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Voting Rights Denied by Residency: Enfranchising Millions of U.S. Citizens in U.S. Territories

Jeaqualyn R.R. Borgonia*

I. INTRODUCTION

I grew up thinking two facts were common knowledge. First, Guam is a part of the United States. Second, the people born in Guam are all United States citizens. Although I was born and raised in Washington State, both of my parents were born and raised on Guam, a small U.S. territory. Growing up, conversations in my household did not include politics, government, or anything remotely related to those topics. In high school, I asked why our family did not talk about government and questioned their decision to not vote. My mom told me politics and government were never emphasized in her household growing up. My parents did not have the opportunity to vote in national elections and lacked genuine representation at the federal level. At most, Guam residents can vote in primaries and elect a delegate with limited voting privileges to the House of Representatives.¹ My parents decided at a young age that their votes did not matter, and when they finally moved stateside, they remained indifferent to politics. During their formative years, they believed that no matter how much they cared for their island or how patriotic the island was, their voice would never count on a national level unless they relocated to the States. Residents of Guam, like residents of many territories, are denied the right to vote in presidential elections strictly

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¹ *Guam Congressional Representation Act 1972*, GUAMPEDIA (Sept. 20, 2020), <https://www.guampedia.com/guam-congressional-representation/> [<https://perma.cc/96BD-ENJD>]; see Tom Curry, *Nominating, but Not Voting for President*, NBC NEWS (May 28, 2018), <https://www.nbcnews.com/id/wbna24839059> [<https://perma.cc/8SFZ-DT22>].

because of their residency. Congress needs to take action through federal statute and a constitutional amendment to grant these United States citizens the right to participate in presidential elections.

Many United States citizens recognize that voting in the presidential election is a fundamental right. The Constitution is the foundation of this recognition, stating, “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account” This language is used in four constitutional amendments granting voting rights to U.S. citizens previously denied this important right.² Currently, this fundamental right to vote in presidential elections can only be exercised by individuals who reside³ within one of the fifty states or the District of Columbia⁴, are over the age of eighteen, are U.S. citizens, and are registered to vote.⁵ On its face, *who* is allowed to vote may not be perceived as a problem. However, millions of U.S. citizens do not reside within the fifty states or the District of Columbia, and do not qualify for absentee voting.⁶ U.S. citizens who live in the territories—Puerto Rico, the Virgin Islands,

² U.S. CONST. amends. XV, XIX, XXIII, XXVI.

³ This includes all U.S. citizens who claim residency in any of the fifty states or the District of Columbia. Even if a U.S. citizen lives abroad, they can still be eligible to vote in primaries and general elections. *Absentee Voting Information for U.S. Citizens Abroad*, U.S. DEP’T OF STATE – BUREAU OF CONSULAR AFF’S, <https://travel.state.gov/content/travel/en/international-travel/while-abroad/voting.html> [<https://perma.cc/ZN7N-D3ZD>].

⁴ Although the District of Columbia is able to vote in general elections because they are afforded representatives in the Electoral College, they only have one non-voting representative in the House of Representatives, similar to the U.S. Territories. U.S. CONST. amend. XXIII; CONG. RSCH. SERV., *DELEGATES TO THE U.S. CONGRESS: HISTORY AND CURRENT STATUS* (Aug. 25, 2015), <https://fas.org/spp/crs/misc/R40555.pdf> [<https://perma.cc/H4PH-NXJE>].

⁵ U.S. CONST. art. II, § 1, *amended by* U.S. CONST. amend. XXIII.

⁶ In 2010, the population of Puerto Rico was 3,725,789, the population of Guam was 159,358, the population of the U.S. Virgin Islands was 106,405, the population of the Northern Mariana Islands was 53,883, and the population of American Samoa was 55,519, for a total population of 4,100,954. *United States Summary: 2010 Population and Housing Units Count*, U.S. CENSUS BUREAU, CPH-2-1, 2010 CENSUS OF POPULATION AND HOUSING (2012), <https://www.census.gov/prod/cen2010/cph-2-1.pdf> [<https://perma.cc/W639-JAWT>].

American Samoa, the Northern Mariana Islands, or Guam—are denied meaningful representation based on where they reside.⁷ Even though Congress holds more power over these U.S. citizens than over U.S. citizens residing in the states, they are denied meaningful representation in the Senate and House of Representatives.⁸

States have constitutional protections that establish federalism.⁹ While states retain a degree of independence, the U.S. Constitution grants Congress plenary—absolute or unqualified—power over the territories.¹⁰ Unlike the fifty states, U.S. Territories are not afforded the same freedom in governing.¹¹ Similarly, citizens in the territories are not treated as equals or granted the same rights as those living in states. They lack adequate representation in Congress, the ability to vote in presidential elections, and a voice at the federal level.¹²

Each U.S. territory shares a unique history and relationship with the United States. Each U.S. territory is denied the right to vote in federal elections,¹³ affecting over four million U.S. citizens.¹⁴ By focusing on Guam, its history, and its relationship with the United States, this article will highlight the

⁷ Neil Weare, *Equally American: Amending the Constitution to Provide Voting Rights in U.S. Territories and the District of Columbia*, 46 STETSON L. REV. 259, 287 (2017) (discussing emerging political opportunities for amending the constitution).

⁸ *Id.*

⁹ U.S. CONST. art. IV, § 3, cl. 2.

¹⁰ *Id.*

¹¹ 48 U.S.C. § 1421 (1950).

¹² Doug Herman, *A Brief, 500-Year History of Guam*, SMITHSONIAN MAG. (Aug. 15, 2017), <https://www.smithsonianmag.com/smithsonian-institution/brief-500-year-history-guam-180964508/> [<https://perma.cc/5HSW-QLNM>].

¹³ Maria Murriel, *Millions of Americans Can't Vote for President Because of Where They Live*, THE WORLD (Nov. 1, 2016), <https://www.pri.org/stories/2016-11-01/millions-americans-cant-vote-president-because-where-they-live> [<https://perma.cc/AT7N-HQEH>].

¹⁴ In 2010, the population of Puerto Rico was 3,725,789, Guam was 159,358, the U.S. Virgin Islands was 106,405, the Northern Mariana Islands was 53,883, and American Samoa was 55,519, for a total population of 4,100,954. U.S. CENSUS BUREAU, *supra* note 6.

inequities U.S. citizens face as well as the importance of rectifying disenfranchisement of citizens in the territories.

First, this article will outline the unique relationship and history between the United States and Guam. This section will include historical information about Guam, background information on United States military presence in Guam, and the expansion of that military presence. Second, this article will provide a brief history of voting rights and the importance of the Insular Cases to this issue, specifically looking at *Downes v. Bidwell*.¹⁵ Third, this article will discuss the Uniform and Overseas Citizen Absentee Voting Act (UOCAVA) and its relevance to this issue. Fourth, this article will overview recent cases that have solidified Guam residents' inability to vote. Fifth, this article will emphasize the lack of congressional action by highlighting the insignificant number of attempts to give residents in U.S. Territories the right to vote. Finally, this article will propose a revision to the UOCAVA and a constitutional amendment, both of which would enfranchise overseas voters with residency in Guam as well as all citizens residing in territories.

II. GUAM'S RELATIONSHIP WITH THE UNITED STATES

A. "Where America's Day Begins"¹⁶

The United States first acquired Guam in 1898 as a result of the Spanish-American War through the Treaty of Paris.¹⁷ After the United States' acquisition in 1898, the island was subject to U.S. naval administration.¹⁸

¹⁵ *Downes v. Bidwell*, 182 U.S. 244 (1901).

¹⁶ This phrase was adopted because as a U.S. Territory, Guam is the first American soil to welcome the new day. Mary Solio, *20 Things You Should Know About Guam*, GUAM GUIDE (Apr. 17, 2018), <https://theguamguide.com/20-things-you-should-know-about-guam/> [<https://perma.cc/PHB3-F7KA>].

¹⁷ Herman, *supra* note 12.

¹⁸ *Id.* (In the beginning, Guam was ruled by a series of military governors); *see also About Guam/Guahan*, GUAMPEDIA (Sept. 30, 2020), <https://www.guampedia.com/about-guam/> [<https://perma.cc/89TQ-BZTA>].

During World War II, Japan invaded shortly after the attack on Pearl Harbor and occupied the island for three years.¹⁹ It was not until July 21, 1944, that the United States returned to reclaim the island,²⁰ a day recognized by the residents as Liberation Day.²¹ In addition to celebrating Liberation, a majority of CHamorus—a term used to refer to the native residents of Guam—became especially patriotic.²²

The people of Guam pushed for “U.S. citizenship and civilian government, to institutionalize their U.S. patriotism and limit U.S. military control.”²³ This push led to the passage of the Organic Act of Guam in 1950.²⁴ The Organic Act declared Guam to be an unincorporated territory of the United States.²⁵ An unincorporated territory is an area under United States sovereignty that only selected parts of the United States Constitution apply to as determined

¹⁹ *About Guam/Guahan*, GUAMPEDIA (Sept. 30, 2020), <https://www.guampedia.com/about-guam/> [<https://perma.cc/89TQ-BZTA>].

²⁰ *Id.*

²¹ Kevin Tano, *Guam Celebrates Liberation Day*, PAC. DAILY NEWS (July 21, 2018, 6:28 PM), <https://www.guampdn.com/story/news/2018/07/21/guam-celebrates-liberation-day/811523002/> [<https://perma.cc/2FEC-ADND>].

²² CHamorus are the indigenous inhabitants of the Mariana Islands. In recent years, the Commission on the CHamoru Language and the Teaching of the History and Culture of the Indigenous People of Guam announced a change in the standardized spelling from Chamorro to CHamoru. This was a move toward cultural purity and aligns with the rules inherent in the CHamoru spoken language. Michael P. Perez, *Colonialism, Americanization, and Indigenous Identity: A Research Note on Chamorro Identity in Guam*, 25 SOCIO. SPECTRUM, 571, 571–72 (2005); Laura Torres Souder, ‘Chamorro’ is Not a CHamoru Word, GUAM DAILY POST (Mar. 4, 2019), https://www.postguam.com/forum/featured_columnists/chamorro-is-not-a-chamoru-word/article_b4af09f4-3bd6-11e9-bd70-77f71ad48379.html [<https://perma.cc/9FPK-AH5L>]; Chamorro vs. Chamoru, GUAMPEDIA, <https://www.guampedia.com/chamorro-vs-chamoru/> [<https://perma.cc/59AU-8S7H>].

²³ Perez, *supra* note 22.

²⁴ 48 U.S.C. § 1421 (1950).

