THE "ENHANCED COMMONWEALTH" PROPOSAL IS "UNREALISTIC,"[1] "DECEPTIVE,"[2] "UNACCEPTABLE,"[3] AND AN "UNATTAINABLE MYTH"[4]

Legislative Branch Statements

Resident Commissioner Luis G Fortuno (R-PR), Statement before the House Natural Resources Committee, March 22, 2007, pp. 6-7. Governor Acevedo's proposal for enhanced commonwealth, as included in his party's 2004 platform, provides, among other things, number one, that Puerto Rico would be a sovereign nation but in permanent union with the U.S. as part of a covenant to which the United States will be permanently bound.

Two. That Puerto Rico would be able to veto most Federal laws.

Three. That Puerto Rico would be able to invalidate Federal court jurisdictions.

Four. That Puerto Rico would be able to enter into trade and other agreements with foreign nations and join international organizations separate from the U.S.

Five. That the U.S. would continue all current assistance programs to Puerto Rico, plus a new annual block grant for socioeconomic development.

Six. That the U.S. would provide new incentives for investment in Puerto Rico.

Seven. That the U.S. would continue to grant free entry to any goods shipped from Puerto Rico.

Eight. That the U.S. would continue to grant U.S. citizenship to persons born in Puerto Rico.

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[1] Representative Jose Serrano (D-NY), Statement before the House Natural Resources Committee, March 22, 2007; Puerto Rico Governor Pedro Rosselló, Testimony before the Senate Committee on Energy and Natural Resources, May 6, 1999; Sen. Paul Simon (D-IL), Senate Floor Statement upon the Introduction of S. Con. Res. 75, Relating to the Commonwealth Option in Puerto Rico, September 30, 1994; Rep. Don Young (R-AK), House Floor Statement upon the Introduction of H. Con. Res. 300, Expressing the Sense of Congress Regarding the Commonwealth Option Presented in the Puerto Rican Plebiscite, Friday, September 30, 1994; Edward S.G. Dennis, Acting Deputy Attorney General for President George H.W. Bush, Statement before the Senate Energy Committee, July 11, 1989.

[2] Teresa Wynn Roseborough, Deputy Assistant Attorney General, Office of Legal Counsel, Administration of President William Jefferson Clinton, Memorandum: Mutual Consent Provisions in the Guam Commonwealth Legislation, July 28, 1994, as included with approval in the Report by the President's Task Force on Puerto Rico's Status, Administration of President George W. Bush, 2005 report (Appendix F) and 2007 report (Appendix F), p. 10.

[3] Jeffrey L. Farrow, Co-Chair of President Clinton's Interagency Group on Puerto Rico, Testimony before the House Natural Resources Committee, October 4, 2000, p. 15-16; Rep. George Miller (D-CA), House Floor Debate on H.R. 856, United States-Puerto Rico Political Status Act, March 4, 1998, Congressional Record, pages H774-75; House Committee on Resources, Report on the United States-Puerto Rico Political Status Act (HR 3024), July 26, 1997, Report Number 104-713, Part 1, p. 19.

[4] Committee on Resources Report on the United States-Puerto Rico Political Status Act (HR 856), June 12, 1997, Report Number 105-131, Part 1, p. 26.

And nine. That residents of Puerto Rico would not have to pay Federal taxes.

Anyone who objectively reviews the Governor's enhanced commonwealth wish list and is honest about it will have to conclude that the definition that he is trying to sell in Puerto Rico and to some of our colleagues here is unconstitutional and thus not acceptable to the Congress. As a matter of fact, similar proposals have been rejected by this very same committee and the Federal Executive Branch in the past.

My friends, the best of two worlds, as labeled by the Governor's party, does not exist. If it did, I have no doubts that we in Congress would immediately receive 50 other requests for the same deal.

Representative Jose Serrano (D-NY), Statement before the House Natural Resources Committee, March 22, 2007, p. 14. [N]o one in Puerto Rico supports the present status. When they say they support commonwealth, they support a new commonwealth, which I call a letter to the Three Kings or a letter to Santa Claus. Because it says let me be a state, but let me be an independent nation; let me change, but not change.

Does Puerto Rico deserve that after 109 years of colonialism? Absolutely. And I would vote for it. Can any Member of Congress outside of three or four of us vote for that? Absolutely not. Because as it was said here, if you go back to your district, somebody is going to ask you that Sunday morning in church, what was it that you gave Puerto Rico that you can't give my district. And that is the problem, that it is not realistic.

Representative Don Young (R-AK), Statement, Subcommittee on Insular Affairs Legislative Hearing, March 22, 2007, p. 55. [M]y goal here is to really try to allow Puerto Rico to advance. And I do not believe you can advance as a commonwealth. I say that from my heart. Because we [Alaska] were not able to advance as a commonwealth. We were a territory. And my goal is to listen to the Puerto Rican people, listen to witnesses like we have today. But my ultimate goal is to try to give the Puerto Rican people a choice. And my bill, H.R. 900, does give them a choice. And if they decide to be an independent nation, God bless you. If you decide to be a state, God bless you. If you decide to be a commonwealth, you are not going to grow.

