

Unconstitutionality of a Referendum

Nogueras Cartagena v. María Calderón
(Hector M. Laffitte, D.P.R. 3:01-cv-1789)

A Puerto Rico voter filed a pro se federal complaint on June 13, 2001, challenging the constitutionality of a local referendum and a later federal referendum on the U.S. military's continued use of the island of Vieques for explosives exercises. Respecting the imminent local referendum, the court ruled that the plaintiff did not have standing to pursue a general grievance in court. Later, the court issued an order to show cause why claims concerning the federal referendum should not be dismissed, and then the court dismissed those claims.

Subject: Ballot measures. *Topics:* Ballot measure; enjoining elections; pro se party.

A Puerto Rico voter filed a pro se federal complaint in the District of Puerto Rico on June 13, 2001, challenging the constitutionality of two scheduled referenda on the U.S. military's continued use of the island of Vieques for explosives exercises.¹ A local referendum was scheduled for July 29 and a federal referendum was scheduled for November 6.²

The National Defense Authorization for Fiscal Year 2001 provided for a “referendum by the Vieques electorate whether the people of Vieques approve or disapprove of the continuation of the conduct of live-fire training, and any other types of training, by the Armed Forces at the Navy's training sites on the island.”³ The federal law specified that “no proposition or option may be presented as an alternative to the propositions of approval and of disapproval of the continuation of the conduct of [the] training.”⁴

On June 13, Puerto Rico's legislature provided for an earlier Vieques referendum “to ascertain the sense of the residents of Vieques regarding the military exercises and bombings of the Navy of the United States of America on said island-municipality.”⁵ The purpose of the local referendum was to provide the voters of Vieques with ballot alternatives different from those provided by the federal legislation.⁶

On June 18, Judge Hector M. Laffitte ordered the defendants to show cause at a June 25 hearing why a preliminary injunction should not be granted.⁷ On June 28, Judge Laffitte, accepting the parties' agreement to consolida-

1. *Nogueras Cartagena v. María Calderón*, 150 F. Supp. 2d 338, 341 (D.P.R. 2001); Docket Sheet, *Nogueras Cartagena v. María Calderón*, No. 3:01-cv-1789 (D.P.R. June 13, 2001).

2. *Nogueras Cartagena*, 150 F. Supp. 2d at 341.

3. Pub. L. No. 106-398 § 1503(a)(1), 114 Stat. 1654, 1654A-352 (2000).

4. *Id.* § 1503(b).

5. 2001 P.R. Law No. 34 (June 13, 2001).

6. *Id.*

7. Order, *Nogueras Cartagena v. María Calderón*, No. 3:01-cv-1789 (D.P.R. June 18, 2001), D.E. 5.

Judge Laffitte retired on February 16, 2007. Federal Judicial Center Biographical Directo-

tion of his consideration of both a preliminary and a permanent injunction, ruled against the plaintiff with respect to the upcoming local referendum.⁸ The plaintiff did not have standing to sue on general grievances against the holdings of the referendum, and his claim that he was improperly denied the right to vote because he was not a resident of Vieques was without merit.⁹

In the local referendum, which drew a turnout of 81%, departure of the Navy received 68% of the vote.¹⁰

On August 20, Judge Laffitte ordered the plaintiff to show cause why his claims concerning the federal referendum should not be dismissed.¹¹ On September 14, Judge Laffitte dismissed the federal referendum claims.¹²

The federal referendum was canceled in light of an Executive decision to phase out use of Vieques for war games.¹³ On December 26, the plaintiff dismissed his appeal.¹⁴

ry of Article III Federal Judges, www.fjc.gov/history/judges.

8. *Nogueras Cartagena v. María Calderón*, 150 F. Supp. 2d 338 (D.P.R. 2001); Partial Judgment, *Nogueras Cartagena*, No. 3:01-cv-1789 (D.P.R. June 21, 2001), D.E. 21.

9. *Nogueras Cartagena*, 150 F. Supp. 2d 338.

10. *See 68% in Vieques Want Navy Out Now*, Miami Herald, July 30, 2001, at 1A; David Gonzalez, *Vieques Voters Want the Navy to Leave Now*, N.Y. Times, July 30, 2001, at A1.

11. Opinion, *Nogueras Cartagena*, No. 3:01-cv-1789 (D.P.R. Aug. 20, 2001), D.E. 27.

12. Opinion, *id.* (Sept. 14, 2001), D.E. 30; Judgment, *id.* (Sept. 14, 2001), D.E. 31.

13. National Defense Authorization Act for Fiscal Year 2002, Pub. L. No. 107-107 § 1049, 115 Stat. 1012, 1230 (Dec. 28, 2001); *see Bombing Tests Set for Vieques*, Miami Herald, Mar. 16, 2002, at 17A; *Court Clears Way for Vote on Vieques*, N.Y. Times, Oct. 19, 2001, at A17.

14. Docket Sheet, *Nogueras Cartagena v. María Calderón*, No. 01-2470 (1st Cir. Oct. 17, 2001).