

**H.R. 6062 AND H.R. 6273**

---

---

**LEGISLATIVE HEARING**

BEFORE THE

SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

---

Thursday, January 18, 2024

---

**Serial No. 118-89**

---

Printed for the use of the Committee on Natural Resources



Available via the World Wide Web: <http://www.govinfo.gov>

or

Committee address: <http://naturalresources.house.gov>

---

U.S. GOVERNMENT PUBLISHING OFFICE

54-612 PDF

WASHINGTON : 2024

COMMITTEE ON NATURAL RESOURCES

BRUCE WESTERMAN, AR, *Chairman*  
DOUG LAMBORN, CO, *Vice Chairman*  
RAÚL M. GRIJALVA, AZ, *Ranking Member*

Doug Lamborn, CO	Grace F. Napolitano, CA
Robert J. Wittman, VA	Gregorio Kilili Camacho Sablan, CNMI
Tom McClintock, CA	Jared Huffman, CA
Paul Gosar, AZ	Ruben Gallego, AZ
Garret Graves, LA	Joe Neguse, CO
Aumua Amata C. Radewagen, AS	Mike Levin, CA
Doug LaMalfa, CA	Katie Porter, CA
Daniel Webster, FL	Teresa Leger Fernández, NM
Jennifer González-Colón, PR	Melanie A. Stansbury, NM
Russ Fulcher, ID	Mary Sattler Peltola, AK
Pete Stauber, MN	Alexandria Ocasio-Cortez, NY
John R. Curtis, UT	Kevin Mullin, CA
Tom Tiffany, WI	Val T. Hoyle, OR
Jerry Carl, AL	Sydney Kamlager-Dove, CA
Matt Rosendale, MT	Seth Magaziner, RI
Lauren Boebert, CO	Nydia M. Velázquez, NY
Cliff Bentz, OR	Ed Case, HI
Jen Kiggans, VA	Debbie Dingell, MI
Jim Moylan, GU	Susie Lee, NV
Wesley P. Hunt, TX	
Mike Collins, GA	
Anna Paulina Luna, FL	
John Duarte, CA	
Harriet M. Hageman, WY	

Vivian Moeglein, *Staff Director*  
Tom Connally, *Chief Counsel*  
Lora Snyder, *Democratic Staff Director*  
<http://naturalresources.house.gov>

---

SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS

HARRIET M. HAGEMAN, WY, *Chair*  
JENNIFER GONZÁLEZ-COLON, PR, *Vice Chair*  
TERESA LEGER FERNÁNDEZ, NM, *Ranking Member*

Aumua Amata C. Radewagen, AS	Gregorio Kilili Camacho Sablan, CNMI
Doug LaMalfa, CA	Ruben Gallego, AZ
Jennifer González-Colón, PR	Nydia M. Velázquez, NY
Jerry Carl, AL	Ed Case, HI
Jim Moylan, GU	Raúl M. Grijalva, AZ, <i>ex officio</i>
Bruce Westerman, AR, <i>ex officio</i>	

## CONTENTS

---

	Page
Hearing held on Thursday, January 18, 2024 .....	1
Statement of Members:	
Hageman, Hon. Harriet M., a Representative in Congress from the State of Wyoming .....	2
Leger Fernández, Hon. Teresa, a Representative in Congress from the State of New Mexico .....	3
Westerman, Hon. Bruce, Representative in Congress from the State of Arkansas, prepared statement of .....	72
Panel I:	
Radewagen, Hon. Aumua Amata Coleman, a Delegate in Congress from the Territory of American Samoa .....	5
Moylan, Hon. James, a Delegate in Congress from the Territory of Guam .....	9
Statement of Witnesses:	
Panel II:	
Nakoa, Keone, Deputy Assistant Secretary, Office of Insular and International Affairs, U.S. Department of the Interior, Washington, DC .....	12
Prepared statement of .....	13
Questions submitted for the record .....	15
Ale, Hon. Talauega Eleasalo Vaalele, Lieutenant Governor, American Samoa, Pago Pago, American Samoa .....	16
Prepared statement of .....	18
Questions submitted for the record .....	26
Jennings, Hon. Alexander Eli, Swains Island Delegate, American Samoa House of Representatives, Pago Pago, American Samoa .....	33
Prepared statement of .....	35
Questions submitted for the record .....	45
Guerrero, Hon. Lordes Aflague “Lou” Leon, Governor, Hagåtña, Guam .....	48
Prepared statement of .....	49
Questions submitted for the record .....	52
Alig, Hon. Jesse, Mayor, Piti, Guam .....	58
Prepared statement of .....	60
Questions submitted for the record .....	62
Additional Materials Submitted for the Record:	
Submissions for the Record by Representative Radewagen	
Fono Senate President and House Speaker Joint Statement .....	7
Submissions for the Record by Representative Moylan	
GovGuam Impacts of COFA FY04–20 .....	10
GAO Compact Impact Numbers 1986–2018 .....	73
Judiciary of Guam Testimony on H.R. 6273 .....	74
Submissions for the Record by Lt. Governor Ale	
2022 American Samoa Election Results Certification Letter .....	76
2022 American Samoa Referendum Ballot .....	77
2022 American Samoa Referendum Results .....	78
Supplemental Documentation Supporting Testimony .....	79

IV

	Page
Additional Materials Submitted for the Record—Continued	
Submissions for the Record by Delegate Jennings	
SR 38-28 (English and Samoan) .....	80
2021 Unanswered Letter to Local Leadership regarding Request for Assistance .....	89
2014 Letter to DOI Assist. Sec. Interior Kiaaina regarding Swains' non-voting status .....	91
2014 Letter to AS Fono Ways and Means and Resolution regarding Swains Island Vote .....	94

**LEGISLATIVE HEARING ON H.R. 6062, TO RESTORE THE ABILITY OF THE PEOPLE OF AMERICAN SAMOA TO APPROVE AMENDMENTS TO THE TERRITORIAL CONSTITUTION BASED ON MAJORITY RULE IN A DEMOCRATIC ACT OF SELF-DETERMINATION, AS AUTHORIZED PURSUANT TO AN ACT OF CONGRESS DELEGATING ADMINISTRATION OF FEDERAL TERRITORIAL LAW IN THE TERRITORY TO THE PRESIDENT, AND TO THE SECRETARY OF THE INTERIOR UNDER EXECUTIVE ORDER 10264, DATED JUNE 29, 1951, UNDER WHICH THE CONSTITUTION OF AMERICAN SAMOA WAS APPROVED AND MAY BE AMENDED WITHOUT REQUIREMENT FOR FURTHER CONGRESSIONAL ACTION, SUBJECT TO THE AUTHORITY OF CONGRESS UNDER THE TERRITORIAL CLAUSE IN ARTICLE IV, SECTION 3, CLAUSE 2 OF THE UNITED STATES CONSTITUTION; AND H.R. 6273, TO EXTEND THE AUTHORIZATION OF CERTAIN GRANTS TO THE GOVERNMENTS OF GUAM, THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA, AND FOR OTHER PURPOSES, "GUAM HOST COMMUNITY COMPENSATION ACT"**

---

**Thursday, January 18, 2024  
U.S. House of Representatives  
Subcommittee on Indian and Insular Affairs  
Committee on Natural Resources  
Washington, DC**

---

The Subcommittee met, pursuant to notice, at 2:04 p.m., in Room 1324, Longworth House Office Building, Hon. Harriet M. Hageman [Chairwoman of the Subcommittee] presiding.

Present: Representatives Hageman, Radewagen, LaMalfa, Carl, Moylan, Westerman; and Leger Fernández.

Ms. HAGEMAN. The Subcommittee on Indian and Insular Affairs will come to order.

Without objection, the Chair is authorized to declare a recess of the Subcommittee at any time.

The Subcommittee is meeting today to hear testimony on two bills, H.R. 6062 and H.R. 6273.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member. I therefore ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted in accordance with Committee Rule 3(o).

Without objection, so ordered.

I will now recognize myself for an opening statement.

**STATEMENT OF THE HON. HARRIET M. HAGEMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING**

Ms. HAGEMAN. Today, the Subcommittee is meeting to consider two bills, H.R. 6062 and H.R. 6273. They are the vehicles for issues of importance to two of our territories in the Pacific: American Samoa and Guam.

I would like to thank you for traveling as far as you have to be with us. I would assume that the weather is a little bit different than what you are used to. It is a little different than a lot of us are used to. So, thank you for being here.

H.R. 6062, sponsored by my colleague, Mrs. Radewagen, would give the Secretary of the Interior the sole authority to approve amendments to the American Samoa Constitution. Prior to 1983, American Samoa was under the realm of the executive branch, specifically the Secretary of the Interior, when it came to constitutional changes and other changes to the governing authority of the territory. In 1983, following ongoing tensions between then-Secretary of the Interior and the American Samoan Government, then-American Samoa delegate Fofu Iosefa Fiti Sunia urged Congress to amend the standing law. As a result, Congress amended Federal Law, section 12 of Public Law 98-213, to prevent the American Samoan Constitution from being changed without an Act of Congress.

While there have been multiple attempts to revert back to the pre-1983 statute, the change still remains in place today. H.R. 6062 would reverse course and grant the President of the United States, and subsequently the Secretary of the Interior, the sole right to approve any amendments to the American Samoan Constitution without the need for congressional approval.

Our second bill on today's agenda, H.R. 6273, sponsored by the gentleman from Guam, Mr. Moylan, the Guam Host Community Compensation Act would extend annual Compact Impact Grant funding, require the Secretary of the Interior to enter into a Memorandum of Understanding regarding incarcerating certain felons, and establish residential requirements for migrants of the Freely Associated States, or FAS.

Under the First Compacts of Free Association, or COFA, citizens of FAS who legally work and reside in the United States were eligible to receive U.S. Federal benefits available to any legal

permanent resident. This eligibility was lost under the 1996 Personal Responsibility and Work Opportunity Reconciliation Act, or PRWOR. As a result, U.S. states and territories have had to shoulder the financial costs of hosting legal permanent residents from the FAS.

The 2003 COFAs provided Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Hawaii with \$30 million in annual grant funding, otherwise known as Compact Impact Grants. These grants were authorized through Fiscal Year 2023, and were used to address increased demands placed on health, educational, social, or public safety services as a result of COFA. H.R. 6273 would extend and authorize this authority through Fiscal Year 2043, while removing Hawaii's eligibility in this program.

This authority was not extended under the recent iteration of the COFA. Instead, the language introduced a new provision known as Compact Impact Fairness. The Compact Impact Fairness provisions would return Federal benefit eligibility for FAS migrants to pre-1996 social benefit levels.

H.R. 6273 would also require the Secretary of the Interior, in coordination with the Attorney General, to enter into Memorandums of Understanding with each state, territory, and the District of Columbia to require any FAS migrant in the United States who is convicted of a felony to be housed in a Federal correctional facility.

Finally, H.R. 6273 would bar any FAS migrant from obtaining non-immigrant residency status in Guam unless they can provide proof of employment or academic eligibility and show proof of a residential address.

I look forward to a robust conversation on these two bills, and I want to again thank both sponsors for their dedication to those they represent.

I also want to take the time to thank our witnesses for being here today, most of which have traveled halfway around the world to be here. We appreciate you being with us in person and look forward to your statements.

Before I yield back, I do want to express my disappointment that, despite receiving an invitation to testify here today, the U.S. Department of Justice declined to be here. I hope that they will, however, engage on these important issues moving forward.

With that, I yield back. The Chair now recognizes the Ranking Minority Member for any statement.

**STATEMENT OF THE HON. TERESA LEGER FERNÁNDEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO**

Ms. LEGER FERNÁNDEZ. Hafa adai, talofa lava, and my apologies if I don't pronounce it correctly, but I did have the wonderful opportunity to be greeted with those wonderful words so often when we traveled to the Blue Continent. And because I know what that travel now feels like, I am very appreciative of the fact that you have traveled. In fact, you have traveled backward in time to be with us here today, since our day begins in Guam, as we have all learned. So, thank you for being here to have your voices heard.

And I am very pleased that we are here today to hear our first bill sponsored by our colleague from American Samoa, Mrs. Radewagen, who showed us great hospitality and shared her deep knowledge of the issues facing her district and the fact that it would eliminate the requirement for Congress to approve changes to the American Samoa Constitution so that we can make it more effective for you so that self-determination can truly be recognized.

And as noted, when American Samoa drafted and ratified the Constitution in the 1960s, only the Secretary of the Interior was empowered to ratify changes. However, because of problems with a particular Secretary, I understand that American Samoa said no, we would prefer that these be ratified by Congress. But clearly, Congress is unable to act quick enough and be responsive enough. And we see that today, even as we are facing the fact that we have not yet passed our funding for this year.

So, there is wisdom, I see, in your desire to move it back to the Secretary, and I think it is really important to be respectful of the wishes of the people themselves on how decisions they make will be implemented. I look forward to hearing your testimony regarding that.

The second bill is sponsored by our wonderful colleague, Mr. Moylan from Guam, and it attempts to address the shortcomings with the Compact Impact Fairness Act, CIFA, which I understand that Guamanian leaders believe it fails to address the public safety and societal concerns caused by migration from the Freely Associated States. Your testimony reflects the fact that you receive them with warm embrace, but you do not want to suffer the economic impacts without the assistance of the United States.

I want to recognize and thank Mr. Moylan for allowing the COFA agreements to move forward, and for bringing us this bill, and for us having this hearing which were part of the discussions of how do we move this conversation forward.

The Compact of Free Association Act of 1985 requires the President to report annually to Congress on the impact of the compact on U.S. territories and commonwealths in the Pacific, and to cover the costs of resulting increased demands placed on education and social services by migrants from the Marshall Islands and the Federated States of Micronesia. The Compact Amendments Act of 2003 mandated \$30 million in compact impact funds to be allocated annually for 20 years, up until 2023.

So, when the first and second compacts were enacted, the majority of compact citizens migrated almost equally to either Guam or Hawaii. We do know that, looking at the census, that COFA citizens can now be found residing in many of the states on the mainland.

I need to say there aren't any in New Mexico. I am very sad about that, having been and seen the wonderful, warm people of the islands.

But you do have the issues of the fact that the \$30 million, is this enough?

And I want to also point out that the Biden administration has chosen to include the Compact Impact Fairness Act, which was sponsored by Representative Case and Senator Hirono of Hawaii. So, CIFA is considered by its proponents to be an effective way to

comprehensively address COFA migrant costs borne throughout the nation by those jurisdictions.

I do support the Biden administration's priority that our territories, all of our territories, receive the same benefits that citizens living in New Mexico, or Arkansas, or Montana receive with regards to SNAP and Social Security income. The President's budget included this last year. And I know this is part of the problem, as well, that you are facing, that there are layers of issues of inequality with regards to how the citizens of Guam are treated and the citizens of American Samoa.

But I look forward to hearing today about the issues with regards to the ineffectiveness of CIFA in dealing with the concerns raised by Guam. I have some questions about how it would work, and whether there are issues that need to be addressed in the bill, and I look forward to a good discussion about that.

Thank you for yielding to me, Madam Chair, and I yield back the balance of my time and look forward to our witness testimony.

Ms. HAGEMAN. The Chair now will recognize Mrs. Radewagen for 5 minutes to speak on her legislation.

**STATEMENT OF THE HON. AUMUA AMATA COLEMAN  
RADEWAGEN, A DELEGATE IN CONGRESS FROM THE TERRITORY OF AMERICAN SAMOA**

Mrs. RADEWAGEN. Talofa lava. Let me begin by thanking Chair Hageman and Ranking Member Leger Fernández and the rest of the Committee leadership for holding this hearing so early in this new session of Congress. I sincerely appreciate the Natural Resources Committee's commitment to resolving issues faced by the territories.

I also want to thank the Honorable Talauega Eleasalo Vaalele Ale, the Lieutenant Governor of American Samoa, for being here on behalf of our Governor, the Honorable Lemanu Peleti Mauga, to speak for our people on a matter of the utmost urgency.

A special thank you, as well, to Deputy Assistant Secretary of the Department of the Interior, Keone Nakoa, for his leadership on behalf of Secretary Haaland and Assistant Secretary Cantor on both bills before us today, and for their successful negotiations last year on the Compact of Free Association.

And talofa and welcome also to Swains Island Delegate, Alexander Jennings. I don't see him, but he must be there.

H.R. 6062 would roll back what was changed in 1983 by efforts that, while well-intentioned, attempted to fix something that was not broken. In 1983, a one-sentence provision was inserted with little notice into a territorial spending bill. This was done without a hearing, and outside of regular order, and if ever implemented that technical amendment would take back rights of self-governance that Congress and the President had delegated to American Samoa between 1929 and 1983.

The explanation given by the sponsors of section 12 of P.L. 98-213 in 1983, was that it was needed to prevent abuse of broad powers delegated by Congress to the President in 1929, and then re-delegated by the President to the Secretary of the Interior in 1951. That 1983 provision imposed the mandate that no amendment approved by the Secretary could take effect until Congress

enacted it as Federal law. This was itself an amendment to the local constitution imposed without regular order or deliberation.

The main problem with this unexpected congressional mandate is that it would apply to amendments proposed under the local constitution by the people, and ratified by majority vote in a referendum. This effectively allows Congress to nullify amendments approved by the people and the Secretary simply by doing nothing.

The authority is also redundant. Under the territorial clause, the Congress can approve or disapprove amendments made by the people and/or the Secretary. What that really demonstrates is that Federal power is supreme, and the people of American Samoa, as a territory, have powers of local self-determination only to the extent consistent with applicable Federal law.

It is technically true that under Executive Order 10264 the Secretary has powers over territorial law that could be abused. But over the years, in multiple referendums, including the 2022 vote, the voters in American Samoa have rejected proposals to reduce the powers of the Secretary under local constitution.

Additionally, congressional oversight of the Interior and the rest of the Administration has developed significantly since the early 1980s, further limiting the potential for any perceived overreach by current or future secretaries. Congress has well established power over all the territories, and repealing the 1983 statute does not and cannot affect that jurisdiction.

Instead, it is section 12 of P.L. 98-213 which takes away the local power to amend the local constitution, and presents the most potent and present risk of abuse not by the Secretary, but by Congress, including power to nullify any amendment the people may want, and do so by act or omission, either declaring its reasons or in silence.

With the Committee's permission, I would like to enter for the record a letter from the Senate President and Speaker of the House of the American Samoan Legislature in support of H.R. 6062, in which they outline the long history our territory has had with the United States and the Secretary of the Interior, and their desire to continue that relationship in a way that respects local determination.

Ms. HAGEMAN. So ordered.

[The information follows:]

**PREPARED JOINT STATEMENT FOR THE RECORD OF**  
**THE HONORABLE TUAOLO M. FRUEAN**  
**PRESIDENT OF THE SENATE**  
**AMERICAN SAMOA LEGISLATURE**  
**AND**  
**THE HONORABLE SAVALI TALAVOU ALE**  
**SPEAKER OF THE HOUSE OF REPRESENTATIVES**  
**AMERICAN SAMOA LEGISLATURE**  
**ON H.R. 6062**

Madam Chair Hageman, Ranking Member Fernandez, and members of the Subcommittee on Indian Affairs and Insular Affairs, thank you for the opportunity to provide a prepared statement for the record on behalf of the Legislature of American Samoa. It is an honor to address the committee and promote for continued self-governance and self-determination of our territory. We join Governor Lemanu Peleti Mauga and the people of American Samoa in supporting the efforts of Congresswoman Uifaatali Aumua Amata Coleman Radewagen to pass R.R. 6062.

For over 150 years, American Samoa has had a formal relationship with the U.S. government. This was first recorded in 1872 when Navy Commander Richard Meade of the USS Narragansett visited the harbor village of Pago Pago and entered into an agreement with then-High Chief Mauga for the use of the bay area as a ship coaling station and provision restocking. This started a long-lasting relationship and friendship between the Samoan islands and the U.S. which culminated in the signing of a deed of cession between the high chiefs of Tutuila and the U.S. in 1900. Tutuila agreed to “cede, transfer and yield up” the islands of Tutuila and Aunu’u to be a district annexed to the U.S. In return, the U.S. agreed to respect and protect the individual rights of all people dwelling in Tutuila to their lands and other property. The islands of Manu’a then were ceded to the U.S. in 1904.

From 1900 to 1951, American Samoa was administered by the U.S. Department of the Navy. On July 1, 1951, the administration was transferred to the U.S. Department of the Interior by Executive Order where it remains to this day. After the handover, the Department worked with the territory to foster greater self-determination and governance through the creation of a constitution. The goal was to prepare a document that would not only shape the territorial government but ensure that the agreements in the Deeds of Cessions were advanced.

Our people convened to adopt its first constitution in 1960 and revised the document several times in 1967, 1977, and 1978. Pursuant to Article V, Section 3, of the Revised Constitution of American Samoa, final approval or disapproval of amendments is made by the Secretary of the Department of the Interior. In 1983, P.L. 98-213, codified in 48 USC 1662a, added a layer of approval to our constitution’s amendment process to include an act of Congress. While the underlying reasons for the change continue to be unclear, it is with a great degree of certainty that 1662a does not align with the Territory’s ultimate goal of self-governance.

American Samoa continues to be the only territory to require an act of Congress to approve amendments to their constitution. For decades before the enactment of 1662a, the process set in place by our people remained ideal to maintain our relationship with the federal government. It remained ideal to uphold the promises by the signatories of the Deeds of Cession that welcomed American Samoa to the U.S. family. A relationship that has seen the U.S. live up to its promise to protect its Pacific nationals with Samoans contributing to the U.S. culture and way of life. This also includes our involvement in every U.S. conflict since it became a U.S. territory, sacrificing many of our men and women. We are very proud and loyal Americans.

In 2022, the Territory convened a Constitutional Convention whereby several amendments were voted on by delegates from each district. Several amendments were passed and forwarded to the Secretary to include changes in the selection process for the judiciary, veto override process for the legislature, redistricting, and an impeachment process for government officials. The list of amendments also included housekeeping items such as misspellings of district names and the proper names for districts. The process was followed and the civic involvement of the territory was front and center with the island consumed with the meetings. However, one of the most historic times in the Territory’s history must now await an uncertain fate where we must find time in Congress’s busy calendar to hear issues that many may find trivial.

We wish to return to the pre-1662a process where our relationship with the federal government remains with the Department of the Interior. The Insular areas have a long history with the Interior who have representatives specifically assigned to collaborate with each territory and monitor each daily. Congress will continue to have plenary authority over the territories pursuant to the Territories Clause of the U.S. Constitution. We, like all states and territories, will always rely on Congress for its wisdom and the direction of our nation. However, Congress should not be burdened with the management of the daily affairs of the American Samoa people, particularly approval of amendments to its constitution. These matters should ultimately be left to the will of the Territory through an open and democratic process as seen in the Constitutional Convention of 2022 and future meetings for like amendments.

As we navigate these rapidly changing and often trying times, we must meet these challenges with a constitution that is both fluid and conforming. Allowing American Samoa to determine its own fate without congressional permission is a step towards what was envisioned by forefathers of both the U.S. and Samoa when we agreed to our union in 1900.

We strongly support H.R. 6062 and urge markup by the committee and approval by Congress. Thank you again for the opportunity to address the committee through this statement.

---

Mrs. RADEWAGEN. American Samoa has over 70 years of experience being able to work out problems and sustain a productive relationship with the Office of the Secretary, and the people of American Samoa know where we would go if the Secretary abused power. We would go to Congress, and ask for intervention to help us protect our way of life if we ever need it.

But who will protect us if Congress abuses its power under the 1983 Act? Who do we call if Congress decides to nullify local self-determination amendments by doing nothing, and letting our acts of determination, self-determination, die on the vine? We currently have power to oppose abuse by the Secretary under Executive Order 10264 by turning to Congress. But we have no power to compel or even influence Congress to act affirmatively under the 1983 Act.

So, that one sentence add-on buried in the 1983 territorial spending bill takes back the fruits of limited self-determination we have achieved under the 1929 ratification of the Deeds of Cession, Executive Order 10264, and the local constitution adopted thereunder. Yet, the local constitution itself has never been enacted by Federal law, so the 1983 technical amendment prohibits the local constitution from being amended locally by the people in the same manner it was adopted locally by the people.

That is why, in 1984, just one year after the Act in question was passed outside regular, the U.S. Senate Committee on Energy and Natural Resources held an oversight meeting on the matter. And at that hearing, the U.S. Department of Justice witness expressed concern that the 1983 Act was federalization of an internal local constitutional act, self-determination, and could alter the special status of American Samoa under the 1900 and 1904 Deeds of Cession.

And now, here we are in 2024, five proposed amendments ratified by the people are pending with the Secretary, who has paused in taking action to give Congress a chance to avoid setting any unwanted precedents and to consider restoring the greater degree of self-determination we had before the 1983 bill.

Thus, H.R. 6062 is a long-overdue, one-sentence technical amendment correcting the 1983 Territorial Spending Act. But this time we are in regular order. And unlike 1983, the people of American Samoa are represented and have a seat at the table.

I look forward to hearing from our witnesses, and I yield back, Madam Chairwoman.

Ms. HAGEMAN. Thank you. The gentlewoman yields back. I will now recognize Representative Moylan for 5 minutes to speak on his legislation.

**STATEMENT OF THE HON. JAMES MOYLAN, A DELEGATE IN  
CONGRESS FROM THE TERRITORY OF GUAM**

Mr. MOYLAN. Thank you, Chairwoman Hageman, and I am so grateful for you and the Committee staff for working with me and holding this historic hearing on my bill following the passage of the COFA Act late last year.

What makes this even more important is that our panel is here today, and took a long trip to come all the way this far for this historic hearing. I want to thank Governor Lou Leon Guerrero for her presence, and also Mayor Jesse Alig, President of the Mayors Council.

In addition, I would like to recognize our former Congresswoman Madeleine Bordallo for all the hard work you continue to do for the people of Guam.

Also, we have here the Chief of Police, Mr. Ignacio, for the protection you are doing for our island of Guam, as well.

We have Director Mr. Ed Byrne, thank you, from the Department of Administration, and making sure things are handled.

And also, Governor Leon Guerrero, for all your staff that are present here with us today.

The three sections of this bill represent three potential solutions to issues plaguing Guam resulting from free migration allowed under the Compacts of Free Association.

Before I get into the details of H.R. 6273, I want to emphasize support for Compacts of Free Association, otherwise known as COFAs, as well as the support of our Governor and Guam citizens.

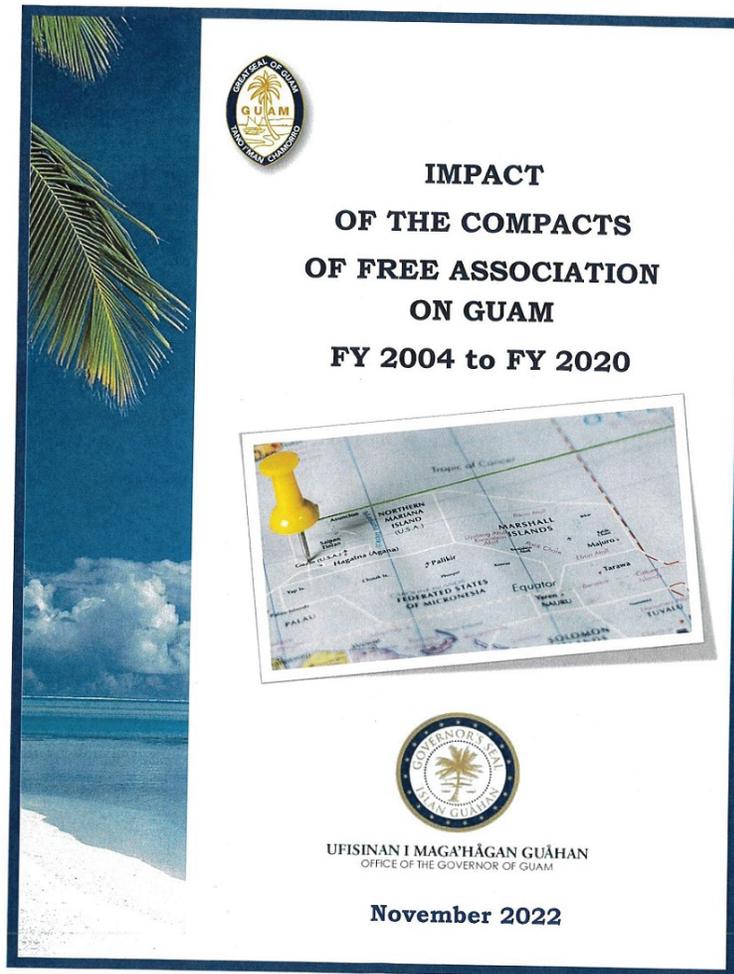
These agreements are critical to maintaining a free and open Indo-Pacific. They also represent America's commitment to close relations with the descendants of the former Trust Territory of the Pacific.

COFA migrants are our neighbors, our co-workers, and our leaders on Guam, we do not seek to end the agreements or relationships with the Federated States of Micronesia, Palau, or the Marshall Islands. Instead, I hope this bill will be the first step in redefining our inter-island relations and helping to build stable, prosperous economies for all island nations in the Pacific.

My bill, H.R. 6273, would seek to alleviate the stresses of this migration in three ways.

First, by reauthorizing compact impact aid to host jurisdictions and changing the recipients to only insular areas. This is done with the understanding that CIFA will solve the issues states are facing, but will not fully solve the concerns of the insular areas.

To illustrate this point, I would ask unanimous consent to enter into the record Guam's calculated costs of hosting migrants.  
Ms. HAGEMAN. So ordered.  
[The information follows:]



\*\*\*\*\*

The full document is available for viewing at:  
<https://docs.house.gov/meetings/II/II24/20240118/116694/HHRG-118-II24-20240118-SD004.pdf>

Mr. MOYLAN. These numbers are regularly over \$100 million annually. Meanwhile, compact impact, even when it existed, only sent \$15 million to Guam. This disparity will only be more prevalent when compact impact ceases altogether.

The second section of this bill will mandate a Memorandum of Understanding between the Federal Bureau of Prisons and Guam's local Department of Corrections. Our local jails are overcrowded, and with 17 percent of its inhabitants being COFA migrants, an already tight squeeze will quickly devolve into crisis without preventive action. Given that the COFA migrants are still given the right to free migration by the Congress, it does not make sense that the locality would be forced to foot the bill to pay for their incarceration.

And finally, section 3 of this bill will require that any migrant seeking residency in Guam must prove of employment or education that they will be undertaking upon their arrival. Guam is a small island. One-third of the island is owned by the Department of Defense. For those of us who live on the other two-thirds, it is critical that we all are productive citizens contributing to our local economy.

Now, 500 migrants coming to Hagåtña, our capital in Guam, will have a larger impact than 500 migrants showing up in the Lower 48. Guam will always welcome migrants looking to work hard and make a good living.

And in closing, Madam Chair, I thank my colleagues for their consideration of this bill. And if any of you would like to speak to me personally or bring any questions or concerns about these issues, my door is always open.

On Guam right now it is way early in the morning, and there are hundreds of constituents that woke up early to view this hearing and see us, the Governor and the Mayor, talk about their concerns, and I know they are proud to see their voices being heard, and they look forward to our discussion on this bill.

Thank you, Madam Chair, and I yield back.

Ms. HAGEMAN. The gentleman yields back. I will now introduce our witnesses for our panel.

Mr. Keone Nakoa, Deputy Assistant Secretary, Office of Insular and International Affairs, U.S. Department of the Interior, Washington, DC; the Honorable Talauega Eleasalo Vaalele Ale, Lieutenant Governor, American Samoa, Pago Pago, American Samoa; the Honorable Alexander Eli Jennings, Swains Island Delegate, American Samoa House of Representatives, Pago Pago, American Samoa; the Honorable Lou Leon Guerrero, Governor of Guam; and finally, the Honorable Jesse Alig, Mayor, Piti, Guam.

Let me remind the witnesses that under Committee Rules, they must limit their oral statements to 5 minutes, but their entire statement will appear in the hearing record.

To begin your testimony, please press the "talk" button on the microphone.

We use timing lights. When you begin, the light will turn green. When you have 1 minute left, the light will turn yellow. At the end of 5 minutes, the light will turn red, and I will ask you to please complete your statement.

I will also allow all witnesses on the panel to testify before Member questioning.

The Chair now recognizes Mr. Keone Nakoa for 5 minutes.

**STATEMENT OF KEONE NAKOA, DEPUTY ASSISTANT SECRETARY, OFFICE OF INSULAR AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, DC**

Mr. NAKOA. Thank you, Chair Hageman, Ranking Member Leger Fernández, and other distinguished members of the Subcommittee. Talofa, hafa adai, and aloha from Hawaii.

I am Keone Nakoa, Deputy Assistant Secretary of the Interior for Insular and International Affairs. It is an honor to be before this Committee on Indian and Insular Affairs as the representative of Assistant Secretary Carmen Cantor and the Department of the Interior.

The Committee has my full written testimony, but I would like to highlight some of the most important issues related to H.R. 6062, introduced by Representative Radewagen and H.R. 6273, introduced by Representative Moylan.

On H.R. 6062, the Department of the Interior supports this measure which would repeal a statutory requirement that amendments or modifications to the Constitution of American Samoa may be made only by Act of Congress. Enactment of H.R. 6062 would affirm the people of American Samoa's determination to amend their territorial constitution without further congressional action.

In 2022, American Samoa held a constitutional convention that consisted of members selected from each county in the territory and Swains Island. The convention recommended 11 amendments to the revised Constitution of 1967, and on November 8, 2022, a majority of voters approved 5 of the 11 proposed constitutional amendments. It was the first time since enactment of 48 U.S.C. 1662(a) that a majority of voters in American Samoa approved proposed amendments to the revised constitution.

In his letter transmitting the five approved amendments to Secretary Haaland, Governor Lemanu stated, "The people of American Samoa have spoken." Since receiving the letter, we at the Department have had several discussions with Governor Lemanu, Representative Radewagen, and members of their respective staffs about the process and next steps for adoption of the amendments to the revised Constitution of 1967. It has been their determination and our consensus decision that passage of H.R. 6062 is the best next step in the process to formally adopt the constitutional amendments and to honor the will of the people.

The people of American Samoa indeed have spoken, and we encourage this Committee to take swift action to approve H.R. 6062, and for Congress to pass the legislation.

We also acknowledge the honorable representative from American Samoa in her consistent efforts to protect, enhance, and advance American Samoan political development.

Related to H.R. 6273, the Guam Host Community Compensation Act, which would reauthorize the 2003 Compact Impact Grants to specify jurisdictions excluding Hawaii and provide other reimbursement to affected states and territories.

The proposed bill would also impose new requirements on individuals seeking to live in Guam under the compacts.

We acknowledge the unintended but significant costs to Guam and other territories and states related to the Compacts of Free Association, COFAs. According to a 2018 GAO report, after over 70 years of close social, political, economic, and cultural ties with the Freely Associated States, or FAS, an estimated 94,000 FAS individuals have properly exercised their ability to travel under the compacts, and now call the United States their home. This includes communities in virtually every state and territory in the country.

However, we cannot support H.R. 6273. This bill would impose additional requirements for non-immigrant residency in Guam which would place at risk our close relationships with the FAS, a cornerstone of U.S. national interest in the Pacific.

