

GAO

Report to the Chairman, Committee on
Energy and Natural Resources, U.S.
Senate

May 1990

PUERTO RICO

Commonwealth Election Law and Its Application to a Political Status Referendum





United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

B-235508

May 2, 1990

The Honorable J. Bennett Johnston
Chairman, Committee on Energy and
Natural Resources
United States Senate

Dear Mr. Chairman:

In 1991, the people of Puerto Rico plan to vote in a referendum to decide their future political relationship with the United States. In preparation for this referendum, your Committee reported out Senate bill 712 (S.712) on September 6, 1989. This bill calls for a referendum on Puerto Rico's political status and defines the three status options to be voted on: enhanced commonwealth, statehood, and independence. In addition to defining the options to be voted on, S.712 sets forth how general parameters on the referendum would be conducted, establishes a process for determining the outcome and certifying it to the U.S. government, and defines the federal role in the referendum process.

Your letter of March 28, 1989, requested that we assess Puerto Rico's electoral law and related matters concerning Puerto Rico's proposed status referendum. In particular, you asked us to provide answers to the following questions about Puerto Rico's electoral process:

- How are Puerto Rico's elections administered?
- What safeguards and controls exist to assure the integrity of election results?
- What roles do the U.S. Department of Justice and Federal Election Commission have in Puerto Rico's elections?
- What limitations are placed on campaign financing in Puerto Rico and how are they administered?
- What are the rights of nonresident Puerto Ricans to participate in the status referendum?
- What problems have been experienced in past elections?

We conducted our review in San Juan, Puerto Rico, and Washington, D.C. We interviewed officials of the Puerto Rico Commonwealth Elections Commission, representatives of the three principal political parties of Puerto Rico, and officials from the Commonwealth government. The officials from the Commonwealth Justice Department, however, declined to meet with us. We also interviewed the U.S. Attorney for Puerto Rico and officials of the Departments of the Interior, Justice, and State, and the Federal Election Commission.

The law includes a number of safeguards and controls to protect the integrity of election results. Among these are the involvement of representatives of the principal political parties at all levels of the electoral process and stringent registration and voting procedures. However, the law applies only to the election of candidates and Puerto Rico's legislature would need to enact special legislation to extend the law to any referendum.

The U.S. Department of Justice and the Federal Election Commission enforce federal laws in elections involving candidates for federal offices. Many of these laws, however, do not apply to referendums. Furthermore, S.712 does not state clearly whether the Committee wants federal law to apply. Therefore, the Committee may wish to clarify this aspect of S.712.

Puerto Rico's electoral law places limits on political campaign contributions and expenditures for the election of candidates to office, but these provisions have not always been complied with or enforced. The special Commonwealth legislation needed to authorize the 1991 status referendum may also attempt to extend campaign contribution limits to the referendum. However, in light of U.S. Supreme Court decisions, there is a question as to whether placing limits on campaign contributions for the referendum would be constitutional.

The electoral law states that domicile in Puerto Rico is one of the key qualifications for voting in Puerto Rico's general elections. However, the question of whether nonresident Puerto Ricans will be eligible to vote in the status referendum will need to be decided by Puerto Rico's legislature.

Although some problems existed in recent Puerto Rico elections, allegations of election fraud and abuse were isolated. To date, the Commonwealth Justice Department prosecuted one election fraud case. No allegations resulted in federal prosecution.

Puerto Rico's Electoral System

Puerto Rico holds general elections every 4 years for the Offices of Governor, Resident Commissioner, and other islandwide and local offices. The 1977 Electoral Law of Puerto Rico established the Commonwealth Elections Commission as an independent agency responsible for overseeing all aspects of the electoral process. The Commission is headed by a chairman and includes one election commissioner from each of Puerto Rico's three principal political parties.

office. These laws include criminal and civil statutes, such as those dealing with mail and wire fraud, civil rights, and voting rights. U.S. Attorneys' offices assist in the investigation and prosecution of alleged election crimes, and the U.S. Attorney for Puerto Rico played a role in monitoring the 1984 and 1988 general elections. The U.S. Attorney's Office appointed an "election day officer" and set up a telephone hot line for citizens to report any voting irregularities.

The Federal Election Commission enforces U.S. campaign finance laws that regulate contributions to candidates for federal office, which, in Puerto Rico, involves only the election of the Resident Commissioner. Consequently, the Commission would have no role in Puerto Rico's proposed status referendum.

S.712 provides that the electoral law in effect on July 15, 1989, shall apply to Puerto Rico's status referendum. The bill also provides for monitoring of the referendum by the U.S. Marshal Service and creates a special federal court to review contested results. S.712, however, is not clear as to the extent to which federal law would apply. (See section 3.)

Limitations on Campaign Financing

Puerto Rico's electoral law and regulations limit political contributions and expenditures on behalf of candidates for public office. The law also details accounting and reporting requirements to be followed by each candidate, political party, and committee, and establishes an electoral fund for public financing of the political parties' campaigns. The special Commonwealth legislation needed for the status referendum could attempt to extend the law's campaign financing provisions to the referendum. However, in light of several U.S. Supreme Court decisions, there is a question as to whether placing limits on campaign contributions would be constitutional.

The Commonwealth Elections Commission is responsible for administering the campaign financing provisions of the law and reviewing compliance with them. Our limited review of audit and campaign finance reports found that these laws were not always complied with by the political parties or enforced by the Elections Commission. (See section 4.)

referendum, and the substantial federal interest in its results, a larger federal monitoring role may be desirable. S.712, as passed by the Senate Energy and Natural Resources Committee, would use U.S. Marshals to fulfill this role. However, other options, such as delegations of congressional, state, or international officials appointed by the President, the Congress, or both could be used to fulfill the same function.

Matter for Committee Consideration

S.712 is not clear as to the extent to which federal law would apply to the status referendum. Because of this, the Committee may wish to amend section 101(d) of the bill to specify that federal laws applicable to the election of Puerto Rico's Resident Commissioner shall apply.

Comments From Affected Parties

A draft of this report was sent for comment to the U.S. Department of Justice and Federal Election Commission, the Governor of Puerto Rico, members of the Dialogue Committee on the Status of Puerto Rico, and the chairman of the Commonwealth Elections Commission. All but two of those who commented on the report generally agreed with our findings and the accuracy of the report. One of the two—the Statehood Party's representative to the Dialogue Committee—had no comments on the overall accuracy of the report, and the other—the election commissioner for the Puerto Rican Independence Party—commented that our report failed to consider the principles of international law as they apply to the referendum process.

Several officials offered comments on similar issues: Puerto Rico's electoral structure, its enforcement of campaign finance laws, the eligibility of nonresidents to vote in the referendum, the 1988 San Juan mayoral election, and the proposed federal role in oversight of the referendum. The officials also commented on a number of other issues. Appendix I summarizes these comments and provides our evaluation of them, and appendixes II through VII contain the comments. Some officials also provided technical comments, which we incorporated where appropriate in this report.

<hr/>		
Section 5 What Are the Rights of Nonresident Puerto Ricans to Participate in the Status Referendum?		28
<hr/>		
Section 6 What Problems Have Been Experienced in Past Elections?	No Federal Prosecution of Election Crimes in Puerto Rico Problems Experienced in the San Juan Mayoral Election	29 29 30
<hr/>		
Appendixes	Appendix I: Summary of Comments From Affected Parties Appendix II: Comments From the Election Commissioner, Popular Democratic Party Appendix III: Comments From the Federal Election Commission Appendix IV: Comments From the Chairman, Commonwealth Elections Commission Appendix V: Comments From the U.S. Department of Justice Appendix VI: Comments From the Office of the Governor of Puerto Rico Appendix VII: Comments From the Election Commissioner, Puerto Rico Independence Party Appendix VIII: Major Contributors to This Report	32 38 43 44 51 53 60 64
<hr/>		
Figure	Figure 1.1: Commonwealth Elections Commission Structure	14

Abbreviations

CPA	certified public accountant
FBI	Federal Bureau of Investigation
GAO	General Accounting Office
PAC	political action committee

Section 1
How Are Puerto Rico's
Elections Administered?

appointed by the Chief Justice of the Puerto Rican Supreme Court and one election commissioner representing each political party.

The registration boards are also comprised of representatives from the three political parties. These boards remain open all year to register voters and update electoral lists, but close after each general election to perform administrative duties. The electoral unit boards supervise the polling places on election day. They also are responsible for tallying the votes cast in their respective precincts and reporting these totals to the local commissions. Figure 1.1 summarizes the structure of the Commonwealth Elections Commission.

Section 1
How Are Puerto Rico's
Elections Administered?

budget request, separate from the Commission's operating budget, to cover election administration costs.

The legislature appropriated \$11.4 million for the Commission's 1988 operating budget and an additional \$17 million to cover the cost of administering the 1988 elections.

At the time of our review, the Commission was in the process of preparing its 1991 operating budget request. According to the Commission's secretary, the budget proposal will also address the costs of administering the proposed 1991 status referendum. The Commission's 1991 budget requests will be completed in 1990.

Commission Decides Election Questions

The electoral law charges the Commission with

- studying any problems of an electoral nature that may affect the Puerto Rican community and designing an integral plan directed towards greater efficiency, promptness, and the solution of electoral problems and procedures;
- approving the work plans and adopting bylaws and internal operating rules for the administration of matters within its jurisdiction;
- investigating and resolving matters or controversies submitted for its consideration by any interested party; and
- adopting rules and regulations needed to implement the provisions of the electoral law.

By law, the chairman and the election commissioners must meet weekly to discuss and resolve electoral matters submitted by any member. The Commission's secretary told us that most of the commissioners' decisions are decided unanimously. Where the commissioners cannot agree, the chairman decides the question.

Commission Decisions Can Be Appealed in the Local Courts

Although the Elections Commission decides all electoral questions, the electoral law provides that any Commission decision can be appealed to the Superior Court of Puerto Rico. A petitioner must file an appeal within 10 days of notification of the Commission's decision and the Superior Court must decide the issue within 20 days of receipt of the petition. The law provides for an expedited review of Commission decisions handed down within the 30-day period before an election. In such cases, the petitioner must file within 24 hours of the decision and the

What Safeguards and Controls Exist to Assure the Integrity of Election Results?

Puerto Rico's electoral law and regulations contain various provisions designed to protect the rights and interests of voters participating in elections of candidates for municipal and islandwide offices. These include stringent procedures for registering voters, balloting, and tabulating election results. The law also provides for participation by the major political parties in all levels of the electoral process. The political parties view this participation as an important control to protect the interests of the parties' membership and the integrity of the electoral system as a whole.

When compared with the election process in the states, a Federal Election Commission expert told us that Puerto Rico's election process is sound and that controls present in its system exceed those in some of the states. However, the extent to which electoral law and regulations would apply to the 1991 status referendum depends on the special legislation the Puerto Rican legislature must enact for any referendum.

Stringent Registration and Voting Requirements

The electoral law and regulations detail the rules and requirements governing the general election process—from voter registration to vote tabulation and certification of election results. The law also provides for broad participation in the electoral process by the major political parties.

In order to register to vote, a person must (1) be a citizen of the United States and of Puerto Rico, (2) reside in Puerto Rico, and (3) be at least 18 years old. Under the law, a voter must register in person at the registration board in the precinct where he or she lives. Voter registration is not permitted by mail.

At the registration board, an applicant completes a registration form and is photographed for a voter identification card. Each identification card has a unique number, which becomes the voter's permanent electoral identification. The applicant must provide his or her signature and documentary evidence showing birthplace, date of birth, citizenship, and legal domicile. Once a voter registers and the local commission approves the application, the voter's name is placed on an electoral register at the Commission's headquarters. If a voter fails to vote in a general election, he or she is removed from the electoral register and must re-register to vote in subsequent elections.

