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U.S. VIRGIN ISLANDS, REPUBLIC OF THE MARSHALL ISLANDS, PUERTO RICO, AND POLITICAL STATUS PUBLIC EDUCATION PROGRAMS

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

TO

RECEIVE TESTIMONY ON THE PROPOSED CONSTITUTION OF THE U.S. VIRGIN ISLANDS; S. 2941, THE REPUBLIC OF THE MARSHALL ISLANDS SUPPLEMENTAL NUCLEAR COMPENSATION ACT OF 2010; H.R. 3940, AN ACT TO AMEND PUBLIC LAW 96–597 TO CLARIFY THE AUTHORITY OF THE SECRETARY OF THE INTERIOR TO EXTEND GRANTS AND OTHER ASSISTANCE TO FACILITATE POLITICAL STATUS PUBLIC EDUCATION PROGRAMS FOR THE PEOPLES OF THE NON-SELF-GOVERNING TERRITORIES OF THE UNITED STATES; AND H.R. 2499, THE PUERTO RICO DEMOCRACY ACT OF 2010

MAY 19, 2010

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U.S. VIRGIN ISLANDS, REPUBLIC OF THE MARSHALL ISLANDS, PUERTO RICO, AND POLITICAL STATUS PUBLIC EDUCATION PROGRAMS

WEDNESDAY, MAY 19, 2010

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m. in room SD–366, Dirksen Senate Office Building, Hon. Jeff Bingaman, chairman, presiding.

OPENING STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

The CHAIRMAN. OK, why don't we get started. The committee meets this morning to receive testimony on 4 matters related to U.S.-affiliated islands.

First is H.R. 2499, the Puerto Rico Democracy Act of 2010.

I don't know if we have some protests, or what.

At any rate, the second item is the proposed constitution of the U.S. Virgin Islands.

Third is S. 2941, the Republic of the Marshall Islands Supplemental Nuclear Compensation Act.

The fourth item is H.R. 3940, to Clarify the Authority of the Interior Secretary to Provide Grants for Political Status Education Programs.

First, with regard to H.R. 2499, this legislation would authorize the Government of Puerto Rico to hold a 2-round vote on political status. The first vote would be on whether the People of Puerto Rico wish to continue the current relationship with the United States, or to change this relationship. If a majority favors continuing the current relationship, then a vote would be held again every 8 years.

If, however, a majority favors change, then there would be a second vote for the people to express their preference. That preference would be among 4 options: independence, sovereignty, an association with the United States, Statehood, or continuing the present Commonwealth relationship.

Puerto Rico's status is a topic of keen interest to 4 million U.S. citizens living in the islands, and to 4 million citizens of Puerto Rican ancestry living in the mainland. I believe this bill advances the status process by identifying the 4 status options available to

Puerto Rico under U.S. law, however, there's a long way to go. Congress has faced significant challenges in the past when considering Puerto Rico's status legislation, and there are additional challenges, now, as Congress enters the mid-term election season.

The second item before the committee is the proposed constitution for the Virgin Islands. On March 1 of 2010, Congress received from the President a proposed constitution drafted by the 5th Constitutional Convention of the Virgin Islands. The current law provides Congress with a 60-day review period, and the opportunity to approve, modify, or amend the draft before it is presented to the people for approval or rejection in a plebiscite.

In his message to Congress, the President included an analysis by the Justice Department which describes several concerns with the draft.

The third item before us is S. 2941, it would modify several U.S. programs that respond to the health and environmental effects of the U.S. nuclear testing program conducted in the Marshall Islands in the 1940s and 1950s. This bill is identical to legislation introduced in 2007 at the request of the President of the Marshall Islands, however, there was a change in the Islands' government before the committee could complete consideration of amendments that were under discussion with the former Marshall Islands' government and with the previous U.S. Administration.

The final item before us is H.R. 3940, it would clarify that the Secretary of the Interior is authorized to provide technical assistance from the Department's existing technical assistance program to the Governments of Guam, Virgin Islands, and American Samoa to, quote, "Facilitate public education programs regarding political status options."

I want to start by thanking all of the witnesses for coming before the committee, I look forward to hearing their contributions, and at this point I'll recognize Senator Murkowski for any opening statements she would like to make.

[The prepared statement of Representative Velázquez follows:]

PREPARED STATEMENT OF HON. NYDIA M. VELÁZQUEZ, U.S. REPRESENTATIVE FROM NEW YORK, ON H.R. 2499

Thank you, Chairman Bingaman, for holding this important hearing. As one of the four Puerto Rican Members of Congress, I am personally invested in the status of Puerto Rico. I appreciate the opportunity to provide my view on H.R. 2499 and its impact on Puerto Rico and the United States.

I oppose this bill. I have stated before that I believe that the best process to determine the will of the people regarding status is through a Constitutional Assembly. However, if the process for self-determination should be through a plebiscite, it is my firm belief that Puerto Ricans should, at minimum, have all the options available from which to choose.

Whenever the debate about the status of Puerto Rico occurs, it still amazes me that the same old issues keep resurfacing. The tactics and actions taken by interested parties continue to be a disservice to the people of Puerto Rico and an affront to the democratic concept of self-determination.

What seems to be missing from this debate is the realization that prior processes, in both the House and the Senate, taught us important lessons. We need to acknowledge these lessons and apply them to today's efforts.

In the past 15 years, the House has acted on flawed legislation that eventually, and properly, stalled in this body. The Senate's most recent experience in conducting a detailed examination of this issue was the extensive effort undertaken by this committee's chairman in 1989 Senator Bennett Johnston. That process, as comprehensive as it was, was unable to complete the legislative process. Since then,

there has been no other Congressional effort that has sought to ascertain the answers to economic, political, social and constitutional questions that are relevant in any debate on the future of Puerto Rico and the United States.

So here we are, today, continuing to talk about Puerto Rico, its past, present and possible future. Still, even with the endless debate, we do not seem to learn the lessons of the previous efforts on this matter.

This is especially true if you examine these past two decades. We have wastefully spent time discussing:

- Whether Congress would pre-commit to a status decision for the people of Puerto Rico;
- Should the Senate or the House define for Puerto Ricans their status options?
- What limits our Constitution does or does not have?

Mr. Chairman, we should not place the cart in front of the horse. Let's take the novel position that Puerto Ricans should first tell us what they want, before we debate what we want. In order to have a constructive discussion on how to address the Puerto Rico question, we must recognize the following lessons:

- First, it is for the people of Puerto Rico, including those communities in the United States, to exercise their right to self-determination—not Congress.
- Second, for a process of self-determination to be accepted as valid by the people, it must be transparent, fair and agreed upon by consensus.
- Third, proponents of status options that fail to win the support of the people in Puerto Rico can not circumvent the will of the people through federal legislation; Congress will not validate nor sanction legislative schemes used to engineer an electoral victory.

Two weeks ago, the House had a very spirited debate about this bill. It is my view that the majority of members saw a flawed bill. Even the Rules Committee seemed to tell the House that the bill had troubling issues by allowing debate on 8 amendments, 5 of which dealt, in one form or another, with the process laid out in the bill. Whether it was eliminating one round of voting or adding an option to the ballot or even striking the whole process, the House clearly heard the message that the bill was unfair.

Today, the Senate has a version of H.R. 2499 that includes the Commonwealth option in the second round of voting under this bill. However, the bill is still the byproduct of a process that did not reach consensus with other status options supporters and tried unsuccessfully to exclude an option from the ballot. This bill is not conducive to an informed self-determination decision by the people of Puerto Rico. Rather, it was conceived with a predetermined agenda in mind. I strongly urge you to not consider it.

Fairness, transparency and consensus are paramount to this debate. In examining these issues, the highest priority should be given to what the people of Puerto Rico want. Congress should not be considering legislation that would stack the deck to reach a predetermined outcome, as the original version of this bill sought to do. Puerto Ricans must be allowed to express their aspirations in a democratic manner that is not encumbered with convoluted processes designed to undermine one side or another.

Mr. Chairman, I appreciate opportunity to share my thoughts on this important issue.

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman and good morning to all. We've got a full house today, and I think that it is an indicator of the interest that is held, not only, of course, with the legislation as it relates to Puerto Rico's political status, but as to our other territories. I think, oftentimes these areas are part of our government's responsibility that are often overlooked or even sometimes forgotten.

Again, from the attendance, there's no doubt that the topic for the first panel, Puerto Rico's political status is a matter of tremendous interest to the millions of Puerto Ricans that reside on the island or across the United States.

As someone who was born in Alaska when we were still a territory, I do have great sympathy for the desire of the people of Puerto Rico to resolve their political status. It took Alaska 92 years—92 for us to resolve our political status. Puerto Rico has been working on it for 112.

So, while I am also sympathetic, I am also mindful that the process to determine Alaska's future was driven from Alaska, not from Washington, DC. I think that that's critical.

I do recognize that Puerto Rico has attempted on a number of occasions to hold plebiscites to determine the wishes of the Puerto Rican people but the results have not been conclusive. I also recognize that outside of the Presidential Task Force on Puerto Rico's Status the Federal Government has not provided Puerto Rico with much guidance as to what their options are.

Mr. Chairman, I do agree with the Presidential Task Force Report and with the text of H.R. 2499 that there are 4 options available to Puerto Rico: maintaining the current Commonwealth status; independence; free association; and, statehood. I am hopeful that this committee can help provide some of that guidance while at the same time allow those in Puerto Rico to lead the political effort on political status, and not have it driven from here, in Washington, DC.

Now, with regard to the proposed constitution for the U.S. Virgin Islands, I want to echo the concerns that have been raised by both the Virgin Islands Attorney General and the U.S. Department of Justice regarding the constitutionality of some of the provisions as well as potential conflict with Federal law.

Creating different rights, restrictions, and benefits for citizens based on when they or their ancestors were born in the Virgin Islands, particularly with respect to property taxes and voting rights, appears to be a violation of the U.S. Constitution's Equal Protection Clause.

I am also concerned about provisions that appear to bestow greater power to the United States Virgin Island Government than is provided in Federal statute: the ability to manage submerged lands out to 12 nautical miles—in contradiction with the Territorial Submerged Lands Act which conveyed to the Virgin Islands title to submerged lands out to 3 geographic miles; and also the ability to set the minimum age for employment, which has the potential to contradict the Fair Labor Standards Act which sets the minimum age of employment at 14 years.

I do look forward to hearing from the President of the Fifth Constitutional Convention on how these provisions are consistent with the Constitution and Federal law, or how they may be changed.

I am also pleased that we are considering the Marshall Islands Supplemental Nuclear Compensation Act. With the Supreme Court's decision not to hear the petition for changed circumstances, the ball is here in Congress' court on whether additional measures with regard to the nuclear testing are warranted.

I believe that the Chairman and I have introduced a bill that's a responsible piece of legislation that addresses some of the concerns put forward. It provides for monitoring of Runit Island, as well as ensured that those Marshall Islands citizens who worked on the Test Sites during the Trust Territory days are eligible for

Energy Employees Occupational Illness Compensation program. Now, this is a fix that should not be necessary but some Federal agencies apparently disagree with the Congressional intent in our previous legislation on this issue.

The bill also calls for a National Academies study to review all scientific reports and identify if parts of the RMI outside of the Four Atolls were impacted by U.S. nuclear testing. This will hopefully allow the U.S. and the Marshall Islands to resolve our differences on this matter.

Mr. Chairman, I look forward to the testimony that we will receive this morning, and learning more about all that we have before us. Thank you.

The CHAIRMAN. Thank you very much.

As is customary, the committee will hear, first, from the House sponsors of the House bills that are being considered today. Delegate Madeleine Bordallo, who is from Guam, of course, is the sponsor of H.R. 3940, and Resident Commissioner Pedro Pierluisi, from Puerto Rico, is the sponsor of H.R. 2499.

Delegate Bordallo, why don't you go right ahead first, and then Commissioner Pierluisi.

STATEMENT OF HON. MADELEINE Z. BORDALLO, DELEGATE OF GUAM, U.S. HOUSE OF REPRESENTATIVES

Ms. BORDALLO. Thank you very much, Chairman Bingaman and Ranking Member Murkowski. It's nice to see you again. Of course, Senator Menendez.

I come before the committee today, both as a representative from Guam, seated in the House, and as the chairwoman of the House Subcommittee on Insular Affairs, Oceans, and Wildlife.

The issues being addressed at the hearing today are ones that have been explored by this committee before, yet they remain matters under active discussion, and for which congressional action is most needed to resolve. We have already acted on each matter in the House in this Congress, and we look to this committee now for initiating appropriate, complementary action in the Senate.

This hearing is a good start, Mr. Chairman, and I appreciate the courtesy you have extended to me to offer a few points for reflection today. I have submitted my longer statement for the record.

First, for 111 years, now, and as a result of the treaty ending the Spanish-American War, Puerto Rico and Guam have been under the United States flag. The people of the unincorporated territories long for resolution of status, and release from being perpetually placed in a state of uncertainty and inequality with regard to their political rights and full self-governance. The issue of political status remains an important point of discussion for Americans residing in Guam, American Samoa, and the United States Virgin Islands. Most importantly, in my home district of Guam, the issue of status has been raised by local leaders in the context of conditioning the military buildup, and the stationing of additional military personnel on our island.

Yet, some status options are more suitable and appropriate for one territory more than they may be for another. There is no universal, one-size-fits-all approach to resolving this matter for all of our territories. Each territory is on its own timeline and path for

resolution, but their people must be afforded the ability to exercise their right to self-determination and express their desire for a permanent, non-territorial status.

Two measures, Mr. Chairman, before you today would engender such progress. H.R. 2499 would Congressionally sanction a status plebiscite for the people of Puerto Rico. Congressional authorization is critical for this exercise, just as Federal resources and guidelines are needed for the status education in the other territories, as would be provided under the terms of H.R. 3940.

H.R. 3940 would authorize the Secretary of the Interior to assist the Governments of Guam, American Samoa, and the United States Virgin Islands in developing and implementing needed political status public education programs. These programs would help our people of these territories in understanding the various and viable political status options available to them. With such information they can, in turn, express informed opinions about their future, in any political status plebiscite or convention.

I appeal to you today, Mr. Chairman, for your judicious exercise of the constitutional responsibility of the Congress under the Territorial Clause to dissolve this inequity for the territories, and resolve the status issue for the people of the territories, consistent with their political aspirations.

Puerto Rico is ready for a plebiscite, and Congress should give it standing. Guam, after spending over a decade pursuing a Commonwealth arrangement, much along the lines of Puerto Rico and the CNMI, but which stalled with the Administration, is ready now for the next stage, and awaits status education backed with Federal support. This would ensure only viable options are presented to voters. I stand ready to work with the committee to ensure the text of H.R. 3940 is constructed such to address your interests and any concerns that you may have, or your committee.

Second, the people of the Virgin Islands continue their journey to enhance self-government. For the fifth time they have, like the people of Guam, attempted before to adopt their own constitution. Attempts at drafting and adopting a constitution locally for Guam and the VI before have been frustrated by the lack of action by Congress to resolve the underlying fundamental status question. Thus, the emphasis remains on resolution of status, and I urge this committee to look carefully at the views expressed by the leaders.

Last, it is encouraging that the committee is attending to the legacy of the U.S. nuclear testing in the Pacific, and what that legacy means for our friends, the people of the Marshall Islands. The testing, it is argued, brought about strength and peace in the last decade following the second World War. But a peace with their contaminated homeland, and a peace for the Marshallese eludes them without proper action from this Congress to improve U.S. assistance for addressing the environmental, resettlement and health challenges. Last month, the President's Cancer Panel issued its report and dedicated a specific portion of it to the issues facing the Marshallese.

So, this is a matter of justice, and Congress should do more to ensure that they are made whole, and their public health protected.

So, I thank you, in summing up Mr. Chairman, Ranking Member, and members of the committee, for your leadership and you

staff's support on insular policy. We look forward to continuing to work with you to advance these bills under consideration today. I thank you, and as we say in Guam, "Si Yu'us Ma'ase."

[The prepared statement of Delegate Bordallo follows:]

PREPARED STATEMENT OF HON. MADELEINE Z. BORDALLO, DELEGATE OF GUAM, U.S. HOUSE OF REPRESENTATIVES

Hafa Adai and Thank you Chairman Bingaman, Ranking Member Murkowski and Members of the Committee for the opportunity to testify in support of H.R. 3940, which is a bill I introduced, to amend Public Law 96-597 to clarify the authority of the Secretary of the Interior to extend grants and other assistance to facilitate political status public education programs for the peoples of the non-self-governing territories of the United States. As the Chairwoman of the Subcommittee on Insular Affairs, Oceans and Wildlife in the House Committee on Natural Resources, I worked with my colleagues on H.R. 3940 which passed the full House on December 7, 2009.

Originally, H.R. 3940 as introduced only addressed political status public education for Guam. At a hearing held on November 5, 2009, in the Subcommittee on Insular Affairs, Oceans and Wildlife, Congressman Eni Faleomavaega of American Samoa and Congresswoman Donna Christensen of the U.S. Virgin Islands expressed a desire to broaden the application of the bill to account for the needs of their islands. At the hearing, the Subcommittee heard supporting testimony from the Honorable Felix Camacho, Governor of Guam and Mr. Nikolao Pula, Director of the Office of Insular Affairs in the U.S. Department of the Interior. At a full Natural Resources Committee markup on November 18, 2009, I offered an Amendment in the Nature of a Substitute which made changes to H.R. 3940 to include the other non-self-governing territories, which was adopted by unanimous consent.

Mr. Chairman and members of the Committee, H.R. 3940 is an important bill for this body because the "territorial clause" in Article IV of the United States Constitution vests with the Congress the power to dispose of and make all needful rules and regulations respecting the territories of the United States. Recommendations as to the exercise of such plenary authority by the Congress rest with this Committee, and your action on this bill would be a manifestation of the Constitutional authority and responsibility. As a member of the United Nations, the United States also assumes by virtue of Article 73 of the United Nations Charter the international obligation to develop self-government and to take due account of the political aspirations of the people of her territories. Mindful of these responsibilities we continue today a discussion that involves the political history and future of Guam and other non-self governing territories.

The issue of political status remains to be an important point of discussion for the Americans residing in Guam, American Samoa and the U.S. Virgin Islands. More importantly in my home district of Guam, the issue of status has been raised by local leaders in the context of conditioning the military build-up and the stationing of additional military personnel on island. Today Guam continues to be an "unincorporated territory" of the United States. It is "unincorporated" because not all provisions of the U.S. Constitution apply to the territory. The relationship of Guam to the United States is extensive and we have been under the U.S. Flag for 111 years. Guam was ceded from Spain to the United States, along with Puerto Rico, under the terms of the Treaty of Paris that ended the Spanish-American War in 1898. In 1950, Congress passed and President Truman signed into law the Organic Act of Guam, conferring U.S. citizenship on the people of Guam and establishing limited local self government. Yet, we remain unequal Americans in a status where the Constitution does not fully apply.

Under the Organic Act, the Secretary of the Interior is vested with administrative responsibility for Guam and Guam is "organized" with a republican form of government with locally-elected executive and legislative branches and an appointed judicial branch. In 1968, Congress also passed a law allowing for the Governor of Guam to be elected by local popular election. Prior to the enactment of that law, the Governor was appointed by the Secretary of the Navy and later by the President during the years of Interior responsibility. In 1970, Congress also passed a law allowing for the election every two years of a Delegate to Congress to represent Guam.

In 1976, Congress afforded the people of Guam an opportunity to adopt a local Constitution. In 1979, the people of Guam rejected the proposed Constitution by a referendum held under United Nations observation. Following this outcome, the Government of Guam through its laws established a commission for the purpose of

working to improve the territory's political status according to the aspirations of the people of Guam.

A plebiscite was held in 1982, resulting in a plurality vote for a "Commonwealth" status (49%), followed by statehood (26%), status quo (10%), incorporated territory (5%), free association and independence (4% each) and "other" (2%). Pursuant to that outcome the Guam Commission on Self-Determination drafted a proposed Guam Commonwealth Act, which was approved in two 1987 plebiscites. The Guam Commonwealth Act was introduced by my immediate two predecessors in four consecutive Congresses—the 100th through the 105th Congresses. A full committee legislative hearing of the Committee on Resources was held on the Guam Commonwealth Act during the 105th Congress on October 29, 1997. Ultimately, the political aspirations of the people of Guam as represented by the Guam Commonwealth Act were never realized despite the efforts made by Guam's representatives, previous Administrations, this Committee and the Congress as a whole.

Thus, we are on a journey to ultimately resolve the political status of Guam and the unincorporated territories. This relationship was not meant to be permanent. Our inequality must be addressed, and H.R. 3940 is one step toward resolution. H.R. 3940 would authorize the Secretary of the Interior to assist the governments of Guam, American Samoa, and the United States Virgin Islands in developing and implementing the needed political status public education programs. These programs would help the people of these territories in understanding the various and viable political status options available to them. With such information they could in turn express informed opinions about their future in any political status plebiscite or convention.

Although efforts have been made in the past in each territory toward improving its status consistent with the right of self-determination, political status remains ultimately unresolved for them. In Guam, a local law has authorized a plebiscite to be held that is to involve a public education program. In American Samoa, the work of a locally-established commission to assess status options, the third such commission in the history of the territory, was recently concluded. A plebiscite on status was also held previously in the Virgin Islands. Each circumstance, however, demonstrates the importance of a public education program for resolving status in each territory and for preparing for future plebiscites or other processes by which their people can collectively express their political aspirations.

This bill simply clarifies in law that the Secretary of the Interior can exercise existing authority to provide general technical assistance to these territories for the purpose of facilitating political status public education. It is an important step for the highest legislative body to reaffirm our constitutional commitment to the non-self governing territories. In closing, I ask that the full Senate Energy and Natural Resources committee pass H.R. 3940 and work towards final passage in the full Senate. Thank you again for the opportunity to testify.

The CHAIRMAN. Thank you very much for that excellent testimony.

Let me go right to Commissioner Pierluisi, why don't you proceed?

STATEMENT OF HON. PEDRO R. PIERLUISI, RESIDENT COMMISSIONER OF PUERTO RICO, U.S. HOUSE OF REPRESENTATIVES

Mr. PIERLUISI. Chairman Bingaman, Ranking Member Murkowski, members of the committee thank you for giving me the opportunity to speak in support of my bill, H.R. 2499.

H.R. 2499 is a bill about democracy, as the title suggests. It deals with the right of self-determination, and Congress doing the right thing. It was approved in a strong bipartisan vote at a time that we all know bipartisanship is in short supply. It was approved by the House, now it is the Senate's turn to consider it.

The purpose of the bill is straightforward. What Congress is doing is authorizing the Government of Puerto Rico to conduct one or more plebiscites in which the people of Puerto Rico will be able to express their views regarding the Island's political status.

The threshold question posed in the first plebiscite is a key question. It's the essence of democracy. Congress is authorizing the Government of Puerto Rico to ask the American citizens living in Puerto Rico, whether they want Puerto Rico to continue having its present form of political status, or whether they want Puerto Rico to have a different political status.

Now, why is that so important? As Ranking Member Murkowski mentioned, we've been a territory now for 112 years. By its definition, it means that Puerto Rico has no voting representation in Congress, its residents can not vote for the President and Congress can, at any point in time, treat us differently than our fellow citizens in the States. It just happened with health reform.

It is my job to fight for them. But the U.S. Supreme Court has stated, repeatedly, that Congress can treat us differently, so long as there is a rational basis for doing so—the lowest possible Constitutional scrutiny.

Now, if a majority of the people of Puerto Rico want to remain under this status, so be it. But, shouldn't Congress know whether the majority of the people of Puerto Rico consent to this arrangement? That's the purpose of the first plebiscite. If the majority tells the Congress that they want a different political status, then Congress is authorizing a second plebiscite, in which you will have the 4 options before the people of Puerto Rico—the only valid and available options.

It's important that Congress, at the very least, give some guidance to the people of Puerto Rico. True, we've had some plebiscites in the past, but the problem is, Congress has never spoken, and that's the least Congress should be doing, in terms of telling us what options we have. Those options are laid out in this bill: Statehood, independence, free association, an association between Puerto Rico and the United States as sovereign nations that is not subject to the Territory Clause of the United States Constitution, and the current status.

I should note something. When I introduced this bill originally, I did not have that fourth option, the current status. My thinking, as a lawyer, was like—I was being logical in the sense of, if the majority of the people reject the current status, why include it in the second time around?

But, I have to say now, on behalf of my fellow colleagues in the House, the sentiment in the House was, "Let's make sure that nobody's left out." Nobody who wants to support a valid option, and the current status, called the Commonwealth, is one option. We've been through it for a long time now.

It is important to note that this bill is not as ambitious as previous bills that have been present or pending before the Congress. It allows Congress to respond in any fashion it thinks appropriate, once we hear from the people of Puerto Rico. It is the first step in a process of dealing with the status issue of Puerto Rico; it is the logical and fair first step.

Later today, you will hear from leaders in Puerto Rico and don't be surprised that some will oppose this bill. That's the very nature of the matter. There are differences in terms of the options, and there are differences in terms of the process. My judgment, the judgment of the Governor of Puerto Rico, the judgment of most—

large majority of the elected officials in Puerto Rico is, we should have a plebiscite. Consult the people directly, as opposed to a constitutional convention.

It is about time we hear from the people of Puerto Rico. That is my prayer to this committee. That is my prayer to the Senate. My people have been patient enough; it is time to act.

I will ask you to report favorably, H.R. 2499 for approval by the Senate. Thank you very much.

[The prepared statement of Resident Commissioner Pierluisi follows:]

PREPARED STATEMENT OF HON. PEDRO R. PIERLUISI, RESIDENT COMMISSIONER OF PUERTO RICO, U.S. HOUSE OF REPRESENTATIVES

Chairman Bingaman, Ranking Member Murkowski, and Members of the Committee:

Thank you for giving me the opportunity to speak in support of my bill, H.R. 2499, the Puerto Rico Democracy Act.

This legislation, which was approved by the House in a strong bipartisan vote, would authorize a fair and non-binding plebiscite process in Puerto Rico regarding the Island's political status. That is all the bill would do-no less and no more.

Puerto Rico is a U.S. territory. Whatever its merits, territorial status has severe and inherent shortcomings. The U.S. citizens of Puerto Rico, four million proud, serve in the U.S. military and their lives are governed by federal law. Yet they cannot vote for their president and commander-in-chief, are not represented in the Senate, and send a single non-voting member to the House.

The sad truth is that, since joining the American family 112 years ago, my people have never had a meaningful voice in their national government. Laws enacted by Congress often treat residents of Puerto Rico worse than their fellow citizens in the states. These laws are upheld by the courts if there is any rational basis for the disparate treatment, the lowest level of constitutional scrutiny. Our Founding Fathers, and generations of American patriots who followed them, established the greatest democracy the world has known. I cannot believe they could have contemplated that the undemocratic governing arrangement that exists between the United States and Puerto Rico would last for more than a century, or that it might effectively be transformed into the Island's permanent status.

The Constitution vests Congress with almost absolute power over the territories. The fundamental premise of 2499 is that Congress, in the responsible exercise of its authority, should ask the people of Puerto Rico whether they consent to the current status or prefer a different status. The first-stage plebiscite authorized by the bill would pose this threshold question to voters.

If a majority expresses a desire for a different status, the legislation would authorize a second-stage plebiscite where voters would state their preference among four options: the current territorial status and the three possible alternatives-independence, free association, and statehood. By adopting an amendment during floor debate to add the current status as a ballot option in this plebiscite, the House has put to rest the argument that the bill "stacks the deck" in favor of statehood or any other status option. That charge, to the extent it was ever colorable, no longer has the slightest merit.

H.R. 2499 does not require any federal action if a majority chooses a different status in the first vote and a particular non-territorial option in the second vote. Congress and the President should decide which steps to take-if any-after seeing the results.

I hope that the Senate will follow the House's lead and pass this bill. But I am the first to say that inaction by this chamber is not the real obstacle to a fair process of self-determination. Rather, the greatest barrier to meaningful self-determination is that politicians affiliated with the Island's minority Popular Democratic Party have not been honest with the people of Puerto Rico.

In addition to denying the self-evident fact that Puerto Rico is a territory, these politicians continue to proclaim the feasibility of a pie-in-the-sky proposal under which Puerto Rico would receive more federal benefits than it does now, while also having the power to decide which federal laws apply to the Island, all pursuant to a bilateral pact from which the U.S. could not withdraw absent Puerto Rico's consent.

As the House counterpart to this Committee stated in its report on 2499, this impossible proposal has been "consistently opposed by federal authorities . . . on both constitutional and policy grounds." Naturally, those who champion this scheme do not talk about it in Washington, because they know it is a non-starter. But they talk about it incessantly in San Juan. This has caused substantial confusion in Puerto Rico about the Island's true status options, and has resulted in misinformed and inconclusive local status referenda in 1967, 1993, and 1998.

In passing 2499 by a large margin, the House accomplished several important things. It clarified that there are only three possible alternatives to the current status. It delivered a devastating blow to those who deceive the people of Puerto Rico for political gain. And it helped ensure that the forthcoming plebiscite process in Puerto Rico will be a meaningful exercise in self-determination, where voters will finally have the opportunity to express their preference among the valid-and only the valid-status options. I hope this Committee, like the House before it, will show respect for the people of Puerto Rico by leveling with them about their real choices.

Thank you.

The CHAIRMAN. Thank you. Thank you, both, for your excellent statements. We appreciate your coming before our committee and advocating for the bills that you have sponsored. We will hear from both panels and try to reach our conclusions as to how to proceed, but thank you both.

I did not have any questions, let me just ask if any member wanted to pose a question to either of the sponsors of the legislation. If not, we'll permit you to go on with your duties, whatever is required, and we will go on with the first panel.

Thank you very much.

Mr. PIERLUISI. Thank you.

The CHAIRMAN. Panel one is the Honorable Luis Fortuño, who is the Governor of the Commonwealth of Puerto Rico; the Honorable Hector Ferrer Rios, who is President of the Popular Democratic Party; and the third witness is the Honorable Ruben Angel Berrios Martinez, who is President of the Puerto Rican Independence Party.

We thank all of you for being here. Our ground rules here are that, obviously, whatever written statements you have developed is welcome. We will include the full statement in the record. I think the committee would benefit most if you could summarize the main points that you think we need to understand and then we will, undoubtedly, have questions.

So, why don't we start with Governor Fortuño, if you would like to start and then go across the table.

STATEMENT OF HON. LUIS G. FORTUÑO, GOVERNOR OF PUERTO RICO

Governor FORTUÑO. Thank you, Mr. Chairman and Ranking Member Murkowski as well as the distinguished members of this committee for the opportunity to appear this morning before you and the other fellow members of this committee to express my support of H.R. 2499, the Puerto Rico Democracy Act of 2009. I especially appreciate the opportunity to follow Puerto Rico's sole representative—elected representative in Congress, Resident Commissioner Pedro Pierluisi, who was my running mate in 2008.

Today, I appear before you as Governor of Puerto Rico and as President of Puerto Rico's Statehood Party, which includes national Republicans like myself as well as Democrats like Resident Commissioner Pierluisi.

In the elections of 2008, voters gave candidates of our Party the biggest margin of any electoral victory in 44 years. We obtained over two-thirds of the seats in each house of the legislature and three-fifths of the mayorships.

The candidates in the "Commonwealth" party, by contrast, received the lowest percentage of votes for their party in history. This is particularly relevant because the process proposed by H.R. 2499 was an issue in the elections. Our party campaigned on a pledge to seek congressional sponsorship of a status choice process in order to provide a choice among real status options to be made directly by the voters in plebiscites.

Why does Congress need to act? Because there is a patently obvious need for the territory's real options to be clarified. Under the present status, given Congress' constitutional jurisdiction under the Territory Clause, Congress can provide the necessary clarification. Specifically, previous political status plebiscites without Federal legislation in the first 2 instances, at the end of the 1960s and the beginning of the 1990s were inconclusive as the Ranking Member mentioned earlier, because of proposals for an unconstitutional and impossible governing arrangement. The most recent plebiscite, 12 years ago, was similarly confused by such a proposal.

For decades, the leaders of the "Commonwealth" party—including those of that party's delegation here today—have refused to recognize the reality that the only possible "Commonwealth" option that exists is the one that is the island's current territory status.

H.R. 2499 simply clarifies what the possible status options for Puerto Rico are: continuation of the current territory status that goes by the name of "Commonwealth," independence, nationhood in free association with the United States, and statehood.

What is not included in the legislation, and what is the real reason for the "Commonwealth" party's persistent objections to the bill is this impossible "Commonwealth" status proposal that is not the current status. Under the present—and I have a copy of their platform in 2008, here. In this proposal of theirs, Puerto Rico would be permanently empowered to nullify Federal laws and court jurisdiction. The island would also be empowered to enter into international agreements and organizations requiring national sovereignty. The proposal also includes a new subsidy for the government of the island, coming from the Federal taxpayers, and incentives for companies in the States to locate plants in Puerto Rico.

But wait, there's more. The proposal also further includes all current Federal program assistance to individuals, and U.S. citizenship would be perpetually guaranteed, as well. A wise member of this committee once called this proposal "the free beer and barbeque option." Members of the Senate should once again join their counterparts in the House in clarifying that such proposals are not possible status options.

In doing so, Mr. Chairman, you and your colleagues would do well to join Congresswoman Virginia Foxx who, in a letter to myself and Resident Commissioner Pierluisi last week, did just that. Congresswoman Foxx clarified that the "Commonwealth" option contained in her amendment to H.R. 2499—which was approved by the full House—is, and I quote, "the status quo, under which Puerto Rico is subject to Federal Territory Clause authority."

As Congresswoman Foxx further made clear, her amendment's intention was not to endorse the legal viability or practical possibility of a quote—and I quote again—"a new Commonwealth status," I end quote, which would grant Puerto Rico greater autonomy from Federal authority with greater Federal benefits. With your permission, Mr. Chairman, I would like to submit Congresswoman Foxx's letter for the record and, in doing so, also my entire written statement.

The CHAIRMAN. We're glad to include that in the record.

Governor FORTUÑO. Thank you, Mr. Chairman.

Mr. Chairman, what H.R. 2499 essentially does is authorize a process, at the discretion of Puerto Rico's elected representatives, that would begin with threshold votes on whether to consider status options. This responds to the "Commonwealth" Party argument that the status question should not be addressed. Only if a majority of voters no longer favors the current status—and Puerto Rico's elected representatives agree—would there be a second-stage vote on the full range of possible options. If a majority of voters in a threshold plebiscite do not want to consider Puerto Rico's status options, the issue would be put aside for 8 years.

If a second-stage vote does take place, the current status would stand equally alongside the other possible status alternatives that have support in Puerto Rico: free association—which is advocated by an increasing number of members of the "Commonwealth" Party, although not the current leadership; independence; and statehood. In terms of measuring support for Puerto Rico's possible status choices, H.R. 2499 could not be any fairer.

In sum, H.R. 2499 would enable the preferences of Puerto Ricans, among the real status alternatives, to finally be ascertained. The legislation would not mandate any action in response by the Federal Government. If there ever is a majority of the vote for a status different from the present one, it is then that the Federal officials could determine what response is appropriate. An accurate expression of status preferences by the people is the necessary first step, though.

Last month, members of the House took the right step. I urge you to do the same. By so doing, you will be effectively responding to the people of Puerto Rico's clear mandate for a federally sanctioned status choice process. You will also fulfill Congress' responsibility to enable a territory that lacks democracy at the National Government level to determine if it wants one of the options for National Government democracy.

Mr. Chairman, over the course of more than a century, millions of your fellow American citizens in the territory of Puerto Rico have made countless contributions to the Nation, both in peace and wartime. Thousands of our sons and daughters have laid down their lives—thousands more proudly serve today, and there are a few of them with us today—in defense of American democratic values. Yet, we have never been given the chance to express our views about our political relationship with the Nation in the context of an accurate, fair and democratic process sponsored by Congress. This bill will, at long last, give us that chance. What would be more right?

Thank you, again.

[The prepared statement of Governor Fortuño follows:]

PREPARED STATEMENT OF HON. LUIS G. FORTUÑO, GOVERNOR OF PUERTO RICO

Thank you, Mr. Chairman . . . and Ranking Member Murkowski . . . for the opportunity to appear this morning before you and fellow members of this Committee to express my support of H.R. 2499, the Puerto Rico Democracy Act of 2009. I especially appreciate the opportunity to follow Puerto Rico's sole elected representative in Congress, Resident Commissioner Pedro Pierluisi, who was my running mate in 2008.

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In the elections of 2008, voters gave candidates of our party the biggest margin of any electoral victory in 44 years. We obtained over two-thirds of the seats in each house of the legislature and three-fifths of the mayorships. The candidates in the "Commonwealth" party, by contrast, received the lowest percentage of votes for their party in history.

This is particularly relevant because the process proposed by H.R. 2499 was an issue in the elections. Our party campaigned on a pledge to seek congressional sponsorship of a status choice process.in order to provide a choice among real status options to be made.directly by voters . . . in plebiscites.

Why does Congress need to act? Because there is a patently obvious need for the territory's real options to be clarified. Under the present status . . . given Congress' constitutional jurisdiction under the Territory Clause . . . Congress can provide the necessary clarification. Specifically, previous political status plebiscites without federal legislation . . . in the first two instances, at the end of the 1960s and the beginning of the 1990s . . . were inconclusive because of proposals for an unconstitutional and impossible governing arrangement. The most recent plebiscite . . . 12 years ago . . . was similarly confused by such a proposal.

For decades, the leaders of the "Commonwealth" party-including those of that party's delegation here today—have refused to recognize the reality that the only possible "Commonwealth" option that exists is the one that is the island's current territory status.

H.R. 2499 simply clarifies what the possible status options for Puerto Rico are: continuation of the current territory status that goes by the name of "Commonwealth", independence, nationhood in free association with the United States and statehood.

What is not included in the legislation.and what is the real reason for the "Commonwealth" party's persistent objections to the bill . . . is this impossible "Commonwealth" status proposal that is not the current status [holding up copy].

Under this proposal of theirs, Puerto Rico would be permanently empowered to nullify federal laws and court jurisdiction. The island would also be empowered to enter into international agreements and organizations requiring national sovereignty. The proposal also includes a new subsidy for the government of the island, and incentives for companies in the States to locate plants in Puerto Rico. But wait, there's more. The proposal also further includes all current federal program assistance to individuals, and U.S. citizenship would be perpetually guaranteed.

A wise member of this Committee once called this proposal "the free beer and barbeque option." Members of the Senate should.once again. join their counterparts in the House in clarifying that such proposals are not a possible status option.

In doing so, Mr. Chairman, you and your colleagues would do well to join Congresswoman Virginia Foxx . . . who in a letter to myself and Resident Commissioner Pierluisi last week did just that. Congresswoman Foxx clarified that the "Commonwealth" option contained in her amendment to H.R. 2499.which was approved by the full House . . . is . . . and I quote . . . " the status quo, under which Puerto Rico is subject to federal Territory Clause authority."

As Congresswoman Foxx further made clear, her amendment's intention was not to endorse the legal viability or practical possibility of . . . and I quote once again . . . " a new Commonwealth status' which would grant Puerto Rico greater autonomy from federal authority with greater federal benefits." With your permission, Mr. Chairman, I would like to submit Congresswoman Foxx's letter for the record, along with my entire written testimony.

Mr. Chairman, what H.R. 2499 essentially does is authorize a process.at the discretion of Puerto Rico's elected representatives . . . that would begin with threshold votes on whether to consider status options. This responds to the "Commonwealth" Party argument that the status question should not be addressed. Only if

a majority of voters no longer favors the current status . . . and Puerto Rico's elected representatives agree. would there be a second-stage vote on the full range of possible options. If a majority of voters in a threshold plebiscite do not want to consider Puerto Rico's status options, the issue would be put aside for eight years.

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In sum, H.R. 2499 would enable the preferences of Puerto Ricans.among the real status alternatives . . . to finally be ascertained. The legislation would not mandate any action in response by the federal government. If there ever is a majority of the vote for a status different than the present one, it is then that Federal officials could determine what response is appropriate. An accurate expression of status preferences by the people is the necessary first step.

Last month, members of the House took the right step. I urge you to do the same. By so doing, you will be effectively responding to the people of Puerto Rico's clear mandate for a federally sanctioned status choice process. You will also fulfill Congress' responsibility to enable a territory that lacks democracy at the national government level to determine if it wants one of the options for national government democracy.

Mr. Chairman, over the course of more than a century, millions of your fellow American citizens in the territory of Puerto Rico have made countless contributions to the Nation, both in peace and wartime. Thousands of our sons and daughters have laid down their lives . . . thousands more proudly serve today.in defense of American democratic values. Yet, we have never been given the chance to express our views about our political relationship with the Nation in the context of an accurate, fair and democratic process sponsored by Congress. This bill will, at long last, give us that chance. What could be more right?

Thank you very much.

The CHAIRMAN. Thank you very much, Governor. I appreciate your testimony very much.

Next is the Honorable Héctor Ferrer Rios, who is the President of the Popular Democratic Party. Thank you for being here.

STATEMENT OF HÉCTOR J. FERRER RIOS, PRESIDENT, POPULAR DEMOCRATIC PARTY

Mr. RIOS. Thank you, Mr. Chairman, and good morning ranking members and members of the committee. My name is Héctor Ferrer, I am the President of the Popular Democratic Party of Puerto Rico, the Minority Leader in the Puerto Rico House of Representatives and a Commonwealth supporter. Along with my remarks today, I have submitted, for the record, a written testimony.

I come before you to oppose H.R. 2499, the Puerto Rico Statehood Bill. H.R. 2499 is crafted as an unusual and unprecedented two-round voting scheme to manufacture a predetermined outcome in front of Statehood. Even after some amendments included on the House floor, the bill remains slanted toward Statehood, and has serious procedural flaws. Moreover, this bill is non-binding. This means that this Congress is not committed to honor its results.

This sounds to me like your "free beer and barbeque" comment 12 years ago, Mr. Chairman, when we defeated Statehood, once again, in the 1998 plebiscite, in a rigged process just like this one. There is absolutely no pain involved in Congress if you're simply hosting a beauty pageant with no tangible obligations. Mr. Chairman, the people of Puerto Rico and the United States deserve better.

The core question before this committee today is this: Why are we here? Frankly, I'm not quite sure. Puerto Rico is undergoing a

significant crisis. The University of Puerto Rico system has been shut down for almost a month, and Governor Fortuño's Administration has just announced that it will remain closed until August.

As unemployment is nearing 20 percent, he has fired well over 20,000 public employees without regard to their unions' calls for negotiations and compromise, while the private sector has lost over 100,000 jobs in the past year and a half.

Since January 2009, the Governor has added 12 new taxes on homes and business, corporate and individual taxes, motor vehicles, among others, and all of this in the middle of a recession. Puerto Rico's public debt surpasses $60 billion. In the first 5 months of this year, more civilians have been murdered in Puerto Rico than American and Coalition forces in both Iraq and Afghanistan together.

With all of these pressing matters at hand, the Governor and his Party are again playing up the status issue, and forcing us to participate, once more, in this 3-ring circus that comes to town every couple of years. For what? To discuss a non-binding plebiscite? Again, the people of Puerto Rico and the United States deserve better.

In fact, today's leader—legislation of Puerto Rico is currently holding hearings on a locally authorized, non-binding plebiscite just like this one. If this is happening, why are we wasting your time here, today? To that effect, I'm submitting for the record Senate bill 1407 and House bill 2497 for the committee's consideration. If Congress chooses to enact this legislation with a clearly pre-ordained pro-State result in mind, it is your responsibility toward the people of Puerto Rico and the United States to clearly define and outline the Statehood that you are willing to grant Puerto Rico. Tell us if you're willing to commit to Statehood on a first vote with a simple majority, or a plurality. Tell us if you will allow for a State where the Executive, Legislative and Judicial branches, schools, business, and every other affair is conducted in Spanish.

Mr. Chairman, your own State of New Mexico, along with Louisiana, Oklahoma, and Arizona, were required to adopt English for all official business as a prerequisite for admission. Will you do that so with Puerto Rico?

Tell us if, under Statehood, Puerto Rico will still receive the Rum Tax Color Over, and tell us how U.S. companies, with significant investment and operations in Puerto Rico will be treated.

Tell us if you're willing to admit a State without sufficient economic resources to support its own government, let alone its share of the Federal budget. Explain if the route to Statehood requires first becoming an incorporated territory, with the burden of Federal taxes and the end of our Olympic Committee. If it's the will of this committee to offer the people of Puerto Rico a bid for Statehood, why not propose a straight yes or no vote on Statehood?

As you can tell, there are more questions to be made to Congress than answers to be demanded from the people of Puerto Rico. As President of the Popular Democratic Party, I believe that the most honest and straightforward way of dealing with this issue of Puerto Rico's status is providing for the people of Puerto Rico to convene in a constitutional convention. This much fairer process has been supported by the Popular Democratic Party for years, and was ac-

tually introduced as a Senate bill by Senator Kennedy, Menendez, Burr, and Lott in the 109th Congress.

H.R. 2499 is not a process of self-determination. In fact, what is needed to move forward is a binding and democratic process that leads us toward mutual determination, where both the people of Puerto Rico and the United States are committed to a fair result. I encourage this committee to rise honorably to the occasion, and do right by the people of Puerto Rico.

Thank you.

[The prepared statement of Mr. Rios follows:]

PREPARED STATEMENT OF HÉCTOR J. FERRER RIOS, PRESIDENT, POPULAR DEMOCRATIC PARTY

My name is Héctor Ferrer Ríos, President of the Popular Democratic Party and House Minority Leader. I come before the Committee to urge you to oppose H.R. 2499, recently approved by the House of Representatives. H.R. 2499 simply appears to call for a non-binding expression by the Puerto Rican people as to their political status preference. Beyond its seemingly innocuous facade, the bill was constructed as an unusual and unprecedented two round voting scheme to predetermine the outcome by producing an artificial statehood majority.

Fundamentally, plebiscites and referendums are democratic mechanisms for determining by direct vote a people's own destiny. These are methods with which to identify, and subsequently implement, the people's most favored avenues of politico-constitutional evolution—-as selected by those peoples themselves. And the common denominator of any such democratic exercise is fairness. The legislator's fair and equitable treatment of the options is paramount to assuring the legitimacy of any such self-determination process.

Nevertheless, the legislative intention of H.R. 2499 was to sub-categorize the options to be presented to the people, in order to configure the voting system in a way that would assure a particular outcome, a predetermined result by imposing its bias and annulling the legitimacy of the process.

That is what H.R. 2499 attempts. In it, the drafters arbitrarily separated what they regard a "territorial and impermanent" option from purportedly "non-territorial and permanent" ones. Following that rationale, the bill calls for an initial round limited to a yes or no vote on the "current political status", followed by a second round among all other options if the current political status fails to achieve 50% of the vote in the first round. Such action renders the process patently biased.

Historical background illustrates what is at play here. Back in 1993, after a landslide victory in the general elections, the pro-statehood governor quickly called for a plebiscite expecting his personal popularity to translate into a similar win for statehood. The governor allowed each of the parties to decide how their status option would appear defined on the ballot. To his surprise, Commonwealth won with 48.6% of the vote to statehood's 46.5% and independence's 4.4.%.

Pledging not to let that happen again, governor Rossellθ called for a new plebiscite in 1998, but this time he drafted the Commonwealth's definition himself and in such unpalatable terms that the Commonwealth party could not endorse it. To his total dismay, the Commonwealth party asked its supporters to vote instead under a "none of the above" option sanctioned by local courts. Commonwealth status d/b/a "none of the above" prevailed again with 50.3% of the vote against statehood's 46.5%, independence's 2.5%. A new option called Free Association got a meager 0.3%.

After the 1998 humiliation, the statehood party went back to the drawing board and came up with a scheme that now takes the form of H.R. 2499. The 1993 plebiscite taught them that statehood can never beat Commonwealth in a face to face contest and the 1998 plebiscite showed them that the Commonwealth supporters are not easily excluded from the process. And so the idea of a two round vote.

The pro-statehood Resident Commissioner from Puerto Rico reasonably thinks that splitting the vote should result in a huge win for statehood. That conclusion is supported by history. Take the 1993 plebiscite results mentioned above. Commonwealth was the people's top choice. If that vote had been divided into two rounds, as H.R. 2499 proposes, Commonwealth's otherwise 48.6% victory would have meant a rejection, and the people would have been forced to choose between what were, and probably still are, their second and third choices. Based on those 1993 numbers,

it is reasonable to conclude that statehood, although not the people's preferred choice, would achieve an overwhelming majority of the votes in the second round.

The statehood party has already made sure that the "none of the above" option can no longer foil a statehood majority as it did in 1998. "None of the above" was a judicially mandated option based on constitutional grounds regarding the individual's right to vote. But the current pro-statehood governor had the opportunity to change the Puerto Rico Supreme Court's ideological composition by filling three vacancies; and just a year ago, a 4-3 majority, without having a case or controversy on this issue before it, quickly reversed the earlier ruling requiring this option.

H.R. 2499 is now the final piece of the statehood party's assault on Puerto Rico's right to self-determination. It is crude, unabashed, undemocratic gimmickry.

The two round setup had its genesis in heavily flawed conclusions regarding the current Commonwealth status found in a Presidential Task Force Report.

Executive Order 13183 (dated December 23, 2000), as amended by Executive Order 13319 (dated December 3, 2003), created a President's Task Force on Puerto Rico's Status (the "Task Force") to "report on its actions to the President as needed, but no less than once every 2 years, on progress made in the determination of Puerto Rico's ultimate status." Pursuant to such directive, the Task Force issued its initial report on December 22, 2005, and the first follow up addendum report on December 21, 2007 (hereinafter the "Task Force Reports"). A final report is due this coming December 2009.

Ever since the publication of the initial Task Force Report in December 2005, the Popular Democratic Party openly challenged the Task Force Reports' main legal conclusions; namely, that despite the establishment of Commonwealth status in 1952, Puerto Rico remains to this day an unincorporated territory of the United States subject to Congress's plenary powers under the Territory Clause of the U.S. Constitution and as such can be unilaterally ceded or conveyed to any other sovereign country and, moreover, that the U.S. citizenship of the people of Puerto Rico is likewise revocable by Congress. For the past three and a half years, the PDP has forcefully contended that the authors of the Task Force Reports blatantly failed to substantiate their obtuse legal conclusions and inexcusably overlooked the robust and consistent corpus of U.S. Supreme Court precedent to the contrary.

During the 2008 Presidential Campaign, President Obama explicitly rejected the legal conclusions contained in the Task Force Reports. In a letter addressed to then Governor Aníbal Acevedo Vila (the "President's Letter") (dated February 12, 2008), President Obama challenged head-on the Task Force's irrational proposition that Puerto Rico (along with the 4 million Puerto Ricans inhabiting the island) can be ceded or transferred to a foreign country at Congress's whim.

> The American citizenship of Puerto Ricans is constitutionally guaranteed for as long as the people of Puerto Rico choose to retain it I reject the assertion in reports submitted by a Presidential Task Force on December 22, 2005 and December 21, 2007 that sovereignty over Puerto Rico could be unilaterally transferred by the United States to a foreign country.

The erroneous legal conclusions put forward by the Task Force, as referenced above, are derailing Puerto Rico's self-determination process into a profound, unnecessary and unfair state of confusion. Such conclusions have now been used to legitimize and recommend a highly irregular two-round self-determination process, whereby the current Commonwealth option (in light of its alleged territorial nature) is put on for ratification or rejection in the first round, and, assuming rejection, then statehood and independence face it off in a second and definitive last round. This is contrary to the norm in all two-round voting processes where electors vote all status options in the first round, and then vote again in a face-off between the two most voted formulas in the final round.

As the subsequent sections show, President Obama was right in rejecting the legal conclusions rendered by the Task Force Reports because they run afoul the most basic values of substantive justice and equality under the law; all of which have been at the heart of American constitutionalism since the early days of the Republic—as were so eloquently echoed in the President's Letter.

A. Congress no longer holds plenary powers over Puerto Rico and consequently cannot unilaterally cede Puerto Rico

The Task Force Reports embrace the untenable proposition that the Federal Government can unilaterally cede Puerto Rico, if it so wishes, to any other sovereign (e.g. Venezuela, Cuba or Iran) without the consent of the people of Puerto Rico as an exercise of its plenary powers over the island under the Territory Clause of the U.S. Constitution. Specifically, the authors of the Task Force Reports conclude that: "[t]he Federal Government may relinquish United States sovereignty by granting

independence or ceding the territory to another nation . . . " Ignoring the canon of legal construction articulated through the years by the U.S. Supreme Court to the effect that Puerto Rico shed its status as an unincorporated territory with the attainment of Commonwealth status in 1952, the drafters of the Task Force Reports claim that such event did not change Puerto Rico's relationship with the United States. Such posturing, in turn, rests on the perverse notion that Congress intentionally deceived the people of Puerto Rico when it entered into the compact elevating Puerto Rico's status from an unincorporated territory to a Commonwealth, and instead retained plenary powers—including the authority to unilaterally cede or even sell Puerto Rico to any foreign nation.

President Obama was right in rebuffing such untenable conclusion. Neither the 2005 Task Force nor its 2007 sequel identifies any legal authority substantiating a contention so incendiary that flies in the face of U.S. Supreme Court jurisprudence (blithely ignored by the drafters of the Task Force Reports) that has explicitly recognized that the creation of the Commonwealth of Puerto Rico was effected through a compact wherein Congress relinquished powers over Puerto Rico making it sovereign over matters not ruled by the U.S. Constitution.

