

SPEAKER OF THE HOUSE OF REPRESENTATIVES
SAVALI TALAVOU ALE'S
WRITTEN STATEMENT
PRESENTED TO THE
U.S. HOUSE OF REPRESENTATIVE'S SUBCOMMITTEE ON INSULAR AFFAIRS

Honorable Madame Chairperson Donna Christensen and illustrious members of the Subcommittee on Insular Affairs, I wish to convey to you greetings from the members of the House of Representatives. Opportunities of this nature are very rare indeed so I am certainly honored to have been extended the invitation to appear before this Subcommittee to present testimony on the issue of federal court presence in the Territory of American Samoa. The Federal Court System presence in American Samoa is an issue that is not new, as pointed out in the GAO Report and endemically acknowledged. Whatever the varying perspectives might be, the inherent intentions and expected outcomes are deemed merited, for the basic premise appears to be the comprehensive accommodation of our judiciary needs. We would be an ungrateful people if we fail to recognize and appreciate the attempt to mitigate issues of cultural sensitivities and ensuring that the justice system is adequately encompassing to guarantee full and impartial adjudication of matters of federal law. While our testimonies may seem hostile towards efforts aimed to establish a 'win win' scenario, between the federal government and the people of American Samoa, with regard to the principal focus on the difficulties of adjudicating matters of federal law arising in American Samoa, and due to American Samoa's remote location, along with the desire to provide American Samoans more direct access to justice, increased federal court presence is feared because of its possible adverse impact on our land tenure system and our

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way of life. However, be confident that we are appreciative of the efforts of the federal government, attempting to fine tune our justice system, giving surety to the protection of individual rights.

Notwithstanding our deepest gratitude over the advancement of the issue regarding federal court presence in American Samoa, the undercurrent obsession attached to the possible destruction of our land tenure system is so intense that logical and impassive exchange is difficult to attain. These are natural emotions because our lands and our culture are extensions of us, and any attempt at alteration means changing our people's DNA. This fanaticism provided impulsion and the catalyst compelling our forefathers to deed our sovereignties to the United States and expecting from the same the maintenance of the prevailing land tenure system, culture and traditions, indigenous to the inhabitants of Tutuila and Manu'a. These sentiments are being memorialized in the 1900 Treaty of Cession of Tutuila and Aunu'u and 1904 Treaty of Cession of Manu'a. Irrespective of the attitude of the United States, with respect to the inherent commitments expected to advance social, economic, and political welfare of our people, the leaders of the islands of Tutuila and Manu'a made and held these presentations sacred, anticipating that these similar sentiments are mutual. The relinquishment of sovereignties of Tutuila and Manu'a Islands were not byproducts of warring conquests or hostile occupation, but through peaceful acquiescence, with full expectation that the United States Government will honor the

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primary elements of the two Deeds of Cessions involving the preservation of the land tenure system and promoting social, economic, and political welfare of the inhabitants of the islands.

On April 17, 2008 Tutuila and Manu'a commemorated and celebrated 108 years of affiliation with the greatest country in the world. We take great pride in our association with the United States. This pride continues to flourish instead of dissipating. As a person privileged to be a member of the 2006 American Samoa Political Status Study Commission, I was exposed to the unanimity of expression of support for the continuation and perpetuation of our present relationship with the United States. As zealous as our pledge to the continuation of our connection to the United States is, so is our passionate support for the perpetuation of the current land tenure system and traditions. The most vociferous of response from the community on the question of political relationship with the United States is to maintain our present union, yet with the caution to hold on to our system of land ownership. We cannot discount or forget the goodness of the United States, because for 108 years, the basic elements of our two Deeds of Cessions have been honored and preserved. We can not skirt the issue inherent in our desire to continue to maintain this relational format. However, we would be delusional to think that the strength of the 108 years of harmonious co-existence will withstand the test when the fundamental democratic principles are applied to our land tenure system.