The vote is taken by means of paper ballots. Voters go to preassigned polling places that are open from 8:00 a.m. to 3:00 p.m. As provided in

Section 2
What Safeguards and Controls Exist to
Assure the Integrity of Election Results?

When the results of an election show a difference between two candidates of less than 100 votes or 1/2 of 1 percent of total votes cast, the law requires a recount upon request by either candidate. The Commission performs the recount using the tally sheets received from the various electoral units within the Commission. Each member of the Commission present at the recount certifies the results. The Commission cannot certify a candidate as the winner of the election until the recount process is completed.

We discussed Puerto Rico's election process with a U.S. Federal Election Commission official familiar with state election laws to determine how Puerto Rico's process compares with those of the states. He told us that he was not aware of any problems with Puerto Rico's electoral law or process. In fact, he believes Puerto Rico's election process is sound, and that controls present in its system exceed those in some of the states. For example, his experience shows that greater bipartisan control is exercised over the election process when election boards or commissions, rather than elected officials, are responsible for the conduct of elections. The trend among the states is towards the use of election boards and commissions, as is the case in Puerto Rico.

In summary, Puerto Rico's electoral process is sophisticated and has several built-in safeguards and controls to protect the integrity of election results. The participatory structure of the Commission further assures that the interests of the political parties and their members are protected throughout the electoral process. However, the Puerto Rican election law specifically states that, in the event of a referendum, a special law must be enacted to establish procedures for such an election.

Section 3
What Roles Do the U.S. Department of Justice
and Federal Election Commission Have in
Puerto Rico's Elections?

- The Civil Rights Act of 1968 (18 U.S.C. 245(b)(1)(A)), which makes it a federal offense to use force or the threat of force to injure, intimidate, or interfere with the activities of a poll officer or candidate for political office or a person in the act of voting or poll watching. According to the Department of Justice, this statute, which normally applies only to federal elections, can also be used in local elections if the Attorney General certifies that federal prosecution is necessary to achieve justice (18 U.S.C., 245(a)(1)).
- Patronage statutes (18 U.S.C. 598, 600, 601), which prohibit the use of federal funds or positions to punish or reward voters. These statutes make it a crime, for example, to grant or withhold federal relief or employment for the purpose of coercing, interfering with, or restraining an individual in exercising the right to vote.
- Mail and wire fraud statutes (18 U.S.C. 1341, 1343, 1346), which forbid the use of U.S. mails or interstate wire facilities to further a “scheme or artifice to defraud.” These statutes have been applied to prosecution of schemes to corrupt the ballot box.

The Criminal Division also prosecutes persons for criminal violations of federal campaign finance laws. The Federal Election Commission is responsible for civil enforcement of these laws, but refers criminal violations to the Criminal Division’s Election Crimes Branch.

Civil Rights Division

The Voting Section of the Civil Rights Division enforces several statutes that also apply to the election of the Resident Commissioner. These include the Voting Rights Act, as discussed above, and:

- The Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff), which facilitates absentee registration and voting in federal elections by members of uniformed services and persons who reside overseas.
- The Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee), which requires, in connection with federal elections, that election officials facilitate access to voter registration and polling places for handicapped and elderly individuals.

Executive Office for U.S.
Attorneys

U.S. Attorneys’ offices throughout the country assist in the investigation and prosecution of alleged election crimes. Approval for full investigation, however, must first be obtained from the Election Crimes Branch.

Section 3
What Roles Do the U.S. Department of Justice
and Federal Election Commission Have in
Puerto Rico's Elections?

Any challenge of the referendum results may be brought only on the basis of an electoral irregularity that is so significant as to affect the outcome of the referendum and call into question the choice certified by the Governor. The special court is provided exclusive jurisdiction over such proceedings, and is empowered to grant appropriate relief to preserve the electoral process's integrity. The Attorney General is also empowered under the bill to intervene at the request of the court to assist in gathering and presenting evidence.

- Provides for the appointment of a federal information officer to translate and distribute information on the referendum. The bill provides for the President to appoint the information officer from a list of candidates provided by Puerto Rico's political parties.

Section 4
What Limitations Are Placed on Campaign
Financing, and How Are They Administered?

For Puerto Rico's 1967 plebiscite, special Commonwealth legislation made \$385,000 available to each political party. The legislation also limited the amount any person could contribute to a party or committee representing a status option to a total of \$300, and required a special contributions report to be filed after the plebiscite election.

The Dialogue Committee on the Status of Puerto Rico tentatively agreed that the special Commonwealth legislation necessary to authorize the 1991 status referendum should provide for adequate and equal public financing for the campaigns of the three status options. The committee also agreed that the legislation should prohibit the use of public funds to campaign for any option or influence the outcome of the referendum.

The contribution limits imposed by the 1967 special plebiscite law preceded U.S. Supreme Court decisions that invalidated laws limiting contributions made in support of referendum proposals. In two cases, the Supreme Court invalidated state and local laws that limited contributions by individuals or corporations to further a particular position on a state referendum proposal.¹ The Court held that such limitations were unconstitutional infringements of the First Amendment right of free expression. Thus, any attempt to extend campaign financing provisions of the electoral law that would limit campaign contributions to the 1991 status referendum is vulnerable to a challenge that it is unconstitutional.

The U.S. Congress provided funding for Puerto Rico's three major political parties' participation in the 1991 referendum. Public Law 101-45 appropriated \$1.5 million for grants in equal amounts not to exceed \$500,000 to each party for expenses incurred in the legislative process.

Campaign Financing Provisions Have Not Been Strictly Complied With or Enforced

The Elections Commission's Auditing Department is responsible for reviewing political parties' compliance with the electoral law's campaign financing provisions. The department monitors the political parties' reports to the Commission but contracts with a local firm of certified public accountants (CPAs) to audit each party's election year receipts and expenditures.

To obtain an overview of political parties' compliance with the campaign finance provisions of the electoral law, we reviewed (1) the CPA's

¹Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290 (1981), First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978).

Section 4
What Limitations Are Placed on Campaign
Financing, and How Are They Administered?

election. In 1986, the Commission's chairman ruled that the two parties exceeded the electoral law's limits on media expenditures and the Commission prepared to take legal action to impose penalties prescribed under the law. Before the Commission acted, the political parties appealed the Commission's decision to Puerto Rico's Superior Court.

In 1987, the court decided in favor of one political party, ruling that expenses included in the Commission's computations did not constitute communications media expenditures within the meaning of the law. In 1988, the court remanded the other party's case back to the Commission for additional documentation about the expenditures in question. As of December 1989, no further action had taken place on this case.

What Problems Have Been Experienced in Past Elections?

The U.S. Attorney's Office in Puerto Rico investigated several allegations of election fraud, but to date, no cases have resulted in federal prosecution. One case of election fraud allegation, however, is still under investigation. An Elections Commission official told us that the Commonwealth Justice Department prosecuted one election fraud case and that another case is under investigation. Also, a problem concerning the 1988 San Juan mayoral election is still unresolved.

No Federal Prosecution of Election Crimes in Puerto Rico

The U.S. Attorney for Puerto Rico told us that no federal election fraud or abuse cases were prosecuted in Puerto Rico. The U.S. Attorney's Office referred several election complaints to the Federal Bureau of Investigation (FBI), but none were prosecuted as they proved to be unfounded. By way of comparison, approximately 150 cases involving election fraud and abuse are prosecuted each year in the United States. The U.S. Attorney provided the following information about past election fraud and abuse allegations in elections in which candidates for the Office of the Resident Commissioner were running.

An allegation was made concerning vote tampering during Puerto Rico's 1980 general elections. The complaint alleged that votes were changed when a breakdown in the Election Commission's reporting system occurred. Before the system failure, the Commonwealth Party gubernatorial candidate was leading in the election. After the system was restored, the incumbent Statehood party candidate was leading and won the election by less than a 3,500 vote margin (0.2 percent of total votes). A recount was taken of all votes cast for governor and the incumbent governor was certified as the winner. No further action was taken by the U.S. Attorney's Office.

Two complaints were filed with the U.S. Attorney's Office during the 1984 general elections. One complaint, received just before election day, alleged that one of the political parties had a so-called super computer that could override the Election Commission's computer system. The U.S. Attorney's Office investigated the allegation, located the computer, and observed that it was not used on election day. No further action was taken because no evidence existed that the computer could be used in the manner alleged.

The other complaint alleged that a local bank provided a campaign contribution to one of the principal political parties in violation of Puerto Rico's election law. After investigating the allegation, the U.S. Attorney's Office found that the alleged contribution was, in fact, a loan from

Section 6
What Problems Have Been Experienced in
Past Elections?

The Commission complied with the court's ruling and implemented special procedures on election day that allowed affected voters to vote even though their names did not appear on the voting lists. The Commission distributed a number of special envelopes to each polling place; however, it was alleged that the number of envelopes distributed was insufficient, and, in some cases, local officials had to improvise in handling the affected voters' ballots. A number of these ballots were questioned and, therefore, not counted in the San Juan Mayoral election. The mayoral race was closely decided and a recount was ordered. The recount showed that the election was decided by 29 votes—a margin smaller than the number of ballots questioned under the special procedures as well as for other reasons. As a result, the losing candidate contested the election in the Puerto Rican court system and as of January 1990, this matter was unresolved.

Enforcing Puerto Rican Campaign Financing Laws

Several comments addressed our discussion in section 4 about the enforcement of Puerto Rican campaign finance laws by the Elections Commission. The Commonwealth Party election commissioner noted that political financing, as treated in the electoral law, is not a clear cut issue, and that all three political parties are responsible for the law's enforcement within the structure of the Commission. The Governor's Office said that our discussion of campaign financing is flawed, incorrect, unsubstantiated, and should be omitted from the report. In particular, both officials, along with the Statehood Party official, said we did not note that fund raising in Puerto Rico is conducted mainly through mass fund-raising activities, such as telethons, radiothons, and rallies. The officials believed that sums raised through a large number of small contributions in events such as these need not be itemized.

We agree that contributions of \$100 or less need not be itemized in reports to the Elections Commission. We confirmed with the Commission's secretary, however, that all contributions of more than \$100 are to be reported, regardless of how they are raised.

Eligibility to Vote in the Referendum

The Commonwealth and Independence parties commented on our discussion in section 5 about who shall be permitted to vote in the referendum. The Commonwealth election commissioner said that we did not analyze the complex issues surrounding absentee voting. He stated that the party is open-minded with respect to allowing nonresidents to vote in the referendum, but believes that several administrative and legal issues must first be resolved.

The Independence Party's election commissioner said that the eligibility criteria established under Puerto Rico's electoral law are unfair and inadequate in a self-determination referendum, and should be different from the existing law. The Independence Party maintains that it is unfair for transient U.S. citizens from the United States and others, such as federal and military personnel or corporate managers, to vote in the referendum by simply complying with the normal electoral law's residence requirements. The party holds that eligibility to vote in the referendum should not be extended to any person who does not have a demonstrated interest in, or commitment to, the future social, political, or economic development of Puerto Rico. Rather, voting rights should be limited to, among others, native-born Puerto Ricans, mainland-born residents of Puerto Rican parentage, and non-Puerto Ricans who have lived in Puerto Rico for at least 20 years.

Appendix I
Summary of Comments From
Affected Parties

Alaska or Hawaii were conducted pursuant to local processes, with no particular application of federal laws or specialized supervision.

The Statehood Party's Dialogue Committee representative, on the other hand, told us that the electoral system is flawed because it is run by politicians. Therefore, federal oversight and monitoring of the referendum, as provided for by S.712, is necessary to protect the integrity of the referendum process.

The Independence Party's election commissioner commented that his party was troubled by the involvement of the FBI in monitoring past Puerto Rico elections. He said that the Dialogue Committee on Puerto Rico's Political Status agreed that neither the FBI nor any other federal intelligence agency should be involved in the referendum process. Such involvement would disregard Dialogue Committee agreements and would be counter to international legal precepts regarding self-determination.