Committee on Natural Resources Report, Puerto Rico Democracy Act of 2007 (H.R. 900), Report No. 110-597, April 22, 2008, p. 8. In 1959, PDP [Popular Democratic Party, not affiliated with the U.S. Democratic Party] representatives began to seek national government powers, with the United States continuing to grant domestic programs and citizenship. This effort has continued to the present day and is [a] major reason why Puerto Ricans have yet to determine their preference with respect to the Island's ultimate political status. The hope that such a "best-of-both-worlds" status can be created has resulted in many Puerto Ricans not expressing a preference between the only constitutionally-valid permanent non-territorial status options: statehood, independence, and free association. A bill that Puerto Rico's representatives proposed in 1959 which incorporated the "commonwealth" theme was rejected in committee. But, notwithstanding the failure of that bill and other "commonwealth" proposals, the PDP still contends that the full Congress has not provided a definitive response to their ideas.

Senator Mary Landrieu (D-LA), Statement before the Senate Energy Committee, November 15, 2006, p. 37. Puerto Ricans cannot, on the one hand, keep their U.S. citizenship, income-tax-free status and access to federal funding while on the other hand be able to enter into trade agreements with foreign countries or choose which laws passed by Congress to follow. There is no such thing as a free lunch. Puerto Ricans should have full representation in Congress and all of the rights – and responsibilities – that such representation entails.

Senator Larry Craig (R-ID), Statement before the Senate Energy Committee, November 15, 2006, p. 12. [I]t is the responsibility of the federal and local government to ensure that commonwealth proposals the U.S. Department of Justice has labeled "illusory" and "deceptive" are not allowed to appear on self-determination ballots.

What would be truly unfair and biased would be to include an unviable option on the ballot in a status vote. That is what happened in 1993, when a definition of commonwealth that was constitutionally unrealistic and legally invalid was presented to voters. This results in an "artificial plurality" for a commonwealth option that does not exist and is impossible.

It is understandable that in the absence of a federal policy on status, local political parties would begin to develop their own status definitions that would benefit their interests. At the same time, those definitions might not fit within U.S. federal law or under the constitutional definition of a territory.

Governor Anibal Acevedo-Vila, written Responses to Questions submitted by Senator Craig (R-ID), Senate Energy Committee, November 15, 2006, pp. 49-51.

Q: Can you identify any Member of congress or other federal official who has said that the "Development of the Commonwealth" proposal is viable?

A: (No names were provided; response was limited to criticism of the President's Task Force Report.)

Q. In the past some of your colleagues have proposed that Puerto Rico be exempted from environmental laws. What laws do you believe should not apply to Puerto Rico?

A. I do not believe that this written question and answer process is the right forum to discuss the full panoply of laws that should not apply to Puerto Rico.

Resident Commissioner Luis G Fortuno, Response to Written Questions Submitted by Senator Mary Landrieu (D-LA), Senate Energy Committee, November 15, 2006, p. 59. The fundamental problem with the Governor's proposal is that it would invite Puerto Rico to choose a status proposal that is incompatible with the Constitution and basic laws and policies of the United States and, thus, is not a status option.

This proposal calls for the U.S. to be permanently bound to the terms of a Covenant with a nation of Puerto Rico that could nullify federal laws and court jurisdiction and enter into international agreements and organizations that States cannot while the U.S. grants an additional subsidy to Puerto Rico and new incentives for investment from the States and continues to grant all current

assistance to Puerto Ricans, totally free access to any goods shipped from Puerto Rico, and citizenship.

[I]t would raise expectations on the part of the people of Puerto Rico that cannot be fulfilled[.]

Resident Commissioner Romero-Barcelo, Testimony before the House Natural Resources Committee, October 4, 2000, p. 46. [The reason why Enhanced Commonwealth proponents rejected our invitation to appear before the Committee] is because they realize that their proposal is indefensible. They can only propose this new enhanced commonwealth, as they call it, publicly from a platform and speaking to their own people and do it on the radio and the television [in Puerto Rico]. But to come into a place where they are going to be asked hard questions about all of these things that they propose, they would be very, very hard – in a very difficult position to answer in a serious, logical and enlightened manner. So that is why they shy away from coming here to testify and they refuse to confront the issue.

Rep. Kildee (D-MI), Statement before the House Natural Resources Committee, October 4, 2000, p. 29. I think this proposal is legal fiction, at best, and a hoax, at worst. I do not see how it can be done. But if it could be done, if this legal fiction somehow could be defictionalized, then you could have that theoretical situation of one U.S. citizen voting against another U.S. citizen in the [United Nations]. It is never going to happen because I think this thing is patently unconstitutional.

They could join NATO and have a NATO representative and we would have a NATO representative, maybe at odds with one another. I mean, I really believe that this is such a bit of legal fiction. I am glad, however, that we are having this hearing because I think it is important that the people of Puerto Rico know what real valid options are available to them. And I will support whatever they choose, but this is not a valid option available to them. It is a legal fiction or a hoax.

Rep. Donna M. Christensen (D-VI), Testimony before the House Natural Resources Committee, October 4, 2000, p. 6. On face value, while [the Enhanced Commonwealth proposal] looks like a bill that would define a status the majority of persons in Puerto Rico seem to support, it appears more likely instead to set up a train wreck which I think will sabotage the efforts of the people of Puerto Rico to freely and fairly determine their future status and their destiny.

Rep. Jim Saxton (R-NJ), Testimony before the House Natural Resources Committee, October 4, 2000, p. 7. Now, it seems to me that if something looks like a duck and it acts like a duck and it talks like a duck, we all know that it is probably a duck. But if something would look like a territory, act like a nation, and walk like a State, I think we know what it is, too. It is unconstitutional and legislatively unattainable.

