RESOLVED, That the American Bar Association supports an interpretation of the Equal Protection Clause of the Fifth Amendment of the United States Constitution which guarantees that all persons residing in a territory of the United States who are otherwise eligible to receive federal benefits shall receive them without regard to residence, including but not limited to, Supplemental Security Income (“SSI”) benefits under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-1383(f); and

FURTHER RESOLVED, That the American Bar Association supports the passage of the Supplemental Security Income Equality Act (H.R. 947) and other legislative efforts to extend SSI benefits to all eligible persons in the fifty states, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, Guam, American Samoa, and the Northern Mariana Islands.
REPORT

I. Background

The federal government established the Supplemental Security Income ("SSI") program in 1972 to provide basic benefits for persons 65 and older with little or no retirement income; younger adults who have disabilities but who have not worked long enough or recently enough to receive disability benefits; and children with disabilities whose parents may still be working, but at very low wages. Congress enacted the SSI legislation so that the federal government may assume responsibility for both funding payments and setting standards of need, so as to expand the number of individuals eligible for assistance compared to earlier programs funded by state governments.¹ As of May 2020, more than 8 million people receive SSI benefits which total nearly $5 billion in the aggregate.²

To qualify for SSI benefits under any of the stated criteria, an individual must reside in a "state."³ Initially, the SSI statute defined "state" as the fifty states or the District of Columbia.⁴ However, effective January 9, 1978, the United States territory of the Commonwealth of the Northern Mariana Islands (CNMI) was also deemed a "state" for the purposes of determining eligibility for SSI benefits.⁵ Thus, Americans who reside in the U.S. Virgin Islands, Puerto Rico, Guam, and American Samoa who are otherwise eligible under the SSI program do not receive the benefits to which they would otherwise be entitled. This includes individuals who are approved for and received SSI benefits while residing in a state, the District of Columbia, or the CNMI and then subsequently moved to one of the four excluded territories.⁶

This resolution supports an interpretation of the Equal Protection Clause of the Fifth Amendment which would guarantee that all Americans residing in all United States territories who are otherwise eligible to receive federal benefits under the SSI program are entitled to receive them. It further supports the adoption of the Supplemental Security Income Equality Act (H.R. 947) and similar legislation to extend SSI benefits to all eligible persons in the fifty states, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, Guam, and the Northern Mariana Islands.

³ 42 U.S.C. § 1614(e).
⁴ 42 U.S.C. § 1382c(e).
⁵ See Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Pub. L. No. 94-241, § 502(a)(1), 90 Stat. 263, 268 (1976) ("The following laws of the United States . . . will apply to the [CNMI] . . . Title XVI of the Social Security Act as it applies to the several states.").
⁶ See United States v. Vaello-Madero, 956 F.3d 12 (1st Cir. 2020) (noting that the federal government sued the defendant to collect $28,081 in SSI benefits that were issued after the defendant changed his residency from New York to Puerto Rico).
II. Reform Efforts

Shortly after the SSI program went into effect, three individuals who received SSI benefits while residing, respectively, in Connecticut, Massachusetts, and New Jersey, filed suit against the United States when those benefits were discontinued after the individuals moved to Puerto Rico. These individuals argued that the exclusion of Puerto Rico from the definition of “state” in the SSI statutes violated their constitutional right to travel. Although they had obtained success at the federal district court, the Supreme Court of the United States ultimately concluded that the right to travel was not infringed by this omission, and that allowing these individuals to continue to receive SSI benefits would in fact grant them greater benefits than those of other residents of Puerto Rico. See Califano v. Gautier Torres, 435 U.S. 1 (1978). However, because only infringement of the constitutional right to travel had been asserted, the U.S. Supreme Court was not asked to consider whether the exclusion of Puerto Rico violated the Equal Protection Clause of the Fifth Amendment. Moreover, the litigation had been brought prior to the January 9, 1978, inclusion of CNMI into the SSI program.