We stand by our conclusion that there is no need for more intensive federal monitoring beyond those procedures used in past elections by the U.S. Attorney's Office. These procedures need not involve use of the FBI in the referendum. With respect to the application of federal law to the referendum, we point out that S.712 is not clear on this issue. Committee staff advised us that the Senate Committee on Energy and Natural Resources intended that federal laws applicable to the election of Puerto Rico's Resident Commissioner should be applied to the status referendum. Because the bill is not clear on this issue, the Committee may wish to amend section 101(d) to clarify this matter.

The Justice Department raised a concern about the monitoring role to be played by the U.S. Marshals Service in the referendum. Justice was concerned that unless the term "monitoring" is more specifically defined in the law, marshals may be assigned functions beyond those that are permissible activities for law enforcement officers. S.712 requires that the Attorney General provide for adequate monitoring by U.S. Marshals. Therefore, in our opinion, he has the discretion to decide the Marshals Service's role in the referendum within the confines of permissible activities.

Puerto Rican people. The party further argues that normal constitutional parameters regarding electoral events in the United States do not constitute the measuring standard for Puerto Rico's unique situation.

We disagree. While Puerto Rico, as a commonwealth, is self-governing, the State Department does not consider it a separate sovereign entity outside the federal system. Further, the party's criticism of our analysis of Supreme Court decisions does not show how these cases are inconsistent with the concept of self-determination and other principles of international law.

The Independence Party also said that if our report is based on the unstated premise that only federal and Puerto Rican laws need be considered, then it would be overly limited and analytically flawed. We recognize that S.712 intends that a referendum for Puerto Rico's self-determination be in harmony with principles of international law. However, recognition of the principles of international law does not preclude applying U.S. constitutional guarantees to the referendum process.

Statehood Party Comments

The Statehood Party's representative to the Dialogue Committee also had specific comments:

- He believes that we did not clearly express the importance that the proposed referendum will have on the lives of Puerto Ricans. We agree that the proposed referendum is of great importance to Puerto Ricans. Other recent GAO studies cited in this report have discussed this matter
- He believes we are incorrect when we say that special Commonwealth legislation is necessary for any referendum or plebiscite. He said that special legislation is not needed because the Puerto Rico Legislature passed a general referendum law in or about 1968. Our review showed that the Puerto Rico electoral law passed in 1977 requires that special legislation be enacted for any referendum or plebiscite.
- He also believes we are incorrect in saying that an allegation of vote tampering was made during the 1980 general election, resulting from an Elections Commission system breakdown. He said, on the contrary, that no such allegation was made. We confirmed with the U.S. Attorney for Puerto Rico that such an allegation was filed with his office. However, it was not substantiated.

Appendix II
Comments From the Election Commissioner,
Popular Democratic Party

Ms. Linda G. Morra
February 5, 1990

Page - 2

finances to mayor political parties for the 1984 elections. Our decisions were overruled by the Courts.

It must be pointed out that political financing as treated in the electoral law is not a clear cut legal issue. The fact of these reversals of our decisions, and that at this moment we are not certain as to our jurisdiction over Political Action Groups--pending a judicial opinion in a case where the New Progressive Party has the onus and has not presented its evidence--clearly shows the uncertainties in this area of the law.

Yet, it must be clear for the record, that all three political parties are responsible for enforcement within the structure of the Commission, and such enforcement, as has occurred, is the result of consensus between the parties based on the state of the law. It is mostly a problem of applicable law than of the application of law.

As it respects the amounts informed by the political parties, where your draft mentions a disproportionate figure of income versus reports of \$100.00 plus, donations, it responds to fund raising activities typical to Puerto Rico. Large sums of money are received in massive activities such as telethons, radiothons, birthday parties, rallies, etc. These funds are to be informed as such and need not be itemized, hence the disparity.

The San Juan mayoral election case.

Section 6 of the Draft, addresses the issue of that election. It erroneously states that the special procedure established by the Supreme Court of Puerto Rico was due to the fact that "... registered voters were deleted from the voters registration lists" and that the Commonwealth Party commissioner objected to a proposal by the other two commissioners to have a special procedure for these voters. Such a statement is clearly erroneous.

No one ever alleged that voters were "deleted" from the register. In fact, such a deletion is a crime as typified in the election law. The allegation was that clerical errors cause some voters not to have access to the registry, which was admitted to be a normal occurrence in the administration of over two million voters registry. A very neuralgic issue developed, and was addressed by the Supreme Court, i.e., whether the State was paternalistically responsible for voter participation or whether the voter shared that responsibility with the state and the political parties.

Appendix II
Comments From the Election Commissioner,
Popular Democratic Party

Ms. Linda G. Morra
February 5, 1990

Page - 4

The draft also addresses the issues of participation in the referendum by non resident Puertoricans and that monitoring be provided by other entities and not the U. S. Marshals. This special absentee voting is superficially contemplated in the draft and it's complexity not analyzed. Although my Party is open minded as to allowing Puertoricans residing in the various states to vote, the following must be first determined: What viable mechanisms may be used to register non residents and account for their electoral qualifications? Which of the local requirements applicable to Island residents may be waived to the absentee without affecting the equal protection of the laws, i.e., political party fiscalization of each registration petition, voter identification cards, voter challenging procedures, etc.? What jurisdiction will the Commonwealth have viz a viz the other states where Puertoricans reside as it respects voter registration? How will such a significant undertaking be financed, not only in the actual registration procedures, but in advertisements and the explanation of issues by the three formulas towards and intelligent vote? May non-resident Puertoricans living in other countries have a right to participate under the equal protection clause of both U.S. and P.R. Constitutions?

As it respects external monitoring of the election, I agree with the draft's recommendation that it be accomplished by a Congressional Committee or an international organization. This is germane to Puerto Rico's electoral tradition of suspicion, which is the basis of the system, and where electoral laws derive from distrust of the political parties, reason for which ours is a stringent system focused on prevention and why no significant fraud incidents have been detected. If it is recognized in the draft that there is a "...political sensitivity surrounding this referendum...", p.12, and admitting that the Statehood issue requires some type of intervention by the federal government, said intervention must be through means less liable to criticism. The mere fact that President Bush publicly supported Statehood, that U.S. Marshals are assigned duties exclusively by the federal government, and that these U.S. Marshals will affect, either with their presence or actual action, the voting procedures, will undoubtedly cause doubts as to the impartiality of the United States in the referendum with the very obvious impact in the international community which will be attentive to the referendum judging from the interest of the United Nations Decolonization Committee, Non-Aligned Nations, and the Latin American nations which view Puerto Rico as an integral part of Hispanic America.

Finally, I must stress that the Draft does not address the organizational structure of the State Electoral Commission in

Now on pp. 6-7.

Comments From the Federal Election Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 7, 1990

OFFICE OF THE CHAIRMAN

Ms. Linda G. Morra, Director
Intergovernmental and Management Issues
Human Resources Division
U. S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Morra:

This letter responds to your January 18 request for our comments on your draft report to the Chairman of the Senate Committee on Energy and Natural Resources regarding the Puerto Rican Commonwealth election laws and their application to a political status referendum.

We have reviewed the report and find your description of the election laws of Puerto Rico true and accurate to the best of our knowledge. We also concur in your assessment that, under current law, the Federal Election Commission would have no role to play in Puerto Rico's proposed status referendum.

We commend you for a well written report and thank you for the opportunity to review it.

Sincerely yours,


Lee Ann Elliott
Chairman

**Appendix IV
Comments From the Chairman,
Commonwealth Elections Commission**

Comments by Marcos A. Rodríguez-Estrada, Chairman of the State Elections Commission of the Commonwealth of Puerto Rico, on the **Draft Report on Puerto Rico's Commonwealth Election Laws and their Application to a Political Status Referendum**, prepared by the U.S. General Accounting Office, as requested by the Chairman of the U.S. Senate's Committee on Energy and Natural Resources.

- I. We are very pleased with the fact that the Draft Report repeatedly recognizes the soundness of our election laws and process. As it is pointed out in the report, and as it has been frequently stated by several observers well acquainted with electoral processes in other parts of the world, our election system includes a number of safeguards and controls that ensure the integrity of the election and the broadest participation in the process.

Puerto Rico's zeal with its electoral system makes it for a very difficult, if not impossible, environment for fraud. Although there have been isolated instances of allegations of fraud and irregularities, these have proven groundless, and no convictions of fraud have been made.

- II. It is pertinent to note that our voting system is based on the hand-counting paper ballot. Contrary to some of the systems based on computerized vote counting now in use where material proof is not always produced and available, in our system ballots are carefully preserved to be recounted if necessary.

No registration, issuance of electoral identification card or any other electoral transaction can be done without the participation of the political parties.

- IV. Although the Election Law establishes that the Chairman of the State Elections Commission shall be of the same political persuasion as that of the candidate that has obtained the most votes for the position of Governor of the Commonwealth of Puerto Rico, in practice, his role is more of the representative of the public interest, and similar to that of the President of the U.S. Senate: only when the Commissioners fail to reach agreement is that he exercises his voting prerogative.

The Chairman also acts as the Executive Director of the Commission.

- V. We are also pleased that the Report recognizes that the controls present in our electoral system exceed those in some of the states of the United States.

Voter registration, the issuance of voter identification cards, the custody of voters information files, balloting and the tabulation of electoral results, among other important related aspects, are given extraordinary attention by the Commission to ensure confidentiality, reliability and accuracy. T. 16 LPRA, S. 3016.

VII. The Draft Report states on Page 21 that many of the Commissioners' decisions are informal and are decided unanimously, and that when the Commissioners cannot agree, the Chairman decides the question.

As it is, that statement is misleading. There is no such things as an informal decision of the Commission. The decisions of the Commission, be them unanimous, approved by a majority or decided by the vote of the Chairman, related to electoral matters or administrative matters, written or on tape, are all formal decisions of the Commission, and, as such, become matters of public record. T.16 LPRA, S. 3014.

And, of course, as the Report points out, the Election Law provides the recourses to challenge any or all the decisions and to appeal to the Superior Court and the Supreme Court of the Commonwealth of Puerto Rico. T.16 LPRA, Ss. 3016b and 3016c.

With respect to the number of decisions and resolutions issued in 1988 -- 31 formal decisions and resolutions, as stated on Page 21 -- it might be useful to observe that that number is conservative, especially during an election year, when the Commission has to implement and supervise not only a general election but also Presidential and local primaries. That number then refers only to a small number of decisions and resolutions approved unanimously, and signed by the Chairman and certified by the Secretary; they are but a reduced

Now on p. 15.

Now on p. 15.

Comments From the U.S. Department of Justice



U.S. Department of Justice

FEB 20 1990

Linda G. Morra
Director, Intergovernmental and
Management Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Morra:

The following information is being provided in response to your request to the Attorney General, dated January 18, 1990, for comments on the General Accounting Office (GAO) draft report entitled, "Puerto Rico: Commonwealth Election Laws and Their Application to a Political Status Referendum." The Department agrees in general with the findings of the report; however, we would like to bring attention to the provision of S.712 which requires the Attorney General to provide for monitoring of the referendum by U.S. Marshals (page 36). The Department believes that the term "monitoring" needs to be better defined, and would like GAO to note the difficulty that the use of this term, as opposed to a more specific term, would create for the U.S. Marshals Service (USMS).

As a federal law enforcement agency, the USMS could undertake the responsibility of maintaining law and order at the 1,602 polling locations used in Puerto Rico during the election. However, monitoring could be read to include functions beyond the maintenance of law and order; e.g., preventing election fraud within the polling place; accompanying the ballot boxes from secure storage sites to polling places; remaining with the voting equipment while in use at the polling sites; managing the voting equipment during the actual election; and/or securing the voting equipment for transport to the election commission. Under 18 U.S.C. 592, at least some of these functions are impermissible activities for armed law enforcement officers. We believe that the most appropriate course of action would be to recommend to Congress that it limit the proposed USMS responsibilities to that of maintaining law and order, and to the extent that it intends the other activities to be carried out by federal officials, it assign those responsibilities to other individuals.

