



## Fix the Court Endorses Resolution Condemning “Insular Cases”

December 13, 2019

On Oct. 18, U.S. Reps. Raúl Grijalva of Arizona, Stacey Plaskett of the U.S. Virgin Islands, Gregorio Sablan of the Northern Mariana Islands, Michael San Nicolas of Guam and Jenniffer Gonzalez-Colon of Puerto Rico introduced a [resolution](#) (H. Res. 641) condemning the racist and ethnocentric “insular cases” and calling for their holdings to be rejected in their entirety.

**Fix the Court endorses this resolution, which now has 30 House sponsors and co-sponsors.**

The “insular cases” refers to a set of early 20<sup>th</sup> century Supreme Court decisions concerning the extent to which the Constitution and U.S. law applied to newly acquired territories. The court repeatedly held that constitutional protections were not to be enjoyed by the people of Guam, Puerto Rico and beyond. The cases infamously refer to territorial inhabitants using derogatory language that underscores the racist assumptions informing the decisions, which have never been overturned in full. The resolution stems from concern that the Supreme Court may cite the insular cases when ruling on the Puerto Rican debt cases, which the justices heard on Oct. 15.

**FTC executive director Gabe Roth released the following statement about H. Res. 641:**

“This bipartisan resolution rightly condemns the insular cases, their reliance on fundamentally racist and ethnocentric assumptions and any use of their holdings in modern jurisprudence, including a case argued just months ago.

“I commend Rep. Grijalva and his colleagues for encouraging the Supreme Court to contend with and rectify its past errors. I urge other representatives to join their effort and bring the resolution to the House floor.

“More broadly, the American public should acknowledge the court’s checkered past and maintain a healthy skepticism of the institution. Throughout its history, the court has contributed to institutional discrimination by codifying ‘separate but equal,’ upholding the internment of Japanese Americans and perpetuating the unequal treatment of territorial inhabitants. No single act can rewrite the past, but this resolution is an important step.”

Fix the Court joins other watchdog organizations in supporting H. Res. 641, including the NAACP and ACLU. In a Nov. 25 letter encouraging House members to co-sponsor, the ACLU [wrote](#), “These cases entrenched imperialist-era concerns over extending constitutional protections to people of color. At the time, prominent members of Congress from both parties did not want the Constitution to apply fully to these territories because their residents were not Anglo-Saxon and believed they were therefore unfit to enjoy its full benefits.”

Fix the Court first supported the resolution in a Nov. 20 [op-ed](#) in the *Arizona Daily Star*, in which FTC researcher Dylan Hosmer-Quint wrote, “Hopefully, the Supreme Court will find an opportunity to condemn, if not overturn outright, the insular cases. Hopefully, Congress will vote on the Grijalva resolution. Regardless, it’s incumbent upon us as citizens to recognize that, even today, the Court’s jurisprudence is marred by a checkered past. [...Such an acknowledgement can] better prepare us for whatever decisions come in the future.”

Finally, on Dec. 12, a federal district judge [held](#) in *Fitisemanu v. U.S.* that the Samoan-born plaintiffs, now living in Utah, are American citizens by birth. This ruling is opposed by the Samoan government over concerns that automatic citizenship could undermine local traditions and self-determination. We do not seek to wade into the politics here, but should the case be appealed to the Supreme Court, it’s worth considering whether it may be an apt vehicle for overturning the holdings of the insular cases.