

**VOTING RIGHTS AND ELECTION ADMINISTRATION
IN THE U.S. VIRGIN ISLANDS AND OTHER
TERRITORIES**

HEARING
BEFORE THE
SUBCOMMITTEE ON ELECTIONS
COMMITTEE ON HOUSE
ADMINISTRATION
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTEENTH CONGRESS
SECOND SESSION

JULY 28, 2020

Printed for the use of the Committee on House Administration



Available on the Internet:
<http://www.govinfo.gov/committee/house-administration>

U.S. GOVERNMENT PUBLISHING OFFICE

41-333

WASHINGTON : 2020

COMMITTEE ON HOUSE ADMINISTRATION

ZOE LOFGREN, California, *Chairperson*

JAMIE RASKIN, Maryland

SUSAN A. DAVIS, California

G. K. BUTTERFIELD, North Carolina

MARCIA L. FUDGE, Ohio

PETE AGUILAR, California

RODNEY DAVIS, Illinois,

Ranking Member

MARK WALKER, North Carolina

BARRY LOUDERMILK, Georgia

CONTENTS

JULY 28, 2020

| | Page |
|--|------|
| Voting Rights and Election Administration in the U.S. Virgin Islands and Other Territories | 1 |
| OPENING STATEMENTS | |
| Chairperson Marcia L. Fudge | 1 |
| Prepared statement of Chairperson Fudge | 3 |
| Hon. Rodney Davis, Ranking Member | 5 |
| Prepared statement of Ranking Member Davis | 7 |
| WITNESSES | |
| Hon. Stacey E. Plaskett, Delegate, United States Virgin Islands | 10 |
| Prepared statement of Hon. Plaskett | 12 |
| Hon. Jenniffer González-Colón, Resident Commissioner of Puerto Rico | 18 |
| Prepared statement of Hon. González-Colón | 20 |
| Hon. Michael F. Q. San Nicolas, Delegate, Guam | 22 |
| Prepared statement of Hon. San Nicolas | 24 |
| Hon. Gregorio Kilili Camacho Sablan, Delegate, Commonwealth of the Northern Mariana Islands | 26 |
| Prepared statement of Hon. Sablan | 28 |
| Mr. Gerard Emanuel, Retired Educator | 70 |
| Prepared statement of Mr. Emanuel | 72 |
| Mr. Neil Weare, President and Founder, Equally American Legal Defense & Education Fund | 82 |
| Prepared statement of Mr. Weare | 84 |
| MATERIAL SUBMITTED FOR THE RECORD | |
| Statement of Robert Underwood, former Delegate, Guam | 32 |
| Statement of Curtis L. Decker, Executive Director, National Disability Rights Network | 36 |
| Statement of Pamela Lynn Colon, Esq., citizen of St. Croix, U.S. Virgin Islands | 38 |
| Statement of Emile A. Henderson III, Esq., Managing Attorney, Yvette D. Ross-Edwards P.C. | 53 |
| Statement of Caroline F. Fawkes, CERA, Supervisor of elections, U.S. Virgin Islands | 55 |
| Statement of Carol M. Burke, National Committee Woman, Democratic Party of the U.S. Virgin Islands | 62 |
| Statement of Gustav James, citizen of St. Croix, U.S. Virgin Islands | 64 |
| Statement of John M. Canegata, Chairman, Republican Party of the U.S. Virgin Islands | 67 |
| Statement of the Democratic Party of Puerto Rico | 90 |
| Statement of the Puerto Rico Equality Commission | 93 |

VOTING RIGHTS AND ELECTION ADMINISTRATION IN THE U.S. VIRGIN ISLANDS AND OTHER TERRITORIES

TUESDAY, JULY 28, 2020

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ELECTIONS,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:07 a.m., via Webex, Hon. Marcia L. Fudge [Chair of the Subcommittee] presiding.

Present: Representatives Fudge, Davis of California, Butterfield, Aguilar, and Loudermilk.

Staff Present: Jamie Fleet, Staff Director; Dan Taylor, General Counsel; Brandon Jacobs, Legislative Clerk; Stephen Spaulding, Senior Elections Counsel; Sarah Nasta, Elections Counsel; Peter Whippy, Communications Director; David Tucker, Senior Counsel and Parliamentarian; Jen Daulby, Minority Staff Director; Tim Monahan, Minority Deputy Staff Director; Cole Felder, Minority General Counsel; and Veleter Mazyck, Chief of Staff, Rep. Marcia Fudge.

Chairwoman FUDGE. The Subcommittee on Elections of the Committee on House Administration will come to order. I see my colleagues from the Committee: Mr. Davis—thank you so much—Mr. Aguilar, and I do understand that Mr. Butterfield is joining us shortly.

I want to thank my colleagues who are witnesses on this panel as well. Thank you so much for being here today for this virtual Subcommittee hearing.

As we begin, I want to remind our Members and participants of a few things that will help us navigate this new platform. We are holding this hearing in compliance with the regulations for remote committee proceedings pursuant to H. Res. 965.

The fundamental nature of the hearing and our rules are unchanged. Generally, the Committee will keep microphones muted to limit background noise. Members will need to unmute themselves when seeking recognition or when recognized for their five minutes. Witnesses will need to unmute themselves when recognized for their five minutes or when answering a question.

Members and witnesses please keep your camera on at all times, even if you need to step away for a moment during the proceedings. Do not leave the meeting.

At this time, I ask unanimous consent that all members have five legislative days to revise and extend their remarks and that any written statements be made part of the record.

Hearing no objection, so ordered.

Now we turn to today's important topic. On a morning when we are discussing voting, we note that this is our first hearing on voting since the passing of our dear friend and colleague The Honorable John Robert Lewis. Congressman Lewis spent his life and career fighting for the right of every American to have free and fair access to the ballot. We must and will continue that work.

Today we will examine the issues of voting rights and election administration in the territories of the United States. This Committee is tasked with oversight of Federal elections. This must include oversight of how Federal elections are administered in the U.S. territories, the impact of Federal laws on elections in the territories, and investigating barriers to the ballot box. During the many hearings held by the Committee and Subcommittee throughout the 116th Congress, we have explored issues of election administration, election security, voting rights, and access, and protecting the integrity of our democracy. It is past time we include voting in the U.S. territories in this examination. And I thank Ms. Plaskett for asking that we do this some time ago.

Collectively, the U.S. Virgin Islands and Puerto Rico in the Atlantic, and Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands in the Pacific constitute the five inhabited territories of the United States. Nearly 4 million people live in the territories. These are our fellow Americans. They have suffered significant devastation in recent years from hurricanes and tropical cyclones. They are not immune from the impacts of the ongoing COVID-19 pandemic. Their residents served in the armed services at a rate historically among the highest of any in the Nation.

Our examination of access to the ballot would be incomplete if we did not address access to the ballot in the U.S. territories. We are here today to listen to, and learn from, our colleagues, citizens, and litigators about the barriers to access to the ballot in the territories. I thank you all for being here.

I would now like to welcome our witnesses. Each of you will be recognized—forgive me. Mr. Davis, would you like to make an opening comment?

[The statement of Chairwoman Fudge follows:]

ZOE LOFGREN, CALIFORNIA
CHAIRPERSON

JAMIE RASKIN, MARYLAND
VICE CHAIRPERSON

SUSAN DAVIS, CALIFORNIA
G.K. BUTTERFIELD, NORTH CAROLINA
MARCIA FUDGE, OHIO
PETE AGUILAR, CALIFORNIA

JAMIE FLEET, STAFF DIRECTOR

Congress of the United States

House of Representatives
COMMITTEE ON HOUSE ADMINISTRATION
1309 Longworth House Office Building
Washington, D.C. 20515-6157
(202) 225-2061
<https://cha.house.gov>

RODNEY DAVIS, ILLINOIS
RANKING MINORITY MEMBER

MARK WALKER, NORTH CAROLINA
BARRY LOUDERMILK, GEORGIA

ONE HUNDRED SIXTEENTH CONGRESS

JEN DAULBY, MINORITY STAFF DIRECTOR

Chairperson Marcia L. Fudge
Subcommittee on Elections
Voting Rights and Election Administration in the U.S. Virgin Islands and
Other Territories
July 28, 2020
Opening Statement

Welcome to my fellow Members of the Committee and our witnesses, thank you for joining us for today's remote Subcommittee hearing.

On a morning when we are discussing voting, we note that this is our first hearing on voting since the passing of our dear friend and colleague, the Honorable John Lewis. Congressman Lewis spent his life and career fighting for the right of every American to have free and fair access to the ballot. We must and will continue that work.

Today we will examine the issues of voting rights and election administration in the territories of the United States.

This Committee is tasked with oversight of federal elections. This must include oversight of how federal elections are administered in the U.S. territories, the impact of federal laws on elections in the territories, and investigating barriers to the ballot box.

During the many hearings held by the Committee and Subcommittee throughout the 116th Congress, we have explored issues of election administration, election security, voting rights and access, and protecting the integrity of our democracy. It is past time to include voting in the U.S. territories in this examination.

Collectively, the U.S. Virgin Islands and Puerto Rico in the Atlantic, and Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands in the Pacific constitute the five inhabited territories of the United States.

Nearly four million people live in the territories. These are our fellow Americans.

They have suffered significant devastation in recent years from hurricanes and tropical cyclones. They are not immune from the impacts of the ongoing

COVID-19 pandemic. Their residents serve in the armed services at a rate historically among the highest of any in the nation.

Our examination of access to the ballot would be incomplete if we did not address access to the ballot in the U.S. territories.

We are here today to listen to and learn from our colleagues, citizens, and litigators about the barriers to access to the ballot in the territories. Thank you all for being here.

Mr. DAVIS. It is great to see everybody. I want to say thanks to everybody here.

Since the creation of the Committee on House Administration, oversight of Federal elections quickly became one of its chief tasks. Throughout the CHA's existence, the Committee has worked across the aisle to create significant and necessary election policy that has widely impacted this Nation, including legislation to eliminate the poll tax, legislation to create easier access to members of the military and their families when voting overseas, and the Help America Vote Act, a landmark piece of legislation that took significant steps to remedy the problems seen in the 2000 Presidential election.

The Subcommittee on Elections is designed to serve as an extension of the CHA to enhance oversight capabilities of Federal elections. While the Subcommittee has not always been a formal part of CHA, the work on election administration has always remained a top priority.

And this priority should not be a partisan one. Hearing from the people who actually conduct elections and the problems they face is vital to our work on this Subcommittee. That is why, in the past, I have invited my own local election administrator, who is a Democrat, to testify in front of full House Administration Committee and have my staff reach out to the Virgin Islands elections administrator, Ms. Caroline Fawkes, after it was brought to our attention she was not contacted ahead of time about this hearing to hear what her concerns are. I am glad she was able to submit written testimony for the record today. We must work in conjunction with election officials and include them in hearings like this.

I am sorry to see Mr. Abramson is sick. I was looking forward to hearing his perspective.

While expanding voting rights is a noble and just cause, we are less than 100 days until States and localities will be conducting a Presidential election in the middle of a global pandemic, something not done in my lifetime. However, during recent primaries, we did get a glimpse of the many problems that can occur if steps are not taken to properly prepare election administrators and voters. This Committee should be providing oversight of States and localities who run our elections by engaging with localities where we saw significant issues in recent primaries and where the risk of disenfranchising voters is great if changes are not made before November.

Just last week, I sent letters to 10 different localities across the country seeking information regarding issues reported in recent primaries and other election administration violations. State and local election officials are moving quickly to adapt to running elections during this pandemic, and I want to make sure we are providing them the help and guidance they need to run a successful election this fall.

I want to make sure we are avoiding some of the issues we saw prior to the adoption of the Voting Rights Act: consolidation of polling locations, confusion among voters on their proper polling location, and long lines on election day.

Nevertheless, we are here today to explore voting rights and election administration in the territories. I certainly wished we would

have had this one in-person, but, unfortunately, the pandemic took care of that.

I do want to thank my good friend and former seatmate on the House Ag Committee, Congresswoman Stacey Plaskett from the Virgin Islands, Congresswoman González-Colón from Puerto Rico, Congressman San Nicolas from Guam, and Congressman Sablan from the Northern Mariana Islands for their testimony they are about to give today. I have enjoyed the opportunity to work with each of you. There are five inhabited unincorporated territories of the United States: American Samoa, Puerto Rico, Guam, the Northern Mariana Islands, and the Virgin Islands. Each of these territories have contributed in countless ways to the American fabric. For instance, the rate of military service from these territories is traditionally much higher than the mainland. Their cultures make America better. However, they do not have voting representation in the United States Congress. Underlying this status are numerous court decisions—some recent, some antiquated.

Today I am here to listen to all the witnesses who have graciously agreed to participate in this virtual hearing. And I look forward to hearing what you have to share with the Subcommittee. Thank you, Madam Chair. And I yield back.

[The statement of Mr. Davis follows:]

ZOE LOFGREN, CALIFORNIA
CHAIRPERSON

JAMIE RASKIN, MARYLAND
VICE CHAIRPERSON

SUSAN DAVIS, CALIFORNIA
G.K. BUTTERFIELD, NORTH CAROLINA
MARCIA FUDGE, OHIO
PETE AGUILAR, CALIFORNIA

JAMIE FLEET, STAFF DIRECTOR

Congress of the United States

House of Representatives
COMMITTEE ON HOUSE ADMINISTRATION
1309 Longworth House Office Building
Washington, D.C. 20515-6157
(202) 225-2061
<https://cha.house.gov>

RODNEY DAVIS, ILLINOIS
RANKING MINORITY MEMBER

MARK WALKER, NORTH CAROLINA
BARRY LOUDERMILK, GEORGIA

ONE HUNDRED SIXTEENTH CONGRESS

JEN DAULBY, MINORITY STAFF DIRECTOR

Ranking Member Rodney Davis Subcommittee on Elections Voting Rights and Election Administration in the U.S. Virgin Islands and Other Territories July 28, 2020 Opening Statement

Since the creation of the Committee on House Administration, oversight of Federal elections quickly became one of its chief tasks. Throughout the CHA's existence, the Committee has worked across the aisle to create significant and necessary election policy that has widely impacted this Nation, including legislation to eliminate the poll tax, legislation to create easier access to members of the military and their families when voting overseas, and the Help America Vote Act, a landmark piece of legislation that took significant steps to remedy the problems seen in the 2000 Presidential election.

The Subcommittee on Elections is designed to serve as an extension of the CHA to enhance oversight capabilities of Federal elections. While the Subcommittee has not always been a formal part of CHA, the work on election administration has always remained a top priority.

And this priority should not be a partisan one. Hearing from the people who actually conduct elections and the problems they face is vital to our work on this Subcommittee. That is why, in the past, I have invited my own local election administrator, who is a Democrat, to testify in front of full House Administration Committee and have my staff reach out to the Virgin Islands elections administrator, Ms. Caroline Fawkes, after it was brought to our attention she was not contacted ahead time about this hearing to hear what her concerns are. I am glad she was able to submit written testimony for the record today. We must work in conjunction with election officials and include them in hearings like this.

While expanding voting rights is a noble and just cause, we are less than 100 days until States and localities will be conducting a Presidential election in the middle of a global pandemic, something not done in my lifetime. However, during recent primaries, we did get a glimpse of the many problem that can occur if steps are not taken to properly prepare election administrators and voters. This Committee should be providing oversight of States and localities who run our

elections by engaging with localities where we saw significant issues in recent primaries and where the risk of disenfranchising voters is great if changes are not made before November.

Just last week, I sent letters to 10 different localities across the country seeking information regarding issues reported in recent primaries and other election administration violations. State and local election officials are moving quickly to adapt to running elections during this pandemic, and I want to make sure we are providing them the help and guidance they need to run a successful election this fall.

I want to make sure we are avoiding some of the issues we saw prior to the adoption of the Voting Rights Act: consolidation of polling locations, confusion among voters on their proper polling location, and long lines on election day.

Nevertheless, we are here today to explore voting rights and election administration in the territories. I certainly wished we would have had this one in person, but, unfortunately, the pandemic took care of that.

I do want to thank my good friend and former seatmate on the House Agriculture Committee, Congresswoman Stacey Plaskett from the Virgin Islands, Congresswoman Gonzalez Colon from Puerto Rico, Congressman San Nicolas from Guam, and Congressman Sablan from the Northern Mariana Islands for their testimony they are about to give today. I have enjoyed the opportunity to work with each of you.

There are five inhabited unincorporated territories of the United States: American Samoa, Puerto Rico, Guam, the Northern Mariana Islands, and the Virgin Islands. Each of these territories have contributed in countless ways to the American fabric. For instance, the rate of military service from these territories is traditionally much higher than the mainland. Their cultures make America better. However, they do not have voting representation in the United States Congress. Underlying this status are numerous court decisions — some recent, some antiquated.

Today I am here to listen to all the witnesses who have graciously agreed to participate in this virtual hearing. And I look forward to hearing what you have to share with the Subcommittee.

Chairwoman FUDGE. Thank you, Ranking Member Davis.

I would now like to welcome our witnesses. Each of you will be recognized for five minutes. I will remind our witnesses that their entire written statements will be made a part of record and that the record will remain open for at least five days for additional materials to be submitted.

A reminder to all our witnesses: There is a timer on the screen. Please be sure you can see the timer and are mindful of the five-minute time limit.

Our first panel, we will hear from four of our colleagues, each of whom represent residents of the territories. As is our custom, we will not ask our colleagues questions.

Congresswoman Stacey Plaskett, my good friend, represents the United States Virgin Islands at-large congressional district. She currently serves on the House Transportation and Infrastructure Committee, the Oversight and Government Reform Committee, and the House Committee on Agriculture, where she chairs the Subcommittee on Biotechnology, Horticulture, and Research.

Prior to serving in Congress, Representative Plaskett served as an assistant district attorney in the Bronx, a senior counsel at the Department of Justice, and as general counsel for the Virgin Islands Economic Development Authority.

Welcome, Ms. Plaskett.

Congresswoman Jenniffer González-Colón was elected in 2016 as Puerto Rico's sole representative to the Congress, known as a Resident Commissioner. She is the first woman to hold the office. She is a member of the House Committees on Transportation and Infrastructure, and Natural Resources. She previously served in the Puerto Rico House of Representatives where she served as speaker of the House and minority leader.

Welcome.

Congressman Michael San Nicolas represents Guam in the 116th Congress. Before coming to Congress in 2019, Congressman San Nicolas served in the Guam legislature since 2013. He currently serves as vice chair of the House Financial Services Committee and a serves on the Natural Resources Committee.

Welcome to you.

And, lastly, Congressman Gregorio Kilili Camacho Sablan is the first and only person to represent the people of the Northern Mariana Islands in the House of Representatives, beginning service in 2009—my classmate. He currently serves as chair for Subcommittee on Early Childhood, Elementary and Secondary Education of the Education and Labor Committee, as well as on the Natural Resources and Veterans' Affairs Committees.

Prior to serving in Congress, Congressman Sablan served in the Northern Mariana Islands legislature in the administration of several Governors and was appointed executive director of the Commonwealth Election Commission.

I will now recognize the witnesses for five minutes apiece.

Ms. Plaskett, you are recognized.

**STATEMENT OF THE HON. STACEY E. PLASKETT, A DELEGATE
IN CONGRESS FROM THE VIRGIN ISLANDS**

Ms. PLASKETT. Good morning, Chairwoman Fudge, Ranking Member Davis, fellow Members of Congress, distinguished guests. My name is Stacey Plaskett, and I represent the Virgin Islands of the United States in the U.S. House of Representatives. Thank you so much for this hearing.

One cannot discuss voting rights and disenfranchisement in the territories without talking about race and racism. The unincorporated territories of the Virgin Islands of the United States, a possession, is the most structural example of systemic racism. That system permeates the legal status, as well as the economic, political, and educational structure that keeps the disparity between us and the mainland. It manifests itself as a position of exclusion of the people living in the Virgin Islands from equitable treatment.

103 years ago, the Danish Government sold what is now known as the Virgin Islands, land, waters, property, and as part of the package, people. All four of my grandparents were alive and living on the island of St. Croix at the time of the transfer. Of my eight great-grandparents, I believe one may have met the land and income requirements mandatory to be able to vote on the purchase. Only one would have been able to vote for his destiny. And after the purchase, those living in the territories, my grandparents and great-grandparents, my family were citizens of nowhere. They had no citizenship for 10 years.

After becoming citizens, Virgin Islanders came to Washington and petitioned, pleaded for the ability to be part of the draft. Virgin Islanders like the other territories serve and give the ultimate sacrifice in far greater number per capita than those Americans on the mainland. We want the responsibility, not just the privileges. This is a longstanding absurdity in our current legal system. Nearly 4 million Americans live on American soil and cannot fully participate in our democracy. They can only participate if they leave home. So long as they reside on the Virgin Islands' soil, on U.S. soil, on mainland soil, they can vote for President. But when they move to a territory, their voting rights disappear.

As you all know, the territories do not have equal voting representation in Congress. In recent history, they have occasionally had similar rights in the U.S. House of Representatives in the event that it has resolved itself in the Committee on the Whole on the State of the Union for consideration of amendments to legislation, so long as the territories' vote won't actually make a difference. Do you know what it is like to see a bill related to your people, your constituents, and not be able to vote on it?

This lack of equal representation and equal voting power has a direct correlation to persistent poverty across all of the U.S. territories. Americans living in the territories are accustomed to being last in line for hurricane relief, for COVID-19 equipment, for basic healthcare, education, and more. All five territories have significantly lower per capita income than States, yet are subject to arbitrary eligibility barriers and funding caps that limit their poorest residents to much needed Federal benefits, like Medicaid and SSI, as well as the formulas for roads and education and more.

I submit that they would be much more likely to receive parity and equality under these programs if millions of Americans who live in the territories of the United States were allowed to participate fully in our democracy. At the core of the disenfranchisement of the territories is a series of controversial Supreme Court decisions written in the same period that the Virgin Islands became part of the United States known as the Insular Cases. These cases held that the Constitution's rights and protections do not necessarily apply to Americans in the territories nor to the promises of full political participation or equality. Those decisions were explicitly informed by racial assumptions. In one case, the Court refused to extend equal constitutional guarantees in Puerto Rico because doing so would place an undesirable limit on the Federal Government's ability to rule over "savages" or, "alien raises" not immersed in Anglo-Saxon principles of law. It comes as no surprise that the most influential of these cases, *Downes v. Bidwell*, was decided by the same Justices who invented separate but equal doctrine of racial segregation in *Plessy v. Ferguson* just 3 years earlier. Yet, even as legal scholars have characterized the Insular Cases as central documents in the history of American racism. The last three administrations, Trump, Obama, and Bush, each have defended the Insular Cases, suggesting that outdated racial premises can and should remain the law of the land. Before the Insular Cases, territories were viewed as inchoate states, areas on the path to full statehood. The Insular Cases have created a near permanent colonial status for those living in the territories. When the House Parliamentarian and Congressional Research Service used the Insular Cases to opine on why the territories should not be given a full vote, the irony of the Insular Cases is that Virgin Islanders in the 1700s pooled money together to send a promising young man to the Americas. Alexander Hamilton, that young man, coauthored the Constitution, the same document that keeps us from this.