Now on p. 22.

Comments From the Office of the Governor of Puerto Rico

ESTADO LIBRE ASOCIADO DE PUERTO RICO

OFICINA DEL GOBERNADOR
LA FORTALEZA
SAN JUAN, PUERTO RICO 00901



February 23, 1990

Ms. Linda G. Morra
Director
Intergovernmental and Management Issues
Human Resources Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Morra:

I am pleased to submit our comments on the Draft GAO Report Puerto Rico: Commonwealth Election Laws and their Application to a Political Status Referendum (B-235508).

In general, the report presents a fair and correct assessment of the integrity of Puerto Rico's electoral system, and its ability to administer a political status referendum such as the one proposed in S-712.

Puerto Rico has a proud democratic tradition, and a firm commitment to the rule of law. Our electoral system reflects this tradition and commitment. We are privileged to have one of the most sophisticated and safest electoral systems in the world. It is based on an elaborate mechanism of checks and balances, which guarantees that all the principal political parties actively participate at every stage of the electoral process, from registering the voter, to counting the votes, and administering the election process. Throughout our history, electoral matters have traditionally been decided by consensus of the political parties, relying on the clash of competing interests to produce a fair process.

Ms. Linda G. Morra
February 23, 1990
Page 3

supervision of the process. It should be noted, for example, that referendum elections held in the U.S. territories which became States have historically been conducted pursuant to local processes, with no particular application of federal laws or specialized federal supervision, see generally P.L. 85-508 (July 7, 1958), 72 Stat. 339 (Admission of Alaska), P.L. 86-3 (March 18, 1959), 73 Stat. 4 (Admission of Hawaii). Such has also been the case with referendum elections held in other U.S. insular jurisdictions, and Commonwealths.

The report highlights the recent controversy regarding the San Juan Mayorality election yet fails to even mention the one unfortunate exception to our honourable tradition of dealing with electoral matters by consensus, and of adherence to the rule of law —the highly controversial 1980 elections. It also fails to consider the root causes of this shameful scandal. The controversy surrounding these elections is not due exclusively to the fact that the winning margins were so thin. In fact, the controversy arose three years prior to the election, in response to the irregular process by which the electoral system was suddenly changed, without the consent of the opposition parties.

In December of 1977 the New Progressive Party administration, which then controlled the governorship and both houses of the legislature, amended the electoral law and fundamentally changed the electoral system. The change was vehemently opposed by the opposition parties, and their electoral commissioners, yet it was approved by a partisan vote in the legislature, against the long-standing tradition of amending the electoral law and regulations only by consensus of all parties. The change involved altering the structure of the Electoral Court, which was an independent body composed of judges in charge of supervising the electoral process and adjudicating disputes. Instead, the NPP administration established an executive agency to run the electoral system headed by an administrator named by the governor. Thus, an independent judicial body was replaced by an executive agency of political appointees. The new entity, the Junta Revisora Electoral, had authority over all aspects of the electoral process. The traditional "closed college" system whereby all electors gathered to vote at the same time (and which made double voting virtually impossible), was abolished. Instead an open system was designed, where each elector would have a photo I.D. card, which would be punched when he voted. This required a complete reorganization of the electoral system and re-registering and photographing all eligible voters.

Ms. Linda G. Morra
February 23, 1990
Page 5

The 1980 elections also resulted in unprecedented and undue intervention by the federal judiciary in Puerto Rico's electoral process. The report should have briefly mentioned this history in order to fully understand the reasons for the high sensitivity toward federal intervention in local elections.

During the 1980 elections, there were several instances where the U.S. District Court for Puerto Rico directly and inappropriately intervened in the electoral process, only to be subsequently and repeatedly revoked by the U.S. Circuit Court of Appeals and the U.S. Supreme Court. In *Partido Nuevo Progresista v. Barreto Pérez*, for example, after a definitive ruling on Puerto Rican law by our Supreme Court, the federal district court in a ruling by Chief Judge Juan R. Torruella enjoined the Puerto Rico's Elections Commission from counting ballots which were mismarked by the electors, but which clearly showed the elector's intent. On a motion for stay and expedited appeal, the First Circuit reversed, 639 F.2d 825 (1980).

In another case, the federal district court enjoined the application of Puerto Rico's election law in the appointment of successors to an elected official, in *Cintrón García vs. Romero Barceló*, siding with the New Progressive Party. Within a matter of days, the First Circuit Court of Appeals again reversed the decision, 671 F.2d 1 (1st Cir. 1982).

In addition to these general observations, there are several minor points which should be clarified in the report.

In various places the report fails properly to describe the nature of the 1967 plebiscite. For example, on pages 1-9, the report states that the 1967 plebiscite was held among the alternatives of statehood, independence and "continued commonwealth." The 1967 plebiscite gave a mandate for the enhancement of Commonwealth status, not simply the preservation of the status quo. The exact wording of the ballot proposition, as spelled out in the Plebiscite Law of December 23, 1966, was as follows:

"A vote in favor of Commonwealth shall mean:

(1) The reaffirmation of the Commonwealth established by mutual agreement under the terms of Public Law 600 of 1950 and Joint Resolution 447 of 1952 of the Congress of the United States as an autonomous community permanently associated with the United States of America;

(2) The inviolability of common citizenship as the primary and indispensable basis of the permanent union between Puerto Rico and the United States;

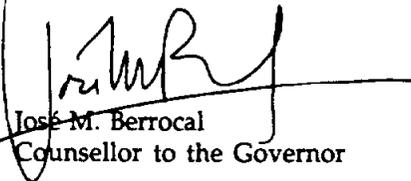
Now on p. 2.

Ms. Linda G. Morra
February 23, 1990
Page 7

Puerto Rican law does not presently require separate itemization of contributions at these events. Therefore, it is improper to conclude or infer from the example reported that there has been widespread non-compliance with the reporting requirement. Likewise, as to the discussion regarding the PACs, it should be noted that under the U.S. Supreme Court's ruling in *Buckley v. Valeo* the Commission's authority to regulate independent political efforts is sharply circumscribed. (page 43).

In closing, I feel that the report provides a good general assessment of the integrity and soundness of the electoral system of the Commonwealth of Puerto Rico. The GAO has done a commendable job of carefully studying an elaborate electoral system, the laws and regulations that guide it, and considering its implications in such a short time period. Furthermore, you have sought diverse reactions to the report from all parties involved, proving the validity of the underlying principle of our electoral system: broad and open participation is the best safeguard to human error. Finally, I would strongly appreciate that you publish this and all other reactions to the report, in order to assure the widest possible dissemination of the variety of views on this subject.

Cordially,



José M. Berrocal
Counsellor to the Governor

Now on p. 26.

**Appendix VII
Comments From the Election Commissioner,
Puerto Rico Independence Party**

Federal Involvement

The Dialogue Committee established by the presidents of Puerto Rico's three principal political parties agreed, at a meeting in Washington, D.C. last year that, among other things, there should be no involvement of the FBI or any other Federal intelligence presence in the referendum process. Accordingly, we are troubled by the possible implications of the statement in your Draft Report, at page 35:

"Assistant U.S. attorneys and Federal Bureau of Investigation agents handled phone calls on election day [in past Puerto Rico elections as part of a monitoring role]. The U.S. Attorney for Puerto Rico believes that this type of federal presence is an important deterrent to election fraud."

It is clear that this appears to disregard Dialogue Committee agreements. Furthermore, it fails to explain how FBI involvement harmonizes with international legal precepts regarding self-determination--particularly those that require free and open elections without undue interference on the part of the metropolitan power. Finally, it fails to take into account--as indeed the full Draft Report fails to consider--that the proposed referendum is one on self-determination of a people.

Financing, Contributions, and Campaign Spending

The fact that the Draft Report fails to consider the nature of the proposed referendum as part of the process of self-determination of the Puerto Rican people has a direct impact on your Report's analysis regarding this second issue area. The Draft Report concludes, after a cursory analysis of two U.S. Supreme Court cases, that "any Commonwealth legislation extending financing provisions that would limit campaign contributions for the status referendum may be found unconstitutional." (Draft Report, p. 40.)

The self-determination of a people is part of a process contemplated by and arising under international law. See, U.N. Gen. Assembly Res. 1514 (XV) and 1541 (XV) (1960), as well as the cases of Western Sahara, ICJ Repts. 1975, and Namibia (Southwest Africa), ICJ Repts. 1971, inter alia. As such, the proposed referendum is not a run-of-the-mill election; it is different from administrative elections of candidates running for political office; and it is different from any plebiscites, referenda, or other ballot questions frequently included in the normal electoral process.

Now on p. 22.

Now on p.25.

Appendix VII
Comments From the Election Commissioner,
Puerto Rico Independence Party

Conclusion

Your Draft Report fails to consider any of the above aspects, which go to the heart of the Congressional intent to provide for Puerto Rico's self-determination. I urge an in-depth revision of your report to consider, discuss, and suggest solutions to the problems arising under these issue-areas. Although I spent a considerable amount of time with your visiting staff last summer explaining these matters, I shall be glad to spend any necessary additional time to help the GAO to formulate a more nearly adequate analysis of the totality of the legal questions raised by Puerto Rico's status in its people's process for self-determination.

Sincerely,



Manuel Rodríguez-Orellana
Electoral Commissioner
Puerto Rican Independence Party

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**Appendix VII
Comments From the Election Commissioner,
Puerto Rico Independence Party**

Now on p. 2.

Because Puerto Rico is a people, the territorial extent of which was "ceded" by Spain to the United States--as you state on page 3 of your Letter to Sen. J. Bennet Johnston--it requires analysis under international law. Because Puerto Rico is an "unincorporated territory" under the U.S. Constitution--see the Insular Cases of the U.S. Supreme Court in the early part of the century, as well as the more recent Harris v. Rosario (1980)--, it requires constitutional treatment under the Territory Clause of the U.S. Constitution which bestows upon Congress the power to make all needful rules and regulations and to dispose of territories.

Accordingly, normal constitutional parameters regarding electoral events in the United States do not constitute the measuring standard for Puerto Rico's unique situation. It is therefore in this context that you should analyze Puerto Rico's 1977 Election Law's limitations on campaign contributions, in addition to other Dialogue Committee agreements to provide adequate funding that will guarantee fair and equitable participation for all three referendum alternatives.

Voting Requirements

For all of the reasons explained above, the voting requirements must also be different. The criteria established under Puerto Rico's 1977 Election Law, arguably adequate for normal administrative elections under Puerto Rico's current status, are grossly unfair and inadequate in a self-determination referendum. What is at stake in this instance is the process for the Puerto Rican people's expression of opinion regarding the ultimate political status of the Island. It is different therefore from a referendum on whether to expand the limits for public borrowing, or to repeal a property tax, or any of a multitude of other normal referendum questions.

For a transient U.S. citizen from anywhere else in the United States to be allowed to vote in this referendum by simply complying with normal election law residence requirements is patently unfair. The same may hold true for persons in the military, federal intelligence officers, corporate managers or executives, or any others who do not have a demonstrated interest in, or commitment to the future social, political, or economic development of Puerto Rico.

Comments From the Election Commissioner, Puerto Rico Independence Party

ESTADO LIBRE ASOCIADO DE PUERTO RICO
COMISION ESTATAL DE ELECCIONES DE PUERTO RICO
APARTADO 2353
SAN JUAN, PUERTO RICO 00902-2353

LIC. MANUEL RODRIGUEZ ORELLANA
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February 27, 1990

Ms. Linda G. Morra, Director
Intergovernmental and Management Issues
United States General Accounting Office
Washington, D.C. 20548

Dear Ms. Morra:

Thank you for extending the period for these comments through Mr. John M. Kamensky, Assistant Director of Human Resources. I also wish to congratulate you and your staff for your interest and efforts at acquainting yourselves with many of the important issues which the proposed referendum on Puerto Rico's political status presents. Your Draft Report of January 18, 1990 is a positive step in this direction.

