



## LEGISLATURE OF AMERICAN SAMOA HOUSE OF REPRESENTATIVES

Hon. Savali Talavou Ale  
Speaker

SU'A ALEXANDER ELI JENNINGS  
Swains Island Delegate

Committee Chairman: Homeland Security/Public Safety  
Committee Vice Chair: Port Administration  
Committee Member: Public Works/ Health

Hon. I'aulualo Faafetai Talia  
Chairman  
House Ways and Means Committee  
Legislature of American Samoa  
Pago Pago, Am. Samoa 96799

Ref. HJR 33-2: Right to Vote for the Swains Is. Delegate

Talofa lau Afioga I'aulualo,

I submit this statement as requested on **HJR 33-2: Constitution Amendment granting the Swains Island Delegate the Right to Vote**. Around March 6, 2014 there was a House Ways & Means Committee Hearing on the **HJR 33-2** with the Secretary of Samoan Affairs, Paramount Chief **Satele Galu Satele**, Attorney General, **Talauega Eleasalo Ale**, and Legislative Council, **Henry Kappel** as witnesses. At the conclusion of the Hearing all three witnesses endorsed the Resolution as written, and indicated by testimonies that this was "long overdue". In other words Chairman, by the testimonies of these three witnesses representing the Executive Branch, Legislative Branch, and Our Samoan Traditions, there are no traditional or legal grounds to deny the Swains Island Delegate the right to vote in the House of Representatives. Regrettably, the matter was referred back to Committee for further deliberations over the same concerns that were presented to the witnesses during the Hearing. Perhaps the greatest opposition to the Resolution is the selection of the Swains Island Delegate, which is by selection in a meeting of the Permanent Residents (similar to Senators) and not by popular vote like the rest of the House Members. Another issue was the lack of residents on Swains Island. Again, these were all discussed with the witnesses in the Hearing, yet the Attorney General, Legislative Counsel, and Secretary of Samoan Affairs all endorsed the Resolution as it is written at the end of the Hearing. Then on August 12, 2014, the matter was discussed in Committee, but again it was decided to keep it in Committee for further deliberations, yet no new evidence was introduced. However, it was suggested that I provide the Committee with a written statement and therefore I provide this statement to the Committee for the record.

**Background:**

**Political Status of Swains Island:**

**A. Swains Island has been a Territory of the United States since August 13, 1856:**

According to Federal Regulations, Swains Island first became a Territory of the United States on August 13, 1856 under the Guano Act. On March 4, 1925, Swains Island was made a part of American Samoa by a Joint Resolution of Congress which Stated:

*Whereas Swains Island ... is included in the list of guano islands appertaining to the United States, which have been bonded under the Act of Congress approved August 18, 1856*

*Whereas the island has been in the continuous possession of American citizens for over fifty years and no form of government therefore or for the inhabitants thereof has been provided by the United States*

*Therefore, be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that sovereignty of the United States over American Samoa is hereby extended over Swains Island, which is made a part of American Samoa*

*d. Native inhabitants of Swains Island of a race indigenous to that island who were not already U.S. citizens or nationals became non-citizen U.S. nationals if residing in Swains Island on March 4, 1925 (U.S. State Department Foreign Affairs Manual (FAM): 7 FAM 1120 Page 20).*

- Swains Island was made a part of American Samoa in that the Sovereignty of the the U.S. over American Samoa was also extended over Swains Island. Swains Island was placed “...*under the jurisdiction of the administrative and judicial authorities of the government established therein by the United States*” (American Samoa Constitution: Acts of Congress 1662) Swains Island did not become a Territory of American Samoa, as implied by current applications of law, but remains a Territory of the U.S.
- Swains Island is equally entitled to the same privileges as Tutuila, Aunnu’u, and Manu’a in the Territory of American Samoa. “Swains Island constitute an area within American Samoa **just like** Tutuila, Aunu’u, and Manu’a” (Assistant Secretary for Insular Affairs, Anthony Babauta letter to Faleomavaega July 2011)

**B. Swains Island became an “Unincorporated Territory or Outlying Possession” of the United States in 1925. .**

According to Federal Regulations there are **two** Unincorporated Territories or Outlying Possessions of the U.S., **American Samoa** and **Swains Island** (7 FAM 1120 Page 18 & 19).