Further, the intended effect of the proposed legislation on the compacts and the Immigration and Nationality Act is somewhat unclear, given that under the compacts eligible FAS citizens do not require visas to travel to the United States, including Guam.

We agree with Representative Moylan that more Federal resources must be dedicated to support host territorial and state governments and FAS individuals residing in Guam and the other territories and states, and we again encourage Congress to pass the Compact of Free Association Amendments Act of 2023, which includes the Compact Impact Fairness Act, a bipartisan legislation co-sponsored by Representatives Moylan, Radewagen, and Case, among others.

This proposal includes language that would restore eligibility for key Federal public benefit programs for FAS individuals while they are lawfully present in the United States: an important long-term solution to the financial impacts of these communities on the United States, state, and territorial governments. This allows the Federal Government to rightfully share in covering a significant portion of the financial burden currently placed on state and territorial governments. Restored access to Federal public benefit means Guam and other host jurisdictions will have additional Federal resources to better support FAS citizens in their communities. Thank you again for this opportunity to provide testimony, and I am happy to take any questions.

[The prepared statement of Mr. Nakoa follows:]

PREPARED STATEMENT OF KEONE NAKOA, DEPUTY ASSISTANT SECRETARY, INSULAR  
AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR  
ON H.R. 6062 AND H.R. 6273

Chair Hageman, Ranking Member Leger Fernandez, and distinguished members of the Subcommittee, I am Keone Nakoa, Deputy Assistant Secretary of the Interior for Insular and International Affairs. It is an honor for me to appear before the Subcommittee on Indian and Insular Affairs as the representative of Assistant Secretary of the Interior for Insular and International Affairs to provide testimony on H.R. 6062, a bill relating to Congressional approval of amendments to the American Samoa Constitution, introduced by Representative Radewagen, and H.R. 6273, the Guam Host Community Compensation Act, introduced by Representative Moylan.

### **H.R. 6062, Amendments to the American Samoa Constitution**

The Department of the Interior supports H.R. 6062, which would repeal a statutory requirement that amendments or modifications to the Constitution of American Samoa may be made only by Act of Congress. Enactment of H.R. 6062 would restore the ability of the people of American Samoa to approve amendments to the territorial constitution without further Congressional action.

In 2022, American Samoa held a Constitutional Convention that consisted of members selected from each county in the Territory and Swains Island. The Convention recommended 11 amendments to the Revised Constitution of 1967, and on November 8, 2022, a majority of voters approved five of the eleven proposed constitutional amendments. It was the first time since enactment of 48 U.S.C. 1662a that a majority of voters in American Samoa approved proposed amendments to the Revised Constitution of 1967.

In his December 14, 2022, letter transmitting the five approved amendments to Secretary of the Interior Deb Haaland, Governor of American Samoa Lemanu P.S. Mauga's first sentence was simply, "The people of American Samoa have spoken." Since receiving the letter, we at the Department have had several discussions with Governor Lemanu, Representative Radewagen, and members of their respective staffs about the process and the next steps for adoption of the amendments to the revised constitution of 1967. It has been their determination and our consensus decision that passage of H.R. 6062 is the best next step in the process to formally adopt the constitutional amendments and to honor the people's vote on November 8, 2022.

The people of American Samoa have spoken, and we encourage this Committee to take swift action to approve H.R. 6062 and Congress to pass the legislation. We also acknowledge the honorable representative from American Samoa in her consistent efforts to protect, enhance, and advance American Samoa's political development.

### **H.R. 6273, The Guam Host Community Compensation Act**

H.R. 6273, the "Guam Host Community Compensation Act," would in part amend a portion of the Compact of Free Association Amendments Act of 2003 relating to the impact of the Compacts on specified jurisdictions within the United States to reauthorize and amend the compact impact grants to those specified jurisdictions and would additionally provide other compensation to affected territories. The proposed bill would also impose new requirements on individuals relying on the immigration provisions of the Compacts to live in Guam.

We acknowledge the unintended but significant costs to Guam and other territories and states related to the Compacts of Free Association (COFAs) over the years. According to the U.S. Government Accountability Office, in 2018, after over 70 years of close social, political, economic, and cultural ties with the Freely Associated States (FAS), there were an estimated 94,000 FAS individuals who have properly exercised their ability to travel in the United States under the COFAs and now call the United States their home—this includes communities in virtually every state and territory in the country.

We cannot, however, support H.R. 6273 because the bill would impose additional requirements for non-immigrant residency in Guam, which would place at risk our close relationships with the FAS, a cornerstone of U.S. national interests in the Pacific. Further, the intended effect of the proposed legislation on the Compacts and the INA is somewhat unclear, given that under the Compacts, eligible FAS citizens do not require visas to travel to the United States, including Guam.

We agree with Representative Moylan that more federal resources must be dedicated to support host territorial and state governments and FAS individuals residing in Guam and the other territories and states, and we again encourage Congress to pass the Compact of Free Association Amendments Act of 2023, which includes the Compact Impact Fairness Act, legislation which was co-sponsored by Representatives Moylan, Radewagen, and Case, among others. The proposal includes language that would restore eligibility for key federal public benefit programs for FAS individuals while they are lawfully present in the United States—an important long-term solution to the financial impacts of these communities on U.S. state and territorial governments.

Restoring access to federal public benefits would have a significant positive impact on these FAS individuals; it also would allow the federal government to rightfully share in covering a significant portion of the financial burden currently placed on state and territorial governments for hosting these small, but unique, communities without an additional costly administrative burden. Further, the benefits from the federal government would follow the FAS individuals in whichever state or territory they choose to live.

With restored access to federal public benefits, Guam and other jurisdictions will have the resources that their government agencies need to better support FAS citizens in their communities.

I thank you again for the opportunity to provide this testimony and am happy to take any questions.

---

QUESTIONS SUBMITTED FOR THE RECORD TO MR. KEONE NAKOA, DEPUTY ASSISTANT SECRETARY, OFFICE OF INSULAR AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

**Mr. Nakoa did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.**

#### **Questions Submitted by Representative Westerman**

*Question 1. How would H.R. 6062 affect the Department of the Interior's process in approving amendments to American Samoa's constitution?*

*Question 2. Section 12 of Public Law 98-213 that H.R. 6062 would repeal, was enacted in 1983 because of fears of unilateral decision making in American Samoa by the Secretary of the Interior.*

*2a) How will the DOI assure the residents of American Samoa that the DOI will not act unilaterally and will work with the American Samoan local government on amendments to American Samoa's constitution?*

*Question 3. H.R. 6062 is designed to remove barriers and subsequently expedite the approval process for changes to the American Samoa Constitution. Yet, it is not Congress who has held up the process since 2022.*

*3a) How can we ensure that without Congressional approval DOI will continue to evaluate amendments to the American Samoan Constitution when there has been no answer regarding the 2022 amendments?*

*Question 4. Would the Compact Impact Fairness provisions provide the individual territories and state governments the same level of funding provided under the Compact Impact grants?*

*4a) Does the Administration believe the Compact Impact Fairness provisions alleviate the issues raised by officials from Guam regarding the impacts of the Compacts has had on Guam?*

*Question 5. In 2020, the Government Accountability Office published a report titled, "Compacts of Free Association: Populations in U.S. Areas Have Grown, with Varying Reported Effects." This report highlighted the issue of a misallocation of Compact Impact grant funds from FY 2015 through 2020 because of an enumeration error by the U.S. Census Bureau on the numbers of migrants from the FAS within each U.S. state and territory. As a result, Hawaii was underfunded while the Pacific territories were provided more grant funds than what they would have received without the error.*

*5a) Is there a risk that this type of error could happen again if Compact Impact grants were extended?*

*Question 6. Under the 2003 Compacts of Free Association, Hawaii and the Pacific territories were eligible to receive the Compact Impact grants. Under H.R. 6273, Hawaii would no longer be eligible to receive Compact Impact grants.*

*6a) With \$30 million for the annual Compact Impact grants under the 2003 Compacts, should there be an adjustment to the annual grant amount if Hawaii is excluded under H.R. 6273?*

*Question 7. The witnesses from Guam have testified that the biggest impacts of hosting COFA migrants in Guam are on public safety and education.*

*7a) Does the Department agree with this assessment? What is the Department doing to help address these concerns?*

**Questions Submitted by Representative Radewagen**

*Question 1. Deputy Assistant Secretary Nakoa, I want to thank Secretary Haaland as well as Assistant Secretary Cantor for supporting H.R. 6062, and I want to thank you for your leadership in consultations with American Samoa's government to develop an approach the Administration is supporting. Do you agree that the ability of Congress to direct the policies and actions of the Secretary and the American Samoa government in local constitutional affairs as determined by Congress is vested by the Territorial Clause, so that we do not need a statute to give that power to Congress?*

*Question 2. At the hearing on H.R. 6062 on January 18, 2024, several statements were made to the effect that 48 U.S.C. 1662a is a source of Congressional authority to participate in or determine the outcome of the American Samoa constitutional amendment process. Rather, is it correct that:*

*2a) The source of the authority of the President delegated to the Secretary of the Interior to approve amendments to the American Samoa constitution is, in order of priority, Congressional enactment of 48 U.S.C. 1661, Executive Order 10264 signed pursuant thereto, and the 1967 Revised Constitutional of America Samoa approved the Secretary acting thereunder;*

*2b) 48 U.S.C. 1662a is not the source of and adds nothing to the power of Congress under the Territorial Clause to determine disposition of proposed amendments to the local constitution before, during and after any local constitutional amendment process or approval by the Secretary of the Interior under Executive Order 10264;*

*2c) Repeal of 48 U.S.C. 1662a will not reduce or restrain the power of Congress to determine disposition of any constitutional amendment proposed or approved for American Samoa under Executive Order 10264;*

*2d) The only actual effect 48 U.S.C. 1662a is to bar and prohibit entry into force or implementation of constitutional amendments approved by the Secretary under Executive Order 10264, for an indefinite period with no defined standard or process of review, unless and until Congress approves or disapprove any such amendment proposed and approved by the people and the Secretary thereunder?*

*Question 3. Is it correct the provisions of 49 U.S.C. 1662 recognize that Swain's Island and persons of U.S. nationality residing there have the same political status and rights as all other persons of American nationality residing anywhere in American Samoa as provided under 48 U.S.C. 1661?*

*Question 4. Although the U.S. Department of Justice did not attend the hearing of this Committee on January 18, can you confirm that it is the legal position of the U.S. Government, including the U.S. Department of Justice, that 48 U.S.C. 1662a does not increase decrease or increase the power of Congress under the Territorial Clause to determine the disposition of amendments concerning proposed by the local government under the local constitution?*

Ms. HAGEMAN. I thank the witness for their testimony. The Chair now recognizes Lieutenant Governor Ale for 5 minutes.

**STATEMENT OF THE HON. TALAUEGA ELEASALO VAALELE ALE, LIEUTENANT GOVERNOR, AMERICAN SAMOA, PAGO PAGO, AMERICAN SAMOA**

Mr. ALE. Madam Chair and members of the Committee, thank you for the opportunity to testify.

I respectfully request that my oral and written statement, with all attachments thereto, be included as part of the record.

As Lieutenant Governor of American Samoa, I am honored to be here to represent Governor Lemanu Mauga to express the American Samoa Government's support for H.R. 6062.

American Samoa is the only U.S. territory that has to come to Congress and ask permission whenever our people want to amend our constitution. This is because of 48 U.S.C. 1662, enacted in

1983. H.R. 6062 seeks to remove this unnecessary and unique burden on the American Samoa local right of self-determination.

American Samoa joined the United States not because we were conquered or purchased, but because of an agreement we voluntarily entered into. We were induced to cede our islands to the United States by promise made to our forefathers embodied in the Deeds of Cession. That ability to preserve our culture would always be respected and protected.

The promise made to our forefathers has largely been kept, and we have more than held up our end of the bargain by demonstrating extraordinary loyalty to this country. American Samoa has the highest rate of military enlistment of any U.S. state or territory, and we have sacrificed much more than our fair share of our best men and women in America's conflicts.

Governor Lemanu himself exemplifies this ethic of military service. He retired as a major in the U.S. Army after serving for over two decades, including the Gulf War and the wars in Iraq and Afghanistan.

As stated earlier, our people have spoken in 2022. We followed the constitutional procedures and amended our constitution. I was honored to be chosen by Governor Lemanu to chair the Constitutional Review Committee. The Constitutional Convention reviewed these provisions, and it was put to vote by the people of American Samoa.

One amendment approved by the voters would establish an impeachment procedure for the Governor and Lieutenant Governor. Another would give the Delegate from Swains Island, an atoll in a remote part of our territory, the right to vote in our House of Representatives. Other amendments would change the names or spellings of some of our counties. These amendments are all matters of local issues that our people are quite capable of deciding for ourselves, without being micromanaged by Congress. The congressional approval requirement that currently exists under 1662(a) makes it infinitely more difficult for the people of American Samoa to exercise self-determination and amend their constitution.

We stand behind this legislation, and we fully support the submission of this law to repeal section 1662.

Congress will always have the ultimate authority over American Samoa under the territorial clause, and will continue to be a partner of American Samoa as we move forward in the future and determine how and where we will end up as a community and as a government.

I am reminded today of an ancient Samoan expression, [speaking Native language], meaning, "May both sides be unified in equal strength." H.R. 6062 represents the inestimable value we place on our unity with the United States, but also the equal importance we place on our constitution and the protection of the Samoan way of life.

Let me close by again expressing my gratitude and thanks to this Committee for allowing us to testify; to our Member of Congress, Amata, for introducing this important legislation and for allowing my brother, Delegate Su'a, to appear before this Committee and to provide a perspective of how American Samoa exists today. I think it is important for Congress to hear from him and how the people

in Swains have fared during this partnership with American Samoa.

At the end of the day, however, it will be shown that we stand together with Swains, and we all support this legislation because it is important for the future and the self-determination of all American Samoa, which includes Swains, Manu'a, and the islands of Tutuila and Aunu'u.

With that I close. Thank you very much.

[The prepared statement of Mr. Ale follows:]

PREPARED STATEMENT OF HON. TALAUEGA ELEASALO VAALELE ALE,  
LT. GOVERNOR OF AMERICAN SAMOA  
ON BEHALF OF  
HON. LEMANU PALEPOI SIALEGA MAUGA, GOVERNOR OF AMERICAN SAMOA  
ON H.R. 6062

Madam Chair and members of the Committee, thank you for the opportunity to testify.

As the Lt. Governor of American Samoa, I am here representing Governor Lemanu Palepoi Sialega Mauga to express the American Samoa Government's support for H.R. 6062. And in supporting H.R. 6062 I speak not only for Governor Lemanu, but also for the people and government of American Samoa. Governor Lemanu and I, our Senate, and our House of Representatives are all united in support of this legislation authored by our Congresswoman, Uifa'atali Aumua Amata Coleman Radewagen.

Current law, as codified in 48 United States Code Section 1662a, provides that amendments or modifications to the constitution of American Samoa, as approved by the Secretary of the Interior under Executive Order 10264, may be made only by Act of Congress. Prior to enactment of Section 1662a in 1983, the only federal approval required to amend or modify our constitution was that of the Secretary of the Interior.

American Samoa is the only U.S. territory that has to come to Congress and ask permission whenever our people want to amend our constitution. We recognize that each territory's legal relationship with the U.S. is unique, but American Samoa's right of self-determination should not be uniquely burdened with this requirement for Congressional approval.

This is particularly true because American Samoa has a very special relationship with the United States. We joined the U.S. not because we were conquered or purchased, but because of an agreement we voluntarily entered into. We were induced to cede our islands to the U.S. by the promise made to our forefathers, embodied in the Deeds of Cession, that our ability to preserve our culture would always be respected and protected. We have always cherished our right to self-determination within the American system.

For well over a century, we have been a proud part of the American family while still practicing the culture that defines us as a people. The promise made to our forefathers has largely been kept, and we have more than held up our end of the bargain by demonstrating extraordinary loyalty to this country. American Samoa has the highest rate of military enlistment of any state or territory in the U.S., and we have sacrificed much more than our share of our best men and women in America's conflicts. Governor Lemanu himself exemplifies our ethic of military service: He retired as a major after serving for over two decades, including in the Gulf War and the wars in Iraq and Afghanistan.

The people of American Samoa have always been first in line to fight for America's freedom, and we hope Congress will support us in our quest for greater self-determination.

Our people demonstrated their commitment to self-determination and participatory democracy in 2022. Governor Lemanu, consistent with the applicable provisions of the American Samoa Constitution and local law, called a Constitutional Convention. The Governor appointed me to chair the Constitutional Review Committee, which recommended proposed amendments to be considered at the convention. Local councils from each county selected a total of 129 delegates to the convention to discuss various proposed constitutional amendments. The result of the convention was that 11 proposed amendments were put on the ballot for the

entire electorate to vote on. In November 2022, five of those amendments were approved by our people.

The amendments that were ultimately approved are an assortment of measures to enhance our self-governance. One measure would establish an impeachment procedure for the Governor and Lieutenant Governor. Another would give the delegate from Swains Island, an atoll in a remote part of our territory, the right to vote in our House of Representatives. Other amendments might appear less significant, such as changing the names or spellings of some of our counties.

These amendments may vary in their perceived significance, but what they have in common is that they are all matters that our people are quite capable of deciding for ourselves without being micromanaged by Congress. Do we really need to take up Congress's valuable time to decide whether "Ma'oputasi," a county in our Eastern District, should be spelled with an "o" or a "u"?

H.R. 6062 would restore a status quo that worked very well for decades prior to 1983: Amendments and modifications to the American Samoa Constitution would have to be approved by the Secretary of the Interior but not by Congress. That procedure was much more efficient, because the Department of the Interior is the federal government's repository of institutional knowledge on American Samoa and its relationship with the United States. Interior has the experts who can engage with our issues without having to get up to speed.

Under the old arrangement, where Congressional approval was not required, American Samoa was able to make significant, steady progress along the path of self-governance. With the approval of the Secretary of the Interior, American Samoa adopted its first constitution in 1960. Working with the Department of the Interior, we adopted a revised constitution after a Constitutional Convention in 1967. In 1977, pursuant to a Secretary's order, our constitution was amended again to empower our people to elect our Governor and Lieutenant Governor. Later that year, the Secretary granted our Senate's request to amend our constitution so that, among other things, the Attorney General of American Samoa would be appointed by the Secretary and confirmed by our local legislature. The following year, the Secretary approved our Senate's request to have the Governor rather than the Secretary appoint the Attorney General.

The old system served us well. The relationship between American Samoa and the United States was characterized by cooperation and mutual respect. We were allowed to develop politically at our own pace, progressing steadily along the path of self-determination and self-governance. The promise of the Deeds of Cession was being fulfilled. H.R. 6062 would restore the arrangement that worked so well for American Samoa and the federal government alike.

The Congressional approval requirement makes it infinitely more difficult for the people of American Samoa to amend their constitution when they see fit. Congress's calendar is subject to partisan machinations that can make it difficult to pass even essential legislation in a timely fashion. The ability to pass legislation, even seemingly noncontroversial legislation, is always subject to external factors that have nothing to do with us and are beyond our control. We are a small, remote territory. It is hard for us to compete for attention with powerful interests when so many important things are going on. Congress already has so much on its plate, and we don't want to add to it every time our people want to amend our constitution.

If we submit constitutional amendments to Congress under current law, Congress has no obligation to act within a reasonable time. In fact, it has no obligation to act at all, or to even respond to us. I'm not suggesting that Congress would ignore us. But it's easier for us to inadvertently get lost in the shuffle with Congress than with the Interior Department, which has to deal with us every day.

Under the Territorial Clause, Congress will of course still retain full authority over American Samoa. While H.R. 6062 would eliminate the need for us to get Congress's prior approval before amending our constitution, Congress would still have full authority to take any appropriate action if American Samoa were ever to do anything that Congress deemed improper. Passing H.R. 6062 would thus not diminish Congress's oversight authority over American Samoa; it would simply excuse Congress from the obligation to micromanage American Samoa in a way that it micromanages no other territory—and in a way that inappropriately impedes our ability to exercise self-determination.

I respectfully request that the attached memorandum prepared for the Governor on 48 U.S.C. 1662a be included in the record. Additional supporting material will be submitted after this hearing pursuant to Committee rules. The memorandum provides detailed historical perspective on how Section 1662a inadvertently upset a very well calibrated mechanism for allowing American Samoa to progress toward self-determination under Congress's ultimate supervision. That well calibrated mechanism would be restored with H.R. 6062.

I am reminded today of an ancient Samoan proverbial expression: “Ia ō gatasi le futia ma le umele,” meaning “May both sides be unified in equal strength.” H.R. 6062 represents the inestimable value we place on our unity with the United States but also the equal importance we place on our Constitution and the protection of the Samoan way of life.

For American Samoa, self-determination is an ongoing journey. Congress has of course been an essential part of that journey. We appreciate that and will continue to call on Congress to request what we need to keep making progress. What we need from Congress now is the same flexibility that Congress allows to all of the other territories to shape their own future.

Thank you.

\*\*\*\*\*

#### ATTACHMENT

#### **MEMO: Political and Legal History of 48 U.S.C. 1662a**

#### **CONCLUSIONS AND RECOMMENDATIONS:**

1. 48 U.S.C. 1662a does not in any respect or by any degree define, implement or enhance the Territorial Clause power of Congress to approve or disapprove, modify, or declare null and void any amendment to the local constitution approved by the Secretary of the Interior pursuant to Executive Order 10264, as authorized by Congress under 48 U.S.C. 1661. Accordingly, Congressional power would not be diminished, restrained or relinquished by repeal of 48 U.S.C., 1662a.
2. The sole effect of 48 U.S.C. 1662a is to make approval by an act of Congress a condition precedent for any amendment approved by the Secretary under Executive Order 10264 to enter into force, including amendments ratified by a majority vote in a referendum conducted by the American Samoan Government in accordance with local laws.
3. The historical role of the Congress, President, Secretary of the Interior and American Samoan Government in lawful governance of American Samoa, including adoption of the local constitution and amendments thereto pursuant to local law sustains self-government in a manner compatible with the 1900 and 1904 Deeds of Cession, 48 U.S.C. 1661, Executive Order 10264, the 1967 Revised Constitution of American Samoa and local law promulgated thereunder, subject to and consistent with federal law made applicable to American Samoa by Congress.
4. Because Congress has the absolute power to act any time it chooses before, during or after amendment of the local constitution, and determine disposition of any proposed or approved amendment, there is no compelling juridical justification or prudential reason to make amendments contingent on action by Congress before amendments are promulgated and take effect as otherwise authorized by federal and local law.
5. Accordingly, in the interests of local democratic self-determination and preservation of the American Samoa way of life consistent with 48 U.S.C. 1661, the extraneous mandate of 48 U.S.C. 1662a should be repealed.

#### **Part One: Framework for self-determination to preserve or change current status**

The framework for local self-government that preserves American Samoa’s cultural, political and legal order, but allows for change through local self-determination, begins with the 1900 and 1904 Deeds of Cession. The 1929 Ratification Act (48 U.S.C. 1661) confirmed the Deeds of Cession, including U.S. obligation to respect local self-determination in local cultural affairs. That 1929 act of Congress delegated to the President of the United States responsibility for conducting federal affairs in the territory consistent with U.S. obligations under the Deeds of Cession.

Pursuant to 48 U.S.C. 1661, in 1951 the President signed Executive Order 10264, which delegated to the Secretary of the Interior responsibility to conduct federal affairs in American Samoa on behalf of the President consistent with the Deeds of Cession. Finally, acting under Executive Order 10264, the Secretary approved the 1967 Revised Constitution of American Samoa, after its approval by the voters of the territory in 1966.

Those instruments provide the framework for self-determination in all local affairs not otherwise governed by applicable federal law. The local constitution provides for local self-government under the current status, and it can be amended by local initiative under the constitution, or otherwise proposed and approved under local law, with approval of the Secretary under Executive order 10264.

That framework remains unchanged since adoption of the local constitution in 1967, except that in 1983 a statute that has never been implemented or applied would require Congress to approve amendments after approval by the voters and the Secretary.

Now for the first time since 1983 amendments have been approved by the voters, and the Secretary as well as Congress are considering whether seeking approval of Congress under the 1983 statute is consistent with purposes of the framework for self-determination already previously established by Congress.

As explained in detail below, in 1983 the Member of Congress from American Samoa proposed and Congress adopted a one sentence statutory provision requiring Congress to approve any amendment to the local constitution adopted under E.O. 10264 (See, U.S. Public Law 98-213, Sec. 12; 48 U.S.C. 1662a).

That provision applies to any amendment approved by the Secretary, including amendments proposed through the amendment process prescribed in the 1967 local constitution at Article V, Section 3 and Section 4, or otherwise lawfully conducted under local authorities within the framework of self-government in all matters not otherwise governed by applicable federal law.

48 U.S.C. 1662a lay dormant from 1983 to 2022, simply because no amendment to the local constitution was ratified by voters in a local referendum or otherwise approved by the Secretary of the Interior during that period. There were multiple constitutional conventions called by past Governors under the local constitution and/or local law, and referendums were conducted on proposed amendments, but none were approved until five of 11 amendments were approved by voters in 2022.

Accordingly, the efficacy and operation of 48 U.S.C. 1662a was never put to the test until the 2022–2023 period American Samoa transmitted the approved amendments to the Department of the Interior, which has had the question of approval under advisement while consulting with the American Samoa Government and Congress about the proposal by the Member of Congress from American Samoa and local leaders that 48 U.S.C. 1662a be repealed before a precedent for its application is created.

The role of the Secretary was approved by the voters in ratifying the local constitution in 1967, and derives in turn from the authorities and responsibilities of the Secretary Executive Order 10264. Accordingly, that role for the Secretary is not in itself a reason much less justification for 48 U.S.C. 1662a.

As noted, on November 8, 2022, the voters of American Samoa approved 5 of 11 amendments to the 1967 Revised Constitution of American Samoa. Three of the voter-approved amendments were technical changes conforming terms used in constitution to local language per custom, one enabled impeachment and removal of the Governor by the Legislature, and one gave the non-voting member of the Legislature from Swain's Island a vote in that body.

The amendments were proposed in 2022 by a convention called under the authority of the Governor, under local authorities and measures consistent with procedures for proposing and approving amendments pursuant to Article V, Section 4 of the 1967 Revised Constitution. The Department of the Interior provided a \$150,000 grant for the convention and referendum as called by the Governor.

Amendments proposed and ratified by voters, including under Article V, Section 3 or Section 4 of the constitution, must be approved by the Secretary of the Interior in the same manner as the constitution was adopted in 1967. Accordingly, the Secretary has the authority under Executive Order 10264 to approve amendments proposed by a convention called under authority of the Governor and approved by majority vote in a referendum conducted under local law.

After the 2022 vote in American Samoa, back in Washington it was determined by Interior Department legal and policy staff that the U.S. need not determine the local protocols for proposing and approving local amendments. Since the local process was determined lawful under both federal and local law, it was confirmed by the Department of the Interior that the Secretary had the authority and responsibility to either approve or disapprove any amendments proposed and approved locally.

In addition, it was determined by the American Samoa Government and the Department of the Interior that unless 48 U.S.C. 1662a were repealed, the amendments approved in 2022 could not take effect without the act of Congress in 1983.

In the past, multiple constitutional conventions have been called in the same manner as the 2022 convention, but voters have rejected all proposed amendments.

In 2022, as noted, one of 6 amendments rejected by voters would have reduced the Secretary of the Interior's role in governance of the territory, including approval of constitutional amendments.

In all previous constitutional amendment votes the vast majority of Americans in American Samoa rejected all amendments that would change the role of the Secretary of the Interior under Executive Order 10264. In 2022, the amendment that would have reduced the DOI Secretary's role under the local constitution was also rejected.

The record of majority rule in past votes expressing trust in and reliance on the governing arrangements under 48 U.S.C. 1661 and Executive Order 10264 are understood in American Samoa as a record of self-determination in favor of the current status defined by the Deeds of Cession and the local constitution.

### **Part Two: Why repeal is best option**

The 1967 Revised Constitution of American Samoa adopted by majority rule in the 1966 ratification vote, including its amendment process, was approved by the Secretary and thereby entered into force in 1967. However, approval of the Secretary at least for now is no longer the last step in the constitutional amendment process.

That is because in 1983 staff acting on behalf of the Congress member from American Samoa, Fofu Sunia, requested House managers of a territorial spending bill to insert a one sentence amendment in that legislation that became 48 U.S.C. 1662a.

Whatever the purposes and intentions for that 1983 bill at the time, the long-term effect that became apparent was that a local democratic act of self-determination to amend the local constitution approved by the Secretary can no longer be given effect in the same manner by which the territorial constitution was itself approved by the Secretary and given effect in 1967.

Specifically, 48 U.S.C. 1662a makes Congressional action necessary, but does not require Congress to act. The result is Congress in effect can knowingly or unknowingly nullify the vote of the people and Secretarial approval of an amendment under Executive Order 10264 by simply doing nothing. By act or omission of either the Senate or the House the vote of the people can be ignored, nullified and vitiated.

Congress already has plenary power under the Territorial Clause of the U.S. Constitution to approve or disapprove of any amendment to the constitution before or after it is approved by the voters, the local government or the Secretary. The 1983 amendment is in that sense a hollow act by mere statute that does not and cannot give Congress power it has under the Constitution.

What the 1983 statutory requirement of Congressional approval does is empower either chamber of Congress to suspend operation of the local constitution and democratic self-determination on a local self-government and home rule issue by taking no action. It allows nullification of democratic process by Congress acting passively, without exercising its constitutional power over territories authoritatively and affirmatively.

Subsequently, after 48 U.S.C. 1662a became law, Congress was advised in 1984 testimony by the Department of Justice that the 1983 amendment might have unintended consequences relating to the territory's status and federal relations as described below. See, U.S. Senate Energy and Natural Resources Committee, Hearing Report, "Revised Constitution of American Samoa," May 8, 1984.

Thereafter, recognition increased that the 1983 amendment was not warranted or needed. Accordingly, Congressman Sunia's successor, Eni Faleomavaega, proposed legislation in 2005 to repeal 48 U.S.C. 1662a.

However, there was confusion in Congress about whether repeal of the act would relinquish powers of Congress, which is not the case given the plenary powers of Congress over all matters of territorial governance, including amendments to the local constitution.

Now, decades later, it might seem like a logical solution to this anomaly going forward to amend the 1983 statute by requiring Congress to act on a proposed amendment within a specified period time. That, of course, would not be binding or enforceable, unless perhaps the statute provided the amendment would take effect if Congress does not act by a specified date.

That option of Congressional approval by default if Congress does not act by a date certain is consistent with the automaticity of an effective date for locally ratified constitutions submitted to Congress by Guam or the U.S. Virgin Islands territory under a 1978 federal statute (P.L. 94-584). But that 60 rule does not apply to amendments (and no constitution has ever been adopted by those two territories).

Another option might be to limit the application of 48 U.S.C. 1662a to amendments proposed and initiated by the Secretary under Executive Order 10264 but not jointly with the Government of American Samoa, and/or proposed and ratified according to local law. That would change and limit the role of the Secretary in a way rejected by voters in every referendum since 1967, including the 2022 vote.

That latter option also would not fully democratize the process (if that were the goal), as long as the Secretary can control what amendments would ever reach Congress after approval by the voters, through the power to approve or disapprove. So, unless the role of the Secretary is either radically altered or ended, the current law will remain.

### **Part Three: Political risk of clouding American Samoa's status**

In the 1984 hearing before the Senate Committee on Energy and Natural Resources cited above, a Deputy Assistant Attorney General from the Office of Legal Counsel in the U.S. Department of Justice suggested implementation of 48 U.S.C. 1662a could raise questions and concerns about whether that might alter political status, rights or equities of American Samoa in the federal-territorial relationship.

While the ultimate effect or impact of those questions and concerns may be more speculative than determinative, the fact that DOJ would give such testimony is extraordinary and cannot be dismissed by countervailing legal or political speculation. Indeed, even if only seen as an expression in 1984 of DOJ disapproval of the adoption of 48 U.S.C. 1662a without regular order and DOJ review, the 1984 DOJ testimony demands attention and consideration.

Alone the DOJ position in 1983 about the 1983 one sentence add-on to P.L. 98-213 may not be legally dispositive, but it augments and provides a political risk context for the preceding discussion of the legal anomalies emanating from 48 U.S.C. 1662a.

Specifically, DOJ indicated “federalization” of the local constitution under 48 U.S.C. 1662a could open not only the constitution but even the Deeds of Cession to amendment or revision the same as a generic territorial organic act, rather than a historical legacy of stable relations under 48 U.S.C. 1661.

The result predicted by DOJ was risk that American Samoa's unique status could be modified. If so, the territory as well as its people who are U.S. nationals could be reclassified for the first time since 1900, as a territory and population indistinguishable from other four unincorporated by statutorily organized territories.

Once articulated by DOJ in 1984, even if temporized with the passage of time this concern cannot simply or lightly be explained away or ignored. DOJ cannot “take it back” or give reassurances that mitigate the effects of the questions DOJ raised.

Those concerns are now part of the political culture of American Samoa, and contribute to the steadfastness of its people to preserve a unique tradition of patriotism and allegiance combined with autonomy and customary way of life, which the U.S. promised to help preserve in the 1900 and 1904 Deeds of Cession. That is what self-determination means to American Samoa.

In this regard, it must be recalled and understood emphatically that American Samoa is not an “organized” territory, that is, not subject to an organic act of Congress establishing local self-government and defining federal-territorial relations under federal law on the basis of conquest or purchase of the islands by the U.S. federal government.

Rather, American Samoa was not taken as a prize of war or purchased by the highest bidder. Instead, the high chiefs ceded their sovereignty and islands to the U.S. by deeds in 1900 and 1904. In accepting and enacting the terms of those deeds Congress affirmed that American Samoa was recognizing the U.S. as sovereign and that the people now owed allegiance to the United States.

At the same time, as noted, the U.S. accepted the obligation to protect and preserve the customs and traditions of American Samoa and its way of life, including the traditional landownership system. As a result, the federal footprint in American Samoa is very small compared to other territories.

Given this degree of both legal and de facto autonomy, far fewer federal statutes apply, and American Samoa proudly and patriotically has statutory U.S. nationality but not statutory citizenship unless individually acquired. There is no federal court in American Samoa and its High Court has been appointed by the Secretary of the Interior.

If the status of American Samoa and its U.S. national population is to change, its leaders reportedly believe that best would be initiated in the people before being proposed to Congress or imposed by a court. That is the position local government leaders successfully argued in the federal courts during *Fitise manu* case, seeking to federalize constitutionally imposed birthright citizenship in the territory by court ruling without democratic consent of the governed.

And that is why the Governor, both Houses of the local Legislature and senior local and federal officials directly responsible for leadership on this matter have proposed that the 1983 amendment taking away home rule under the people's constitution be repealed. That is because in its historical context the 1983 amendment requiring Congress to approve any amendments to the constitution is not consistent with self-determination.

As noted above, in the 2022 vote, the amendment conferring voting rights on the representative from Swain's Island is the only amendment passed that ushers in a change in local political affairs. That and the other approved amendments need to undergo Interior Department legal review. Frustration over delay in federal approval of the 2022 vote on several amendments to the local constitution is understandable.