There are three major issue-areas which are of direct concern for the Puerto Rican Independence Party (PIP): (1) Federal involvement in the referendum election, (2) financing, contributions and campaign spending, and (3) voting requirements in the proposed referendum. In each of these issue-areas, your Draft Report does not provide any indication of how your staff analyzed the international legal problems which I personally raised with your representatives concerning substantive and procedural requirements under self-determination doctrine and jurisprudence.

If the unstated premise of the Draft Report is that only Federal and Puerto Rican laws need be considered, the Draft Report would be overly limited and analytically flawed. For the impression which it would convey--that only Puerto Rican and U.S. laws need apply--would lead the U.S. Congress and the Puerto Rican people astray from the explicit legislative intent of S. 712 to provide for Puerto Rico's self-determination on the basis of applicable principles of international law.

Ms. Linda G. Morra
February 23, 1990
Page 6

(3) The authorization to develop Commonwealth in accordance with its fundamental principles to a maximum of self-government compatible with a common defense, a common market, a common currency and the indissoluble link of the citizenship of the United States;

(4) That no change in the relations between the United States and Puerto Rico shall take place unless previously approved by a majority of the electors voting in a referendum held to that effect."

The discussion as to the number of employees in the Elections Commission should stress that all of the employees are evenly recruited from the three political parties. It should further note that registered political parties in Puerto Rico are provided by law with substantial economic and infrastructure assistance to assure an equitable opportunity for all, including minority and opposition parties, to participate in the public life of the Commonwealth. Few jurisdictions provide as much assistance to opposition parties as the Commonwealth.

The absentee ballot discussion is not accurate. Present Puerto Rican law permits absentee balloting to only a limited category of voters, namely full-time students, and military personnel. Other individuals outside of Puerto Rico may not presently vote through absentee ballots. (page 27).

The section on safeguards and controls to assure the integrity of the electoral system should stress that Puerto Rican law provides for full judicial review of the results, and the historical record evidences a vigilant judiciary protecting the due process rights of voters and the sanctity of the electoral system. Indeed, the Puerto Rican Constitution specifically guarantees the "expression of the will of the people by means of equal, direct, and universal suffrage and shall protect the citizens against any coercion in the exercise of the electoral franchise." The report should further note that our Electoral Commission's decisions are immediately reviewable by the Superior Court, with appeal to the Supreme Court, and that the Puerto Rican Constitution includes all the procedural and substantive protections of the United States Constitution.

The discussion of campaign financing is flawed, incorrect, unsubstantiated, and should be omitted. The report fails to recognize that fund raising in Puerto Rico is conducted primarily through mass activities, such as telethons, rallies or other mass collection efforts, and that due to the impossibility of separately itemizing the thousands of small contributions,

Now on p. 18.

Ms. Linda G. Morra
February 23, 1990
Page 4

On September 8 of 1980, a mere two months before election day, the electoral system was again amended by the New Progressive Party administration, over the vehement opposition of all other political parties. In part responding to the administrative deficiencies of the Electoral Commission appointed by the Governor, this change resulted in the establishment of a hybrid "half-open" system where voters with newly issued elector I.D. cards could vote in open colleges and those without them could vote in closed colleges. This complicated system led to substantial litigation over every aspect of the law and the process. Given the closeness of the election and the magnitude of the litigation, the final results were not known until more than a year after election day, specifically with respect to several mayoralties and the membership of the House of Representatives.

The cloud of doubt that surrounded the 1980 result evidences the importance of our historical tradition of operating through consensus. It is no accident that the only instance in modern Puerto Rican history where the entire electoral system was modified without the consensus of all political parties is also the only election whose results have been questioned by independent observers.

This disaster obligated a return to the prior tradition, and in 1981, with a Popular Democratic Party controlled legislature and a New Progressive Party governor, a multi-partisan Special Committee to Revise the Electoral Process was established to reconstruct Puerto Rico's traditional electoral system on the basis of a consensus between the parties. The present system is a result of the work of that Committee, which established an Electoral Commission in which all parties share the work and jointly make all necessary decisions. The president of the Commission, which in the absence of a consensus has the final word, has to be himself chosen through the consensus of the three parties. Competing interests thus balance the process. This whole procedure of full representation of each party at every stage of the process was reestablished after the 1980 elections in order to avoid the specific problems experienced with a Commission staffed by political appointees of the party in power.

It is this electoral system, with the ample safeguards which have been agreed upon by all parties, which will govern the referendum election. This is why, S-712 "freezes" electoral law as of July 15, 1989 effectively preventing a recurrence of the 1980 scenario, and assuring it will be safe from fraud.

Ms. Linda G. Morra
February 23, 1990
Page 2

We have some specific comments on several important areas of the report, which we feel could be further improved, to assure accurate and comprehensive coverage of the issues involved.

As you correctly note in your report, electoral controversies involving allegations of fraud have been few and isolated during the past eight years. These, in turn, have taken place in elections where the margin of victory is as small as less than one half of one percent of the vote, often amounting to a few dozen votes. In elections as closely contested as these, no electoral system can be immune from human error, and thus, controversy.

The report's finding regarding the fundamental soundness of our electoral system is inconsistent with its apparent encouragement of an increased federal role over the referendum election, both with respect to the application of federal law and the extent of federal monitoring. See generally pages 5 and 13.

Now on pp. 3,6, and 7.

No special federal monitoring role is called for, or justified. The fundamental soundness of our electoral system, which the report acknowledges, does not require it. Contrary to the suggestion that "because of the political sensitivity surrounding the referendum" (p. 13) an enhanced federal role is called for, political sensitivity argues for committing the referendum process exclusively to Puerto Rican authorities. The referendum election is an act of self-determination by the Puerto Rican people. In order for the result to receive widespread international recognition, it is essential to minimize and eliminate all forms of outside intervention. In fact, an increased federal presence, given the underlying soundness of our electoral system, is likely to defeat the stated goal of avoiding doubts as to the results of the referendum, and in fact pose troubling questions as to the legitimacy of the process.

Now on pp. 6 and 7.

Nor is there any justification for extending federal law to the status referendum. S.712, as presently drafted, clearly has no intention that federal law govern the referendum election. It specifically provides that Puerto Rican law shall govern. What is required, and what the report should recommend, is an express statement that federal laws will not apply to the referendum election, except as may be otherwise specifically provided. As an act of self-determination, the election must properly be a local election, administered pursuant to Puerto Rican law. Moreover, the undefined extension of the body of federal laws would advance no identified or articulated purpose, and would only complicate the administration and

Appendix V
Comments From the U.S. Department
of Justice

Page 2

We appreciate the opportunity to comment on the draft report and hope that you find our comments both constructive and beneficial.

Sincerely,


Harry H. Flickinger
Assistant Attorney General
for Administration

part of a larger volume of decisions that are integrated into official minutes and records of proceedings which are public documents.

As to the statement that 20 of those decisions and resolutions were decided by the Chairman, it should be cleared that no more than 1 per cent of the Commission's total number of electoral decisions were decided by his vote.

In the first paragraph on Page 28, the word **precinct** should be substituted by the word **unit**, so as to read as follows: the election **unit** board, comprised of ..., verifies and approved the **unit's** summary. The **unit** summary then goes... The **unit** summaries are facsimilied..."

The Electoral Law establishes the nature and functions of the Local Election Commission and Electoral Unit Board. T.16 LPRA Ss. 3022d and 3026a.

Now on p. 18.

VI. It is important to indicate that Puerto Rico has consistently had one of the highest electoral participation indexes in the democratic world.

In the United States, for example, no more than 75% of those who can vote are registered, and only 50% or less of those registered, do vote.

In Puerto Rico, on the other hand, 99% of those who can vote are registered, and of those, from 84% to 90% do vote.

Many factors account for this constantly high participation, among them:

---A sincere belief in participatory democracy;

A strong sense of the value of the vote as the only civilized instrument of change and reform;

---The nature of our society, small, close and intimate, with a highly developed conscience of civic involvement in all those matters related to the commonwealth;

---A natural enjoyment of politics and political activities; and,

---A body of electoral legislation that fosters participation, provides funds for political parties, and ensures that each and every capable voter goes to the polls.

It might also be relevant to cite a comprehensive article titled **Annals of Democracy - Counting Votes**, in the November 7, 1988 issue of the New Yorker Magazine, in order to appreciate the benefits of our present system.

III. Our electoral system is also based on the participation at all levels of the election process and the shared responsibility of the representatives of the principal political parties in Puerto Rico.

Thus, the administration and operations of the State Elections Commission, as well as the implementation of the different electoral events held on the Island, are the shared responsibility of the three Commissioners. They are the ones who administer the decision-making process and who determine policy, goals and objectives within the framework of the law.

But the participation and shared responsibility of the political parties in the electoral process is not limited to the higher levels of decision; it permeates the lowest levels of electoral activity as well.

For example, no distribution or collection of electoral materials can be done unless it is done by representatives of the parties constituted into a "junta."

Another example, no electoral materials can be printed unless it is done under the supervision of representatives of the parties.

Comments From the Chairman, Commonwealth Elections Commission

Commonwealth of Puerto Rico
PUERTO RICO STATE ELECTION COMMISSION
Box 2353
San Juan, Puerto Rico 00902-2353

LIC. MARCOS A. RODRIGUEZ-ESTRADA
President

February 13, 1990

Ms. Linda G. Morra, Director
Intergovernmental and Management Issues
Human Resources Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Morra:

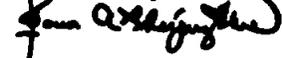
Thank you for giving us the opportunity of submitting our comments to the Draft Report to the Chairman of the U.S. Senate Committee on Energy and Natural Resources, on Puerto Rico's Commonwealth Election Laws and their Application to a Political Status Referendum.

I also thank Attorney Mary W. Reich and Messrs. William C. Petersen and Joseph L. Santiago for their careful analysis of our electoral system, and again, Messrs. Peterson and Santiago, who, jointly with Mr. John M. Kamensky, made the oral presentation of the report to our Election Commission.

At that meeting, held on Thursday, January 18, 1990, it was agreed by the plenum of the Commission that the Chairman and the Commissioners representing the three political parties of Puerto Rico would submit their own separate comments.

Herewith, please find my comments on the matter.

Yours truly,



Marcos A. Rodríguez-Estrada
Chairman

Enclosure

Appendix II
Comments From the Election Commissioner,
Popular Democratic Party

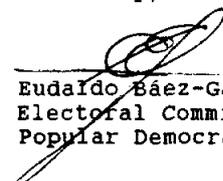
Ms. Linda G. Morra
February 5, 1990

Page - 5

proper perspective. The Commission was designed to allow parity of all political parties in their access of the system irrespective of which party in government. Not only does each commissioner has a full staff and budget paid by the state to fiscalize every and all activities, either electoral or administrative, but throughout the Agency's sensitive areas "political balance" as required by law, is strictly observed-- employment of equal number of workers per political party. Sensitive materials are kept under locks controlled by each political party; sensitive documents are transported by teams of three workers, one per party, etc. Each political party is allotted \$200,000.00 per year, except in electoral year which is \$400,000.00, for administration purpose, plus materials and free access to the Commission computer, employment of over 125 party identified workers for fiscalization and "political balance projects". Thus it is highly improbable, barring incompetence, that anything occurs without the direct knowledge of each political party, which is the purpose of that proven organizational design.

Thank you for your attention.

