

**Statement of Neil C. Weare, President and Founder
Equally American Legal Defense and Education Fund**

Averting a Crisis: Protecting Access to Health Care in the U.S. Territories:

Hearing Before the House Committee on Energy and Commerce, Subcommittee on Health

March 17, 2021

Chair Eshoo, Ranking Member Guthrie, and distinguished Subcommittee members:

My name is Neil Weare, and I am the President and Founder of Equally American Legal Defense and Education Fund. We are a nonpartisan civil rights law organization that fights to advance equality and civil rights for the 3.5 million Americans living in American Samoa, Guam, the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands. Our values are centered on the basic principle that all Americans should have equal rights and representation, wherever they live.

Let me begin by thanking the Subcommittee for holding today's hearing. Protecting access to health care in the territories is indeed a national concern and should thus be a national priority. The territories, as you know, have neither voting rights nor voting representation in Congress. That shackles them with added burdens when trying to seek redress for their interests here in Washington. So our organization applauds the proactive approach this subcommittee is taking to avert a crisis of health care access in the territories.

Protecting access to health care in the territories is a matter of basic fairness. As you know, Medicaid funding is typically allocated to the states based on the per-capita income of their residents. But citizens in U.S. territories have historically received less funding than citizens in states with similar per-capita incomes. Moreover, Medicaid funding for the territories has long been arbitrarily capped well below the territories' actual needs. This uncertainty, instability, and vulnerability discourages providers in the territories from serving low-income patients, which has life and death consequences. It also has created significant financial strains on territorial governments, contributing to a structural debt crisis in each territory. No American should be denied access to health care for arbitrary and discriminatory reasons. Yet that is exactly what is happening today in the territories.

Protecting access to health care in the territories is also a matter of racial equity. Ninety-eight percent of Americans living in the territories identify as racial or ethnic minorities, or indigenous peoples. These communities have historically faced impediments to equitable access to health care. This ongoing discrimination against citizens in U.S. territories is an unfortunate legacy of

the *Insular Cases*, which for over a century have relegated those living in the territories to a second-class status. Rooted in the same unrepentantly racist notions as *Plessy v. Ferguson*'s separate-and-un-equal racial segregation, the *Insular Cases* sanctioned a colonial relationship between the United States and citizens in its territories that is not substantively unlike the one rejected during our Nation's founding. *Plessy* has thankfully been since overturned, but the *Insular Cases* regrettably remain on the books. Until that changes, we encourage this Subcommittee to lead the charge against discriminatory treatment of the territories. We cannot change the regrettable injustices of the past. But we can choose to make a fairer, more equitable future for all Americans.

Protecting access to health care in the territories also implicates the Constitution's guarantee of equal protection. The Supreme Court is currently considering *United States v. Vaello-Madero*, which challenges the federal government's arbitrary exclusion of residents of Puerto Rico from the Supplemental Security Income program. Like Medicaid, SSI provides a safety net to some of our country's most vulnerable citizens. *Vaello-Madero* also has broad implications for Americans living in American Samoa, Guam, and the U.S. Virgin Islands, who are likewise denied access to SSI benefits. Recently, Members of Congress called on the Biden-Harris Department of Justice to stop defending arbitrary discrimination against residents of the territories (see [attached](#)). Regardless what position DOJ ends up taking, we hope that the Supreme Court will agree that arbitrarily discriminating against otherwise eligible Americans based solely on where they live is indeed unconstitutional. However, the Subcommittee need not and should not wait for the courts to ensure equal protection. We encourage an immediate legislative fix that ensures that citizens in the territories are able to fully enjoy federal programs like Medicaid and SSI that other American communities take for granted.

Protecting access to health care in the territories is needed to avoid a looming crisis. Favorable Medicaid treatment for territorial residents that was initially enacted as temporary will soon end without further congressional action. If that happens, the territories will face a Medicaid "cliff," making it likely that funding will run out part way through the year, jeopardizing lives. We therefore urge your support for eliminating Medicaid's general funding limitation for the territories altogether, and for making this permanent. This has long been a priority for the Members of Congress who represent citizens in the territories. We especially thank Congressman Kilili Sablan of the Northern Mariana Islands for his outstanding leadership on this issue through the introduction of the Insular Area Medicaid Parity Act, H.R. 265, which currently has over 60 bi-partisan co-sponsors.

Equally American applauds your attention to these important issues, which too often are neglected or forgotten by the federal government. We stand ready as a resource to support your work to protect access to health care for the 3.5 million U.S. citizens who live in the territories. Thank you for the opportunity to present written testimony.