

Response to Congressman Bruce Westerman's Questions

1. Lead-up: One of the Constitutional amendments voted upon by American Samoa citizens in 2022 allowed the delegate seat you currently occupy the ability to vote in the American Samoa House of Representatives.

Question: Could you please explain to us the impact of H.R. [6062] on this amendment attempt?

Answer:

HR 6062 impacts this amendment attempt by suspending the requirements for DOI to review of our Amendments within 4 months to an indefinite time. HR 6062 was introduced on October 25, 2023, 10 months after the Governor sent the Amendments to the Department of the Interior for review, and 3 weeks after the passage of Senate Resolution 38-28 on October 2, 2023, calling on Governor Lemanu P. Mauga to "pursue the United States Congress with urgency and to petition the approval of our Constitutional Amendments." There's no guarantee HR 6062 will be passed by both Houses this year given the Presidential and General elections in November (SR 38-28 was submitted to the subcommittee on Indian and Insular affairs as additional information on January 31, 2024). DOI has shown that they are willing to unilaterally suspend certain provisions of our constitution without warning, namely, the 4-month approval requirement in the American Samoa Constitution being completely disregarded both before and after the introduction of HR 6062.

HR 6062 impacts this amendment because it denies Swains Island's reliance on a Congressional review to get to the core of why Swains Island has been mistreated and separated from the rest of the islands of American Samoa for over 63 years under the Administration of the Department of Interior. Resulting in the nonexistence of Federal Funding assistance for Swains Island and the forced alienation from our lands in violation of our Constitutional rights.

Question: How would the passage of this bill affect Swains Island?

Answer:

Passage of HR 6062 removes requirements for ASG and/or DOI to consider the Constitutional rights of Swains Island, as demonstrated by the Executive Order that only includes the 1929 Ratification Act which only recognizes Tutuila and Manu'a as American Samoa, but does not include HJR 294 approved March 4, 1925, that also recognizes Swains Island as a part of American Samoa. This is further demonstrated by the ASG and DOI's failure to respond to letters related to Constitutional rights violations going back to 2014, and more recently leading up to the 2022 Constitutional Convention.

2. Lead-up: The 2022 constitutional amendments have yet to be approved as they are currently still with the Department of the Interior.

Question: What has been the impact on Swains Island from this delay?

Answer:

Swains Island has had no ability to impact any financial measures that affect Swains Island, such as the 2024 Budget Hearings, and soon the rapidly approaching 2025 Budget Hearings. Swains Island only receives local funding for transportation under the Governor's *Special Programs* which is further obscured by being combined with the Manu'a Transportation where they have scheduled by-weekly trips to Manu'a, while there are no set trips to Swains

Island. This practice has resulted in going for months or even years without transportation to Swains Island, and the forced evacuation of our lands against our Constitutional Rights, despite budgeted funds for the Swains Island transportation during all those years.

Another Legislation was the SB 38-26 Supplemental Appropriation Bill where \$5 million from local surplus fund were allocated for a Swains Island airport but was cut to \$1.5 million and the rest distributed for other projects in Tutuila and Manu'a, despite Swains Island's appeals. That is in addition to the recent millions of dollars out of the \$1.4 Billion ARPA funds that were also distributed to Tutuila and Manu'a for airports, roads, and other infrastructure projects, but none was ever allocated for Swains Island.

This delay is causing Swains to continue to lose out on having a vote on these important measures *despite* the fact the people of American Samoa already voted in favor of giving Swains voting representation in the legislature.

Question: Can you describe your experience with attempting to reach out to the Department of the Interior on the 2022 Swains Island amendment?

Answer

2014

Efforts to reach out to the Department of the Interior on the 2022 Swains Island amendment originated in **2014**, with attempts to resolve matters at the local level.