²⁵ *Id.*

by the United States Congress.²⁶ Additionally, the Organic Act established Guam's government, which closely mirrors state and federal governments.²⁷

Guam is the largest island of the Mariana Islands chain.²⁸ Covering 214 square miles, this United States territory holds 159,358 people, and two military bases occupying thirty percent of the island.²⁹ Guam has successfully fought for U.S. citizenship,³⁰ the right to elect their own governor,³¹ and the right to have a non-voting delegate in the U.S. House of Representatives.³² However, individuals born and raised in Guam do not have the ability to participate in the general election and lack adequate representation. Only if a U.S. citizen from Guam moves to one of the fifty states or the District of Columbia and takes up residency there will they be able to vote in a general election. If that same citizen moves back to Guam, they will again lose that right to vote.³³

Originally, the people of Guam were denied these rights because of racist preconceived notions of places that differ in language and culture from European ways.³⁴ For example, a legal scholar noted in 1903 that the U.S.

²⁶ U.S. DEP'T OF THE INTERIOR, OFF. OF INSULAR AFFS., *Definitions of Insular Area Political Organizations*, <https://www.doi.gov/oia/islands/politicatypes> [<https://perma.cc/5W86-W5EE>].

²⁷ 48 U.S.C. § 1421 (1950) (The Organic Act is similar to the U.S. Constitution in that it establishes three branches of government and the powers and duties of each. Additionally, it includes a bill of rights for the citizens of Guam.).

²⁸ GUAMPEDIA, *supra* note 19.

²⁹ *Id.*; Alexandra Ossola, *Guam's Ecological Fate Is in the Hands of the U.S. Military*, NAT'L GEOGRAPHIC (Dec. 27, 2018), <https://www.nationalgeographic.com/environment/2018/12/guam-endangered-species-ecology-threatened-us-military-base-expansion/> [<https://perma.cc/QUd3-CDU4>].

³⁰ 48 U.S.C. § 1421 (1950).

³¹ *Elective Governor Act 1968*, GUAMPEDIA (Sept. 19, 2020), <https://www.guampedia.com/the-elective-governor-act-1968/> [<https://perma.cc/82Q9-2UHJ>].

³² *Expanding Representation: Pacific Territories*, U.S. HOUSE OF REPRESENTATIVES: HIST., ART, & ARCHIVES, <https://history.house.gov/Exhibitions-and-Publications/APA/Historical-Essays/Exclusion-to-Inclusion/Expanding-Representation/> [<https://perma.cc/MB63-3GTC>].

³³ *Att'y Gen. of Territory of Guam v. United States*, 738 F.2d 1017 (9th Cir. 1984).

³⁴ *Downes v. Bidwell*, 182 U.S. 244 (1901).

Territories became “real dependencies—territories inhabited by a settled population differing from us in race and civilization to such an extent that assimilation seems impossible.”³⁵ The rights afforded to U.S. citizens residing in Guam derive from racist determinations made in the 1900s.³⁶ A federal statute and a constitutional amendment are the only available remedies to grant all U.S. citizens a right to vote.

B. United States Military Presence

The strong United States military presence in Guam is important for two reasons. First, it demonstrates the United States’ historic reliance on Guam. Second, it establishes how valuable Guam is to the United States, which underscores why these U.S. citizens deserve the right to vote for president. Ever since the United States acquired Guam in 1898, there has been a strong military presence there.³⁷ In 1899, the United States government established its first military outpost in Guam because of its “ideal strategic location.”³⁸ Guam was under the jurisdiction of the Navy and ruled by a series of military governors who had absolute authority over the island.³⁹ Under naval policy, the people of Guam were expected to assimilate and the soldiers were meant to “Americanize” the CHamorus.⁴⁰ Guam was ruled by military governors until the passage of the Elective Governor Act in 1968, which allowed Guam residents to vote for their own governor.⁴¹

³⁵ Herman, *supra* note 12.

³⁶ *Id.*; *Downes v. Bidwell*, 182 U.S. 244 (1901).

³⁷ Herman, *supra* note 12.

³⁸ Anthony (T.J.) F. Quan, “*Respecta I Taotao Tano*”: *The Recognition and Establishment of the Self-Determination and Sovereign Rights of the Indigenous Chamorros of Guam Under International, Federal, and Local Law*, 3 ASIAN-PAC. L. & POL’Y J. 3, 66 (2002) (arguing that the Chamorro people, as Guam’s original indigenous inhabitants, are a distinct, identifiable, sovereign people deserving of the right to self-determination and self-preservation).

³⁹ Herman, *supra* note 12.

⁴⁰ Quan, *supra* note 38, at 66.

⁴¹ GUAMPEDIA, *supra* note 31.

Since the establishment of the U.S. military's first outpost there in 1899, Guam's historic U.S. patriotism has continued, and it persists today.⁴² Many factors explain why people from Guam are patriotic. As previously stated, CHamorus became especially patriotic after the United States reclaimed the island from Japanese forces.⁴³ On December 8, 1941, shortly after the Pearl Harbor attack, Japanese forces bombed Guam.⁴⁴ The next day, the planes returned, striking military facilities.⁴⁵ On December 10, 1941, Japanese troops invaded the island and occupied its lands for three years.⁴⁶ In these three years, over "13,000 American subjects suffered injury, forced labor, forced march or internment. . . . At least 1,123 died."⁴⁷ Today, Guam still celebrates Liberation Day to commemorate the return of the United States Troops.⁴⁸

Other factors that demonstrate the strong military presence derive from Guam's history with the military. Today, Guam's economic revenue is primarily derived from tourism and the U.S. military.⁴⁹ The U.S. military is intertwined with life on the island. The economy is geared to support the military and guide youth to military careers.⁵⁰ Most families are either employed by the military or connected to someone serving in it.⁵¹

⁴² Dakota Alcantara-Camacho, *Guam: Where America's Day Begins with Injustice*, SEATTLE GLOBALIST (Nov. 27, 2013), <https://seattleglobalist.com/2013/11/27/guam-where-americas-day-begins-with-injustice/17809> [<https://perma.cc/M4CV-XP8Q>].

⁴³ GUAMPEDIA, *supra* note 19.

⁴⁴ Herman, *supra* note 12.

⁴⁵ Tony Palomo, *Rising Sun Dawns on Guam*, THE WAR IN THE PAC., https://www.nps.gov/parkhistory/online_books/npswapa/extContent/Lib/liberation4.htm [<https://perma.cc/R58G-33VQ>].

⁴⁶ Herman, *supra* note 12.

⁴⁷ *Id.*

⁴⁸ Tano, *supra* note 21.

⁴⁹ GUAMPEDIA, *supra* note 19.

⁵⁰ LisaLinda Natividad & Gwyn Kirk, *Fortress Guam: Resistance to U.S. Military Mega-Buildup*, COLUMBIAN COLL. OF ARTS & SCIS. HIST. NEWS NETWORK, <https://historynewsnetwork.org/article/127303> [<https://perma.cc/62YR-5A8V>].

⁵¹ *Id.*

Additionally, the high schools on the island offer JROTC⁵² programs for the Air Force, Army, and Navy, and the University of Guam has its own ROTC program.⁵³

For some, joining the military may not be about patriotism per se, but rather the economic opportunity that accompanies joining the armed forces. The military offers a stable job, benefits, access to base facilities, and even the ability to leave the island and see the world. As a result, Guam has one of the highest enlistment rates per capita in the United States and one of the highest concentrations of military veterans among the U.S. states and territories.⁵⁴ In fact, up to one in eight adults in Guam is a veteran.⁵⁵ It is common knowledge among Guam residents that Guam's people consistently sacrifice their lives for this country. Yet, they cannot vote for their commander in chief. Thirty percent of Guam is occupied by U.S. military bases⁵⁶ and Guam's people, who are U.S. citizens, enlist to serve at high rates.⁵⁷ It is time to allow these United States citizens to participate in the vote for the presidency.

⁵² JROTC stands for Junior Reserve Officers' Training Corps. This program prepares high school students for leadership roles while making them aware of their rights, responsibilities, and privileges as American citizens. *How Do I Find out About JROTC Programs?*, U.S. DEP'T OF DEF. (Mar. 20, 2019), <https://www.defense.gov/ask-us/faq/Article/1775385/how-do-i-find-out-about-jrotc-programs/> [<https://perma.cc/S5GZ-AZYS>].

⁵³ Natividad & Kirk, *supra* note 50; *UOG Army ROTC Overview*, UNIV. OF GUAM, <https://www.uog.edu/schools-and-colleges/college-of-natural-and-applied-science/army-rotc/overview.php> [<https://perma.cc/QDX5-U4RP>].

⁵⁴ John Hicks, *Guam: A High Concentration of Veterans, but Rock-Bottom VA Funding*, WASH. POST (Oct. 29, 2014), <https://www.washingtonpost.com/news/federal-eye/wp/2014/10/29/guam-a-high-concentration-of-veterans-with-little-va-funding/> [<https://perma.cc/4G5M-VFCC>]; Neil Weare & Rodney Cruz, *Opinion, Guam, America's Forgotten Frontline*, N.Y. TIMES (Aug. 14, 2017), https://www.nytimes.com/2017/08/14/opinion/guam-north-korea-american-ally-.html?fbclid=IwAR1pCS33Nd5wU1tRgETA1IsVCz_t8bEq5MfAmA3-w2rS576b12yepsJI4sY [<https://perma.cc/QB7S-C77N>].

⁵⁵ Hicks, *supra* note 54.

⁵⁶ GUAMPEDIA, *supra* note 19.

⁵⁷ Hicks, *supra* note 54.

C. Expansion in Military Presence on the Island

“We are equal in war, but not in peace.”

-Ben Blaz (Member of Congress, Guam)⁵⁸

Guam’s status as an unincorporated territory has left Guam with little power over the United States’ decisions regarding the island.⁵⁹ Granting U.S. citizens the right to vote on Guam would hold Congress and the President more accountable in their actions regarding the island. Since 2009, there have been ongoing talks between the United States and Japan about the expansion of the military presence on Guam.⁶⁰ Based on a 2005 agreement between the United States and Japan, the United States will reduce the presence of U.S. troops in Japan.⁶¹ To facilitate this reduction, the government decided to move the base from Okinawa, Japan, to Guam.⁶² This proposal concerned citizens on the island because many feared that Guam’s infrastructure would be overwhelmed if plans to nearly double the military presence on the island continued.⁶³ With around 7,800 U.S. military personnel currently stationed on Guam, the proposal would bring an additional 5,000 marines and 2,400 dependents.⁶⁴ “Guam is less than nine miles wide and a little more than 30

⁵⁸ Ben Blaz, Opinion, *Guam: Equal in War, but Not in Peace*, N.Y. TIMES (Oct. 19, 1991), <https://www.nytimes.com/1991/10/19/opinion/1-guam-equal-in-war-but-not-in-peace-399191.html> [<https://perma.cc/EM9A-XV67>].