I know that I have run out of time, but I would like to submit for the record written testimony from so many Virgin Islanders who have given me written testimony. They range across the spectrum from the head of our GOP of our Virgin Islands Republican Party, John Canegata, to Caroline Fawkes, to Carol Burke, the Democratic National Committeewoman, all administrations.

Ms. PLASKETT. Thank you for this opportunity, and I look forward to listening to our witnesses as well. Thank you so much.

[The statement of Ms. Plaskett follows:]

Statement of Congresswoman Stacey Plaskett (VI)
Committee on House Administration, Subcommittee on Elections
Hearing: “Voting Rights and Election Administration in the U.S. Virgin
Islands and other Territories”
July 28, 2020, 10:00 AM

Good Morning Chairwoman Fudge, Ranking Member Davis, fellow Members of Congress, distinguished guests. My name is Stacey Plaskett. I represent the Virgin Islands of the United States in the US House of Representatives. Thank you for the opportunity to present a statement before the committee on voting rights, election administration and status in territories of the United States.

One can not discuss voting rights and disenfranchisement in the territories without talking about racism. The unincorporated territory of the Virgin Islands OF the United States (a possession) is the most structural example of systemic racism. That system permeates the legal status as well as the economic, political, and educational structure that keeps the disparity between us and the mainland – it manifests itself as a position of exclusion of the people living in the Virgin Islands from equitable treatment.

One hundred and three years ago, the Danish government sold what is now known as the Virgin Islands to the United States. Land, waters, property and as a part of the package - people. All four of my grandparents were alive and living on the island of St. Croix at the time of the transfer – of my 8 great grandparents I believe I may have met the land and income requirement mandatory to be able to vote on the purchase. Only one would

have been able to say vote for his destiny. And after purchase, those living in the territory (my grandparents and great grandparents - my family) were citizens of NO where – they had NO citizenship for 10 years. Yet, after becoming citizens Virgin Islanders came to Washington and petitioned, pleaded, for the ability to be part of the draft. Virgin Islanders like the other territories serve and give the ultimate sacrifice in far greater number per capital than those Americans on the mainland. We want the responsibility not just the privileges.

This is a long-standing absurdity in our current legal system. Nearly four million Americans live on American soil and cannot fully participate in our democracy, and they only can if they leave home. So long as they reside on U.S. soil, they can vote – when they move to the US territory their voting rights disappear.

As you all know, we also do not have equal voting representation in the Congress. In recent history, they have occasionally had similar rights in the House of Representatives in the event that it resolves itself into the Committee of the Whole House on the State of the Union for consideration of amendments to legislation, so long as the territories' vote won't actually make a difference. But currently, during the covered period for proxy and remote proceedings, the standing resolution for such proceedings precludes any votes from being considered in the Committee of the Whole. Do you know what is like to see a bill related to your people, your constituents and not be able to vote on it?

This lack of equal representation and equal voting power has a direct correlation to persistent poverty across all of the U.S. territories. Americans in the territories are accustomed to being last in line: for [hurricane relief](#), for [COVID-19](#) equipment, for basic health care, education, and more. All five territories have a significantly lower per-capita income than any state, yet are subject to arbitrary eligibility barriers and funding caps that [limit their poorest residents' access](#) to much-needed federal benefits like Medicaid and SSI, formulas for roads and education. I submit that they would be much more likely to receive parity and equality under these programs if the millions of Americans who live in the territories of the United States were allowed to participate fully in our democracy.

At the core of disenfranchisement in the territories is a series of controversial Supreme Court decisions, written in the same period that the Virgin Islands became part of the United States, known as the *Insular Cases*. These cases held that the Constitution's rights and protections do not necessarily apply to Americans in the territories, nor do the promises of full political participation or equality. Those decisions were *explicitly* informed by racial assumptions. In one case, the Court refused to extend equal constitutional guarantees in Puerto Rico because doing so would place an undesirable limit on the federal government's ability to rule over "savages" or "alien races" not immersed in "Anglo-Saxon principles of law." It comes as no surprise that the most influential of these cases, *Downes v. Bidwell*, was decided by the same group of Justices who invented the "Separate but Equal" doctrine of racial segregation in *Plessy v. Ferguson*, just three years earlier. Yet even as legal scholars have characterized the *Insular Cases* as "central documents in the history of American racism," The last three

Administrations – Trump, Obama, and Bush – have each defended the *Insular Cases*, suggesting that outdated racial premises can and should remain the law of the land. Before the Insular Cases, territories were viewed as inchoate states – areas on the path to full statehood. The Insular cases have created a near permanent colonial status for those living in the territory. While the House Parliamentarian and the Congressional Research Services use the Insular Cases to opine on why the territories should not be given a full vote –The irony of the Insular Cases is that Virgin Islanders in the 1700s pooled together funds for a promising young man to come to the British colonies in the Americas. That young man, Alexander Hamilton, became the co-author and chief proponent of the U.S. Constitution, the same document that the U.S. Supreme Court has held, and this body uses, to continue to keep Virgin Islanders and other territorial residents “Separate and Unequal” today.

What is needed is common ground on a way forward for resolving this disenfranchisement in the U.S. territories, which leaves open the possibility that this may include a different path for different territories. That is why, when the House of Representatives brought to the floor an aggressive package to address long-standing issues of voting rights and election reform, H.R. 1, the For the People Act of 2019, I fought hard for the bill to call for progress on how to form a consensus for a path forward to address voting rights and election issues facing Americans in the territories.

As passed by the House, H.R. 1 has a series of findings:

that residents of the U.S. territories have played an important part in the American democracy for more than 120 years;
 that political participation and the right to vote are among the most significant concerns of territorial residents, in part because they were not always afforded these rights;
 that voting participation in the territories consistently ranks higher than many mainland communities; and
 that the right to vote is one of the most potent instruments that residents of the territories have to ensure that their voices are heard.

Accordingly, the bill would establish a Congressional Task Force to review federal voting rights and election issues facing the territories, and it requires the task force to make recommendations to Congress on providing U.S. citizens residing in U.S. territories with equitable voting representation in Congress, voting rights in the presidential election, and full and equal treatment under other federal voting and election laws.

I am so proud of the many Virgin islanders who have written compelling statements on the importance of full voting rights for the territories. We are ONE Voice on this in the Virgin Islands – from veteran John Canegata Chair of the Republican Party in the Virgin Islands, to Carol Burke National Committeewoman for the Democratic Party in the Virgin Islands. You will hear from the former Supervisor of the Virgin Islands Board of Elections, John Abramson, but I also have a written statement from the present Supervisor of the Board of Elections, Caroline Fawkes (who was also the first female State Army Aviation Officer within the National Guard). That same demand for equality is written by Attorney Emile Hendersen, counsel to the most recent former Governor

Kenneth Mapp and is also written by Carlyle Corbin who served as the envoy to the United Nations from our former Governor to attorney Pamela Colon a plaintiff in a case winding its way through the federal court system and resident of the state who lost her ability to vote almost 30 years ago when she made the Virgin Islands her home.

The urgency of equal voting rights for all has never been more ripe than now upon the recent passing of Representative John Lewis. Mr. Lewis dedicated his life to equal rights for all Americans, which includes the right to vote, and he continued to fight his fight for what he thought was right until his dying day. As a matter of fact, his voice was instrumental to the inclusion of the territorial voting rights provisions of H.R. 1.

I hope to honor Mr. Lewis and all those who came before us by continuing to fight for our equal right to vote. The nearly four million people who live in U.S. territory are not the subjects of a king or a master. They are American citizens. While they live in America, their interests will not be fully represented within the government of the United States until they have full and equal voting rights, just like other Americans.

I close by thanking you for the opportunity to highlight the importance of equal voting rights for all territories of the United States.

Chairwoman FUDGE. Thank you very, very much.

Congresswoman Jenniffer González-Colón, you are now recognized for five minutes. You need to unmute.

**STATEMENT OF THE HON. JENNIFFER GONZÁLEZ-COLÓN,
RESIDENT COMMISSIONER FROM THE TERRITORY OF PUERTO
RICO**

Miss GONZÁLEZ-COLÓN.

Thank you, Madam Chair, members of the Committee for holding this hearing on voting rights and election administration in the territories.

The rights to vote and to be equally represented in the government that make one's laws and to have elections conducted thoroughly are the most fundamental and essential elements of democracy. So I need to support the statement of my friend Stacey Plaskett. We are fighting almost for the same thing.

I represent about 89 percent of the total population in the five territories. That means that I represent 3.2 million American citizens with the same rights as American citizens in the States, but we and the residents of other territories live in jurisdictions that constitutionally cannot have votes in the government that not only make our national laws but can and sometimes does intervene in local laws. Congress has this power because the Constitution territorial clause, which makes Congress our super territorial legislature. Congress can delegate the exercise of self-government to the people of a territory, but it still ultimately possesses the power to govern us in all matters, and it can take it back, the self-government it has delegated. That is the reality.

It did this in Puerto Rico in 2016 when the approval of PROMESA [the Puerto Rico Oversight, Management, and Economic Stability Act], and the Supreme Court subsequently reiterated the authority. It cannot relinquish the power without making a territory a State or a nation. It also constitutionally can and does treat us differently than the States, overall worse.

These are the single most influential factors in Puerto Rico's economy's underdevelopment. It is also why the Americans that I represent are not only 35 percent of all Puerto Ricans that live on the island; approximately 5 million Puerto Ricans live in the U.S. mainland because of the greater opportunities and rights available to them in a State which Puerto Rico cannot provide.

The United States is history's greatest democracy, but it has never been a perfect democracy. The problem of democracy and equality for territories however cannot be rectified by Congress or the courts because it comes from the plain meaning of the Constitution. The only way for a territory to obtain broader representation in Congress, equal or otherwise, or in electing a President is to become a State or for the Constitution to be amended. We have seen this in the District of Columbia obtaining votes in electing the President without a constitutional amendment. We have also seen it in repeated court rulings rejecting claims that tried to extend Federal voting rights of States citizens in territories.

The only other option for territories to obtain democracy is to become nations, either fully independent from or in a free association with the United States or another nation, that either nation can

unilaterally end. This will mean the end of U.S. citizenship in one way or another.

The same is true for obtaining equal treatment in Federal programs. Even when we are granted equal treatment, it can be taken away. The situation I have described is the hard truth for Americans in the territories. These realities and appreciation of and the admiration of the United States are why the remaining people of Puerto Rico want a territory to become a State. We should not have to move to an existing State for democracy or equality. That territories will eventually become States was a founding principle of our Nation that dates to the Articles of Confederation and was reenacted during the First Session of the 1st Congress. This policy was cast aside after the Spanish-American War in 1898 because of racial and cultural bigotry. It was a concern that if Puerto Rico were put on the path to statehood, the Philippines would want that too.

So the Supreme Court divined the existence of a previously unknown status: unincorporated territories, that status of being a possession but not part of the United States. Unincorporated territories can become nations as well as States. Only constitutional rights considered to be fundamental apply absent action by Congress or Court.

The Supreme Court has resisted all efforts to reverse its findings of this status, including very recently. Doing so would mean all territories can only become States. Whether others want to, it is for them to say. I can report that Puerto Rico does want to be a State of the Union, and it wants equality and democracy within the United States, and that is the reason we file and dropped H.R. 4901 with 60 cosponsors supporting statehood for Puerto Rico, including our friend John Lewis.

Thank you, Madam Chair, and I yield back.

[The statement of Miss González-Colón follows:]

**Statement of Congresswoman Jenniffer González-Colón (PR -At Large)
Committee on House Administration
Subcommittee on Elections
“Voting Rights and Election Administration in the U.S. Virgin Islands and Other
Territories”
July 28, 2020 – 10:00am**

Thank you, Madame Chair, for holding this hearing on voting rights and election administration in the U.S. Virgin Islands and other U.S. territories, including Puerto Rico. The rights to vote and to be equally represented in the governments that make one’s laws and to have elections conducted fairly are the most fundamental and essential elements of democracy.

I represent about 89% of the total population in the five territories. That means I represent 3.2 million American citizens, with the same rights as American citizens in the States. But we, and the residents of the other territories, live in jurisdictions that constitutionally cannot have votes in the government that not only makes our national laws but can – and sometimes does – intervenes in the local laws.

Congress has this power because of the Constitution’s Territory Clause, which makes Congress our super-territorial legislature. Congress can delegate the exercise of self-government to the people of a territory, but it still ultimately possesses the power to govern us in all matters and it can take back the self-government it has delegated.

It did this in Puerto Rico in 2016 with the approval of PROMESA, and the Supreme Court subsequently reiterated the authority. It cannot relinquish the power without making a territory a State or a nation.

It also constitutionally can – and does – treat us differently than the States: overall worse.

These are the single most influential factors in Puerto Rico’s economic underdevelopment. It is also why the Americans that I represent are now only 35% of all Puerto Ricans that live on the Island. Approximately 5 million Americans live in the U.S. mainland, because of the greater opportunity and rights available to them in a State, which Puerto Rico cannot provide.

The United States is history’s greatest democracy – but it has never been a perfect democracy. If my colleague and I did not know that from representing territories, we would know it by being women and members of national minority groups.

Over time, the United States has become more democratic. The problems of democracy and equality for territories, however, cannot be rectified by Congress or the courts because it comes from the plain meaning of the Constitution. As individual Americans, we can only obtain Federal representation and equality by moving to a State.

The only way for a territory to obtain voting representation in Congress, equal or otherwise, or in electing the president is to become a State or for the Constitution to be amended.

We have seen this in the District of Columbia obtaining votes in electing the president through a constitutional amendment and in failing to obtain a vote in the House through legislation even though a vote in the House would be far short of equal representation. We have also seen it in repeated court rulings rejecting claims that tried to extend Federal voting rights of States to citizens in territories.

The only other option for territories to obtain democracy is to become nations, either fully independent from or in a free association with the U.S. (or another nation) that either nation can unilaterally end. This would mean the end of U.S. citizenship in one way or another.

The same is true for obtaining equal treatment in federal programs. Even when we are granted equal treatment, it can be taken away.

The situation that I have described is the hard truth for the Americans of the territories.

These realities – and appreciation of and admiration for the United States – are why the remaining people in Puerto Rico – want the territory to become a State. We should not have to move to an existing State for democracy or equality.

That territories would eventually become States was a founding principle of our Nation that dates to the Articles of Confederation and was re-enacted during the first Session of the 1st Congress. This policy was cast aside after the Spanish-American War because of racial and cultural bigotry. There was a concern that, if Puerto Rico were put on the path to statehood, the Philippines would want it, too.

So, the Supreme Court divined the existence of a previously unknown status: unincorporated territory, that status of being a possession but not a part of the United States. Unincorporated territories can become nations as well as States. Only constitutional rights considered to be fundamental apply absent action by Congress or the Court.

The Supreme Court has resisted all efforts to reverse its finding of this status, including very recently. Doing so, would mean that all of the territories can only become States.

Whether others want to, it is for them to say. I can report that Puerto Rico does want to become a state of the Union; it wants equality and democracy within the United States.

Chairwoman FUDGE. Thank you very, very much.
 Next we will hear from Congressman Michael San Nicolas.
 You are recognized.

**STATEMENT OF THE HON. MICHAEL F.Q. SAN NICOLAS, A
 DELEGATE IN CONGRESS FROM THE TERRITORY OF GUAM**

Mr. SAN NICOLAS. Chairwoman Fudge and Ranking Member Davis, and honorable Members of the Subcommittee. My name is Michael F.Q. San Nicolas, and I am the representative at-large for the territory of Guam to the U.S. House of Representatives.

Let me begin by expressing my thanks to the Committee for taking the historic step to hold this hearing as it encompasses a subject no less significant than the suffrage of this democracy of our United States.

Today the Committee will be hearing testimony and receiving testimony from witnesses who will very eloquently articulate the circumstances of its subject before us: the voting rights of American citizens who reside in our U.S. territories. The Committee will hear compelling arguments of the inequality and injustices that surround these circumstances, how it is fundamentally un-American and how it is long overdue for remedy.

For my part, in representing my constituency the people of Guam, I first want to open in full agreement that the inability for American citizens to impact electorally the full voting representation they have in the Congress and the President of their country is a circumstance that must be addressed.

Equally, as a nonvoting Member of this House, I also have the unique perspective to assert in full confidence that these present circumstances denying American citizens of the opportunity for full representation is not born out of malice from any Member of this House. Plainly put, there is not a single Member of Congress, to my knowledge, who relishes in the fact and seeks to perpetuate the reality that Americans anywhere, and in particular our territories, are disenfranchised.

We are here today because the history of our country, the make-up of our Republic, the framework of our Constitution, and the case law of our courts have not caught up to what we today would expect to be an American standard, that every American living in America should be equally protected and represented in the law as Americans.

The challenge before us today is how to address this. History has shown that it was never the intent of this Republic to perpetually maintain territories. Every American territory before 1898 had a very distinct path into the Union. And what was consistent in all paths was a deliberate attempt to invest in their eventual inclusion. Whether it was through encouraging settlements or investing in infrastructure or the deliberate attempt by the predecessors of this body to take pride in growing the number of States that encompass the United States of America.

Territories that qualify for full inclusion into the Republic as States must be so included. Puerto Rico must be included as a State in this Republic or released by this Republic. There is no rational basis to maintain it as a territory as it meets all constitu-

tional thresholds for inclusion. And the inaction of this government that perpetuates its territorial status is inexcusable.

A binding referendum in Puerto Rico administered by the United States for inclusion in the State of Puerto Rico as a State or recognition of an independent Puerto Rico is a duty we have not the convenience to ignore. The very integrity of our Republic is a stake.

For our smaller territories, to include Guam, a deliberate attempt to bring them into the Union must be undertaken by this country. Further increments of progress must be taken in this regard to include the extension of delegates, not only to the United States House of Representatives as we have today but to the United States Senate, that there may be some form of representation in both Chambers of Congress. Similarly Electoral College representation as so extended to the District of Columbia must so too be extended to all territories. While the latter represents a larger hurdle requiring a constitutional amendment, the former could have us seating Senate delegates posthaste, as my own H.R. 5526 introduced in this 116th Congress would see it so.

Additional consideration must be given to territories to enhance their abilities to qualify for inclusion as States. Deregulation of shipping constraints to lower the cost of living, travel waivers to encourage tourism growth, public transportation infrastructure investment to mobilize economies, and higher education investment to firm up local governments and enterprises are all modern-day equivalents of the same policies that transformed the West and the Midwest into the great States west of the Mississippi that we have in our Union today.

A deliberate attempt to meet their unique needs and circumstances in order to fuel their growth into full membership and the fulfillment of full voting rights for those who call them home is something that we need to support for our territories. The quest for voting rights in this Republic and how we address it is nothing less than a testament of the government's commitment to this Republic, to growing it, strengthening it, and also graduating its territories into whole parts of it or setting them free, and preserving this Republic from bastardization. This is the question before us, the sanctity of American democracy.

Thank you so much for the opportunity to testify today. I look forward to working with you and all the great Representatives of this Congress to address these truths as they are now known and our commitment to it.

Thank you, Madam Chair. And I yield back.
[The statement of Mr. San Nicolas follows:]

Testimony of Congressman Michael F.Q. San Nicolas (GU)
The Subcommittee on Elections of the Committee on House Administration
“Voting Rights and Election Administration in the U.S. Virgin Islands and Other Territories”
July 28, 2020 | 10:00am

Chairwoman Fudge and Ranking Member Davis and honorable members of the Subcommittee, my name is Michael F.Q. San Nicolas and I am the Representative At-Large for the Territory of Guam to the U.S. House of Representatives. Let me begin by expressing my thanks to the Committee for taking the historic step to hold this hearing, as it encompasses a subject no less significant than the suffrage of this democracy of our United States.

Today the Committee will be hearing testimony and receiving testimony from witnesses who will very eloquently articulate the circumstances of the subject before us - the voting rights of American citizens who reside in our U.S. Territories.

The Committee will hear compelling arguments of the inequality and injustice of these circumstances. How it is fundamentally un-American, and how it is long overdue for remedy.

For my part, in representing my constituency the people of Guam, I first want to open in full agreement that the inability for American citizens to impact electorally the full voting representation they have in the Congress and the President of their country, is a circumstance that must be addressed.

Equally, as a non-voting member of this House, I also have the unique perspective to assert in full confidence that these present circumstances denying American citizens of the opportunity for full representation is not born out of malice from any member of this House. Plainly put, there is not a single member of Congress - to my knowledge - who relishes in the fact and seeks to perpetuate the reality that Americans anywhere, and in particular our Territories are disenfranchised.

We are here today because the history of our country, the makeup of our Republic, the framework of our Constitution, and the case law of our courts, have not caught up to what we today would expect to be an American standard - that every American living in America should be equally protected and represented as Americans.

The challenge before us today is how to address this. History has shown that it was never the intent of this Republic to perpetually maintain Territories. Every American Territory before 1898 had a very distinct path into the Union, and what was consistent in all paths was a deliberate attempt to invest in their eventual inclusion. Whether it was through encouraging settlement, or investing in infrastructure, or in the deliberate attempt by the predecessors of this body to take pride in growing the number of States that encompass America.

Territories that qualify for full inclusion into the Republic as States must be so included. Puerto Rico MUST be included as a State in this Republic or released by this Republic. There is no rational basis to maintain it as a Territory as it meets all Constitutional thresholds for inclusion, and the inaction of this government that perpetuates its territorial status is inexcusable. A binding referendum in Puerto Rico administered by the United States, for inclusion of the State of Puerto

Testimony of Congressman Michael F.Q. San Nicolas (GU)
The Subcommittee on Elections of the Committee on House Administration
“Voting Rights and Election Administration in the U.S. Virgin Islands and Other Territories”
July 28, 2020 | 10:00am

Rico or recognition of an independent Puerto Rico is a duty we have not the convenience to ignore. The very integrity of our Republic is at stake.

For our smaller Territories to include Guam, a deliberate attempt to bring them into the Union must be undertaken by this country. Further incremental progress must be taken in this regard, to include the extension of delegates not only to the House of Representatives as we have today, but to the United States Senate, that there may be some form of representation in both chambers of Congress. Similarly, electoral college representation as so extended to the District of Columbia must so too be extended to all Territories. While the latter represents a larger hurdle requiring a constitutional amendment, the former could have us seating Senate delegates post haste, as legislation in my H.R. 5526 introduced in this 116th Congress would see it so.

