fold (U.S. Dep’t of the Interior, Definitions of Insular Area Political Organizations (June 12, 2015), <https://www.doi.gov/oia/islands/politicatypes> (“Definitions”)), the USVI has been designated (first by the courts, and then by Congress) an “unincorporated territory.” See 48 U.S.C. § 1541(a) (emphasis added); *Soto v. United States*, 273 F. 628, 633 (3d Cir. 1921). This distinction, known as “the territorial incorporation doctrine,” was drawn in the Insular Cases, a line of six core cases

decided in 1901—during the Jim Crow era and at the height of the American expansionist period—and grounded in the racial and cultural prejudices of the time. The Insular Cases raised questions of the structural relationship between the United States and its “unincorporated” territories and ultimately justified differential constitutional treatment for U.S. citizens who live in them See *Huus v. New York & Porto Rico S.S. Co.*, 182 U.S. 392 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); *Armstrong v. United States*, 182 U.S. 243 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Goetze v. United States*, 182 U.S. 221 (1901); *De Lima v. Bidwell*, 182 U.S. 1 (1901). However, when it comes to the USVI, the Danish Treaty of 1916 eviscerated these general principles by creating *inter alia*, a *sui generis* right to vote in the USVI despite its unincorporated status.

In part because of this infusion of geography into principles of citizenship, incorporation is no mere formality. Unless and until an unincorporated territory is “incorporated into a body politic,” the Constitution does not apply to unincorporated territories “of its own force.” *Dorr v. United States*, 195 U.S. 138, 149 (1904); *Soto*, 273 F. at 633–34 (citations omitted). Rather, “the guarantees of the constitution apply to unincorporated territories such as the Virgin Islands only when Congress has stated they are applicable or when fundamental rights are involved.” *JDS Realty Corp. v. Gov’t of the Virgin Islands*, 824 F.2d 256,

259 (3d Cir. 1987). In this case, the fundamental right is the right to vote enshrined in a self-executing treaty applicable only to USVI citizens because of that treaty.

Which rights the courts consider “fundamental” for this purpose have been determined case by case— with no apparent pattern or discernible rule. This “patchwork” approach to constitutional rights leaves Virgin Islanders with no certainty as a direct result of the ongoing violations of the Treaty of 1916 or predictability as to what their rights are, even though they are U.S. citizens.

While this Court could revisit the Insular Cases which rely on the congressional procedure of “Continuity”; it cannot overrule the *per curiam* decisions that rely on them, and which the U.S. Government uses to justify its discriminatory treatment of territorial residents. This Court must resolve the conflict between the Treaty of 1916 and the Insular Acts on this right to vote. This Honorable Court must affirm the right to vote of the tenants of the Danish Treaty, establishing at long last the full and equal rights of Virgin Island citizens that they have had, and continue to have, a right to vote in U.S. elections consistent with the Treaty of 1916, given the “supremacy” of the treaty over the “continuity” of the Insular Acts applied to other territories.

### **III. ARGUMENT**

The treaty provisions and supremacy supersede other federal laws such as

those restricting voting rights. Denying USVI residents the right to vote in presidential elections violates the Equal Protection Clause. The U.S. Constitution grants Congress authority over federal elections.

In 1898, the United States won three Spanish colonies—Puerto Rico, the Philippines, and Guam—in the Spanish-American War. See Treaty of Peace Between the United States of America and the Kingdom of Spain, U.S.–Spain, art. IX, Dec. 10, 1898, 30 Stat. 1754, T.S. No. 343 (Treaty of Paris). The Treaty of Paris, which put an end to the war, provided that “[t]he civil rights and political status of the native inhabitants of th[ose] territories . . . shall be determined by Congress.” *Id.* But that Treaty did not expressly preserve citizenship and a right to vote. Congress did not immediately take up these complicated—and politically charged questions. Americans viewed the former Spanish colonies as “differe[nt] from the dominant stateside societal structure with respect to their race, language, customs, cultures, religions, and even legal systems.” Torruella, *supra*, at 63. This was the hostile climate that the USVI found itself in in 1917, when the United States purchased the Danish West Indies from Denmark in hopes of blocking Germany from annexing it and gaining a North American foothold during World War I. See DOUG MACK, *THE NOT-QUITE STATES OF AMERICA* 19–20 (2018). But unlike the American-Spanish Treaty of 1898, the subsequent treaty of 1916 preserved citizenship rights.