⁵⁹ Jon Letman, *Proposed US Military Buildup on Guam Angers Locals Who Liken It to Colonization*, GUARDIAN (Aug. 1, 2016), <https://www.theguardian.com/us-news/2016/aug/01/guam-us-military-marines-deployment> [<https://perma.cc/8HEX-AT4H>].

⁶⁰ *Id.*

⁶¹ Gaynor D. Daleno, *Story No. 7: Military Buildup Gains Momentum, Opposition*, GUAM DAILY POST (Dec. 13, 2017), https://www.postguam.com/news/local/story-no-military-buildup-gains-momentum-opposition/article_5f118a7a-e5f7-11e7-b556-7f1e33288693.html [<https://perma.cc/4A6W-EG6H>].

⁶² *Id.*

⁶³ Letman, *supra* note 59.

⁶⁴ *Okinawa-Based U.S. Marines May Start Moving to Guam in October 2024*, JAPAN TIMES (May 14, 2019), <https://www.japantimes.co.jp/news/2019/05/14/national/okinawa-based-u-s-marines-may-start-moving-guam-october-2024/#.XnUdxS-ZMUs> [<https://perma.cc/7NDX-GLJ6>].

miles long, and ‘there will be tension, frictions . . . [because] there is only so much room to go around.’”⁶⁵ Carmen Artero Kasperbauer, a resident on the island whose family once owned land that is now a part of Andersen Air Force Base, expressed frustration, stating, “We hate being possessions to the federal government. . . . That’s why people are angry.”⁶⁶ Dave Lotz, a local historian who has lived on Guam since 1970, summarized an important takeaway and frustration for those on the island: “The future of the island and the people here is decided by the Pentagon, not the people of Guam.”⁶⁷

Although Guam’s economy is dependent on the U.S. military, many are in strong opposition to the buildup. However, as an unincorporated territory, Guam is very restricted in its ability to influence the political process. Citizens on the island were not even consulted or brought into the conversation when expansion plans were developed.⁶⁸

Because of the United States’ lack of response to Guam citizens’ concerns, Prutehi Litekyan, a community organization, sent a letter to Okinawa’s governor emphasizing that thousands of residents provided public testimony, met with local leaders, submitted thousands of comments, and stressed that not all of Guam’s residents were in support of the Marine Corps relocation to Guam.⁶⁹ Those who opposed the buildup understood why Okinawa wanted to relocate the military base, and they clarified that their opposition did not mean they supported keeping the base in Okinawa.⁷⁰ Rather, their position

⁶⁵ Teri Weaver, *On Guam, Military’s Roots Run Deep*, STARS & STRIPES (Jan. 23, 2010), <https://www.stripes.com/news/on-guam-military-s-roots-run-deep-1.98336> [<https://perma.cc/CU4L-26C5>].

⁶⁶ *Id.*

⁶⁷ Ossola, *supra* note 29.

⁶⁸ LisaLinda Natividad & Gwyn Kirk, *Fortress Guam: Resistance to U.S. Military Mega-Buildup*, COLUMBIAN COLL. OF ARTS & SCIS. HIST. NEWS NETWORK, <https://historynewsnetwork.org/article/127303> [<https://perma.cc/62YR-5A8V>].

⁶⁹ Anumita Kaur, *Prutehi Litekyan to Okinawa Governor: Not All of Guam Supports the Marines’ Relocation*, PAC. DAILY NEWS (Oct. 9, 2019), <https://www.guampdn.com/story/news/local/2019/10/08/prutehi-litekyan-guam-denny-tamaki-the-marines/3904543002/> [<https://perma.cc/R3E4-NUJP>].

⁷⁰ *Id.*

was that these areas should not have more U.S. military presence.⁷¹ Residents' opposition was not simply because they did not want more military presence on the island. There are serious implications to culture, land, ecology, and the health and well-being of those living on Guam.⁷² In its letter, Prutehi Litekyan specifically focused on the proposed live-fire training range complex and emphasized the endangerment of the Northern Guam Lens aquifer, historic properties, and natural resources.⁷³ Guam lacks a voice in the federal arena and these changes drastically affect Guam's citizens, whose concerns are not being addressed by the federal government.⁷⁴

The greatest concerns regarding the expansion of military presence on Guam involve the effects of the proposed live-fire training ranges.⁷⁵ If these ranges lead to destruction and contamination of the land, the damage will be irreversible.⁷⁶ Additionally, there are concerns about the cultural and historical implications of where the military buildup will take place.⁷⁷ The military has stated that due to the pressing needs of the buildup, changing or halting construction is unlikely.⁷⁸ Al Borja, an environmental director with Marine Corps Activity Guam, stated that "[i]t's not that preservation in place is impossible, but if it affects something as important as the firing lanes and

⁷¹ *Id.*

⁷² Ossola, *supra* note 29; Daleno, *supra* note 61.

⁷³ Kaur, *supra* note 69.

⁷⁴ Letman, *supra* note 59.

⁷⁵ *Okinawa Waits as U.S. Marines' Move to Guam Struck by Delays*, ASAHI SIMBUN (May 24, 2019), <http://www.asahi.com/ajw/articles/AJ201905240006.html> [<https://perma.cc/YDB6-EECW>].

⁷⁶ Natividad & Kirk, *supra* note 50; *see* letter from Jared Blumenfeld, Regional Administrator, United States Environmental Protection Agency, to Roger M. Natsuhara, Acting Assistant Secretary of the Navy, Installations and Environment (Feb. 17, 2010), <https://archive.epa.gov/region9/nepa/web/pdf/guam-cnmi-military-reloc-deis.pdf> [<https://perma.cc/6AN3-JFZG>].

⁷⁷ Ossola, *supra* note 29.

⁷⁸ Anumita Kaur, *A 'Rough Road' as Military Buildup Projects Are in 'Full Force,' PAC. DAILY NEWS* (May 24, 2019), <https://www.guampdn.com/story/news/local/2019/05/23/guam-camp-blaz-us-military-asia-pacific/1200366001/> [<https://perma.cc/L3FJ-BLDR>].

the configuration of the range, I would say it's very unlikely that we'll preserve it in place."⁷⁹ Although the military will explore the potential effects on historical properties, it will not grant protection or automatic preservation of Guam's cultural sites.⁸⁰

It is worth mentioning that not *all* Guam residents oppose the military buildup. That being said, even with strong opposition, United States citizens in Guam have no say in the matter. If this expansion were to occur in any of the fifty states, the citizens would have more power to stop, pause, or change the plans the United States government put in place. If the government attempted to use land and build a base that would have adverse effects on the citizens of its states, people would call their representatives and senators. There would be public backlash and pressure from not only citizens, but people in power. But Guam only has one non-voting delegate in the House of Representatives.⁸¹ That single delegate provides the only representation with some sort of voice at the national level. Guam does not and cannot sit at the decision-making table. Moreover, many U.S. citizens are unaware that Guam is even a part of the United States.⁸² When U.S. citizens think of the U.S., they think of the fifty states, not knowing the U.S. has overseas possessions, and are convinced that "only 'foreigners' [like] the British have an 'empire.'"⁸³ The United States is fast to encourage, enact, and pass anything that benefits it, especially in relation to the military and Guam, but

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Expanding Representation: Pacific Territories*, U.S. HOUSE OF REPRESENTATIVES: HIST., ART, & ARCHIVES, <https://history.house.gov/Exhibitions-and-Publications/APA/Historical-Essays/Exclusion-to-Inclusion/Expanding-Representation/> [<https://perma.cc/MB63-3GTC>].

⁸² Daniel Immerwahr, *How the US Has Hidden Its Empire*, GUARDIAN (Feb. 15, 2019), <https://www.theguardian.com/news/2019/feb/15/the-us-hidden-empire-overseas-territories-united-states-guam-puerto-rico-american-samoa> [<https://perma.cc/4MLU-ZW7F>].

⁸³ *Id.*

drags its feet when the citizens of Guam ask for justice and a voice: “We are equal in war, but not in peace.”⁸⁴

III. INSULAR CASES

After the acquisition of the territories in the post-Spanish War era, the U.S. Supreme Court issued a series of opinions that held the “newly acquired territories belonged to, but were not a part of, the United States.”⁸⁵ These decisions effectively denied citizens in these territories full constitutional protections.⁸⁶ The land belonged to the U.S., but the people did not. These cases created the important distinction between incorporated and unincorporated territories.⁸⁷ Although these cases were decided in the 1900s, they created a harmful legacy that persists today.

One of the predominant cases in this series is *Downes v. Bidwell*.⁸⁸ In *Downes*, the United States Supreme Court reinforced U.S. naval policy denying the people of Guam the right to self-govern and basic civil liberties.⁸⁹ The court effectively held that “the U.S. Constitution did not apply in the same fashion to insular territories as it did to states, reaffirming the doctrine of Congress’s ‘plenary power’ over the territories.”⁹⁰ The majority’s holding was grounded in racist justifications finding that “Anglo-Saxon principles” of government and justice would be impossible to apply to “alien races differing” in “religion, customs, laws . . . and modes of thought.”⁹¹ *Downes* developed a new territorial doctrine, creating the concept of incorporated and

⁸⁴ Blaz, *supra* note 58.

⁸⁵ Lana Birbrair, *The Insular Cases: Constitutional Experts Assess the Status of Territories Acquired in the Spanish-American War*, HARV. L. TODAY (Mar. 18, 2014), <https://today.law.harvard.edu/insular-cases-constitutional-experts-assess-status-territories-acquired-spanish-american-war-video/> [<https://perma.cc/P7VK-TVTA>].

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Downes v. Bidwell*, 182 U.S. 244 (1901).

⁸⁹ *Id.*

⁹⁰ Quan, *supra* note 38, at 66.

⁹¹ *Downes*, 182 U.S. at 287.

unincorporated territories.⁹² The Court defined an unincorporated territory as “not an integral part of the United States,” and thus as a territory not intended to become a state.⁹³ This definition is the foundation upon which many basic rights are denied to citizens on Guam.⁹⁴

IV. UNIFORM AND OVERSEAS CITIZEN ABSENTEE VOTING ACT

Ensuring the right to vote, especially for military personnel, has been an ongoing concern as early as the American Civil War.⁹⁵ The enfranchisement of oversea voters initially began to ensure military personnel had the ability to vote.⁹⁶ The act was then extended to their families and citizens who were overseas for other various reasons.⁹⁷ In 1975, Congress granted overseas citizens the right to vote through the Overseas Citizens Voting Rights Act (OCVRA).⁹⁸ In 1986, the Uniform and Overseas Citizen Absentee Voting Act (UOCAVA) was enacted by Congress to replace the OCVRA.⁹⁹ Both acts guarantee U.S. citizens residing overseas the right to vote by absentee ballot in federal elections.¹⁰⁰ The legislative history of the OCVRA demonstrates the original legislative intent for both the OCVRA and the UOCAVA.¹⁰¹ House Report No. 94-649 indicated, “The primary purpose of the bill is to assure the right of otherwise qualified private U.S. citizens residing outside the United States to vote in federal elections.”¹⁰² With

⁹² *Id.* at 281.