On March 13, 2014, I introduced HJR 33-2 seeking the right to vote for the Swains Island Delegate. At a subsequent Hearing of the House Ways and Means Committee on HJR 33-2 on March 16, 2014, then Attorney General Talauega Elesalo Ale (now the Lt. Governor), the late Secretary of Samoan Affairs Paramount Chief Satele Galu Satele, and the late Legislative Counsel Henry Kappel, all endorsed the Legislation stating it was long overdue.

On September 29, 2014, I wrote the Ways and Means Committee Chairman, I'aulualo Faafetai Talia, explaining my reasons for calling for a vote on HJR 33-2. A copy of my letter was also sent to Congressman Faleomavaega E. Hunkin and the ASG Leadership. On October 3, 2014, HJR 33-2 was brought up for a vote of the House where it was defeated by a vote of 6 to 5, 4-abstained, and 5-absent (a copy of the letter to the Ways and Means Chair including a copy of HJR 33-2 was submitted as additional documents to the U.S. House Subcommittee on Indian and Insular Affairs on January 31, 2024).

Seeking assistance from DOI Assistant Secretary Esther Kiaaina

On October 17, 2014, I wrote the Department of the Interior's Assistant Secretary Esther Kiaaina, explaining my failed attempts to seek the right to vote for the Swains Island Delegate, despite the endorsements of the Attorney General, Secretary of Samoan Affairs and the Legislative Counsel and requesting a meeting on her anticipated visit to American Samoa. I also copied the Interior's American Samoa Field Representative Lydia F. Nomura. I never got a response from Assistant Secretary Esther Kiaaina and was not granted a meeting with her on her visit to American Samoa (a copy of the letter to Assistant Secretary Kiaaina and a copy of the letter to the Ways and Means Chairman including a copy of HJR 33-2 was submitted to the subcommittee on Indian and Insular affairs as additional information on January 31, 2024).

HJR 33-2 was later submitted as a proposed amendment to the 2022 Constitutional Convention where it passed by an overwhelming vote of 73 to 43 and approved by the people of American Samoa on the 2022 election.

2021

My recent attempt to reach out to the Department of the Interior on the 2022 Swains Island Amendment again began with a letter to Governor Lemanu P. Mauga, the President of the Senate Tualo Manaia Fruean, and the Speaker of the House Savali Talavou Ale on July 28, 2021. This was in response to a notification from Mr. Keith Gebauer, Manager of the Rescue Plan Coordinator that out of \$1.4 Billion Dollar ARPA and Cares Act funds for American Samoa, Swains Island was only eligible for \$3,400.00 (Three Thousand Four Hundred Dollars). In my letter to the American Samoa Government (ASG) Leadership, I cited several inconsistencies in the American Samoa Constitution and treatment of Swains Island that has contributed to our forced evacuation and disqualification for ARPA funding. At the same time words of a possible Constitutional Convention in 2022 started to surface. Also in that letter, I specifically requested a seat in any Constitutional Review or Political Status Review Committee (the letter to the ASG Leadership was submitted to the subcommittee on Indian and Insular affairs as additional information on January 31, 2024).

Seeking assistance from DOI Deputy Assistant Keone Nakoa

After 4 months without any response from the local Leaders, I requested the assistance of the Honorable Keone Nakoa in a letter dated November 30, 2021. I forwarded a copy of my letter to the ASG Leadership citing the inequities, injustices, and neglect that has plagued Swains Island for years in American Samoa to Deputy Secretary Nakoa (the letter to Deputy Assistant Nakoa was attached to our written testimony). No response to my letter to Deputy Nakoa was ever received.

2022

Swains Island Administratively denied the Introduction of a Constitutional Amendment

At the convening of the 3rd Session of the 37th Legislature in January 2022, the 2022 Constitutional Review Committee was set to convene on February 9, 2022. Swains Island was not granted a seat on the Constitutional Review Committee. On February 12, 2022, I requested through an email to House Legal Counsel Nat Savali to review an attached copy of HJR 33-2 from 2014 for resubmission as an Amendment for the 2022 Constitutional Convention. After several discussions with Legal Counsel Nat Savali and a meeting with the Speaker, my Amendment was not allowed to be introduced by the end of the 3rd Session of the 37th Legislature.