However, there is now valid concern and hesitation about action by the Secretary of the interior that could trigger Congressional inaction, on one hand, and Congressional hearings in which approval or disapproval of an amendment such as the Swain's Island vote decided by the voters back home could become the focus of a debate over election law in Congress.

Thus, the decision in Washington not to act without further deliberation is prudent given flaws in the hastily adopted 1983 federal law creating a local constitutional political conundrum under 48 U.S.C. 1662a that now only Congress can correct.

To understand the legislation introduced to repeal that errant 1983 statute requiring Congressional ratification-action on amendments, and to define the real options for resolution of this dilemma, it is important understand American Samoa's political ethos.

#### **Part Five: America's Most Self-Governing Overseas Territorial Possession**

American Samoa is the only U.S. territory that is not seeking changes to its political status and relations with the federal government. The traditional and elected leaders of American Samoa and the voters consistently demonstrate a preference to remain America's outpost in the South Pacific under current law.

Although grateful for the federal programs, services and benefits of U.S. territorial status, the American Samoa body politic consistently has affirmed through local self-government that any change in political status or federal-territorial relations preferably should be initiated locally not in distant Washington.

American Samoa is home to deeply patriotic Americans whose allegiance and loyalty to America is confirmed by the highest per capita rate of U.S. military service of any state or territory. Yet, when a territorial policy advocate from Guam filed a lawsuit asking a federal court in Washington DC to end the current statutory "national but not citizen" status of Americans born in the territory, and replace it not by statutory citizenship applicable on the other territories,—but by federal judicial order with the same citizenship status conferred in states, the local government opposed that lawsuit.

American Samoa's Congresswoman, Governor and Legislature intervened as parties in the case and opposed any change to the historical American nationality and autonomous political status that has served the people of the territory and our nation so well for over 120 years. The U.S. Supreme Court rejected petition to review federal appellate court ruling in favor of the current status of American Samoa and persons born there.

That local initiative to preserve the autonomous status of the territory confirmed that U.S. nationality in American Samoa confers rights to Americans equal to that of nationals residing in the four other unincorporated territories who are classified as "citizens" by federal territorial statutes.

To understand this political culture, it is important to note that America Samoa was never disposed to European colonial or American imperial initiatives. Instead, the powerful Chiefs of the Eastern islands of Samoa requested and voluntarily agreed in 1900 and 1904 to Deeds of Cession conferring U.S. sovereignty over the islands of the territory, in exchange for the U.S. promise to preserve the local traditional landownership system and way of life.

It is because the U.S. has kept its promises that American Samoa prefers its current political status to any other relationship with the U.S. federal government or model of self-government. The U.N. may classify American Samoa as non-self-governing territory for its own purposes, but most locals believe the current status is the result of and consistent with local self-determination.

It is recommended to support repeal of 48 U.S.C. 1662a. If that statute is not repealed, approval of the amendments ratified by the people in 2022 will trigger the perverse and anomalous 1983 law suspending the amendment process to which the people have consented, unless and until Congress acts. In turn, action by Congress

under that 1983 statute could have consequences for self-determination for American Samoa to which its people have not consented.

In that context, it is important to note that the Secretary's role not only in the amendment process but more broadly under Executive Order 10264 derives from a consent based mutually beneficial federal-territorial relationship created by Congress in 1929 under 48 U.S.C. 1661. In that historic Act, Congress authorized the President to adopt measures to establish local government in the territory, and since 1951 that has included authorization of the Secretary of the Interior to execute and implement responsibilities for federal relations with the territory pursuant to Executive Order 10264.

The legal meaning, political implications and intergovernmental viability of Section 1662a is being fully revealed and understood for the first time since it was adopted. Obviously, that is due to approval of five constitutional amendments in the referendum of Nov. 8, 2022, now awaiting final review and action by the Secretary of the Interior under Executive Order 10264, pending Congressional review at this time of H.R. 6062.

In that context, while not seeking uniformity or "one size fits all" political status features for all territories, it has not been agreed American Samoa should be the only U.S. territory with a local constitution that has to come to Congress after the people have voted to amend the constitution. Like the local constitutions of all unincorporated territories, American Samoa's constitution applies only to local affairs to the extent consistent with federal law, so local amendment is limited to local matters in all territories.

That is why American Samoa has not agreed the historical role Secretary of the Interior in approval of amendments justifies singling American Samoa out for the requirement of Congressional action after an act of local self-determination and Secretarial approval. While each of the other four territories has been authorized by Congress to adopt a constitution, only American Samoa's constitution was authorized by the President and Secretary as enabled and authorized by Congress.

Thus, just as each territory's legal relationship with the U.S. is unique, American Samoa's right of self-determination should not be uniquely burdened because of the unique features of its organic law grounded in the Deeds of Cession. Section 1662a was an ad hoc and never reviewed revision of what was in 1983 a 54-year federal-territorial relations success story under 48 U.S.C. 1661.

The mandate of Section 1662a is for what amounts to a secondary after-the-fact Congressional approval. The effect is to hold acts of local self-determination in abeyance indefinitely, until Congress acts, or even to nullify amendments by omission or silence.

Perhaps most fundamentally, Congress does not need 1662a to exercise its plenary and supreme power under the Territorial Clause to approve or disapprove any amendment approved by the Secretary under Executive Order 10264. Whether an amendment is proposed in a local convention and ratified in a referendum or any other lawful procedure under local law, approval by the Secretary does not bind the Congress before or after the Secretary acts.

The U.S. DOJ position is that there is no vested right under local or federal law to a local constitution or any amendment to it, whether or not adopted under authorization by Congress in 48 U.S.C. 1661. Thus, there is no gain of Congressional authority by requiring a second authorization by Congress under 1662a, and no loss of Congressional power if the 1983 statute is repealed. Indeed, Congress can disapprove amendments approved by the Secretary, approve amendments that have been disapproved by the Secretary, or simply amend the local territorial constitution as Congress chooses.

Because the local constitution was adopted by the people and approved by the Secretary on behalf of the President as authorized by Congress, the real effect of Section 1662a is to prevent the local constitution from being amended in the same manner it was adopted. As such, Section 1662a is a condition precedent and/or condition subsequent that either way leaves an act of self-determination and/or Secretarial act promulgated under Congressional authorization in limbo unless and until Congress acts yet again.

In contrast, the power of Congress to approve or disapprove of any amendment or act of the Secretary in American Samoa or other territory is sovereign, supreme and of constitutional magnitude, not created by or dependent on a mere federal statute like 1662a.

QUESTIONS SUBMITTED FOR THE RECORD TO THE HON. TALAUEGA ELEASALO VAALELE ALE, LT. GOVERNOR, AMERICAN SAMOA

### Questions Submitted by Representative Westerman

*Question 1. Deputy Assistant Secretary Keone Nakoa testified at the hearing that Department of the Interior review for the five constitutional amendments approved during the November 2022 American Samoa Constitutional Convention has been placed on hold at the request of Governor Lemanu P.S. Mauga.*

*1a) Can you confirm if this request was made by Governor Mauga?*

*1b) If the Governor did request this from the Department of the Interior, why did he make this request?*

Answer. After submitting the five constitutional amendments to the Secretary of the Interior on December 14, 2022, Governor Lemanu Mauga subsequently asked the Secretary to hold off her review to allow time for repeal of Section 12 of Public Law 98-213, 48 U.S.C. Section 1662a (hereinafter “Section 1662a”).

The leaders of American Samoa, including Governor Lemanu Mauga, the Senate President, House Speaker, and Congresswoman Radewagen share the strong conviction that Section 1662a poses an unacceptable risk and unfair burden to American Samoa and her unique relationship with the United States. This concern was raised during the constitutional convention and led to Congresswoman Radewagen’s decision in November 2022 and again in October 2023 to introduce legislation to repeal Section 1662a. In fact, the American Samoa House of Representatives, on February 2, 2023, passed a Resolution asking Congresswoman Radewagen to take all necessary steps to repeal Section 1662a.

Section 1662a poses two primary concerns for the people of American Samoa. First, application of Section 1662a will delay and possibly prevent the people of American Samoa from amending their local constitution. As explained in my oral and written statements, the ability to pass legislation in Congress, even seemingly noncontroversial legislation, is generally difficult and unpredictable. For American Samoa, the burden is even greater. Not only are we a small, remote territory in the middle of the Pacific Ocean, we have only one non-voting Delegate in the House of Representatives and no representation whatsoever in the Senate chamber.

Further, under Section 1662a, Congress has no obligation to act within a reasonable time once we submit our constitutional amendments for approval. In fact, Congress has no obligation under Section 1662a to act at all, or even respond to us. Based on our review, no other U.S. territory is required to endure such a burden in order to amend their local constitution. Given these facts, our local leaders made the only practical and logical decision for American Samoa in seeking repeal of Section 1662a. Repeal of Section 1662a protects our right as a people to self-determination and ensures fair treatment of all U.S. territories. Of course, repeal of Section 1662a does not remove Congress’ ultimate authority over American Samoa under the Territorial Clause of the U.S. Constitution and under 48 U.S.C. Section 1661(c).<sup>1</sup>

Second, application of Section 1662a to our constitutional amendments, exposes our local constitution and our special relationship with the United States to unnecessary risks.<sup>2</sup> American Samoa’s relationship with the U.S. was forged on the promise made by the U.S. to our forefathers that our ability to preserve our Samoan culture would always be respected and protected. This promise, codified in the Deeds of Cession and in 48 U.S.C. Section 1661(a), has allowed American Samoa for over 120 years under the watchful eye of the President, the Secretary of the Navy, and now the Secretary of the Interior, to establish certain institutions and laws as incorporated into the local constitution, to protect and preserve the Samoan culture. While some of these protective measures may not be viewed or understood as conventionally conforming practice under the U.S. Constitution, they have been allowed to exist because of our special relationship with the U.S. and because our

<sup>1</sup> See 48 U.S.C. Sec. 1661(c) (“*Until Congress shall provide for the government of such islands*, all civil, judicial, and military powers shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct; and the President shall have power to remove said officers and fill the vacancies so occasioned. (Emphasis added). This language reflects Congress’ clear intent to retain ultimate authority over governance of American Samoa.”)

<sup>2</sup> Although enacted in 1983, Section 1662a has never been put to test before. Congress has never had the opportunity to review amendments to the American Samoa constitution under Section 1662a. Unless repealed, this would be the first occasion where the provisions of Section 1662a would be applied.

constitution is generally viewed as a matter of local law with limited applicability. Congressional review of our constitutional amendments under Section 1662a could convert our entire constitution into federal law subject to full application of the U.S. Constitution and application of federal laws now applicable to other territories. Worse, such congressional action could result in the establishment of a “de facto” organic act that could be conformed in the case of American Samoa to organic laws of other territories without any input from our people.

Governor Lemanu Mauga consulted with the Secretary of the Interior regarding his concerns about Section 1662a and received useful advice from the DOI on how to proceed. The Secretary graciously agreed to delay her review of the amendments to allow time for repeal of Section 1662a.

*Question 2. In your testimony, you stated that the Congressional approval requirement under Section 12 of Public Law 98-213 has made it “infinitely more difficult for the people of American Samoa to amend their constitution when they see fit.” However, the Department of the Interior testified at the hearing that the reason why Congress has yet to review and approve the 2022 amendments is because American Samoa officials requested from the Department of the Interior to not finalize its review of the amendments, thus not submitting them to Congress for review.*

*2a) Can you explain why you believe that it is the Congressional approval authority making it difficult for the people of American Samoa to amend their constitution when it has not been Congress holding up the amendments, but rather the Department of the Interior, at the request of American Samoan officials?*

Answer. Congress never delayed or held back approval of the five constitutional amendments we submitted to the Secretary of the Interior. If my testimony suggested otherwise, I sincerely apologize. In fact, the amendments have not been officially submitted to Congress by American Samoa or the Department of the Interior in furtherance of the purposes of Section 1662a because the Secretary has not completed her review or taken action to approve or disapprove any amendment. My statement, both orally and written, refers prospectively and reflects an honest assessment of American Samoa’s unique disadvantage, as compared to other jurisdictions, when it comes to our ability to push legislation through Congress. This disadvantage is made even worse when one considers the language of Section 1662a, which requires Congressional approval of our amendments but contains no requirement for Congress to even act upon receiving our amendments.

*Question 3. When Section 12 of Public Law 98-213 became law in 1983, it was enacted because of the fear that the then-Secretary of the Interior would act unilaterally in American Samoa. As such, American Samoa requested Congress for constitutional amendments to require congressional approval.*

*3a) Are you concerned about the potential for unilateral decisions by the Secretary of the Interior if amendments are no longer required to have congressional approval? If not, why?*

Answer. No. Even without Section 1662a, American Samoa has other available federal remedies to address any improper unilateral actions by the Secretary of the Interior. American Samoa retains a direct line to seek intervention by Congress under the Territorial Clause of the U.S. Constitution and pursuant to 48 U.S.C. Section 1661(c). American Samoa also has the option of seeking intervention by the President pursuant to 48 U.S.C. Section 1661(c) and Executive Order 10264. Finally, American Samoa may seek judicial intervention if deemed necessary to address any improper unilateral action by the Secretary.

*3b) In the event that the Secretary of the Interior does act unilaterally, would American Samoa request to reinstate the Congressional approval requirement? If not, what mechanism do you believe would serve to mediate and resolve the issue?*

Answer. No. Given the remedies available to American Samoa and the concerns raised above about Section 1662a, American Samoa would have no reason to seek reinstatement of Section 1662a if the Secretary acts improperly or unilaterally in the future.

**Questions Submitted by Representative Radewagen**

*Question 1. In my statement I noted we stay in close consultation with both the Secretary and Congress based on trust and commitment to what best for both the people of American Samoa and the American people as a whole. Do you agree that it is respectful but also honest to recognize that the Secretary, a territorial government or Congress may exercise powers in a way that causes questions or concerns, and that H.R. 6062 is an example of American Samoa asking Congress to reconsider its exercise of powers in the 1983 act, knowing in the end that Congress has the power but wanting to work together toward successful federal and local law and policy for our territory and our nation?*

Answer. The 1900/1904 Deeds of Cession create a relationship between American Samoa and the U.S. that is fundamentally different than nationhood, statehood or organized territory status. American Samoa is an unincorporated territory with local government not organized under federal statute like the other four unincorporated territories. Congress never approved an organic act or local constitution because Congress delegated its power to organize local government to the President in 1929. The President established local government under the Department of the Interior in the 1951–1960 period, and the Secretary approved the current constitution effective in 1967.

In contrast, under federal statute organic acts Congress organized local government and authorized each of the other four unincorporated territories to adopt local constitutions subject to approval by Congress. Even though the constitutions of the other territories are authorized and approved by federal statute, those federal laws do not require amendments to local constitutions to be approved by Congress. Of course, all local constitutions and laws promulgated thereunder must be compatible with applicable federal law.

Within the framework of federal territorial law and policy applicable to American Samoa, there will be times when the local government, Department of the Interior and Congress will act separately or in some combination and create concerns or questions that each will address. It is normative for corrections to be made based on joint efforts to make federal territorial law and policy more perfect, just as we never cease trying to make the U.S. more perfect.

The current effort being made by ASG, DOI and Congress to determine if the 1983 amendment to 48 U.S.C. 1661 and the American Samoa's local constitution by 48 U.S.C.1662a should be corrected is based on trust and respect for the authorities, initiatives and actions of ASG, Interior and Congress.

*Question 2. Is it accurate to say that the 1983 act codified at 48 U.S.C. 1662a was in effect an amendment to the American Samoa local constitution that was enacted without a hearing at which American Samoa was afforded an opportunity to be heard, and without any formal consultative process of any kind that we know of as we look back at what happened?*

Answer. Consistent with 48 U.S.C. 1661 (1929) and Executive Order 10264 (1951), the 1967 Revised Constitution of American Samoa and laws adopted thereunder authorize the local government to propose amendments to the local constitution. While it is within the authority of Congress to do so, by adding an additional statutory Congressional approval process for amendments, in addition to the approval requirements under 48 U.S.C. 1661, Executive Order 10264, and the 1967 Revised Constitution, the effect of 48 U.S.C. 1662a is to directly change the amendment process under existing federal and local law. It appears this was done in Congress without regular order or the creation of a public record before Congress to transparently inform Congress and the public then or now as to the purposes and perspectives of all stakeholders in the 1983 decision to approve Section 12 of P.L. 98-213.

**Additional Background Provided by the American Samoa Government for the Record in Response to the Preceding Questions and Answers:**

*1. Importance of Congressional action on H.R. 6062:*

Governor Lemanu Palepoi Sialega Mauga, the American Samoa Government and our fellow Americans in American Samoa welcome and are grateful for Congressional oversight on local constitutional matters, as provided in the hearing by the Subcommittee on Indian and Insular Affairs on January 18, 2024. We deeply appreciate the care, time and attention allocated to consideration of H.R. 6062, and

the opportunity to address here the important questions addressed to the ASG witness by full House Natural Resources Committee Chairman Westerman.

The responsiveness by HNRC/SIIA to the efforts of ASG to work with the Department of the Interior, in order to ensure the results of the 2022 referendum on local constitutional amendments are duly honored, demonstrates the efficacy of confidence and trust we placed in Congress to fully and fairly consider H.R. 6062. Without presuming, we hope Congress can expedite its consideration of H.R. 6062 and signal its intentions with regard thereto before the Secretary must act on this matter subject to the 1983 amendment codified at 48 U.S.C. 1662a.

We believe that H.R. 6062 would restore the successful self-government model established as authorized by Congress under 48 U.S.C. 1661, by repealing the disruptive 1983 amendment thereto codified at 48 U.S.C. 1662a. In that context, the following reply is offered to the first of three specific questions directed to the ASG witness by Chairman Westerman:

The American Samoa Government's efforts to achieve timely action and approval of amendments ratified by a majority in the 2022 referendum has not been pursued by one or more "requests" to the Department of the Interior or Congress. Rather, in our endeavors with the Office of the Secretary, our Congresswoman who speaks with us for the people, and with the Congress, we are making offers of consultation, cooperation and collaboration to define and achieve as a shared goal a policy that honors the 2002 vote, albeit in a somewhat complex historical, legal and political context.

Accordingly, on December 14, 2022, the Governor transmitted the amendments approved by a majority of voters in the referendum on November 8, 2022 to the Secretary of the Interior. On behalf of the American Samoa Government and the people of the territory the Governor requested approval of these amendments by the Secretary, to enable the most-timely local implementation possible for each amendment so confirmed. This official and formal request, regarding amendments which have been public record before and after the 2022 vote, also was made a part of the record before Congress in the Governor's testimony of February 9, 2023, before the U.S. Senate Committee on Energy and Natural Resources.

During consultations by the Governor and senior ASG officials with the Secretary and senior DOI officials, including ASG and DOI legal counsel, it was recognized that potentially unproductive and possibly prolonged delay in approval and implementation of amendments could occur, due to the requirement of 48 U.S.C. 1662a that amendments approved by the people and the Secretary have no effect unless and until also enacted by a federal statute.

In addition, we have been cognizant of testimony by the U.S. Department of Justice addressing the legal implications of 48 U.S.C. 1662a soon after it was enacted. At that time, DOJ expressed concern and raised questions about whether Section 12 of P.L. 98-213 (48 U.S.C. 1662a) would alter the legal effect of 48 U.S.C. 1661 (1929), the federal statute that ratified the 1900 and 1904 Deeds of Cession. 48 U.S.C. 1661 confirmed features of local autonomy created by the Deeds of Cession and authorized the President to establish local self-government under Executive Order 10264 (1951).

Without questioning the good will with which Congress and the President would act in the event 48 U.S.C. 1662a were implemented to enact as federal law each of the 2022 amendments approved by the Secretary, that requirement creates a unique and unequal burden on American Samoa. That burden is not justified by or compatible with the unique structure and features of local self-determination established for American Samoa under Executive Order 10264, as authorized by Congress under 48 U.S.C. 1661.

Accordingly, after the Governor consulted with American Samoa's elected Member of Congress and the elected leadership of the Legislature of American Samoa, specifically the President of the Senate and Speaker of the House, there was a consultative understanding reached by the American Samoa Government with the Office of the Secretary that Congress should have the opportunity to consider H.R. 6062 while the Secretary has the amendments under advisement, before application of 48 U.S.C. 1662a is triggered and sets a precedent with possible unintended consequences noted above.

This cooperative forbearance is undertaken as an affirmative step to restore self-government instituted under Congressional authorization in 48 U.S.C. 1661. That 1929 local territorial government enabling act for American Samoa, as implemented under Executive Order 10264 (1951) and the current 1967 Revised Constitution of American Samoa, is a success story for Congressional oversight, in the only territory that does not currently seek a change in its political status.

Yet, that same success story could be exposed to undue and inappropriate political risk if 48 U.S.C. 1662a were to be applied and set a regrettable precedent in federal-

territorial relations. That risk is not to be minimized, since 48 U.S.C. 1662a applies unequally and unfairly only to American Samoa, when it arguably better would serve U.S. interests nationally and locally if that 1983 provision applies to none of America's territories.

The consultative consensus reached by the American Samoa Government and the Office of the Secretary is a federal-territorial relations success that has included consultations with and oversight by Congress. It also has included creation of a record before Congress based on the public record on the 2022 referendum and amendments approved and transmitted to the Secretary. This has culminated in the hearing that HNRC's Subcommittee on Indian and Insular Affairs conducted on January 18, 2024.

*2. Understanding the 2022–2024 amendment approval process:*

The current joint effort of the American Samoa Government and the Office of the Secretary of the Interior is to ensure all necessary and appropriate steps to implement in the most-timely way amendments approved by majority vote of our fellow Americans in the 2022 referendum. The import of the Governor's transmittal letter, dated December 14, 2022, was that the people of American Samoa had spoken, and accordingly the American Samoa Government supported timely action by the Secretary to approve all five amendments.

On February 9, 2023, the Governor testified before the Senate Committee on Energy and Natural Resources and reiterated on behalf of the American Samoa Government the request for the Secretary of the Interior to take all steps "necessary and appropriate" in order to "bring into effect" the amendments approved by majority vote of the people. Thus, the position of the Governor and the American Samoa Government has been clear, and it is that timely action to approve and implement the amendments was intended and desired by the people of American Samoa and their leaders acting on behalf of the people.

Similarly, on behalf of the Secretary of the Interior, Assistant Secretary Carmen Cantor and her staff consulted with the Governor and his staff on the steps required for the Secretary to act on the amendments in a timely manner, as authorized by federal and local law and policy. In that context, the 2022 referendum results presented the first occasion since it was enacted in 1983 that both the American Samoa Government and Office of the Secretary were faced by the practical administrative tasking and legal dilemma posed by the requirement 48 U.S.C. 1662a that Congress act before any amendments approved by majority vote of the people and by the Secretary became effective and could be implemented.

Repeal of 48 U.S.C. 1662a had been proposed more than once by American Samoa's representatives in Congress during the intervening decades since it was adopted in 1983. But in 2023 it was recognized the efforts of American Samoa Government to carry out the will of the people could be delayed indefinitely—and the vote in effect nullified, not by the affirmative exercise of Congressional authority but by inability or inopportunity for Congress to act. That outcome could be unrelated to any substantive issue, but understandably due to demands and priorities in our nation's critical and urgent affairs, leading to unwarranted delay or inaction on local territorial internal affairs with no defined federal equities or imperatives at play.

But the flawed predicates of 48 U.S.C. 1662a are not primarily procedural, parliamentary or political, but rather implicate constitutional powers, statutory law and allocation of democratic rights for Americans in the territory. Thus, while it is appropriate for Congress to exercise oversight to ensure local law in a territory applies only to extent not otherwise governed by federal law, the burden on the territory is to ensure compatibility of all local law with applicable federal law.

In contrast, the effect of 48 U.S.C. 1662a is to require that amendments to local law embodied in the local constitution must be enacted as federal statutory law. Yet, 48 U.S.C. 1662a is not the source of and does not increase Congressional constitutional authority to enact a federal law approving or disapproving amendments to the local constitution. When the Territorial Clause gives Congress plenary and supreme powers to which the federal courts have deferred for 125 years, Congress does not need a statute to permit itself to exercise that power.

Accordingly, repeal of 48 U.S.C. 1662a would not diminish that constitutionally conferred power of Congress, and would simply remove an impediment and possible barrier to local self-government on local matters. That hurdle to local democratic self-determination is posed by 48 U.S.C. 1662a as a condition subsequent imposed by federal law on the promulgation of local law, with no effect other than the presumably unintended disruption of local self-government on amendments to the local constitution, which are invalid to the extent of any inconsistency with federal law.

As noted in testimony offered as Lieutenant Governor in the role of a witness, requiring Congress to act on every change to local law is not fair to our fellow Americans in the territory and it is not fair to Congress, because both have better uses of their respective authorities, time and effort.

*3. History of 48 U.S.C. 1661 (1929) and 48 U.S.C. 1662a (1983):*

We are grateful for the opportunity to explain the statement that 48 U.S.C. 1662a significantly complicates and makes it far more difficult to initiate, conduct and complete the local process for approving locally developed amendments to the local constitution. There are several ways to describe the problems that would arise from implementation of Sec. 48 U.S.C. 1662a:

- Congress authorized the President to organize local civilian government in American Samoa in 1929 under 48 U.S.C. 1661, on terms confirming a U.S. obligation to recognize local autonomy in local cultural and social affairs to preserve the Samoan way of life.
- The central aspect of the Samoan way of life implicated in the U.S. obligation to protect and preserve local cultural and social autonomy is perpetuation of the landownership system that sustains social cohesion in Samoan society.
- As authorized by Congress in 48 U.S.C. 1661, in 1951 the President issued Executive Order 10264, delegating the authority to organize local civil government under 48 U.S.C. 1661 to the Secretary of the Interior.
- The Secretary of the Interior approved the local constitution of American Samoa in 1960, and also approved its amendment in the 1967 Revised Constitution of American Samoa.
- The exercise of the President's power under 48 U.S.C. 1661 and delegation of that authority to the Secretary in 1951, as well as all local actions and actions of the American Samoa Government under the local constitution, have been and remain fully subject to Congressional oversight and the Territorial Clause power to "otherwise provide" for government of American Samoa as stipulated in 48 U.S.C. 1661.
- It was under Congressional oversight that the American Samoa constitution was approved by the Secretary under Executive Order 10264 in 1960, and Congress also had oversight when the revised constitution was approved in 1967.
- The people of American Samoa and the American Samoan Government believe that the local constitution should be amended in the same way it was approved.
- That is due to desire in American Samoa to preserve continuity and stability in the unique historical structure of federal-territorial relations under the 1900/1904 Deeds of Cession, 48 U.S.C. 1661, Executive Order 10264 and the 1967 Revised Constitution of American Samoa.
- After 54 years of continuity and stability in federal territorial relations under 48 U.S.C. 1661, without effective consultation between Congress, President, Secretary or the American Samoa Government, in 1983 the Congress amended 48 U.S.C. 1661 by enacting 48 U.S.C. 1662a.
- 48 U.S.C. 1662a amended 48 U.S.C. 1661 by providing that amendments approved by the people and Secretary under 48 U.S.C. 1661 and Executive Order 10264 have no legal effect unless approved as a new federal statute by Congress.
- In 1984, a Deputy Assistant Attorney General of the United States testified in a hearing before the Senate Committee on Energy and Natural Resources on the Constitution of American Samoa, including the effect of 48 U.S.C. 1662a on federal-territorial relations.
- In written and oral testimony the Department of Justice witness advised Congress that the Office of Legal Counsel had questions and concerns about whether having Congress approve amendments to the American Samoa Constitution pursuant to 48 U.S.C. 1662a would in effect alter the one-of-a-kind system of local self-government and special autonomy established under the Deeds of Cession, 48 U.S.C. 1661 and Executive Order 10264.

The preceding litany of historical, legal and political considerations is the context in which the statement can be made that 48 U.S.C. 1662a makes the constitutional amendment process after 1983 more difficult than approval of the local constitution by the people and Secretary in 1960, or its amendment and revision in same manner in 1967.

When the U.S. Congress adopted 48 U.S.C. 1661 in 1929, it expressly “accepted,” “confirmed and “ratified” the 1900 and 1904 Deeds of Cession, which served as documents of mutual consent setting forth terms for local autonomy under U.S. sovereign rule over the islands.

While the 1929 ratification statute recognized the authority of the U.S. Congress to “otherwise provide” terms for conducting federal-territorial relations, Congress generally has recognized an obligation and commitment to local autonomy in local cultural and social affairs, as agreed and promised in the Deeds of Cession.

Accordingly, 48 U.S.C. 1661 mandates that “. . . all civil, judicial, and military powers shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct . . .”

48 U.S.C. 1661 also provided that, “The existing laws of the United States relative to public lands shall not apply to such lands in the said islands of Eastern Samoa; but the Congress of the United States shall enact special laws for their management and disposition.”

While the Department of the Interior has institutionalized the political status and federal-territorial relations under 48 U.S.C. 1661, neither the ASG nor DOI has institutionalized 48 U.S.C. 1662a. There is a high level of uncertainty about whether the 1984 DOJ testimony warning of possible unintended consequences following “federalization” of matters that have been managed as local and internal for 125 years.

Those DOJ concerns in 1984 could become self-fulfilling prophecy should Congress not now institutionalize in 2024 that 125-year legacy of special autonomy. The best way to do that is to repeal 48 U.S.C. 1662a.

Approval of local amendments by Congress will convert these local amendments to a local constitution established under authority of the Deeds of Cession, 48 U.S.C. 1661, Executive Order 10264 and the 1967 local constitution into a federal statute. DOJ expressed concern that Congressional approval of amendments could convert the entire local constitution into a federal statutory organic act and end the federal territorial relationship defined by the Deeds of Cession, 48 U.S.C. 1661, Executive Order 102764 and the 1967 Revised Constitution.

Please be assured, then, that no one representing the American Samoa Government would suggest that Congress, the Department of the Interior or ASG has been “holding up the amendments.” Rather, we appreciate the contributions that officials at DOI and both members and staff in Congress have made to seeking and finding an approach to action on and approval of the amendments approved by the voters that redeems the promise of the Deed of Cession without unintended consequences.

We hope the record created at the hearing on January 18 will clarify the questions and issues that have been raised so that we can work together find solutions that best serve Americans in the territory and across our nation.

#### *4. Flawed statute does not define Congressional power or territorial policy:*

The limited formal record before Congress regarding the actual intent of Congress in allowing the 1983 amendment codified at 48 U.S.C. 1662a to be included in P.L. 98-213 makes it hard to confirm the motives and reasons for that provision. Indeed, without any record before Congress to confirm its purpose, 48 U.S.C. 1662a actually constitutes an amendment to the 1929 authorization by Congress codified at 48 U.S.C. 1661, under which local self-government measures for American Samoa have been established and progressively democratized.

In addition, the flawed 1983 statute lacks precision and utility. For example, it does not provide procedures for the Secretary to make transmittal of amendments approved under Executive Order 10264 to Congress, but rather mandates only that any such approved amendments have no effect unless again approved by Congress. Additionally, there are no limitations on the period within which ASG, DOI or Congress should act to implement the requirement of Congressional approval.

Those tertiary procedural omissions aside, more fundamental issues of considerable consequence arise from the anomalies in the 1983 amendment statute.

First, it is ironic that in the case of amendments approved by the people in an act of self-determination 48 U.S.C. 1662a does not protect the people of American Samoa from “unilateral” action by the Secretary. That is true of actions under Executive Order 10264 disapproving amendments approved by the voters, which might be deemed to be against the interests of the people in that territory.

Instead, all 48 U.S.C. 1662a does is require Congress to review amendments voted on favorably by a majority of the people that have been approved by the Secretary. 48 U.S.C. does not apply to “unilateral” actions of the Secretary disapproving amendments approved by a majority of the people in a referendum lawfully conducted under local law.

If Congress allows itself to be misled to believe its power to review actions of the Secretary on amendments derives from 48 U.S.C. 1662a, then that means Congress is precluded from reviewing unilateral actions of the Secretary when the people presumably need it most. That is, not when a democratically approved amendment is approved by the Secretary, but when the Secretary nullifies an amendment approved by a democratic majority.

Of course, this is a false narrative, because 48 U.S.C. 1662a is not the source of the power of Congress to “otherwise provide” for federal law and policy in American Samoa. Instead, the 48 U.S.C. 1661 framework as implemented under Executive Order 10264 motivates ASG and DOI to resolve differences and address issues the Samoan way, as much or more than the Washington way.

The pragmatic predicate of Secretarial Order 10264 is that dealing with the President’s surrogates in the Office of the Secretary and convincing one or two decision senior decision makers on an agreed action by consensus requires far less effort than convincing 535 members of Congress to act on matters of local self-government.

But it remains true that if the Secretary and American Samoa can’t resolve a problem, routine Congressional oversight has to be augmented and potentially legislation will be required to solve the problem.

That kind of special Congressional oversight is intended and expected under 48 U.S.C. 1661, and Executive Order 10264. Those instruments of delegated authority create no zone of executive power or privilege outside the reach of Congressional authority to “otherwise provide” for governance of the territory under 48 U.S.C. 1661 and, of course, the Territorial Clause.

---

Ms. HAGEMAN. I thank the witness for their testimony. The Chair now recognizes Delegate Jennings for 5 minutes.

**STATEMENT OF THE HON. ALEXANDER ELI JENNINGS, SWAINS ISLAND DELEGATE, AMERICAN SAMOA HOUSE OF REPRESENTATIVES, PAGO PAGO, AMERICAN SAMOA**

Mr. JENNINGS. Good morning, Madam Chair and distinguished members of the Subcommittee this morning. Again, I also want to submit my verbal testimony this morning, together with the written statement that was already given to the Committee earlier.

My name is Su’a Alexander Eli Jennings. I am the Swains Island delegate to the American Samoa House of Representatives, the only non-voting member of the legislature of American Samoa for over 63 years.

In the 2022 Constitutional Convention of American Samoa, after a very difficult and uphill battle, Swains Island was able to submit on the last minute on the last day an amendment to seek the right to vote in the legislature of American Samoa. When the distinguished delegates of this convention heard for the first time that there was absolutely no reason why the Swains Island delegate wasn’t given the right to vote, this amendment was passed by an overwhelming majority of 73 to 43. And when the people of American Samoa heard for the first time the contributions of Swains Island to the territory, this amendment was passed for the first time by a majority of the people of American Samoa.

I am also a fifth-generation descendant of a U.S. citizen, Eli Hutchinson Jennings from Southampton, Long Island, New York, the owner of Swains Island. In 1800, he and his wife, Malia, the daughter of a prominent chief from Lefaga, started a plantation on Swains Island in the 1840s. By the 1900s, Swains Island was extremely prosperous with the copra trade.

At that same time, the Americans, the Germans, and the British were dividing up the Samoan Islands. In 1900, the United States

signed a Deed of Cession with the leaders of Tutuila, and in 1904, the United States signed the Deed of Cession with the Kingdom of Manu'a. And if you read the history of American Samoa, everything stopped for American Samoa for the next 25 years. During that time, the Navy requested that the Swains Island, who was already a territory of the United States from 1856 under the Guano Act, to be brought in and made a part of American Samoa.