Not surprisingly, the federal courts have forcefully rejected the argument that would render Public Law 600 an entirely illusory legislative gesture. The U.S. Court of Appeals for the First Circuit addressed the issue in one of its first judicial interventions shortly after the Commonwealth's creation. Rejecting the contention that Public Law 600 was merely another Organic Act, Chief Judge Magruder, writing for the First Circuit, concluded that, "We find no reason to impute to the Congress the perpetration of such a monumental hoax."

If, as suggested in the Task Force Reports, the compact entered into pursuant to Public Law 600 did not transform Puerto Rico's political status, then the United States perpetrated a "monumental hoax" not only on the people of Puerto Rico, but also on the General Assembly of the United Nations. Specifically, in 1953 the United States advised the United Nations that it would no longer report on Puerto Rico as a "non self-governing territory" under Article 73(e) of the United Nations Charter."

In the Cessation Memorandum, the United States formally advised the United Nations that the incremental process of the "vesting of powers of government in the Puerto Rican people and their elected representatives" had "reached its culmination with the establishment of the Commonwealth of Puerto Rico and the promulgation of the Constitution of this Commonwealth on July 25, 1952." The Cessation Memorandum explicitly declares that, "[w]ith the establishment of the Commonwealth of Puerto Rico, the people of Puerto Rico have attained a full measure of self-government."

In describing the "principle features of the Constitution of the Commonwealth," the Cessation Memorandum noted that the new Constitution, "as it became effective with the approval of the Congress, provides that '[i]ts political power emanates from the people and shall be exercised in accordance with their will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States of America."

Mason Sears, the United States Representative to the Committee on Information from Non-Self-Governing Territories, explained the legal significance under American law of the fact that Puerto Rico's Constitution resulted from a compact,

> A most interesting feature of the new constitution is that it was entered into in the nature of a compact between the American and Puerto Rican people. A compact, as you know, is far stronger than a treaty. A treaty usually can be denounced by either side, whereas a compact cannot be denounced by either party unless it has the permission of the other.

Moreover, Frances Bolton, U.S. Delegate to the United Nations' Fourth Committee, made it plain clear that while "the previous status of Puerto Rico was that of a territory subject to the absolute authority of the Congress of the United States in all governmental matters [. . .] the present status of Puerto Rico is that of a people with a constitution of their own adoption, stemming from their own authority, which only they can alter or amend [. . .]"

The United Nations accepted at face value the representations made by the United States. The General Assembly recognized, "the people of the Commonwealth of Puerto Rico, by expressing their will in a free and democratic way, have achieved a new constitutional status." Resolution 748, VIII (Nov. 3, 1953). On approving the Cessation Memorandum on Puerto Rico, the General Assembly further stated that,

> [I]n the framework of their Constitution and of the compact agreed upon with the United States of America, the people of the Commonwealth of Puerto Rico have been invested with attributes of political sovereignty

> which clearly identify the status of self-government attained by the Puerto Rican people as that of an autonomous political entity.

The U.S. Supreme Court has confirmed that view. In Calero Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974), the Supreme Court motu proprio addressed the issue of whether Puerto Rico statutes were State statutes for purposes of the Three-Judge Court Act (28 U.S.C. §2281). The issue was of great import, for the predominant reason behind the law was requiring that issues about the constitutionality of State statutes be resolved before a three judge district court panel in order to avoid unnecessary interference with the laws of a sovereign State of the Union. That "predominant reason" did not exist in respect of territories because they do not enjoy the attributes of sovereignty of States within the U.S. federal structure. For that reason, the Supreme Court had already ruled in Stainback v. Mo Hock Ke Lok Po, 336 U.S. 368 (1949) that the legislative enactments of the Territory of Hawaii were not State statutes for purposes of Judicial Code §266 (predecessor to 28 U.S.C. §2281). Similarly, the First Circuit had arrived at the same conclusion with respect to Puerto Rico in Benedicto v. West India & Panama Tel. Co., 256 F.417 (1st Cir. 1919).

Stainback and Benedicto, of course, were decided before Puerto Rico became a Commonwealth, so the issue had to be examined afresh and the opportunity finally arouse in Calero Toledo. As the Calero Toledo Court narrates, Puerto Rico's Commonwealth status was preceded by a series of Organic Acts,

> Following the Spanish-American War, Puerto Rico was ceded to this country in the Treaty of Paris, 30 Stat. 1754 (1898). A brief interlude of military control was followed by congressional enactment of a series of Organic Acts for the government of the island. Initially these enactments established a local governmental structure with high officials appointed by the President. These Acts also retained veto power in the President and Congress over local legislation.

The creation of the Commonwealth, as the Court suggests by voice of Justice Brennan, followed a materially different procedure,

> By 1950, however, pressures for greater autonomy led to congressional enactment of Pub. L. 600, 64 Stat. 319, which offered the people of Puerto Rico a compact whereby they might establish a government under their own constitution. Puerto Rico accepted the compact, and on July 3, 1952 Congress approved, with minor amendments, a constitution adopted by the Puerto Rican populace [. . .] Pursuant to that constitution the Commonwealth now "elects its Governor and legislature; appoints its judges, all cabinet officials, and lesser officials in the executive branch; sets its own educational policies; determines its own budget; and amends its own civil and criminal code" (citing Leibowitz, The Applicability of Federal Law to the Commonwealth of Puerto Rico, 56 GEO. L. J. 219, 221 (1967)).

The Calero Toledo Court recognized that the Commonwealth's creation effected "significant changes in Puerto Rico's governmental structure." It then quoted at length, and with apparent approval, from Chief Judge Magruder's observations in Mora v. Mejías, 206 F.2d 377 (1st Cir. 1953) that "Puerto Rico has thus not become a State in the federal Union like the 48 States, but it would seem to have become a State within a common and accepted meaning of the word . It is a political entity created by the act and with the consent of the people of Puerto Rico and joined in union with the United States of America under the terms of the compact."

Two years later, in Examining Board v. Flores de Otero, 426 U.S. 572 (1976), the Supreme Court again examined the juridical nature of Puerto Rico's Commonwealth status and held that for purposes of Section 1983 jurisdiction the island enjoyed the same attributes of sovereignty as a State of the Union. The Court found that "the purpose of Congress in the 1950 and 1952 legislation was to accord to Puerto Rico the degree of autonomy and independence normally associated with States of the Union [. . .]." The Court reasoned, moreover, that through the establishment of the Commonwealth, "Congress relinquished its control over the organization of the local affairs of the island and granted Puerto Rico a measure of autonomy comparable to that possessed by the States."

Six years later, in Rodriguez v. Popular Democratic Party, 457 U.S. 1 (1982), the issue before the Supreme Court was whether a local political party could be granted statutorily the power to fill an interim vacancy in the Puerto Rican Legislature. Arguing for the PDP, former Justice Abe Fortas wrote,

> The Commonwealth of Puerto Rico, as this Court has stated, "occupies a relationship to the United States that has no parallel in our history". Califano v. Torres 435 U.S. at 3, 98 S.Ct. at 907, fn. 4. That it is an "autonomous political entity," "in the framework of the compact agreed upon with the United States" has been recognized by formal action and resolution of the United Nations on the basis of representations of the United States.

Fortas added,

> There can be no doubt that the Commonwealth of Puerto Rico has "freedom from control or interference by the Congress in respect of internal government and administration . . . " Mora v. Mejias, 115 F.Supp. 610 at 612 (D.P.R. 1953) (Three-Judge Court), quoted in Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. at 674, 94 S.Ct. at 2087. The Compact between the United States and the people of Puerto Rico incorporated the repeal of most of the provisions of the Organic Act of 1917, including repeal of the Bill of Rights contained therein and the provisions for local government. The provisions of the Organic Act that were continued by the Compact were directed to the interrelationships of Puerto Rico and the United States: Affirmation that Puerto Ricans are citizens of the United States; that Puerto Rico is free of United States Internal Revenue laws; that trade between the two shall be free of export duties; and that the rights, privileges and immunities of citizens of the United States shall be respected in Puerto Rico.

The Court, agreeing with the PDP's position, accorded the same deference to the Puerto Rico Legislature that it accords the States, "Puerto Rico, like a state, is an autonomous political entity, 'sovereign over matters not ruled by the Constitution.'" Based on the principle that fundamental constitutional rights apply to the people of Puerto Rico, the Court concluded that "it is clear that the voting rights of Puerto Rico citizens are constitutionally protected to the same extent as those of all other citizens of the United States." In reaching this conclusion the Court cited approvingly the following excerpt from a decision authored by then Circuit Judge Stephen Breyer in Cordova & Simonpietri Ins. Agency Inc. v. Chase Manhattan Bank N.A., 649 F. 2d 36, 39-42 (1st Cir. 1981),

> [In 1952] Puerto Rico's status changed from that of a mere territory to the unique status of Commonwealth. And the federal government's relations with Puerto Rico changed from being bounded merely by the territorial clause, and the rights of the people of Puerto Rico as United States citizens, to being bounded by the United States and Puerto Rico Constitutions, Public Law 600, the Puerto Rican Federal Relations Act and the rights of the people of Puerto Rico as United States citizens.

Between Flores de Otero (1976) and Rodriguez (1982), the Supreme Court delivered a very short per curiam decision that has been misinterpreted by anti-Commonwealth sectors in Puerto Rico, by some federal courts and by the Task Force. In Harris v. Rosario, 446 U.S. 651 (1980), the Supreme Court held that Puerto Rico could receive less assistance than the States under the Aid to Families with Dependent Children Program. In a two paragraph decision, the Court found that Congress pursuant to the Territory Clause of the U.S. Constitution could treat Puerto Rico differently than the States so long as there is a rational basis for its actions.

The Task Force Report interprets Harris as holding "that Puerto Rico remains fully subject to congressional authority under the Territory Clause." But that reading confuses what Harris is about and ignores that the U.S. Supreme Court has clearly recognized that Puerto Rico enjoys full sovereignty over its internal affairs. If the Supreme Court said in 1976 that "Congress relinquished its control over the organization of the local affairs of the island and granted Puerto Rico a measure of autonomy comparable to that possessed by the States" and then in 1982 that Puerto Rico is "sovereign over matters not ruled by the Constitution" it is then wrong to interpret Harris in 1980 saying that Puerto Rico remains fully subject to congressional authority under the Territory Clause. These two notions are antithetical. So either the Supreme Court was twice contradicting itself, or Harris is being misread. We strongly believe the latter is the case.

The Supreme Court did not contradict itself. Harris deals with a federal assistance program, a legislative area within Congress' exclusive purview. It does not deal with the internal affairs of the Commonwealth. In ruling that Congress could treat Puerto Rico differently than a State for purposes of federal fund allocations, the Supreme Court was not suggesting that Congress retained its plenary powers over Puerto Rico under the Territory Clause. But there is even more to Harris.

The Supreme Court does say in Harris that Congressional power over Puerto Rico arises from the Territory Clause. That is a reflection of the Constitution's vintage. Its textual configuration reflects the conditions of its time. While Congress enjoys plenary powers pursuant to the Territory Clause, the Supreme Court has long recognized that Congress can relinquish such authority. It may do so, for instance, by admitting a Territory as a State, in which case Congressional power over the former Territory is transformed from plenary to limited under U.S. Constitution Article 1. While Puerto Rico did not become a State on July 25, 1952, Congress did relinquish (as the Supreme Court has consistently found) the same powers over Puerto Rico that it relinquishes when admitting a Territory as a State of the Union. In the case of the Commonwealth of Puerto Rico, while the remaining Congressional powers are exercised pursuant to the Territory Clause, for lack of a more specific source of constitutional authority, those powers are no longer plenary.

The courts and the U.S. Justice Department before 1990 have long recognized that the territorial power, like other federal powers, demands flexibility on the part of Congress and hesitation on the part of those who like the authors of the Task Force Reports would confine the exercise of those powers to rigid or arbitrary categories. In 1963 the U.S. Justice Department saw this very clearly, and quoted a memorandum written by future Justice Felix Frankfurter in 1914 when he was a law officer in the U.S. Department of War:

> The form of the relationship between the United States and [an] unincorporated territory is solely a problem of statesmanship. History suggests a great diversity of relationships between a central government and [a] dependent territory. The present day shows a great variety in actual operation. One of the great demands upon creative statesmanship is to help evolve new kinds of relationship[s] so as to combine the advantages of local self-government with those of a confederated union. Luckily, our Constitution has left this field of invention open. The decisions in the Insular cases mean this, if they mean anything; that there is nothing in the Constitution to hamper the responsibility of Congress in working out, step by step, forms of government for our Insular possessions responsive to the largest needs and capacities of their inhabitants, and ascertained by the best wisdom of Congress.

Eight years later, the Office of Legal Counsel, under then-Assistant Attorney General William H. Rehnquist, expounded on Frankfurter's functionality argument:

> [T]he Constitution does not inflexibly determine the incidents of territorial status, i.e., that Congress must necessarily have the unlimited and plenary power to legislate over it. Rather, Congress can gradually relinquish those powers and give what was once a Territory an ever-increasing measure of self-government. Such legislation could create vested rights of a political nature, hence it would bind future Congresses and cannot be "taken backward" unless by mutual agreement.
>
> That is precisely what Flores de Otero holds with respect to Puerto Rico.

A thorough reading of Harris, moreover, reveals that Congress' relinquishment of powers over Puerto Rico went beyond matters of internal governance. Even with regards to the allocation of federal funds, the Supreme Court makes clear in Harris that Congress cannot exercise unrestricted powers over Puerto Rico. It can only treat Puerto Rico differently to the extent there is a rational basis for doing so. If Congress had plenary powers over Puerto Rico, it would not need to have a rational basis to discriminate.

The Task Force Reports' erroneous reading of Harris constitutes their most fatal flaw. It leads their authors to make the colossal mistake of asserting that, "[a]s long as Puerto Rico remains a territory of the United States, Congress may not impair the constitutional authority of later Congresses to alter the political powers of the government of Puerto Rico by entering into a covenant or compact with Puerto Rico or its residents." In the same way that a future Congress cannot de-admit Alaska, Hawaii or Texas, or revoke the independent status of the Philippines, it cannot reclaim powers relinquished to the people of Puerto Rico.

The federal circuit courts of appeals have also recognized that Puerto Rico is no longer merely an unincorporated territory. See e.g. United States of America v. Marco Laboy-Torres, 553 F. 3d 715, 721 (3rd Cir. 2009) ("Puerto Rico possesses 'a measure of autonomy comparable to that possessed by the States.'"); Emma Rodriguez v. Puerto Rico Federal Affairs Administration 435 F. 3d 378, 379-80 (DC Cir. 2006) ("Through popular referendum, the people of Puerto Rico approved Public Law 600's proposed allocation of power—supreme national power to the U.S. Congress and full local control to the Puerto Rican government . . . and then adopted

a . . . constitution."); Romero v. United States, 38 F. 3d 1204 (Fed. Cir. 1994) ("Congress approved the proposed Constitution of the Commonwealth of Puerto Rico, which thenceforth changed Puerto Rico's status from that of an unincorporated territory to the unique one of Commonwealth."); United States v. Quinones, 758 F.2d 40 (1st Cir. 1985) ("The authority of the federal government emanated thereafter from the compact itself. Under the compact between the people of Puerto Rico and the United States, Congress cannot amend the Puerto Rico Constitution unilaterally, and the government of Puerto Rico is no longer a federal government agency exercising delegated power.").

There is scattered case law asserting that Puerto Rico still is subject to the plenary powers of Congress under the Territory Clause. In U.S. v. Sµnchez, 992 F.2d 1143, 1151-53 (11th Cir. 1993) the Eleventh Circuit disagreed with consistent First Circuit case law and held that Puerto Rico is not a separate sovereign for purposes of the dual sovereignty exception to the Double Jeopardy Clause. That patently wrong view is supported by Judge Torruella out of the First Circuit, who espoused it in his dissident opinion in United States v. Lopez Andino, 831 F.2d 1164 (1st Çir.1987) and then slipped a line to that effect writing for the majority in Davila-Perez v. Lockheed Martin Corp., 202 F.2d 464, 468 (1st Cir. 2000) (holding that Puerto Rico is a territory under the Defense Base Act). All of these cases rely on the same erroneous interpretation of Harris v. Rosario. These cases have been wrongly decided and must be discarded.

Both the constitutional history of the relationship between the United States and Puerto Rico and the relevant Supreme Court cases confirm that Puerto Rico's Commonwealth status is predicated upon a binding compact, created through the mutual consent of the sovereign parties and revocable, likewise, only by the mutual consent of such parties.

The Task Force Reports' blatantly outrageous conclusion that the United States can unilaterally cede the Commonwealth of Puerto Rico, without the consent of its people, to any foreign country of its choosing is not only superficial and highly un-American but also without any legal merit.

B. The U.S. Citizenship of the People of Puerto Rico

The drafters of the Task Force Reports also adhere to the unfounded notion that Congress can rescind the U.S. citizenship of the 4 million Puerto Ricans born in the island. The Task Force Reports adamantly suggest that "[i]ndividuals born in Puerto Rico are citizens of the United States by statute (rather than by being born or naturalized in the United States)," and that as such "if Puerto Rico were to become an independent sovereign nation, those who chose to become citizens of it or had U.S. citizenship only by statute would cease to be citizens of the United States, unless a different rule were prescribed by legislation or treaty [. . .]."

It is a well-settled principle of federal law that the citizenship rights of people born in Puerto Rico are protected by the constitutional guarantees of due process and equal protection of the laws emanating from the U.S. Constitution.

The history of the U.S. citizenship of the Puerto Rican people begins with the 1899 Treaty of Paris, which provided that, "[t]he civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress." The Foraker Act, enacted on April 12, 1900, put an end to military rule and established a civil government in the island. But it was not until the enactment of the 1917 Jones Act that Puerto Ricans were granted U.S. citizenship. The 1940 Nationality Act, moreover, defined "United States" as "the continental United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands of the United States," and determined that the people who were born "in the United States" were citizens at birth. The 1952 Immigration and Nationality Act, from which most Puerto Ricans today trace their U.S. citizenship, tracked the language of the 1940 statute.

The Citizenship Clause of the Fourteenth Amendment states, "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." By its terms, the text of the Fourteenth Amendment extends American citizenship to persons born or naturalized "in the United States." The Commonwealth of Puerto Rico is certainly "in the United States," as specifically acknowledged in the Immigration and Nationality Act and elsewhere. Thus, the people of Puerto Rico clearly qualify as "constitutional" or "Fourteenth Amendment" citizens.

The Supreme Court has interpreted the Fourteenth Amendment as granting irrevocable constitutional citizenship to those persons born within a jurisdiction such as Puerto Rico. In the Slaughter-House Cases, 83 U.S. (16 Wall.) 36 (1872), the Supreme Court directly rejected the claim that only citizens of a State are United States citizens under the Fourteenth Amendment. The Court found inter alia that

"[. . .] persons may be citizens of the United States without regard to their citizenship of a particular State, and . by making all persons born within the United States and subject to its jurisdiction citizens of the United States."

In light of the Slaughter-House Cases and the Supreme Court's common-law interpretation of the Citizenship Clause, it is clear that persons born "within the United States"—such as the people of Puerto Rico—are constitutional U.S. citizens. In Afroyim v. Rusk, 387 U.S. 253, 262 (1967), the Supreme Court explained that Congress cannot revoke Fourteenth Amendment citizenship,

> [The Fourteenth Amendment] provides its own constitutional rule in language calculated completely to control the status of citizenship: 'All persons born or naturalized in the United States . . . are citizens of the United States . . . ' There is no indication in these words of a fleeting citizenship, good at the moment it is acquired but subject to destruction by the Government at any time. Rather the Amendment can most reasonably be read as defining a citizenship which a citizen keeps unless he voluntary relinquishes it.

Thus, Afroyim makes clear that Congress may not rescind or revoke the U.S. citizenship of people born in Puerto Rico. The Task Force Reports' contrary conclusion is patently incorrect. The Supreme Court has only recognized one revocable variant of U.S. Citizenship. Both the 1940 Nationality Act and 1952 Immigration and Nationality Act, as well as subsequent federal statutes, contain provisions regarding persons born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States. They are regarded as U.S. Citizens, but if they fail to reside in the United States or its outlying possessions for a prescribed period or periods of time between given ages, they automatically, by statute, lose that citizenship.

Quite clearly, the people of Puerto Rico do not fall under this latter category. Puerto Ricans are born in the United States for purposes of the Fourteenth Amendment. Their citizenship, thus, is irrevocable.

Rather than designing a process whereby all three options—namely commonwealth, statehood and independence—are voted on side-by-side, H.R. 2499, in accordance with the Task Force Report, adopted a rigged two-step process designed to kill the commonwealth option in the first round of voting. However, H.R. 2499 was amended before its consideration by the House of Representatives in the second round and the commonwealth option was included. Hence, the initial round is superfluous, unnecessary and wasteful. This committee must recommend its elimination. But the second round, as an only round, would still have problems. In a study conducted in 1985 at the request of the late Senator Kennedy, the Library of Congress examined the statehood processes of all the territories and identified as one of the traditional requirements for statehood that a majority of the electorate wish it. The four option plebiscite in H.R. 2499 is likely to produce only a plurality for the prevailing option. If the statehood option were to obtain that plurality in a "federally sanctioned process", you will have to deal with the unprecedented situation of admitting a new state against the will of the majority of its population.

An obvious solution is to require a majority vote for any change of status. Since one generation of voters would be deciding on behalf of all subsequent generations and simple majorities may result from purely temporary sentiments, you should consider whether requiring a supermajority of votes is more prudent. The way to obtain a majority vote in this situation is to hold a runoff election between the two most voted options.

Another defect of this bill is that it presents statehood as an option without having conducted a feasibility study. The Library of Congress' 1985 analysis reveals that one of the traditional requirements for statehood is "that the proposed new State has sufficient population and resources to support State government and at the same time carry out its share of the cost of the Federal Government." The Congressional Budget Office must conduct such an analysis before the people vote. It is unfair to all parties to do it after the votes are cast.

The other major defect of this bill is that it contains nothing in terms of implementation of the results. As indicated earlier, if the Senate sanctions this process it will become morally bound to respect its results. Failing to provide for an implementation process will only lead to chaos. We already know how the statehood party intends to force statehood down the Senate's throat. But what if Commonwealth prevails and we wish to propose some enhancements to its current structure?

The bill should address this issue. It should provide for the people of Puerto Rico to convene in a constitutional convention.

As contended above, the second ballot prescribed by H.R.2499 should allow the voters the option of continuing and enhancing Puerto Rico's Commonwealth status.

Thus, H.R. 2499's voting process has to recognize the voting rights of Puerto Rico's voters to choose within that second vote the enhancing of the Commonwealth.

During his campaign, President Obama made a commitment that his Administration would openly engage the people of Puerto Rico in engineering a "genuine and transparent process of self-determination that will be true to the best traditions of democracy." He said:

> As President, I will actively engage Congress and the Puerto Rican people in promoting this deliberative, open and unbiased process, that may include a constitutional convention or a plebiscite, and my Administration will adhere to a policy of strict neutrality on Puerto Rico status matters. My Administration will recognize all valid options to resolve the question of Puerto Rico's status, including commonwealth, statehood, and independence.

As President of the Popular Democratic Party, I encourage Congress to insist upon a real self-determination mechanism that will not force statehood upon the people of Puerto Rico, and instead to support a process that will provide productive and democratic options. H.R. 2499 still does not do that.

Moreover, the results of the proposed plebiscite in this bill will make sense only if Congress legitimizes it, by amending the bill and clearly ratifying the results as "federally sanctioned". If not, the process will be a beauty contest.

My party and I believe that the true way of dealing with the status issue of Puerto Rico is, as stated before, providing for the people of Puerto Rico to convene in a Constitutional Convention. It will allow a true democratic and self determination process with the participation and representation of all the political sectors. HR 2499 is not a true democratic and self determination process. Thank you.

The CHAIRMAN. Thank you very much for your testimony.

Next, Senator Berríos Martínez, we're very glad to welcome you here as the President of the Puerto Rican Independence Party. Please, go right ahead.

STATEMENT OF RUBÉN ANGEL BERRÍOS MARTÍNEZ, PRESIDENT, PUERTO RICAN INDEPENDENCE PARTY

Mr. BERRÍOS MARTÍNEZ. Thank you.

Mr. Chairman and members of the committee, the people of Puerto Rico have an inalienable right to self-determination and independence. We are now in the 21st century, and yet Puerto Rico is still colony of the United States, or as you prefer to call it, an unincorporated territory. It is up the people of Puerto Rico to decide how and when we should exercise our right of self-determination.

But the United States has the legal and moral obligation to respect self-determination which is, under your Constitution, part of the supreme law of the land.

Congress has repeatedly refused to facilitate a process for Puerto Rico to exercise its right to self-determination. Moreover, Congressional inaction forces us to live under a colonial straitjacket which has pushed Puerto Rico to economic, social, and moral bankruptcy which you have seen described here today. Right now, back home, our people are demonstrating their frustration, despair, and indignation, including a strike in the University of Puerto Rico where the students are mercilessly tried at this moment as if they were criminals. That is the shameful reality of the territory after 112 years under U.S. sovereignty.

The U.S. House of Representatives responds with H.R. 2499, which is now before you. Cynically entitled "The Puerto Rican Democracy Act," the bill purports to advance the principle of self-determination, yet it proposes the continuation of the colonial status of unincorporated territory—not once, but twice—as an alternative

to the problem of territorial subordination, even against the original purpose of its sponsors. It adds insult to injury.

Of course, it could have been worse. Instead of, or in addition to the present territorial relation, someone might have thought of including, some modified form of commonwealth along the lines of what Senator Bingaman has characterized in the past, as has already been mentioned, "free beer and barbecue" offer.

Colonial rule, consented or not, constitutes a denial of the elementary principle of democracy which requires participation of the governed in determining the laws under which they live. A democratic colony is a contradiction in terms. Slavery or apartheid would not have been less abominable had they enjoyed popular support, because it would have been presumed to be the consequence of manipulation, intimidation, and deception. Likewise, colonialism with consent is, by definition, only apparent, for it is the product of collective coercion.

The territorial status of Puerto Rico still stands because such has been the will of the United States. For many years you have shunned and criminalized independence. Now you cringe at the mere thought of a Statehood petition, because granting statehood to a Latin American and Caribbean nation, like Puerto Rico, is incompatible with your national interests. Therein lies the reason behind the contradictory nature of H.R. 2499. The United States is not, and does not aspire to be, a multinational state; multicultural, maybe. Multinational, never.

Those of us in Puerto Rico who respect ourselves and believe in democracy and self-determination repudiate this hoax that perpetuates colonialism. We will denounce it in Puerto Rico and before the international community.

What should Congress do, then? It should simply declare its intention to put an end to colonial rule in Puerto Rico by disposing of the territory, and commit itself to receive and act upon a proposal for decolonization formulated by the people of Puerto Rico through a procedural mechanism of its choice, among alternatives recognized by international law. That is, independence, integration, and free association.

Puerto Ricans—and I am sure I speak here for the great majority of our people—are sick and tired of the condescending and cavalier attitude of the U.S. Government. Enough is enough.

More than one hundred years of colonialism have not broken our national spirit. Regardless of your decision concerning H.R. 2499, you will never admit Puerto Rico as a State because we are a separate nation. Precisely because we are a nation, in the end, freedom for Puerto Rico will prevail and we will be masters of our own destiny.

Thank you very much.

[The prepared statement of Mr. Berríos Martínez follows:]

PREPARED STATEMENT OF RUBÉN BERRÍOS MARTÍNEZ, PRESIDENT, PUERTO RICAN INDEPENDENCE PARTY

Mr. Chairman and Members of the Committee:

The people of Puerto Rico have an inalienable right to self determination and independence. We are now in the 21st century, and yet Puerto Rico is still colony of the United States, or as you prefer to call it, an unincorporated territory. It is up to our people to decide how and when we should exercise our right of self deter-

mination. But the United States has the legal and moral obligation to respect self determination which is, under your Constitution, part of the supreme law of the land.

Congress has repeatedly refused to facilitate a process for the exercise of the right to self determination. Moreover, Congressional inaction forces us to live under a colonial straitjacket which has pushed Puerto Rico to economic, social and moral bankruptcy. These are not just words. Right now, in Puerto Rico our people are in the streets, expressing their frustration, despair and indignation. That is the shameful reality of the territory after 112 years under U.S. sovereignty.

And the U.S. House of Representatives responds with H.R. 2499, which is now before you. Cynically entitled the Puerto Rico Democracy Act, the bill purports to advance the principle of self determination. Yet, it proposes the continuation of the colonial status of unincorporated territory—not once but twice—as an alternative to the problem of territorial subordination, even against the original purpose of the proponents of the bill.

H.R. 2499 adds insult to injury.

Of course, it could have been worse. Instead of including the present territorial relation, someone might have thought of including, instead of or in addition to, some cosmetically modified form of commonwealth along the lines of what Senator Bingaman has characterized in the past as "free beer and barbecue".

Colonial rule, consented or not, constitutes a denial of the elementary principle of democracy which requires participation of the governed in determining the laws under which they live. There is no such thing as a democratic colony. It is a contradiction in terms, at best, a gilded cage. Slavery or apartheid would not have been less abominable had they enjoyed popular support, because it would have been presumed to be the consequence of manipulation, intimidation and deception. Likewise consent to colonialism is by definition only apparent, for it is the product of collective coercion.

The territorial status of Puerto Rico still stands simply because such has been the will of the United States. For many years you have shunned and criminalized independence. Now you cringe at the mere thought of a petition for statehood because granting statehood to a Latin American and Caribbean nation like Puerto Rico is incompatible with your national interests. Therein lies the reason behind the contradictory nature of H.R. 2499. The United States is not, and does not aspire to be, a multinational state; multicultural maybe, multinational never.

Those of us in Puerto Rico who respect ourselves and believe in democracy and self-determination repudiate this fraudulent maneuver designed to perpetuate colonialism and allow Congress to avoid facing its decolonizing obligation. We will denounce this hoax in Puerto Rico and before the international community.

What should Congress do? It should simply declare its intention to put an end to colonial rule in Puerto Rico by disposing of the territory, and commit itself to receive and act upon a proposal for decolonization formulated by the people of Puerto Rico through a procedural mechanism of its choice, among alternatives recognized by international law.

Puerto Ricans—and I am sure I speak for the great majority of our people—are sick and tired of the condescending and cavalier attitude of the U.S. government so crudely reflected in H.R. 2499. Enough is enough.

More than one hundred years of colonialism have not broken our national spirit nor diminished our profound sense of identity as a Latin American and Caribbean nation. Regardless of your decision concerning H.R. 2499, you will never admit Puerto Rico as a state because we are a separate nation. And precisely because we are a separate nation, in the end, freedom for Puerto Rico will prevail and we will be masters of our own destiny.

The CHAIRMAN. Thank you very much.

Thank you, all, for your testimony.

Let me start with 5 minutes of questions, and then defer to my colleagues, here, for their questions.

Governor Fortuño, H.R. 2499 was significantly altered when an amendment was adopted adding continuation of the present Commonwealth relationship as a fourth option in the second round of voting. Given the addition of Commonwealth to this second vote, wouldn't it make more sense to just eliminate the first vote? What purpose does the first vote now serve?

Governor FORTUÑO. Mr. Chairman, you bring an excellent point and actually the intent really was to understand whether the people of Puerto Rico desired to address this issue now, or not. That was the intent of the first vote. If the second round is going to include the 3 constitutionally viable alternatives, plus the current territorial status option then, indeed, perhaps it will make sense to have just one vote amongst—with the 4 alternatives: 3 that are permanent in nature, and one that is, really, the current territorial status and will not solve the issue.

I do have to say that I understand what Mr. Berrios is saying, on behalf of the Independence Party, because, you know, whether the problem could be part of the solution is a big question. If we want to solve this once and for all, it should be the 3 constitutionally viable options. But, if we simply want to poll how the people of Puerto Rico feel about this, then the 4 options should be there, and there should be only one vote.

The CHAIRMAN. Let me ask one other question, Governor. In your testimony, you say the U.S. Congress needs to act, quote, "Because there is a patently obvious need for the Territory's real options to be clarified." H.R. 2499 goes beyond defining the options, however, by authorizing these 2 rounds of voting. Wouldn't this objective of defining the options be achieved more easily by a simple sense of the Congress Resolution that would identify the options available under U.S. law, and then leave the mechanics of the process to the Government of Puerto Rico?

Governor FORTUÑO. Let me first tell you that, as Governor of 4 million American citizens residing in Puerto Rico, what I pledged to do was to try to get Congress to actually sponsor a process—a balanced and fair process—so that the voters would be guaranteed that they had a fair process. However, if that were not possible, certainly a clarification of what the options are is needed. I'll tell you why.

We all know what Statehood means, and there are 50 successful examples of that. We all know what independence means, and we all know what the present territorial status means. But then, there's a fourth option that, I believe, also has to be clarified, and that is the free association option. If I may, I have some documents to introduce into the record.

Free association actually started being discussed openly in 1998 when the Governing Board of the Commonwealth Party approved a definition—a definition that I will introduce for the record, with an English translation. That definition, 1998 definition, is included in the PDP Training Manual that they put out in September—on September 1, 2009. Essentially, this manual states very clearly that the 1998 definition that I just mentioned earlier is the, and I quote, "Institutional definition of the Party." It relates to what they have told the voters in Puerto Rico that's doable. Essentially, they had said that we could retain American citizenship, we would retain all of the Federal funding that we're getting today and, actually, then some more. We will pay no Federal taxes; that we could have veto power over the legislation that you approve here; that we could even pick and choose which wars we like or we don't like, and that we could even decide when there is Federal jurisdiction at the court level on different issues. We all know that's not doable,

but that's what they've sold to the people as late as September 1, 2009, in their Manual.

This year, on January 18, 2010, they're converting more, again, actually approve a resolution, and I have a full resolution, and a section in English—English translation that is relevant to this issue—where they state again, and they refer to the Manual as a definition they will be using. So, again, they're using the 1998 definition, and I think it's fair for the 4 million American citizens residing in Puerto Rico to understand, if that deal is doable, you may have 50 requests for the same deal, but that will be your problem. But, we all need to know whether that's doable or not doable.

The CHAIRMAN. My 5 minutes is up.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

As I mentioned in my opening remarks, the issue with Alaska Statehood is somewhat different than where we are, currently, with Puerto Rico. At the time that Alaska petitioned Congress for Statehood, it did so backed by a referendum that showed that—there was an overwhelming number of Alaskans that were in support, it was about a 2 to 1 ratio on the issue. Given the results that we've seen in the last several plebiscites, there's clearly not a majority that's represented in support of any one option, much less a supermajority.

So, the question I have to each one of you this morning is, given that the population, obviously, is conflicted on this, what do you believe the Federal role should be at that point in time?

Governor, I heard you to say that it's important for us to clarify the status of the options. Mr. Ferrer Rios, you suggested that you're not quite sure what role the Congress has. But it's important, I think, for us to understand what that role appropriately should be. So, if I could ask each one of you to clarify what you believe the Federal role on this issue should be at this point.

Mr. Berríos Martínez.

Mr. BERRÍOS MARTÍNEZ. I think it was very clear about the role of the U.S. It has an obligation to de-colonize Puerto Rico. Therefore, the only real option should be to proclaim to the world——

Senator MURKOWSKI. Should we do that when we're not quite certain what the people of Puerto Rico wish?

Mr. BERRÍOS MARTÍNEZ. No, no. Wait a minute. It's clear, in my statement, what you should do. What you should say is you—have the obligation to de-colonize Puerto Rico, to dispose of the territory, because free determination means that.

Now, how and when we should freely determine what option we shall use, that's up to us in Puerto Rico. That's not up to Congress. So, I'm proposing that Congress merely states its decolonizing obligation under international law, which is part of the law of this land, of the United States, and then tell the Puerto Rican people, "We are willing to receive your petition, under the conditions and through the mechanisms you choose in order to make that petition." We, the Puerto Rican people, then—I will propose a constitutional assembly among alternatives recognized by international law, that is, free association, integration, or independence. Other people, like Governor Fortuño, will propose a plebiscite between those 3 alternatives. That's what I'm telling you. Your only obliga-

tion is to fulfill your obligation to decolonize, announcing to the world that you have a duty to decolonize Puerto Rico and that you are willing to receive the petition, and then you shall speak. As for independence, you have nothing to speak about, because we have an inalienable right—if we petition for independence, there's no option. We are independent.

Senator MURKOWSKI. Let's go on to the others, here, because I have limited time. If I can get responses from Mr. Berríos——

Mr. RIOS. Yes, Madam Senator.

The people of Puerto Rico knows what Commonwealth is. We've been living in Commonwealth for the past 60 years. An option that was validated by the U.S. Government, here in Congress, and the United Nations. What the people of Puerto Rico don't know is Statehood. That's why, in my remarks, I urge Congress and this Senate to explain to the people of Puerto Rico the consequences of Statehood for them. Because we don't know what Statehood is. What we have to engage in order to become a State. I think the people of Puerto Rico deserve to know, because Mr.—Governor Fortuño's Party say that Statehood can be in Spanish. That Statehood can be with our Olympic team, and all those—all those may be simple things for this committee, Spanish is really important for Puerto Rico. Our Olympic team is part of our culture, big things for our people.

So, the right thing for—to do for—of the Senate is to explain, outline, and define what Statehood means, and the consequences for the people of Puerto Rico.

Senator MURKOWSKI. Governor.

Governor FORTUÑO. Yes, and I thank you for the question.

I would respectfully pose to you that if the "free beer and barbeque" option had been one of the options in Alaska, you would not have gotten a 2 to 1 margin. The issue, here, is that we need to understand what the options are. I think people know what Statehood means in Puerto Rico. Actually, more than half of Puerto Rican-Americans have moved to the mainland, so they clearly understand what it means. But, we need to understand what all the options are.

There are 4 options. There is the present territorial status——

Senator MURKOWSKI. Do you believe there's only 4, or are there more?

Governor FORTUÑO. There are 4 options. I mean, there is the present territorial status, which will not solve this issue. You will be seeing us coming back over and over again for decades. Then there are 3 options that will solve this once and for all: independence, Statehood, and free association which has been, historically, the position—at least since 1998 until January of this year—the position of the Commonwealth Party. I understand that they may be backtracking on that, but that has been, historically, their position and the people need to understand what it means.

At the very least, if I may say so, on behalf of the 4 million American citizens residing in Puerto Rico, we would ask Congress to clearly define what the options are. We may have a process, locally, if that's what it takes at the end of the day, but our—the American citizens residing in Puerto Rico—deserve to know what the options are.

If I may, I want to end with this. The Founding Fathers never intended for territorial status to last 112 years. I'm sure they never did. We need to end this once and for all. It doesn't help anyone in the process. Actually, if at the end of the day you could clarify those options for us, I'm sure we could agree on how to address them. I pose that the majority of people want the voters to decide that—that's the American way, that's the way things are done in America. You vote, and you vote up or down what do you want to do. But you must understand what the alternatives are.

Senator MURKOWSKI. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Menendez.

Senator MENENDEZ. Mr. Chairman, this is a very serious and complicated issue. I hope the chair—since you've decided to hold this hearing—is going to give adequate time for questions beyond the 5 minutes, I have many. Since I didn't make an opening statement and this is an issue that I have followed for some time, I want to preface it with a statement.

That is, first and foremost, I appreciate the distinguished panel we have before us. I've had the pleasure of interacting with all of them at one time or another. I appreciate the Resident Commissioner and the work he's doing on behalf of the people of Puerto Rico and I have worked with him on healthcare and other critical issues for the economy of Puerto Rico, and probably have been their strongest advocate here in the U.S. Senate.

Puerto Ricans have given a great deal to our Nation, through their contributions to our economy, and to the Armed Forces of the United States. I'm reminded of the 65th Infantry Regiment, an all-Puerto Rican Division, "Los Borinqueneeros," who actually were among the most highly decorated in the military history of the United States. So, they have worn the uniform and they have died for this Nation. They deserve, as such, a process toward self—true self-determination—that is fair and balanced.

That has been my position for 18 years in the U.S. Congress. I have always said, when it comes to Puerto Rico, we must have an unstacked, and unbiased process that allows the people of Puerto Rico to determine their own future. I believe that the issue is not whether you support Statehood, independence or Commonwealth, the issue is creating a process that is fair. The bottom line is that any rigged process creates a false outcome, and the people of Puerto Rico deserve a fair and transparent process with an outcome that can, ultimately, be supported.

I, for one, if we have a fair and balanced process, one that is not rigged, am happy to state—as I have stated for over 18 years, and not every member of the Congress that I have heard who supposedly "supports" the idea of a plebiscite is, then, willing to support the outcome of a plebiscite. A fair, balanced, and unbiased plebiscite, I for one, am ready to support the position of the people of Puerto Rico. Whether that be Statehood, continuation of the Commonwealth, or independence. I would love to challenge my colleagues to make those statements, as well.

For many people, the idea of a plebiscite or a referendum by the people sounds like a good idea. Why not let the people vote on the option to determine their future? But I truly wonder if the people of Puerto Rico need to be instructed by Congress how to determine,

for themselves, the best approach? I think any process needs to have a clear and complete comparison between the 3 options, and I really wonder whether or not this particular way that this has been structured, if you want to say, "Yes, the Congress should have—be the instigator of a process," whether or not the two-step process is one that actually meets the test of not being stacked in a specific way.

I think that the issue of the status of Puerto Rico not only affects the lives of all Puerto Ricans, it affects their economy, and their language, and their customs, and their daily lives, and all of that needs to be, honestly, understood at the end of the day.

So, let me start with 1 or 2 questions in the time I have left.

Governor, and any of you, isn't the two-step process, really, a way in which—clearly, the distinguished Senator, head of the Independence Party, wants to see independence for the people of Puerto Rico, clearly you, Governor, as the head of the Statehood Party wants to see a change in the status and you want to see a Statehood. So, the first option, automatically, the union of both of your parties toward that option, means that that vote is predetermined.

Governor FORTUÑO. If I may, first of all, Mr. Senator, I want to commend you and thank you for standing up for the American citizens residing in Puerto Rico on so many issues in the last 16 months, and before that, of course. I must say, publicly—and I've stated this in Puerto Rico—that you stood up for what was right. I thank you on behalf of the 4 million Americans residing in Puerto Rico—not just on healthcare, but on many other issues where you have been up in center, really, defending our rights and obligations. If we had 2 Senators here, we would not have, really, been bothering you all the time, really. But we thank you, anyway, for everything you've done so far.

Trying to address your question—and I believe I did, somewhat, address the question earlier. The idea of the two-step process was to understand whether the voters wanted to change, and then address the status options that are viable in a free vote.

However, especially given the way this bill was amended in the House, it probably makes no sense, any longer, to have a two-step process, it probably makes sense to go straight to a—to one vote on the 4 options.

If I may, because you mentioned 3, I think it's important that I mention that there are really 3 that are permanent in nature, but we should allow those that want to remain a territory, that option. There's a sizable group in the Commonwealth Party that don't want to remain as we are. That they want to move into free association. Actually, since 1998 until January of this year, that was the institutional position of the Commonwealth Party.

Whether it is, or not, actually there have been polls in the last month in Puerto Rico, and there is a group—somewhere between 17 and 18 percent that clearly, always, stand for free association. So, I believe, if we're going to do that, we should have the 3 options that are permanent—that is, Statehood, independence, and free association—and then the territorial status would just transitory in nature, even though we have been living as a territory for the last 112 years.

Senator MENENDEZ. So, in essence, you believe at this point that, based upon how the bill was amended in the House of Representatives that the first step should be eliminated?

Governor FORTUÑO. Probably. It makes—it really would make sense if we want to solve this once and for all. I sense pushback on the first round of votes. I sense that, to be open about this, here, that we move straight to the second vote.

However—and I must state this very clearly—the voters must understand that what Commonwealth means, as the author of that amendment states to Pedro Pierluisi and I, is the present status quo, which is a territorial status. That there are 3 options that are permanent in nature, and the 3 options should be there, as well.

Senator MENENDEZ. Mr. Chairman, I have many other questions, but I'll wait for a second round.

Mr. BERRÍOS MARTÍNEZ. Mr. Chairman, I would like to answer your question, also.

The CHAIRMAN. Senator Bunning has been waiting to ask questions, we will have another round, or 2, of questions, here. So, there will be opportunities to respond.

Senator Bunning.

Senator BUNNING. Thank you, Chairman.

Good to see you again, Governor.

Governor FORTUÑO. Likewise.

Senator BUNNING. Welcome, to all of our witnesses.

It's come to my attention you've had 3 plebiscites in Puerto Rico—1967, 1993, and 1998. None of them determined anything. Because the Congress and the plebiscites never connected.

Now, it's come to my attention that there's 2 pieces of legislation relevant to this referendum that have been filed in the legislature in Puerto Rico, S. 1407, and H.R. 2487, in the House. Both indicate that if the option of Statehood is chosen in this referendum, then 8 months later, Puerto Rico would move ahead and conduct the elections of Representatives and Senators to the U.S. Congress. Seeing how a pro-Statehood result is only the first step in what is certain to be a process longer than 8 months to join the Union, does it not seem premature to hold these elections before there are even seats to fill?

Governor FORTUÑO. Yes, indeed, I agree 100 percent. But, you know, the State legislators have a right to file whatever bills they want to file, and that's their right and I respect that. But——

Senator BUNNING. Then you're not—you, personally, are not supporting either one of them?

Governor FORTUÑO. No, I have stated very clearly that the process is different. That, let's assume we had a vote of 3 permanent options, or 3 plus the one that is transitory in nature. Let's assume Statehood carries the day. We will commence a process, really, for additional votes, and new—and actually, actual Federal legislation—to have a process as we have seen in other, in previous cases, where that issue will be decided, and it will probably end up being a Statehood, yes or no, vote at the end of the day. It's just the beginning of a process.

But don't—and I know a lot of people have been misleading, trying to mislead Congress as to filing of those bills. I have been very clear on this issue: that the next step would be coming back here,

probably having new Federal legislation, and having additional votes probably just on the status question that was approved. You need an enabling bill to move forward. You probably have more than one vote, as we have had in other previous territories.

Senator BUNNING. Do you all really—the 4 different options that we're talking about, here—do you need it written out? Do the people of Puerto Rico need to know exactly what a State has the responsibility of doing, or if you're an independent country? You don't need it. You think the average Puerto Rican is fully capable of making that determination?

Mr. BERRÍOS MARTÍNEZ. Yes, sir. I must tell you——

Senator BUNNING. No wait a minute.

Mr. BERRÍOS MARTÍNEZ. I'm sorry.

Senator BUNNING. I'm asking all 3 of you.

Mr. BERRÍOS MARTÍNEZ. OK.

Senator BUNNING. Do you really think that Statehood, independence, Commonwealth, and the current status is easily understood by the average voter in Puerto Rico?

Governor FORTUÑO. I believe the average voter understands fully what Statehood means. Actually, there are more Puerto Rican-Americans living—residing in the mainland than in Puerto Rico. So, they clearly——

Senator BUNNING. I understand that.

Governor FORTUÑO. I believe they understand what independence means. I believe they understand what our present territorial status means. They are confused by that—this fourth option——

Senator BUNNING. Commonwealth.

Governor FORTUÑO. It's a free association option. Because they are being told that we could retain our American citizenship, enter into international treaties, have veto power over Federal legislation, retain all of the Federal funding we're getting today without paying a dime in income taxes at the Federal level, and actually even get an additional funding—trust——

Senator BUNNING. We don't have those kind of parties in——

Governor FORTUÑO. But that has to be clarified. Because otherwise you will have 50 requests for the same deal.

Senator BUNNING. Yes, sir.

Mr. BERRÍOS MARTÍNEZ. Senator.

Senator BUNNING. Yes.

Mr. BERRÍOS MARTÍNEZ. I must state—you asked first, why hasn't the petition from Puerto Rico found a common ground in this Congress. It's very simple.

Senator BUNNING. This Congress—not this Congress.

Mr. BERRÍOS MARTÍNEZ. Yes, previous——

Senator BUNNING. The Congress in 1998.

Mr. BERRÍOS MARTÍNEZ. Previous Congresses. It's very simple. Because this Congress and the U.S. Government is interested in maintaining the territorial status. If it weren't interested it would——

Senator BUNNING. Maybe some are.

Mr. BERRÍOS MARTÍNEZ. Yes, the majority. If the majority hadn't been——

Senator BUNNING. I'm not sure of that, either.

Mr. Berríos Martínez: Why are we still a territory if you don't want us to be a territory, can you answer that?

Senator BUNNING. Some of us would like to see you be independent.

Mr. BERRÍOS MARTÍNEZ. Perfect. You are——

Senator BUNNING. Some of us would like to see you in your current status. Some, I mean—there is a very divergence in the Congress of the United States.

Mr. BERRÍOS MARTÍNEZ. But we have petitioned different ways, and you have always refused the procedures—even when we came here, all of us——

Senator BUNNING. Because you send us such mixed messages. What was the last plebiscite? What was the result of it?

Governor FORTUÑO. None of the above.

Senator BUNNING. That's right. None of the above was the result.

Mr. BERRÍOS MARTÍNEZ. It is your obligation to decolonize. Your constitution obligation to announce to the world that you want Puerto Rico to——

Senator BUNNING. A hundred and some years ago, that wasn't our obligation.

Mr. BERRÍOS MARTÍNEZ. No, no. Now, now, now. It is the obligation of the United States——

Senator BUNNING. We have the same relationship, I can give you, right now, with Puerto Rico that we have with 3 other establishments.

Mr. BERRÍOS MARTÍNEZ. Other free nations?

Senator BUNNING. Yes.

Mr. BERRÍOS MARTÍNEZ. Of course. That's what I yearn for.

Senator BUNNING. No, no. I mean the same status that you, Puerto Ricans, now—the Marshall Islands, and others, have the same relationship as you do.

Mr. BERRÍOS MARTÍNEZ. No, no.

Senator BUNNING. No, no?

Mr. BERRÍOS MARTÍNEZ. No, no.

The CHAIRMAN. Why don't I——

Mr. BERRÍOS MARTÍNEZ. Some of them are free associations——

Mr. RIOS. Can I answer—can I answer the question?

Senator BUNNING. Three former——

Mr. RIOS. Can I answer the question?

Senator BUNNING. Three former territories have the same arrangement and associated with the United States——

Mr. BERRÍOS MARTÍNEZ. These are free association arrangements.

The CHAIRMAN. Right.

Senator BUNNING. Yes.

Mr. RIOS. Can, sir——?

Mr. BERRÍOS MARTÍNEZ. That's correct.

Senator BUNNING. OK, that's what I meant.

The CHAIRMAN. Senator Bunning, why don't we go with the—?

Mr. RIOS. Can I answer the first question? I wasn't allowed to answer the——

The CHAIRMAN. Let me ask you a different question, and then you can also answer that question.

Mr. RIOS. Sure.

The CHAIRMAN. But, I would like to start a second round of questions, here.

As I understand your statement, you said the bill was constructed—this is the legislation—as an unusual, and unprecedented two-round voting scheme to predetermine the outcome by producing an artificial Statehood majority. Would you support this bill if the first-round vote were eliminated? In that circumstance, there would then be only one vote, among the 4 options presented, including the current Commonwealth relationship. Would you support that?

Mr. RIOS. As long as it's a binding process, and——

The CHAIRMAN. You want it to be binding?

Mr. RIOS [continuing]. The United States—U.S. Congress commits with the results. But this bill, right now, is not binding.

The CHAIRMAN. Right, I agree.

Mr. RIOS. It's not binding. I want to——

The CHAIRMAN. Go right ahead, go ahead and respond to his question.

Mr. RIOS [continuing]. To answer the question of Senator Bunning, first of all, people know in Puerto Rico what Commonwealth is. People don't know what Statehood is.

Second, Mr. Governor, you ran on a platform saying that if Congress did not act in a year, year and a half, you will start a special election in Puerto Rico to elect 6 Congressmen and 2 Senators and start the Tennessee plan. That is in your platform, and what Senator Bunning's saying is correct. This bill—Senate bill 1407 and H.R. 2497, which are presented by your delegations, both of them contain that part—that section of your platform that took you to the victory in November 2008, and that's in your platform, and you have talked about the Tennessee Plan once, twice, 3, 4 and 5 times.

The CHAIRMAN. Let me ask one other question, Representative Ferrer, about your testimony on page 11. You state that the second ballot should allow the voters the option of continuing, and enhancing, Puerto Rico's Commonwealth status.

Mr. RIOS. Correct, sir.

The CHAIRMAN. Continuing the current relationship is an option under the House-passed bill. But the question arises as to what is meant by the enhancement, and whether these enhancements trigger constitutional or policy issues that we need to understand.

More specifically, would the Party continue to seek an enhancement, as an enhancement, the establishment of a, quote, "Permanent union with the United States under a covenant that cannot be invalidated—a covenant that cannot be invalidated or altered unilaterally"? Also, would the Party continue to support, quote, "A mechanism to approve or deny the application of legislation approved by the U.S. Congress"?