Cordially,



Eudaído Báez-Galib
Electoral Commissioner
Popular Democratic Party

Appendix II
Comments From the Election Commissioner,
Popular Democratic Party

Ms. Linda G. Morra
February 5, 1990

Page - 3

It was my position then, and still is, even though the Supreme Court rejected my arguments, that the voter must ascertain himself that he is duly registered when the state provides the many outlets of information as it does in Puerto Rico--computer print-out are distributed to all political parties at all levels throughout the Island, voting information cards for each voter are printed and delivered to each house by all three political parties whereby each voter receives the card three times, funds are allocated for each party to administer the process (\$200,000.00 per year, \$400,000.00 election year, plus Commission funds,) plus \$2M spent by the Commission in media outlets.

The Puerto Rico's Supreme Court decision clearly established that only voters not in the lists "because of errors adscribed to the Commission" had access to the special procedure, and not because of deletions, and upon addressing the paternalistic versus shared responsibility issue, it decided that the state was totally responsible for the integrity of the voting list and that the voters needed not verify if they were in the list. Thus the establishing of a procedure whereby a voter could vote and his eligibility determined after the election, causing, in an extremely close election like San Juan's, very complex litigation.

At this point it could be significant to mention that local courts history has shown that the interpretation of electoral controversies have been upheld by federal appellate jurisdiction, while the local U.S. District Court has been consistently reversed, because of undue intromission in purely local electoral affairs, and even that federal court declined to entertain the San Juan Case. Of much more impact was the 1980 gubernatorial election, decided by less than one percent of difference and which generated more controversies, political and judicial.

The application of federal laws.

The draft incorrectly assumes that S.712 provide for federal laws to apply in the referendum. S.712 indicate that federal monitoring be provided, but not that federal law apply. It specifically provide for local laws to apply and even sets a cut-off date for amendments to local electoral law prior to the referendum. It do provide for monitoring by U.S. Marshals and for a special federal appeals court with specific and limited jurisdiction.

Comments From the Election Commissioner, Popular Democratic Party

Estado Libre Asociado de Puerto Rico
COMISION ESTATAL DE ELECCIONES
Apartado 2208
San Juan, P.R. 00903

LCDO. EUDALDO BAEZ - GALIB
COMISIONADO
PARTIDO POPULAR DEMOCRATICO

February 5, 1990

Ms. Linda G. Morra
Director
Intergovernmental and Management Issues
United States General Accounting Office
Washington, D.C. 20548

Re: B-235508

Dear Ms. Morra:

I have reviewed my draft of the report on Puerto Rico's elections law and its application to a political status referendum, requested by the Chairman of the Committee on Energy and Natural Resources of the U.S. Senate. Although your letter is addressed to the President of the State Electoral Commission, of which I am a member for the Popular Democratic Party--advocate of enhanced Commonwealth--it was decided by the Commission that each member file his separate views irrespective of the views of each other. Thus, the Commission, as a body, will not file its position.

The report accurately describes Puerto Rico's electoral system as sound, sophisticated and with several built-in safeguards and controls to protect the integrity of an election. Nevertheless I have detected some inaccuracies which, although not essential to the healthy description of the system made by your Office, must be mentioned.

Compliance with campaign contributions and expenditures provisions.

All provisions in our electoral law which are clearly applicable to particular financial situations in which political parties did not follow established procedures, were raised and adjudicated. The Commission imposed over two million dollars in

Other Comments

Puerto Rico officials also commented on a number of other issues. These comments are summarized below.

Commonwealth Party Comments

Commonwealth Party officials raised several specific issues:

- The Commonwealth Party's election commissioner said we incorrectly assumed that S.712 provides for federal laws to apply in the referendum. On the contrary, we state that S. 712 is unclear as to the extent to which federal law would apply, and suggest that the Committee clarify this issue.
- The Commonwealth election commissioner supports our suggested option—which he terms as a recommendation—that external monitoring be accomplished by a congressional committee or an international organization. He believes that using U.S. Marshals to monitor the referendum would raise doubts in the international community about the impartiality of the United States government in the referendum process. We suggest that monitoring alternatives, other than those provided in S.712, could be used for the referendum.
- The Governor's Office commented that our report highlights the recent controversy regarding the 1988 San Juan mayoral election, but did not mention events leading up to the controversial 1980 election. This controversy arose in 1977, when the electoral law was amended without the consensus of the three political parties, and fundamentally changed the electoral system. This, and subsequent amendments to the electoral law made without political consensus, resulted in doubts surrounding the 1980 election results. We did not discuss the historical problems or events in the evolution of Puerto Rico's electoral law because all parties presently accept the integrity of the electoral system.

Independence Party Comments

The Independence Party raised three basic concerns about our report relating to: the extent of federal involvement, voter eligibility requirements for the referendum, and campaign financing. We previously discussed the party's concerns about federal involvement and voting requirements. With respect to the issue of campaign financing, the Independence Party was critical of our conclusion that any Commonwealth legislation extending campaign financing provisions that would limit contributions for the referendum may be found unconstitutional. The party maintains that this conclusion does not consider the nature of the proposed referendum as part of the process of self-determination of the

We did not attempt to address the issues surrounding absentee voting. Our objective was to determine what voting rights nonresident Puerto Ricans have under current electoral law. As the electoral law stands, nonresidents cannot vote in Puerto Rican elections. As stated in section 5, the Dialogue Committee indicated that it would address the question of who shall be permitted to vote in the referendum, and the issues raised by the Commonwealth Party and Independence Party officials could properly be addressed by the committee.

With respect to the Independence Party's position that voter eligibility should be more restrictive than under present law, the Justice Department testified, in July 1989,¹ that Puerto Rico is bound by the equal protection guarantees of the Fifth and Fourteenth Amendments. Voting qualifications based upon place of birth, parentage, or an excessively long residence requirement violate those equal protection guarantees.

1988 San Juan Mayoral Election

The Commonwealth Party's election commissioner expressed concern about our characterization in section 6 of problems surrounding the 1988 San Juan mayoral election, and provided additional details about what happened in this election. The Statehood Party's Dialogue Committee representative told us that the election results were not counted fairly, and that we did not appropriately highlight the significance of this problem as evidence of a systemic weakness in the electoral system.

In responding to these comments, we revised section 6 to more clearly present the facts concerning this election. We believe, however, that the problems experienced were administrative in nature, and do not involve systemic weaknesses in the electoral system.

Federal Oversight of the Referendum

All three political parties commented on the proposed federal oversight role, the application of federal law in the referendum process, or both. Commonwealth Party officials maintained that no special federal monitoring role is called for or justified, and that an increased federal presence is likely to raise doubts about the results of the referendum and the legitimacy of the process. They further maintained that no justification exists for extending federal law to the status referendum and that S.712 clearly does not intend for federal laws to govern the election. They also noted that referendum elections held in the former U.S. territories of

¹Statement of Edward S.G. Dennis, Acting Deputy Attorney General, in hearings on S.712 before the Senate Committee on Energy and Natural Resources, Washington, D.C., July 11, 1989.

Summary of Comments From Affected Parties

A draft of this report was sent for comment to the U.S. Department of Justice and Federal Election Commission, the Governor of Puerto Rico, members of the Dialogue Committee on the Status of Puerto Rico, and the Chairman of the Commonwealth Elections Commission. We received written comments from Justice, the Federal Election Commission, the Governor's Office, the Commonwealth Elections Commission chairman, and election commissioners representing the Popular Democratic Party (Commonwealth Party) and Puerto Rican Independence Party (these comments are in apps. II-VII). We obtained oral comments from the New Progressive Party's (Statehood Party) representative to the Dialogue Committee. No comments were received from the Commonwealth or Independence parties' representatives to the Dialogue Committee or from the election commissioner for the Statehood Party.

Five of the seven commentors generally agreed with our findings and the accuracy of the report. Of the remaining two, the Statehood Party's representative to the Dialogue Committee had no comments on the overall accuracy of the report, and the election commissioner for the Independence Party commented that our report failed to consider the principles of international law as they apply to the referendum process. The Federal Election Commission had no specific concerns about the report. The others did.

Five issues were addressed by several officials. Our evaluation of comments regarding these and other issues are summarized below.

Puerto Rico's Electoral Structure

One issue concerned our description of Puerto Rico's electoral system. The Governor's Office and the Commonwealth Party's election commissioner believed that our report did not address the Election Commission's organizational structure and history in proper perspective. These officials provided additional insight into the history and participatory structure of the Commission. They pointed out that the Commission was designed to allow access to the electoral system by all political parties, and to provide sufficient financing to each party, irrespective of which party is in power.

In response to these comments, we added additional information to section 1 of the report to more fully describe the Commission's operations. However, we did not add all of the suggested descriptive information because, in our opinion, the report presents sufficient information on the Commission's structure and activities.

Section 6
What Problems Have Been Experienced in
Past Elections?

the bank's owner. It was further determined that the owner had violated banking laws and the owner was eventually prosecuted and convicted in federal court and is serving a prison sentence.

During the 1988 general elections, two allegations of election fraud were filed with the U.S. Attorney's Office. One concerned vote selling and alleged that residents of a halfway house in San Juan were paid \$50 each to vote for a particular candidate. The FBI investigated the complaint and reported that the allegation was unfounded. The other complaint dealt with voter intimidation. Inmates at a Commonwealth prison were allegedly intimidated into voting for a particular political party's gubernatorial candidate. The FBI investigation of this case is still underway. However, the U.S. Attorney for Puerto Rico told us that no significant evidence has been developed as of January 1990.

An Elections Commission official told us that one election fraud case was prosecuted by the Commonwealth Justice Department and another matter relating to the 1988 general election is under investigation. The closed case involved an individual who voted in the 1980 election using a deceased person's name. The individual was tried in the Puerto Rican court system and convicted of election fraud.

Thus, of the several allegations of election fraud and abuse made regarding recent elections, none resulted in federal prosecution to date and only one case was prosecuted by the Commonwealth Justice Department.

Problems Experienced in the San Juan Mayoral Election

Problems occurred during the 1988 San Juan mayoral election concerning duly qualified voters not appearing on the voter registration lists. This led to the mayoral election being contested, and, as of January 1990, this matter was still unresolved.

Before the election, the Statehood and Independence Parties' election commissioners alleged that a number of duly qualified and registered voters did not appear on the voter registration lists. The commissioners requested that the Elections Commission provide for special voting procedures on election day. The Commonwealth Party's commissioner objected, and, ultimately, the Commission chairman decided not to grant these special procedures. This decision was appealed to Puerto Rico's Supreme Court, which ruled that the Commission must provide special voting procedures for those affected voters.

What Are the Rights of Nonresident Puerto Ricans to Participate in the Status Referendum?

The question of whether nonresidents will be permitted to vote in the 1991 status referendum has not been decided. Puerto Rico's electoral law states that any citizen of the United States and of Puerto Rico who is at least 18 years old and domiciled on the island is qualified to register as a voter. The Dialogue Committee on the Status of Puerto Rico, however, plans to consider a proposal to allow voting by Puerto Ricans living in the United States.

The electoral law states that although a voter may have one or more residences, for electoral purposes there can be but one domicile that he or she has manifested the intention of remaining in. The law further states that the voter must maintain access to the residence claimed as domicile and live in it with reasonable frequency. It also provides factors for determining the basis of a voter's intention to remain in Puerto Rico.

Commonwealth Elections Commission officials stated that voter qualifications presently specified in the electoral law will most likely apply to the status referendum. However, Commonwealth government officials are still considering ways of changing absentee voting provisions to allow voting by Puerto Ricans living on the mainland.

Plebiscite elections held in other U.S. territories were conducted under their existing election laws. U.S. government officials previously involved in territorial affairs told us that in the former U.S. territories of Alaska and Hawaii, nonresidents were not permitted to vote in plebiscite elections. However, a State Department official told us that Palauan citizens residing in Guam and the United States were permitted to vote in plebiscite elections held recently in Palau, an island of the Trust Territory of the Pacific Islands.

