Equality is not simply a belief, but rather a truth for which we "hold self-evident," for we operate under the notion that we truly are all created equal. This truth was professed by Thomas Jefferson as he authored the Declaration of Independence for which we declared our independence from Great Britain. This independence was based upon the unfair treatment Great Britain rendered to the thirteen colonies in which the colonies were heavily taxed yet maintained an absence of equal representation within the monarchy at the time. As such, the thirteen colonies declared independence under the premise that they desire liberty and equality. In keeping with these values, the newly formed United States established the Bill of Rights contained within their Constitution, in order to reaffirm their commitment to protecting the freedoms, liberty, and equality of its citizens.

Among the most essential freedoms is the freedom to vote. This freedom represents the greatest manifestation of freedom of speech as it involves free citizens exercising their right to elect the individuals and the values which are most reflective of them. In essence, these citizens have the unique power to control the direction of the country in which they live and the types of policies which will guide the country along that path.

However, in articulating these essential freedoms throughout the Constitution, the Founding Fathers failed to recall Jefferson's words in the Declaration of Independence, that we are all "created equal." This neglect was evident in Article 1, Section 2 of the Constitution in which the founders counted African-American slaves as 3/5 of a person, viewing them as both human and property (Applestein 2013). As such, not only did this undermine the humanity of African-American slaves themselves but it also did not provide a clear path by which slaves could vote, attain citizenship, or simply live as free people. Eventually, the 14th and 15th Amendments to the U.S. Constitution addressed this issue surrounding African-American slaves. The 14th Amendment established citizenship for former slaves while the 15th Amendment mandated that the voting rights of citizens shall not be infringed, thus granting former slaves the right to vote as well.

While this represented a significant advancement in the attainment of citizenship and voting rights for former slaves, other U.S. citizens across the nation were still left vulnerable due to these new amendments not being applicable to them, specifically for those who resided in the District of Columbia and U.S. territories. These citizens also lacked the opportunity to elect members of Congress for both the House and the Senate. Prior to 1970, Washington possessed no representative in the U.S. House of Representatives nor any senator in the U.S. Senate. More importantly, those residing in the District were also not afforded the right to vote for President or Vice President. The very two individuals who are residing in the District, in theory, do not even solicit the votes of the very individuals who also refer to the District as home.

Eventually, Congress created the 23rd Amendment which provided the District of Columbia with a number of Presidential electors which is equivalent to the amount of electoral votes/members of Congress the District would otherwise have should it be a state. Although, this begs the question, why is it that Congress made this exception for the District of Columbia, a federal district, which is not a state and likewise does not have full representation in Congress? Moreover, the larger implications of this question is why is it that citizens in U.S. territories do not receive these same privileges to vote, whereas, a U.S. citizen living abroad in a foreign country can still participate in the Presidential electoral process via absentee ballot?

The primary explanation for this was authored in the U.S. Supreme Court case, *Bidwell v. Downes,* in which the residents of these U.S. territories are classified as being of "alien races, differing from us in religion, customs, laws, methods of taxation, and modes of thought," as such in order to execute government practices upon these territories, such as the freedom to vote, these territories must follow Anglo-Saxon principles by which if considered alien races, would be nearly "impossible" for these territories to adopt. However, the United States itself is a nation of different racial backgrounds and each difference is not regarded as "alien" simply because they are not similar, rather, each race is included in the fundamental practice of electing the leader of America, provided they are U.S. citizens. As such, this negates the argument that "alien races" occupy the territories, simply because different races do not constituent "alien races" nor is this viewed aligned with the sacred American truth that we are all created equal.

The case of *Bidwell v. Downes* represents one of numerous Supreme Court cases in which the outcome of such cases has negatively impacted U.S. territories as it relates to exercising their right to vote. These cases are known collectively as the "Insular Cases," all of

them underscore that the territories are indeed U.S. sovereignty, however, they do not grant Constitutional rights to the residents of these territories as they otherwise would for residents of U.S. states. This notion is vehemently refuted by Judge Juan Torruella of the U.S. Court of Appeals for the First Circuit. Judge Torruella argues that the U.S. territories are being "treated unequally from those in the rest of the nation solely by reason of their geographical residence" (Weare 2018).

As such, Judge Torruella believes that "the Insular Cases represent classic Plessy v. Ferguson legal doctrine, a thought that should be totally eradicated from present-day constitutional reasoning" (Weare 2018). Through the Insular Cases, the concept of "unincorporated territories" was developed and served as the basis for which to deny traditional Constitutional rights to the citizens of these territories. Although, in the citizenship clause of the 14th Amendment, it states that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside" (Cornell Law School).

Thus, they ought to be afforded the same rights other citizens living throughout the states have, although, this is simply not the case. For instance, Puerto Rico is federally taxed as if they were a foreign entity rather than a domestic one. This dramatically impacts Puerto Rico's budget and funding as well as their economic and labor force stability. Moreover, under the precedents of the Insular Cases, the marriage equality ruling made by the Supreme Court was not further extended to the U.S. territories, thus prohibiting their residents from legally taking part in this practice (Weare 2018).

The most heart wrenching aspect of this issue is the fact that the U.S. territories contribute much to the American cause, most especially through military service. In relation to the U.S. territory of Guam, they possess a military enlistment rate that is higher than any other state. However, because of that, Guam sacrifices the lives of their service members in Afghanistan and Iraq at a rate that is four times the national average casualty rate in America (Weare & Cruz 2017). Although, for those who do return home to their families in Guam from war, they should not expect to receive sufficient medical treatment to address any injury or trauma they experienced during their deployment, especially given that Guam's per capita funding allocation for medical services for veterans is the last out of all the states and territories which the federal government allocates funding to for veteran medical services. Although, because of their lack of voting representation in Congress or for the Presidency, citizens in Guam and other territories often feel voiceless in their ability to address their issues and concerns.