Mr. RIOS. Sir, first of all, what we have today, a Commonwealth, the compact that we have today, it was a presentation made by the U.S. Government 60 years ago, to the world. It says that what we were doing—the Puerto Rican Government and the U.S. Government.was right. That that action, and let me read what the representative of the United States said in the United Nations, he said, "A most interesting feature of the new constitution is that it will enter into—in the nature of a compact between the American

and Puerto Rican people. A compact, as you know, is far stronger than a treaty. A treaty usually can be denounced by either side, whereas a compact cannot be denounced by either party unless it has the permission of the other."

This is what the U.S. Government told the world about Puerto Rico. We have lived with that assumption for the past 60 years. Is there something wrong about this compact which is the law of the land, and has been at least 4 or 5 times seen in different Supreme Court cases as a valid, and constitutional, option, well, that's what—that was your offer to the people of Puerto Rico and your presentation to the world about the compact and the option that was given to the people of Puerto Rico.

The Commonwealth has good things about it, and it has flaws—just like independence, and just like Statehood. But, our position is that it is better, Commonwealth, than independence and Statehood, and that we have the right—like we did 60 years ago—to sit on a table with the United States, with Congress, the President, and try to enhance the Commonwealth. It has been done before—20 years ago, 30 years ago. The House passed a bill, it was a bill H.R. 4567, where it contained an enhancement of the Commonwealth, and that was passed on the House, so it has been done before, it can be done before. It's not a legal issue, it's a political will issue, and we're in favor of sitting down, anytime, with this committee and try to get to an agreement on an enhanced—on an enhancement Commonwealth.

The CHAIRMAN. Let me go ahead and call on Senator Murkowski for her additional questions.

Governor FORTUÑO. Mr. Chairman.

The CHAIRMAN. Yes.

Governor FORTUÑO. If I may, some statements were made that I, I think at some point I would love to be able to clarify them.

The CHAIRMAN. That's fine, I don't mind, but we're really not here talking about the various campaign platforms of the various parties.

Governor FORTUÑO. OK.

The CHAIRMAN. I think we're more focused on this particular legislation that's been proposed in the House, and——

Mr. BERRÍOS MARTÍNEZ. Senator? I agree with you, but it is about time you tell us what you are willing to do. We've told you what we're willing to do for 60 years, now. What is Congress willing to do?

The CHAIRMAN. That's the purpose of our hearing, is to try to get enough knowledge that we can make that judgment.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

I would hope that this is going to be an easy question for each of you. I think there have been some statements and assumptions that, "Puerto Ricans know what the definition of independence is, what the definition of Statehood—" I would like each of you, in a couple of sentences, or less, to describe your Party's definition of its political status option.

So, Governor, if you—as the pro-Statehood, if you could just, very succinctly define your political status option, that of Commonwealth, and that of independence.

Governor FORTUÑO. Statehood is the arrangement under the Federal system under which American citizens, residing in a body politic, can actually enjoy the same benefits and obligations that other citizens residing in other States have. That is very clear.

Senator MURKOWSKI. Commissioner.

Mr. RIOS. Yes, ma'am. I'm going to read from our governing platform. It's in Spanish, but I'm going to translate. "The concept of a sovereign Commonwealth seeks to have the Puerto Rican and U.S. Government agree on specific terms defining this mutual relationship, with American citizenship as the binding element of a political association. We support the autonomous development of the Commonwealth based on the principles of shared sovereignty, association, and responsibilities with the United States. Sovereignty means that the ultimate power of a nation to handle its affairs rests with the people. To address the status issue, we must begin by recognizing that the sovereignty rests with the people." That's what's written in our platform.

Senator MURKOWSKI. OK.

Mr. BERRÍOS MARTÍNEZ. Senator. I'm not—I don't know if you're a lawyer, but I am so I——

Senator MURKOWSKI. I'm a lawyer, and I would like your definition of the independence option.

Mr. BERRÍOS MARTÍNEZ. It's a res ipsa loquitor. All independent states in the world which are 200 and some-odd independent nations in the world are independent nations, and that's what we yearn for our land. Those principles that Jefferson, Madison, Washington fought for, that's what we want for our land—we want to command our own destiny. So, res ipsa loquitor.

Senator MURKOWSKI. Let me ask, the last status, which is free association.

Governor, you have suggested that it is, perhaps, confused or less understood—and you've spoken to that. Would the other 2 gentlemen agree that there is less clarity on the definition of that political status option?

Mr. RIOS. The way it is defined——

Senator MURKOWSKI. Because there is no one representing that, here.

Mr. RIOS. Correct. The way it's defined in the bill, it is confusing.

Senator MURKOWSKI. Would you agree, Mr. Berríos Martínez? Would you agree?

Mr. BERRÍOS MARTÍNEZ. The way the free association statement is defined in the bill?

Mr. RIOS. In the bill.

Mr. BERRÍOS MARTÍNEZ. It's defined by international law. It doesn't need to be defined that way.

Mr. RIOS. The CRS has a report—2 reports as a matter of fact—in that issue, and it says that it's vague. The definition of that third option is vague in this bill. I think we have it here, we can share it with you guys.

Governor FORTUÑO. Senator, the issue is that the position—official position of the Commonwealth Party has been quite different——

Mr. RIOS. No, it's not.

Governor FORTUÑO.—until January of this year, at least.

Mr. RIOS. No, it's not. No, it's not.

Governor FORTUÑO. I have the documents, you know.

Mr. RIOS. No, it's not.

Governor FORTUÑO. Again, the resolutions and what they put out——

Mr. RIOS. No, it's not.

Governor FORTUÑO.—that's why we're requesting that Congress step in——

Mr. BERRÍOS MARTÍNEZ. Why don't we stop fighting among ourselves and let you fight among——

Governor FORTUÑO.—define it.

Senator BUNNING [continuing]. Determination.

Governor FORTUÑO. That's why a definition is needed.

Mr. RIOS. No, it's not, sir.

Senator MURKOWSKI. If there are documents that you would like submitted to the record——

Mr. RIOS. We will.

Senator MURKOWSKI [continuing]. I think it's fully appropriate to provide them to the Chairman.

Mr. RIOS. We will.

Senator MURKOWSKI. Thank you, Mr. Chairman.

The CHAIRMAN. No, we—we're glad to include in our record whatever documents any of you would like to have included.

But, let me now call on Senator Menendez for additional questions.

Senator MENENDEZ. Thank you, Mr. Chairman.

You know, Mr. Ferrer, do—let me get this straight. Do you support, as one of the options in the plebiscite, the association—sovereignty in association with the United States?

Mr. RIOS. No. My Party does? No.

Senator MENENDEZ. OK. So, you do not. That's—that's why I'm confused, because when I only spoke of 3, I spoke of 3 because that was my understanding of the positions of the respective parties represented before us, and to me, sovereignty in association with the United States, I agree with Governor Fortuño. Not only are Puerto Ricans confused about it, but I am confused by it. I am both a legislator and a lawyer.

One of the concerns I have in sovereignty in association, is that if you defined it under international standards, under that definition, the people of Puerto Rico would not be considered citizens of the United States.

Mr. RIOS. Correct.

Senator MENENDEZ. I do not think—I do not think—that is—I would not think—maybe, I know Mr. Barrios would disagree—but I do not think that those who have citizenship want to give it up. So, I'm confused as to why we have sovereignty in association, if no one here supports it and, in fact, it is a clearly—a huge definitional problem, including a fundamental issue about those United States citizens in Puerto Rico who, under such a change, might very well lose their citizenship.

So, let me ask this question. In independence, it's rather clear—it is res ipsa loquitor, it is what it is, it speaks for itself. But, in the case of either Statehood or a continuing Commonwealth, or an enhanced one, as you have suggested that the law permits, there

are questions that Puerto Ricans should know about. Be able to answer.

For example, what happens to the question of language? What happens to the question of an Olympic team? What happens to the question of the conduct of the courts and the public schools? Change, in any of these set of circumstances, in one case remains the same, in another case, with Statehood, how do we view that? Your enhanced Commonwealth, how do you view that?

Because it seems to me that if we look at the history of how States were entered in—territories entered into the Union, there were demands on them, you know, including the distinguished Chairman's State. How do you view that?

Governor FORTUÑO. Mr. Chairman, I mean, Mr. Senator, I—first of all, I——

Senator MENENDEZ. Please don't get me in trouble with Senator——

Governor FORTUÑO. I know.

[Laughter.]

Governor FORTUÑO. Senator, I think it's very clear what Statehood means. The arrangement that allows for a Federation of States to be established under one Federal Government is—was unique at the time that it was commenced, but it is no longer unique. Actually we see other parts of the world that are trying to move in that direction—not with the same success we have had, so far.

What is wrong is to, after 112 years, have formerly American citizens residing under conditions that are so unequal to their counterparts in the mainland.

Senator MENENDEZ. I fully understand that that is your position, and I understand, you know, the currency behind your statement.

My question would be, if the people of Puerto Rico voted in an unstacked plebiscite for Statehood, and those of us—like myself—who are ready to support the people of Puerto Rico's determination in an unstacked plebiscite, would—if Statehood meant that the official language of Puerto Rico has to be English, if Statehood meant that you obviously couldn't have an Olympic team because you are part of the United States now—those are things that the people of Puerto Rico should know in the equation.

If Commonwealth is going to continue to be the set of circumstances the people of Puerto Rico should know that there are certain things that they will not be able to achieve under Commonwealth status. So, my goal here, is that it is very easy to throw out, you know, a one-phrase term, "Statehood," "Commonwealth," "independence," but what goes behind that in understanding what comes with it, I think, is very critical.

Governor FORTUÑO. Let me tell you, and I'll answer both questions.

First of all, as to Statehood, since 1902 our 2 official languages have been English and Spanish. We're proud of both languages, and most of our parents want their children to be totally fluent in English. English is the language of—to advance, not just in business and your professions, but in life, in general. We recognize that. Actually at times, there have been people that have played with that tool of advancement for political purposes.

I believe it makes no sense. I pledged in my campaign that I wanted our children, since pre-K, to be fully bilingual. They must learn English from the very beginning, and we're proud of that.

At the same time, I'm proud that I speak Spanish. When we pray at home, we pray in Spanish. I'm sorry, I don't think Washington should have anything to say about how we pray at home.

Having said that, however——

Senator MENENDEZ. I don't believe Washington should have anything to say how you pray home, or anywhere else. I think you should have the freedom to pray wherever you choose.

Governor FORTUÑO. Exactly. That's what binds this great country together, is the values we share. That's why we're proud to be Americans.

Having said that, however, if I may—I believe there's still a question on the table. Because the present leadership of the Commonwealth Party supports—I think, I'm not sure, yet but I think—it's the present territorial status. Even though, for the last 12 years, they have supported a different deal, and it's in writing. A deal that have been put in writing and actually that they—in the 1998 plebiscite that you all questioned about, was put forth as one of the options, that they said, you know, that this is doable.

We all know it's not doable. We know it's not doable. There's a sizable group that may not be represented by him, within his own Party, that feel different. That group has legislators. They must have an option to vote for that, because it's doable.

We have a deal like that, as Senator Bunning was mentioning, with the Marianas. I mean, the Micronesian Islands, which is different from the deal the Federal Government has with the territory of Puerto Rico.

Senator MENENDEZ. Mr. Chairman, could we have the other 2 witnesses answer the question?

The CHAIRMAN. Yes. Why don't we do that, and then we'll go to Senator Bunning for additional questions.

Mr. RIOS. First of all, I do represent my Party, all of my Party.

Second, somebody told me when I started visiting Congress, that you have to—in your meetings, you have to ask. What is your ask? Your question, Senator, is our ask. Define Statehood, for the people of Puerto Rico. The people of Puerto Rico should know what are the consequences of Statehood. Spanish or English? I'm a Spanish-speaking Puerto Rican. I know English. But only 20 percent of the people of Puerto Rico are fully bilingual. That's a fact, too.

Two, we love our Olympic team. With all due respect, when our basketball team, our national basketball team, beat the U.S., we were celebrating because we beat the best team in the world, with our Olympic team, and that's a fact, too.

So, my ask is, to define Statehood, outline Statehood for the people for the people of Puerto Rico.

Second, about Commonwealth. Sure, we want to enhance Commonwealth, but that's a process of negotiation between Congress and the people of Puerto Rico. Their—Governor Fortuño is repeating and repeating that he has 10, 12 documents—well those are aspirations of our Party. You can be in one point of the table, as a party that is engaging in negotiation, and the other party is in the

other side. We start walking together, and see what we can agree upon.

We can also take, as a starting point, the definition of the new Commonwealth relationship that was approved on the House 20 years ago, H.R. 4567, and that's a starting point on the discussion on how we can enhance Commonwealth.

Finally, it can be done. The Constitution of the United States is not a strict constitution, it's a dynamic constitution. I roll back on what I say on a previous term. It's not a legal issue, it's a will issue.

Governor FORTUÑO. Senator, if I may say so, we aspire to have 4 Senators, too.

The CHAIRMAN. Why don't we go ahead and have Senator Bunning—or, Senator Barrios, could you give us a quick response to his question? Then Senator Bunning?

Mr. BERRÍOS MARTÍNEZ. Yes, of course.

Of course, Congress could say what's it's opinion regarding Statehood or Commonwealth, of course. What I am suggesting, what I am telling Congress to tell the people of Puerto Rico is, "You have a right to self-determination, and we have an obligation to decolonize. Now, you go and tell us your mechanism," which we propose as a constitutional convention, "what is it that you want?" Then let whoever wins, if the Statehoods win, come here and ask—and then you will tell them. That's the way to do it. We—when and how we do it, it's our self-determination.

The CHAIRMAN. Right.

Mr. BERRÍOS MARTÍNEZ. That's my position regarding what you just said. So, I think it's very simple.

The CHAIRMAN. All right, thank you very much.

Senator Bunning, go right ahead.

Senator BUNNING. Thank you.

We get 3 Puerto Ricans together, we can get an argument any time.

[Laughter.]

Mr. BERRÍOS MARTÍNEZ. That's what I mean by the cavalier and condescending attitude of Congress.

Senator BUNNING. Oh, really?

Mr. BERRÍOS MARTÍNEZ. Yes.

Senator BUNNING. I happened to live in Puerto Rico for quite a while, and——

Mr. BERRÍOS MARTÍNEZ. You have to——

Senator BUNNING [continuing]. I understand Puerto Rico pretty well. In fact, I played for Marianal down in Puerto Rico and——

Mr. BERRÍOS MARTÍNEZ. Good.

Senator BUNNING [continuing]. The——

Mr. BERRÍOS MARTÍNEZ. Welcome.

Senator BUNNING. Not Marianal, I was in Cuba, but we played for Cogwes.

Mr. RIOS. Cogwes.

Mr. BERRÍOS MARTÍNEZ. Cogwes.

Mr. RIOS. All right.

Senator BUNNING. Managed Cogwes in Puerto Rico. So, I have a very strong affinity with Puerto Rico. I am troubled by self-determination and a certain way to self-determine if, not allowing the

people to vote on what they want is not the proper way to self-determine, rather than having a constitutional convention which, we haven't had in—God knows how long—in the United States. We don't even—we haven't had one in the Commonwealth of Kentucky since 1891–1981. Just to give you an example how long constitutional conventions have not been in vogue.

But, a determination—and I agree that there—it has to be laid out, the different options that are available, and spelled out for those who are voting. But, just to give you an idea of why there is such mixed feelings about this—1990, CBO did a study on Puerto Rican Statehood. It would cost, in 1990, about $2 billion a year. Independence would save almost $780 million per year.

Now, these figures are 20 years old. They're certainly higher, probably, now than they were at that time. Do any of you know what the current budgetary effects of the different options discussed here, today, are? Anybody?

Governor FORTUÑO. First of all, on behalf of the 4 million American citizens that reside in Puerto Rico, but especially the men and women that have served in uniform in defense of democracy since 1917, I cannot put a price tag on their lives, I'm very sorry, Senator.

Senator BUNNING. I don't want to put a price tag on their lives, either.

Governor FORTUÑO. Second, I will state, very clearly, that there have been a number of scorings on different bills, on status. I saw a scoring that stated that the cost of Statehood—if you want to call it that way, and I have a problem with that—will be $5 million. The raw deal for the American citizen is what's happening today.

Senator BUNNING. We spend more than that, Governor, in 1 day.

Governor FORTUÑO. Actually, I have the report here. I have the report here that we could actually, if we—if you want to——

Senator BUNNING. You may, please enter it into the record.

Governor FORTUÑO. We could introduce it into the record, but actually this was the Senate Committee, this committee report, in 1989, stated that the cost was less than $5 million under the bill that was reported under Senate Finance in 1990. So, there are—it depends on which bill you were looking at, but this was scored. This bill, right now, 2499, has not been scored because it is not self-executing. But at the time, the last time we had something that was self-executing, the numbers were quite different.

Actually, it stated—the CRS report in 1991 stated that the—Statehood would have a net cost to the U.S. Treasury, during the first 4 years, beginning with the $700 million in 1992, but then after the Treasury, after the succeeding 5 years, culminating in a $1.3 billion net positive contribution by 2000. So, the net—there was going to be a net contribution. But the greatest one of those contributions is our men and women, really, that have actually contributed to this Nation in more than one way.

Senator BUNNING. Go ahead.

Mr. RIOS. Sir, I agree with you, there should be a CBO study on all of the options—this bill doesn't have one. That's one of the flaws of this.

Senator BUNNING. There will be—if, in fact—there will be a CBO study. A score.

Mr. RIOS. But, let me add that, it is essential for this committee to have that study. Because while the pro-Statehood Party, its strategy is to go to Puerto Rico and say, "Well, if we get a resolution of this committee," not even the bill, just a resolution of this committee, agreeing on self-determination, that will be enough for them to conduct a plebiscite in Puerto Rico. That's—nothing wrong with that. But, the 2 bills that you stated before, the ones that are in the House and Senate, I would like you to read them—both of them. You were talking about self-determination—both of them only include Statehood and independence. There's no room for Commonwealth on their bill, and that's a rigged process, too.

Senator BUNNING. Excuse me.

Go ahead.

Mr. BERRÍOS MARTÍNEZ. Yes, sir.

Senator, of course if nothing is done, than Commonwealth wins by default. The territory——

Senator BUNNING. Correct.

Mr. BERRÍOS MARTÍNEZ [continuing].—That's the position of the PPD.

Senator BUNNING. Status quo is the position.

Mr. BERRÍOS MARTÍNEZ. Yes. Status quo.

Now, I must say, regarding cost. You've already referred to the cost of Statehood. The cost of Commonwealth is a political, economic, moral, spiritual, and economic bankrupt, or bankruptcy Puerto Rico is living under. Those are clear. As you say, for the United States, the cost of independence is for its prestige to surge in Latin America and the world over.

Senator BUNNING. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

I think we've had a good hearing, we've had good testimony on all sides of the issue.

Mr. RIOS. Yes, sir, I just wanted to ask permission to submit, in the next 10 days, all possible written documents that we can, in the next 10 days, like Ranking Member Murkowski asked? In the next 10 days?

The CHAIRMAN. We're glad to have anything that's relevant to this issue before us.

Mr. RIOS. To this issue.

The CHAIRMAN. We don't need all of the political——

Mr. RIOS. No, to this issue. To this issue, sir.

The CHAIRMAN [continuing]. Platform positions.

Mr. RIOS. Yes, to this issue, sir.

The CHAIRMAN. But, if—anything relevant to this legislation——

Mr. RIOS. Thank you.

The CHAIRMAN [continuing]. We're glad to have.

Mr. RIOS. Thank you.

The CHAIRMAN. We would appreciate that.

But, thank you all. I think it's been very good testimony, and we will ask the second panel to please come forward.

Let me ask the second panel to please come forward, and those who are not involved in the second panel could take their seats.

OK, let me introduce the second panel, please. The witnesses on the second panel are the Honorable Donna Christensen, who is the United States Virgin Islands delegate to Congress, serving in the

House of Representatives. Next is Mr. Gerald Luz James, who is President of the Fifth Constitutional Convention in the Virgin Islands, thank you for being here. Mr. Cedarbaum is the Deputy Assistant Attorney General with the Department of Justice.

Could we ask that the visitors please exit the room if they're not focused on this second panel?

Let me just state for the record, Mr. Cedarbaum is here to present the Administration's views only on the proposed constitution for the Virgin Islands. He's not authorized to speak to, or answer questions on other bills that are being considered by the committee today.

Next is the Honorable John Silk, the Minister of Foreign Affairs with the Republic of the Marshall Islands, we appreciate him being here. Mr. Nikolao Pula, who is the Director of the Office of Insular Affairs with the Department of the Interior.

There any way to speed up the exit of folks so that we can hear the witnesses?

OK, why don't we go ahead. We have the Honorable Donna Christensen first, and then we would just go right across the table. If each of you could take about 5 minutes and make the main points you think we need to understand, and your complete statements will be included in the record.

Thank you for being here.

STATEMENT OF HON. DONNA M. CHRISTENSEN, DELEGATE OF THE VIRGIN ISLANDS, U.S. HOUSE OF REPRESENTATIVES

Ms. CHRISTENSEN. Thank you, Mr. Chairman. Good morning to you, Chairman Bingaman, and Ranking Member Murkowski. Thank you for holding this hearing on the proposed Virgin Islands Constitution and for the opportunity to testify.

I consider the adoption of our own Constitution an important and requisite step in our political development. Having begun this process more than 30 years ago and now on this our 5th attempt, the time to complete the process is now or it may be years, yet another generation before a 6th convention could be convened. That is unacceptable, at least it is unacceptable to me.

Since the people of the Virgin Islands have not made a status decision that would allow us to develop a Constitution under anything other than that of an unincorporated territory, this draft must be consistent with the U.S. Constitution. Reviews thus far by the White House and Justice Department have concluded that it is not, in several areas.

While I understand the concerns of the Congress not to abdicate its responsibility to bring it into compliance with the U.S. Constitution, I feel that it's very important—I feel it's necessary that this process be viewed, also, as an important step—an important part of our journey to increased political maturity and greater self-governance.

Further, the Congress has taken a position in recent years that has been supportive but non-prescriptive and one of little or no interference in that journey. Recognizing that no law or any constitution of any territory or State——

The CHAIRMAN. Let me ask you if the door can be closed, please?

I apologize for that interruption. Go ahead with your statement.

Ms. CHRISTENSEN. Some students from the Virgin Islands may also come in at some point.

But, recognizing that no law or constitution of any territory or State can abrogate any right of a person living in the United States or under the U.S. constitution, I believe that this is the position—the position of non-interference—that we should continue to take in this matter.

As Virgin Islanders, we have grappled with the issues raised by the White House and the Department of Justice for many years. I believe that these issues should be resolved or brought to consensus by the people of the Virgin Islands. If the Congress intervenes, it will not allow the people to go through the important process of coming to this resolution on our own.

This approach would present a choice, then, of years of local court proceedings or one of reconvening the Constitutional Convention for the purpose of considering the issues raised by the President and the Department of Justice. The better and wiser course, I believe, would be the latter. I recommend, then, that the Convention be reconvened for a specific number of days and that it be left to the Convention delegates to decide the process that they want to follow when it does reconvene. To ensure the success of this process, it would be critical that the Congress support the extended convention with the necessary funding to properly undertake this task. The Fourth constitutional convention and the process has set a precedent for that to be done.

Last, I strongly recommend that it not be required that the document be returned to the President or to the Congress once the convention has completed its reconsideration of the issues, but that once passed by the Convention, it go directly to the people of the Virgin Islands for their adoption or rejection.

So, I thank you for the opportunity to testify.

[The prepared statement of Delegate Christensen follows:]

PREPARED STATEMENT OF HON. DONNA M. CHRISTENSEN, DELEGATE OF THE VIRGIN ISLANDS, U.S. HOUSE OF REPRESENTATIVES,

Good morning and thank you Chairman Bingaman, Ranking Member Murkowski, and other members of the Committee for this hearing on the proposed Virgin Islands Constitution and for the opportunity to testify.

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While I understand the concerns of the Congress not to abdicate its responsibility to bring it into compliance with the US Constitution, I feel it is necessary that this process be viewed as an important part of our journey to increased political maturity and greater self governance.

Further, the Congress has taken a position in recent years that is supportive but non-prescriptive and of little or no interference in this journey. Recognizing that no law or any constitution of any territory or state can abrogate any right of a person living in the United States and under the US constitution, I believe this is the position we should continue to take in this matter.

As Virgin Islanders, we have grappled with the issues raised by the White House and the Department of Justice for many years. I believe that these issues should

be resolved or brought to consensus by the people of the Virgin Islands. If the Congress intervenes, it will not allow the people to go through the important process of coming to this resolution on our own.

We have a choice of years of local court proceedings or reconvening the Constitutional Convention for the purpose of considering the issues raised by the President and the Department of Justice. The better and wiser course I believe is the latter. I recommend that the Convention be reconvened for a specific number of days and that it be left to the Convention delegates to decide the process that they want to follow. To ensure the success of this process it would be critical that the Congress support the extended convention with the necessary funding to properly undertake this task. The Fourth constitutional document has set a precedent for this to be done.

Lastly, I strongly recommend that it not be required that the document be returned to the President or the Congress once the convention has completed its reconsideration of the issues, but that if passed by the Convention it go directly to the people of the Virgin Islands for their adoption or rejection.

I again thank you for this opportunity to testify.

Ms. CHRISTENSEN. If I might, I'd like to introduce the next speaker?

The CHAIRMAN. Go right ahead.

Ms. CHRISTENSEN. Thank you.

Mr. Chairman, Ranking Member, I'm pleased to introduce the President of our Fifth Constitutional Convention, the Honorable Gerard Luz James II, who is also a former Lieutenant Governor of the Virgin Islands, a former member of the legislature of the Virgin Islands, and a prominent businessman in the St. Croix community.

He comes from a well-known Virgin Islands family whose record of service to our people is long and distinguished. I am pleased that he is here with us today to convey the wishes of the Convention with regard to the document before us.

Thank you, again, for the opportunity to testify, and to introduce the President of the Constitution.

The CHAIRMAN. Thank you very much.

Mr. James, go right ahead.

STATEMENT OF GERALD LUZ AMWUR JAMES, II, PRESIDENT, FIFTH CONSTITUTIONAL CONVENTION OF THE VIRGIN ISLANDS

Mr. JAMES. Thank you very much. Thank you very much. Good morning, Chairman Bingaman and Ranking Member Murkowski. Members and others present, I am Gerard Luz James II, President of the Fifth Constitutional Convention of the United States Virgin Islands. It is my distinct honor to address this committee.

The proposed constitution was drafted by the people and for the people of the United States Virgin Islands. It is not proposed to govern any other people. The people who have made negative comments about the document have not worn the shoes of those who have suffered the indignation of being governed externally. They have not examined the evidence that led the convention to adopt provisions in this constitution that are so necessary to keep life going for those whose parents, grandparents, and great-grandparents have worked hard in order to own property that would provide life for themselves and their future generations.

The critics have not reviewed the evidence that shows that those whose ancestries lies in the Virgin Islands have been devastated by the lack of support for the people of the Virgin Islands. That evidence demonstrates that the territory has 114,000 residents, and

that more than 58,000 Virgin Islanders no longer reside in the Virgin Islands. These people now live in the mainland U.S. of A. Simple math resolves that this loss represents about one-half of the current population of the Virgin Islands. The life-blood of any people lies in its young. Historically, people of this great country worked to provide a better life for their young with the hope that they would prosper from their parent's labor. The young of the Virgin Islands are leaving because their parents can not pass on to them the home that had been in their family for decades.

Unlike the mainland, the values of the homes in the Virgin Islands have soared due to the many tourist developments. These developments have caused the taxes on the ancestral homes to be well beyond the ability of many families to pay. Even worse is the plight of our young, who remain and resort to violence in an effort to acquire something they can call their own.

I sit as a witness to the loss of these young lives. As a funeral director, I daily look into the eyes of the young and see the absence of hope. The convention has compelling reasons for the provisions that are contained in the document. The provisions in this constitution, as they relate to natives, is not new to this Congress. This body has recognized that the native people of this country and its territories, at times, need special protection in order for the native people to exist. The Congress of the United States has enacted laws for native people of Hawaii, Alaska, and Northern Marianas, Aleutians, and the continental United States. Congress did not deny those revisions in advance because of alleged unconstitutionality. Congress knew that constitutional challenges to a specific provision of law can not be resolved by any litmus paper test. Congress knew that constitutionality is determined on a case-by-case basis.

It was the U.S. Government that established the definition contained in the proposed constitution. These definitions should not bring suspicions or challenge, or be improper. These definitions are derived directly from the Government of the United States. It was an act of Congress that differentiated the people of the Virgin Islands and conferred different legal status upon them by virtue of 8 USC, subsection 1406.

It was an act of Congress that carved out certain rights for natives. Everyone in this room, including the Justice Department, is fully aware that our proposed constitution is not designed to usurp the sovereignty or supremacy of the Federal law. The passage of the constitution will not, nor is it intended, to alter our political relationship with the United States. It merely represents a farther step along the path toward a full measure of self-dignity. We strongly believe that the constitutions provisions are not discriminatory, do not violate Federal law, and do support a constitutional appropriate interest.

Throughout our history, our shores have remained open to all people, cultures, and ethnicity. We ask that Congress approve the proposed constitution with all its present provisions. I am aware that Congress is considering a resolution to urge the convention to reconvene. If the resolution passes, we ask that Congress provide the financial resources that would be necessary for the convention to reconvene. We ask that Congress allow the convention, after reconvening, to place the proposed constitution before the voters of

the territory, without further need to send a document to the Government of the Virgin Islands. We further ask that the requirements to send the proposed constitution back to Congress be eliminated.

This is our fifth attempt to attain greater self government. You need to know how important this constitution is to the Virgin Islands. This proposed constitution has helped to breed new life and hope into our people. It is—it is the talk of every radio and television show, it is the topic of daily conversations. People now believe that their lifelong dreams will come true. These pieces of paper may not mean much to many in this room, but it means life to the people of the Virgin Islands.

I thank you very much for giving me this opportunity.

[The prepared statement of Mr. James follows:]

PREPARED STATEMENT OF GERARD LUZ AMWUR JAMES, II, PRESIDENT, FIFTH CONSTITUTIONAL CONVENTION OF THE VIRGIN ISLANDS

Good Morning Chairman Bingaman, Committee members and all others present. I am Gerard Luz Anwur James II, President of the Fifth Constitutional Convention of the Unites States Virgin Islands ("Convention"). It is my distinct honor to address this Committee.

The proposed constitution was drafted by the people and for the people of the United States Virgin Islands. It is not proposed to govern any other people. The people who have made negative comments about the document have not worn the shoes of those who have suffered the indignation of being governed externally. They have not examined the evidence that led the Convention to adopt provisions in this constitution that are so necessary to keep life going for those whose parents, grandparents, and great-grand parents have worked hard in order to own property that would provide life for themselves and their future generations. The critics have not reviewed the evidence that shows that those whose ancestry lies in the Virgin Islands have been devastated by the lack of support for the people of the Virgin Islands.

The evidence demonstrates that the territory has 114,000 residents and that more than 58,000 Virgin Islanders no longer reside in the Virgin Islands. These people now live in the mainland United States. Simple math resolves that this lost represents about one-half of the current population of the Virgin Islands. This exodus must stop or the Virgins Islands' life blood will cease to exist. Extinction of the native people of the Virgin Islands is not an acceptable option.

The life blood of any people lies in its young. Historically, people of this great country work to provide a better life for their young with the hope that they will prosper from their parent's labor. The young of the Virgin Islands are leaving because their parents cannot pass on to them the home that had been in their family for decades. Unlike the mainland, the values of the homes in the Virgin Islands have soared due to the many tourist developments. These developments have caused the taxes on the ancestral home to be well beyond the ability of many families to pay. Their homes have been taken from them. Even worst is the plight of our young who remain and resort to violence in an effort to acquire something they can call their own. I sit as a witness to the lost of these young lives. As a funeral director, I daily look into the eyes of the young and see the absence of hope they once suffered. The Convention has compelling reasons for the provisions that are contained in the document.

The provisions in this constitution as they relate to "natives" is not new to this Congress. This body has recognized that the native people of this country and its territories at times need special protections in order for the native people to exist. The Congress of the United States has enacted laws for native people in Hawaii, Alaska, the Northern Marianas, Aleutians and the continental United States. Congress did not deny those provisions in advance because of alleged unconstitutionality. Congress knew that Constitutional challenges to a specific provision of law cannot be resolved by any litmus-paper test. Congress knew that constitutionality is determined on a case-by-case basis.

It was the United States government that established the definitions contained in the proposed constitution. These definitions should not bring suspicion or challenge as being improper. These definitions are derived directly from the Government

of the United States. It was an act of Congress that differentiated the people of the Virgin Islands and conferred different legal status upon them by virtue of 8 U.S.C. §1406. It was this act of Congress that carved out certain rights for "natives." To the best of my knowledge, these provisions have not been challenged or overturned.

The Fifth Constitutional Convention's fact gathering process included public meetings throughout the Virgin Islands. The Convention heard testimony from hundreds, reviewed formal presentations and documents.

Everyone in this room including the Justice Department is fully aware that our proposed constitution is not designed to usurp the sovereignty or supremacy of federal law. The passage of our constitution will not, nor is it intended to, alter our political relationship with the United States. It merely represents a further step along the path toward a full measure of self-dignity.

We strongly believe that the constitution's provisions are not discriminatory, do not violate federal law and support a Constitutional appropriate interest. Throughout our history our shores have remained open to people of all cultures and ethnicities. The Virgin Islands has long been known as the 'American Paradise." The proposed constitution is our sincere effort to insure that our beloved territory remains our "Virgin Islands Home."

We asked that Congress approve the proposed constitution with all of its present provisions. At the very least we ask that the constitution be returned with no action.

I am aware that Congress is considering a resolution to urge the Convention to reconvene. We do not ask this, but if the resolution passes, we ask that Congress in the resolution provide the financial resources that would be necessary for the Convention to reconvene. We ask that Congress allow the Convention, after reconvening, to place the proposed constitution before the voters of the territory without further need to send the document to the Governor of the Virgin Islands, who has tried in every way to circumvent the will of the people. We further ask that the requirement to send the proposed constitution back to the President and Congress be eliminated.

This is our fifth attempt to attain greater self-government since Congress passed PL 94-584 in 1976, which granted us the authority to draft our own constitution. You need to know how important this Constitution is to the Virgin Islands. This proposed constitution has helped to breathe new life and hope into our people. It is the talk of every radio and television show. It is the topic of daily conversation. People now believe that their life-long dreams will come true. These pieces of paper may not mean much to many in this room, but it means life to the people of the United States Virgin Islands.

Thank you again for your time and consideration.

The CHAIRMAN. Thank you very much for your testimony.

Mr. Cedarbaum, why don't you give us your Administration's views on the proposed constitution.

STATEMENT OF JONATHAN G. CEDARBAUM, DEPUTY ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. CEDARBAUM. Thank you, Chairman Bingaman, Ranking Member Murkowski, my name is Jonathan Cedarbaum, I'm a Deputy Assistant Attorney General in the Office of Legal Counsel at the Justice Department. I am honored to appear before you this morning to discuss the proposed constitution for the U.S. Virgin Islands recently drafted by a constitutional convention there.

As you know, Public Law 94–584 as amended, establishes a process by which the people of the U.S. Virgin Islands can adopt a constitution for their local self-government. In accord with that process, the Fifth Constitutional Convention of the U.S. Virgin Islands drafted a proposed constitution last year and submitted it to the Governor of the Virgin Islands. The Governor forwarded the proposed constitution to President Obama. President Obama then transmitted the proposed constitution to Congress with his comments. As the President stated in his letter of transmittal, the electorate of the Virgin Islands and its governmental representatives

are to be commended for their continuing commitment to increasing self-government and the rule of law.

As the President also indicated in his letter of transmittal, in carrying out his responsibilities under public law 94–584, he asked the Department of Justice, in consultation with the Department of the Interior, to provide its views of the proposed constitution. The department provided those views in the form of a memorandum from the Assistant Attorney General for Legislative Affairs, to the Office of Management and Budget. The President attached a copy of the department's memorandum to his letter of transmittal. As the President noted, the Department of Justice's memorandum analyzed several features of the proposed constitution, including: first, the absence of an express recognition of United States sovereignty and the supremacy of Federal law; second, provisions for a special election on the USVI's political status; third, provisions conferring legal advantages on certain groups defined by place and timing of birth, timing of residency, or ancestry; fourth, residence requirements for certain offices; fifth, provisions guaranteeing legislative representation of certain geographic areas; sixth, provisions addressing territorial waters and marine resources; seven, imprecise language in certain provisions of the proposed constitution's bill of rights; eighth, the possible need to repeal certain Federal laws if the proposed USVI constitution were adopted; and ninth, the effect of Congressional action or inaction on the proposed constitution.

I would be happy to address any of these issues with you this morning, but I should emphasize that our review was limited to legal issues. The Department's memorandum does not address any questions of policy. Because I trust you have had some opportunity to review the Department's memorandum in advance of today's hearing, I will not attempt to summarize it in this opening statement. I would just like to briefly highlight 3 issues as to which the Department suggested that changes in the proposed constitution should be considered.

First, several provisions of the proposed constitution give special advantages to "Native Virgin Islanders" and "Ancestral Native Virgin Islanders." These provisions raise serious concerns under the Equal Protection guarantee of the U.S. Constitution, which has been made applicable to the Virgin Islands by the Revised Organic Act. Because we find it difficult to discern a legitimate governmental purpose that would be rationally advanced by these provisions defining groups by place and timing of birth, timing of residency, or ancestry, we recommend that they be removed.

Second, the proposed constitution imposes substantial residence requirements on a number of USVI offices. In particular, it requires the Governor and lieutenant Governor, judges and justices of the USVI Supreme Court and lower court, and the Attorney General, Inspector General, and members of the Political Status Advisory Commission, to have been Virgin Island residents for periods ranging from 5 to 15 years. These requirements, particularly those requiring more than 5 years of residence, raise potential Equal Protection concerns. Thus, we would suggest the consideration be given to shortening their duration.

Third, article 12, section 2 of the proposed constitution, concerning preservation of natural resources, makes a number of assertions about USVI sovereignty or control over waters and submerged lands. The intended meaning and effect of this section are not entirely clear. To the extent that its reference to a claim of sovereignty over coastal waters is intended to derogate from the sovereignty of the United States over those waters, it is inconsistent with Federal law and should be revised.

In addition, by statute, the United States has, subject to certain exceptions, conveyed to the Virgin Islands its right, title, and interest in submerged lands and mineral rights in those submerged lands, out to 3 miles. Federal law also reserves to the United States exclusive management rights over fisheries within the exclusive economic zone. The proposed constitution must be made consistent with these Federal statutory mandates.

Finally, while the last sentence of article 12, section 2, acknowledges that the rights it addresses are alienable, we recommend modifying this language to make clearer that these matters are subject to Congress's plenary authority.

I would like to emphasize that my statement has focused on these 3 aspects of the proposed constitution because they are ones that we believe Congress should consider revising. We thought that would be most useful—most helpful for the committee as it determines what action to take in response to the transmittal of the proposed constitution.

But let me close by again echoing President Obama's letter of transmittal, in commending the electorate of the Virgin Islands and its governmental representatives in their continuing commitment to increasing self-government and the rule of law.

I'd be happy to address any questions you have, and I'd be grateful if the Department's memorandum could be inserted in the record of this hearing following my statement.

The CHAIRMAN. We will be glad to include that memorandum in the committee record.

[The prepared statement of Mr. Cedarbaum follows:]

PREPARED STATEMENT OF JONATHAN G. CEDARBAUM, DEPUTY ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Chairman Bingaman, Ranking Member Murkowski, Members of the Committee:

My name is Jonathan Cedarbaum. I am a Deputy Assistant Attorney General in the Office of Legal Counsel at the Department of Justice. I am honored to appear before you this morning to discuss the proposed constitution for the U.S. Virgin Islands ("USVI") recently drafted by a constitutional convention in the Virgin Islands.

As you know, Public Law 94-584 establishes a process by which the people of the U.S. Virgin Islands can adopt a constitution for their local self-government. In accord with that process, the Fifth Constitutional Convention of the U.S. Virgin Islands drafted a proposed constitution last year and submitted it to the Governor of the Virgin Islands. The Governor forwarded the proposed constitution to President Obama. President Obama then transmitted the draft Constitution to the Congress with his comments. As the President indicated in his letter of transmittal, in carrying out his responsibilities under Public Law 94-584 he asked the Department of Justice, in consultation with the Department of the Interior, to provide its views of the proposed constitution. The Department provided those views in the form of a memorandum from the Assistant Attorney General for Legislative Affairs to the Office of Management and Budget, and the President attached a copy of the Department's memorandum to his letter of transmittal.

As the President also noted, the Department of Justice's memorandum analyzed several features of the proposed constitution, including: (1) the absence of an ex-

press recognition of United States sovereignty and the supremacy of federal law; (2) provisions for a special election on the USVI's territorial status; (3) provisions conferring legal advantages on certain groups defined by place and timing of birth, timing of residency, or ancestry; (4) residence requirements for certain offices; (5) provisions guaranteeing legislative representation of certain geographic areas; (6) provisions addressing territorial waters and marine resources; (7) imprecise language in certain provisions of the proposed constitution's bill of rights; (8) the possible need to repeal certain federal laws if the proposed USVI constitution is adopted; and (9) the effect of congressional action or inaction on the proposed constitution. I would be happy to address any of these issues with you this morning. I should emphasize that our review was limited to a review of legal issues in light of the requirements established by Public Law 94-548. The Department's memorandum does not address any questions of policy.

Because I trust you have had some opportunity to review the Department's memorandum in advance of today's hearing, I will not attempt to summarize in this opening statement the analysis it provides of all of these issues. I would just briefly discuss the three issues as to which the Department suggested that changes in the proposed constitution should be considered.

A. Provisions Concerning "Native Virgin Islanders" and "Ancestral Native Virgin Islanders"

First, several provisions of the proposed constitution give special advantages to "Native Virgin Islanders" and "Ancestral Native Virgin Islanders." These provisions raise serious concerns under the equal protection guarantee of the U.S. Constitution, which has been made applicable to the USVI by the Revised Organic Act, see 48 U.S.C. § 1561 (2006). Because we find it difficult to discern a legitimate governmental purpose that would be rationally advanced by these provisions conferring legal advantages on certain groups defined by place and timing of birth, timing of residency, or ancestry, we recommend that these provisions be removed from the proposed constitution.

In Article III, section 2, the proposed constitution would define "Native Virgin Islander" to mean (1) "a person born in the Virgin Islands after June 28, 1932," the enactment date of a statute generally extending United States citizenship to USVI natives residing in United States territory as of that date who were not citizens or subjects of any foreign country, see Act of June 28, 1932, ch. 283, 47 Stat. 336 (now codified at 8 U.S.C. 1406(a)(4) (2006)); and (2) a "descendant[] of a person born in the Virgin Islands after June 28, 1932." "Ancestral Native Virgin Islander" would be defined as: (1) "a person born or domiciled in the Virgin Islands prior to and including June 28, 1932 and not a citizen of a foreign country pursuant to 8 U.S.C. [§] 1406," the statute governing United States citizenship of USVI residents and natives; (2) "descendants" of such individuals; and (3) "descendants of an Ancestral Native Virgin Islander residing outside of the U.S., its territories and possessions between January 17, 1917 and June 28, 1932, not subject to the jurisdiction of the U.S. and who are not a citizens [sic] or a subjects [sic] of any foreign country." Proposed Const. art. III, § 1.[1]

1. Property Tax Exemption for Ancestral Native Virgin Islanders

Under the proposed constitution, the USVI legislature would be authorized to impose real property taxes, but "[n]o Real Property tax shall be assessed on the primary residence or undeveloped land of an Ancestral Native Virgin Islander." Proposed Const. art. XI, § 5(g). The property tax exemption for Ancestral Native Virgin Islanders raises serious equal protection concerns. The Equal Protection Clause of the Fourteenth Amendment, which has been extended to the USVI by statute, see 48 U.S.C. § 1561 (2006),[2] generally requires only that legislative classifications be rationally related to a legitimate governmental purpose. See, e.g., Heller v. Doe, 509 U.S. 312, 319-20 (1993). But the proposed constitution does not identify a legitimate governmental purpose that the real property tax exemption for Ancestral Native

[1] The third prong of this definition appears circular insofar as it defines "Ancestral Native Virgin Islander" in terms of descendants of "Ancestral Native Virgin Islanders" (a category of people already encompassed by the definition's second prong), and it is also grammatically ambiguous with respect to whether the qualifying terms modify the "descendants" or the "Ancestral Native Virgin Islander" from whom they are descended.

[2] See also, e.g., Government of the Virgin Islands v. Davis, 561 F.3d 159, 163-64 n.3 (3d Cir. 2009) (recognizing applicability of the Fifth and Fourteenth Amendment Due Process Clauses to the USVI under the Revised Organic Act); Hendrickson v. Reg O Co., 657 F.2d 9, 13 n.2 (3d Cir. 1981) (same); Moolenaar v. Todman, 433 F.2d 359, 359 (3d Cir. 1970) (per curiam) (requiring adherence to "the constitutional requirements of equal protection of the law" in the USVI).

Virgin Islanders would further, and it is difficult for us to discern a legitimate governmental purpose that the exemption could be said to further.

The definition of Ancestral Native Virgin Islander appears to combine two subclasses: (i) individuals born or domiciled in the USVI before a certain date and (ii) descendants of such persons. The first sub-class may include many long-time residents of the USVI, but to the extent the real property tax exemption is designed to benefit such long-time residents it raises serious equal protection concerns. The Supreme Court has held that statutes limiting benefits, including property tax exemptions, to citizens residing in a jurisdiction before a specified date are not rationally related to any legitimate governmental purpose. For example, in Hooper v. Bernalillo County Assessor, 472 U.S. 612 (1985), the Court held that a New Mexico property tax exemption applicable only to Vietnam War veterans who resided in the state before a certain date violated equal protection by "creat[ing] two tiers of resident Vietnam veterans, identifying resident veterans who settled in the State after May 8, 1976, as in a sense 'second-class citizens.'" Id. at 623. Explaining that "singling out previous residents for the tax exemption[] [and] reward[ing] only those citizens for their 'past contributions' toward our Nation's military effort in Vietnam" was "not a legitimate state purpose," the Court held that the tax exemption violated the Equal Protection Clause by "creat[ing] fixed, permanent distinctions . . . between . . . .classes of concededly bona fide residents.'" Id. at 622-23 (quoting Zobel v. Williams, 457 U.S. 55, 59 (1982)).[3]

We think it clear that these classifications could not be considered tribal within the meaning of the Indian Commerce Clause, U.S. Const. art. I, § 8, cl. 3, that is, as falling within the established body of law defining the special relationship between aboriginal peoples of the United States and the Federal Government. In any event, that Clause empowers Congress, not the government of the Virgin Islands.

Moreover, even as to this sub-class, the real property tax exemption proposed here appears to be even less constitutionally justifiable than benefits for long-time residents. In Nordlinger v. Hahn, 505 U.S. 1 (1992), the Supreme Court upheld a California real property valuation system that disfavored newer purchasers (though not necessarily newer or longer-term residents), and the Court recognized as legitimate two governmental interests for such a system: "local neighborhood preservation, continuity, and stability," id. at 12, and honoring the reliance interests of long-time property owners, id. at 12-13. To the extent that those interests might be offered in defense of tax benefits for long-time residents or property owners, they cannot justify the real property tax exemption for Ancestral Native Virgin Islanders. Neither of those interests appears to be rationally furthered by the first sub-class included in the proposed property tax exemption for Ancestral Native Virgin Islanders because membership in that sub-class is defined neither by length of residence nor even by length of property ownership in the USVI, but simply by having been born or having lived in the USVI many years ago. Thus, for example, an individual born in the USVI on June 28, 1932, who left the Islands the following year and who moved back to the Islands and bought a home there 50 years later (or who simply bought an undeveloped piece of land there 50 years later) would be entitled to immunity from real property taxes even though an individual who had spent his or her whole life in the USVI and had owned the same home there for the past 50 years, but who had been born there of parents who had arrived in the USVI as immigrants on June 29, 1932, would not be so shielded. How a system permitting this kind of discrimination could be said to further neighborhood stability or reliance interests of long-time property owners is unclear.

The second sub-class benefitted by the real property exemption for Ancestral Native Virgin Islanders also seems difficult to justify as furthering a legitimate governmental interest, for the second sub-class is defined simply by parentage or ancestry. We need not delve into whether this use of "ancestry" in classifying citizens would be deemed "suspect" and thus subject to heightened scrutiny under the Fourteenth Amendment. See, e.g., Mass. Bd. of Retirement v. Murgia, 427 U.S. 307, 312 & n.4 (1976) (per curiam) (identifying alienage, race, and ancestry as classifications subject to strict scrutiny). Again, it is unclear to us what legitimate governmental purpose would support favoring so starkly the descendants of individuals born or resi-

[3] See also, e.g., Att'y Gen. of N.Y. v. Soto-Lopez, 476 U.S. 898, 909, 911 (1986) (plurality opinion) (applying heightened scrutiny to invalidate civil service employment preference limited to veterans who lived in the state when they entered the armed forces); id. at 913 (Burger, C.J., concurring in judgment) (same under rational basis review); Bunyan v. Camacho, 770 F.2d 773, 776 (9th Cir. 1985) (invalidating law enacted by Guam legislature awarding certain retirement credits for higher education degrees to Guam civil servants only if they resided in Guam before pursuing the degree).

dent long ago in the USVI regardless of the descendants' own connections (or lack thereof) to the Islands.

2. Provisions on Voting and Office-Holding Favoring Native Virgin Islanders and Ancestral Native Virgin Islanders

Provisions in the proposed constitution that limit certain offices and the right to vote in certain elections to Native Virgin Islanders and Ancestral Native Virgin Islanders or that guarantee members of those groups the right to participate in certain elections present similar issues. Under the proposed constitution, the positions of Governor and Lieutenant Governor would be open only to members these groups, see Proposed Const. art. VI, § 3(d), as would service on the Political Status Advisory Commission, an eleven-member body composed of four appointed members and seven elected members that would promote awareness of the USVI's political status options and advise the Governor and legislature on "methods to achieve a full measure of self-government." Id. art. XVII, §§ 1(b), 3. The special election on "status and federal relations options" provided for under the proposed constitution would be "reserved for vote by Ancestral Native and Native Virgin Islanders only, whether residing within or outside the territory." Id. art. XVII, § 2. And the proposed constitution would guarantee that "Ancestral and Native Virgin Islanders, including those who reside outside of the Virgin Islands or in the military, shall have the opportunity to vote on" amendments to the USVI constitution. Id. art. XVIII, § 7.[4]

The provisions concerning eligibility to vote in certain elections raise equal protection concerns. To the extent one might attempt to justify the limitation on the electorate for the special election on status options as akin to a durational residence requirement, we believe it is too restrictive to be so justified. Although the Supreme Court has upheld a very brief residential limitation on eligibility to vote in one instance based on a state's legitimate interest in "prepar[ing] adequate voter records and protect[ing] its electoral processes from possible frauds," Marston v. Lewis, 410 U.S. 679, 680 (1973) (per curiam) (upholding 50-day durational residence requirement), it has held that even a requirement of one year's residence for voting, as opposed to office-holding, violates constitutional equal protection guarantees. See Dunn v. Blumstein, 405 U.S. 330, 360 (1972) (invalidating state's requirement that voters have resided in the state for one year and the county for three months). Moreover, the classifications here are not based on length of residence, and their effects appear potentially arbitrary. As I discussed earlier, the categories of Ancestral Native Virgin Islanders and Native Virgin Islanders are based simply on place and timing of birth, the fact of having resided in the USVI before a certain date regardless of for how brief a time, or ancestry, regardless of the individual's own connection to the USVI. Thus, they could prohibit, for example, a foreign-born but life-long resident of the USVI from voting on political status, but would permit any qualifying ancestral descendant, including those who have never lived in the USVI, to do so.[5]

The proposed constitution's guarantee that Native Virgin Islanders and Ancestral Native Virgin Islanders "resid[ing] outside of the Virgin Islands" may vote on amendments to the USVI constitution also raises equal protection concerns. Proposed Const. art. XVIII, § 7. To uphold inclusion of non-resident voters in local government elections against equal protection challenges, courts have required a showing that the non-resident voters have a "substantial interest" in the elections in

[4] The right to vote on such amendments does not appear to be limited to these groups, as the same provision requires that amendments be submitted "to the electors of the Virgin Islands." Proposed Const. art. XVIII, § 7. Although the term "electors of the Virgin Islands" is undefined, the proposed constitution elsewhere provides that "[e]very citizen of the United States and the Virgin Islands eighteen (18) years of age or older and registered to vote in the Virgin Islands shall have the right to vote." Id. art. IV, § 1. The separate provisions establishing special voting rights and opportunities for Ancestral Native Virgin Islanders and Native Virgin Islanders suggest that the term "electors of the Virgin Islands" refers to the broader group of eligible voters.

