

als so the people of Puerto Rico can make the appropriate decisions.

The CHAIRMAN. Thank you very much, Senator Nickles.

Our witness this morning is the Honorable Edward S. Dennis. He is Acting Deputy Attorney General. General Dennis, we are glad to have you. Please proceed.

**STATEMENT OF EDWARD S.G. DENNIS, ACTING DEPUTY  
ATTORNEY GENERAL, DEPARTMENT OF JUSTICE**

Mr. DENNIS. Mr. Chairman, it is certainly my pleasure to represent the administration in this very important hearing.

As you have stated in your opening remarks, the President is very much in favor of the approach of having the referendum process be one through legislation that would be self-executing.

The choices that the people of Puerto Rico will be presented with are basically three choices, the first being statehood, the second being independence, and the third being an enhanced commonwealth choice.

The administration supports self-determination by the people of Puerto Rico through the form of a referendum, and certainly that choice by the majority of the people of Puerto Rico voting in that election will be respected.

The President has made it very clear that the administration supports statehood for Puerto Rico. However, the President recognizes that that choice is one that only the people of Puerto Rico can make. It is certainly a very exciting prospect to have Puerto Rico as possibly our 51st state with a new star on the flag and a new state joining a union of states dedicated to liberty and to justice for all.

The prospect that Puerto Rico would join our nation as the 51st state, a nation that has demonstrated that we can truly be one nation out of many people, a nation that has drawn its strength from a tradition of an open society that is hospitable to diversity but steadfast in its allegiance to the Constitutional principles of governance that keep us firmly on the path of freedom and equality of opportunity.

Yes, we do support the status of statehood for the people of Puerto Rico and the island of Puerto Rico.

We would like them to join in the constitutional bond with the other 50 states of the United States.

However, this is not a responsibility to be taken lightly.

This is a very significant step in the history of Puerto Rico, and we certainly recognize that a majority of the people of Puerto Rico must fully support whatever option is selected in the referendum process.

Toward that end, we believe the referendum process must present clear choices. Those choices must be realistic. They must be workable, and they must present economically viable options.

As drafted, S. 712 has many provisions that are essentially extraneous to the ultimate goal of giving the people of Puerto Rico such a choice, a goal that should not be obscured by confusing and unnecessarily detailed provisions.

I would point out, Mr. Chairman, that in your remarks this morning, in your opening remarks this morning, you have succinctly stated the goal of this legislation, and that is to be self-executing upon the choice of the Puerto Rican people, the people of Puerto Rico through the referendum. The legislation would hopefully set that island on a course either towards statehood or independence or the maintenance of a commonwealth status.

However, we do believe as a general matter that an attempt to resolve all of the issues and the contingencies that might arise in conjunction with any of these statuses should be approached with great caution. One, we should not make promises or hold out expectations that are unconstitutional, that are legally or politically unrealistic, or that are economically unsound.

I would like to highlight some of the provisions that would require revision before this important process goes forward. Please note that this discussion includes what we believe to be the most important, significant legal constitutional and policy issues presented by the bill and is not intended to be exhaustive.

However, we are certainly prepared to meet the Committee's timetable with regard to the markup process and intend to be very supportive insofar as the details of the legislation as it takes shape. Further, as you know, the Departments of Treasury, State, Defense, Agriculture, Health and Human Services, Transportation, and the U.S. Trade Representative will also be appearing before the Committee to address particular concerns they have with the legislation.

Let me assure you on behalf of the entire Administration that we are eager to work with the Committee to establish clearly defined status options that can be presented to the Puerto Rican people.

The issue of statehood, and the definition of statehood, the choice of statehood as defined in Title II of S. 712 is an option that is the least problematic from a legal and constitutional standpoint. We do have several comments on the bill as drafted, but on a whole, Title II currently represents a realistic status option.

Obviously, the status of statehood is one that has been defined over more than 200 years of our constitutional form of government. We believe that the people of Puerto Rico are certainly very familiar with the status of statehood. There is a clear and well-defined body of law relating to the rights and obligations and limitations on the powers of the states.

However, there are several provisions that we feel are not consistent with the status of statehood, and I would like to point those out at this time. One of the issues relates to the exploitation of the continental shelf.

