

UNITED STATES-PUERTO RICO POLITICAL STATUS ACT

—————  
JUNE 12, 1997.—Ordered to be printed  
—————

Mr. YOUNG of Alaska, from the Committee on Resources,  
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 856]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 856) to provide a process leading to full self-government for Puerto Rico, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “United States-Puerto Rico Political Status Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title, table of contents.

Sec. 2. Findings.

Sec. 3. Policy.

Sec. 4. Process for Puerto Rican full self-government, including the initial decision stage, transition stage, and implementation stage.

Sec. 5. Requirements relating to referenda, including inconclusive referendum and applicable laws.

Sec. 6. Congressional procedures for consideration of legislation.

Sec. 7. Availability of funds for the referenda.

**SEC. 2. FINDINGS.**

The Congress finds the following:

(1) Puerto Rico was ceded to the United States and came under this Nation’s sovereignty pursuant to the Treaty of Paris ending the Spanish-American War in 1898. Article IX of the Treaty of Paris recognized the authority of Congress to provide for the political status of the inhabitants of the territory.

(2) Consistent with establishment of United States nationality for inhabitants of Puerto Rico under the Treaty of Paris, Congress has exercised its powers under the Territorial Clause of the Constitution (article IV, section 3, clause 2) to provide by several statutes beginning in 1917, for the United States citizenship status of persons born in Puerto Rico.

(3) Consistent with the Territorial Clause and rulings of the United States Supreme Court, partial application of the United States Constitution has been established in the unincorporated territories of the United States including Puerto Rico.

(4) In 1950, Congress prescribed a procedure for instituting internal self-government for Puerto Rico pursuant to statutory authorization for a local constitution. A local constitution was approved by the people of Puerto Rico, conditionally approved by Congress, subject to congressionally required amendment by Puerto Rico, and thereupon given effect in 1952 after acceptance of congressional conditions by the Puerto Rico Constitutional Convention and an appropriate proclamation by the Governor. The approved constitution established the structure for constitutional government in respect of internal affairs without altering Puerto Rico's fundamental political, social, and economic relationship with the United States and without restricting the authority of Congress under the Territorial Clause to determine the application of Federal law to Puerto Rico, resulting in the present "Commonwealth" structure for local self-government. The Commonwealth remains an unincorporated territory and does not have the status of "free association" with the United States as that status is defined under United States law or international practice.

(5) In 1953, the United States transmitted to the Secretary-General of the United Nations for circulation to its Members a formal notification that the United States no longer would transmit information regarding Puerto Rico to the United Nations pursuant to Article 73(e) of its Charter. The formal United States notification document informed the United Nations that the cessation of information on Puerto Rico was based on the "new constitutional arrangements" in the territory, and the United States expressly defined the scope of the "full measure" of local self-government in Puerto Rico as extending to matters of "internal government and administration, subject only to compliance with applicable provisions of the Federal Constitution, the Puerto Rico Federal Relations Act and the acts of Congress authorizing and approving the Constitution, as may be interpreted by judicial decision." Thereafter, the General Assembly of the United Nations, based upon consent of the inhabitants of the territory and the United States explanation of the new status as approved by Congress, adopted Resolution 748 (VIII) by a vote of 22 to 18 with 19 abstentions, thereby accepting the United States determination to cease reporting to the United Nations on the status of Puerto Rico.

(6) In 1960, the United Nations General Assembly approved Resolution 1541 (XV), clarifying that under United Nations standards regarding the political status options available to the people of territories yet to complete the process for achieving full self-government, the three established forms of full self-government are national independence, free association based on separate sovereignty, or full integration with another nation on the basis of equality.

(7) The ruling of the United States Supreme Court in the 1980 case *Harris v. Rosario* (446 U.S. 651) confirmed that Congress continues to exercise authority over Puerto Rico as territory "belonging to the United States" pursuant to the Territorial Clause found at Article IV, section 3, clause 2 of the United States Constitution; and in the 1982 case of *Rodriguez v. Popular Democratic Party* (457 U.S. 1), the Court confirmed that the Congress delegated powers of administration to the Commonwealth of Puerto Rico sufficient for it to function "like a State" and as "an autonomous political entity" in respect of internal affairs and administration, pending further disposition by Congress. These rulings constitute judicial interpretation of Puerto Rico's status which is in accordance with the clear intent of Congress that establishment of local constitutional government in 1952 did not alter Puerto Rico's status as an unincorporated United States territory.

