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HEARING ON H.R. 4751, PUERTO RICO-
UNITED STATES BILATERAL PACT OF
NON-TERRITORIAL PERMANENT UNION
AND GUARANTEED CITIZENSHIP ACT

UNEDITED TRANSCRIPT
COMMITTEE ON RESOURCES

October 4, 2000
Washington, DC



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NOTE; The above list reflects the Committee's membership at the time of the hearing.

UNEDITED TRANSCRIPT
COMMITTEE ON RESOURCES

HEARING HELD OCTOBER 4, 2000

HEARING ON H.R. 4751, TO RECOGNIZE ENTRY OF THE COMMONWEALTH OF PUERTO RICO INTO PERMANENT UNION WITH THE UNITED STATES BASED ON A DELEGATION OF GOVERNMENT POWERS TO THE UNITED STATES BY THE PEOPLE OF PUERTO RICO CONSTITUTED AS A NATION, TO GUARANTEE IRREVOCABLE UNITED STATES CITIZENSHIP AS A RIGHT UNDER THE UNITED STATES CONSTITUTION FOR ALL PERSONS BORN IN PUERTO RICO, AND FOR OTHER PURPOSES - PUERTO RICO-UNITED STATES BILATERAL PACT OF NON-TERRITORIAL PERMANENT UNION AND GUARANTEED CITIZENSHIP ACT

WEDNESDAY, OCTOBER 4, 2000

HOUSE OF REPRESENTATIVES,

COMMITTEE ON RESOURCES,

WASHINGTON, D.C.

The committee met, pursuant to notice, at 11:23 a.m., in Room 1324, Longworth House Office Building, Hon. Don Young (chairman of the committee) presiding.

STATEMENT OF HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

The CHAIRMAN. The committee will come to order. Good morning, ladies and gentlemen, members of the committee. Today we will receive testimony from witnesses concerning H.R. 4751, legislation which presents, in bill form, a proposed political status formula for the Commonwealth of Puerto Rico and which would make legally permanent Puerto Rico's present commonwealth system of internal government.

The definition of enhanced commonwealth and the enhanced commonwealth formula presented in H.R. 4751 is the formal proposal by the Popular Democratic Party of Puerto Rico, adopted by

the party on October 15, 1998. It is the formula in which the party proposes its goal to be reached as Puerto Rico moves through its self-determination and political status resolution process.

H.R. 4751 is the measure that Congress would have to approve to attempt to implement the party's enhanced commonwealth formula. Various versions of this enhanced commonwealth formula have been promoted in Puerto Rico for five decades as a theory of political status purporting to offer the benefits of both statehood and independence without the full burdens of either.

The contention that this commonwealth formula might be legally possible and politically realistic is the subject of continuing debate within the Commonwealth. Today, we will focus on the many commonwealth status questions which arise in this long-standing debate.

Let me point out that this hearing is not a hearing on the many other recommendations for resolving the status of Puerto Rico. This is not a hearing on the Independence Party's recommendations, nor a hearing on the New Progressive Party's recommendations, nor a hearing on the administration's recommendations. This is a hearing on H.R. 4751, the Popular Democratic Party's commonwealth status recommendations.

The Popular Democratic Party was invited to testify at this hearing. Unfortunately, the president of the party declined our invitation.

[The prepared statement of Mr. Young follows:]

***** INSERT *****

[The text of H.R. 4751 follows:]

***** INSERT *****

The CHAIRMAN. At this point, I will recognize my good friend, the governor, for an opening statement.

STATEMENT OF HON. CARLOS A. ROMERO-BARCELO, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PUERTO RICO

Mr. ROMERO-BARCELO. Thank you. Thank you, Mr. Chairman. Mr. Chairman, for the overwhelming majority of the 3.9 million loyal U.S. citizens in Puerto Rico who cherish democracy and love liberty and love this nation. This year has brought forth many feelings and emotions related to more than 100 years of territorial status. The strongest of these feelings and emotions for most in Puerto Rico has been a renewed resolve to complete the overdue task of forming a more perfect union with the rest of our nation based on equality. I say this because it is more clear than it has ever been that the desire of the U.S. citizens of Puerto Rico for equal justice and equal opportunity with all other U.S. citizens will not be fully realized until the status question is resolved.

In 1998, I predicted that Congress would regret its failure to heed this committee and approve legislation establishing a process to resolve the status of Puerto Rico. This prediction is being proven correct. The lack of a Congressionally approved policy regarding the status of Puerto Rico is beginning to produce unpredictable results in the legal and political process that impacts U.S. national interests, and you can look at the record.

On July 17 of this year, a Federal district court ruled that Federal law must be compatible with local law to apply in Puerto Rico. The court's order stated that Puerto Rico must give specific consent to application of Federal law since consent of the governed is denied to U.S. citizens in Puerto Rico by virtue of the fact that we lack voting representation in Congress. Although I believe that this decision will be overturned, however, it is a decision by the U.S. District Court.

On August 4 of this year, a Federal district court decided that the U.S. citizens of Puerto Rico have a right to vote in election for the President and Vice President of the United States. The Legislative Assembly of Puerto Rico took it upon themselves to carry out the court's order by enabling the presidential vote to take place even if the vote will not be counted. If the court's ruling is overturned, this election will be an historic expression of the desire of the U.S. citizens of Puerto Rico for enfranchisement as enjoyed by our fellow citizens in the rest of the nation.

The controversy over Vieques has provoked some in Washington and Puerto Rico to argue that Puerto Rico should separate from the rest of the nation and go its own way if it is unwilling to host national defense training exercises. This would not be said if citizens of an area in a State were to take the same stand regarding military operations in their area. Fortunately, cooler heads have prevailed, recognizing that the Vieques question is not that simple and that it directly involves the question of disenfranchisement and Puerto Rico's lack of sovereignty or lack of participation in the exercise of sovereignty.

These court rulings which attempt to address the denial of equal democratic rights for 3.9 million U.S. citizens have something in common with the desperation born of deep frustration in the case of Vieques. These two very different problems are, in a sense, the same and best can be understood as a manifestation of the need for Congress to define the constitutionally valid options for resolving the status of Puerto Rico. Vieques could never have happened if the U.S. citizens of Puerto Rico were not disenfranchised under our present territorial status, which we euphemistically call "Commonwealth."

In a very different way, the introduction of H.R. 4751 is also a manifestation of the need for Congress to commit itself to a status resolution process. Regardless of the subjective motives of the sponsor, my colleague on the Republican side, Mr. Doolittle, on the objective level of fact, this bill contains the status formula adopted by the Popular Democratic Party of Puerto Rico in October 1998, just before the last status vote was conducted under local law, and this is what was discussed before the people of Puerto Rico. It is the commonwealth option that the leaders of the pro-commonwealth party offer the people of Puerto Rico, an option which accepts permanent disenfranchisement in exchange for a package of unrealistic and unattainable package of legislated rights.

When Federal judges appointed by the President and confirmed by the Senate ordered judicial remedies for disenfranchisement under—

The CHAIRMAN. Will the gentleman stop for a moment? Whoever has a cell phone in here, the rules are very clear. You will leave

the room or else you will shut off all cell phones. That goes for the members as well as the people in the audience. It is impolite, offensive to me, and I do not think you want to offend this chairman.

The gentleman can proceed.

Mr. ROMERO-BARCELO. Thank you, Mr. Chairman. When Federal judges appointed by the President and confirmed by the Senate ordered judicial remedies for disenfranchisement under the current political status, when national defense operations are halted because the community impacted by training exercises has been left unprotected and denied justice for decades, when the leaders of a political party in Puerto Rico espouse a status formula that is based on special rights that cannot be guaranteed instead of equal rights that are guaranteed, these developments make manifest the need for Congress to meet its constitutional responsibility to establish a clear policy on the future status of Puerto Rico.

The ultimate status of Puerto Rico and enfranchisement of its voters in our nation's democracy so that full self-government is achieved is a political question for Congress to decide based on an informed process of self-determination by the voters. Congress can delay, Congress can run away from it, but in the end, it cannot hide from its constitutional duty to define a status resolution process.

I represent all the citizens of Puerto Rico in this Congress and have no doubts that the status formula contained in H.R. 4751 is not constitutionally, legally, and politically possible.

The people in Puerto Rico who propose this formula are quite aware that it is unprecedented and many realize it probably never will be implemented. Still, in the absence of a Congressional policy that defines the terms for continued commonwealth, statehood, and separate nationhood, many of our fellow citizens in Puerto Rico have concluded Congress will never open up a pathway to a permanent and constitutionally guaranteed status. That is why many have become beguiled and obsessed with the idea that Puerto Rico can have it both ways and enjoy the best features of Statehood and independence, at the same time with the full obligations of neither.

As much as I disagree with that conclusion and as much as I oppose any status not based on equal citizenship for all, I want my constituents who support this formula to be shown respect and to be understood. We need to establish a record that shows Congress understands what it is that they are proposing, even if the party that proposed it is unwilling to defend its contents.

Congress must recognize that the U.S. citizens in Puerto Rico who support this formula are good Americans who were taught to believe in the principle of government by consent. There understand that there is no substitute for consent of the governed, but they have been told that a substitute form of consent is available under the Constitution. It has been the failure of Congress, not the U.S. citizens of Puerto Rico, to honor and redeem the principle of government by consent of the governed as defined by the U.S. Constitution. That lack of a constitutionally valid definition of government by consent has created fertile ground for local political leaders affiliated with "commonwealth" to sow the seeds of confusion about how to achieve a permanent constitutional status based on consent.

Congress has made this status formula called commonwealth to appear plausible by its ambivalence and silence on the status of Puerto Rico. Now events demand that Congress exercise its constitutional power and define the status options and the self-determination process through which the U.S. citizens of Puerto Rico can express and ultimately realize their aspirations for a fully enfranchised and fully self-governing status.

This committee should be commended for holding this hearing so that the U.S. citizens of Puerto Rico can see that the so-called enhanced commonwealth formula would mean less participation for Puerto Rico in the U.S. national economy, less progress toward enfranchisement and equal citizenship rights, and even less certainty of political union and U.S. citizenship for our children in the future.

The 3.9 million U.S. citizens of Puerto Rico need to know the truth about the enhanced commonwealth formula and this hearing should make the truth a matter of record in Congress. For the first time, the details of what the commonwealth supporters elite has proposed in Puerto Rico will be on record so that they may be fully understood by Congress. That should hasten the day when Congress and the U.S. citizens of Puerto Rico will agree on a legitimate process to complete the decolonization of Puerto Rico and finally resolve the issue of 83 years of disenfranchisement of the U.S. citizens of Puerto Rico. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman for the outstanding job he has done on this issue.

[The prepared statement of Mr. Romero-Barcelo follows:]

***** INSERT *****

The CHAIRMAN. Mr. Dooley, I am going to recognize you because I understand you have someplace to go.

STATEMENT OF HON. CALVIN M. DOOLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. DOOLEY. Yes. I just want to associate myself with the remarks of Mr. Romero-Barcelo and have a statement I would like to include in the record.

The CHAIRMAN. Without objection, so ordered.

[The prepared statement of Mr. Dooley follows:]

***** COMMITTEE INSERT *****

The CHAIRMAN. The lady from the Virgin Islands.

STATEMENT OF HON. DONNA M. CHRISTIAN-CHRISTENSEN, A REPRESENTATIVE IN CONGRESS FROM THE VIRGIN ISLANDS

Ms. CHRISTIAN-CHRISTENSEN. Thank you, Mr. Chairman, for the opportunity to make this opening statement.

Mr. Chairman, I speak as a member who is from one of the offshore territories of the United States and the closest neighbor to Puerto Rico, with whom we share historical, cultural ties, and kinship through the many families who relocated to St. Croix and the Virgin Islands in the early part of the last century, ties that we celebrate even this week in my home district.

Mr. Chairman, I understand that the author of H.R. 4751, our colleague on the committee, Mr. Doolittle, has said that he introduced this bill before us with the intention that it never become law but that he hopes the bill will provoke an honest discussion of Puerto Rico's future and the truth about its current status. That it certainly will, and not only for Puerto Rico but for all of us. But why this bill and why now?

Despite opening statements, I fail to find an answer. On face value, while it 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.

Mr. Chairman, former Supreme Court Chief Justice Felix Frankfurter once wrote that "history suggests a great diversity of relationships between a central government and a dependent territory." Yes, our citizens receive Federal subsidies and we do not pay direct Federal taxes. However, we do not get to have a direct say in who our Commander in Chief will be. We do not vote for the man or woman who, with the stroke of a pen, could order our sons and daughters to go and fight or die for our country, and we serve in this body with rules under which our Congressional representatives would not be able to vote yea or nay on whether we supported or opposed that action.

Despite all I have said, Mr. Chairman, let me say to my colleagues and to the witnesses represented here today, who I also welcome, that I welcome the discussion that H.R. 4751 would provoke. The residents of Puerto Rico, as well as the Virgin Islands and I would assume Guam, American Samoa, and the CNMI, we all deserve to know how our fellow Americans think we should be treated under this imperfect relationship that is ours. Our fellow citizens need to understand also that we are a part of this country and they need to know that our hopes and aspirations are very much the same as theirs.

It is my hope that any negative consequences that could have been intended and any which might be foreseen will instead, because of the goodness, the fairness, and generosity of the American people, foster closer bonds between us and our fellow Americans.

The people of the U.S. Virgin Islands have been a part of the United States since we were purchased from Denmark in 1917. We were denied American citizenship for the subsequent 10 years, but have been Americans since then, and time and time again a majority of Virgin Islands citizens have expressed their desire to remain a part of this great country of ours. We deserve and expect, however, to be treated with the dignity and respect that our relationship with our mother country affords us. Our status is not a drain on the American taxpaying public. It is but a meager payment for our support of our country in peacetime and war, for the many contributions of our people, and for the position of not being able to control our own destiny.

