

Congress of the United States
House of Representatives
Washington, DC 20515-5400

April 11, 2017

The Honorable Jeff Sessions
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Mr. Attorney General:

Members of Congress have sent you letters in support of and opposed to the political status plebiscite proposed by the Government of Puerto Rico under Public Law 113-76. I am writing regarding the assertion of a letter that some leaders of a faction of the islands' Popular Democratic Party said that they got some senators to sign. It is that the plebiscite does not comply with the law's requirements and other law because it does not include a "Commonwealth" option.

First, this claim is inconsistent with P.L. 113-76: The statute does not specify the options for the plebiscite, leaving that to the insular government.

Second, the contention fails because a "Commonwealth" option cannot meet the law's criteria for possible options. These criteria are that options 1) be able to "resolve" the question of Puerto Rico's ultimate political status and 2) are found by the Department of Justice to not be incompatible with the Constitution, laws, and policies of the United States.

In the Puerto Rico status context, "Commonwealth" has two different meanings. One is a reference to the islands' current status. This status is territory: The Justice Department and all three branches of the Federal government have determined that Puerto Rico is subject to the authority of the Territory Clause of the Constitution. Territory status cannot meet the law's criteria for a plebiscite option because it cannot "resolve" the question of the islands' ultimate status: It cannot extinguish the debate that P.L. 113-76 was intended to settle over whether the territory wants to become a State or a nation and the right of the U.S. citizens of the territory to

petition for either status. P.L. 113-76 recognized that Puerto Ricans do not want territory status, which was defeated in a plebiscite under territorial law in 2012.

“Commonwealth” is also used in Puerto Rico to refer to various proposals of the local Popular Democratic Party or some of its leaders for an unprecedented governing arrangement. These proposals have been made since the 1950s and have been ultimately rejected by the Justice Department, the Executive branch as a whole, and in Congress as impossible for constitutional and other reasons. For example, under the local party’s last proposal, Puerto Rico would be considered to be nation but in a union with the U.S. with terms that the U.S. could not change and that would be permanent. U.S. laws would apply as determined by the Commonwealth. Puerto Rico would also be able to enter into international agreements that require national sovereignty. U.S. citizenship would continue to be granted. The U.S. would also be obligated to provide all current benefits to Puerto Ricans and a new subsidy to the insular government. No proposal for a new “Commonwealth status” that has ever been suggested would meet P.L. 113-76’s criteria for a plebiscite option.

Further, what is called “Commonwealth” in English in the Puerto Rico status context are words in Spanish that literally translate into English as “Associated Free State.” The plebiscite already includes a free association proposal (and some leaders of the Popular Democratic Party are in favor of it). Under both U.S. and international law, a freely associated state is a sovereign nation that lets another nation exercise some of its sovereign powers on the condition that it can reclaim the powers. The U.S. is in free association with three nations in the Pacific. Their status is very different from that of Puerto Rico now and from proposals for a new “Commonwealth” status.

For the reasons cited above, the argument that a plebiscite provided for by P.L. 113-76 should include a “Commonwealth” option does not reflect the law, is contrary to its requirements and purpose, and is without merit. As Puerto Rico’s elected representative to the Federal government, I would like to discuss this further with you or any other appropriate person in the Department if there are any questions.

I support the plebiscite and this effort of the Government of Puerto Rico to resolve the question of the territory’s ultimate status. The current status precludes the possibility of a representative government at the national level, and has now resulted in self-government on local matters being subject to the determinations of appointees of a government in which Puerto Ricans do not have voting representation. The current status has also resulted in treatment of Puerto Ricans in major Federal programs worse than their fellow citizens in the States. The status has, further, resulted in underdevelopment, serious economic deterioration and mass migration, as individual Puerto Ricans have voted for statehood for themselves by moving to a State for the greater opportunities and better life afforded U.S. citizens who live in a State. I will understand, however, if the Department finds that the provision of the ballot’s free association option that America citizenship would be subject to negotiation with

the U.S. is misleading. In such a case, I would join in advising the territorial government that the definition should be corrected, and I believe that it would be.

The letter that the Puerto Rico Popular Democratic Party faction said that it got some senators to sign also includes other egregiously misleading assertions: that many Puerto Ricans have voted for "Commonwealth status" in the past and that the non-inclusion of "Commonwealth status" disenfranchises such voters. First, as the only possible "Commonwealth" status is territory according to the Department and Congress, Puerto Ricans have never voted in favor of the current status. (The sometimes cited vote in 1952 was a vote on the territorial constitution not on territory status.) When it has been voted on, it has been overwhelmingly defeated, as it was most recently in 2012. (Statehood was the winner then with more than 61.1%, as certified by the Puerto Rico State Elections Commission.).

Moreover, in the two instances that a "Commonwealth" proposal appeared on the ballot, in 1967 and in 1993, the proposals were very different from the current governing arrangement which, again, is the only possible "Commonwealth" status. Both proposals were also ultimately rejected in the Federal Executive branch and in Congress as impossible for constitutional and other reasons.

The non-inclusion on a ballot of a proposal that has been repeatedly and recently rejected or a proposal that cannot be implemented if chosen does not disenfranchise voters. Even voters who might want such proposals have the same right to vote in the proposed plebiscite that other voters do. And, again, P.L. 113-76 does not permit such "Commonwealth" proposals to be options. Further, neither does self-determination. That concept requires options be for fully democratic governing arrangements.

I hope that this letter provides adequate clarifications. I request the opportunity to discuss any questions if it does not.

With appreciation for your attention and that of your colleagues in the Department to this effort to resolve Puerto Rico's central and fundamental issue, which underlies many of its most serious challenges, I am.

Respectfully,



Jenniffer González-Colón
Member of Congress