⁹³ *Id.*; Ossola, *supra* note 29.

⁹⁴ Downes v. Bidwell, 182 U.S. 244 (1901).

⁹⁵ Steven F. Huefner, *Lessons from Improvements in Military and Overseas Voting*, 47 U. RICH. L. REV. 833, 837 (2013) (discussing the evolution of improvements regarding military and overseas voting).

⁹⁶ ROBERT TIMOTHY REAGAN, FED. JUD. CTR., OVERSEAS VOTING: THE UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT, FJC-MISC-2016-3 (2016).

⁹⁷ *Id.*

⁹⁸ Overseas Citizens Voting Rights Act of 1975, Pub. L. No. 94-203, 89 Stat. 1142.

⁹⁹ 52 U.S.C. §§ 20310–20311 (1986).

¹⁰⁰ *Id.*

¹⁰¹ See 132 CONG. REC. H5973-03 (1986).

¹⁰² Franklin Troy Fegurur, “*Half an American*”: *Guam Veterans; Struggle for Voter Equality*, 19 ASIAN-PAC. L. & POL’Y J. 153, 174 (2017).

approximately 6 million U.S. citizens living and working overseas, “[a]ll of them are entitled to vote.”¹⁰³ In the relevant committee reports, Chairman of the Subcommittee of Elections, Al Swift, stated:

Our fellow citizens who are serving overseas to preserve, protect and defend the basic rights we all share—whether they are in uniform or in one of many important civilian positions—deserve no less. They deserve to be able to vote. This bill will protect a fundamental right they retain as American citizens, wherever in the world they might be.¹⁰⁴

The UOCAVA is meant to bridge the gap for all overseas citizens so that their right to vote will not be infringed upon.

The UOCAVA permits three groups of citizens to register and vote absentee in elections for federal offices: (1) members of the United States Uniformed Services and Merchant Marines; (2) family members of United States Uniform Services and Merchant Marines; and (3) United States citizens residing outside the United States (overseas voters).¹⁰⁵ As previously mentioned, Congress has emphasized the importance of all U.S. citizens having a voice in government.¹⁰⁶ Yet a large portion of Guam residents are explicitly denied the right to vote. As the statute currently stands, voting is only permitted for citizens who have resided in the mainland U.S. before relocating overseas.¹⁰⁷ The UOCAVA defines “overseas voter” as follows:

(A) an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(B) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

¹⁰³ See 132 CONG. REC. H5973-03 (daily ed. Aug. 12, 1986) (statement of Rep. Swift).

¹⁰⁴ *Id.*

¹⁰⁵ 52 U.S.C. § 20310 (1986).

¹⁰⁶ 132 CONG. REC. H5973-03 (daily ed. Aug. 12, 1986) (statement of Rep. Swift).

¹⁰⁷ 52 U.S.C. § 20310 (1986).

(C) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.¹⁰⁸

Impacted residents of Guam can be broken down into two groups: (1) citizens of Guam who have only resided or claimed residency on Guam (including veterans and active military); and (2) citizens of Guam who have previously resided in one of the fifty States but are registered to vote in Guam elections.¹⁰⁹ Relying on the statute’s definition of overseas voters, the first group of citizens discussed above would not be qualified to vote.¹¹⁰ Although people born in Guam are U.S. citizens, they are not qualified to vote in presidential elections.¹¹¹ Since this first group of citizens have only resided in Guam, they have never been qualified to vote, and thus, the statute is inapplicable to them. As a result, a group of citizens, who would otherwise be eligible to vote, are barred because of their location.¹¹²

Additionally, the UOCAVA makes two other important definitions. First, the statute defines “state” as a “State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.”¹¹³ Second, the statute defines “United States,” when used “in the territorial sense,” to mean “the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.”¹¹⁴ This is significant because this definition, when combined with the given definition of “overseas voter,” disqualifies overseas voters from voting in presidential elections when they reside in Puerto Rico, Guam, the Virgin Islands, and American Samoa. When combined, the

¹⁰⁸ *Id.* § 5 (emphasis added).

¹⁰⁹ See Fegurgur, *supra* note 102, at 161.

¹¹⁰ *Id.*

¹¹¹ Murriel, *supra* note 13.

¹¹² *Id.*

¹¹³ 52 U.S.C. § 20310(6) (1986).

¹¹⁴ 52 U.S.C. § 20310(8) (1986).

definition of “overseas voter” (for Puerto Rico, Guam, the Virgin Islands, and American Samoa) can be understood as follows:

(A) an absent uniformed services voter who, by reason of active duty or service is absent from the United States [(including Puerto Rico, Guam, the Virgin Islands, and American Samoa)] on the date of the election involved;

(B) a person who resides outside the United States [(including Puerto Rico, Guam, the Virgin Islands, and American Samoa)] and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(C) a person who resides outside the United States [(including Puerto Rico, Guam, the Virgin Islands, and American Samoa)] and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.¹¹⁵

Because the United States encompasses Guam, under the above definition, citizens who reside on the island are still considered to be residing in the United States.¹¹⁶ Although this does not affect the first group of citizens previously mentioned, it negatively affects the second group: citizens of Guam who have previously resided in one of the fifty States but claimed residency in Guam. Consider, for example, that a citizen who is qualified to vote in Washington State moves to Guam, gains residency, and votes in Guam elections. Under this statute, that citizen would not be qualified to vote in presidential elections with an absentee ballot because they are technically still residing in the U.S.¹¹⁷ When citizens decide to move to territories, which are still considered part of the U.S. under this statute, they forfeit their right to participate in federal elections.¹¹⁸ This is the problem facing U.S. citizens living in Guam and other territories. They are “a part of the United States” in

¹¹⁵ See 52 U.S.C. §§ 20310(5), (6), (8) (1986) (emphasis added).

¹¹⁶ 52 U.S.C. § 20310(8) (1986).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

the definitional sense of this statute, but in practice are not afforded the same right to vote. If Guam is actually considered part of the U.S. under this statute, why are the island's residents excluded from participating in federal elections? The lack of action taken by the government in this case may stem from the difficulty in adding Guam and other territories into the electoral college.¹¹⁹ Regardless of this challenge, every U.S. citizen should have the right to vote and be represented in their government.

V. OTHER RELEVANT CASES

A. *The Constitution Grants States, Not People, the Right to Vote*

Attorney General of the Territory of Guam v. United States is an important case that speaks directly to the issues Guam faces in enfranchising its citizens.¹²⁰ In this case, the attorney general of Guam and four individuals sued the United States on behalf of U.S. citizens who are registered to vote in territorial elections.¹²¹ The plaintiffs sought a judgment declaring the right of these citizens to vote in presidential and vice-presidential elections.¹²² The plaintiffs raised two issues: (1) the constitutionality of excluding U.S. citizens from federal elections and (2) the qualifications of Guam citizens' voting rights under the OCVRA¹²³ and *Oregon v. Mitchell*.¹²⁴ The appellate

¹¹⁹ Though not a reason to disenfranchise millions of U.S. citizens, passing a constitutional amendment by constitutional convention or by Congress and the states would be an onerous process. Additionally, the government would then have to address reapportionment of electoral votes and address the pushback of smaller states due to the high population of Puerto Rico.

¹²⁰ *Att'y Gen. of Territory of Guam v. United States*, 738 F.2d 1017 (9th Cir. 1984).

¹²¹ *Id.* at 1018.

¹²² *Id.*

¹²³ The Plaintiffs argued that the Supreme Court expansively interpreted congressional power over federal elections and Congress already legislated presidential voting rights for American citizens who are not residents of any state. *Id.* at 1019–20.

¹²⁴ This case upheld congressional voting rights legislation which struck down state “durational residency” provisions and substituted nationwide uniform state residency requirements for voting for presidential and vice-presidential electors. *Oregon v. Mitchell*, 400 U.S. 112 (1970).

court affirmed the district court's decision to dismiss the action because the complaint failed to state a claim for which relief could be granted.¹²⁵ The court emphasized that although the plaintiffs argued voting was a privilege of citizenship, the Constitution does not grant U.S. citizens the right to elect the President.¹²⁶ Electors appointed by the states elect the President and Vice President and thus, citizens do not vote for the President.¹²⁷ The court further stated:

The right to vote in presidential elections under Article II inheres not in citizens but in states: citizens vote indirectly for the President by voting for state electors. Since Guam concededly is not a state, it can have no electors, and plaintiffs cannot exercise individual votes in a presidential election. There is no constitutional violation.¹²⁸

Although the court found no constitutional violation, the court mentioned that a constitutional amendment would be required to permit plaintiffs to vote in a presidential election.¹²⁹ The court also noted that such an amendment to the Constitution would solve the problem asserted by the plaintiffs and further solve similar concerns of the District of Columbia.¹³⁰ Under the OCVRA, the court stated, this statute “does not [demonstrate] Congress’s ability or intent to permit all voters in Guam elections to vote in presidential elections. The OCVRA rationale simply is inapplicable to the problem plaintiffs raise, and the judiciary is not the institution of our government that can provide the relief they seek.”¹³¹

¹²⁵ *Id.*

¹²⁶ U.S. CONST. art. II, § 1, cl. 2.

¹²⁷ U.S. CONST. art. II, § 1, cl. 3.

¹²⁸ *Att’y Gen. of Territory of Guam*, 738 F.2d at 1019.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* at 1020.

B. *Segovia v. United States*

Segovia v. United States further explored the injustice of including Guam and other territories under the definition of “states” in the UOCAVA and established why limiting voting through the UOCAVA is a state issue rather than a federal issue.¹³² In this case, there were six plaintiffs, all United States citizens, all former Illinois residents, and all current residents of U.S. territories defined as a “state” for the purposes of the UOCAVA.¹³³ The plaintiffs sued federal and Illinois officials, arguing that the UOCAVA and Illinois law both violate the Due Process and Equal Protection Clauses of the U.S. Constitution by permitting residents of some territories to vote in federal elections but not others.¹³⁴ The court held that “federal law *requires* Illinois to provide absentee ballots for its former residents living in the Northern Mariana Islands, but it does not *prohibit* Illinois from providing such ballots to former residents in Guam, Puerto Rico, and the Virgin Islands.”¹³⁵ The court further stated that state law could provide plaintiffs access to the ballots they seek, but it simply does not.¹³⁶ States have the discretion to determine eligibility for overseas absentee ballots under their election laws.¹³⁷ Under the court’s logic, plaintiffs cannot sue the federal government for failing to enact a law requiring a state to remedy their injury.¹³⁸ Instead of addressing an inequality or suggesting ways to combat the issue, the court simply stated that the federal government cannot be sued for failing to enact a law that could remedy the plaintiff’s inability to vote.¹³⁹

¹³² *Segovia v. United States*, 880 F.3d 384 (7th Cir. 2018), *cert. denied*, 139 S. Ct. 320 (2018).