- An "**unincorporated territory**" or "**outlying possession**" is an area over which the Constitution has not been expressly and fully extended by the Congress within the meaning of Article IV, Section 3 of the United States Constitution (**7 FAM 1120 Page 2**).

### **Constitutional Rights of Swains Island**

#### **A. Right to have a voting Delegate in an American Samoa Constitution Convention**

Swains Island has the right to select a Delegate (similar to the Delegate to the Fono), except with voting rights to an American Samoa Constitution Convention. Yet he/she cannot vote on Bills or Resolutions in the House. "*Swains Island shall have one delegate selected in open meeting by the adult permanent residents of the island who are United States nationals*" (AS Rev. Const. Article V Miscellaneous Section 3).

- I was the delegate of Swains Island in the 2010 Constitution Convention, and voted both in the Legislative Committee, and the Full Committee.

#### **B. Right to protection of Lands, Customs, Culture and traditional family organization of Samoan Ancestry (Article 1 Section 3 Protective Legislation).**

- (d) "**American Samoan ancestry**" means lineal descendants of the inhabitants of Tutuila and **Swains Islands** whose permanent place of residence was American Samoa on 17 April 1900, and the inhabitants of Manu'a Islands whose permanent place of residence was American Samoa on 16 July 1904 (**ASCA 41.0202 Definitions**).
- Any law that protects the lands, customs, and traditional family organization of Swains Island people does not violate the Constitution. Subsequently, the Swains Island Delegate is selected in an open meeting (not by popular vote) of the Permanent Residents to protect its lands, culture, and family organization traditions (AS Rev. Const. Article II Legislature Sect. 2 Members)

#### **C. Right to the protection against laws that abridge against the privileges or immunities of the citizens of American Samoa (Article I Bill of Rights Section 16: Unspecified rights and privileges and immunities)**

- **Denying the Swains Island Delegate the right to vote violates section 16 of the Bill of Rights.**

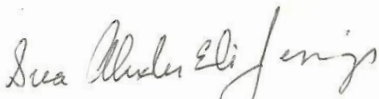
### **Discussion**

Chairman, Swains Island is a Territory of the United States that was made a part of American Samoa through a Joint Resolution of Congress. Swains Island is not a Territory of American

Samoa, but is equal to Tutuila, Aunu'u and Manu'a according to the U.S. Department of Interior. The Swains Island Delegate to the House of Representatives is selected the same way the Swains Island Delegate is selected for a Constitution Convention (an open meeting of the permanent residents of Swains Island). Yet the Swains Delegate to a Constitution Convention has the right to vote both in Sub-Committees as well as the Committee as a Whole. I was the Swains Island Delegate to the 2010 Constitution Convention and I voted both in the Legislative Committee and the Committee as a whole for proposed Amendments from all Committees. The selection of the Swains Island Delegate to the House of Representatives protects the lands, customs, and traditional family organization of Swains Island under Article I Section 3 Protective Legislation. The same way the selection of Senators to the Senate protects Tutuila and Manu'a. As such, granting the Swains Island Delegate the right vote does not violate the Constitution. However, denying that Delegate the right to vote may very well violate Article I Section 16 Unspecified rights, privileges and immunities, by enforcing a law that abridge the privileges and immunities of citizens of American Samoa. This logic is consistent with the testimonies of the Attorney General, Legislative Counsel, and Secretary of Samoan Affairs.

Finally Chairman, in two subsequent Committee meetings since the testimonies of the Attorney General, Legislative Counsel, and the Secretary of Samoan Affairs, there's been no new evidence or arguments to justify keeping this Resolution in Committee. However it is becoming more apparent that an Amendment to the Constitution may not be the best course of action for this deficiency. Therefore Chairman, with this statement I humbly ask that HJR 33-2 be brought up for a full vote of the House, and let the distinguished Members utilize the greatest tool of a free society, the expression of their decision with the right to vote.

