

APPENDIXES

APPENDIX I

Responses to Additional Questions

RESPONSES OF GOVERNOR ANÍBAL ACEVEDO-VILÁ TO QUESTIONS
FROM SENATOR CRAIG

“DEVELOPMENT OF THE COMMONWEALTH”

Question 1. One of your primary complaints about the Task Force Report is that it says your proposal for the “Development of the Commonwealth” is not an option. Your proposal calls for Puerto Rico to be recognized as a nation in a relationship that permanently binds the United States to its terms. The U.S. would have to cede to the Commonwealth the powers to nullify most federal laws and court jurisdiction and to enter into trade and other agreements and international organizations that States cannot. The U.S. would also have to grant an additional subsidy to the insular government and new incentives for U.S. investment and continue to grant all current program benefits to Puerto Ricans, citizenship, and totally free entry to products shipped from Puerto Rico. The Clinton Administration and the Justice and State Departments have also said that the proposal is impossible for constitutional, structure of government, and basic policy reasons.

Can you identify any Member of Congress or other federal official who has said that the “Development of the Commonwealth” proposal is viable?

Answer. The problem with the Task Force Report is that we do not even get a chance to discuss the specifics of an enhanced Commonwealth because it concludes without adequate legal support that the Commonwealth cannot exist under the Constitution.

Question 2. In lieu of the status resolution process recommended in the Report, you have asked Members to sponsor a bill that would support a convention in Puerto Rico to choose the territory’s status preference among three options—the recognized options of statehood and independence and a new form of what the bill calls the current “association.” You led your party in adopting a proposal for that association, the proposal for the “Development of the Commonwealth,” in 1998. It was incorporated into the Platforms on which you ran in 2000 and 2004, and you have continued to support it as Governor, including in testimony to a committee of the Puerto Rico House last year and after the presidential task force’s report was released.

Since the convention would propose your plan for the “Development of the Commonwealth” as Puerto Rico’s status choice, have you fully explained the contents and federal positions on the proposal to the Members you are asking to sponsor your bill?

Answer. Since my first day in office I have proposed that the first step should be for Puerto Ricans to elect a Constitutional Convention and such convention would have the option of drafting a proposal to the Congress for a new or amended compact. If Members of Congress support self determination for Puerto Rico they should support the Constitutional Convention option, regardless of the proposals that might emerge from that Convention. If the proposal is not to the liking of a particular member, be it an enhanced Commonwealth proposal, a statehood proposal or an independence proposal, such Member of Congress will have an opportunity to judge the proposal once it is presented. It makes no sense to judge it before it is even proposed.

Question 3. Article XIII (b) of your proposal for the “Development of the Commonwealth” would establish a mechanism whereby U.S. laws, other than those pro-

viding benefits to Puerto Ricans specified elsewhere in the proposal, would only apply to Puerto Rico if approved by the Commonwealth.

As there is no chance that the federal government would cede the power to determine the application of federal laws to the Commonwealth, are you more willing to accept the status options recognized in the report and otherwise by the federal government: a continuation of the current status, statehood, independence, and free association?

Answer. I disagree with both your characterization of the proposal and your "no chance" premise.

Question 4. Article VIII of your proposal for the "Development of the Commonwealth" would enable the Commonwealth to limit the jurisdiction of the federal courts in Puerto Rico.

How could the federal court tenably operate fits enforcement of federal law could be limited at the Commonwealth's will?

Answer. Your premise is incorrect since what the proposal says is that the jurisdiction of the Federal Courts will be agreed up by both Puerto Rico and the United States in the Covenant.

Question 5a. Article IV (B) of your proposal for the "Development of the Commonwealth" would obligate the U.S. to continue to provide all current assistance to Puerto Ricans. Article V (A) would require the U.S. to provide the Commonwealth with a new, annual block grant, adjusted for inflation, for social assistance and infrastructure, and new socioeconomic development incentives. Congress repealed the \$3 billion-a-year Internal Revenue Code Section 936 tax exemption for manufacturing income from Puerto Rico and other possessions. It also rejected the essentially similar Sec. 956 amendment.

Very roughly, how much do you think the block grant should be?

Answer. The amount of the referenced block grant is one of the many issues that would be up for negotiation when there is an actual negotiation. To decrease the levels of economic dependency is one of the goals that the PDP has established for the future. Whatever the final cost of such a block grant, it would certainly be significantly less than the added cost to the Federal treasury of making Puerto Rico a state.

Question 5b. Would the socioeconomic incentives be tax exemptions for companies based in the States?

Answer. No.