Seeking the assistance of Madam Secretary Deb Haaland

On June 7, 2022, with no response from Deputy Assistant Nakoa and repeated discussions with the Office of Insular Affairs as well as failed attempts to introduce an amendment in the House of Representatives, I wrote to the Honorable Deb Haaland, seeking her assistance given the approaching 2022 Constitutional Convention and 2023 Budget Hearings. I have not received a response from the Secretary (letter to Secretary Deb Haaland was included in our written testimony to the Subcommittee on Indian and Insular Affairs).

Meeting with Policy Director Basil Ottley and DOI American Samoa Field Representative, Lydia F. Nomura

On August 29, 2022, Interior Assistant Secretary Carmen Cantor was on hand for the opening of the 2022 Constitutional Convention as the Keynote Speaker. Accompanying her was Mr. Basil Ottley, Policy Director of OIA. After the opening Ceremony, I was granted a meeting with Mr. Ottley and DOI Field Representative Lydia F. Nomura. The purpose of the meeting was to specifically seek a response from Deputy Secretary Keone Nakoa to my letter dated November 30, 2021, or Secretary Haaland to my follow-up letter of June 7, 2022. Neither Mr. Basil nor Ms. Nomura were aware of any response to my letters.

2023-2024

Meeting with DOI Deputy Assistant Secretary Keone Nakoa

On November 7, 2023, I met Deputy Assistant Keone Nakoa and DOI American Samoa Field Representative Lydia F. Nomura. When asked about a response to my letter to him dated November 30, 2021, or my follow-up letter to Secretary Haaland dated June 7, 2022, he replied that he did send a reply on behalf of the Secretary. He directed Field Representative Nomura to forward his response to me. I never received his letter dated June 30, 2024, which is also consistent with the response from Policy Director Ottley and Field Representative Nomura almost 30 days later August 29, 2022, and our Legislative staff's report that they never received a letter from DOI.

As for any Constitutional violations against Swains Island, Nakoa stated there are none because the U.S. Constitution does not fully apply to American Samoa, and DOI does not review local Constitutions. There may be inconsistencies with the American Samoa Constitution, but no violations. Besides there may be some illegalities with the American Samoa 2022 Constitutional Convention. He stated that DOI will not litigate my case and advised that I seek the help of a lawyer. That's when I assembled my Opposition to HR 6062 Team to oppose Congresswoman Radewagen's Legislation, resulting in my testifying before the Subcommittee on Indian and Insular affairs on January 18, 2024.

Follow-up: What responses has the Department of Interior provided if any?

Answer:

I have not received a response from the Department of the Interior to any of my letters. I only had a chance to meet with Policy Director, Basil Ottley and the American Samoa Field Representative Lydia F. Nomura on August 29, 2022, where they assured me, they are not aware of any response to my letter from Deputy Assistant Nakoa or, Madam Secretary Haaland. Over a year Later I met with Deputy Assistant Keone Nakoa and DOI Field Representative in American Samoa, Lydia F. Nomura on November 7, 2023. There he informed Nomura and I that he sent a response on behalf of Secretary Haaland, which I never received.

Follow-up: Do you believe that removing the requirement for amendments to receive Congressional approval would address this issue?

Answer:

No. This bill will remove the ability for Swains to address Congress about DOI and ASG's mistreatment of Swains Island under the American Samoa Constitution. The only way to resolve this issue is to have assurance from Congress or DOI that DOI can be held accountable for disparate treatment of certain classes of American Samoans. This requires either Congress to amend this legislation and insert a provision that all people of American

Samoa shall be protected from the forced alienation of their family lands, or an amendment of the Presidential Executive Order 10264 stating the same. At the least, DOI needs clarity on the fact that Swains is a part of American Samoa under their civil administration, and that Swains is a politically co-equal part of American Samoa as the islands of Tutuila, Aunu'u, and Manu'a.