The enhanced commonwealth plan appears to be nothing more than an attempt to gain political advantage by misleading the people of Puerto Rico into believing that they can have all the rights, privileges, and benefits they want without the duties, responsibilities, and obligations that go along with them. Congress is given the authority under the constitution to make the needful rules and regulations governing territories.

Rep. Dan Burton (R-IN), Testimony before the House Natural Resources Committee, October 4, 2000, p. 9. Maybe [Enhanced Commonwealth] is the result of pure ignorance or maybe it is the brainchild of political opportunists seeking to confuse or complicate the issue. Regardless, it is our duty to clarify these statements that have misled millions of U.S. citizens and that have been perpetuated by the lack of Congressional action. The fact that a political faction in Puerto Rico promises this definition as feasible is an affront to the truth and to our shared democratic principles. I suspect that if the "enhanced commonwealth definition" was, in fact, constitutionally viable, the United States of America would not have 50 independent States, we would have 50 enhanced commonwealths rather than what we have today.

Not allowing American citizens to decide their fate in a Congressionally-mandated referendum is an injustice, not just to 3.9 million of our fellow Americans in Puerto Rico, but to all Americans in general. There is no doubt that the U.S. Congress has the sole authority to solve this century-long dilemma that continues to project us as colonial rulers in front of the entire world.

Rep. John Doolittle (R-CA), Testimony before the House Natural Resources Committee, October 4, 2000, p. 47. I think we close this hearing with a very solid record that [Enhanced Commonwealth] cannot be implemented as proposed by the PDP. First, there is no political will in Congress to give a territory a status that is based on permanent disenfranchisement of U.S. citizens. I think there is bipartisan agreement on that much. I also do not think we want the U.S. to govern another nation within our nation or to give a territory special constitutional rights that are unfair to U.S. citizens within the States.

Senator Jeff Bingaman (D-NM), Colloquy with Puerto Rico Governor Pedro Roselló before the Senate Energy and Natural Resources Committee, May 6, 1999. Governor, thank you very much for your very strong statement. Let me sort of give you my paraphrase of a point you're making there. It seems that this [Enhanced Commonwealth option] was sort of the free beer and barbecue option, where everybody got everything and there was no pain involved. Is that essentially your view of it? That's why it was so strongly supported by people [in the 1998 plebiscite]?

Governor Rosselló: I think, Senator, you've put it most eloquently.

"The Results of the 1998 Puerto Rico Plebiscite," Report by Chairman Don Young (R-CA) and Senior Democratic Member George Miller (D-CA) to Members of the Committee on Resources, November 19, 1999, Serial No. 106-A, p. 6. [T]he Popular Democratic Party, which has been the long-standing advocate of commonwealth, did not support the Commonwealth ballot definition [on the 1998 plebiscite ballot]. Instead, the PDP officially adopted and advocated an alternative commonwealth definition that did not appear on the ballot and contained principles rejected on a bipartisan basis by the Committee on Resources during consideration of H.R. 856.

Rep. George Miller (D-CA), House Floor Debate on H.R. 856, United States-Puerto Rico Political Status Act, March 4, 1998, Congressional Record, page H774 (oral remarks). I was very distraught at the beginning of this process because I felt that those who support commonwealth were not able to present their definition to the Congress, to the committee. I worked very hard so that that definition could be offered. I offered that definition. It was turned

down overwhelming[ly] on a bipartisan basis. It was something called "enhanced commonwealth." It was sort of a make-believe status of commonwealth.

The suggestion was that if you voted for commonwealth, you would then be empowered to pick your way through the Constitution of the United States and the laws of the United States and pick and choose which laws you wanted to apply and not have apply, and that you did not have to live under the power of the Congress of the United States or of the Constitution of the United States. That simply was unacceptable to the overwhelming majority of the committee. I believe it is unacceptable to the overwhelming majority of this House....and I believe it would clearly be unacceptable to the people of this country

Rep. George Miller (D-CA), House Floor Debate on H.R. 856, United States-Puerto Rico Political Status Act, March 4, 1998, Congressional Record, page H775 (written remarks). The definition of Commonwealth supplied by [the PDP political] party, which is similar in many respects to the definition on the ballot during the 1993 referendum in Puerto Rico, is not accurate and is not acceptable to the Congress. It is not acceptable that Puerto Rico would be eligible for full participation in all federal programs without paying taxes; it is not acceptable that Puerto Rico would pick and choose which federal laws apply on the island; it is not acceptable that Puerto Rico would be free to make its own foreign treaties.

I appreciate that this is what the supporters of "Enhanced Commonwealth" want. But the Congress is not prepared to give such unprecedented rights to Puerto Rico while denying them to every state in the Union. Nevertheless, I offered [the "Enhanced Commonwealth" proposal] in the Resources Committee so that it would be clear what is and is not acceptable to the Congress. It was overwhelmingly, and bipartisanly, defeated. And Congress should not offer an option to the voters of Puerto Rico that we are not prepared to embrace.

Rep. Peter Deutsch (D-FL), House Floor Debate on H.R. 856, United States-Puerto Rico Political Status Act, March 4, 1998, Congressional Record, page H783. The U.S. has a free association relationship with three Pacific island nations, and this status is very different from the free association espoused by the so-called "autonomists in Puerto Rico" – who want to be a separate sovereign nation but also keep U.S. national[ity] and citizenship. That "have it both ways" approach to free association was attempted in the case of the Micronesian Compact of Free Association, but the State Department, Justice Department and Congress rejected that model as unconstitutional and unwise. It was an attempt to "perfect" the legal theory of the Puerto Rican commonwealth as a form of permanent self-government, a nation-within-a-nation concept that has always failed and always will because the U.S. constitution does not allow a Quebec-like problem in our Federal system.