¹³³ *Id.*

¹³⁴ *Id.* at 387.

¹³⁵ *Id.* at 388.

¹³⁶ *Id.*

¹³⁷ *Id.* at 389.

¹³⁸ *Id.*

¹³⁹ *Id.*

VI. PAST ATTEMPTS TO GRANT REPRESENTATION TO CITIZENS LIVING IN U.S. TERRITORIES

Congress has made a number of attempts, especially in recent years, to pass legislation that would either enfranchise U.S. citizens residing in U.S. Territories or take necessary steps to finding a solution for the underrepresented citizens. Focusing on three proposed legislations, there is a blaring commonality to the various proposed solutions: they died in committee with no discussion recorded. Congress lacks urgency and understanding as to why this issue needs to be addressed. This lack of urgency is further demonstrated by the fact that July 28, 2020, was the first time in the history of Congress that a committee had a hearing on voting rights and election administration in the U.S. Territories.¹⁴⁰

A. S.B. 960: Establishing a Commission to Develop Proposals Regarding Voting Representation for Citizens of the United States Who Reside in a Territory

United States Senator Jeff Merkley from Oregon introduced Senate Bill 960 on March 28, 2019.¹⁴¹ This bill would establish a commission to develop proposals regarding voting representation for citizens of the United States who reside in a territory, commonwealth, or federal district of the United States.¹⁴² Because it does not propose an amendment or federal statute that would grant voting rights, building support for the commission should be easier than passing a constitutional amendment or a federal statute. Still,

¹⁴⁰ *Voting Rights and Election Administration in the U.S. Virgin Islands and Other Territories: Hearing Before the Subcomm. on Elections of the Comm. on House Administration*, 116th Cong. (2020); *Congress Holds Historic Hearing on Territorial Voting Rights*, PAC. NEWS CTR. (July 29, 2020), <https://www.pncguam.com/congress-holds-historic-hearing-on-territorial-voting-rights/> [https://perma.cc/7XQ6-PRF4]; *Congress Holds Historic Hearing on Territorial Voting Rights*, EQUALLY AMERICAN (July 30, 2020), https://www.equalrightsnow.org/congress_holds_historic_hearing_on_territorial_voting_rights [https://perma.cc/F87S-TXNW].

¹⁴¹ S.B. 960, 116th Cong. (2019).

¹⁴² *Id.*

however, this proposal did not leave committee and congressional record lacks any mention or discussion of this bill.¹⁴³

B. H.R. 5526: Nonvoting Delegate to the Senate to Represent the Territories and Commonwealth

In December 2019, the Delegate to the U.S. House of Representative from Guam, Representative San Nicolas, introduced a bill to provide a nonvoting delegate to the Senate to represent America Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the Virgin Islands.¹⁴⁴ Over four million U.S. citizens are represented by five members of Congress in the House of Representatives.¹⁴⁵ U.S. citizens in the territories have no Senator nor the right to participate in presidential elections. Representative San Nicolas's bill proposed adding a non-voting Senator for each U.S. Territory or Commonwealth.¹⁴⁶ Although this legislation would add necessary representation of the territories to the Senate, there was no note of discussion on the bill and the only movement was the bill's referral to the House Committee on Natural Resources.¹⁴⁷

¹⁴³ S. 960 – *We the People Commission on Full Representation Act of 2019*, CONGRESS.GOV (2019), <https://www.congress.gov/bill/116th-congress/senate-bill/960/actions> [<https://perma.cc/Z93Y-XJEM>].

¹⁴⁴ H.R. 5526, 116th Cong. (2019).

¹⁴⁵ There are five delegates and one resident commissioner serving as non-voting members of the House. They represent American Samoa, the Commonwealth of Northern Mariana Islands, Guam, Puerto Rico, the Virgin Islands, and the District of Columbia. *House of Representatives*, U.S. SENATE, https://www.senate.gov/reference/reference_index_subjects/House_of_Representatives_vrd.htm [<https://perma.cc/TSJ7-2KWH>].

¹⁴⁶ H.R. 5526, 116th Cong. (2019).

¹⁴⁷ *Id.*

C. H.R. Res. 641: Rejection of the Insular Cases

*“Whereas notions of Anglo-Saxon racial and imperialist supremacy, together with the perceived racial and cultural inferiority of non-White peoples, drove the outcome of the Insular cases . . .”*¹⁴⁸

In 2019, Representative Raul Grijalva introduced a House resolution acknowledging that the decisions rendered by the United States Supreme Court in the Insular Cases rest on racist and ethnocentric assumptions that led to *Plessy v. Ferguson*’s infamous “separate but equal” doctrine and that the Insular Cases must be rejected in their entirety.¹⁴⁹ At several points in the Insular Cases, the court uses “othering” language¹⁵⁰ when referring to people on the islands.¹⁵¹ The Court stated that if the territories are inhabited by “alien races, differing from us in religion, customs, laws... and modes of thought, the administration of government may for a time be impossible.”¹⁵² The Court painted the people on the islands as inferior and unable to comprehend laws and justice according to Anglo Saxon principles.¹⁵³ These notions and bias are the backbone to the Supreme Court’s decision in the 1900s. Though a review from the courts on the Insular Cases is unlikely, an address from Congress rejecting the Insular Cases and their “application to all present and future cases and controversies”¹⁵⁴ can be more attainable. Again, although this bill did not propose a change in statute or a constitutional amendment, it still stalled in committee.¹⁵⁵

¹⁴⁸ H.R. Res. 641, 116th Cong. (2019).

¹⁴⁹ *Id.*

¹⁵⁰ Othering is “to treat or consider (a person or a group of people) as alien to oneself or one’s groups (as because of different racial, sexual, or cultural characteristics).” *Othering*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/othering> [<https://perma.cc/8K48-3FVL>].

¹⁵¹ *Downes v. Bidwell*, 182 U.S. 244 (1901).

¹⁵² *Id.* at 287.

¹⁵³ *Id.*

¹⁵⁴ H.R. Res. 641, 116th Cong. (2019).

¹⁵⁵ H.R. Res. 641, 116th Cong. (2019).

VII. SOLUTIONS

Because of the history of legal barriers, change towards a solution will inevitably be slow. There are statutes and judicial precedents that purposefully exclude Guam citizens from the voting process, claiming that voting is not a fundamental right.¹⁵⁶ This issue is about more than just expanding voting rights and representation; it is about finally empowering all United States citizens with a key fundamental right.

This section calls for a variety of solutions that will enable all United States citizens, whether they reside in Guam, other territories, or the states, to have a voice in federal government. These proposals will be focused on granting all United States citizens the right to vote in presidential elections. The proposals are limited in that these recommendations are a band-aid affording U.S. citizens a voice in electing the next commander in chief while not fully addressing the lack of Congressional representation. In order to rectify the inadequate representation U.S. citizens residing in the territories face, there will need to be further action from Congress. The solution to this inequity is not easily fixed with many legal barriers and systems complicating the matter.¹⁵⁷ The courts state that enfranchisement and congressional representation must be resolved through political means,¹⁵⁸ which is flawed ab initio because there is no effective political means to correct Territories' colonial condition.¹⁵⁹ Guam cannot fix this issue until one of the branches of

¹⁵⁶ 52 U.S.C. § 20310 (1986); see *Segovia v. Bd. of Election Comm'rs for City of Chicago*, 201 F. Supp. 3d 924 (N.D. Ill. 2016), *vacated sub nom. Segovia v. United States*, 880 F.3d 384 (7th Cir. 2018).

¹⁵⁷ Constitutional amendments would help fix the lack of representation and would enfranchise millions of U.S. citizens. Before constitutional amendments are passed, the biggest issues involve the implementation of the amendments. Though abolition or modifications to the electoral college would allow better flexibility for changes in representation, such a suggestion likely would not pass.

¹⁵⁸ *Att'y Gen. of Territory of Guam v. United States*, 738 F.2d 1017, 1079 (9th Cir. 1984).

¹⁵⁹ Juan R. Torruella, *The Insular Cases: The Establishment of a Regime of Political Apartheid*, 29 U. PA. J. INT'L L. 283, 347 (2007) (arguing that the Insular Cases represent an outdated or obsolete framework that is no longer consistent with current constitutional principles).

the federal government steps up and aids Guam in establishing their right to representation and voting.

This section will analyze proposed federal statutes and constitutional amendments that could each enable Guam citizens to vote in presidential elections. First, this section will propose legislative solutions to this current injustice. This proposal will recommend statutory language to revise the UOCAVA to support the voting rights of Guam citizens by removing Guam, Puerto Rico, the Virgin Islands, and American Samoa under the definition of “state” and “United States.” Second, the proposal will recommend and analyze language for a constitutional amendment acknowledging the challenges and strategies to overcome the future oppositions.

A. Federal Statute

1. Constitutional Requirements

Passing a federal statute may be more attainable than enacting a constitutional amendment. Article I, Section 1 of the U.S. Constitution states that “[a]ll legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representation.”¹⁶⁰ All federal statutes or acts must pass through Congress to be enacted.¹⁶¹ While a constitutional amendment needs approval from two-thirds of the Senate, a federal statute only needs support from a majority of both the House of Representatives and the Senate to be enacted.¹⁶² After the legislation passes both bodies, the President has veto power, but this can also be overruled by Congress.¹⁶³ If the President fails to do anything within ten days, the legislation will become law.¹⁶⁴ Passing a federal statute differs from a constitutional amendment because the federal statute would enfranchise

¹⁶⁰ U.S. CONST. art. I, § 1.

¹⁶¹ *Id.*

¹⁶² U.S. CONST. art. I, § 7; U.S. CONST. art. V.

¹⁶³ U.S. CONST. art. I, § 7.

¹⁶⁴ *Id.*

U.S. citizens who previously resided in the states or the District of Columbia without requiring the states to vote on the matter.¹⁶⁵

Many constitutional amendments discussed earlier in this article were also accompanied by a federal statute.¹⁶⁶ In these cases, the statutes generally expand on protections afforded in a constitutional amendment. Although most voting rights to date were established by both constitutional amendment and federal statute, there are exceptions in which only a federal statute was created, including the UOCAVA.¹⁶⁷

2. UOCAVA

The UOCAVA permits three groups of citizens to register and vote absentee in elections for federal offices: members of the United States Uniformed Services and Merchant Marines; family members of United States Uniform Services and Merchant Marines; and United States citizens residing outside the United States (overseas voters).¹⁶⁸ The UOCAVA is inapplicable to or excludes citizens in Guam based on the statute’s definitions of “overseas voter,” “state,” and “United States.”¹⁶⁹

Congress should revise the UOCAVA statute, specifically focusing on the definitions of “state” and “United States,”¹⁷⁰ to read as follows:

(6) “State” means a State of the United States; [and] the District of Columbia.¹⁷¹; ~~the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa; . . .~~

¹⁶⁵ *Id.*

¹⁶⁶ *See* Voting Rights Act of 1965, 52 U.S.C. §§ 10303, 10309, 10314.