The personal accounts of citizens who live in these various territories, Guam, the Northern Mariana Islands, Puerto Rico, American Samoa, and the U.S. Virgin Islands, speak to how this lack of representation has impacted them. During Matt Kwong's interview of Rodney Cruz, a disabled military veteran from Guam, Cruz speaks to his feelings surrounding his inability to vote for his commander-in-chief, he states "it's like somebody has stripped me of my title of being a human being. Being a disabled veteran who is an American citizen, I served my country, bled for this country, and I continue to serve for the federal government of this country by helping patriots in my work with Veterans Affairs" (Kwong 2016). As it relates to the concept of freedom and Cruz's understanding of the sacredness of voting, he asserts the following, "I fought in the sands of Iraq knowing what freedom means. Freedom is not free. To be allowed to

vote adds value to who I am. But it hurts me deep inside that I can't vote" (Kwong 2016). Thus, not only does the inability to vote devalue one's pride and belief that they are an American, but it also undermines the very contributions they made to make America what it is today.

These same sentiments are shared by Tracy Guerrero of the Northern Mariana Islands, who because she chose to return to her native Northern Mariana Islands, after living in California for college, is now denied the right to vote for President. Her perspective of this is as follows, "We call ourselves Americans, yet we're denied the right to vote? To me, that's a statement saying we're lesser citizens, lesser people. This whole thing is really a holdover from 100-year-old American colonialism" (Kwong 2017).

In response to these sentiments, various citizens from these territories have challenged the constitutionality of denying U.S. citizens who reside in U.S. territories their rights to vote. Such cases have included *Igartua de la Rosa v United States*, which was challenged in the U.S. Court of Appeals for the First Circuit and preceded by *Sanchez v. United States.* These two cases advocated for the rights of Puerto Rican-Americans to vote in U.S. presidential elections, although, both cases were dismissed. Likewise, for U.S. citizens residing in Guam, the verdict handed down in *Attorney General of the Territory of Guam v United States,* brought before the U.S. Court of Appeals for the Ninth Circuit, outlined the same denial of voting rights. These courts cited the Electoral College as the primary reasoning for their denial of voting rights to these territories. Specifically, these courts referenced Article 2, Section 1, Clause 2 of the Constitution, in which the method of selecting Presidential electors is outlined along with the a clear restriction that "only states may cast electoral votes in presidential elections" (Article 2, Sec. 1, Clause 2 of the U.S. Constitution, qtd. in Cottle). Although, if this restriction is to be

interpreted strictly as it is written, it would signify that the clause itself must be amended in order for the District of Columbia, which is not a state, to maintain their Presidential electors legally. As part of amending that clause the word "state" would be removed, thus providing a clear path by which the U.S. territories can obtain voting rights.

Another component included within the case *Igartua de la Rosa v United States,* dealt with the issue of U.S. citizens who previously resided in the states but has since relocated to one of the U.S. territories and as a result has become ineligible to vote in the Presidential elections. The legal precedent employed in this scenario was the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). While the basis challenging this law involved asserting that U.S. territories are included within the "United States" as stipulated in federal statutes, the appeals court maintained that because of that those U.S. citizens who relocated to that new territory technically can still vote in the federal election of that territory. However, the issue is that the territories are only permitted to vote in a federal election to select their non-voting representative to the U.S. House of Representatives, while not permitted to vote for President or a U.S. Senator. Thus, they loose these rights despite relocating within the U.S., whereas, if they were to relocate to a foreign country they can request an absentee ballot from their former state of residence and maintain their right to vote for President along with voting members of Congress (Cottle).

Consequently, due to these legal challenges, initiatives have been undertaken in order to address the issue. Among the initiatives mentioned by Ms. Cottle, the most impactful one involves a Constitutional amendment being proposed by Congress that is enforceable through Article V of the Constitution. The amendment would provide territories with Constitutional

voting rights/electors as well as supercede the legal precedent set forth in the *Insular Cases.* While an initiative such as this appears feasible and more importantly it has received bipartisan support, as noted with the Republican and Democratic National Conventions (Images 1 & 2, respectively) allowing for delegates from the U.S. territories to participate in their respective Presidential nominating conventions, the idea of a Constitutional amendment is still one which has received little traction and thus little progress due to individuals not being aware of it (Ricci 2016).

The argument against the advancement of voting rights initiatives for the U.S. territories and the citizens who reside there are based on the previous notion that the inhabitants of these territories are of "alien races" or as Professor James Bradley Thayer describes it, these territories are comprised of "savage people unfit to govern themselves." Whereas, Professor Christopher Columbus Langdell employs a protectionist economic argument to justify his views against allowing U.S. territories the right to vote for President. He fears that this will undermine the economic success of those residing in the continental U.S. Although, what both arguments fail to recognize is the significance of U.S. values themselves, values which celebrate diversity, rather than discourage it. Moreover, if these individuals residing in these territories truly could not govern themselves, each of these territories would still be in the phase of military governors who are appointed by the President. However, each territory is afforded the right to elect their chief executives along with other high-ranking officials. Furthermore, the economic success of even one segment of America, will eventually translate to the overall success of the nation as a whole and thus improve our economic prospects as oppose to hindering them. Overall, including U.S.

territories in voting for our leader is fundamental to who we are as Americans and it is important we are aware of this issue and are committed to resolving it.

Image 1: Guam Delegates at the 2016 Republican National Convention

Image 2: Puerto Rican Delegates at the 2016 Democratic National Convention

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