Rep. Patrick Kennedy (D-RI), House Floor Debate on H.R. 856, United States-Puerto Rico Political Status Act, March 4, 1998, Congressional Record, page H832. I heard this commonwealth definition. I said, "This commonwealth definition sounds pretty good." I said, "It sounds so good I want Rhode Island to have commonwealth status." I bet every Member in this place would like to have commonwealth status the way the commonwealth party in Puerto Rico wants it to be defined.

Committee on Resources Report on the United States-Puerto Rico Political Status Act (HR 856), June 12, 1997, Report Number 105-131, Part 1, pp.22-23 and 26. [I]n the case of "commonwealth" it quite clearly was a conscious decision of PDP leaders to define it as they would like Congress to change and improve it, rather than it actually is at this time.

The "commonwealth" definition in the 1993 vote reasonably, logically, and without prejudice can and should be seen as a bold "have it both ways" hybrid status option, which is Constitutionally flawed as it purports to combine in one status the primary benefits of both separate sovereignty and statehood, with the primary burdens of neither. Yet, even with the proposal for a new and "enhanced" formulation of the present Federal–territorial relationship, thought by its authors to be irresistible to the voters, "commonwealth" was not approved by a majority.

Those who advocate the "have-it-both-ways" legal theory and the revisionist version of "commonwealth" hold out the unattainable myth that Puerto Rico can somehow enjoy in perpetuity the most precious American rights of membership in the Union and guaranteed citizenship, without having to cast its lot or fully share risks and burdens with the rest of the American political family.

Committee on Resources Report on the United States-Puerto Rico Political Status Act (HR 856), June 12, 1997, Report Number 105-131, Part 1, pp. 30-31. On May 21, 1997, the Committee met to mark up H.R. 856. . . . Congressman George Miller (D-CA) offered an amendment substituting the `commonwealth' definition with the `commonwealth' definition submitted by the Puerto Rico political party advocating commonwealth. The amendment failed[.]

Representative Jose Serrano (D-NY), Statement before the House Resources Committee, March 19, 1997, pp. 79-80. I don't have a problem with a new commonwealth. I have a problem with a new commonwealth being presented in the ballot as the old commonwealth, because the old commonwealth is not the new commonwealth.

Committee on Resources Oversight Plan for the 105th Congress, Adopted February 5, 1997. Puerto Rico held a referendum in 1993 with locally defined status options in which an enhanced "commonwealth" received a plurality of 48 percent, statehood 46 percent, and independence 4 percent. The Committee on Resources considered and overwhelmingly rejected on a bipartisan basis the enhanced "commonwealth" ballot definition as unconstitutional and fiscally and politically inviable. [Puerto Rico's] permanent disenfranchisement is unacceptable, and that the U.S. must define the political status options of a final relationship of dignity to both parties.

House Committee on Resources, Report on the United States-Puerto Rico Political Status Act (HR 3024), July 26, 1996, Report Number 104-713, Part 1, p. 19. [T]he 1993 definition of "Commonwealth" failed to present the voters with a status option consistent with full self-government, and it was misleading to propose to the voters an option which was unconstitutional and unacceptable to the Congress in almost every respect.

Letter from Representatives Robert Torricelli (D-NJ), Lee Hamilton (R-NY), Bill Richardson (D-NM) and Dale Kildee (D-MI) to Senator Charlie Rodriquez, Majority Leader, Puerto Rico Senate, June 28, 1996. We believe that the definition of Commonwealth on the 1993 plebiscite

ballot was difficult given Constitutional, and current fiscal and political limitations. Through numerous Supreme Court and other Federal Court decisions, it is clear that Puerto Rico remains an unincorporated territory and is subject to the authority of Congress under the territorial clause. [One] aspect of this definition called for the granting of additional tax breaks to [certain] companies and an increase in federal benefits in order to achieve parity with all the states without having to pay federal taxes. It is important that any judgment on the future of Puerto Rico be based on sound options that reflect the current budgetary context in the United States.

Chairmen Don Young (R-AK, Resources Committee), Elton Gallegly (R-CA, Native American and Insular Affairs Subcommittee), Ben Gilman (R-NY, International Relations Committee), and Dan Burton (R-IN, Western Hemisphere Subcommittee), Letter to The Honorable Roberto Rexach-Benitez, President of the Puerto Rican Senate and The Honorable Zaida Hernandez-Torres, Speaker of the Puerto Rican House, February 29, 1996. Congress may consider proposals regarding changes in the current local government structure, including those set forth in the [Enhanced Commonwealth definition] on the 1993 plebiscite ballot. However, in our view serious consideration of proposals for equal treatment for residents of Puerto Rico under Federal programs will not be provided unless there is an end to certain exemptions from federal tax laws and other non-taxation in Puerto Rico, so that individuals and corporations in Puerto Rico have the same responsibilities and obligations in this regard as the states. Since the "commonwealth" option on the 1993 plebiscite ballot called for "fiscal autonomy," which is understood to mean, among other things, continuation of the current exemptions from federal taxation for the territory, this constituted another major political, legal and economic obstacle to implementing the changes in Federal law and policy required to fulfill the terms of [Enhanced Commonwealth].

