



U.S. Department of Justice

Office of the Deputy Attorney General

Washington, DC 20530

April 13, 2017

The Honorable Ricardo A. Rosselló Nevares
Governor of Puerto Rico
La Fortaleza
Post Office Box 9020082
San Juan, Puerto Rico 00902-0082

Puerto Rico State Elections Commission
Post Office Box 195552
San Juan, Puerto Rico 00919-5552

Re: United States Department of Justice review of plebiscite ballot, voter education materials, and expenditure plan

Dear Governor Rosselló:

Thank you for your recent transmittals of the ballot, voter education materials, and expenditure plan relating to a plebiscite to be held on June 11, 2017. As you are aware, the Consolidated Appropriations Act of 2014 included a “no-year” appropriation of \$2,500,000 for “objective, nonpartisan voter education about, and a plebiscite on, options that would resolve Puerto Rico’s future political status.” Pub. L. 113-76, 128 Stat. 5, 61 (2014) (“Appropriations Act”). Consistent with the House Report accompanying the legislation, the Department has reviewed the plebiscite materials to determine whether it may notify Congress that “the voter education materials, plebiscite ballot, and related materials are compatible with the Constitution and laws and policies of the United States” and obligate funds for the plebiscite. H.R. Rep. No. 113-171, at 54 (2014). The Department has determined that multiple considerations preclude it from notifying Congress that it approves of the plebiscite ballot and obligating the funds.

It has long been “the policy of the executive branch . . . to work with leaders of the Commonwealth and the Congress to clarify [Puerto Rico’s status] options to enable Puerto Ricans to determine their preference among options for the islands’ future status that are not incompatible with the Constitution and basic laws and policies of the United States.” Exec. Order 13183 of Dec. 23, 2000 (Establishment of the President’s Task Force on Puerto Rico’s Status). Consistent with that policy, the President’s Task Force on Puerto Rico’s Status (the “Task Force”) has maintained that the popular will of the people of Puerto Rico should be ascertained in a way that provides a clear result. *See* Report by the President’s Task Force on Puerto Rico’s Status, at 10 (2005) (“2005 Task Force Report”); Report by the President’s Task Force on Puerto Rico’s Status, at 10 (2007) (“2007 Task Force Report”). The Task Force’s most recent report recommended support for efforts to determine the will of the people of Puerto Rico and emphasized that the available status

options should be “as clear as possible.” Report by the President’s Task Force on Puerto Rico’s Status, at 23, 26 (2011) (“2011 Task Force Report”).

The Department has concluded that the plebiscite ballot is not compatible with these policies, as it is not drafted in a way that ensures that its result will accurately reflect the current popular will of the people of Puerto Rico. As transmitted, the ballot omits Puerto Rico’s current territorial status as an available option and instead provides the people of Puerto Rico with only two choices: “Statehood” or “Free Association/Proclamation of Independence.” This omission appears to be based on a determination that the people of Puerto Rico definitively rejected Puerto Rico’s current status in the plebiscite held on November 6, 2012. *See* Act No. 7-2017, Art. III § 1(a). The Department does not believe that the results of the 2012 plebiscite justify omitting Puerto Rico’s current status as an option on the ballot. For a variety of reasons, the validity of the 2012 plebiscite’s results “have been the subject of controversy” and debate. *See* Congressional Research Service, *Puerto Rico’s Political Status and the 2012 Plebiscite: Background and Key Questions*, at 8 (June 25, 2013) (“CRS Report”). Furthermore, nearly five years have elapsed since that plebiscite, during which significant political, economic, and demographic changes have occurred in Puerto Rico and the United States. As a result, it is uncertain that it is the present will of the people to reject Puerto Rico’s current status. Accordingly, any plebiscite that now seeks to “resolve Puerto Rico’s future political status,” as the Appropriations Act contemplates, should include the current territorial status as an option. *See* 2011 Task Force Report, at 26 (noting that the current status “must be an available option for the people of Puerto Rico”). Otherwise, there would be “real questions about the vote’s legitimacy” and its ability to reflect accurately the will of the people. *Id.*

Furthermore, the Department has determined that the plebiscite ballot language contains several ambiguous and potentially misleading statements, which may hinder voters’ ability to make a fully informed choice as well as efforts to ascertain the will of the people from the plebiscite results. The statements of concern are as follows:

- The ballot’s description of the “Statehood” option contains the following statement: “I am aware that Statehood is [the] only option that guarantees the American citizenship by birth in Puerto Rico.” This statement is inaccurate when considered in the context of all available status options, as under current law, Puerto Ricans have an unconditional statutory right to birthright citizenship. The sentence therefore is potentially misleading and reinforces the ballot’s flawed omission of an option for retaining Puerto Rico’s current territorial status.
- The description of the “Free Association” option contains the following statement: “Puerto Rico should adopt a status outside of the Territory Clause of the Constitution of the United States that recognizes the sovereignty of the People of Puerto Rico.” This statement does not make clear that a vote for “Free Association” is a vote for complete and unencumbered independence. Describing Free Association in this manner may lead voters to think that this choice is an “enhanced Commonwealth” option. The Department and Task Force have rejected as unconstitutional previous “enhanced Commonwealth” proposals that would have given Puerto Rico a status outside of the Territory Clause, but short of full independence, and would have further provided that the relationship between the United

States and Puerto Rico could only be altered by mutual consent. *See* 2005 Task Force Report at 6; 2007 Task Force Report at 6; 2011 Task Force Report at 26; *see also* 2005 Task Force Report, App'x E (Letter from Ronald Raben, Assistant Attorney General, Office of Legislative Affairs, to Hon. Frank H. Murkowski, Chairman, Committee on Energy and Natural Resources, United States Senate (Jan. 18, 2001)); *cf. Mutual Consent Provisions in the Guam Commonwealth Legislation*, 1994 WL 16193765 (O.L.C.) (July 28, 1994).

- The description of “Free Association” states that “[u]nder this option the American citizenship would be subject to negotiation with the United States Government,” but the description of “Independence” is silent as to citizenship. Voters may misperceive this difference to suggest that Free Association is an “enhanced Commonwealth” option, when the reality is that both choices would result in complete and unencumbered independence and both would require an assessment of a variety of issues related to citizenship.

For the reasons stated, the Department is unable to notify Congress that it approves of the plebiscite materials and is unable to obligate the appropriated funds.

Thank you for your continued service to Puerto Rico.

Sincerely,



Dana J. Boente
Acting Deputy Attorney General