The Dialogue Committee on the Status of Puerto Rico indicated that it would consider a proposal to expand the absentee balloting provisions of the law to allow for voting by Puerto Ricans living in the United States.

Section 4
What Limitations Are Placed on Campaign
Financing, and How Are They Administered?

reports for audits of the political parties' 1984 general election campaigns and (2) selected campaign financing reports filed by the political parties during the 1988 general election. This review found indications that the political parties and some PACs did not strictly comply with the law's requirements. For example:

- The law specifies that PACs spending more than \$500 in favor of or against a party or candidate must register and file reports with the Commission. The 1984 campaign audit reports for two of the parties listed 18 PACs that made over \$1.1 million in media expenditures in 1984. However, the director of the Commission's Auditing Department stated that none of the PACs registered or filed reports with the Commission, as required under the law. According to the director, the Commission took no legal action respecting these apparent violations of the electoral law because it could not identify the responsible individuals.
- Media sources reported that campaign expenditures totaling \$181,000 were made by 15 PACs during the 1988 election. Three of the PACs had registered with the Commission, but none of the 15 PACs filed reports of receipts and expenditures, as required under the law. According to the Auditing Department Director, the Commission sent letters to the registered PACs informing them of their legal obligation to file reports with the Commission, but none of the PACs responded.
- The law requires that political fund raisers file a notarized statement with the Commission within 5 days following the date of any fund raising activity. One party filed with the Commission in February 1989 several statements that reported fund raising events held in October and November 1988. No action was taken by the Commission respecting these apparent violations of law.
- The law requires contributions to a candidate or party of more than \$100 (\$25 for contributions to PACs) to be reported to the Commission along with the name and address of the contributor and date the contribution was received. Our limited review of political party reports for the 1988 election showed relatively few contributions of over \$100 itemized in those reports. For example, one party reported total income from contributions and fund raising activities of over \$1 million in September 1988, but only \$1,558 in contributions of more than \$100.²

The CPAs also reported that two political parties exceeded the communications media expenditure limit of \$1.5 million during the 1984 general

²In an explanation of this apparent disparity, two of the major political parties told us that they receive a large number of small contributions in mass activities, such as rallies and telethons, which they believe do not need to be itemized.

What Limitations Are Placed on Campaign Financing, and How Are They Administered?

Puerto Rico's electoral law and regulations limit political contributions and expenditures on behalf of candidates for public office, but the law does not apply to referendums. Commonwealth legislation would be required to extend the law's campaign financing provisions to a status referendum. However, in light of several U.S. Supreme Court decisions that were made after the current Puerto Rican law was enacted, there is a question as to whether placing limits on campaign contributions for the referendum would be constitutional.

The Commonwealth Elections Commission is responsible for administering the law's campaign financing provisions and reviewing political parties' compliance with them. Our limited review of audit and campaign finance reports indicated, however, that political parties did not always comply with the provisions and the Elections Commission did not always enforce them.

Limitations on Contributions and Expenditures for Candidates

The electoral law limits contributions and expenditures on behalf of candidates for public office. The law also establishes an electoral fund for political parties' use. Contribution limits vary by the office sought. For example, the law limits individuals' and corporations' contributions in general election years to \$2,500 for a gubernatorial candidate or political party or both; \$500 each for other candidates or political action committees (PACs), which support a candidate or political party or both; and a total of \$5,000 for all candidates and PACs.

The law also provides for each political party to share in an electoral fund furnished by the Commonwealth government. In general election years, the fund provides \$400,000 to each party and its candidate for governor plus additional amounts based on the number of registered voters.

For those political parties and gubernatorial candidates that share in the electoral fund, the law limits total campaign expenditures in an election year to a maximum of \$5 million in addition to the electoral funds. The law also limits the amount each party may spend in an election year to purchase time and space in the communications media to a maximum of \$1.5 million. Moreover, the electoral law requires each political party, candidate, or PAC to keep complete and detailed accounts of contributions received and expenses incurred and to report such accounts periodically to the Commonwealth Elections Commission.

Section 3
What Roles Do the U.S. Department of Justice
and Federal Election Commission Have in
Puerto Rico's Elections?

In Puerto Rico, as in the states, the U.S. Attorney's Office plays a role in monitoring elections. In the past two general elections, the U.S. Attorney for Puerto Rico appointed an Election Day Officer to detect and prosecute voter fraud offenses. The U.S. Attorney also issued press releases on its role and established and published in local newspapers a hot line for reporting voting irregularities. Assistant U.S. attorneys and Federal Bureau of Investigation (FBI) agents handled phone calls on election day. The U.S. Attorney for Puerto Rico believes that this type of federal presence is an important deterrent to election fraud.

Role of the Federal Election Commission

The Federal Election Commission administers the Federal Election Campaign Act of 1971 (2 U.S.C. 431) and advises the states on the conduct of elections. The commission has exclusive jurisdiction over civil enforcement of the act, which covers three broad areas: public funding of presidential elections, restrictions on contributions made to influence federal elections, and disclosure of campaign finance information by candidates and political committees. The commission seeks to promote voluntary compliance with election laws and attempts to resolve violations of law through conciliation before filing civil actions. Criminal matters are referred to the Justice Department for prosecution.

Because the Federal Election Campaign Act, by its own terms, pertains only to candidates for federal offices, the commission has no role in Puerto Rico's elections, except with respect to the financing of the Resident Commissioner's election campaign. Consequently, under current law, the Federal Election Commission will have no role in Puerto Rico's proposed status referendum.

Provisions of S.712

S.712, as reported by the Senate Committee on Energy and Natural Resources, provides that the election law of Puerto Rico in effect on July 15, 1989, shall apply to the status referendum. The bill, however, is not clear as to the extent to which federal laws, such as those discussed above, would also apply.

S.712 also provides for federal oversight of the status referendum. The bill:

- Requires the Attorney General to provide for monitoring of the referendum by U.S. Marshals.
- Establishes a three-judge special court to which any aggrieved party can challenge the referendum's results once the Governor certifies them.

What Roles Do the U.S. Department of Justice and Federal Election Commission Have in Puerto Rico's Elections?

The Justice Department and the Federal Election Commission enforce federal laws that pertain to elections involving candidates for federal offices. These laws cover such areas as registration and voting, civil rights, and campaign financing. In Puerto Rico, the federal laws apply to elections that include candidates for the Office of the Resident Commissioner, which is a federal office. Many of the laws do not apply to referendums.

S.712, as reported by the Committee on Energy and Natural Resources, provides that the election law of Puerto Rico shall apply to the status referendum, but the bill is not clear as to the extent to which federal laws would also apply. If the Committee wants federal laws to apply, it should clarify this intent in title I of the bill.

The bill also provides for federal oversight of the election process. This oversight is to consist of monitoring by the Attorney General, a three-judge special court to hear appeals on the referendum results, and an information officer to translate and distribute information on the referendum.

Role of the Justice Department

Within the Justice Department, the Criminal Division's Election Crimes Branch and the Civil Rights Division are responsible for overseeing the nationwide enforcement of federal laws pertaining to elections involving candidates for federal office. In addition, Justice's Executive Office for U.S. Attorneys assists in investigating and prosecuting election fraud and abuse.

Criminal Division

The Criminal Division's Election Crimes Branch prosecutes crimes involving election matters under several laws. Among those statutes that also apply to the election of Puerto Rico's Resident Commissioner are:

- The Voting Rights Act of 1965 (42 U.S.C. 1973), which, among other things, prohibits any voting qualification, standard, or practice that would result in the denial or abridgement of any citizen's right to vote on the basis of race or language minority. The act makes it a federal crime, in connection with federal elections and certain other elections, to knowingly or willfully give false information as to name, address, or period of residence for the purpose of establishing eligibility to register or vote; to conspire with another to encourage the above; and to vote more than once in an election.

Section 2
What Safeguards and Controls Exist to
Assure the Integrity of Election Results?

the electoral regulations, inspectors from each political party are stationed at each poll. One inspector matches the voter's identification card with the copy on file and verifies that the voter appears on the registration list. Once the voter is certified, the inspector marks the voter's finger with indelible ink to preclude his or her voting again. The inspectors from the other parties then issue the voter two ballots; one for islandwide candidates, the other for municipal candidates. The voter then signs the register next to his or her name and completes the ballots. The completed ballots are dropped into designated ballot boxes in the presence of the poll inspectors.

Certain groups of individuals, such as military personnel, students, and migrant workers, may also vote by means of absentee ballots. When such voters know that they will not be in Puerto Rico on election day, the voter or a family member completes a request form for an absentee ballot. Once the Commission verifies that the person is a qualified voter, it sends an absentee ballot to the requester by certified mail.

After the polls close, poll workers tabulate the vote and each party's representative verifies and signs a summary of the vote. Poll workers forward these summaries to the election precinct, which tabulates the votes for all polls in its jurisdiction.

The electoral unit board, comprised of representatives of each party, verifies and approves the unit's summary. The unit summary then goes to the local elections commission, which again verifies the election results and enters the summary data into the Elections Commission's computer. The unit summaries are facsimiled to a central location where the Elections Commission verifies the summaries against the data entered into its computer system.

During each of these stages, the political parties receive a copy of each summary verified and approved by their respective representatives. At each level, the parties have the opportunity to challenge vote totals, and, if a total is challenged, the Commission must resolve any disputes. The parties view this participation as an important control in protecting the interests of their members and the integrity of the electoral system as a whole.

After counting all ballots and resolving any disputes, the Elections Commission certifies the final election results.

court has 5 days to resolve the matter. Superior Court decisions on electoral matters can further be appealed to the Supreme Court of Puerto Rico. In 1988, four Commission decisions were appealed to the Superior Court. These included a Commission decision regarding special voting procedures for the 1988 general elections. (see section 6 for further discussion of this decision).

A Status Referendum Will Require Special Legislation

The electoral law provides that special legislation approved by the Commonwealth legislature is necessary for every referendum or plebiscite held in Puerto Rico. The law further specifies that the legislature provide the mechanisms for financing any referendum or plebiscite it may order and determine the amount of money, if any, to be authorized and granted to the political parties and citizen groups for their campaigns. The electoral law also specifies that the Elections Commission is responsible for directing, implementing, and supervising any referendum or plebiscite.

Commission officials believe that the current electoral law will be extended to the status referendum.