Recent lawsuits challenging the denial of SSI benefits to residents of the four excluded territories pursuant to the Equal Protection Clause have largely succeeded. In United States v. Vaello-Madero, 356 F.Supp.3d 208 (D.P.R. 2019), the United States District Court for the District of Puerto Rico held that the exclusion of residents of Puerto Rico from the SSI program violated the Equal Protection Clause under rational basis review, since the residency classification was irrelevant to the stated purpose of the SSI program to provide cash assistance. That decision was recently affirmed on appeal by the United States Court of Appeals for the First Circuit. United States v. Vaello-Madero, 956 F.3d 12 (1st Cir. 2020). The United States District Court of Guam reached a similar result in Schaller v. U.S. Social Security Administration, Civ. No. 18-00044 (D. Guam June 19, 2020), in which it held that the exclusion of residents of Guam from the SSI program violated the Equal Protection Clause under rational basis review.

In these cases, the federal government attempted to justify its exclusion of Puerto Rico and Guam from the SSI program due to their purported special tax status, in that bona fide residents of those territories are generally exempt from paying personal income taxes to the federal government. However, both the Vaello-Madero and Schaller courts rejected this argument because the CNMI shares an identical special tax status yet is expressly included in the program. See Vaello-Madero, 956 F.3d at 30 (“While the inclusion of the Northern Mariana Islands in the SSI program does not standing alone render the discriminatory treatment of Appellee per se irrational . . . the fact that Congress extended SSI benefits to the residents of the Northern Mariana Islands as part of the Islands' covenant to enter the United States undercuts the Appellant's only offered explanations for the exclusion. Aside from where they live, the otherwise SSI-qualifying residents of Puerto Rico and of the Northern Mariana Islands have the legally-relevant characteristics in common . . . .”); Schaller, slip op. at 11 (“While Guam’s tax status might explain why it is treated differently from the fifty states and the District of Columbia, it does not justify the distinction in treatment between Guam and the CNMI with regard to SSI benefits. Guam’s tax status is not unique when contrasted with the tax status of the CNMI.”).
Although the effect of the Vaello -Madero and Schaller decisions is to extend SSI benefits to all eligible residents of Puerto Rico and Guam, those decisions remain subject to further review, including by the Supreme Court of the United States. Moreover, eligible residents of the U.S. Virgin Islands and American Samoa continue to remain excluded from the SSI program. Thus, on the same day the Vaello -Madero decision was issued, Puerto Rico’s non-voting representative to the House of Representatives, Rep. Jennifer González-Colon, introduced the Supplemental Security Income Equality Act, H.R. 947, which would eliminate the residency restriction and allow all eligible individuals to receive SSI benefits if they reside in any of the fifty states, the five territories, or the District of Columbia.

III. The Role of the American Bar Association

It is the mission of the American Bar Association to increase public understanding and respect for the rule of law and the legal process, to hold governments accountable under the law, and to work for just laws, including human rights. As the voice of the legal profession in the United States, the ABA is uniquely situated to advocate for the inclusion of all eligible Americans in the SSI program.

The ABA has a long history of supporting both the SSI program itself as well as its underlying purposes. See, e.g., 13A100B (urging Congress to enact the SSI Restoration Act of 2013); 94M110 (supporting in principle the recommendations of the Final Report of the Supplemental Security Income Modernization Project). In addition, the ABA has repeatedly urged that Americans who reside in United States territories receive the same rights and benefits as those who reside in the fifty states and the District of Columbia. See, e.g., 20M10C (supporting an interpretation of the Citizenship Clause of the Fourteenth Amendment that recognizes all persons born in the territories as natural-born citizens of the United States); 14A10A (urging an amendment to 28 U.S.C. § 44(c) to grant each territory representation on its respective federal court of appeals); 99M107 (urging Congress to establish an Article III district court in the U.S. Virgin Islands); 92M10H (supporting an amendment to the United States Constitution to permit citizens in American territories to vote in national elections).

This resolution builds on the foundation established by these prior resolutions. It supports an interpretation of the Equal Protection Clause of the Fifth Amendment to the United States Constitution that recognizes all Americans residing in all United States territories who are otherwise eligible to receive federal benefits under the SSI program are entitled to receive them. It further supports the passage of the Supplemental Security Income Equality Act (H.R. 947) and other legislative efforts to extend SSI benefits to all eligible persons in the fifty states, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, Guam, and the Northern Mariana Islands. This resolution will authorize the ABA to lobby the relevant entities, including submission of an amicus curiae brief in Vaello-Madero, Schaller, or another appropriate case on these issues.