Additional consideration must be given to Territories to enhance their abilities to qualify for inclusion as States. Deregulation of shipping constraints to lower the cost of living, travel waivers to encourage tourism growth, public transportation infrastructure investment to mobilize economies, and higher education investment to firm up local governance and enterprise, are all modern day equivalents of the same policies that transformed the West and the Midwest into the States of Alaska, Arizona, Arkansas, California, Colorado, Idaho, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming. Our Territories need the same support. A deliberate attempt to meet their unique needs and circumstances in order to fuel their growth into full membership and the fulfillment of full voting rights for those who call them home.

The quest for voting rights in this Republic and how we address it is nothing less than a testament of this government’s commitment to this Republic. To growing it. Strengthening it. And graduating its Territories into whole parts of it, or setting them free, and preserving this Republic from bastardization. This is the question before us. The sanctity of American Democracy.

Thank you so much for the opportunity to testify before you today. I look forward to working with you and all the great representatives of this Congress, to address these truths as they are now known and our commitment to it.

Chairwoman FUDGE. Thank you.

Congressman Gregorio Kilili Camacho Sablan, you are now recognized for five minutes.

**STATEMENT OF THE HON. GREGORIO KILILI CAMACHO
SABLAN, A DELEGATE IN CONGRESS FROM THE TERRITORY
OF NORTHERN MARIANA ISLANDS**

Mr. SABLAN. Thank you, Madam Chair Fudge, Ranking Member Davis, and other Members of the Subcommittee. Thank you for holding today's hearing. I wish to associate myself with the statements including the discussion of the legal hurdles of allowing citizens of territories to fully and finally exercise their rights as Americans. And I hope I can help the understanding of the mechanics of elections.

I served for 10 years as election commissioner in the Northern Mariana Islands. I was responsible for voter registration, absentee mail-in ballots, training election workers, securing ballots, and all the behind-the-scenes complications that produce a clean and creditable election.

We are all concerned how the coronavirus may affect the election process. To begin on a hopeful note, I will tell you that one week before the 2018 election, a super typhoon struck the Mariana Islands, throwing life into chaos, cutting off power and water, stripping the roofs from the schools where we go to vote. The Governor delayed the election by one week and, according to the Congressional Research Service, the only case of the postpone Federal general election in modern history.

Though people were struggling to put their lives together, one week later, they voted. The turnout was good. The integrity of the election seemed to have been maintained. The results were not questioned, not until later. If the people of the Marianas can hold an election even after the second worst typhoon in the United States' history, surely America can maintain this cornerstone of our democracy even in the middle of the coronavirus pandemic. I am hopeful based on the 2018 experience. I am also hopeful because Congress has already acted to strengthen election security funding in the Consolidated Appropriations Act in December.

The Marianas, for example, received \$600,000 using that money, I understand, to operate voting equipment, auditing, voter registration, strengthening cybersecurity, and better track campaign financing. That appropriation comes to the Marianas through the Help the America Vote Act, which is particularly satisfying.

In 2002, when I was election commissioner and the Help America Vote Act was enacted, the Marianas had no delegate in Congress and, thus, no Federal election. So we were not included in HAVA. It has long been my goal to fix that gap in the Consolidated Appropriations deal. The Congress did not stop with just one appropriation. In March, we passed the CARES Act with more funding to ensure the November 3rd Federal election goes on, despite the coronavirus crisis. The Marianas Election Commission gets another \$600,000 from the CARES Act to implement vote by mail and expand voter registration and early voting. The money can also increase the number of voting places to reduce crowding and keep in-person voters healthy.

These actions do not mean we are finished. House Democrats' signature legislation, H.R. 1, the For the People Act, also aimed to make voting easier and more secure. But the Senate has refused to take up our bill. The For the People Act permanently includes the Marianas in the Help America Vote Act. There is also a technical version adding the Marianas to the National Voter Registration Act and protection for Marianas voters who use the Uniformed and Overseas Citizens Absentee Voting Act to vote in Presidential elections.

And H.R. 1 establishes a commission to recommend how to fully provide full and equal voting rights here in the House of Representatives and in elections for President for the people of the Marianas and the other Insular areas.

So let us hope today's hearing reminds America there is more to be done to improve and protect America's election and ensure every citizen has the right to representation and the right to vote.

The Senate should too—something is wrong here—

Chairwoman FUDGE. We can hear you, Kilili.

Mr. SABLON. I am hearing something else. Oh, there. Okay.

So, lastly, I want to remind the Subcommittee that there are technical corrections needed in Federal election law to ensure people in the non-State areas are protected from intimidation, threats, or coercion when they cast their ballots in Federal elections. So, in 2011, I induced H.R. 3268, which makes all Federal election law fully applicable in the Marianas, American Samoa, Guam, and the U.S. Virgin Islands. The bill bars government officials from using their authority to interfere with the nomination or election process. The bill bars noncitizens from voting and prohibits any false representations when registering or voting.

Among the cosponsors was our late and beloved John Lewis. I hope that, Madam Chair, as part of a memorial, we can take up this long overdue technical correction in Federal election law so everyone in the Insulars has all of the voting right protections afforded to the rest of the United States. I will certainly look forward to working with Chair Fudge to reach that legislative goal. I look forward to hearing Mr. Weare's testimony today as well.

I thank you for the opportunity to testify today. Thank you. I yield.

[The statement of Mr. Sablan follows:]

Testimony
The Honorable Gregorio Kilili Camacho Sablan
Subcommittee on Elections of the Committee on House Administration
Hearing on
Voting Rights and Election Administration in the U.S. Virgin Islands
and Other Territories.
July 28, 2020

Madame Chair –

Thank you and all the members of the subcommittee for holding today's hearing and for including me on this panel.

I hope that I can be useful to your understanding of the mechanics of elections, having served as Election Commissioner in the Northern Mariana Islands before being elected to Congress. I was responsible for voter registrations, managing absentee mail-in ballots, training election workers, securing ballots, and all the behind-the-scenes complications that produce a clean and credible election.

I know that we are all concerned about the impact the coronavirus may have on the already complicated—and in some ways vulnerable—election process.

So, just to begin with a note of hope, I will tell you that one week before the 2018 election a super typhoon struck the Marianas, throwing life into chaos, cutting off power and water, stripping the roofs from the schools where we go to vote.

The Governor delayed the election by one week. According to the March CRS report on Disrupted Federal Elections, “this episode appears to be the only case of a postponed federal general election in modern history.”

Despite the delay, even though many people were still struggling to put their lives back together, one week late they voted. Turnout was good. The integrity of the election seems to have been maintained. The results were not questioned.

If the people of the Marianas can hold an election after the profound physical disruption caused by the second worst typhoon in U.S. history, surely throughout America we can maintain this cornerstone of our democracy even in the middle of the coronavirus pandemic.

I am hopeful, based on that 2018 experience.

I am also hopeful, because Congress has already taken action to strengthen election security. We included funding in the Consolidated Appropriations Act in December for that purpose of which the Marianas is receiving \$600,000. I understand, our Election Commission is using that money to upgrade voting equipment, conduct election auditing activities, enhance the voter registration system and management, strengthen cyber-security, and better track campaign financing.

I am particularly satisfied with that appropriation because it comes through the Help America Vote Act. In 2002, when I was Election Commissioner and the Help America Vote Act was enacted, the Marianas had no Delegate in Congress and, therefore, no federal election. So, we were not included in HAVA. It had long been my goal to fix that gap and the Consolidated Appropriations Act did.

Congress did not stop with that one appropriation.

In March, we passed the CARES Act with funding to further ensure the November 3rd federal election goes on, despite the coronavirus crisis.

The Marianas Election Commission is receiving about \$600,000 from the CARES Act. Again, the money can be used to implement vote-by-mail for all voters and to increase the availability of online registration and early voting. The grant can also increase voting sites to reduce crowding and keep in-person voters healthy.

These actions do not mean we have done all that is necessary to make voting easier and more secure. I do not have to remind you that House Democrats' signature legislation, H.R. 1, the For the People Act, has that very goal of ensuring election integrity, but the Senate has refused to take up our bill.

The For the People Act would permanently include the Marianas in the Help America Vote Act.

There is also a technical correction adding the Marianas to the National Voter Registration Act of 1993 and protection for Marianas voters, who use the Uniformed and Overseas Citizens Absentee Voting Act to participate in Presidential elections.

And H.R. 1 establishes a commission composed of 12 Members of Congress to make recommendations on how to provide full and equal voting rights in the House of Representatives and in elections for President for the residents of the Marianas and the other U.S. insular areas.

Let us hope that today's hearing will remind America there is more work to be done to protect and strengthen the integrity of America's elections and ensure every citizen has the right to representation and the right to vote.

The House has acted. The Senate should, too.

Lastly, I want to use this opportunity to remind the subcommittee that there remains a need to make technical corrections in federal election law to ensure the people in the non-state areas are protected from intimidation, threats, or coercion, when they cast their ballots in federal elections.

In 2011, I introduced H.R. 3268, which makes all federal election law fully applicable in the Marianas, American Samoa, Guam, and the U.S. Virgin Islands. Among the specific provisions, the bill bars anyone employed in a federal or insular government office from using their official authority to interfere with the nomination or election process. The bill bars aliens from voting and prohibits any false representations when registering or voting.

Among the co-sponsors was our late and beloved John Lewis. So, I hope that as part of our memorial to him, we consider taking up these long overdue technical corrections in federal election law, so everyone in the U.S. insular areas has all of the voting rights protections afforded to the rest of the United States.

I would certainly look forward to working with the Chair Fudge and the Subcommittee to advance that legislative goal.

Thank you again for the opportunity to testify today.

Chairwoman FUDGE. Thank you very, very much. Thank you to all of the witnesses. Certainly, I for one, I am with you, just tell me what I need to do, and I will do the best I can to ensure that we do the right thing. So I appreciate your testimony.

And before I go to the second panel, I need to ask you unanimous consent to enter into the record a written statement from former Congressman Robert Underwood who represented Guam in the Congress from 1993 to 2003.

Without objection, so ordered.

[The information follows:]

HOUSE ADMINISTRATION COMMITTEE

HEARING ON VOTING RIGHTS AND ELECTION ADMINISTRATION IN THE U.S.
VIRGIN ISLANDS AND OTHER TERRITORIES

July 28, 2020

Hafa Adai and Good Morning Chairwoman Marcia Fudge and Ranking Member Rodney Davis

I want to first thank you and the members of the Subcommittee for taking interest in the matter of voting rights in the territories and for Congresswoman Stacey Plaskett's leadership on making this hearing possible.

My name is Robert Underwood and I represented Guam in the 103rd-107th Congress in the U.S. House of Representatives. This experience was invigorating and inspiring, but it could also be exasperating and sometimes dispiriting. Representing a territory in the nation's capital presented many challenges and difficulties. The inability to fully participate in the proceedings of the House of Representatives and the lack of participation of your own constituents to be involved in the selection of national leadership, most notably the President, was always present in your mind. The best way to explain the nature of American citizenship in the territories was to explain to other Americans that territorial citizens could not vote for President.

The core of American representative democracy was outlined by a former territorial delegate who eventually became President of the United States. There was one such public figure. William Henry Harrison stated, "The only legitimate right to govern is an express grant of power from the governed." The essence of American democracy is laid upon the foundation of getting consent from those who are governed. American history is replete with examples of how this is not happened for the first Americans, women, immigrants and most especially with African-Americans brought over to this country in bondage. But methodically, the promise of America kept moving forward and brought down barriers of wealth, race and gender. The story is not complete, but most of us are in agreement on where it should go.

But it seems to stop at the water's edge, when we talk about the territories. The overseas territories seem like a different world and we tend to suspend the full meaning of democracy when it comes to them. Territorial Americans do not grant their consent to this body to make decisions about them. Territorial Americans are not allowed to participate in the selection of the nation's chief executive who possesses legal and regulatory authority over them as much as he does the 50 states and District of Columbia.

This is not just illogical. This is un-American. And it has no promise of being remedied because, we think that voting rights and election reform does not include voting power and consent of the governed. The full discussion of whether territories should be represented in the body which makes laws over them is essential to defining the true meaning of the democratic creed. Voting for the President is equally important, but the lack of consent of the governed in the very body that governs should be an affront to all and not just those people who live beyond the water's edge.

Grant real representation to the territories and let them vote for President. If they are going to be kept as territories until a future and final political status is determined, then they should be given the right to grant their consent to this body. As it stands now, the people of Guam especially those in the military must choose between voting for their Congressional Delegate or voting for President. If you are a soldier from Guam in a combat area today, you could choose to vote for your Congressional representative or give up residency and vote for President. No one in uniform or indeed, no American should have to make that choice.

CONDUCT OF ELECTIONS

Distance and identity are major features of life for citizens in the territories, especially those from Guam. Guam is over 9,000 miles away from Washington DC and, in spite of the inequities, we love being from Guam. The people of Guam participate in the military in high rates. Many more are temporarily assigned to work elsewhere and there are many who reside in any of the 50 states on a temporary basis throughout the year for business or family reasons. However, their legal residence and their heart remain in Guam. The current system of absentee voting requires ballot distribution and return via the mail. This has been

in place for decades in Guam in spite of all the technological advances and security systems we have in place.

I recommend that the Congress works directly with the territorial governments to establish a secure system of electronic voting which can be monitored by all parties and which are verified by paper receipt for future reference or challenge. While important documents and paper checks continue to be delivered through the mail, the rate has gone down dramatically as we move towards more efficient and secure financial transactions. Voting should be similarly as efficient as well as honest. Without the efficiency, we put barriers to participation. Those barriers keep us from receiving the honest will of the people. We must remove those today.

Robert A. Underwood

Member of Congress, 103rd-107th Congress

President Emeritus, University of Guam

Chairwoman FUDGE. I also ask unanimous consent that statements be entered into the record from the National Disability Rights Network, attorney Pamela Colon, Dr. Carlyle Corbin, attorney Emile Henderson III, the Virgin Islands GOP, Caroline Fawkes, supervisor of the elections for the Virgin Islands, Carol Burke, the Democratic National Committeewoman, Gustav James, a citizen of St. Croix, U.S. Virgin Islands, and John M. Canegata, Chairman of the V.I. GOP.

[The information follows:]



July 27, 2020

Representative Marcia L. Fudge
United States House of Representatives
Washington, DC 20515

Representative Rodney Davis
United States House of Representatives
Washington, DC 20515

**Re: Subcommittee on Elections of the Committee on House Administration
Hearing: "Voting Rights and Election Administration in the US Virgin Islands and Other Territories"**

Dear Chairwoman Fudge and Ranking Member Davis:

On behalf of the National Disability Rights Network (NDRN) and the nationwide network of Protection & Advocacy (P&A) agencies, we commend the Subcommittee for examining voting rights and election administration in the US territories: US Virgin Islands, American Samoa, Guam, and Northern Mariana Islands. We wish to submit this letter for the Subcommittee hearing record.

NDRN is the non-profit membership organization for the federally mandated P&As and Client Assistance Programs (CAPs) for individuals with disabilities. The P&As and CAPs were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. P&As and CAPs are in all 50 states, the District of Columbia, Puerto Rico, and the US territories, and there is a P&A and CAP affiliated with the American Indian Consortium which includes the Hopi, Navajo, and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP Network is the largest provider of legally based advocacy services to people with disabilities in the US.

Through the Protection and Advocacy for Voter Access (PAVA) program, created by the Help America Vote Act (HAVA), the P&As have a federal mandate to ensure the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places and are the leading experts on access to the vote for people with disabilities in the US. The PAVA program allows P&As to advocate on behalf of voters with disabilities to ensure that they have access to all aspects of the American voting process. PAVA program funds allow P&As to conduct disability training to poll workers, distribute resources on how to conduct an accessible campaign, maintain voting hotlines, examine polling places for accessibility, and much more throughout the year.

PAVA program funding is currently awarded to all "eligible" P&As across the US. Unfortunately, because HAVA includes specific language about "states" only 55 out of the 57 P&As are currently eligible for PAVA program funding. The Northern Mariana Islands and the American Indian Consortium P&As do not receive PAVA funding since

they are not considered states and therefore have been ineligible for PAVA funding since HAVA passed in 2002.

It was always the intent for all P&As to participate in the PAVA program. We urge Congress to swiftly pass [H.R. 5510](#), the PAVA Program Inclusion Act, authorizing the distribution of grant funds to the Northern Mariana Islands and American Indian Consortium P&As to ensure that every P&A across the US can advocate on behalf of voters with disabilities.

Thank you for your work on this important topic and consideration of a technical fix to PAVA. If you have any questions please contact Erika Hudson, Public Policy Analyst, at Erika.hudson@ndrn.org or (202) 408-9514 x134.

Sincerely,



Curtis L. Decker
Executive Director

LAW OFFICES OF PAMELA LYNN COLON, LLC

27 & 28 KING CROSS STREET - FIRST FLOOR
CHRISTIANSTED, VI 00820

PAMELA LYNN COLON, ESQ.
(LIC. ILLINOIS AND U.S.V.I.)

(340) 719-7100 TEL
(340) 719-7700 FAX
stretch@viaccess.net

CONGRESSIONAL TESTIMONY

**FULL VOTING RIGHTS FOR UNITED STATES CITIZENS
RESIDING IN THE TERRITORIES**

Testimony before

Subcommittee on Voting Rights

The House Administration Committee

United States House of Representatives

July 28, 2020



Submitted by Pamela Lynn Colon, Esq.
United States Citizen
Resident of St. Croix, United States Virgin Islands

“What gives any person the right to judge any other person?” That was the question posed a few years ago by one of my students, who happens to be my son, to a panel of judges from the United States Court of Appeals for the Third Circuit. It was a philosophical, rather than a legal, question. To one of the panelists, however, it had a concrete legal answer. The Judge explained that in our system of democracy, the People have the right to vote for a President, who selects the judges who will preside over our legal disputes; for Senators, who confirm the judicial appointments; and for Representatives, who forge and amend the federal laws to which those judges are bound. In other words, what gives a person the right to judge another in America is voting, the foundation of democratic accountability and political participation.

That was a most dissatisfying answer to all residents of the United States Virgin Islands, and to my students in particular. Anyone who has lived here knows that although Virgin Islanders are natural born citizens of the United States and in every other way qualified to vote for President, we will again be voiceless in the November election simply because of where we live. Neither will we have a right to vote for Senators, or for a full voting member of the House of Representatives. On account of zip code, the U.S. Virgin Islands is prevented from exercising the most meaningful right of citizenship: the right to select those who govern. In the words of the United States Supreme Court, it is the right “preservative of all rights.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

It was a particularly troubling answer for my students to hear as we had just finished studying the *Insular Cases*, from which the disparate treatment for those United States citizens living in United States colonies (euphemistically referred to as territories) is derived. The *Insular Cases* are a series of United States Supreme Court opinions written at the turn of the twentieth century in the immediate aftermath of U.S. annexation of the Philippines, Guam,

Puerto Rico, Hawaii, and other overseas possessions. These decisions are based entirely on ugly racist assumptions and extralegal beliefs regarding the social, political and intellectual abilities of persons living in these colonies at that time. The abhorrent attitudes supporting these legal precedents can be summed up in a quote by Supreme Court Justice Henry Billings Brown in his plurality opinion in *Downes v. Bidwell*, 182 U.S. 244 (1901): “If those **possessions are inhabited by alien races**, differing from us in religion, customs, laws, methods of taxation, and modes of thought, **the administration of government and justice, according to Anglo-Saxon principles, may for a time be impossible.**” (Emphasis added.)

This is the same Justice Brown who authored the majority opinion in *Plessy v. Ferguson* just a few years earlier, upholding state-imposed racial segregation and inventing the “separate-but-equal” doctrine seemingly from thin air. While segregation has long been abandoned as repugnant to the lofty ideals of our nation and civilization itself, the prohibition against full participation in “the administration of government and justice, according to Anglo-Saxon principles” by “alien races” “inhabit[ing]” U.S. “possessions” is still in full force and effect.

It was especially disheartening that a judge from the Third Circuit, which hears cases appealed from the District Court of the Virgin Islands and decides many of the most significant legal questions affecting its people, would fail to see how this lesson on “our” system of democracy would fail to satisfy U.S. citizens residing in the United States Virgin Islands. We do not have any voting representation on the floor of the House of Representatives and no representation at all in the Senate. We cannot vote for president. This means that we have no say in the federal laws that apply to us. No voice in who will be selected to be our federal judges in the District Court of the Virgin Islands nor to the United States Attorney’s Office that brings federal prosecutions there. No input as to whether or not to declare war or how much to spend

once declared, though our sons have an obligation to register for Selective Service at 18 and our fathers, husbands, brothers and sons—along with our mothers, wives, sisters and daughters—have made the ultimate sacrifice to their country as both draftees and willing volunteers in the United States military. Citizens of U.S. territories serve this country in uniform at rates far higher than those of most States, yet we cannot participate in choosing the Commander in Chief who orders them into danger. Indeed, we are treated more like subjects than citizens.

Yet, despite very recent opportunities to overturn the bigoted *Insular Cases*, today's Supreme Court, as well as lower federal courts throughout the nation, have allowed this disparate and unjust system of second-class citizenship to continue. I was a plaintiff in one of those cases, *Segovia v. United States*, 880 F.3d 384 (7th Cir. 2018), *cert. denied*, 139 S.Ct. 320 (2018). The core harm of living in this second class is denial of full representation and equal voting rights in federal elections. The intellectual dishonesty and blatant discrimination of this prohibition becomes even more apparent when it is applied to those who were once registered voters in the States who lost their voice in government upon moving to a "territory."

I was born and raised in Illinois. I went to college and law school in the City of Chicago. I was a registered voter in Cook County, Illinois, from the time I was 18 until I moved to the USVI in April, 1992. I was an active voter and participated in every presidential election from 1980 (my first) until 1988 (my last). I was both blindsided and devastated when I learned I was not going to be allowed to vote in the 1992 presidential election even though I was still a U.S. citizen and not suffering from any impairment that would prohibit me from voting.

Disbelief turned to anger when I learned that had I moved another 18 miles east to the British Virgin Islands, federal law would have required that I be allowed to vote for President through absentee ballot. Indeed, had I moved to any other country in the world, including Iran or

North Korea, I would have continued to enjoy my suffrage. Instead, I have been silenced and disenfranchised, as have been my students, colleagues, neighbors, clients and my son.

I have a criminal defense practice in the United States Virgin Islands. I defend clients who are charged by persons who are neither directly nor indirectly accountable to them, solely because they live in the USVI. Presiding over their trials are judges appointed to the bench without Virgin Islanders' participation at any point in the selection process. It should be readily apparent to all that judge selection is determinative of how justice is delivered in this country.