Hostility was not the USVI's only problem. By 1917, the plantation system and triangular slave trade— “the backbones of its economy”—had ended, and a hurricane “all but wipe[d] out” the few remaining sugar plantations.

DISABILITY RIGHTS CENTER OF THE VIRGIN ISLANDS, SHADOW  
CITIZENS: CONFRONTING FEDERAL DISCRIMINATION IN THE U.S.

VIRGIN ISLANDS 10 (2021), <https://drcvi.org/documents/general/DRCVI>

ShadownCitizens.pdf?downloadable=1 (“SHADOW CITIZENS”). When Herbert Hoover became the first American president to visit the USVI in 1931, he derided it as “an effective poorhouse” and deemed it “unfortunate that we ever acquired these islands.” MACK, *supra*, at 30. This attitude set the tone for the federal government's treatment of the USVI: the Territory's economic struggles continue unabated, and the government has failed to provide assistance at levels that equal treatment would require. The salient flaw in this history is that the acquisition of the Virgin Islands was by a separate treaty with the Danish kingdom preserving citizenship and the right to vote in a sale which was self-executing. It cannot be preempted by the U.S. Government since doing so undermined the sanctity of treaties is now being upheld in SCOTUS.

The 1916 Danish Treaty, ratified by the U.S. President on January 16, 1917, established the transfer of governance from Denmark to the United States. Notably, the U.S. Senate has jurisdiction over treaties and sales contracts, unlike

other territories acquired through the Insular Acts. This distinction underscores the unique status of the USVI.

The Danish Treaty of 1916 granted citizenship and voting rights to Danish inhabitants of the U.S. Virgin Islands without restriction. However, other federal laws restricted these rights. Those. Conflicting laws include: 1. Insular Acts (1900-1932): Limited constitutional protections. 2. Nationality Act of 1940: Withheld full voting rights, and 3. Electoral Count Reform Act of 2022: Excluded territory residents from presidential elections.

Recognizing the treaty's supremacy is crucial and rests on the U.S. Constitution's Supremacy Clause (Article VI, Clause 2). Unlike all other U.S. Territories, we were acquired with a treaty that expressly included citizenship provisions while other attempted or ratified treaties with Denmark that did not include this language were never formally executed. This underscores that the right to vote set out in the 1916 Treaty was a critical component of that treaty compared to prior efforts. This ongoing refusal to implement that right to vote fully is very much akin to the Native American nations' precedent holding that Treaties are supreme law. i.e. *Missouri v. Holland* (1920) which also upheld treaty provisions.

To ensure compliance with the Treaty of 1916 and thereby address colonialism's vestiges and establish autonomy, we have long understood the need

to revise the structural aspects of our Organic Act. However, no prior conventions arising under the Organic Act addressed a right to vote in federal elections arising from the 1916 Treaty. The Organic Act's supersession with a constitution in the Sixth Convention has and will focus on the following:

1. *Clarify Separation of Powers*: Establish clear legislative, executive and judicial branch boundaries.
2. *Local Governance*: Enhance local control through elected officials.
3. *Judicial Independence*: Ensure impartial justice.
4. *Congressional Representation*: Secure voting representation.
5. *Federal Funding*: Access equal funding.

### ***Urgency***

There has never been an express focus and application of the Treaty of 1916 and citizenship rights. The tortious acts rising from the wrongful denial of a citizen's right to vote, a right expressed in the Danish Treaty, arises from the continued application of the inferior Insular Acts compared to the supremacy of the Treaty. The USVI Sixth Convention must affirm that right of full citizenship going forward coterminous with the looming constitution. Convention arising under the Insular Acts. Action must be taken now to correct

this legally. The current USVI and federal law allows this Honorable Court to redress this particular wrong as a duly-constituted Court arising under the US Constitution, the Organic Act, and subsequent USVI and federal law. This Honorable Court must act to correct this wrong.