Because of all the resources American Samoa had, the greatest resource to the United States was the largest natural harbor in the Pacific, which is why they wanted it. Other than that, they needed help with this very fragile economy. By an Act of Congress, House Joint Resolution 294 passed on March 4, 1925. Swains was finally brought in and made a part of American Samoa.

Then, later on, 4 years later in 1929, and under the Ratification Act, Congress approved the two Deeds of Cession between Manu'a and Tutuila and the United States. And now we have the territory of the United States.

And I am also a second generation of Tokelau descent when my grandfather married a very prominent figure, his wife from a prominent Pedro family of the Tokelau Islands. After I was born, my parents divorced, and my grandmother took me to Swains Island and raised me there with my brother. It was there that I developed a strong passion for my Tokelau side. And in 2005, when I assumed the duties of the Delegate of Swains Island 18 years ago, I was also installed as the traditional leader for the Swains Island Tokelau community in American Samoa, which, by the way, is the least recognized community in all of American Samoa. Besides presiding over traditional ceremonial events, I helped this community.

Finally, Madam Chairwoman, I am again also a fifth generation of Samoan descent from my great-great-grandmother, Malia Su'a Jennings, the daughter of a prominent chief from Lefaga, Samoa. In 2008, I was asked on her behalf to take the High Chief title under the Samoan tradition, Su'a, from Lefaga.

So, I come before you this morning as a non-voting delegate of Swains Island, as the traditional leader for the Swains Island community, and as a traditional high chief under the Samoan culture.

And Madam Chairwoman, distinguished members of this Committee, I would like to start off by saying I am not here deliberately to go against our distinguished Congresswoman, the Honorable Aumua Amata Radewagen. She has been an amazing delegate for American Samoa. I am not here this morning to deliberately defy the authority of Madam Secretary Deb Haaland or the Department of the Interior, especially not here to go against the Honorable Governor Lemanu Mauga, our Governor of American Samoa, and the Honorable Lieutenant Governor here this morning. I am only here for one reason, and one reason only, and that is to fulfill my obligation under my sworn oath to defend the Constitution of American Samoa and the rights of every American Samoan Native, which includes lineal descendants of Tutuila, Manu'a, and Swains Island.

All I am asking is that we need assurance that we can verify that the rights of every American Samoan Native is protected and respected by the Department of the Interior. The only way we can

do that is to reject H.R. 6062, or amend H.R. 6062 to include “including Swains Island.”

What really got me about this, Madam Chairwoman, is when I start noticing these grants. Every grant that I have read says American Samoa and Swains Island. I thought they were the same thing. Madam Chairwoman, there are two separate territories of the United States: Swains Island in 1925 and American Samoa in 1900. Unfortunately, by our discovery, it appears that the Department of the Interior is not under any mandate to recognize Swains Island, which may possibly explain why we have gone 63 years without a vote in the legislature.

I am just here, Madam Chairwoman, to ask that we please recognize the rights of every American Samoan Native and to include Swains Island in the mandate that DOI has to comply with in overseeing American Samoa.

I have the outline of my written testimony and I would refer that to my written statement. That is all I would like to say this morning, and that is the only reason why I am here.

But otherwise, I thank you very much for this time.

[The prepared statement of Mr. Jennings follows:]

PREPARED STATEMENT OF SU’A ALEXANDER ELI JENNINGS, SWAINS ISLAND  
DELEGATE, 38TH LEGISLATURE OF AMERICAN SAMOA, HOUSE OF REPRESENTATIVES  
ON H.R. 6062

Honorable Subcommittee, since 1983, the procedure for amending the American Samoa Constitution has been (1) approval by the people, (2) approval by the Secretary of the Interior, and (3) approval by Congress. At that point amendments become part of the American Samoa Constitution.

H.R. 6062 seeks to take Congress out of the picture, leaving sole authority to approve changes to our Constitution with the Secretary of the Interior by repealing 48 U.S.C. § 1662a.

In November 2022, the people of American Samoa approved 5 of 11 proposed amendments to the American Samoa Constitution. As the Swains Island Delegate to the *Fono* for the past 18 years, I would like to extend my sincere appreciation and gratitude to all of those who voted in favor of the Swains Island Amendment giving the Swains Island Delegate the ability to vote in the *Fono* for the first time. I would also like to extend my appreciation and gratitude for the approval of the “Swains Island Amendment” as the Traditional Leader of the Swains Community in Tutuila for the past 18 years. The Swains Community in Tutuila consists mostly of Americans of Tokelauan descent, which are the least recognized American Samoan Natives in the Territory.

The Hon. Governor Lemanu P.S. Mauga sent the approved amendments to the Secretary of the Interior in December 2022. Under the Constitution, the Secretary of the Interior (also referred to herein as “DOI”) is required to approve or disapprove amendments within four months after which Congress makes the final decision. To date, DOI has taken no action.

In October 2023, eleven months after the 2022 referendum, without DOI approval and without having introduced any of the 5 approved amendments to Congress, Congresswoman Amata introduced H.R. 6062, seeking to remove Congress from the amendment process. I am opposed to this change for one reason: DOI has not treated Swains Island as an equal part of American Samoa since they assumed administration of this Territory in 1951 and H.R. 6062 lacks assurances from DOI that things will change in the future.

Without verifiable guarantees that all American Samoan Natives, *including descendants of U.S. citizens and nationals of Swains Island* shall be protected from the forced alienation of their lands, and all rights under the American Samoa Constitution, there is no reason to support this bill. While DOI claims to support the protection from alienation of family lands in American Samoa, history paints a different picture for Swains.

### Swains Depopulation

Swains Island's status as an American possession predates that of the rest of American Samoa. Swains Island was bonded to the United States in 1856 through the Guano Islands Act. 48 U.S.C. ch. 8 §§1411-1419. The Jennings family, who descend from Eli Jennings of Southampton, NY, has been in continuous ownership of Swains Island from the 1850s to the present. I am a lineal descendant of the original owner of Swains Island, Eli Jennings, one of Swains' current owners, and currently serve as the Swains Island Delegate in the American Samoa Legislature, or *Fono*.

United States sovereignty over Swains Island was recognized by Congress in 1925 when it was made a part of American Samoa. 48 U.S.C. §1662. The Islands of Eastern Samoa, meaning all islands of American Samoa other than Swains Island, were recognized by Congress as part of the United States in 1929, four years after Swains. 48 U.S.C. §1661.

During American Samoa's Naval administration (1900–1951), Swains Island enjoyed unprecedented prosperity and a growing population exporting copra for the production of coconut oil, which was also an essential part of the very fragile economy of the new Territory of American Samoa and provided jobs, tax revenues, and the opportunity for Tutuila and Manu'a to combine their copra harvests with that from Swains Island for export.

However, the 1951 transfer of American Samoa's civil administration from the U.S. Navy to DOI marked the beginning of a slow decline. The lack of services provided to Swains Island, e.g., transportation, communications, fresh water, electricity, and basic infrastructure made the island uninhabitable, resulting in the ultimate depopulation of the island by 2013 and the internal displacement of Swains Islanders into other parts of American Samoa and the rest of the United States.

When Swains Islanders were finally forced to abandon Swains Island in 2013, they left behind several pristine natural resources, many of which could help reduce American Samoa's dependency on the federal government, including:

- Hundreds of acres of coconut trees grown with no chemicals or pesticides making them suitable for Organic Virgin Coconut Oil
- Hundreds of acres of monster coconut crabs (*birgus latro*), some weighing up to 9 lbs. and measuring 3 feet in width which are a delicacy for local and world markets. The population of coconut crab, a vulnerable species, has steadily developed and increased since the last export of copra in 1966.
- Hundreds of old coconut trees at the maturity level for use as coconut wood for building homes and furniture.
- A National Marine Sanctuary protecting pristine marine resources for dive tours and sports fishing.
- A favorite destination for Science Research, Film Production, and Amateur Radio Operation.
- Excellent destination for corporate retreats and special guests.

Swains Island is truly one of the last jewels of the planet.<sup>1</sup> However, the Swains Island Delegate lacking a vote in the Legislature results in Swains Islanders throughout American Samoa being in a “taxation without representation” governance scheme. Despite the existence of such extensive natural resources, Swains Island today remains uninhabited, visited sporadically only when transportation becomes available. Without a vote in the Legislature, the Swains Island Delegate has had little opportunity to advocate for the Island's interest for the past 63 years under DOI's watch.

The threat of depopulation is not limited to Swains. As recognized by Gov. Lemanu P.S. Mauga in his 2024 State of the Territory address, Manu'a may follow the same demise as Swains because of the lack of government services for the people living there; our Governor shedding tears seeing people at Faleasao on Ta'u island having to swim out to bring their cargo to shore when the boat was unable to enter the harbor.

In 2024, Swains Islanders can only travel to their home—over 200 miles away from Tutuila—if they personally charter private transportation, while other islands in American Samoa are given regularly scheduled, federally subsidized transportation. To put it bluntly, Swains has been on the receiving end of neglect and abandonment under the unmindful hand of DOI from 1951-the present and DOI has failed to address any of my concerns for decades.

<sup>1</sup>See *Swains Island: One of the Last Jewels of the Planet* (Ocean Futures Society, 2014), <https://www.imdb.com/title/tt5352610/>.

### The Department of the Interior's Role in American Samoa

DOI's authority in American Samoa is not well understood by many in American Samoa and sadly, many in DOI. On paper, the entire governmental structure in American Samoa operates under the authority of the Secretary of the Interior. And while in practice, DOI has taken an increasingly "hands-off" approach to American Samoa during 63-year relationship, under the law, the Secretary of the Interior can still unilaterally overturn decisions of the judiciary and the executive and legislative branches. It is irrelevant that this does not take place often, if at all. As stated by U.S. Territorial scholar Arnold Leibowitz "the very fact that the Secretary of the Interior exists as an ombudsman, to put it kindly, or as a benevolent dictator—to put it less generously—depreciates all Samoan government institutions and makes the Samoan Constitution adopted in 1960 a giant deceit." Leibowitz, Arnold, *Defining Status: A Comprehensive Analysis of U.S. Territorial Policy*, Martinus Nijhoff Publishers, The Hague (1989) at 420.

DOI and the American Samoa Government often says things about Swains Island such as "nobody lives there," or "it's private land" whenever a valid concern is raised about Swains' treatment. Addressing the claim of "nobody lives on Swains" first, Swains was permanently inhabited for over 150 years and it was the very policies of DOI and ASG that caused the ultimate depopulation of Swains in 2013. Imagine the DOI claiming A'asu or Aoloau Tuai villages don't deserve recognition because "nobody lives there." Secondly, to the "privately-owned island" claim, 90% of all land in American Samoa is privately-owned family land: under the *fa'asamoa* for Tutuila and Manu'a, and descendants of U.S. Citizens for Swains Island. Those who point out that Swains is private land are probably unaware that private landownership is what made Swains such an ideal community for Congress to partner with American Samoa 99 years ago.

When Swains Island became part of American Samoa in 1925 and joined Tutuila, Aunu'u and the islands of the former Kingdom of Manu'atele, it marked the merging of three cultures and peoples under one flag which has remained to this day; this is the American Samoa of our times. Unique among the territories, the United States' contribution of Swains to American Samoa extended the protections against alienation of communal land under the *fa'asamoa* to Swains Island while explicitly stating Swains "is not under the *matai* system." The private ownership of Swains made it a perfect fit with American Samoa.

The initial differences between Swains and American Samoa have faded over time. Despite many Swains Islanders being descendants of U.S. Citizens, in 1952, U.S. Citizens by descent born on Swains Island became non-citizen nationals with the passage of the Immigration and Nationality Act of 1952, thus bringing Swains Islanders into the same U.S. National category as the rest of American Samoa.

The 1960 and 1967 Constitutions ratified under DOI's sole authority gave voting power to all representatives and senators in the *Fono* except the Swains Island Delegate, thereby separating Swains Island from the rest of the American Samoan Islands for the first time. See Rev. Const. Am. Samoa Art. II, § 2:

The adult permanent residents of Swains Island who are United States nationals may elect at an open meeting a delegate to the House of Representatives who shall have all the privileges of a member of the House **except the right to vote.** (Emphasis added).

I have a simple question about the Swains Delegate's non-voting status: why? That one-word question has gone unanswered by ASG and DOI for the past 63 years. The closest thing to an answer I have received from DOI or ASG is "talk to a lawyer."

Swains Island receives little to no money from the federal government. In 2021, out of \$1.4 Billion in COVID related CARES Act and American Rescue Plan Act Funds allocated to American Samoa, Swains Island was only eligible to receive \$3,400.00 (three thousand four hundred dollars). My concerns about the inequalities in funding around 2020–21 were expressed in a November 30, 2021 letter to the DOI Deputy Assistant Secretary of Insular and International Affairs, Keone Nakoa. See *Attachment 1*. After no response from DOI for seven months, I wrote to the Secretary of the Interior, Deb Haaland on June 7, 2022. See *Attachment 2*.

Without a response to my various concerns about the past, present, and future inequities facing Swains Island, I was able to arrange a meeting with Deputy Assistant Secretary Nakoa and DOI Field Rep. for American Samoa, Lydia F. Nomura in the Tradewinds Hotel lobby in Tafuna village, American Samoa on November 7, 2022. It was at this point I was informed that DOI is not going to fight my battles for me and that I should talk to a lawyer.

The Constitution of American Samoa clearly provides “American Samoans,” meaning lineal descendants of Tutuila, Manu’a, and Swains Island have the basic fundamental right to protection from the alienation of their lands. Every time the American Samoa Government has issues with the Federal Government, they cite the right to the protection from the alienation of land and culture. Unfortunately, that same reasoning has not worked within American Samoa for Swains Island. Not having a vote in the local legislature means the Swains Island Delegate cannot effectuate the protection of this right, which led to the complete evacuation of its people.

### 2022 Referendum and H.R. 6062

In November 2022 a constitutional referendum a majority of American Samoans voted to give the Swains Island Delegate the right to vote in the *Fono*. The amendments were submitted by the Governor to the Secretary of the Interior in December 2022. Under DOI’s 1967 Revised Constitution of American Samoa, once a majority of voters pass a constitutional amendment, the Governor submits the proposed amendment to the Secretary of the Interior, who shall give “formal approval or disapproval within 4 months after its receipt.” It has been over one year since the voters passed the amendments and over one year since the amendments were forwarded to the DOI Secretary. DOI has taken no action nor provided justification why.

In October 2023, the American Samoa Senate passed *Fono* Senate Resolution 38-28 introduced by Sen. Togiola Tulafono urging the Governor “to pursue Congress with urgency and petition the approval of our constitutional amendments.”<sup>2</sup> The American Samoa Senate, the upper house of the *Fono* (Legislature) is unique among all state and territories in that it is the only body not elected by popular vote, but rather, selected among chiefly *matai* title holders through traditional means according to the traditions of each district of American Samoa. The decisions of the American Samoa Senate are the cultural barometer for policy in American Samoa. I am not standing in opposition to H.R. 6062 alone, in addition to my concerns about H.R. 6062’s impact on Swains Island, I am taking the same position as that of the traditional leaders of Tutuila and Manu’a in the American Samoa Senate. The people have spoken through the passage of these 5 amendments. Yet, DOI has still taken no action. Why are these amendments being held up?

In the 2022 referendum we rejected amendments 1-3 that sought to diminish the oversight role of the Secretary of the Interior in American Samoa by:

1. Transferring the power to appoint the Chief and Associate Justices of the High Court from the DOI Secretary to the Governor, **Defeated:** 66% No–34% Yes (defeated by the largest margin of any amendments);
2. Removing the power of the Secretary of the Interior to change decisions of the High Court, **Defeated:** 60% No–40% Yes;
3. Removing the Secretary of the Interior’s power to change the *Fono*’s override of the Governor’s veto, **Defeated:** 61% No–39% Yes.

These all failed.<sup>3</sup> At least we were given an opportunity to vote on the Secretary of the Interior’s oversight role. Where was the vote on Congress’s oversight role?

I have been told that H.R. 6062 didn’t exist in 2022, and that it deals only with federal law, and that’s why it wasn’t included in the Constitutional Convention (the “ConCon”) or the referendum. But amendments 1-3 we voted down deal with federal law also. The Secretary of the Interior gets her powers from Congress and the President. American Samoa cannot supplant powers of federal officials granted by federal law. We tried anyway.

At the ConCon, Congresswoman Amata said “We have the option of asking Congress to repeal the law and revert to the previous arrangement of approval by the Secretary of Interior, amending the law just to prohibit unilateral changes by the federal government, or leave the law as it is. This body may want to recommend a course of action in its transmittal to the Governor. As your representative in Congress, I will be guided by your wishes and introduce any changes needed in the

<sup>2</sup>See *Senate Approves Legislation regarding Constitutional Amendments*, Talanei News Now (American Samoa), October 3, 2023, available at <https://www.talanei.com/2023/10/03/senate-approves-resolution-regarding-constitutional-amendments/council%20paper%20on%20self-determination>, last accessed January 14, 2024.

<sup>3</sup>See Results of 2022 American Samoa Constitutional Referendum. Source Ballotpedia.com, available at [https://ballotpedia.org/American\\_Samoa\\_2022\\_ballot\\_measures](https://ballotpedia.org/American_Samoa_2022_ballot_measures), last accessed Jan. 14, 2024.

laws.”<sup>4</sup> Congresswoman Amata was talking about H.R. 6062 before it was introduced. Everyone at the ConCon heard her speech and the Congresswoman even went as far to make a press release about it.<sup>5</sup>

The ConCon never introduced a resolution to change Congressional involvement in the process. To me, that appears to be (in Congresswoman Amata’s words) asking Congress to “leave the law as it is.”<sup>6</sup> Nonetheless, on October 25, 2023, Congresswoman Amata introduced H.R. 6062, which seeks to remove Congress from the approval process. Again, why was such an important change never included in the ConCon or the referendum?

For simply asking these questions locally and to Congress, I have created enemies. Directly due to my opposition of H.R. 6062, I have been publicly threatened physically<sup>7</sup> and verbally threatened that if I don’t change my position on this bill, the Swains Island Amendment will possibly not be implemented for five years or more. These threats are not coming from members of the public, they’re coming from senior level members of the legislative and executive branches. On the contrary, I have also been told if I support this legislation, I could have the vote by the end of the year by some of the same people. This does not seem right to me.

I have been told DOI does not review constitutional amendments. I have been told they do not review local legislation. I have been told there may have been conflicts with the federal constitution in the amendments that came out of the 2022 ConCon. I have been told these things by ranking officials at the DOI Office of Insular Affairs.

### National Security Concerns

Swains’ recent thrust into the center of constitutional deliberations in American Samoa has caused the amount of online misinformation about its history to increase. Swains and the neighboring New Zealand dependency of Tokelau share a rich history, which was recognized and celebrated since the marriage of the 3rd generation Jennings, Alexander Eli Jennings I, to his wife of the prominent Pedro family in Tokelau, Margaret Pedro. However, Tokelau has since made historic claims to ownership of Swains Island, recently given the name *Olohega* in the Tokelauan language. The 1980 Treaty of Tokehega between New Zealand and the United States delineating the maritime boundary between American Samoa and Tokelau increased the United States’ exclusive economic zone (EEZ) in the South Pacific by roughly 100,000 square miles that has continued to feed the canneries of American Samoa for 70 years; Swains Island being geographically responsible for the extension, once again signifying that Swains Island has been a major economic asset to American Samoa since its inclusion nearly 100 years ago. First with the coconut farm and up to the present day with the EEZ.

While New Zealand confirmed U.S. sovereignty over Swains with the Treaty of Tokehega the government and people of Tokelau continue to question the validity of the United States’ sovereignty over Swains Island.

In 2006, Tokelau held an independence referendum which failed to reach the required 2/3 majority by a mere 38 votes. One year later in 2007, Tokelau’s independence referendum failed by just 16 votes. In 2008 Swains sought to add another layer of federal protection over the Island by establishing it as part of the National Marine Sanctuary prior to its people being forced to abandon the Island completely in 2013. In 2022, the General Fono (Legislature) of Tokelau issued a paper entitled *Conversation of the Question of Tokelau’s Path Toward Self Determination* (the “2022 General Fono Paper”). See *Attachment 3*.

In the 2022 General Fono Paper, the Tokelau Government stated publicly that they plan to “Develop a Strategy for Olohega [Swains Island]” by 2025/26. It is no secret that Swains Island is in the forefront of Tokelau’s minds when deliberating their potential independence from New Zealand.

American Samoa is the only U.S. Territory in the Southern Hemisphere. Swains is the most remote part of American Samoa over 200 miles to the north. Its position

<sup>4</sup> See *Amata’s Remarks at 2022 ConCon* (link available at <https://radewagen.house.gov/media-center/press-releases/amata-speaks-self-government-and-self-determination-concon-decries>, last accessed, December 30, 2023).

<sup>5</sup> See *Amata Speaks of Self-Government and Self-Determination at ConCon; Decries Threat from Outside Special Interests*, screenshot of press release by Congresswoman Amata, September 22, 2022, (available at <https://radewagen.house.gov/media-center/press-releases/amata-speaks-self-government-and-self-determination-concon-decries>, last accessed, December 30, 2023).

<sup>6</sup> See *supra* n. 4 at 4

<sup>7</sup> See *Spar of Words Turns Physical After House Session*, Talanei News Now (American Samoa), Jan. 10, 2024, available at <https://www.talanei.com/2024/01/10/spar-of-words-turns-physical-after-house-session/>, last accessed January 15, 2024.

on the border with a potentially new sovereign country who challenges the very legitimacy of American sovereignty over Swains Island and its surrounding waters represents a significant threat to national security. DOI's history of indifference to the rights and affairs of Swains Island jeopardizes not just the security of Swains, but the integrity of the United States' international borders.

#### **Conclusion**

As a veteran of the U.S. Navy and as a member of the *Fono*, I took an oath to defend the Constitution of the United States and the Constitution of American Samoa. And I am grateful the voters approved the Swains Island Amendment and want it to be implemented as soon as possible. But is H.R. 6062 necessary to implement the amendments we approved? If there is an issue with the amendments, bring it to light so the people of American Samoa can agree on a way to fix it. Unfortunately, I do not believe we have been given enough information about H.R. 6062.

I have tried for decades to resolve the issues with Swains Island at the local level and with DOI with no success. No one wants to talk about Swains Island. It was only with the introduction of H.R. 6062 that I had a chance to tell the story of Swains Island and surprisingly, several Members of Congress were interested, resulting in my invitation to Congress this Thursday. This is not about politics. If DOI can somehow ensure Swains Island is treated fairly with Tutuila and Manu'a when it comes to protections from alienation of land, and all rights under the American Samoa Constitution, then I have no problem supporting H.R. 6062. But if H.R. 6062 can't ensure equal treatment for all American Samoan Natives, whether your family is from Tutuila, Manu'a, or Swains, then I see no point in supporting it.

\*\*\*\*\*

#### **Swains Island by drone, November 2023**



## ATTACHMENT 1

Letter from Su'a Alexander Eli Jennings to Deputy Secretary of Insular and International Affairs, Keone Nakoa, U.S. Department of the Interior, November 30, 2021

**37th LEGISLATURE OF AMERICAN SAMOA  
HOUSE OF REPRESENTATIVES**

November 30, 2021

Hon. Keone Nakoa  
Deputy Assistant Secretary for Insular and International Affairs  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

Re: Request for Assistance to the Office of Insular Affairs

Aloha Honorable Keone Nakoa,

I would like to extend my heartfelt congratulations on your recent appointment as the *Deputy Assistant Secretary for Insular and International Affairs*. My name is Su'a Alexander Eli Jennings; I am the current serving Swains Island Delegate to the American Samoa House of Representatives—the only non-voting member of this legislative body. In my capacity as a Community Leader, I also have the monumental task and grave responsibility for preserving and perpetuating our unique Swains Island cultural history, traditions, and economic livelihood. I am writing this letter to you to seek your assistance in mitigating the dire struggles we face as a people.

For background information, here is a brief history of Swains Island. Eli Jennings (an American from Long Island, NY) acquired Swains Island in 1856; the United States first established a claim of sovereignty about 1860 under the Guano Act of 1856. In a report to Congress in 1924, the Secretary of State indicated that the U.S. Government had “. . . the responsibility either of extending its sovereignty over Swains Island and assuming the obligations which such a course would necessarily entail, or of disclaiming the exercise of any control or jurisdiction over the island . . .” The following year Swains Island was officially annexed by the United States through an act of Congress and was placed under the jurisdiction of the government established in American Samoa by the United States (administered by the Commanding Officer of Naval Station Tutuila until 1951, when it was transferred to the U.S. Department of Interior).

While American Samoa has benefited from its relationship to the United States, Swains Island has not. Though we are United States nationals, we have no significant voice in the government of American Samoa (where I am a **non voting** delegate to the Legislature) or of the United States. Swains Island continues to be a vital economic asset to American Samoa and the United States, adding some one hundred thousand square miles of ocean to the Exclusive Economic Zone (EEZ). But the Swains Island community has been forced to relocate elsewhere due to the complete lack of economic support from the governments of American Samoa and the United States.

Now Swains Island has been notified that out of the \$1.4 billion anticipated for American Samoa through the CARES and ARPA fundings, Swains Island is only eligible for \$3,400 (Three Thousand Four Hundred Dollars). This is like the on-going practice of allocating only \$50,000.00 (Fifty Thousand Dollars) yearly to Swains Island out of an annual ASG budget of over \$400 Million Dollars. It was further explained that the distribution of ARPA funding was set by the Federal Government and based on population.

On July 28, 2021, I wrote the American Samoa Leadership, explaining why Swains Island was forced to evacuate its residents, and our desperate need for Infrastructure Development and employment opportunities. To my disappointment, I have received no response. In subsequent discussions with the OIA Field Representative it was revealed that Swains Island is set to receive \$3 million. However, the ASG government responded that they are not aware of any such funding for Swains Island. In a recent public meeting (on November 9, 2021) for ports, airports, and transportation projects, it was confirmed again that Swains is not included under any of these projects, where millions of dollars are allocated to

Tutuila, Manu' a, and Aunu'u. Even under non-specified areas where flexible justifications are acceptable for additional millions of dollars to Tutuila, Manu'a, and Aunu'u, Swains Island does not qualify for assistance.

The purpose of my letter is to bring to your attention the inequities, injustices and neglect that have seen the systematic demise of our Swains Island Community. We are a United States Territory by annexation, not by a Deed of Session. In our view the governments of the United States and of American Samoa have failed to assume the obligations which that annexation necessarily entails. The unfair treatment under the CARES Act and ARPA is the most recent and most egregious example of this failure.

Therefore, as the Agency with oversight over American Samoa and Swains Island, and as stated in my original letter to the ASG Leadership dated July 28, 2021, I humbly submit to you the following request:

- **Funding for Swains Island:** I respectfully request assistance in providing me with information on any funding which may be available through CARES, ARPA, or the Department of the Interior for Swains Island. Also as mentioned in my letter to the ASG Leadership, Swains Island is seeking \$10 Million for infrastructure development and \$3 million annual funding for essential services.
- **Resources to explore other political options for Swains Island:** I respectfully request funding assistance to explore other political options for Swains Island under the United States.

Finally Honorable Keona Nakoa, if we are unable to resolve these injustices to a 165-year Territory of the United States, then On May 13, 2025, Swains Island will recognize one hundred years since becoming part of American Samoa in 1925, and 70 years of oppression under the jurisdiction of the U.S. Department of Interior since its transfer from the U.S. Department of the Navy. I look forward to your favorable response to my request, and please do not hesitate to let me know if more clarification is needed.

Respectfully yours,

S'UA ALEXANDER ELI JENNINGS,  
*Swains Island Delegate*

## ATTACHMENT 2

Letter from Su'a Alexander Eli Jennings to the Secretary of the Interior,  
Deb Haaland, June 7, 2022.

### 37th LEGISLATURE OF AMERICAN SAMOA HOUSE OF REPRESENTATIVES

June 7, 2022

The Honorable Deb Haaland  
Secretary of the Interior  
1849 C Street, NW  
Washington DC, 2024

Dear Madam Secretary,

My name is Su'a Alexander Eli Jennings, and I have served as the Delegate of Swains Island for the last 18 years in the American Samoa House of Representatives. Moreover, during the last 18 years I have also served as the Traditional Leader for the Swains Island Tokelau Community in American Samoa, and among other things I preside over Traditional and Ceremonial events.

With much apprehension, I plea for your leniency given this stretch of extreme events in the United States, the Insular Areas, and even here in American Samoa and the Pacific Region, to consider my desperate appeal for assistance to the Office of Insular Affairs (OIA) in my attached letter dated November 30, 2021.

My apprehension and disappointment in writing to you stems from the apparent lack of significance to claims of inequities, injustices, and neglect against Swains Island in the Territory of American Samoa for over fifty years, including potential violations of the Constitutional rights of a U.S. Territory and U.S. Nationals,

because of the lack of a response from OIA for nearly seven months. The situation is further escalated by the rapidly approaching and long-anticipated Constitution Convention of 2022, and the 2023 Budget Hearings which will negatively impact Swains Island even more without a response from the Department of the Interior. Meanwhile, Swains Island is forced to be abandoned and left alone and unprotected two hundred miles to the North, even while the threat of influence by the People's Republic of China in the Pacific (including illegal fishing activities) is attracting other countries to the aid and security of neighboring islands.

Therefore, I beg your indulgence to support a prompt response from OIA to my letter, so that Swains Island can be better prepared for the upcoming Constitution Convention and Budget Hearings, as well as to afford a solid foundation for moving forward to a better future for all American Samoa. I am prepared and willing to provide any additional information, or recommendations, or to answer any questions at your pleasure.

Very Respectfully Yours,

S'UA ALEXANDER ELI JENNINGS,  
*Swains Island Delegate*

### ATTACHMENT 3

Council Paper on Self-Determination for May 2022 General Fono (Tokelau),  
available at [https://www.matauala.org.nz/\\_files/ugd/f198ee\\_c91191cfc2db4ea88c73da395a32f6a0.pdf](https://www.matauala.org.nz/_files/ugd/f198ee_c91191cfc2db4ea88c73da395a32f6a0.pdf), last accessed Jan. 14, 2024.

### UNCLASSIFIED

#### CONVERSATION ON THE QUESTION OF TOKELAU'S PATH TOWARDS SELF-DETERMINATION.—*Malo Fakaauau*

##### Purpose

1. The purpose of the paper is to propose a revisit the views of our people on the question of self-determination for now and into the future.

##### Introduction

2. We are well aware of our efforts in the government development agenda through our forefathers and foremothers who have passed and those who are still alive, the able men—aumaga/taulelea, elderly women and Fatupaepae, through to our children.

3. Tokelau expressed many views to a number of international forum especially the UN starting back in 1993, to detail Tokelau people's dreams and their aspirations for the future. Right up to this moment Tokelau continues to present a voice annually to the C24 (UN Committee of 24 on Decolonization) who is responsible to decolonize countries.

4. The two referenda in 2006 and 2007, we know didn't achieve the threshold required for the referendum. But the nature of the views and our dreams remains. It's now 14 years since we took that referendum, and there has been silence since with no further conversation where to from here.

5. That is the spirit of the proposal; Tokelau should be looking at defining its position. What future dreams does Tokelau wants? The answer is only within Tokelau.

6. It's is not an easy task, but it is controllable. We keep our faith that our Lord will help strengthen us because of the nation. We, Tokelau, should start meeting and have a conversation in our respective national forums. Also, in villages the conversations should be had. There may also be a decision required to include our diaspora overseas to be involve in the conversation. The purpose is to ensure the people of Tokelau understands what is ahead.

7. Some thoughts that may generate the conversations:

- Who will lead such thinking?
- Don't leave it for others to start the thinking, but initiate an internal conversation first

- Tokelau should be well prepared to respond to the question: of a preferred type of governance appropriate for Tokelau
- It is a belief such a conversation will be supported by NZ
- If we are not willing and start exploring now, we may be questioned by our future generation

8. Once Tokelau has decided, then a discussion with our administering power, NZ to support in improving our capacity and capability towards our preparations.

9. It is proposed that, by 2025—2026 Tokelau will have a clear response. The reason being Tokelau was administered by Samoa and NZ since 1925. If we are fortunate enough to be alive in 2025, that is the 100 year anniversary the people of Tokelau have been administered by NZ. And there will be other thoughts to improve this matter.

10. But the thinking is, if approved by the three Taupulegas and villages than we look and investigate we have a clear understanding of the relationship between Tokelau and NZ over the past century. It will remind Tokelau also of the efforts to date since the delegation of the Administrator's powers to the 3 Taupulegas and the GF. It is hoped there will be important workshops, which will be crucial for Tokelau to consider on the way ahead.

11. There should be no proposed model from us, but we leave that to be decided by our people. Or do we select a model from the governance models provided by UN, or develop our own fit for purpose model that suits Tokelau and using some component of outside models to achieve the most appropriate governance model for Tokelau.

12. What is important, as our ancestors would say 'Taia ko Lata Matau'. Let's be strong to first allow Tokelau to develop then seek help later. Let's look forward for better days, knowing, there will be many challenges, but Tokelau can initiate the work to know the right tack depending on the wind direction whether it's from the stern, the bow, starboard or port side. Important the vaka is buoyance, steady keel, straight forward sailing, kae, e lahi foki na pokotau, kae e mafai lava ia Tokelau ke taumaka, ke gauku, fuafua lava ki te matagi pe tuliheke, pe fetalaaki pe uamua. Ko te Vaka ke hako na tau, ke takele lelei, ke teletonu, ke gutua, ke tauala, ke malu, ke tologa. And very dependent on the Voyage Guidance ('Taki Folau').

13. The three models from UN:

- Independent
- Free Association
- Integration

14. Tokelau should first understand these models, as well as another model that may be different, should Tokelau decides. The final decision is Tokelau.

15. There are a number of development that works alongside with the preparation for our internal self-determination agenda.