We do not control our borders, natural resources, or when and if we fight in a war. Ours is not a perfect relationship, nor is it one of our exclusive choosing to date. We are, however, one family struggling to find a balance between full local self-government and

the advantages and responsibilities of being under the sovereignty of a bigger mother country. That process in which each of us finds ourselves at different levels of involvement must be respected, and I do not find that this bill does that.

I thank you again, Mr. Chairman, for allowing me to make this opening statement and I look forward to hearing from the witnesses.

[The prepared statement of Ms. Christian-Christensen follows:]

***** INSERT *****

The CHAIRMAN: The gentleman from New Jersey, Mr. Saxton.

STATEMENT OF HON. JIM SAXTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. SAXTON. Thank you, Mr. Chairman. I want to thank you for holding this hearing today. I have been a Member of Congress for 16 years and during that period of time I have served with the chairman on numerous committees. I know that the chairman cares very deeply about self-determination for the people of Puerto Rico.

I also want to thank my colleague, Mr. Doolittle, for introducing the bill at issue today. Like my colleague, Mr. Doolittle, I am not sure what Puerto Rico's ultimate political status should be, but I agree with him that we should consider and debate only those options that pass constitutional muster. In my opinion, this bill fails in that regard.

The proposal, which I understand was originally put forward by Puerto Rico's Commonwealth Party, seeks to create a quasi-nation within a nation. This new entity would have the authority to make all laws necessary for its own governance, regulate trade with foreign countries, and enter into treaties with other nations. On the other hand, the residents of this new entity would be U.S. citizens, use U.S. currency, and be protected from enemy attack by U.S. forces. If this entity sounds more like a State than a separate nation, consider that the citizens and businesses of this new entity would not have to pay U.S. income taxes.

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.

Mr. Chairman, I look forward to hearing from the witnesses today. I understand that the faction that devised the plan did not accept the committee's invitation to testify today. That is disappointing. Nevertheless, I look forward to hearing from the witnesses that are with us. Thank you very much.

The CHAIRMAN. I thank the gentleman.

If we may, we have witnesses waiting and I would suggest respectfully, unless you are from the territory, submit a statement. Mr. Pallone, is that all right with you or do you want to make a long statement?

Mr. PALLONE. I am sorry. You do not want us to do any more?

The CHAIRMAN. No, really. I mean, we have got witnesses here that have to go.

Mr. PALLONE. If everybody else agrees to that, I have no problem.

[The prepared statement of Mr. Pallone follows:]

***** INSERT *****

The CHAIRMAN. Mr. Underwood, I would say, or my good friend from American Samoa, those two gentlemen have directly some real interest in this, and Mr. Doolittle, because you are the author of the bill, make it good and short. Mr. Doolittle?

STATEMENT OF HON. JOHN T. DOOLITTLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. DOOLITTLE. Thank you, Mr. Chairman. I thank you for agreeing to hold this hearing today. You have been tireless in your efforts to persuade Congress that it has a duty to help Puerto Rico achieve a permanent political status.

I have a somewhat lengthy statement, Mr. Chairman, which I will not be able to abbreviate, so I will say this to you. Many, you and Mr. Saxton and Governor Romero-Barcelo, have expressed thoughts that I agree with. I will just say this. I would vote against this bill myself, but I introduced it for the purpose of provoking this discussion and of getting finally a focus by the Congress on these issues, because I think it is absolutely critical that we identify what the acceptable alternatives are, and in my opinion, this proposal reflected in the bill, really, which is the PDP's proposal, is absurd and unconstitutional on its face and we need to hear today from the experts in constitutional law and in policy and have them give us their seasoned opinions on these issues because the people of Puerto Rico do have American citizenship. They are entitled, I think, to know what the truth actually is.

I am hopeful that out of this hearing today will come some positive momentum for resolving the political status of Puerto Rico. I will submit the rest of my statement, Mr. Chairman.

The CHAIRMAN. I thank the gentleman for being understanding.

[The prepared statement of Mr. Doolittle follows:]

***** INSERT *****

The CHAIRMAN. I also ask unanimous consent that the statement of Mr. George Miller be submitted for the record.

[The prepared statement of Mr. Miller follows:]

***** INSERT *****

The CHAIRMAN. I ask that the statement of Senator Larry Craig be submitted for the record.

[The prepared statement of Senator Craig follows:]

***** INSERT *****

The CHAIRMAN. I also ask that the statement of Representative Henry Bonilla be submitted for the record. Without objection, it is so ordered.

[The prepared statement of Mr. Bonilla follows:]

***** INSERT *****

The CHAIRMAN. At this time, we are honored to have the Honorable Dan Burton from the U.S. House of Representatives to be our first witness, and before you go ahead, Dan, I am moving Mr. Dick Thornburgh up on the first panel, coming right after Walter Dellinger. It will be five, and then the last two will be in the second panel.

Mr. Burton?

STATEMENT OF HON. DAN BURTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. BURTON. Let me just say, Mr. Chairman, I have worked with you for a long time on the Puerto Rico issue. I admire your stand and your hard work and you are to be commended for holding this hearing. Mr. Doolittle, who is a good friend of mine, as well, I thank you for bringing this issue before the Congress and this committee because I think it is extremely important that the people of Puerto Rico, whom I love—I have been down there with the chairman a number of times and they are wonderful people—they deserve to know the facts about where they stand as far as this issue is concerned.

This bill seeks to emphasize the need to address and clarify the definitions of the status options that are available to the U.S. citizens in Puerto Rico. Up until now, the lack of a Congressionally-mandated plebiscite to decide once and for all the political status of Puerto Rico has resulted in a waste of time and money, as previous debates and referendums have unfortunately been filled by inaccurate and potentially unconstitutional definitions. These definitions have misled the Puerto Rican people into believing in something that is just not feasible.

An example of one such definition is the definition of enhanced commonwealth that we have before us today. In the past, this definition has been supported by the Popular Democratic Party, the Puerto Rican political party that promotes the status quo as the ultimate political relationship with the United States. Maybe the definition 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 promotes 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.

It is disturbing that over the past 101 years, Mr. Chairman, the U.S. Congress has considered a total of 92 bills regarding the sta-

tus of Puerto Rico and yet there has been no resolution to the ambiguous relationship between Puerto Rico and the United States.

I believe that the United States citizens of Puerto Rico have the right to choose to enjoy the full privileges and responsibilities that the rest of America's citizens are able to enjoy today, or in the alternative, they also can choose for themselves to establish a free and independent republic, a free country.

For that reason, I firmly believe that Congress should act now to give the people of Puerto Rico the ability to choose between the only real options for full sovereignty, statehood or independence. It is time that we take charge of our legal and moral obligations and enact legislation that will resolve Puerto Rico's political status by allowing them to decide their own future for themselves once and for all.

We have been debating this, Mr. Chairman, for a long time. You and I have worked on it for a long time. There has been so much confusion down there that we have seen time and again when we have been down there that it is really time to resolve this issue and there are only two choices, in my opinion, and I think you agree with that, and that is independence or statehood. I believe truly that the wonderful people of Puerto Rico, when faced with that decision, will undoubtedly vote once and for all to become the 51st State of the Union. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Burton. I can agree with what you have said and I suggest also you have been a leader in this for a long, long time. For those in the audience, I will not be chairman of this committee next year but I will be on the committee and I will not give up on this issue. Everybody knows where I am coming from. I have been very right up front. We brought the bill to the floor and we will continue to work on this issue, and with your help, Mr. Burton, hopefully we will be able to solve these problems as time goes by.

[The prepared statement of Mr. Burton follows:]

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The CHAIRMAN. At this time, I am going to turn the committee over to Mr. Doolittle, author of the bill, and he will call the first panel that will appear before us. I have to go to another meeting. I will try to return as soon as possible. Mr. Doolittle, you will be chairman.

Mr. DOOLITTLE. [Presiding.] We will invite the members of panel one to take a seat at the table. We will have testifying today, in this order, Mr. Walter Dellinger, The Honorable Dick Thornburgh, Mr. Jeffrey Farrow, Mr. William Treanor, and Mr. Robert Dalton.

We welcome all of you here and appreciate your arranging your affairs so that you could come and testify today on this important issue. We will begin with Mr. Dellinger, who is a professor of law at Duke University and I understand associated with O'Melveny and Myers in Washington, D.C. Mr. Dellinger?

STATEMENTS OF WALTER E. DELLINGER, PROFESSOR OF LAW, DUKE UNIVERSITY, O'MELVENY AND MYERS, WASHINGTON, D.C.; JEFFREY L. FARROW, CO-CHAIR, THE PRESIDENT'S INTERAGENCY GROUP ON PUERTO RICO, WASHINGTON, D.C.; WILLIAM M. TREANOR, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, UNITED STATES DEPARTMENT OF JUSTICE, WASHINGTON, D.C.; ROBERT DALTON, ASSISTANT LEGAL ADVISOR FOR TREATY AFFAIRS, UNITED STATES DEPARTMENT OF STATE, WASHINGTON, D.C.; AND DICK THORNBURGH, KIRKPATRICK AND LOCKHART LLP, WASHINGTON, D.C.

STATEMENT OF WALTER E. DELLINGER

Mr. DELLINGER. Mr. Doolittle and members of the committee, thank you very much for allowing me to appear today. I apologize in advance that I have a long-scheduled debate at 12 noon sponsored by the American Bar Association and will, therefore, unfortunately have to leave, but I look forward to following this issue further.

Mr. Doolittle, as you know, the people of Puerto Rico face very difficult decisions about their political status and their political future. The four million Americans who—

Mr. DOOLITTLE. Why do you not hold on for just a minute until we get the bells and all of this out of the way. We are going to have you go ahead and complete your statement and then we will decide what we are going to do.

Mr. DELLINGER. Good. I will be concise as I hear that you all are receiving your instructions from the voice of the whip's office.

The people of Puerto Rico face difficult choices, and I would like to make it clear to the committee that though I have studied constitutional law and taught constitutional law here and abroad for nearly 30 years, that is the limit of my expertise and I do not have a view on what is best for the people of Puerto Rico or the people of the States as they work out their relationship. I come to testify today to take a look at H.R. 4751 and to see whether its provisions are consistent with the Constitution of the United States.

Mr. Doolittle, over the 30 years I have been a professor and scholar of constitutional law, I have encountered a number of very difficult and uncertain questions of constitutional law, but this bill is not one of them. The propositions put forth by this bill, in my view, are so clearly unconstitutional that I do have concerns that the propositions put forward here would be misleading to the citizens and the people of Puerto Rico and anyone else who was concerned about this difficult issue.

The basic propositions by which these proposals are clearly impossible under the United States Constitution are simply this. Congress has plenary authority under the Constitution to govern the territories of the United States and that is the basis upon which Puerto Rico is presently governed under a statutory framework.

Secondly, there is no more fundamental proposition of the American Constitution than the democratic principle that a newly elected Congress is free to alter, revise, amend, revoke, repeal, or otherwise alter legislation passed by a previous Congress. If the people

of the United States do not like the legislation they have, they get to elect a new Congress which passes new laws. Therefore, whether this bill creates something more like a separate nation or more like a nation within a nation, the guarantees put forth in this bill, for example, that the United States will provide the defense for Puerto Rico or that Puerto Rico will not have Congress legislate for it without the consent of governing officials there, they are simply not worth the paper they are written on because the next Congress, newly elected, or the same Congress a week later can reach a different judgment and reflect the views of the national constituency in a different way.

I mean, this has been clear since the beginning of a republic, that the only way to make a permanent change in legal status is through an amendment to the Constitution or by having one of the territories of the United States become an independent nation, as the Philippines did, or become a State, as so many of our areas did after the first 13 formed the Union. So these are the two ways.

But the reason these promises are so misleading, and I am afraid so disingenuous, is that they simply hold out something that cannot be done in the face of the continuing constitutional authority of Congress. As long as the area of Puerto Rico is neither a State nor an independent nation, then Congress has plenary authority to legislate as it will and none of the guarantees or provisions can be enforceable on a new Congress.

I would go on at greater length. I am happy to answer any questions you may have for me. But I think the issue is so clear and simple that the provisions put forward in the Popular Democratic Party provision are simply fundamentally incompatible with the Constitution of the United States that there is really not a lot of elaboration, I think, that is necessary to establish that proposition. Thank you, Mr. Doolittle.

Mr. DOOLITTLE. Thank you, sir.

[The prepared statement of Mr. Dellinger follows:]

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Mr. DOOLITTLE. If the committee will indulge me here, we do not have much time to ask questions of Mr. Dellinger. He will be gone by the time we come back because there are two votes. Is there anyone that wishes to pose a question to Mr. Dellinger? Yes, Mr. Underwood?

Mr. UNDERWOOD. Just quickly, Mr. Dellinger, under your explanation, if Congress has plenary authority over the territories and cannot do this on a permanent basis, if it passed legislation like that, then it would simply be in effect until some future Congress changed it, is that correct?

Mr. DELLINGER. That is correct. It would be in effect until a future Congress changed it, though I would want to caution, Mr. Underwood, that some of the provisions, I think, would be subject to constitutional challenge immediately, that is, even before changed by a future Congress, that is, provisions that purported to give up the President's authority over foreign affairs or that made foreign affairs obligations, that delegated some executive powers that the Constitution puts in the executive branch of the national government. Some of those might be subject to constitutional chal-

lenge immediately. But the other more core provisions would exist until a future Congress—

Mr. UNDERWOOD. Would it make any difference if the legislation or the proposal said for a period of 25 years or 50 years or if it gave a time frame?

Mr. DELLINGER. That goes right to the heart of the matter. A provision that guaranteed certain statuses to Puerto Rico for 50 years could be repealed the next day after it had been enacted, and, therefore, it would no longer be law and there would be no guarantee. That is why a 50-year guarantee in legislation over an area with respect to which Congress has plenary authority is not effective.

Mr. UNDERWOOD. But that applies to almost anything that Congress does, right?