The Petition asks this Honorable Court to act now because the sixth constitutional convention presents a unique opportunity for the U.S. Virgin Islands to correctly apply the Treaty of 1916 right to vote and thereby rectify historical injustices, secure full citizenship rights and establish clear autonomy. Governor Albert Bryan Jr.'s approval of Bill No. 34-0153 has made this convention possible. Our Territory's delegates, elected on November 5, 2024, will convene in January 2025.

Given the commencement of the USVI's sixth constitutional convention on January 25, 2025, and the need for congressional ratification of the new constitution, it is imperative to address this voting rights issue promptly and with all deliberate speed.

While the delegates cannot overturn the Insular Cases, the Court must issue this Petition in advance of that convention clarifying the right to vote under the Treaty of 1916 so that the delegates can adopt a sound constitutional view that the applicability of the Insular Acts to the USVI is limited by the

Treaty of 1916, particularly as to the rights of citizenship and voting.

The inapplicability of “Continuity” because it conflicts with the Treaty of 1916 can be addressed in the following ways: 1. *Treaty-specific provisions*: Danish Treaty's unique terms arising under the supremacy clause, override general laws like the Insular Acts. 2. *Temporal precedence*: The Treaty was signed after Insular Acts, and it carved out the USVI from some portions of the Insular Acts, and 3. *Intent and purpose*: The Treaty aimed to integrate U.S. Virgin Islands residents by granting and preserving citizenship.

Recent Supreme Court decisions, such as *McGirt v. Oklahoma* (2020), where Justice Gorsuch's critique of Insular Cases was constitutionality questioned, upheld Native American treaties, and criticized the distasteful components that have somehow escaped successful challenge.

### **Key Considerations**

The Danish Treaty of 1916 granted citizenship rights without restriction, Virgin Islanders were granted citizenship between 1927 and 1932 (see 8 U.S.C. § 1406), but, thanks to the Insular Cases’ imposition of geographic constraints on citizenship, that did not solve the problem of denial of the right to vote. See *infra* Part I.A. Nor did the “partial self-governance” the USVI eventually acquired, first through a presidentially appointed local government; then a local legislature established by the Virgin Islands Organic Act of 1936 and strengthened by the

Revised Organic Act of 1954; and most recently by permitting residents to elect their governor. Positive as these developments were, they all depended entirely on the beneficence of Congress. “Congress has unquestionably full power to govern [an unincorporated territory], and the people, except as Congress shall provide for, are not of right entitled to participate in political authority, until the Territory becomes a State.” Dorr, 195 U.S. at 148. But again, this precedent cannot conflict with the international Danish Treaty granting citizenship under the Supremacy Clause.

Even as Congress controls the destiny of the territories and the U.S. citizens who reside there, those very citizens have no voting representation in it. Nor do they have any electoral votes for President, or any Article III protections for their judges. *Id.* “The Virgin Islands’ lack of a meaningful, equal voice in Washington D.C. means that federal law or policymaking that excludes U.S. territories is more likely to go unnoticed or unchallenged until it is too late.” *Id.*; see Resp. Br. 28. It also has another, more insidious consequence: many Virgin Islanders have developed “a fundamental distrust of the American government to really, truly put them on equal footing, economically, politically, or otherwise.” This Court must rule that the supremacy of the 1916 Danish Treaty's provisions supersede federal laws restricting voting rights. This difference among the USVI's acquisition by the Treaty of 1916 and other treaty-

based acquisitions distinguish it from other territories. USVI citizens should be able to cast votes counted in the popular vote. This can occur regardless of electoral college participation.