[5] Cf. Soto-Lopez, 476 U.S. at 915 (Burger, C.J., concurring in judgment) (discussing "irrationality" of law that "would grant a civil service hiring preference to a serviceman entering the military while a resident of [the state] even if he was a resident only for a day," but that would deny the preference to a veteran "who was a resident of [the state] for over 10 years before applying for a civil service position"); Dunn, 405 U.S. at 360 (concluding that the state interest in "knowledgeable" voters did not justify a durational residence requirement for voting because "there is simply too attenuated a relationship between the state interest in an informed electorate and the fixed requirement that voters must have been residents in the State for a year and the county for three months"); Kramer v. Union Free School Dist. No. 15, 395 U.S. 621, 632 (1969) (rejecting, under strict scrutiny, restrictions on franchise for school board elections because "[t]he classifications in [the statute] permit inclusion of many persons who have, at best, a remote and indirect interest in school affairs and, on the other hand, exclude others who have a distinct and direct interest in the school meeting decisions").

question.[6] Because many non-resident Ancestral Native Virgin Islanders and Native Virgin Islanders may have no connection to the Islands apart from ancestry, it is unclear whether their inclusion in the electorate for USVI constitutional amendments would satisfy this standard.

Finally, although the residential duration requirements for Governor and Lieutenant Governor and members of the Political Status Advisory Commission would prevent non-resident individuals who qualify as Native Virgin Islanders or Ancestral Native Virgin Islanders from serving in those offices, it is unclear what legitimate governmental purpose would be advanced by narrowing the subset of longtime residents who could hold those offices to Native Virgin Islanders and Ancestral Native Virgin Islanders.

In the absence of any identified legitimate governmental interest to support such provisions concerning voting and office-holding based on place of birth, residence many decades ago, or ancestry, we would again recommend that these provisions be removed from the proposed constitution.[7]

B. Residence Requirements for Office-Holding

Second, the proposed constitution imposes substantial residence requirements on a number of USVI offices. In particular, the Governor and Lieutenant Governor would be required to have been "domiciliar[ies]" of the USVI for at least fifteen years, ten of which "must immediately precede the date of filing for office," Proposed Const. art. VI, § 3(a); judges and justices of the USVI Supreme Court and lower court to be established under the proposed constitution would be required to have been "domiciled" in the USVI for at least ten years "immediately preceding" the judge or justice's appointment, id. art. VII, § 5(b); the Attorney General and Inspector General would need to have resided in the USVI for at least five years, id. art. VI, §§ 10(a)(1), 11(a)(2);[8] and the members of the Political Status Advisory Commission would be required to have been "domiciliaries" of the USVI for "a minimum of five years," id. art. XVII, § 1(b). In addition, the proposed constitution would require that USVI Senators be "domiciled" in their legislative district "for at least one year immediately preceding the first date of filing for office." Id. art. V, § 3(c).

These requirements, particularly those requiring more than five years of residence, raise potential equal protection concerns. The Supreme Court has summarily affirmed three decisions upholding five-to seven-year residence requirements for state senators and governors, see Chimento v. Stark, 353 F. Supp. 1211, 127 (D.N.H. 1973), aff'd, 414 U.S. 802 (1973); Kanapaux v. Ellisor (D.S.C. unreported), aff'd, 419 U.S. 891 (1974); Sununu v. Stark, 383 F. Supp. 1287 (D.N.H. 1974), aff'd, 420 U.S. 958 (1975), and lower courts have upheld relatively brief durational residency requirements for state or local offices, typically applying only rational basis review and deeming such laws adequately justified by the governmental interest in ensuring familiarity with local concerns.[9] But in some cases lower courts have

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[6] See, e.g., May v. Town of Mountain Village, 132 F.3d 576, 583 (10th Cir. 1997) (upholding inclusion of nonresident property owners in town electorate because such voters "have a substantial interest in township elections"); Board of County Commissioners of Shelby County, Tenn. v. Burson, 121 F.3d 244, 248-51 (6th Cir. 1997) (deeming participation of city voters in county school board elections irrational and thus impermissible under Fourteenth Amendment where city voters had their own independent school board and lacked a substantial interest in county school board elections); Hogencamp v. Lee County Bd. of Educ., 722 F.2d 720, 722 (11th Cir. 1984) (deeming city taxpayers' contribution of 2.74% of county school board's budget "insufficient by itself to create a substantial interest in the city residents" justifying their participation in county school board elections).

[7] Because we conclude that the restrictions on voting present clear equal protection concerns under the Fourteenth Amendment, we need not consider whether they may also violate the Fifteenth Amendment's prohibition on denial or abridgement of the right to vote "on account of race, color, or previous condition of servitude." U.S. Const. amend. XV; see also 48 U.S.C. § 1561 (extending Fifteenth Amendment to USVI).

[8] The proposed constitution appears ambiguous with respect to how this five-year period is determined. It provides: "There shall be an Attorney General, who shall be appointed by the Governor with the advice and consent of the Senate, and at the time of the appointment must . . . have resided in the Virgin Islands at least five (5) years next preceding his election." See Proposed Const. art. VI, § 10(a)(1). Given that the Attorney General would be appointed rather than elected, the reference to the period "next preceding his election" seems unclear.

[9] See, e.g., City of Akron v. Bell, 660 F.2d 166, 168 (6th Cir. 1981) (one-year residence requirement for city council members); MacDonald v. City of Henderson, 818 F. Supp. 303, 306 (D. Nev. 1993) (one-year residence requirement for city council); Hankins v. Hawaii, 639 F. Supp. 1552, 1556 (D. Hawaii 1986) (five-year residence requirement for Hawaii governor under state constitution); Schiavone v. DeStefano, 852 A.2d 862, 866-67 (Conn. Sup. Ct. 2001) (fiveyear residence requirement for city mayor); Civil Service Merit Bd. of City of Knoxville v. Burson, 816 S.W.2d 725, 734 (Tenn. 1991) (one-year residence requirement for municipal civil service boards); State ex rel. Brown v. Summit County Bd. of Elections, 545 N.E.2d 1256, 1259-60 (Ohio

struck down laws imposing residence requirements of five or more years on certain state or local offices.[10]

Insofar as the territorial status and unique history and geography of the USVI make familiarity with local issues particularly important for office-holders there, the governmental interests supporting durational residence requirements for USVI offices may be particularly strong.[11] Yet at least some courts might consider the lengthy residence requirements here-particularly the ten-or fifteen-year periods required for USVI judges, Governors, and Lieutenant Governors-unjustified.[12] Accordingly, we would recommend that consideration be given to shortening the ten-and fifteen-year residence requirements for USVI Governors, Lieutenant Governors, and judges.

C. Territorial Waters, Marine Resources, and Submerged Lands

In Clements v. Fashing, 457 U.S. 957 (1982), a plurality of the Supreme Court observed that "the existence of barriers to a candidate's access to the ballot 'does not of itself compel close scrutiny,'" and that "[d]ecision in this area of constitutional adjudication is a matter of degree, and involves a consideration of the facts and circumstances behind the law, the interests the State seeks to protect by placing restrictions on candidacy, and the nature of the interests of those who may be burdened by the restrictions." Id. at 963 (plurality opinion) (quoting Bullock v. Carter, 405 U.S. 134, 143 (1972)). Clements, however, did not involve durational residence requirements, but rather provisions requiring a waiting period or mandatory resignation before certain current state officeholders could seek new elective offices. See id. at 966-71. In another case, a concurring opinion, citing Chimento's approval of a seven-year residence requirement for a state governor, suggested that residence requirements may serve legitimate purposes, but this opinion did not elaborate on how long a period of prior residence may be required. See Zobel, 457 U.S. at 70 (Brennan, J., concurring) (observing that "allegiance and attachment may be rationally measured by length of residence . . . and allegiance and attachment may bear some rational relationship to a very limited number of legitimate state purposes").

Third, Article XII, Section 2, concerning "Preservation of Natural Resources," states:

> The Government shall have the power to manage, control and develop the natural and marine resources comprising of submerged lands, inlets, and cays; to reserve to itself all such rights to internal waters between the individual islands, claim sovereignty over its inter-island waters to the effect that the territorial waters shall extend 12 nautical miles from each island coast up to the international boundaries. This is an alienable right of the people of the Virgin Islands of the U.S. and shall be safeguarded.

1989) (two-year residence requirement for city council); Langmeyer v. Idaho, 656 P.2d 114, 118 (Idaho 1982) (five-year residence requirement for appointment to local planning and zoning board); cf. Thournir v. Meyer, 909 F.2d 408, 411 (10th Cir. 1990) (upholding under rational basis review state requirement that unaffiliated candidates have been registered as unaffiliated voters in the state for at least one year before filing for office); White v. Manchin, 318 S.E.2d 470, 488, 491 (W.Va. 1984) (applying strict scrutiny based on the fundamental right "to become a candidate for public office" but upholding state constitutional requirement that state senators have resided in their district for at least one year before their election).

[10] See, e.g., Antonio v. Kirkpatrick, 579 F.2d 1147, 1151 (8th Cir. 1978) (invalidating tenyear residence requirement for State Auditor); Brill v. Carter, 455 F. Supp. 172, 174-75 (D. Md. 1978) (invalidating four-year residence requirement for members of county council); Billington v. Hayduk, 439 F. Supp. 975, 978-79 (S.D.N.Y.) (invalidating five-year residence requirement for county executive), aff'd on other grounds, 565 F.2d 824 (2d Cir. 1977); cf. Robertson v. Bartels, 150 F. Supp. 2d 691, 696, 699 (D.N.J. 2001) (applying strict scrutiny based on "the combined right of persons to run for public office and the right of voters to vote for candidates of their choice" and invalidating state requirement that state legislators have resided within their legislative districts for at least one year); Peloza v. Freas, 871 P.2d 687, 691 (Alaska 1994) (applying heightened scrutiny under state constitution and invalidating three-year residence requirement for city council).

[11] See, e.g., Hankins, 639 F. Supp. at 1556 (observing that "[t]he State has a strong interest in the assurance that its governor will be a person who understands the conditions of life in Hawaii" and that "[t]his concern has 'particular relevance in a small and comparatively sparsely populated state'" (quoting Chimento, 353 F. Supp. at 1215)); cf. Bell, 660 F.2d at 168 (noting that "the interests of [a state or local] governmental unit in knowledgeable candidates and knowledgeable voters may be served by differing lengths of durational residency requirements").

[12] Cf. Clements, 457 U.S. at 963 (plurality opinion) (observing that "[d]ecision in this area of constitutional adjudication is a matter of degree"); Summit County Bd. of Elections, 545 N.E.2d at 1260 (upholding two-year residence requirement but deeming it "conceivable that such a requirement may be too long in duration to serve a legitimate state interest").

The intended meaning and effect of this provision are not entirely clear. To the extent that its reference to a claim of "sovereignty" over coastal waters is intended to derogate from the sovereignty of the United States over those waters, it is inconsistent with federal law and should be removed. See Proclamation No. 5928, 54 Fed. Reg. 777 (Jan. 9, 1989) (proclamation of U.S. territorial sea). In addition, by statute, the United States has, subject to certain exceptions, conveyed to the USVI its right, title, and interest in submerged lands and mineral rights in those submerged lands out to three miles. See 48 U.S.C. §§ 1705, 1706 (2006); see also, e.g., Proclamation No. 7399, 66 Fed. Reg. 7364 (Jan. 22, 2001) (proclamation of Virgin Islands Coral Reef National Monument). Any assertion of USVI control over submerged lands and mineral rights beyond those federal statutory limits would be inconsistent with federal law and should be removed. Federal law also reserves to the United States exclusive management rights over fisheries within the "exclusive economic zone." See 16 U.S.C. § 1811(a) (2006). Again, the proposed constitution must be made consistent with this federal statutory mandate. While the final sentence of Article XII, Section 2 acknowledges that the rights it addresses are alienable, we recommend modifying this language to make clearer that these matters are subject to Congress's plenary authority.[13]

Submerged, Filled and Reclaimed Lands

> Submerged lands, filled and reclaimed lands in the Virgin Islands are public lands belonging collectively to the people of the Virgin Islands, and shall not be sold or transferred. The Virgin Islands of the United States cannot be sold or transferred.

Because this provision comes in an Article on environmental protection and follows sections on establishing a land, air and water preservation commission and protecting public access to beaches, we understood it as directed at private owners. To the extent the second sentence could be read as purporting to limit Congress's power under the Territories Clause of the Constitution, see U.S. Const. art. IV, sec., to transfer the USVI, we agree that it should be amended to remove any ambiguity on that score.

I would like to emphasize that my statement has focused on three aspects of the proposed constitution that we believe Congress should consider revising because we believed that discussing those provisions would be most helpful to the subcommittee as its considers what action to take in response to the transmittal of the proposed constitution. Let me close by echoing President Obama's letter of transmittal in commending the electorate Virgin Islands and its governmental representatives in their continuing commitment to increasing self-government and the rule of law.

I would be happy to address any questions you may have. I would be grateful if the Department's memorandum could be inserted in the record of this hearing immediately following my statement.

ATTACHMENT.—DOJ MEMORANDUM

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, January 18, 2001.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your letter to President Clinton requesting that the Administration provide an analysis of the status options for Puerto Rico favored by the three principle—political parties in Puerto Rico This letter provides comments on two proposals that were voted on in the December 1998 political status plebiscite in Puerto Rico, as well as a third proposal outlined by the Popular Democratic Party in its 2000 platform. The first proposal, for Statehood, is outlined in option number 3 in Puerto Rico's recent Petition to the Government of the United Stales. The second proposal, for Independence, is outlined in option number 4 of that petition. The third proposal, the "New Commonwealth" option, is described in the Popular Democratic Party platform documents. Given the complexity and

[13] After the Department of Justice had completed its memorandum, we received a copy of a letter from several members of the Fifth Constitutional Convention to Delegate Christensen in which they raised, among other things, a concern about another article in the proposed constitution addressing submerged lands. See Letter for Hon. Donna M. Christensen, from Craig Barshinger et al. (Jan. 29, 2010). Article XV, concerning "Protection of the Environment," provides in Section 4:

number of proposals on which our comments have been sought, we address only a limited number of issues raised by the proposals, most of them constitutional in nature.

1. Statehood

The Statehood option[1] provides that Puerto Rico would become "a sovereign state, with rights, responsibilities and benefits completely equivalent to those enjoyed by the rest of the states." The principle that a new State stands on "equal footing with the original States in all respects whatsoever" has been recognized since the first days of the republic. Coyle v. Smith, 221 U.S 559, 567 (1911) (quoting 1796 declaration upon the admission of Tennessee). Supreme Court caselaw makes clear that, as a State, Puerto Rico would be "equal in power, dignity, and authority" to the other States. Id. This shift in status to statehood would also have tax consequences not fully articulated in the statehood proposal itself. Currently, as an unincorporated territory, Puerto Rico is not subject to the Tax Uniformity Clause, which requires that "all Duties, Imposts, and Excises" imposed by Congress "shall be uniform throughout the United States " U S. Const. art. I, § 8, cl. 1; see Downes v. Bidwell, 182 U.S. 244 (1901). As a result, it can be and is exempted from some federal tax laws (including most federal income lax laws), and it has other tax preferences not applicable to the States, although it also does not receive certain benefits such as the earned income tax credit. See 48 U.S.C. § 734 (1994) (providing that, with certain exceptions, "the internal revenue laws" shall not apply in Puerto Rico); 26 U.S.C. § 32 (earned income tax credit). Were Puerto Rico to become a State, however, it would be covered by the Tax Uniformity Clause and many, if not all, of these different tax treatments could not constitutionally be preserved on a permanent basis. See Political Status of Puerto Rico: Hearings on S. 244 Before the Senate Comm. on Energy and Natural Resources, 102d Cong. 189-90 (1991) (testimony of Attorney General Richard Thornburgh) ("Thornburgh Testimony") (reaching this conclusion, but also noting that the Tax Uniformity Clause permits the use of narrowly tailored transition provisions under which Puerto Rico's tax status need not be altered immediately once the decision were made to bring it into the Union as a State).

In addition, the statement in the Statehood option that admitting Puerto Rico as a State would not result in the "impairment of the representation of the rest of the states" may be inaccurate. If Puerto Rico gains representatives in Congress, it will affect the representation of the rest of the States in both the Senate and the House. In the Senate, because granting Puerto Rico two senators will increase the total membership of the Senate, the representation of the other States in the Senate will decline as a proportion of the whole, arguably "impair[ing]" their representation. Similarly, if the total number of representatives in the House of Representatives were to be increased beyond its cuerent number of 435 with the addition of representatives from Puerto Rico, then the representation of current States as a proportion of the whole would decline, again arguably "impair[ing]" their representation. If, on the other hand, the total number of representatives were to remain fixed at 435, then the fact that Puerto Rico had achieved representation would necessarily mean that at least one State would have fewer representatives. The representation of that State (or States) would arguably be "impair[ed] in two ways: its number of representatives in the House would decline, and (like all the other States) its representation would decline as a proportion of the whole.[2]

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[1] The Statehood proposal contemplates a petition to Congress asking it to provide for the following:

The admission of Puerto Rico into the Union of the United States of America as a sovereign state, with rights, responsibilities and benefits completely equal to those enjoyed by the rest of the states. Retaining, furthermore, the sovereignty of Puerto Rico in those matters which are not delegated by the Constitution of the United States to the Federal Government. The right to the presidential vote and equal representation in the Senate and proportional representation in the House of Representatives, without impairment to the representation of the rest of the states. Also maintaining the present Constitution of Puerto Rico and the same Commonwealth laws; and with permanent United States citizenship guaranteed by the Constitution of the United States of America. The provisions of the Federal law on the use of the English language in the agencies and courts of the Federal Government in the fifty states of the Union shall apply equally in the State of Puerto Rico, as at present.

[2] In the past, Congress permanently increased the number of representatives in the House when new States were admitted. Most recently, however, when Hawaii and Alaska were admitted in 1959, the number of Members of Congress was temporarily increased (from 435 to a total of 437) by the addition of a representative from each of these States; following the 1960 census, however, the number of representatives returned to 435, and the House was reapportioned. See

Continued

Moreover, the clause "maintaining the present Constitution of Puerto Rico and the same Commonwealth laws" contained in the Statehood option could be read as stating that the admission of Puerto Rico as a State would have no effect on the constitution and laws of Puerto Rico. Such a statement might not be entirely correct. Currently, not all provisions of the United States Constitution are fully applicable to Puerto Rico. See Balzac v. Porto Rico, 258 U.S. 298, 304-314 (1922) (Sixth Amendment right to jury trial not applicable in Puerto Rico); Downes, 182 U.S. at 291 (White, J., concurring in the judgment) (explaining that only constitutional provisions that are "of so fundamental a nature that they cannot be transgressed" apply to unincorporated territories such as Puerto Rico). If Puerto Rico were to become a State, however, it would then be subject to the entire Constitution. In that event, some aspects of Puerto Rico's constitution and laws might be preempted by the Constitution pursuant to the Supremacy Clause, U.S. Const. art. VI, cl. 2. Similarly, the admission of Puerto Rico as a State might extend to Puerto Rico some federal statutes that may be deemed not to apply to Puerto Rico at present because they are written to apply only in the several States. If so, then under the Supremacy Clause those statutes would also preempt aspects of Puerto Rican law with which they conflict (although it should be noted that Congress currently has power to preempt laws of Puerto Rico).

2.Independence

The Independence proposal contains certain provisions regarding citizenship. Specifically, it states:

> The residents of Puerto Rico shall owe allegiance to, and shall have the citizenship and nationality of, the Republic of Puerto Rico. Having been born in Puerto Rico or having relatives with statutory United States citiienship by birth shalt no longer be grounds for United States citizenship; except for those persons who already had the United States citizenship, who shall have the statutory right to keep that citizenship for the rest of their lives, by right or by choice, as provided by the laws of the Congress of the United States.This proposal could be read as having two possible meanings: it could mean that persons already holding United States citizenship based on their birth in Puerto Rico or on the birth of their relatives have a right to that citizenship and that Congress must legislate in a way that makes provision for that right; or, it could mean that Congress has discretion to decide whether persons who have United States citizenship by virtue of their birth in Puerto Rico (or by virtue of having United States citizen relatives) will retain that citizenship once Puerto Rico becomes independent.[3] At least the second reading raises the question whether statutory United States citizens residing in Puerto Rico at the time of independence would have a constitutionally protected right to retain that citizenship should Congress seek to terminate it.[4]

Although the proposal speaks of a "statutory right" to retain citizenship,[5] there is at least an argument that individuals possessing United States citizenship would have a constitutional right to retain that citizenship, even if they continue to reside in Puerto Rico after independence. See Afroyim v. Rusk, 387 U.S. 253, 257 (1967) (rejecting the position that Congress has a "general power . . . to take away an American citizen's citizenship without his assent"). On the other hand, there is also case law dating from the early republic supporting the proposition that nationality

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Comptroller General, Puerto Rico's Polilical Future: A Divisive Issue with Many Dimensions 103 (1981).

[3] We do not read the proposal to affect existing statutory provisions regarding U.S. citizenship for persons born outside the United States to a U.S. citizen parent or parents. See 8 U.S.C. §§ 1401, 1409.

[4] If such persons do have a constitutionally protected right to retain their United States citizenship even as they acquire Puerto Rican citizenship, then Puerto Rican independence could result in a significant number of people acquiring dual citizenship. While this letter does not address the policy implications of such dual citizenship, we do not think it would run afoul of any constitutional stricture.

[5] It is the Department's position that the source of the citizenship of those born in Puerto Rico is not the Fourteenth Amendment, but federal statute, specifically 8 U.S.C. § 1402 (1994). See Statement of William M. Treanor, Deputy Assistant Attorney General, Office of Legal Counsel, Before the House Comm. on Resources, 106th Cong. 18 (Oct. 4, 2000) ("Treanor Testimony"); Puerto Rico: Hearings on H.R. 856 and S. 472 Before the Senate Comm. on Energy and Natural Resources, 105th Cong. 148 (1998) (statement of Randolph D. Moss, Acting Assistant Attorney General, Office of Legal Counsel, U.S, Department of Justice). That point is separate, however, from the question whether the Constitution protects that citizenship once it is statutorily conferred, and, if so, to the same extent as it protects "Fourteenth Amendment citizenship."

follows sovereignty. See American Insurance Co. v. Canter, 26 U.S. (1 Pet.) 511, 542 (1828) (Marshall, C.J.) (upon the cession of a territory the relations of its inhabitants "with their former sovereign are dissolved, and new relations are created between them, and the government which has acquired their territory. The same Act which transfers their country, transfers the allegiance of those who remain in it."); Boyd v. Nebraska ex rel Thayer, 143 U.S. 135, 162 (1892) ("Manifestly the nationality of the inhabitants of territory acquired by . . . cession becomes that of the government under whose dominion they pass, subject to the right of election on their part to retain their former nationality by removal, or otherwise, as may be provided."); United States ex rel Schwarzkopf v. Uhl, 137 F.2d 898, 902 (2d Cir. 1943) (describing Canter as recognizing a "generally accepted principle of international law" that "[i]f the inhabitants [of a newly independent nation] remain within the territory [of the new nation] their allegiance is transferred to the new sovereign."). See also Restatement (Third) of The Law of Foreign Relations § 208 (1987) (observing that [n]ormally, the transfer of territory from one state to another results in a corresponding change in nationality for the inhabitants of that territory" and that, in some cases of territory transfer, inhabitants can choose between retaining their former nationality and acquiring that of the new state). In view of the tension between Afroyim and cases such as Canter, it is unclear whether the Independence proposal's possible provision for congressional revocation of United States citizenship passes constitutional muster. See Treanor Testimony at 19 (reserving the constitutional issue of whether, upon independence, it would be permissible to terminate non-consensually the United States citizenship of residents of Puerto Rico).[6]

The Independence proposal also provides that "Puerto Rico and the United States shall develop cooperation treaties, including economic and programmatic assistance for a reasonable period, free commerce and transit, and military force status." Viewing this language as part of a ballot option for the people of Puerto Rico, we understand it as a possible proposal to be made by Puerto Rico to Congress. We do not, therefore, read the use of the word "shall" to impose on the United States any obligation to enter into certain treaties with an independent Puerto Rico. Moreover, if the proposal did purport to impose such an obligation, we would construe its language as precatory, not binding, in order to preserve the sovereign prerogatives of the United States. We discuss this point in greater detail infra at 7-9.

3. New Commonwealth[7]

The New Commonwealth proposal describes Puerto Rico as "an autonomous political body, that is neither colonial nor territorial, in permanent union with the United States under a covenant that cannot be invalidated or altered unilaterally." Our analysis of this proposal is based on two general premises, which we will outline before proceeding to address specific aspects of the proposal.

The first premise is that the Constitution recognizes only a limited number of options for governance of an area. Puerto Rico could constitutionally become a sovereign Nation, or it could remain subject to United States sovereignty. It can do the latter in only two ways: it can be admitted into the Union as a State, U.S. Const. art. IV, § 3, cl. 1, or it can remain subject to the authority of Congress under the Territory Clause, U.S. Const. art. IV, § 3, cl. 2. See National Bank v. County of Yankton, 101 U.S. 129, 133 (1879) ("All territory within the jurisdiction of the United States not included in any State must necessarily be governed by or under the authority of Congress."). The terms of the Constitution do not contemplate an option other than sovereign independence, statehood, or territorial status.

Although Puerto Rico currently possesses significant autonomy and powers of self-government in local matters pursuant to the Puerto Rican Federal Relations Act, Pub. L. No. 81-600, 64 Stat. 319 (1950) (codified at 48 U.S.C. §§ 73 lb-731e (1994)) ("Public Law 600"), that statute did not take Puerto Rico outside the ambit of the Territory Clause. In Harris v. Rosario, 446 U.S. 651 (1980) (per curiam), for example, the Court sustained a level of assistance for Puerto Rico under the Aid to Families with Dependent Children program lower than that which States received, and explained that "Congress, which is empowered under the Territory Clause of the Constitution to 'make all needful Rules and Regulations respecting the Territory ...

[6] It should be noted that in 1991 the Department of Justice did not treat this question as unsettled. See Thornburgh Testimony at 206-07 (suggesting that should Puerto Rico become independent, its residents "should be required to elect between retaining United States citizenship (and ultimately taking up residence within the United States . . .)," and citizenship in the new republic of Puerto Rico.).

[7] Our comments on the New Commonwealth proposal are based in part on, and are intended to be consistent with, the October 4, 2000 testimony of Deputy Assistant Attorney General William M. Treanor before the House Committee on Resources. See Treanor Testimony, supra at n.5.

belonging to the United States,' may treat Puerto Rico differently from States so long as there is a rational basis for its actions." Id. at 651-52 (internal citation omitted). See also Califano v. Torres, 435 U.S. 1, 3 n.4 (1978) (per curiam) ("Congress has the power to treat Puerto Rico differently, and , .. every federal program does not have to be extended to it."). The Department of Justice has long taken the same view,[8] and the weight of appellate case law provides further support for it. See, e.g., Mercado v. Commonwealth of Puerto Rico, 214 F.3d 34, 44 (1st Cir. 2000) ("[U]nder the Territorial Clause, Congress may legislate for Puerto Rico differently than for the states."); Davila-Perez v. Lockheed Martin Corp., 202 F.3d 464, 468 (1st Cir. 2000) (affirming that Puerto Rico "is still subject to the plenary powers of Congress under the territorial clause."); United States v. Sanchez, 992 F.2d 1143, 1152-53 (11th Cir. 1993) ("'Congress continues to be the ultimate source of power [over Puerto Rico] pursuant to the Territory Clause of the Constitution.'") (quoting United States v. Andino, 831 F.2d 1164, 1176 (1st Cir. 1987) (Torruella, J., concurring), cert. denied, 486 U.S. 1034 (1988)), cert. denied, 510 U.S. 1110 (1994).[9]

The second premise is that, as a matter of domestic constitutional law, the United States cannot irrevocably surrender an essential attribute of its sovereignty. See United States v. Winstar Corp., 518 U.S. 839, 888 (1996) (The United States "may not contract away 'an essential attribute of its sovereignty.'") (quoting United States Trust Co. v. New Jersey, 431 U.S. 1, 23 (1977)); Burnet v. Brooks, 288 U.S. 378, 396 (1933) ("As a nation with all the attributes of sovereignty, the United States is vested with all the powers of government necessary to maintain an effective control of international relations."). This premise is reflected in the rule that, in general, one Congress cannot irrevocably bind subsequent Congresses. See Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803) (Marshall, C. J.) (noting that legislative acts are "alterable when the legislature shall please to alter [them]."); see also Fletcher v. Peck, 10 U.S. (6 Cranch) 87, 135 (1810) (Marshall, C.J.) (recognizing the general rule that "one legislature is competent to repeal any act which a former legislature was competent to pass; and that one legislature cannot abridge the powers of a succeeding legislature," while holding that vested rights are protected against subsequent congressional enactments). Moreover, as the Supreme Court has recognized, treaties and other covenants to which the United States is party stand, for constitutional purposes, on the same footing as federal legislation. See Breard v. Greene, 523 U.S. 371, 376 (1998) (per curiam) ("We have held 'that an Act of Congress . . . is on a full parity with a treaty, and that when a statute which is subsequent in time is inconsistent with a treaty, the statute to the extent of conflict renders the treaty null.'") (quoting Reid v. Covert, 354 U.S. 1, 18 (1957) (plurality opinion)). Thus, to the extent a covenant to which the United States is party stands on no stronger footing than an Act of Congress, it is, for purposes of federal constitu-

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[8] This position has been expressed in briefs filed in federal court by past Solicitors General. See, e g., Jurisdictional Statement of the United States at 10-11, Harris v. Rosario, 446 U.S. 651 (1980) (No. 79-1294). It has also been taken in memoranda and opinions issued by the Office of Legal Counsel. See, e.g., Memoranda for Linda Cinciotta, Director, Office of Attorney Personnel Management, from Richard L. Shiffrin, Deputy Assistant Attorney General, Office of Legal Counsel, Re. Interpretation of the Term "Territory" in the Department of Justice Appropriations Act (July 31, 1997); Memorandum for Lawrence E. Walsh, Deputy Attorney General, from Paul A. Sweeney, Acting Assistant Attorney General, Office of Legal Counsel, Re: H.R. 5926, 86th Cong., 1st Sess., a bill "To provide for amendments to the compact between the people of Puerto Rico and the United States" (June 5, 1959). In a 1963 opinion, the Office of Legal Counsel treated the legal consequences of Public Law 600 as an open question and did not resolve it. See Memorandum Re: Power of the United Stales to Conclude with the Commonwealth of Puerto Rico a Compact Which Could Be Modified Only by Mutual Consent (July 23, 1963).

[9] We acknowledge, however, that the First Circuit has not always spoken with a single voice on this question. See, e.g., United States v. Andino, 831 F.2d 1164 (1st Cir. 1987) (prevailing opinion), cert. denied, 486 U.S. 1034 (1988)); United States v. Quinones, 758 F.2d 40, 42 (1st Cir. 1985) ("[I]n 1952, Puerto Rico ceased being a territory of the United States subject to the plenary powers of Congress as provided in the Federal Constitution."); Cordova & Simonpietri Ins. Agency Inc. v. Chase Manhattan Bank N.A., 649 F.2d 36, 4 l (1st Cir. 1981) (Breyer, J.) (stating that following the passage of Public Law 600, "Puerto Rico's status changed from that of a mere territory to the unique status of Commonwealth."); Figueroa v. People of Puerto Rico, 232 F.2d 615, 620 (1st Cir. 1956) (Magruder, J.) (maintaining that to say that Public Law 600 was "just another Organic Act" for Puerto Rico would be to say that Congress had perpetrated a "monumental hoax" on the Puerto Rican people). Notwithstanding these inconsistencies, we believe the more recent First Circuit and other appellate decisions correctly state the law and properly recognize that the Supreme Court's decision in Harris is controlling.

We also acknowledge that the Federal Circuit's opinion in Romero v, United States, 38 F.3d 1204 (Fed. Cir. 1994), found that, for purposes of 5 U.S.C. § 5517, Puerto Rico is not a "State," "territory," or "possession." We read that opinion as addressing questions regarding the terms of that particular statute alone.

tional law, subject to unilateral alteration or revocation by subsequent Acts of Congress. As the Court explained in Whitney v. Robertson, 124 U.S. 190, 194 (1888):

> When the stipulations [of a treaty] are not self-executing they can only be enforced pursuant to legislation to carry them into effect, and such legislation is as much subject to modification and repeal by Congress as legislation upon any other subject. If the treaty contains stipulations which are self-executing, that is, require no legislation to make them operative, to that extent they have the force and effect of a legislative enactment. Congress may modify such provisions, so far as they bind the United States, or supersede them altogether.

This second premise applies to the exercise of presidential powers as well as to the exercise of congressional powers. Thus, a compact could not constitutionally limit the President's power to terminate treaties by requiring that he not exercise that power in the context of that compact without first obtaining the consent of the other signatories to the compact. Cf. United States v Curtiss-Wright Export Corp., 299 U.S. 304, 320 (1936) (President has "plenary and exclusive power . . . as the sole organ of the federal government in the field of international relations"); Goldwater v. Carter, 617 F.2d 697, 703-09 (D.C. Cir.) (en banc), rev'd on other grounds, 444 U.S. 996 (1979) (finding that the President has constitutional authority to terminate a treaty); Goldwater, 444 U.S. at 1007 (Brennan, J., dissenting) (President's power to recognize the People's Republic of China entailed power to abrogate existing defense treaty with Taiwan).

With these two premises established, we turn now to analyzing the New Commonwealth proposal. The threshold point to consider is what type of status the proposal contemplates for Puerto Rico. Parts of the New Commonwealth proposal appear to contemplate Puerto Rico's becoming an independent Nation,[10] while others contemplate Puerto Rico's remaining subject to United States sovereignty to some degree).[11] To the extent that the proposal would thereby create for Puerto Rico a hybrid status, it runs afoul of the first premise discussed above. The proposal must be assessed against the constitutionally permissible status categories that exist, and the precise nature of the constitutional issues raised by the proposal turns in part on whether it is understood to recognize Puerto Rico as a sovereign nation or to maintain United States sovereignty over Puerto Rico.

First, regardless of whether the New Commonwealth proposal contemplates full Puerto Rican independence or continued United States sovereignty over Puerto Rico, the proposal's mutual consent provisions are constitutionally unenforceable. Article X of the proposal specifies that the New Commonwealth will be implemented pursuant to an "agreement between the people of Puerto Rico and the government of the United States," and provides that the agreement will have the force of a "bilateral covenant . . . based on mutual consent, that cannot be unilaterally renounced or altered.[12] If the proposal is read to maintain United States sovereignty over Puerto Rico, then, since the "enhanced" Commonwealth it contemplates would not be a State, it would necessarily remain subject to congressional power under the Territory Clause. It follows, then, that Congress could later unilaterally alter the terms of the covenant between the United States and Puerto Rico. See District of Columbia v. John R. Thompson Co., 346 U.S. 100, 106 (1953) (explaining that delegations of power from one Congress to the government of a territory are generally subject to revision, alteration, or revocation by a later Congress); see also Thornburgh Testimony at 194 (stating that proposed legislation conferring on Puerto Rico "sov-

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[10] See, e.g., Preamble (referring to Puerto Rico as a "nation," and describing the "natural right to self government" and "free will" of the people of Puerto Rico as "ultimate sources of their political power"); Article V(B) (referring to Puerto Rico's authority over international matters).

[11] See, e.g., Preamble (describing Puerto Rico as being, "in permanent union with the United States"); Article II (providing for continued United States citizenship for persons born in Puerto Rico); Article VIII (providing for federal court jurisdiction over matters arising from "provisions of the Constitution of the United States and of the Federal laws that apply to Puerto Rico consistent with this Covenant and not in violation [of] the laws of the Constitution of Puerto Rico"); Article XIII (providing that the Resident Commissioner of Puerto Rico shall be "considered a Member of the U.S. House of Representatives" for certain purposes).

[12] This mutual consent requirement appears in a number of places throughout the proposal. The Preamble states that Puerto Rico shall remain "in permanent union with the United States under a covenant that cannot be invalidated or altered unilaterally." Article II(A) provides that "[p]eople born in Puerto Rico will continue to be citizens of the United States by birth,' and specifics that this rule "will not be unilaterally revokable"). See also Article XIII(e) (prohibiting unilateral alteration of the covenant by the United States by providing that "[a]ny change to the terms of this Covenant will have to be approved by the people of Puerto Rico in a special vote conducted consistent with its democratic processes and institutions.").

ereignty, like a State" and making that status irrevocable absent mutual consent was "totally inconsistent with the Constitution").[13]

If Puerto Rico is to become an independent nation under the New Commonwealth proposal, then the relationship between the United States and Puerto Rico would necessarily be subject to subsequent action by Congress or the President, even without Puerto Rico's consent. As a general matter, a treaty cannot, for purposes of domestic constitutional law, irrevocably bind the United States, See supra at 7-8. In particular, because the power to make and unmake treaties is "inherently inseparable from the conception" of national sovereignty, Curtiss-Wright Export Corp., 299 U.S. at 318, it can not be contracted away. Thus, if Puerto Rico were to become independent, the New Commonwealth proposal's mutual consent requirements would be constitutionally unenforceable against the United States.[14]

The New Commonwealth proposal also contains certain provisions regarding the retention of United States citizenship. Specifically, it provides that "[p]eople born in Puerto Rico will continue to be citizens of the United States by birth and this citizenship will continue to be protected by the Constitution of the United States and by this Covenant and will not be unilaterally revokable."

This provision could be read in two different ways, First, it could be read as concerned only with persons born in Puerto Rico after the New Commonwealth proposal goes into effect. Understood as limited to these individuals, the proposal would confer United States citizenship on them unless and until Puerto Rico and the United States mutually agree to revoke it. Second, the text could be read as addressing the United States citizenship of all persons born in Puerto Rico, whether before or after the New Corrunonwealth proposal goes into effect.[15] Under this second reading, the proposal would preserve these individuals' citizenship subject to revocation by the mutual consent of Puerto Rico and the United States.

With respect to either reading, the mutual consent stipulation (i.e. that the grant of citizenship cannot be altered except by mutual consent) is, for the reasons discussed above, see supra at 8-9, constitutionally unenforceable. If that stipulation is set aside, the provision then reads as a simple grant of citizenship to certain persons born in Puerto Rico—either those born in Puerto Rico after the New Commonwealth proposal goes into effect, or all those born in Puerto Rico before and after such time. We see no constitutional impediment with that provision, regardless of how broadly it is read. However, whether that provision is itself alterable by a subsequent Act of Congress becomes a question of whether the United States citizenship of the persons covered by the provision is constitutionally protected. The answer to that question depends on how the provision is read (that is, whether it is

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[13] Under the approach set forth in Fletcher v. Peck, 10 U.S. (6 Cranch) 87 (1810), a different result would be warranted if the covenant called for in the New Commonwealth proposal had the effect of vesting rights in Puerto Rico's status as a commonwealth or in an element of that status, such as the mutual consent requirement. It is true that in 1963, the Office of Legal Counsel concluded that a mutual consent provision would be constitutional because Congress could vest rights in political status. See Memorandum Re: Power of the United States to Conclude with the Commonwealth of Puerto Rico a Compact which Could be Modified Only by Mutual Consent (July 23, 1963). But the Justice Department altered its position on that question during the administration of President Bush, see Thornburgh Testimony at 194, and the Office of Legal Counsel now adheres to that position. See Treanor Testimony at 15-16; Memorandum for the Special Representative for Guam from Teresa Roseborough, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Mutual Consent Provisions in the Guam Commonwealth Legislation (July 28, 1994).

Two independent grounds support out current position that rights may not be vested in political status. First, after the issuance of the Department's 1963 opinion, the Supreme Court concluded that the Fifth Amendment's guarantee of due process applies only to persons and not to States. See South Carolina v. Katzenbach, 383 U.S. 301, 373-24 (1966). While Katzenbach was concerned with a State, its rationale suggests that a governmental body, including a territory such as Puerto Rico, could not assert rights under the Due Process Clause. Second, the modern Supreme Court case law concerning vested rights is limited in scope. While the Court has recognized that economic rights are protected under the Due Process Clause, see, e.g., Lynch v. United States, 292 U.S. 571 (1934), the case law does not support the view that there would be Fifth Amendment vested rights in a political status for a governmental body that is not itself provided for in the Constitution. Cf Bowen v. Public Agencies Opposed to Social Security Entrapment, 477 U.S. 41, 55 (1986) ("[T]he contractual right at issue in this case bears little, if any, resemblance to rights held to constitute 'property' within the meaning of the Fifth Amendment.... The provision simply cannot be viewed as conferring any sort of 'vested right' in the fact of precedent concerning the effect of Congress' reserved power on agreements entered into under a statute containing the language of reservation.").

[14] It is a separate question whether, or to what extent, the New Commonwealth proposal's mutual consent requirements would be binding under international law, and we do not address that question here.

[15] One limitation to the scope of the clause should be noted: presumably it is not intended to apply to those residing outside of Puerto Rico at the time the proposal took effect.

read as addressing those born in Puerto Rico in the future, or as covering those already born in Puerto Rico, or both),[16] and may also depend on whether the New Commonwealth proposal in general is understood as creating an independent nation or as maintaining United States sovereignty over Puerto Rico.

We first address whether there would be any constitutional constraints on Congress's authority to provide that persons born in Puerto Rico in the future would not acquire United States citizenship by virtue of their birth in Puerto Rico. If Puerto Rico is to become an independent nation, then, while Congress may well have the power to provide (as the New Commonwealth proposal appears to contemplate) that persons born in Puerto Rico in the future shall acquire United States citizenship, we think Congress could also change that rule and provide that, in the future, birth in Puerto Rico shall no longer be a basis for United States citizenship.[17] If, however, Puerto Rico is to remain subject to United States sovereignty, then the answer is less clear. We are unaware of any case addressing the power of Congress to withhold prospectively non-Fourteenth Amendment citizenship from those born in an area subject to United States sovereignty, when persons previously born in that area received statutory citizenship by birthright, and we think it is unclear how a court would resolve that issue.

Next, we consider whether the Constitution would permit Congress to revoke the United States citizenship of persons who already have such citizenship because they were born in Puerto Rico. If the New Commonwealth proposal is understood to maintain United States sovereignty over Puerto Rico, then we think Congress could not revoke the United States citizenship of persons who already possess that citizenship by virtue of their birth in Puerto Rico. As the Court explained in Afroyim, Congress lacks a "general power . . . to take away an American citizen's citizenship without his assent." 387 U.S. at 257. While not squarely faced with a case of statutory citizenship, the Court in Afroyim did not limit its decision to persons whose citizenship is based on the Fourteenth Amendment, and we think it should not be so confined.[18] Accordingly, while we find no constitutional impediment in the New Commonwealth proposal's provision that those born in Puerto Rico will retain their citizenship in the future, we do think that to the extent Puerto Rico is to remain subject to United States sovereignty, the provision is redundant (or at best declaratory) of an underlying constitutional requirement that such citizenship not be revoked once it is granted. If, on the other hand, Puerto Rico were to become an independent nation under the New Commonwealth proposal, then, as we noted in our discussion of the Independence proposal's treatment of citizenship, see supra at 4-5, it is unclear whether Congress could revoke the U.S. citizenship of persons already holding such citizenship at the time of independence. There is an argument that the Constitution would ensure that those who possessed United States citizenship at the time of Puerto Rican independence must he able to retain that citizenship after independence, see Afroyim, 387 U.S at 257, but there is also case law supporting the proposition that nationality follows the flag. See Canter, 26 U.S. at 542. As noted, it is unclear how a court would resolve this issue.

The New Commonwealth proposal also provides for the election of a Resident Commissioner to "represent Puerto Rico before the Government of the United States

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[16] The proposal might also be read to refer to people born in Puerto Rico in the future, but before any future action by Congress to cease extending citizenship to persons born in Puerto Rico. Identifying the precise constitutional considerations relevant to that reading of the proposal would require further study.

[17] We do not, however, address whether Congress could also exclude residents of Puerto Rico from other statutory sources of United States citizenship, such as being born abroad to a United States citizen parent or parents.

[18] A counter-argument might be made based on the Supreme Court's decision in Rogers v. Bellei, 401 U.S. 815 (1971), which upheld the loss of citizenship of an individual who was born in Italy and who acquired citizenship under a federal statute because one of his parents was an American citizen. The statute required that persons claiming citizenship on that basis meet certain requirements of residency in the United States prior to their twenty-eighth birthday. The Rogers Court upheld the statute's provision for loss of citizenship for those who failed to meet the residency requirement. While the Rogers Court criticized Afroyim's language concerning non-Fourteenth Amendment citizenship and based its own holding in part on the fact that Belles citizenship was not conferred pursuant to the Fourteenth Amendment, see 401 U.S. at 835, Rogers is best understood as addressing the legitimacy of pre-established requirements for statutorily conferred citizenship (including conditions subsequent such as the residency by age 28 requirement) when Congress grants citizenship to those who would not otherwise receive it directly by operation of the Fourteenth Amendment. That issue—of the legitimacy of pre-established requirements—is not relevant to Congress's powers to divest citizenship once it has been unconditionally conferred. Afroyim thus appears to be the most relevant precedent, and it supports the view that, so long as Puerto Rico remains under United States sovereignty, citizenship that has been granted is constitutionally protected.

and who will be considered a Member of the U.S. House of Representatives for purposes of all legislative matters that have to do with Puerto Rico." The applicable provision of the Constitution—Article I, Section 2, Clause 1—provides that the House of Representatives "shall be composed of Members chosen every second Year by the People of the several States." (emphasis added). On its face, that provision would seem to mean that the Resident Commissioner from Puerto Rico could not be "considered a Member" of the House because, under the New Commonwealth proposal, Puerto Rico would not be a "State." While Congress has the ability to permit participation by representatives of the territories, see Michel v. Anderson, 14 F.3d 623, 630-32 (D.C. Cir. 1994) (holding that the House of Representatives had the authority to permit a territorial delegate (including the Resident Commissioner from Puerto Rico) to vote in the House's committees, including the Committee of the Whole), there are constitutional limits to the participation that would be permitted.

The New Commonwealth proposal contains a number of other provisions that may raise particular constitutional concerns if the proposal contemplates Puerto Rico remaining subject to United States sovereignty. The proposal authorizes Puerto Rico to "enter into commercial and tax agreements, among others, with other countries," and to "enter into international agreements and belong to regional and international organizations." The Constitution vests the foreign relations power of the United States, which includes the power to enter into treaties, in the federal government. Curtiss-Wright Export Corp., 299 U.S. at 318. Specifically, Article I, Section 10, Clause 1 (the "Treaty Clause") prohibits States from entering into "any Treaty, Alliance, or Confederation." Under Article I, Section 10, Clause 3 (the "Compact Clause"), however, States are permitted, if authorized by Congress, to "enter into any Agreement or Compact ... with a foreign Power." Read against the backdrop of these constitutional provisions, the New Commonwealth proposal raises several issues.

First, it is unclear whether either the Treaty Clause or the Compact Clause applies to Puerto Rico, since both clauses refer only to "State[s]." What little case law there is on this question is not in agreement. Compare Venable v. Thornburgh, 766 F. Supp. 1012, 1013 (D. Kan. 1991) (stating in dicta that "the compact clause addresses agreements between the states, territories and the District of Columbia."), with Mora v. Torres, 113 F. Supp. 309, 315 (D. P.R) (concluding that "Puerto Rico is not a State, and the compact clause, as such, is not applicable to it"), aff 'd, 206 F.2d 377 (1st Cir. 1953). If the two clauses do apply to Puerto Rico, then presumably the Compact Clause's provision for congressional authorization to enter into "Agreement[s] or Compact[s]" applies to Puerto Rico. Second, even if Congress may consent to Puerto Rico's entry into "Agreement[s] or Compact[s]," it is not clear that the "commercial and tax agreements" and "international agreements and ... regional and international organizations" referred to in the New Commonwealth proposal would all constitute "Agreement[s] or Compact[s]" to which Congress may give its consent. As the Supreme Court has noted, the constitutional distinction between "Agreement[s] [and] Compact[s]," on the one hand, and "Treat[ies], Alliance[s], [and] Confederation[s]," on the other, is not easily discerned. See U.S. Steel Corp v. Multistate Tax Comm 'n, 434 U.S. 452, 461-62 (1978) (noting that "the Framers used the words 'treaty,' 'compact,' and 'agreement' as terms of art, for which no explanation was required and with which we are unfamiliar.").[19] Some "commercial and tax agreements" would be likely to qualify as "Agreement[s] or Compact[s]" under Article I, Section 10, Clause 3 of the Constitution. If so, then Congress may be able to authorize Puerto Rico to enter into such agreements. The status of the "international agreements and ... regional and international organizations" referred to in the New Commonwealth proposal, however, is less clear. At least some of the agreements embraced in this phrase might constitute "Treat[ies], Alliance[s], or Confederation[s]" under Article I, Section 10, Clause 1. If so, then Puerto Rico may not constitutionally enter into them, with or without congressional consent. Third, even assuming Congress may authorize Puerto Rico to enter into at least some of

[19] On one account (which traces back to Justice Story) of the distinction between the Treaty and Compact Clauses, the Treaty Clause's categorical prohibition refers to agreements of a political character such as one Nation would make with another, while the conditional prohibition of the Compact Clause on agreements with foreign countries refers to arrangements regarding the private rights of sovereigns, such as adjusting boundaries, making territorial acquisitions in another State, or harmonizing the internal regulations of bordering States. See Louisiana v, Texas. 176 U.S. 1, 16-18 (1900) (outlining Story's theory); Virginia v. Tennessee, 148 U.S. 503, 519-20 (1893) (same). Agreements between Puerto Rico and foreign countries regarding taxation and commerce seem unlikely to concern private sovereign rights; a fortiori, international agreements and membership in international or regional organizations would seem to be political in character. On this theory, therefore, the Treaty Clause, if applicable to Puerto Rico, could well bar all forms of international agreements mentioned in the bill.

the types of international agreements referenced in the New Commonwealth proposal, it is unclear whether Congress could, as apparently contemplated by the proposal, give Puerto Rico prospective blanket authorization to conclude such agreements. Although it is our view that, under the Compact Clause, Congress may consent in advance to a State's entering into certain international agreements,[20] there would still be a question whether advance consent over such a broad and unspecified range of agreements as is contemplated here would be an impermissible use of Congress's power.[21]

Finally if Puerto Rico remains subject to United States sovereignty, the provision that Puerto Rico would "retain[] all the powers that have not been delegated to the United States" rests on a constitutionally flawed premise. This provision appears to attempt to create for Puerto Rico an analogue to the Tenth Amendment. But the legislative powers of a non-State region under the sovereignty of the United States are entirely vested in Congress. Because territories are created by the Nation, as a matter of constitutional law they can not delegate power to the Nation. As Chief Justice Marshall explained in Canter, "[i]n legislating for [the territories], Congress exercises the combined powers of the general, and of a state government." 26 U.S. at 546. And while Congress may delegate some of its powers over a territory to the territory itself, such delegation is, as discussed supra at 7-8, always subject to Congress's own plenary power to revise, alter, or revoke that authority. See Thompson, 346 U.S. at 106, 109; United States v. Sharpnack, 355 U.S. 286, 296 (1958).[22]

We hope this information is helpful to you. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

ROBERT RABEN,
Assistant Attorney General.

The CHAIRMAN. Yes, Mr. Silk, go right ahead. We're glad to have you here.

STATEMENT OF JOHN M. SILK, MINISTER OF FOREIGN AFFAIRS, REPUBLIC OF THE MARSHALL ISLANDS

Mr. SILK. Thank you, Mr. Chairman. On behalf of the President Jurelang Zedkaia, the Government and people of the Republic of the Marshall Islands, it is my privilege and pleasure to be able to testify before your committee here today, on S. 2941, The Republic of the Marshall Islands Supplemental Nuclear Compensation Act of 2010.

Mr. Chairman, I would also like to take this opportunity, on behalf of President Zedkaia, to thank you for our meeting yesterday.

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[20] See Letter for the Hon. Caspar W. Weinberger, Director, Office of Management & Budget, from Ralph E. Erickson, Deputy Attorney General (Sept. 19, 1972); Memorandum for Nicholas deB. Katzenbach, Deputy Attorney General, from Norbert A, Schlei, Assistant Attorney General, Office of Legal Counsel, Re: Draft bill "To authorize the construction of certain international bridges," the proposed International Bridge Act of 1963 (July 18, 1963). The case law accords with that conclusion. See Cuyler v. Adams, 449 U.S. 433, 441 (1981) (advance congressional consent to certain interstate compacts relating to crime prevention and law enforcement); Seattle Master Builders Ass'n v. Pacific Northwest Power and Conservation Council, 786 F,2d 1359, 1363 (9th Cir. 1986) (even if advance congressional consent were "unusual," it would not be unconstitutional), cert. denied, 479 U.S. 1059 (1987); see generally Virginia v. Tennessee, 148 U.S. at 521 ("The Constitution does not state when the consent of congress shall be given, whether it shall precede or may follow the compact made. . . . In many cases the consent will usually precede the compact or agreement.").

[21] We have found little authority addressing the scope of permissible congressional delegation under the Compact Clause, and we note that potential "delegation" problems might arise whether or not the Compact Clause were thought to apply to Puerto Rico. Compare Milk Industry Found. v Glickman, 132 F.3d 1467, 1473-78 (D.C. Cir. 1998) (analyzing issue arising under Compact Clause of delegation of authority to Executive Department), with Philippine Islands—Postal Service, 29 Op. Att'y Gen. 380 (1912) (analyzing without reference to Compact Clause whether Congress could delegate to government of Philippine Islands authority to negotiate and enter into international postal conventions). In either case, the breadth of the delegation contemplated here might raise constitutional concerns.

