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Written Testimony
Hearing on the Political Status of Puerto Rico
Senate Committee on Energy and Natural Resources
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Chairman Wyden, Ranking Member Murkowski, and Members of the Committee: Thank you for inviting me to testify about the status referendum Puerto Rico held last November, and about the federal government's response.

To summarize, the results of the referendum demonstrate that a solid majority of the U.S. citizens of Puerto Rico want to end the island's current status as a territory; that a supermajority prefer statehood among the three possible alternatives to the current status; and that more voters favor statehood than any other status option, including the current status. The Administration responded by proposing a \$2.5 million appropriation to conduct the first federally-sponsored status vote in Puerto Rico's history, to be held among one or more options that would "resolve" the territory's future status. The House Appropriations Committee has approved that proposal. In addition, I introduced bipartisan legislation in the House—cosponsored by over 100 of my colleagues—that proceeds from the irrefutable premise that statehood obtained more votes than any other status option in the November referendum. The bill, H.R. 2000, outlines the rights and responsibilities of statehood, provides for an up-or-down vote on statehood, and prescribes the steps that the president and Congress would take in the event of a majority vote for statehood. Those who support statehood and those who oppose it will have equal opportunity to express their views. Reduced to its essence, the message I want to convey to the Committee is this: On November 6th, Puerto Rico withdrew its consent to territory status. The federal government must respect—and respond to—the democratically expressed will of its own citizens.

Status is the central issue in Puerto Rico's political life. One party, the New Progressive Party, or PNP, favors statehood. Another party, the Puerto Rico Independence Party, or PIP, supports independence.

The third party, the Popular Democratic Party, or PDP, prefers the current status to either statehood or independence. At the same time, the PDP champions a proposal that its leaders often describe as an “enhanced” version of the current status, but that is in fact fundamentally different than the current status. This proposal has been repeatedly rejected by federal officials in the executive and legislative branches on both constitutional and policy grounds, including by former Committee Chairman Jeff Bingaman and Ranking Member Murkowski in a December 2010 letter to President Obama.

I am honored to speak on behalf of the U.S. citizens from Puerto Rico who seek equal rights and equal responsibilities through statehood, a status we believe would be in the best interest of both Puerto Rico and the United States. The PNP is unique among the island’s parties because it draws support from across the political spectrum, from liberal Democrats to conservative Republicans. The goal of the PNP is to perfect our union with the United States, rather than to dilute or dissolve the bonds we have forged over the past 115 years. I view the struggle for statehood as a fight for civil and political rights, economic progress, and a better standard of living for the people I represent. The fact that this aspiration is not universally shared in Puerto Rico does not diminish the nobility of the aspiration itself.

I appeared before this Committee in May 2010, when a hearing was held on my status bill, H.R. 2499, which had been approved by the House. During the hearing, Senator Murkowski noted: “As someone who was born in Alaska when we were still a territory, I do have great sympathy for the desire of the people of Puerto Rico to resolve their political status. It took Alaska 92 years. . . . Puerto Rico has been working on it for 112.” Senator Murkowski also noted that the process to determine Alaska’s future was “driven from Alaska, not from Washington, DC,” and expressed her view that the same should hold true for Puerto Rico.

I agree—and I want to underscore that Puerto Rico is, indeed, driving this process. In December 2011, the duly elected government of Puerto Rico enacted a local law providing for a status referendum to be held. Several million dollars in public funds were spent to support voter outreach and to administer the referendum. On November 6, 2012, a free and fair vote was conducted, with turnout exceeding 75 percent of registered voters. The results of the vote were certified by the Puerto Rico Elections Commission and transmitted to the President and Congress. All of this took place at Puerto Rico’s initiative.

The referendum consisted of two questions. The first question asked voters if they want Puerto Rico to maintain its current territory status. Puerto Rico is an unincorporated territory of the United States, subject to Congress's broad powers under the Territory Clause of the U.S. Constitution. The term "unincorporated" indicates that Puerto Rico has the potential to become either a state or a sovereign nation. The federal government has enacted measures that, in the aggregate, have *allowed* Puerto Rico to exercise about the same degree of authority over its local affairs that the states are *entitled* to exercise under the Constitution. But these measures have not changed Puerto Rico's status, and Congress could rescind the autonomy it has delegated to Puerto Rico if it chose. Today's hearing is being held because this Committee has jurisdiction over "territorial policy . . . including changes in status."

Of the nearly 1.8 million voters who answered the first question, 970,910 voters—53.97 percent—voted "No" to maintaining the current territory status, while 828,077 voters—46.03 percent—voted "Yes." This is the official result certified by the Elections Commission, which consists of representatives from each of the territory's status-based parties.

There is no legitimate basis upon which to challenge the fairness or the outcome of the first question, and such efforts by PDP leaders do not survive even the slightest scrutiny. Moreover, there are 100 members of the U.S. Senate and 435 voting members of the U.S. House. None of you would accept territory status for your own constituents, so I know you will respect that my constituents do not accept it either.