It is worth noting that all prior treaty negotiations between the United States and Denmark failed. First in 1865 with a U.S. need to enforce the Monroe Doctrine, and again in 1867 where the U.S. Senate declined to ratify the treaty. A third attempt in 1897-1898 was reopened but Denmark ended discussions as a courtesy to Spain during the Spanish-American War. The fourth attempt during 1901-1902 created a signed treaty but Denmark's upper house, the Landsting, rejected it due to a tie vote. None of these prior attempts included specific citizen rights and the premise that all included provisions would have been thoroughly scrutinized and intended.

The Senate's role in ratifying treaties, including those involving sales contracts underscore the USVI's unique status. Article 5 of the Treaty states: "In full consideration of the cession made by this convention, the United States agrees to pay, within ninety days from the date of the exchange of the ratifications of this convention, in the city of Washington to the diplomatic representative or other agent of His Majesty the King of Denmark duly authorized to receive the money, the sum of twenty- five million dollars in gold coin of the United States. There is no provision addressing citizenship or the

right to vote, nor the payment made (\$25,000,000.00) to consummate a sale and Treaty as is the case in the Treaty of 1916, in the American-Spanish Treaty of 1898. Both houses are also governed by the Insular Acts. This difference on the rights of citizenship (Voting) rests in one treaty as compared to another (Danish Treaty) requiring careful application of the Insular Acts so as to avoid and conflict with the Supremacy Clause and all treaties rising under it.

#### **IV. REQUEST FOR RELIEF**

The Danish Treaty of 1916 should take precedence over the Insular Acts on the question of citizenship and the right to vote due to constitutional supremacy, the problematic nature of Insular Acts, and recent Supreme Court decisions. This Court is asked to: 1. Declare the USVI election system structural denial of the right citizenship and the right to vote under the Treaty of 1916 to be a violation of that treaty and the Supremacy Clause. 2. Order the implementation of a revised system allowing USVI citizens to vote in U.S. Presidential and other federal expressly granting a right to vote in Presidential elections under the Treaty of 1916, and 3. Direct the USVI government to seek congressional ratification of the revised constitution going forward.

By recognizing the treaty's authority, addressing injustices and seizing the current opportunity, the U.S. Virgin Islands can achieve full citizenship and

voting rights, enhanced self- governance, and improved autonomy.

The delegates of the sixth Constitutional Convention have a unique opportunity to:

1. *Recognize the Danish Treaty's Supremacy*: Seek congressional agreement to honor our Danish Treaty provisions.
2. *Recommend Congress Ignore Insular Cases*: When it comes to the right to vote, advise Congress that our Territory is in fact able to be treated differently in our constitution without regard to precedent or prejudice with other territories based on the Treaty of 1916 and the Supremacy Clause.
3. *Establish Self-Determination Mechanisms*: Allow the U.S. Virgin Islands to enable future status choices, and
4. *Strengthen Autonomy*: Enhance the autonomy of our citizens. Favorable action on the Petition by this Honorable Court furthers all of these positive results.

## **V. CONCLUSION**

Petitioner Clendenin asks the Supreme Court to consider the entirety of this petition and issue an Order affirming the supremacy of the Treaty of 1916 right to vote over the Insular Acts denial of that same right to vote. The Supreme Court of the Virgin Islands has jurisdiction over this matter of Insular Case continuity vs. Supremacy of the Danish Treaty. The USVI's current economic struggles—and the limits on the federal and territorial governments' respective will and ability to

remedy them—can be traced not only to the historical climate in which the USVI was brought into the American portfolio, but the legal framework that was envisioned at the time and is now denied. These outmoded and racially charged principles, encapsulated in the notorious Insular Cases (named after the “generic term” for “[a] jurisdiction that is neither a part of one of the several States nor a federal district,” *Definitions, supra*) are still in force today.