(8) In a joint letter dated January 17, 1989, cosigned by the Governor of Puerto Rico in his capacity as president of one of Puerto Rico's principal political parties and the presidents of the two other principal political parties of Puerto Rico, the United States was formally advised that "... the People of Puerto Rico wish to be consulted as to their preference with regards to their ultimate political status", and the joint letter stated "... that since Puerto Rico came under the sovereignty of the United States of America through the Treaty of Paris in

1898, the People of Puerto Rico have not been formally consulted by the United States of America as to their choice of their ultimate political status”.

(9) In the 1989 State of the Union Message, President George Bush urged the Congress to take the necessary steps to authorize a federally recognized process allowing the people of Puerto Rico, for the first time since the Treaty of Paris entered into force, to freely express their wishes regarding their future political status in a congressionally recognized referendum, a step in the process of self-determination which the Congress has yet to authorize.

(10) On November 14, 1993, the Government of Puerto Rico conducted a plebiscite initiated under local law on Puerto Rico’s political status. In that vote none of the three status propositions received a majority of the votes cast. The results of that vote were: 48.6 percent for a commonwealth option, 46.3 percent statehood, and 4.4 percent independence.

(11) In a letter dated December 2, 1994, President William Jefferson Clinton informed leaders in Congress that an Executive Branch Interagency Working Group on Puerto Rico had been organized to coordinate the review, development, and implementation of executive branch policy concerning issues affecting Puerto Rico, including the November 1993 plebiscite.

(12) Under the Territorial Clause of the Constitution, Congress has the authority and responsibility to determine Federal policy and clarify status issues in order to resolve the issue of Puerto Rico’s final status.

(13) On January 23, 1997, the Puerto Rico Legislature enacted Concurrent Resolution 2, which requested the 105th Congress “. . . to respond to the democratic aspirations of the American citizens of Puerto Rico” by approving legislation authorizing “. . . a plebiscite sponsored by the Federal Government, to be held no later than 1998”.

(14) Nearly 4,000,000 United States citizens live in the islands of Puerto Rico, which have been under United States sovereignty and within the United States customs territory for almost 100 years, making Puerto Rico the oldest, largest, and most populous United States island territory at the southeastern-most boundary of our Nation, located astride the strategic shipping lanes of the Atlantic Ocean and Caribbean Sea.

(15) Full self-government for Puerto Rico is attainable only through establishment of a political status which is based on either separate Puerto Rican sovereignty and nationality or full and equal United States nationality and citizenship through membership in the Union and under which Puerto Rico is no longer an unincorporated territory subject to the plenary authority of Congress arising from the Territorial Clause.

### **SEC. 3. POLICY.**

(a) **CONGRESSIONAL COMMITMENT.**—In recognition of the significant level of local self-government which has been attained by Puerto Rico, and the responsibility of the Federal Government to enable the people of the territory to freely express their wishes regarding political status and achieve full self-government, this Act is adopted with a commitment to encourage the development and implementation of procedures through which the permanent political status of the people of Puerto Rico can be determined.

(b) **LANGUAGE.**—English shall be the common language of mutual understanding in the United States, and shall apply in all of the States duly and freely admitted to the Union. The Congress recognizes that at the present time, Spanish and English are the joint official languages of Puerto Rico, and have been for nearly 100 years; that English is the official language of Federal courts in Puerto Rico; that the ability to speak English is a requirement for Federal jury services; yet Spanish rather than English is currently the predominant language used by the majority of the people of Puerto Rico; and that Congress has the authority to expand existing English language requirements in the Commonwealth of Puerto Rico. In the event that the referenda held under this Act result in approval of sovereignty leading to Statehood, it is anticipated that upon accession to Statehood, English language requirements of the Federal Government shall apply in Puerto Rico to the same extent as Federal law requires throughout the United States. Congress also recognizes the significant advantage that proficiency in Spanish as well as English has bestowed on the people of Puerto Rico, and further that this will serve the best interests of both Puerto Rico and the rest of the United States in our mutual dealings in the Caribbean, Latin America, and throughout the Spanish-speaking world.