Mr. DELLINGER. That is correct, except that with regard to the States of the Federal Union, they have rights as States under the Constitution that Congress may not constitutionally touch, so that there are, as we know, more and more—

Mr. UNDERWOOD. That does not stop them from trying, though.

Mr. DELLINGER. What stops them from trying is the Supreme Court has been very protective of the sovereignty of the States and of their rights. I believe 24 acts of Congress have been invalidated in the last 5 years, many on the grounds that they try to touch or interfere with the sovereign role of the States.

Mr. UNDERWOOD. Thank you.

Mr. DOOLITTLE. I would like to recognize Mr. Tauzin for questions.

Mr. TAUZIN. I will be brief. I simply want to make sure I understand this. The bill, H.R. 4751, would attempt to confer perpetual rights of U.S. citizenship with all attendant Federal benefits without making those citizens subject to Federal income taxes, is that correct?

Mr. DELLINGER. That is the way I read it, Mr. Tauzin.

Mr. TAUZIN. That is the way I read it, too. Would it be permissible, Mr. Chairman, for me to amend the bill to include the great State of Louisiana?

Mr. DOOLITTLE. If this is constitutional, a number of us may. I like the part that says they do not have to abide by any Federal law if they choose not to. That is what South Carolina was trying to get in the last century, is it not?

Mr. TAUZIN. Can we pick the Federal laws we would like not to abide by? Thank you, Mr. Chairman.

Mr. DOOLITTLE. Thank you.

Yes, Mr. Faleomavaega?

Mr. FALEOMAVAEGA. I just want to ask a quick question of Mr. Dellinger. You mentioned about the unconstitutionality of the proposed legislation. Are you aware of the covenant relationship that Congress creatively has provided for the Commonwealth of the Northern Mariana Islands?

Mr. DELLINGER. I am aware of that, yes.

Mr. FALEOMAVAEGA. And there are special provisions in this covenant relationship that goes well into the heart of the constitutionality of some of those provisions.

Mr. DELLINGER. That is true, but what that bill cannot establish, or the act about the Marianas cannot establish, is the fact that you and your colleagues might not decide to alter that tomorrow.

Mr. FALCOMA. The interesting thing about this, too, professor, is that the word "commonwealth," and I am not an expert in Spanish, is a free association, and we get into a very interesting dialogue here about the Micronesian states that are now in free association with the United States. Call it what you want, but it seems to me it is a form of enhanced commonwealth status that we have with these uniquely established states like the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, and they seem to be functioning very well in our relationship with them.

Mr. DELLINGER. Certainly, Congress may choose to have a relationship of that kind. It is clear that the Congress may choose to delegate, as it has done, for example, to the District of Columbia. Congress may choose from time to time to delegate authority. But we also know, we have seen many instances in Congress where if some Members of the Congress do not like something that the D.C. City Council does, there will often be a bill in Congress the next day to reverse or rescind what the District of Columbia has done.

Now, the Marianas have the good fortune that they are further away and I think Congress pays less attention than they do to the laws that are passed. But even where you have as much a tradition of self-government as now in the District of Columbia, Congress shows its authority by passing laws nullifying what the City Council has done.

Mr. FALCOMA. I do not think distance is necessarily a factor here, professor, as you are well aware. Puerto Rico, as you know, became as a prize of war in the Spanish-American War. Similarly, also, the Northern Marianas and the Micronesian Islands, we call it a strategic trust, right after World War II, and under that basis, this relationship we have established is a very unique relationship with these Micronesian states. I am just curious, the Northern Marianas is a class example, which in many instances it is a form of enhanced commonwealth because the people of the Northern Marianas want to call themselves as the Commonwealth of the Northern Marianas in a very similar fashion that those who want to promote enhanced commonwealth status is the very reason why they are suggesting that maybe a similar legislation be drawn for those who are advocates or supporters of commonwealth status.

Mr. DELLINGER. Yes, I understand that.

Mr. FALCOMA. Thank you, Mr. Chairman.

Mr. DOOLITTLE. I am going to recess the hearing at this point, and Mr. Dellinger, I regret that you have to leave, but we know that you do.

Mr. DELLINGER. Thank you. I look forward to reviewing the proceedings.

Mr. DOOLITTLE. Thank you. If we have some other questions, we will send them to you and ask you to respond to us.

With that, the hearing will be in recess for two votes.

[Recess.]

Mr. DOOLITTLE. Ladies and gentlemen, the hearing will resume. I would ask our witnesses to return to the witness table. We may have another vote here in 45 minutes, but hopefully we will have made substantial progress by then.

Mr. Thornburgh, I think with your indulgence, we will go with Mr. Farrow as the lead administration witness first. Mr. Farrow is Co-Chair of the President's Interagency Group on Puerto Rico here in Washington, D.C. Mr. Farrow, you are recognized.

STATEMENT OF JEFFREY L. FARROW

Mr. FARROW. I am Jeffrey Farrow, Co-Chair of the President's Interagency Group on Puerto Rico. I will present the executive branch's overall views. William Treanor of the Justice Department and Robert Dalton of the State Department will address some questions in greater detail. We are accompanied by Janice Podolny of the Immigration and Naturalization Service. I will also submit a letter from the Secretary of Labor, Alexis Herman.

[The letter from Ms. Herman follows:]

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Mr. FARROW. Our first point is that you are doing a great service by considering this bill. It raises issues that have prevented Puerto Rico's fundamental question from being resolved. It reflects the proposal of leaders of one of Puerto Rico's most supported political parties. They said votes for the "none of the above" column in the last status referendum would be votes for this proposal. They are now asking to try to have it implemented by July 25, 2002.

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.

However, it reflects a desire for greater autonomy while retaining most of the benefits that the United States has provided that has been a major force in the island's public debate.

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.

Many aspects of this proposal would require actions by the United States to be implemented, so Puerto Ricans should know the United States' views on it before they consider it.

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. My written statement explains some problems. Our other witnesses will explain others.

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.

We can only determine which elements of the proposal should be retained in a status option when the leaders of the party clarify which fundamental status they want. Is national sovereignty more desirable than permanent union, citizenship, and programs? It would be understandable if it is, but it is their choice. It also may be that with explanations, some elements of this proposal can be modified to make them acceptable, even if most cannot.

Puerto Rico's parties should not be expected to draft a proposal that is acceptable as drafted, but it is our responsibility to advise them of the problems, as this hearing is doing, so they can develop a realistic proposal. We will also soon report on the viability of the proposals of Puerto Rico's other parties, as Chairman Young has requested.

The President has additionally initiated a dialogue on the issue that will continue past his administration. He plans to act further to ensure this. The major candidates to succeed him have committed to continue the effort, so it should be expected to.

It is important to the United States as well as to Puerto Rico. The island's lack of votes raises questions of democratic rights. The uncertainty regarding its ultimate status raises questions of how economic and social policies should apply.

If Puerto Rico is to be a nation, as this bill proposes, we should gear programs to eventual nationhood. If it is to be a permanent member of the United States family, we should work toward equal treatment. Puerto Rico's status to date is as much about what the Federal Government would implement as it is about which option would be best. It is so intense, it affects attention to the island's social and economic needs. This proposal is not an option, but the administration has no preference among the proposals that are— independence, free association, and statehood, as well as the Federal commonwealth governing arrangement.

We strongly believe that Puerto Ricans should be enabled to obtain any of the options that would enable them to elect the officials who make their national laws, but we do not feel the current arrangement, which we respect, has to change until a majority has decided on one of those options. Instead, we should further clarify what the realistic options are so the people can make a fair, informed choice as they are ready to.

Thank you. I will be pleased to answer any questions.

Mr. DOOLITTLE. Thank you.

[The prepared statement of Mr. Farrow follows:]

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Mr. DOOLITTLE. Our next witness will be Mr. William M. Treanor, Deputy Assistant Attorney General, Office of Legal Counsel of the U.S. Department of Justice. Mr. Treanor?

STATEMENT OF WILLIAM M. TREANOR

Mr. TREANOR. Thank you very much, Mr. Chairman and members of the committee. I am pleased to be here today on behalf of the Department of Justice to respond to your request for testimony on the constitutional issues arising from H.R. 4751. I have prepared a written statement and I would like to ask that it be submitted into the record in its entirety.

Mr. DOOLITTLE. Yes. Without objection, so ordered.

Mr. TREANOR. The focus of my oral testimony will be the two principal constitutional issues raised by the bill. I will discuss the constitutionality of the statute's requirement, that its terms can only be modified by mutual consent, and the constitutionality of its treatment of United States citizenship.

I will begin by discussing the framework of the Department's analysis. That framework embodies two premises. The first is that the Constitution recognizes only a limited number of options for the governance of an area. Puerto Rico could constitutionally become a sovereign nation, as the Republic of the Philippines did. Alternately, it could remain under United States sovereignty. It could do so in either of two ways. It can be admitted into the Union as a State, and the applicable constitutional provision is in Article 4, Section 3, Clause 1, or it can be governed pursuant to the Territories Clause, and the applicable constitutional provision is Article 4, Section 3, Clause 2.

The terms of the Constitution do not contemplate an option other than sovereign nationhood, Statehood, or territorial status. Currently, despite the great degree of autonomy and self-government in local matters that Puerto Rico enjoys as a commonwealth, it is from a constitutional point of view governed under the Territories Clause. The Supreme Court's 1980 decision in *Harris v. Rosario* makes that clear, and that is also the longstanding view of the Department of Justice.

The second premise of our Constitution analysis is that, as a general matter, one Congress cannot bind a subsequent Congress. The proposition is a well-established proposition of constitutional law and it traces back to the decisions of Chief Justice Marshall in the early 19th century, including *Marbury v. Madison* and the 1810 decision, *Fletcher v. Peck*.

Because of these two premises, H.R. 4751's mutual consent provisions are constitutionally unenforceable. The requirement of mutual consent appears a number of times in the bill. For example, Section 2.1 provides that the Commonwealth of Puerto Rico is established "in permanent union with the United States of America under an agreement which may not be unilaterally nullified or changed."

The precise way in which these provisions are constitutionally problematic turns on whether the proposed status is understood as contemplating recognition of Puerto Rico as a sovereign nation or whether it is understood as continuing current commonwealth status, although in an enhanced form. The bill seems to envision the creation of a new nation. If Puerto Rico is to become an independent nation, as a matter of domestic law, the relationship between the United States and Puerto Rico would necessarily be sub-

ject to alteration by a later act of Congress. Although the United States unquestionably has the power to make contracts and give consents bearing upon the exertion of governmental power, including contracts in the international field with other national sovereigns, the United States may not contract away its power to revoke such an undertaking or to suspend its operation.

If, alternately, H.R. 4751 is read not as creating an independent country but as maintaining Puerto Rico's current territorial status, the mutual consent provisions are equally problematic. As I previously discussed, the Constitution contemplates territories and States. It does not contemplate a third status. Since Puerto Rico as an enhanced commonwealth would not be a State, it would necessarily remain subject to Congressional power under the Territories Clause. One Congress cannot prevent future Congresses from exercising a power that the Constitution gives Congress.

With respect to citizenship, the central constitutional issues concern Section 2.1's provisions that United States citizenship would be non-revokable. Whether this provision is constitutionally enforceable turns in large part upon whether the United States citizenship held by the people of Puerto Rico is already non-revokable. Analysis of that issue, again, turns on whether H.R. 4751 is understood as envisioning the creation of an independent nation.

If it would create an independent nation, the constitutional analysis is complicated. There is case law that indicates that a change in sovereignty severs the individual's ties with the country that had previously exercised sovereignty over the place that the person inhabits. At the same time, there is case law suggesting that Congress lacks power to sever citizenship over the ejection of one who is a citizen and who satisfied all preexisting conditions for citizenship, and the Supreme Court has not directly addressed the effects of granting independence to a former territory upon the continued United States citizenship of persons continuing to reside there.

The issue presents difficult questions involving the relationship between the United States citizenship held by people in Puerto Rico by virtue of the INA, Congress's power to impose conditions on retention of citizenship, and the assumptions of international law that nationality follows sovereignty.

If, however, the bill is understood as preserving United States sovereignty over Puerto Rico, the case law is more helpful. The leading case here is *Afroyim v. Rusk*, a 1967 Supreme Court decision. The Court in *Afroyim* rejected the proposition that "Congress has any general power, express or implied, to take away an American citizen's citizenship without his consent," and that is the end of the quote. The case does support the proposition that, with the exception of limited circumstances that are not applicable here, once citizenship is irrevocably granted, it cannot be taken away.

We recognize that a counterargument may be made based on the Supreme Court's subsequent decision in *Rogers v. Bellei*, to which the Court upheld the loss of citizenship of an individual who was born in Italy and who acquired citizenship at birth under a Federal statute. But *Afroyim* appears to us to be the most relevant precedent and it supports the view that so long as Puerto Rico remains a part of the United States, citizenship that has been granted is constitutionally protected.

Thank you for this opportunity to provide the views of the Department of Justice, and I am glad to answer any questions that you may have.

Mr. DOOLITTLE. Thank you.

[The prepared statement of Mr. Treanor follows:]

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Mr. DOOLITTLE. Our next witness is Mr. Robert Dalton, Assistant Legal Advisor for Treaty Affairs of the U.S. Department of State in Washington, D.C. Mr. Dalton?

STATEMENT OF ROBERT DALTON

Mr. DALTON. Mr. Chairman, members of the committee, I am pleased to have this opportunity to discuss some aspects of H.R. 4751, the proposed legislation on the future status of Puerto Rico. My prepared statement has a discussion of three points and I ask that it be admitted into the record.

Mr. DOOLITTLE. Yes, without objection, so ordered.