[22] Other provisions of the Commonwealth proposal may present constitutional concerns. Article VIII makes jurisdiction of federal courts subject to the provisions of the Constitution of Puerto Rico, and article XIII concerns the creation of a mechanism by which application of United States laws to Puerto Rico will be subject to the laws of Puerto Rico.

You have always been a good friend to the Marshall Islands, and we greatly appreciate your assistance.

Mr. Chairman, S. 2941 was introduced on January 28, 2010. It's identical to the original version of S. 1756, which you introduced in 2007, at the request of President Note. Although a new draft of S. 1756 was presented to the RMI as a complete substitute after a hearing before your Honorable Committee on September 25, 2007, I will speak to the present S. 2941.

While we appreciate the efforts of the Department of Energy with the people of Enewetak to provide monitoring of the nuclear waste storage facility at Runit, it is clear that the responsibility for monitoring and oversight needs to be institutionalized within the U.S. Government. In this connection, we support the provisions of S. 2941 to require a radiological survey of Runit to ensure that it is secure and that seepage or environmental contamination is not taking place, along with this committee's maintaining oversight in the reporting of these surveys.

The RMI also appreciates the inclusion of the former tri-territory citizens to participate in a Department of Labor Healthcare and Compensation Program for Department of Energy employees who contracted cancer after exposure to occupational sources of radiation. S. 2941 makes provisions for the National Academy of Sciences to conduct an assessment of the health impacts of the nuclear testing program on the residents of the RMI. The RMI hopes that this study could consider all data and analysis sent relating to analysis relating to those reconstruction exposure pathways and potential health outcomes. The RMI strongly supports this assessment.

S. 2941 appropriates the sum of $2 million annually, as adjusted for inflation, in accordance with section 218 of the RMI–U.S. compact for purposes of providing primary healthcare to the Four Atoll communities. The RMI government welcomes and fully supports this measure, and wishes to thank the Chairman for making this a permanent rather than a discretionary appropriation.

Nonetheless, as I note in my written statement, Mr. Chairman, healthcare funding for cancers attributable to the nuclear testing program, have steadily declined since the mid-1980s. Despite the findings of the NCI and the PCP, regarding continuing healthcare burdens caused by the nuclear testing program on the Marshallese people.

In addition, the compact, as amended, excluded any consideration of healthcare impacts of the nuclear testing program. I can only ask that Congress, under the commitment made in section 177 agreement, and take action on these important issues. Many Marshallese have died from the consequences of the nuclear testing program without receiving adequate medical care. While the U.S. continues to expand and increase assistance to its own citizens, we have suffered from exposure to radiation. Assistance to Marshallese has declined considerably. We recall that after the hearing in 2007, this committee took steps to address these issues in a meaningful manner, by improving the provisions of the original version of S. 1756.

We hope that this will happen again, after today's hearing on S. 2941.

Finally, Mr. Chairman, the fact is that the United States nuclear testing program was the marking point of our modern history. Our islands and our institutions reflect the chaos and problems caused by extensive contamination, public health crisis, and upheaval—and the upheaval and repeated relocation of several populations. Nonetheless, we do not hold the present generation of the American people personally responsible for what their forefathers did or failed to do to our people.

I submit to you, Chairman, that as much as we had—as much as you, we had no control or say over the politics of the cold war, and the consequences of the nuclear arms race. However, this generation of Americans are the inheritors of the richest and most powerful country in the world.

If indeed the United States has closer relationship with any nation in the world than it has through compact of free association with the RMI, as openly stated by numerous government officials, then I pray, on behalf of my government and people, that our calls may not fall on deaf ears. I further pray, Mr. Chairman, that this generation of Americans will have the courage and the will to rise above the past and make a difference, rather than to allow itself to remain controlled by the past and make excuses.

Mr. Chairman, we Marshallese and Americans can and must work together to bring closure to the legacy of the nuclear testing. I believe that together we can further the respect and mutual understanding between our 2 peoples, and bequest to our grandchildren the promise of a better future.

Thank you, Mr. Chairman. I would be pleased to answer any questions.

[The prepared statement of Mr. Silk follows:]

PREPARED STATEMENT OF JOHN M. SILK, MINISTER OF FOREIGN AFFAIRS, REPUBLIC OF THE MARSHALL ISLANDS

Mr. Chairman, Distinguished Members of the Senate Committee on Energy and Natural Resources, Ladies and Gentlemen:

Thank you for the opportunity to appear before you today. His Excellency President Jurelang Zedkaia once again takes this opportunity to personally thank you Chairman Bingaman for introducing S. 2941, the Republic of the Marshall Islands Supplemental Nuclear Compensation Act of 2010, and for convening this hearing so that we may present our views on this most important and historic legislation.

I would also like to take this opportunity to recognize other members of our delegation present here today, and to thank them for their presence and contributions.

S.2941, Republic of the Marshall Islands Supplemental Nuclear Compensation Act of 2010

There is no question that the U.S. Government's detonation of sixty-seven atmospheric nuclear weapons in our country created profound disruptions to human health, the environment, as well as our economy, culture, political system, and virtually every aspect of life. The U.S. nuclear weapons testing program was the marking period of our modern history; the trajectory of our people, our islands, and our institutions reflect the chaos and problems caused by extensive contamination, public health crises, and the upheaval and repeated relocation of several populations.

A small country with seventy square miles of land, and only six feet above sea level, and a population one tenth the size of Washington, D.C. does not have the financial, human, or institutional capacity to respond to and address the magnitude of problems caused by the nuclear weapons testing program—problems which continue to plague our nation to this day, and into the future.

The RMI Government appreciates all the assistance the U.S. Government has given to date to address some of the needs related to the testing program. The health programs, the environmental monitoring, and the food support programs for the atolls most impacted by the testing program are perhaps the most important

programs that the U.S. has provided to the RMI, particularly from a symbolic perspective as they demonstrate the U.S. commitment in taking responsibility for the damages and injuries caused by U.S. testing. However, the RMI Government and the atoll leaders have been telling the U.S. Government continuously over many decades and through multiple administrations and Congressional hearings that the needs are much greater than the U.S. is taking responsibility for.

Mr. Chairman, S 2941, which was introduced on January 20, 2010, is identical to the original version of S 1756 which you introduced in 2007, at the request of President Note. Although a new draft of S 1756 was presented to the RMI as a complete substitute after a hearing before your Honorable Committee on September 25, 2007, I will speak to the present S 2941, and then discuss the proposed substituted version of S 1756 in light of those comments.

Consequently, I would like to discuss some of the issues addressed in S 2941, as well as those issues that need to be further considered and acted upon by our governments to fully address the consequences of the U.S. Nuclear testing program in the MarshallIslands.

Runit Nuclear Waste Storage Facility

We are most pleased to note the inclusion of provisions to address the monitoring of the Runit Nuclear Waste Storage Facility at Enewetak Atoll.

The partial cleanup of Enewetak Atoll in the late 1970's resulted in the creation of an above ground nuclear waste storage site on Runit Island that has come to be known as the Runit Dome. Inside the Runit Nuclear Waste Storage Facility is over 110,000 cubic yards of radioactive material scraped from other parts of Enewetak Atoll. This nuclear waste storage site is of concrete construction and the material inside is radioactive for 24,000 years. This type of nuclear waste storage facility would not have been permitted in the US because it would not have been considered to be adequately protective of human health and the environment.

In addition, there is an area on Runit Island where particles of plutonium were dispersed and not cleaned up. These particles remain on the island covered only by a few inches of dirt.

We all know that monitoring of Runit Nuclear Waste Storage Facility and other parts of Runit Island needs to be done as part of a long-term stewardship program. Neither my government nor the Enewetak people have the expertise or resources to conduct such monitoring. The Runit Nuclear Waste Storage Facility and the surrounding contaminated land and marine area should be monitored and treated as any nuclear storage site in the US in order to provide the same level of protection to the Enewetak people as US citizens receive. That means that the monitoring needs to be part of a long-term stewardship program under the direction and responsibility of the DOE or other appropriate US agency.

This has always been a major issue of concern for the people of Enewetak who live in the immediate area of Runit, and consume fish and other seafood from the reef area adjoining Runit. Accordingly, we ask the Committee to remain engaged in the oversight of the Department of Energy's survey reports regarding the radiological conditions at Runit, and to see to it that these surveys are adequately and consistently funded to allow the Department of Energy to carry out the surveys in a complete and timely manner, and to take immediate action if a problem is discovered.

We also note that the provisions contained in the proposed substitute for S 1756 provided additional support and assurances beyond the provisions presently contained in S. 2941. We would ask that those changes also be made to S 2941.

Eligibility for Energy Employees Occupational Illness Compensation Program

The inclusion of citizens of the Trust Territory of the Pacific Islands for coverage under the Energy Employees Occupational Illness Compensation Program Act of 2000 is also most welcomed by the RMI. Approximately 50 Marshallese worked for the United States or its contractors in the Marshall Islands during this period in efforts to clean-up or monitor these severely contaminated sites, but unlike their U.S. citizen co-workers, have been denied access to health care to address the health consequences of their very hazardous work.

In this connection, we note that the US government has recently expanded its coverage under the Energy Employees Occupational Illness Compensation Program and is increasing the number of Americans eligible for nuclear compensation through "special exposure cohorts", groups of people who were exposed at US nuclear facilities, including Bikini and Enewetak.

Section 177 Healthcare

S. 2941 also appropriates the sum of $2 million annually, as adjusted for inflation in accordance with the Section 218 of the RMI-U.S. Compact for purposes of pro-

viding primary health care to the four atoll communities. The RMI welcomes and fully supports this measure and wishes to thank the Chairman for making this a permanent rather than discretionary appropriation; an issue that has caused significant problems in other Compact assistance.

Section 1(a) of Article II of the Section 177 Agreement provided that $2 million annually be made available to address the health consequences of the nuclear testing program. This amount was never subject to an inflation adjustment, despite the fact that health care cost inflation rates have always been substantially higher in the U.S. than overall inflation rates. Applying the Medical Care CPI in Hawaii, where most medical referral cases from the RMI were sent during the period in question, the adjusted rate would have been $4.42 million annually as of 2001. These costs have continued to increase even as nuclear related health care funding has declined.

As stated in the November 13, 2009, letter from President Zedkaia to Chairman Bingaman, "The provisions contained in Section 4 of the substituted version of S.1756 that provided the sum of $4.5 million annually plus adjustment for inflation as a continuing appropriation through FY 2023 to address radiogenic illnesses and the nuclear related health care needs of Bikini, Enewetak, Rongelap, Utrik, Ailuk, Mejit, Likiep, Wotho, and Wotje, is acceptable to my Government."

There is more than ample evidence and justification to support this request. The scope of 177 Health Care Program needs to be examined, especially in light of the September 2004 NCI report prepared at the specific request of the Senate Committee on Energy and Natural Resources. In addition to stating that more than half of the estimated 532 excess cancers had "yet to develop or be diagnosed" (page 14), the report also indicates that more than half of those excess cancers will occur in populations that were at atolls other than the four included in the 177 Health Care Program. Table 3 on page 20 of the report provides more than adequate justification for including in the program the populations of the "Other Northern Atolls" of Ailuk, Mejit, Likiep, Wotho, Wotje, and Ujelang. That table indicates 227 estimated excess cancers among the 2005 people who were living at those atolls during the testing period, an amount representing more than 11% of those populations. It could also be argued that there should be an active and ongoing medical diagnostic program carried out across the RMI, specifically including the outer islands, in order to diagnose the excess cancers so that they can be treated at the earliest possible stage.

While the NCI Report continues to undergo peer review, new reports continue to support the need for a substantial increase in Section 177 Health Care, beyond the provisions of S.2941. The President's Cancer Panel Annual Report entitled "Reducing Environmental Cancer Risk, What We Can Do Now" (PCP) published by the U.S. Department of Health and Human Services, National Institutes of Health and the National Cancer Institute comment in the Report's Executive Summary that:

> Of special concern, the U.S. has not met its obligation to provide for ongoing health needs of the people of the Republic of the Marshall Islands resulting from radiation exposures they received during U.S. nuclear weapons testing in the Pacific from 1946-1958.

The PCP goes on to state:

> Funding issues are exacerbated by the limited health resources available in the Marshall Islands and elsewhere in the Pacific Islands to treat affected individuals who seek care through the Section 177 and Special Medical Care programs.

The PCP notes that despite the ongoing increased risk of several hundred new cancers caused as a result of the Nuclear Testing Program in the Marshall Islands, actual funding to address these health risks has declined considerably since the mid 1980's notwithstanding the exponential increase in health care costs during the same period. In this connection, the PCP notes that the Section 177 healthcare has been significantly underfunded; annual funding beginning in 1986 was $4 million. Annual funding dropped to $2 million after about 4 years. Since 2006, funding has been level at approximately $984,000 per year.

The 4 Atoll Health Care Program (formerly the 177 Health Care Program) has been operating on borrowed time and resources since its beginnings. We have continued to watch medical and pharmaceuticals, supplies, and logistical costs increase year after year while our financial support stayed flat. After 24 years of the Compact, with medical costs at an all time high, we faced the challenge of trying to continue the program with a more than 50% cut in our already seriously inadequate budget.

What are the challenges we face?

We need a commitment for longer term funding that maintains its value in light of rapidly increasing health care costs.

We need adequate and reliable water supply systems.

We need affordable and reliable power supply systems.

We need reliable transportation services for patients and medical supplies.

We continue to lack the ability to diagnose or treat cancers in the RMI. We have no full time oncologist and lack the necessary personnel and equipment to treat cancers, although we have started a national cancer registry.

We lack autoclaves because these sterilizers require a continuing supply of distilled water to operate. Other sterilization supplies such as Formalin can only be transported by boat and are difficult to ship into the Marshall Islands. This means we do without basic minor surgery equipment unless we use cost-prohibitive disposable sets and supplies.

None of our clinics have basic laboratory setups for simple diagnostics and many of the one step lab tests are either too costly or require cool storage. We have extremely limited diagnostic equipment and much of it has to be shared on a rotating basis. We have no proctoscopes, we cannot do PSA's. Both of these would be needed for cancer screenings. In addition, we lack reliable cold storage.

Facing these limits, we have been very lucky to recruit physicians from third world countries with strong clinical skills, experience relative to our diseases, and a willingness to work under these difficult circumstances. These doctors continue to live and work in our outer atolls despite limitations in supplies, equipment, and logistical support. Hiring these doctors has also been a matter of necessity as neither our previous or current budget would have supported hiring physicians with greater salary expectations. The recruiting and relocation costs for these doctors can be relatively high. This expense is compounded as we deal with year to year funding. Lack of secured funding prevents us from recruiting and hiring on longer term contracts and seriously impacts the program's continuity and the related recruiting costs.

Some have suggested that sector grants available under the Compact, as amended, can fill this program and funding gap. Nothing could be further from the truth. Although introduced into the record in prior hearings before this committee and the House Resources and Foreign Affairs committees, the U.S. Administration specifically excluded in writing any consideration of nuclear related health issues when the amended Compact was negotiated. Instead, it was pointed out to our government that nuclear related health issues were to be taken up by the Congress under Article IX of the Section 177 Agreement. Thus, we look to Congress as provided in the Section 177 Agreement to address these issues.

NAS Study

S.2941 makes provision for the National Academy of Sciences to conduct an assessment of the health impacts of the nuclear testing program on the residents of the RMI. The RMI strongly supports this assessment as it will look at the overall health impacts caused by the Nuclear Testing Program rather than focusing on just one aspect of those impacts. The RMI would like to make it clear, however, that the NCI and other data previously presented to this Committee provides the justification for taking action now to establish a cancer screening and treatment program, and to address the radiogenic healthcare needs of several communities beyond the 4 atolls.

The proposed National Academy of Sciences assessment of the health impacts of the nuclear program on the residents of the Marshall Islands should consider all data and analyses relating to dose reconstructions, exposure pathways, and potential health outcomes. In particular, two reports prepared for the Centers for Disease Control by S. Cohen & Associates and dated May, 2007, should be reviewed as part of the assessment and the authors of the reports should be given an opportunity to meet with the NAS experts to discuss their findings. The two reports are: "Historical Dose Estimates to the GI Tract of Marshall Islanders Exposed to BRAVO Fallout".Contract No. 200-2002-00367, Task Order No. 9) and "An Assessment of Thyroid Dose Models Used for Dose Reconstruction," Vols. I and II (Contract No. 200-2002-00367 ,Task Order No. 10).

We also believe that the NAS study should consider Marshallese perspectives on illness caused by the testing. Instead of looking for effects that the NAS expects to find, it should incorporate a research methodology that includes an opportunity for Marshallese to explain the changes from their perspectives.

We know from the PCP and other reports that knowledge is constantly changing in this area, and there is an ongoing need for a continuing assessment of the health impacts of the nuclear testing program in the Marshall Islands.

While the NAS study provision had been removed from the proposed substitute of S 1756, we ask that it be retained in S. 2941, so that both governments can stay fully apprised of updated information concerning the health impacts of the nuclear program on residents of the Marshall Islands.

We want to also raise an issue that concerns the people of Utrik. In 2003, the Department of Energy established a Whole Body Counting (WBC) facility for radiological testing of the people of Utrik. Due to insufficient power supply on Utrik Atoll, the Department of Energy located the Utrik WBC on Majuro. As a result, the people who live on Utrik Atoll must travel to Majuro, which is approximately 250 miles away, in order to be tested at the WBC facility. The significant cost of air transportation, when it is available, and inconvenience to travel to Majuro from Utrik has led to infrequent and sporadic WBC testing of the inhabitants of Utrik. Congress acknowledged this problem when it passed legislation in 2004 to transfer a decommissioned NOAA vessel to Utrik Atoll for the purpose of helping to alleviate this transportation issue. While Utrik supported and welcomed that Congressional gesture, a professional analysis showed that if Utrik took possession of the vessel it would be a heavy financial burden, so unfortunately the NOAA vessel was not the solution.

So today, with only a portion of the Utrik community being tested, many are left unexamined. This is extremely problematic because recent WBC data gathered by Lawrence Livermore Laboratory has demonstrated that the people living on Utrik have received the highest body burdens of radionuclides of any group in the Marshall Islands. The people of Utrik strongly feel that relocating the WBC facility to Utrik is the right solution and is long overdue. They therefore request that language be added to S. 1756 that grants the Department of Energy the authority and funding necessary to construct a WBC facility with an adequate power supply on Utrik Atoll. While the people of Utrik do not have an exact cost estimate at this time, they believe this can be achieved with a relatively modest expenditure.

I note that provision for a WBC was included in the proposed substitute version of S 1756, but does not appear in S 2941 before us today. We urge that this provision be included in S 2941 to support and the people of Utrik on this important health and safety concern.

Assessment of the Marshall Islands Nuclear Claims Tribunal

Absent from the S.2941 is any reference to the decisions and awards made by the Marshall Islands Nuclear Claims Tribunal. The administrative and adjudicative processes of the Tribunal over the past 19 years are an important mutually agreed to component of the Section 177 Agreement and its implementation to resolve claims for damage to person and property arising as a result of the nuclear testing program. We cannot simply ignore the Tribunal's work and awards that it has made.

Understanding that there continues to be concerns in Congress, we would support a further study of the decision-making processes of the Marshall Islands Nuclear Claims Tribunal and its awards by an appropriate organization. The RMI has presented a Report on this subject prepared by former United States Attorney General Richard Thornburgh in January, 2003, however, issues and concerns apparently continue. We should move forward and resolve any remaining issues and concerns regarding the Tribunal and its work. We would therefore respectfully suggest that the GAO may be appropriate to undertake such a study and provide recommendations to the Congress should these concerns persist.

We note that there recently has been a great deal of activity in the United States in respect to amending the U.S. Radiation Effects Compensation Act (RECA) to increase the parameters of eligibility; the amounts of compensation; and the number of qualifying conditions that are presumed eligible for compensation. The RMI would take this occasion to point out as we have in the past that the Tribunal's personal injury program is based on the U.S. RECA program. The difference is that while RECA expands, the Tribunal is not provided with the resources necessary to carry out its statutory and Compact mandate and obligations. Given that test yields in the Marshall Islands were almost 100 times as great as those from the Nevada Tests, there is clearly a gross disparity between the treatment of U.S. and Marshallese victims. We ask that nuclear victims in the RMI be provided equity in compensation and treatment with their US counterparts.

Conclusion

The RMI first presented its petition under Article IX of the Section 177 Agreement regarding "changed circumstances" almost 10 years ago, and as noted earlier, the ensuing Compact negotiations excluded any discussion or measures to address issues related to the US Nuclear Testing Program. Subsequently, we were most pleased that hearings took place in the House and Senate in 2005, and again in

2007. Specifically, our Government had the opportunity to testify before this Committee on September 25, 2007, on S. 1756, in its initial version which is identical to S 2941 before us here today.

Finally, our government was provided with a proposed substituted version which increased health care assistance and expanded eligibility to ten atolls. That version was never submitted to the Committee, so S 1756 died at the end of 2008.

Meanwhile, many Marshallese have died from radiogenic related cancers without adequate health care or ever receiving their full awards from the Nuclear Claims Tribunal. Problems related to clean-up and resettlement continue to this day with inadequate resources and with no resolution in sight. We need to look for ways forward in addressing these problems, and we should not continue to put off action that should have been taken years ago.

The RMI notes that the Section 177 Agreement continues in the Compact, as amended. It does not have an expiration date, including Article IX. We need to look for solutions rather than impediments and obstacles. Contrary to what the U.S. Administration seems to believe, taking steps under Article IX of the Section 177 Agreement does not reopen the settlement. Rather it allows us to work together and address the shortcomings of the settlement as those shortcomings have become apparent over time, and need to be addressed.

We ask that this process start again today with consideration of S 2941 and timely passage of these important measures.

Thank you, and I would be pleased to answer any questions that you may have.

The CHAIRMAN. Thank you very much.

Mr. Pula, you're our cleanup witness here, go right ahead.

STATEMENT OF NIKOLAO I. PULA, DIRECTOR, OFFICE OF INSULAR AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. PULA. Thank you, Mr. Chairman, Ranking Member Murkowski, and members of the committee. Thank you for the opportunity today to discuss S. 2941, the Republic of the Marshall Islands Supplemental Nuclear Compensation Act.

The 4 principal sections deal with nuclear weapons testing in the Marshall Islands from June 1946 until August 1958.

If enacted, section 2 of S. 2941 would require the Department of Energy to survey radiological conditions on Runit Island every 4 years. In 1986, the agreement subsidiary to section 177 of the 1986 compact of free association relieved the U.S. Government of all responsibility for controlling the utilization of areas in the Marshall Islands effected by the nuclear testing program, and placed that responsibility solely on the Marshall Island's government.

Despite the settlement, the Department of Energy, for many years, performed environmental measurements at Bikini, Enewetak, Rongelap, and Utrik Atolls, including, upon request, periodic environmental sampling around Enewetak Atolls, Runit dome.

Section 3 deals with the eligibility of the former citizens of the trust territory of the Pacific islands for the Energy Employees Occupational Illness Compensation Program Act, EEOICPA. The Department of the Interior defers to the Department of Labor, which, since it has primary responsibility for administering EEOICPA, is the Federal agency best positioned to discuss this compensation program.

If enacted, section 4 of the bill would appropriate funds for the Four Atoll Health Care Program. The Administration does not support permanent annual appropriation of $2 million for this program. The executive branch determined in 2005 that there was no legal basis for considering additional payments under the agreements subsidiary to section 177 of the compact. If enacted, Sec. 5

of S. 2941 would mandate that the Secretary of the Interior commission an assessment and report by the National Academy of Sciences of the health impact of the U.S. nuclear weapons testing program in the northern islands and atolls of the Marshall Islands from June 1946 until August 1948, or 58.

The Administration does not support the commissioning of additional studies at this time. Mr. Chairman, we understand the committee is contemplating amendments to this legislation, the Administration would be happy to work with the committee on any appropriate changes.

With regard to H.R. 3940, the bill would authorize technical assistance funding for political status education programs. The Department of the Interior has no objection to the enactment of H.R. 3940, however we note that any assistance provided under this authorization would have to compete with other priority needs. We also note that everything section 2 would authorize, be accomplished under the language already contained in subsection A of section 601 of Public Law 95–597, without the enactment of additional legislation.

The Department of the Interior would not object to funding political status education on 2 conditions. One, the educational option is factual, and 2, all points of view receive equal opportunity for hearing. The hallmark considerations for a public education program on political status are facts and fairness.

Thank you for the opportunity to comment on this particular bill.

[The prepared statement of Mr. Pula follows:]

PREPARED STATEMENT OF NIKOLAO I. PULA, DIRECTOR, OFFICE OF INSULAR AFFAIRS, DEPARTMENT OF THE INTERIOR

ON H.R. 3940

Mr. Chairman and members of the Committee on Energy and Natural Resources, thank you for the opportunity today to discuss H.R. 3940, which would authorize technical assistance funding for political status education programs.

Subsection (a) of section 601 of Public Law 96-597 created a technical assistance program that authorizes the Secretary of the Interior——

> to extend to the governments of American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands technical assistance on subjects within the responsibility of the respective territorial governments.

This technical assistance program, administered by the Office of Insular Affairs in the Department of the Interior, has provided technical assistance funds to the territories for a wide range of purposes.

Section 2 of H.R. 3940 would add a new section before the language above that would authorize, not require, the Secretary of the Interior to extend assistance to American Samoa, Guam and the U.S. Virgin Islands for grants, research, planning assistance, studies, and agreements with Federal agencies to facilitate public education programs regarding political status options.

The Department of the Interior has no objection to the enactment of H.R. 3940. However, we note that any assistance provided under this authorization would have to compete with other priority needs. We also note that everything section 2 would authorize can be accomplished under the language already contained in subsection (a) of of section 601 of Public Law 96-597 without the enactment of additional legislation.

When the political status of a territory is under consideration, education of the public regarding the options available to the people is of utmost importance. Only an educated populace can make informed decisions about its future. The Department of the Interior would not object to funding political status education on two conditions:

- the education on options is factual, and
- all points of view receive equal opportunity for hearing.

The Department would not award funding to extol one point of view that unfairly excludes other points of view. The hallmark considerations for a public education program on political status are facts and fairness.

Thank you for the opportunity to comment on H.R. 3940. I would be happy to answer any questions at this time.

ON S. 2941

Mr. Chairman and members of the Committee on Energy and Natural Resources, thank you for the opportunity today to discuss S. 2941, the Republic of the Marshall Islands Supplemental Nuclear Compensation Act.

The four principal sections of S. 2941 deal with several issues arising from the nuclear weapons testing program that the United States conducted in the northern islands and atolls of the Marshall Islands from June 1946 until August 1958.

Continued Monitoring on Runit Island—Section 2

If enacted, section 2 of S. 2941 would require the Department of Energy to survey radiological conditions on Runit Island every four years and to report the results to relevant House and Senate committees. The partial clean-up of Enewetak Atoll conducted by the Department of Defense in the late 1970's resulted in the creation of an above-ground nuclear waste storage site on Runit Island capped by a dome. Inside Runit Dome are over 110,000 cubic yards of radioactive material scraped from other parts of Enewetak Atoll.

In 1986, the U.S. and Marshall Islands Governments fully settled all claims, past, present and future, of the government and citizens of the Marshall Islands which are based upon, arise out of, or are in any way related to the U.S. nuclear weapons testing program. In particular, Article VII of the agreement subsidiary to section 177 of the 1986 Compact of Free Association relieved the U.S. Government of all responsibility for controlling "the utilization of areas in the Marshall Islands affected by the Nuclear Testing Program" and placed that responsibility solely with the Marshall Islands Government. Nevertheless, radiological conditions at the Runit Island repository have remained for many years a point of friction in the otherwise mutually agreeable, bilateral relationship between the Marshall Islands and U.S. Governments. Representatives of the Marshall Islands Government have raised questions regarding Runit Island including:

- the safety of land, water and marine life;
- the radiological condition of the northern part of the island; and
- the structural integrity of the dome.

For many years the Department of Energy has performed environmental measurements at Bikini, Enewetak, Rongelap and Utrik Atolls, including, upon request, periodic environmental sampling around Enewetak Atoll's Runit Dome. The atoll communities set their own environmental goals and conduct all remedial actions. The Department of Energy takes environmental measurements before and after remedial actions to see if the actions have achieved their goals. In addition, the Department of Energy offers suggestions for remedial actions at the request of the Marshall Islands Government, to aid atoll communities' resettlement decisions.

Clarification of Eligibility under EEOICPA—Section 3

Section 3 deals with the eligibility of the people of the former Trust Territory of the Pacific Islands for the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). In the 1950's the U.S. Government hired U.S. citizens and people of the Trust Territory to clean up ground-zero locations on Bikini and Enewetak Atolls and to collect soil and other materials from contaminated areas in the Marshall Islands. Trust Territory inhabitants received certain benefits, e.g. consular, from the United States Government as administering authority, but they were not U.S. citizens. These individuals cannot currently receive EEOICPA benefits.

Section 3 is intended to place the former non-U.S. citizen Trust Territory workers on an equal footing with U.S. citizen workers.

Regarding section 3 of this bill, the Department of the Interior defers to the Department of Labor, which, since it has primary responsibility for administering EEOICPA, is the Federal agency best positioned to discuss this compensation program and provide technical assistance concerning the language of section 3.

Four Atoll Health Care Program—Section 4

If enacted, section 4 of the bill would appropriate funds for the Four Atoll Health Care Program. The Congress established the Four Atoll Health Care Program in the early 1970's to provide health care for certain members of the Enewetak, Bikini, Rongelap, and Utrik Atoll communities. When the original Compact of Free Association came into force in 1986, the Four Atoll Program was funded for fifteen years under the agreement subsidiary to section 177 of the Compact. This funding ended in 2001 in accordance with the terms of that agreement. In January 2005, the Department of State transmitted to Congress the Executive Branch's evaluation of the Marshall Islands Government's changed circumstances petition under Article IX of the agreement subsidiary to Compact section 177. The Marshall Islands request included, among other things, an enhanced primary, secondary and tertiary health care system to serve all Marshall Islanders for fifty years. The Executive Branch's report concluded that there was no legal basis for considering additional payments.

Nonetheless, in each fiscal year beginning with 2005, the Congress has added a little less than $1,000,000 in appropriations for the Four Atoll Program. Section 4 of this bill would create a permanent appropriation for the program for fiscal years 2012 through 2028. Additionally, it would fund the program annually at $2,000,000, as adjusted for inflation.

The Administration does not support a permanent annual appropriation of $2,000,000 for this program. As noted previously, the Executive Branch determined in 2005 that there was no legal basis for considering additional payments under the agreement subsidiary to section 177 of the Compact. Furthermore, the U.S. Government is spending over $1,500,000,000 in direct assistance and trust fund contributions for the Marshall Islands through fiscal year 2023. Also, the Marshall Islands Government, equally with U.S. State and insular governments, remains eligible for a number of categorical and competitive public health grant programs administered by the Department of Health and Human Services under section 105(f)(1)(D) of the Compact of Free Association Amendments Act of 2003 (48 U.S.C. 1921d(f)(1)(D)), should the Marshall Islands wish to apply.

Assessment of Health Care Needs of the Marshall Islands—Section 5

If enacted, section 5 of S. 2941 would mandate that the Secretary of the Interior commission an assessment and report by the National Academy of Sciences of the health impact of the U.S. nuclear weapons testing program in the northern islands and atolls of the Marshall Islands from June 1946 until August 1958.

The Administration believes that this assessment is not necessary. In January 2005, the Department of State submitted the results of the Executive Branch's evaluation that comprehensively and methodically reviewed existing scientific studies of the impact of the U.S. nuclear weapons testing program in the Marshall Islands. This evaluation highlighted that previous studies had adequately answered questions about the impact of the nuclear weapons testing program as those questions related to additional claims for compensation.

The Administration does not support the commissioning of additional studies at this time.

Mr. Chairman, we understand that the Committee is contemplating amendments to the legislation. The Administration would be happy to work with the Committee on any appropriate changes.

The CHAIRMAN. Thank you all very much for your testimony.

Let me just ask a few questions. First, let me ask Ms. Christensen, your suggestion is that we urge that the Constitutional Convention reconvene for the purpose of considering issues that have been raised by the President and by the Department of Justice, and that there would be some funding required if the convention did reconvene and pursue this. What—what are you suggesting is the right amount of necessary funding, what would it be required for?

Ms. CHRISTENSEN. I can't tell you at this point what the correct funding would be. We've asked the convention to prepare a budget that we could consider. I've also had some discussions with the Department of the Interior, the Assistant Secretary for Insular Affairs. On this—perhaps the President might have a better sense of

what the cost might be, but I have not received a budget or—or an approximate cost.

The CHAIRMAN. Did you have a comment, Mr. James?

Mr. JAMES. I certainly do, Mr. Chairman. It will be approximately $600,268.15.

The CHAIRMAN. That's a good approximation. All right, and you have some documentation as to how that figure was arrived at that you could present?

Mr. JAMES. Yes, I can provide that to you, Mr. Chairman, that can be provided.

The CHAIRMAN. That would be useful.

The CHAIRMAN. Delegate Christensen, you also recommended that, if the convention reconvenes and considers these points that the Department of Justice and the President have made, that then the convention's resulting document should be presented to the people of the Virgin Islands directly, and not come back to Congress. Are you not concerned with the possibility that the convention would choose not to address the issues or would find—and we would wind up in years of court proceedings?

Ms. CHRISTENSEN. I'm convinced that the 30 individuals who are elected by the people of the territory to be delegates to the Constitution convention have a commitment to seeing a document that can be adopted by the people of the Virgin Islands, sent to the people of the Virgin Islands. I think the concerns that have been raised and the issues that have been raised by the President and the Justice Department will be taken into complete consideration. I do recognize that in many—in some cases the governmental—the governmental intent or the rationale has not been made clear perhaps. I think it can be made clearer, but I do think that as this is returned to the territory with the Department of Justice and the White House having pointed out the inconsistencies with the U.S. Constitution and the Organic Act, recognizing the authorizing legislation requires that the constitution be consistent with the Constitution of the United States and the Organic Act. Also recognizing the concerns of the people of the territory, also regarding some of those issues that the constitution will—convention when it convened will ensure that this is a document that has the support of, and the consensus of the territory.

The CHAIRMAN. Mr. James, do you have—could you give us your perspective as to how the convention would feel about making revisions in this document, on the issues that have been raised by the Department of Justice and the President?

Mr. JAMES. If it's the wish of this body, we will have to go forward, but I would like to just put on the record that the members of the delegates are former judges, Governors, lieutenant Governors, they also are individuals who are teachers, professors, and it will be their wish once they come to consensus. That's following the lead of the delegate. We'd like to have that done and that returned back. We did have a problem getting the bill here, in terms of its process, and we don't want to have that happen again.

The CHAIRMAN. Let me ask either one of you, I guess particularly, Mr. James, here. If there were a consensus here in the committee and in the Congress that this suggestion of delegate Christensen should be taken up and we should urge the recon-

vening of the convention, could it—could that be done through something less formal than an actual Resolution passed by Congress? Could it be done through a, perhaps letters from the Chairman and Ranking Members of the committees of jurisdiction and the delegates to the convention, is that—would that be an adequate way to proceed?

Mr. JAMES. I would rather see it more formal, as a resolution.

The CHAIRMAN. All right.

Mr. JAMES. Then a letter.

The CHAIRMAN. OK.

Ms. CHRISTENSEN. Mr. Chairman, I'm not sure that it can be done without a formal resolution, given the authorizing—the way the authorizing legislation was written.

The CHAIRMAN. OK.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Let me start with you, Mr. Pula. Since the Administration has said that they don't support the continued for the Four Atoll Healthcare Program, are there any aspects of the Compact funding that are or could be used to assist in providing for the healthcare programs and the environmental monitoring in the Four Atolls, and potentially for the additional 6 that have been identified by the National Cancer Institute?

Mr. PULA. Thank you for the question. With compact funding, it has been slated for six sectors, health, education, infrastructure, and environmental, and also, I think capacity building, public capacity building. That—most of the funding goes into those sectors. If there's any funding that could be discussed with the joint economic committees that deal with the annual budget of both—in particular of Marshall Islands here, that is something that could be subject to discussion, but it's—I can say it's pretty tight, the way the money is now being spent and appropriated on an annual basis.

Senator MURKOWSKI. Let me ask you then, Minister Silk, what capacity does the RMI government have to submit these competitive grant applications for—as Mr. Pula has said—the public health programs? What level of Compact funding has been used to develop the capacity?

Mr. SILK. Senator, the current Compact funding is all geared toward the whole Republic of the Marshall Islands. There is no specific funding specifically geared toward the health of the—of the people who were effected by the nuclear testing program. I'm very, let me say this, that I'm very disappointed by the response from the Administration. Three years ago, we had this same hearing with this committee, Senator, and at that time a testimony was given by, then Minister Felipo, in which he stated, and I quote, that he was "profoundly disappointed" by the Administration's position.

Now, let me repeat that again, and I'm saying that on behalf of the government, let me say that I'm deeply and profoundly disappointed and saddened—let me add that—that the—of the continued denial of the consequences of the nuclear testing program, continues until today. Thank you, Senator.

Senator MURKOWSKI. With regard to the monitoring that you had mentioned on Runit, you had—I think you had indicated that we

need to institutionalize this within the U.S. Government. Should this fall under the existing Department of Energy monitoring or do we place in a new program? Have you given any thought to that, in terms of where the monitoring is?

Mr. SILK. I think it should continue with the Department of Energy, but that there should be continued oversight by the Congress.

Senator MURKOWSKI. OK.

Mr. SILK. Thank you.

Senator MURKOWSKI. Then one last question for you Minister, you had noted that the conditions that physicians in the outer atolls live and work under are less than ideal. You've had some—some luck, I guess, in attracting and recruiting physicians from third-world countries that have the necessary experience. What's the level of interaction, if there is any interaction, between those physicians that you're able to bring to the Marshall Islands and their involvement with the Department of Energy's Marshall Islands' programs? Do we need to be doing more to coordinate the efforts to allow for greater effectiveness of the Four Atoll Healthcare Program?

Mr. SILK. Yes, indeed we should and could. I think that is something that we would have to work on in order to improve coordination between the—and also within the Ministry of Health of the Government of the Republic of the Marshall Islands, and the Department of Energy as well, the Department of the Interior. Thank you.

Senator MURKOWSKI. Thank you.

Mr. Chairman, I don't have any further questions this morning.

The CHAIRMAN. All right. Let me just ask one additional question. Mr. Pula, you say on page 4, that the Administration does not support a permanent annual appropriation of $2 million for the Four Atoll Healthcare Program, because, "The executive branch determined in 2005 that there was no legal basis for considering additional payments under the agreement subsidiary to section 177 of the Compact." In reaching this decision, did the Administration consider the findings of the 2005 study of the National Cancer Institute or this year's annual report of the President's Cancer Panel? If those were not considered, would you be willing to recommend that the Administration reconsider its position in light of those reports?

Mr. PULA. Thank you, Mr. Chairman. I have just learned that myself, regarding the Panel's decision recently. As I stated in my testimony that the Administration would be happy to work with the committee on appropriate changes regarding this.

The CHAIRMAN. Thank you very much. I thank all witnesses for your excellent testimony. We have a good record and we will try to figure out the right way to proceed on each of these bills and initiatives and move ahead. But thank you all for being here.

Mr. CEDARBAUM. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. CEDARBAUM. Could I comment on that question?

The CHAIRMAN. Certainly, certainly you can. Go right ahead.

Mr. CEDARBAUM. Thank you, Mr. Chairman. Mr. Chairman, we don't agree with that position that there is no legal basis, however, the Congress has that authority as—the Congress could—enact to

improve on the health of the Four Atolls and the rest of the Marshall Islands as a consequence of the nuclear testing, but we don't agree with that assessment that there is no legal basis. Thank you.

The CHAIRMAN. Thank you very much.

Thank you all again for your testimony, and that will conclude our hearing.

[Whereupon, at 11:56 a.m., the committee was adjourned.]

The following documents have been retained in committee files:

- The Compact of Permanent Union Between Puerto Rico and the United States, submitted by Ferrer.
- An Overview of the Special Tax Rules Related to Puerto Rico and an Analysis of the Tax and Economic Policy Implications of Recent Legislative Options, submitted by Ferrer.
- H.R. 2497 from the Puerto Rican House of Representatives, submitted by Ferrer.
- A Letter from the Obama Campaign, submitted by Ferrer.
- The PNP Platform, submitted by Ferrer.
- S.B. 1407, submitted by Ferrer.
- The PDP Resolution, submitted by Fortuño.
- The Political Education and Training Manual of the PDP, submitted by Fortuño.

APPENDIXES

APPENDIX I

Responses to Additional Questions

RESPONSES OF HON. LUIS G. FORTUÑO TO QUESTIONS FROM SENATOR MURKOWSKI

Question 1. Among the status options put forward by the Presidential Task Force is that of Free Association, which is not represented on the panel this morning. How would you define the Free Association option?

Answer. The defining element of free association in international law is that the parties be sovereign nations that remain sovereign. Because they are sovereign, the corollary essential aspect of the status is that the association is terminable by either nation, that is, "free."

Obviously, Puerto Rico is not now in free association with the United States—as claimed by some representatives of the "Commonwealth" party—because Puerto Rico is clearly not a sovereign nation that remains sovereign. Additionally, under U.S. law, Puerto Rico does not have a right to withdraw from its U.S. relationship. Congress would have to act to change Puerto Rico's status.

An important aspect of free association is that, under such a status, individuals born in Puerto Rico would be citizens of Puerto Rico and not the United States. U.S. citizens alive at the time of the start of free association would also have to choose between retaining their U.S. citizenship and acquiring citizenship in the new nation. This is consistent with U.S. citizenship policy, which requires primary loyalty to the U.S.

Other likely aspects of a free association between the U.S. and Puerto Rico based on the precedents, current law, and positions of the Clinton and George W. Bush Administrations would include: some greater access to the U.S. for citizens of the freely associated state in comparison to that of citizens of purely independent nations; U.S. laws not applying; U.S. courts not having any jurisdiction; the continuation of some U.S. domestic programs and services but far from all current ones; U.S. military rights; Puerto Rican foreign policy, subject to a U.S. security veto; U.S. taxation of Puerto Rican income of U.S. citizens, with an exclusion for a basic amount and credit for Puerto Rican income taxes.

Question 2. Do you believe the four options put forward by the Presidential Task Force and in the House bill are the only legitimate and viable options for Puerto Rico's political status?

Answer. The four options—the current status (unincorporated territory), independence, nationhood in a free association with the U.S., and U.S. statehood are the only real options and the only real options with support in Puerto Rico. Theoretically, Puerto Rico could freely associate with another nation, such as Spain or the Dominican Republic, or become part of another nation, such as those nations, but there is no known support for such options.

The proposal of the "Commonwealth" party for an association between the U.S. and Puerto Rico that the U.S. could not change without Puerto Rico's consent that would empower Puerto Rico to nullify federal laws and federal court jurisdiction on most matters and enter into international agreements and organizations that do not compromise U.S. security, replace repealed tax incentives for companies in the States to locate plants in Puerto Rico, provide a new subsidy for the insular government, continue all programs providing assistance to Puerto Ricans and grant U.S. citizenship to individuals born in Puerto Rico forever is not a possible arrangement. It is an incompatible combination of aspects of different statuses that is contrary to the Constitution and basic laws and policies of the U.S., as has been explained by the Justice and State Departments and the Clinton and George W. Bush White

Houses, the Congressional Research Service, the House committee with jurisdiction over territories matters, and bipartisan leaders of your committee.

RESPONSE OF GERALD LUZ AMWUR JAMES, II, TO QUESTION FROM SENATOR MURKOWSKI

Question 1. If the Constitutional Convention were to reconvene and revise the proposed constitution, how would that impact the timing of a vote by the people and voter participation?

Answer. Thank you for the your concern on behalf of the people of the Virgin Islands. The people will have the opportunity to vote in the November general election or in a subsequent special election called for voting on the constitution. Originally, the Convention was of the belief that the vote would be by special election. If the constitution was were returned today, I seriously question the ability of the Convention and Territory the Virgin Islands Election System to be ready adequately prepared for a vote in the November general election. It is the Convention's plan to have a comprehensive education program before a call to a vote.

RESPONSES OF RUBÉN ANGEL BERRÍOS MARTÍNEZ TO QUESTIONS FROM SENATOR MURKOWSKI

Question 1. Among the status options put forward by the Presidential Task Force is that of Free Association, which is not represented on the panel this morning. How would you define the Free Association option?

Answer. This option is defined by International Law in "Principle VII" of the United Nations General Assembly Resolution 1541 (XV) (1960) as follows:

http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/153/15/IMG/NR015315.pdf?OpenElement

PRINCIPLE VII

> (a) Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and dmocratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will be democratic means and through constitutional processes.
>
> (b) The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. This does not preclude consultations as appropriate or necessary under the terms of the free association agreed upon.

Evidently, the terms of the association would need to be worked out between the United States and a sovereign Puerto Rico, after constitutional disposition of the territory.

Question 2. Do you believe the four options put forward by the Presidential Task Force and in the House bill are the only legitimate and viable options for Puerto Rico's political status?

Answer. I wish to reiterate that current territorial status is illegitimate in the XXI century under international law, as are apartheid, slavery, or child-labor laws. The present status—or any form of territorial status—is colonial and therefore immoral and anti-democratic because Puerto Rico continues to be governed by federal laws it does not make, under a foreign constitution of a nation to which it belongs, but of which it is not a part. [See The Insular Cases, several U.S. Supreme Court cases decided early in the XX century, most of which deal with Puerto Rico's status as an unincorporated territory."]

Puerto Rico is a Spanish-speaking, Latin American nation of the Caribbean -and was, even before the U.S. acquired it by conquest in 1898. Hence, it is not an independent territory. The only rational-and legal-alternative to colonialism under international law is independence.

In 1960, the United Nations General Assembly adopted Resolution 1514 (XV). Paragraph 5 of its dispositive part states that:

> 5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to

> transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/152/88/IMG/NR015288.pdf?OpenElement

Since then, this Resolution has been recognized as stating the international legal standard for decolonization. [See, the International Court of Justice decision in Western Sahara (1975) I.C.J., among other sources of International Law.]

The right to self-determination and independence has also become part of customary international law. The U.S. Supreme Court has recognized international law as part of U.S. law. [See, The Paquete Habana, 175 U.S. 677 (1900).] Furthermore, since the United States is a signatory of the U.N. Charter, perhaps the most important multilateral treaty adopted by your country, self-determination, as the norm has developed under international law, is also treaty law and as such, under your constitution, the Supreme Law of the Land.

Resolution 1514 (XV) is complemented in some aspects by Resolution 1541 (XV), to which reference has been made in the preceding question regarding "free association." This Resolution also recognizes that "integration," which might loosely be compared to U.S. federated statehood might, like "free association," be regarded as a way out of colonialism. However, as long as Puerto Rico retains its distinct identity and culture, under International and Human Rights Law, it will continue to have an inalienable right to self-determination and independence. If the U.S. were to contemplate "statehood" for Puerto Rico, it should bear in mind that, in Puerto Rico's case, this would entail federated statehood with a right to secession.

"Statehood," currently favored by an increasing number of Puerto Ricans, is not generally a choice of loyalty to the United States, so much as a forced choice of colonial dependence. In the absence of sovereign powers to integrate into the global economy under the most beneficial terms to us as a developing country, economic dependence would increase under statehood. This means growing dependence on federal transfer payments to what would become the poorest state of the Union, with a congressional delegation considerably larger than that of your state of Alaska—indeed, larger than that of most states.

Puerto Rico's right to secede as a federated state makes it a different case from the other 50 states. These became integrated after a sufficient number of mainland Americans had settled in each territory and any "native" population (such as in Alaska, Hawaii, or Native Americans elsewhere) became a subdued minority.

As historical circumstances change, so can Puerto Rico's national sentiment. Statehood, therefore, would not be a good choice for us Puerto Ricans, or for you, Americans.

The Puerto Rican Independence Party does not favor free association because there is nothing we could achieve under this status that could not be achieved by national sovereignty in independence through a Treaty of Friendship and cooperation, including free transit and free trade under mutually convenient terms with the United States, or any other free nation. Independence frees Puerto Rico to multiply sources of investment and job creation, while protecting Puerto Rico's and the United States' right of self-determination and territorial integrity.

I shall be happy to respond to any additional questions you may wish to pose.

RESPONSE OF JONATHAN G. CEDARBAUM TO QUESTION FROM SENATOR MURKOWSKI

Question 1. In Mr. James' testimony, he refers to the Act of Congress that extended U.S. citizenship to USVI natives as establishing the date to differentiate between an ancestral native Virgin Islander and a native Virgin Islander. Do you agree with his assessment that the Act differentiated between the people of the Virgin Islands and conferred different legal status upon them?

Answer. The proposed constitution for the United States Virgin Islands ("USVI") would exempt from real property taxation the "primary residence or undeveloped land of an Ancestral Native Virgin Islander," a term defined to refer to, among others, individuals born or domiciled in the USVI on or before June 28, 1932 and not a citizen of a foreign country or descended from such individuals. See Proposed Const. art. 111, sec. 1; art. XI, sec. 5(g). In addition, the proposed constitution would limit certain offices and the right to vote in certain elections to Ancestral Native Virgin Islanders and "Native Virgin Islanders," a term defined to refer to individuals born in the USVI after June 28, 1932 or descended from such individuals; and the proposed constitution would also specially guarantee the right to participate in

certain elections to members of these two groups. See Proposed Const. art. 111, sec. 1; art. VI, sec. 3(d); art. XVII, secs. 1(b), 2; art. XVIII, sec. 7.

June 28, 1932 was the date of enactment of an Act of Congress extending United States citizenship to "[a]ll natives of the Virgin Islands of the United States who, on the date of enactment of this [provision], are residing in [the] continental United States, the Virgin Islands of the United States, Puerto Rico, the Canal Zone, or any other insular possession or Territory of the United States, who are not citizens or subjects of any foreign country, regardless of their place of residence on January 17, 1917." Act of June 28, 1932, sec. 5, 47 Stat. 336 (now codified at 8 U.S.C. 1406(a)(4) (2006)). In a prior statute enacted on February 25, 1927, Congress had granted United States citizenship to all persons born in the USVI after January 17, 1917 (the date when the United States formally acquired the USVI, see Convention Between the United States and Denmark for Cession of the Danish West Indies, 39 Stat. 1706 (1916)) and subject to the jurisdiction of the United States, as well as to certain other categories of USVI natives and residents who were not then citizens or subjects of any foreign state—specifically, former Danish citizens who had resided in the USVI on January 17, 1917 and resided in the United States, Puerto Rico, or the USVI on February 25, 1927; natives of the USVI who resided in the USVI on January 17, 1917 and resided in the United States, Puerto Rico, or the USV1 on February 25, 1927; and natives of the USVI who resided in the United States on January 17, 1917 and resided in the USVI on February 25, 1927. Act of February 25, 1927, secs. 1, 3, 44 Stat. 1234, 1234-35 (now codified at 8 U.S.C. 1406(a)(1)-(3), (b)).

The Act of June 28, 1932 thus built upon prior legislation that had already conferred United States citizenship on broad categories of USVI natives and residents, including all individuals born in the USVI after the United States acquired the Islands, by extending citizenship to yet another category—USVI natives who resided in the United States or any United States territory when this legislation was enacted. We do not see how the date of enactment of this citizenship statute provides a rational basis for conferring a tax exemption and other advantages on individuals born in the USVI on or before that date or descended from such individuals. Thus, for the reasons explained in the Department's memorandum of February 23, 2010 and in the May 19, 2010 testimony of Deputy Assistant Attorney General Jonathan G. Cedarbaum, we believe that the benefits conferred on Ancestral Native Virgin Islanders and Native Virgin Islanders by the proposed constitution would likely be subject to challenge under the equal protection guarantee of the United States Constitution, which has been made applicable to the USVI by the Revised Organic Act.

RESPONSE OF HON. DONNA M. CHRISTENSEN TO QUESTION FROM SENATOR MURKOWSKI

Question 1. If the Constitutional Convention were to reconvene and revise the proposed constitution, how would that impact the timing of a vote by the people and voter participation?

Answer. Thank you for your question. I believe that it is the will of the Convention Delegates to have the proposed constitution on the ballot by this November, and I have been advised by the Virgin Islands Supervisor of Elections that as long as they receive it by October 15, this can be achieved. However, since it will be up to the Convention, if and when to proceed and how long to deliberate, it is difficult to determine if they would indeed by ready for this year.

RESPONSES OF HÉCTOR J. FERRER RIOS TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. Does the document "Development of the Commonwealth," approved by the Governing Board of the Popular Democratic party on October 15, 1998, continue to represent the position of the Party regarding enhancements to the current PR-US relationship?

If not, would you please provide the Committee with the Party's platform including its proposed enhancements to the current relationship.

Answer. Since 1998 the Popular Democratic Party has approved a number of platforms and resolutions that in a way or another address the political status issue. The current platform, as I mentioned during the May 19th hearing, states:

> We support the autonomous development of the Commonwealth based on the principles of shared sovereignty, association and responsibilities with the Unites States. Sovereignty means that the ultimate power of a Nation to handle its affairs rests with the people. To address the status issue we

> must begin by recognizing that sovereignty rests with the people. The concept of sovereign Commonwealth seeks to have the Puerto Rican and US governments agree on specific terms defining this mutual relationship, with the American citizenship as the binding element of our political association."