Yet, even the judges that we do not get to pick are treated as second-tier. Despite being held out as fully independent federal judges, the USVI's district judges are not appointed to life terms like those judges appointed under Article III. As argued recently by James Campbell in the *Yale Law Journal*: "Divorced from its once-plausible logic of necessity and institutional development, the present status of federal district judges in the territories is an emerging problem in federal judicial independence that exposes the federal courts to charges of exceptionalism and political interference." James T. Campbell, Note, *Island Judges*, 129 *Yale L.J.* 1888 (2020). Again, "territorial" federal judges are created less equal, just like "territorial" U.S. citizens.

Remarkably, barring full citizenship rights to U.S. citizens residing in the "territories" is not a partisan issue. Both Republican and Democratic administrations have argued against equal citizenship before the United States Supreme Court during this century, over one hundred year since the *Insular Cases*.

Yet, after twenty-eight years of living in America's Paradise without a vote, I still have hope that I and my fellow residents will become fully participating, first-class U.S. citizens. Hope is the most powerful of emotions. As I experience it, hope is "an orientation of the spirit;" "the ability to work for something to succeed." Havel, Vaclav, "Never Hope Against

Hope,” *Esquire*, October, 1993, p. 68 - classicsquire.com. It accounts for the resiliency displayed by those living in the territories that allows us to rebuild after each devastating hurricane wreaks havoc on our lives. It is the key to revolution. It allows us all to move forward, together.

I hope for a federal government that will cease to treat us like second-class citizens or, worse yet, possessions. Now, after more than a century of overseas colonialism, we need the For The People Act to transform this hope into reality, guaranteeing to every U.S. Citizen the long-withheld right that preserves all others.

WRITTEN STATEMENT (REV. 2)

Dr. Carlyle G. Corbin

House Administration Committee
 Subcommittee On Voting Rights
 U.S. House Of Representatives

Hearing on voting rights in US territories and possessions

28th July 2020

As a matter of introduction, I am Carlyle G. Corbin, an international advisor on governance with specific focus on constitutional and political evolution of dependent territories globally. I had the distinct honor of serving the US Virgin Islands Government as the International Advisor to US Virgin Islands Governor Cyril E. King, Washington Representative to Governor Juan F. Luis, and Representative for External Affairs to Governors Alexander A. Farrelly, Roy L. Schneider and Dr. Charles W. Turnbull, respectively. My duties included representation of the territory in the United Nations (U.N.) and other international organizations. I express my appreciation to US Virgin Islands Delegate to Congress Stacy E. Plaskett for the kind invitation to present a written statement for the record on the matter of voting rights in US territories and possessions.

In addressing this issue, I recall the wisdom of my graduate school political economy professor Dr. Robert Rhodes who reminded that “in considering the *particular* problem, in favor of the *general* problem, one is soon to be confronted with the *general* problem.” Following this logic, I would characterize the issue of the lack of voting rights in U.S. territories as a *particular* problem which is, essentially, a byproduct of the *general* problem of our unincorporated territorial status, defined as non self-governing under international law.

This political and legal reality inherent in the political status of the US Virgin Islands and other US territories has been thoroughly analyzed over the decades by various territorial legal and political scholars, as well as expert analysts who study the political and constitutional evolution of non-independent territories on a global level. In this connection, the U.S. territories of American Samoa, Guam and the US Virgin Islands are classified by the United Nations (UN) as Non Self-Governing Territories (NSGTs) and voluntarily inscribed by the US on the UN list under Article 73 of the UN Charter pursuant to UN General Assembly Resolution 66-1 of 1946. Puerto Rico remains an unlisted NSGT having been removed from the UN list in 1954 some six years before the minimum standard of autonomy was established by the UN in 1960 by Resolution 1541(XV) which defined the options of political equality, namely integration, free association and independence (*See Annex*).

In this vein, the status quo unincorporated territorial status is not a credible option of democratic governance, but rather was always meant to serve as preparatory to a legitimate model of full self-government consistent with Article 73(b) of the UN Charter (*See Annex*). Thus, the issue of voting rights for U.S. territories should be examined in this broader context of international law, and is best addressed through the attainment of one of these three

permanent political status options. The introduction of the various dependency reform measures being proposed such as presidential and Congressional votes, and U.S. Senate representation among other measures, would provide for, at best, a position of "lesser inequality" within the U.S. political system. Such measures would not elevate the territories to a position of full political equality required under international law.

If the proponents of these dependency reform measures are arguing that the current political status of the territory is one of clear political inequality requiring remediation, then I concur with this position. Where we may differ is in how to address the unequivalence. On this point, the particular question of voting rights is but one component of the general question of full political equality best addressed through a process of genuine self-determination where a permanent political status is achieved. This would, by definition, provide for equal voting rights within the context of the full measure of self-government achieved through an option of political equality.

Accordingly, the permanent option of integration (US statehood) would yield full political rights in the US political system, while the options of free association or independence would provide for full rights within the political systems created under these alternatives. The operative feature is the extension of full political equality through the attainment of a legitimate political status option as defined under U.N. General Assembly Resolution 1541(XV) of 1960 which is wholly applicable to the US territories.

On the other hand, continued dependency arrangements existing under the territorial clause, however modernized or re-cast, would not be considered as acceptable models of democratic governance, and would remain as forms of political inequality. The international legal obligation of the US to bring the territories to the full measure of self-government pursuant to the U.N. Charter is abundantly clear. Gradual colonial reforms represented by proposals for US presidential/Congressional votes and Senate representation-- as difficult as these measures would be to achieve - would result in a creeping form of partial and unequal political integration of the territories with the US, with the territories remaining without full political rights.

If these and other incremental measures were to succeed, the informed consent of the people of the territory should be required in advance of the pursuit of these measures. Otherwise, the political status of the territories would be unilaterally modified by the Congress under its territorial clause powers without the concurrence of the people -- an action Congress can take under its unilateral authority. Such a scenario could invariably result in unintended consequences without an immediate self-determination plan aimed at achieving full self-government to fill a political vacuum which may be created in the event that these incremental measures were to be enacted. As an example, if the territories would no longer be unincorporated following the proposed Congressional de-legitimization of the territorial clause, would they become incorporated, by default? What are the implications of that?

The clarification must be made as to the actual relationship between US territories and the US. as to whether US territories are actually *part of* the US, or rather, *owned by* the US. It is instructive that the infamous territorial clause of the U.S. Constitution refers to "*territory*

or other property belonging to the United States" (emphasis added). In this light, it is interesting that the French Constitution, the Netherlands Charter, and other 'administering authorities' include their dependencies and 'autonomous' countries by name in their respective constitutional and political documents (*New Caledonia, French Polynesia, Curacao, Sint Maarten, Aruba, et al*). It speaks volumes that the linkage between the US Constitution and the US territories is with the Article of the US Constitution that deals with the nameless "*territory or other property belonging to the U.S.*"

This is our political reality reflective of an anachronistic model of dependency governance which has been "tweaked" over time, but still remaining in dire need of fundamental transformation. While some territories such as Guam, the Northern Mariana Islands and Puerto Rico have been challenging the dependency syndrome via referendum processes, others such as the US Virgin Islands are taking a dependency accommodation/legitimization approach by promoting the adoption of the U.S. congressionally-written Revised Organic Act as the territorial constitution while remaining in the condition of democratic deficiency of the unincorporated territorial status. Meanwhile, American Samoa's political leadership continues to vehemently object to attempts to unilaterally confer US citizenship on its people whose p[reference is to maintain their current US national status.

It is to be recalled that US First Circuit Court of Appeals Justice Juan Toruella in a 2014 presentation to a conference at Harvard Law School observed that "not even the grant of US citizenship to the inhabitants of Puerto Rico changed their constitutional rights as long as they remained residents of Puerto Rico," in reference to what he termed the "state of eternal inequality" including the "political impair(ment) of the territory's representative to the U.S. House of Representatives."

The reference to Puerto Rico is instructive given that most court cases filed in relation to deficiency in political rights of that territory have direct application to the other US dependencies. Accordingly, three challenges to the constitutionality of the lack of presidential voting rights for US citizens in Puerto Rico between 1994 and 2004 were consistently denied, and determined not violative of the constitutional rights of those citizens. The point was – and remains – that such voting rights under Article II of the U.S. Constitution inheres not in citizens, but in states – absent the unlikelihood of a similar constitutional amendment which was adopted to provide presidential voting rights for the District of Columbia requiring approval of three-fourths of the state legislatures. In a similar case regarding the unincorporated territory of Guam, a 1984 ruling of the U.S. Court of Appeals for the Ninth Circuit provided further clarity:

A constitutional amendment would be required to permit (U.S. citizens in Guam) to vote in a presidential election. The District of Columbia experience illustrates this point, for American citizens on Guam are not the first American citizens not residing in states to complain about their inability to vote in presidential elections. Until the passage of the twenty-third amendment to the Constitution, American citizens who lived in the District of Columbia could not participate in presidential elections [738 F.2d 1017 (9th Cir. 1984)]

A subsequent case considered by the U.S. District Court in the US Virgin Islands in 2006 and upheld by the U.S. Third Circuit Court of Appeals confirmed that the U.S. Constitution does not grant the right to vote for President and Vice President to individual citizens, but to "Electors" appointed by each State." In the 2020 analysis "America's Territories: Equality and Autonomy," eminent American legal scholar Howard Hills confirmed that "the U.S. Constitution itself allows fully equal representation in Congress and the Electoral College only for citizens of a state, making any remedy other than statehood less than equal" in reference to full rights within the context of the US political system.

Accordingly, the historic quest for presidential voting rights by most US Virgin Islands delegates to Congress to date, usually in conjunction with representatives of other US territories, has not been met heretofore with a credible U.S. Congressional response. To this end, the present hearing is possibly the first of its kind to be held addressing the matter since the various proposals were made over the decades.

On the related issue of full voting rights for the US territorial delegates to Congress, the question is examined in a similar vein to that of the US presidential vote. A 2017 US Congressional Research Service (CRS) report set forth the limitation of the authority of the present territorial House delegates in rather stark language:

As officers who represent territories and properties possessed or administered by the United States (*emphasis added*) but not admitted to statehood, the five House delegates and the resident commissioner from Puerto Rico do not enjoy all the same parliamentary rights as Members of the House. They may vote and otherwise act similarly to Members in legislative committee (*emphasis added*). They may not vote on the House floor but may participate in debate and make most motions there. Under the rules of the 115th Congress (2017-2018), the delegates and resident commissioner may not vote in, but are permitted to preside over, the Committee of the Whole.

....

Under Rules III and XVIII, as adopted in both the 110th and 111th Congresses (2007-2010), when the House was sitting as the Committee of the Whole, the delegates and resident commissioner had the same ability to vote as Representatives, subject to immediate reconsideration in the House when their recorded votes had been "decisive" in the committee.

An earlier 2006 CRS Report entitled "*Territorial Delegates to the U.S. Congress: Current Issues and Historical Background*" recounted the genesis of the territorial delegate voting rights in the Committee of the Whole originally granted in the 103rd Congress. An ensuing lawsuit filed by a group of House members contended that the delegate voting, even as it was conditional on whether the five votes were determinative – argued that non-members (*emphasis added*) of the House voting in the Committee of the Whole impairs and dilutes the constitutional rights of the House Members, and that the House did not have the authority to unilaterally expand the powers of the territorial delegates. A U.S. District Court ruling in 1993 upheld the delegate vote in the Committee of the Whole only on the

conditionality that an automatic re-vote provision was required when the delegate vote was decisive on legislation. The ruling concluded, in part:

“If the only action of the House of Representatives had been to grant to the delegates from the District of Columbia, Guam, Virgin Islands, and American Samoa, and the Resident Commissioner from Puerto Rico the authority to vote in the Committee of the Whole, its action would have been plainly unconstitutional. [W]hile the action... undoubtedly gave the Delegates greater stature and prestige both in Congress and in their home districts, it did not enhance their right to vote on legislation....[B]y virtue of Rule XXIII they [the votes of the Delegates] are meaningless. It follows that the House action had no effect on legislative power, and that it did not violate Article I or any other provision of the Constitution (*Michel v. Anderson*, 1993)

This sequence is illustrative of the fact that the political rights of citizens in the US unincorporated territories, and the nature and extent of the participation of their representatives in the US political system, is circumscribed by the provisions of the unilateral applicability of the territorial clause. It is only the attainment of a genuine political status transition to full self-government which will solve such particular questions as US voting rights and other forms of political power which would come as a form of reversible delegation of power rather than permanent devolution. In any case, proposed dependency reform measures should be pursued only as the result of a clear signal of preference of the people of a given territory for integration with the U.S., and only after a thorough public education process in which the implications of the ‘creeping integration’ would be carefully examined and revealed. Otherwise, the inalienable right of the people of the territory to self-determination may be violated.

In my view, the more preferable path lies in the implementation of the international legal obligations contained in the UN Charter to decolonize the US territories by preparing them for the full measure of self-government and advancing them to that position. In this context, territorial voting rights would be a logical outcome of whatever permanent option would be democratically selected by the people. The several White House Task Force Reports on Puerto Rico are instructive in regards to what constitutes permanent options for US territories, and the democratic deficiencies of the status quo unincorporated territorial status which renders these dependencies below the threshold of political equality according to global self-governance indicators. As it has been said, the price of remaining the same can be far greater than the price of change.

ANNEX**United Nations Charter****Article 73**

“Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

- a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
- b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;
- c. to further international peace and security;
- d. to promote constructive measures of development, to encourage research, and to cooperate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and
- e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.”

United Nations General Assembly Resolution 1541(XV)
15th December 1960

Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter.

The General Assembly,

Considering the objectives set forth in Chapter XI of the Charter of the United Nations,

Bearing in mind the list of factors annexed to General Assembly resolution 742 (VIII) of 27 November 1953,

Having examined the report of the Special Committee of Six on the Transmission of Information under Article 73 e of the Charter,¹² appointed under General Assembly resolution 1467 (XIV) of 12 December 1959 to study the principles which should guide Members in determining whether or not an obligation exists to transmit the information called for in Article 73 e of the Charter and to report on the results of its study to the Assembly at its fifteenth session,

1. *Expresses its appreciation* of the work of the Special Committee of Six on the Transmission of Information under Article 73 e of the Charter;
2. *Approves* the principles set out in section V, part B, of the report of the Committee, as amended and as they appear in the annex to the present resolution;
3. *Decides* that these principles should be applied in the light of the facts and the circumstances of each case to determine whether or not an obligation exists to transmit information under Article 73 e of the Charter.

ANNEX

PRINCIPLES WHICH SHOULD GUIDE MEMBERS IN DETERMINING WHETHER OR NOT AN OBLIGATION EXISTS TO TRANSMIT THE INFORMATION CALLED FOR IN ARTICLE 73 E OF THE CHARTER OF THE UNITED NATIONS

Principle I

The authors of the Charter of the United Nations had in mind that Chapter XI should be applicable to territories which were then known to be of the colonial type. An obligation exists to transmit information under Article 73 e of the Charter in respect of such territories whose peoples have not yet attained a full measure of self-government.

Principle II

Chapter XI of the Charter embodies the concept of Non-Self-Governing Territories in a dynamic state of evolution and progress towards a "full measure of self-government". As soon as a territory and its peoples attain a full measure of self-government, the obligation ceases. Until this comes about, the obligation to transmit information under Article 73 e continues.

Principle III

The obligation to transmit information under Article 73 e of the Charter constitutes an international obligation and should be carried out with due regard to the fulfilment of international law.

Principle IV

Prima facie there is an obligation to transmit information in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it.

Principle V

Once it has been established that such a *prima facie* case of geographical and ethnical or cultural distinctness of a territory exists, other elements may then be brought into consideration. These additional elements may be, *inter alia*, of an administrative, political, juridical, economic or historical nature. If they affect the relationship between the metropolitan State and the territory concerned in a manner which arbitrarily places the latter in a position or status of subordination, they support the presumption that there is an obligation to transmit information under Article 73 e of the Charter.

Principle VI

A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

- (a) Emergence as a sovereign independent State;
- (b) Free association with an independent State; or
- (c) Integration with an independent State.

Principle VII

(a) Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.

(b) The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. This does not preclude consultations as appropriate or necessary under the terms of the free association agreed upon.

Principle VIII

Integration with an independent State should be on the basis of complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated. The peoples of both territories should have equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms without any distinction or discrimination; both should have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government.

Principle IX

Integration should have come about in the following circumstances :

(a) The integrating territory should have attained an advanced stage of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes;

(6) The integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes.

Principle X

The transmission of information in respect of Non-Self-Governing Territories under Article 73 e of the Charter is subject to such limitation as security and constitutional considerations may require. This means that the extent of the information may be limited in certain circumstances, but the limitation in Article 73 e cannot relieve a Member State of the obligations of Chapter XI. The "limitation" can relate only to the quantum of information of economic, social and educational nature to be transmitted.

Principle XI

The only constitutional considerations to which Article 73 e of the Charter refers are those arising from constitutional relations of the territory with the Administering Member. They refer to a situation in which the constitution of the territory gives it self-government in economic, social and educational matters through freely elected institutions. Nevertheless, the responsibility for transmitting information under Article 73 e continues, unless these constitutional relations preclude the Government or parliament of the Administering Member from receiving statistical and other information of a technical nature relating to economic, social and educational conditions in the territory.

Principle XII

Security considerations have not been invoked in the past. Only in very exceptional circumstances can information on economic, social and educational conditions have any security aspect. In other circumstances, therefore, there should be no necessity to limit the transmission of Information on security grounds.

YVETTE D. ROSS-EDWARDS P.C.
Attorneys-at-Law

Yvette D. Ross-Edwards, Esq.
yvette@rossedwardspc.com

Emile A. Henderson III, Esq.
emile@rossedwardspc.com

July 26, 2020

**EMILE A. HENDERSON III, ESQ.'S WRITTEN TESTIMONY TO THE HOUSE
ADMINISTRATION COMMITTEE'S SUBCOMMITTEE ON VOTING RIGHTS**

Honorable Congresswoman Marcia Fudge and other Members of the House Administration Committee's Subcommittee on Voting Rights, it is my honor and privilege to provide testimony to this Committee on the importance of voting rights in possessions of the United States. This is an issue whose time has come for immediate and deliberate action.

The Virgin Islands of the United States have been an unincorporated territory of the United States for 103 years. In that time, the Territory has given its loyalty, dedication, and even lives of its residents for this country. Since its purchase in 1917, the enlisted service men and women of the U.S. Virgin Islands have fought in every international conflict the United States has been a part of. Yet, despite this commitment to this great nation, we are treated like second class citizens.

It is important to note that nowhere in the United States Constitution are there provisions expressly providing that United States citizens are only permitted to have full citizenship rights as long as he or she resides in one of the fifty states. Moreover, there are no provisions in our Constitution which expressly limits such full citizenship, or a loss of such full citizenship, because one lives in a territorial possession.

It is unfortunate that twenty years into this new millennium we are still discussing issues that were created by the U.S. Supreme Court in the early 20th century through a string of unfortunate decisions known collectively as the "Insular Cases." These cases have served as the foundation for the discriminatory practices against United States citizens living in the Territories in regards to our basic fundamental rights afforded by the Constitution. The most sacred of those denials is the right to vote which is the driving force behind a functional democracy. This basic fundamental right has been eroded by judicial decisions where, in at least one of those decisions, territorial residents have been referred to as "savages."

The fact is, being treated as a second-class citizen is demoralizing. The inability to exercise freely the fundamental right to vote for the President of the United States and to have full voting representation in Congress is unconscionable in a country that touts itself as the "Land of the Free."

It is apparent the Supreme Court of the United States has no intention of revisiting and reversing the Insular Cases and the effect these cases have had on shaping what is unequal treatment for United States Citizens residing in the Territories. The Fourteenth Amendment to our Constitution serves the purpose of ensuring that there is Equal Protection; the Insular Cases

Emile A. Henderson III, Esq.
Testimony before the House Administration Committee Subcommittee on Voting Rights
July 26, 2020
Page 2

run afoul of that basic tenet. To that end, it is up to Congress to right that wrong. It is up to Congress to finally recognize that the right to vote is fundamental and should be afforded to all United States citizens irrespective of whether they live in one of the fifty states or one of the Territories. It is time for Congress to live up to the words of our Founding Fathers in the Declaration of Independence which states in pertinent part:

When in the Course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume among them the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to separation. We hold these truths to be self-evident that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights Governments are instituted among Men, deriving their powers from the consent of the governed. . . .

Our country has strayed from this basic principle, and has created second class citizens who have been silenced and locked out from their ability to fully and meaningfully participate in the democratic process. U.S. Territories are affected by mainland politics, and the decisions made nationally. Therefore, having a national vote, participating in electing the President and Vice President of the United States, as well as having full voting representation in Congress, would be to finally carry out the intentions of our Founding Fathers. Casting a vote for President is an inalienable right for all Americans, and ensuring that Americans living in U.S. Territories are afforded that right would be a step towards upholding our Constitution's sound promise to form a more perfect union.

The time has come for you to act. The time has come for each Member of Congress to show fellow Americans that there are no differences in citizenship. Every American is an American, and as such is able to enjoy all the privileges and immunities provided under the Constitution. It is time to ensure that there is equal access to participation in our country's democracy. It is time to assure all citizens that their voices *matter*.

Thank you for giving me the opportunity to provide this written testimony, and I look forward to being able to assist in any way I can to bring full voting rights and equality to all United States citizens living in the U.S. Territories.

Respectfully Submitted,



Emile A. Henderson III
 Managing Attorney

GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES

Election System of the Virgin Islands

P.O. Box 1499 • KINGSHILL • ST. CROIX • U.S. VIRGIN ISLANDS 00851-1499
P.O. Box 6038 • ST. THOMAS • U.S. VIRGIN ISLANDS 00801-6038

July 25, 2020

The Honorable Marcia Fudge
Congress of the United States
Committee on House Administration
United States House of Representatives
Washington, D.C. 20515

Dear Chairwoman Fudge,

My name is Caroline Fawkes, a Certified Election Registration Administrator, serving as the Supervisor of Elections for the Virgin Islands of the United States for the past seven (7) years. The Virgin Islands of the United States consists of the main islands of Saint Croix, Saint John, and Saint Thomas, and many other surrounding minor islands. The total land area of the territory is 133.73 square miles. The territory's capital is Charlotte Amalie on the island of St. Thomas.

