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MEMORANDUM FOR MR. HARRY C. McPHERSON, JR.

Subject: Bills to provide for elected Governors in Guam and the Virgin Islands

Two issues are presented by bills -- S. 449 and S. 450 -- which the Senate Interior and Insular Affairs Committee is considering to provide for elected Governors in Guam and the the Virgin Islands.

-- They do not authorize the President to remove an elected Governor for cause, as originally proposed by the Administration, and

-- They would repeal the President's existing authority to veto enactments of the local legislatures under certain circumstances.

Background. At present, the Governors of Guam and the Virgin Islands are appointed by, and serve at the pleasure of the President. Under the bills proposed by the Administration in 1965, the Governors (and Lieutenant Governors) would have been elected for four-year terms but would have been subject to removal by the President for cause or by recall by the electorate. In 1966, the House passed the bills with changes providing for two-year terms and removal only on impeachment for, and conviction (by a Federal court) of, high crimes and misdemeanors. In 1966, the Senate Committee reported out bills which, like S. 449 and S. 450, provided for four-year terms and removal only by recall.

With respect to the veto power, the organic acts of Guam and the Virgin Islands both contain provisions under which, if the local legislature repasses a bill over the original veto of the Governor, the Governor is required to present such bills to the President if the Governor does not then approve them. The President then has the final authority to approve or disapprove the bills presented to him or to let them become law simply by taking no action within the 90 days authorized for action.

The Guam and Virgin Islands organic acts go on to require all laws of the territories to be reported to the President and to the Congress, but only in the case of Guam does the law specifically reserve to the Congress the

power and authority to annul such territorial laws within one year of their receipt by the Congress. Such annulment authority formerly existed with respect to the enactments of the municipal councils of St. Thomas and St. John and of Saint Croix but was dropped in the Virgin Islands Organic Act of 1954. The Interior Department nevertheless is certain that Congress has the authority to annul Virgin Islands laws. The Congress has never exercised its authority over either territory.

In its 1966 report to the Senate Committee the Bureau recommended that the President be given the authority to remove elected Governors for cause and that the present authority for Presidential veto of local legislation not be changed.

Discussion. The basic question underlying both the authority to remove Governors and the veto authority is the nature and the scope of the power which should be retained by the President and the Congress to protect the Federal interest in the territories and to enable the Federal Government to carry out its responsibilities for their government.

The arguments against retaining Presidential authority to remove elected Governors and to veto local legislation which the Interior Department makes are:

-- Such authority is inconsistent with, and will dilute the concept of home rule and the development of local self-government. The Federal Government will appear to be taking away with one hand that which it is giving with the other.

-- The people of the territories are mature enough to be depended on to remove an unsatisfactory Governor or correct unwise legislation by taking action against the legislature at the next election.

-- There is adequate remedy in the Congress' authority to withdraw the authority to elect a Governor, to limit the authority of the legislature, and to correct deficiencies in the plan of self-government.

The arguments in favor of retaining certain Presidential authority are:

-- The elected-Governor bills will not alter the status of Guam and the Virgin Islands or diminish the responsibilities of the President and the Congress under Article IV, section 3, of the Constitution with respect to making and executing rules and regulations with respect to United States territory. Guam and the Virgin Islands would remain unincorporated territories of the United States basically governed by Federal law in the form of their organic acts.

-- In many respects, Guam and the Virgin Islands are analogous to cities in our States. They are the creatures and, hence, the responsibility of the United States just as cities are the creatures of the States.

-- The United States will continue to be accountable to the United Nations for the protection and welfare of the territories and their inhabitants. It will be morally obligated to provide necessary financial support for their governments.

-- Despite the proposed change in their method of selection, the elected Governors will have a responsibility not only for the execution of local laws but also for the execution of certain Federal laws applicable to the territories. Chief among the latter are the organic acts themselves.

-- Because of the above circumstances, the Federal Government cannot put itself in a position in which it has no authority to carry out its responsibilities, in which it cannot take action to remove an irresponsible Governor or bar an enactment of the local legislature which is contrary to the national security or Federal interests.

-- The need for such authority could be critical in Guam because of its importance to the national security.

-- The congressional authority to annul local enactments is only a partial and, at best, cumbersome procedure for dealing with the problem and would be completely unworkable in emergencies or when Congress is not in session.

On balance, we continue to favor retaining certain Presidential authorities because of the need to insure that the Federal Government's basic responsibilities can be carried out.

Recommendations, That the Bureau of the Budget, in its report to the Senate Committee urge:

-- That the President be authorized to remove an elected Governor for certain causes. (The report would be silent as to whether elected Governors should also be subject to removal by impeachment or recall.)

-- That the present veto authority be repealed but that the President be authorized to disapprove local laws for certain causes within sixty days of receiving notice of their enactment.

(This would be a change from our previous position but one which we believe is necessary on further consideration. With an appointed Governor, the President could always exercise some control over the laws which such a Governor approved. With an elected Governor, that will no longer be the case. It would not be feasible to rely on the present authority which brings to the President's attention only certain bills passed over the Governor's veto, or to rely on the cumbersome process of congressional annulment. In our view a Presidential disapproval authority, if properly limited and if exercised in a reasonable period of time, is no more repugnant to the concept of local self-government than congressional annulment and is much more workable. It is certainly not more repugnant than the retention of a Federal comptroller in the Virgin Islands.)

-- That the above Presidential authorities be limited by law so that he could remove a Governor or disapprove a law only if he or it adversely affected the security, foreign relations, property and interests of the United States. (Such a limitation would probably make the retention of the authorities more acceptable. Executive Order No. 11010, dealing with the Ryukyu Islands administration, provides a precedent for such a limitation.)

(Signed) Wilf Rommel

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Legislative Reference