Question 5c. Don't you think that all of this financial assistance is inconsistent with the proposal that Puerto Rico be recognized as a nation and the proposed power for the Commonwealth to be able to nullify the application of federal laws and enter into international agreements that States cannot?

Answer. No. If read carefully, the proposal is designed to make Puerto Rico less financially dependent on the Federal Government, which contrasts with the case of statehood, where Puerto Rico would become much more financially dependent on the Federal treasury.

Question 6. Your representative at the House hearing told that committee that the Commonwealth "Covenant" ought to exempt Puerto Rico from the laws requiring the use of U.S. crewed, built, and owned vessels in shipping between U.S. ports. The Departments of Transportation and Defense have previously opposed this proposal. U.S. ship builders and owners and the AFL-CIO have opposed similar proposals.

Why do you think it is viable?

Answer. That could be part of the overall negotiations. It is pointless to assess viability without understanding the whole.

Question 7a. The director of your offices in the States told an assistant to a Member of the Committee that there should be different trade rules set by Puerto Rico for trade with Costa Rica.

What differences should there be?

Answer. That comment simply refers to the fact that there are certain products, particularly agricultural products, that are grown in Puerto Rico, but nowhere else in the United States. In those cases it is important to take into consideration the different reality of agriculture in Puerto Rico. And that, in fact, is already done to some extent, in the negotiations conducted by the USTR because the Commonwealth Government has alerted the USTR as to its specific situations.

Question 7b. And, if Puerto Rico could negotiate trade agreements with other countries and all trade between Puerto Rico and the States continued to be totally unrestricted as proposed in your plan for the "Development of the Commonwealth," couldn't products that the U.S. restricted entry of from other countries enter the U.S. if shipped through Puerto Rico?

Answer. If that were to be the route taken, I am sure that it is possible to prevent such outcome.

Question 8. 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?

Answer. 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.

Question 9. Your proposal for the "Development of the Commonwealth" calls for the federal government to cede to the Commonwealth the power to enter into trade, tax, and other agreements with foreign countries and into international organizations that States cannot—which are agreements that require national sovereignty—subject only to U.S. security requirements. The Department of State testified against the proposal in 2000, primarily because of the hybrid nature of the governing arrangement you propose: Puerto Rico would be a nation but U.S. citizenship would still be granted and U.S. domestic programs would still apply but Puerto Rico would be able to nullify U.S. laws. If Puerto Rico were to become a true nation, it would, of course, be able to establish its own foreign relations. But if it retained the benefits of a U.S. status inconsistent with true nationhood, Puerto Rican foreign relations could create conflicts with U.S. foreign relations, resulting in confusion abroad and imposing obligations on the U.S. which the U.S. could be unwilling to meet. Earlier this year, the State Department witness at the 2000 hearing reiterated that the views he expressed remain those of the State Department. During the term of your predecessor, State officials up to Secretary Powell had to intervene several times when the Commonwealth sought to enter into international agreements and organizations to which the U.S. had not agreed or to which it objected.

In light of this, why should we consider this aspect of your proposal viable?

Answer. Again, it is pointless to enter into such a discussion unless we have an actual good faith negotiation, which is not happening at this point.

Question 10. Your proposal for the "Development of the Commonwealth" would recognize Puerto Rico as a nation but in a permanent union with the U.S. that neither nation would be able change or end. One of the basic elements of national sovereignty is that a nation can determine its relationships with other nations.

Wouldn't acceptance of your proposal mean that neither the U.S. nor Puerto Rico would be sovereign nations?

Answer. No. The question is premised on an outdated vision of sovereignty as a zero sum game, where one entity's gain must be another entity's loss. In the 21st Century nations are not absolute sovereigns. Every nation agrees to cede some element of what could have been an absolute sovereignty, simply as a matter of coexisting on the same planet. The Federal Union of States itself recognizes a dual sovereignty that cannot be unilaterally broken. There is absolutely nothing in the U.S. Constitution that prohibits an analogous dual sovereignty relationship with a non-State jurisdiction.

Question 11. You argued that the Task Force reiterated the federal position that one Congress cannot bind a future Congress regarding Puerto Rico policy as long as Puerto Rico remains a territory and does not become a nation or a State.

If one Congress could bind a future Congress regarding Puerto Rico policy while Puerto Rico remained a territory, wouldn't it compromise the future Congress' power under the Territory Clause of the Constitution? Wouldn't it compromise the sovereignty of the federal government? Wouldn't it in essence make Puerto Rico a different kind of State of the U.S.—in a nation where the States are intended to be equal—and, since it would not have equal voting representation in the federal government, make Puerto Rico a second-class State?