The use of the term "sovereign Commonwealth" in that platform, however, has been the subject of a great deal of distortion by Commonwealth detractors, some even trying to equate it with the concept of free association. That interpretation was expressly and flatly rejected by the party's Governing Board this past January, 2010.

The juridical notion of the "shared sovereignty" nature of Commonwealth was recognized by the U.S. Supreme Court in Rodrφguez v. PDP, 457 U.S. 1, 8 (1982) when it stated: "Puerto Rico, like a state, is an autonomous political entity, 'sovereign over matters not ruled by the Constitution.'" A broader statement defining the Commonwealth's relationship with the federal government was provided by the First Circuit Court of Appeals in Cordova-Simponprieti v. Chase Manhattan Bank, 649 F.2d 36 (1st Cir. 1981):

> [In 1952] Puerto Rico's status changed from that of a mere territory to the unique status of Commonwealth. And the federal government's relations with Puerto Rico changed from being bounded merely by the territorial clause, and the rights of the people of Puerto Rico as United States citizens, to being bounded by the United States and Puerto Rico Constitutions, Public Law 600, the Puerto Rican Federal Relations Act and the rights of the people of Puerto Rico as United States citizens.

The party's 2008 platform is consistent with the case law.

The 1998 Resolution you allude to was written in order to contain a number of aspirations intended to be negotiated with the United States in the event the people of Puerto Rico and the United States decide to deal, in a serious and fair way, with the P.R.—U.S. political relationship. There is no specific document or resolution overruling it. This document too has been the subject of distortion by Commonwealth opponents. If there is a particular question regarding a specific matter covered in that Resolution, I will gladly provide you with a detailed answer on that point. The Popular Democratic Party understands that enhancing the Commonwealth status requires a process of dialogue and negotiation with the federal government, and, thus, its adopted resolutions on this matter may constitute aspirations at a given point in time.

In the past there have been several serious efforts between the U.S. and Puerto Rico to enhance the current Commonwealth status. In October,1975, an Ad Hoc Advisory Group on Puerto Rico appointed by President Nixon and Governor Hernμndez Colθn presented a "Compact of Permanent Union Between Puerto Rico and the United States." A copy is attached. The proposed compact was the result of a process of studies, inquiries, public hearings, reports and discussions over a two year span. The group concluded that: "in order to further develop Commonwealth towards the maximum of self-government and self determination within the framework of Commonwealth, as well as to provide guidelines concerning which statutory laws and administrative regulations of the United States should apply in Puerto Rico, a new compact of permanent union should be adopted to replace the Puerto Rican Federal Relations Act, section 4, Public Law 600, 1950." The Popular Democratic Party is open to that approach.

During the 101th Congress, the House of Representatives unanimously passed a bill calling for a plebiscite on status. The House Report included the following definition of a "New Commonwealth":

> A NEW COMMONWEALTH RELATIONSHIP.—(A) The new Commonwealth of Puerto Rico would be joined in a union with the United States that would be permanent and the relationship could only be altered by mutual consent. Under a compact, the Commonwealth would be an autonomous body politic with its own character and culture, not incorporated into the United States, and sovereign over matters governed by the Constitution of Puerto Rico, consistent with the Constitution of the United States.
>
> (B) The United States citizenship of persons born in Puerto Rico would be guaranteed and secured as provided by the Fifth Amendment of the Constitution of the United States and equal to that of citizens born in the several States. The individual rights, privileges, and immunities provided for by the Constitution of the United States would apply to residents of Puerto Rico. Residents of Puerto Rico would be entitled to receive benefits under Federal social programs

equally with residents of the several States contingent on equitable contributions from Puerto Rico as provided by law.

(C) To enable Puerto Rico to govern matters necessary to its economic, social, and cultural development under its constitution, the Commonwealth would be authorized to submit proposals for the entry of Puerto Rico into international agreements or the exemption of Puerto Rico from specific Federal laws or provisions thereof to the United States. The President and the Congress, as appropriate, would consider whether such proposals would be consistent with the vital national interests of the United States on an expedited basis through special procedures to be provided by law. The Commonwealth would assume any expenses related to increased responsibilities resulting from the approval of these proposals.

The Popular Democratic Party is also open to discuss this alternative or any other.

The above examples demonstrate that this is a matter of political will. As Felix Frankfurter put it in 1914: "The form of the relationship between the United States and [an] unincorporated territory is solely a problem of statesmanship. History suggests a great diversity of relationships between a central government and [a] dependent territory. The present day shows a great variety in actual operation. One of the great demands upon creative statesmanship is to help evolve new kinds of relationship[s] so as to combine the advantages of local self-government with those of a confederated union. Luckily, our Constitution has left this field of invention open . . . " The outright rejection, without discussion, without a study, without any kind of serious process, of the possibility of improvements to the Commonwealth status has always been the result of a bias.

Question 2. In January, 2001 the U.S. Department of Justice responded to this Committee's request for an analysis of the status options favored by the three principal political parties in Puerto Rico. Its analysis of Enhanced Commonwealth begins with the premise that "All territory within the jurisdiction of the United States not included in any state must necessarily be governed by or under the authority of the Congress." Do you agree with this premise, and if not why not?

Answer. The actual first premise in the Justice Department's 2001 response was "that the Constitution recognizes only a limited number of options for governance of an area." We do not agree with that premise. Instead we agree with Felix Frankfurter's 1914 statement to the effect that:

> The form of the relationship between the United States and [an] unincorporated territory is solely a problem of statesmanship. History suggests a great diversity of relationships between a central government and [a] dependent territory. The present day shows a great variety in actual operation. One of the great demands upon creative statesmanship is to help evolve new kinds of relationship[s] so as to combine the advantages of local self-government with those of a confederated union. Luckily, our Constitution has left this field of invention open . . .

The statement that "All territory within the jurisdiction of the United States not included in any state must necessarily be governed by or under the authority of the Congress" is taken from the Supreme Court case of Bank v. Country of Yankton, 101 U.S. 129. 133 (1879) and reflects the state of constitutional thought in the mid to late nineteenth century. As of that date, the United States solely acquired territories with the intention of eventual statehood. Since then, however, the United States has acquired territories not intended for statehood, the Commonwealth of Puerto Rico was created and later the Commonwealth of the Northern Marianas. There have been developments in this area of constitutional law that Congress cannot ignore.

In the specific case of Puerto Rico and its Commonwealth status, Country of Yankton must be read as substantially qualified by subsequent Supreme Court case law on this matter. The Court in Calero Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974), describes the fundamental changes that occurred with the creation of Puerto Rico's Commonwealth status in 1952:

> Following the Spanish-American War, Puerto Rico was ceded to this country in the Treaty of Paris, 30 Stat. 1754 (1898). A brief interlude of military control was followed by congressional enactment of a series of Organic Acts for the government of the island. Initially these enactments established a local governmental structure with high officials appointed by the President. These Acts also retained veto power in the President and Congress over local legislation.

The creation of the Commonwealth, as the Court suggests by voice of Justice Brennan, followed a materially different procedure,

> By 1950, however, pressures for greater autonomy led to congressional enactment of Pub. L. 600, 64 Stat. 319, which offered the people of Puerto Rico a compact whereby they might establish a government under their own constitution. Puerto Rico accepted the compact, and on July 3, 1952 Congress approved, with minor amendments, a constitution adopted by the Puerto Rican populace [. . .] Pursuant to that constitution the Commonwealth now "elects its Governor and legislature; appoints its judges, all cabinet officials, and lesser officials in the executive branch; sets its own educational policies; determines its own budget; and amends its own civil and criminal code" (citing Leibowitz, The Applicability of Federal Law to the Commonwealth of Puerto Rico, 56 GEO. L. J. 219, 221 (1967).

The Calero Toledo Court recognized that the Commonwealth's creation effected "significant changes in Puerto Rico's governmental structure." It then quoted at length, and with approval, from Chief Judge Magruder's observations in Mora v. Mejias, 206 F.2d 377 (1st Cir. 1953) that:

> Puerto Rico has thus not become a State in the federal Union like the 48 States, but it would seem to have become a State within a common and accepted meaning of the word . . . . It is a political entity created by the act and with the consent of the people of Puerto Rico and joined in union with the United States of America under the terms of the compact.

Two years later, in Examining Board v. Flores de Otero, 426 U.S. 572 (1976), the Court found that "the purpose of Congress in the 1950 and 1952 legislation was to accord to Puerto Rico the degree of autonomy and independence normally associated with States of the Union [. . .]." The Court reasoned, moreover, that through the establishment of the Commonwealth, "Congress relinquished its control over the organization of the local affairs of the island and granted Puerto Rico a measure of autonomy comparable to that possessed by the States."

The 2001 Department of Justice response is seriously incomplete in that it fails to recognize the implications of that last statement by the Supreme Court. In Yankton, the Court had stated that territories "must necessarily be governed by or under the authority of the Congress", but the Court is saying in Flores de Otero that as to Puerto Rico, Congress "relinquished its control over the organization of the local affairs." The Supreme Court did not say "delegated", or "authorized". Its choice of words was "relinquished".

That concept of "relinquishment" appears earlier in a Memorandum Re: Micronesian Negotiations (Office of Legal Counsel, Aug. 18, 1971), then Assistant Attorney General William H. Rehnquist recognized that:

> [T]he Constitution does not inflexibly determine the incidents of territorial status, i.e., that Congress must necessarily have the unlimited and plenary power to legislate over it. Rather, Congress can gradually relinquish those powers and give what was once a Territory an ever-increasing measure of self-government. Such legislation could create vested rights of a political nature, hence it would bind future Congresses and cannot be "taken backward" unless by mutual agreement.

No analysis of the Commonwealth status can ignore those cases and the statements that appear therein.

The position of the Popular Democratic Party on this matter is clear and simple: the Commonwealth of Puerto Rico is not the result of an organic act, it arose from a process wherein Congress offered the people of Puerto Rico a compact and the people accepted the compact. Calero Toledo. In that process Congress relinquished its control over the organization of the local affairs of Puerto Rico. Flores de Otero. Puerto Rico, like a state, is an autonomous political entity, sovereign over matters not ruled by the Constitution. Rodriguez v PDP. Therefore,

> [In 1952] Puerto Rico's status changed from that of a mere territory to the unique status of Commonwealth. And the federal government's relations with Puerto Rico changed from being bounded merely by the territorial clause, and the rights of the people of Puerto Rico as United States citizens, to being bounded by the United States and Puerto Rico Constitutions, Public Law 600, the Puerto Rican Federal Relations Act and the rights of the people of Puerto Rico as United States citizens. Cordova Simonprieti v. Chase Manhattan Bank.

Our opinion is shared by many renowned legal scholars. In his 2002 book, Semblances of Sovereignty, Dean Alexander Aleinikoff from the University of Georgetown Law School devoted an entire chapter to the Commonwealth of Puerto Rico[1]. In reference to a 1991 testimony from Attorney General Richard Thornburgh before the U.S. Senate stating that the "enhanced commonwealth" status proposed was unconstitutional, he wrote:

> The Attorney General's reasoning seems to be this: the United States Constitution knows only the mutually exclusive categories of "State" and "Territory." States are full and equal members of the Union, but territories are subject to plenary federal power. Such plenary power may be surrendered only by moving outside the territory clause by granting statehood or independence. To recognize congressional power to create new categories—such as "enhanced commonwealth".violates the structure of the Constitution and potentially weakens the position of the states . . .

Rejecting that approach and making an implicit challenge to Congress, Dean Aleinikoff further states:

> The infamous Insular Cases recognized the need for congressional flexibility in handling the unanticipated situation of Empire. When flexibility is now, by mutual consent of capital and former colony, exercised to restore dignity and self-government, why should congressional power suddenly be read narrowly?

And more specifically Dean Aleinikoff asks Congress:

> the question is whether we can think ourselves into notions of sovereignty that permit overlapping and flexible arrangements attuned to complex demands of enhanced autonomy with a broader regulative system of generally applicable constitutional and human rights norms," responding that "if both Congress and the people of Puerto Rico seek to establish a new relationship that recognizes space within the American constitutional system for "autonomous" entities, it ill behooves either the executive branch or the judiciary to set such efforts aside in the name of nineteenth-century conceptions of sovereignty.The Constitution should not be read—out of fear and loathing of new understandings of sovereignty—to prevent promising power-sharing arrangements that provide a space for political and cultural autonomy.

Similarly, in a recent memorandum, Professor W. Michael Reisman, Professor of International Law at Yale (2006), stated:

> Yet in the late twentieth and early twenty-first century, all three branches of the U.S. federal government maintain legal positions on Puerto Rico rooted firmly in a nineteenth-century paradigm of international law . . . This binary division (between states and territories), . . . is in fact, anachronistic: It neither accurately reflects nor properly accommodates the diverse political arrangements embodied in the freely associated state of Puerto Rico, the CMNI, and the FAS. Legally created at a later date, those arrangements better represent current law.

Professor Reisman further concludes:

> Should Puerto Rico decide that an "enhanced" commonwealth status best serves its long term interests, U.S. constitutional law, to our view would likely be able to accommodate that arrangement . . . ; the barriers to enhance commonwealth status are more political than legal.

Another respected scholar, NYU Constitutional Law Professor Richard Pildes, has testified extensively before Congress[2] that:

> were the United States Congress and the people of Puerto Rico to prefer expanding the existing Commonwealth relationship, in a way that provides greater autonomy for Puerto Rico on the basis of mutual consent, it would be unfortunate, even tragic, for that option to disappear due to confusion

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[1] Aleinikoff, Alexander, SEMBLANCES OF SOVEREIGNTY, Chapter 4, Harvard University Press (2002).

[2] Pildes, Richard, TESTIMONY BEFORE THE COMMITTEE ON NATURAL RESOURCES, SUBCOMMITTEE ON INSULAR AFFAIRS, U.S. HOUSE OF REPRESENTATIVES ON H.R. 900 and H.R. 1230, page 1, March 22, 2007.

> or error about whether the Constitution permits Congress to adopt such an option.

And he clearly concludes:

> Congress does have the power, should it choose to use it, to enter into a mutual-consent agreement that would create and respect more autonomous form of Commonwealth status for Puerto Rico, in which Congress would pledge not to alter the relationship unilaterally.

Finally, Charles Cooper, a former head of the Office of Legal Counsel of the U.S. Department of Justice, in a recent memorandum[3] stated that:

> there is no support for a reading of the Constitution that unnecessarily restricts the political arrangements available to the President and Congress in fashioning binding consensual solutions to the Nation's relations with the people of its territories," . . . "the relevant Supreme Court cases confirm that Puerto Rico's commonwealth status is predicated upon a binding compact, created through the mutual consent of the sovereign parties and revocable, only by mutual consent of the parties.

Most recently, President Barack Obama, in a letter addressed to former Commonwealth Governor, Anibal Acevedo Vilá, bluntly rejected the premises contained in the 2005 White House Task Force Report on Puerto Rico. Such Report based its legal findings on the above stated 2001 U.S. Department of Justice opinion. President Obama stated the following:

> As President, I will actively engage Congress and the Puerto Rican people in promoting this deliberative, open and unbiased process, that may include a constitutional convention or a plebiscite, and my Administration will adhere to a policy of strict neutrality on Puerto Rican status matters. My Administration will recognize all valid options to resolve the question of Puerto Rico's status, including commonwealth, statehood, and independence. I strongly believe in equality before the law for all American citizens. This principle extends fully to Puerto Ricans. The American citizenship of Puerto Ricans is constitutionally guaranteed for as long as the people of Puerto Rico choose to retain it. I reject the assertion in reports submitted by a Presidential Task Force on December 22, 2005 and December 21, 2007 that sovereignty over Puerto Rico could be unilaterally transferred by the United States to a foreign country, and the U.S. citizenship of Puerto Ricans is not constitutionally guaranteed.

See letter form presidential Candidate Barack Obama to Governor Anϕbal Acevedo Vilá, dated February 12, 2008.

Question 3. The fundamental characteristic of Enhanced Commonwealth is that of "an autonomous political body, that is neither colonial nor territorial, in permanent union with the United States under a covenant that cannot be invalidated or altered unilaterally . . . ". However, the Justice Department's 2001 analysis established a second premise that "the U.S. cannot irrevocably surrender an essential attribute of its sovereignty". As a consequence, the Department concludes that "the (New Commonwealth) proposal's mutual consent provisions are constitutionally unenforceable."

Do you agree or disagree with this Justice Department premise and conclusion?

Answer. We disagree with the conclusion and do not think that it follows from the stated premise. The requirement of mutual consent exists under the current Commonwealth status from its inception without it ever having been considered to have entailed a "surrendering" of an "essential" attribute of U.S. sovereignty.

In 1953 the United States advised the United Nations that it would no longer report on Puerto Rico as a "non self-governing territory" under Article 73(e) of the United Nations Charter."[4]

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[3] Cooper, Charles, THE POWER OF CONGRESS TO VEST JURIDICAL STATUS IN PUERTO RICO THAT CAN BE ALTERED ONLY BY MUTUAL CONSENT, page 7, September, 2005 (Memorandum presented to the U.S. Department of Justice on behalf of the Government of Puerto Rico).

[4] See "Memorandum by the Government of the United States of America Concerning the Cessation of Transmission of Information Under Article 73(e) of the Charter with Regard to the Commonwealth of Puerto Rico," reprinted in PUERTO RICO FEDERAL AFFAIRS ADMINISTRATION, DOCUMENTS ON THE CONSTITUTIONAL RELATIONSHIP OF PUERTO RICO AND THE UNITED STATES, 616 (3D ED. 1988) (the "Cessation Memorandum" enclosed herein as Annex 6).

In the Cessation Memorandum, the United States formally advised the United Nations that the incremental process of the "vesting of powers of government in the Puerto Rican people and their elected representatives" had "reached its culmination with the establishment of the Commonwealth of Puerto Rico and the promulgation of the Constitution of this Commonwealth on July 25, 1952."[5] The Cessation Memorandum explicitly declares that, "[w]ith the establishment of the Commonwealth of Puerto Rico, the people of Puerto Rico have attained a full measure of self-government."[6]

In describing the "principle features of the Constitution of the Commonwealth," the Cessation Memorandum noted that the new Constitution, "as it became effective with the approval of the Congress, provides that '[i]ts political power emanates from the people and shall be exercised in accordance with their will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States of America.[7]"

Mason Sears, the United States Representative to the Committee on Information from Non-Self-Governing Territories, explained the legal significance under American law of the fact that Puerto Rico's Constitution resulted from a compact,

> A most interesting feature of the new constitution is that it was entered into in the nature of a compact between the American and Puerto Rican people. A compact, as you know, is far stronger than a treaty. A treaty usually can be denounced by either side, whereas a compact cannot be denounced by either party unless it has the permission of the other.[8]

Moreover, Frances Bolton, U.S. Delegate to the United Nations' Fourth Committee, made it plain clear that while "the previous status of Puerto Rico was that of a territory subject to the absolute authority of the Congress of the United States in all governmental matters [. . .] the present status of Puerto Rico is that of a people with a constitution of their own adoption, stemming from their own authority, which only they can alter or amend [. . .]"[9]

Those statements are consistent with the analysis made in 1971 by then Assistant Attorney General William H. Rehnquist in the Memorandum Re: Micronesian Negotiations (Office of Legal Counsel, Aug. 18, 1971), which I have quoted in my answer to a previous question:

> [T]he Constitution does not inflexibly determine the incidents of territorial status, i.e., that Congress must necessarily have the unlimited and plenary power to legislate over it. Rather, Congress can gradually relinquish those powers and give what was once a Territory an ever-increasing measure of self-government. Such legislation could create vested rights of a political nature, hence it would bind future Congresses and cannot be "taken backward" unless by mutual agreement.

There can be no other conclusion that when Congress has relinquished powers to a territory, it can not claim those powers back, except by mutual consent. See Flores de Otero.

Question 4. The enhanced commonwealth proposal of October 15, 1998, states that the new covenant "will include a mechanism to approve the application of legislation approved by the U.S. Congress." Given the history between the Federal and State governments on the issue of the applicability of Federal law to the states, particularly the experience of the U.S. Civil War, why do you believe a majority of the members of Congress would agree to such a mechanism under a covenant with Puerto Rico?

Answer. The proposal of a mechanism to exempt Puerto Rico from the automatic application of federal law is justified by a fundamental difference between the Commonwealth of Puerto Rico and a State: Puerto Rico, unlike the States, has no voting representation in Congress. Thus federal law is approved without its participation.

Such mechanisms have been examined in the past by Congress. The 1990 legislation approved in the House, provided in the House Report that:

> To enable Puerto Rico to govern matters necessary to its economic, social, and cultural development under its constitution, the Commonwealth would be authorized to submit proposals for the entry of Puerto Rico into inter-

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[5] Cessation Memorandum at 616.

[6] Id.

[7] Id. at 620, quoting P.R. Const. art I, §1.

[8] Press Release No. 1741, United States Mission to the United Nation, at 2 (Aug. 28, 1953) (emphasis added).

[9] Official Records of the U.N. General Assembly, Eighth Session, Fourth Committee, Trusteeship, at 225–26 (Nov. 3, 1953).

> national agreements or the exemption of Puerto Rico from specific Federal laws or provisions thereof to the United States. The President and the Congress, as appropriate, would consider whether such proposals would be consistent with the vital national interests of the United States on an expedited basis through special procedures to be provided by law. The Commonwealth would assume any expenses related to increased responsibilities resulting from the approval of these proposals.

The 1975 proposed "Compact of Permanent Union Between Puerto Rico and the United States." developed by an Ad-Hoc Advisory Group appointed by President Nixon and Governor Hernández Colón proposed a more elaborate mechanism:

> Prior to final passage of any legislation applicable to the Free Associated State, the Governor or Resident Commissioner thereof shall be entitled to submit to the Congress objections as to the applicability of said legislation to the Free Associated State, whereupon Congress shall specifically act upon those objections so as to determine whether the proposed law is essential to the interests of the United States and is compatible with the provisions and purposes of this Compact. If the respective committee or committees by vote express agreement with the objections, the Free Associated State will be held exempt from those affected provisions of the proposed law in the event of its final enactment. Provided, That this paragraph shall not apply to proposed laws which directly affect the rights and duties of citizens, security and common defense, foreign affairs, or currency.

Article 12 of the Compact.

It is in the interest of both Puerto Rico and the United States to adopt a provision to that effect in order to resolve an undemocratic condition.

RESPONSES OF HÉCTOR J. FERRER RIOS TO QUESTIONS FROM SENATOR MURKOWSKI

Question 1. Among the status options put forward by the Presidential Task Force is that of Free Association, which is not represented on the panel this morning. How would you define the Free Association option?

Answer. Before addressing the question, I must clarify that the Popular Democratic Party does not advocate for the Free Association option. We support the development of the Commonwealth option.

As adopted by the United States in the case of the Palau, Micronesia and the Marshall Islands, Free Association has the following characteristics: 1-they are compacts between independent nations; 2-with a specific duration; 3-where the people of the country associated with the U.S. are not U.S. citizens; 4-where federal aid is limited to certain areas.

Question 2. Do you believe the four options put forward by the Presidential Task Force and in the House bill are the only legitimate and viable options for Puerto Rico's political status?

Answer. I do not believe that the options put forward and as defined by the President's Task Force on Puerto Rico Status are the only viable options for Puerto Rico's political status. If we accept that conclusion, it would be a narrow reading of the US Constitution that would also portray the limitations and inflexibility of Congressional power. I believe there is no support for a reading of the Constitution that unnecessarily restricts the political arrangements available to the President and Congress in fashioning binding consensual solutions to US relations with the people of its territories.

In terms of International Law, that conclusion has no merit either. The United Nations has said that the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.[10]

There is no justification for Congress to shut the doors to any enhancement possibilities for Commonwealth. It must overcome the inertia created in the past two decades and allow for a serious debate on this matter.

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[10] UN Resolution 2625 (XXV): Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

APPENDIX II

Additional Material Submitted for the Record

STATEMENT OF LUIS A. DELGADO RODRÍGUEZ AND SENATOR JOSÉ A. ORTIZ-DALIOT
ALLIANCE FOR SOVEREIGNTY IN FREE ASSOCIATION

Mr. Chairman and members of the Committee:

We are, Luis A. Delgado Rodríguez and Senator José A. Ortiz-Daliot, spokespersons for ALAS -Alliance for Sovereignty in Free Association, a non-colonial and non-territorial political formula which is growing in support in Puerto Rico. As a matter of fact, two polls released last week by two of the main radio stations on the island, placed "free association" with a 13% and 17% percent of electorate support. This is a significant achievement, considering Free Association has never had the support of a political structure.

We come before you to share our views on HR2499, the latest effort for decolonizing Puerto Rico.

Mr. Chairman, the US preaches freedom and democratic values from its bully pulpit as the sole super-power in the world. In some instances, it even resorts to military intervention in its efforts to promote freedom around the world. Ironically, the U.S. breaches its values in its own backyard, particularly when dealing with its colonial possessions. The US declared its independence from one of the greater colonial powers in the world (at that time), the United Kingdom, and then fought another colonial power in 1898—Spain, when it acquired Puerto Rico. Today, notwithstanding, it has replaced both of these countries as the main colonial power in the world, holding more than 4.5 million people as colonial subjects in American Samoa, Mariana Islands, Guam, the Virgin Islands, and Puerto Rico. Shameful, to put it mildly. It seems this great country is satisfied to tell the world "do as I say, not as I do." Why? To us, it is incomprehensible, particularly when the international community is in its second decade of attempting to end colonialism in the world.

You would believe the US would be leading this effort, but it is not. To the contrary, it utilizes XX century rhetoric to avoid its duty to lead a true effort to decolonize its own backyard. Puerto Rico, as the chairman described it recently in a news article, is an unincorporated territory of the U.S., as labeled by the Supreme Court in the now famous insular cases, decided at the beginning of the XX century. So even after the creation of the Commonwealth in 1952, it remains an unincorporated territory which is nothing more than a different label for a US colonial possession.

Many say it is a self-governing commonwealth, after the US government tricked the UN into releasing the US from its duty to report annually on Puerto Rico as a territory under Article 73 of the UN Charter by approving UN Resolution 748 on November 27, 1953. Ironically, that very same day the UN approved Resolution 742 which described the necessary elements needed to release a colonial power from its duties under Article 73. The creation of the Commonwealth did not meet the criteria set forth by the UN on November 27, 1953 by Resolution 742 (VIII) particularly because neither the government of the US or Puerto Rico provided freedom of choice to the people of Puerto Rico (the freedom of choosing on the basis of the right of self-determination of peoples between several possibilities, including independence). The US had not met said requirement. Notwithstanding UN Resolution 748 was approved, mainly due to the US influence as a super-power, right after World War II.

The Commonwealth of Puerto Rico option has never had the attributes of a self governing jurisdiction. A self governing entity should be able to handle its everyday affairs of its people. Puerto Rico cannot.

Lets briefly examine the self-governing attributes of the Commonwealth of Puerto Rico and afterwards decide if Puerto Rico is "really and effectively" a self-governing jurisdiction. Let's take a close look at several areas in which the daily affairs of our people are conducted and which under normal circumstances should be under the

purview of the government of Puerto Rico. The few examples which follow should be sufficient to illustrate our point:

1. The government of Puerto Rico doesn't has the legal authority to decide the best mode of maritime transportation for the products, edibles and other food items which are imported from the US, therefore, its people do not have access to these products in the most efficient and inexpensive way, without having to pay the most expensive mode of maritime transportation in the world. The government of Puerto Rico does not have said authority since maritime transportation is regulated by the US Congress as a way of subsidizing its non-competitive and most expensive shipping industry. Therefore, this is not self-government.

2. The US government excludes, as a general rule, Puerto Rico from its tax treaties since the island is considered a foreign tax jurisdiction. Notwithstanding, the US denies Puerto Rico its tax-treaty making power. Consequently, Puerto Rico may not reap the benefits from negotiating tax treaties with other countries. This is not self-government.

3. Puerto Rico may import Peugeot cars directly from France? It cannot. Every vehicle entering Puerto Rico has to comply with the US Congressional mandated standards. So Puerto Rico is forced to buy only automobiles authorized to entry into the US. This, my fellow senators is not self-government.

4. Puerto Rico may not set its own set of environmental statutory standards unless, of course, they are more stringent than US laws. This is not self-government.

5. US minimum wage laws do not apply to Puerto Rico? They do, so Puerto Rico may not even set its own minimum wage, even though it is the poorest jurisdiction under the US flag. Therefore, this is not self-government.

6. The government of Puerto Rico or its residents may purchase medications in the international market, consequently saving millions of dollars. No, all medicines sold on the island need FDA approval, so a jurisdiction with a per capita income fifty percent (50%) lower than Mississippi, has to pay extraordinary high prices since only FDA approved medicines may be sold in Puerto Rico. This again, is not self-government.

We could go on forever, providing you examples of the lack of self-government authority the government of Puerto Rico has, but with a few of them, should be enough. But, why is our self governing authority so limited? Simple, Puerto Rico is subject to the plenary powers of Congress under territorial clause of the US Constitution and thus subject to every act of Congress whether it makes sense or not. And that fact, dear Senators, is not self-government. It is a subordinated government.

What we have described above, is a total subordination to the federal government. That is why we have labeled the commonwealth arrangement as territorial and colonial in nature. Puerto Rico is a colonial possession of the US, though the US Supreme Court may call it whatever they want. The Senate should take notice of this; stop looking the other way and take steps to decolonize Puerto Rico, as well as the other US territories, NOW.

At ALAS, we would like to see a Free Association arrangement much like the treaties the US has negotiated with three nations in the Pacific. But we recognized that the people of Puerto Rico should be able to choose among the three (3) non-colonial options of statehood, independence and free association. Not like what occurred in 1952, when the present Commonwealth was imposed to the Puerto Rican people.

HR-2499 is not perfect, but at least, as it had been originally drafted the second round offer three political options which are non-colonial in nature. The Foxx amendment damaged the bill. The bill should only include options which are non-colonial and not-territorial. The commonwealth is neither, and consequently should not be an option, unless, as usual, the colonial power (the US Congress) imposes it as an option. The Senate could fix HR-2499 or simply take appropriate action, as long as it does not take 112 more years.

Thank you for the opportunity for submitting our comments on HR-2499.

STATEMENT OF GOVERNOR JOHN P. DE JONGH, JR.

On behalf of the people of the Virgin Islands, I am grateful to the Chairman and Members of Committee on Energy and Natural Resources for providing me with this opportunity to again express my strong opposition to certain elements of the proposed Constitution of the Virgin Islands, and my equally strong conviction that it

is the people of the Virgin Islands, and not the members of this Congress, who should be permitted freely to accept or reject their own Constitution on its merits.

OPENING STATEMENT

As you know, in March I came to Washington and appeared before the House Subcommittee on Insular Affairs to explain my view that the proposed Virgin Islands Constitution is contrary to basic principles of the Federal Constitution, in that, among other things, it creates invidious distinctions between Virgin Islanders based on their heritage and ancestry; violates the sacred democratic principles of "one man, one vote". and willfully fails to recognize the supremacy of the United States, its Constitution, and its laws. I further explained that regardless of its legal infirmities, the proposed constitution was unacceptable to me because it was wholly inconsistent with our fundamental values as Virgin Islanders-values like equality before the law and our very identity as Americans.

Despite those grave misgivings, however, I asked the House Subcommittee to leave it to us-to the people of the Virgin Islands that the proposed constitution would purport to govern-to either remedy the document's manifest deficiencies or reject it outright. The proposed constitution is not merely a legal document; it is, however flawed, a symbol of the Virgin Islands' right to self-determination. To take from us the opportunity to consider (and, I hope, reject) the proposed constitution in our own democratic process would be a bitter irony, and would vitiate the very purpose that the constitutional process is meant to serve.

I made those remarks to the House two months ago. I reaffirm them here today. The intervening months have only strengthened my conviction that the proposed constitution, despite its many flaws, must be returned to the people of the Virgin Islands for acceptance or rejection by referendum. That referendum will represent another important step in the Islands' struggle for true self-governance-a struggle that has lasted for decades, even centuries, and in which I hope and intend we will prevail during my administration.

THE VIRGIN ISLANDS' COMMITMENT TO LOCAL, CONSTITUTIONAL SELF-GOVERNANCE

Before I discuss the proposed constitution and what I believe to be its serious deficiencies, I must re-affirm the fundamental principle that the proposed constitution represents: the right of the people of the Virgin Islands to govern themselves.

As you know, the Virgin Islands became part of the United States in 1917. From the earliest days of their assimilation into the American republic, the people of the Virgin Islands have relentlessly pursued increased self-government and Home Rule. And after decades of tireless effort, we have achieved a great deal. We now elect our own Governor and Legislature. We draft our own laws, and constitute our own Supreme Court to administer them. All of this represents progress-progress toward the deeply American goal of local self-determination within the federal system. And there is no more significant step in reaching that goal than drafting and ratifying our own constitution.

This is not an easy thing. Ours is a long and unique political history, unlike that of any other part of the United States. A constitution acceptable to the people of the Virgin Islands must both honor that history and reflect the very best traditions of democratic self-governance. We have been pursuing such a constitution now for thirty-four years: since 1976, we have elected five constitutional conventions, but have not ratified a constitution. It is fair to say we have struggled with this gravest of political responsibilities. But these struggles are inherent in democracy itself. No document produced by a constitutional convention will be perfect: as you know, even this nation's Constitution emerged from the constitutional convention without the Bill of Rights that has come to define American liberty. The Bill of Rights came later, when the people of this country, asked to ratify the original document, demanded it.

The constitution proposed by our own constitutional convention is much more severely flawed: it violates the very rights that the Bill of Rights seeks to protect. But the people of the Virgin Islands, like the people of the original States, must be the ones to demand better. To deny them the opportunity to do so would set back the cause of self-governance far more than the proposed constitution itself, despite its flaws, ever could. Only when we are presented with a constitution that is of Virgin Islanders, by Virgin Islanders, and for Virgin Islanders can our Islands reach the fullness of their political maturity and their place within the American system. It is a goal to which I and my fellow Virgin Islanders have always been, and remain, deeply committed. We have been waiting a long time.

THE PROPOSED CONSTITUTION VIOLATES THE FEDERAL CONSTITUTION AND IS CONTRARY TO THE VALUES OF THE PEOPLE OF THE VIRGIN ISLANDS

For the convention delegates, the drafting of the proposed constitution was a difficult task, and in many ways a thankless one. It is, therefore, with great reluctance and disappointment that I have concluded that, in too many respects, the document they produced is not worthy of the people of the Virgin Islands. Most disturbingly, the proposed constitution divides the people and declares that some of them have more rights than, and should be given legal and financial preference over, others.

The legal and constitutional deficiencies of the proposed constitution are obvious on their face, and have been extensively documented by every competent lawyer to consider them-including the convention's own legal counsel. You have the benefit of the Department of Justice's memorandum of February 23, 2010 (hereinafter "DOJ Memo," and attached as Appendix A), as well as the Virgin Islands Attorney General's opinion of June 9, 2009 (hereinafter the "USVI AG Opinion," attached as Appendix B), both of which set forth some of those deficiencies in detail. Taken together, those deficiencies do not only render the document unlawful; they also render it profoundly contrary to the most cherished values of the people of the Virgin Islands. I will describe three of them briefly here today.

First, the current constitutional proposal fails to recognize the supremacy of the "Constitution, treaties, and laws of the United States." It is required to do by law, pursuant to the 1976 law authorizing a Virgin Islands constitution, and its failure to do so is intentional and egregious. Because of the lack of a supremacy clause, the proposed constitution's assertion of "sovereignty" over coastal waters in Article XII, Section 2 can be read to "derogate from the sovereignty of the United States over those waters." DOJ Memo at 16. As the Department of Justice has pointed out, the proposed constitution's assertion of sovereignty over inter-island waters "up to twelve nautical miles from each island coast" is flatly inconsistent with federal law. Id. A supremacy clause would resolve this ambiguity by making it clear that the Virgin Islands does not claim any more than what it is due under federal and international law. Without it, DOJ concluded that the coastal waters provision must be modified or removed because it is "inconsistent" with "Congress' plenary control" over U.S. territorial sea. DOJ Memo at 16.

The lack of a supremacy clause is not merely a legal failure. It is also a symbolic failure, with political and historical implications. To formally recognize the supremacy of the Federal Constitution is to affirm, in our fundamental political document, that we are the United States Virgin Islands. It is an essential symbol of the Virgin Islands' place within the American system-and of Virgin Islanders' identities as Americans. For reasons of both law and principle, the failure to recognize the supremacy of the U.S. Constitution is a grave error, and of itself would justify the rejection of the proposed constitution by the people of the Virgin Islanders.

Second, and more important, the proposed constitution openly creates invidious distinctions among the people of the Virgin Islands, and confers special political and economic benefits upon favored classes of "native" and "ancestral native" Virgin Islanders.

I cannot overstate the repugnance of those distinctions. There is no more fundamental American value than the self-evident truth that all men are created equal, and as such, are entitled to equal protection of the laws. The Fourteenth Amendment of the United States Constitution protects this value. And ever since Brown v. Board of Education of Topeka, the Supreme Court has made clear that government may not drive a wedge between its citizens based on the accident of their birth. The proposed constitution, unfortunately, does just that.

Article III of the proposed constitution divides its citizens into three classes. The first class, termed "Ancestral Native Virgin Islanders," principally includes any person, or any descendants of any person, born or domiciled in the Virgin Islands before June 28, 1932. The second class, termed "Native Virgin Islanders," includes any person, or any descendant of any person, born in the Virgin Islands after June 28, 1932. The third class, without a name in the proposed constitution, includes everyone else. These classifications depend entirely on the timing and place of one's birth, the timing of one's residency, and the birth or residency of one's ancestors.

Having so divided its citizenry in Article III, the proposed constitution goes on to apportion benefits and burdens based on those divisions. For example, Article XI, Section 5 authorizes the Senate to levy and collect property taxes. But it contains an exemption providing that "No Real Property tax shall be assessed on the primary residence or undeveloped land of an Ancestral Native Virgin Islander." In other words, some Virgin Islanders would pay these property taxes; others, by virtue of their birth or ancestry, would not.

Article XVII, Section 2 provides for a special election on "status and federal relations options," i.e., an election devoted to the Islands' status as a U.S. Territory. But it contains a strict limitation that it is "reserved for vote by Ancestral Native and Native Virgin Islanders only, whether residing within or outside the territory." In other words, some Virgin Islanders would have the right to vote in these elections; others, by virtue of their birth or ancestry, would not.

Article XVIII, Section 7 of the proposed constitution appears to permit citizens of the Virgin Islands to ratify future constitutional amendments by a majority vote. It further provides, however, that "Ancestral and Native Virgin Islanders, including those who reside outside the Virgin Islands or in the military, shall have the opportunity to vote on Constitutional Amendments." In other words, some non-residents, by virtue of their birth or ancestry, would have the right to vote on constitutional amendments; others would not.

Finally, Article VI, Section 3 provides for the election of a Governor and Lieutenant Governor. But eligibility for those offices is tightly restricted: both the Governor and Lieutenant Governor must "be an Ancestral or Native Virgin Islander." In other words, some Virgin Islanders would have the right to seek these elected offices; others, by virtue of their birth or ancestry, would not.

In short, the proposed constitution uses birth and ancestry to exempt some Virgin Islanders from property taxes; to give some Virgin Islanders the exclusive right to vote in important special elections; to give some Virgin Islanders preferential rights to vote on constitutional amendments; and to give some Virgin Islanders the exclusive right to hold the offices of Governor and Lieutenant Governor. Those who by birth or ancestry do not enjoy favored "native" status have none of these rights.

All of these provisions conferring legal advantages on "natives" are manifestly unconstitutional. The Department of Justice found it "difficult to discern a legitimate governmental purpose" that the provisions could possibly serve. DOJ Memo at 1, 7, 8, 10. My own attorney general had the same difficulty. See "USVI AG Opinion at 2, 8, 10, 11. And so do I. Even under the most deferential "rational basis" standard, the provisions violate the Equal Protection Clause of the Fourteenth Amendment.

Again, however, the offensiveness of these nativist preferences is not wholly a function of their illegality. It is more important that they are contrary to the most fundamental of all American values: the self-evident truth that all men are created equal, are endowed by their Creator with certain inalienable rights, and are entitled to the equal protection of the laws. The proposed constitution, with its carve-outs and special preferences, assails these fundamental values. As a matter of U.S. constitutional law, it is indefensible; as a political act, it is divisive; and as a matter of history, it is a dangerous step backwards in our centuries-long struggle, which has been joined by generations of Virgin Islanders, for full and equal civil rights.

A constitution is not merely a law, or even a law of laws. It not only governs us; it constitutes us. It is the tangible expression of our values, and a source of our identity as a people. A constitution that would carve us up into factions, based solely upon our origins and the circumstances of our birth, is one that does not reflect the values of Virgin Islanders, and the identity it creates is one I do not wish to share.

Third, the proposed constitution divides the Virgin Islands in another unconstitutional respect. Article V, Section 2 of the proposed constitution establishes a new method for apportioning seats in the Senate, which creates a Senate seat exclusively for the island of St. John. That apportionment serves to overrepresent St. John and underrepresent the other islands of St. Thomas and St. Croix relative to their populations.

Such lopsided apportionment gives St. John a vastly greater share of power in the 15-member Senate than its population warrants, and for that reason, both my Attorney General and the Department of Justice have concluded that it probably violates the Equal Protection Clause of the Fourteenth Amendment and the bedrock principle of "one person, one vote." See DOJ Memo at 13-15; USVI AG Op. at 13-14.

Because the proposed constitution's apportionment scheme is a sharp break from the past resulting in a large representation disparity, it likely has no legally sufficient justification. Although the Supreme Court has warned that states must make an effort to construct districts that are as close as possible to having equal populations, the proposed constitution suggests that such an effort was not made. Apportionment can be difficult and complicated, but it must be done in a manner designed to ensure "one person, one vote." The constitutional convention's failure to heed this requirement places a cloud of constitutional uncertainty over the apportionment provisions.

The creation of the St. John Senate seat is nevertheless of a piece with the other objectionable parts of the proposed constitution: Like preferences for "natives," it gives preferential treatment to one class of Virgin Islanders over all others-this

time, residents of St. John. As such, it is likely to be a source of substantial resentment and divisiveness in the Virgin Islands. And like the "native" provisions, it is inconsistent with basic principles of fairness and equality-principles that, as Americans and as Virgin Islanders, are deeply rooted in our shared values.

CORRECTION OF THE PROPOSED CONSTITUTION'S DEFICIENCIES SHOULD BE LEFT TO THE PEOPLE OF THE VIRGIN ISLANDS

The flaws in the proposed constitution are so blatant, and so contrary to the best traditions of democratic self-governance, that I am tempted to seek the document's rejection by any means necessary. But that is a temptation that I resist, and that I must ask you to resist as well. For as passionate as I am in rejecting the inequalities and preferences embodied in the proposed constitution, I am equally passionate about the importance of leaving the fate of this document in the hands of those it would purport to govern-the people of the Virgin Islands.

There is no question that Congress has the power, implicit in the governing statute and inherent in its legislative authority, to reject the proposed constitution outright. It also has the power to modify the proposed constitution and return it, as modified, for a vote in the Virgin Islands. The minority members of the constitutional convention have proposed exactly that. See Letter to The Hon. Donna M. Christensen, Jan. 29, 2010 ("Minority Letter," attached as Appendix D).

But I must urge the Congress not to exercise its power to modify or reject the constitution. I have great respect and admiration for those minority members who have spoken out on this matter; but I seek a different result. I believe it is critical to the continued political development of the Virgin Islands that our constitution, when finally adopted, be the product solely of the labors of Virgin Islanders. A constitution that has been edited by Congress, however good its intentions, will be seen in the Islands as an exercise that runs contrary to true local self-governance.

It is my view that it falls to the people of the Virgin Islands to correct, on our own, the deficiencies so blatantly evident in the proposed constitution. Therefore if this proposed constitution is not rejected based on its failure to meet the requirements of constitutionality, I would request, at this juncture, that you return the proposed constitution to the people of the Virgin Islands and leave it to them to either accept, or reject, this document.

I have made no secret of my views on this proposed constitution. I believe that the people should reject it, and I believe that they ultimately will. But I just as strongly believe that such a decision belongs with the people of the Virgin Islands.

CONCLUSION

In conclusion, my position today remains the one I articulated before the House two months ago. I am a native Virgin Islander. I am also an American. Those identities are not separable: To be a Virgin Islander is to be an American. The overriding flaw of the proposed constitution before you is that, in its effort to recognize and honor the unique contributions of those of us who are natives, it would sacrifice the values that make us Americans.

As a Virgin Islander, as an American, and as an officer of the government sworn to support and defend the Constitution of the United States, I cannot countenance that result. I ask that Congress not do so either, while also allowing us the ability to determine our own political fate.

Thank you.

STATEMENT OF THE HON. ENI F. H. FALEOMAVAEGA, DELEGATE OF AMERICAN SAMOA, U.S. HOUSE OF REPRESENTATIVES

ON HR 3940

Chairman Jeff Bingaman, Ranking Member Lisa Murkowski, Distinguished Members of the Senate Committee on Energy and Natural Resources:

I extend to you my deepest gratitude and appreciation for allowing me to submit statement for the record in strong support of H.R. 3940. This piece of legislation authorizes federal grant funding to facilitate political status public education programs in American Samoa, Guam and the U.S. Virgin Islands.

I want to acknowledge the leadership of the Chairwoman of the Subcommittee on Insular Affairs, Oceans and Wildlife, my good friend Ms. Madeleine Bordallo. While this bill was originally intended for Guam, Chairwoman Bordallo heeded a request that the assistance provided for under H.R. 3940 is extended to include American Samoa and the US Virgin Islands.

Mr. Chairman and distinguished members of the Committee, the question of political status continues to underscore many of the policy issues that the territorial governments faced. Addressing this ongoing issue is the prerogative of the people. Nonetheless, Congress has a constitutional responsibility to help the territorial governments decide their political status according to the peoples' aspirations. This bill embodies such responsibility.

Under H.R. 3940, the Secretary of Interior is authorized to extend much needed assistance to the three territorial governments, American Samoa, Guam and the US Virgin Islands, to facilitate a public education program regarding political status options. This includes assistance in the form, of grants, research, planning assistance, studies, and agreements with Federal agencies, to better educate and inform the public about various valid political status options and alternatives for the territories.

For American Samoa, political relationship with the United States government is based on two separate deeds of cessions: between the U.S. and Tutuila and Aunu'u in 1900; and U.S. and Manu'a in 1904. Under Title 48 U.S. Code Section 1661 (c), Congress delegated all civil, judicial, and military powers over American Samoa to the President. Subsequently, by Executive Order 10264, these powers were transferred to the Secretary of the Department of Interior (DOI).

As of today, American Samoa remains an unorganized and unincorporated territory of the United States. After more than 100 years since the two deeds of cession were signed, the local government of American Samoa is conducting a review of its political status. This bill, H.R. 3940 will go a long way to facilitating this process.

Mr. Chairman, I am pleased that Congress remains committed to the territorial governments and the people living in the insular areas. The program and assistance provided for under HR 3940 would certainly enhance public knowledge and enable Americans living in the insular areas realize their aspirations for a formalized political status with the United States government.

I urge you and members of the Senate Energy and Resources Committee to support H.R. 3940.

STATEMENT OF ZORAIDA FONALLEDAS, REPUBLICAN NATIONAL COMMITTEEWOMAN FROM PUERTO RICO, ON H.R. 2499

House record on H.R. 2499 makes Senate action urgent

The Republican Party of Puerto Rico supported H.R. 2499 in the House of Representatives. The debate on H.R. 2499 in the House, in Puerto Rico, and in the local and national media, confirmed once again that ultimately Congress must define the political status options available to four million U.S. citizens in Puerto Rico. The U.S. Senate itself confirmed that only Congress can determine the political status options available to Puerto Rico, when it adopted Senate Resolution 279 on September 17, 1998. The only problem was that S. Res. 279 failed to state what options the Senate deemed compatible with federal law, and would be willing to consider if approved by a majority in a locally conducted advisory status referendum.

In light of House passage of H.R. 2499, action by the Senate to affirm status alternatives that Congress is willing to consider for Puerto Rico is now urgently necessary. If the Senate fails to act in concert with the House in some manner that ends confusion over status options demonstrated by past local votes, then Congress will be repeating its 1998 abdication of constitutional responsibility to affirmatively manage disposition of federal territories. The mixed message from House and Senate actions in 1998 contributed to yet another inconclusive local status vote. While the 1998 vote advanced the status resolution process, it did so in a confusing and vexatious way that makes Congressional guidance now more necessary than ever.

In this historical context, we do not need to be reminded here in Washington or back in San Juan that the duly-constituted local government has the authority to conduct a referendum on locally formulated status options. We also know a constitutional convention can be called, and proposed amendments to the territorial constitution can be submitted to the voters. We do not need Congress to authorize a local constitutional convention, proposed as a delaying tactic by the commonwealth party.

These local government initiatives are possible already and have always been available as tools of the current limited local self-government we have had for 60 years under "commonwealth." Indeed, these local powers of self-determination were allowed by permission of Congress when it approved Article VII of the Puerto Rico constitution, with amendments Congress required to confirm the supremacy of federal law applied to Puerto Rico under Article IV, Section 3, Clause 2 of the U.S. Constitution.

So it is clear what we can do under "commonwealth" to address our aspirations for self-government locally, and we know that self-government under "commonwealth" is limited to local matters not otherwise governed by federal law. Thus, despite the sympathetic but gratuitous verbiage in a few federal court rulings that nevertheless remain within the confines of Insular Cases jurisprudence, the "commonwealth" model of federal-territorial relations does not create a zone of local sovereignty beyond the reach of Congress and the supremacy of federal law.

It also is clear to any rational person what we are not empowered or enabled to do under "commonwealth." When it comes to addressing the political status question which is paramount over all other issues in Puerto Rico, the most important thing we are unable to do under the local constitution is formulate through any local political process definitions of the political status options Congress will accept as consistent with federal law, and be willing to consider for Puerto Rico. If the Senate will agree to be bound by local status definitions we will go away and not come back until we have a majority for a locally defined status, but if not the Senate must act now.

The amendments Congress made to the "commonwealth" constitution in 1952, imposed as a prerequisite for it to take effect, confirm that any amendments proposed by a local constitutional convention must address local matters arising under provisions of the local constitution itself, and must be consistent with federal law authorizing the adoption of the local constitution, subject to the residual sovereignty and territorial clause authority of Congress over Puerto Rico. This ensured local government adherence to the legal and political order under the federal constitution, pursuant to which U.S. national law is the supreme law of the land in Puerto Rico, as promulgated in Congress assembled.

The historical and legal revisionism of the commonwealth party suggesting "commonwealth" is a constitutionally permanent status is based on opportunistic and tertiary ambiguities in the U.S. and U.N. proceedings through which "commonwealth" was instituted in 1952. The "commonwealth" bilateral pact ideology is superficially beguiling, but ultimately just an idiosyncratic obsession of a colonial mindset among one faction in the local territorial political culture. The sociological notion that Puerto Rico acquired a power of consent over definition of its own status under federal law is unavailing in light of unambiguous federal territorial law and policy confirmed by subsequent Congressional measures, the prevailing effect of which has been to define "commonwealth" as territorial.

The confusion created by local "commonwealth" political mythology promotes a Quebec-like political and cultural separatism under the American flag in the name of "autonomy." That is why the Senate now must act to end its silence of 112 years, the period of American rule during which Congress never has afforded U.S. citizens in Puerto Rico the opportunity by direct vote to give consent of the governed to the current territorial status. Adoption of the local territorial constitution in 1952 was not a form of consent to the current status, because approval of limited home rule was the only option on the ballot at that time, rather than any actual political status.

Nor has Congress ever enabled the residents of the territory to accept or reject non-territorial status options recognized by Congress. In this connection, past local status votes the residents of Puerto Rico did not reject statehood, as some falsely have claimed before and since H.R. 2499 was passed.

Inclusion of a bogus "commonwealth" option on the ballot in local status votes conducted under Puerto Rico law in 1967 and 1993 stacked the deck against statehood, but statehood still gained 46.4% of the vote against the bogus "commonwealth" option in 1993. That bogus "commonwealth" option in 1993 was based on principles of local nullification of federal law and a de facto confederacy created through "mutual consent" gimmicks the U.S. Justice Department has termed "deceptive" and "illusory."

In 1998 statehood got the highest percentage of votes case on valid status options (46.5%), in a locally vote where "commonwealth" as defined by Congress in current territorial organic law garnered less than 1%. "None of the Above" received 50.2%, expressing the confusion and frustration of voters due to the discrepancies between definition of status options in the federal and local political and legal process.

The current territorial status with a "commonwealth" structure of limited local self-government, subject to supremacy of federal law, does not confer equal rights or equal dignity on the U.S citizens of Puerto Rico. Consequently, its continuation cannot be justified or reconciled with American values, unless there is at the very minimum a mechanism recognized under federal law and policy for the residents of Puerto Rico periodically to give consent to continuation of the current less than fully democratic status of the territory.

Additionally, some advisory self-determination mechanism must be available to inform the residents of Puerto Rico and Congress if there is a non-territorial and fully democratic representative status that a majority of the voters prefer, triggered any time the present status proves not to have the consent of a majority. Failure to provide these status resolution mechanisms represents a failure by Congress to perform its constitutionally prescribed duties with respect to administration and disposition of territories of the U.S. government.