¹⁶⁷ 52 U.S.C. §§ 20301–20311 (1986).

¹⁶⁸ 52 U.S.C. § 20310 (1986).

¹⁶⁹ 52 U.S.C. §§ 20310(5), (6), (8) (1986).

¹⁷⁰ 52 U.S.C. §§ 20310(6), (8) (1986).

¹⁷¹ Although the District of Columbia lacks adequate representation in Congress, this UOCAVA revision specifically focuses on allowing U.S. citizens in the territories a right to vote for the U.S. president should they qualify (based on prior residency in a state or the District of Columbia). Here, the District of Columbia has this right, and the revision is for the benefit of the territories and any person who may relocate to one of the territories.

(8) “United States”, where used in the territorial sense, means the several States, ~~[and] the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.~~¹⁷²

Because the UOCAVA was created to expand and “assure the right of otherwise qualified private U.S. citizens residing outside of the United States to vote in federal elections,” revising these definitions would appropriately allow this otherwise qualified group of individuals to vote.¹⁷³ Removing the list of territories that do not have any voting rights from the statutory language would enable voters residing in those territories to have the voting rights they would have if they were residing in a foreign country. This expansion would allow citizens of Guam who previously resided in one of the fifty states or the District of Columbia to participate in federal elections.

B. Constitutional Amendment

Historically, voting rights in the United States have been expanded by constitutional amendment.¹⁷⁴ In 1870, the Fifteenth Amendment was passed to expand voting rights to former slaves.¹⁷⁵ In 1920, the Nineteenth Amendment enfranchised women.¹⁷⁶ Forty years later, the Twenty-Third Amendment allowed residents of the District of Columbia to vote.¹⁷⁷ Finally, the Twenty-Sixth Amendment in 1971 allowed citizens eighteen years or older to participate in voting.¹⁷⁸ It took over one hundred years and four amendments to only partially establish this fundamental right for U.S. citizens, and yet not every U.S. citizen has this coveted right.¹⁷⁹

¹⁷² See 52 U.S.C. §§ 20310(6), (8) (1986).

¹⁷³ 132 CONG. REC. H5973-03 (daily ed. Aug. 12, 1986) (statement of Rep. Swift).

¹⁷⁴ U.S. CONST. amends. XV, XIX, XXIII, XXVI.

¹⁷⁵ U.S. CONST. amend. XV.

¹⁷⁶ U.S. CONST. amend. XIX.

¹⁷⁷ U.S. CONST. amend. XXIII.

¹⁷⁸ U.S. CONST. amend. XXVI.

¹⁷⁹ U.S. CONST. amends. XV, XIX, XXIII, XXVI.

1. Constitutional Amendment Requirements: Approval by Constitutional Convention or by Congress and the States

The Constitution states that an amendment can become a part of the Constitution in two ways: either by approval or by constitutional convention.¹⁸⁰ If done by approval, then two-thirds of the House and Senate must approve the proposal and send it to the states for a vote.¹⁸¹ Each state governor will either submit the amendment to its state legislature or call for a state convention.¹⁸² Once the proposal is sent to the states, three-fourths of the states must ratify the proposed amendment.¹⁸³ Or, if the amendment is proposed by constitutional convention, two-thirds of state legislatures must ask Congress to call for a convention for the proposing amendment.¹⁸⁴ Again, three-fourths of the states must approve the proposed amendment at the constitutional convention.¹⁸⁵

Although the constitutional amendment has historically been the primary way to extend voting rights, it is also a difficult one because a constitutional amendment calls for a majority of Congress and the states to approve the proposed amendment.¹⁸⁶ In a time of increasingly polarized political tensions, an amendment is a difficult feat. If Congress and the states fail to see the importance of expanding this right, then the proposed amendment will go nowhere.

Neil Weare,¹⁸⁷ an advocate for equal rights and representation, stated that “[h]istorically, when the political stars have aligned, voting rights

¹⁸⁰ U.S. CONST. art. V.

¹⁸¹ *Id.*

¹⁸² *Constitutional Amendment Process*, NAT’L ARCHIVES, <https://www.archives.gov/federal-register/constitution> [<https://perma.cc/34LY-E454>].

¹⁸³ *Id.*

¹⁸⁴ U.S. CONST. art. V.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Neil Weare grew up in Guam and is president and founder of We the People Project, a nonprofit that advocates for equal rights and representation for the nearly five million Americans living in U.S. Territories and the District of Columbia. He is a graduate of Yale Law School and Lewis & Clark College. Neil Weare, *Equally American: Amending the*

amendments have actually been added to the Constitution rather quickly.”¹⁸⁸ All of the previous voting rights amendments took no more than two years to be ratified after they were proposed.¹⁸⁹ Weare argues that although there are political tensions, a constitutional amendment enfranchising territories may be attractive because territories offer swing votes from which both the Democratic and Republican parties have found success in recent elections.¹⁹⁰ Since Guam’s first Delegate to Congress in 1973, Democrats have predominately held this position.¹⁹¹ This pattern differs from Guam’s elections for governor.¹⁹²

*Chart of Guam’s Past Governors and Their Party Affiliations*¹⁹³

Year	Governor of Guam	Party Affiliation
1963 – 1969	Manuel Flores Guerrero	Democrat
1969 – 1975	Carlos G. Camacho	Republican
1975 – 1979	Ricardo Jerome Bordallo	Democrat

Constitution to Provide Voting Rights in U.S. Territories and the District of Columbia, 46 STETSON L. REV. 259, 287 (2017) (discussing emerging political opportunities for amending the constitution).

¹⁸⁸ *Id.* at 287.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ List of Members of Congress from Guam, CONGRESS.GOV, <https://www.congress.gov/search?q={%22source%22:%22members%22,%22search%22:%22guam%22}&searchResultViewType=expanded> [<https://perma.cc/MRY4-4DV7>]; see also *Territorial Deputy for Guam*, U.S. HOUSE OF REPRESENTATIVES: HIST., ART & ARCHIVES (1961), https://history.house.gov/Records-and-Research/Listing/c_040/ [<https://perma.cc/U3Q9-BL4D>].

¹⁹² U.S. DEP’T OF THE INTERIOR, OFF. OF INSULAR AFFS., <https://www.doi.gov/oia/islands/guamformergov> [<https://perma.cc/2TWU-LM8K>].

¹⁹³ *Former Guam Governors*, NAT’L GOVERNORS ASS’N, <https://www.nga.org/former-governors/guam/> [<https://perma.cc/HYB6-CFG5>]; Governor Lou Leon Guerrero, NAT’L GOVERNORS ASS’N, <https://www.nga.org/governor/lou-leon-guerrero/> [<https://perma.cc/Z3QE-TZKP>].

1979 - 1983	Paul McDonald Calvo	Republican
1983 – 1987	Ricardo Jerome Bordallo	Democrat
1987 – 1995	Joseph F. Ada	Republican
1995 – 2003	Carl T. C. Gutierrez	Democrat
2003 – 2011	Felix P. Camacho	Republican
2011 – 2019	Eddie Baza Calvo	Republican
2019 – Present	Lourdes Leon Guerrero	Democrat

Most recently, in 2019, Lourdes “Lou” Leon Guerrero was elected as the first female governor of the island.¹⁹⁴ Differing from her predecessor Eddie Baza Calvo, Governor Guerrero is a Democrat.¹⁹⁵ As shown in the table above, Guam is not committed to either party, as it has had five governors from both the Democratic and Republican parties.¹⁹⁶ If Weare is correct in thinking that Congress and the states would be more willing to approve this proposed amendment because Guam is not committed to a specific party, then there is a greater chance for this amendment to pass.¹⁹⁷

Many people do not know the historical context of why the people of Guam deserve to vote. Critics argue that until Guam becomes a state, the citizens should not get to vote. This is not only an argument that citizens

¹⁹⁴ Alejandro de la Garza, *Guam Has Just Elected Its First-Ever Female Governor*, TIME (Nov. 6, 2018, 7:49 PM), <https://time.com/5446878/lou-leon-guerrero-elected-guam-first-female-governor/> [<https://perma.cc/GE4W-LEBG>].

¹⁹⁵ See NAT’L GOVERNORS ASS’N, *supra* note 193.

¹⁹⁶ U.S. DEP’T OF THE INTERIOR, OFF. OF INSULAR AFFS., *supra* note 192.

¹⁹⁷ See Weare, *supra* note 187, at 287–88.

believe, but one that the courts have reaffirmed.¹⁹⁸ Why would the United States create a new constitutional amendment to expand voting rights to non-states? Maybe the question should not be why expand voting rights to non-states, but rather why expand voting rights to United States citizens. Although Guam is not a formal state, the residents of Guam are affected by U.S. policy. Guam's government was created through the Organic Act of Guam, a U.S. congressional action.¹⁹⁹ The provisions in the Organic Act established Guam's executive, legislative, and judicial branches, and also included a bill of rights for Guam.²⁰⁰ Because Congress continues to retain plenary power over the island, the people, at the very least, deserve a voice in government.²⁰¹ Guam's status as a territory rather than a state does not negate the need for its U.S. citizens to vote for their representation.

2. A Parallel Case: The District of Columbia

The proposal of a constitutional amendment to enfranchise U.S. citizens is not without precedent. On July 16, 1790, Congress established a federal district for the seat of the United States government on lands donated by Virginia and Maryland.²⁰² This federal territory was officially named the District of Columbia in 1796.²⁰³ At the time of the territory's founding, residents could not vote in federal elections and did not have any representation in Congress.²⁰⁴

Both Guam and the District of Columbia had similar beginnings. Both were established by congressional action with no right of representation or

¹⁹⁸ See *Segovia v. Bd. of Election Comm'rs for City of Chicago*, 201 F. Supp. 3d 924, 940 (N.D. Ill. 2016), *vacated sub nom. Segovia v. United States*, 880 F.3d 384 (7th Cir. 2018).

¹⁹⁹ See 48 U.S.C. § 1421.

²⁰⁰ See 48 U.S.C. §§ 1421a–b.

²⁰¹ *Chapter One: Territorial Federalism*, 130 HARV. L. REV. 1632 (2017).