Sen. Paul Simon (D-IL), Senate Floor Statement upon the Introduction of S. Con. Res. 75, Relating to the Commonwealth Option in Puerto Rico, September 30, 1994. In the interests of comity, the Legislative Assembly of Puerto Rico permitted each of the three political parties represented in the plebiscite--the Statehood Party, the Commonwealth Party, and the Independence Party--to draw up its own definition of its status option for inclusion on the plebiscite ballot. This attempt to be fair, however, led to the formulation and appearance of completely unrealistic status options on the November 14 ballot.

The Commonwealth Party in Puerto Rico presented Puerto Rico's citizens with a series of vain promises regarding the island's future relationship with the United States. The Commonwealth Party promised, among other things, that future Puerto Rico-U.S. relations would be governed by a bilateral pact that would be unalterable except by mutual consent; that supplemental security income benefits and food stamps would be made available to Puerto Ricans on a par with citizens of the 50 states; that Puerto Rican fiscal autonomy would be preserved; and that Puerto Rico would be guaranteed a common market, defense, and currency with the United States. In short, the Commonwealth Party promised Puerto Ricans many of the benefits of full incorporation with the United States without any of the concomitant responsibilities, and proposed a form of association with the United States that is inconsistent with Constitutional principles.

Not surprisingly, a plurality of Puerto Ricans--48.6 percent--voted for the Commonwealth package of benefits, although to the credit of the Puerto Rican people, a combined majority of

pro-statehood and pro-independence voters expressed approval for packages that combined benefits and responsibilities equally. Indeed, it is important to note that, for the first time since its establishment in 1952, the commonwealth status option failed to receive a majority of support from the Puerto Rican electorate.

In light of the continued uncertainty regarding the Puerto Rican plebiscite and what it means for the future, it is incumbent on the U.S. Congress to heed the call of the Puerto Rican Legislature and express its opinion regarding the viability of the commonwealth plebiscite formula. If, as I believe, this formula was neither politically, economically, nor constitutionally viable, the people of Puerto Rico must be given this signal, so that they may promptly choose a path of association that is both realistic and consistent with constitutional principles.

Rep. Don Young (R-AK), House Floor Statement upon the Introduction of H. Con. Res. 300, Expressing the Sense of Congress Regarding the Commonwealth Option Presented in the Puerto Rican Plebiscite, Friday, Sept. 30, 1994. [On the November 14, 1993 plebiscite ballot], [t]he people were presented a mythical commonwealth option which proposed significant changes to the current relationship between Puerto Rico and the United States[.]

It should not be surprising, given human nature, that a plurality of the people voted for a guarantee of virtually all of the benefits and assistance of U.S. citizenship without the corresponding duties and obligations. Notwithstanding the option of 'all-the-goodies-without-the-price,' and to the grand credit of the people of Puerto Rico, a combined majority chose status options offering additional rights and responsibilities. A near plurality of voters chose statehood with the same rights, benefits, and responsibilities of the 50 States; a small fraction voted for independence with the inherent rights, powers, and obligations of separate sovereignty.

The commonwealth formula is clearly not an economically or politically viable alternative to the current self-governing, unincorporated territorial status of the Commonwealth of Puerto Rico; and the unalterable bilateral pact that such commonwealth formula proposes as the vehicle for permanent union of Puerto Rico with the United States is not a constitutionally viable alternative to the current self-governing, unincorporated territorial status of the Commonwealth of Puerto Rico.

It is unfortunate that the voters have faced unrealistic and inflated expectations of a supposed commonwealth relationship with the United States. However, this has become an opportunity to set the record straight; to quell the commonwealth fantasy status which continues to be promoted to the detriment of the society it is purported to help. While it is true that the United States-Puerto Rico relationship shares many things in common, no permanent union secured by an unalterable bilateral pact with irrevocable American citizenship is possible under any variation of the proposed commonwealth formula. Our U.S. Constitution provides the only avenue for irrevocable U.S. citizenship, total equality, and permanent union.

Rep. Don Young (R-AK), Statement in the Congressional Record, November 10, 1993. It is ridiculous to suggest that the United States would ever agree to a commonwealth with permanent union between Puerto Rico and the United States. Only by being incorporated into the body politic of the United States can Puerto Rico be considered to be in permanent union. We are a

democracy united by a Constitution which extends equal protection, rights, and privileges to all. The United States will not set aside over two centuries of reliance upon this near-sacred document to be "bound by a bilateral pact that could not be altered, except by mutual consent." Even the North America Free Trade Agreement (NAFTA) allows a member to end the agreement with a 6-month notice.

Legislative Branch Resources

Congressional Research Service (CRS), Political Status of Puerto Rico: Options for Congress, Report Number RL32933, May 29, 2008, p. 25. Some support an enhanced or "new" commonwealth status and seek changes in the current relationship to increase the autonomy of Puerto Rico. Aspects of enhanced commonwealth considered by rejected by congress in 1991 and 2001 included providing the government of Puerto Rico authority to certify that certain federal laws would not be applicable to the commonwealth, mandating that the President consult with the governor on appointments to federal offices in Puerto Rico that require Senate approval, recognizing a permanent relationship between Puerto Rico and the United States that cannot be unilaterally changed, and establishing economic relationships with other nations.

Executive Branch Statements

Jeffrey L. Farrow, Co-Chair of President Clinton's Interagency Group on Puerto Rico, Testimony before the House Natural Resources Committee, October 4, 2000, p. 15-16. Although it is called a commonwealth proposal, it is for a very different governing arrangement than the present one. It is also different from the commonwealth in the only other status referendum in Puerto Rico in recent decades, and it differs from the commonwealth proposal that the leaders of the party made to you in 1997.

The proposal's fundamental elements include Puerto Rico would be a sovereign nation but in a permanent union with the United States under a binding agreement; the United States would continue to grant citizenship and all assistance currently granted to residents; the Commonwealth would determine the application of other Federal laws and be able to enter into agreements with other countries.

The proposal includes a combination of aspects of different statuses. Many people may find the combination attractive. As stated, though, the combination is an incompatible mixture of benefits of national sovereignty and benefits of a U.S. status. Many of the individual elements would be appropriate under one status or another, but others are impossible or unacceptable.

The positions we are expressing cannot be expected to change. Most are based on requirements our government lacks the power to change or so basic that they are not really discretionary. Our positions were developed by permanent officials of the agencies involved as well as by

administration appointees. They are generally consistent with bipartisan decisions of this committee and the Senate committee.

Robert Dalton, Assistant Legal Advisor for Treaty Affairs, U.S. Department of State, Testimony before the House Natural Resources Committee, October 4, 2000, pp. 19-21. We are concerned about the foreign relations aspect of the [Enhanced Commonwealth proposal], particularly the proposed provisions regarding Puerto Rico's ability to enter into agreements with foreign nations and participate in international organizations.

[The Enhanced Commonwealth proposal] would purport to make the Commonwealth a nation legally and constitutionally and provide it with many trappings of a sovereign nation. Yet at the same time, the legislation would retain or create links to the United States that are inconsistent with sovereignty as that term is understood in international law. It is this hybrid nature of the arrangement contemplated in the legislation that renders it untenable as a functional matter.

It is essential that the component parts of U.S. foreign policy form a consistent and internally consistent whole. This cannot be accomplished if areas that are within U.S. control are populated primarily by U.S. citizens, conduct their own foreign affairs. It benefits neither the United States as a whole or the territories and commonwealths if the United States is perceived as speaking with many inconsistent voices internationally. The Founding Fathers...widely recognized this in framing the Constitution.

[W]e think that the hybrid nature of the status proposed for Puerto Rico would render it impossible for the United States to maintain a unitary foreign policy with respect to all areas under its control. Therefore, we oppose the provisions of the [proposal] relating to the foreign affairs powers to be conferred on Puerto Rico which would be untenable functionally in the overall context of the proposed arrangement.

Mary V. Mochary, Department of State Principal Deputy Legal Adviser, Testimony before the Committee on Energy and Natural Resources, July 11, 1989, pp. 153-155. The proposal for an enhanced commonwealth . . . would create an unprecedented political status for Puerto Rico. It would grant to Puerto Rico significant attributes of sovereignty which would be incompatible with remaining a part of the United States.

Many provisions require important transfers of authority from the Executive to the Puerto Rican Government. These new powers would extend well beyond those currently enjoyed by the Commonwealth of Puerto Rico or other nonfederated U.S. commonwealths and territories.

The Department objects to any delegation to another entity such as a state or territorial commonwealth of the authority vested in the Executive by the Constitution to conduct and oversee U.S. foreign relations. The Department does not agree to any language which implies a derogation of the President's power to negotiate for and represent the United States, including Puerto Rico, in the area of foreign relations.

With respect to the issuance of U.S. passports and visas, these functions have been strictly relegated to the Department of State. The United States under no circumstances should cede its

power to determine citizenship by the issuance of U.S. passports and to relegate and control its borders to any other authority.

Apart from constitutional concerns, there are foreign policy concerns and sound practical reasons for opposing these provisions so that control over the issuance of U.S. passports and immigration remains in the hands of a Federal authority. Chief among these are law enforcement interests and the need to promote the uniform issuance of passports.

A final matter of concern flowing from [Enhanced Commonwealth] is the likely impact it will have on U.S. positions in international organizations. Puerto Rico has a longstanding desire for greater freedom to participate in international organizations under its own auspices. The United States cannot cede greater freedom for participation in international organizations than Puerto Rico already enjoys. This participation is currently limited, subject to U.S. agreement, to observer status, associate status, or to U.S. delegation participation in approved organizations. This circumscribed participation has been carefully crafted over many years to maximize Puerto Rico's freedom without unacceptably compromising other U.S. objectives and prerogatives.

Edward S.G. Dennis, Acting Deputy Attorney General, Department of Justice, Testimony before the Senate Energy Committee, July 11, 1989, p. 18. 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 . . . 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.

James W. Brennan, Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, Testimony before the Committee on Energy and Natural Resources, July 13, 1989, pp 320-321, 323. Enhanced Commonwealth includes several provisions which give us great concern[.] The Commonwealth, for example, [could] impose fees and restrictions on U.S. vessels....[Another] provision raises questions about the application of the Marine Mammal Protection Act of 1972 and the Endangered Species Act, and all of the other environmental and marine resource programs for which we are responsible, and which provide vital protection to important resources.

Brigadier General M. J. Byron, Acting Deputy Assistant Secretary of Defense (Inter-American Affairs), Department of Defense, Testimony before the Committee on Energy and Natural Resources, July 11, 1989, pp. 141-42. Under the Enhanced Commonwealth option, the Governor of Puerto Rico may take any official action to promote the international interest of Puerto Rico that is not prohibited by law; however, the President may determine within 30 days that such action would imperil U.S. foreign relations or national defense, in which case the governor's authority for that action would be withdrawn. This procedural requirement for a presidential determination is unduly cumbersome, and could cause serious delay under critical

circumstances. This provision could also be politically costly since it could put the U.S. and Puerto Rican governments at odds with each other. The exemption from any future military draft is inconsistent with U.S. responsibility for national defense. Additionally, Puerto Rico would immediately acquire title to all lands ceded by Spain to the U.S. by the 1898 Treaty of Peace. This would require us to relinquish several smaller properties.

Kenneth W. Gideon, Assistant Secretary, Department of the Treasury, Testimony before the Energy and Natural Resources Committee, July 13, 1989, p. 222. [Enhanced Commonwealth] would provide that the Commonwealth of Puerto Rico may "continue" to enter in its own right into international cultural, commercial, educational, and sports agreements, and other agreements of like nature. In addition, the same amendment would authorize the Governor of Puerto Rico to take "any official action" to promote the international interests of Puerto Rico that requires the consent of the United States Government and is not expressly prohibited by law. The amendment appears to contemplate that U.S. consent would be implicit unless the President objected to the action on foreign relations or national defense grounds, after being notified of the proposed action by the Governor. Currently, Puerto Rico does not have the authority to negotiate or enter into international double taxation or similar agreements in its own right, and it is unclear how the [Enhanced Commonwealth proposal] would affect that issue. It is certain, however, that the grant of independent tax treaty authority to Puerto Rico would significantly complicate the negotiations of United States treaties and quite possibly undermine several existing conventions.

Bipartisan Executive Branch Position on "Mutual Consent"

Teresa Wynn Roseborough, Deputy Assistant Attorney General, Office of Legal Counsel, Administration of President William Jefferson Clinton, Memorandum: Mutual Consent Provisions in the Guam Commonwealth Legislation, July 28, 1994, as included with approval in the Report by the President's Task Force on Puerto Rico's Status, Administration of President George W. Bush, 2005 and 2007 reports (appendix F), pp. 1, 10. The Guam commonwealth Bill, H.R. 1521, 103d Cong., 1st Sess. (1993) contains two sections requiring the mutual consent of the Government of the United States and the Government of Guam. Section 103 provides that the Commonwealth Act could be amended only with mutual consent of the two governments. Section 202 provides that no Federal laws, rules, and regulations passed after the enactment of the Commonwealth Act would apply to Guam without the mutual consent of the two governments. . . . Our conclusion is that these clauses raise serious constitutional issues and are legally unenforceable.

Congress thus retains the power to amend the Guam Commonwealth Act unilaterally or to provide that its legislation shall apply to Guam without the consent of the government of the Commonwealth. The inclusion of such provisions, therefore, in the Commonwealth Act would be misleading. Honest and fair dealing forbid the inclusion of such illusory and deceptive provisions in the Guam Commonwealth Act.

Judicial Branch Statements

Levin H. Campbell, Chief Judge, U.S. Court of Appeals for the First Circuit, Boston, MA, Testimony before the Senate Energy Committee, July 11, 1989, pp. 75-76. All my fellow judges and I regretfully but unanimously believe the present [Commonwealth] proposal [providing that all the proceedings in the federal court to be conducted in Spanish upon the request of any one party to a lawsuit] would cause enormous problems of implementation. We are joined in this position by all seven of the Federal District Judges now sitting in Puerto Rico; all of whom, of course, are themselves native Spanish speakers, but who do not believe that Spanish should be an option, as well as English, in the District Court proceedings.

Our position here is merely that in the very small seven-judge, Article III, United States District Court for Puerto Rico, the language spoken should remain the same as that used throughout the federal judicial system, and throughout our entire Federal Government.

To introduce another language will greatly slow down, and may cripple, the ability of the Federal Courts of Appeal to review the decisions of the Puerto Rico District Court. Additionally, the proposal threatens to isolate the Puerto Rico Federal Court and its bar from all other Federal courts.

U.S. District Court for the District of Puerto Rico, Resolution, In the matter of: Requiring the United States District Court for the District of Puerto Rico to Conduct Judicial Proceedings in the Spanish Language, Signed by Juan M. Perez Gimenez, Chief, U.S. District Judge, Judge Gilberto Gierbolini, Judge Raymond L. Acosta, Judge Carmen Consuelo Cerezo, Judge Hector M. Laffitte, Judge Jaime Pieras, Jr., Judge Jose A. Fusté, June 30, 1989. *Whereas:* It is our strong belief that the introduction of a Spanish language option in the federal district court in Puerto Rico will cause the court to become an isolated entity in an otherwise unified federal system in that it would (1) limit the ability of non-Spanish speaking members of the federal bar in Puerto Rico and elsewhere from practicing in the District Court of Puerto Rico, (2) encourage the appearance at the federal bar of attorneys whose English is inadequate for responsible federal practice, and (3) cause a diminution in the quality of justice and the access to justice available to the people of Puerto Rico[.]