Dialogue Committee Established to Assist in Drafting the Referendum Legislation

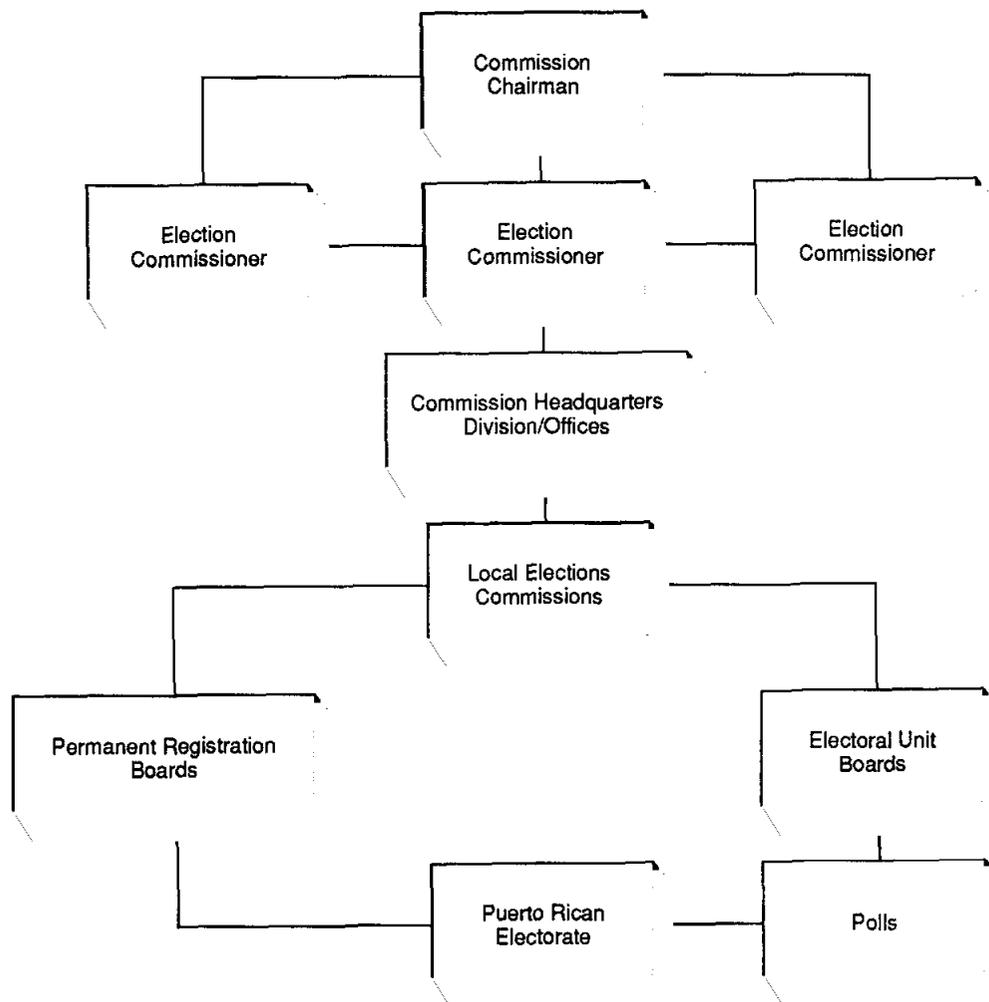
To foster dialogue and consultation on the proposed political status referendum, the Governor established the Dialogue Committee on the Status of Puerto Rico by executive order on June 29, 1989. The Committee, composed of the presidents of the three principal political parties and their representatives, is tasked with searching for consensus among the parties on political status issues and communicating those views to the United States Congress.

The Dialogue Committee met on July 12, 1989, in Washington, D.C., and reached a series of preliminary agreements about the proposed status referendum. It agreed, among other things, that

- the referendum should be held according to the Electoral Law of Puerto Rico, and the law should be "frozen" 6 months before the referendum;
- the law should assure adequate and equal public financing of the three options for the campaign; and
- the Dialogue Committee would consider a proposal to expand the absentee voting system in order to include Puerto Ricans living in the United States.

Section 1
How Are Puerto Rico's
Elections Administered?

Figure 1.1: Commonwealth Elections Commission Structure



Source: Commonwealth Elections Commission

Electoral Budget Process

The Commission Chairman prepares the budget and submits it to the election commissioners for discussion. Once approved by the commissioners, the budget request goes to the Governor who submits it to the Commonwealth legislature for approval. The legislature cannot reduce the Commission's operating budget from one fiscal year to the next. By law, the budget appropriation must equal or exceed the previous year's appropriation. In election years, the Commission prepares a special

How Are Puerto Rico's Elections Administered?

The Commonwealth Elections Commission, established by the 1977 revision to the electoral law of Puerto Rico, is responsible for conducting general elections every 4 years for islandwide and local municipal offices, including the election of candidates to the offices of Governor and Resident Commissioner. The electoral law defines the Commission's composition, functions, and responsibilities and provides for its financing and authority over election matters.

Structure of the Commonwealth Elections Commission

The Elections Commission is an autonomous agency responsible for overseeing all aspects of the elections process. It consists of a chairman and an election commissioner from each of the principal political parties: the Popular Democratic Party (Commonwealth Party), the New Progressive Party (Statehood Party), and the Puerto Rican Independence Party.

Electoral law governs the selection of commissioners. Each political party selects its candidate for election commissioner and petitions the Governor, who appoints the candidates as the parties' commissioners. Once appointed, the commissioners serve at the discretion of the political parties they represent.

The election commissioners must vote unanimously to elect the Commission Chairman, who also acts as the Commission's Executive Director. The electoral law requires the chairman to be a member of the same party as the Governor. The Governor, who does not have a direct role in the selection of the chairman, can effectively veto the choice of a chairman through his party's election commissioner.

The Elections Commission employs approximately 750 people during nonelection years and about 1,100 in election years. Commission officials advised us that political parties' representation occurs at all staff levels within the Commission. All parties share in the electoral decision-making process by serving in key control functions in the computer center, maintaining voter records, printing and distributing electoral materials, and presiding on registration boards.

The electoral law also provides for establishing a local elections commission for each election precinct. One of the primary functions of the local commission is to supervise the municipal registration and electoral unit boards. Each municipality must have at least one registration board and an electoral unit board, each comprised of one or more representatives from each political party. Each local commission has a chairman

Contents

Letter		1
Section 1		12
How Are Puerto Rico's Elections Administered?	Structure of the Commonwealth Elections Commission	12
	Electoral Budget Process	14
	Commission Decides Election Questions	15
	A Status Referendum Will Require Special Legislation	16
Section 2		17
What Safeguards and Controls Exist to Assure the Integrity of Election Results?	Stringent Registration and Voting Requirements	17
Section 3		19
What Roles Do the U.S. Department of Justice and Federal Election Commission Have in Puerto Rico's Elections?	Role of the Justice Department	19
	Role of the Federal Election Commission	22
	Provisions of S.712	22
Section 4		24
What Limitations Are Placed on Campaign Financing, and How Are They Administered?	Limitations on Contributions and Expenditures for Candidates	24
	Campaign Financing Provisions Have Not Been Strictly Complied With or Enforced	25

Copies of this report will be sent to the Commonwealth Governor's Office, Elections Commission, the Dialogue Committee on the Status of Puerto Rico, the Department of Justice, the Federal Election Commission, and other appropriate congressional committees. Copies will also be made available to interested parties upon request.

Please call me on (202) 275-1655 if you or your staff have any questions about this report. Other major contributors to this report are listed in appendix VIII.

Sincerely yours,

A handwritten signature in black ink that reads "Linda G. Morra". The signature is written in a cursive style with a long horizontal stroke at the end.

Linda G. Morra
Director, Intergovernmental
and Management Issues

Rights of Nonresident Puerto Ricans to Participate in the Referendum

The question of whether nonresidents will be permitted to vote in the 1991 status referendum has not yet been decided. Under Puerto Rico's current electoral law, any citizen of the United States and of Puerto Rico who is at least 18 years old and domiciled on the island is qualified to register as a voter.

Commonwealth Elections Commission officials stated that the existing statutory voter qualifications will most likely apply to the status referendum. This would be consistent with status referendums held in the former U.S. territories of Alaska and Hawaii where existing election laws did not permit voting by nonresidents.

However, the Dialogue Committee on the Status of Puerto Rico indicated that it would consider a proposal to expand the absentee balloting provisions of the electoral law to allow for voting by Puerto Rican citizens living in the United States. (See section 5.)

Problems Experienced in Past Elections

The U.S. Attorney for Puerto Rico told us that several allegations of election fraud and abuse were made in recent general elections in which candidates for the Office of Resident Commissioner were running, but, to date, no cases resulted in federal prosecution. An Elections Commission official told us that the Commonwealth Justice Department prosecuted one election fraud case and is investigating another case.

Problems occurred during the 1988 San Juan mayoral election. Because of an allegation that a number of duly qualified voters did not appear on the voter registration lists, Puerto Rico instituted special voting procedures. These procedures, however, resulted in a number of ballots being questioned. The vote count in the San Juan mayoral election was close and a recount showed that the election was decided by only 29 votes—a margin of votes smaller than the number of questioned ballots. The losing candidate contested the election in the Puerto Rican court system, and, as of January 1990, this matter was still unresolved. (See section 6.)

Conclusions

While Puerto Rico's election process is basically sound, some highly publicized problems occurred in past elections. Of the several allegations of fraud and abuse, however, only one case has been substantiated to date. Our review did not indicate a need for more intensive federal monitoring beyond those procedures used in past elections by the U.S. Attorney's Office. Nevertheless, because of the political sensitivity surrounding this

Puerto Rico's electoral law provides that special Commonwealth legislation is necessary for any referendum or plebiscite held in Puerto Rico. A June 1989 executive order of the Governor established the Dialogue Committee on the Status of Puerto Rico to assist the legislature in drafting the referendum law. The committee, composed of representatives of each of the political parties, will assist in deciding referendum issues, including who will be eligible to vote in the referendum and what public financing will be made available for the parties' status campaigns. The committee has reached several preliminary agreements including, for example, that the law should assure adequate public financing for the status campaigns. (For further information about Puerto Rico's electoral structure, see section 1.)

Electoral Safeguards and Controls Assure the Integrity of Election Results

Puerto Rico's electoral law contains various provisions designed to protect the rights and interests of voters and assure the integrity of election results. The law and resulting regulations contain safeguards and controls covering all aspects of the electoral process. These include stringent procedures for voter registration, balloting, and the tabulation of election results.

Puerto Rico's electoral law provides for participation of the major political parties in all levels of the electoral process. The political parties view this as an important control in protecting the interests of the parties' membership and the integrity of the electoral system as a whole. Representatives of the political parties verify voter qualifications, validate ballots cast, and certify election results at each level within the Commonwealth Elections Commission's structure.

When compared with the election process in the states, a Federal Election Commission expert told us that Puerto Rico's election process is sound and that controls present in its system exceed those in some of the states. (See section 2.)

Roles of the U.S. Department of Justice and Federal Election Commission

The Justice Department and the Federal Election Commission enforce federal laws that pertain to elections involving candidates for federal office. In Puerto Rico, these federal laws pertain to elections that include candidates for the Office of Resident Commissioner. Many of the laws, however, do not apply to referendums.

The Justice Department enforces various federal laws intended to ensure the integrity of an election involving candidates for federal

We reviewed Puerto Rico's electoral law and related regulations, the Commonwealth Elections Commission's reports and decisions, and documents related to the litigation of electoral and campaign finance issues in the 1984 and 1988 general elections. We also made a limited review of political party campaign financing reports and post-election audit reports for the political parties' election year campaign activities. In addition, we reviewed relevant federal laws and court decisions and determined their applicability to Puerto Rico elections.

We conducted our review from May to September 1989 in accordance with generally accepted government auditing standards.

Background

Spain ceded Puerto Rico to the United States in 1898. In 1900, the Congress authorized a resident commissioner to the United States as a non-voting member of the U.S. House of Representatives. And, in 1917, Puerto Ricans became U.S. citizens. Administered initially as a territory, the island progressed toward greater home rule, and was formalized as a commonwealth of the United States with its own constitution in 1952. The Puerto Rican people held a referendum in 1967 on three political status alternatives: independence, statehood, and enhanced commonwealth status. About three-fifths of the voters supported enhanced commonwealth status.¹

In 1988, Puerto Rico's three major political parties addressed the issue of Puerto Rico's status in platforms they presented to the electorate. In January 1989, a letter and joint declaration to pursue resolution of the status issue were signed by the leaders of the three major political parties. President Bush, in his 1989 State of the Union Address, reaffirmed the right of the Puerto Rican people to self-determination and expressed his preference for statehood. He urged the Congress to take steps to allow the people to decide their political status in a referendum.

Results in Brief

Puerto Rico's 1977 electoral law and election process appear to be sound. The electoral law established the Commonwealth Elections Commission, an autonomous agency composed of a Chairman and an election commissioner from each of the principal political parties. The Commission is responsible for overseeing all aspects of the elections process.

¹For more background information, see Puerto Rico: Update of Selected Information Contained in a 1981 GAO Report (GAO/HRD-89-104FS, Aug. 9, 1989) and Puerto Rico: Information for Status Deliberations (GAO/HRD-90-70BR, Mar. 7, 1990).