Mr. DALTON. I will briefly discuss elements of those three points. We are concerned about the foreign relations aspect of the legislation, particularly the proposed provisions regarding Puerto Rico's ability to enter into agreements with foreign nations and participate in international organizations. The sections of the legislation that cover this are Section 2, Paragraph 5, and Section 3, Paragraph 7. We are concerned, as other members of this panel have suggested, about implications of the proposal that residents of Puerto Rico be granted U.S. citizenship under Section 2, Paragraph 1, Section 3, Paragraphs 6 and 13.

And finally, Mr. Chairman, there are constitutional issues posed by the legislation as drafted with respect to executive branch prerogatives in the conduct of foreign relations. Those provisions are Section 3, Paragraphs 17, 21, and 22.

The proposed legislation 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.

Under our system of government, the conduct of foreign affairs is constitutionally vested in the Federal Government. Just as with States of the Union, there are many types of foreign activities in which a U.S. territory or commonwealth or State may choose to engage. At the same time, however, the Federal Government is responsible internationally for the affairs of all its territories and for the affairs of territories and commonwealths in the same way as it is for the States of the Union. It is responsible for meeting commitments and ensuring that obligations to other nations are met and that rights of the United States under treaties are formed by other countries. So the efficacy of U.S. international relations depends on the foreign activities of territories and commonwealths as well as the States fitting into the framework of an overall United States foreign policy.

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, based on the unhappy lessons learned under the Articles of Confederation, widely recognized this in framing the Constitution. The conclusion of international agreements, for example, is one of the most basic functions of foreign policy and the framers emphasized the exclusive authority of the Federal Government with respect to foreign policy functions by inserting the provisions of Article 1, Section 10, Clauses 1 and 3 in the U.S. Constitution.

The juxtaposition of these provisions and of Article 4, Section 3, Clause 2, concerning the power of the Congress to make regulations concerning the territories, raise a number of issues. Should the rules with respect to making international agreements applicable to the States be narrower than those made to the territory? How broadly should the term "agreement" in Clause 3 of Article 1, Section 10, of the Constitution be read? Would the proposed legislation with respect to the making of international agreements be an unconstitutional delegation of authority by the Congress? These are questions that are difficult.

We are concerned with such a broad obligation in the international agreement field because it risks the existence of different, perhaps conflicting obligations to foreign countries. Such cases could make it impossible for the United States to fulfill its commitments and guarantee that all of its constituent units comply with U.S. treaty obligation.

Under the current arrangements with Puerto Rico, matters of foreign relations and national defense are conducted by the United States, as they are with the States in the Union. We feel that the legislation would adversely affect that system, could result in inconsistent foreign policy commitments, and trouble our foreign relations.

In sum, Mr. Chairman, we 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 legislation 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.

One of my colleagues on the panel spoke about citizenship issues, and those are the second areas in which the Department has concern. We have concern about the proposal that would legislate dual nationality for residents of Puerto Rico, since it appears to be grounded in the recognition of the conferred citizenship on citizens of another nation, which is incompatible with the notion of sovereignty. There are also problems that are explained in my testimony about the diplomatic protection of U.S. citizens who would be in Puerto Rico and the responsibilities that a United States embassy would have under U.S. law to protect those rights.

Finally, Mr. Chairman, I turn to the third question, the question of the unconstitutional delegation of executive, or the unconstitutional interference with executive prerogatives in the negotiating area. The legislation appears to dictate the size and structure of the U.S. negotiating team. It would require that the executive branch sponsor membership for Puerto Rico in international organizations. We believe that these provisions interfere with executive branch authority and we, therefore, are opposed to them.

This completes the high points of my remarks, Mr. Chairman, and I would be glad to answer any questions.

Mr. DOOLITTLE. Thank you.

[The prepared statement of Mr. Dalton follows:]

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Mr. DOOLITTLE. Our final witness is Mr. Dick Thornburgh, who is with the firm of Kirkpatrick and Lockhart and a former distinguished Attorney General of the United States. Mr. Thornburgh?

STATEMENT OF DICK THORNBURGH

Mr. THORNBURGH. Thank you, Mr. Chairman. I have submitted a statement with attachments that I ask be made part of the record. I am obviously not a spokesman for the administration, as my predecessors were, I guess more like a member of the government in exile. Nonetheless, I am pleased to note that there is a great deal of agreement and little variance between our position on the issues that you are addressing today.

As Attorney General of the United States under President Bush, I testified before Congress nearly a decade ago on the need for a legitimate process of self-determination to resolve the political status of millions of United States citizens in Puerto Rico. I appear today as a private citizen, advising the Citizens' Educational Foundation of Puerto Rico on constitutional and self-determination issues. My views on the need for such a process, however, have only grown stronger with the passage of time and events.

I want to take note first that there is a basic fallacy at the heart of the formula set forth in H.R. 4751. The fallacy is that there is somehow a third path to a non-territorial status other than Statehood or independence that can be achieved within the framework of our Federal system of national government under the United States Constitution. Let me be direct and make it very clear. Under U.S. constitutional law and our system of federalism as a form of domestic government, there is no third path to a non-territorial status. There is Statehood and there is territorial status. Congress can be creative in how it administers a territory and Congress can grant significant levels of autonomy to a territory. However, Congress does not have the power by statute to create a new form of permanent union or political status within the union that is binding on a future Congress.

Simply put, Congress has no power to implement this formula or any formula based on the central elements of this proposal because it defines a status that is not available under the U.S. Constitution. To mislead people to believe that the only barrier to implementation of this formula is the attitude of Congress, when it is the rule of law that precludes it, merely perpetuates the colonial mentality about status options and self-determination.

Under international law, free association can be thought of as a kind of third path to decolonization and an alternative to independence or Statehood. However, what Puerto Rico has now and what is proposed in this formula is not free association as it is defined in international law. Real free association would be a treaty-based relationship that would end U.S. sovereignty, nationality, and citizenship in Puerto Rico in favor of separate sovereignty, nationality, and citizenship for Puerto Rico.

In contrast to political union and the U.S. constitutional system of federalism, real free association is the same ultimate status as independence. While a close association by treaty can be negotiated, free association is terminable at will by either party consistent with the right of both parties to national independence. Otherwise, the association would not be free. If it were meant to be unalterable without mutual consent, that would mean each party would be able to deny the right of independence to the other. That would be a continuation of a colonial and territorial status by another name.

Thus, as a matter of U.S. and international law, the only way this proposal could be implemented by Congress would be through an amendment to the U.S. Constitution creating a new form of permanent political union under our Federal system other than Statehood. Even if that were accomplished, it would not solve the problem of disenfranchisement for the U.S. citizens of Puerto Rico unless the constitutional amendment also gave Puerto Rico proportional voting representation in the House, two members of the Senate, and voting rights in national elections for the President and Vice President.

We can negotiate forever, but the central elements of this enhanced commonwealth formula remain unconstitutional and, therefore, non-negotiable. The central provisions which are constitutionally unavailable include permanent union other than Statehood, statutory guarantee of U.S. citizenship in the future without Statehood, binding Congress to the terms of this formula as an unalterable pact, a binding right of specific consent to changes in statutory policy or application of Federal laws, exemption of Puerto Rico from the Territorial Clause without Statehood, and exemption of Puerto Rico from the supremacy of Federal law in all matters. Trying to make these central provisions acceptable legally or politically without changing their meaning to conform to territorial status would frankly be a waste of time for Puerto Rico and for the Congress.

In closing, let me state, Mr. Chairman and members of the freedom loving nation, we cannot be comfortable with the exercise by Congress in perpetuity of Federal supremacy over U.S. citizens who cannot participate and compete in the American system on the basis of equality. Thus, we need to make a clear policy commitment to resolution of the territory's status on a basis that results in full enfranchisement of the citizenry under the applicable national constitutional process. This is the only approach to Puerto Rico's status that can be implemented by Congress on a bipartisan basis.

Both major parties must live up to the unambiguous position in the two national party platforms for this election year regarding Puerto Rico's right to self-determination and the responsibility of

Congress to sponsor an informed referendum process until the status question is resolved.

Thank you very much for the opportunity to appear before you today, and I will be glad to answer any questions.

Mr. DOOLITTLE. Thank you.

[The prepared statement of Mr. Thornburgh follows:]

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Mr. DOOLITTLE. I wish that we had had attend the representatives of the PDP, whose proposal we are really debating. I just stuck it into legislation so we could have this hearing. But let me ask the panel. I am trying to understand, on what possible basis could anyone argue that one Congress could bind another. I do not understand even where they think they could make that argument. Do you have some understanding of where that notion comes from, to any witness who would care to volunteer and answer?

Mr. THORNBURGH. My guess would be that the hope is that simply by saying it makes it so, but I quite agree with the chairman that there is no palpable basis for extending that kind of argument in this or any other area. As members well know, you are the ones who have the ultimate authority to lay down the rules for governance in this area and to change them, if necessary.

Mr. DOOLITTLE. Would anyone else disagree on the panel about that?

Mr. TREANOR. No. On behalf of the Department of Justice, we believe this strongly. There was a time, in particularly in a 1963 opinion from the Department of Justice, from my office, the Office of Legal Counsel, that indicated that the exception to the general principle, which is called the Vested Rights Doctrine, would allow some kind of intermediate status, but that was based on the case law at the time. Based on the current case law, we believe that there is no intermediate status. It is simply territorial status, Statehood, or independence.

Mr. DOOLITTLE. Thank you. I think I heard all of you pretty much say this, but just for the purpose of clarification, without reference to the merits, do you agree that Congress has the constitutional authority currently to unilaterally revoke U.S. citizenship from the residents of Puerto Rico? Mr. Thornburgh?

Mr. THORNBURGH. Subject to due process and equal protection provisions, which are always built into Congressional action, that is absolutely right.

Mr. DOOLITTLE. Mr. Farrow, would that be the administration's belief, too?

Mr. FARROW. I am going to let Mr. Treanor expand on what I say. Congress could discontinue the current granting of citizenship to the people of Puerto Rico. As he will explain, we do not believe that we can revoke the citizenship that persons who have it now have. Bill, do you want to expand?

Mr. TREANOR. And this is within the idea that Puerto Rico would remain subject to United States sovereignty, and our position is that the better view of the law is that the Congress, having granted citizenship to people, cannot take it away from those people. Again—

Mr. DOOLITTLE. So that would be the Vested Rights Doctrine there?

Mr. TREANOR. I think that would be an example of the Vested Rights Doctrine. In other words, this is something that the individuals have. Now, the case law is not completely clear on that. As I said in my testimony, there is a Supreme Court case, *Rogers v. Bellei*, that says that under some circumstances, it is permissible to take away citizenship, but we believe that in the kind of situation that the bill contemplates, Congress could not take away citizenship so long as Puerto Rico remains part of the United States.

If it were to go outside of the United States, if it were to become an independent nation, that is not a question that the Supreme Court has had occasion to examine. It would be a novel situation and it would present difficult questions. There is case law that indicates that sovereignty and citizenship are linked. Citizenship changes when sovereignty changes. But there is also case law that indicates that citizenship cannot be generally severed. So it would present a novel situation and there are difficult questions that would be raised by it.

Mr. FARROW. Mr. Chairman, if I could add, if I could interject here—

Mr. DOOLITTLE. Yes.

Mr. FARROW. I think this is a question that we need to look at not only from a constitutional point of view and the question of what Congress can do but what Congress would do and what is rational policy.

Mr. DOOLITTLE. Well, I understand that and I am not trying to get into rational policy. I am just trying to explore the full dimensions of Congress's authority here.

Mr. THORNBURGH, do you have any further comment on what you have heard?

Mr. THORNBURGH. I think when you look at the policy questions and what occurred in the Philippines when it changed from a commonwealth to a republic, Congress did not continue statutory U.S. nationality for residents of the Philippines and they did not create U.S. citizenship or provide by law or treaty for dual U.S. citizenship under the free association treaties with the Pacific Islands that we discussed earlier.

I think these have to be looked at very carefully on a case-by-case basis, both in the Congress and certainly they would be looked at in that manner in the courts, though I think there is a degree of uncertainty. But I think that involves an examination of precisely what the parameters of due process protection and equal protection limits are under the Constitution, as well.

So I cannot disagree with what my colleagues have said, but I think that this is an area that—citizenship is such a unique and valuable commodity that, on the one hand, it should not be treated lightly if one is to enforce a change in citizenship. But on the other hand, it is not something to be conferred lightly, particularly if a political entity has made its own decision to become independent and to adopt a separate path. So I do not know whether that helps or not, but let me say this. Let us hope that we have to face those questions under legislation adopted in this body and the other body soon.

Mr. DOOLITTLE. Just to sum up the intent of my question, let us say, then, while there is disagreement—well, there is not even dis-

agreement. You are saying, those who have got citizenship, we may not be able to remove that as a Congress, but for example, what if we passed a law that said, in the future, people not yet having citizenship but subsequently born to parents in Puerto Rico would no longer be considered U.S. citizens. Do you all believe that that would be within our power?

Mr. THORNBURGH. Yes, I do.

Mr. FARROW. Yes.

Mr. DOOLITTLE. Okay. Thank you.

Governor Romero-Barcelo, you are recognized for your questions.

Mr. ROMERO-BARCELO. Thank you, Mr. Chairman. I just wanted to go a little bit further with what the chairman has asked and I would like to ask Mr. Treanor, because you have mentioned in your testimony that Puerto Rico is governed under the Territorial Clause, and also you made another statement which is one Congress cannot bind another Congress. Furthering the question that the chairman made, it is clear that it is very difficult for Congress to take away citizenship just by a statutory act, but the citizenship in Puerto Rico, is that a constitutional citizenship or is that a statutory citizenship?

Mr. TREANOR. There is a statutory grant of citizenship under the INA.

Mr. ROMERO-BARCELO. And then Congress can always repeal or amend its own laws.

Mr. TREANOR. Congress can always repeal and amend its laws.

Mr. DOOLITTLE. INA is the Immigration and Naturalization Act?

Mr. TREANOR. That is right.