Under Section 5(b), Puerto Rico, as a new State, would be granted "the exclusive right to explore, exploit, lease, possess and use all seabed natural and mineral resources lying within the 200 mile economic zone continental shelf boundary around the waters of the archipelago of Puerto Rico."

No state enjoys such wide authority over its coastal areas. The use and development of the United States coast and continental shelf is governed by the Submerged Lands Act of 1953, and by the Outer Continental Shelf Lands Act of 1953. Under these statutes,

the states generally are entitled to utilize submerged lands within a three-mile boundary, while the Federal Government retains jurisdiction over the balance of the continental shelf.

The legislation admitting both Alaska and Hawaii to the Union specifically required that they be covered by this statutory scheme. And the Administration believes that the same provisions should be included in any act admitting Puerto Rico to the Union.

Another issue that arises under the option of statehood is the question of economic adjustments. We recognize that the realistic needs to have an economically viable transition from commonwealth to statehood is an important consideration. A realistic transition is in the interests of the Federal Government as well as of Puerto Rico. Such transition provisions have been adopted in previous statehood bills.

For example, when Alaska was admitted to the Union, the Federal Government made very significant land grants to the new state to help establish it on a sound fiscal footing. The Administration believes that a transition to statehood should result in no net revenue loss to Puerto Rico. The Administration would support a transition grant to Puerto Rico.

But the budgetary treatment of a transition to statehood should be consistent with sound budget discipline. And we feel that these principles should be the guiding principles in arriving at a realistic scheme of economic adjustments through the period of transition from commonwealth status to statehood status.

There is another provision in Title II which is also at odds or at least goes beyond the status held by the fifty states. This would be a provision in Section 16(c) which would require Congress to pass an omnibus act to insure that the people of Puerto Rico attain equal social and economic opportunities with the residents of the several states.

The Constitution of the United States we believe, through the equal protection clause of the Fourteenth Amendment, really provides the framework within which citizens are guaranteed the equal protection of the laws and equality of opportunity both economic and political, and that that has served us well over these generations, and that that is the standard under which all fifty states are judged or at least the citizens of all fifty states operate.

In addition, of course, Puerto Rico, as a state will have representation, voting representation in the Congress of the United States and in the Senate of the United States. And through that process, we are confident that a state of Puerto Rico can hold its own among the other fifty states in terms of the debate over public issues both economic and social.

We would certainly welcome them as a State if that choice is made the insight of the people of Puerto Rico through their representatives insofar as our social arrangement is concerned. But it is through that political vehicle of representation, through our constitutional process, that the states are able to be heard and that the process of governance is carried out with the appropriate safeguards against any discrimination, against any particular state or any particular region of the country.

So, therefore, we do not support this language insofar as the omnibus act is concerned, but merely would like to point out that our

constitutional processes have been structured with the recognition that it is through the process of voting, through the process of representation in our Congress, that each area of our nation has a voice in the policies that would affect each state and each region of our nation.

The next option is the option of independence. The independence option we feel is certainly one option that the people of Puerto Rico can choose, but we feel that the provisions in Title III of S. 712 are really not consistent with full independence. And we feel that the language of the legislation which would establish the referendum process should make it clear that independence is full independence with all that that represents.

Obviously, as with the process of moving to possible statehood, there would be a period of transition. Likewise, if the option of independence is chosen, there would be a period of transition. But we feel that no mistake should be made that independence would mean that Puerto Rico would become a separate nation, a separate people, certainly enjoying I am sure a friendly and cooperative relationship which has been our history with the United States.

But that independence would represent a radical departure from the commonwealth status, and that the people of Puerto Rico would be setting a course of complete sovereignty from the United States with all the risks, and advantages and disadvantages that that brings with it.

There are a number of specific provisions I am sure that are of concern, probably chief among which is the issue of citizenship. Under the independence provisions of S. 712, Puerto Rican residents would be entitled to maintain a dual citizenship in both the United States and the new republic of Puerto Rico. Allowing Puerto Rican residents to retain United States citizenship while becoming citizens of the new republic obscures the reality of independence for the Puerto Rican voter more than any other provision.

Allowing such dual citizenship, while not unconstitutional, is fundamentally inconsistent with granting full independence to the island. Moreover, under accepted principles of international law, a transfer of sovereignty of a territory transfers the allegiance of those who remain in the territory from the former sovereign to the new sovereign.