This is the legacy of the Insular Cases and their progeny: if a territory is not “incorporated” into the United States, the protections guaranteed to U.S. citizens by the Constitution do not fully apply; only rights deemed “fundamental” do—and what those are, exactly, must be determined by the Court case by case. *Torruella, supra*, at 74. A century later, whether a vague reservation of ill- defined rights will, as a contemporary scholar put it, “quiet any apprehension as to the danger of placing the inhabitants of a territory at the complete mercy of Congress” remains to be seen. L.S. Rowe, *The Supreme Court and the Insular Cases*, 18 *ANNALS OF AM. ACAD. OF POL. AND SOC. SCI.* 38, 51 (1901).

These are not unfortunate stylistic choices. The assumption that the residents of the island territories were not to be allowed to vote, because of their races and ethnicities, because they are not “capable of self-government” in accordance with the Constitution forms the bedrock of the Court’s holdings.

See, e.g., *De Lima*, 182 U.S. at 219. The “obvious belief in racial superiority that supported the ‘manifest destiny’ policies” had ingratiated itself into the case law, notwithstanding contrary provisions including the right to citizenship in the Danish Treaty of 1916, that would govern the relationship between the United States and those living in its island territories until the present day. *Torruella*, *supra*, at 64; see, e.g., *Downes*, 182 U.S. at 300 (U.S. entitled to acquire “unknown island[s], peopled with an uncivilized race, yet rich in soil, and valuable to the United States for commercial and strategic reasons”)

The USVI Supreme Court must rule in *Clendenin's* favor and compel the board of elections to provide an opportunity for presidential voting going forward under the Treaty of 1916 because the U.S. Virgin Islands' residents are beneficiaries of that treaty as U.S. citizens entitled to participate in federal elections. The 1916 Danish Treaty, which transferred governance of the USVI to the United States, established the islands as part of the U.S. territory, subject to congressional authority. That treaty preserved and did not deny citizenship with a right to vote. It is only the inferior Insular Acts adopted under Article I that wrongly supersedes an international treaty governed by the Supremacy Clause. Article 11 of the Treaty provides: “In case of differences of opinion arising between the High Contracting Parties in regard to the interpretation or application of this convention, such differences if they cannot be regulated

through diplomatic negotiations, shall be submitted for arbitration to the Permanent Court of Arbitration at The Hague.” Therefore, this Court has another option in prevailing for the full rights of our citizens. The principles of *pacta sunt servanda* (agreements must be honored) and *uti possidetis* (territorial integrity) apply. The sale's legitimacy and terms are reinforced by constitutional law in The Treaty Clause (Article VI, Clause 2), emphasizing the supremacy of treaties and the Constitution's guarantee of republican governance (Article IV, Section 4) supporting democratic participation. Precedents in cases like *United States v. Vaello-Madero* (2022) and *Fitisemanu v. United States* (2022) address citizenship and voting rights in US territories. The Insular Cases (e.g., *Downes v. Bidwell*, 1901) distinguished between territories acquired through treaty and those obtained through conquest. The implications in the sale's terms, including citizenship and voting provisions, should be upheld. The USVI residents' rights, including voting rights, should be recognized.

The Electoral College structure governs incorporated acquisitions based on congressional and senate representation. All the territories lack any role in this electoral college structure at this time. Consequently, there is no adverse harm to the current Electoral College structure arising under the Constitution by affirming the right to vote arising under the Treaty of 1916. That is because affirmation of the right to vote by USVI citizens in the popular Presidential

election, however, can occur without impact on the current Electoral College.

Petitioner Clendenin thanks the Court for its indulgence in his *pro se* appeal and any inadvertent procedural shortcomings demonstrated in his sincere and continued efforts to comply with the requirements of the Virgin Islands Courts. Clendenin recognizes that this filing may be long and somewhat repetitive, but the harms are multiple, and they occur in many ways and forms.

A draft ORDER is sincerely submitted for review by the court.

Respectfully Submitted,

Dated: November 20, 2024



---

Johann A. Clendenin,

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 18th day of November 2024, a copy of Clendenin's **VI Supreme Court Petition to Challenge The Elections System of the Virgin Islands Unjust Denial of United States Voting Rights** was served upon the individuals listed below in person.