Mr. ROMERO-BARCELO. Then the constitutionally acquired citizenship are whether you are born in a State or whether you are naturalized. Those are the only two moments for acquiring citizenship that are mentioned in the Constitution, am I correct?

Mr. TREANOR. That is correct.

Mr. ROMERO-BARCELO. So Puerto Rico's citizenship is by virtue of the law passed, first of all, the first time in 1917. Now, that law can be repealed, and as we said here, those born in Puerto Rico after such and such a date will not be citizens by the fact that they are born in Puerto Rico. Congress can do that, is that correct?

Mr. TREANOR. Right. Actually, if I can just clarify that, what I say in my testimony is 14th Amendment citizenship, which is what you are referring to, that citizens of Puerto Rico are not citizens pursuant to the 14th Amendment, and that is based on Supreme Court case law and a number of Court of Appeals decisions recently. Then there is the separate question we also talk about the statutory grant of citizenship.

What I was focusing on earlier was whether that having been granted to certain people can be taken away. It is a separate question and it would be one that I think would need further study, about once a statutory grant has been made to an area, and specifically to Puerto Rico, whether it could be rescinded prospectively, again, so long as—while Puerto Rico remains subject to United States sovereignty. I think that raises difficult questions and we would have to study them further in order to respond fully.

Mr. ROMERO-BARCELO. In other words, I am talking about the people that are not born yet. Congress cannot say, well, we repeal

the law of 1917. We set it aside and from now on, those that are born in Puerto Rico will not be U.S. citizens merely by birth. Do you have any doubts about that, that Congress can do that?

Mr. TREANOR: And this is, again, if Puerto Rico were to become an independent nation?

Mr. ROMERO-BARCELO. No, either one. Right now, if Congress wanted to do it right now.

Mr. TREANOR. Again, I think if Puerto Rico remains subject to the United States sovereignty, I think it is a novel question. It is not something that the courts have had to confront—

Mr. ROMERO-BARCELO. That probably will not happen, but that is something else. I am just talking in pure legal theory!

Mr. TREANOR. Right. In pure theoretical terms, and again, I think the critical kind of constitutional doctrine is the Vested Rights Doctrine that we talked about before, it leads to a statement in, for example, the insular cases where Justice White says what has been done cannot be undone. So the question would be, having granted statutory citizenship to people in Puerto Rico for a substantial period of time, would Congress be able to prevent prospective application of citizenship? And again, I think there are difficult questions that are raised by that and we do not have a clear answer to that.

Mr. DOOLITTLE. Will you yield on that?

Mr. ROMERO-BARCELO. Yes.

Mr. DOOLITTLE. Are you not retrenching on what you just told me in my question? You all sat there and agreed that we could prospectively deny citizenship to children born in Puerto Rico. Am I misunderstanding what you said, because you are giving him a different answer than you gave me on the same question. Mr. Thornburgh?

Mr. THORNBURGH. I would suggest that part of the confusion is that in the cases used as a jumping-off point, Afroyim and Bellei, are fact-specific instances applying to individual citizens. They do not reach the question that you have posed, which is an element of the course that might be chosen by Puerto Ricans for an entire people, an entire nationality, if you will, and I think that quite different questions come into consideration there than in the individual case of a person who may have voted in another country or where they were, in Bellei, failed to comply with some specific regulation.

Mr. DOOLITTLE. And so in the case of where we are talking about an entire people, which is what the question is here, would it still be your opinion—

Mr. THORNBURGH. Yes. Yes.

Mr. DOOLITTLE. —that as you testified earlier, that we could do that?

Mr. THORNBURGH. The prospective denial of citizenship, it seems to me, is entirely within the power of a Congress.

Mr. DOOLITTLE. And then, Mr. Farrow, is that also still your position?

Mr. FARROW. I think the context that—it is our position that as long as the U.S. flag flies in Puerto Rico, we ought to continue to grant citizenship. If Puerto Rico is to become a nation, then it would be in—I will not be the constitutional witness here, I will let

Mr. Treanor do it for the Justice Department, but it would be—we have already taken the position and reiterated that we should not continue to grant citizenship and we can discontinue the grant of citizenship if Puerto Rico is to become a nation, if it is not to be a territory of the United States.

Mr. DOOLITTLE. Well, I am on the Governor's time, if he will allow me to continue. I am not talking about that. I am talking about the example where we decide to pass a law that says people born in Puerto Rico are not going to be citizens anymore, and you just a few moments ago said, yes, I agree with that, and now I am not hearing that.

Mr. FARROW. Yes, in the context of Puerto Rico becoming a sovereign nation—

Mr. DOOLITTLE. No, but it was not in the context of that. It was in the present context, where they are, in essence, a territory of the United States and we decide on a whim that we are going to take away their prospective citizenship, not affecting the citizenship of those who are presently citizens but those who are now born after a certain date. I understood you to say, yes, we could do that, and your answer was unequivocal. Now I am hearing equivocation.

Mr. FARROW. I was trying to expand at the time on the answer. As you may recall, Mr. Treanor will speak on the constitutionality of the question.

Mr. DOOLITTLE. Okay. Is it a yes or a no, Mr. Treanor?

Mr. TREANOR. There are two categories. One category is Puerto Rico not subject to United States sovereignty—

Mr. DOOLITTLE. No, I do not want to talk about that category. The only category I am interested in is whether it is subject to United States sovereignty. Yes or no, can we take away their prospective citizenship?

Mr. TREANOR. And the answer is, it is not clear.

Mr. DOOLITTLE. Well, it was clear.

All right, Governor, back to you and we will give you some more time.

Mr. ROMERO-BARCELO. In other words, you have doubt as to the answer on that one?

Mr. TREANOR. I am sorry?

Mr. ROMERO-BARCELO. Your final answer is that you have doubts as to your answer on that one. You do not have a clear answer on that one?

Mr. TREANOR. We do not have a clear answer on that.

Mr. ROMERO-BARCELO. In the bill that is before us, Section 3, it says, upon agreement by Congress to recognize a unilateral bilateral pact with provisions describing Section 2 by approval of this act, the following terms for its implementation shall apply. And then further on it says, the people of Puerto Rico in the exercise of their sovereignty, natural right to self-government and free will, et cetera, may reaffirm the validity and the force and effect of the commonwealth formula that was established in 1952 as an autonomous body which is neither colonial nor a territory in permanent political union with the United States under agreement that may not be set aside or altered unilaterally.

Now, can a separate nation have an agreement which may not be set aside or altered unilaterally? Is that possible constitutionally?

Mr. TREANOR. No. As a matter of domestic law, Congress cannot commit itself not to subsequently alter an agreement.

Mr. ROMERO-BARCELO. So this would be—it would not be allowed—

Mr. TREANOR. It would not be permissible.

Mr. ROMERO-BARCELO. And then further on, do you know of any such thing as a permanent union other than with the State?

Mr. TREANOR. Again, it gets back to the same proposition. Permanent union is inconsistent with the notion of the limit of Congress's power to bind future Congresses.

Mr. ROMERO-BARCELO. So there is a no such thing as a permanent union unless you are a State within the union?

Mr. TREANOR. That is right.

Mr. ROMERO-BARCELO. Further on, it says, in Section 3, Subsection 6—Paragraph 6 of Section 3, it says, those persons born in the Commonwealth of Puerto Rico shall continue being United States citizens by birthright and such citizenship will continue to be protected by the United States Constitution. The right of United States citizenship cannot be unilaterally revoked by the United States, and this is under the terms of a separate nation. Would such a thing be allowable under the terms of the separate nation, unrevokable U.S. citizenship?

Mr. TREANOR. Unrevokable United States citizenship prospectively, if Puerto Rico is a separate nation, would not be allowed.

Mr. ROMERO-BARCELO. Thank you. Thank you very much.

Mr. DOOLITTLE. Mr. Kildee is recognized.

Mr. KILDEE. Thank you, Mr. Chairman. What I cannot really understand is how can Puerto Rico actually be a real nation and at the same time rely upon U.S. programs and rely upon U.S. citizenship. I mean, it is just baffling. That is more of a statement on my part. I do not see how it can actually be a real nation and depend on the programs which Congress passes here regularly in the Education and Labor Committee and Resources Committee and really rely on those U.S. programs and rely on U.S. citizenship and be a real nation.

Let me ask you this question. If Puerto Rico is considered to be a nation under this proposal, could it apply for membership to the United Nations? Mr. Thornburgh, maybe you could answer.

Mr. THORNBURGH. Yes.

Mr. KILDEE. It could apply. So then we could have a U.S. citizen as the representative to the United Nations voting against another U.S. citizen who is the representative of the United States?

Mr. THORNBURGH. If that citizenship is carried forward.

Mr. KILDEE. So under this proposal, if this could be done, which I do not think it can be done under the Constitution—

Mr. THORNBURGH. No.

Mr. KILDEE. —but if it could be done, you could have a U.S. citizen from Puerto Rico actually being a delegate to the General Assembly voting against another U.S. citizen from the United States?

Mr. THORNBURGH. But that all is built on the thin read that this can be done, and I think the whole thrust—

Mr. KILDEE. I know. I do not believe it can be done, but under this proposal—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 U.N. It is never going to happen because I think this thing is patently unconstitutional. It is a bit of legal fiction, as I say, and it is a hoax, really. But if this were not legal fiction or not a hoax and could be done, that theoretically could happen, could it not, that situation?

Mr. THORNBURGH. I think there are a whole string of similar anomalies that could be played out, all of which, I think, underscore the notion that this is not a constitutionally permissible process because the series of relationships that might be set up under such anomalies would be inconsistent with our Constitution and the notion of federalism.

Mr. KILDEE. 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.

Mr. THORNBURGH. Yes.

Mr. KILDEE. And I will support whatever they choose, but this is not a valid option available to them. It is legal fiction or a hoax.

Thank you, Mr. Chairman.

Mr. DOOLITTLE. Thank you. Mr. Faleomavaega?

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. I have a couple of questions for our panel and certainly want to thank the members of the panel for their statements. I just wanted to ask, and anyone can respond to my question, under international law, what was Puerto Rico's political relationship with Spain prior to and after the Spanish-American War? Was Puerto Rico a territory? Was it an almost independent nation? What was its status before, during, and after the Spanish-American War?

Mr. FARROW. Before the Spanish-American War, it was Spanish territory that Spain ceded to the United States. It had some autonomy in its territorial status. I am not familiar with the constitution of Spain at the time to be able to describe the precise terminology. Certainly after the Spanish-American War, Spain ceded Puerto Rico to the United States.

Mr. FALEOMAVAEGA. So all of Spain's sovereign rights and everything under international law was ceded to the United States as far as Puerto Rico was concerned?

Mr. FARROW. Yes.

Mr. FALEOMAVAEGA. When was U.S. citizenship granted to Puerto Ricans? Was this in 1917 or 1950? I am not sure.

Mr. FARROW. Seventeen.

Mr. FALEOMAVAEGA. In 1917, they became U.S. citizens. Is not Puerto Rico no longer a self-governing territory under the provisions of the United Nations charter?

Mr. FARROW. No. Puerto Rico was taken, in 1953, taken off the list of non-self-governing territories for which the United States had to report annually. We no longer report to the United Nations

on the political status of the territory. Puerto Rico has local self-government similar to that of a State. It does not elect its national government officers, the people who make and implement its national laws.

Mr. FALCOMAVEGA. Now, was this at the request of the Puerto Rican people and their leaders, that they be taken off the United Nations status as a non-self-governing territory, or was this something that was unilaterally done by our national government?

Mr. FARROW. The United States made the request to the United Nations in consultation with the government of Puerto Rico.

Mr. FALCOMAVEGA. I hear so much about the people and their right of self-determination. Under international law, when does self-determination come into play and at what point do we say that people have been given their right of self-determination, Mr. Thornburgh or some of the legal experts there, or Mr. Farrow?

Mr. THORNBURGH. Well, I think we have to look first to our own Constitution, which on numerous occasions has seen territorial status ripen into Statehood, for example, and in other cases seen territorial status change to independence. I think the thrust of what my testimony today and heretofore has been is that it is unacceptable for the United States to continue to exercise authority and jurisdiction over Puerto Rico in its present posture and that the people of Puerto Rico ought to be given—in fact, the time has long since past when they should be given the right to choose to make their own determination about what their form of government should be and what that relationship should be with the United States.

Mr. FALCOMAVEGA. Well, I think—

Mr. THORNBURGH. The thrust of our examination, if you will just permit me a moment—

Mr. FALCOMAVEGA. Sure.

Mr. THORNBURGH. —the thrust of our examination of the proposal that is before you today is to determine whether that is a viable choice, among others, to place before the people of Puerto Rico, and what you have heard, I think, from every witness here today is that it is not and that there really are only three choices that are viable. One is continuance of current commonwealth status. The second is Statehood. And the third is independence.

Mr. FALCOMAVEGA. I think there have been basically three major plebiscites taken, and I suppose this is where the issue, or at least I feel is where the problem lies. The right of free determination in the plebiscite of 1967, 60 percent for commonwealth, 38 percent for Statehood. And then the plebiscite of 1993, 48.6 percent for commonwealth and 46.4 for Statehood and 4.5 percent for independence. Then the 1998 plebiscite, I think it was boycotted by the pro-commonwealth advocates, at 0.1 percent they got and 46.5 percent Statehood and 50.2 percent none of the above, including free association of independence.

So I suppose the question I am raising, it is not until 1967 that we really found a clear majority. If we are looking at majority as the basis of saying this is the right of self-determination, where a people by majority have said, opted for an option, and clearly in 1967, there was that option. And then in 1993, it was just by a 2-percent margin difference, but there was majority. And then in

1998; there was another clear question also in terms of the advocates of commonwealth not even participating.