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We are indeed indebted to the Congress of the United States for public recognition of the two Treaties of Cessions entered into with the inhabitants of Tutuila and Manu'a as memorialized in Title 48 of the United States Code, in which the endemic expression of desire for the preservation of our land tenure system is acknowledged. We share the thinking that this special provision is possible only because of our informal political relationship with the United States, being an "unorganized and unincorporated" territory. The experience of Guam and the Commonwealth of Northern Mariana Islands with respect to the alienation of their lands, perpetrated by the passage of the Organic Act and Covenant, is one we do not wish to replicate. The inhabitants of these insular areas are all U.S. Citizens, and it appears to us that the alienation of their lands is the sacrifice they were willing to make to acquire the privilege and inherent benefits of U.S. citizenship. It is clear from the testimonies received by the 2006 American Samoa Political Status Study Commission that the people of American Samoa are not willing to surrender their system of land ownership.

The 2006 American Samoa Political Status Study Commission made a point to physically visit some of the flagged territories of the United States with varying political statuses. Invariably, the residents of these islands lauded and expressed envy over American Samoa's current political relationship with the United States. This knowledge bolstered our confidence and affirmed our belief that opting to preserve our land tenure system and cultural

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traditions is the best possible option for American Samoa. We are also not oblivious to the disadvantages associated with this decision memorialized in the primary recommendation of the 2006 American Samoa Political Status Study Commission. In essence, the recommendation reaffirms the conclusions of the two previous political status commissions, calling for the adoption of the status quo posture. The additional stipulation to the recent Commission's recommendation is to continue the process for political status determination until the most perfect union is found. The perfect union envisioned by the 2006 American Samoa Political Status Study Commission is one which assures the perpetuation of our land tenure system and the elimination of economic development barriers precipitated by our present political status relationship with the United States. American Samoa is economically hamstrung because it lacks eligibility to access the financial services of the World Bank and the Asian Development Bank. American Samoa cannot participate in Pacific Organizations and forums comprised of independent countries of the Pacific as an equal partner, thus suffering exclusion from programs of regional flavor or fund leveraging activities with our Pacific Island neighbors because of our political designation. American Samoa's access to foreign aid is prohibited although our neighbors in the Pacific, like the Independent State of Samoa, Tonga, etc., are receiving developmental aid from other metropolitan countries of the World. These are but a few examples of economic impediments confronting American Samoa which the Commission

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has identified and used as the basis for the call to continue negotiations with the United States until the most practical and beneficial union is found and adopted.

The 2006 American Samoa Political Status Study Commission has exhaustively explored all the issues of significance upon which predicated its resulting recommendations. The Governor is presenting legislation for consideration by the Legislature calling for the convening of a political convention in November of this year, to afford the opportunity to the community to review the report and recommendations of the Commission. It is expected that this review will culminate with the identification, prioritization, and approval of issues and recommendations to be presented to the people of American Samoa for a decision in the form of a referendum. It makes logical sense to allow this process to run its course without externally induced complications to ensure that the outcome is truly reflective of our people's aspirations and desires. The plea is therefore made herein to suspend discussion on the federal court presence issue and allow us to complete the planned process for the consideration of the issues and recommendations presented by the 2006 American Samoa Political Status Study Commission.

The above plea also addresses the concern over the piecemeal changes applied to our judiciary system, caused by actions of U.S. Citizens demanding satisfaction of their constitutional rights. For

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example, the fear of not having sufficient population from which to draw an impartial jury because of close ties, has been rendered inconsequential and moot with the Circuit Court decision affirming Mr. Jake King's claim that his rights to trial by jury of his peers have been violated; hence the introduction of trials by jury. Moreover, there are already provisions of federal laws that are being adjudicated in the High Court of American Samoa. Throughout the 1960s and 1970s, and again in the early 2000s, federal law also provided that the High Court has jurisdiction over cases arising under certain other federal statutes. For example, the High Court has been granted jurisdiction over cases arising under certain federal statutes governing grain standards, pesticide control, animal welfare, animal and plant health, and poultry and meat inspection. These actions have the effect of shrinking potential political relationship options or force decisions that are not in the best interest of our people. The High Court of American Samoa has been given full litigation and adjudicative capacity to address any type or manner of white collar crime perpetrated against the American Samoa Government irrespective of the source of funding. We assert therefore that American Samoa's current judiciary system possesses the required legal scope to competently address matters pertaining to federal law and the need to change has not been clearly determined. The reasons given to change American Samoa's judiciary system, except for the associate cost, are not of sufficient merit to warrant and legitimize transformation.