Prior to becoming the Supervisor of Elections, I served for thirty-two years in the Virgin Islands National Guard. My last two years of service were in Guantanamo Bay, Cuba, with the Joint Task Force Guantanamo as the Director of Operations and the Director of the Joint Visitors Bureau. Some of my military accomplishments are:

- First Female Virgin Islander to become a pilot and serve in the Virgin Islands National Guard (1986)
- First and only female State Army Aviation Officer within the National Guard comprising of the fifty (50) states and three Territories. (1986-2002)
- First and only female within the Armed Forces to pilot the C-23B Sherpa Aircraft (1992-2002)

I am presently, Bromley Berkeley American Legion Post 133 Commander. The Bromley Berkeley Post 133 claimed one of the only veteran centenarian, Comrade John Tranberg who

was 103 years old when he passed in August 2019 and the last World War II Veteran on St. Croix, Comrade Olric Carrington and a Legionnaire for over fifty-five years, who passed in February 2020. Currently, our membership includes veterans from the Korean War to present.

The mission of the Elections System of the Virgin Islands (ESVI) is: "To provide American citizens in the United States Virgin Islands with the mechanism to exercise their right to vote according to the United States Constitution. Our primary goal is to ensure a Fair, Accessible, Secure and Transparent Election process.

"The vote is a trust more delicate than any other, for it involves not just the interests of the voter, but his life, honor and future as well." Jose Marti

The Election System of the Virgin Islands was created through Act 936 on February 20, 1963 by the Legislature of the United States Virgin Islands. The authority of the Election System of the Virgin Islands is derived from Title 18 of the Virgin Islands Code.

The statute establishes the organizational structure of the agency, which is comprised of two divisions: Joint Board of Elections and the Office of the Supervisor of Elections. The fourteen-member Board is elected; seven Board Members from the St. Croix District and seven Board Members from the St. Thomas/St. John District. Of the seven Board Members from the St. Thomas/St. John District, two Board Members must be residents of St. John.

The Office of the Supervisor has thirteen (13) staff members territorially with over one hundred and forty-three (143) total years of service. The Supervisor, two- Deputy Supervisors, two – Senior Elections Assistants, five -Elections Assistants, one – Administrative Assistant & two - Board Administrative Assistants.

During my tenure, the ESVI has conducted various types of Elections – Primary, General, Run Off (twice- 2014 & 2018) and Special Elections. The Elections System of the Virgin Islands utilize the following voting processes, Early Voting, was initiated in 2014, Absentee Ballot Voting and Election Day. ESVI has the latest technology in voting equipment, the DS200 Tabulators and the Express Vote machines. Funding received from the Elections Assistance Commission and most recently the CARES ACT 2020 has enabled us to purchase technological advance voting equipment. We are continuously looking at the next advancement to enhance voter's participation, such as registration online, off site voter's identification processing, voting centers, however, we will need federal funds to accomplish these goals.

The number of registered voters as of July 25, 2020 are as follows:
St. Croix – 25,387, St. Thomas – 25,340, and St. John – 2,210 Total – **52,937**. Historically, Elections System of the Virgin Islands has had 20% of our registered voters participate in the non-gubernatorial election year and 60% in the gubernatorial election year.

The global spread of COVID-19 pandemic has profoundly impacted the delivery of public service. The spread of communicable diseases such as COVID-19, and the measures to contain the virus imposed by governments and state agencies, have both constitutional and technical implications for the timing and administration of elections.

The ESVI received \$600,000.00 CARES ACT Funding, which will support the additional requirements caused by this pandemic. The requirements for personal protective equipment, cleaning solutions and retrofitting of the offices. We just completed the early voting process on July 26th. The numbers of voters who participated as of July 25th, are as follows: STX -850, STT-678 and STJ-34 Total: 1,562

Since its inception, Early Voting has grown each year. The voters appreciate it and the staff enjoy serving the public. It has even become an in-house inter-island competition; which district is going to get the most turn out. The coronavirus did cause us to suspend the early voting operation for eleven days in the St. Thomas/St. John District. In prior years, ESVI had legal challenges of Candidates on the ballots, which also suspended this process, but overall, it is a welcomed election process. We were grateful, all worked out well for our organization and early voting was successful.

If granted the right to vote for the Presidency, the ESVI will carry out all mandated federal and local laws. ESVI may have to increase its capabilities of the voting equipment and other resources, however, the experience and commitment of the Staff will enable us to complete this additional requirement professionally, efficiently and transparently.

Now, I will address the two prongs on the topic of -Voting Rights and Election Administration in the U.S. Virgin Islands and Other Territories.

As most Americans mourn the passing of Congressman John Lewis, this hearing could not have come at a better time, this is the right moment to discuss the Voting Rights and Administration in the United States Virgin Islands and Other Territories. Congressman Lewis knew the Voting Rights Advancement Act was vital to safeguarding democracy. "Congressman Lewis, a Georgia Democrat, spent his life fighting for the right to vote, which he viewed as "the most powerful non-violent tool we have in a democracy." "On Dec. 6, 2019, Lewis held the gavel as the House passed the Voting Rights Advancement Act, which would establish new criteria for determining how states with histories of voting discrimination could change their voting laws."

The two impediments the ESVI is requested to provide comments on are:

a. Full and equal voting rights for United States citizens who are residents of territories of the United States in Federal Elections

Voting rights are under attack in America. Quietly, gradually, state-by-state, the right to vote – a right that many people died to secure – is being taken away. It should be no surprise that U.S. citizens, who are residents of U.S. territories, are unable to enjoy the same rights to vote, as voters on the U.S mainland-The United States of America, notwithstanding fact they pay some of the same taxes.

Unfortunately, the highest court of the land; the U.S. supreme court has ruled that residents of the territories would not have the rights and protections of the U.S. constitution, including the right to vote in federal elections.

People born in Guam, the Virgin Islands, the Northern Mariana Islands, American Samoa, and Puerto Rico are all Americans. But Americans residing in these territories cannot vote for president. Not unless they move to the mainland.

Today, we should be making it easy, simple, and convenient to vote. Instead, legislatures around the nation are creating barriers and making it more difficult for citizens to vote. There is not just one law, but many types of laws that are disenfranchising voters such as elimination of early voting and absentee voting, and laws making it harder to restore voting rights for people who have paid their debt to society. If these laws are passed, we will be stepping backward toward another dark time in our history.

US Citizens living in foreign countries are granted the right to vote via absentee ballot and US Citizens residing in a US Territory cannot vote. This practice is unfair and non-democratic, in today's society, the twenty-first century.

We cannot separate the dangerous trend across this nation from our history and the struggle for the right to vote. Before the passage of the Voting Rights Act in 1965, not so very long ago, it was impossible for some citizens to register and vote. Many were harassed, jailed, beaten, and some were even killed for trying to participate in the democratic process.

The right to vote is precious and almost sacred, and one of the most important blessings of our democracy. Today, we must be vigilant in protecting that blessing. Today, we are on the precipice of change and we must seize this historical moment.

As a thirty-two-year veteran, I have served this country. The brave men and women of the Virgin Islands who proudly wear their uniforms in defense of this country continue to represent our great nation in time of conflict and peace. These American Citizens take an oath to support and defend the constitution of the United States against all enemies foreign and domestic. The Virgin Islanders have been entrusted with protecting America, how can American not trust us to vote.

Our citizens have served in every war from the American Revolutionary War of 1775 to present day conflicts. It is this selfless commitment to our nation and its citizens that they have and will continue to make extraordinary sacrifices. The realities of war have caused some to make the ultimate sacrifice by laying down their life for the freedoms we experience each day in the United States and its Territories. As a Territory, we have lost more servicemembers per capita than any State, a current lost which stands out is Lieutenant Colonel David C. Canegata III and SFC Floyd Lake in the Second Persian Gulf War in Afghanistan in 2007. They volunteered to serve in the Gulf War and was shot down while returning to Afghanistan from Iraq in a Blackhawk helicopter. I served with these two military heroes. With this said, it is befitting that these men and women, as well as all other Virgin Islanders have the opportunity to vote in the Presidential Elections for their Commander in Chief, as well as their Gubernatorial Elections for their Territory / State Commander in Chief as done across all fifty states in America today.

Having served this country in a military capacity, as well as many other Virgin Islands' veterans, I eagerly look forward to the day when all U.S. citizen can enjoy equal rights, including voting rights. We cannot be American Paradise, these words once on our license plates and always touted where democracy is the cornerstone of America, and the right to vote is denied to us.

b. Equal voting representation in the House of Representatives for United States citizens who are residents of territories of the United States.

Congress has five main functions: lawmaking, representing the people, performing oversight, helping constituents, and educating the public. The duties carried out by a Member of Congress are understood to include representation, legislation, constituent service and education, performed as political and electoral activities. The expectations and duties of a Member of Congress are extensive, encompassing several roles. Many of the responsibilities that Members of Congress have assumed over the years have evolved from the expectations of Members and their constituents.

Upon election to Congress, Members typically develop approaches to their jobs that serve a wide range of roles and responsibilities. Given the dynamic nature of the congressional experience, priorities placed on various Member roles tend to shift in response to changes in seniority, committee assignment, policy focus, district or state priorities, institutional leadership, and electoral pressures. In response, the roles and specific duties a Member carries out are often highlighted or de-emphasized accordingly.

If the Virgin Islands Representative to Congress is a non-voting Member, how can they perform their role fully and effectively without the authority and power to conduct any of the five functions? The Virgin Islands electorate is being disenfranchised by our Delegate not having voting rights on the Congressional floor and is left to run around trying to get other Representatives to take their attention away from their constituents to focus on hers. In addition, to championing her legislative ideas.

The Virgin Islands just honored the passing of the first and longest serving Delegate to United States House of Representatives, Ron De Lugo, an American politician on July 24th. He served in congress from 1973 – 1979 & 1981 – 1995 and served in the United States Army for two years. In 1968, De Lugo was elected to the newly created post of Washington Representative, whose objectives included persuading the federal government to give the territory the right to elect its own Governor and to have an official Territorial Delegate in the House of Representatives.

De Lugo also sponsored several bills extending the right to vote in presidential elections to citizens in the offshore territories and introduced bills and held hearings in Puerto Rico and Washington, DC on status options for that island.

Throughout his years in Washington, De Lugo had to defend special status and tax advantages the Virgin Islands enjoys, including exemption from the Jones Act and the return of excise taxes collected by the federal government on imported Virgin Islands rum.

Elected members of Congress are best suited to meet the needs of their specific constituents. Many people I have encountered at National Election Conferences are unaware of the Territories disenfranchisement and have been shocked to learn that we cannot vote for President.

This disenfranchisement is exacerbated by our Delegate being non-voting. As a Virgin Islander, Delegate Plaskett is uniquely qualified to represent our needs and to appreciate the challenges an offshore island territory faces. All her predecessors felt the same way. Our geographical location alone often leaves us unrecognized as Americans, even the weather reports regarding hurricanes and sadly we are even excluded from many maps of the United States.

The covid pandemic has highlighted the disparities and inequalities which still plague citizens of this great nation. Until we are all recognized as full citizens equality remains elusive.

We must ensure every vote and every voter count. The vote is the most powerful, non-violent tool we have in a democratic society. We must not allow the power of the vote to be neutralized. Your voice is your vote and your vote is your voice.

In closing, the Elections System of the Virgin Islands fully supports these two impediments, the Board Members are as follows: Chairman Raymond J. Williams, Vice Chairwoman Alecia Wells, Secretary Epiphane Joseph, Members – Ms. Lisa Harris-Moorhead, Mr. Arturo Watlington, Jr. Esq, Ms. Atanya Springette, Ms. Barbara Jackson-McIntosh, Mr. Frederick Espinosa, Ms. Lydia Hendricks, Ms. Harriet Mercer, Ms. Shikima Jones, Mr. Glenn Webster, Mr. Maurice Donovan, Jr., and Mr. Jevon Williams. The Office of the Supervisor Staff are STT-STJ Deputy Supervisor, Ms. Kevermay Douglas and Acting STX Deputy Supervisor, Mr. Terrell Alexandre.

Thank you for the opportunity to provide my written statement for the record to the Subcommittee on Elections of the Committee on House Administration.

Caroline F. Fawkes, CERA
Supervisor of Elections

Virgin Islands



DEMOCRATIC PARTY OF THE U.S. VIRGIN ISLANDS

July 27, 2020

The Honorable Marcia Fudge, Chairperson
The House Administration Committee Subcommittee on Voting Rights
1309 Longworth House Office Building
Washington, DC 20003

Dear Congresswoman Marcia Fudge and The House Administration Committee Subcommittee on Voting Rights,

Thank you for the opportunity to provide the United States House of Representatives with a Voting Rights Statement of Support on behalf of the United States Virgin Islands, Puerto Rico, Guam, American Samoa, and the Northern Mariana Islands. At a time when African American communities on the mainland are struggling for justice and equality, America's Black citizens in the United States Virgin Islands, and our Black and Brown citizens in the other United States Territories are struggling with the same challenge. I am writing to The House Administration Committee Subcommittee on Voting Rights with a straightforward request: The United States Virgin Islands requests the full and equal voting rights for United States citizens who are residents of territories of the United States in Federal elections and equal voting representation in the House of Representatives for United States citizens who are residents of territories of the United States. After all—we are called upon to meet the challenge of justice and equality and to transform our society so that we can finally reach the mountaintop that Dr. Martin Luther King Jr. envisioned more than fifty years ago.

The United States Virgin Islands comprised of St. Croix, St. Thomas, and St. John, and the four other territories, maybe small in number, but that should not make us invisible or dispensable, especially considering that together, the territories have a larger population than several states. The areas recognize that voting rights will not come without a concerted effort on the part of our elected officials.

As you review your priorities and value systems in Congress, an accurate analysis must be done to determine where voting rights for the United States Virgin Islands and the other territories fit on your priority lists. I know this analysis is underway in the Congressional Task Force on Territorial Voting Rights and am grateful for this development. As we look to the states on the mainland, historically, the lack of the Black vote in Congress has racist roots. To the right this wrong and shameful legacy, it is going to be critical to look across our communities and acknowledge the inequities to develop comprehensive plans to address historical challenges that include healthcare, education, energy, the economy, our veterans, and other significant issues that affect all Americans.

Post Office Box 222848, Christiansted, VI 00822

Voting Rights Letter

Page 2

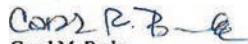
Writ large, it is also critical for Congress to examine itself, assess and determine where these crucial challenges and inequities fit into the broader Congressional agenda, demonstrating Congress' fundamental principles, values, and commitment to voting rights for the territories.

Virgin Islanders serve proudly and with distinction in the United States Department of Defense. We fight in America's wars. Our sons and daughters die in America's wars, yet we have no voice in voting. Dignity, respect, honor, and equality. Again, our request is simple: We, the people of the United States Virgin Islands, urge your support for our voting rights and the fundamental principle of justice and equality for the United States citizens in America's Paradise and the territories across the globe.

Equality and justice are fundamental tenets of American Democracy. Fairness and justice cry out passionately and loud for the promise of all that America can be. The time to vote Yes for Voting Rights for the United States Territories is now!

Thank you for your consideration of this mission-critical issue.

Sincerely,



Carol M. Burke
National Committee Woman

TO: THE UNITED STATES HOUSE OF REPRESENTATIVES

SUBJECT: VOTING RIGHTS

DATE: JULY 28, 2020

FROM: GUSTAV JAMES
St. Croix
United States Virgin Islands

It must be clear that we are not asking for rights, WE HAVE UNALIENABLE RIGHTS. We are asking The Government of The United States to stop denying us our rights. No person, no entity, no great and powerful nation has the right to govern us without our full and equal participation.

This also, is not a question about status. The only status that matters here is not in question. We are humans, CREATED EQUAL. Whether we are called a State, whether we are called a Territory, whether we are called an independent Nation, we have the right and the responsibility to participate in our governance.

This is not about the United States Constitution. The United States Constitution is a brilliant but yet highly flawed document. The Constitution is the operating manual of the greatest, most powerful nation in recorded history. It is brilliant and it is flawed and the original authors knew it was flawed. This is why they provided a clear and fair method by which to correct and improve it.

This is about the founding principles of the Great Nation, the fundamental principles of the Great Nation. These principles are stated in the United States Declaration of Independence, a document that is not flawed, a document that can never be changed. These are the principles that made the Nation the greatest in recorded history and we, the people, must continuously strive to align our actions, our laws, our practices, with these correct and unchangeable principles.

To correct this grave injustice that has been perpetrated against our people for 103 years, there are 3 changes that must be made:

1. We must be able to participate in United States Presidential elections.
2. Our Representative in the United States House of Representatives must be equal to all other members of that body. She must have a vote. This insult of Less Than Equal Membership must end.
3. We must be represented in the United States Senate. There must be at least one Senator from The United States Virgin Islands.

There are inherent problems with the status quo. The fact that this current form of government lacks legitimacy leads to potential disarray in our justice system.

For example I published the following article 3 years ago on the 100th anniversary of our union with the United States:

THE UNITED STATES DISTRICT COURT LACKS LEGITIMACY IN THESE VIRGIN ISLANDS. The judges of the District Court are selected by the President of the United States and confirmed by the United States Senate. As long as the People of these Virgin Islands are not allowed to vote in United States presidential elections, as long as our Delegate to the House of Representatives of the United States has no vote in That House and as long as we have no representation in The United States Senate, It is impossible for this court to have legitimacy. President Barack Obama has said on more than one occasion "The only way for a government to achieve legitimacy is through the consent of those governed".

My statement is not based on the words of President Barack Obama. The President and I use the same basis for our statements. The right to self-determination is an unalienable right, bestowed upon all adult humans by our creator. It is emphatically stated in the United States Declaration of Independence; *"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness, - That to secure these Rights Governments are instituted among Men, deriving their just powers from the consent of the governed, ...*

The People of the Virgin Islands are not allowed to consent to Governance by the Federal Government of the United States. We are totally excluded from the Federal decision making process. For 100 years we have been insulted, degraded and treated like children unworthy and unable to think and decide for ourselves. The Country of the United States cannot obtain the right to govern the People of the Virgin Islands by giving gold to the Country of Denmark. Only the People of the Virgin Islands have the right to select their government. It is actually fitting that we address this matter now as we have completed 100 years in this inferior and unequal state. I have long been struggling with the question as to how I will explain to my grandchildren that we have accepted this injustice for 100 years.

In order for a court to have legitimacy, the Judges sitting on that court have to have arrived at the bench via choices made by the adults of the subject jurisdiction. In the case of the Virgin Islands Superior Court, The People of the Virgin Islands vote for the Governor of the Virgin Islands and for the Senators of the Virgin Islands Legislature. Our Governor then appoints judges and our Legislature confirms or ratifies these appointments. The Virgin Islands Superior Court therefore has the "Consent of those governed".

In the case of a United States District Court in any of the 50 States, The People of the State vote for the President of the United States and for their two Senators in the United States Senate. The President then appoints judges and the United States Senate then confirms or ratifies those appointments. Therefore District courts in the 50 States also have the "Consent of those governed".

In the case of The United States District Court in These Virgin Islands, The President of the United States appoints judges and The United States Senate confirms or ratifies these appointments. However, The People of the Virgin Islands are not allowed to vote for the President and the People of the Virgin Islands are not represented in The United States Senate. **This District Court therefore DOES NOT HAVE THE "CONSENT OF THOSE GOVERNED" AND THEREFORE LACKS LEGITIMACY.**

I am not happy to make this statement. We Virgin Islanders are loyal to the United States of America. We have stepped forward to answer every call to service. We have served and died in defense of the United States at per capita rates higher, I believe than any state. The vast majority of us, myself included, want to be full and equal citizens of the United States. However facts are facts. We are not allowed to participate in the governance of the United States; we are not allowed to consent to governance by the United States. Without our consent, the Federal Government of the United States cannot achieve legitimacy in These Virgin Islands. These are indisputable facts.

Self-determination is not only our right, it is also our responsibility to ourselves and our Posterity. We have a moral obligation to address this injustice.

END OF PREVIOUSLY PUBLISHED ARTICLE

I expect all fair-minded citizens of this Great Nation to support this corrective action. We know right from wrong. We must all act to right the wrong. To my fellow Virgin Islanders, I ask that you end your complacent attitude towards this injustice. To remain complacent is to become complicit. PRINCIPLES MATTER.

Thank you for allowing me this opportunity to be heard.

A handwritten signature in black ink, appearing to read 'Gustav James', with a long horizontal flourish extending to the right.

Gustav James
Citizen
St. Croix U.S. Virgin Islands

July 25, 2020

The Honorable Stacey E. Plaskett
2404 Rayburn House Office Building
Washington, DC 20515

Via email: Kyza.Callwood@mail.house.gov

Dear Delegate Plaskett and the Members of the House Administration Committee
Subcommittee on Voting Rights:

On behalf of the V.I. GOP, I thank you for allowing us to offer testimony on this very important proposed legislation. The Virgin Islands Republican Party is proud to assist and support efforts like the *portions* of the “For The People Act” that guarantee the rights of territorial residents to participate fully in our vibrant democracy.

I am the Chairman of the V.I. GOP, a veteran, and a multiracial native son of these United States Virgin Islands. I am also the son and the brother of veterans who have served in two major world conflicts. I am also a member of a family who has lost one in service to this great country. I identify all these parts of myself to demonstrate the investment I have personally, professionally, and politically in living during a time where voter enfranchisement will move from being a dream to a reality. My family and I have made the ultimate sacrifices in dedication to this nation, yet by accident of birth, none of us could know the privilege of serving in the highest office of the executive branch, none of us have known the beauty of casting votes for those with the power to send our sons and daughter to war, and none of us have known the power of a delegate to congress who has equal voting rights in the House of Representatives. These restrictions are the definition of second-class citizenship. A denial of the basic rights afforded to every citizen, except those born or who live in the territories. It is time for this to end.

The Virgin Islands have played a significant role in the history of the United States, since its adoption as a U.S. territory in 1917. It is the place where venerated American Founding Father Alexander Hamilton spent his formative years. It is the birthplace of famous impressionist painter Camille Pissarro. And it is one of a handful of places in the Caribbean where the enslaved literally emancipated themselves. Virgin Islanders are a proud and noble people. Much deserving of the right to speak our political minds in line with the normal rules of our democracy.

It is worth noting that the basis for our denial of basic fundamental freedoms are very much a vestige of the worst versions of our nation’s history. The same Supreme Court that decided *Plessy v. Ferguson*—separate but equal-- is the same Court that decided the *Insular Cases*. The atrocious racialized language in these cases, do not require repetition or enshrinement in these hallowed proceedings. However, it was a prejudiced demonstration of our early relationship with the United States. One that never belonged to us and one we have clearly outgrown and demonstrated otherwise.

