

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS / ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,)

v.)

WILLIAM G. CLARK)
_____)

Crim. No. ST-09-cr-0020

2010 APR 16 PM 3:22
SUPERIOR COURT
OF THE VIRGIN ISLANDS

STATEMENT OF INTEREST
ON BEHALF OF THE UNITED STATES IN SUPPORT
OF DEFENDANT CLARK'S MOTION FOR RECONSIDERATION

INTRODUCTION

Pending before this Court is a motion filed by Bureau of Alcohol, Tobacco, Firearms and Explosives Special Agent (SA) William Clark seeking reconsideration of this Court's March 19, 2010, Order holding that the Supremacy Clause of the United States Constitution does not apply in the United States Virgin Islands (hereafter "Virgin Islands") which is an unincorporated territory of the United States. *See* 48 U.S.C. § 1541(a). Although the United States is not a party to the underlying criminal action and SA Clark is represented by private counsel, the Department of Justice respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517 to make clear that it is the position of the United States that the Supremacy Clause fully applies in all territories of the United States, including the Virgin Islands. Section 517 provides broad authority for a representative of the Attorney General to appear in any court at any time "to attend to the interests of the United States." The critical federal interest implicated in this instance is the proper application of the Supremacy Clause to the Virgin Islands.

STATEMENT OF FACTS

This Court held a hearing on March 19, 2010, on SA Clark's motion to dismiss the criminal action brought against him by the Virgin Islands. SA Clark's motion was based on his assertion of immunity pursuant to the Supremacy Clause of the Constitution. Prior to hearing argument on the merits, this Court queried defense counsel on the application of the Supremacy Clause to the Virgin Islands, citing to Section 1561 of the Revised Organic Act of the Virgin Islands. Transcript p. 16. That section applies certain provisions of the Constitution to the Virgin Islands but does not include the Supremacy Clause as one of those delineated rights. Based on that "omission" from the Revised Organic Act, this Court subsequently ruled that the Supremacy Clause does not apply in the Virgin Islands. *Id.* at 25. SA Clark has since filed a motion for reconsideration of that decision. The United States hereby supports reconsideration and urges this Court to vacate its prior holding.

ARGUMENT

The Supremacy Clause provides that "the Laws of the United States * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." U.S. Const. Art. VI, cl. 2. That language assures that the Constitution and federal law take precedence over local law, and requires all judges to adhere to that principle in their courts. Congress also has broad and exclusive authority under the Territorial Clause of the Constitution, Art. IV, Section 3, cl. 2, to make "all Needful rules and Regulations" governing all of the acquired territories of the United States. *See Polychrome Int'l Corp. v. Krigger*, 5 F.3d 1522, 1534 (3d Cir. 1993)(explaining that "Congress has comprehensive powers to regulate territories under the Territorial Clause").

Congress could not exercise such “comprehensive powers” if federal law did not reign supreme in all United States territories and was subject to nullification by local law or authority.

Although the Supremacy Clause expressly provides that the “the Judges in every *State* shall be bound thereby,”(emphasis added), the reference to state governments in the clause merely reflects the special role afforded states in the federalism scheme established by the Constitution and cannot logically be read to imply that the Framers somehow intended to provide greater autonomy to territories acquired by the United States than to states. The critical phrase in the Supremacy Clause for purposes of this case is that federal law is the “supreme Law of the Land,” which term logically encompasses territories as well as states. In fact, the Supreme Court in *P.R. Consumer Affairs Dept. v. Isla Petroleum*, 485 U.S. 495, 499 (1988), has expressly applied the Supremacy Clause to the Commonwealth of Puerto Rico¹, explaining: “Although Puerto Rico has a unique status in our federal system ... the parties have assumed, and we agree, that the test for federal preemption of the law of Puerto Rico at issue here is the same as the test under the Supremacy Clause, Art. VI, cl. 2, for preemption of the law of a State.” *See also Dupont-Benlate Litig.*, 859 F.Supp. 619, 621 (D. P.R. 1994) (stating that “Puerto Rico is considered a state for purposes of Supremacy Clause analysis”). Federal preemption, of course, is directly based on the authority of the Supremacy Clause. *See Gade v. Nat’l Solid Waste Mgmt Ass’n*, 505 U.S. 88, 108 (1992)([“U]nder the Supremacy Clause, from which our preemption doctrine is derived, any state law, however clearly within a state’s acknowledged power, which interferes with or is contrary to federal law, must yield.”). Accordingly, as in the case of Puerto

¹ Although a Commonwealth, Puerto Rico, like the Virgin Islands, is also an unincorporated territory of the United States. *See United States v. Sanchez*, 992 F.2d 1143, 1152 (11th Cir. 1993).

Rico, the Virgin Islands status as a United States territory rather than a state affords no basis to avoid application of the Supremacy Clause.