So is this not really where the problem lies, that we really have not gotten a clear will of the majority of the Puerto Rican people as to what option they really want to pursue? And if so, let us say for the sake of argument that the pro-commonwealth people get a majority, if a future plebiscite should ever take place, under the Constitution, is not really the only option possible within the framework that there has to be some kind of a negotiable treaty relationship to then allow these negotiables, I suppose, with our government when you talk about citizenship, talk about trade, and all these others. This bill presupposes that we give all these things to this status that is being sought by the pro-commonwealth rather than being negotiated under a treaty relationship. Then it will better clearly define what our options and what we may or we may not want to do as a country in relation to the people of Puerto Rico.

Mr. THORNBURGH. I think a lot of these features set forth in this legislation put the cart before the horse.

Mr. FALEOMAVAEGA. Right.

Mr. THORNBURGH. The problem is that there has been no legally binding Congressionally defined choice given to the people of Puerto Rico in these referenda that you refer to, and I think the thesis that is obviously contained in the platform of both Presidential candidates and their parties and what you have heard today is that it is time for the Congress to carefully define these alternatives. Once they have been voted upon and a status has been divined for the future of Puerto Rico, then the relationships that ensue can be on the agenda for policy determination. But I think what we are urging today is that a constitutional process contemplates that the Congress, the ultimate sovereign, if you will, for the time being, enunciate those choices in a clear and constitutional manner.

Mr. FALEOMAVAEGA. Just one quick question, Mr. Chairman. I know my time is up. You heard earlier Mr. Tauzin from Louisiana said, if all these things are to be given to Puerto Rico, will this allow other States to negotiate similar compacts? We do not have to pay Federal income taxes, we can go ahead and establish trade relations with other countries, all these goodies that are contained in this proposed package. Will this set a precedent that will allow other States to also claim similar rights under the Constitution if we were to grant this kind of a status to Puerto Rico?

Mr. THORNBURGH. I think to ask the question is to answer it, Congressman.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

Mr. DOOLITTLE. Thank you.

Mr. Underwood?

Mr. UNDERWOOD. Thank you, Mr. Chairman, and I must congratulate you on introducing legislation you do not agree with and then finding a way to hold a hearing on it.

[Laughter.]

Mr. UNDERWOOD. I have several ideas I know you do not agree with that I would like to see a hearing on.

We have had a lot of discussion about the nature of the political status arrangements and the nature of citizenship. I guess as we look around here, conceivably, I suppose, under the distinction be-

tween statutory citizenship and constitutional 14th Amendment citizenship, there are maybe two of us on the panel here that are statutory citizens. So trying to understand the dynamics of that is very critical, because citizenship is the linchpin of much of these discussions about the kind of relationship that we are envisioning and other areas aspire to, as well.

If U.S. citizenship is not individually revokable, and certainly that is not likely to happen under any scenario, but Congress can take away the capacity to make citizens in the territories and I think there is general consensus on that, although perhaps the chairman caught a little bit of shifting of ground there in the process of that discussion.

I want to introduce another novel situation which Mr. Thornburgh sort of touched on in his characterization of what happened with the Philippines, and people in the Philippines did not have citizenship prior to becoming independent. But there was the hint that perhaps in that arrangement or in that arrangement that we have seen with the freely associated states that under perhaps a negotiated arrangement, that it is legally possible to extend citizenship to a freely associated country. I know that presents kind of a new novel situation that Mr. Treanor refers to, since we are trying to explore all the possibilities of that. How would you respond to that, Mr. Treanor? Is it possible to extend just citizenship to a freely associated state?

MR. TREANOR. Our position is that it would be, as a matter of constitutional law, as opposed to—there are serious policy concerns that others—

MR. UNDERWOOD. I know the policy concerns well, believe me.

MR. TREANOR. But as a matter of constitutional law, Congress has the power to grant citizenship and there is no textual limitation to that power. So the answer would be yes.

MR. UNDERWOOD. Mr. Thornburgh, you have discussed in the context of the two political platforms for this upcoming Presidential election that special mention has been made that the Congress is responsible for this, and I quite agree. If we do not have a Congressional process for self-determination, then we are not going to have a real process for self-determination. This is not a best two-out-of-three elections. It has to be viewed as a single process and what we have to date, as Mr. Faleomavaega has outlined, several election results. I keep thinking that people think that we will keep having these elections until we get the result we want and then we will stop. That is not the way this is supposed to work. It is supposed to be a Congressionally mandated responsibility that is consistent with the international understanding of that.

That is why I find it very, very ironic that despite all the protestations to the contrary, that clearly Puerto Rico is just another territory, just like Guam or American Samoa or the Northern Mariana Islands, and if we all understand that, why do we not put them back on the non-self-governing list at the United Nations because that is where the other territories are at because it is clear that we were all grouped together there to begin with. If we all accept the fact or we all accept the notion that nothing fundamentally has changed, there is still no consent of the governed of laws

that apply over Puerto Rico or any of the other small territories in Federal law, then I still think they are non-self-governing.

But Mr. Thornburgh, you mentioned those particular items in the political platforms, and you mentioned that what we have done with Puerto Rico is unacceptable. Would you extend that same characterization to the other territories, that, indeed, we should get a Congressionally mandated process for the small territories and get them to make a choice between Statehood and independence?

Mr. THORNBURGH. I think as a general matter, that is probably a position that is consistent with our history and the commitment of our Constitution. I must admit that I am not as familiar with the background and history of those territories as I am with Puerto Rico, where my interest has been longstanding. But as a general principle, I cannot quarrel with that.

Mr. UNDERWOOD. Well, that is very heartening, because for those of us who are smaller territories, and as much as we love our friends from Puerto Rico, they are sometimes the 800-pound gorilla when it comes to insular policy. But there are other flags represented in this committee room behind the chair and the responsibility to deal with this issue in a serious way, that should not be impeded by notions about size or about the individual characteristics of each territory. If we believe in firm principles regarding self-determination and we believe that democratic principles and consent of the governed should apply to all areas, then they should apply to all areas regardless of size.

Mr. FALCOMA. Will the gentleman yield?

Mr. UNDERWOOD. Yes, I would be happy to yield.

Mr. FALCOMA. I think it was some years ago, if I recall, over 10 years ago, the people of Guam by plebiscite—what was the percentage? It was about 85 percent voted and opted for commonwealth status. For the past 15 years, from past administrations, even the current administration, the people and the leaders of Guam have gone nowhere in trying to implement what the will of the people of Guam have wanted for all these years and I wanted some responses from the panel. What do you suggest? Here is the representative from Guam, has been for how many years now, and our own government has failed to allow the people of Guam to go through with it. I mean, they have already made their decision, years ago. We still have not gotten even to first base.

Mr. FARROW. Congressman, the people of Guam voted for a particular piece of legislation that members of this committee urged caution before they voted for a specific piece of legislation. Both the Bush administration and the Clinton administration have worked hard on that proposal and responded to the proposal. The responses have been similar from the Bush administration and the Clinton administrations of what the executive branch would agree to of those proposals. The people of Guam have not accepted or agreed to the extent to which either administration has agreed to the proposals. There was a similar effort when the people of Guam first voted on this proposal, done in this committee, and this committee also advised the government of Guam at the time to what extent it found the proposals acceptable.

So I think we do have a serious problem to continue to work on and there is a commitment and a willingness of this administration

to do that. The President has said, he has gone out to Guam and said it and told the Governor, as well, that he is willing to work on the issues and bring them to closure to the extent he can. But the territory, like Puerto Rico, cannot unilaterally determine what changes in Federal policy there should be or how the structure of the Federal Government should change. That has been the essence of the problem with that specific proposal. It is largely the problem with this proposal, as well.

If I may, I would like to add, as well, a comment with respect to your—

Mr. FALCOMA. I am on Mr. Underwood's time. I am sorry, Mr. Farrow.

Mr. FARROW. With respect to self-determination, because you raised that, the U.N., there are two basic tests on self-determination for a territory. One is that the people of the territory freely choose their form of government, and the Puerto Ricans did that and they have not yet chosen another form of government. The other basic question that is out there and continues until it is answered is that the people of a territory elect the people who make and implement their national laws. That is clearly not the case with Puerto Rico.

And yes, in 1967 there was a referendum in Puerto Rico on status options and a majority voted for commonwealth. There have been two referenda since. There has been no majority, including for the current governing arrangement, and as you noted, in the last vote, the vote was one-tenth of 1 percent for the current governing arrangement. In 1993, there was a plurality for a commonwealth proposal and the proposal was in essence the following, that the Congress would restore tax benefits for U.S. companies operating in Puerto Rico that it had repealed 2 months earlier, a multi-billion-dollar proposal, that Supplemental Security Income would be extended to Puerto Rico under the new Commonwealth, which aid to the needy, aged, blind, and disabled cost about \$900 million, that Puerto Rico would be treated equally in the food stamps program, gets now a block grant in lieu of food stamps, that would have cost at that point about \$600 million, and that there would be protection for Puerto Rican agricultural products from competition from abroad.

None of those proposals were acceptable either to this Congress, and there was some consideration here, or to the executive. That is why the President responded by saying that we ought to clarify what viable options are in response to Puerto Rican proposals and we ought to put that choice to the people of Puerto Rico. That led to Chairman Young's bill offering options. Our administration insisted that the Popular Democratic Party, the Commonwealth Party of Puerto Rico, be able to offer its proposal to the committee. It did. The committee worked its will and we reached agreement with the bipartisan leadership of this committee on what a viable commonwealth option is.

The commonwealth that is contemplated in this bill is vastly different than what the committee agreed to and the House agreed to in 1998, several Senators agreed to in 1998. It is different than the commonwealth entirely that was on the ballot in 1993 and different entirely than the commonwealth that was on the ballot in 1967. I

do not know that there has to be consistency between the parties' proposals, but it is our obligation to say what is realistic in a proposal so that when people vote, they vote for something that has some chance of being implemented and is somewhat viable, and that is precisely the problem that occurred in the case of Guam and it is precisely the reason that the President does not want to go through that again. He is very sensitive to the situation with Guam, would like to develop the status, but does not want to have a situation where people vote for something that is not realistic.

Mr. UNDERWOOD. Mr. Farrow, I do not want to go over old ground on this particular issue—

Mr. FARROW. Right.

Mr. UNDERWOOD. —but basically, the problem was that from the beginning, the people of Guam were indeed advised by members of this committee and the administration at the time to put in everything, including the kitchen sink, and they did. Now, since that time we have dealt with it as legislation, and perhaps what is needed is to stop dealing with it as legislation.

So I would respectfully suggest that the way to proceed with it in whatever administration we have next is to put together an office of a status negotiator to discuss these various options, because it is obvious that we are not going to do it by dealing with the programmatic managers at the Department of Interior or dealing with it as legislation as we would any other particular piece of legislation, so thank you very much.

Thank you very much, Mr. Chairman.

Mr. ROMERO-BARCELO. Mr. Chairman, can I—

Mr. DOOLITTLE. Mr. Romero-Barcelo?

Mr. ROMERO-BARCELO. Mr. Chairman, I would like to introduce some documents. The clerk already has them. There are two Congressional Research memos on citizenship. One is dated March 9, 1989. The other one is dated November 15, 1990. Also, Mr. Chairman, I would like to submit with unanimous consent the Department of Justice memo of July 28, 1994, on mutual consent provisions, and also two articles, one in the Orlando Sentinel which is about this process, which came out on the 25th of September of this year, and also an editorial from the San Juan Star on September 22 of this year.

[The information of Mr. Romero-Barcelo follows:]

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Mr. DOOLITTLE. Let me just add to that list, I have some material that I want to submit and I would like to, by unanimous consent, if you approve, I would like to hold the record open for us to submit supplementary material for, say, 2 weeks after—how about October 21, 2000. Is there any objection to that? Statements for the record will be accepted until that date. Without objection, so ordered.

[The information of Mr. Doolittle follows:]

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Mr. ROMERO-BARCELO. Mr. Chairman, I would also like to be clear for the record, just to make sure that people understand it, when we talk about the Republic of Palau and the Federated States of Micronesia and the Republic of the Marshall Islands and

the different rights that they have under some agreement, the residents of those islands are not U.S. citizens.

It would be the same as they expect in this bill, the Puerto Rico will be Puerto Rican citizens. It would be a separate nation. But they also want to be U.S. citizens. I will read from the bill itself where it talks about the irrevocability of the citizenship but it also talks of all of the people born in Puerto Rico are Puerto Rican citizens by birth, so they are Puerto Rican citizens but they also want to have U.S. citizenship and that is where the conflict begins.

I would like to finally just make some points regarding the international trade. The bill says that the Commonwealth shall control its international trade and establish a policy that will foster its maximum growth. Now, can there be such a control of international trade and still be under the same customs system as the United States? First of all, Mr. Farrow, can you address that issue?

Mr. FARROW. I think—are you asking it legally or in terms of whether the U.S. would do it? We oppose the idea that—we are completely in favor of Puerto Rico controlling its international trade if Puerto Rico becomes a sovereign nation. That is one of the attributes of sovereignty. At the same time, we would oppose it being part of the—having the same customs status that it has today, which the bill proposes, because that would be incompatible with its national status. It would enable, in effect, Puerto Rico to determine what products get into—the sovereign Puerto Rico would be able to determine what products get into the sovereign United States and it would create enormous trade problems in our international relationships as well as for our domestic industry.

Mr. Dalton, do you want to add to that?

Mr. DALTON. Yes. There are some additional problems, as well. Generally, when we do trade agreements, they apply to all our territories. Many of these trade agreements have in them what are called most favored nation clauses and they promise to other parties that they will get the best treatment that we give to anyone. If Puerto Rico does agreements that give better treatment to somebody than the United States has given, countries are going to come in and say, well, we are entitled to this better treatment that is being accorded in Puerto Rico, and that is a system that we really cannot live with and that is a practical illustration.

Tomorrow, for example, the Senate is going to take up five bilateral investment treaties. If this provision were to become law and Puerto Rico were to do agreements giving more favorable benefits to a Caribbean neighbor than most of our bilateral investment treaties, that would trigger an obligation for the United States that it does not currently have and that is the problem that we have with giving the international agreement power to something other than the Federal Government.

