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U.S. House of Representatives
Committee on Resources
Washington, DC 20515

December 11, 1996

The Honorable William Jefferson Clinton
 President of the United States
 1600 Pennsylvania Avenue, NW
 Washington, DC 20500

Dear Mr. President:

I recently have seen press reports and reviewed public statements by local officials in the U.S. territory of Guam regarding current political status consultations between the Deputy Secretary of the Interior and representatives of the territorial government's "Commission on Self-Determination." I am quite familiar with the saga of Guam's quest for a new political status and some real concerns arise from the information we are receiving.

For most of the last decade Congress and the Executive Branch have passed the buck back-and-forth without responding to Guam's proposal for a "Commonwealth of Guam" in a manner that suggests a legally sound, politically feasible and intellectually honest alternative approach to achieving local self-government and defining options for resolving the status question. At this stage in the process, the only thing worse than further dithering would be to make commitments on behalf of the Federal government that can't be kept.

I remain optimistic that the U.S. and Guam can define and jointly implement a process to establish constitutional self-government. In addition, if Congress, the Administration and the territorial government are serious about the decolonization of Guam as contemplated by Article 73 of the U.N. Charter, 1997 can be the year that we start down that path by defining a legitimate self-determination process based on legally valid options for ultimately ending unincorporated status in favor of full self-government.

Of course, under P.L. 94-584 Guam has had the ability since 1976 to establish a "Commonwealth of Guam" structure of local constitutional self-government to replace the present territorial administration under the 1950 Organic Act. I voted in favor of P.L. 94-584 with the expectation that the institution of local constitutional self-government would provide the mechanism to address and resolve issues that have arisen such as the rights of Guam's

indigenous Chamorro people, return of excess military land, immigration policy, and, of course, Guam's ultimate political status.

Instead, Guam elected to link commencement of local constitutional self-government over its internal affairs to a proposed comprehensive government-to-government political status pact which contained Federal law and territorial policy reforms that Congress may or may not ever approve. When presented with that expansive proposal the then majority in Congress told Guam's leaders to go work out the issues with the Executive Branch. Predictably, the departments and agencies of the Federal government grudgingly agreed to review what Guam was proposing, while correctly insisting all along that Congress would have to make the difficult policy and legal determinations.

The delays, frustration and difficulty that Guam has experienced in seeking a competently formulated and constructive response from the Federal government is due in part to the fact that determination of the disposition of the unincorporated territories is an authority and responsibility expressly assigned in the first instance to Congress under the territorial clause of the Constitution (article IV, section 3, clause 2). Thus, history demonstrates that more than any other factor the degree of consultation and coordination between the Executive Branch and Congress on status measures within the scope of the territorial clause makes the difference between getting it done right, getting it done the hard way, or not getting it done at all.

For example, the last time a President of the United States transmitted to Congress a major new territorial status proposal it was the free association agreement for the Pacific islands trust territory in 1984. The primary criticism of the Reagan Administration by leaders in Congress at the time -- including me -- was inadequate consultation with Congress before commitments were made by Executive Branch negotiators on behalf of the Federal government.

After more than twenty hearings before five committees in Congress and years of truly tortuous debate, the framework political status legislation for the Pacific trust territories was approved. More than thirty five pages of statutory amendments and reservations were added by Congress to the status agreements. The entire process was gratuitously destructive in many respects, due in part to provisions agreed to by the Federal negotiators without consulting Congress. The people of the islands and the Federal government paid a high price for doing it the hard way, and it almost didn't get done at all.

On January 31, 1995 -- in the first month of the 104th Congress -- the Chairman of the Subcommittee on Native American and Insular Affairs, Mr. Gallegly, tried to send a clear signal regarding political status to the Administration, Guam, Puerto Rico, and all the unincorporated territories by candidly stating that "...until a territory gains distinct sovereignty within or without the Constitution, the Congress cannot be bound by an unalterable bilateral pact of mutual consent." Yet, there reportedly is an agreement in the works under which the political, legal and economic relationship to be defined under the proposed "Guam

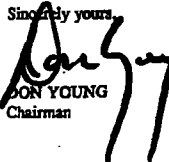
Commonwealth Act" (GCA) could not be altered by a future Congress without the "mutual consent" of Guam.

Since the GCA would be a Federal statute, a future Congress can not be bound to a political status relationship with an unincorporated territory as contemplated by the GCA. The "solution" apparently arrived at in the Guam discussions is to create ambiguity about the nature of the mutual consent clause. Thus, instead of an enforceable right of consent, Guam reportedly is prepared to accept a provision which admits of unenforceability. This may have some symbolic political value, but in the end it only underscores the disenfranchisement and lack of equal participation or real consent in the Federal political process for U.S. citizens in an unincorporated territory such as Guam.

It is time for both Federal and territorial officials to stop bashing "the bureaucrats" for the lack of a political status agreement with Guam. We should be glad there are executive branch civil servants who will not bow to political pressure and sign off on status proposals that do not withstand scrutiny. An agreement that will unravel as soon as the ink dries, or another proposal that simply gathers dust, has no real value for the U.S. or Guam. Those of us elected to get results for the people we serve need to take responsibility for doing more than "coming to closure" with Guam in form but not substance. If we believe we can pretend to have a real agreement and then walk away or wash our hands of it, we are really just setting up the people of Guam for another episode of disappointment.

We may have disagreement on some issues, but the Federal government must never risk making a mockery of the decolonization process. We would do just that by attempting to make less-than-equal citizenship and permanent disenfranchisement seem more tolerable through the legal and political fiction of "mutual consent." Also, I question whether the U.S. would be fulfilling its obligations to the Chamorro people by agreeing to a provision which seems to reduce the legacy of the native inhabitants of Guam to the possibility of their participation in what appears to amount to little more than a straw poll. The people of Guam deserve better, and we can do better.

Thus, I stand ready to work with your Administration to develop a strategy for success in this matter, rather than continuing tactics of grid-lock and blame-shifting we have seen in the past. This Committee and its staff would be pleased to work with those responsible for the Administration's status consultations with Guam to ensure that this time we get it done right.

Sincerely yours,

DON YOUNG
Chairman