### **Elections System of the Virgin Islands**

P.O. Box 1499  
Kingshill, VI 00851-1499  
Sunny Isles Shopping Center  
Unit 26, 1st Floor  
Plot No. 2-C  
Est. Sion Farm<sup>[SEP]</sup> Christiansted, VI 00821  
[esvi.info@vi.gov](mailto:esvi.info@vi.gov)

and was served upon the individuals listed below electronically

PAMELA R. TEPPER, ESQ., Solicitor General, [pamela.tepper@doj.vi.gov](mailto:pamela.tepper@doj.vi.gov)

Department of Justice

34-38 Kronprindsens Gade GERS Complex,

2nd Floor<sup>[SEP]</sup> St. Thomas, VI 00802

(340) 774-5666 ext. 10112



---

Johann A. Clendenin

Order 1

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

Johann Clendenin,	)	
	)	
Petitioner	)	
	)	CIVIL NO.: SCT-CIV-2024-0116
v.	)	
THE ELECTIONS SYSTEM OF	)	
THE VIRGIN ISLANDS,	)	
	)	
Respondent	)	
	)	
_____	)	
	)	

Mandamus of the Court

**Order of the Court Establishing Timelines and Relief**

Now, this \_\_\_\_\_ day of December 2024, having reviewed the filing, this Court issues the following series of Mandamus Orders resolving this matter as set forth below. Now, therefore, it is Ordered that:

1. The supremacy of Danish Treaty of 1916 provides for the citizens of the U.S. Virgin Islands the right to vote in U.S.A. elections.

2. The continuity of the Insular Acts by the U.S. House of Representatives does not preempt the United States Senate jurisdiction of treaties and sales.
3. The Elections System of the Virgin Islands will provide procedures for U.S. Virgin Island citizens to vote in presidential elections.
4. The legislature of the Virgin Islands will provide guidance to the delegates of the Sixth Constitutional Convention to clearly provide in the drafted constitution the supremacy of the Danish Treaty and the rights therein.

---

---

(Revised Petition's previous filing cover)

IN THE SUPREME COURT OF THE VIRGIN ISLANDS  
 DIVISION OF SAINT CROIX



Johann A. Clendenin,	)	
	)	
Petitioner	)	CIVIL NO.:
	)	
v.	)	
	)	
THE ELECTIONS SYSTEM OF	)	
THE VIRGIN ISLANDS,	)	
	)	
Respondent	)	
	)	
	)	

*PETITION*  
MOTION TO CHALLENGE THE ELECTIONS SYSTEM OF THE VIRGIN ISLANDS  
UNJUST DENIAL OF UNITED STATES VOTING RIGHTS

COMES NOW, Petitioner, Johann A. Clendenin (*Petitioner or Appellant Clendenin*), in his capacity as a citizen of the United States and the United States Virgin Islands, by and through himself as a Petitioner *pro se*, seeking the abrupt termination of actions by the Executive, Judicial, and Legislative authority of the USVI Government that, individually and together, constitute an ongoing violation of Section VI of the 1916 Danish Treaty rising from The Elections System of the Virgin Islands continued denial of an opportunity to vote in U.S. presidential elections as set forth here (The Petition).

The United States Supreme Court may review final judgments or decrees rendered by the Supreme Court of the Virgin Islands by writ of certiorari in cases where the validity of a United States statute or treaty is drawn into question, a Virgin Islands statute is drawn in question on the ground that it is repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege or immunity is set up or claimed under the Constitution, treaties, or laws of the United States. See 28 U.S.C. § 1260.

The Revised Organic Act vests the judicial power of the U.S. Virgin Islands in an appellate court as may be established by the Legislature. See 48 U.S.C. § 1611(a). Pursuant to this authority, the Legislature has established the Supreme Court of the Virgin Islands as the appellate court of last resort. See 4 V.I.C. § 2(a).

**I. INTRODUCTION TO ISSUES PRESENTED:**

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the Virgin Islands:

