July 23, 2020

Honorable Marcia L. Fudge

Chairwoman

Subcommittee on Elections

Dear Ms. Fudge:

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

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

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

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

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

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

In the same case Judge Brown further stated,

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

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

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

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

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

A recent Harvard Review article further stated that:

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

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

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

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

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

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

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

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

Gerard Emanuel