The assessment conducted by the GAO Office documented in the GAO-08-655 American Samoa Report was thorough with lucid comparisons of judicial systems for Guam, CNMC, USVI, and American Samoa. The report also provided three possible format options for federal court presence in American Samoa. The report neglected to recommend one more option which calls for the maintenance of our present judicial system. Clearly, insufficient compelling reasons exist to warrant the adoption of one of the three options recommended in the GAO Report unless it is a foregone conclusion that judicial system change for American Samoa is inevitable. In any event, the GAO Office did an exceptional job bringing to light all necessary and relevant information upon which a prudent decision will hopefully evolve.

In the order of priority, preserving the current status of our judicial system is our preferred choice and should be our only choice. However, it is highly idealistic to think that passionate pleas alone are enough to sway Congress to heed these petitions deemed by the indigenous inhabitants to be reflective of their aspirations and desires. We have raised the issue relative to the significant issues compelling the movement to change the current judicial system in American Samoa. Except for complaints from the federal agencies connected with the judicial process, respecting the difficulty associated with the full discharge of their duties and the cost, we have not been privy to any grievance filed citing dissatisfaction

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questioning the integrity of the justice system and the quality of court decisions. We have also addressed our concern over the piecemeal manner with which federalism is being introduced into the territory without first settling the political relationship with the United States. The overall consequence of the current approach has the effect of truncating potential political status options which could be adopted by the territory to which best fit the aspirations and desires of the people of American Samoa. The recommendations of the 2006 American Samoa Political Status Study Commission are promulgated in its published report awaiting review and action by the community leaders of American Samoa; the decision from which derives possible political options to adopt will be placed before the people of American Samoa for a decision. This process is evolving with our Governor declaring the convening of the Political Status Convention for November of this year. Our hope and wish to complete this local process before any federal intervention is also placed before you for your consideration. For 108 years of association with the United States, our people have, in unison, opted for the continuation of our “unorganized and unincorporated” status. The compelling reason precipitating this unified declaration remains unchanged which is affirmed by the 2006 American Samoa Political Status Study Commission’s primary recommendation to hang on to our present status. The addendum to the recommendation acknowledges the need to boldly address the issue of our land tenure system.

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In the event our wishes are deemed insufficient to induce a favorable response, it is the general preference of the members of the House of Representatives to adopt Scenario III in which the High Court of American Samoa is empowered to hear matters of federal law. The implementation of this option should not pose a problem because the High Court of American Samoa is currently adjudicating certain matters of federal law. Trial by jury of ones peers is now a matter of law. This piecemeal change to our judicial system raised grave concerns and the implications of which were afforded attention in the earlier section of this statement. The additional uneasiness caused by this change is the process deployed from which this modification was derived. It took just one dissatisfied, and unhappy U.S. Citizen to forge the change, leaving us with no assurances that the same strategy will not be utilized to challenge the constitutionality of our land tenure system in the federal court system. Based on this experience, it is necessary to identify local issues which can not be adjudicated in the federal court system. While the adoption of Scenario III is the alternative choice, incorporation of language to allay our concerns over the vulnerability of land tenure system is requested and it should be made an integral part of the scenario.

Although cost associate with the three potential scenarios for federal court presence in American Samoa is an important factor, it should not be the principal determinant for the viability of each of the options. If cost is the controlling criteria, status quo would

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prove to be the most cost effective alternative. Our people have been consistent in expressing their desires and wishes to preserve their land tenure system and their cultural traditions.

We have also been unyielding and relentless in the contestation of proposals deemed to threaten the perpetuation of our way of life entrenched and embedded in our lands. We clearly understand the political pressures brought to bear on your shoulders to ensure that the rights of all U.S. Citizens are not compromised. Nevertheless, we are a small community far removed from the mainstream, struggling to maintain indigenous elements upon which it draws its identity as a people and a race distinct unto itself. This ideology does not diminish our patriotism nor lessen the pride we treasure as being Americans. Thank you for the opportunity to offer statement on the issue of federal court presence in American Samoa which has far reaching implications on our survival as a people.

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