Mr. ROMERO-BARCELO. Thank you. Mr. Thornburgh, would you like to add what you have to say about this?

Mr. THORNBURGH. I think this is the kind of devil that resides in the details that is not often addressed and I think it is useful to consider what the implications of these kinds of arrangements would be. I must admit that I had not thought directly about the most favored nation provisions and I think it is useful to factor

that into consideration of the non-feasibility of this type of arrangement.

Mr. ROMERO-BARCELO. I am not sure I understand your answer. Let me pose my question again to you. The bill reads that the Commonwealth shall control its international trade and establish a policy that will foster its maximum economic growth, and that would be consistent with being part of the customs system of the nation, establishing its own international trade and its own policy, international trade policy.

Mr. THORNBURGH. I think the short answer is no.

Mr. ROMERO-BARCELO. That is what I wanted to find out, what you felt about it, because, obviously, as Mr. Farrow stated and Mr. Treanor stated, goods coming into Puerto Rico on a different basis would then have free access to the United States and that will be a very serious consideration. Yes?

Mr. TREANOR. Then one final constitutional point.

Mr. ROMERO-BARCELO. Sure.

Mr. TREANOR. There are provisions in the Constitution that come into play, again about Puerto Rico and sovereignty. One is no State shall enter into any treaty, so there is that limitation. There is also a provision that says no State shall, without the consent of Congress, and then it goes on, enter into agreements or compacts. So the question there would be, is what is contemplated by the bill a treaty as opposed to a compact or agreement, and also can Congress delegate respectively in the way that the bill would contemplate to Puerto Rico this power.

Mr. ROMERO-BARCELO. There is no doubt, there are a lot of other little issues, but one thing that is not mentioned specifically but it is mentioned as a right that the people of Puerto Rico have over and over a couple of times in the bill. This is called fiscal autonomy. What they mean by fiscal autonomy, at least what it said at home, is that the Congress has no authority to impose taxes on Puerto Rico unless Puerto Rico consents to those taxes.

Now, I would like to ask, first of all, Mr. Thornburgh, what is your opinion about that statement that is made in Puerto Rico continuously by people who propose this so-called enhanced commonwealth, which is a separate nation? At the present time, there exists a fiscal autonomy, that Congress has no authority to impose taxes on Puerto Rico.

Mr. THORNBURGH. Well, I think, echoing Congressman Tauzin's wish list for his State, if any such principle were to find its way into our constitutional regimen, it would be quickly availed of by every one of the 50 States. The point here is the Federal Supremacy Clause with regard to matters that relate to overall national policy, and by providing that no taxes could be imposed or a particular class could be imposed in a territory, you run smack into the provisions of the Constitution that relate to the governance of territories, in essence by the Congress of the United States. And to require an additional approval of a fiscal measure by the governing body of the territory does not compute. It is not allowed for under the Constitution. I think that is manifestly clear.

Mr. ROMERO-BARCELO. In other words, the only reason why there is no Federal income taxes in Puerto Rico is because the Congress—

Mr. THORNBURGH. Because the Congress has not imposed it.

Mr. ROMERO-BARCELO. —has not imposed it.

Mr. THORNBURGH. And it does not say that you could not do that tomorrow.

Mr. ROMERO-BARCELO. Mr. Treanor, do you have any statement?

Mr. TREANOR. No. I think the point there is that kind of the critical constitutional clause is the Uniformity Clause, which applies to States. That says that acts in the States have to be uniform, and the Supreme Court, and this is at the turn of the century in the insular cases, said that Puerto Rico is not covered by the Uniformity Clause. So Congress has the power to treat it differently as a result of that.

Mr. ROMERO-BARCELO. In other words, it can impose or not impose taxes as it sees fit.

Mr. TREANOR. Right. Right. So, I mean, again, in terms of Congress's authority, Congress's authority over the territories is plenary, which means it is complete. So that judgment then lies in Congress. Part of the concern of the bill would be if Congress is giving that away kind of irrevocably, that runs afoul of the principle that I have talked about at a number of points here, which is one Congress cannot do something like that. It cannot give away power that the Constitution gives Congress.

Mr. ROMERO-BARCELO. In other words, Congress cannot irrevocably give away its power to tax Puerto Rico or territories.

Mr. TREANOR. That is right.

Mr. ROMERO-BARCELO. Thank you.

Mr. DOOLITTLE. If the committee will bear with me, I had not planned to enter into a second round of questioning, only because we have been at this for two-and-a-half hours and we have got one more panel to go. May we move on to the next panel, or what do you think, Mr. Faleomavaega? All right. You are recognized.

Mr. FALEOMAVAEGA. I appreciate the chairman's indulgence. Gentlemen, I may be moving the cart before the horse or the horse before the cart and realize that there is consensus we have got some very serious constitutional problems with the proposed bill. So my next question to the panel is, should Congress be charged with administering another plebiscite or should we have a plebiscite on this whole question of self-determination for the people of Puerto Rico in the future?

Mr. FARROW. Congressman, the President feels very strongly that the people of Puerto Rico should be enabled to choose their future political status. The referendum that was conducted in 1993, the referendum that was conducted in 1998, both had serious flaws.

In the case of the 1998 referendum, the majority of the people did not choose any status. As I have explained, they were encouraged to do that by a party that advocated this proposal and said the referendum was unfair because this proposal was left off the ballot. But this proposal was not an option. The proposal in 1993 made proposals that were not viable.

What will be meaningful, and the President is for a meaningful choice, which is among viable options, and so, yes, we should enable the people of Puerto Rico to have a choice that is meaningful, which would be a choice limited to viable options.

Mr. FALCOMA. Well, I do not know if that answered my question. Should the Congress be in charge of administering another plebiscite or should it be left to the people of Puerto Rico or a third party?

Mr. FARROW. Our position is that the government of Puerto Rico ought to conduct the referenda, that the Federal Government ought to clarify the options, but it is the government of Puerto Rico that has the mechanisms by which a referendum could be conducted and they ought to conduct it as they are ready. We ought to discharge our responsibility, which is answering the questions that Puerto Ricans have asked for years about what their options are, and say to them, if you select one of these options, we will then act. But the people of Puerto Rico should conduct the referendum itself.

Mr. FALCOMA. One of the things that I, as a matter of observation, Mr. Chairman, is that we concocted this concept or this new relationship of a commonwealth status simply because the Congress was not about to grant Statehood for the people of Puerto Rico. It seems that we never really gave the people of Puerto Rico that option historically, whether to become independent or to be granted Statehood. Did we ever historically allow the people of Puerto Rico to vote on those options?

Mr. FARROW. The people of Puerto Rico never voted on the commonwealth option when it was created. That was not the question that Puerto Ricans voted on 50 years ago. What they voted on—what the Congress authorized was the people of Puerto Rico to adopt a constitution to organize their local government and to accept a number of Federal policies concerning the islands. That is what they approved. The constitution and the constitutional convention named the local government the commonwealth in terms of the name of that local government. In English, you have already mentioned—in Spanish, it literally translates into the free associated State of Puerto Rico. There were not status options per se that were offered.

The Congress, the legislative history written by this committee, the Senate committee, the executive branch at the time, and the testimony of the Puerto Rican witnesses at the time was that it was not a change in political status. It is a change within a political status, but was not a change to a different political status.

Mr. FALCOMA. Mr. Chairman, I am not going to pursue this more.

Mr. DOOLITTLE. All right, thank you.

Gentlemen, we appreciate the time and the valuable insights that you have offered. We will hold the record open for supplementary questions that we may tender to you and would invite your expeditious response. We thank you for being here and excuse you now. Thank you.

Mr. DOOLITTLE. I would like to, as soon as it is possible to do so, to invite panel number two to come forward.

We have two witnesses for panel number two and we will begin with the Honorable Angel E. Rotger-Sabat, Attorney General of Puerto Rico in San Juan. Mr. Sabat?

STATEMENTS OF ANGEL E. ROTGER-SABAT, ATTORNEY GENERAL, SAN JUAN, PUERTO RICO; AND CHARLES A. RODRIGUEZ, PRESIDENT, SENATE OF PUERTO RICO, SAN JUAN, PUERTO RICO

STATEMENT OF ANGEL E. ROTGER-SABAT

Mr. ROTGER-SABAT. Good afternoon, Mr. Chairman and members of this committee. My name is Angel E. Rotger-Sabat and I am the Attorney General of Puerto Rico. On January 1 of the year 2000, the Governor of Puerto Rico, the Honorable Pedro Rossello, appointed me as the Attorney General, after serving for more than 2 years as Puerto Rico's Chief Deputy Attorney General under former Attorney General Mr. Jose A. Fuentes-Agostini. On behalf of the government of Puerto Rico, I thank you for the opportunity to appear before you today.

I have submitted my written statement for this hearing and ask that it be made part of the record and will now confine my remarks to a brief summary of the legal principles therein explained regarding the 102-year-old relationship between Puerto Rico and the United States. It is my pleasure to address the legal questions that arise from this bill, mainly based on the jurisprudence of various Federal courts. Why the Federal courts? Because the questions of Puerto Rico's political status in relation to the United States and of the Congressional powers associated with that status are inherently and fundamentally questions of Federal law. As I will further explain, the historical, legislative, and judicial background of the relationship between the United States and Puerto Rico undoubtedly presents at its core a Federal question, one which only Congress can lay to rest.

Puerto Rico became subject to the jurisdiction of the United States as a result of the Treaty of Peace of December 10, 1898, also known as the Treaty of Paris, which ended the Spanish-American War. Article 9 of that treaty states that the civil rights and political conditions of the natural inhabitants of Puerto Rico and other territories ceded to the United States shall be determined by the Congress. Congress thereafter began to legislate for Puerto Rico pursuant to Article 4, Section 3, Clause 2 of the United States Constitution, also known as the Territorial Clause, which authorizes Congress to dispose of and make all needful rules and regulations respecting the territory of the United States.

In 1900, Congress enacted the Foraker Act, establishing a civil government for Puerto Rico, consisting of an elected legislature with limited powers and a governor and a supreme court appointed by the President of the United States. Then in 1917, Congress granted statutory citizenship to Puerto Rico residents and provided for an enhanced bicameral elected legislature when it enacted the Jones Act. Thirty years later, Congress once again took a further step in delegating a greater degree of internal autonomy for local self-government in Puerto Rico when it enacted the Elective Governor Act, authorizing the Puerto Rico residents to elect their own governor.

These limited actions by Congress did not alter the constitutional status of Puerto Rico, which was then defined by the United States Supreme Court in the so-called insular cases as that of an unincor-

porated territory of the United States. Puerto Rico's limited powers of local self-government existed as a matter of Congressional grace, not constitutional right. Congress's power thus remained plenary under the Territorial Clause.

The current structure of local government in Puerto Rico resulted from the enactment of Public Law 600, also known as the Puerto Rico Federal Relations Act. This law provided Federal statutory authorization for the citizens of Puerto Rico to write their own constitution, subject to Congressional approval. A local constitutional convention drafted a constitution for Puerto Rico, which was ratified by the people of Puerto Rico and later submitted to Congress for approval. Congress, exercising its power under the Territorial Clause, amended several sections of the Puerto Rico constitution draft and ultimately approved the revised version by means of Public Law 447.

It is worth noting that the legislative history of Public Law 600 leaves no doubt that even though its passage allowed the grant of internal self-government to Puerto Rico, no change was intended in Puerto Rico's territorial status and Congress continued plenary power over Puerto Rico.

During the hearings prior to the enactment of Public Law 600, Mr. Antonio Fernos Insern, then Puerto Rico's Resident Commissioner before Congress, testified that the bill, and I quote, "would not change the status of the island of Puerto Rico relative to the United States. It would not alter the powers of sovereignty over Puerto Rico under the terms of the Treaty of Paris." He and Mr. Luis Munoz Marin, then Governor of Puerto Rico, expressed their understanding that Congress unilaterally would retain authority to revoke or modify Puerto Rico's constitution. The then-Secretary of the Interior, the then-Chief Justice of the Supreme Court of Puerto Rico, the Senate report accompanying the Senate version of Public Law 600, and the Senators who sponsored it, Senators O'Mahoney and Butler, all explicitly stated that the new bill would not affect the underlying political, social, and economic relationship between Puerto Rico and the United States.

Congress has never strayed from holding the same view as it having the final authority to define the juridical status of Puerto Rico. The Federal courts have also recognized Congress's plenary power over Puerto Rico under the Territorial Clause.

The United States Supreme Court held in *Harris v. Rosario* that Congress under the Territorial Clause may treat Puerto Rico differently from the States so long as there is a rational basis for its action. Following the holding in *Harris*, the United States Court of Appeals for the First Circuit has recognized as recently as twice in this year that Puerto Rico is a territory subject to the plenary powers of Congress under the Territorial Clause.

Some may argue that there are First Circuit cases that cast some doubt regarding Puerto Rico's post-1952 constitutional status and Congress continuing plenary power over Puerto Rico as a territory. They may argue that with the enactment of Public Law 600 and the approval of the revised Puerto Rico constitution, the island ceased to be a territory and Congress's authority over Puerto Rico emanates thereafter from the compact between Puerto Rico and the United States, which Congress cannot unilaterally amend.

This doubt should have been long ago dissipated in light of, as I have previously pointed out, the legislative history of Public Law 600, the Supreme Court's ruling in *Harris v. Rosario*, which was not cited in the cases that I have referred to previously, and the consistent trend of the First Circuit Court explicitly recognizing the territorial status of Puerto Rico. The historical and legislative background in this matter contains overwhelming evidence proving that before, during, and after the approval of Public Law 600, Congress did not intend to change the fundamental status of Puerto Rico from that of an unincorporated territory or to relinquish its plenary power over the island.