Before turning to the second question on the referendum, I want to outline the three fundamental defects of territory status, because it is important to understand *what* the people of Puerto Rico rejected, and *why* they rejected it.

First, territory status deprives my constituents of political rights. I represent more U.S. citizens—3.6 million—than 42 senators. My constituents have fought shoulder-to-shoulder with your constituents, under the same flag, on battlefields from Korea and Vietnam to Iraq and Afghanistan. Residents of Puerto Rico can relocate from Puerto Rico to the states without any obstacle save the cost of a one-way plane ticket. But, if they choose to remain in Puerto Rico, they cannot vote for their president, have no representation in the Senate, and elect one member to the House—the Resident Commissioner—with

limited voting rights. In the 21st century, in the most democratic nation on earth, this is astonishing. And it should be unacceptable.

Federal law is supreme in Puerto Rico, yet I can only watch as my House colleagues cast floor votes on bills that affect, for better or for worse, every aspect of life on the island. I must rely on the goodwill of senators like you. But you were elected to protect the interests of your constituents, not mine—so, understandably, our needs are not always your highest priority. I must request assistance from a president who is not obliged to seek or earn our vote. To expect the administration to feel the same urgency to produce positive results for Puerto Rico as it does for the states is to substitute hope for experience.

In addition, territory status gives the federal government a license to discriminate against Puerto Rico. It should come as no surprise, given our lack of political power, that the federal government often uses that license. Puerto Rico is excluded from—or treated unfairly under—various federal laws, including nearly every social safety-net program. The territory receives fewer federal funds per resident than any state or the District of Columbia. In 2010, Puerto Rico received about \$5,300 per capita from the federal government, which is half the national average.

It has been argued that Puerto Rico *should* receive fewer federal funds than the states because territory residents are not required to pay federal taxes on their local income. Among its other deficiencies, this argument overlooks that residents of Puerto Rico pay all federal payroll taxes, that nearly half of all households in the states do not pay federal income taxes, and that—through refundable tax credits—federal law actually provides a substantial benefit to working families in the states that it denies to working families in Puerto Rico. To illustrate, consider a married couple with two children living in the states that earns \$25,000, and then consider an identical family living in Puerto Rico. Both families owe the same payroll taxes. But the stateside family would receive over \$6,000 in credits under the Earned Income Tax Credit and Child Tax Credit programs, for a final income of over \$30,000. The Puerto Rico family, because it is ineligible for the EITC or the CTC, takes home less than \$24,000. This is a useful example to bear in mind the next time you hear someone extol the supposed “advantages” of territory status.

Finally, territory status—and the unequal playing field it creates—has harmed Puerto Rico’s economy and, therefore, quality of life on the island. Between 2004 and 2012, Puerto Rico’s population decreased

by 4.2 percent, nearly all through migration to the states. This is the sort of exodus that one typically sees only in the wake of a natural disaster. In the nearly 40 years that the federal government has published statistics, Puerto Rico's unemployment rate has *averaged* 15.5 percent, risen as high as 24 percent, and almost never dipped below 10 percent. At no point in time in the last 450 months has a state ever had an unemployment rate as high as Puerto Rico's. The data on household income reveal a similar pattern. Indeed, whatever economic metric we use, the numbers tell the same narrative: Puerto Rico has lagged far behind the states for at least four decades, and the gap is only increasing.

Political leaders in Puerto Rico, in an effort to spur economic activity, have generally resorted to a policy of offering tax and other incentives to large multinational corporations, but this policy has failed to produce substantial and sustained results. It is clear that territory status serves as a perpetual economic headwind, slowing or stopping forward progress by the ship of state, regardless of who is at the helm.

The second question on the referendum asked voters to express their preference among the three possible alternatives to territory status. The certified results show that, of the nearly 1.4 million voters who chose an option, 834,191 voters—61.16 percent—chose statehood, 33.34 percent chose nationhood in free association with the United States, and 5.49 percent chose independence. Of critical importance, the number of votes for statehood on the second question (834,191) exceeded the number of votes for the current status on the first question (828,077). For the first time in history, more voters in Puerto Rico want the territory to become a state than to continue its current status.

PDP leaders seek to downplay the result of the second question by noting that close to 500,000 voters did not provide an answer. In the run-up to the referendum, some PDP leaders encouraged voters to leave the second question blank, though other PDP leaders encouraged voters to choose the free association option, aware that blank ballots “shall not be deemed to be a vote cast” under Puerto Rico election law and general election practice. Although it is impossible to divine voter intent from a blank ballot, we can speculate that some—but by no means all—of the voters who did not answer the second question were responding to this appeal. If blank ballots are included in the vote total, the PDP's theory runs, statehood's supermajority victory becomes a plurality victory, though a victory nonetheless.

This argument is thin and, ultimately, *beside the point*. The purpose of the second question was to ascertain the voters' preference among the valid alternatives to territory status. And it is well-established that there are only three alternatives to territory status. Each of those options was included.