### **SEC. 4. PROCESS FOR PUERTO RICAN FULL SELF-GOVERNMENT, INCLUDING THE INITIAL DECISION STAGE, TRANSITION STAGE, AND IMPLEMENTATION STAGE.**

(a) **INITIAL DECISION STAGE.**—A referendum on Puerto Rico’s political status is authorized to be held not later than December 31, 1998. The referendum shall be held

pursuant to this Act and in accordance with the applicable provisions of Puerto Rico's electoral law and other relevant statutes consistent with this Act. Approval of a status option must be by a majority of the valid votes cast. The referendum shall be on the approval of 1 of the 3 options presented on the ballot as follows:

"Instructions: Mark the status option you choose as each is defined below. Ballot with more than 1 option marked will not be counted.

"A. COMMONWEALTH.—If you agree, mark here \_\_\_\_\_

"Puerto Rico should retain Commonwealth, in which—

"(1) Puerto Rico continues the present Commonwealth structure for constitutional self-government with respect to internal affairs and administration;

"(2) Puerto Rico is an unincorporated territory of the United States, and the provisions of the Constitution and laws of the United States, including those provisions for rights, privileges, and immunities of United States citizens, apply to Puerto Rico as determined by Congress;

"(3) persons born in Puerto Rico have statutory United States nationality and citizenship as prescribed by Congress;

"(4) the qualified voters of Puerto Rico elect a nonvoting Resident Commissioner to the United States who serves in the House of Representatives;

"(5) the levels of Federal benefits and taxes extended to the residents of Puerto Rico are established by Federal law as deemed equitable by Congress;

"(6) Puerto Rico uses the currency of the United States, is within the United States customs territory and defense system, and English language requirements of the Federal Government apply, as provided by Federal law;

"(7) the extension, continuation, modification, and termination of Federal law and policy applicable to Puerto Rico and its residents is within the discretion of Congress; and

"(8) the ultimate status of Puerto Rico will be established through a process authorized by Congress which includes self-determination by the residents of Puerto Rico in periodic referenda.

"B. SEPARATE SOVEREIGNTY.—If you agree, mark here \_\_\_\_\_

"The people of Puerto Rico should become fully self-governing through separate sovereignty in the form of independence or free association, in which—

"(1) Puerto Rico is a sovereign Republic which has full authority and responsibility over its territory and population under a constitution which is the supreme law, providing for a republican form of government and the protection of human rights;

"(2) the Republic of Puerto Rico is a member of the community of nations vested with full powers and responsibilities for its own fiscal and monetary policy, immigration, trade, and the conduct in its own name and right of relations with other nations and international organizations;

"(3) the people of Puerto Rico owe allegiance to and have the nationality and citizenship of the Republic of Puerto Rico;

"(4) the Constitution and laws of the United States no longer apply in Puerto Rico, and United States sovereignty in Puerto Rico is ended; thereupon birth in Puerto Rico or relationship to persons with statutory United States citizenship by birth in the former territory shall cease to be a basis for United States nationality or citizenship, except that persons who had such United States citizenship have a statutory right to retain United States nationality and citizenship for life, by entitlement or election as provided by the United States Congress, based on continued allegiance to the United States: *Provided*, That such persons will not have this statutory United States nationality and citizenship status upon having or maintaining allegiance, nationality, and citizenship rights in any sovereign nation, including the Republic of Puerto Rico, other than the United States;

"(5) the previously vested rights of individuals in Puerto Rico to benefits based upon past services rendered or contributions made to the United States shall be honored by the United States as provided by Federal law;

"(6) Puerto Rico and the United States seek to develop friendly and cooperative relations in matters of mutual interest as agreed in treaties approved pursuant to their respective constitutional processes, and laws including economic and programmatic assistance at levels and for a reasonable period as provided on a government-to-government basis, trade between customs territories, transit of citizens in accordance with immigration laws, and status of United States military forces; and

"(7) a free association relationship may be established based on separate sovereign republic status as defined above, but with such delegations of some government functions and other cooperative arrangements as agreed to by both

parties under a bilateral pact terminable at will by either the United States or Puerto Rico.