Puerto Rican Officials and Representatives

Luis E. Gonzalez Vales, Official Historian of Puerto Rico, Testimony before the House Subcommittee on Insular Affairs, March 22, 2007. Puerto Rican proposals for a "Commonwealth" status have been rejected by the U.S. Government repeatedly since soon after the local constitution was adopted in 1952. Past proposals were made in: legislation in the 1950's; negotiations between Gov. Munoz and the Kennedy White House; legislation in the 1960's; legislation in the 1970's based upon the results of a referendum in 1967 that result[ed] in a majority for a "Commonwealth" with some national government power with continued U.S. jurisdiction benefits; legislation between 1989 and '91; a referendum in 1993 that resulted in a plurality – not a majority – for a "Commonwealth" immune from federal tax and other laws and

for restoration of tax exemptions for the Puerto Rico income of companies based in the States that had just been cut by the President and Congress, trade protection for Puerto Rican products that contradicted NAFTA and GATT, and $1.5 billion a year in additional social programs funding; legislation that passed the U.S. House in 1998; and unsuccessfully arguing before the federal court that the definition of the current status on a 1998 referendum ballot was erroneous.

Veronica Ferraiuoli, Federal Bar Association, Puerto Rico Chapter, Testimony before the House Subcommittee on Insular Affairs, March 22, 2007. [I]n the 1998 plebiscite on status, the Popular Democratic Party proposed a new Commonwealth providing that, while Puerto Ricans will continue to be citizens of the United States by birth, the federal court's jurisdiction will be limited to matters arising from the United States Constitution and whichever federal laws apply in Puerto Rico and not in violation with the laws of the Commonwealth of Puerto Rico. It would appear that – under this proposal – the federal court in Puerto Rico would be divested of diversity jurisdiction. In addition, it appears that – under this proposal – the federal court would lack jurisdiction over statutory challenges to Commonwealth law, such as actions under the 1964 Civil Rights Act. Further, under this proposal, any laws that the Commonwealth might enact in the future would strip the federal court of its jurisdiction under the constitution and federal laws of the United States.

We cannot support a [proposal] which . . . fails to guarantee the continued existence of a federal court system in Puerto Rico with jurisdiction consistent with that of all States so long as Puerto Ricans continue to be United States citizens.

Jose Luis Fernandez, President, Inter-American Entrepreneurs Association, Testimony before the House Subcommittee on Insular Affairs, March 22, 2007. It would be counter productive – and irresponsible – for Congress to invite Puerto Rico to propose a non-territory "Commonwealth status" when it knows that the intent of the proponents for such a status is a proposal that Congress would not – and cannot – implement.

Governor Pedro Rosselló, Testimony before the Senate Committee on Energy and Natural Resources, May 6, 1999. [M]y administration made a point of inviting Puerto Rico's three political parties to define for themselves the political status option that they would endorse in our 1993 plebiscite.

Regrettably, that good faith gesture resulted in inclusion on the ballot of a Commonwealth definition that was utterly unrealistic. And when I say utterly unrealistic, I do so in the context of parameters that this very committee clearly stipulated during its extensive examination of the subject from 1989 through 1991.

Undaunted by that congressional record, the proponents of commonwealth, the Popular Democratic Party, campaigned in 1993 on behalf of a definition which they literally proclaimed was the best of two worlds solution to the status dilemma, a solution that would have imbued Puerto Rico with many of the benefits of U.S. statehood and many of the prerogatives of independence, while exempting Puerto Rico from most of the responsibilities inherent in both of these options.

The 1993 commonwealth ballot definition, in other words, amounted to a wish list. It was both politically unattainable and constitutionally inadmissible. So it is that the 1993 plebiscite failed in its objective. Although commonwealth ostensibly won that plebiscite, polling 48.6 percent of the vote, slightly ahead of U.S. statehood at 46.3 percent, it is worth noting that nobody from the Popular Democratic Party had the audacity to come up here to the Nation's capital afterwards and argue for congressional enactment of that Party's best of two worlds platform.

The Guam Precedent

"Administration Shelves Plan To Give Guam More Autonomy," The Washington Post, p. A4, March 7, 1997. The White House said yesterday that an administration proposal to grant the territory of Guam broad new autonomy was shelved following vigorous internal opposition, disputing reports that campaign money from the island apparently had swayed government policy. Officials said the plan to allow the island more authority over immigration, taxes, trade, labor laws and federal land was deemed unacceptable during internal discussions and not endorsed by President Clinton. Instead, officials have been assigned to rework it and develop a more limited, and therefore more politically salable, plan to present to the president.

In late January, officials from across the administration called the plan problematic; criticism came from the Justice, State, Defense and Treasury departments. Among other things, officials worried that such a change in Guam's status would set an unwelcome precedent in dealing with Puerto Rico.

William Jefferson Clinton, Letter of response to Chairman Don Young (R-AK), Committee on Resources, January 21, 1997. I read your letter regarding Guam's commonwealth status with great interest, and I share many of the positions you expressed in your well-reasoned analysis.

I am aware of Guam's aspirations for self-government. At the same time, we must satisfy federal concerns at the policy, legislative and constitutional levels.

Chairman Don Young (R-AK) letter to President William Jefferson Clinton, December 11, 1996. 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.

Since the [Guam Commonwealth Act (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 underscored 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.

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 sere 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."

[See also, Tab 37 of this document entitled "Bipartisan Executive Branch Position on "Mutual Consent'," Teresa Wynn Roseborough, Deputy Assistant Attorney General, Office of Legal Counsel, Administration of President William Jefferson Clinton, Memorandum: Mutual Consent Provisions in the Guam Commonwealth Legislation, July 28, 1994, as included with approval in the Report by the President's Task Force on Puerto Rico's Status, Administration of President George W. Bush, 2005 and 2007 reports (appendix F), pp. 1, 10.]