16. We hope that once agreed by the Taupulegas, then, it is the time to formally inform NZ

17. By the year 2025–2026 progress made:

- Workshops has happened
- Activate workshop meetings, reviewing and discussions in villages and the nation;
- Decide on a model that may be selected in future
- Improve structures of governance with politics in all levels of decision making.
- Improve governance of services in villages and national, and properly put right the Office in TALO
- The national airport would be complete by then
- A proper inter-atoll vessel in place
- The fibre optic cable is cut over for high speed internet
- Complete priorities for Education and Health
- Complete preparation for Climate Change
- Tokelau continues to be protected from COVID19

- Complete part of the independent Judiciary sector (consultation?) and the laws themselves
- The Tokelau Language Commission is established
- The TREEP project is complete.
- Secured the EZZ and fishing boundaries
- Develop a strategy for Olohega

18. There may be other development agenda that the General Fono and the Taupulega may wish to add.

**Recommendations:**

19. It is recommended that the General Fono:

- i) **note** that the purpose of the paper is to encourage and seek endorsement that Tokelau now start the conversation on self-determination heading into commemorating 100 years under NZ administration;
- ii) **agree** that Tokelau revive the conversation on self-determination heading into commemorating 100 years under NZ administration

---

QUESTIONS SUBMITTED FOR THE RECORD TO THE HON. ALEXANDER ELI JENNINGS,  
SWAINS ISLAND DELEGATE, AMERICAN SAMOA HOUSE OF REPRESENTATIVES

**Questions Submitted by Representative Westerman**

*Question 1. One of the Constitutional amendments voted upon by American Samoa citizens in 2022 allowed the delegate seat you currently occupy the ability to vote in the American Samoa House of Representatives.*

*1a) Could you please explain to us the impact of H.R. 6062 on this amendment attempt?*

Answer. H.R. 6062 impacts this amendment attempt by suspending the requirements for DOI to review of our Amendments within 4 months to an indefinite time. H.R. 6062 was introduced on October 25, 2023, 10 months after the Governor sent the Amendments to the Department of the Interior for review, and 3 weeks after the passage of Senate Resolution 38-28 on October 2, 2023, calling on Governor Lemanu P. Mauga to “pursue the U.S. Congress with urgency and to petition the approval of our Constitutional Amendments.” There’s no guarantee H.R. 6062 will be passed by both Houses this year given the Presidential and General elections in November (SR 38-28 was submitted to the Subcommittee on Indian and Insular Affairs as additional information on January 31, 2024). DOI has shown that they are willing to unilaterally suspend certain provisions of our constitution without warning, namely, the 4-month approval requirement in the American Samoa Constitution being completely disregarded both before and after the introduction of H.R. 6062.

H.R. 6062 impacts this amendment because it denies Swains Island’s reliance on a Congressional review to get to the core of why Swains Island has been mistreated and separated from the rest of the islands of American Samoa for over 63 years under the Administration of the Department of Interior. Resulting in the nonexistence of Federal Funding assistance for Swains Island and the forced alienation from our lands in violation of our Constitutional rights.

*1b) How would the passage of this bill affect Swains Island?*

Answer. Passage of H.R. 6062 removes requirements for ASG and/or DOI to consider the Constitutional rights of Swains Island, as demonstrated by the Executive Order that only includes the 1929 Ratification Act which only recognizes Tutuila and Manu’a as American Samoa, but does not include HJR 294 approved March 4, 1925, that also recognizes Swains Island as a part of American Samoa. This is further demonstrated by the ASG and DOI’s failure to respond to letters related to Constitutional rights violations going back to 2014, and more recently leading up to the 2022 Constitutional Convention.

*Question 2. The 2022 constitutional amendments have yet to be approved as they are currently still with the Department of the Interior.*

*2a) What has been the impact on Swains Island from this delay?*

Answer. Swains Island has had no ability to impact any financial measures that affect Swains Island, such as the 2024 Budget Hearings, and soon the rapidly approaching 2025 Budget Hearings. Swains Island only receives local funding for transportation under the Governor's *Special Programs* which is further obscured by being combined with the Manu'a Transportation where they have scheduled bi-weekly trips to Manu'a, while there are no set trips to Swains Island. This practice has resulted in going for months or even years without transportation to Swains Island, and the forced evacuation of our lands against our Constitutional Rights, despite budgeted funds for the Swains Island transportation during all those years.

Another Legislation was the SB 38-26 Supplemental Appropriation Bill where \$5 million from local surplus fund were allocated for a Swains Island airport but was cut to \$1.5 million and the rest distributed for other projects in Tutuila and Manu'a, despite Swains Island's appeals. That is in addition to the recent millions of dollars out of the \$1.4 Billion ARPA funds that were also distributed to Tutuila and Manu'a for airports, roads, and other infrastructure projects, but none was ever allocated for Swains Island.

This delay is causing Swains to continue to lose out on having a vote on these important measures despite the fact the people of American Samoa already voted in favor of giving Swains voting representation in the legislature.

*Question 3. Can you describe your experience with attempting to reach out to the Department of the Interior on the 2022 Swains Island amendment?*

Answer.

#### **2014**

Efforts to reach out to the Department of the Interior on the 2022 Swains Island amendment originated in 2014, with attempts to resolve matters at the local level.

On March 13, 2014, I introduced HJR 33-2 seeking the right to vote for the Swains Island Delegate. At a subsequent Hearing of the House Ways and Means Committee on HJR 33-2 on March 16, 2014, then Attorney General Talauega Elesalo Ale (now the Lt. Governor), the late Secretary of Samoan Affairs Paramount Chief Satele Galu Satele, and the late Legislative Counsel Henry Kappel, all endorsed the Legislation stating it was long overdue.

On September 29, 2014, I wrote the Ways and Means Committee Chairman, F'aulualo Faafetai Talia, explaining my reasons for calling for a vote on HJR 33-2. A copy of my letter was also sent to Congressman Faleomavaega E. Hunkin and the ASG Leadership. On October 3, 2014, HJR 33-2 was brought up for a vote of the House where it was defeated by a vote of 6 to 5, 4-abstained, and 5-absent (a copy of the letter to the Ways and Means Chair including a copy of HJR 33-2 was submitted as additional documents to the U.S. House Subcommittee on Indian and Insular Affairs on January 31, 2024).

#### **Seeking assistance from DOI Assistant Secretary Esther Kiaaina**

On October 17, 2014, I wrote the Department of the Interior's Assistant Secretary Esther Kiaaina, explaining my failed attempts to seek the right to vote for the Swains Island Delegate, despite the endorsements of the Attorney General, Secretary of Samoan Affairs and the Legislative Counsel and requesting a meeting on her anticipated visit to American Samoa. I also copied the Interior's American Samoa Field Representative Lydia F. Nomura. I never got a response from Assistant Secretary Esther Kiaaina and was not granted a meeting with her on her visit to American Samoa (a copy of the letter to Assistant Secretary Kiaaina and a copy of the letter to the Ways and Means Chairman including a copy of HJR 33-2 was submitted to the Subcommittee on Indian and Insular Affairs as additional information on January 31, 2024).

HJR 33-2 was later submitted as a proposed amendment to the 2022 Constitutional Convention where it passed by an overwhelming vote of 73 to 43 and approved by the people of American Samoa on the 2022 election.

#### **2021**

My recent attempt to reach out to the Department of the Interior on the 2022 Swains Island Amendment again began with a letter to Governor Lemanu P. Mauga, the President of the Senate Tuaoalo Manai'a Fruean, and the Speaker of the House Savali Talavou Ale on July 28, 2021. This was in response to a notification from Mr. Keith Gebauer, Manager of the Rescue Plan Coordinator that out of \$1.4 Billion Dollar ARPA and Cares Act funds for American Samoa, Swains Island was only eligible for \$3,400.00 (Three Thousand Four Hundred Dollars). In my letter to the American Samoa Government (ASG) Leadership, I cited several inconsistencies in the American Samoa Constitution and treatment of Swains Island that has contributed to our forced evacuation and disqualification for ARPA funding. At the

same time words of a possible Constitutional Convention in 2022 started to surface. Also in that letter, I specifically requested a seat in any Constitutional Review or Political Status Review Committee (the letter to the ASG Leadership was submitted to the Subcommittee on Indian and Insular Affairs as additional information on January 31, 2024).

#### **Seeking assistance from DOI Deputy Assistant Keone Nakoa**

After 4 months without any response from the local Leaders, I requested the assistance of the Honorable Keone Nakoa in a letter dated November 30, 2021. I forwarded a copy of my letter to the ASG Leadership citing the inequities, injustices, and neglect that has plagued Swains Island for years in American Samoa to Deputy Secretary Nakoa (the letter to Deputy Assistant Nakoa was attached to our written testimony). No response to my letter to Deputy Nakoa was ever received.

#### **2022**

#### **Swains Island Administratively denied the Introduction of a Constitutional Amendment**

At the convening of the 3rd Session of the 37th Legislature in January 2022, the 2022 Constitutional Review Committee was set to convene on February 9, 2022. Swains Island was not granted a seat on the Constitutional Review Committee. On February 12, 2022, I requested through an email to House Legal Counsel Nat Savali to review an attached copy of HJR 33-2 from 2014 for resubmission as an Amendment for the 2022 Constitutional Convention. After several discussions with Legal Counsel Nat Savali and a meeting with the Speaker, my Amendment was not allowed to be introduced by the end of the 3rd Session of the 37th Legislature.

#### **Seeking the assistance of Madam Secretary Deb Haaland**

On June 7, 2022, with no response from Deputy Assistant Nakoa and repeated discussions with the Office of Insular Affairs as well as failed attempts to introduce an amendment in the House of Representatives, I wrote to the Honorable Deb Haaland, seeking her assistance given the approaching 2022 Constitutional Convention and 2023 Budget Hearings. I have not received a response from the Secretary (letter to Secretary Deb Haaland was included in our written testimony to the Subcommittee on Indian and Insular Affairs).

#### **Meeting with Policy Director Basil Ottley and DOI American Samoa Field Representative, Lydia F. Nomura**

On August 29, 2022, Interior Assistant Secretary Carmen Cantor was on hand for the opening of the 2022 Constitutional Convention as the Keynote Speaker. Accompanying her was Mr. Basil Ottley, Policy Director of OIA. After the opening Ceremony, I was granted a meeting with Mr. Ottley and DOI Field Representative Lydia F. Nomura. The purpose of the meeting was to specifically seek a response from Deputy Secretary Keone Nakoa to my letter dated November 30, 2021, or Secretary Haaland to my follow-up letter of June 7, 2022. Neither Mr. Basil nor Ms. Nomura were aware of any response to my letters.

#### **2023-2024**

#### **Meeting with DOI Deputy Assistant Secretary Keone Nakoa**

On November 7, 2023, I met Deputy Assistant Keone Nakoa and DOI American Samoa Field Representative Lydia F. Nomura. When asked about a response to my letter to him dated November 30, 2021, or my follow-up letter to Secretary Haaland dated June 7, 2022, he replied that he did send a reply on behalf of the Secretary. He directed Field Representative Nomura to forward his response to me. I never received his letter dated June 30, 2024, which is also consistent with the response from Policy Director Ottley and Field Representative Nomura almost 30 days later August 29, 2022, and our Legislative staff's report that they never received a letter from DOI.

As for any Constitutional violations against Swains Island, Nakoa stated there are none because the U.S. Constitution does not fully apply to American Samoa, and DOI does not review local Constitutions. There may be inconsistencies with the American Samoa Constitution, but no violations. Besides there may be some illegalities with the American Samoa 2022 Constitutional Convention. He stated that DOI will not litigate my case and advised that I seek the help of a lawyer. That's when I assembled my Opposition to H.R. 6062 Team to oppose Congresswoman Radewagen's Legislation, resulting in my testifying before the Subcommittee on Indian and Insular Affairs on January 18, 2024.

*3a) Follow-up: What responses has the Department of Interior provided if any?*

Answer. I have not received a response from the Department of the Interior to any of my letters. I only had a chance to meet with Policy Director, Basil Ottley and the American Samoa Field Representative Lydia F. Nomura on August 29, 2022, where they assured me, they are not aware of any response to my letter from Deputy Assistant Nakoa or, Madam Secretary Haaland. Over a year Later I met with Deputy Assistant Keone Nakoa and DOI Field Representative in American Samoa, Lydia F. Nomura on November 7, 2023. There he informed Nomura and I that he sent a response on behalf of Secretary Haaland, which I never received.

*3b) Follow-up: Do you believe that removing the requirement for amendments to receive Congressional approval would address this issue?*

Answer. No. This bill will remove the ability for Swains to address Congress about DOI and ASG's mistreatment of Swains Island under the American Samoa Constitution. The only way to resolve this issue is to have assurance from Congress or DOI that DOI can be held accountable for disparate treatment of certain classes of American Samoans. This requires either Congress to amend this legislation and insert a provision that all people of American Samoa shall be protected from the forced alienation of their family lands, or an amendment of the Presidential Executive Order 10264 stating the same. At the least, DOI needs clarity on the fact that Swains is a part of American Samoa under their civil administration, and that Swains is a politically co-equal part of American Samoa as the islands of Tutuila, Aunu'u, and Manu'a.

---

Ms. HAGEMAN. I thank the witness for your testimony, and I am sure that you have generated some questions for the Members up here, thank you.

The Chair now recognizes Governor Guerrero for 5 minutes.

**STATEMENT OF THE HON. LORDES AFLAGUE "LOU" LEON  
GUERRERO, GOVERNOR, HAGATNA, GUAM**

Governor GUERRERO. Hafa adai, Madam Chair and members of the Committee. I am testifying before you today to support the provision in H.R. 6273 that continues language in the 2003 Compact of Free Association agreements that authorized and appropriated annual grants to host communities to defray costs incurred as a result of increased demands placed on health, educational, social, and public safety services due to the COFA agreements.

The United States has primarily treated the COFA agreements as a foreign policy issue. However, it is also crucial for the United States to fully understand the impact of the COFA agreements on the domestic policy front. Jurisdictions such as Guam and other states and territories are adversely affected by the woefully underfunded mandate of the COFA agreements. Now, the Federal Government is seeking to make this an unfunded mandate on host states and territories, which will negatively impact our state government coffers.

Reimbursements to the government of Guam have been insignificant. Before Fiscal Year 2024, Guam received between \$12 million and \$16 million annually from the Federal Government for our government's cost in providing public services and programs to COFA citizens, and between \$1.4 million to \$2 million annually in compact impact discretionary funds. We estimate that the Government of Guam spends between \$132 million to \$150 million each year providing such services and programs.

Therefore, I request your support for compact impact funding solutions. H.R. 1571, also known as the Compact Impact Fairness Act, CIFA, alone cannot adequately reduce the cost that COFA migrants have on our host communities. Several local services and programs rely on compact impact funding that CIFA cannot cover, with education and public safety costs being the most significant.

The United States, as the administering power of Guam, the territory of the United States, is responsible for ensuring, maintaining, and seeking the island's economic advancement according to the United Nations charter under chapter 11, article 73.

Interestingly, House Joint Resolution 96 authorizes and appropriates to the United States Postal Services a total of \$602.3 million, or \$31.7 million for each year of Fiscal Year 2024 through 2043, to fund its services in the FAS. However, per a 2022 GAO report, USPS stated it incurred a total loss of \$110 million since 2002 by providing services to the FAS.

The USPS appropriation is significantly more than it requested. Therefore, I ask that the Federal Government fulfill its duty as an administering power by appropriating sufficient funding to Guam for the compact impact costs, which is between \$132 million to \$150 million each year.

In 2013, GAO submitted a statement for the record to the U.S. Senate's Committee on Energy and Natural Resources. The GAO identified several weaknesses related to compact impact estimates. Following GAO recommendations, Guam applied for a DOI grant to conduct a cost benefit analysis and develop an acceptable methodology to address the impacts of the COFAs, which will help us share the most adequate data with Congress. Therefore, I ask that continued annual reporting of compact impact costs to Congress be maintained.

I want to thank my Delegate for his quick introduction of H.R. 6273, and I appreciate your Committee urgently moving the bill forward. I strongly urge Congress to pass the provision of H.R. 6273 to reauthorize and continue to appropriate annual grants to host communities to defray costs incurred as a result of increased demands placed on health, educational, social, and public safety services due to the COFA agreements.

Thank you, and si yu'us ma'ase.

[The prepared statement of Governor Guerrero follows:]

PREPARED STATEMENT OF THE HONORABLE LOURDES A. LEON GUERRERO, GOVERNOR  
OF GUAM

ON H.R. 6273

I strongly urge the Committee to pass the provision in H.R. 6273 to reauthorize and continue to appropriate annual grants to host communities to defray costs incurred as a result of increased demands placed on health, educational, social, and public safety services due to the COFA agreements. Upon taking office in January 2019, one of my first letters to the U.S. Department of Interior (DOI) stated that the government of Guam would address the methodology concerns Congress had with Guam's annual reports documenting the cost impacts of the Compact of Free Association (COFA).

Knowing in 2019 that negotiations on the economic terms of the COFA agreements would have to begin ahead of the 2023 termination date, I shared the policy points that Guam proposed to be included in the renegotiated compacts. These five policy points hardly varied over the past four years, and the message stayed consistent for every current or incoming legislative or executive official.

Topping my list was the need for adequate reimbursement of compact impact costs with a dedicated funding source. Without a seat at the renegotiation table, I took every opportunity to share Guam's needs with those who did have a seat.

Guam's latest unaudited Compact Impact costs for 2022 show that the government of Guam spent more than \$148 million in local funds to live up to the obligations the U.S. has made to the COFA nations. To secure strategic access for U.S. military forces within the FAS boundaries and strategic denial rights that prevent the use of the FAS boundaries by other governments without U.S. consent, the U.S. told the FAS that they could avail themselves of government services when living in the U.S.

Guam is the favored first stop on the migration trail for many FAS islanders. Their presence within our community has been welcomed and challenged as we learn how to strengthen and grow from our shared migration experience. The story is heard across every U.S. community of a struggling immigrant community.

On Guam, low-income families battle with a limited housing market, which is also impacted by the largest peacetime military buildup in America's history. The housing crisis is forcing Indigenous families to leave the island because they can no longer afford to own a home here, and many FAS islanders struggle to afford and live comfortably with many individuals in one housing unit. In contrast, a single 18-year-old military soldier can pay \$2,100 monthly to rent a one-bedroom apartment. The Guam Housing and Urban Renewal Authority (GHURA) Housing study also indicates that Guam will need nearly 10,000 new housing units between 2020 and 2025 to accommodate potential demand, household growth, and homeless households re-entering the housing market. Guam's housing crisis is due to the high cost of construction and the lack of housing inventory. More affordable homes must be built quickly to stabilize the critical housing shortage.

Our healthcare workforce grapples with an infant mortality rate among the FAS population that is three times higher than the U.S. national average. The government of Guam began tracking in 2017 why so many infants were dying, and the statistics paint a grim picture of how FAS mothers had high rates of infant deaths due to lack of access to health care. The Guam Department of Public Health & Social Services (DPHSS) Child Fatality Review Report highlights that the government of Guam's locally funded Medically Indigent Program (MIP) can help cover medical expenses for low-income expectant mothers. However, MIP paid low rates, which led to many OB/GYNs not accepting patients with locally funded MIP. Until 2020, FAS young mothers did not have access to Medicaid. We hope to turn our staggeringly high infant mortality statistic around due to Congress allowing FAS islanders to be eligible for Medicaid once again.

The DPHSS also deals with high rates of tuberculosis, including cases of antimicrobial drug-resistant variants of TB. The medicine for this program is mainly purchased with local funds. Guam is on the frontline of challenging, complex public health issues that impact us hard with further adverse consequences to multiple government of Guam agencies. The June 2020 GAO report that the state of Arkansas was so concerned about the high rates of TB among the Marshallese community that they sent Arkansas officials to the Marshall Islands to conduct screening for active and latent tuberculosis, diabetes, and leprosy.

The Guam Department of Education (GDOE) is the most impacted government agency, which reported spending a little over \$62 million of local funds to educate nearly 7,000 FAS students in School Year 2021-2022. H.R. 1571, also known as the Compact Impact Fairness Act (CIFA), would not cover this cost. The enrollment of FAS students in our schools has been as high as 27% of the entire school population. Multiply your state school population by 27% and then imagine that locally generated funds were paying that obligation every year and have been doing so since the Compacts were first signed in 1982. This number should give you an idea of the magnitude of the unfunded burden Guam has been carrying.

Our public safety agencies, in 2022 alone, expended nearly \$39 million in services to FAS citizens. Our public safety agencies are on the front lines where many FAS islanders are struggling to adjust to their lives in Guam and far too often find themselves in the criminal justice system. Yet, CIFA does not provide a solution to help the government of Guam with the growing costs of its public safety services to FAS citizens.

In multiple letters to executive and congressional leaders, I have stated that Guam has millions of dollars of annual expenses that CIFA will not cover. My office has supported Delegate James Moylan in securing federal funding sources for unfunded local costs due to the COFA agreements. See the table below for a list of some of Guam's local departments and agencies, mainly education and public safety, that spend the most local money to provide services to FAS citizens since I have been in office from FY 2019 to FY 2022. FY 2023 data have not been compiled yet.

AGENCY	FY 22	FY 21	FY 20	FY 19	SUBTOTAL
GDOE	\$62,359,289	\$65,340,153	\$70,973,640	\$72,211,980	\$270,885,062
DPW (bus ops)	\$2,062,596	\$2,096,326	\$1,037,800	\$2,045,781	\$7,242,503
GCC	\$99,917	\$85,718	\$2,879,554	\$3,187,876	\$6,253,065
UOG	\$1,787,068	\$638,350	\$2,014,284	\$1,463,527	\$5,903,229
GPD	\$10,287,942	\$8,752,221	\$8,356,208	\$10,617,570	\$38,013,941
JOG	\$7,092,840	\$4,169,982	\$5,590,248	\$5,943,521	\$22,796,591
GFD	\$6,655,727	\$5,619,652	\$5,130,033	\$4,583,552	\$21,988,964
DOC	\$6,505,207	\$5,411,860	\$2,185,080	\$4,532,470	\$18,634,617
DYA	\$4,447,199	\$3,223,450	\$3,737,595	\$4,779,403	\$16,187,647
OAG	\$2,398,360	\$2,465,072	\$2,992,957	\$2,987,644	\$10,844,033
PDSC	\$1,441,351	\$1,357,853	\$1,117,823	\$1,198,466	\$5,115,493
DMA/OCD	\$0.00	\$0.00	\$120,919	\$75,927	\$196,846
DOAG	\$10,567	\$6,361	\$3,753	\$12,403	\$33,084
<b>FY TOTAL</b>					
LOCAL FUNDS SPENT	\$105,137,496	\$99,160,637	\$106,015,222	\$113,551,790	\$423,865,145
Compact Impact MANDATORY Funds Received	\$12,532,239	\$12,532,239	\$14,855,958	\$14,855,958	\$54,776,394
Compact Impact DISCRETIONARY Funds Received	\$2,088,706	\$1,670,965	\$0.00	\$1,980,000	\$5,739,671

Members of Congress, Guam is dealing with two substantial federal policies: the COFA agreements allowing unrestricted migration from Micronesia and the military build-up of Guam, including the first Marine Corps base built in 68 years and an environmental impact statement (EIS) process underway right now for the feasibility of building up to 20 missile defense sites throughout Guam.

As Guam participates in the defense of the country and the FAS region, we need continued funding, support, and a greater voice where we can say what is working or not and what is about to break and needs attention immediately.

We need to continue the processes we are engaged in with Congress/GAO and DOI to determine the level of funding and support required to ensure that the local people of Guam and the FAS islanders who call Guam their home can lead a peaceful existence together. The impacts on Guam are more significant than those impacting anywhere else in the country. Multiply 18.5% by every affected state population, and you will understand the magnitude of what Guam is dealing with. Chairman Westerman, the GAO stated your FAS population to be nearly 6,000 between 2013 to 2017. Thus, your state of Arkansas would have to have at least 567,530 FAS islanders in Arkansas to feel the impact that Guam bears.

It stands to reason that since Guam's impacts are so significantly huge, finding and fixing them would be arduous and time-consuming. We are inventing the wheel for calculating the impacts of legal migration to U.S. host communities.

To continue the process we are engaged in, I ask Congress to continue the language concerning the intent of Congress, Compact Impact reimbursement, the

definition of a FAS islander to be counted for impacts, debt relief, census taking, commitment to fund medical facilities and reporting of impacts in Section 104(e) of U.S. Public Law 99-239 and U.S. Public Law 108-188. The U.S. Congress has yet to reimburse Guam for actual expenditures relating to costs incurred from the COFA agreements, as DOI and Congressional leaders have concerns about the methodology to compile Guam's statistics. It has been represented to us that if we fix the methodology, we will have a better chance of having our Compact costs reimbursed by Congress.

My administration submitted a grant to DOI and secured funding that would enable the government of Guam to submit audited annual reports for reimbursement using an accepted methodology that showcases only the locally generated funds used to provide needed services to the FAS population.

We are informed by and complying with the dictates of numerous GAO reports. One of the guidelines that has been the most difficult to comply with, according to the University of Guam (UOG), which is administering the grant, is how to calculate the positive impacts to a local government by FAS islanders who are working in the economy paying taxes and buying goods and services. UOG has reported a 90% completion of their preliminary review of the government of Guam agency data and intake forms.

We have worked with DOI and our subject matter expert/consultant on crafting a new process that will enable the government of Guam to capture more information on the impacts of the compacts. We will soon be able to use our revised methodology to measure the impacts of the FAS population living and working in Guam because of the COFA treaties with the US.

Once it is totaled up, we anticipate that the government of Guam will still be adversely affected by the COFA agreements, expending nearly \$150 million annually in locally generated funds. The compact impact reporting pathway that winds from Guam to DOI to Congress must be maintained so Guam can submit a report of impacts for reimbursement. Our preferred course of action is to deal with this matter within the U.S. system.

In 1985, with the passage of the first COFA agreements, the language in U.S. Public Law 99-239 stated, "The Congress hereby declares that if any adverse consequences To United States territories, commonwealths or the State of Hawaii result from implementation of the Compacts of Free Association, the Congress will act sympathetically and expeditiously to redress those adverse consequences."

In 2003, in U.S. Public Law 108-188, the U.S. Congress stated, "In reauthorizing the US-FSM Compact and the US-RMI Compact, it is not the intent of Congress to cause any adverse consequences for an affected jurisdiction."

Guam is the most affected jurisdiction in the country, and our adverse consequences will not be solved solely with the passage of CIFA. We ask that Congress update Section 104(e) and live up to the federal government's commitment to not negatively impact Guam with the implementation requirements of the COFA treaties. We ask that Congress pass the provision in H.R. 6273 to provide funding to Guam for the compact impact costs we incur due to the U.S. treaty obligations to the FAS.

---

QUESTIONS SUBMITTED FOR THE RECORD TO THE HON. LOURDES AFLAGUE LEON  
GUERRERO, GOVERNOR, GUAM

### **Questions Submitted by Representative Westerman**

*Question 1. There are significant concerns about enacting laws that prevent citizens of the Freely Associated States (FAS) from obtaining residency in Guam as that would violate the terms of the Compacts of Free Association.*

*1a) Do you believe in the importance of the Compacts of Free Association and the benefits they provide for all of us Americans, both here in the states and in the territories?*

Answer. During the Pacific battles of World War II, the United States learned how important it is to keep these islands and sea lanes open and free. The Compact nations' EEZs encompass the largest and most significant trading routes between the populous manufacturing countries of Asia and the rest of the world. I recognize that it is vitally important for the United States that the enduring relationship with the Compact nations is nurtured and strengthened through the COFAs.

1b) Would it be fair to say that it is important to both honor the terms of these international agreements while finding ways to help address Guam's needs?

Answer. The federal government must provide adequate funding to host communities such as Guam to help cover Compact Impact costs caused by providing local government services such as education and public safety that the Compact Impact Fairness Act will not cover. The Pacific, including allies and adversaries, will be looking at how Guam and the COFA nations are treated in the United States' push to strengthen its Pacific footprint and relationships. I am confident that the federal government can both honor the terms of the COFA and find ways to help address Guam's needs, including providing funding for Compact Impact costs by reauthorizing Compact Impact grants to host communities.

Question 2. How has Guam used the Compact Impact grant funds provided under the 2003 Compacts of Free Association?

Answer.

#### COMPACT IMPACT ASSISTANCE GRANTS: FY 2004 TO FY 2008

Compact Impact Assistance Grant Projects (P.L. 108-188) FY2004-2008				
Grant Year	Agency	Project	Total Grant	
FY 2004	DOC	Fire system	300,000	
	DPHSS	Pharmaceuticals and medical supplies	1,800,000	
	DPHSS	Renovation and equipment	764,238	
	DPW	School buses	3,200,000	
	GMHA	Facilities improvement	1,500,000	
	GMHA	Pharmaceuticals and medical supplies	3,584,010	
	GPD	Facilities improvement and equipment	2,837,000	
	GFD	Equipment	257,074	
		<b>Subtotal</b>		\$14,242,322
		GMHA	Operational and Feasibility Studies [1]	(286,657)
		<b>FY Total</b>	\$13,955,665	
FY 2005	PW (GMLF	Governor's Municipal Leasing Plan (Schools)	6,100,000	
	GMHA	Medicine, supplies and imaging equipment	2,211,600	
	GMHA	Pharmaceutical supplies	3,005,000	
	DMHSA	Therapeutic Group Home acquisition	916,000	
	DMHSA	Permanent Injunction / Therapeutic Group Home	412,000	
	DPW	Heavy equipment	509,717	
	GFD	Fire Rescue Pumpers/Fire Rescue Boat	538,005	
	DYA	Renovations, furniture/equip., passenger vans.	350,000	
	GPD	Motorcycle parking shelter and ballistic vests	200,000	
		<b>Subtotal</b>		\$14,242,322
FY 2006	DMHSA	Building Improvement and Equipment	800,000	
	DISID	Permanent Injunction	1,000,000	
	GMHA	Pharmaceutical Supplies and Equipment	1,629,014	
	GMHA	Medical Personnel and Equipment	2,478,986	
	DPW	Governor's Municipal Leasing Plan (Schools)	6,100,000	
	GMHA	Diabetes Program	150,000	
	DPHSS	Pharmaceuticals	400,000	
	DPHSS	Building Upgrade	600,000	
	DMHSA	Psychotropic Medication	200,000	
	AGRI	Stray Animal Enhancement	78,000	
	DMHSA	Permanent Injunction	806,322	
	<b>Subtotal</b>		\$14,242,322	
FY 2007	DPW	Governor's Municipal Leasing Plan (Schools)	6,100,000	
	GMHA	Pharmaceutical Supplies and Equipment	6,242,322	
	DPHSS	Pharmaceutical Supplies and Equipment	500,000	
	DISID	Permanent Injunction	500,000	
	DOC	Phase II Fire Alarm/Sprinkler System	500,000	
	DMHSA	Psychotropic Medications	171,000	
	DMHSA	Vendor Payables (Latte Treatment)	229,000	
		<b>Subtotal</b>		\$14,242,322
FY 2008	DPW	Governor's Municipal Leasing Plan (Schools)	6,100,000	
	GMHA	Pharmaceutical Supplies and Equipment	5,000,000	
	GMHA	Pharmaceutical Supplies and Equipment	1,992,303	
	DPHSS	Pharmaceutical Supplies and Equipment	500,000	
	DISID	Permanent Injunction	500,000	
	(DOI Reserv	Census of Micronesians	150,019	
	<b>Subtotal</b>		\$14,242,322	

**COMPACT IMPACT ASSISTANCE GRANTS: FY 2009 TO FY 2013**

Compact Impact Assistance Grant Projects (P.L. 108-188) FY2009-2013			
<u>Grant Year</u>	<u>Agency</u>	<u>Project</u>	<u>Total Grant</u>
FY 2009	DPW	Governor's Municipal Leasing Plan (Schools)	6,100,000
	DPW	School Leasing Plan - Collateral Equipment	1,000,000
	GMHA	Pharmaceutical Supplies and Equipment	3,142,322
	DPHSS	Pharmaceutical Supplies and Equipment	500,000
	DISID	Permanent Injunction Projects	500,000
	DMHSA	Building Construction Projects	500,000
	DPW	Heavy Equipment (Packer Trucks)	500,000
	GFD	Fire Trucks (including repair) / Rescue Boad	1,000,000
	GPD	Forensic Lab Equipment	1,000,000
		<b>Subtotal</b>	<b>\$14,242,322</b>
	GMHA	Operational and Feasibility Studies [1]	286,657
		<b>FY Total</b>	<b>\$14,528,979</b>
	FY 2010	DPW	Governor's Municipal Leasing Plan (Schools)
DPW		School Leasing Plan - Collateral Equipment	1,000,000
GMHA		CIP and Equipment Procurement	3,500,000
GMHA		Pharmaceutical Supplies and Equipment	1,000,000
DPR/GHUF		Northern Sports Recreation Complex	2,700,000
GFD		Equipment Procurement (Fire Pumper Trucks)	750,000
GPD		Equipment Procurement (Patrol Vehicles)	527,026
DPHSS		Pharmaceutical Supplies	500,000
DMHSA		Permanent Injunction Projects	500,000
DYA		Building Renovations / Equipment	250,000
		<b>Subtotal</b>	<b>\$16,827,026</b>
FY 2011		DPW	Governor's Municipal Leasing Plan (Schools)
	DPW	School Leasing Plan - Collateral Equipment	1,000,000
	UOG	A/E School of Engineering and Student Center	1,400,000
	GMHA	Medical Equipment	2,500,000
	DPHSS	Medical and Pharmaceutical Supplies	750,000
	DOC	Electronic Cell Locking System Upgrade	300,000
	DYA	Facilities Improvement	250,000
	Judiciary	Case Management System	3,777,026
	DOC	Emergency Generators	500,000
	DISID	Permanent Injunction Projects	250,000
		<b>Subtotal</b>	<b>\$16,827,026</b>
FY 2012	DPW	Governor's Municipal Leasing Plan (Schools)	6,100,000
	DPW	School Leasing Plan - Collateral Equipment	1,000,000
	GMHA	Operations Offset	4,142,026
	DOC	Operations Offset	3,525,000
	MCOG	Facility Renovations & Repairs	500,000
	GFD	Operations Offset	1,560,000
	<b>Subtotal</b>	<b>\$16,827,026</b>	
FY 2013	PW / DO	Governor's Municipal Leasing Plan (Schools)	6,100,000
	DPW / DO	School Leasing Plan - Collateral Equipment	1,000,000
	GMHA	Operations Offset - Pharmaceutical and Equipment [2]	8,500,000
	GPD	Operations Offset (Police vehicles)	377,026
	DPW	Bus Satellite Facility Repairs	350,000
	BSP	Centralized Data Center Project	300,000
	DISID	Individualized Budget Program (BP) Project	200,000
	<b>Subtotal</b>	<b>\$16,827,026</b>	

**COMPACT IMPACT ASSISTANCE GRANTS: FY2014 TO FY2018**

Compact Impact Assistance Grant Projects (P.L. 108-188) FY2014-2018				
<u>Grant Year</u>	<u>Agency</u>	<u>Project</u>	<u>Total Grant</u>	
FY 2014	DPW / DOE	School Leaseback Program - School Construction & Collateral Equipment	7,100,000	
		GMHA Operations Offset (Inclusive of \$2M for Financing)	3,000,000	
	DOC	Operations Offset (Corrections Officers & Overtime)	950,000	
	DPW	Vehicle Procurement & Road Repairs	1,500,000	
	UOG	Operations Offset - Facilities Maintenance & Repair	1,000,000	
	GPD	Operations Offset (20 Police Recruits)	800,000	
	DPHSS	Operations Offset (Pharmaceuticals & Medicaid Match)	800,000	
	DOE	Operations Offset (Computer Procurement)	417,026	
	GFD	Operations Offset (Ambulance Procurement)	60,000	
	DPR	Paseo Park & Recreation Area Repairs	500,000	
	GBHWC	Operations Offset	290,000	
	MCOG	Emergency Road Repairs & Flooding	410,000	
	<b>Subtotal</b>			<b>\$16,827,026</b>
	FY 2015	DPW / DOE	School Leaseback Program - School Construction & Collateral Equipment	7,100,000
DPHSS Operations Offset (Foster Home/Medicaid Match/Operations)			4,200,000	
GMHA		Operations Offset (Inclusive of \$2M for Financing)	3,000,000	
DOE / DPW		Operations Offset (Bus Shelters)	606,671	
<b>Subtotal</b>			<b>\$14,906,671</b>	
FY 2016	DPW / DOE	School Leaseback Program - School Construction & Collateral Equipment	7,100,000	
		DOC Operations Offset (Civil Case: DOC - \$1,974,088 and MOU with GMHA \$3,375,146)	\$5,349,234	
	GMHA	Operations Offset (\$2M Financing and CIPs)	\$2,257,437	
	Governor's Offc	Operations Offset (GMHA Operations Assessment)	\$200,000	
<b>Subtotal</b>			<b>\$14,906,671</b>	
FY 2017	DPW / DOE	School Leaseback Program - School Construction & Collateral Equipment	\$6,665,250	
		Governor's Offc General Operations Offset	\$8,064,031	
	(DOI Reserve)	Compact of Free Association (COFA) 2018 Census Survey	\$177,390	
<b>Subtotal</b>			<b>\$14,906,671</b>	
FY 2018	DPW / DOE	School Leaseback Program - School Construction & Collateral Equipment	\$6,661,550	
		Governor's Offc General Operations Offset	\$8,245,121	
<b>Subtotal</b>			<b>\$14,906,671</b>	

**COMPACT IMPACT ASSISTANCE GRANTS: FY2019 TO FY2022**

<b>Compact Impact Assistance Grant Projects (P.L. 108-188) FY2019-2022</b>				
<u>Grant Year</u>	<u>Agency</u>	<u>Project</u>	<u>Total Grant</u>	
FY2019	DPWDOE	School Leaseback Program - School Construction & Collateral Equipment	\$5,736,250	
			\$9,119,708	
	Governor's Office	General Operations Offset	<b>Subtotal</b>	\$14,855,958
FY2020	DPWDOE	School Leaseback Program - School Construction & Collateral Equipment	\$5,741,000	
			\$9,114,958	
	Governor's Office	General Operations Offset		\$14,855,958
FY2021	DPWDOE	School Leaseback Program - School Construction & Collateral Equipment	\$5,737,500	
			\$8,794,739	
	Governor's Office	General Operations Offset	<b>Subtotal</b>	\$12,532,239
FY2022	DPWDOE	School Leaseback Program - School Construction & Collateral Equipment	\$5,735,750	
			\$2,959,067	
	Governor's Office	General Operations Offset		\$3,837,422
	DPRDPW	(FY18 Island-Wide Gyms, Rec. Centers & Restrooms)- Supplemental	<b>Subtotal</b>	\$12,532,239
<b>GRAND TOTAL GRANT FUNDS</b>			<b>\$283,992,140</b>	
Source: Bureau of Budget and Management Research				
[1] Re-obligation of funds from closed FY 2004 grant projects (\$286,657)				
[2] Inclusive of vendor payables				

**COMPACT IMPACT SUPPLEMENTAL DISCRETIONARY FUNDS**

<u>Grant Year</u>	<u>Department/Project</u>	<u>Amount</u>
2022	Guam Department of Education Operations Offset	\$2,088,706
2021	Guam Department of Education Operations Offset	\$1,670,965
2020	Guam Department of Education Operations Offset	\$0
2019	Guam Department of Education Operations Offset	\$1,980,000
2018	Guam Department of Education Operations Offset	\$2,164,545
2017	Guam Department of Education Operations Offset	\$ 1,491,000
2016	Guam Department of Education Operations Offset	\$ 1,491,000
2015	Guam Department of Education Operations Grant	\$ 1,491,000
2014	Guam Department of Education Operations Grant	\$ 1,682,700
2013	Guam Department of Education Operations Grant	\$ 2,800,000
2012	Guam Department of Education Operations Grant	<u>\$ 2,800,000</u>
	TOTAL	\$19,659,916

*2a) What impact would it have on Guam and its communities if they were not renewed?*

Answer. If the Compact Impact grants are not renewed, the government of Guam would have to bear the entire cost of providing local government services to Compact migrants. For the latest year, Fiscal Year 2022, the government of Guam spent over \$148 million providing health, educational, social, and public safety services to Compact migrants. This significant financial burden on our government coffers adversely affects how we budget and spend our local money.