We believe that it is well within the authority of the Congress to require the residents of Puerto Rico at the time of independence, and who continue to reside there, to choose between their United States citizenship and citizenship in the newly independent Puerto Rican republic. Requiring such a choice would be consistent with the Supreme Court's jurisprudence with respect to United States citizenship under the Fourteenth Amendment.

Citizenship acquired pursuant to the Fourteenth Amendment by birth or naturalization in the United States is constitutionally protected. The Supreme Court has held, however, that Congress has authority to condition citizenship acquired outside of the territorial boundaries of the United States, outside of the states, the District of Columbia, or a territory that actually has been incorporated into the United States.

Puerto Rico was not incorporated within the United States upon its acquisition from Spain, and the Congress has never purported to affect such an incorporation. As a result, the citizenship of Puerto Rican residents is statutorily protected by the Jones Act rather than by the Fourteenth Amendment. Such citizenship is subject to reasonable statutory regulations. Consequently, it would be within Congress' authority to require Puerto Rican residents to choose between their United States citizenship and citizenship in the new republic.

In summary, although in terms of a transition, there is the possibility of allowing for freedom of choice insofar as those who currently hold citizenship that is protected by the Jones Act, it should be clear to those that are voting in the referendum that they are setting the island of Puerto Rico and its residents on a course of full independence, and that over time, the citizenship in the republic of Puerto Rico would be the dominant citizenship of those who would reside in Puerto Rico.

And that dual citizenship, as a permanent status for those future generations in Puerto Rico, should not be deemed a realistic option. In addition, under the independence choice, there is the issue of a treaty of friendship and cooperation which is also set forth in Title III of S. 712.

Section 6.1 would require that all the provisions of the bill scheduled to take effect after the proclamation of independence be embodied in a treaty of friendship and cooperation between the republic of Puerto Rico and the United States. We feel that if the independence option is chosen, that although we would certainly expect there would be a friendly and cooperative relationship between the United States and the new republic of Puerto Rico, that a specific definition of that relationship must be carried out through the normal diplomatic processes, the constitutional processes for actual negotiation, enforcement, and implementation of a treaty arrangement.

Therefore, it is our position that any treaty arrangements with the new republic of Puerto Rico, if that choice is chosen, would have to await that choice being chosen and should be the subject of normal diplomatic negotiations.

Finally, there is the issue of voter qualifications for delegates to the constitutional convention that would be responsible for drafting a constitution for a new republic of Puerto Rico. As we view this referendum election, this process is a process that would be set in motion under a federal statute. It would be a federal election, and therefore, the qualifications of the voters for that referendum should be controlled or is controlled by constitutional standards.

In addition, assuming that independence was the choice of the people of Puerto Rico, we believe that the voting requirements also should be controlled by constitutional principles. We do not believe we should endorse standards that are non-constitutional standards for either the purposes of the referendum or for a subsequent vote for delegates to a constitutional convention in shaping the form of government for a new republic.

Finally, there is the issue of commonwealth status, an enhanced commonwealth status which is set forth in Title IV of S.712. There are a number of different provisions in Title IV. These would alter

the commonwealth status of Puerto Rico as it is currently defined, and in fact, I think it would be fair to characterize this enhanced status as being one that would allow the Commonwealth of Puerto Rico greater autonomy than it has now insofar as federal laws are concerned and the enforcement of those laws, the applicability of those laws and provisions to the Commonwealth of Puerto Rico.

For example, in many instances, federal legislation would be inapplicable to the island. The President's right to appoint federal officials in Puerto Rico would be restricted to a list provided by the Puerto Rican governor. Puerto Rico would be authorized to negotiate its own air transportation treaties.

The functions of the National Labor Relations Board in Puerto Rico would be taken over by a Puerto Rican labor relations board. Special protection would be provided for Puerto Rican copyrights, and the governor of Puerto Rico would be empowered to issue United States passports.

This list is not exhaustive, but it does reflect issues that are of concern to the Administration. In many respects, the enhanced commonwealth option would render the island virtually independent of the United States authority in many areas. It also would grant Puerto Rico much greater advantages than any other area under United States sovereignty that is not a state.