Yet, even to today, the United States Supreme Court has not acted to outright overturn this antiquated legal perception of territorial residents. Therefore, its compromising legacy lives

2 VIGOP Response to Territorial Voting Rights

on as a phantom basis for even more recent decisions like *Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*. Here, the Court delicately sidestepped overturning the *Insular Cases*, leaving it to stay in active place under the doctrine of *stare decisis*. If the Court will not act, it is incumbent on the Congress to clarify and assist.

The VI GOP is proud of the work it has done over the years to bring to light this holdover relic of unequal citizenship. In early 2015, under my leadership, we worked tirelessly and successfully to pass a national GOP resolution naming territorial enfranchisement as one of the principles of the Republican National Party. That commitment remains both locally and nationally.

While I applaud the inclusion of this matter in the proposed legislation as Congress' solid indication of another step towards full citizenship for territorial residents, I also believe we are beyond the point of "Task Forces" and "studies." The Virgin Islands and its residents, like many other territorial residents, have already proven our right to full political inclusion by blood and by birth. The "study" was undertaken the day we were renamed as Americans, and it has been well earned from the lives given and dedicated in service and contribution to this great country. I encourage the Committee to go further than it is demonstrating, and seek full inclusion and full rights for all territorial residents, as is guaranteed under the Constitution of the United States.

I believe this can best be metabolized by the creation of legislation in lieu of a constitutional amendment. The Congress has routinely created rules and provisions for the Territories that act in place of territorial constitutions e.g. The Virgin Islands Organic Act, which incorporates constitutional rights, and presently serves as a *de facto* constitution for the Virgin Islands. This proposed legislation would be no different. It could be simply accomplished by the placement of the names of the presidential nominees on every territorial voting ballot. Then aggregating those votes, and allotting them to an existing state's popular vote to be included ultimately in their electoral votes for president. The determination of which state would be determined by Congress or even territorial residents themselves. Voter enfranchisement for territorial citizens could be "studied" into perpetuity, or it could be "acted" upon right now. The time is ripe for our best and boldest forward action.

Thank you for this opportunity to share the V.I. GOP's thoughts and concerns on this matter. I wish you Godspeed in your deliberations, and a purposeful and positive outcome for the People of the Virgin Islands, and all Americans living in the territories of the United States of America.

Sincerely,



3 *VIGOP Response to Territorial Voting Rights*

John M. Canegata
Chairman

Chairwoman FUDGE. Without objection, so ordered.

It is now time for our second panel. Gerard Emanuel is a retired educator, having worked most of his adult life as an educator in jobs that involved history, culture, political status, research and/or public administration.

Mr. Emanuel was a political status educator for the United States Virgin Islands Bureau of Public Administration, as well as the executive director for the Virgin Islands Commission on Status and Federal Relations, and a delegate to the Fifth Constitutional Convention.

Gwen-Marie Moolenaar is the president of the League of Women Voters of the Virgin Islands. Dr. Moolenaar is from St. Thomas. She has a Ph.D. in neurophysiology and was a faculty member of the Howard University School of Medicine from 1972 to 1988, and became provost of the University of the Virgin Islands before retiring in 2005.

Neil Weare is the President and founder of Equally American Legal Defense & Education Fund. Raised in the U.S. territory of Guam, Mr. Weare worked for Guam's former delegate Madeleine Bordallo prior to attending law school. Mr. Weare is a civil rights attorney committed to achieving equal rights for Americans living in the U.S. territories.

Mr. Emanuel, you are now recognized for 5 minutes. Please unmute yourself.

Mr. EMANUEL. Where is it?

Chairwoman FUDGE. We can hear you now.

**STATEMENTS OF GERARD EMANUEL, RETIRED EDUCATOR;
GWEN-MARIE MOOLENAAR, PRESIDENT, LEAGUE OF WOMEN
VOTERS OF THE VIRGIN ISLANDS; AND NEIL WEARE, PRESI-
DENT AND FOUNDER, EQUALLY AMERICAN LEGAL DEFENSE
& EDUCATION FUND.**

STATEMENT OF GERARD EMANUEL

Mr. EMANUEL. Good morning, Chairwoman Fudge and other honorable Members of the House Administration Subcommittee on Elections. My name is Gerard Emanuel. Thank for inviting me to this important hearing.

I would also like to thank the Congresswoman, The Honorable Stacey Plaskett, for recommending me as a presenter. I will address voting on the national level. I concur with Dr. Carlyle Corbin statement to this subcommittee.

Today I hope to demonstrate that the basis of withholding rights from the Virgin Islands including voting on the national level is fatally flawed. The legal decision that denied us these voting rights may have been based on Jim Crow views that was said before, that should never have been a foundation for making legal decisions.

Honorable Members, as a result, in unincorporated territories, as you know, the Constitution doesn't follow the flag, but constitutional experts, such as Stanley Laughlin, state that it should, except in cases where applying it would be impractical, anomalous, and violative of the local culture and custom.

Granting the territories the right to vote for the Commander in Chief as well providing voting representation in both Houses of

Congress would definitely not be impractical or violate any local or cultural custom. Doing this is violation of our rights of U.S. citizens. The reason for the denying these rights were stated by Justice Brown in *Downes v. Bidwell* over 120 years ago.

Furthermore, the Court was unanimous in *Balzac v. Puerto Rico* in denying U.S. citizens their trial jury solely because they reside in an unincorporated territory. These reasons might have seemed valid during the Jim Crow era, when segregation was based on *Plessy v. Ferguson*. They should not have been valid after *Brown v. Board of Education*, and certainly not after each territory had proven that it could operate the government based on the laws and principles of the U.S. Constitution for more than half a century.

Furthermore, denying your citizens the right to vote in national elections simply because of their residence is out of step with the recent clamor for justice and equality, especially for persons of African descent after recent public events and the death of two civil rights heroes.

Honorable Members, the Supreme Court invented the status of unincorporated territory. And it was never intended to be permanent, as said before. Justice White said this. This untenable and unconstitutional situation has lasted for over 100 years in the Virgin Islands.

The remedy we seek Congress to consider that, since we are too small to be a State, like Puerto Rico, all U.S. citizens in the territories all the duties and stabilities of citizenship, they should be granted certain rights that U.S. citizens who reside in the States have. Denying us a voting representation in Congress is anachronistic, anomalous, discriminatory, and must be changed because it is all inconsistent with the ideals upon which this country was built. All of us have paid the tax by fighting and dying in wars fought by the U.S. We are also obligated to perform all the responsibilities, as was said before. Isn't it fair that we obtain the rights of you residing in the States while we reside in the Virgin Islands? Denying this territory is like taxation without representation, one of the fundamental reasons for the Revolutionary War. And as my Congresswoman mentioned, we fought the Revolutionary War not only but [inaudible] who created. We fought in this war [inaudible] and died in all wars.

In conclusion, *Balzac v. Puerto Rico* that is the status the territory itself, not the status of U.S. citizens there, that deter rights and privileges [inaudible]. And an unincorporated territory is sometimes more than an international country. [Inaudible] Members of Congress, they can receive SSI, but it is important to become a resident [inaudible] territories. Please remedy this.

Thank you.

[The statement of Mr. Emanuel follows:]

July 23, 2020

Honorable Marcia L. Fudge

Chairwoman

Subcommittee on Elections

Dear Ms. Fudge:

Good morning honorable members of the House Committee on Administration's Subcommittee on Elections. My name is Gerard Emanuel. Thank you for inviting us to this very important field hearing. I would also like to thank our Congresswoman, the Honorable Stacey Plaskett, for recommending me as a presenter. Honorable Members, we were invited to provide testimony on our ineligibility as US Citizens to vote for the Commander in Chief in an Unincorporated Territory, the lack of voting representation in both Houses of Congress, and other voting and election issues. I will address voting on the national level. In theory, the most direct way that we can resolve this situation, is outside of this subcommittee's jurisdiction. If Virgin Islanders vote for statehood in a local status referendum, and it is accepted in the manner prescribed by the US Constitution, then theoretically, we could have what I am going to testify on. Unfortunately, it is more complicated than this. Therefore Honorable Members, we must address these issues within the existing relationship that exists in all unincorporated territories, because this status is violative of the fundamental principles on which this nation was founded and based on Jim Crow views that should definitely not be used as the basis for making legal decisions with respect to the territories today.

Honorable Members, as you are aware, in unincorporated territories like the Virgin Islands, the entire Constitution doesn't, **but should** follow the flag, except as status expert, the late Professor Stanley Laughlin has written, in cases where applying the constitution would be impractical anomalous, and violative of the local culture and customs. (See <https://harvardlawreview.org/2017/04/american-samoa-and-the-citizenship-clause/>)

Honorable Members, granting the territories the right to vote for the Commander in Chief as well as providing voting representation in both house of Congress would definitely not be impractical or violate any local or cultural customs. Not doing this is a violation of our rights as US citizens. You may have to amend the

Constitution to do this, but if I had to, my presentation today could have been reduced to the following two sentences. **The specific reasons the Supreme Court has used for not extending certain parts of the constitution like voting rights to the territories, no longer apply, and have not applied for a very long time. Therefore, voting and other rights that were withheld and defined as formal and not fundamental parts of the constitution, should be applied to the territories if they meet Professor Laughlin's criteria.**

These reasons were stated by Justice Brown over 120 years ago. They might have seemed valid during the Jim Crow era when segregation was legal based on Plessy vs Ferguson, but they should not have been valid after Brown v. Board of Education, and after each territory had proven that it could operate a government based on the laws and principles of the US Constitution. Furthermore, denying US citizens the right vote in national elections simply because they have a different race or culture, or due solely to their residence in an unincorporated territory, definitely is completely out of step with recent fervor for justice and equality for all, but especially for persons of African descent after recent public events that do not require repeating here. (See citation in my conclusion from Balzac v. Porto Rico, Page 258 U. S. 309)

According to Judge Brown in Downes v. Bidwell, 1901, "It is obvious that in the annexation of outlying and distant possessions *grave questions will arise from differences of race, habits, laws, and customs of the people*, and from differences of soil, climate, and production, *which may require action on the part of Congress that would be quite unnecessary in the annexation of contiguous territory inhabited only by people of the same race*, or by scattered bodies of native Indians. "

In the same case Judge Brown further stated,

"We suggest, without intending to decide, that there may be a distinction between certain natural rights enforced in the Constitution by prohibitions against interference with them, and what may be termed artificial or remedial rights which are *peculiar to our own system of jurisprudence*. Of the former class

are the rights to one's own religious opinions and to a public expression of them, or, as sometimes said, to worship God according to the dictates of one's own conscience; the right to personal liberty and individual property; to freedom of speech and of the press; to free access to courts of justice, to due process of law, and to an equal protection of the laws; to immunities from unreasonable searches and seizures, as well as cruel and unusual punishments; and to such other immunities as are in- [182 U.S. 244, 283] dispensable to a free government. Of the latter class are the rights to citizenship, to suffrage (Minor v. Happersett, 21 Wall. 162, 22 L. ed. 627), and to the particular methods of procedure pointed out in the Constitution, which are peculiar to Anglo-Saxon jurisprudence, and some of which have already been held by the states to be unnecessary to the proper protection of individuals."

Honorable Members, Article 1 of the Constitution only speaks to states not territories being represented in the national legislature. At that time all territories were incorporated and seen as temporary, since it was expected that they would eventually become states, thus receiving all of the rights, privileges and protections in the US Constitution. However, honorable members, although the Supreme Court invented the status of unincorporated territory for US possessions that consisted of populations of persons of "different" races and cultures, it had one principal feature that all territories before had. It also was never intended to be permanent.

Justice White in Downes v. Bidwell, stated this clearly, and even went further to strongly imply that it may violate the US Constitution.

Justice White in Downes v Bidwell in 1901, wrote:
"for the legislative department, in the exercise of its discretion, to accept a cession of and permanently hold territory which is not intended to be incorporated" could conceivably amount to a "violation of duty under the Constitution." (Downes v Bidwell 1901 p.343)

A recent Harvard Review article further stated that:

"At least as a matter of "honor and good faith," but possibly as a constitutional matter as well...any unincorporated territory must one day become incorporated and be put on a path to statehood or must be released from U.S. sovereignty to forge a path of its own."

Honorable Members, this untenable and unconstitutional situation has lasted for over 100 years in the Virgin Islands. Therefore, the remedy we seek is for Congress to consider the fact that we are too small to be a state, and consequently some compromise should be reached where the residents in the territories not only have all of the duties and responsibilities of US citizenship when they reside here, but the rights and privileges that US citizens who reside in states do. The foundation for the current situation where we are denied a vote for the President and voting representation in Congress, is to quote a constitutional expert, "anachronistic and anomalous" and must be changed because it is inconsistent with the ideals upon which this country was built. If we can be drafted to fight and pay the blood tax by dying in this nation's wars, as well as be obligated to the other responsibilities and duties of US citizens in the states, then most certainly we should have the right of citizens in the states to vote for the commander in chief, and have voting representation in both Houses of Congress, while we reside in a territory. Denying this to the territories is a form of taxation without representation, one of the fundamental reasons for the Revolutionary War. The other taxes we pay, should also make us eligible for SSI, and our District Court Judges should have the same privileges as Article III Judges.

In conclusion, Honorable Members, *Balzac v. Puerto Rico*, in 1922, made it clear that it is solely the status of the unincorporated territory itself, not the status of the US, citizens in it that determines what rights and privileges can be exercised there.

Page 258 U. S. 309

"In Porto Rico, however, the Porto Rican cannot insist upon the right of trial by jury except as his own representatives in his legislature shall confer it on him. **The citizen of the United States living in Porto Rico cannot there enjoy a right of trial by jury under the federal Constitution, any more than the Porto Rican. It is locality that is determinative of the application of the Constitution, in such matters as judicial procedure, and not the status of the people who live in it.**

This has meant that an unincorporated territory is sometimes more foreign than an international country. US citizens living in Afghanistan, Germany, Panama or Okinawa can vote for members of both houses of Congress and the President of

Congress and the President. They also may have access to SSI as well as other rights and privileges that residents of this US territory do not get because of the political status of the territory.

The basis for denying certain rights and privileges to judges in the territories, was “**the presumably ephemeral nature of a territorial government**”. After lasting for over 100 years, this certainly cannot also justifiably be used as a criterion for denying voting rights in the VI.

So, thank you again for this opportunity, and we hope that some concrete and positive change results.

Gerard Emanuel

Chairwoman FUDGE. Thank you, Mr. Emanuel. We were having just a bit of difficulty with your sound. But we do have your written testimony as well. So thank you so much.

Ms. Gwen-Marie Moolenaar, you are now recognized for five minutes.

STATEMENT OF GWEN-MARIE MOOLENAAR

Ms. MOOLENAAR. Thank you. Good morning, Madam Chair, and members of the subcommittee, and honorable guests here today. Thank you so very much for this invitation to testify on voting rights in the U.S. Virgin Islands. It is disturbing that this great country of ours, which was founded on the idea of government by, of, and for the people is today struggling to uphold one of its founding principles—the democratic right of its citizens to vote.

The League of Women Voters of the Virgin Islands notes that we are in the Virgin Islands free of some of the more heinous assaults against citizen rights to vote. I am pleased to report for example that we do not have gerrymandering, nor blatant purging of voter rolls, nor threats of fraud associated with mail-in voting. So it is in our territory citizens' voting rights are well, protected when it comes to local government. I cannot predict that it will always remain so, but I do not foresee signs of any imminent change ahead. However, more could always be done for the physically challenged and physically disabled.

On a parallel note, within the territories, there has been a strong push for the Presidential vote. The League of Women Voters of the Virgin Islands has supported the efforts of Neil Weare in this regard, and we will continue to do so. But besides the Presidential vote however we are concerned that our congressional representatives do not have a stable vote in Congress beyond the standing committee level. Congress has wrestled with this issue of the delegate vote since 1794. As our territorial representatives are not Members of the House, they cannot vote on the House floor, but can do so in standing committees, and only occasionally in the Committee of the Whole, depending on the majority control of the House. Generally their vote in the Committee of the Whole is allowed under Democratic control but not under Republican control of House. What is the rationale there besides a partisan advantage?

But this can easily be changed in House rules. The House has changed the rules and voting responsibilities of the delegates over the years from a simple presence in 1794, to now a vote in standing committees and an occasional vote in the Committee of the Whole. So change has and can continue to happen. Rules can change, and so can our Constitution.

It is noteworthy that, in some European countries, representatives from their Caribbean territories have full voting powers in the national voting assemblies. If our representatives have been found worthy over the years to be good enough for voting membership in standing committees and occasionally in the Whole, why not within the Committee on the Whole on a regular basis irrespective of partisan control?

At a Conference on Territorial Affairs held in Washington, D.C. in 1993, when asked about this, a U.S. Congressman attending the

conference stated that to allow territorial representatives at that level of the vote would be tantamount to, and I quote him, it would be tantamount to "a case of the tail wagging the dog." However, it needs to be pointed out that in that proverbial tail is the population of Puerto Rico which outnumbers the population of at least five or six States.

Unfettered it is reminiscent of the old days of the plantations of the South when the so-called lesser beings stood outside the house, not good enough to step inside. Why are the territories being treated like the lesser beings in the U.S. Congress standing outside? After all, we have fought in your wars shoulder to shoulder with other American soldiers, as has been pointed out by Professor Emanuel and Congresswoman Plaskett. We have been fighting since we were purchased from Denmark in 1917.

Also, the territories do contribute millions, if not billions, collectively through special taxes. Look at rum and our and our gasoline taxes. However, we recognize that these issues will remain problematic until we can clarify our Federal relations, until we can determine our political status with the U.S. To do this well, we need to have adequate support and the necessary resources to make those decisions.

Once done, these issues can be more easily resolved within that new context and through meaningful discussions and compromise with Congress on how we can have full inclusion as U.S. citizens in the U.S. territories.

Thank you.

[The statement of Ms. Moolenaar follows:]



The League of Women Voters
United States Virgin Islands

TESTIMONY PRESENTED TO THE SUBCOMMITTEE ON ELECTIONS
OF THE COMMITTEE ON HOUSE ADMINISTRATION
Presenter: Gwen-Marie Moolenaar, PhD
President, League of Women Voters, United States Virgin Islands
July 28, 2020

Thank you for the invitation to testify today on Voting Rights in the USVI.

It is disturbing that this great country of ours which was founded on the ideal of government by, of and for the people, is today struggling to uphold its founding principles; principles that speak to the democratic rights of its citizens to vote.

It is clear that we must work collectively to prevent the unraveling of this great democracy. The League of Women Voters USA is committed to this mission and for this reason has litigated a number of voting rights cases nationwide.

The VI chapter of the League notes that locally (i.e. in the USVI) we are free of some of the more heinous assaults against citizen rights to vote. I am pleased to report, for example, that we do not have gerrymandering nor blatant purging of voter rolls nor threats of fraud associated with mail-in voting. So, within our Territory, citizen voting rights are well protected when it comes to local government. Of course, I cannot predict that it will always remain so nor do I see any imminent changes ahead.

On another note, among the Territories there has been a strong push for the presidential vote. The LWV VI has supported the efforts of Neil Weare in this regard and we will continue to do so.

Besides the presidential vote, however, we are concerned that our congressional representatives do not have a stable vote in Congress beyond the standing committee level. Congress has wrestled with this issue of the delegate vote for hundreds of years. As our Territorial representatives are not Members of the House, they cannot vote on the House floor but can do so in standing committees and only occasionally in the Committee of the Whole, depending on the majority control of the House. Generally, their vote in the Whole is allowed

under Democratic control but not under Republican control of the House. What is the rationale there, besides a partisan advantage?

But this can easily be changed in House Rules. The House HAS changed the rules and voting responsibilities of the delegates over the years: from a simple presence to now in standing committees, and an occasional vote in the Whole. So change has and can continue to happen. It is interesting that in some European countries, representatives from their Caribbean territories have full voting powers in the national governing assemblies.

If our representatives have been found worthy over the years to be good enough for voting membership in standing committees and occasionally in the Whole, why not within Committee of the Whole on a regular basis, irrespective of partisan control?

At a conference on territorial affairs held in WDC in 1993 when asked about this, a U.S. congressman attending stated that to allow territorial representatives that level of the vote would be tantamount to "a case of the tail wagging the dog".

However, it needs to be pointed out that in that proverbial tail is the population of Puerto Rico which outnumbers the population of some 6 states.

Certainly does smell like the old days of the "Plantation of the South" when the so-called "lesser beings" stood *outside* the House, not good enough to step *inside*. Why are the Territories being treated like "lesser beings" in the US Congress, standing *outside*? Smells also like the language of the Territorial Clause which gave Congress the authority to overrule any laws written in the Territories without the consent of the Territories, because it was felt, at that time, that the (and I use the exact term, "savages" couldn't possibly understand the rule of law and elements of true democracy.

The League believes it is about time the American citizens living in its Territories have the rights given to all U.S citizens.

After all, we have fought in your wars beside other US soldiers since we were purchased from Denmark in 1917; also, the Territories do contribute millions if not billions collectively through special taxes (e.g. rum and gasoline).

However, we recognize that these issues will remain problematic until we can finally clarify our federal relations, determine our political status with the U.S. To

do this well, we need to have adequate support and the necessary resources to make those final decisions. Once done, these issues can be more easily resolved within that new context and through meaningful discussions and compromise with Congress.

Thank you for the opportunity to make this case.

.

"

Chairwoman FUDGE. Thank you very much.
Mr. Weare, you are now recognized for five minutes.

STATEMENT OF NEIL WEARE

Mr. WEARE. Thank you, Chair Fudge, Ranking Member Davis, distinguished Subcommittee Members and representatives of the territories. Thank you all for the opportunity to testify in support of voting rights for the nearly 4 million Americans living in U.S. territories, 98 percent of whom are racial or ethnic minorities.

I am Neil Weare, president and founder of Equally American Legal Defense & Education Fund. I grew up in Guam, and when I turned 18, I was required to register for Selective Service. I was unable to vote for President. I founded Equally American in 2013, and it remains the only public interest law organization focused exclusively on advancing equality and voting rights in the U.S. territories. Building on the progress of earlier civil rights movements, including the work of American heroes like John Lewis and Thurgood Marshall, we approach our work through a civil rights lens and do not take a position on political status. Using civil rights litigation, we work to build the kind of broad awareness and consensus at both the national and local level needed to end the second class treatment of U.S. citizens in the territories.

On Veterans Day in 2015, Equally American filed the Federal voting rights lawsuit on behalf of Luis Segovia and other territorial residents, who could have voted for Presidents under overseas voting laws if they lived literally anywhere else in the world, even a foreign country. We also represented the League of Women Voters of the Virgin Islands, which Dr. Moolenaar leads.