*Question 3. In what ways have the migrants from the FAS positively benefited Guam?*

Answer. DOI grant funds have been subgranted to the University of Guam (UOG) to address the GAO's concerns with an expected deliverable of the methodology and cost benefit analysis. The DOI grant has been extended with a new performance end date of September 30, 2024. UOG has reported a 90 percent completion of their preliminary review of the government of Guam agency data and intake forms. One of the major components is featured to achieve overall estimates of the benefits and costs of migrants. The UOG has secured the Input-Output (I/O) analysis using the IMPLAN economic model. This economic model will allow users to conduct economic impact analysis for planning purposes. The IMPLAN software application will support the framework to conduct an analysis of economic impacts. The Guam IMPLAN hybrid model profiles DOI payments, local government spending, and the creation of jobs. The development of the model format includes the construction of an Excel benefit-cost template to identify the baseline and scenario changes related to programs and services for the compact migrants to Guam. The extension of the project has allowed UOG to meet the project deliverables of producing a methodology in computing the financial impacts for servicing COFA residents and the cost-benefit analysis.

Individuals and families from the Compact nations utilize the Compacts to further their economic advancement and enhance the quality of their lives, and in doing so, they often become important members of the host communities. Our labor force depends on the Compact nations' workers, who play a vital role in every job category and industry. Islanders from the Compact nations bring cultural diversity to every setting, be it the classroom, job site, church, sports, or neighborhood.

---

Ms. HAGEMAN. I thank the witness for their testimony, and the Chair now recognizes Mayor Alig for 5 minutes.

**STATEMENT OF THE HON. JESSE ALIG, MAYOR, PITI, GUAM**

Mr. ALIG. Good afternoon and hafa adai, Chairman Hageman and distinguished members of the House Committee on Natural Resources and the Subcommittee on Indian and Insular Affairs. My name is Jesse Alig, and I am the Mayor of Piti, a village in Guam. I present this testimony as the President of the Mayor's Council of Guam. Nineteen mayors and seven vice mayors comprise our council, and this is my second term. I sincerely thank you for this esteemed opportunity to speak on the importance of passing H.R. 6273.

I begin my testimony by painting a picture of a COFA migrant's journey into my beautiful island home. A couple with seven children living in Chuuk makes the difficult decision to send the husband to Guam in search of better opportunities. Chuukese is his first language, and he is not proficient in English. Upon arrival in Guam, all travelers must go through customs and immigration process. He needs help understanding the forms presented to him for completion, and answers them as best as he can. Upon leaving the baggage claim terminal, family or friends residing in Guam meet him, and he is excited at the prospect of one day reuniting with his wife and children in Guam.

He is not accustomed to searching online for jobs, so he begins his job search by speaking with those in his social circle. After months on Guam, living with 15 relatives in a substandard wood and tin two-bedroom home, and remaining unemployed, he finally lands a job as a yard maintenance worker, and earns less than \$500 a month. He slowly discovers that reunification with his family will be more complicated than he imagined, and he longs for his wife and children.

Out of frustration, he turns to alcohol to numb the loneliness and pain of being unable to provide the life he and his wife dreamed of for their family. He continues to utilize alcohol as a crutch, and in an inebriated state commits an unintentional crime of vehicular homicide. He then becomes a consumer within Guam's justice system.

This story I just shared with you is more common than you think. Although the man in this story unintentionally committed vehicular homicide, if you were to Google crimes on Guam involving COFA migrants you would quickly see stories that include sexual abuse, home invasion, assault, robbery, and the list goes on and on.

Guam has graciously hosted our COFA guests for almost four decades. In 2018, the U.S. Census Bureau officially reported that Guam has the highest number of COFA migrants in the country,

with 18,874 residents from the Freely Associated States, or a little over 10 percent of our total population. Now, in 2024, the number is estimated to be around 24,000 migrants, close to 15 percent of Guam's population, which includes a couple of generations of COFA American citizens.

Despite hosting the most COFA migrants, Guam still does not receive the most significant amount of compact impact funding. The Office of Insular Affairs allocated only \$35 million in compact impact funding, including \$5 million which may be available at the discretion of Congress. Guam's costs alone for educating, providing health care, as well as enforcing the law and keeping COFA migrants safe, is at least \$30 million annually.

Guam's homeless population has increased exponentially since the COFA agreement was enacted, many of whom are FAS citizens. Our mayors have to deal with this issue at the village level. Guam's homeless looked to unlawfully occupy abandoned houses or homes that are currently vacant and are in between rental tenants. Guam's parks are littered with many homeless COFA migrants. Because of their constant loitering, and many in an inebriated disposition, homeowners, churches, and small businesses are forced to make costly mitigation efforts on their private properties to keep them safe.

My words alone are insufficient to describe the enormous impact of COFA citizens on Guam's quality of life. There are many realities that the mayors see and experience that many outsiders, including here in Washington, DC, don't see and may not immediately understand.

My proposal for using the financial support enabled by this legislation would be to establish a welcoming process upon a COFA migrant's arrival in Guam. By establishing this process, I believe we can better address potential issues before they arise, and improve COFA migrants at the start of their journey. Assimilation should include education on social services, legal processes, and local and Federal laws. While this sounds like it should be already in place, Guam cannot financially support these necessary services using its current budget.

Let it be clear that there are success stories of COFA migrants on Guam. They are our caregivers, our pastors, our cooks, and our helpers. Because of their respect and appreciation for culture and life, we entrust our families and homes to their care.

I hope this testimony has shed some light on our daily issues living together in Guam. Guam is a melting pot of many cultures, and her people continue to be warm and welcoming to those who wish to call it home. But the hard reality is that there is a cost to ensuring a safe and caring community, and we look forward to working with our Federal partners to make this happen.

[The prepared statement of Mr. Alig follows:]

PREPARED STATEMENT OF JESSE L.G. ALIG, PITI MAYOR  
AND PRESIDENT, MAYORS' COUNCIL OF GUAM  
ON H.R. 6273

Good afternoon and *Hófa Adai*, Chairman Harriet Hageman and distinguished members of the House Committee on Natural Resources and the Subcommittee on Indian and Insular Affairs.

My name is Jesse Alig, and I am the Mayor of Piti, a village in Guam. I present this testimony as the President of the Mayors' Council of Guam. Nineteen mayors and seven vice mayors comprise our Council, and I am in my second term as President.

I sincerely thank you for this esteemed opportunity to speak on the importance of passing H.R. 6273, the "Guam Host Community Compensation Act," introduced by Guam's Congressional Delegate James Moylan.

While many other proponents will testify, referencing vital statistics and historical data, today, I offer you my perspective on the impact of the Compact of Free Association—or COFA—from a grassroots level.

I ask you to indulge me as I begin my testimony by painting a picture of a COFA migrant's journey into my beautiful island home, which is home to approximately 165,000 Guamanians.

A couple with seven children living in Chuuk makes the difficult decision to send the husband to Guam in search of better opportunities. Chuukese is his first language, and he is not proficient in English. Upon arrival in Guam, all travelers must go through the customs and immigration process. He needs help understanding the forms presented to him for completion and answers them as best as he can. Upon leaving the baggage claim terminal, family or friends residing in Guam meet him, and he is excited at the prospect of 1 day reuniting with his wife and children in Guam.

He is not accustomed to searching online for jobs, so he begins his job search by speaking with those in his social circle. After several months on Guam, living with 15 relatives in a sub-standard, wood and tin, two-bedroom home, and remaining unemployed—he finally lands a job as a yard maintenance worker and earns less than \$500 a month. He slowly discovers that reunification with his family will be more complicated than imagined, and he longs for his wife and children.

Out of frustration, he turns to alcohol to numb the loneliness and pain of being unable to provide the life he and his wife dreamed of for their family. He continues to utilize alcohol as a crutch and, in an inebriated state, commits an unintentional crime of vehicular homicide. He then becomes a consumer within Guam's justice system.

This story I just shared with you is more common than you think. Although the man in this story unintentionally committed vehicular homicide—if you were to google crimes on Guam involving COFA migrants—you would quickly see stories that include sexual abuse, home invasion, assault, robbery, and the list goes on and on.

Guam has graciously hosted our COFA guests from the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands for almost four decades. In 2018, the U.S. Census Bureau officially reported that Guam has the highest number of COFA migrants in the country, with 18,874 residents from the Freely Associated States, or a little over 10% of our total population. Now, in 2024, the number is estimated to be around 24,000 migrants, close to 15% of Guam's population, which includes a couple of generations of COFA-American citizens.

Despite hosting the most COFA migrants, Guam still does not receive the most significant amount of Compact Impact funding. The Office of Insular Affairs allocated only \$35 million in Compact Impact Funding, including \$5 million, which may be available at the discretion of Congress. Guam's cost alone for educating, providing healthcare as well as enforcing the law, and keeping COFA migrants safe is at \$30 million annually.

Guam has received between \$14 million and \$17 million since 2003 from the federal government for hosting COFA migrants, which has been grossly insufficient. Our island leaders, including current and former governors, our current and former Congressional delegates, and our current and former legislators, have traveled to Washington, DC, for several decades, meeting with leaders of our federal government to increase COFA reimbursements for Guam, but to no avail. To complicate matters, the latest COFA agreement expired in September 2023, and Guam is not scheduled to receive Compact Impact funding. Congressman Moylan's legislation, H.R. 6273, will restore this critical Compact-Impact funding for another ten years.

A significant area of concern regarding COFA migrants is the high volume of criminal activity, from theft and driving under the influence to violent crimes like sexual assault and even murder. One in five convicted criminals currently incarcerated at Guam's correctional facility is from one of the Freely Associated States, and in 2023, more than one-third of arrests were COFA citizens. It is virtually impossible to see a local police blotter, open a Guam newspaper, or watch a local television newscast without seeing a COFA migrant arrested, charged, and incarcerated for a felonious crime.

The negative impact this has on our community is overwhelming, including the cost of investigating these crimes, prosecuting the accused, and eventual incarceration, not to mention the damage and trauma each victim of their crimes in our community has to bear. Congressman Moylan will alleviate the incarceration component through H.R. 6273 by requiring the Federal Bureau of Prisons to incarcerate FAS citizens who are convicted of a felony.

H.R. 6273 will also mandate that COFA citizens provide proof of work or education before permanently settling in Guam.

Making matters worse, Guam's homeless population has increased exponentially since the COFA agreement was enacted, many of whom are FAS citizens. Our mayors have to deal with this issue at the village level. Guam's homeless look to unlawfully occupy abandoned houses or homes that are currently vacant and are in between rental tenants. Guam's parks are littered with many homeless COFA migrants. Because of their constant loitering and many in an inebriated disposition, homeowners, churches, and small businesses are forced to make costly mitigation efforts on their private properties to keep them safe.

My words alone are insufficient to describe the enormous impact of COFA citizens on Guam's quality of life. There are many realities that the mayors see and experience that many outsiders—including here in Washington, DC—don't see and may not immediately understand. Therefore, when you receive testimony recommending COFA children attend Department of Defense schools instead of our overcrowded and strained Guam school system or receive medical care at the U.S. Naval Hospital instead of the dilapidated Guam Memorial Hospital, please consider them as solutions in support of our absolute willingness to ensure we take care of all residents.

The residents of Guam have welcomed COFA citizens to our small island, and we will continue to invite them and take care of them. However, their impact and burden must be addressed and funded. On behalf of the Mayors' Council of Guam, I implore you to pass H.R. 6273 to allow us to continue to adequately improve and maintain the quality of life for all U.S. citizens and COFA migrants on the island of Guam.

Through passage, Guam can address issues from the front end. We are advocates of culture and welcome all cultures to our home. Through proper assimilation, we can help our COFA brothers and sisters fulfill their dreams by providing a stronger start. We put enormous efforts into educating young children, and I believe the idea can carry on to our COFA migrant crisis. Solutions should now focus on the front end of migrant issues rather than dealing with them at the final straw.

My proposal for using the financial support enabled by this legislation would be to establish a welcoming process upon a COFA migrant's arrival in Guam. By establishing this process, I believe we can better address potential issues before they arise and improve COFA migrants at the start of their journey. Assimilation should include education on social services, legal processes, and local and federal laws.

While this sounds like it should be already in place, Guam cannot financially support these necessary services using its current budget.

Let it be clear that there are success stories of COFA migrants on Guam. They are our managers, supervisors, caregivers, our pastors, our cooks and our helpers. Because of their respect and appreciation of culture and life, we entrust our families and our homes to their care.

I hope this testimony has shed some light on our daily issues living together in Guam. Guam is a melting pot of many cultures and we are well known and recognized for our hospitality and family-oriented nature in the western Pacific region. We want to continue to be warm and welcoming to those who wish to call it home. But the hard reality is that there is a cost to ensuring a safe and caring community and we look forward to working with our federal partners to make this happen.

Thank you!

QUESTIONS SUBMITTED FOR THE RECORD TO THE HON. JESSE ALIG,  
MAYOR OF PITI, GUAM

**The Honorable Jesse Alig did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.**

**Questions Submitted by Representative Westerman**

*Question 1. Do you have an estimate on how many migrants from the Freely Associated States (FAS) reside in Guam and how many among them are employed or attend Guam's academic institutions?*

*1a) Do you believe that the intent of H.R. 6273 is to try to discourage FAS migrants from working or studying in Guam?*

*Question 2. What impact would it have on Piti if H.R. 6273 was not enacted?*

*Question 3. How have Compact Impact grants provided under the 2003 Compacts served Guam's local communities?*

*Question 4. In what ways have the migrants from the FAS positively benefited Guam?*

---

Ms. HAGEMAN. The Chair thanks the witness for their testimony, and the Chair will now recognize Members for 5 minutes of questioning, starting with myself.

H.R. 6062 would grant the President and, subsequently, the Secretary of the Interior, the sole responsibility of approving any amendment to the American Samoan Constitution. The current process under existing law is that the Secretary of the Interior must approve amendments, and then Congress.

In 2022, the citizens of American Samoa supported several amendments to their constitution, and they have been submitted to the Department of the Interior for approval. Congress has yet to receive these proposed constitutional amendments. Mr. Nakoa, can you provide the Committee an update on DOI's review of these amendments?

Mr. NAKOA. Thank you for the question, Chair Hageman.

The Department has indeed received the five approved amendments from the Governor, as transmitted in, I forget the date.

However, after consultation or conversations with both Governor Mauga and his staff, as well as Representative Radewagen and her staff, the consensus decision has been to pause the ultimate review in order for Congress to act on H.R. 6062.

Ms. HAGEMAN. OK, so my understanding is you are not going to be moving forward with those amendments at this time.

Mr. NAKOA. At this point, that is the request and that is our intention.

Ms. HAGEMAN. OK. Compact Impact Grants have provided \$30 million annually in grant funding to the Pacific Territories and Hawaii since Fiscal Year 2004. This program expired in Fiscal Year 2023, and the Biden administration's COFA proposal did not reauthorize Compact Impact Grants, but instead included compact impact fairness provisions.

My question is why does the Administration believe that the compact impact fairness provisions are a better solution to addressing the impact of the compacts?

Mr. NAKOA. Thank you for the question.

As mentioned in, I guess, the hearing about the Compact Impact Fairness Act earlier, and in several other hearings that we have had on the compacts, the position of the Administration is that the Compact Impact Fairness Act is a more holistic, enduring solution for addressing the impacts on host states and territories from the immigration or migration provisions of the compacts.

So, with that, the benefits would also follow the FAS citizens wherever they are choosing to live, as opposed to just staying with the four identified jurisdictions in the Compact Impact Grant authorized under P.L. 108-188 in 2003.

Ms. HAGEMAN. Well, Mayor Alig, do you agree that the compact impact fairness is the best solution for Guam?

Mr. ALIG. I do not agree.

Ms. HAGEMAN. OK, would you please explain?

Mr. ALIG. In my testimony, I talked about all the expenses that we endure as an island, and how our economy is affected. So, I don't believe that it gives us a fair share at what we really should be receiving in order to take care of the migrants and our own people.

Ms. HAGEMAN. Do you believe that the number needs to be higher than the \$30 million?

Mr. ALIG. Yes, ma'am.

Ms. HAGEMAN. OK. But what about the way that it is being addressed through the compact impact fairness, rather than through the Compact Impact Grants? Is there any difference between the two?

Mr. ALIG. Unfortunately, I cannot answer that question.

Ms. HAGEMAN. OK, thank you. I have a couple of questions for Lieutenant Governor Ale.

If H.R. 6062 becomes law, Congress will lose part of its oversight authority. And while Congress still has the authority granted under the Territory Clause of the U.S. Constitution, it would no longer be directly part of the American Samoan constitutional amendment process. Can you explain to us why you believe that this is still the best path forward for American Samoa?

Mr. ALE. Thank you, your honor. It is the best process because currently we have five amendments. And if approved by the Secretary, we will have to take it through Congress. And as mentioned by Delegate Radewagen, well No. 1, Congress has no obligation to take up our amendments, so we could be waiting for a very long time before these amendments are approved.

Congress has so much more important activities that is on its table. The issues that we talk about in our local constitutional amendments are local issues, and it should be resolved locally. We have developed a very good relationship with the Secretary for over many years, and we believe they will give more attention to our issues than Congress. So, that is the best way forward.

Ms. HAGEMAN. Mr. Jennings, if I understand your testimony correctly, you disagree with that position, is that correct?

Mr. JENNINGS. Madam Chairwoman, only for the fact that there is no assurance that the rights of all Americans, including Native American Samoa comprising of the lineal descendants of Tutuila, Manu'a, and Swains Island. It is not part of the mandate that we

feel that DOI is under, based on the discoveries with the Executive Order. It only recognizes one resolution, and that was the Ratification Act of 1929. But it failed to recognize the 1925 joint resolution of Congress that made Swains Island part of American Samoa. And rather than pointing fingers, I have to say that is where the problem is.

Ms. HAGEMAN. OK, perhaps we can figure that one out.

I yield back. I am out of time, but I am going to recognize the Ranking Member, Ms. Leger Fernández, for 5 minutes for questioning.

Ms. LEGER FERNÁNDEZ. Thank you, witnesses, once again for sharing the perspectives across the islands with us today.

And I know nobody wants to leave the beautiful islands that we have visited, but they feel that they must to seek health care, to seek job opportunities, and Arkansas has more COFA migrants than New Mexico, with our zero, but we know it is a hardship.

You have described the numbers to us. You have described what a life story could look like and does look like, and the need to address those impacts, and the need for a welcoming center, which sounds like a great idea.

Can you share with me, Governor, the trend as you are seeing it? I think I picked up that it went from 10 percent of the population to 15 percent. But Governor, what has been the trend over the last 5 years, and what are your worries if that trend continues?

Governor GUERRERO. The trend of migration from these FAS states has been increasing significantly every year. The cost of expenses to provide services to these migrants have been increasing tremendously from since my administration, from Fiscal Year 2019 to 2022. We now see a total of about \$424 million of total expenses to include public safety, education, and so forth, with only a \$54 million reimbursement.

I wanted to also mention, Congresswoman, that we support CIFA, but CIFA only addresses Federal programs. They are Federal dollars for Federal programs. Our local coffers provide the financial means to provide services to our people and our Micronesian brothers and sisters, but they come out of our general fund. And these services are education, public safety, fire, Department of Corrections, the judicial services, DYA, Department of Youth Affairs. So, these services are very important also to provide for the quality of life. CIFA does not address the expenses that come from those programs. These are programs that we provide from our local funding. And that is the difference between CIFA and our local funds. So, the impact is greater to our local funds than what CIFA is meant to address.

Ms. LEGER FERNÁNDEZ. Thank you very much. And when I look at this bill, I wanted you to address the fact that the COFA agreement states that residents of the Freely Associated States are granted non-immigrant residency status, which means you can migrate. But section 4 of this bill would require proof of employment or admission to an education facility, as well as proof of a residential address for any citizen of the Freely Associated States.

And we heard, Mayor, your story highlighted one of the concerns that this might be intended to address, right, so that you have somewhere to go, you know what you are doing. However, it

appears that there would be a conflict between those two provisions.

So, Governor Guerrero, could you help me understand how to deal with this conflict that it looks like these two sections of the bill would be in conflict with each other, and do you have any suggestions of how to deal with that?

Governor GUERRERO. First of all, I want to make it very clear that we welcome our brothers and sisters to improve their quality of life. And we also benefit from their job services, their labor. It improves the economy. So, we support migration.

There definitely has to be some reconciliation, because what we do not want to experience is becoming wards of our state. We want every migrant that comes in to be able to be educated, to be able to learn, to be able to get medical care, to be able to provide residency for their families. So, there is some necessary work, I believe, that can be done for reconciliation, and I am very confident that our Congressman, who has the pulse of our community and our constituencies, will come up, in conjunction with our support and also our ability to work with him very closely, and with your Committee, to come into some very positive reconciliation.

Ms. LEGER FERNÁNDEZ. Thank you very much. And just real quickly, with regards to H.R. 6062, it is a bill that has seven words, right, as you pointed out. It is not even a full sentence, almost. It is seven words. And real quickly, those seven words, Lieutenant Governor, what do they mean to you?

I mean, we don't have a lot of time, we have run out of time, but can you just give me two sentences of why those seven words are so key to your future?

Mr. ALE. As mentioned earlier, and I thank you for the question, it really kills our ability to have local self-determination. One of the amendments is to give this good gentleman the right to vote in our local legislature. That amendment will sit and probably die on the vine in Congress. But if this provision is removed and repealed, then with the support of the Secretary that could be passed, and this gentleman could be voting in the local legislature of American Samoa this year. That is a wonderful self-determination issue.

Ms. LEGER FERNÁNDEZ. Thank you very much. My time is expired, and I yield back.

Ms. HAGEMAN. The Chair now recognizes Mrs. Radewagen for 5 minutes of questions.

Mrs. RADEWAGEN. Thank you, Madam Chair.

Lieutenant Governor, [speaking Native language]. The 1983 statute not only suspends the approval by the Secretary of the Interior, but when the amendment has been approved by the people it suspends an act of self-determination, and yet the statute does not provide any criteria or standard for approval or disapproval, or a time limit for Congress to act.

Do you agree that the real test Congress should apply to local self-determination does not need to be in a statute because it is in the territorial clause, and that the real standard for congressional review of local self-government and local law should be in compatibility with Federal territorial law and policy as determined by Congress, which American Samoans have honored and obeyed as patriotic Americans?

Mr. ALE. Thank you, Congresswoman Radewagen, for the question. The answer is absolutely yes.

The territorial clause is all Congress needs to have its authority maintained to govern American Samoa and all territories of the United States. This additional provision that we are seeking to repeal is completely unnecessary. And as you mentioned in your testimony, it was added into an appropriations bill without Committee review or regular order. So, it is time for it to be removed so that the people of American Samoa can finally proceed to amend its constitution. Thank you.

Mrs. RADEWAGEN. Thank you.

Secretary Nakoa, although some of the details may be lost to history, the original reasoning behind the 1983 statute included concerns over unilateral changes to the constitution made by Interior. What is the current policy regarding administrative changes to territorial law?

Mr. NAKOA. I would have to consult the departmental manual for more specific processes.

That being said, in general, when we receive something like this that would impact the territories, one of the major things that we seek to do is consult with the territories and the territorial leadership, so that the Department can be well aware of their stance on the proposal, and that we are seeking to both move ahead in what is in the best interest of the territory, in coordination with the territorial governments.

Mrs. RADEWAGEN. Has Interior finished reviewing the proposed constitutional amendments from the recent referendum?

And do you have any issues with or opposition to any of the amendments?

Mr. NAKOA. I think I would have to say that we are still technically in the process of reviewing those amendments, only because when we conclude the process, I believe we are due to report out to Congress.

However, I can say that I have not heard any opposition to any of the five amendments that were approved by the people of American Samoa.

Mrs. RADEWAGEN. Thank you.

Mr. Jennings, first of all, I want to let you know that I am in favor of fair representation for all of our people. I support self-governance and any amendments our people wish to make to our local laws. And to that end, thank you for being here.

In your testimony, your opposition to H.R. 6062 seems to be predicated on whether it will help move the recent amendments forward based on the testimony of Secretary Nakoa and Interior's stated policy of respecting local affairs. Do you still oppose H.R. 6062?

Mr. JENNINGS. Thank you, Congresswoman. I appreciate the question.

As mentioned earlier, I think the reason why I am here today is for the rights of every American, which includes American Samoan Natives.

My opposition, and not really an opposition, is the fact that there are no guarantees that if we revert this back to the Department of the Interior, that the rights of every American Samoan Native

will be considered under the Administration of the Department of the Interior.

For example, why hasn't there been a vote for Swains Island after 63 years?

Mrs. RADEWAGEN. I have 12 seconds left, Delegate Jennings.

Mr. JENNINGS. If I can have assurance that we can verify that H.R. 6062, this legislation, will acknowledge the rights of every American Samoan Native, I am ready to embrace you and support this legislation. That is all I am looking for.

Mrs. RADEWAGEN. Thank you, sir. I am totally out of time.

I have other questions I would like to submit for the written record, Chairwoman.

I yield back.

Ms. HAGEMAN. Yes, we can do that. The Chair now recognizes Mr. LaMalfa for 5 minutes of questioning.

Mr. LAMALFA. Thank you, Madam Chairman.

Mayor Alig, when we look at the impact grants, and that the Biden administration's COFA has moved away from the Compact Impact Grants, they have instead, as we have talked about, chosen to implement impact fairness provisions, as I have it. So, Mayor, would you touch a little bit more on the pros and cons of the decision and how, for you, as a director of all the mayors, the mayors association there, what are you and your colleagues looking at here on this?

Mr. ALIG. In regards to the CIFA and how CIFA would be beneficial to us? Is that your question?

Mr. LAMALFA. Yes, going away from Impact Grants to the fairness provisions, how does that change, and is it overall going to be better for you, or are you concerned about it?

Mr. ALIG. Well, we are most concerned about the funding, or the lack of funding that we would receive, that we would lose because of it and its effects, yes.

Mr. LAMALFA. Yes, because my understanding, the overall numbers are probably going to go down for you, so you will have less ability to fund the program.

Mr. ALIG. That is correct, yes.

Mr. LAMALFA. OK. All right. Please send us more background on that as we go. I know we are going to run short here pretty quick with votes coming up.

But I would also like to yield the remainder of my time to Mr. Moylan.

Mr. MOYLAN. Thank you, Mr. LaMalfa.

Mr. Mayor, thank you for your testimony. It was very helpful, giving that example and understanding how rough it is for migrants to come on over to the island, and the struggles that we face and, unfortunately, some of the lawbreaking activities that do happen.

Mr. Mayor, we have problems with the Department of Corrections. Would you agree?

Mr. ALIG. I do agree, yes.

Mr. MOYLAN. And if nothing comes around, and we are not able to make some changes through the help of the Federal Bureau of Prisons by assisting us with these migrants, what do you see as the future of the Department of Corrections under this situation?

Mr. ALIG. Well, it is obvious that the overcrowding will continue. And the biggest issue for us, as mayors, is the safety of our community. And we will see that continue to rise. Our police department does the best that they can do, but we do know that our current administration is working on plans for a better Department of Corrections, but without any support from the Federal Government we are not going to see a safe community.

Mr. MOYLAN. Thank you, Mr. Mayor.

Governor Lou Leon Guerrero, likewise, the Department of Corrections' current situation. If we are unable to move this measure forward, what do you see the future of the Department of Corrections, please?

Governor GUERRERO. I think the future of the Department of Corrections is going to be bleak, and there will be some crisis in terms of overcrowding, in terms of ability to provide more personnel capacity to monitor these prisoners. So, I feel that the section that creates a Memorandum of Agreement with the Federal Government to incur the cost for those individuals who have committed a crime that are from the FAS, to incur that cost would greatly help our general coffers.

Mr. MOYLAN. Thank you, Governor. We have a little bit more time left. Governor Guerrero, in previous hearings, Secretary Cantor said that CIFA will be a net positive for the territories. Could you speak on what effect CIFA has on the costs the Government of Guam must endure to host migrants? Please further expand.

Governor GUERRERO. As I mentioned earlier, CIFA is the Federal dollars for Federal programs. When CIFA was started to be discussed in Congress, Congressman Ed Case and Senator Hirono sought my perspective and my comments on it, and I totally support it. I support the ability to provide SNAP programs, housing programs, these Federal programs to our brothers and sisters from the Micronesia. It is not enough for us in terms of the impact of the expenses to provide the local programs to our citizens, and to our residents, and to the migrants that come to Guam.

You must also understand that there are two Federal policies that Guam is facing. One is the COFA migrants, two is the military buildup. Both policies will incur and have an outcome of increased population to our small island.

For us as a government to provide the kind of services, the substantive services, the quality of services to all of the residents of Guam requires more financial capacity and more increase in funding to pay for the expenses. As a result of that, our general fund is greatly and significantly impacted with these local programs. CIFA, I think, will help, but it is not enough in terms of sufficient financial capacity to provide those services.

Mr. MOYLAN. Thank you, Governor.

Thank you, Madam Chair.

Ms. HAGEMAN. The Chair will now recognize Mr. Moylan for any additional questions that he may have.

Mr. MOYLAN. Thank you, Madam Chair.

Mr. Nakoa, why does the Biden administration feel that non-citizens deserve entitlements not available to American citizens

that have served their country and happen to live on Guam or Puerto Rico?

Mr. NAKOA. I guess, just to clarify the question, are you asking why FAS citizens who choose to live in the States would be eligible for certain programs so that, so yes, I guess to clarify one thing that has been maybe miscommunicated about the impact of the Compact Impact Fairness Act, FAS citizens who live in Guam or any jurisdiction where certain Federal programs are not available to a U.S. citizen or U.S. resident living in that community, this is not an affirmative grant of any eligibility right to FAS citizens. So, they would sit in the same shoes as their neighbors in Guam, or American Samoa, or CNMI, or Hawaii, or Arkansas. So, that is one thing.

And then I guess the Biden administration doesn't, I guess, we have supported extending certain programs in the territories in general. We have supported SSI, we have supported extending other programs that additionally—

Mr. MOYLAN. Thank you, and I understand that, and I think it is really coming down to money and funding. Guam has been asking for this for quite some time, as well as Puerto Rico.

Mr. NAKOA. I have a copy of the President's budget request to Congress for Fiscal Year 2024, and it included a request for \$140 million for ASEAN and the IPEF. Both of these programs have no benefit to Guam, nor are we part of it, and it is \$2 billion to bolster the Indo-Pacific countries through game-changing investments, which is the full amount necessary for the Compacts of Free Association.

So, my concern is, Mr. Nakoa, and really, I am just making this statement, how would you have me or the Governor explain to our constituents that the Federal Government is willing to find \$2 billion for Pacific neighbors, but they cannot find \$30 million a year for the cost to expand SSI to cover Guam?

I would like to also address that to Governor Lou Leon Guerrero, please.

Governor GUERRERO. I think for me, my immediate reaction would be that it is a bit of an inequity. That it is a bit discriminatory. And I know that under the Biden administration, one of the biggest, biggest mantra of the Biden administration is equity and fairness for all. And not to have these social services, but yet being allowed these social services in other states, speaks to me very loudly of unfairness, inequity, and discriminatory.