Nevertheless, PDP leaders continue to insist that the party's proposal—called “New Commonwealth” or “Enhanced Commonwealth”—should have been on the ballot. Simply to describe this proposal—which PDP leaders dutifully avoid doing in public—is to discredit it. Under this proposal, residents of Puerto Rico would retain their U.S. citizenship, and Puerto Rico would receive at least as much federal funding as it does now. In addition, Puerto Rico would be able to decide which federal laws apply on the island and to limit federal court jurisdiction, and to enter international organizations and international agreements as if it were a sovereign nation. Finally, Congress—once it agreed to this arrangement—could not modify its terms or withdraw without the consent of Puerto Rico.

In a March 2011 report, the Obama administration—concurring with the two prior administrations, former Chairman Bingaman and Ranking Member Murkowski, and the House Natural Resources Committee, among others—rejected the core of this proposal on constitutional grounds, reiterated that the only alternatives to territory status are statehood and nationhood, and confirmed that, under any “Commonwealth” proposal advanced by the PDP, “Puerto Rico would remain, as it is today, subject to the Territory Clause of the U.S. Constitution.” Accordingly, to the extent that PDP leaders argue that the second question was unfair because it should have included their preferred status proposal, that argument is without merit.

In the final analysis, the fact that some voters left the answer to the second question blank does nothing to detract from the broader point, which is that a majority of voters in Puerto Rico do not support the current territory status, a supermajority favor statehood among the three *valid* alternatives, and more voters want statehood than any other option, including the current status. These results are now part of the historical record, and they cannot be dismissed or diminished by those who find them inconvenient.

Now that American citizens living in an American territory have informed the federal government, in a free and fair vote, that they do not consent to a political status that deprives them of the right to choose the leaders who make their national laws and the right to equal treatment under those laws, it is imperative

that the federal government take steps to facilitate Puerto Rico's transition to a democratic and dignified status.

It is true that Puerto Rico should drive the self-determination process—and we are. But it is equally true that Congress has a constructive role to play in this process for both legal and moral reasons.

As a legal matter, the Constitution vests Congress with broad authority over its territories, including the power to decide whether, when and how to “dispose of” a territory. For Puerto Rico to become a state or sovereign nation, it is not enough for Puerto Rico to seek such a change; Congress—and the president—must act to enable that change.

As a moral matter, the federal government rightfully prides itself as a champion of democracy and self-determination around the world. It should—indeed, it must—adhere to those principles with respect to its own citizens.

I am encouraged by what I have seen to date, but believe that more needs to be done. In April, the Administration requested an appropriation of \$2.5 million, which would be provided to the Puerto Rico Elections Commission to conduct the first federally authorized status vote in the territory's history, with the express goal of “resolving” the issue. Last month, that funding was approved by the Republican-controlled House Appropriations Committee, confirming that the effort to secure fair treatment for Puerto Rico is not, and should never become, a partisan issue.

The Appropriations Committee endorsed a condition proposed by the Administration, stating that federal funding will not be obligated until the Department of Justice has certified that the ballot and voter education materials are compatible with U.S. law and policy. This language was included for the specific purpose of ensuring that any PDP effort to include “New Commonwealth” as an option will not succeed. True self-determination is a choice among options that can be implemented, not an exercise in wishful thinking.

Moreover, the wording of the appropriation is key. The only way to “resolve” the island's ultimate status is through statehood or nationhood. Puerto Rico cannot resolve its status by maintaining the same undemocratic status that my people have endured since 1898 and that they rejected in November. Since

the current status is the root cause of Puerto Rico's political and economic problems, it cannot also be the solution to those problems.

If the appropriation is enacted into law, I believe the leaders of this Committee can play a role in ensuring that any vote conducted pursuant to the appropriation is structured in a way that is designed to accomplish Congress's stated purpose in making the appropriation, which is to resolve the status issue once and for all.

On another front, I have introduced standalone legislation, H.R. 2000, which proceeds from the indisputable premise that statehood obtained more votes than any other option in the November referendum. The bill outlines the rights and responsibilities of statehood, and asks voters in Puerto Rico whether they accept those terms. Those who support statehood and those who oppose it—for whatever reason—will have equal opportunity to express their views. If there is a majority vote for statehood, the bill provides for the President to submit legislation to admit Puerto Rico as a State after a transition period. As of this writing, the bill enjoys support from 102 representatives from both parties and every region of the country, and it is my hope that a senator will introduce a companion bill.

In closing, I want to make this point. In June, I testified before the United Nations. I expressed faith that the U.S government would follow through on its legal and moral obligation to facilitate Puerto Rico's transition to a democratic and dignified status, but I also noted that my faith was not blind. As the leader of a party that wants Puerto Rico to become a full and equal member of the American family, I have no desire to publicly criticize the United States. But as I told the U.N., and as I reiterate now, it is more important for me to secure justice for my people than it is for me to be polite.

On November 6th, Puerto Rico withdrew its consent to territory status and expressed a preference for statehood. Congress must respect—and provide a constructive response to—the democratically expressed aspirations of its citizens.