Answer. In the same fashion that one Congress may accept one territory as a state, and thus "compromise the future Congress' power under the Territory Clause", Congress can enter into a different relationship. As explained by the late Chief Justice Rehnquist when he served at the Justice Department:

"One Congress could bind subsequent ones where it creates interests in the nature of vested rights, e.g., where it makes a grant or brings about a change in status. Thus we concluded in the early 1960's that a statute agreeing that the United States would not unilaterally change the status of Puerto Rico would bind subsequent Congresses."

The Justice Department held this position for over 30 years, and it has failed to provide a reasonable legal explanation of why 15 years ago it changed this position. The Task Force Report had the opportunity to offer this explanation, but it offered no new analysis.

Question 12. Proposals for the federal government to cede national government powers to the Commonwealth without making it a nation have been rejected by the federal government for half a century, beginning with legislation by Resident Commissioner Fernos in the 1950s and Governor Munoz's negotiations with a task force

under President Kennedy. At the same time, federal officials have always said that the Commonwealth can continue to be a territory. The Task Force and the Clinton Administration have also said that free association is the status option most similar to "developed Commonwealth" proposals.

Is there a point at which you recognize that the federal government is not going to cede national government powers to the Commonwealth and you choose among the constitutional options: for the Commonwealth to remain a territory or to become a sovereign nation in a free association with the U.S., or choose one of the other recognized status options—*independence or statehood*?

Answer. The reasons why Congress has failed to act on proposals for greater autonomy for Puerto Rico have been varied and cannot be simplified into a statement that they "have been rejected by the Federal Government for over 50 years." For 20 of those 50 years, Puerto Rico had pro-statehood Governors who were not interested in pursuing greater autonomy. It can also be said that several former territories failed to convince Congress to accept them as a state for long periods of time, yet this hardly seems like a convincing argument for them to have stopped those requests if that is what their citizens wanted.

Question 13. Your proposed "Development of Commonwealth" primarily consists of proposed changes in federal laws and policies.

Shouldn't the people of Puerto Rico have the benefit of federal views on these proposed changes in federal laws and policies so they can make an informed decision if they are to elect a convention of delegates favoring different status proposals?

Answer. Yes. As I stated during the Committee hearing, I envision that during the Constitutional Convention there would be extensive consultation with the Federal Government.

RESPONSES OF GOVERNOR ANÍBAL ACEVEDO-VILÁ TO QUESTIONS
FROM SENATOR MARTINEZ

Question 1. The Task Force calls on Congress to primarily provide for a plebiscite between: A) continuing the current status and B) seeking a non-territorial status. The Congress is not asked to take another step until after that vote. The Puerto Rico Democracy Act that I sponsored along with Senators Salazar, Craig, Landriau and nine others would provide for the plebiscite.

Would you agree that this bill will not preclude consideration of any status proposal or process after that vote?

Answer. No. There is a significant dispute as to the scope of the Territory Clause. It could be argued that any option where the United States retains certain powers under the territory clause (be it limited powers as we believe is possible) or unlimited powers (as the Task Force report contends) would be precluded from consideration after that vote.

Question 2. It is my understanding that you have referred to a "democratic deficit" in Puerto Rico and have further suggested allowing Puerto Rico to nullify federal laws and to enter into international agreements as a response to this perceived problem.

If your proposals for the "Development of the Commonwealth" are feasible, why not allow the Task Force's plebiscite process to move forward and perhaps include a 'Developed Commonwealth' option in the second-round of this process?

Answer. That does not appear to be possible, as explained in the previous question.

Question 3. The Task Force recommended that Puerto Rico's status preference be chosen by the citizens of Puerto Rico. Others have proposed that it be chosen by a convention. Under this alternative proposal, Puerto Ricans would only be able to accept or reject the convention's choice after the federal government agreed to the proposal.

Wouldn't it be more democratic to allow Puerto Ricans to directly choose the status of the territory?

Answer. This notion that the two step vote outlined in the Task Force Report is "more democratic" than the Constitutional Convention is false. If you arbitrarily limit the options available to the people in a direct vote as recommended in the Task Force Report, the process becomes totally anti-democratic. The Constitutional Convention is well recognized around the world as a valid democratic mechanism, but it has its deepest roots in U.S. history since it was the mechanism used for the adoption of the U.S. Constitution. The Constitutional Convention will have before it a full range of options and the voters will have the last word on approval, so I do believe voters will be directly choosing their political future. Accordingly, I disagree that a status choice among artificially limited options as suggested by the Task Force Report is "more democratic."