Mr. MOYLAN. Thank you, Governor.

Mayor Alig, could you speak of the importance, and we are going back to section 3 here regarding proof of employment and education, mandating that our migrant brothers and sisters coming on over have something to work for and look at, please?

Mr. ALIG. Well, I know that there is some misunderstanding, perhaps, of what that would provide. I do believe, and many of us mayors and vice mayors on Guam believe, that every migrant coming to Guam must have a plan. And if, in fact, this amendment requires them to be enrolled in education or have employment secured, then we certainly agree with it.

However, we do understand that there may be some contentious idea behind it, and that we are willing to support whatever extra

funding we get, we support their migration to Guam by fully educating them and providing them opportunities for employment and for health care.

Mr. MOYLAN. Thank you, Mr. Mayor.

Mr. Nakoa, back to you, sir. Again, how would you have me and Governor Leon Guerrero explain to our constituents that the Federal Government can find \$2 billion for these other programs that we are not involved with, but they can't find \$30 million a year that it would cost to expand and provide SSI to cover Guam?

Mr. NAKOA. I am not aware of the specific, and maybe I just didn't catch the specific provisions you mentioned. But in general, the President's budget has to cover the entirety of the Federal Government, and provisions that are not specific in nature are meant to benefit the entirety of the citizenry of the United States. So, that is the only thing that I would comment on that.

Mr. MOYLAN. Again, per the Governor's comments, it is not acceptable, but I thank you.

And I also, in final, if I may, Madam Chair?

Mr. Nakoa, I just want to thank you for coming today and speaking to us, and given the importance of the compact impact and how much this revolves around the experience we are facing in Guam, I want to invite you to join me, the Governor, and the Mayor to come to Guam and hold a town hall listening session later this year, hear the stories that we are referring to today, and see with your own eyes why we need this funding, and you will understand our perspective. I hope we can host you sometime this year.

And I thank you, Madam Chair, I yield back.

Ms. HAGEMAN. Thank you. The Chair now recognizes Chairman Bruce Westerman for 5 minutes of questioning.

Mr. WESTERMAN. Thank you, Chairman Hageman, and thank you to the witnesses. And it is good to see so many familiar faces from our trip this past fall down to Guam. And I appreciate all the help that you all provided to us in coming up with the new COFA agreement. And I understand there are issues that still need to be resolved.

And I want to commend Mr. Moylan for all of his work and Mrs. Radewagen for her work in organizing this hearing today.

Mr. Nakoa, H.R. 6273 would require the Secretary of the Interior to enter into a Memorandum of Understanding with state and territory governments ensuring that FAS citizens who are convicted of a felony are transferred to Federal correctional facilities. Does DOI have any concerns regarding the implementation of this policy, and have you consulted with the Department of Justice on it?

Mr. NAKOA. I am not sure, to my knowledge, that we have officially consulted with the DOJ, but I believe there would be some concerns on the implementation side. I would have to defer to DOJ on some of the specifics.

But what it seems like, it would involve at least 55 or some-odd potential MOUs to comply with at least section 3, I believe.

Mr. WESTERMAN. Is there any precedent for these types of transfers that you are aware of?

Mr. NAKOA. Not that I am aware of.

Mr. WESTERMAN. H.R. 6273 would require reimbursements for the costs associated with pre-conviction and incarceration of felons from the FAS. And the funds for this reimbursement would come from the Bureau of Prisons. Do you have any estimate of the total cost of providing these reimbursements?

And does the Bureau of Prisons have the capacity to cover these costs?

Mr. NAKOA. I have no idea what those costs would be.

Mr. WESTERMAN. Maybe some follow-up actions we need to look at.

Lastly, H.R. 6273 would bar FAS migrants from obtaining residency in Guam unless they provide proof of academic enrollment or employment and residential address. However, the Compacts of Free Association provide the citizens of the FAS to travel freely to the United States without visas, as well as live and work indefinitely in the United States. Do you think this could have a negative impact on the United States-FAS relationship?

Mr. NAKOA. I do. Like I said in my testimony, it is unclear what the impact would be on the compacts, as well as the INA, the Immigration and Naturalization Act, I think it is. So, we would have to seek to clarify how those would interact.

But I have heard from at least some of our FAS partners that this would be a difficult situation to face.

Mr. WESTERMAN. Thank you.

Lieutenant Governor Ale, it is apparent from the hearing that the 2022 constitutional amendments are still being reviewed by DOI, and this has resulted in none of these amendments being approved and being transmitted to Congress for approval. Do you believe that by removing congressional oversight this process will be expedited?

Mr. ALE. Thank you, Chairman, and that is the reason we support the legislation by Congresswoman Radewagen to remove this provision of requiring these amendments to come to Congress, because we believe there is no assurance that it will be enacted or acted by Congress anytime soon. In fact, the law doesn't even require Congress to even acknowledge. So, we are asking to have it removed.

Secretary Nakoia cannot comment on their review of these, but so far, we have received assurances that these amendments will be approved. And once this law is removed, and the Secretary approves the amendments, it becomes effective and our right of self-determination comes alive again. Thank you.

Mr. WESTERMAN. A follow-up, and this is a really, really tough one here, since American Samoa is the only territory that is required to have congressional approval for amendments to its constitution: Do you believe this is fair and equitable?

Mr. ALE. Thank you for the question again. Yes, it is a unique and unfair burden for American Samoa to have to come here. I believe it is also an unfair burden for Congress to have to deal with our local issues every time we decide as a community to amend our local constitution.

Mr. WESTERMAN. Madam Chair, I am out of time, so I yield back.

Ms. HAGEMAN. Thank you. I want to thank the witnesses for your valuable testimony and the Members for your questioning,

and for these very thoughtful bills that have been presented to us for consideration.

The members of the Committee may have some additional questions for the witnesses, and Mrs. Radewagen has indicated that she will. We will ask you to respond to these questions in writing. Under Committee Rule 3, members of the Committee must submit such questions to the Subcommittee Clerk by 5 p.m. on Tuesday, January 23, 2024, and the hearing record will be held open for 10 business days for your responses.

If there is no further business, and without objection, the Committee stands adjourned.

[Whereupon, at 3:37 p.m., the Subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

PREPARED STATEMENT OF THE HON. BRUCE WESTERMAN, CHAIR, COMMITTEE ON  
NATURAL RESOURCES

We are here to discuss two bills: H.R. 6062 introduced by Representative Radewagen and H.R. 6273, introduced by Representative Moylan. I want to thank them for working tirelessly to bring the issues important to their districts to this committee and I look forward to working with you both to find ways to address the needs of the U.S. territories.

This hearing marks the first step in the right direction. There is much more Congress will need to consider as we continue to discuss and understand the implications of these bills.

H.R. 6062 would return American Samoa's constitutional amendment process to the pre-1983 process of requiring approval from only the Secretary of the Interior.

This committee is committed to territorial self-determination and improving the livelihoods of all Americans on the islands.

We are also committed to our oversight responsibilities and making sure that Americans, both in the mainland and in the territories, are not negatively impacted by federal laws and policies. And that the bills coming out of this committee will positively benefit communities and American prosperity.

To that end, we need to ensure that H.R. 6062 does not unintentionally relinquish an aspect of congressional oversight and prevent American Samoans from accessing an avenue for recourse against unilateral actions by any administration.

We also need to ensure that legislation truly resolves the issue it aims to solve. There have been reports that previous constitutional amendment attempts by American Samoa have not yet received review by the Secretary of the Interior. And we have not received the amendment proposals here in Congress. I hope we can get clarity on this today from the Department of the Interior. If the delay is indeed with the Department of the Interior, then this issue may require a different path forward.

Turning to H.R. 6273, this bill has three major components. First, it would extend authorization for annual Compact Impact grant funds for the Pacific territories of Guam, The Northern Marianas Islands, and American Samoa. It would also require felons from the Freely Associated States or FAS to be incarcerated in federal facilities and seeks reimbursement for costs associated with those incarcerations. Finally, the bill would place entry requirements for FAS citizens seeking residency in Guam.

It is imperative that Congress ensure that this legislation not only addresses the specific needs of Guam but is also fiscally responsible and does not come into conflict with existing federal law and international agreements.

My colleagues and I on this Committee have worked hard these past 8 months on the renewal of the Compacts of Free Association and we will continue to work towards its timely passage.

We know fully well how critically important the Compacts are for U.S. national security and the incredible mutual benefits that the U.S.-FAS special relationship provides.

As such, it is important that we find a path forward on addressing the unique needs of Guam, we must continue to work to preserve the U.S.-FAS relationship.

Thank you to our witnesses for being here today, particularly those who traveled to great lengths to testify on these important bills.

## Submissions for the Record by Rep. Moylan

### GAO COMPACT IMPACT NUMBERS 1986-2018

#### Appendix V: Compact Impact Costs Reported by Hawaii, Guam, and the Commonwealth of the Northern Mariana Islands

Since 1986, Hawaii, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI) have submitted to the Department of the Interior (Interior) intermittent compact impact reports and other documents that include descriptions of, and estimated costs for, education, health, public safety, and social services that local government agencies provided to compact migrants. Hawaii and Guam have submitted compact impact reports, which are available on Interior's Office of Insular Affairs' website.<sup>98</sup> The CNMI has not submitted a compact impact report since fiscal year 2003 but reports compact impact costs to Interior in the CNMI's annual plan for the use of compact impact grants. Table 14 shows the estimated costs that these affected jurisdictions reported to Interior or provided to us for 1986 through 2018.

**Table 14: Estimated Compact Impact Costs Reported by Hawaii, Guam, and the CNMI, 1986-2018**

Dollars (in millions)				
Year	Hawaii	Guam	CNMI	Total
1986-1995	23.4	60.6	43.7-71.7 <sup>a</sup>	127.7-155.7
1996	6.4	16.1	11.0	33.5
1997	12.2	19.1	13.7	45.0
1998	12.4	19.1	16.1	46.6
1999	14.1	18.9	12.3	45.3
2000	17.5	24.5	9.2	51.2
2001	21.5	23.4	4.6	49.5
2002	30.4	23.3	4.6	58.3
2003	47.4	30.9	4.2	82.5
2004	55.3	33.2	10.0	98.5
2005	66.9	33.6	10.3	110.8
2006	81.0	43.3	9.7	134.0
2007	90.8	46.5	8.6	145.9
2008	101.0	56.0	8.2	165.2
2009	118.8	64.0	4.0	186.8
2010	114.9	71.8	4.7	191.4
2011	113.9	99.6	2.8	216.3
2012	130.3	99.6	5.9	235.8
2013	144.8	115.5	8.3	268.6
2014	163.3	130.0	12.3	305.6

<sup>98</sup>Department of the Interior, Office of Insular Affairs, "Compact Impact Reports," accessed January 13, 2020, <https://www.doi.gov/olia/reports/Compact-Impact-Reports>.

#### Appendix V: Compact Impact Costs Reported by Hawaii, Guam, and the Commonwealth of the Northern Mariana Islands

Dollars (in millions)				
Year	Hawaii	Guam	CNMI	Total
2015	145.1	136.8	5.9	287.8
2016	140.2	140.2	7.7	288.1
2017	183.9	147.3	7.3	338.5
2018	197.8	Not reported	9.8	207.6
<b>Total</b>	<b>2,033.3</b>	<b>1,453.3</b>	<b>234.0-262.0</b>	<b>3,720.6-3,748.6</b>

Source: GAO analysis of compact impact reporting, grant proposals, and documents from the governments of Hawaii, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI). | GAO-20-461

Notes: Amounts shown are rounded and unadjusted for inflation.  
 Not all local government agencies in affected jurisdictions reported compact impact every year, although costs may have been incurred.  
<sup>a</sup>The CNMI's range of estimated costs for 1986 through 1995 was provided in a 2000 CNMI congressional testimony.

**Judiciary of Guam**

January 18, 2024

Hon. Harriet M. Hageman, Chair  
Subcommittee on Indian and Insular Affairs  
Committee on Natural Resources  
1324 Longworth House Office Building  
Washington, DC 20515

Re: Judiciary of Guam Testimony on H.R. 6273

Dear Chair Hageman:

On behalf of the Judiciary of Guam, thank you for the opportunity to submit testimony on **H.R. 6273**, introduced by Delegate James C. Moylan, to extend the authorization of certain grants to the governments of Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa, and for other purposes.

Please be advised that **the scope of these comments is limited to Section 2 of the measure**, relative to a continuing appropriation under the Compact of Free Association Amendments Act of 2003.<sup>1</sup> The branch refrains from offering commentary on the policy positions outlined in the remaining portions of the bill.

The U.S. Compacts of Free Association permit citizens from Freely Associated States (FAS) unrestricted immigration into the United States and its territories. Although annual reimbursements for compact migration costs ceased in 2023, migration to U.S. areas is anticipated to grow, as reported by the U.S. Government Accountability Office.<sup>2</sup>

A continuing appropriation is vital for maintaining essential services and preserving the principles of justice for a community grappling with this expanding population. While the Compact Impact Fairness Act would alleviate some challenges for host jurisdictions, existing federal initiatives may not adequately mitigate the extensive financial burden associated with Compact-related expenditures, particularly in the sectors of public safety and legal services.

As the third branch of the government of Guam, the Judiciary of Guam is charged with interpreting the laws of the territory. The branch is composed of both a trial (Superior Court of Guam) and appellate court (Supreme Court of Guam) that provides for the settlement of disputes between parties and protects the rights of individuals as mandated by the Organic Act of Guam and the Constitution of the United States of America. Presently, COFA Migrants represent **20% of the Superior Court of Guam's total case population**.

Local expenditures on cases involving citizens of the Freely Associated States have steadily increased over the past two decades. In Fiscal Year 2004, the Judiciary expended \$891,279 on cases involving citizens of the Freely Associated States. By Fiscal Year 2023, **expenditures increased to \$8,699,588**. Over the past 20 years, **the cumulative cost to the Judiciary of Guam** for cases involving citizens of the Freely Associated States is **\$76,953,151**.

A significant number of FAS citizens appearing before the Judiciary of Guam also face financial challenges, impacting the state of the court's indigent defense fund. The growing demand for indigent defense services over the years raises concerns about a potential crisis within our legal system. While strengthening these services remains a priority for the branch—sustained financial support will be critical to meet the constitutional mandate for adequate representation of indigent individuals in Guam.

<sup>1</sup>“Extension of Authorization of Grants”

<sup>2</sup>Compacts of Free Association: Populations in U.S. Areas Have Grown, with Varying Reported Effects. GAO-20-491

In summary, without the continuation of annual reimbursements as outlined in H.R. 6273, Guam risks jeopardizing the quality, accessibility, and fairness of its legal services. Inadequate funding would strain the Judiciary's ability to handle an increasing caseload, potentially resulting in delays, reduced access to legal representation, and a compromised justice system for the People of Guam. The Judiciary respectfully urges support of the continuation of annual reimbursements to not only ensure the equitable allocation of funds but also sustain the essential services our community provides.

Thank you for your time and consideration.

Sincerely,

ROBERT J. TORRES,  
*Chief Justice*

---

**Submissions for the Record by Lt. Governor Ale  
(Supplements to Testimony)**

**2022 American Samoa Election Results Certification Letter**



November 15, 2022

Lemanu P.S. Mauga  
Governor of American Samoa  
Office of the Governor, EOB  
Utulei, American Samoa

Dear Governor Lemanu,

In my capacity as Chief Election Officer, I would like to officially inform you that our Midterm Election 2022 results have been certified as required by law in Title 6, Chapter 8, section 6.0805.

In the matter of our Constitutional Amendments, five have been passed and six have been rejected as voted on by the registered voters of American Samoa on Tuesday, November 8<sup>th</sup>, 2022.

Lastly, I would like to thank you for your tremendous efforts and support shown during the preparation and execution of the 2022 Midterm Election, and the democratic principles we stand for; our voters have spoken.

Official results are enclosed for your review. I shall be happy to further discuss them with you if you so decide.

Again, thank you very much.

Respectfully,

  
\_\_\_\_\_  
Uiagalelei, Lealofi  
Chief Election Officer

Certified November 15, 2022-4:45 p.m

Received in Governor's Office  
On 12/16/22 time 12:13  
By 

P.O. BOX 3970  
PAGO PAGO, AM. SAMOA 96799

PH: 684-699-3571  
FAX: 684-699-3574

EMAIL: INFO@EO.AS.GOV  
WEBSITE: WWW.ASELECTIONOFFICE.GOV

2022 American Samoa Referendum Ballot

AMERICAN SAMOA GOVERNMENT  
OFFICIAL REFERENDUM BALLOT – NOVEMBER 8, 2022 MIDTERM ELECTION

<b>Instruction</b> Place a mark X or √ inside the circle corresponding to the answer of your choice.		<b>Fa'atonuga</b> Tusi se fa'atologa X po'o'v' i totonu o le pusa e feagai ma le tali ua e filifilia.	
<b>DO YOU APPROVE THE FOLLOWING AMENDMENTS TO THE 1967 REVISED AMERICAN SAMOA CONSTITUTION?</b> <b>E TE FAAMAONIA SUIGA NEI I LE FAAVAE TO'E TEUTEU O AMERIKA SAMOA O LE 1967?</b>			
<b>#1</b>	The Governor shall appoint the Chief Justice and Associate Justices subject to confirmation by the Legislature.	YES/IOE	<input type="radio"/>
	O le a filifilia e le Kovana le Faamasino Sili, ma Sui Faamasino Sili ae faamaonia e le Fono Faitulafono.	NO/LEAI	<input type="radio"/>
<b>#2</b>	The Secretary of Interior shall not have the power to change the decisions of the High Court of American Samoa.	YES/IOE	<input type="radio"/>
	O le a le toe iai se pule a le Failautusi o le Initeria e sui ai faai'uga a le Faamasinoga Maua'uga o Amerika Samoa.	NO/LEAI	<input type="radio"/>
<b>#3</b>	The Secretary of Interior shall not have the power to change the Legislature's override of the Governor's Veto.	YES/IOE	<input type="radio"/>
	O le a le toe iai se pule a le Failautusi o le Initeria e sui ai le faaleaogaina e le Fono le veto a le Kovana.	NO/LEAI	<input type="radio"/>
<b>#4</b>	This amendment shall add one (1) seat to Representative District–Ituau and, add one (1) seat to Representative District –Tualata. The total number of Representatives would increase from 20 to 22.	YES/IOE	<input type="radio"/>
	O lenei suiga o le a faapoopo ai le Faipule e tasi (1) i le Ituau ma se Faipule e tasi (1) i Ma'upu (Tualata). O le a sui ai le aofa'i o Faipule mai le 20 i le 22.	NO/LEAI	<input type="radio"/>
<b>#5</b>	This amendment shall include "Malaeimi" in Representative District No. 12 – Ituau.	YES/IOE	<input type="radio"/>
	O lenei suiga o le a aofia ai "Malaeimi" i le Itumalo Faafai'upule o le Ituau.	NO/LEAI	<input type="radio"/>
<b>#6</b>	This amendment will give the delegate from Swains Island the right to vote in the House of Representatives.	YES/IOE	<input type="radio"/>
	O lenei suiga o le a tuina atu ai i le Faipule o Swains le aia tatau e palota ai i le Maota o Sui.	NO/LEAI	<input type="radio"/>
<b>#7</b>	This amendment will restore five (5) Senators to Manu'a. The total number of Senators would increase from 18 to 20.	YES/IOE	<input type="radio"/>
	O lenei suiga o le a toe fa'atoo ai le lima (5) o Senata o Manu'a. O le a sui ai le aofa'i o Senata mai le 18 i le 20.	NO/LEAI	<input type="radio"/>
<b>#8</b>	This amendment shall include an impeachment process of the Governor and Lt. Governor.	YES/IOE	<input type="radio"/>
	O lenei suiga e auilili ai faagasologa e faatula'i ai le Kovana poo le Kovana Lutena.	NO/LEAI	<input type="radio"/>
<b>#9</b>	This amendment shall change the name "Government of American Samoa" to "American Samoa Government".	YES/IOE	<input type="radio"/>
	O lenei suiga o le a suia ai le "Government of American Samoa" i le "American Samoa Government".	NO/LEAI	<input type="radio"/>
<b>#10</b>	This amendment shall change "Ma'uputasi" to "Ma'oputasi".	YES/IOE	<input type="radio"/>
	O lenei suiga o le a suia ai le "Ma'uputasi" i le "Ma'oputasi".	NO/LEAI	<input type="radio"/>
<b>#11</b>	This amendment shall change "Leasina" to "Leasina ma Aitulagi".	YES/IOE	<input type="radio"/>
	O lenei suiga o le a suia ai "Leasina" ia "Leasina ma Aitulagi".	NO/LEAI	<input type="radio"/>

2022 AMERICAN Samoa Referendum Results

DISTRICT	Amended 1		Amended 2		Amended 3		Amended 4		Amended 5		Amended 6		Amended 7		Amended 8		Amended 9		Amended 10		Amended 11		
	Yes	No	Yes	No	Yes	No																	
Swains Island	5	4	8	1	5	4	3	0	3	0	0	0	0	0	2	2	6	3	7	2	8	1	
Dist #1 - Manua	56%	44%	60%	11%	66%	44%	0%	33%	0%	100%	0%	0%	0%	0%	70%	22%	0%	0%	0%	73%	23%	80%	11%
Dist #2 - Manua	173	242	190	247	215	210	210	210	210	210	210	210	210	210	210	210	210	210	210	210	210	210	210
Dist #3 - Vaialua	37%	63%	38%	62%	47%	53%	52%	48%	47%	53%	57%	43%	70%	24%	68%	34%	66%	34%	66%	61%	39%	61%	39%
Dist #4 - Sa'ole	92	165	80	185	92	180	104	167	110	163	152	123	70	104	148	127	138	153	143	129	141	138	141
Dist #5 - Sata No. 1	83	142	79	127	83	126	80	142	103	95	174	56	68	110	102	97	90	106	78	103	63	96	88
Dist #6 - Sata No. 2	75	113	76	111	82	104	76	110	81	104	102	84	60	127	97	80	106	78	103	63	96	88	88
Dist #7 - Maoputasi No. 1	36	138	44	126	39	132	53	113	68	95	66	72	52	120	69	80	81	83	93	77	83	86	86
Dist #8 - Maoputasi No. 2	193	247	180	234	228	228	228	228	228	228	228	228	228	228	228	228	228	228	228	228	228	228	228
Dist #9 - Maoputasi No. 3	298	71%	34%	66%	36%	64%	41%	59%	43%	57%	64%	36%	24%	76%	61%	30%	67%	43%	52%	46%	54%	46%	46%
Dist #10 - Maoputasi No. 4	28%	72%	33%	67%	33%	67%	45%	55%	47%	53%	46%	54%	27%	73%	73%	27%	73%	27%	73%	27%	73%	27%	73%
Dist #11 - Maoputasi No. 5	87	177	183	157	95	162	103	151	102	158	127	133	73	169	153	107	141	100	146	113	138	125	125
Dist #12 - Falea	33%	67%	54%	46%	37%	63%	42%	58%	39%	61%	49%	51%	28%	72%	69%	41%	54%	46%	54%	46%	54%	46%	46%
Dist #13 - Falea	323	69%	37%	63%	33%	67%	38%	62%	35%	65%	40%	60%	30%	70%	64%	36%	64%	36%	64%	36%	64%	36%	64%
Dist #14 - Aialua	191	436	241	380	231	397	267	333	284	345	258	205	427	340	249	367	255	367	255	367	255	367	255
Dist #15 - Tonitua	30%	70%	39%	61%	37%	63%	45%	55%	39%	61%	59%	41%	32%	68%	60%	40%	60%	40%	60%	40%	60%	40%	60%
Dist #16 - Tuamotua	427	839	468	764	487	764	487	764	487	764	487	764	487	764	487	764	487	764	487	764	487	764	487
Dist #17 - Leifone	140	357	165	243	159	246	192	210	180	225	241	174	140	270	238	122	242	164	235	170	233	179	233
TOTAL	2300	4488	2140	4106	2312	4227	3338	3099	3216	3683	3840	3088	2683	4084	2683	3926	2683	3926	2683	3926	2683	3926	2683
	34%	66%	40%	60%	38%	62%	49%	51%	47%	53%	56%	44%	38%	62%	61%	39%	58%	42%	58%	42%	58%	42%	58%

**Supplemental Documentation Supporting Testimony**

SUPPLEMENTAL DOCUMENTATION

IN SUPPORT OF  
THE JANUARY 18, 2024 STATEMENT OF  
HON. TALAUEGA ELEASALO VAALELE ALE  
LT. GOVERNOR OF AMERICAN SAMOA

ON BEHALF OF  
HON. LEMANU PALEPOI SIALEGA MAUGA  
GOVERNOR OF AMERICAN SAMOA

BEFORE THE  
HOUSE COMMITTEE ON NATURAL RESOURCES  
SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS  
REGARDING H.R. 6062

\*\*\*\*\*

The full document is available for viewing at:  
<https://docs.house.gov/meetings/II/II24/20240118/116694/HHRG-118-II24-20240118-SD013.pdf>

---

**Submissions for the Record by Delegate Jennings  
(Supplements to Testimony)**

**SR 38-28 (English and Samoan)**

---



**LEGISLATURE OF AMERICAN SAMOA**  
American Samoa Government

**CERTIFICATION**

Senate Chamber  
October 2, 2023

I certify that Senate Resolution No. 38-28 passed on this date in the Senate during its Second Regular Session of the Thirty-Eighth Legislature of American Samoa.

  
MR. LEO'O V. MA'O  
Secretary of the Senate

---

THE THIRTY-EIGHTH LEGISLATURE  
SECOND REGULAR SESSION

S.R. NO. 38-28

SENATE RESOLUTION

**"A SENATE RESOLUTION SEEKING TO ADVISE GOVERNOR LEMANU P. S. MAUGA TO PURSUE THE UNITED STATES CONGRESS WITH URGENCY AND TO PETITION THE APPROVAL OF OUR CONSTITUTIONAL AMENDMENTS PASSED DURING THE 6<sup>TH</sup> CONSTITUTIONAL CONVENTION OF AMERICAN SAMOA IN 2022."**

**WHEREAS**, in 1872, the Navy Commander Richard Meade of the USS *Naragansett* visited Pago Pago. Commander Meade entered into an agreement entitled "Commercial Regulations, etc." with then High Chief Mauga. This started a long-time relationship between Tutuila, Manu'a, Aunu'u and Swains, with the United States, which culminated in the signing of a deed of cession between the high chiefs of Tutuila and the United States in 1900. Tutuila agreed to "cede, transfer and yield up" the islands of Tutuila and Aunu'u to be a district annexed to the United States. In return, the United States agreed to respect and protect the individual rights of all people dwelling in Tutuila to their lands and other property. The islands of Manu'a then were ceded to the United States in 1904; and

**WHEREAS**, for many years after that, the "Islands of Tutuila, of the Samoan Group, and all other islands of the group east of Longitude 171 degrees west of Greenwich, are hereby placed under the control of the Department of the Navy." The Navy governed American Samoa until July 1, 1951, when the administration of American Samoa was then transferred from the Secretary of the Navy to the Secretary of the Interior. The administration of American Samoa is currently still with the Secretary of Interior, pursuant to Executive Order No. 10264. That states "The administration of American Samoa is hereby transferred from the Secretary of the Navy to the Secretary of the Interior, such transfer to become effective on July 1, 1951." ; and

**WHEREAS**, American Samoa adopted its own constitution in 1960, which was then revised in 1967; and

**WHEREAS**, the Revised Constitution provides for amendments to the constitution to be made in one of two ways:

1. By way of a Joint Resolution whereby 3/5's of all members of each House shall pass it. The Governor is then requested to submit the proposed amendment to the voters, eligible to vote at the next general election. If a majority of such voters voting, approve such amendment, the Governor shall, within 30 days after such approval submit the same to the Secretary of the Interior for approval or disapproval within 4 months after its receipt.
-

2. The Governor shall appoint a Constitutional Committee to prepare amendments to be submitted to the Governor who shall call a constitutional convention to consider the same. If the convention approves such amendments made therein by the convention, the same as approved shall be submitted to the voters eligible to vote at the next general election. If the majority of the voters approve the amendments, the Governor shall submit the same to the Secretary of Interior for her approval and if she approves it, the amendments shall become part of the constitution; and

**WHEREAS**, on August 29, 2022, American Samoa held its 6<sup>th</sup> Constitutional Convention. Eleven (11) amendments were agreed upon to be put to the people to vote on at the next general election, which took place on November 8, 2022:

1. The Governor shall appoint the Chief Justice and Associate Justices subject to confirmation by the Legislature.
2. The Secretary of Interior shall not have the power to change the decisions of the High Court of American Samoa.
3. The Secretary of Interior shall not have the power to change the Legislature's override of the Governor's Veto.
4. This amendment shall add one (1) seat to Representative District– Ituau and, add one (1) seat to Representative District –Tualauta. The total number of Representatives would increase from 20 to 22.
5. This amendment shall include “Malaeimi” in Representative District No. 12 – Ituau.”
6. This amendment will give the delegate from Swains Island the right to vote in the House of Representatives.
7. This amendment will restore five (5) Senators to Manu’a. The total number of Senators would increase from 18 to 20.
8. This amendment shall include an impeachment process of the Governor and Lt. Governor.
9. This amendment shall change the name “Government of American Samoa” to “American Samoa Government”.
10. This amendment shall change “Ma’uputasi” to “Ma’oputasi”.
11. This amendment shall change “Leasina” to “Leasina ma Aitulagi”.

**WHEREAS**, of those eleven (11) amendments to the Revised Constitution, only five (5) were approved by the people:

- Amendment 6. This amendment will give the delegate from Swains Island the right to vote in the House of Representatives.
- Amendment 8. This amendment shall include an impeachment process of the Governor and Lt. Governor.
- Amendment 9. This amendment shall change the name “Government of American Samoa” to “American Samoa Government”.
- Amendment 10. This amendment shall change “Ma’uputasi” to “Ma’oputasi”.

---

*Amendment 11. This amendment shall change "Leasina" to "Leasina ma Aitulagi".*

**WHEREAS,** *on December 14, 2022, Governor Lemanu Peleti Mauga transmitted the five (5) constitutional amendments to the American Samoa Revised Constitution to Secretary of Interior, Deb Haaland. Governor Lemanu stated, "The people of American Samoa have spoken. We ask that you support these amendments and take such actions as may be necessary and appropriate to bring them into effect...and to facilitate the will of our people."*

**WHEREAS,** *Assistant Secretary Carmen G. Cantor of Insular and International Affairs acknowledged receipt of the Voter-Approved Amendments to the American Samoa Revised Constitution, as conveyed by Governor Lemanu in a press statement issued on January 2023. In acknowledging our constitutional amendment submissions, Assistant Secretary Cantor stated, "We will review the amendments you transmitted to the Secretary in the same spirit of respect for self-determination as well as the laws and policies of the federal government for appropriate action; and*

**WHEREAS,** *in addition to the requirements stated above for submission of constitutional amendments to the Secretary of Interior, Public Law 98-213, sec. 12, 97 Stat. 1462 (codified as 48 U.S.C. Sec. 1662a) states "Amendments of, or modifications to, the constitution of American Samoa, as approved by the Secretary of the Interior pursuant to Executive Order 10264 as in effect January 1, 1983, may be made only by Act of Congress." In short, our five constitutional amendments submitted to the Secretary of Interior must be approved by her and then submitted to Congress for their approval or disapproval; and*

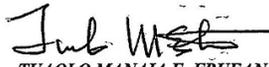
**WHEREAS,** *it has been approximately nine (9) months since our constitutional amendments have been submitted to the Department of Interior. This resolution bids Governor Lemanu Peleti Mauga to reach out to Secretary of Interior Deb Haaland to inquire as to her approval or disapproval of our Constitutional Amendments. This resolution bids Governor Lemanu to push this process and petition the approval of our constitutional amendments by Secretary Haaland. This resolution bids Governor Lemanu to entreat the US Congress to approve our constitutional amendments and allow us to achieve self-determination, self-sufficiency, and self-actualization. It will be 124 years since our forefathers trusted the United States enough to sign the Deed of Cession allowing them a US presence in our part of the world. It is high time that we be allowed to make decisions that will benefit our territory and our people.*

---

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE TERRITORY OF AMERICAN SAMOA:**

*THAT, the American Samoa Senate, for itself and on behalf of the people of the Territory of American Samoa, advises Governor Lemanu P.S. Mauga to pursue Congress with urgency and petition the approval of our constitutional amendments; and*

**BE IT FURTHER RESOLVED,** *that the President of the Senate, the Honorable Tualo Manala E. Fruean, or his authorized representative, is respectfully requested to present this Senate Resolution to Governor Lemanu and the American Samoa Government.*

  
**TUAOLO MANALA E. FRUEAN**  
*President of the Senate*

NOFOA'IGA TOLUSEFULU-VALU  
FONO TELE LONA LUA

I.M.M. NU. 38-28

**I'UGAFONO MAOTA MAUALUGA**

**“O LENEI I'UGAFONO A LE SENATE E SAILI AI LE FAUTUAINA O LE AFIGA IA KOVANA LEMANU P.S. MAUGA, E SAILI VAVE LE KONEKERESI A LE IUNAITTE SETETE MA TALOSAGAINA LE FAAMAONIA O SUIGA SA PASIA I LE TAUAOFIGA LONA 6 O LE FAAVAE O AMERIKA SAMOA I LE 2022.”**

**TALUAI,** *i le 1872, sa asiasi mai ai le Taitai o le Navy ia Richard Meade o le USS Naragansette i Pago Pago. O le taitai ia Meade sa faia se maliliea ma le Afiga ia Mauga ua faigoaina “Tuutuuga Faapisinisi ma isi mea.” Sa amata ai iina se fesootaiga umi i le va o Tutuila, Manua, Aunuu ma Swains ma le Iunaitte Setete, lea e taualuga i le sainia o le feagaiga o le tuuina atu i le va o ta'ita'i o Tutuila ma le Iunaitte Setete i le 1900. Ua malie Tutuila e “tuu atu, avatu ma faamatuu atu” Tutuila ma Aunuu e avefa ma itumalo e vaavaa e le Iunaitte Setete. I le tali mai, ua malie le Iunaitte Setete e faaalologia ma puipuia aia tatau o tagata taitoatasi uma o loo alala i Tutuila i o latou fanua ma isi mea totino. O motu o Manua sa tuuina atu i le Iunaitte Setete i le 1904; ma*

**TALUAI,** *ina ua mavae le tele o tausaga, “o Motu o Tutuila, o le atu Samoa, ma isi ona vaega uma i le itu i sasa'e o le logitu 171 tikeri i sisifo o le meritiana o le Greenwich, ua tuuina atu nei i lalo o le vaavaaiga a le Matagaluga a le Navy.” Sa pulea e le Navy Amerika Samoa se seta oo mai ia Iulai 1, 1951, ina ua suia le pulea o Amerika Samoa mai le Failautusi o le Navy i le Failautusi o le Initeria. O le pulega o Amerika Samoa o loo i ai pea e oo mai nei i le Failautusi o le Initeria, e tusa ma le Poloaiga Faaperesetene, Numera 10264. O le poloaiga lena o loo faapea mai, “O le pulea o Amerika Samoa ua suia nei mai le Failautusi o le Navy i le Failautusi o le Initeria ma o lea suiga ia taualoina ia Iulai 1, 1951,” ma*

**TALUAI,** *sa faia e Amerika Samoa lona lava faavae i le 1960, ma toe teuteu i le 1967; ma*

**TALUAI,** *o le Faavae Toe Teuteu o loo aiaia ai suiga mo suiga o le faavae e faia i se tasi o ni auala se lua:*

- 1. E ala i se iugafono soofaatasi lea e tatau ona pasia e le 3/5 o sui o Maota taitasi. Ona talosagaina lea o le Kovana ina ia tuuina atu suiga*

*i le au palota, ina ia palotaina i le isi palota tele e sosoo ai. Afai e fulisia le au palota e sapaapapai ia suiga, e tatai i le Kovana i totonu o le 30 aso ina ua maea ona faamaonia, ona tuuina atu suiga i le Failautusi o le Initeria mo le taliaina poo le teena i totonu o le 4 masina talu ona mava.*

2. *E tofia e le Kovana se Komiti o le Faavae e tapenaina suiga e tuuina atu i le Kovana, o ia e taloina se fono o le faavae e toe silasila i suiga. Afai e pasia e le fono faavae ia suiga, ma faamaonia, e ao ona tuuina atu i tagata palota, ina ia palotaina i le isi palota tele e sosoo ai. Afai e sapaapapai e tagata palota suiga, o le a tuuina atu e le Kovana ia suiga i le Failautusi o le Initeria mo lana faamaoniga ma afai na te talia, ona avea loa lea o suiga ma vaega o le Faavae; ma*

**TALUAI,** *ia Aukuso 29, 2022, na tauaofia ai lona 6 o Fono Faavae a Amerika Samoa. E 11 suiga sa malilie e tuuina atu i tagata palota ina ia palotaina i le isi palota tele e sosoo ai, lea sa faataamuuina ia Novema 8, 2022.*

1. *E tofia e le Kovana le Faamasino Sili ma Faamasino Lagolago e faalagolago i le faamaoniga a le Fono Faitulafono.*
2. *E leai se malosai o le Failautusi o le Initeria e suia ai se faaiuga a le Faamasinoga Mauuluga a Amerika Samoa.*
3. *E leai se malosai o le Failautusi o le Initeria e suia ai le faaleaogaina e le Fono Faitulafono o le Teena a le Kovana.*
4. *O leni suiga e faaopoopo ai se Sui Faipule e tasi i le Itumalo Ituau, tasi se Sui Faipule faaopoopo i le Itumalo o Tualauta. O le a faaopoopo ai le aofaiga o Sui Faipule mai le 20 i le 22.*
5. *O leni suiga e aofia ai "Malaemi" i Sui Faipule o le Itumalo Faapalota Numera 12-Ituau"*
6. *O leni suiga e avatu ai le aia i le sui o le Motu o Swains e palota ai i le Maota o Sui.*
7. *O leni suiga o le a toe faafoia ai le 5 Senatoa i Manua. O le a faaopoopo ai Senatoa mai le 18 i le 20.*
8. *O leni suiga o le a aofia ai taualumaga o le faaleaogaina o le faatulalese o le Kovana ma le Lutena Kovana.*
9. *O leni suiga e suia ai le faaupuga "Malo Amerika Samoa" (GAS) i le "Malo o Amerika Samoa" (ASG).*
10. *O leni suiga e suia ai le upu "Ma'uputasi" i le "Ma'oputasi."*
11. *O leni suiga e suia ai "Leasina" i le "Leasina ma Aitulagi".*

**TALUAI,** *O nei suiga e 11 i le Faavae Toe Teuteu, na o le 5 suiga na faamaonia e tagata:*

*Suiga 6. O leni suiga e avatu ai le aia i le sui o le Motu o Swains e palota ai i le Maota o Sui.*

Suiga 8. O lenei suiga o le a aofia ai taualumaga e faatulai ese ai le Kovana ma le Lutena Kovana.