Almost 2 years ago, the Federal courts addressed the core issue of Puerto Rico's status. On August 17, 1998, the Puerto Rico legislature enacted Act. No. 249, which provided for a plebiscite to be held that year wherein the voters of Puerto Rico could express their preferences concerning the Commonwealth's ultimate political status. Once Governor Rossello signed into law Act No. 249, the Popular Democratic Party filed suit before a Commonwealth court, seeking declaratory and injunctive relief against the conduct of said plebiscite. Because of the substantial Federal question addressed in the suit, the Commonwealth removed the case to the Federal District Court. The United States District Court agreed with our position, denying the Popular Democratic Party's motion to remand. The court held that the causes of action of the complaint raised Federal, constitutional, and statutory questions of the highest order, implicating the power of Congress over Puerto Rico pursuant to the Territorial Clause and the Supremacy Clause of the Constitution of the United States.

The Popular Democratic Party filed a petition for a writ of mandamus jointly with a motion to expedite its consideration before the United States Court of Appeals for the First Circuit, requesting an order to remand the case to the local court. The Court of Appeals denied the petition, announcing that a written opinion would follow in due course. But the Popular Democratic Party filed a motion for voluntary dismissal of the case, and consequently, the clerk of the Court of Appeals entered an order stating that in light of the voluntary dismissal, no written opinion on the denial of the petition of writ of mandamus would be issued. Nonetheless, the fact that the Court of Appeals denied the mandamus petition certainly evidences that this higher court must have concluded that the District Court's opinion was not clearly erroneous, as this is the standard applied by the courts when reviewing a petition of this nature.

Mr. Chairman and members of this committee, the future political status of Puerto Rico and its approximately four million U.S. citizens can only be resolved by an action of Congress, exercising its plenary authority over this territory. Any bill that raises the issue of the relationship of Puerto Rico with the United States deserves the utmost serious and careful attention. As I have explained this afternoon, it is a matter of Federal law that can only be addressed through the legislative action from Congress.

I appreciate your invitation to address the committee and sincerely express my availability to answer any questions or observations you have regarding today's statement. Thank you.

Mr. DOOLITTLE. Thank you.

[The prepared statement of Mr. Rotger-Sabat follows:]
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Mr. DOOLITTLE. Our final witness is the Honorable Charlie Rodriguez, President of the Senate of Puerto Rico in San Juan. Senator Rodriguez?

STATEMENT OF CHARLES A. RODRIGUEZ

Mr. RODRIGUEZ. Thank you. Mr. Chairman, Governor Romero-Barcelo, distinguished members of the committee, although I currently serve as President of the Senate of Puerto Rico, I come before you today on behalf of Dr. Carlos Pesquera, President of the New Progressive Party and its members. I have submitted a longer written statement. I will try to summarize the same at this moment.

H.R. 4751 intends to give the present commonwealth status the following: Permanent union with the United States, sovereign powers to Puerto Rico as a nation, and an irrevocable guarantee of the United States citizenship to all persons born in Puerto Rico.

First, we welcome this bill only as a vehicle to provide and gather information on the complexities of the status issue of Puerto Rico and as a discussion tool on that matter. In fact, Mr. Chairman, you stated when you introduced this bill that it was, and I quote, "a vehicle to begin a debate regarding the current and proposed commonwealth status."

Secondly, from the details of the enhanced commonwealth formula as introduced in this bill, it pretends to establish a segregated and a separate jurisdiction of U.S. citizens. It goes on to establish a second-class citizenship for Puerto Ricans living in Puerto Rico, a citizenship not envisioned by the Constitution or the Founding Fathers.

The Popular Democratic Party, PDP, has the responsibility to explain to Congress how this formula can be implemented consistent with the U.S. Constitution. This bill as it is written is a blueprint for the perpetuation of the apartheid policy established in 1952 with the so-called free associated state or Commonwealth of Puerto Rico, whose citizens responded with patriotism when our nation was involved in World War I, World War II, Korea, Vietnam, Libya, Somalia, the Persian Gulf, and Bosnia. More than 1,300 Puerto Ricans gave their lives in defense of our nation, democracy, and freedom, and thousands more were injured in combat.

Third, this bill once more reaffirms the political reality that all three political parties of Puerto Rico agree that the current commonwealth status is colonial in nature and maintains the discredited and unconstitutional segregationist policies of the 1950's and the 1960's. Even the PDP, the pro-commonwealth party, recognizes that it is necessary to perfect or culminate the associated nation-state pact of permanent union. After five decades of failure to convert a territorial commonwealth into a non-territorial status, as if by magic, the PDP has repackaged a failed political theory as a program to perfect a status proposal that is not attainable under the Territorial Clause of the Constitution.

Fourth, this bill derails, contradicts, and opposes the spirit and the objective of H.R. 856, approved with bipartisan support in 1998, which provided clear status definitions for the three political

currents. The three options must reflect what is constitutionally attainable within the powers of Congress under the Territorial Clause. The definitions must honestly describe to the people of Puerto Rico what is legally possible and acceptable to Congress from a public policy standpoint. For example, guaranteed U.S. citizenship cannot exist in a status formula with sovereign powers. There is no constitutional precedent for such an occurrence.

Maybe this explains why our locally held referendums do not produce clear majorities. Now perhaps Congress can begin to understand that meaningful and informed self-determination in Puerto Rico is precluded as long as Congress tell us, we will respect whatever you people support with a majority vote, just as there was no clear majority vote in Wisconsin in the 1840's or in what is now the State of Washington in the 1860's until Congress clarified the terms for resolving the political status of those territories. It will be difficult to achieve a decisive majority for any option in Puerto Rico until Congress fulfills its responsibility under the Territorial Clause by defining the terms for enhanced commonwealth or transition to Statehood or independence.

Fifth, this legislation is in direct opposition with the public statements of Presidential candidates George W. Bush and Albert Gore. Both candidates support the self-determination policy established by President Carter and ratified by President Bush. At the same time, both the Democratic and Republican platforms defend the right of self-determination and the right of the American citizens in Puerto Rico to choose. This legislation is a carbon copy of the campaign promise of the PDP for perfecting or enhancing the present commonwealth status, a formula rejected by all Puerto Ricans who voted in the 1998 plebiscite.

It is not unfair to the PDP or any ideological sector in Puerto Rico for Congress to tell the truth about what the U.S. Constitution will allow and what it will not allow. That is all we are asking you to do. Only Congress can define the constitutionally valid status options it is willing to consider. The legislative assembly of Puerto Rico has formally petitioned Congress repeatedly to exercise its exclusive power to prescribe legitimate self-determination options for Puerto Rico and sponsor a status resolution process. Now Congress must tell the truth about what the U.S. Constitution will allow.

Finally, I strongly recommend and urge this committee to think in time. Puerto Rico is the last colony on the planet. It is not within the spirit of the Constitution to maintain a jurisdiction of nearly four million American citizens in the 21st century, segregated and living in an apartheid regime with some civil rights.

I would like to make the following recommendations. We strongly urge the establishment of a Presidential and Congressional decolonization policy for Puerto Rico based on United Nations Resolution 1541 and H.R. 856. For the implementation of this decolonization policy, Congress should establish without delay, and with all deliberate speed, a federally mandated plebiscite to finally resolve our present colonial, segregated, and apartheid condition, which violates the basic principles of our Constitution and the democratic ideals we have defended in the U.S. conflicts abroad.

The United States must not continue with this charade to perpetuate a commonwealth with all the elements of the internationally

discredited Rhodesian apartheid policy. The time is now for the establishment of a decolonization policy to guarantee four million, almost four million Americans, their undeniable right to self-determination with clearly defined and attainable formula within the framework of the Constitution. This policy and ensuing process will erase the injustice of having a second-class citizenship under the present condition and will open the door for our people to become the 51st State of the Union, a totally independent country, or an associated republic.

In closing, I ask you to reflect on the statement made by Abraham Lincoln in a letter addressed to Joshua Speed on August 24, 1855, and I quote, "As a nation, we began by declaring that all men were created equal. We now practically read it; all men are created equal except Negroes. When the know-nothings get control, it will read, all men are created equal except Negroes and foreigners and Catholics. When it comes to this, I shall prefer emigrating to some country where they make no pretense of loving liberty."

Thank you, Mr. Chairman and members of the committee.

Mr. DOOLITTLE. Thank you.

[The prepared statement of Mr. Rodriguez follows:]

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Mr. DOOLITTLE. I am going to reserve my comments until the end and recognize Governor Romero-Barcelo for his questions.

Mr. ROMERO-BARCELO. Thank you, Mr. Chairman.

I just want to thank Angel Sabat for his testimony and Charlie Rodriguez for his testimony. I agree with you. I do not have any questions to ask of you other than those probably self-serving questions, and that might not look proper. They might be much more subject to criticism than otherwise. So I just want to thank you for being here and thank you for your testimony.

Mr. DOOLITTLE. Thank you.

Mr. Faleomavaega is recognized.

Mr. FALEOMAVAEGA. I would like to follow the same tact that Governor Barcelo has proceeded with and thank both gentlemen for their testimony. I had hoped, Mr. Chairman, that maybe someone from the Popular Democratic Party would be here to testify to perhaps kind of explain what their thinking is about the enhanced commonwealth as proposed in the bill, but maybe on another occasion we will have this.

Just one real quick question of Mr. Sabat, and I have been very intrigued by this term that we keep using, and that is as an unincorporated territory. I believe it was Justice Brown who issued this decision in the Supreme Court giving a very unique status to territories, a territory that is incorporated and a territory that is unincorporated, and I wonder if Mr. Sabat could respond to this. What is an unincorporated territory?

Mr. ROTGER-SABAT. Yes, Congressman. An unincorporated territory is the term used from the early 1900's in a series of insular cases, what are the so-called insular cases, in which it is a transition in which it is acknowledged full sovereignty of the United States over that territory, but it is still not a direct part of the Union as a whole, but it is an unincorporated territory. It is a step before becoming part of the Union, but exclusively under the sovereignty of the Territorial Clause.

Mr. FALDOMAVAEGA. In the readings of these insular cases, there was also another opinion rendered as an unincorporated territory, that territory will never see the day of becoming a State in the future, as opposed to incorporated territories. Every one of them have become States. In other words, with the intention of the Congress if at some future date, some period of time that that territory will become a State, and I was just curious. It is an interesting interpretation. I was just curious about that.

Mr. ROTGER-SABAT. It reflects a statement of the time.

Mr. ROMERO-BARCELO. Will the gentleman yield?

Mr. FALDOMAVAEGA. I gladly yield to my friend.

Mr. ROMERO-BARCELO. The term unincorporated territory, I think my own personal opinion after having read the cases also is that it was a prejudiced statement. In other words, the U.S. Supreme Court did not feel that Puerto Rico, because we were a Spanish-speaking society, we were Catholic, there were more black and browns than there were in the rest of the nation, that we would really be accepted into the nation. We were not U.S. citizens when the first insular case was decided. So that was a way of keeping us out of the Union, and that is why the unincorporated territory was an invention of the U.S. Supreme Court. There is no such thing in the Constitution. So that is where this term comes from, and that is my interpretation, reading the insular cases.

Mr. FALDOMAVAEGA. And I want to echo the same sentiments that Governor Barcelo did. The legal fiction that this U.S. Supreme Court adopted by judicial legislation made that at the point in time because of the strong Spanish culture that existed in Puerto Rico, and if there was any consideration of Statehood, I believe that this legal fiction was adopted by the U.S. Supreme Court in the same way that they did the equal but separate clause that denied so many African-Americans their civil rights in so many instances. I thank the Governor for his statement.

Mr. ROMERO-BARCELO. Would the gentleman yield?

Mr. FALDOMAVAEGA. I would be glad to yield to the Governor.

Mr. ROMERO-BARCELO. Thank you. I just wanted to make sure that I made this also clear, because we are talking here about the proposals that were made under the Popular Democratic Party and they have not appeared to defend their proposal. They were invited by this committee. In Puerto Rico, the press continuously asked them if they were coming. The president of the Popular Democratic Party, which are the ones that proposed the commonwealth, said that they would not be coming.

The reason I feel also that they are not coming 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. 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. This proposal was never submitted as such to this committee when we were discussing the options the last time. This proposal came out afterward of the plebiscite.

Mr. FALCOMA. I thank the gentleman from Puerto Rico for elaborating on that, because I was just curious, at least for the record. I was not informed that that was the problem and I thank him.

Just for the matter of the record, Mr. Chairman, it is interesting that American Samoa is an unorganized and an unincorporated territory. In every instance, we find that territories who later became States were all incorporated territories, and that is the reason why I raised the issue just then and I want to thank the Governor for his assistance in that.

Thank you, Mr. Chairman, and I thank the gentlemen for their testimony.

Mr. DOOLITTLE. Thank you. I think we close this hearing with a very solid record that this status formula embodied in H.R. 4751 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.

But even if we did wish to do all of that, under the U.S. Constitution, the Congress does not have the power to implement this status formula by statute or by treaty. We can talk about valid status definitions and the overall status resolution process another day, but today, I think we established that the core elements of this formula in its entirety and in the combination proposed by the PDP are unconstitutional.

I especially appreciate the testimony of Mr. Dellinger and Mr. Thornburgh in this regard and I invite them and all of our other witnesses and members of this committee to submit further supplementary testimony for the written record.

We thank you gentlemen on this panel for your testimony and your time in preparing it and presenting it.

Before adjourning, I would like to submit a statement for the record from Congressman Rush Holt.

[The prepared statement of Mr. Holt follows:]

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Mr. DOOLITTLE. I would also like to submit a statement from Congressman Adam Smith.

[The prepared statement of Mr. Smith follows:]

***** INSERT *****

Mr. DOOLITTLE. Finally, I would like to submit a statement from Congressman Benjamin Gilman.

[The prepared statement of Mr. Gilman follows:]

***** INSERT *****

Mr. DOOLITTLE. With that, this hearing is adjourned.

[Whereupon, at 2:01 p.m., the committee was adjourned.]

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