

LOURDES A. LEON GUERRERO
GOVERNOR



JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HĀGAN GUĀHAN
OFFICE OF THE GOVERNOR OF GUAM

May 12, 2021

The Honorable Raul M. Grijalva
Chair, Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515

Transmitted via email to Ivan.Robles@mail.house.gov

RE: Testimony on H.Res. 279 “Insular Cases Resolution”

Dear Chair Grijalva:

Thank you for this opportunity to submit for the written record testimony on House Resolution 279, relative to acknowledging that the United States Supreme Court’s decisions in the Insular Cases and the “territorial incorporation doctrine” are contrary to the text and history of the United States Constitution, rest on racial views and stereotypes from the era of *Plessy v. Ferguson* that have long been rejected, are inconsistent with our Nation’s most basic constitutional and democratic principles, and as such, should be rejected.

For more than 120 years, while the People of Guam and the people of our sister territories have played a vital role in American democracy, we have for too long been met with unequal treatment by the federal government. Upon acquiring the islands of Puerto Rico, Cuba, the Philippines, and Guam following the Spanish-American War and the Treaty of Paris in 1898, the United States was suddenly in possession of the land that was not intended for eventual statehood. Utilizing Article IV, Section 3 of the Constitution, the United States used its power to “dispose of and make all needful rules and regulations respecting the territory ... of the United States” to govern these new territories.

This interpretation of Article IV, Section 3 was soon challenged and made its way to the United States Supreme Court. In a series of opinions known as the *Insular Cases*, the Supreme Court ruled that these lands were “foreign in a domestic sense” and were not a part of the United States for all constitutional purposes. Instead, the Court determined that because these territories were not intended for future statehood and due to our “wholly dissimilar traditions and institutions,” the Constitution in its entirety did not apply, thus establishing the Territorial Incorporation Doctrine, which still applies today.

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Even more insidious was the decision that not all provisions of the Bill of Rights were applicable. Thus, while the Court determined in *Downes v. Bidwell* that Congress could not create governments for the territories in such a way as to abridge fundamental rights, precisely which constitutional rights are fundamental has been left to a case-by-case determination.

It would be gravely amiss for us to analyze the viability of the Insular Cases in modern history without acknowledging the fascist discourse that has inveigled the Court's rhetoric and decisions. To further cite *Downes v. Bidwell*, Justice Brown justified the denial of constitutional protection because he found it "doubtful if Congress would ever assent to the annexation of territory upon the condition that its inhabitants, however foreign they may be to our habits, traditions, and modes of life, shall become at once citizens of the United States."

In the same case, Justice White discussed the "grave detriment" to the United States should they bestow citizenship to those "absolutely unfit" to receive it. Because these territories were ruled by savages who were neither ready for the responsibility of self-rule nor incorporation into the Union, the United States established constitutional policy that those living beyond the borders of the United States were not afforded the same rights and freedoms as citizens despite being subject to its control.

For over a century, the United States has used the Territorial Incorporation Doctrine to relegate millions of U.S. to second-class status. To rectify this injustice, the United States Constitution, in its entirety, must immediately be applied equally to the territories as it does to states. Unfortunately, although the U.S. Supreme Court decided the Insular Cases over a century ago, its territorial incorporation doctrine continues to affect the people of Guam today through many federal policies and programs.

Due to our territorial status, Guam receives unequal treatment under federal programs, such as Medicaid, the Affordable Care Act, and the Federal Highway Program. Furthermore, we are excluded from other programs, including Supplemental Security Income and the Radiation Exposure Compensation Act. These policies have adversely affected our quality of life and, ultimately, our freedom and prosperity under the American flag. This is how the territorial incorporation doctrine materializes itself today.

The right to self-determination is not something afforded to us when we are ready and deemed fit for self-governance—it is a right that is endowed by our Creator. The United States cannot hold a territory indefinitely, and our present political status does not meet our needs. As an unincorporated territory, we are limited in negotiating meaningful partnerships with our regional neighbors and lack the full authority to dictate how our land, skies, and waters are used. This acknowledgment is not and cannot be a substitute for self-determination, but it is a necessary step to right the injustices of the past.

Lastly, I would like to recognize and thank President Biden for putting racial equity and justice at the center of his executive agenda and his commitment to take bold action through federal policies, programs, and agencies to address historical injustices. I look forward to working

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closely with his administration and Congress to uphold our democratic principles in the best interest of the people of Guam.

Senseramente,



LOURDES A. LEON GUERRERO

Maga'hågan Guåhan

Governor of Guam