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Dear Members of the House Committee on Rules,

At the request of the Committee staff, I have excerpted and summarized an article I wrote, *Territorial Exceptionalism and the American Welfare State*, recently published in the Michigan Law Review. Thank you for the opportunity to present my research.

Federal law excludes millions of American citizens from crucial public benefits simply because they live in the United States territories. Excluding territorial Americans from SNAP, not to mention Medicaid, Supplemental Security Income (SSI), and other crucial public benefits, has left a gaping hole in the American safety net. This status quo has significant implications for any future anti-hunger efforts in the United States.

Background on Poverty in the Territories

Five times as many Americans live in the territories than in the District of Columbia. Roughly as many Americans live in the territories as those in Alaska, Delaware, Hawaii, and Wyoming combined. While the federal government excludes these Americans from the official poverty measurements for the country, what data we have on poverty levels paints a stark picture. The Census Bureau estimates that the poverty rate in Puerto Rico in 2018 was 43.5%, compared to 11.8% in the fifty states and the District of Columbia. Adults living in the U.S. Virgin Islands are two and a half times more likely to lack health insurance than those in the fifty states.

SNAP and the Nutritional Assistance Block Grants in the Territories

The Food Stamp Program had previously operated in Puerto Rico, putting its food stamp program on the same footing as the states' programs. As part of the Omnibus Budget Reconciliation Act of 1981, President Reagan and Congress removed Puerto Rico from the national food assistance scheme and created a separate program, the Nutrition Assistance Program (NAP). NAP was permanently authorized in 1985 and continues to be how American citizens in Puerto Rico, American Samoa, and the CNMI receive food assistance. While the block grant is referred to as NAP in each of these territories, the rules vary across each.

The NAP block grants and SNAP share the same purpose: "to provide low-income households with access to a nutritious diet through increased food purchasing power." However, the programs differ in many ways, some of which disadvantage residents of the territories. The maximum monthly food assistance benefits for these territorial residents are roughly 60% of the maximum monthly benefits under SNAP. For instance, a three-person household in one of lower 48 states can receive up to \$535 in food assistance. In Alaska and Hawaii, the amounts are higher (\$659 to \$1,024 and \$986)

respectively. The three territories excluded from SNAP have lower benefit amounts. A three-person household in Puerto Rico can receive up to \$315 in food assistance. In American Samoa, the benefits are up to only \$127 per person. Compare CNMI's \$541 benefits per household to the U.S. Virgin Islands (\$688) or Guam (\$789).

As a result, the food assistance programs in American Samoa, CNMI, and Puerto Rico are unable to provide sufficient assistance in the face of natural disaster and recessions because, unlike SNAP which operates under the entitlement structure, it cannot serve all applicants that meet eligibility requirements. Thus, these three territories are disadvantaged with respect to household food assistance. Unlike the rest of the United States citizenry, Americans who live in these three territories do not have access to a food assistance program that can expand and contract to accommodate changing need.

Excluding Territories from Disaster SNAP (D-SNAP)

By excluding these three territories from SNAP, federal law also excludes them from Disaster SNAP (D-SNAP). This exclusion has had disastrous consequences, and it will only get worse. The five U.S. territories are particularly vulnerable to the ravages of climate change. Those who live there will face increasingly tenuous living conditions due to extreme weather events made more frequent and more intense by a warming planet. In 2018, American Samoa suffered through Cyclone Gita and the Northern Mariana Islands withstood Typhoon Yutu—the most powerful storm to hit the United States since 1935. Two Category 5 hurricanes struck the U.S. Virgin Islands within a two-week period in 2017. One of them, Hurricane Maria, also decimated Puerto Rico. Due to the increased need following Hurricane Maria and the lack of additional funds from the federal government, Puerto Rico cut its nutrition assistance spending by \$100 million per month. Precisely when territories need additional resources to recover from the rolling disaster that is climate change, federal law fails them.

The Supreme Court Will Weigh in Soon

The Committee should be aware, if it is not already, that this coming term, the Supreme Court will hear a related constitutional challenge to the exclusion of an American citizen from SSI simply because he now resides in Puerto Rico. That case, *United States v. Vaello-Madero*, is worth describing in detail here.

José Luis Vaello-Madero was born in Puerto Rico—a U.S. citizen by birth. Thirty years later, he moved from Puerto Rico to New York. Nearly thirty years after that, in 2012, Vaello-Madero began to receive federal disability benefits through the Supplemental Security Income (SSI) program. In 2013, Vaello-Madero moved back to Puerto Rico. A few years later, the Social Security Administration informed him that it would discontinue his SSI benefits, dated retroactively to his return to Puerto Rico. In its notice, the Agency stated that Vaello-Madero had been “outside of the U.S. for 30 days in a row or more” since 2014. The Agency noted that it “consider[ed] the U.S. to be the 50 States of the U.S., the District of Columbia, and the Northern Mariana Islands.” Of course, Puerto Rico has been a United States territory for 122 years.

Roughly a year later, the United States sued Vaello-Madero to recover the allegedly improper disability benefits over that two-year period, for a total of \$28,081. An investigator employed by the Social Security Administration got Vaello-Madero, who was without counsel at the time, to sign a stipulated judgment, which the federal government promptly filed in federal court in Puerto Rico. The

district court appointed counsel for Vaello-Madero who raised as an affirmative defense that excluding Vaello-Madero and other Puerto Rican residents from SSI benefits violated the Constitution's equal protection guarantee. On cross-motions for summary judgment, the district judge agreed, and the First Circuit affirmed, holding that excluding Puerto Rican residents from the SSI program violates equal protection. The Supreme Court granted the government's petition for certiorari last March. While the issue in the case involves a different public benefit program, it could have significant implications for nutrition assistance in the territories. How the Supreme Court decides it could bless, or alternatively, upend the status quo of territorial welfare administration, including nutrition programs.

Moreover, *Vaello-Madero* is not the only case that's worth watching. In *Peña Martínez v. U.S. Department of Health and Human Services*, nine Puerto Rican residents sued the federal government on the grounds that excluding them from SSI, SNAP, and Medicare Part D subsidies violates the Due Process Clause of the Fifth Amendment's equal protection guarantee. The federal district court granted summary judgment for the plaintiffs. In doing so, the district court detailed how "[t]he federal safety net is flimsier and more porous in Puerto Rico than in the rest of the nation." Americans in the territories will continue to challenge their exclusion from crucial public benefits in the courts unless and until Congress acts.

Congress Has Made Progress on This Issue

Fortunately, in the last decade or so, Congress has repeatedly provided supplemental funds to the American territories to help shore up the public benefits programs. Often, Congress has acted in response to a rolling series of crises: the 2008 financial crisis, several storms that have struck the islands, and, most recently, the COVID-19 pandemic. In both the Families First Coronavirus Response Act and the American Rescue Plan Act, Congress provided increased funding for nutrition assistance in the five territories. This recent activity in Congress to shore up funding for food assistance in the territories suggests that structural reform could be on the horizon. My law review article explains how it could do so.

Conclusion

Federal law denies certain Americans protection from hunger, sickness, and disability because they live in the country's territories. Put short, it will be impossible to end hunger in America if federal law continues to exclude millions of Americans from SNAP simply because they live in the Commonwealth of the Northern Mariana Islands (CNMI), Guam, or Puerto Rico.

Respectfully,

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