Male ava tele e tatau ai,



Su'a Alexander Eli Jennings

cc:

Hon. Lolo M. Moliga, Governor of American Samoa  
Hon. Lemanu P. Mauga, Lt. Governor of American Samoa  
Hon. Faleomavaega E. Hunkin, American Samoa Delegate  
Hon. Tamaitaioleao Gaoteote P. Tofau  
Hon. Savali Talavou Ale, Speaker of the House  
Honorable Senators and Representatives  
Paramount Chief, Satele Galu Satele, Secretary of Samoan Affairs  
Attorney General, Talauega Elesalo Ale  
Legislative Counsel, Henry Kappel

**33RD LEGISLATURE  
3RD REGULAR SESSION**

**H.J.R. NO. 33-2  
IN THE HOUSE**

*13 MARCH 2014*

INTRODUCED BY: Rep. Su'a Alexander Eli Jennings, Swains Island  
 Rep. I'aulualo Fa'afetai Talia, D-1                      Rep. Va'amua Henry Seseapasara, D-9  
 Rep. Fetui Fetu, Jr., D-1                                      Rep. Puleleite Tufele Li'a, D-5  
 Rep. Toeaina Faufano Autele, D-2

REFERRED TO COMMITTEE ON:

**SUBJECT:**  
 CONSTITUTIONAL AMENDMENT—SWAINS ISLAND—RIGHT TO VOTE

**SUMMARY:**  
 This Joint Resolution amends Article II, Section 2 of the Revised Constitution of American Samoa to provide the right to vote for the delegate of Swains Island.

OWN VOTE			LEGISLATIVE VOTE		
YES	NO		YES	NO	DATE
<input type="checkbox"/>	<input type="checkbox"/>	1ST READING			
<input type="checkbox"/>	<input type="checkbox"/>	COMMITTEE REPORT			
<input type="checkbox"/>	<input type="checkbox"/>	2ND READING			
<input type="checkbox"/>	<input type="checkbox"/>	3RD READING			
<input type="checkbox"/>	<input type="checkbox"/>	AMENDED - SEE CALENDAR DATED			
<input type="checkbox"/>	<input type="checkbox"/>	AMENDED - SEE JOURNAL DATED			
<input type="checkbox"/>	<input type="checkbox"/>	AMENDED - SEE JOURNAL DATED			
<input type="checkbox"/>	<input type="checkbox"/>	RECOMMITTED			
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H.J.R. NO. 33-2

INTRODUCED BY:

*[Handwritten signatures and names over the text]*  
*Reading Article*

“A HOUSE JOINT RESOLUTION AMENDING ARTICLE II, SECTION 2 OF THE REVISED CONSTITUTION OF AMERICAN SAMOA TO PROVIDE THE RIGHT TO VOTE FOR THE DELEGATE OF SWAINS ISLAND”

WHEREAS, Swains Island has been a Territory of the United States for over 156 years, since its inclusion in the list of guano islands appertaining to the United States, which have been bonded under the Act of Congress that was approved on August 18, 1856; and

WHEREAS, by a Joint Resolution of Congress on March 4, 1925 the sovereignty of the United States over American Samoa was also extended over Swains Island, and Swains Island was made a part of American Samoa. Native inhabitants of Swains Island of a race indigenous to that island who were not already U.S. citizens or nationals became non-citizen U.S. nationals if residing in Swains Island on March 4, 1925; and

WHEREAS, the copra from Swains Island was instrumental in stimulating the fragile economy of the newly formed Territory of American Samoa. It created jobs, by allowing local residents to bring what copra they can produce to combine with Swains copra, and it also generated tax revenue for the government from the sale of copra; and



1 WHEREAS, at the decline of the copra industry in the 1960's, two tuna canneries  
2 were erected in the Pago Pago harbor. The high demand for tuna  
3 from the canneries led to the formation of Exclusive Economic  
4 Zones (EEZ) between the countries of the South Pacific in the  
5 1970's. The Swains Island waters brought over 200 miles of ocean  
6 and represents 1/3 of the total United States EEZ in the South  
7 Pacific; and  
8

9 WHEREAS, for 89 years the only voice Swains Island has in the Government of  
10 American Samoa is a non-voting member of the House of  
11 Representatives, in the Legislature of American Samoa; and  
12

13 WHEREAS, this political arrangement has greatly contributed to the deteriorating  
14 state of Swains Island today. Residents are forced to vacate their  
15 homes due to the lack of transportation, communication, and basic  
16 infrastructure to sustain social and economic developments. Their  
17 language, culture, traditions and customary practices have all but  
18 vanished from the Territory; and  
19

20 WHEREAS, in order to start the process of reviving Swains Island back to its  
21 original state and rightful standing in the Territory of American  
22 Samoa, an Amendment to the Revised Constitution of American  
23 Samoa must be approved giving the right to vote to the Swains  
24 Island Delegate in the House of Representatives; and  
25

26 WHEREAS, in accordance with Article V, Section 3 of the Revised Constitution  
27 of American Samoa, this House Joint Resolution was agreed to by  
28 three-fifths of all members of each House, voting separately, with

1 yeas and nays taken thereon, and so entered in the respective  
2 journals of each House.