²⁰² *The District of Columbia (Washington, DC)*, NAT'L ARCHIVES, <https://www.archives.gov/research/district-of-columbia> [<https://perma.cc/99ST-ANX8>].

²⁰³ *Id.*

²⁰⁴ See U.S. CONST. amend. XXIII (establishing voting rights for citizens of Washington D.C.).

voting.²⁰⁵ Understanding the similarities and distinctions is important to see that it is not a new concept to grant non-state entities a voice in the government. The table below demonstrates similarities and differences between the District of Columbia and Guam.

Program/ Service	The District of Columbia	Guam
Population (2010)	601,723 ²⁰⁶	159,358 ²⁰⁷
Veterans (2010)	4.3% of population ²⁰⁸	5.4% of population ²⁰⁹
Type	Federal district	Unincorporated territory
Location	Between Maryland and Virginia	Pacific Ocean near Japan and the Philippines
Citizenship	United States	United States
Passport	United States	United States
Medicaid ²¹⁰	Yes (residents pay)	Yes (residents pay)

²⁰⁵ See Organic Act of Guam, 48 U.S.C. § 1421 (1950); District of Columbia Organic Act of 1871, Pub. L. No. 41-62, 16 Stat. 419.

²⁰⁶ *District of Columbia Quick Facts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/DC/POP010210> [<https://perma.cc/X7GT-KAQK>].

²⁰⁷ *Total Population of Guam*, U.S. CENSUS BUREAU (2010), <https://data.census.gov/cedsci/table?q=Guam&tid=DECENNIALGU2010.P1&hidePreview=true> [<https://perma.cc/22CB-4LWY>].

²⁰⁸ U.S. CENSUS BUREAU, *supra* note 206.

²⁰⁹ GUAM 2010 CENSUS DETAILED CROSS TABULATIONS, U.S. CENSUS BUREAU (2010), https://www2.census.gov/census_2010/10-Island_Areas_Detailed_Cross_Tabulations/Guam/ [<https://perma.cc/N34V-6MC2>].

²¹⁰ Medicaid provides health coverage to millions of Americans, including eligible low-income adults, children, pregnant women, elderly adults, and people with disabilities. See *Medicaid*, CTRS. FOR MEDICARE & MEDICAID SERVS., <https://www.medicaid.gov/medicaid/index.html> [<https://perma.cc/QH3L-DHSB>].

SNAP ²¹¹	Yes	Yes
TANF ²¹²	Yes	Yes
WIC ²¹³	Yes	Yes
SSI	Yes ²¹⁴ (residents pay)	Yes ²¹⁵ (residents pay)
U.S. Federal Tax	Yes	Some pay U.S. federal tax, but some pay a mirror image tax ²¹⁶

There are two main distinctions between Guam and the District of Columbia: (1) type of relationship with the United States and (2) location. The type of relationship with the U.S. is important to note because it is the main difference between the two. The District of Columbia is a federal

²¹¹ Supplemental Nutrition Assistance Program (SNAP) is the federal program formerly known as food stamps. It is a federal entitlement program that the United States Department of Agriculture (USDA) oversees. *See What Is SNAP?*, PROJECT BREAD, <http://www.gettingfoodstamps.org/whatisnap.html> [<https://perma.cc/C2US-BB23>].

²¹² Temporary Assistance for Needy Families (TANF) is a program that assists families with children when the parents or other responsible relatives cannot provide for the family’s basic needs. The federal government provides grants to states to run the program. *See What Is TANF?*, U.S. DEP’T OF HEALTH & HUM. SERVS., <https://www.hhs.gov/answers/programs-for-families-and-children/what-is-tanf/index.html> [<https://perma.cc/DDT7-CN59>].

²¹³ Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) provides federal grants to states for supplemental foods, health care referrals, and nutrition education for low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, and to infants and children up to age five. *See WIC Data Tables, Total Participation*, U.S. DEP’T OF AGRIC.: FOOD & NUTRITION SERV., <https://fns-prod.azureedge.net/sites/default/files/resource-files/26wifypart-4.pdf> [<https://perma.cc/UW87-PRJW>].

²¹⁴ *District of Columbia*, SOC. SEC. OFF. OF RET. & DISABILITY POL’Y, https://www.ssa.gov/policy/docs/factsheets/cong_stats/2017/dc.html [<https://perma.cc/KTL3-JNMG>].

²¹⁵ *Guam*, SOC. SEC. OFF. OF RET. & DISABILITY POL’Y, https://www.ssa.gov/policy/docs/factsheets/cong_stats/2017/gu.html [<https://perma.cc/G27T-AX8J>].

²¹⁶ *Individuals Living or Working in U.S. Territories/Possessions*, INTERNAL REVENUE SERV., <https://www.irs.gov/individuals/international-taxpayers/individuals-living-or-working-in-us-possessions> [<https://perma.cc/L2EK-DZVH>].

district created out of a compromise between the North and the South United States. James Madison wrote about the necessity of the Capitol not being a state in his essay *The Federalist No. 43*:

The indispensable necessity of complete authority at the seat of government, carries its own evidence with it. It is a power exercised by every legislature of the Union . . . Without it, not only the public authority might be insulted and its proceeding interrupted with impunity; but a dependence of the members of the general government on the State comprehending the seat of the government, for protection in the exercise of their duty, might bring on the national councils an imputation of awe or influence, equally dishonorable to the government and dissatisfactory to the other members of the Confederacy.²¹⁷

The District of Columbia's main purpose was to be the location for the Capitol without the power to unfairly influence the government. On the other hand, Guam was acquired as a territory after the Spanish-American War through the Treaty of Paris and is used as a prominent military base for national security.²¹⁸ The difference in their purposes is the main reason as to why the District of Columbia is a federal district while Guam is an unincorporated territory.

Another distinction is location. Visibility to people in the U.S. can influence the support of the constitutional amendment. States are more likely to support a constitutional amendment if they are familiar with the issue and the affected areas. The District of Columbia is one of the most well-known non-state entities in the United States. The history of D.C. appears many times throughout U.S. primary and secondary education; it is second nature to know that D.C. is a part of the United States and is located on the East Coast. It is common knowledge that when someone says "D.C." (or even

²¹⁷ JAMES MADISON, THE FEDERALIST NO. 43 (1788).

²¹⁸ *The Spanish-American War, 1898*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1866-1898/spanish-american-war> [<https://perma.cc/VQ27-CP8M>].

“Washington”), they are referencing Washington, D.C. When searching for “District of Columbia” on Google, automated suggestions formulate questions about the role of D.C. within the United States, but none of the questions relate to D.C.’s connections to the United States.²¹⁹

People also ask	
Why is it called the District of Columbia?	▼
Is Washington DC is a city or a state?	▼
What does the District of Columbia?	▼
Why is Washington DC a district and not a state?	▼

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²¹⁹ When searching a term in Google, the results are accompanied by additional questions labeled “People Also Ask.” These “related questions” are generated whenever Google receives a query. When Google looks at a query it receives and after receiving a number of search results, it will decide upon one or more topic sets for each of the search result resources from “previously submitted search queries that have resulted in users selecting search results identifying the search result resource” and “selecting related questions from a question database using the topic sets.” See Bill Slawski, *Google Related Questions or ‘People Also Ask’ Patent*, SEO BY THE SEA (June 5, 2019), <http://www.seobythesea.com/2017/03/googles-related-questions-patent-people-also-ask-questions/> [<https://perma.cc/6N4V-F3VC>].

²²⁰ *District of Columbia*, GOOGLE, <https://www.google.com/search?q=district+of+columbia&oq=district+of+columbia&aqs=chrome..69i57j46i433j0l6.4292j0j7&sourceid=chrome&ie=UTF-8> [<https://perma.cc/LSU7-UZ93>].

These results differ if someone Google searches “Guam.” In the “People also ask” section, the automatic assumption is that Guam has no connection to the United States. Google frames the questions as though Guam is a sovereign foreign entity rather than a U.S. Territory. These questions assume that Guam is an independent foreign nation (“Is Guam a poor country?” and “Is Guam safe to visit?”) and question its relationship with the United States (“What country owns Guam?” and “Are Guam US citizens?”).

People also ask	
Are Guam US citizens?	▼
What country owns Guam?	▼
Is Guam safe to visit?	▼
Is Guam a poor country?	▼

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U.S. mainland residents’ perceptions of Guam will inevitably play a part in whether they believe citizens of Guam deserve the right to vote. D.C. seems automatically connected with the U.S., while Guam is othered and seemingly outside of the realm of the common U.S. internet user’s understanding. Because of the association of being “foreign,” Guam could easily fall victim to the rising wave of xenophobia in the United States.

²²¹ *Guam*, GOOGLE, [VOLUME 19 • ISSUE 3 • 2021](https://www.google.com/search?ei=0kMrYIKuOYvu-gTe_4igBg&q=Guam&oq=Guam&gs_lcp=Cgdnd3Mtd2l6EAMyBAGAEEMyBwguELEDEEMyBAGAEEMyAggAMgUIABCxAziECAAAQzIICAAQsQMqgwEyBAGAEEMyCAgAELEDEIMBMgUIABCxAzoKCC4QsAMQQxCTAjoHCAAQsAMQQzoKCAAQsQMqgwEQQzoHCAAQsQMQQzoLCC4QsQMqXwEQowI6CggUEMcBEK8BEEM6CAguELEDEIMBOgoILhCxAXBDEJMCogQILhBDOgIILjoNCC4QsQMqXwEQowIQzoFCC4QsQNQ2egeWOnrHmDp7x5oAXACeACAAeMBiAhtA5IBBTQuMC4xmAEAoAEBqgEHZ3dLXdpesgBCsABAQ&sclint=gws-wiz&ved=0ahUKewiC36Xdwu3uAhULt54KHd4_AmQQ4dUDCA0&uact=5, [https://perma.cc/L3A6-Y9BH].</p>
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Perceptions from U.S. citizens residing on the mainland influence their representatives in Congress. These perceptions and beliefs have a direct effect on the outcomes of proposals in Congress. If state constituents do not understand the relationship between U.S. Territories and the United States, they are less likely to support proposals granting voting rights. In an area where a constitutional amendment is the most effective, yet difficult solution to enfranchise citizens in U.S. Territories, mainland U.S. citizens must be informed and supportive of U.S. Territories' push for equal voting rights.