So long as Puerto Rico remains under the sovereignty of the United States, it is essential that this fact be made clear beyond peradventure. Any statements that the island is autonomous in the bill must make clear that this autonomy is limited to internal affairs, and that as a commonwealth Puerto Rico remains under the sovereignty of the United States. Congress retains the authority to legislate with respect to Puerto Rico, and federal law may not be preempted or nullified by the local government.

We think that this is absolutely essential, again, getting back to the point that the choices to be made by the Puerto Rican voters in this referendum should be clear choices and they should be choices that are accurately represented and should not represent either unrealistic options which cannot or will not be made actually available should that choice be voted.

Some of the specific provisions which give us pause involve the treatment of federal statute and regulations. Under subpart 4 of Title IV there is a discussion of the applicability of federal laws to Puerto Rico. Under current law, federal statutes not locally inapplicable within the meaning of Section 734 of the Puerto Rico Federal Relations Act have the same force and effect in Puerto Rico as in the United States.

Under Title IV, however, this process would be turned on its head and any federal statute would be inapplicable to Puerto Rico unless it is consistent with the policy of allowing Puerto Rico greater autonomy, more equitable participation in federal programs, greater participation in Federal Government decisions affecting the island, provide safeguards for Puerto Rico's distinct cultural identity, and has greater regard for the economic, cultural, ecological, geographic, demographic and other local conditions of the Commonwealth of Puerto Rico.

Under this provision, the great bulk of federal legislation would become locally inapplicable to Puerto Rico. Only if Congress makes

a certification of an overriding national interest would a particular federal law apply to Puerto Rico. Similar provisions would apply to federal rules and regulations.

Further, under this part, the governor of Puerto Rico would be granted an unprecedented and truly extraordinary power to certify that a federal law or a federal regulation is inapplicable to Puerto Rico. The subsection would thereby confer on the governor a significant authority pursuant to the laws of the United States. Such authority, however, may be vested only in an officer of the United States.

The governor of Puerto Rico is elected by the people of Puerto Rico. He is not an officer of the United States. The power envisaged by subsection (c) and (f) of subpart 4 therefore cannot constitutionally be vested in the governor of Puerto Rico.

There is another part that deals with federal appointments and representation. Subpart 13 of Title IV would provide that the highest ranking federal officials in Puerto Rico must be appointed by the president from a list of eligible candidates recommended by the governor of Puerto Rico. A requirement that the President make appointments only from a list of candidates submitted to him is objectionable as a matter of constitutional law.

As noted above, the appointments clause of the Constitution requires that officers of the United States, i.e., those persons who exercise significant authority pursuant to the laws of the United States be appointed by the president subject to the advice and consent of the Senate. Inferior officers may be appointed by the President alone where the Congress has vested this authority in him or in the heads of the Executive Branch departments.

The president's authority to nominate principal officers cannot be qualified by law. This subsection 13 purports to permit the governor of Puerto Rico to share in the President's appointment power and to accord to the governor significant authority under the laws of the United States.

Accordingly, we believe that the requirement that the president nominate officials from a list submitted by the governor of Puerto Rico is unconstitutional and should be deleted. There are similar provisions related to special treatment regarding labor relations laws and special treatment regarding passports and special treatment regarding other federal functions.

I will not go into those in any detail except to ask that my entire statement be made a part of this record. But in general, I wanted to make clear that although we are pointing out what we feel are troublesome areas in S.712, that conceptually, we do agree that we should work towards a bill that would create a referendum which would be self-executing.

As I have stated earlier, it may well be that there are going to be certain questions that are going to be open in terms of the actual transition and implementation of any particular option. However, we prefer that state of the legislation rather than a prolonged debate and possible controversy over contingencies that realistically cannot be well defined or accurately reconciled at this stage of the process.

In conclusion, Mr. Chairman, let me again affirm that the Administration wholeheartedly supports a referendum allowing the

people of Puerto Rico to determine what their continuing relationship with the Federal Government shall be. It is the hope of the Administration that the difficulties outlined above can be easily and expeditiously resolved.

As drafted, S.712 provides a first step in this direction, and we believe that it can be revised so as to structure a fair and workable referendum within the applicable constitutional parameters.

The Administration is committed to working with the Committee and the Congress to create a referendum vehicle that will enable the people of Puerto Rico to determine in a meaningful way whether and how to alter their island's existing political relationship with the United States.

I would be happy to address any questions that the Chairman and the Committee might have.

[The prepared statement of Mr. Dennis follows:]