3  
4 NOW, THEREFORE, BE IT JOINTLY RESOLVED BY THE HOUSE OF  
5 REPRESENTATIVES AND THE SENATE OF THE TERRITORY OF  
6 AMERICAN SAMOA:

7  
8 THAT, Article II, Section 2 of the Revised Constitution of American Samoa is  
9 amended to read:

10  
11 **“Section 2. Membership.** The Senate shall consist of eighteen members, three from the  
12 Manu’a District, six from the Western District, and nine from the Eastern District.

13  
14 The House of Representatives shall consist of twenty members elected from the  
15 following representative districts, the number of representatives from each of the districts  
16 to be as indicated:

17 Representative District No. 1, composed of Ta’u, Fitiuta	)	two representatives;
18 and Faleasao,	)	
19 Representative District No. 2, composed of Ofu, Olosega	)	one representative;
20 and Sili,	)	
21 Representative District No. 3, Vaifanua — composed of	)	one representative;
22 the Villages of Alao, Aoa, Onenoa, Tula and Vatia,	)	
23 Representative District No. 4, Saole — composed of the	)	one representative;
24 Villages of Aunuu, Amouli, Utumea and Alofau,	)	
25 Representative District No. 5, Sua No. 1 — composed of	)	one representative;
26 the Villages of Fagaitua, Amaua, Auto, Avaio, Alega,	)	
27 Aumi and Lauili,	)	
28 Representative District No. 6, Sua No. 2 — composed of	)	one representative;
29 the Villages of Sailele, Masausi, Masefau and Afono,	)	
30 Representative District No. 7, Ma’uputasi No. 1 —	)	



- 1 composed of the Villages of Fatumafuti, Fagaalu and Utulei) one representative;  
2 Representative District No. 8, Ma'uputasi No. 2 —  
3 composed of the Village of Fagatogo, ) one representative;  
4 Representative District No. 9, Ma'uputasi No. 3 —  
5 composed of the Village of Pago Pago, ) one representative;  
6 Representative District No. 10, Ma'uputasi No. 4 —  
7 composed of the Villages of Satala, Atuu and Leloaloa, ) one representative;  
8 Representative District No. 11, Ma'uputasi No. 5 —  
9 composed of the Village of Aua, ) one representative;  
10 Representative District No. 12, Ituau — composed of the  
11 Villages of Nu'uuli, Fagasa, Matuu, Faganeanea, ) two representatives;  
12 Representative District No. 13, Fofu — composed of the  
13 Villages of Leone and Auma, ) one representative;  
14 Representative District No. 14, Lealataua — composed of  
15 the Villages of Fagamalo, Fagalii, Poloa, Amanave,  
16 Failolo, Agagulu Seetaga, Nua, Atauloma, Afao, Amaluia  
17 and Asili, ) one representative;  
18 Representative District No. 15, Ma'upu — composed of  
19 the Villages of Tafuna, Mesepa, Faleniu, Mapusaga Fou,  
20 Pavaiai, Iliili and Vaitogi, ) two representatives;  
21 Representative District No. 16, Tualatai- composed of the  
22 Villages of Futiga, Ituau (Malaeloa), Taputimu and Vailoatai) one representative;  
23 Representative District No. 17, Leasina — composed of  
24 the Villages of Aitulagi (Malaeloa), Aoloau and Asu. ) one representative.

25

26 Senators and Representatives shall be reapportioned by law at intervals of not less  
27 than 5 years. The adult permanent residents of Swains Island who are United  
28 States nationals may elect at an open meeting a delegate to the House of  
29 Representatives who shall have all privileges of a member of the House, ~~except~~  
30 ~~the right to vote.~~”

31

1 BE IT FURTHER RESOLVED, that the Governor is respectfully requested to  
2 submit the amendment proposed by this joint resolution to the voters in the next  
3 general election on November 4, 2014, and  
4

5 BE IT FURHTER RESOLVED, that the Chief Clerk of the House is directed to  
6 transmit copies of this resolution to the Honorable Lolo M. Moliga, Governor of  
7 American Samoa and the Honorable Sally Jewell, Secretary of the Department of  
8 the Interior.

9 ----- END -----  
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