While it is true that the Virgin Islands operates under a different organic statute than Puerto Rico, that does not alter the Supremacy Clause analysis. Congress enacted the United States Virgin Islands Revised Organic Act of 1954 pursuant to its “comprehensive powers” under the Territorial Clause. Part of that Act, codified at 48 U.S.C. § 1561 and known as the United States Virgin Islands Bill of Rights, provides, among other things, for the extension of certain constitutional guarantees to the people of the Virgin Islands. Specific provisions and amendments to the Constitution related to individual rights are extended to the people of the Virgin Islands, *to wit*, Art. I, Section 9, cl. 2 and 3, Art. IV, Section 1 and Section 2, cl. 1, Article VI, cl. 3, the First through Ninth Amendments inclusive, the Thirteenth Amendment, second sentence of Section 1 of the Fourteenth Amendment, and the Fifteenth and Nineteenth Amendments. Other individual rights, such as voting rights, are not provided.

In discussing application of the Commerce Clause of the Constitution to the Virgin Islands, the Third Circuit explained in *JDS Realty Corp., v. Gov't of the Virgin Islands*, 824 F.2d 256 (3d Cir. 1987), *vacated on other grounds*, 852 F.2d 66 (3d Cir. 1988), that Section 1561 provides Virgin Island residents with many of the protections against unreasonable governmental action that the Constitution provides. However, the Third Circuit noted that “because this section is concerned with the rights of Virgin Islands residents as against the Virgin Islands government ... it is not surprising that Congress did not include the Commerce Clause in its enumeration of applicable constitutional guarantees.” 824 F.2d at 259. In finding that the powers granted to Congress by the Commerce Clause are implicit in the Territorial Clause, the

court went on to conclude that the Commerce Clause serves to protect the national power against encroachment from local governments, and if it did not apply in the Virgin Islands, the result would be that an unincorporated territory would have more power over commerce than the fifty states. *Id.* at 260; *See also Polychrome Int'l Corp. v. Krigger*, 5 F.3d at 1534 (Commerce Clause principles are implicit in the Territorial Clause); *Molloy v. Gov't of the Virgin Islands*, 594 F.Supp. 595 (D.V.I. 2007) (same).

The same principle applies with regard to the Supremacy Clause. It is axiomatic that the Supremacy Clause was designed to ensure that local governments do not “retard, impede, burden, or in any manner control the execution of federal law.” *McCulloch v. Maryland*, 17 U.S. 316 (1819). Thus, as with the Commerce Clause in *JDS Realty*, the Supremacy Clause must apply in the Virgin Islands, else the laws and judges of this territory could frustrate federal regulation and would have more power to impede or control the execution of federal authority than the states.

In extending through the Revised Organic Act certain *individual* constitutional rights to the citizens of the Virgin Islands to the exclusion of other individual rights, Congress did not restrict the governing authority of the United States over the Virgin Islands. To the contrary, although there is no doubt that Congress granted the Legislature of the Virgin Islands broad powers under Section 8(a) of the Revised Organic Act, 48 U.S.C. § 1574(a), the Virgin Islands is specifically prohibited under that Act from taking any action that is “inconsistent with ... the laws of the United States” *See also Port Const. Co. v. Gov't of the Virgin Islands*, 359 F.2d 663 (3d Cir. 1966) (explaining that “[t]he Legislature of the Virgin Islands has full legislative powers limited only by the Constitution, the Revised Organic Act, and other federal statutes applicable to the Virgin Islands”). One federal law limitation on the government of the Virgin

Islands is the Supremacy Clause. That limitation is not an individual right that Congress can be said to have disposed of in Section 1561. Rather, it is a fundamental constitutional restriction on the governing authority of the Virgin Islands that is explicitly reserved in the Revised Organic Act.

Consistent with that reasoning, both the Third Circuit and the Territorial Court of the Virgin Islands have found that Supremacy Clause principles are fully applicable to the Virgin Islands pursuant to Section 1574(a) of the Revised Organic Act. In *St. Thomas-St. John Hotel & Tourism Assn, Inc. v. Gov't of the Virgin Islands*, 357 F.3d 297 (3d Cir. 2004), the Third Circuit addressed whether a Virgin Islands statute on wrongful discharge from employment was preempted by the National Labor Relations Act, a federal statute governing employment relationships. In concluding that preemption applied, the Third Circuit specifically held that the Supremacy Clause applies to the Virgin Islands through the Revised Organic Act. Similarly, in *Hamlet v. Oliver Exterminating Inc.*, 2001 WL 1568595 (Terr. V.I. 2001), the Territorial Court of the United States Virgin Islands held that a plaintiff's tort claims were preempted by federal law through Section 1574(a) of the Revised Organic Act. The reasoning of those cases is compelling and warrant reconsideration of this Court's ruling that the Supremacy Clause does not apply in the Virgin Islands.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court consider this filing in conjunction with its consideration of defendant Clark's motion for reconsideration, and vacate its prior holding that the Supremacy Clause does not apply in the Virgin Islands.

Respectfully submitted,

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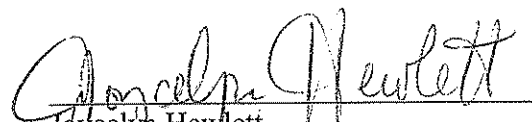
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