IV. Conclusion

Although Congress established the SSI program for the express purpose of

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7 See 2008A121.
providing greater assistance to the elderly, children, and the disabled, the exclusion of otherwise-eligible Americans who reside in the U.S. Virgin Islands, Puerto Rico, Guam, and American Samoa is arbitrary and unjust. This resolution highlights the ABA’s strong support for both the SSI program and equal treatment of United States territories by urging that this be corrected, whether through constitutional interpretation or legislation.

Respectfully submitted,

Nesha R. Christian-Hendrickson, Esq.
President, Virgin Islands Bar Association

August 2020
GENERAL INFORMATION FORM

1. Summary of Resolution

This resolution supports an interpretation of the Equal Protection Clause of the Fifth Amendment which would guarantee that all Americans residing in all United States territories who are otherwise eligible to receive federal benefits under the SSI program are entitled to receive them. It further supports the adoption of the Supplemental Security Income Equality Act (H.R. 947) and similar legislation to extend SSI benefits to all eligible persons in the fifty states, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, Guam, and the Northern Mariana Islands.

2. Approval by Submitting Body

Approved by the Virgin Islands Bar Association on July 13, 2020.

3. Has this or a similar Resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

There are no existing Association policies that are directly relevant to the issues raised in this resolution. However, the ABA has previously enacted policies supporting expansion of the SSI program, see, e.g., 13A100B (urging Congress to enact the SSI Restoration Act of 2013); 94M110 (supporting in principle the recommendations of the Final Report of the Supplemental Security Income Modernization Project), and urging that Americans who reside in United States territories receive the same rights and benefits as those who reside in the fifty states and the District of Columbia, see, e.g., 20M10C (supporting an interpretation of the Citizenship Clause of the Fourteenth Amendment that recognizes all persons born in the territories as natural-born citizens of the United States); 14A10A (urging an amendment to 28 U.S.C. § 44(c) to grant each territory representation on its respective federal court of appeals); 99M107 (urging Congress to establish an Article III district court in the U.S. Virgin Islands); 92M10H (supporting an amendment to the United States Constitution to permit citizens in American territories to vote in national elections).

5. If this is a late Report, what urgency exists which requires action at this meeting of the House?

N/A.

10B

H.R. 947 was introduced in the House of Representatives on February 4, 2019, and referred to the Subcommittee on Worker and Family Support of the House Ways and Means Committee.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

If adopted, this policy would support the filing of an amicus curiae brief in United States v. Vaello-Madero, Schaller v. U.S. Social Security Administration, or other appropriate case. The ABA would also support the passage of H.R. 947 or similar legislation.

8. Cost to the Association (both indirect and direct costs).

None.


None.

10. Referrals

ABA Coalition on Racial and Ethnic Justice
ABA Commission on Hispanic Legal Rights & Responsibilities
ABA Government & Public Sector Lawyers Division
ABA Section on Civil Rights & Social Justice
ABA Section on International Law
ABA Section on State & Local Government Law
ABA Young Lawyers Division

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address.)

Anthony M. Ciolli
Past President, Virgin Islands Bar
PO Box 590
St. Thomas, VI 00804
340-774-2237
aciolli@gmail.com

12. Contact Name and Address Information. (Who will present the Resolution with Report to the House?)

Anthony M. Ciolli
Past President, Virgin Islands Bar
EXECUTIVE SUMMARY

1. **Summary of Resolution.**
   This resolution supports an interpretation of the Equal Protection Clause of the Fifth Amendment which would guarantee that all Americans residing in all United States territories who are otherwise eligible to receive federal benefits under the SSI program are entitled to receive them. It further supports the adoption of the Supplemental Security Income Equality Act (H.R. 947) and similar legislation to extend SSI benefits to all eligible persons in the fifty states, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, Guam, and the Northern Mariana Islands.

2. **Summary of the Issue which the Resolution addresses.**
   Americans who reside in the U.S. Virgin Islands, Puerto Rico, Guam, and American Samoa who are otherwise eligible to receive SSI benefits are unable to receive them solely due to their residence.

3. **An explanation of how the proposed policy position will address the issue.**
   This resolution addresses the issue by urging an interpretation of the Equal Protection Clause which would confer SSI benefits on otherwise-eligible Americans who reside in the U.S. Virgin Islands, Puerto Rico, Guam, and American Samoa, and supporting the passage of H.R. 947 or similar legislation which would extend SSI benefit to residents of those territories.

4. **A summary of any minority views or opposition internal and/or external to the ABA which have been identified.**
   No minority or opposing views have been identified.