3. Language

On January 9, 2019, Representative Stacey Plaskett from the Virgin Islands introduced an amendment proposing presidential election voting rights for residents of all United States territories and commonwealths.²²² This amendment proposal was referred to the Subcommittee on the Constitution, Civil Rights, and Civil Liberties.²²³ Other than the referral, the amendment moved nowhere.²²⁴ The bill consisted of two sections. One section would empower Congress to enforce the amendment by legislation.²²⁵ The other section states that “the right to vote for President and Vice President shall not be denied by the United States or any State on account of residency in a U.S. territory or commonwealth.”²²⁶ This proposed amendment acknowledges that U.S. citizens in territories face a disparate inability to vote, but it lacks implementation language. Comparing this proposed amendment to the Twenty-Third Amendment granting the District of Columbia a right to vote in Presidential elections, valuable language is missing.²²⁷ Although House Joint Resolution 24 acknowledges that citizens

²²² H.R.J. Res. 24, 116th Cong. (2019).

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ U.S. CONST. amend. XXIII.

in U.S. territories are not granted the right to vote in presidential elections, the resolution does not have any substance to correct that inequality.²²⁸

Any constitutional amendment that would allow all United States citizens, regardless of residency, the right to vote in presidential elections must include language implementing this right. This article will cover two possible proposals that would satisfy this requirement. The first proposal uses language from House Joint Resolution 24, while mirroring the Twenty-Third Amendment:²²⁹

SECTION 1. The right of citizens of the United States to vote in the election for President and Vice President shall not be denied or abridged by the United States or by any State on account of residency in a territory or commonwealth of the United States.

SECTION 2. Each Territory or Commonwealth of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the Territory or Commonwealth would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a state; and they shall meet in the Territory or Commonwealth and perform such duties as provided by the twelfth article of amendment.

SECTION 3. The Congress shall have power to enforce this article by appropriate legislation.

Using this language, Guam and the other territories and commonwealths would be entitled to electors and treated as states for the purposes of the Electoral College. The number of electors would be determined by the sum of Senators and Representatives to which the territory may be entitled in

²²⁸ Att’y Gen. of Territory of Guam v. United States, 738 F.2d 1017, 1019 (9th Cir. 1984).

²²⁹ U.S. CONST. amend. XXIII; H.R.J. Res. 24, 116th Cong. (2019).

Congress.²³⁰ The Constitution permits each state to have two Senators, and under this proposal, the territories would be entitled to the same.²³¹ Additionally, each territory would be granted at least one member in the House of Representatives and subject to more members based on population.²³² Therefore, with two Senators and one Representative, each territory would be entitled to at least three electors. The proposed amendment would also restrict territories and commonwealths from obtaining more electors than the least populous state. In this case, Wyoming is the state with the lowest population, and it is afforded three electors.²³³ If Guam is treated as a State for the purposes of the Electoral College, Guam, similar to the District of Columbia, would be entitled to three electors.²³⁴

Although this first proposal would allow every U.S. citizen in Guam to vote in the presidential election, there may be opposition. As previously stated, there have not been many attempts to grant U.S. citizens residing in territories and commonwealths the right to vote.²³⁵ Because of the lack of legislative history and proposals, there are no recorded explicit statements in opposition to granting voting rights in Congress. The closest opposition that could relate to this issue is opposition to the most recent attempt for territorial representation in the Senate.²³⁶ Again, there were not any explicit statements of opposition, but granting territorial representation in the Senate could be seen as a “slippery slope towards territorial statehood.”²³⁷ Although Guam is noted to have swing votes, many Republicans still oppose statehood for

²³⁰ U.S. CONST. art. II.

²³¹ U.S. CONST. art. I, § 3.

²³² U.S. CONST. art. I, § 2.

²³³ *Distribution of Electoral Votes*, NAT’L ARCHIVES, <https://www.archives.gov/electoral-college/allocation> [<https://perma.cc/55CB-8LAS>].

²³⁴ *Id.*

²³⁵ H.R.J. Res. 24, 116th Cong. (2019).

²³⁶ H.R. 5526, 116th Cong. (2019).

²³⁷ *Territorial Representation in the Senate Act Would Give Puerto Rico, Guam, Virgin Islands Non-Voting Senators*, GOVTRACKER INSIDER (Jan. 16, 2020), <https://govtrackinsider.com/territorial-representation-in-the-senate-act-would-give-puerto-rico-guam-virgin-islands-c0c0cbc73589> [<https://perma.cc/N7P2-7D75>].

territories because of the likely addition of Democratic senators, specifically with concern from Puerto Rico with over three million residents.²³⁸ This potential addition of Democratic senators would threaten to increase the Democratic majority.²³⁹

Although no explicit statement of legislator opposition to the addition of voting rights for U.S. Territories exists, another foreseeable challenge could derive from small states like Wyoming. Based on the proposed language, all territories would receive three electors. This is the same number of electors that Alaska, Delaware, the District of Columbia, Montana, North Dakota, South Dakota, Vermont, and Wyoming receive.²⁴⁰ Wyoming is the smallest state with around 563,700 residents.²⁴¹ Small states could oppose this proposal based on the population of some of the territories and commonwealths. For example, Guam has a total population of 159,300.²⁴² Even with a difference of at least 404,400 residents, Guam's votes would still have the same weight in a presidential election as Wyoming's. This disparity would only grow in comparison to states like Montana. Montana's population is around 1,040,000.²⁴³ Under this proposal, both Guam and Montana would receive three electoral votes even though they differ in population by 880,700 residents. Because of this disparity, there would likely be opposition to this first proposal. The next proposal would similarly grant U.S. citizens the right

²³⁸ *Id.* In 2010, the population of Puerto Rico was 3,725,789. U.S. CENSUS BUREAU, *supra* note 6.

²³⁹ Simon Barnicle, *The 53-State Solution*, ATLANTIC (Feb. 11, 2020), <https://www.theatlantic.com/ideas/archive/2020/02/case-new-states/606148/> [<https://perma.cc/7TSM-LRRG>].

²⁴⁰ NAT'L ARCHIVES, *supra* note 233.

²⁴¹ *Wyoming QuickFacts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/WY/PST040219#PST040219> [<https://perma.cc/RB7A-NT46>].

²⁴² U.S. CENSUS BUREAU, *supra* note 6.

²⁴³ TOTAL POPULATION AND NET CHANGE FOR STATES: 1995 TO 2025, U.S. CENSUS BUREAU (May 1997), <https://www.census.gov/prod/2/pop/p25/p25-1131.pdf> [<https://perma.cc/C798-ATLG>].

to vote no matter where they reside, but it would likely be more favored by small states.

The second proposal follows the format of the Twenty-Third Amendment, but with key changes. This proposal would remove state-centric language to instead treat territories as their own entities:

SECTION 1. The right of citizens of the United States to vote in the election for President and Vice President shall not be denied or abridged by the United States or by any State on account of residency in a territory or commonwealth of the United States.

SECTION 2. The territory or commonwealth of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the territory or commonwealth's whole number of Senators and Representatives in Congress ~~to which the Territory or Commonwealth would be entitled to if it were a state, but in no event more than the least populous state;~~ they shall be in addition to those appointed by the territory or commonwealth, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a state; and they shall meet in the territory or commonwealth and perform such duties as provided by the twelfth article of amendment.

SECTION 3. The Congress shall have power to enforce this article by appropriate legislation.

This second proposal differs from the first because instead of treating the territories and commonwealths like a state in allocating them three electors (which represents two Senators and one member in the House of Representatives²⁴⁴), the proposal would grant the territories and commonwealths the same number of electors as the number of Senators and Representatives currently representing them in Congress. Guam and many of the other territories currently have one non-voting member in the House of

²⁴⁴ NAT'L ARCHIVES, *supra* note 233.

Representatives.²⁴⁵ If this proposal is passed today, Guam would receive one elector. This second proposal is likely to have more support from smaller states because smaller territories like Guam and the Virgin Islands would not be granted the same number of electors as those States.²⁴⁶

The language also allows for additional electors depending on changes in the representation of the territories and commonwealths in the House of Representatives and the Senate. In December 2019, H.R. 5526 proposed establishing a nonvoting delegate in the Senate to represent the territories and commonwealths.²⁴⁷ If the bill were to pass, this would change the number of electors for Guam from one to two.

While no statement of opposition has been made in Congress, there could be opposition questioning why the District of Columbia automatically gets three electors²⁴⁸, while the number of electors the territories and commonwealths get is based on their representation in Congress. Addressing possible opposition, this proposal would negatively affect one territory, Puerto Rico, while the first proposal would negatively affect seven states and the District of Columbia. Puerto Rico is, by far, the largest U.S. territory, with a population of over three million.²⁴⁹ Given its large population, to mitigate a disparity in the number of electors for Puerto Rico, Congress could pass a supplemental federal statute awarding Puerto Rico more representation according to its population.

Although a constitutional amendment is not the easiest way to grant voting rights, it is the *only* way to grant voting rights to all U.S. citizens currently residing in territories and commonwealths.

²⁴⁵ U.S. HOUSE OF REPRESENTATIVES: HIST., ART, & ARCHIVES, *supra* note 32.

²⁴⁶ In 2010, the population of Guam was 159,358, and the U.S. population of the Virgin Islands was 106,405. U.S. CENSUS BUREAU, *supra* note 6.

²⁴⁷ H.R. 5526, 116th Cong. (2019).

²⁴⁸ U.S. CONST. amend. XXIII.

²⁴⁹ In 2010, the population of Puerto Rico was 3,725,789, Guam was 159,358, the U.S. Virgin Islands was 106,405, the Northern Mariana Islands was 53,883, and American Samoa was 55,519, for a total population of 4,100,954. U.S. CENSUS BUREAU, *supra* note 6.

VIII. CONCLUSION

All U.S. citizens, no matter their location, should have the right to participate in presidential elections. Change will not happen unless Congress takes action, whether by constitutional amendment or federal statutory reform. Two groups of citizens have been identified in Guam: (1) citizens of Guam who have only resided on Guam (this includes veterans and active military); and (2) citizens of Guam who have previously resided in one of the fifty States but are registered to vote in Guam elections. Resolutions for citizens who have only ever resided or claimed residency on Guam will consist of a constitutional amendment that expands voting rights to citizens of the island as a whole. Because citizens in the first category have only resided in Guam, they do not qualify for presidential voting rights under any other statute or constitutional amendment. Proposed constitutional amendments need to be specifically tailored to citizens residing in Guam, other U.S. Territories, and commonwealths, and encompass implementation language. Furthermore, revising the UOCAVA's definition of "state" and "United States" as proposed in this article will enfranchise citizens who previously resided in one of the fifty states or the District of Columbia.²⁵⁰ The courts have previously stated the judiciary is not the correct institution to grant these rights, so these rights must be granted through congressional action.²⁵¹ It has been 119 years since the Insular Cases, and it is time for the United States to finally acknowledge and grant citizens of Guam, and all territories and commonwealths, the right to vote in federal elections.

²⁵⁰ See 52 U.S.C. §§ 20310(6), (8) (1986).

²⁵¹ See *Att'y Gen. of Territory of Guam v. United States*, 738 F.2d 1017, 1019 (9th Cir. 1984).