The debate surrounding House passage of H.R. 2499 reinforces that Congress will never return to the false doctrine that "commonwealth" can be converted into a new form of "free associated state" with attributes of a nation unto itself, with "first allegiance" to Puerto Rico, while retaining U.S. citizenship and eligibility for federal subsidization of "commonwealth" by U.S. taxpayers.

However, the House debate also revealed the work that still needs to be done to end the high level of confusion and misdirection about how America—historically and constitutionally—resolves the status of populated territory under U.S. sovereignty, so that temporary territorial status can end in favor of sovereign self-government, within or outside the federal union.

House debate demands Senate clarification of territorial policies

It was conspicuous to everyone in Puerto Rico paying any attention that the local "commonwealth" party lobbyists were creating high levels of confusion among House Republicans about English language policy under current status, as well as under statehood, as well as the fiscal implications of federal subsidization of the current "commonwealth" regime, in contrast to Puerto Rico's ability to pay its own way in the union under statehood.

Suffice to say that there is no horizon for unending increases in the current 15 billion annual federal subsidy of the "commonwealth" regime. In contrast, CBO projects Puerto Rico will be able to meet the test for contribution to the cost of government under the statehood model that has enabled every economically underperforming territory to pay its own way once it becomes a part of the national economy.

We also need to remind Republicans in Congress that it was the "commonwealth" party that ended equal time public instruction in English and ended English as an official language, and the statehood party that revered those attempts at cultural separatism. It was the same liberal Democrat controlled "commonwealth" party that retained Republican credentialed lobbyists to distort these issues and try to arouse seemingly anti-Hispanic sentiment in Republican ranks to confuse the House debate.

If Puerto Rico is placed on the path to statehood based on results of an advisory status resolution process, the same English language policies applied to Louisiana, California and New Mexico will apply. There is no justification for discriminatory language policy that holds Puerto Rico to a higher standard than other mostly non-English territories that were admitted to the union.

Ironically, it is under "commonwealth" that the Congress can arbitrarily and in a discriminatory way apply English language and federal fiscal policy to the territory without any protections that states have form under federal interventions.

The attempt of liberal Democrats in the local "commonwealth" party to mobilize conservative pundits to confuse GOP members of the House on these issues was unsuccessful, but it was made, and that underscores the need for the Senate to act responsibly to clarify the real issues and define the real options.

Obama Administration must restore efficacy of White House Task Force

The Republican Party of Puerto Rico is deeply disappointed that the Obama Administration did not sustain continuity of bipartisan policy and procedure in management of the activities of the President's Task Force on Puerto Rico. The coherence that was achieved between the first Bush Administration, the Clinton Administration and the second Bush Administration on the Puerto Rico status issue was a model of bipartisan commitment to do what was right for America.

Indeed, the President's Task Force on Puerto Rico's Status was created by and Executive Order of President Clinton's, which defined its mission in a manner that both recognized the status policy of the Reagan and first Bush administrations. The Clinton policy was then in turn embraced by the second Bush Administration.

In contrast, the Obama Administration has been aloof and diluted the mission of the task force. Its members visited Puerto Rico in March of this year and showed an obvious preference for discussing the Obama agenda over status. The Obama Administration clearly does not attach a high level of importance to the fact that status resolution is the paramount issue for the people of Puerto Rico, and for the U.S. in its governance of Puerto Rico. That is why there is a federal task force on the subject of Puerto Rico's status in the White House.

Simply stated, no matter how it may be perceived in the short term, in reality all other federal and local political, legal, fiscal, commercial, economic, social, cultural, and government policy matters ultimately have less long term importance than status resolution. That may seem an overstatement, but it is true due to the reality that the current status creates a pervasive and corrosive ambiguity about our individual and collective rights and responsibilities, challenges and opportunities. This impairs our vision of the future, prevents informed self-determination, and obscures the true meaning of our identity as the body politic of Puerto Rico.

Indeed, there are few federal or local interests or endeavors that do not suffer in a profound and sometimes crippling way from institutionalized ambiguities that are due directly to the lack of a permanent political status. In all matters of import and consequence, Puerto Rico will be better off and we will do better, once the path to a permanent future status of the island is known. Even if it takes years for the self-determination process to reach culmination, it is imperative now that there be a federally sponsored self-determination mechanism that makes orderly democratic status resolution possible.

While the transition period for achieving a democratic status may be prolonged, real progress toward a known permanent status will end state of political limbo we have been in for a hundred years. Certainty will usher in a political, social and economic resurgence for Puerto Rico. This view is consistent with the position adopted by President Obama during the 2008 campaign, after he had been barraged by the most persuasive arguments of the most impassioned advocates on all sides of the status debate.

Upon hearing from statehooders, commonwealth supporters, and the independence faction, he spoke plainly and yet resoundingly, saying on May 25, 2008, that Puerto Rico is " . . . definitely a territory" and one that is " . . . trying to figure out" if it wants to remain one. Then he said, "And that's why it's so important for us to really pay attention to providing a mechanism for that final status to be determined . . . I'm committed to doing that . . . in my first term . . . setting up a procedure whereby the people of Puerto Rico can make this final decision."

For all Americans, regardless of political affiliation, the transcendental meaning of the election of President Obama in 2008 was that we as a nation, as a people, do not have to live forever with the mistakes of the past. We are not captives of the wrongs and injustices of the past. We uphold the same hope for Puerto Rico with respect to the mistakes, wrongs and injustice of our political status. Yet, we are mindful that:

- It was a mistake for Congress to confer U.S. citizenship in 1917, without explicitly committing to full and equal citizenship through incorporation, extension of the federal constitution by its own force, and eventual statehood.
- It was wrong for the U.S. Supreme Court to rule in the 1922 Balzac case that Congress could govern the U.S. citizens of Puerto Rico outside the protection of the federal constitution, in the same manner as non-citizen subjects in the Philippine islands territory were governed under the unincorporated territory doctrine invented by the court's 1901 ruling in the Downes case.
- It was an injustice for Congress to misconstrue the Balzac decision as license to govern the U.S. citizens of Puerto Rico under discriminatory statutory policies that define a subclass of citizenship with less than equal legal standing, and to do so for an indefinite period without sponsoring a self-determination process to ensure that the principles of self-determination and government by consent were being respected in governance of the territory.

The Road Ahead: H.R. 2499

We do not have to live with those mistakes, wrongs and injustices any longer. A bipartisan record supporting a federally sponsored status process has been created in the Congress, as well as the 2005 and 2007 reports of the Task Force. That record includes authoritative U.S. Department of Justice legal opinions from the Bush-Clinton-Bush years.

The decades of confusion are over, the truth is clear. The whole world knows the "improved commonwealth" ideology is a subterfuge for perpetual federal subsidization of a failed political economic model. Politically, the idea that Puerto Rico can be a nation but remain under U.S. sovereignty, or become sovereign and keep U.S. citizenship without true allegiance, is the real hoax. The notion that real self-determination on real options should be held in abeyance, while the elites of the territorial commonwealth seek to redefine U.S. federalism and create a new form of "associated statehood," is nothing more than a grand deception.

Treaty based free association between two separate sovereign nations is recognized under U.S. and international law, but the status of Puerto Rico under commonwealth, improved or not, is not and never will be recognized under U.S. or inter-

national law as free and mutual, or terminable at will. That would require separate sovereignty, it cannot be done within the domestic political status framework of the U.S. Constitution, without an amendment to create something other than a state or territory.

So it is time to stop allowing arguments based on the fallacy of a discredited ideological doctrine to disrupt an informed process of self-determination. To prevent the local political gridlock in Puerto Rico from further impeding democratic status resolution, Congress should act now to confirm the status options embodied in H.R. 2499.

H.R. 2499 did not disenfranchise commonwealth supporters. Rejection of status change by a majority in the first vote would have strengthened the commonwealth party's position in seeking the improvements to commonwealth it proposes. However, to placate "commonwealth" supporters who were pretending to be excluded, the House added the current status to the second referendum under H.R. 2499. That gives the Senate leeway to act in concert with House to define the actual options and recognize a local vote based on a 4 option ballot.

Those who want commonwealth do not have a right to prevent those who want change from voting based on their freely conceived aspirations for a new status. Self-determination is a right of individuals, not political parties. The right to self-determination cannot be divvied up or allocated based on ideological pedigree, much less how someone from one party think voters from other parties will vote.

It is anti-democratic arrogance for commonwealth party leaders to demand that statehood and independence voters be denied the right democratically to express their common aspirations for a fully democratic status, even if the new and more democratic status they seek is not the same. Who appointed the commonwealth party to be the self-determination police? Why are we even listening to these intellectually empty arguments? Who told them they had a preemptive right to a guaranteed first or second place finish?

The commonwealth party claim that H.R. 2499 is rigged against commonwealth is actually a clever barely concealed demand for a process that prevents majority rule on whether to seek a new status, and gives commonwealth a manufactured plurality that preserves the status quo. In a robust democracy, all ideas are equal coming out of the gate, but some ideas cross the finish line last. Having post position when the competitive race starts does not ensure an idea or proposal will win, place or even show.

Indefinite territorial status is not a normative status option. Real sovereign free association, independence and statehood are normative status options. After decades of indulging this anachronistic and regressive status doctrine, the record of its illegitimacy is incontrovertible. After all, the "improved commonwealth" autonomy proposal is an anachronistic and futile attempt to restore archaic features of autonomy granted under Spanish colonial rule. The idealized Spanish autonomy charter was non-binding and colonial, and the same is true of the current commonwealth regime that is falsely touted as sovereign autonomy. We cannot afford to indulge this pathetically nostalgic historical revisionism any longer.

Commonwealth is territorial, always has been and always will be, unless it is converted to statehood, independence or real sovereign free association. Thus, the arguments being made against H.R. 2499 are nonsense, and only seem compelling to those who do not understand the record that has been created before Congress over the last two decades.

Protecting the Rights of Citizenship

Continued inaction to restore democratic consent principles cannot be justified. This is the message we hoped the Obama Administration members of the White House Task Force would take back to Washington:

- Failure to act now to fix mistaken status policy for Puerto Rico made decades ago would be yet another mistake of historic proportions.
- It would be wrong to base federal policy on the grand deception that commonwealth is normative and statehood or sovereign nationhood are non-normative, a doctrine that exploits rather than corrects the mistakes and wrongs of the past.
- Above all, it would be an injustice if we fail to act now, because gradualism may limit the solutions and options available to the next generation.

Instead the Obama Administration failed to support H.R. 2499, even though it complies with criteria in the 2005 and 2007 reports of the White House Task Force and the Clinton Administration Executive Order created the Task Force.

This is disturbing, because delay is not a substitute for change that was needed. Failure to act may very well be prejudicial to the aspirations of the next generation

to preserve their rights and even their status as American citizens. We have a duty of social responsibility to end the status dilemma and free our children to realize their own dreams as individuals and as a people.

As long as Puerto Rico remains a commonwealth with the status of a territory ruled under the territorial clause power of Congress, the only source of the current U.S. citizenship for our children born in Puerto Rico is federal statutory law. This statutory citizenship enacted pursuant to the sovereign federal territorial power and the treaty of cession from Spain gives us a less than equal legal and political status. Only application of the 14th Amendment to Puerto Rico by its own force will secure for our descendants in perpetuity an automatic constitutionally defined U.S. citizenship right, conferral of which is beyond the reach of Congress. Those politicians and party ideologues who urge delay, gradualism and experimentation to "improve" commonwealth do not seem to realize that the 14th Amendment was adopted to end the power of Congress to define citizenship by statute. Today, only those who do not acquire full constitutionally conferred U.S. citizenship under the 14th amendment still acquire it only by discretionary Congressional application of naturalization statutes that are subject to amendment and repeal.

As never before we know that the world order changes, the national agenda changes, and the day may come when a decision is made by Congress to stop conferral of territorial American citizenship that only creates a new and expanding disenfranchised class of U.S. citizens in the territories. Those who are telling us to wait until the local economy improves to make a decision about status cannot guaranty that our grandchildren will acquire even the limited territorial classification of U.S. citizenship conferred on our generation.

Commonwealth as a territorial status does not guaranty anything at all. American nationality is the only nationality we have, but commonwealth does not even guaranty in our homeland, within the only nation we have, an equal legal status under federal law, much less equal political and civil rights.

We are second-class territorial citizens in the nation that exercises supreme and pre-emptive sovereignty over our homeland and our people. We do not have national sovereignty like a real country or a legitimate free associated state, and we do not have democratic sovereignty as a people under the U.S. system of constitutional federalism.

Real Choices

We challenge the defenders of commonwealth to justify delay and gradualism, instead of federal sponsorship of a self-determination process based on real options, when our people are not sovereign in our homeland after nearly a century of U.S. nationality. Statehood, independence and real free association based on separate national sovereignty are the only options that reconcile our human rights with our status as citizens subject to the sovereign power of the U.S. to govern our lands and our people. Based on the record now there for the whole world to see, the whole world knows that the status of Puerto Rico will not be resolved unless the federal government sponsors a self-determination process in Puerto Rico, based on options that are defined by federal law.

Since federal law is supreme in Puerto Rico, and any status solution must be mutually agreed and approved by Congress, self-determination informed by governing law and status resolution itself is legally impossible without federal facilitation. Thus, to oppose a federally sponsored status resolution process is to oppose status resolution for Puerto Rico.

Decades of federal governing measures reflecting ambivalence in Congressional intentions as to status resolution have institutionalized the contradictions and confusion in federal law and policy applicable to Puerto Rico. In turn, this ambiguity in federal doctrine has been mirrored in locally concocted status doctrines that exploit the long-term confusion for short-term political gain.

The inconclusive results of all locally conducted status votes reflect the confusing and fallacies of non-normative status doctrines promoted by local political party leaders in the absence sound and unequivocal federal policy. Congress and the Executive Branch must actively and affirmatively provide for self-determination that meets the democratic standards America has set for the rest of the world and in its own domestic and international practices, with respect to decolonization of dependent territories in the modern era. The U.S. has been a leader among nations on self-determination for dependent foreign client states and neo-colonial possessions.

At the very least Congress should be as favorably disposed to self-determination for Puerto Rico as it was for foreign peoples and territories during the U.N. decolonization process. Affirmative federal measures to make resolution of Puerto Rico's status possible also should conform to U.S. practices respecting status resolu-

tion for its own former possessions, including the Philippines, Alaska, Hawaii, the Canal Zone and the U.S. administered U.N. Trust Territory of the Pacific Islands.

In this regard, the argument by commonwealth leaders against the two tiered balloting process contemplated by H.R. 2499 was utterly without merit. In fact, a tiered options balloting process comparable to that anticipated under H.R. 2499 was employed by the U.S. with U.N. oversight in the difficult but ultimately successful process for approval of free association between the U.S. and the sovereign Republic of Palau. The U.S. Congress confirmed the legitimacy of the balloting process in Palau, and in 1986 ratified the compact of free association with that former U.S. administered U.N. trust territory in 1985.

Multi-stage periodic votes were also enacted by Congress in the status resolution process for the territories that became the states of North Dakota, South Dakota and Washington. So the polemical accusation that the original H.R. 2499 was some kind of scheme to force a majority for statehood is based on historic ignorance. The House changed it so we are moving forward with the bill as amended, but it remains true that the original bill was the best way to enable a majority vote not encumbered and impeded by false options that prevented majority rule in the past.

Given the record of U.S. support for self-determination by the people of former U.S. and foreign territories, the failure of Congress to act on status in the case of Puerto Rico over the last few decades is legally, historically and constitutionally non-normative and unprecedented. It is a glaring abdication of constitutional responsibility by Congress, and history will recognize it as such.

H.R. 2499 as passed but the House now gives the means for Congress to restore the principle of government by consent of the governed. It also will restore federal territorial law and policy to a democratic standard consistent with both modern precepts of self-determination and the anti-colonial principles of the Northwest Ordinance.

The Moral Imperative

The U.S. is fighting two wars for the right of citizens in Iraq and Afghanistan to a national government that is democratic. Yet, for 110 years Puerto Rico has been a U.S. territory with no right to democratic national government. Men and women from Puerto Rico are serving in the military at a rate higher than 49 states. Some are dying on foreign soil to defend rights they never had on American soil in Puerto Rico.

So, respectfully, our message is simple, urgent and emphatic: The best way for President Obama to keep his promise for a federally recognized self-determination process is to support passage of H.R. 2499 by Congress, or at least support action by Congress now to act to define the available status options.

Our work to improve the local economy is no excuse to delay self-determination. Progress on status is the best way to sustain recovery and create jobs long term. H.R. 2499 is based on a strong historical record of federal deliberations. It does not disenfranchise commonwealth supporters. Those who want to keep and try to improve commonwealth will be free to vote to preserve commonwealth.

Statehood and independence voters cannot be denied the right to vote for change to a new status, even if their aspirations for an ultimate status differ. The commonwealth party cannot demand a ballot option for a status that does not exist. Commonwealth is and always will be territorial. Statehood, independence or real sovereign free association are the only non-territorial options. H.R. 2499 is the best way for Congress to restore the principle of government by consent now, even if it takes many years to fully resolve the status issue.

STATEMENT OF ALEJANDRO J. GARCÍA-PADILLA, ON H.R. 2499

I appreciate the opportunity that the Committee has given me to address the very important issues raised by H.R. 2499 regarding the constitutional relationship between Puerto Rico and the United States. For the reasons herein stated, I urge you to oppose the bill.

1. The true nature of H.R. 2499.—H.R. 2499 does not lead to the exercise of the rights to self-determination of the people of Puerto Rico. Much to the contrary, H.R. 2499 is a hoax to such rights. H.R. 2499 is nothing but a disguised statehood bill. I explain why:

2. Statehood.—Puerto Ricans have never favored statehood for Puerto Rico. Several plebiscites have been held in the Island since 1967 and statehood has never prevailed. The most telling case was the plebiscite of 1998: The political party then in power in the Island produced by itself—without taking into account the views of the other parties—the alternatives to be brought to a vote.

Since the party in power favored statehood for Puerto Rico, the definitions were charged in favor of that alternative. But the electorate proved wiser, and the vote went for " none of the above."

3. The intended involvement of Congress.—H.R. 2499 is a move to seek the involvement of Congress in this new maneuvering to produce a vote for statehood. H.R. 2499 sets forth a two-round plebiscite process. The first round leads to a consolidation of the supporters of statehood and independence—historically the second and third choices of preference in Puerto Rico—to gang against the historically preferred commonwealth option. In the second round, H.R. 2499 intends to confuse commonwealth supporters by, first, interjecting poorly defined alternatives that evoke complex legal issues regarding the powers of Congress to enter into political compacts with the people of Puerto Rico, under the specific provisions of the Constitution or under the pre constitutional powers enjoyed by Congress as "necessary concomitants of nationality;" and, second, negating the intrinsic capacity of commonwealth to evolve and reshape to provide better solutions to needs of both the peoples of Puerto Rico and the United States.

4. The commitment of Congress.—H.R. 2499 does not articulate the nature of the commitment made by Congress regarding the implementation of the outcome of the plebiscite. If the statehood supporters have not cared to define such congressional commitment, then why have they come before Congress with this vague proposal? The answer seems clear: H.R. 2499 pretends to convey to the people of Puerto Rico the wrong message that the Congress of 3 the United States is committed and ready to grant statehood to Puerto Rico if statehood takes the majority of the vote in the proposed plebiscite. Is Congress ready to assume that responsibility—legal or moral—under the terms of H.R.2499? Are we all fully aware, for instance, of the cost of statehood for Puerto Rico and for Congress, are we aware, likewise, of the cultural issues at stake?

5. An exercise of statesmanship.—After a century of shared history, the peoples of Puerto Rico and the United States deserve better. Addressing the Puerto Rico status question is not a matter that should be left to political maneuverings like that present in H.R. 2499. It calls, instead, for the exercise of serious statesmanship: the options to be presented to the electorate must respond to the real preferences of the people of Puerto Rico, the alternatives must be precisely defined, the commitment of Congress must be clear. I urge you to engage with all three political forces in the Puerto Rico in a process of such dignity.

In the meantime, I urge you to oppose H.R.2499.

STATEMENT OF LUIS RAÚL TORRES-CRUZ, CARLOS HERNÁNDEZ-LÓPEZ, LUIS VEGA-RAMOS AND CARMEN YULÍN CRUZ-SOTO, PUERTO RICO HOUSE OF REPRESENTATIVES, ON H.R. 2499

The undersigned are elected members of the Puerto Rico House of Representatives. As such, we wish to express today to this Honorable Committee that H.R. 2499, the so-called Puerto Rico Democracy Act of 2010, as approved by the U.S. House of Representatives, constitutes a flawed vehicle that will not only fail to allow Puerto Rico to properly exercise its right of self-determination, but will also, in a most undemocratic way, skew the process in favor of a victory for a Statehood option. We also wish to express our understanding that a much better way for Congress to support a democratic exercise of the right of self-determination would be by supporting the convening of a Constitutional Assembly in Puerto Rico, and establishing a formal process of negotiation with the People of Puerto Rico to implement the results of said Constitutional Assembly.

We believe that a valid process of self-determination for Puerto Rico must comply with applicable U.N. Decolonization Committee resolutions, which are based on recognized international law principles. As such, it is essential that any valid process originates from Puerto Rico, not from the United States, and that it engages the Congress and the Administration in an effective response mechanism to the expressed will of the people.

H.R. 2499 would federalize our electoral process, which under US Supreme Court decisions is unconstitutional, as it is also contrary to the very nature of self-determination according to International Law. In addition, H.R. 2499 would create a two-vote process in which the first vote would be an unnecessary waste of valuable resources. Under the first vote, the people of Puerto Rico would be asked to choose between undefined change and the current state of relations between Puerto Rico and the United States. It should be noted that no one in Puerto Rico, not even our

own Popular Democratic Party ("PDP"), which is the historical defender of the Commonwealth status, advocates for a continuation of Commonwealth as we know it today. In fact, in 1998, given the choice of supporting today's territorial Commonwealth in a status referendum, the PDP chose instead to support the "None of the Above" alternative. Subsequently, the PDP has repeatedly stated its support for changes to the current Commonwealth arrangement. Thus, the first vote included in H.R. 2499 is unnecessary, a waste of valuable and scarce resources, and offensive to the idea of a proper self-determination procedure.

The second vote to be held under the terms of H.R. 2499 is equally problematic. As originally drafted, the second vote did not contain an alternative that would adjust to the expressed aspirations of the more than 800,000 supporters of the PDP, one of the two main political parties in Puerto Rico. Not having an alternative to support, PDP voters would be left disenfranchised and without any motivation to participate in the process. These would result in an artificial victory for the Statehood option, generally the "runner up" in Puerto Rico's political preferences. The addition of a "status quo" amendment in the House of Representatives did not in any way cure that fatal flaw. Now, instead of having three alternatives that do not adjust to the expressed wishes of the members of the PDP, H.R. 2499 contains four alternatives that do not so adjust. The only way to avoid the disenfranchisement of PDP supporters would be to define an alternative in a way that adjusts to the text of the PDP platform, which reads as follows:

> Sovereignty means that a nation's ultimate power over its affairs resides with its people, its countrymen. The undertaking of the issue of Puerto Rico's political status should begin with the recognition that sovereignty rests with the people of Puerto Rico. The concept of "Estado Libre Asociado Soberano" (Sovereign Commonwealth or Free Associated State) seeks that Puerto Rico and the government of the United States agrees to specific terms that define the relationship between them, with U.S. citizenship as a bonding element of the political association. That effort will establish the extent of the jurisdictional powers that the People of Puerto Rico authorize to have in the hands of the United States.

Without an option that adjusts to the above-cited language, H.R. 2499 would leave the members of the PDP without a choice on the second vote, undemocratically creating an artificial victory for an alternative (Statehood) that has never had the support of the majority of Puerto Ricans.

We also concur with those, like the Congressional Research Service (CRS), who express concern as to the confusing nature of the so-called "sovereignty in association" option. When a serious process of self-determination is entertained by this Senate, the middle ground option between Statehood and Independence should be clearly outside the Territorial Clause and as close as possible to the previous models of association already adopted by the United States with three Pacific nations. In that sense, H.R. 2499 fails to properly consider the alternative of Free Association as suggested by Chairman Bingaman to the Puerto Rican media on November of 2006.

Instead of the flawed process suggested in H.R. 2499, we propose that a special Constitutional Assembly for self-determination be convened by the People of Puerto Rico, in accordance to our laws, institutions and our inalienable rights. This special Constitutional Assembly shall be the vehicle of expression which allows the articulation of non-territorial alternatives, based on the sovereignty of the People of Puerto Rico and not bound by the straitjacket of the territorial clause and its plenary powers. This proposal is consistent with the PDP platform; in fact, we have filed a Bill in the Puerto Rico House of Representatives, drafted by a multi-party special committee of the Puerto Rico Bar Association (that would provide for the convening and operation of such a Constitutional Assembly). Instead of wasting time and resources with flawed processes as H.R. 2499, Congress could also enact legislation that acknowledges the inalienable right of Puerto Rico to convene such a convention and that establishes a formal process to negotiate in accordance to what the People of Puerto Rico express as a result of that Constitutional Assembly[1].

Finally, we denounce the effects of an English language amendment included in the approved version of H.R. 2499. Said amendment mandates our Election's Commission to instruct voters that if Puerto Rico retains its current commonwealth status, "it is the sense of Congress that the teaching of English to be promoted in Puerto Rico as the language of opportunity and empowerment in the United States in order to enable students in public schools to achieve English language proficiency".

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[1] This proposal was included in H.R. 1230, a bill introduced in the previous Congress by Representative Gutierrez of Illinois and Representative Velazquez of New York.

Said amendment is another attack on the culture and distinct identity of Puerto Rico, and by itself is enough reason to defeat H.R. 2499.

We urge you to defeat H.R. 2499 for the various reasons that have been explained on this written statement. Furthermore, we urge you to work with the people of Puerto to truly fashion a self-determination process that respects our natural right to determine our ultimate political status.

GREGORIO IGARTUA, ATTORNEY, AGUADILLA, PR, ON H.R. 2499

I am an American citizen resident of Puerto Rico, and have been pursuing the right to vote in Presidential Elections for the American citizens of Puerto Rico since 1991. On Wednesday, June 24, 2009, your Committee will be holding a public hearing regarding Puerto Rico's status issue. I find it pertinent to bring to your attention, and that of the other Members of the Committee, the following observations in opposition to the proposed legislation:

1) Gradual Congressional Incorporation of Puerto Rico to the United States "as a State" Since 1898.

Puerto Rico has met all of the requirements to become the 51st State of the United States. Since 1898, when Puerto Rico was acquired by the U.S. by the Treaty of Paris, as a result of the Spanish American War, Congress has gradually incorporated Puerto Rico to be "like a state". The native residents of Puerto Rico are American citizens by birth, vote for their governor, and adopted by direct vote a constitution in 1952, one that was approved by Congress, to rule their internal affairs, just like American citizens do in the fifty states. (See, US. Const. Art IV, Section 4). The Executive Branch operates fully in Puerto Rico. All U.S. Federal laws have been applicable in Puerto Rico since May of 1900. (See Foraker Law and Public Law 600). All income from sources outside of Puerto Rico is subject to Federal taxation. (See US. Tax Code). In addition, all employers and employees in Puerto Rico pay Social Security (F.I.C.A.) and Medicare taxes. The net result is that Puerto Rico is now contributing over five billion dollars annually to the U.S. Treasury, more than residents of some states do. (Verify with IRS Annual Income Report). Puerto Rico is so incorporated as "a state" to the Nation that the Judicial Branch operates fully in Puerto Rico as in the States. (Puerto Rico is subject to the jurisdiction of the Federal District Court, First Circuit Court of Appeals, and the United States Supreme Court.) As a result, the American citizens residents of Puerto Rico have a federalist personality, one associated with the Nation and one associated with Puerto Rico, just like the American citizens in the states have. All of these policies constitute acquired rights and obligations within the American constitutional legal framework. Thus, Puerto Rico is ready for an Enabling Act from Congress granting it the statehood franchise, so that, in justice and after more than one hundred years, its four million American citizens can send two senators and six congresspersons to Congress, and vote in Presidential Elections. Taking into account the spirit of the U.S. Constitution, and the democratic rights that our Nation so arduously defends, domestically and abroad, this statehood step is long overdue for Puerto Rico.

What is a clear and simple solution of the status question that is for Puerto Rico to become a state is hindered by contradictions-ignorance, bad faith, discrimination or a combination of these on the part of local and national politicians debating the status question. Particularly consider the following:

A. Some politicians are still confined to the dilemma of whether Puerto Rico is an incorporated or non incorporated territory of the United States, a judicial classification that originated in the so called Insular Cases of 1901. These ignore that Congress has incorporated Puerto Rico to be like a state gradually over the years, as previously exposed. We were made part of the American family when we were granted American citizenship in 1917. (" . . . The distinction between incorporated and unincorporated territory is no longer significant . . . [after] the conferral of citizenship on persons born in Puerto Rico (1917, amended, 1939 and 1940)". 3 Gordon and Rosenfeld, Immigration Law and Procedure 12 (1980 rev), Restatement of the Law, Vol. 1, Section 212 at 121). Even the Federal Courts have judicially incorporated Puerto Rico to the United States by applying US constitutional provisions in their opinions, as if it is "a state." (See eg: Mora V Mejias, 11SF Supp 610, Trailer Marine Transport v Rivera Vazquez, 977F 2d1, Calero—Toledo v Pearson Yacht Leasing Co, 416 US 663; Terry Tend Torres v Commonwealth of PR 442 US 46S). Moreover, the U.S. Supreme Court established Puerto Rico is an incorporated territory, Boumedine v. U.S. (US Sup Ct, June 2008).

B. The leaders of the Popular Democratic Party have insisted for sixty years in promoting as legally viable a political relation whereby Puerto Rico is a territory of the United States with the privileges of internal free disposition of U.S. constitutional areas as those exposed in U.S. Constitution Art I, Section 8, which are exclusively delegated to Congress, and which would, if allowed, constitute unequal treatment between the American citizens residents in the states and those residing in Puerto Rico. That is, making Amendments VI and XIV's, equal protection clause inoperative. This proposal pretends to revive in our Nation a confederate relation between Puerto Rico and the National Government, a type of relation that ended when the U.S. Constitution was ratified in 1789, and which was reaffirmed by the outcome of the Civil War. Worst, they are still searching for a status definition which mixes American Citizenship with constitutional privileges not acceptable to Congress because these do not fit into the American constitutional framework.

C. If you evaluate different reports concerning the political status of Puerto Rico from both Congressional and Executive sources, including those by the White House, as well as the opinions espoused by national and local politicians, you will find them to be generally contradictory and confusing. Policies are still adopted on the wrong premise that we do not pay Federal taxes. Last year two congressmen opposed full voting rights in the House to Hon. Luis Fortuño, then Puerto Rico Resident Commissioner, on this wrong basis. (Ignoring US Const Amend XXIV prohibiting the imposition of tax requirements as a precondition to voting.) This may be due to ignorance of the development of the legal relationship between Puerto Rico and the United States and our present legal status as an incorporated territory of the U.S.

D. Consider Congressman Luis Gutierrez and Congresswoman Nydia Velazquez, both from Puerto Rico, with residence in states, enjoying full citizenship rights, and opposing statehood for their fellow American residents of Puerto Rico. This political contradiction provokes confusion in Congress.

E. The political confusion created by a proposal by some in the Popular Party of an associated republic, and the proposal by others of a Republic for Puerto Rico, where both mean independence from the United States, and included in the proposed law. How can Congress include an independence states to the American Citizens of Puerto Rico who have rejected it in the last fifty years? What independence, with what: government organization, emigration laws, coin, labor laws, etc.) On the other hand, Puerto Rico needs to be a Republic in order to freely negotiate an association with the United States or any other Republic. Therefore the proposed associated republic alternative is not legal. The proposed law offers a double blank check to an independence alternative to a minority which has not received more than three percent of the electoral vote in the past two elections.

F. Many politicians ignore the fact that the territory of Puerto Rico is fully incorporated to qualify as a state, including with population requirements, contrary to the legal status of other territories. The other territories are still ruled by the United States under an Organic Act, and their population does not meet the minimum required population to elect one Representative to Congress, or one elector to vote in Presidential elections.

2) Legal Considerations Opposing HR 2499

The December 2005 Report by the President's Task Force on Puerto Rico's Status proposed as a solution to the status issue a Federally sponsored plebiscite. One of the alternatives offered to the voters would ask them to keep Puerto Rico as a territory, thus freezing the incorporation process. Has your Committee consider the implications of such proposal, of a political status of keeping the status quo of American citizens residents of a territory within the U.S. constitutional legal framework, such as: How would Congress establish guidelines to determine the applicability of federal laws to Puerto Rico; or, for the Courts to determine the extent and degree to which our rights under the U.S. Constitution would be advanced, or withhold; or, how will the Executive Branch operate in Puerto Rico, in a territory where the applicability of laws, or advancement of legal rights has been frozen? What is the constitutional provision which allows such a discriminatory practice? There is no other similar discriminatory policy that has been proposed to be applicable to American Citizens residents of a territory in the history of our Nation, nor to afroamerican American Citizens with respect to their voting rights.

As the White House Report proposed this law also proposes a political solution for the status of Puerto Rico that is not legally viable, that is, a two tier referendum where the American citizens of Puerto Rico would first decide on whether to stay as a territory of the United States, and depending on the outcome of the first ref-

erendum, to participate in a subsequent referendum to vote for either statehood or independence, or an associated republic. This proposal promotes more confusion on the status issue. Any attorney should be able to explain to the Committee, as the U.S. Attorney General should, that you cannot ask American citizens by birth to vote for an option that will continue to subject them to government without consent. It is legally and morally incomprehensible to promote a system based upon the proposition that taxation without representation is a valid option for American citizens, even when it expressly contravenes the very text of Amend XXIV. In Puerto Rico's case to continue to be deprived of Congressional representation and the right to vote in Presidential Elections while being federally taxed for over 5 billion dollars annually.

Consider how contradictory it would have been for African Americans in the U.S. to claim their rights in a fashion similar to the proposed plebiscite during the U.S. Civil Rights Movement of the 1950's and 1960's. Imagine that a federally sponsored plebiscite had been held in the states of Alabama and Mississippi in 1956 and that the African American residents of those states would have been asked to vote "yes" or "no" to the following questions: Would you like to vote in local, state and Federal elections? Only a small minority of African Americans in those two states were allowed to vote freely in1956. It was not until the passage of the Voting Rights Act in the 1960's that they could vote in significant numbers. Up until then African Americans in those and other states had government without the consent of the governed. Another question would have been:

Would you like to continue living in segregated communities with separate public facilities such as restaurants and rest rooms? Segregation ended with the passage of the Civil Rights Act. Finally, would you like to continue sending your children to inferior segregated schools? The U.S. Supreme Court decision Brown vs. Board of Education of 1954 ended segregation in schools, however, it required the intervention of Federal troops to implement that decision.

It is evident that such a plebiscite would be absurd, illegal, discriminatory, against the national democratic principles, and would only lead to more confusion. The adoption by Congress of the proposed referendum for Puerto Rico would be the equivalent of institutionalizing the case of Plessy v. Ferguson, 163 US 537, to the four million American citizens of Puerto Rico, or similarly the Insular cases. Such is the one proposed for the four million Americans who live in Puerto Rico, and the one endorsed by some pro statehood and pro independence leaders, and considered by your Committee.

Even under international treaties, particularly those to which the United States is signatory, and under international customary law, the proposal is not only legally unviable, but rather disrespectful to the four million American citizens residents of Puerto Rico, which have contributed so much to the Nation, inclusively in armed conflicts to ironically defend the democratic rights (government by consent) of citizens of other countries (Iraq and Afghanistan—More than 60 American citizens from Puerto Rico have died already in these conflicts.) That is, defending our flag under the embarrassing condition of being denied those same democratic rights. (See Igartua v. US. III, 407 F3d 30, Judge Torruellas and Judge Howard dissenting).

I wonder, why so many people seem to be confused with the political status of Puerto Rico? I also wonder whether some politicians consider whether the American citizens of Puerto Rico have dignity at all? We are the first American citizens residents of a U.S. territory whose acquired federal civil rights are still being considered for a possibility of a move in a direction towards independence rather than towards statehood. Only 3% of the voters hare favor independence in the last 50 years. To the contrary, both the Pro-Statehood Party leaders and the Popular Democratic Party leaders institutionallyparticipate actively in National Politics. Ex Governor Rafael Hernandez Colon and the leaders of his Popular Democratic Party have strongly expressed their position against renouncing American citizenship. (See transcripts of previous status hearing before the Committee). What moral, legal, or logical justification does Congress has to even contemplate the possibility of taking away our federal acquired rights, our American citizenship from four million Americans also who are now fourth, fifth, and sixth generation American citizens. Furthermore taking into consideration the following:

1. Hundreds of thousands have served in the Armed Forces of the U.S., many of whom have died in combat.
2. There is a constant flux of people to and from the mainland to Puerto Rico for the purpose of education, employment, business and leisure.

3. That independence would place an undue burden on the residents of Puerto Rico (4 million American citizens), and their relatives in the 50 states alike (4 million American Citizens).

4. That there is no precedent in the history of the United States to revoke or rescind American citizenship to American Citizens against their will.

5. The political relation of Puerto Rico to the United States where the U.S. Constitution has been made applicable in several judicial decisions, including by the U.S. Supreme Court.

Notwithstanding everybody wants to propose solutions randomly. Some Senators have even proposed a constitutional assembly, showing total disregard for the one held in 1952, when we adopted a constitution to govern our internal affairs, with a republican form of government like in states, and where we expressed our loyalty to the U.S. Constitution. (PR Constitution Preamble) This would be very convenient for the independence Party, as similarly proposed by their leader Ruben Berrios Martinez. Its a chance to turn back all the Federal incorporation process. Most probably many of these proposals are made out of ignorance of Puerto Rico's legal relationship as an incorporated territory of the United States, from where four million other former residents have moved to the fifty states. How can Congress ever consider legislation for a constitutional assembly that will affect the acquired federal rights of four million American citizens without a specific agenda, or with the expectation that one that it will the adopted at a later stage at the unilateral will of a few. Is this the normal legislation procedure in Congress? To determine where we are legally under the U.S. Constitution, and where we should go, is not such a complicated endeavor. In this regard, I would respectfully propose to this Honorable Committee to match the requirements imposed to other territories in order to become a state. After such analysis, your Committee would find that Puerto Rico has complied with all the requirements to become a state as originally established in the Northwestern Ordinance of] 789.

I invite you and the other Members of the Committee to evaluate first all of the legal documents and judicial opinions in the cases of Igartua v. 1LS, I, II, and III, litigated in the Federal Courts and related to our right to vote in Presidential Elections. The U.S. Department of Justice can provide you with the whole record. In any case, I am at your disposition to provide these or any documents you deem pertinent. (Igartua v Us, 404 F3 dl; 407 F3 d30; 229FS3 d80).

Chairman Rahall and the Honorable Committee, I urge you to analyze the relationship of Puerto Rico with the United States within its proper legal context. The Puerto Rico status issue is not like a blank canvas where anyone can paint a custom made solution. Our relationship has been developing since 1898 legally, socially, politically and economically, and it is imperative that this process be taken into account. The American Citizens residents of Puerto Rico have helped built the Nation. Your Committee can contribute to our human rights and make history by promoting a process that fully recognizes our legally acquired rights as American citizens by birth and provide us with all the benefits conferred by statehood. It is Congress obligation to treat this issue within the context of the presently applicable legal dispositions, that is, within a civil and human rights perspective, and not within a purely territorial perspective more fitting for the latter part of the 19th century.

Congress should work to complete the incorporation process by adopting an Enabling Act for Puerto Rico. A Federally sponsored plebiscite for Americans citizens to consent to government without consent of the governed as an option would be asking us to choose a status of political servitude, an illegal and unjust option to offer to an American citizen. It would also show that the Committee does not understand where we stand legally. Work for us considering what we really are, four million American citizens who moved residence to the States, and four million American Citizens of fifth and fourth generation residing in Puerto Rico, U.S.A.

I am sure that both Honorable Governor Luis Fortuño, and Honorable Resident Commissioner Pedro Pierlussi, and other statehood leaders, have a genuine and honest interest in pursuing statehood for Puerto Rico. I very respectfully oppose the alternative of HR 2499-for the reasons set forth above.

I respectfully request that this communication be made part of the official record of the Committee Hearing on Puerto Rico.

STATMENT OF MICHAEL A. MONAGLE, CHRISTIANSTED, VI

Dear Committee Members and Delegate Christensen:

Let me begin by saying that I support the creation of a Virgin Islands Constitution. I even testified at a meeting of the committee on the legislature to express my opinion on how our senate should be formed. Let me go a step further by saying

that I respect many individual delegates to the Constitutional Convention and admire their hard work in helping to create such a document. Unfortunately there were some members of the Convention who had an agenda that will guarantee the failure, once again, of this worthwhile endeavor. I am speaking specifically of the creation of classes of citizenship with the attendant special privileges that such distinctions entail. The delegates have put forward a document that will divide us into three classes-Native Virgin Islander, Virgin Islander and Virgin Islands Citizen. Already formed in the proposed Constitution are ideas such as special tax privileges for Native Virgin Islanders and the premise that our Virgin Islands Governor and Lieutenant Governor must be Native Virgin Islanders. If the proposed Constitution is allowed to pass we can expect more such enactments in our future, further degrading our constitutional rights.

In the previous hearing before members of the House you had Gerard Emmanuel, Adelbert Bryan and Gerard Luz James testifying, three men who have been in the forefront of enacting the above mentioned sections of the Constitution. Let me speak of the thoughts of the two who will not be there today. First Mr. Emmanuel stated that we should restrict the two elected executive offices to Native Virgin Islanders even if it means bucking Congress. He stated "The top office is something we should have for our own. If people fight against that I don't think they love the Virgin Islands." Mr. Bryan stated about the offending sections "Why we here wondering about what little handful of white people not going to like it." (sic) Mr. James is now appearing in front of your committee so please ask Mr. James if he agrees with those quotes. Who does he and Mr. Emmanuel define as "our own"? Is he excluding many of our Arab citizens and many of our Hispanic citizens and all of our Down Island citizens and almost all of our Caucasian citizens? Are they not his own? Does he share the views of Mr. Bryan about a "little handful of white people"?

As you are aware, we live in a global world where people do not stay within fifteen feet of where they were born. Such insular thinking is not applicable to the way we all live today. In referencing the section on our executive officers, if you look at the fifty five governors under the U.S. flag, 24 were not born in the state or territory where they govern, in fact three were born in foreign countries. That is a total of 43%. This is a fact of life, people move and denying them their rights and privileges because of that is unconstitutional. Would Mr. James like to see reciprocal ceding of rights for Native Virgin Islanders who moved to New Jersey or Oklahoma? Should they have extra taxes levied against them in those states because of these clauses? Shouldn't we include a clause in our Constitution that would permit the citizens not allowed to run for office to pay no taxes at all as they are not getting the rights and privileges guaranteed to others?

What the proposed Constitution codifies on our islands is the beginning of Apartheid, a government mandated way of life with different rights for different classes of citizens. Apartheid in Afrikaans means separateness or apartness. I don't believe that is what we should be creating in our Constitution. At present you have several options in regards to the document before you. I ask that you carefully consider them and please do not allow this to become the law of the land on our islands.

Thank you for allowing me to contribute my thoughts to your debate on the issue at hand.

STATEMENT OF MAURO E. MUJICA, CHAIRMAN OF THE BOARD, U.S. ENGLISH, INC., ON H.R. 2499

Chairman Bingaman and members of the Committee,

My name is Mauro E. Mujica, and I am Chairman of the Board of U.S. English, Inc.

U.S. English was founded in 1983 by former U.S. Senator S.I. Hayakawa. Since then, we have grown to more than 1.8 million members who believe that public policy should emphasize the importance of our common language, English. On behalf of our members, we oppose the current version of H.R. 2499, the Puerto Rico Democracy Act. H.R. 2499 fails to address the serious official language questions pertaining to Puerto Rico's status, and compounds this error by pretending to address these issues. As with the vote in the House of Representatives, any vote on H.R. 2499 will be featured prominently in the legislative scorecard we distribute to our members before the November elections.

Our chief concern is that Puerto Rico's current policies with respect to its official language have never been allowed for any incoming state:

- While English is mandatory in Puerto Rico's public schools, it is taught as a foreign language, and instruction rarely exceeds one hour per day. Unsurprisingly, just 20 percent of Puerto Rico's residents speak English flu-

ently. By comparison, California has the lowest proficiency rate among the 50 states, and its rate is 80 percent.

- Puerto Rico's local courts and legislature operate entirely in Spanish, with English translations available only upon request.

Dr. Yolanda Rivera, Director of the linguistics program at the University of Puerto Rico recently told the International Herald Tribune that the cumulative force of these government policies is that "English is a foreign language in Puerto Rico."

No state has ever been allowed to come into the Union when its core organs of government operate in a foreign language, and Puerto Rico must not be an exception.

As your former colleague Daniel Patrick Moynihan wrote in his book Pandaemonium: Ethnicity in International Politics, a formal or informal requirement for all U.S. territories entering the Union has been that English be the operational language of government. In most cases, it's been an informal requirement: the vast majority of territories were operating in English when they petitioned for statehood, so a Congressional requirement would have been unnecessary.

However, when the language of the new state government was in genuine doubt, Congress has always formally required English as a condition for statehood. In 1811, President James Madison signed the Louisiana Enabling Act, establishing the conditions under which heavily French speaking Louisiana could become a state. Under the Act, the laws, records, and written proceedings of the new state were to be solely in English. Three of our most recent states have presented a similar challenge: Oklahoma, Arizona, and New Mexico all entered the Union with large and historically rooted non-English speaking populations. In all three cases, Congress required English to be the language of public school instruction before the territory voted on whether or not to become a state.

Requiring similar changes would force a sea change in Puerto Rico. While it is true that Puerto Rico technically has English as an official language, we must ask what this means in practice. I visited Puerto Rico's legislature last month, and I would encourage you to visit as well. One would think that with English being an "official language" that the legislative proceedings would be at least in both English and Spanish. Instead, all the legislative proceedings are conducted in Spanish. I was able to follow very well, since Spanish is my native language. But if, like most Americans, I did not speak Spanish, and I wanted a copy of the legislative proceedings in English, I would have had to make a special request.

Some incoming states were allowed to keep their historical languages for ceremonial purposes. For example, New Mexico was allowed to keep Spanish and Hawaii to keep Hawaiian. Still, English was and is the operational language of government in both states. In Puerto Rico, it is the reverse: Spanish is the operational language, and English is there for ceremonial purposes.

I am not criticizing Puerto Rico for their preference for Spanish. The island has substantial autonomy as a U.S. commonwealth, and they have the discretion to do what they think is best for the commonwealth. But if they want to become a state, they must not be allowed to have practices that no state in our history has ever held.

As such, the legislative language related to English that passed the House of Representatives is woefully insufficient. The House measure requires that the official language policies of the federal government apply to Puerto Rico, as they would to all other states. I very much wish the federal government had an official language-my organization is trying to make it happen. But the federal government does not have an official language, so this "requirement" is useless.

The House also defeated, by four votes, an amendment that would have required English to be the sole official language as a condition for Puerto Rico statehood. Make no mistake: without this amendment, Puerto Ricans would vote in a federally sanctioned plebiscite believing that they could enter the Union with their historically unprecedented language policies intact.

That would mean a U.S. state in which American schoolchildren are taught English only as a foreign language.

That would mean a U.S. state in which the state legislature and state courts operate in Spanish and in English only by special request.

That would mean a U.S. state where only 20 percent of the population can speak English, and where government policies are not attempting to improve that number.

The question of language in Puerto Rico is actually bigger than Puerto Rico. After all, how can the United States ask immigrants to learn English when they come here if we allow a state where public policy makes no attempt to achieve English fluency?

Some in the statehood movement have suggested that Congress addressing the language question is premature, and that Congress should only address it once a plebiscite has been held. But if the true purpose of H.R. 2499 is to accurately assess Puerto Ricans' political wishes, Congress must give the voters accurate information about what each option entails. If Congress believes that Puerto Rico must truly adopt English in its official practices, the time for addressing it is now.

Endorsing Puerto Rico's political self determination does not mean that Puerto Rico unilaterally determines the conditions under which it becomes a state. As has always been the case, defining the contours of statehood is up to the Congress. This Congress must make it clear to Puerto Rico-before any vote-that statehood means joining all of the other 50 states in operating their courts, schools, and legislature in English.

The time for addressing these weighty issues of language and national identity are now. Without these changes to H.R. 2499, I respectfully ask that the Act be defeated.

STATEMENT OF JOHN A. REGIS, JR., PRESIDENT OF PUERTO RICO-USA FOUNDATION, INC., ON H.R. 2499

On April 29, 2010, the U.S. House of Representatives passed H.R. 2499, a bill providing for federal recognition of the a political status referendum conducted by the duly-constituted local government of Puerto Rico on future political status options recognized by Congress as compatible with the U.S. Constitution and federal law applicable to Puerto Rico. We strongly supported H.R. 2499 and regard its passage as a significant and historic step toward a long over due definitive response by both Houses of Congress to the formal petitions in 1994 and 1997 of the Legislative Assembly of Puerto Rico, requesting Congress to enable Puerto Ricans to vote on the legally valid status options Congress is willing to consider for Puerto Rico.

Accordingly, it is now historically and legally imperative that the U.S. Senate take up H.R. 2499 and act in concert with the House of Representatives to define the future political status options Congress is willing to consider for Puerto Rico. Given the history of past status votes in Puerto Rico and the legislative record in both Houses of Congress in response to those local votes, timely and effective action by the Senate during this session of Congress clearly is consistent with the authority and responsibility of Congress for territorial status resolution under Article IV, Section 3, Clause 2 of the U.S. Constitution.

Why the Senate Should Act

It no longer is credible or rational for Congress to expect much less require the 4 million U.S. citizens of Puerto Rico to conduct a referendum on future political status options in the absence of Congressional confirmation of the legally valid available options. The 1994 and 1997 petitions by the people of Puerto Rico, acting through the local constitutional process established under federal law, confirm that meaningful and informed self-determination expressing the future status aspirations of the people can not realistically be expected unless and until Congress clarifies federal law and policy with respect to the status options formulated in the local political and constitutional process of Puerto Rico.

The history of confusing and inconclusive votes conducted on status options formulated in the local constitutional and political process in 1967, 1993 and 1998 compelled the Legislative Assembly of Puerto Rico to petition Congress to define the options to consider in 1994 and 1997. Adoption of H.R. 856 by the House in March of 1998 was followed by U.S. Senate Resolution 279 in September of 1998, but the Senate measure failed to confirm any specific status options. The local government then sponsored a local status vote based on the legislative record before Congress in 1998, with results that reflected, among other things, the need for both Houses of Congress to act in concert to confirm the status options Congress as a whole is willing to consider.

The action taken by the House in bringing H.R. 2499 to the floor for a vote reflected the progress made since 1998 in creating a record for federal law and policy. That record includes 12 years of legislative and oversight hearings in the Senate and House on the Puerto Rico status question, based on legislation that has been introduced with bipartisan sponsorship, as well as the 2005 and 2007 reports by the President's Task Force on Puerto Rico's Status.

Based on that record, the principles that must govern federal law and policy with respect to the status of Puerto Rico are clear:

- By voting to adopt the current local constitution in 1952, the U.S. citizens of Puerto Rico approved a form of limited local territorial self-government under

the "commonwealth" label, but that did not constitute consent of the governed to indefinite territorial status without full self-government at the national level.

- A federal mechanism must be created to enable the U.S. citizens residing in Puerto Rico to consent to continuation of the current status, which consent must be based on majority rule to be sufficient and sustainable as a form of government by consent of the governed.
- If a majority do not consent to continuation of the current status as defined by federal law, there must be a mechanism that makes possible the free democratic expression of the wishes of a majority of voters regarding future status options other than the current territorial "commonwealth" status that Congress is willing to consider.
- The U.S. citizenship rights of residents of Puerto Rico are defined restrictively and are less than equal to citizenship rights in the states due to the territorial status of Puerto Rico, so only U.S. citizens residing in Puerto Rico should be eligible to vote in a referendum on the status of Puerto Rico, rather than enabling residents of the states with ties to Puerto Rico to vote to influence the determination of the status and rights of residents of the territory.
- Any initial referendum mechanism on status in Puerto Rico to ascertain consent to the current status or the freely expressed wishes of the voters as to the options for a new status that is not territorial will be advisory and not binding on Congress.
- It is not consistent with the principles of informed self-determination to present voters in a status referendum with options that are not recognized under federal law. That denies the right of self-determination to voters who want to vote on legally valid options.
- Voters who do not consent to the present status have a right to combine their vote to end the current status, even if they have different aspirations as to the ultimate future status of Puerto Rico.
- Majority rule on the status issue provides the most sound basis for federal and local law and policy on the political status issue, and it is not "stacking the deck" or creation of a "manufactured majority" to enable voters favoring different ultimate options to combine their vote to form a majority to eliminate an option supported by less than a majority.
- The current territorial status and "commonwealth" regime limits self-government to local matters not otherwise governed by federal law, and includes the ability of the local government to request improvements in federal-territorial relations.
- The local "commonwealth" party does not have a right to demand that its party platform proposals to improve "commonwealth" by converting it to a non-territorial status combing features of both statehood and sovereign nationhood be included on a referendum ballot, because that local party platform is not recognized under federal law as a legally valid status option, and has been rejected by Congress and the federal courts for 60 years.

