April 12, 2021

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles Schumer
Senate Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Kevin McCarthy
House Republican Leader
U.S. House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
Senate Republican Leader
U.S. Senate
Washington, DC 20510

Dear Speaker Pelosi, Majority Leader Schumer, and Leaders McCarthy and McConnell:

We, the undersigned legal and constitutional scholars, write to express our strong opposition to the Puerto Rico Self-Determination Act, H.R. 2070, and its Senate companion bill, S. 865, and to register our equally strong support for the Puerto Rico Statehood Admission Act, H.R. 1522, and its Senate companion bill, S. 780.

Like all Americans, we support self-determination. But unlike the supporters of the Puerto Rico Self-Determination Act, we believe that genuine self-determination requires the United States to offer Puerto Ricans a real choice. By "real," we mean *constitutional* and *non-territorial*. Puerto Rico's self-determination options must be *constitutional*, for the obvious reason that neither Congress nor Puerto Rico has the power to implement an unconstitutional option. And they must be *non-territorial*, because a territorial option is not self-determination.

There are two, *and only two*, real self-determination options for Puerto Rico: statehood and independence. Yet the Puerto Rico Self-Determination Act defies constitutional reality by calling upon Puerto Ricans to define other non-territorial options. *There are no other non-territorial options*. For many decades, advocates of "commonwealth" status argued that it was non-territorial. They argued that when Puerto Rico made the transition to commonwealth status in 1952, it ceased to be a U.S. territory, became a separate sovereign, and entered into a mutually binding compact with the United States. But they were wrong. Quite simply, Congress does not have the power to create a permanent union between Puerto Rico and the United States except by admitting Puerto Rico into statehood. Lest there be any doubt, the U.S. Supreme Court has repeatedly and recently refuted the controversial "compact theory." In *Puerto Rico v. Sanchez Valle* (2016), the Court ended seven decades of debilitating debate over the question of whether Puerto Rico's commonwealth status created a permanent union between two separate sovereigns with an unequivocal "no": as the Court made clear, Puerto Rico is, and always has been, a U.S. territory, and Congress retains plenary power to govern the island under the Territory Clause of the Constitution (Art. IV, §3, cl.2). And in *Financial Oversight and Management Board of Puerto Rico v. Aurelius Investment LLC.* (2020), the Court went on to explain that Congress's creation of a federal board with substantial powers over Puerto Rico's local government was a permissible exercise of Congress's plenary power over a U.S. territory. In short, as long as Puerto Rico is neither a state of the Union nor an independent nation, it will remain a territory. By inviting Puerto Ricans to define non-territorial options other than statehood or independence, the inaptly named Puerto Rico Self-Determination Act disserves its purported goal by perpetuating the pernicious myth that such options exist. They do not.

Despite longstanding political division within Puerto Rico, Puerto Ricans have long shared an overwhelming consensus on two key points: They reject territorial status and they wish to remain U.S. citizens. But while both statehood and independence would fulfill the goal of self-determination, only one of those options would guarantee U.S. citizenship: statehood. Last November, in an unmistakable effort to determine their political future, a clear majority of Puerto Ricans voted "yes" in their own referendum on statehood. Now that Puerto Ricans have publicly and officially asked for statehood, it is time for the United States officially to offer it. The Puerto Rico Statehood Admission Act does just that.

Proceeding respectfully, cautiously, and pragmatically, the Puerto Rico Statehood Admission Act responds to the November referendum with an offer of statehood and sets the terms for admission, but it makes admission contingent on a *second* referendum in which Puerto Ricans would ratify their choice. Were they to do so, the President would issue a proclamation admitting Puerto Rico as a state within one year of the vote. If they were to reject statehood, then the island would remain a territory with the option to pursue sovereignty at any time in the future—so the Act does not force statehood on Puerto Rico in any way. In other words, the Puerto Rico Statehood Admission Act respects the result of Puerto Rico's referendum by responding with concrete action, while ensuring that Puerto Ricans have the first and last word on their future.

In the 123 years since the United States annexed Puerto Rico, Congress has never offered Puerto Ricans the choice to become a state. Instead, the United States has allowed Puerto Rico to languish indefinitely as a U.S. territory, subjecting its residents to U.S. laws while denying them voting representation in the government that makes those laws. We strongly support a congressional offer of statehood to Puerto Rico, and we urge Congress to pass the Puerto Rico Statehood Admission Act immediately.

Signed,*
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