Suiga 9. O lenei suiga e suia le "Malo Amerika Samoa" (GAS) i le "Malo o Amerika Samoa" (ASG).

Suiga 10. O lenei suiga e suia le "Ma'uputasi" i le "Ma'oputasi."

Suiga 11. O lenei suiga e suia ai "Leasina" ia "Leasina ma Aitulagi".

**TALUAI,** O Tesema 14, 2022, sa tuuina atu ai e Kovana Lemanu Peleti Mauga suiga e 5 o le Faavae Toe Teuteu I le Failautusi o le Initeria, Deb Haaland. Sa ta'ua e Kovana Lemanu, "Ua faaalua finagalo o tagata Amerika Samoa. E talosagaina lau lagolago i nei suiga ma faia se gaoiiga tatau ma talafeagai e taualoa ai... ma faalauaitele ai le finagalo o o matou tagata."

**TALUAI,** sa faailoa e le Failautusi Lagolago o Mataupu tau Atumotu ma le Va o Malo, Carmen G. Cantor le mauaina o suiga sa faamaonia e tagata palota i le Toe Teuteuga o le Faavae e pei ona faao atu e Kovana Lemanu i le au faasalalau ia Ianuari 2023. I le faalauiloina o tatou suiga o le faavae sa tuuina atu, sa ta'ua ai-e le Failautusi Lagolago ia Cantor, "O le a matou iloiloina suiga ua tuuina atu i le Failautusi, i le agaga e tasi o le faaaloalo mo le faailoina o lo outou finagalo faapea foi tulafono ma faiga tausisia a le malo fetetale mo se gaoiiga talafeagai; ma

**TALUAI,** i se faaopoopoga i manaoga ua ta'ua i luga mo le tuuina atu o suiga o le faavae i le Failautusi o le Initeria, o le Tulafono Lautele 98-213, maga 12, 97 (o loo ta'ua i le tulafono o le TTUS 48, Maga 1662a) e faamatalaina o "Suiga o, poo fesuiiga, o faavae o Amerika Samoa, e pei ona faamaonia e le Failautusi o le Initeria e tusa ma le Poloaiga Faaperesetene 10264 e pei ona taualoaina ia Ianuari 1, 1983, pau le auala e mafai ona fai ai o se Gaoiiga a le Konekeresi." A faapupu, o tatou suiga e 5 o le faavae sa tuuina atu i le Failautusi o le Initeria e tatau ona faamaonia e ia, ma toe tuuina atu i le konekeresi mo la latou taliaina poo le teena; ma

**TALUAI,** ua tusa ma le 9 masina talu mai ona tuuina atu a tatou suiga i le Matagaluega o le Initeria. O lenei iugafono e talosagaina ai Kovana Lemanu Peleti Mauga e faafesiligia le Failautusi o le Initeria ia Deb Haaland lana faamaoniga poo le teena o tatou Suiga o le Faavae. O lenei iugafono e talosagaina ai Kovana Lemanu ina ia unaia lenei mataupu ma talosagaina le Failautusi ia Haaland mo le faamaonia o tatou Suiga o le Faavae. O lenei iugafono e talosaga ai Kovana Lemanu ina ia saili atu i le Konekeresi mo le faamaonia o a tatou suiga o le faavae, ma faatagaina mai tatou ia mafai ona faia a tatou lava filifiliga, o le soifua tutoatasi, ma le faatinoina o tatou lava mana'oga. Ua 124 tausaga talu ona faatuuina o le Iumaite Setete e o tatou augatamā e saina o le Feagaiga

---

*o le Tuuina atu, e faataga ai le auai o le Inaite Setete i lo tatou itulaga.  
Ua tatau ona oo nei i le taimi e faataga ai tatou lava ia e faia faaiuga e  
manuia ai lo tatou teritori ma ona tagata.*

**O LENEI, O LE MEA LEA, IA FAAIUGAFONOINA AI E LE MAOTA MAUALUGA  
O LE TERITORI O AMERIKA SAMOA:**

*E FAAPEA, o le Senate a Amerika Samoa, mo ia lava ma fai ia ma sui o tagata o le  
Teritori, e fautuaina Kovana Lemanu P.S. Mauga e tulituliloa vave le Konekeresi ma  
talosagaina le faamaonia o tatou suiga o le faavae; ma*

*IA TOE FAAIUGAFONOINA FO'I e talosagaina ma le faaaloalo le Peresetene o le  
Senate, Afioga Tualo Manaiia Fruean, poo sona sui faatagaina e tauaaoina atu lenei  
Iugafono a le Senate i le Afioga i le Kovana ia Lemanu ma le Malo o Amerika Samoa.*



**TUAOLO MANAIA E. FRUEAN**  
*Peresetene, Maota Mauuluga*

---

**37th LEGISLATURE OF AMERICAN SAMOA  
HOUSE OF REPRESENTATIVES**

July 28, 2021

Hon. Lemanu P. Mauga  
Governor of American Samoa  
A.P. Lutali Executive Building  
Utulei, American Samoa

Hon. Tuaolo M. Fruean  
President of the Senate  
Legislature of American Samoa  
Fagatogo, American Samoa

Hon. Savali T. Ale  
Speaker of the House  
Legislature of American Samoa  
Utulei, American Samoa

**Subject: Swains Island's Request for Assistance**

*Malo ni tau Afioga,*

*Mua na kave te fakafetai ma te vikiga i te Aliko mo tona aloha ma te agalelei kua aulia mai ai tenei taeao. Tatalo hoki ke maua pea e tau afioga te malosi o te tino kae maihe te agaga. Tulona tau afioga, ke kavatu he talohaga vaivai a Olosega mamao (Swains Island) mo he fesoasoani mai te malo, ma te fakaaloalo lahi lele.*

I have been informed by the Manager of the American Rescue Plan Coordinator that Swains Island does not qualify for any of the American Rescue Act Funding. So far out of the estimated \$1.4 Billion slated for American Samoa, Swains may receive \$3,000.

Swains Island first became a Territory of the United States in August **1856** under the **Guano Act** and went on to be very prosperous in the copra trade. Then at the request of the U.S. Navy and the U.S. State Department, along with the support of President Calvin Coolidge, Swains Island was made a part of American Samoa by an **Act of Congress** on **May 1925**. Swains Island immediately contributed to the newly formed government with tax revenues from the copra. Swains became a greater economic factor by bringing in over 200 miles (or several hundred thousand square miles) of ocean to the U.S. Exclusive Economic Zone (**EEZ**) that has fed the canneries for nearly 70 years.

Unfortunately, the collapse of the copra industry in the 1960s not only devastated Swains Island's economy, but it exposed its **Political Status** with American Samoa as a destructive force incapacitating a U.S. Territory to near annihilation. Secondly, the Tuna Industry continues to show evidence of decline and unsustainable future. Despite our contributions to the American Samoa economy for nearly 100 years, as well as the dedication of many of our men and women who served honorably and sacrificed their lives in the United States Armed Forces, Swains Island received no compensation for the depletion of its ocean resources, and no assistance for basic human needs to sustain life.

We are unable to live on our lands and have no resource to combat the effects of Climate Change that is impacting every island in the Pacific. No resource to protect against illegal entry by foreign fishing vessels or government. Despite annual budget allocations for **Swains Island Transportation**, there's not been a trip to Swains Island for 4 years after numerous attempts and requests.

It is arguable that this territorial government has practiced a policy of relocation, de-population, civic abandonment, and disenfranchisement (exclusion, alienation) that is in effect compulsory (enforced) rather than consensual, and that is not consistent with due process and government by consent of the governed under the federal and territorial constitutions.

**Political Inconsistencies:**

- The U.S. government repeatedly and formally recognized and confirmed (including the 2011 letter from DOI) the right of Swain Island to a legal and political status, as well as public governance by the federal and territorial governments, on an equal basis with the islands of Tutuila, Manu'a and Aunu'u.

- **American Samoan ancestry:** means lineal descendants of the inhabitants of Tutuila and **Swains Islands** whose permanent place of residence was American Samoa on 17 April 1900, and the inhabitants of Manu'a Islands whose permanent place of residence was American Samoa on 16 July 1904. (*American Samoa Code Annotated ASCA: Chapter 02—General Provisions 41.0202 Definitions.*)
- Swains Island has a Delegate in the American Samoa House of Representatives with all the powers of a Representative, **except the right to vote**, like other U.S. Territory Delegates to the U.S. House of Representatives
- Like other U.S. Territory Delegates to Congress, the Swains Island Delegate to the American Samoa Legislature can introduce Bills/Resolutions, Chair Committees, vote in Committees, but cannot vote in the chamber for the final passage of Legislation.
- The Swains Island Delegate to an American Samoa Constitution Convention, can vote for changes to the Constitution of American Samoa, but a Swains Island Delegate to the American Samoa Legislature cannot vote on Legislation.
- Like other U.S. Territories with Delegates to Washington without a Senator, Swains Island has no Senate Seat in the Fono.
- All Territories with Delegates to Congress are exempted from taxation without representation. Swains Island has been paying taxes, without representation and depleting its Resources for nearly 100 years.
- It seems Swains Island has become a Territory of American Samoa, and no longer of the United States. Yet, the U.S. State Department Foreign Affairs Manual (FAM) still recognizes Swains Island as a Territory of the United States.

**Swains Island Request:**

- Request Representation in any Constitution or Political Status Review.
- Request for at least 2 trips a month to Swains like Manu'a and allow for the repatriation of island residents.

**Swains Island is Requesting \$10 million from the American Rescue Plan Act for the following infrastructure development and to provide employment for Swains Island Residents. Also an additional \$3 Million annual budget to maintain essential services for the people.**

- Landing Craft: A Landing craft is needed to safely transport equipment and material to Swains Island because of the lack of wharf or dock.
- Safe Wharf/Dock/Ramp/Channel: The channel needs to be widened and dredged for safety. Also, a dock or ramp needs to be installed.
- Airport: Land and/or Sea (lagoon)
- Communication/Internet
- Water Purification System
- Sustainable Renewable Power

Thank you for your consideration, and I look forward to your favorable response and deliberations.

Ma le ava tele e tatau ai,

SU'A ALEXANDER ELI JENNINGS,  
*Swains Island Delegate*

**37th LEGISLATURE OF AMERICAN SAMOA  
HOUSE OF REPRESENTATIVES**

October 17, 2014

Hon. Esther Kia'aina  
Assistant Secretary of Insular Affairs  
U.S. Department of Interior  
1849 C Street, NW  
Washington, DC 20240

Re: The Matter of the Swains Island Representation in the American Samoa  
Legislature

Malo ni and Aloha Madam Secretary,

Please allow me, from American Samoa, where you'll be visiting soon to introduce myself. I am Su'a Alexander Eli Jennings and I am the delegate to the American Samoa Legislature from the northernmost part of the territory, which was made part of the territory in 1925 (two decades after the territory was created by the U.S. Congress). I represent Swains Island, also the birth place of the Hon. Papaliitele Jack "Tihati" Thompson (Counsel General of Samoa in Hawaii), whom you may also know along with wife Cha as owners of Tihati Productions, headquartered in Honolulu. If at all possible, despite your super-busy schedule while you are here in American Samoa, I would appreciate very much, please, an appointment with you to discuss with you the following situation involving Swains Island:

On March 13, 2014 I sponsored House Joint Resolution, HJR 33-2 to amend the Revised Constitution of American Samoa to grant the Swains Island Delegate the right to vote in the House of Representatives (please see HJR 33-2 attached). The Resolution was referred to the House Ways & Means Committee, and a Hearing conducted around March 16, 2014.

In that Hearing the Attorney General, the Legislative Council, and the Secretary of Samoan Affairs all testified in support of the Resolution, despite objections by some lawmakers. After the matter was left in Committee for six months, with no new evidence or further discussions, I submitted a written request to the Chairman, Hon. F'aulualo Faafetai Talia, to bring HJR 33-2 up for a vote (please see letter to Chairman F'aulualo Faafetai Talia attached.) On October 3, 2014, HJR 33-2 was brought up for a vote of the House where it was defeated by a vote of 6 to 5, 4-abstained, and 5-absent.

Unfortunately, the decision of the House of Representatives to defeat HJR 33-2 seals the fate of Swains Island to be permanently disenfranchised in this Territory. Furthermore, it concludes over 8 years of attempts to address ambiguities in our political relations through the local government and traditional leaders, and over 89 years of being treated as second class citizens of American Samoa, and not as a Territory of the United States.

**BACKGROUND:**

***American Samoa Constitution Convention June 2010***

Preparations for the 2010 Constitution Convention began in **2006** when then Governor Togiola Tulafono created the **Future Political Status Study Commission FPSSC** (ASCA Title 2: Chpt. 14). Part of their mandate stated in paragraph (d): "To study and evaluate the impact of American Samoa's political status and relationship with the United States as to the economic, cultural, land tenure, health, safety and social needs of American Samoa and **the need for a comprehensive study to include Swains Island.**" Unfortunately, the Commission did not include a representative from Swains Island. However, based on their mandate, the Commission issued the following recommendations on Swains Island:

- The Commission recommends that to avail themselves of the public services to which they are entitled, the US Nationals of Swains Island consider relocating to the main islands of American Samoa.
- The Commission recommends that the constitutional process for the election of the Swains Island delegate (to the House of Representatives) be made more practical.

([http://faleomavaega.house.gov/sites/faleomavaega.house.gov/files/pdfs/fpssc\\_report.pdf](http://faleomavaega.house.gov/sites/faleomavaega.house.gov/files/pdfs/fpssc_report.pdf))

The **Constitution Review Committee** was subsequently created in 2009, to consider the recommendations of the Commission and submit proposed amendments to the Constitution Convention scheduled for June 2010. Again, no representative of Swains Island was invited to be part of the Constitution Review Committee. However, in their recommendation, the Review Committee proposed only that the Swains Island Delegate be selected by popular vote of all Swains Island residents on Swains and in American Samoa and given the right to vote. The other recommendation by the FPSSC, to relocate residents to Tutuila, was not approved by the Review Committee.

Approximately two weeks before the **Constitution Convention**, all the preparations were in place except no Delegate from Swains Island was invited to participate. I spoke with the Review Committee and was advised that due to the number of people on Swains Island it was determined that Swains Island will not have a Delegate. I referred them to the Constitution which specifies that Swains Island will have a Delegate in a Constitution Convention. I later received a call to conduct a selection for the Swains Island Delegate, and I was selected as the Swains Delegate.

During the Convention, I argued in the Legislative Committee that the selection of the Swains Island Delegate to the House of Representatives was consistent with the right to the protection of lands, customs, culture, and traditional family organization of American Samoan Ancestry, as provided in the Constitution (similar to the selection of Senators). My position was upheld, and the Committee agreed to remove the proposal and leave the Swains Island selection as it stands.

Meanwhile, in the Preamble Committee, Congressman Faleomavaega proposed that the Preamble include three paragraphs to recognize the three islands that were united to form the Territory of American Samoa. The first paragraph to include the Deed of Cessions with the traditional leaders of Tutuila, the second paragraph to include the Deed of Cessions with King Elesara and the traditional leaders of Manu'a, and the third paragraph the act of Congress making Swains Island part of American Samoa. Both recommendations from the Legislative Committee and Preamble Committee were approved in the Convention. Unfortunately, all proposed Amendments were defeated in the General election by an overwhelming 70% of the vote, because of the decision of the Election Officer to select one vote "Yes" or "No" for all proposed amendments on the ballots.

***Letter to Congressman Faleomavaega E. Hunkin January 14, 2011***

In my letter to Congressman Faleomavaega dated January 14, 2011, I tried desperately in my limited capacity, to provide a comprehensive review of the political status of Swains Island and its impact on economic, cultural, land tenure, health, safety, and social needs of Swains Island (please see letter to Congressman Faleomavaega attached). On July 6, 2011, Congressman Faleomavaega solicited the assistance of the Department of Interior (please see Congressman Faleomavaega letter to then Secretary Ken Salazar attached). Assistant Secretary of Insular Affairs then, Anthony Babauta, responded to our Congressman, indicating that Swains Island constitutes an area in American Samoa equal to Tutuila, Aunu'u, and Manu'a, when considered throughout the DOI and other federal offices (please see Secretary Babauta response attached).

***House Joint Resolution (HJR) 33-2 March 2014***

HJR 33-2 was introduced in the House of Representatives in March 2014, requesting an Amendment to the Revised Constitution of American Samoa to grant the Swains Island Delegate the right to vote in the House of Representatives. On the Second Reading of the House, approval of the measure failed by a vote of 5-ayes, 6-nays, 4-abstained, with 5-absent.

**REQUEST:**

Madam Secretary, I believe that the non-voting status of the Swains Island delegate to the American Samoa Legislature is an oversight and bears correction through Interior Department action. One, because our Constitution sanctions laws that protect the lands, customs, culture and traditional family organization of Swains Island, and two, it also prohibits the enforcement of laws that abridge against the privileges and immunities of the citizens of American Samoa. Consequently, I support the position of the Attorney General, the Legislative Counsel, and the Secretary of Samoan Affairs, in that granting the Swains Island Delegate the right to vote is a basic step in correcting this oversight.

I further believe that I have exhausted every reasonable action over the last eight years to rectify this oversight at the lowest level through the local government and traditional leaders. Therefore, I humbly request your assistance on this matter and request a meeting with you during your upcoming visit to American Samoa.

Respectfully yours,

SU'A ALEXANDER ELI JENNINGS,  
*Swain Island Delegate*

---

**LEGISLATURE OF AMERICAN SAMOA  
HOUSE OF REPRESENTATIVES**

Hon. Fa'aulalo Faafetai Talia, Chairman  
House Ways and Means Committee  
Legislature of American Samoa  
Pago Pago, Am. Samoa 96799

Re: HJR 33-2: Right to Vote for the Swains Is. Delegate

Talofa lau Afioga Fa'aulalo,

I submit this statement as requested on HJR 33-2: Constitution Amendment granting the Swains Island Delegate the Right to Vote. Around March 6, 2014 there was a House Ways & Means Committee Hearing on the HJR 33-2 with the Secretary of Samoan Affairs, Paramount Chief **Satele Galu Satele**, Attorney General, **Talauega Eleasalo Ale**, and Legislative Council, **Henry Kappel** as witnesses. At the conclusion of the Hearing all three witnesses endorsed the Resolution as written, and indicated by testimonies that this was "long overdue". In other words Chairman, by the testimonies of these three witnesses representing the executive branch, legislative branch, and Our Samoan Traditions, there are no traditional or legal grounds to deny the Swains Island Delegate the right to vote in the House of Representatives. Regrettably, the matter was referred back to Committee for further deliberations over the same concerns that were presented to the witnesses during the Hearing. Perhaps the greatest opposition to the Resolution is the selection of the Swains Island Delegate, which is by selection in a meeting of the Permanent Residents (similar to Senators) and not by popular vote like the rest of the House Members. Another issue was the lack of residents on Swains Island. Again, these were all discussed with the witnesses in the Hearing, yet the Attorney General, Legislative Counsel, and Secretary of Samoan Affairs all endorsed the Resolution as it is written at the end of the Hearing. Then on August 12, 2014, the matter was discussed in Committee, but again it was decided to keep it in Committee for further deliberations, yet no new evidence was introduced. However, it was suggested that I provide the Committee with a written statement and therefore I provide this statement to the Committee for the record.

**Background:**

**Political Status of Swains Island:**

**A. Swains Island has been a Territory of the United States since August 13, 1856:**

According to Federal Regulations, Swains Island first became a Territory of the United States on August 13, 1856 under the Guano Act. On March 4, 1925, Swains Island was made a part of American Samoa by a Joint Resolution of Congress which Stated:

*Whereas Swains Island . . . is included in the list of guano islands appertaining to the United States, which have been bonded under the Act of Congress approved August 18, 1856*

*Whereas the island has been in the continuous possession of American citizens for over fifty years and no form of government therefore or for the inhabitants thereof has been provided by the United States*

*Therefore, be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that sovereignty of the United States over American Samoa is hereby extended over Swains Island, which is made a part of American Samoa*

*d. Native inhabitants of Swains Island of a race Indigenous to that island who were not already U.S. citizens or nationals became non-citizen U.S. nationals if residing in Swains Island on March 4, 1925 (U.S. State Department Foreign Affairs Manual (FAM): 7 FAM 1120 Page 20).*

- Swains Island was made a part of American Samoa in that the Sovereignty of the U.S. over American Samoa was also extended over Swains Island. Swains Island was placed ". . . under the jurisdiction of the administrative and judicial authorities of the government **established therein by the United States**" (American Samoa Constitution: Acts of Congress 1662) Swains Island did not become a Territory of American Samoa, as implied by current applications of law, but remains a Territory of the U.S.

- Swains Island is equally entitled to the same privileges as Tutuila, Aunu'u, and Manu'a in the Territory of American Samoa. "Swains Island constitute an area within American Samoa **just like** Tutuila, Aunu'u, and Manu'a" (Assistant Secretary for Insular Affairs, Anthony Babauta letter to Faleomavaega July 2011)

**B. Swains Island became an "Unincorporated Territory or Outlying Possession" of the United States in 1925.**

According to Federal Regulations there are **two** Unincorporated Territories or Outlying Possessions of the U.S., **American Samoa** and **Swains Island** (7 FAM 1120 Page 18 & 19).

- An "**unincorporated territory**" or "**outlying possession**" is an area over which the Constitution has not been expressly and fully extended by the Congress within the meaning of Article IV, Section 3 of the United States Constitution (7 FAM 1120 Page 2).

**Constitutional Rights of Swains Island**

**A. Right to have a voting Delegate in an American Samoa Constitution Convention**

Swains Island has the right to select a Delegate (similar to the Delegate to the Fono), except with voting rights to an American Samoa Constitution Convention. Yet he/she cannot vote on Bills or Resolutions in the House. "*Swains Island shall have one delegate selected in open meeting by the adult permanent residents of the island who are United States nationals*" (AS Rev. Const. Article V Miscellaneous Section 3).

- I was the delegate of Swains Island in the 2010 Constitution Convention, and voted both in the Legislative Committee, and the Full Committee.

**B. Right to protection of Lands, Customs, Culture and traditional family organization of Samoan Ancestry (Article 1 Section 3 Protective Legislation).**

- (d) "**American Samoan ancestry**" means lineal descendants of the inhabitants of Tutuila and **Swains Islands** whose permanent place of residence was American Samoa on 17 April 1900, and the inhabitants of Manu'a Islands whose permanent place of residence was American Samoa on 16 July 1904 (ASCA 41.0202 Definitions).
- Any law that protects the lands, customs, and traditional family organization of Swains Island people does not violate the Constitution. Subsequently, the Swains Island Delegate is selected in an open meeting (not by popular vote) of the Permanent Residents to protect its lands, culture, and family organization traditions (AS Rev. Const. Article II Legislature Sect. 2 Members)

C. Right to the protection against laws that abridge against the privileges or immunities of the citizens of American Samoa (Article I Bill of Rights Section 16: Unspecified rights and privileges and immunities)

- Denying the Swains Island Delegate the right to vote violates section 16 of the Bill of Rights.

**Discussion**

Chairman, Swains Island is a Territory of the United States that was made a part of American Samoa through a Joint Resolution of Congress. Swains Island is not a Territory of American Samoa, but is equal to Tutuila, Aunu'u and Manu'a according to the U.S. Department of Interior. The Swains Island Delegate to the House of Representatives is selected the same way the Swains Island Delegate is selected for a Constitution Convention (an open meeting of the permanent residents of Swains Island). Yet the Swains Delegate to a Constitution Convention has the right to vote both in Sub-Committees as well as the Committee as a Whole. I was the Swains Island Delegate to the 2010 Constitution Convention and I voted both in the Legislative Committee and the Committee as a whole for proposed Amendments from all Committees. The selection of the Swains Island Delegate to the House of Representatives protects the lands, customs, and traditional family organization of Swains Island under Article I Section 3 Protective Legislation. The same way the selection of Senators to the Senate protects Tutuila and Manu'a. As such, granting the Swains Island Delegate the right vote does not violate the Constitution. However, denying that Delegate the right to vote may very well violate Article I Section 16 Unspecified rights, privileges and immunities, by enforcing a law that abridge the privileges and immunities of citizens of American Samoa. This logic is



1 H.J.R. NO. 33-2  
 2 INTRODUCED BY: [Signature]  
 3 [Signature]  
 4 [Signature]  
 5 [Signature]  
 6

7 "A HOUSE JOINT RESOLUTION AMENDING ARTICLE II, SECTION 2 OF  
 8 THE REVISED CONSTITUTION OF AMERICAN SAMOA TO PROVIDE  
 9 THE RIGHT TO VOTE FOR THE DELEGATE OF SWAINS ISLAND"  
 10

11 WHEREAS, Swains Island has been a Territory of the United States for over 156  
 12 years, since its inclusion in the list of guano islands appertaining to  
 13 the United States, which have been bonded under the Act of  
 14 Congress that was approved on August 18, 1856; and  
 15

16 WHEREAS, by a Joint Resolution of Congress on March 4, 1925 the sovereignty  
 17 of the United States over American Samoa was also extended over  
 18 Swains Island, and Swains Island was made a part of American  
 19 Samoa. Native inhabitants of Swains Island of a race indigenous to  
 20 that island who were not already U.S. citizens or nationals became  
 21 non-citizen U.S. nationals if residing in Swains Island on March 4,  
 22 1925; and  
 23

24 WHEREAS, the copra from Swains Island was instrumental in stimulating the  
 25 fragile economy of the newly formed Territory of American Samoa.  
 26 It created jobs, by allowing local residents to bring what copra they  
 27 can produce to combine with Swains copra, and it also generated tax  
 28 revenue for the government from the sale of copra; and  
 29

1 WHEREAS, at the decline of the copra industry in the 1960's, two tuna canneries  
2 were erected in the Pago Pago harbor. The high demand for tuna  
3 from the canneries led to the formation of Exclusive Economic  
4 Zones (EEZ) between the countries of the South Pacific in the  
5 1970's. The Swains Island waters brought over 200 miles of ocean  
6 and represents 1/3 of the total United States EEZ in the South  
7 Pacific; and

8  
9 WHEREAS, for 89 years the only voice Swains Island has in the Government of  
10 American Samoa is a non-voting member of the House of  
11 Representatives, in the Legislature of American Samoa; and

12  
13 WHEREAS, this political arrangement has greatly contributed to the deteriorating  
14 state of Swains Island today. Residents are forced to vacate their  
15 homes due to the lack of transportation, communication, and basic  
16 infrastructure to sustain social and economic developments. Their  
17 language, culture, traditions and customary practices have all but  
18 vanished from the Territory; and

19  
20 WHEREAS, in order to start the process of reviving Swains Island back to its  
21 original state and rightful standing in the Territory of American  
22 Samoa, an Amendment to the Revised Constitution of American  
23 Samoa must be approved giving the right to vote to the Swains  
24 Island Delegate in the House of Representatives; and

25  
26 WHEREAS, in accordance with Article V, Section 3 of the Revised Constitution  
27 of American Samoa, this House Joint Resolution was agreed to by  
28 three-fifths of all members of each House, voting separately, with

1 yeas and nays taken thereon, and so entered in the respective  
2 journals of each House.

3  
4 NOW, THEREFORE, BE IT JOINTLY RESOLVED BY THE HOUSE OF  
5 REPRESENTATIVES AND THE SENATE OF THE TERRITORY OF  
6 AMERICAN SAMOA:

7  
8 THAT, Article II, Section 2 of the Revised Constitution of American Samoa is  
9 amended to read:

10  
11 **"Section 2. Membership.** The Senate shall consist of eighteen members, three from the  
12 Manu'a District, six from the Western District, and nine from the Eastern District.

13  
14 The House of Representatives shall consist of twenty members elected from the  
15 following representative districts, the number of representatives from each of the districts  
16 to be as indicated:

- 17 Representative District No. 1, composed of Ta'u, Fitiuta  
18 and Faleasao, ) two representatives;  
19 Representative District No. 2, composed of Ofu, Olosega  
20 and Sili, ) one representative;  
21 Representative District No. 3, Vaifanua — composed of  
22 the Villages of Alao, Aoa, Onenoa, Tula and Vatia, ) one representative;  
23 Representative District No. 4, Saole — composed of the  
24 Villages of Aunuu, Amouli, Utumea and Alofau, ) one representative;  
25 Representative District No. 5, Sua No. 1 — composed of  
26 the Villages of Fagaitua, Amaua, Auto, Avaio, Alega,  
27 Aumi and Lailii, ) one representative;  
28 Representative District No. 6, Sua No. 2 — composed of  
29 the Villages of Sailele, Masausi, Masefau and Afono, ) one representative;  
30 Representative District No. 7, Ma'uputasi No. 1 —

- 1 composed of the Villages of Fatumafuti, Fagaalu and Utulei) one representative;
- 2 Representative District No. 8, Ma'uputasi No. 2 —
- 3 composed of the Village of Fagatogo, ) one representative;
- 4 Representative District No. 9, Ma'uputasi No. 3 —
- 5 composed of the Village of Pago Pago, ) one representative;
- 6 Representative District No. 10, Ma'uputasi No. 4 —
- 7 composed of the Villages of Satala, Atuu and Leloaloa, ) one representative;
- 8 Representative District No. 11, Ma'uputasi No. 5 —
- 9 composed of the Village of Aua, ) one representative;
- 10 Representative District No. 12, Ituau — composed of the
- 11 Villages of Nu'uuli, Fagasa, Matuu, Faganeanea, ) two representatives;
- 12 Representative District No. 13, Fofu — composed of the
- 13 Villages of Leone and Auma, ) one representative;
- 14 Representative District No. 14, Lealataua — composed of
- 15 the Villages of Fagamalo, Fagalii, Poloa, Amanave,
- 16 Failolo, Agagulu Seetaga, Nua, Atauoloma, Afao, Amaluia
- 17 and Asili, ) one representative;
- 18 Representative District No. 15, Ma'upu — composed of
- 19 the Villages of Tafuna, Mesepe; Faleniu, Mapusaga Fou,
- 20 Pavaiai, Iliili and Vaitogi, ) two representatives;
- 21 Representative District No. 16, Tualatai — composed of the
- 22 Villages of Futiga, Ituau (Malaeloa), Taputimu and Vailoatai) one representative;
- 23 Representative District No. 17, Leasina — composed of
- 24 the Villages of Aitulagi (Malaeloa), Aoloau and Asu. ) one representative.

25

26 Senators and Representatives shall be reapportioned by law at intervals of not less

27 than 5 years. The adult permanent residents of Swains Island who are United

28 States nationals may elect at an open meeting a delegate to the House of

29 Representatives who shall have all privileges of a member of the House, ~~except~~

30 ~~the right to vote.~~"

31

1 BE IT FURTHER RESOLVED, that the Governor is respectfully requested to  
2 submit the amendment proposed by this joint resolution to the voters in the next  
3 general election on November 4, 2014, and

4

5 BE IT FURTHER RESOLVED, that the Chief Clerk of the House is directed to  
6 transmit copies of this resolution to the Honorable Lolo M. Moliga, Governor of  
7 American Samoa and the Honorable Sally Jewell, Secretary of the Department of  
8 the Interior.

9

-----END-----

10

11