Luis and three other plaintiffs were decorated veterans who honorably served in the U.S. Armed Forces, swearing an oath to support and defend the Constitution of the United States and to obey the orders of the President of the United States. Yet, despite their service, they remained disenfranchised, unable to vote for their Commander in Chief. These decorated veterans deserve better. And their story is not unique.

U.S. territories have a proud tradition of military service. Over 100,000 veterans live in the territories having served to defend our Nation's democratic and constitutional principles. Yet they remain disenfranchised simply because of where they live.

It is also clear that the right to vote must be viewed as a kitchen table issue, not simply a matter of principle. Residents of U.S. territories are shortchanged in a range of Federal benefits programs that most Americans take for granted. Disparities in Federal Medicaid policy leaves citizens in the territories without the funding that ensures a basic level of healthcare sustainability in most American communities. Under Federal law, otherwise eligible low-income, aged, blind, or disabled Americans living in most territories are entirely precluded from receiving SSI benefits based solely on where they live. Some of these discriminatory Federal laws have been recently struck down in Federal courts and will likely soon come before the U.S. Supreme Court. But Congress need not and should not wait for the Supreme Court to say whether this kind of discrimination is unconstitutional for Congress to know it is wrong.

The grim reality is, until residents of the territories are able to vote for President and have voting representation in Congress, life and death decisions will continue to be made by the Federal Government without their input.

Underlying the ongoing disenfranchisement and inequality facing U.S. citizens in the territories is the shameful legacy of the Insular Cases, a series of controversial decisions grounded in overt racism, which for over a century have relegated those territories to second class status. While other racist Supreme Court decisions like *Plessy* and *Korematsu* have been overruled, the Insular Cases doctrine of separate and unequal is still on the books. Until the Insular Cases are overruled, discrimination against residents to the territories is unlikely to end. We are working to do just that through groundbreaking civil rights legislation.

One political obstacle to the expansion of voting rights in U.S. territories has been the perception of providing political representation to these Americans would benefit one party over the other. But voters in each of the territories consistently elect both Democrats and Republicans to represent them in all levels of government. In Puerto Rico, Congresswoman González, of course, is a Republican, as is the current Governor there and even the president of their Senate, while their immediate predecessors were all Democrats. Voters in the other territories also elect both Republicans and Democrats. Misguided politics should not be an excuse for continued disenfranchisement.

This ongoing disenfranchisement is particularly concerning because of the undeniable connection it has to issues of race. We cannot ignore the fact that, by silencing citizens in the territories, we are silencing Americans who have long faced racism, systemic bias, and racial exclusion.

We ask Congress to act so that citizens in the territories who cannot vote for President and lack voting representation in Congress can finally have their voices heard. It is the right thing to do, the moral thing to do, and this year in 2020, it is long overdue.

Thank you very much.

[The statement of Mr. Weare follows:]

Neil Weare
President and Founder
Equally American Legal Defense & Education Fund
Testimony On “Voting Rights and Election Administration
in the U.S. Virgin Islands and Other Territories”

Subcommittee on Elections
Of the Committee on House Administration

July 28, 2020

Chair Marcia L. Fudge, Ranking Member Rodney Davis, and distinguished subcommittee members:

Thank you for the opportunity to testify in support of full voting rights for the nearly 4 million Americans living in U.S. Territories – 98% of whom are racial or ethnic minorities. I am Neil Weare, President and Founder of Equally American Legal Defense & Education Fund.

Equally American is the only public interest law organization focused exclusively on advancing equality and voting rights in U.S. Territories. Building on the progress of earlier civil rights movements, we approach our work through a civil rights lens. We do not take a position on political status in the Territories, other than to reject the undemocratic status quo. In other words, we seek to obtain full constitutional rights and political equality for disenfranchised communities in the Territories while also supporting these communities’ right to determine their own future relationship to the United States. Through our impact litigation we hope to build the kind of broad awareness and consensus at both a national and local level needed to end the second-class treatment of U.S. citizens in the Territories.

Advancing Voting Rights and Political Participation in U.S. Territories

Last week, on the 76th Anniversary of the Liberation of Guam from a brutal Japanese occupation, Equally American led a group of civil rights organizations to call on the Inter-American Commission on Human Rights (IACHR) to hold a thematic hearing on the denial of voting rights in U.S. Territories and the District of Columbia.¹ This follows our prior advocacy in *Rosselló v. United States*, where we represented current and former elected officials from the U.S. Virgin Islands, Guam, and the Northern Mariana Islands – Democrats and Republicans alike – to argue before the IACHR that the denial of voting rights in the Territories violates not only our Nation’s foundational principles, but also U.S. obligations under international law.² The State Department’s response to this legal challenge was that U.S. citizens in the Territories are “free to move to any state of the United States, where they can take up residence and exercise their voting

¹ Equally American, *Equally American Calls for Human Rights Commission to Examine Disenfranchisement in U.S. Territories and DC*, EQUALLY AM. BLOG (July 21, 2020).

² Brief of Amici Curiae, *Rosselló v. United States*, [Case 13-326](#), Inter-Am. Comm’n H.R. (2018).

rights.”³ A decision in this case is pending, but one thing is clear: the right to vote should not depend on where you happen to live. No U.S. citizen should have to move to be able to vote.

On Veterans Day in 2015, Equally American filed a federal lawsuit on behalf of Luis Segovia and other residents of Guam, the U.S. Virgin Islands, and Puerto Rico who would have been able to vote for President in their former state of residence had they lived literally anywhere else outside the 50 states, including other Territories or even foreign countries. Luis and three other plaintiffs were decorated veterans who had honorably served in the U.S. Armed Forces, swearing an oath to “support and defend the Constitution of the United States” and to “obey the orders of the President of the United States.” Yet, despite their service, they remained disenfranchised, unable to vote for their Commander-in-Chief, and denied equal protection of the law.

In 2005, Luis was deployed for 18 months in Iraq as part of Operation Iraqi Freedom. Serving at Forward Operation Base Marez near Mosul, one of his primary missions was providing security for the 2005 Iraqi election. He could not have imagined then that 15 years later he would be disenfranchised based simply on a change in address, especially after he would go on to serve two tours in Afghanistan as part of Operation Enduring Freedom. With the Supreme Court having denied review of his case in 2018, this November Luis will remain on the sidelines of democracy, a spectator rather than a participant despite his three tours of service. A decorated veteran like Luis deserves better. And Luis’s story is not unique.

U.S. Territories: On the Front Lines Every Day

U.S. Territories have a proud tradition of military service. Over 100,000 veterans living in the Territories have served to defend our Nation’s democratic and constitutional principles. Yet they remain disenfranchised simply because of where they live. More than 20,000 veterans from the Territories served in Iraq and Afghanistan, with nearly 100 making the ultimate sacrifice. Military service rates in the Territories exceed any State, and casualty rates for the Territories during these conflicts range from three, four, to even seven times the national average, as is the case in American Samoa. Service members from the Territories have been awarded the Medal of Honor by the President of the United States on multiple occasions, yet denied the right to vote for President even as they receive that honor. Voting rights should not be denied these patriotic citizens, or the communities in which they live.

The contributions of citizens in the Territories to our Nation’s security is not limited to service in uniform. Guam, for instance, is often called the “tip of the spear” because of its proximity to threats in Asia, hosting forward deployed weapons like the B-2 stealth bomber and other powerful military assets. At the same time, nearly one-third of Guam’s land is occupied by the U.S. military. Because of the military assets stationed in Guam, North Korea has made credible threats to attack the island with nuclear weapons.⁴ Possible military threats against Guam from China or other adversaries are also taken seriously in military circles.⁵ If citizens in Guam and

³ [U.S. Consolidated Response to Petitioners Merits Submission](#), *Rosselló v. United States* (2018).

⁴ Choe Sang-Hun, *North Korean Threat to Guam Tests Credibility of Kim and Trump*, NY Times (Aug. 10, 2017).

⁵ David Ax, *China Aims Missiles At Guam. How Should the Pentagon Defend America's Pacific Bomber Base?*, Forbes (July 23, 2020).

other Territories face a disproportionate share of military threats, should they not have some say in electing the leaders who make America's national security decisions?

Structural Political Inequality Results in Structural Economic Inequality

Political inequality in U.S. Territories has resulted in significant economic inequality, demonstrating why the right to vote must be viewed as a kitchen table issue, not just a matter of principle. Deprived of a voice in presidential elections and voting representation in Congress, residents of U.S. Territories are short-changed in a range of federal benefits programs that most Americans take for granted.

Disparities in federal Medicaid policy leave citizens in the Territories without the funding that ensures a basic level of healthcare sustainability to most American communities.⁶ Throughout the country, Medicaid enables providers to care for low-income Americans and to invest in equipment, infrastructure, and health-worker salaries. Congress allocates Medicaid funds to states based on residents' per capita income. But it has historically allocated funds to Territories at rates associated with the wealthiest States, like California, rather than the higher rates associated with states with similarly low per capita incomes. Congress also caps Territories' funds at an arbitrary dollar amount that falls well below actual need.⁷ Although Congress increased Medicaid funding to all Territories in response to Hurricanes Irma and Maria, this funding bump expires in 2021—setting the stage for a Medicaid cliff that has life or death consequences.

NMI Congressman Gregorio Kilili Sablan has introduced bipartisan legislation to eliminate Medicaid's general funding limitations for Territories and thereby enable the more than 4 million Americans living in U.S. Territories to fully participate in the Medicaid program.⁸ We commend Congressman Sablan's leadership and hope that Congress will enact this important legislation. But if history is any guide, a lack of voting rights in Congress will likely mean these communities will continue waiting to be treated the same as other Americans.

Another example of how a lack of voting rights in the Territories leads to benefits discrimination is the Supplemental Security Income program. Under federal law, otherwise eligible low-income aged, blind, or disabled Americans living in the Virgin Islands, Puerto Rico, Guam, and American Samoa are entirely *precluded* from receiving SSI benefits solely based on where they happen to live. So, for example, if someone receiving SSI benefits moves from Ohio or Illinois to the Virgin Islands or Guam, their benefits will end even as their very real needs continue. This discriminatory treatment unjustly disqualifies some of America's most vulnerable citizens from accessing the basic benefits they need and deserve.

The U.S. Court of Appeals for the First Circuit recently struck down this statutory discrimination as an unconstitutional denial of equal protection in *United States v. Vaello Madero*. According to Judge Torruella, "[t]he categorical exclusion of otherwise eligible . . . residents from

⁶ Selena Simmons-Duffin, *America's 'Shame': Medicaid Funding Slashed In U.S. Territories*, NPR.org (November 20, 2019).

⁷ Lena O'Rourke, *Congress is Holding Health, Wellbeing of U.S. Territory Residents in the Balance*, CLASP.org (December 19, 2019).

⁸ Insular Area Medicaid Parity Act, [H.R. 6495](#), 116th Cong. (2020).

SSI is not rationally related to a legitimate government interest.”⁹ *Vaello Madero* will almost certainly be taken up by the Supreme Court. But Congress need not and should not wait for the Supreme Court to say whether this kind of discrimination is unconstitutional for Congress to know it is wrong. Congresswoman Jenniffer González-Colón has proposed bipartisan legislation that would include all the Territories in the SSI program.¹⁰ If residents of the Territories had full voting representation in Congress, this discrimination would likely be remedied in quick order. Absent voting rights, unfortunately this kind of legislation faces tough odds.

COVID-19 is another example where the federal response has allowed too many residents of Territories to fall through the cracks. The Virgin Islands was recently called “the hottest of hotspots” in the current pandemic, exposing gaps in the federal response and necessitating congressional action to avoid long-term harm to the Territory’s economy.¹¹

The denial of voting rights in the Territories means these vital decisions are being made in the absence of the usual democratic checks and balances. The grim reality is that until residents of the Territories are able to vote for President and have voting representation in Congress, decisions will continue to be made without their input that could be the difference between life or death for too many of these U.S. citizens.

Ongoing Disenfranchisement a Legacy of the *Insular Cases*

Underlying the ongoing disenfranchisement and inequality facing U.S. citizens in the Territories is the shameful legacy of the *Insular Cases*, a series of controversial decisions which for over a century have relegated those living in the Territories to second-class status.¹² The same Justices who ruled in *Plessy v. Ferguson* to justify Jim Crow and racial segregation decided the *Insular Cases*, which invented a distinction between so-called “incorporated” and “unincorporated” Territories. The territorial incorporation doctrine gave the Court’s imprimatur for the acquisition of overseas Territories without any promise of eventual political equality. In the most prominent of these cases, *Downes v. Bidwell*, Justice Brown distinguished between what he called “natural” and “artificial” rights, classifying voting rights among the latter, which he believed could be perpetually withheld by Congress.¹³

Thus, even as the *Insular Cases* are perhaps best known for restricting the application of certain constitutional requirements in so-called “unincorporated” Territories, their most far-reaching effect has been to justify the perpetual denial of political equality to these communities. Unlike *Plessy*’s doctrine of “separate but equal,” which has long been overturned, the *Insular Cases* doctrine of “separate and unequal” remains valid Supreme Court precedent. As recently as June 2020, the Supreme Court had the opportunity to overrule the *Insular Cases* in *Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*, but failed to act.¹⁴

⁹ *United States v. Vaello-Madero*, 956 F.3d 12, 17 (1st Cir. 2020).

¹⁰ Supplemental Security Income Equality Act, [H.R. 947](#), 116th Cong. (2019).

¹¹ Colby Hall, *The Biggest Coronavirus Hotspot No One Is Talking About*, MSN.com (July 15, 2020).

¹² Neil Weare, *Why the Insular Cases Must Become the Next Plessy*, HARV. L. REV.: BLOG (Mar. 28, 2018).

¹³ *Downes v. Bidwell*, 182 U.S. 244, 282-83 (1901).

¹⁴ Neil Weare, Kyla Eastling, and Danny Li, *The Supreme Court Just Passed Up a Chance to Overrule Appallingly Racist Precedents*, Slate.com (June 1, 2020).

The inaction of the Supreme Court with respect to the *Insular Cases* continues to have real consequences for the millions of Americans living in the Territories today.

The *Insular Cases* created what Judge Torruella has described as a “noxious condition that continues to the present day allowing the citizens of the United States who reside in [the Territories] to be treated unequally from those in the rest of the nation solely by reason of their geographical residence.”¹⁵ It is a colonial relationship not substantively unlike the one our Nation was founded in opposition to. Legal scholars from across the ideological spectrum have rejected the *Insular Cases* as inconsistent with the Constitution’s text and spirit.¹⁶

I remain optimistic that one day soon the Supreme Court will overrule the *Insular Cases*. But simply waiting for the Supreme Court to reverse a century of injustice is not enough. I commend Congressman Raúl Grijalva for his bipartisan resolution, H.Res. 641, which calls on the *Insular Cases* to be “be rejected in their entirety” as decisions that have “no place in United States Constitutional law.” Congress has often used its expansive powers over the Territories in ways that perpetuate the injustices of the *Insular Cases*, it is refreshing to see a congressional resolution that seeks to reverse these injustices.

Until the *Insular Cases* are overruled, the federal government will continue relying on them to justify discrimination against residents of the Territories. In May 2020, the United States filed a brief arguing against recognition of birthright citizenship in U.S. Territories that cited the *Insular Cases* in fully *half* of its pages. The United States is appealing a district court decision from December 2019, *Fitisemanu v. United States*, that held people born in U.S. Territories – like those born anywhere else on U.S. soil – have a constitutional right under the Citizenship Clause of the Fourteenth Amendment to be recognized as U.S. citizens.¹⁷ Because that decision has been stayed pending appeals, lead plaintiff John Fitisemanu—who has been a tax-paying, law-abiding, passport-holding resident of Utah for more than 20 years— may be unable to vote this year for President, Governor, or even his local school board, despite the district court’s recognition that he has been a U.S. citizen since the day he was born. Thus, it is not just voting rights that are at stake for residents of the Territories, it is citizenship itself.

Both Democrats and Republicans Should Support Expanding Territorial Voting Rights

One political obstacle to the expansion of voting rights in U.S. Territories has been the perception and myth that providing political representation to these Americans would benefit one party over the other. But as the bipartisan makeup of the first panel illustrates, the truth is that voters in the Territories consistently elect both Democrats and Republicans to represent them in all levels of Government. The facts speak for themselves.

In Puerto Rico, Congresswoman González is a Republican, her predecessor a Democrat, and his predecessor a Republican. The current Governor is Republican, her two immediate

¹⁵ Juan R. Torruella, *Why Puerto Rico Does Not Need Further Experimentation with its Future: A Reply to the Notion of “Territorial Federalism,”* 131 Harv. L. Rev. Forum 65, 69 (2018).

¹⁶ Gary Lawson and Guy Seidman, *The Constitution of Empire* (2004); Sanford Levinson, *Why the Canon Should be Expanded to Include the Insular Cases and the Saga of American Expansionism*, 17 Const. Comment. 241, 145 (2000).

¹⁷ *Fitisemanu v. United States*, 426 F.Supp 3d. 1155 (D. Utah 2019).

predecessors were Democrats, and their predecessor was a Republican. Guam has had more Republicans elected Governor than Democrats, and has elected both Democrats and Republicans to represent them in Congress. The Northern Mariana Islands currently has a Republican Governor and a Democratic Congressman; in American Samoa it is reversed, with a Democratic Governor and a Republican Congresswoman. The Virgin Islands has also elected both Democrats and Republicans as their Governor and Delegate to Congress.

Guam is especially illustrative of the idea that territorial voters are swing voters that both Democrats and Republicans can successfully appeal to. While residents of Guam cannot vote for President, since 1980 a “straw poll” has been included on the ballot to allow residents to indicate who they *would* vote for if they could vote. From 1980 through 2012, residents of Guam – who vote a day ahead of the rest of the nation because Guam sits on the other side of the international date line – have chosen the candidate that went on to win in *every single election*. The streak was finally broken in 2016, but what other American community voted for the winning candidate in nine straight presidential elections?

Conclusion

The United States has long championed democracy both at home and around the world. Indeed, the Declaration of Independence rooted our nation in the principle that governments derive their just powers from the consent of the governed. And from the Fifteenth Amendment to women’s suffrage to the Voting Rights Act of 1965 to Ranking Member Davis’s Counting All Military Votes Act, the arc of American history has bent toward ever more inclusion and representation. Yet, when it comes to the rights of the more than 4 million American citizens living in the Territories, we fall far short of our democratic principles.

This ongoing structural disenfranchisement is particularly concerning because of the undeniable connection it has to issues of race. When America’s overseas Territories were initially acquired, Members of Congress and others were explicit that they viewed the race of the inhabitants of these areas to disqualify them from ever being able to vote for President or have voting representation in Congress. While such racist sentiments are no longer stated so openly, it is not a mere coincidence that more than 98 percent of territorial residents are racial or ethnic minorities.¹⁸

We cannot ignore the fact that by silencing our Territories, we are silencing Americans who have long faced racism, systemic bias, and exclusion because of their race. We cannot erase that tragic history—nor should we permit ourselves to forget it. But it need not be our future. Indeed, Congress has the power to help turn the page on America’s long history of discrimination against those living in our Territories and ensure that the future is one that more closely aligns with the fundamental principles of democracy and representation that our Nation was founded upon.

We ask Congress to act so that citizens in the Territories who cannot vote for President and lack voting representation in Congress can finally have their voices heard. It is the right thing to do, the moral thing to do, and in 2020 it is long overdue.

¹⁸ Stacey Plaskett, [The Left and Right’s Blind Spot in Systemic Racism: The US Colonies](#), THE GRIO (June 24, 2020).



Democratic Party of Puerto Rico - Partido Demócrata de Puerto Rico

Testimony for the Record by the Leadership of the Democratic Party of Puerto Rico

Committee on House Administration - Subcommittee on Elections

“Voting Rights and Election Administration in the U.S. Virgin Islands and Other Territories”

Virtual Hearing held on July 28, 2020 – 10:00 a.m.

July 30, 2020

Madame Chair,

We thank the Committee for the opportunity to provide testimony for the record on the virtual hearing held on July 28, 2020 titled “Voting Rights and Election Administration in the U.S. Virgin Islands and Other Territories”.

It is quite fitting that we appear before this Committee minutes after President Obama delivered a passionate eulogy at the funeral of the Honorable John Lewis. From the pulpit at Ebenezer Baptist Church, where Martin Luther King Jr. and his father served as pastors, President Obama called to keep marching and “to honor the life of John Lewis by revitalizing the law that he was willing to die for”. President Obama recommended making the John Lewis Voting Rights Act better “by guaranteeing that every American citizen has equal representation in our government, including the American citizens who live in Washington, D.C. and in Puerto Rico. They are Americans!”.

Every citizen should be able to vote for the people who make their laws, just as they should be treated equally. The residents who live in the five U.S. Territories, however, do not have the right to vote for the President of the United States nor elect U.S. Senators or voting members in the U.S. House of Representatives. Those who approve laws and establish policies that affect the daily lives of the islands residents do so without the consent of the governed.

The only way for a territory to obtain voting representation in Congress, equal or otherwise, or in electing the president, is to become a State or for the U.S. Constitution to be amended. The process of amending the Constitution is a difficult task compared to a territory becoming a State.

Of the 4 million people who live in the territories, 3.2 million live in Puerto Rico. More U.S. citizens live in Puerto Rico than in 21 current States. Puerto Ricans became U.S. citizens in 1917, 103 years ago, and ever since we are denied equal rights for living in an unincorporated U.S. territory.

To this day, Puerto Ricans are subjected to a second-class citizenship as established by the U.S. Supreme Court more than a century ago. The rationale implemented by the Court concluded that extending equal constitutional guarantees to the people of Puerto Rico would limit the federal government's ability to govern over "savages" and "alien races". It is no coincidence that the composition of the U.S. Supreme Court that decided the Insular Cases is the same Court that allowed the "separate but equal" doctrine in *Plessy v. Ferguson* in 1896. That these cases are good law today is considered an abomination and clear evidence that colonialism continues to be at the very root of centuries old discrimination and the pursuit of racial justice.

The second-class citizenship situation is more so evident with the men and women from Puerto Rico who have served and continue to serve in the U.S. Armed Forces. Many have given the ultimate sacrifice for the Nation, but in life are deprived of equal voting rights because they cannot elect their Commander-in-Chief as their fellow Americans in arms from the other 50 states and DC can.

The enactment of PROMESA, and the subsequent decisions by the Supreme Court, have reiterated the authority Congress has over Puerto Rico under the Territorial Clause of the U.S. Constitution and the "separate and unequal" treatment territories receive since the Insular Cases were decided.

That is why leading and well-respected civil rights organizations like the NAACP and LULAC have approved resolutions endorsing the admission of Puerto Rico as a state of the Union. For as long as Puerto Ricans are subject to the undemocratic *status quo*, we will never be able to fully exercise our civil rights. Likewise, the Democratic National Committee unanimously approved a resolution endorsing statehood for Puerto Rico in 2017 and DNC Chairman Tom Perez has also expressed his personal view in favor of the admission of Puerto Rico.