House Debate of H.R. 2499

H.R. 2499 satisfied almost all of these criteria, developed through the comprehensive deliberative committee oversight and legislative hearing process in House. Indeed, the only provision of H.R. 2499 inconsistent with these principles was the extension of voter eligibility in status votes under the act to Americans from Puerto Rico residing in the states. We respect the sentiment behind that provision, but do not believe it is consistent with the principle of government by consent of the governed, because only the U.S. citizens residing in Puerto Rico are governed by federal territorial law applicable to the commonwealth under the current status.

By separating the threshold issue of consent to the current status in a first stage vote, H.R. 2499 would have given supporters of the current status and "commonwealth" the ability to preserve the status quo and seek improvements to "commonwealth" as it has for 60 years. As long as "commonwealth" supporters garnered a majority for that option there never would have been a vote under H.R. 2499 for the non-territorial status options recognized by Congress.

However, in the House debate representatives of the local "commonwealth" party in Puerto Rico opposed H.R. 2499, and supporting proposed amendments intended to ensure continued minority rule and artificially imposed plurality votes based on inclusion of a "commonwealth" option that is not recognized under federal law. Fortunately, the House did not consider proposed amendments to include the "commonwealth" status option of the local "commonwealth" party that had appeared in locally conducted status votes in 1967 and 1993.

However, due primarily to confusion, misinformation and misunderstanding of the two-tier ballot in H.R. 2499, created by representatives of the local "commonwealth"

party, the House did amend H.R. 2499 to combine the current status with the "commonwealth" system of limited local self-government in the second stage vote on non-territorial status options. This makes attainment of majority rule on a valid status option more difficult, and increases the chances of continued minority rule under plurality votes.

The most disingenuous argument made in the House debate on H.R. 2499 was that the voters of Puerto Rico had "said no" to statehood 3 times in the earlier status votes. The truth is that statehood gained ground in the 1967 and 1993 vote against a "commonwealth" ballot option that promised a "fantasy island" status combining feature of statehood and independence that are not recognized under federal law as consistent with territorial status, independence, true sovereign free association or statehood. In 1998 statehood got the highest vote of any status option, "commonwealth" as defined by federal law got less than 1%, and "None of the Above" got the highest vote. That record of locally conducted status votes is the best proof that Congress needs to end its silence on what status options are constitutionally and legally plausible.

H.R. 2499 Makes Senate Action Imperative

But even with the amendments to H.R. 2499 that alter its original framework it is an historic achievement, and provides the basis for the Senate and the House of Representatives to reach agreement on a mechanism to enable a local referendum process that can lead to government by consent in Puerto Rico on the political status question.

Now the highest and most urgent priority is for the Senate to act in concert with the House to define the status options that are recognized under federal law, so an informed and meaningful act of self-determination can occur in Puerto Rico. We look forward to working with the Committee to achieve that goal during this session of Congress.

STATEMENT OF JORGE I. SUÁREZ CÁCERES, SENATOR, COMMONWEALTH OF PUERTO RICO, ON HR 2499

Senator Jeff Bingaman, Chairman of the Committee, and all other members. I make these remarks as State Senator of the Commonwealth of Puerto Rico and member of the Popular Democratic Party (PDP).

The United States first claimed the Caribbean island of Puerto Rico as a prize after its victory over Spain in the Spanish-American War in 1898. In 1952, the People of Puerto Rico and the Congress agreed to turn Puerto Rico into a democratic, self-governing, Spanish speaking, internationally recognized U.S. commonwealth. Since then, Puerto Ricans have voted to reject statehood in 1967, 1993 and 1998.

On the first two instances Puerto Ricans were asked to vote on their political status, we were given three options to choose from: commonwealth, statehood or independence. In both instances, the majority voted for commonwealth. As a result, in 1998, in an effort to tilt the balance in their direction -after failing to move Congress in their favor, a pro-statehood administration in Puerto Rico came up with a new strategy. Instead of just three options, voters were given five; four political status definitions and a "none of the above" option. The plan was to dilute the commonwealth vote and win at least a plurality for statehood. However, their "divide and conquer" strategy failed embarrassingly when Puerto Rico's pro-commonwealth leaders urged their supporters to vote for "none of the above," which won the majority of the votes. For a third time, statehood was rejected.

All three plebiscites were originated by Puerto Rico law. They were not binding on the Congress. Millions of dollars were spent in campaigning and in the process. The result: the political status of Puerto Rico remains the same. Three plebiscites, three strikes, Plebiscites are out!!! Statehood is out!!!

Nevertheless, in spite of the fact that history has shown that plebiscites do not work, statehood proponents are back, this time before the Congress, trying to "divide and conquer". In a new attempt to engineer a victory for statehood, they are teaming up with the pro-independence movement for a yes or no vote on commonwealth status. Instead of proposing a new option, chosen via consensus, they are proposing another plebiscite with a yes or no vote on commonwealth status. If that plebiscite does not give them the desired result, then they propose yet ANOTHER plebiscite.

H.R. 2499 is intended to transform the Island and its 4 million mostly Spanish-speaking inhabitants into the first Hispanic state. H.R. 2499 would make Puerto Ricans vote on the issue of statehood yet again. This time, however, statehood sup-

porters are leaving nothing to chance. They are pulling out all obstacles to rig the voting process in favor of statehood.

H.R. 2499 authorizes a federally mandated plebiscite on whether Puerto Rico should remain a commonwealth, become a state or become an independent nation in association (or not) with the United States. A majority of Puerto Ricans have never favored statehood, but the voting scheme in H.R. 2499 is designed to guarantee that statehood finally wins.

As the Senate Committee on Natural Resources prepares to mark up HR 2499 you should be aware that this bill was not the product of a drafting process that was inclusive transparent nor fair. HR 2499, as introduced, would set forth a predisposed process designed to get rid of the Commonwealth option in order to steer the people of Puerto Rico towards a predetermined outcome in favor of statehood. This latest statehood bill proposes two plebiscites structured to knock out Commonwealth early on hoping to create a bogus majority in favor of statehood. Basically, in the first plebiscite voters would be asked whether Puerto Rico should continue to have its present form of political status (Commonwealth) or it should have a different one. Although in theory this might be a fair question, what it does, in effect, is to merge voters from the statehood and independence factions and stack the deck against the Commonwealth supporters. Once the Commonwealth option is eliminated the bill provides for a subsequent plebiscite between Independence, Statehood and a nondescript "sovereignty in association with the United States", an option without U.S. citizenship that ignores and does not represent the aspirations of the largest group of Puerto Rico voters who like me support and advocate for Commonwealth.

If you want to continue trying with plebiscites -which is absurd-why not try with this: statehood, yes or no vote. A YES vote for statehood would constitute a more robust petition to the Congress. However, history has shown that plebiscites are costly and ineffective, especially if they are designed to favor one option over the others. Its time to try something else.

This bill not only endangers the democratic principles that are the foundation of the United States of America but it also does not take into account the will of the majority of the people of Puerto Rico. I strongly believe HR 2499 is the wrong way for Congress to address our political status issue since it does not signify a true, fair and democratic process of self determination

This bill is designed to get rid of the Commonwealth option in order to steer the people of Puerto Rico towards in favor of statehood. All Americans believe in democracy. In Puerto Rico, we believe in democracy, and the only thing we want is the right to decide for ourselves our future in a level playing field.

Thank you.

STATEMENT OF J. ALOYSIUS HOGAN, ESQ., GOVERNMENT RELATIONS DIRECTOR, ENGLISH FIRST, ON H.R. 2499

To The United States Senate Committee on Energy and Natural Resources:

There are numerous substantive issues associated with the prospect of Puerto Rican statehood. Some of these issues may be addressed only in this testimony.

One of the most gauling aspects of this particular plan for Puerto Rican statehood is that it turns the statehood process on its head-rather than changing to assimilate into the United States, some Puerto Ricans for statehood would have the United States itself change to admit a state with a foreign language as its official language, which admission has never been done before.

Previously other states have had to accept English to become states, such as French-speaking Louisiana, as well as New Mexico, Arizona, and Oklahoma.

As the Government Relations Director of English First, it is my responsibility to raise some of these issues again.

I say "again" because the concept of statehood for Puerto Rico is like a bad penny that keeps turning up. The issue arose during the late Nineties when I served as Counsel to the House Resources Committee, then chaired by Congressman Don Young.

The issue also arose about ten years before that and received much attention in the press and elsewhere around 1989 and 1990. The issues raised twenty years ago are valid today, and the included Issue Brief from English First pertaining to that era is as fresh and pertinent today as it was then.

Let me first highlight a few notable points and raise a few questions that are addressed in more detail in the testimony below and in the attachment:

1. Americans by huge margins favor making English the official language of the United States. This issue must be addressed when discussing Puerto Rican statehood.
2. The example of Quebec's bilingualism is not favorable.
3. A mandate of foreign translation is astronomically expensive.
4. The United States Supreme Court has decided on multiple occasions that conditions on statehood must be determined BEFORE admittance to the union.
5. Congress could settle this matter in the same way that it resolved the question of French-speaking Louisiana. The Louisiana Constitution accepted by Congress when the state was admitted to the Union clearly stated:

> All laws that may be passed by the [state] Legislature, and the public records of this state, and the judicial and legislative written proceedings of the same, shall be promulgated, preserved, and conducted in the language in which the Constitution of the United States is written.

6. The people of Louisiana, then and now, are free to speak whatever language they choose, but the government and courts of Louisiana are required to function in English.
7. Puerto Rico may have numerous Members of Congress were it to be admitted as a state. Just how many would it have? Might it be twice as many as represent West Virginia, the Chairman's state? How do the people of West Virginia feel about that?
8. The average per capita income of Puerto Ricans has been quite low, less than half that of our poorest state.
9. How much does Puerto Rico currently cost federal taxpayers each year?
10. Puerto Rico's former Governor and Resident Commissioner, Carlos Romero Barcelo, has written, in his book, Statehood is for the Poor, that "the island would take billions more out of the federal treasury than it would put in," according to Professor Antonio M. Stevens-Arroyo, writing in the January 22, 1990 issue of The Nation. Professor Stevens-Arroyo adds, "[t]his is the bottom line statehooders try not to mention when in Washington.
11. How devastating would the loss of U.S. corporate tax exemption be for Puerto Rico?
12. What percentage of Puerto Rico's revenue derives from industry versus tourism?
13. What is the unemployment rate of Puerto Rico?
14. What would the total budget effect be of admission of Puerto Rico as a state? U.S. Senator Kent Conrad has been dubious of rosy estimates.

Now allow me to delve more deeply into some of the history and issues.

The State of Play: The Play for "State"

If Puerto Rico, a Commonwealth of the United States, were to be admitted as a state with a foreign language as its official language, it would end the concepts of assimilation in America and of Americans learning English.

We absolutely can stop this nefarious goal, and with your help we must.

Lamentably the U.S. House of Representatives took a large step towards this nefarious goal on April 29, 2010, when it passed a bill toward making Puerto Rico a state. The bill, H.R. 2499, is misleadingly titled (as is common) the Puerto Rico Democracy Act of 2010.

Throughout the process, Congress thwarted all attempts to have Puerto Rico abide by the same type of English-language rigors as Congress required Louisiana, New Mexico, Arizona, and Oklahoma to undertake to become states.

Last summer neither side was willing to have even one witness who opposed the bill when on June 24th, 2009, the House Natural Resources Committee conducted a hearing.

In July of last summer, the same committee voted 30-8 to send the bill out of committee and to the floor of the U.S. House of Representatives. At that time the Natural Resources Committee voted down an amendment by Congressman Paul Broun, an English First hero, which would have made English the official language of Puerto Rico.

The Latest Development

I am pleased that you, the U.S. Senate Energy & Natural Resources Committee, are hearing from opposing Puerto Rican political parties on the bill and are allowing testimony from outside groups.

English First was the only group that submitted testimony opposed to H.R. 2499 for the House hearing.

English First is again proud to submit this testimony opposed to H.R. 2499 for this Senate hearing.

A Most Popular Issue

English as America's official language is and has always been one of America's consistently highest polling issues, bringing moderates and liberals and conservatives together.

Congress deserves this opportunity to have a real English-language vote-a chance for a truly pro-America moment.

House Rules Pose A Problem

The problem lies in the ability of the majority in the U.S. House of Representatives to thwart even reasonable amendments to a bill by writing a "rule" for how a bill will be considered.

Rules for considering bills are written in the aptly titled Rules Committee, which has 9 Democrats and 4 Republicans. That committee make-up is intentionally the most lop-sided in all of the U.S. Congress, so that the majority will never be at risk of losing control of the proceedings in the House.

The minority obviously has a hard time ever winning a vote in the Rules Committee.

The Puerto Rico statehood bill was one of the extremely rare bills this Congress to allow any amendments at all.

The House Rules Committee has issued "closed" rules forbidding any amendments for almost every bill considered on the House floor in this two-year 111th Congress.

In fact, for this bill, the Rules Committee passed a rule allowing 8 amendments.

The Ranking Member of the House Natural Resources Committee and Congressman Paul Broun's office led the charge for the English cause.

Congressman Paul Broun submitted four amendments, and Congressman Steve King submitted one of his own. Additionally, Congressmen Steve King of Iowa, Jason Chaffetz of Utah, and Gary Miller of California each cosponsored a Broun amendment. For their leadership, these Members of Congress are English First heroes.

The Dregs and the Ruse

Unfortunately, the amendments proposed by Congressmen Broun and Steve King were shot down by the Rules Committee.

Most of the amendments allowed by the Rules Committee were the dregs, as you might expect, but a few were helpful.

The worst amendment was submitted by Congressmen Dan Burton of Indiana and Don Young of Alaska. The Burton/Don Young amendment was the only amendment allowed on the English language, and it was a complete ruse.

The Burton/Don Young destructive amendment was meant to give cover to bilingualism and multiculturalism. The amendment had three parts.

The first part was completely useless and redundant because it retained the requirement to have the ballots in English as well as Spanish. The ballots were already required to be printed in English as well as Spanish. Repeating this requirement was useless and intended to make its supporters seem helpful to the cause of English when in reality they were doing nothing whatsoever.

The second part of the amendment was also a complete ruse. It stated a requirement that the Puerto Rico State Elections Commission inform voters that if Puerto Rico retains its current status or is admitted as a State, any official language requirements of the Federal Government shall apply to Puerto Rico to the same extent as throughout the United States. The ruse there is, as we all too painfully know, is that there are no federal language requirements. As a result, it could just as well have been written to inform Puerto Ricans that they have no language requirements whatsoever.

The third part of the abominable amendment was a Sense of Congress that the teaching of English be promoted in Puerto Rico in order for English-language proficiency to be achieved. As they say inside the District of Columbia beltway, that had no "teeth." They might as well have voted, "Good luck with that."

Hero Doc Hastings

The Ranking Member of the House Resources Committee Doc Hastings proved to be a true hero of the English language by championing our cause on the House floor. Congressman Hastings' discussion of the abominable Burton/Young amendment demonstrates his merit:

> Mr. HASTINGS of Washington. Mr. Chairman, I want to say that this amendment is unnecessary, and really it masquerades a whole debate on

English, and let me explain why. This amendment has essentially three components, and I will paraphrase what those components are. They talk about all ballots used in the plebiscite must be in English, number one. Number two, prospective voters are informed that the official language requirements of the Federal Government shall apply to Puerto Rico. And number three, it has a sense of Congress that it is in the best interest to promote English.

Now let me address each of those issues but let me suggest that I believe this amendment is offered to only deny a straight up-or-down vote on the issue of English as the official language.

First of all, the language that my good friend from Indiana read in support of this amendment is already in the bill. It is on page 5. It says that the plebiscite will be carried out in English. So we don't need that because it is already in the bill.

The second provision is really meaningless. That is the one that talks about Federal language requirements. We know there is no Federal requirement in this country as to English, even though 30 States have adopted that. There is no official one from the United States. There should be, but there isn't. Finally, I will concede at least a little point. The sense of Congress language really has no statutory effect, but I will concede this: It is at least timely. Why do I say that, because just 3 days ago the Secretary of Education in Puerto Rico said: "English is taught in Puerto Rico as if it were a foreign language."

In the 2005 Census, 85 percent of Puerto Ricans said they had very little knowledge of English. As a practical matter, in the Commonwealth legislature, and in its courts and classes in public schools, Spanish is the primary language. So there is nothing in this amendment that will change that. What should have happened and didn't happen is the Rules Committee denied a straight up-or-down vote on English as official language. That was embodied in Mr. Broun of Georgia's amendment. But unfortunately we were denied the opportunity because this is a structured rule to at least have a debate on that. If the intent of the Rules Committee is to say this is the one we should have, I totally disagree with that. So for that reason, I urge my colleagues to vote "no" on the amendment.

. . . the pertinent part of this amendment is already in the bill, and that speaks to the ballot; the other two are really meaningless. Frankly, this amendment does not even need to be considered today; but if it's a cover, then it's a cover, and let's call it what it is. [Emphasis added.]

Ruse Redux

Congressmen Burton and Don Young were actually reprising their spoiler roles for English, which they first played back in March of 1998 by gutting English First Hero Congressman Gerry Solomon's good English amendment during the previous Puerto Rico statehood debate.

To add insult to injury, these two masquerade their opposition to English as the official language as support for English.

Delivering the Message

Congressman Paul Broun of Georgia spoke strongly against the Burton/Don Young abominable amendment. In doing so he specifically noted on the House floor the opposition of English First and other groups to the amendment.

Historical Fact

Congressman Broun pointed out no state has ever been admitted to the union with a language other than English as its official language.

A Walk through Puerto Rico's History

English was the sole official language of Puerto Rico after March 2, 1917, when President Woodrow Wilson signed the Jones Act to make Puerto Rico a territory of the United States ("organized but unincorporated"), to grant citizenship to Puerto Ricans, and to make English the sole official language of Puerto Rico. English as the official language of Puerto Rico effectively ended in 1946 when a bill was passed ordering "the exclusive use of the Spanish language for teaching in all public schools."

In 1950 Congress authorized Puerto Ricans to draft their own constitution, establishing the Commonwealth of Puerto Rico.

In 1991, Puerto Rico declared Spanish the only official language.

In 1993, Puerto Rico declared English and Spanish both as the official languages.

The Right Way and the Wrong Way to Become a State

The reality is that Puerto Ricans have repeatedly refused statehood in four previous popular votes. In 1952, 1967, 1993 and 1998 the people in Puerto Rico voted on statehood and they voted it down all four times.

This bill was written to force TWO VOTES instead of one on what status Puerto Rico should have. This never-used-before, double vote rigged the effort to get a majority of Puerto Ricans to vote in favor of statehood. The double vote was essentially a divide-and-conquer technique to defeat the existing commonwealth status.

The idea was to aggregate all other options against the existing commonwealth status in the 1st vote and then, with the most popular option gone, to push statehood over the finish line in a 2nd vote. That kind of crooked questioning wouldn't even cut it in a push poll. It's just not a clean, simple, straightforward way to ask what people want.

Jose A. Hernandez-Mayoral who has served as Secretary of Federal and International Affairs for the Popular Democratic Party of Puerto Rico states, "What is at play with this legislation is the railroading of a self-determination process. . With the commonwealth option out of the ballot, statehood is finally, albeit crookedly, assured a victory."

We don't want to be faced with the possibility that through a grossly rigged vote with oppressive arm-twisting, statehood gets a bare majority in a fifth try. States ought not to be admitted to the union under such circumstances, when the population is teetering in its opinion at best, even when skewed through the originally proposed voting process.

New York Congressman Charlie Rangel stated on the House floor that, "Tom Foley once told me when I thought that statehood was really going to pass in Puerto Rico, I said, Mr. Chairman, how are we going to handle this question with the Members? How are we going to handle the question of what parties these people are going to belong to? He said, 'Forget it, Charlie. The only time we're going to have statehood is when there is a mandate. We're not going to have a divided territory become a State.' That was a guy who told me that from his background in history that he was an expert in this type of thing."

Well, Puerto Rico is divided on the issue of statehood.

It's close enough that even if enough votes for statehood were garnered by hook or by crook this year, it could change next year or the year after.

You don't want a situation where the state votes for statehood, and a couple of years later most people don't want to be a state.

You could be faced with a brand new state fighting to exit the Union.

That would be a disaster for which you on this committee would not want to be responsible.

When Alaska and Hawaii were admitted, HUGE majorities favored statehood. That's the right way to become a state.

The fact is that most Puerto Ricans feel a national identity.

I personally have lived in New Jersey, New York, Ohio, Florida, Michigan, Indiana, the District of Columbia, and now I am a Virginian.

In contrast, when Puerto Ricans move about the United States, they still consider themselves Puerto Rican.

What's missing is the assimilation.

This very bill you are hearing today reinforces this lack of assimilation. Were Puerto Ricans ready to take their place as co-equal with the 50 states, they would consider themselves New Yorkers after having lived in New York for some time.

However, Resident Commissioner Pierluisi wrote the bill as considering people who have lived in New York virtually their entire lives to be Puerto Ricans and not New Yorkers. Even the Resident Commissioner who is advocating statehood is not ready to recognize or accept Puerto Ricans' assimilation.

Passage of a Key Amendment

We secured an upset victory on the House floor with passage of one of the most helpful amendments.

Representative Virginia Foxx of North Carolina offered an amendment to fix the rigged voting set up by the bill. Our victory in passage of the Foxx amendment allows supporters of the commonwealth status quo the option of voting their preference during the second stage of the plebiscite. By making the vote fairer and nearer the actual wishes of the people, the probability of statehood is diminished.

Winning that vote is a big success, because we must not have statehood without AGAIN having English as the sole official language of Puerto Rico.

Securing the Votes of ALL of the Minority Leadership

Furthermore, obtaining the actual votes of ALL of the Minority Leadership and the Ranking Member is yet another discreet step.

That's especially difficult when a couple in the Minority Leadership supported and even cosponsored the underlying bill. They knew full well that our meritorious issue could prove a "poison pill" for the whole bill.

Yet the force of our communications and our combined suasion was strong.

We indeed secured all of the votes from these key people.

Getting a Good Result on the Motion to Recommit

Indeed we only ultimately lost the Motion to Recommit by a 4-vote margin, one of the best votes on a Motion to Recommit in this entire two-year Congress.

Changing Hearts, Minds, and Votes

A full 58 Republicans cosponsored the Puerto Rico bill without any provision for English.

That error will earn them a black mark in English First's vote rating.

Changing Members' hearts and minds is very difficult after they have put their name-their stamp of approval-on a piece of legislation.

It is exceedingly rare to see Members vote against bills they have cosponsored. It can be quite embarrassing.

Rather than look at the Members' co-sponsorship mistakes as a problem, English First saw opportunity.

Senator Everett Dirksen, a former Minority Leader who had a Senate office building named after him, famously said "I see the light when I feel the heat." So it is with Congress-when Members hear from their allies and constituents that they have made a mistake, they CAN be persuaded to change course.

"Flipping" Representative is one of the toughest challenges of lobbyists and constituents.

We had amazing success.

Of the 58 Republicans who cosponsored H.R. 2499, the Puerto Rico statehood bill, 32 did not support the bill in the end. 27 actually voted against the bill they had cosponsored, and another 5 did not vote at all.

In other words, we changed MOST of their minds!

Beware of "The Tennessee Plan"

The University of Puerto Rico recently studied the process for statehood. They explained an important phenomenon,

> Several states, beginning with Tennessee in 1796, chose a bold method of obtaining admission to the union. The states which followed Tennessee's initiative undertook a uniform course of action once they made a decision to seek statehood. The 'Tennessee Plan,' as it has come to be known, consists of the following steps: . . .
>
> Holding state elections for state officers, U.S. senators and representatives;
>
> In some cases, sending the entire congressional delegation to Washington to demand statehood and claim their seats;
>
> Finally, Congress, presented with a fait accompli, has little choice but to admit a new state through the passage of a simple act of admission. . . .

The statehood party in Puerto Rico, called the New Progressive Party, has adopted the Tennessee Plan as its platform.

Carpe Diem

The upshot of intent to pursue the Tennessee Plan is that now is the time that counts.

It's game-time, not scrimmage-time.

Without the appropriate changes now, Congress later would have little choice but to admit Puerto Rico as a state and would have difficulty holding up statehood for any conditions such as having English as their official language.

If we admit a state with an official foreign language, efforts toward a national language will be severely hampered. It might take decades or a century to come back from such a withering defeat.

Don't let the sand run through our fingers! Seize the day!

OPPOSE PUERTO RICO STATEHOOD WITHOUT ENGLISH FIRST!

What We're Fighting For: A Way of Life for Us and Our Descendants

The battle is over multiculturalism.

Former Maryland Congressman Albert Wynn stated our opponents' point of view most succinctly last time this Puerto Rico battle was fought in 1998, "I think it is time we move forward to true multiculturalism and accept that fact that we do not have to have an ordered language in our society."

Some statehood proponents want to end assimilation, our American identity, and our common English language.

Let's stand up for American heritage and the American Way.

Don't let the sand run through our fingers! Seize the day!

OPPOSE PUERTO RICO STATEHOOD WITHOUT ENGLISH FIRST!

Thank you for the opportunity to raise these important points and questions. Satisfactorily addressing each and every one of these points is essential to moving forward with this bill. More attention is paid in the Issue Brief which follows. Even more attention and perhaps more hearings, such as in the Senate Finance Committee and the House Committee on Ways & Means, is necessary.

STATEMENT OF MAJ. GEN. ORLANDO LLENZA, USAF (RET.), CHAIRMAN, AND JUSTIN O'BRIEN, EXECUTIVE DIRECTOR, UNITED STATES COUNCIL FOR PUERTO RICE STATEHOOD, ON H.R. 2499

To The Honorable Members of the Committee on Energy and Natural Resources:

Puerto Rico has now been a territory of the United States for 112 years, which gives it the dubious distinction of having been a territory for half the life of this Republic since the U.S. Constitution became operational in 1787, or 222 years ago. Notwithstanding the progress that has occurred during the period of Puerto Rico's relationship with the United States, the unequal territorial reality of the island has not changed. Though the Congress granted Puerto Rico a local constitution that affords limited local self-governance, the island's American citizens remain subordinate to the legislative will of Congress without their own sovereign participation. Puerto Rico and Puerto Ricans remain in a state of inequality and without sovereignty.

As equality and education advocates, equality and education are our concerns. We believe that equality of citizenship and civil rights for the four million Americans who live in Puerto Rico cannot be attained without freely exercised self-determination, and self-determination cannot be achieved without the Congress sanctioning, and providing clarity to the process by which an island plebiscite will be carried out and regarding the results returned by such a process. The Congress, on various occasions through the decades, has merely expressed its sense that Puerto Ricans should be allowed to exercise their right to self-determination to articulate their wishes on the question of status, but has never actually passed legislation sanctioning and supporting a democratic vote in Puerto Rico to resolve the island's unequal, second-class status. As originally written, H.R. 2499 would have facilitated that by allowing the people of Puerto Rico to vote, with congressional sanction and support, on what at a human level is the most i mpactful daily issue of their lives: the status of their collective Puerto Rican future. It is inconceivable that some 45 years since the landmark Civil Rights Act of 1964 and the Voting Rights Act of 1965, equality of citizenship and sovereign representation in the affairs of the government that exercises control over their political, economic, and civil rights are denied to four million of our citizens.

Puerto Ricans are proud Americans who suffer second-class citizenship that is not constitutionally-guaranteed, and they deserve a just opportunity to choose from constitutionally-viable, sovereign status options. By virtue of unequal citizenship, the American citizens of Puerto Rico also have unequal democratic, political, economic, and civil rights. H.R. 2499, for the first time, will allow voters to choose directly with their vote, and the support of congressional sanction, whether they wish to maintain the current territorial status, or seek sovereignty through a constitutionally-viable and acceptable, permanent status option.

H.R. 2499, as originally submitted by Resident Commissioner for Puerto Rico, Pedro Pierluisi, would have authorized a two-part plebiscite that unquestionably provided an equal and unbiased opportunity for Puerto Ricans to terminate or maintain the current unequal territorial status or replace it with one of the three constitutionally-valid, sovereignty-granting options: Independence, Statehood, or Sovereignty in Free Association. If Puerto Ricans do choose to continue their present territorial status, in the first vote of the plebiscite, then H.R. 2499 prescribes and authorizes future plebiscites to be carried out by the government of Puerto Rico every eight years. Thus, the legislation would assure that the voters of the island will be permitted and will have the opportunity to eventually resolve the unequal

status question, and it would make clear that the current territorial status and the citizen inequality it maintains are not acceptable in perpetuity. It is that simple. Now, however, it appears that the effort to enfranchise four million Americans is to be subjected to a farcical process where the territorial status would be voted on twice, it having been cynically added to the sovereign-granting choices comprising the second plebiscite that Puerto Ricans would choose from; this second plebiscite being held in the event that Puerto Ricans would choose to end the current territorial "Commonwealth" status in the first place.

In keeping with the 112 years to date, indications from the Senate are that its members are not inclined to bring the legislation to a vote, the net result of which will be continued inequality for four million and no congressional sanction for Puerto Ricans moving forward to resolve the issue. In light of this possibility, the most that Puerto Ricans on the island and mainland Americans alike can hope for in place of congressional sanction are clear statements on what non-territorial and permanent status choices are acceptable. Certainly, Puerto Ricans in Puerto Rico can debate, discuss, and act, but in the absence of clear language from the Congress, the public discourse in Puerto Rico will be muddied by opponents of self-determination for narrow political ends with the goal of negating principled public discussion on citizenship rights, equality and sovereignty.

Successful passage of H.R. 2499 will also dispel the dishonest argument that the four million American citizens on the island are, and should be, content to live with second-class citizenship, disproportionate unenfranchised representation, and perpetual inequality. To suggest that second-class citizenship is or should be acceptable as a matter of choice by virtue of limited self-governance in Puerto Rico must be recognized as a false choice and anathema to the just and right-minded.

Puerto Rico has been a territory since 1898 and Puerto Ricans have been American citizens since 1917. In the years since, Puerto Rico's seemingly greatest political rights accomplishments were the creation of a constitutionally limited local government and being granted the ability to elect and send a non-voting delegate, the Puerto Rico Resident Commissioner, to the U.S. House of Representatives. Puerto Rico remains unrepresented in the U.S. Senate. In addition to the absence of proportionately equal, enfranchised representation in the legislative branch, Puerto Ricans cannot vote for their President, their head of state. The American citizens of Puerto Rico have served in every military conflict that our country has participated in since World War I, in all branches of the U.S. Armed Forces. Today, hundreds of thousands of American veterans live in Puerto Rico, but they cannot enjoy the very rights they fought for and served in defense of throughout the world under the American flag. Puerto Ricans are U.S. citizens, and despite an exceptionally strong history of national service in the Armed Forces, the current unequal status precludes the people living on the island from voting for their Commander-in-Chief.

As our organization's name suggests, the U.S. Council for Puerto Rico Statehood supports statehood as the preferred and specific permanent status option best for and in the interests of Puerto Rico, Puerto Ricans, and all Americans. However, our support for H.R. 2499 did not emanate from the idea that it was a "statehood bill" as opponents of self-determination have chosen to publicly characterize it, as quite clearly it was not and is still not. On the issue of outcomes, the bill is and has been decidedly neutral. Rather, the Council's strong support for H.R. 2499 derived from the legislation's ability to provide an unbiased opportunity for the people of Puerto Rico to exercise their right to free self-determination in a fashion that settles the confusions that have marred past local plebiscites and decision-making in the island's electoral processes.

During committee proceedings in the U.S. House of Representatives, the bill's author, Resident Commissioner Pierluisi, described talk of results and majoritarianism and pluralism as premature. Such talk remains premature. All constitutionally-valid options were presented equally and neutrally in H.R. 2499. As equality advocates, it is our position that if statehood is construed as a preferable option over others, then it is merely because it is the status alternative that represents the interests of all Americans better than any other option, but most certainly not because the Congress wants to impose statehood on Puerto Ricans. Imposition does not represent self-determination and this legislation clearly, without bias or prejudicial determination, provides for the majority expression of Puerto Ricans as to their desired status choice.

Opponents of the legislation, who indeed are opponents of any self-determination process, whether there is congressional sanction or not, argue that H.R. 2499 creates "an artificial majority for statehood" because the territorial "Commonwealth" option is, or was not competing directly with the other options. Of course, the subordinate territorial status was separated from sovereignty-granting options in the original version of the legislation. With the insertion of the "Commonwealth" option

in the second part of the plebiscite process that resulted from the Foxx Amendment, an amendment that process opponents themselves asked to have included, this argument is now moot. However, despite the Foxx amendment's inclusion, these same opponents still refuse to support the legislation and any self-determination process. This has been expressed publicly and on the record during the Senate Committee hearings of May 19, 2010. Given these documented facts, is there any way to construe these actions and participation in the Page 4 of 15 process as other than disingenuous? In light of these facts, can this engagement in public discussion and debate on the status argument be considered sincere?

The "other options" as presented in the second part of the proposed plebiscite process are all permanent and non-territorial in nature, and the "Commonwealth" option is not. If the people of Puerto Rico are to decide on a permanent sovereignty-granting option, how, then, could the status quo be permitted to appear amongst sovereign-granting options without giving Puerto Ricans the impression that the "Commonwealth" option is an equality-granting, permanent, sovereign option? Further, are we to ask the Puerto Rican electorate to self-determine themselves out of self-determination by "voting" to remain an unequal, subordinate territory having already expressed that they do not wish to remain so in the first instance? The first question of the plebiscite would directly ask the people of Puerto Rico if they wish to keep the current territorial status. If so, then Puerto Ricans can vote to do so accordingly. Ultimately, all constitutional and permanent status options would have been on the ballot with the process spelled out by H.R. 2499, so the people of Puerto Rico would have been permitted to vote and make their sentiments clear, with the blessing of Congress!

Critically, H. R. 2499 was legislation that neutrally put forth to the voters of Puerto Rico all of the sovereignty-granting options accepted under the U.S. Constitution in an equal and balanced way. That balance and equality has been undone with the inclusion of the territorial status option in the second plebiscite. The only differences that exist between one constitutionally-valid status option and the others are the differences that are naturally inherent in each, and the Congress cannot be expected to, nor should, "water down" a legitimate self-determination process or any one legitimate option simply because opponents of citizen equality present it as "too good," holding too much promise, or suggest that it puts the other options at a disadvantage. To behave otherwise is to pretend to level a playing field that is neither level nor equal in the first instance.

As advocates of citizen equality for Puerto Ricans within the Union, we are confident in the facts favoring statehood as they stand. To concoct fantastic alternatives, or to suggest that yet-undiscovered status alternatives exist, and engage in endless debate on what is or is not possible, more than a century since Congress assumed control of the destiny of the Puerto Rican populace, can only be described as a ploy to avoid facing the facts regarding what is constitutional and what is not. Avoiding the facts will definitively result in perpetual inequality for Puerto Ricans. Beyond discussions of constitutionally-viable and acceptable status alternatives, and in the context of decolonization and the perspective of international law United Nations Resolution 1541, approved by the United Nation' General Assembly in 1960 is very clear on the matter at hand; there are only three acceptable status alternatives that provide citizen sovereignty. The resolution defines the three legitimate options for full self-government as Free Association with an independent State, integration into an independent State, or independence.

The complexity of Puerto Rico's unequal status has made it possible for a variety of groups to impart myths, opinions, and inaccurate information as erstwhile truths, which unfortunately has been made easier because the Puerto Rico status issue has now spanned an entire century and forty-eight Congresses. The sole political group in Puerto Rico that refuses to directly and openly recognize the Congress' Territorial Clause powers over the island territory is composed of status quo (or by its English misnomer, "Commonwealth") supporters, represented electorally by the Popular Democratic Party. This is despite the facts that the Territorial Clause of the U.S. Constitution and a succession of public expressions by the mainland's political leadership over a period of decades have made clear that Puerto Rico remains—despite limited local autonomy—a territory of the United States subject to the authority of the Congress. As has been articulated by Commonwealth adherents and their leadership, it is their firm belief that Puerto Rico is already a sovereign body politic, and any changes to Puerto Rico's relationship with the United States of America must have their blessing as the would-be caretakers of the status quo alternative. Adherents to the territorial status quo contend that sovereignty was granted to Puerto Rico through a "compact" in Public Law 600, in 1950, even though the U.S. Congress was quite explicit in its intentions when it said:

> [Public Law 600] would not change Puerto Rico's fundamental political, social, and economic relationship to the United States. Those sections of the Organic Act of Puerto Rico concerning such matters as the applicability of United States laws, customs, internal revenue, Federal judicial jurisdiction in Puerto Rico, representation in the Congress of the United States by a Resident Commissioner, et cetera, would remain in force and effect. [. . .] The sections of the Organic Act which [Public Law 600] would repeal are concerned primarily with the organization of the insular executive, legislative, and judicial branches of the government of Puerto Rico and other matters of purely local concern.
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> S. Rept. 81-1779, at 3-4. (almost verbatim on H. Rept. 81-2275, at 3.)

Opponents of self-determination, seek to maintain the status quo at all costs, irrespective of whatever principles may be compromised. This is evidenced in the variety of actions by status quo proponents in the period running up to the floor action on H.R. 2499 in the U.S. House of Representatives and since. If passed, island actions pursuant to the provisions of H.R. 2499 would potentially bring change. Accordingly, status quo proponents rejected the bill as biased and unfair. However, these same proponents then insisted on participating in the legislative process nonetheless, actively working to have the bill amended to include the current territorial status a second time, in the second vote, regardless of a possible defeat in the first. They were successful in having the Foxx Amendment included. The president of the pro-status quo "Commonwealth" party, the Puerto Rico House of Representatives Minority Leader Hector Ferrer, has described in the press and media how he used his relationship with the University of North Carolina System, to urge Congresswoman Foxx from North Carolina to include the amendment that adds the unequal territorial status option a second time in an authorized self-determination process by adding it to the second round of voting. Yet, in the Senate Energy and Natural Resources Committee proceedings, Mr. Ferrer stated for the record that he and his party still do not support the legislation or the process. It is reasonable to suggest that a mockery is being made of our government, and clear that the rights of four million American citizens are being toyed and played with for political ends.

It is also evident that adherents of the current unequal status would suggest that U.S. citizenship without full and equal rights as citizens should be acceptable to all, even though as has been demonstrated for decades in the island's electoral and plebiscite processes, such a position does not command the support of the majority of Puerto Ricans. While it can be academically argued that Public Law 600 represented a 'compact' inasmuch as Puerto Rico residents were consulted in the acceptance or rejection of the island's constitution, this definitively cannot be construed as a treaty or any other agreement of full and equal partnership between a separate Puerto Rico and the United States. The constitutional facts speak for themselves and the acceptance of the congressionally-approved island constitution through Public Law 600 does not negate congressional plenary authority and responsibility over and for the territory.

Although supporters of the territorial status will not openly recognize Puerto Rico's territorial status, elements within this grouping seek to "enhance" or "develop" the current "Commonwealth" territorial status in an attempt to remake a constituency base and regain community power. As such, they seek to maintain veto power over self-determination legislation that is not of their making. Despite having had decades to develop, discuss, offer, or propose an alternative in this mode, regardless of such a notion's lack of constitutionality, no such proposal has ever been crafted or offered to the Puerto Rican public for its approval or disapproval. Only with successive efforts to afford Puerto Ricans on the island an unequivocal opportunity to support or reject the current territorial status has rhetoric been conveniently resuscitated to muddy public discussion.

Proponents of the concept of "enhanced Commonwealth," amongst status quo adherents, seek to gain a veto power over federal laws, while simultaneously maintaining constitutionally guaranteed American citizenship and continued preferential tax treatment from the federal government. In other words, supporters of inequality seek to continue to make good on the intellectual falsehood and congressionally-rejected promise to the Puerto Rican electorate that a new, undiscovered status alternative can be fashioned and negotiated with the U.S. Congress. "The Best of Both Worlds," as the new compromise has been called, is an attempt to obtain rights and freedoms that no single state of the Union enjoys, and it seems incredible that Congress would ever support it. In so doing, they would seek to avoid an electoral showdown on constitutionally-valid status options.

Such aspirations for Puerto Rico, which amount to seeking to make the island "The Independent Republic of the State of Puerto Rico," must be viewed as a con-

stitutional mockery. This perversion of the American electoral process, in effect a would-be constitutional abomination, can only be viewed by all Americans as a mockery of the democratic process of self-determination for Puerto Rico, and contemptible to the intelligence of members of the United States Congress, mainland taxpayers, and their island opponents who are offering constitutionally-viable alternatives. How else could any group seek to unilaterally create some new and fantastic, notional concept of constitutionally-viable status?

Opponents of equality in Puerto Rico have concocted various thin arguments in favor of continuing, even "improving," the now-debunked "Commonwealth" status, and at the same time have sought to confuse, obstruct, and obfuscate the issues and legislative process in order to derail congressional sanction and support for a self-determination process. This quest clearly continues as evidenced by continued opposition to all attempts to bring either self-determination or equality to these four million citizens. The movement for the compromise formulated as a temporary solution to Puerto Rico's status question, between independence and statehood in the 1950s, has now found comfort in its social standing, and its representative grouping is unwilling to relinquish its grip from the originally temporary status. Every argument fabricated by the opponents of equality has been fairly and honestly discredited, and at each successive turn and effort towards the provision and attainment of citizen equality, yet another different argument is introduced to further stall any possible progress. All of these arguments and objections come with the explicit goal of keeping the four million second-class American citizens living in Puerto Rico from having the opportunity to end the territorial relationship through democratic self-determination at the ballot box while simultaneously maintaining political viability. A recently introduced new argument seems to revolve around some notion of "Consensus."

It is reasonable to enquire what the acceptance of this notion means in the context of the unfinished Puerto Rico status debate. It is clear from data and conjecture that there is consensus on the island that the current territorial status in unacceptable to a majority of the people. There is also consensus among the mainland political parties as evidenced in their 2008 platforms that self-determination is a worthy undertaking in the name of freely-exercised enfranchisement. It is reasonable to ask whether veto power should be afforded to enfranchised mainland legislators in relation to the right to self-determination of four million citizens with neither franchise nor sovereignty of their own.

To suggest that proponents of the constitutionally-valid status alternatives must agree to mutually recognize an as-yet-undetermined status alternative, an alternative that has not been identified as constitutionally-valid to date during the 222 years of the Republic, can only be viewed in the realm of the ridiculous. Successive interagency working groups and presidential task forces on the status of Puerto Rico, traversing multiple administrations of different political parties, have definitively reported that constitutionally-valid status options to be used in island plebiscites or referenda do not include possibilities beyond what is constitutional. For decades, Congress and differing administrations have consistently rejected with clarity, attempts to include such options.

Organizations devoted to soiling Puerto Rico's image and denigrating the human worth of Puerto Ricans because Puerto Ricans speak Spanish as a matter of heritage, culture, and custom have decided to wave "a cautionary flag" about Puerto Rican statehood in the context of the congressional discussion on H.R. 2499. Inasmuch as H.R. 2499 is clearly not about Puerto Rican statehood, but rather freely exercised self-determination, non-partisan observers such as the Council cannot help but see this new attack against Puerto Rico as another attempt by those who would deny equality to try to confuse, obstruct, and derail opportunity for self-determination and subvert the century-long struggle for equal rights.

The submission of statements that have not been redacted in over a decade demonstrates a lack of knowledge about the status issue and Puerto Rico. They further illustrate that their commitment is not to equality or affording sovereign rights to four million American citizens. For such organizations as English First, the issue of Puerto Rico's status is not about equal democratic, political, economic, and civil rights for all American citizens, no; rather, in their own words, Puerto Rico's status is simply "a bad penny that keeps turning up." It is evident that second-class citizenship for Puerto Ricans is acceptable to this group.

The U.S. Council for Puerto Rico Statehood unequivocally rejects the ideas advanced by organizations such as English First that American citizens in a Spanish speaking U.S. territory are less American and less able to fulfill their duties as citizens of a state of the Union. We believe that such ideas are at best misguided and at worst rooted in bigotry and xenophobia. These ideas also disregard the history of our western and southwestern states. Equality of citizenship and civil rights

within the union and federation of the states, our United States, can only be accomplished for Puerto Rico through equal standing within the American union. This equal standing can only be enjoyed through sovereign voting representation in both chambers of the U.S. Congress on a par with those of the states.

Although it has now been 50 years since the most recent new admissions to the Union, it is often overlooked that some five states joined from 1900 to 1959 with two non-contiguous territories joining that year: Alaska and Hawaii. Importantly, two of the five, Hawaii and New Mexico, are officially bilingual states. The recognition of an official language, or none, is now an established right of the states. The idea that the costs of translation, if any, in any public process or proceedings must be viewed as prohibitive, is negated, for example, by bilingual presentations online and otherwise by the preponderance of federal government departments and agencies, multilingual drivers exams in states nationwide, and other forms of multilingual access provided today throughout the United States. Similarly, arguments that the entry of Puerto Rico to the Union would have catastrophic national sociocultural effects belie the facts of Hawaii, New Mexico, Louisiana, Texas, Florida and numerous other territories' entry and full integration to the Union. It is evident that equality opponents, whether on the island or their allies on the mainland seek to project a 'state-based' or 'state-oriented' issue as some sort of a national problem.

It must also be considered that these arguments bear little relevance to the issue of equality and the enfranchisement of four million United States citizens unempowered for more than a century. Though H.R. 2499 is really about the issue of self-determination for democratic equality, ancillary commentary and baseless arguments are foisted upon the public in opposition to statehood for the sole reason that Puerto Rico self-determination has both currency and validity. Misplaced arguments that refer to statehood without context, given the transparent neutrality that H.R. 2499 represents, underscore an intent tobfuscate the serious issues at stake.

Economic arguments offered against statehood in debate of this legislation in the House proceedings were not germane to a self-determination discussion, which is what H.R. 2499 is about. Section 936 of the United States Tax Code continues to be frequently treated in depth in submitted statements in opposition to legislation that supports self-determination, even though Section 936 no longer exists in Puerto Rico. The U.S. Congress instituted a 10-year phase-out of Section 936 in the mid-1990s. It has been claimed that statehood for Puerto Rico would end the special tax status of Section 936, and eventuate "still more unemployment in Puerto Rico [and] more costs to U.S. taxpayers." These projections from over a decade ago have been proven wildly incorrect and the facts speak for themselves: 1990 unemployment figures offered as a basis to reject self-determination and future statehood by English First were 14.6 percent, with the projection that unemployment would effectively double to almost 30 percent if Section 936 were to be repealed! Today, according to the April 2010 estimates by the Bureau of Labor Statistics, unemployment in Puerto Rico stands at 17.2 percent. An article written in 2005 by Gary Bingham for BusinessFacilities.com offers an alternative view of what really happened shortly after the Section 936 phase-out was set to conclude in 2005:

> Fortunately for Puerto Rico, the 936 phase-out did not kill investment. Tax professionals did their research, the government of Puerto Rico updated its incentives, and as a result, Puerto Rico's GDP has grown over 70% since the phase out of 936 began in 1996. During the same 10-year period, outbound shipments increased 140% to over $55 billion, and inbound shipments rose 104% to almost $40 billion. One reason for this phenomenal growth is that although Section 936 will sunset this December, another section of the IRC has found new life. The section concerns Controlled Foreign Corporations (CFCs). The section on CFCs had been part of the tax code for years, but the benefits under Section 936 were so good that many tax professionals simply ignored CFCs."
>
> Life after 936

Further, Bingham goes on to explain why the focus on IRS Section 936, and tax incentives in general, was misdirected to begin with and what the real reasons are for U.S. companies relocating to Puerto Rico:

> Tax advantages, however, are not the primary reason companies continue to invest in Puerto Rico. Companies selling into the U.S. benefit from being within the U.S. Customs area, thus providing easy access to the mainland U.S. market. Puerto Rico operates in U.S. dollars, eliminating currency ex-

change risk. Companies on the island also have U.S. legal protections, which are particularly important for intellectual property concerns."

Life after 936

Though the "Section 936 Argument" offered by English First is irrelevant in the contemporary and is rendered moot by exposing it to reality, there is yet another argument that originates from its pronouncements that serve to confuse and obstruct the process of democratic self-determination for the people of Puerto Rico. The argument that a post-Puerto Rico statehood phase-out of Section 936 would "not survive Constitutional scrutiny at all," must also be viewed as an attempt to frustrate and confuse the process of self-determination by sowing the seeds of doubt wherever possible, irrespective of how irrelevant or non-germane they are to the facts of the discussion.

Both the U.S. Supreme Court and the Congress have addressed the issue of preferential tax treatments as part of a transitional statehood package before. This issue was exposed during previous hearings on the issue of Puerto Rico's territorial status. Hearings before the U.S. Senate Committee on Finance on November 14 and 15, 1989, settled this question on the constitutionality of special tax treatments in relation to newly-admitted states. A quick look at the record regarding S.712 provides the answer. The Committee on Finance and the Committee on Energy and Natural Resources concurred on the view that:

> Congress has substantial authority under the territorial and statehood clauses of the Constitution to provide for non-identical economic treatment under statehood if such treatment is reasonable, transitional, and necessary. [The Uniformity Clause notwithstanding!]
>
> S. Rep. No. 101-120, at 39.

It is well-established in the Congressional Record that the Congress' powers to accept new states into the Union (Article IV, section 3, clauses 1 & 2) give it "substantial" powers over the issue of admission. Subsequently, the Uniformity Clause of the U.S. Constitution (Article I, section 8, clause 1) does not prohibit the Congress from designing solutions to what the U.S. Supreme Court has referred to as "geographically-isolated problems," and in the context of the admission of new states, the Court's reading applies. As such, arguments by those who would thwart self-determination for Puerto Ricans are neither academically nor intellectually sustainable in light of factual reality.

Again, it is our own view that H.R. 2499 has never been about congressionally-imposed statehood and that any thoughtful analysis of the legislation as presented debunks any notion to the contrary. Rather, it is about congressionally-sanctioned action on whether or not the four million American citizens in Puerto Rico deserve to have a say in their political, democratic, social, civic, and cultural future. America's values demand that the U.S. Congress remove the blight of Puerto Rico's unequal territorial status. Surely our American values and citizenship rights are important enough for the Congress to insist that four million citizens be provided a sanctioned choice amongst the territorial status quo or "Commonwealth," statehood, and sovereign independence, with or without an association agreement. As with all such agreements, association would be unilaterally revocable should Congress or Puerto Rico decide to part ways, but that is a choice that cannot stand in the way of the principal goal of this legislation, which is offering a just and balanced opportunity to continue or end the undemocratic territorial status of Puerto Rico and the damage it wreaks on our national and international credibility.

The U.S. Council for Puerto Rico Statehood does not stand alone in its desire to see our fellow citizens in Puerto Rico afforded the right and opportunity for self-determination and by extension the opportunity to free themselves of the indignity of second-class citizenship. The platforms of both the Democratic and Republican parties include clear and specific language that speaks to the issue of Puerto Rico self-determination. The platforms' language is instructive and self-evident:

> We recognize that Congress has the final authority to define the constitutionally valid options for Puerto Rico to achieve a permanent non-territorial status with government by consent and full enfranchisement."
>
> Republican Party Platform 2008
>
> We believe that the people of Puerto Rico have the right to the political status of their choice, obtained through a fair, neutral, and democratic process of self-determination."
>
> Democratic Party Platform 2008

While, clearly, the expression of self-determination is a matter about the unenfranchised citizens of the island, and they alone should decide whether they

wish to change the current territorial status, national support for self-determination for Puerto Rico has been documented and is long-standing amongst and across a myriad of community and state government organizations countrywide. Organizations expressing solidarity and common cause in the quest for Puerto Rican self-determination include: The League of United Latin American Citizens (LULAC); the U.S. Hispanic Chamber of Commerce; the National Governor's Association (NGA); Young Democrats of America; the Republican National Hispanic Assembly (RNHA); the National Association of Hispanic Publications; Vietnam Veterans of America; the National Hispanic Policy Forum; the Southern Governors Association; the American G.I. Forum; and the National Hispanic Caucus of State Legislators (NHCSL) amongst many others.

In closing, as fellow Americans, we would like to once again express the following points:

- Puerto Rico has been a territory of the United States for half the life of the Republic since the adoption of the United States Constitution.
- Puerto Ricans are United States citizens who have been forced to endure unequal citizenship and the current unequal territorial status because Congress has failed to act decisively and conclusively on this issue to date.
- Puerto Rican self-determination has never been provided official sanction by the Congress that continues to exercise sovereign authority over the territory and its four million inhabitants without their sovereign input and franchise.
- Neither self-determination nor equality will be afforded to our fellow citizens in Puerto Rico without definitive support and a clear message from the Congress of the country to which the overwhelming Puerto Rican majority's allegiance is unquestionable.
- Successful passage of H.R. 2499 will for the first time demonstrate congressional support for self-determination and allow Puerto Rican voters to directly choose to maintain the current territorial status or seek sovereignty.

We thank the Committee for the opportunity to share these views and this statement, and hope that they assist in securing additional support for Puerto Rican self-determination and this critically important legislation.

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