Puerto Rico has chosen the path of statehood to achieve equal treatment under U.S. laws and voting rights. In local plebiscites held in Puerto Rico in 2012 and 2017 the majority of the people of Puerto Rico voted overwhelmingly for statehood by 61% and 97%, respectively. This upcoming November 3rd, 2020, Puerto Rico will have a referendum to answer, "Yes or No" to the question of "Should Puerto Rico be immediately admitted into the Union as a State?" We are confident the people of Puerto Rico will reiterate its determination to become a State.

We urge Congress to acknowledge the results of the upcoming referendum and support H.R. 4901, a bipartisan legislation supported by 48 Democrats and 18 Republicans, including the late Congressman John Lewis.

Thank you for this opportunity to express our views on the subject before the Committee.



Charles A. Rodríguez
Chairman
Democratic Party of Puerto Rico



Johanne Vélez
Vice Chair
Democratic Party of Puerto Rico



María "Mayita" Meléndez
National Committeewoman Puerto Rico
Democratic National Committee



Luis Dávila-Pernas
National Committeeman Puerto Rico
Democratic National Committee



Testimony for the Record from the Puerto Rico Equality Commission (PREC)

Committee on House Administration

Subcommittee on Elections

“Voting Rights and Election Administration in the U.S. Virgin Islands and Other Territories”

Virtual Hearing held on July 28, 2020 – 10:00am

We thank the Committee for the opportunity to provide our written testimony for the record on the virtual hearing held on July 28, 2020, titled “*Voting Rights and Election Administration in the U.S. Virgin Islands and Other Territories*.” The right to vote for your own representatives before a legislative body and to have elections conducted fairly are the fundamental and essential elements of any democracy. We look forward to continuing the conversation on issues affecting Puerto Rico, especially regarding the need to end the unequal and undemocratic territorial status, to achieve equality for all U.S. citizens who reside in Puerto Rico.

The Puerto Rico Equality Commission (PREC) was established under Law 30 of 2017 (Law 30), which created a committee of seven government representatives in order to facilitate Congress in the admission of Puerto Rico as a state of the United States. The PREC serves as the “congressional delegation” of Puerto Rico to the United States Congress, which include two shadow senators and five shadow representatives. The PREC’s duties consist of increasing U.S. support for statehood by informing and educating Members of Congress, the White House, federal agencies, and the national public in general about the statehood movement. Our congressional delegation has met with multiple Members and Senators on the Hill and will continue to actively engage with Congress in order to move forward the PREC’s support efforts.

Despite the implementation of the Fiscal Oversight and Management Board created as a result of the enactment the “*Puerto Rico Oversight, Management, and Economic Stability Act*” (PROMESA) (Public Law 114-187), to restructure Puerto Rico’s debt and expedite procedures for approving critical infrastructure projects, nothing in PROMESA restricts the right of Puerto Rico to determine its future political status. In accordance with Law 30, the PREC has and will educate, promote, and advocate for the admission of Puerto Rico as a state of the United States. This includes the demand to participate and be recognized as representatives of the U.S. citizens of Puerto Rico before the Senate and the House of Representatives of the United States of America. Therefore, the PREC’s main objective is to advance the consideration and determination of the political status of Puerto Rico as a State of the Union, in accordance with Article 4, Section 3 of the United States Constitution.

For Puerto Rico to truly recover from the mass devastation caused by Hurricanes Irma and María, ongoing earthquakes, the COVID-19 pandemic, and the decades long fiscal, economic and



demographic crisis, Congress must address the root cause that connects all these issues, which is the U.S. Government's 123 year old failed experiment in territorial colonialism. Voters in Puerto Rico have now expressed their opposition to continued territorial-colonial status twice in the last 7 years (2012 and 2017), declaring their desire for equal rights and responsibilities along their fellow U.S. citizens in the 50 states. Statehood is necessary to finally transition Puerto Rico to a fully democratic government, and to have voting representation in Congress for the 3.2 million U.S. citizens on the island. This upcoming November 3rd, 2020, Puerto Rico will have a plebiscite to answer, "Yes or No" to the question of "Should Puerto Rico be immediately admitted into the Union as a State?"

With "66% of Americans indicating they support statehood for Puerto Rico and 75% agreeing that Puerto Rico should have full representation in Congress"¹, it is paramount for Congress to recognize that the lack of equal rights and obligations of U.S. citizens in Puerto Rico is quickly becoming a national issue. Therefore, the PREC urges Congress to acknowledge the results of the upcoming plebiscite and ensure equality with our federal citizens of the 50 states of the Union.

¹ <https://news.gallup.com/poll/260744/americans-continue-support-puerto-rico-statehood.aspx>

Chairwoman FUDGE. Thank you. Thanks to all of our witnesses. I so much appreciate your testimony.

It is now time for members to ask questions. I would first recognize Mr. Butterfield for five minutes.

Mr. BUTTERFIELD. Thank you very much, Madam Chair. And thank you to the witnesses for your testimony today. I have heard most of it. I am in my Rayburn office, and I have been following your testimony, as well as doing a few other things to make sure that I could ask you some informed questions.

Let me just simply start first with the delegates. And thank you for your passion. I have watched each you in your own space as you have advocated for your constituents. And I just want to thank you for your passion. And like the Chair, I hope that I am here long enough to see the day that you will have full voting rights in the Congress of the United States.

Let me just ask the four delegates, if I can do this very quickly, and I will talk slowly so you can kind of think of the two things that you could recommend, but if you would recommend two things, two things that we can do to improve voting in the territories. Two things, what would they be? Congresswoman Plaskett.

Ms. PLASKETT. Thank you very much for the question. The first thing I would, which has been done and I believe now needs to be an actual creation is, in H.R. 1, I authored and the other territories agreed with me on the creation of a congressional task force that would put into the record what have been the implications and the effects of not having voting rights in the territories, as well as to come up with recommendations for that inclusion to be presented to the Congress. I believe that that should be done.

Mr. BUTTERFIELD. Thank you.

Ms. PLASKETT. The other thing, the second one would be to remove the barriers and the disparity and treatment of the territories in terms of funding so that we could grow our economies and our population to be able to come up to par and move towards a more equitable position to demand either inclusion or independence.

Mr. BUTTERFIELD. Let me ask the gentlelady from Puerto Rico the same question. Two things, two very basic things that we can and should do. Jennifer.

Chairwoman FUDGE. G.K., I am not sure she is still on the line.

Mr. BUTTERFIELD. All right.

Let me go to the representative from the Northern Mariana Islands, please. Two things.

Mr. SABLON. Thank you for your question, Mr. Butterfield. I will agree with delegate Stacey Plaskett that the passage of H.R. 1, the enactment of that bill into law would be extremely helpful. Having said that, I also would think that the provisions of H.R. 3268 will help move forward the exercise of free and fair elections in the territories—stating that elections in the territories should be held up to Federal standards as well. Elections in the territories are intramural sports, Mr. Butterfield, seriously. Things get mixed up. And I am the only Democrat in office for the past 12 years. Just imagine.

Mr. BUTTERFIELD. You are voting seriously on the island. Is that right. I mean, your constituents treat this thing very seriously. Yes.

Mr. SABLAN. Our participation is always for the most part in the upper 80 percent. Unlike in our Nation, which it is, you know, upwards of 50 or 60 percent.

Mr. BUTTERFIELD. Sure.

Mr. SABLAN. And, of course, the process of [inaudible] success of Mr. Weare is also good for the territories. Thank you.

Mr. BUTTERFIELD. Thank you, sir.

Finally, to the gentleman from Guam, two things, two things in plain English, two basic things that we can and should do.

Mr. SAN NICOLAS. Thank you, Congressman. I agree with my two colleagues, Congresswoman Plaskett on H.R. 1, as well as the legislation referenced by Congressman Sablan.

As well, as I would like to put on the record, as I mentioned in my testimony, H.R. 5526. Sir, as you know, if you have any issue that you want to have addressed in the Senate, you can walk over and talk to your Representative in the Senate. Territories do not have that luxury. The challenge that comes with that is that, you know, territorial issues and concerns don't have a voice. And so, when we have things in the CARES Act or the HEROES Act or even the HEALS Act, they are crafted without the perspective of the territories when it is being managed and handled on the Senate side. And that inability for us to have even basic input is just so destructive to our ability to advocate for representation for our people. And as you see with us here today, just having even delegate representation is a huge step forward. And I think that getting that for our territories in the Senate is something that—is an action step that we can do right now to increase representation for our people.

Mr. BUTTERFIELD. Thank you. Thank all of you. And you have my conditional unqualified support, as well as the chair. Thank you very much.

Chairwoman FUDGE. Thank you very much. Ranking Member Davis, you are recognized.

Mr. DAVIS. Well, thank you, Madam Chair. And thank you to the witnesses. This is a great opportunity to hear about priorities. I am glad Ms. Plaskett was advocating for a task force to have Congress look at the potential of changes for our territories. I would support a provision like that. But let's not kid ourselves: Throwing that into a 600-page bill named H.R. 1 that was written before and cosponsored by every member of the majority and announced the day of swearing in, people didn't have as much input in that bill. And there are so many bad things in that piece of legislation, like the first ever taxpayer funding to go to our own congressional campaigns. My constituents can't stand for that. And then, after that was called out, it was changed to the first ever corporate money directly going to our own campaigns. So, if we want to work together, then let's work together on this. But we have got to watch for what is happening right now in our territories or in our States, in our elections that have been recently held.

Almost month ago, we had an election in New York City. We still don't have the results. So many of the provisions that dealt with elections were actually part of H.R. 1 and instituted in States like New York that we don't even have the results. What are we doing to fix this? What are we doing to stop the fraud that happened in

New Jersey? What are we doing to stop the fraud that happened in Indiana? No, we are going to put our head in the sand? All of the things that we found so wrong, long before I was alive, that stopped people from being able to vote are happening in our country right now by closing polling locations. Making sure that people will only use one certain type of process is disenfranchising tens of thousands of people in our election process. That is wrong.

So, with that being said, Ms. Moolenaar, please tell us how you in the Virgin Islands are able to prepare for this pandemic, and what are you doing to stop what we have seen happen in other States already just a few weeks ago?

Ms. MOOLENAAR. I indicated in my opening remarks in testimony that, indeed, in the Virgin Islands, we are free from all of the heinous assaults that we see happening nationwide, and we are all very much concerned that this is happening in the United States.

We have a supervisor of elections that I am disappointed that she was not included in part of this discussion, but she would have been able to indicate to you that, indeed, there are rules and regulations and guidance that we are following that prevent all of that, and we have been free of that.

As I indicated in my testimony, I can't promise we will continue to do so, but, right now, we don't have that. Our big concerns right now are, as all of the other witnesses have pointed out, we are very much concerned about the fact that we are not able to discuss in Congress on a full level with all other citizens through their Representatives what our concerns are, what our needs are. And I am so happy that the representative from Guam has also included the statement that we need also to have representatives also in the Senate. This has to be changed.

And I believe that, I ask that you look at my last request in my statement that we do need to have the matter of status finally resolved within the territories, and we need to have the support that would allow us to make meaningful decisions on this matter. The Constitution has been changed. Rules Committees—rules and committees in the House have been changed. We can change, and we must change.

Mr. DAVIS. Well, thank you, Ms. Moolenaar. I appreciate that. And, again, I know a lot of discussion in testimony has been about having access to HAVA funds—

Ms. MOOLENAAR. Yes.

Mr. DAVIS [continuing]. And I think that is something we can work together on in a bipartisan way. But at the same time, we also have to follow the law. What is the Virgin Islands doing to maintain their voter rolls?

Ms. MOOLENAAR. Again, that is a good question that our supervisor for elections would have been able to answer. But I know that they have not had any difficulties with doing so, and we have not heard of any assaults against that. And I know that it is being done on a regular basis. I have spoken with the supervisor of elections on a number of issues, and she has indeed indicated that they do look at voter rolls, and they are updated on a regular basis.

Mr. DAVIS. Actually, I am out of time. I yield back. Thank you. Chairwoman FUDGE. Thank you, Mr. Davis.

Mr. Aguilar, you are now recognized for five minutes.

Mr. AGUILAR. Thank you, Madam Chair. I appreciate you having this hearing. This is critically important to hear from our colleagues who represent the territories, as well as our guests who presented testimony. And I am going to start with them.

Ms. Moolenaar, what do you feel most—I mean, you talked about representation, just like Delegate San Nicolas mentioned as well. What do you feel most Americans need to know about physically voting in the territories? What is often overlooked and not understood? And I will ask Ms. Moolenaar, and then Mr. Emanuel and Mr. Weare.

Ma'am, go ahead.

Ms. MOOLENAAR. Well, I did most of my education on the mainland. And to tell you the truth, most Americans know very little about the territories. But when I do indicate that we did not have when I was in school, we did not have a voting representative at any level and that finally, when they do vote, the vote is considered inconsequential—they are not included as part of the quorum in the House, as if they are not there—people are stunned and shocked. I think that the vast majority of Americans are completely unaware of the inequities that are thrown to our citizens in the territories. I think most Americans would be shocked to know that indeed these conditions exist. And those Americans from the mainland who do come to our territory come up to the rude awakening that they could not vote for the President until they flew back to the mainland as if there was something tainted on the place of the territories.

So it is becoming known. I think we need to let most Americans know—and I think if we did, there would be an upswell of individuals to support the claims that we are making in the territories that we need to be given our full rights as citizens because we are behaving like full citizens: going to war, paying taxes.

Mr. AGUILAR. Thank you. Mr. Emanuel.

Mr. EMANUEL. Yes, thank you very much for the question. I think you are asking, what is it that citizens in the United States need to know about the problems we are having? I would align myself [inaudible] the Insular Cases [inaudible] exist, they stated specifically that we are not having Anglo-Saxon principals, but people in the Virgin Islands have gone to Denmark for hundreds of years dealing with trial by jury, dealing with elections, et cetera, as Dr. Moolenaar said. And, also, another basis for the Insular Cases concerning the nature of our [inaudible] didn't want to give district judges lifetime tenures because, I guess, the unincorporated territorial status was temporary. But we have been there for over 103 years, so I don't know what temporary means in the American parlance.

So my point that that I think all Americans need to understand and the Supreme Court is that the legal basis, if there ever was one, the legal basis for having unincorporated territories no longer exists. So we should be able to move forward and provide all of those formal parts of the Constitution, such as suffrage and all the other things to the citizens in the territories and to other U.S. citizens when they come here. That is basically what I wanted to say.

Mr. AGUILAR. Thank you.

Mr. Weare.

Mr. WEARE. I think most Americans would be—are surprised to learn that there are U.S. citizens under the U.S. flag who are completely disenfranchised. One other thing a lot people don't realize is just how many Americans live in the territories. So the population of the five populated territories is actually greater than the population of the five smallest States combined. The smallest States have 15 electors, 10 Senators, 5 Representatives in Congress, and the combined population of almost 4 million in the territories have none of those things.

There is also a lot of people who are surprised and kind of assume that residents of territories vote for one party over another. In Guam, for example, residents of Guam are swing voters. There has actually been a straw poll where, while they can't vote for President for real, each Presidential election since 1980, they get a mark on a ballot who they would vote if they could vote. And between 1980 and 2012, Guam voters selected the eventual winner of the election a day ahead of the rest of the country because Guam is on the other side of the dateline.

So residents in territories are swing voters. This should not be a partisan issue. Every American should be able to vote wherever they live.

Mr. AGUILAR. Thank you, Mr. Weare. I appreciate it. Thank you to our guests for being here. You know, Mr. Davis made a point in his opening remarks about the number of men and women who serve in our armed services who come from the territories, and on a per capita basis, the territories send more than Illinois, more than California, more than any State in our Union. And I think most Americans need to start connecting those dots about the service to our country and the lack of representation that we have.

I also want to say that I owe the Chair a coffee because this might be the first hearing, Madam Chair, that Mr. Davis hasn't mentioned ballot harvesting in California. So he is not—

Mr. DAVIS. Ballot harvesting. Time is up. Ballot harvesting.

Mr. AGUILAR [continuing]. It is not a message today, even though we know that the only voter fraud that happened in the last election was in North Carolina. But, with that, Madam Chair, I will yield back.

Chairwoman FUDGE. Thank you very, very much.

Mr. Loudermilk, you are recognized for five minutes.

Mr. LOUDERMILK. Thank you, Madam Chair. And thank you for allowing me to participate in this today. It is very interesting conversation. And I agree with Mr. Davis that this is something that a task force would be well advised to look into and study in a bipartisan basis.

And I just briefly want to mention the ballot harvesting in California because Mr. Davis refused to do that. So—but moving on, Mr. Weare, in your opinion, do the respective territories have the infrastructure in place to conduct a smooth Federal election? For example, do the territories have the updated voting machines, cybersecurity protections, and bipartisan election observers to prevent against coercion and fraud?

Mr. WEARE. I am not an election administration expert, but I know having voted in many Federal elections myself in the territories that they do follow the same practices, sometimes for better

or worse, as the rest of the country have participated by absentee ballot while I was working for Congresswoman Bordallo. And I know that election administrators such as Congressman Sablan was for many years do the best they can with the local and Federal resources to ensure elections—fair elections are held every cycle.

Mr. LOUDERMILK. With the influx of mail ballots that we have seen throughout the United States, do you think the territories are equipped to handle a potential massive influx of voters?

This is for Mr. Weare.

Mr. WEARE. Sure, again, I am not an expert on those issues, but I know that, with territories and how many people do travel abroad, absentee voting and voting by mail is a process that they are very familiar with, that they have supported. And, usually, particularly in a smaller territory, given the smaller number of voters involved, it is not—it is not a process that is manageable.

Mr. LOUDERMILK. Well, thank you, and I also open that question up to any of the delegates or any other guests.

Mr. SABLÁN. May I—

Mr. LOUDERMILK. Sure.

Mr. SABLÁN. May I, Mr. Loudermilk? Thank you. I conducted elections in the Northern Marianas for 10 years. And, yes, absentee voting, about 10 percent, a little bit over 10 percent of our population vote by absentee because they moved to the U.S. for medical, for educational purposes.

And, actually, I had an experience where a Navy sailor who was in a submarine somewhere underwater actually wanted to vote. And we had to immediately and urgently put out a mechanism where he would allow us to expose his ballot, because we would know how he voted, and actually allowed him to vote. I don't know how they sent that transmission, but it came in by fax.

And so, yes, we are able to do that. And, yeah, I think it would be wonderful because, right now, you can actually, starting 10 days before the election, walk in for no reason and ask for a ballot so you could vote by mail, even if you are—just because you are on election day. So, yes, I feel the territories are ready for mail-in ballots. That is my experience, sir.

Ms. PLASKETT. Mr. Loudermilk, this is Stacey Plaskett again. I just want you to know that, under the CARES Act, the Virgin Islands on the board of elections, based on the written testimony of Caroline Fawkes, received \$600,000 for protective equipment and other resources to support elections during this time period of COVID.

Additionally, the board of elections has extended the period for early voting, which we have been doing increasingly over each election cycle, extending the time for early voting, which allows people to be able to do that and the social distancing and have more time so that there is not a crowd at the end. And mail-in ballots and absentee ballots, the expansion of that for not having specific reasons or just as a request, there is discussion at the board of elections about allowing all ballots to be mailed. Those kinds of issues and initiatives are being debated and discussed now.

Mr. LOUDERMILK. Thank you.

Chairwoman FUDGE. I see two hands up, Mr. Loudermilk. Do you want to continue or ask another question?

Mr. LOUDERMILK. No, I will just continue with these for the remaining time.

Chairwoman FUDGE. Ms. Moolenaar, you need to unmute yourself.

Ms. MOOLENAAR. Thank you for the question. I am glad that Congresswoman Plaskett responded because I was also going to mention that the League of Women Voters did indeed speak with our supervisor of elections, Ms. Fawkes, and she assured us that indeed the system is up for—for the mail-in ballots change. She indicated that mail-in voting has been in existence for quite a while in the U.S. Virgin Islands because, as it was pointed out by Mr. Weare, many individuals have moved to the mainland, but they still maintain voting rights within the territories. So the system is accustomed to that.

Ms. Fawkes also indicated that she is aware that the tradition of going to the polls is a very strong cultural one in the Virgin Islands. So, although, this is—the increase in absentee ballots is a possibility, she recognizes that the system will definitely not be overwhelmed by an increase in absentee ballots. So the Virgin Islands definitely is prepared for this.

Chairwoman FUDGE. Thank you.

Mr. EMANUEL. Yes, I think the Congressman's question also went to the—

Chairwoman FUDGE. Mr. Emanuel.

Mr. EMANUEL. I am sorry.

Chairwoman FUDGE. You are going to need to be very, very brief. The gentleman's time actually expired, but go ahead.

Mr. EMANUEL. Oh, I am sorry. I wanted to say that we also changed the machines. We used to have Shouptronic machines. We have machines that meet HAVA requirements. We have a paper trail. And we have a number of other measures in place to ensure the integrity of the elections. Thank you.

Mr. LOUDERMILK. Thank you. I yield back.

Chairwoman FUDGE. Thank you very much.

Mr. Davis, do you have any closing statements or remarks?

Mr. DAVIS. Ballot harvesting is bad. Thank you very much, Madam Chair.

Thanks to my colleagues and very educational today.

I certainly hope we can come together and work on some of these issues that were brought to our attention today. You have willing partners in the Republican Conference, and I look forward to sitting down and discussing some of these in more details with each of the—each of my colleagues from the territories.

So thanks again, Madam Chair. I appreciate the opportunity.

And thank you to all of the witnesses too.

Chairwoman FUDGE. I thank you all. Thank you so much. And let me just say a few words in closing. One, if my Republican colleagues would like for us to pull out the language that Ms. Plaskett has been talking about from H.R. 1 and make it a standalone, I would be happy to do that. If that is something that you guys want to cosponsor with me, I am happy to do it.

Secondly, as we talk about how elections are run in the territories, it clearly has nothing to do with the status of voting for the President of the United States. I mean, my colleagues see some-

thing sinister around every single corner. But let me just say the status and your voting rights and the problems in New York have absolutely nothing to do with allowing the territories their full citizenship and their right to vote.

I would now just want to thank all of the witnesses and the members for their questions. The Members of the Subcommittee may have additional questions for the witnesses, and we will ask you to respond to those in writing.

The hearing record will be held open for these responses. I thank you all. I thank all of our witnesses for your testimony today.

And, without objection, the Subcommittee stands adjourned.

[Whereupon, at 11:26 a.m., the Subcommittee was adjourned.]