“C. STATEHOOD.—If you agree, mark here \_\_\_\_\_

“Puerto Rico should become fully self governing through Statehood, in which—

“(1) the people of Puerto Rico are fully self-governing with their rights secured under the United States Constitution, which shall be fully applicable in Puerto Rico and which, with the laws and treaties of the United States, is the supreme law and has the same force and effect as in the other States of the Union;

“(2) the sovereign State of Puerto Rico is in permanent union with the United States, and powers not delegated to the United States by the Constitution nor prohibited by the Constitution to the States, are reserved to the State of Puerto Rico or to the people;

“(3) United States citizenship of those born in Puerto Rico is guaranteed, protected and secured in the same way it is for all United States citizens born in the other States;

“(4) the people of Puerto Rico have equal rights, privileges, immunities, and benefits as well as equal duties and responsibilities of citizenship, including payment of Federal taxes, as those in the several States;

“(5) Puerto Rico is represented by two members in the United States Senate and is represented in the House of Representatives proportionate to the population;

“(6) United States citizens in Puerto Rico are enfranchised to vote in elections for the President and Vice President of the United States; and

“(7) English is the official language of business and communication in Federal courts and Federal agencies as made applicable by Federal law to every other State, and Puerto Rico is enabled to expand and build upon existing law establishing English as an official language of the State government, courts, and agencies.”

(b) TRANSITION STAGE.—

(1) PLAN.—(A) Within 180 days of the receipt of the results of the referendum from the Government of Puerto Rico certifying approval of a ballot choice of full self-government in a referendum held pursuant to subsection (a), the President shall develop and submit to Congress legislation for a transition plan of not more than 10 years which leads to full self-government for Puerto Rico consistent with the terms of this Act and the results of the referendum and in consultation with officials of the three branches of the Government of Puerto Rico, the principal political parties of Puerto Rico, and other interested persons as may be appropriate.

(B) Additionally, in the event of a vote in favor of separate sovereignty, the Legislature of Puerto Rico, if deemed appropriate, may provide by law for the calling of a constituent convention to formulate, in accordance with procedures prescribed by law, Puerto Rico’s proposals and recommendations to implement the referendum results. If a convention is called for this purpose, any proposals and recommendations formally adopted by such convention within time limits of this Act shall be transmitted to Congress by the President with the transition plan required by this section, along with the views of the President regarding the compatibility of such proposals and recommendations with the United States Constitution and this Act, and identifying which, if any, of such proposals and recommendations have been addressed in the President’s proposed transition plan.

(C) Additionally, in the event of a vote in favor of United States sovereignty leading to Statehood, the President shall include in the transition plan provided for in this Act—

(i) proposals and incentives to increase the opportunities of the people of Puerto Rico to learn to speak, read, write, and understand English fully, including but not limited to, the teaching of English in public schools, fellowships, and scholarships. The transition plan should promote the usage of English by the United States citizens of Puerto Rico, in order to best allow for—

(I) the enhancement of the century old practice of English as an official language of Puerto Rico, consistent with the preservation of our Nation’s unity in diversity and the prevention of divisions along linguistic lines;

(II) the use of language skills necessary to contribute most effectively to the Nation in all aspects, including but not limited to Hemispheric trade, and for citizens to enjoy the full rights and benefits of their citizenship;

(III) the promotion of efficiency and fairness to all people in the conduct of the Federal and State government's official business; and

(IV) the ability of all citizens to take full advantage of the economic, educational, and occupational opportunities through full integration with the United States; and

(ii) the effective date upon which the Constitution shall have the same force and effect in Puerto Rico as in the several States, thereby permitting the greatest degree of flexibility for the phase-in of Federal programs and the development of the economy through fiscal incentives, alternative tax arrangements, and other measures.

(2) CONGRESSIONAL CONSIDERATION.—The plan shall be considered by the Congress in accordance with section 6.

(3) PUERTO RICAN APPROVAL.—

(A) Not later than 180 days after enactment of an Act pursuant to paragraph (1) providing for the transition to full self-government for Puerto Rico as approved in the initial decision referendum held under subsection (a), a referendum shall be held under the applicable provisions of Puerto Rico's electoral law on the question of approval of the transition plan.

(B) Approval must be by a majority of the valid votes cast. The results of the referendum shall be certified to the President of the United States.

(c) IMPLEMENTATION STAGE.—

(1) PRESIDENTIAL RECOMMENDATION.—Not less than two years prior to the end of the period of the transition provided for in the transition plan approved under subsection (b), the President shall submit to Congress a joint resolution with a recommendation for the date of termination of the transition and the date of implementation of full self-government for Puerto Rico within the transition period consistent with the ballot choice approved under subsection (a).

(2) CONGRESSIONAL CONSIDERATION.—The joint resolution shall be considered by the Congress in accordance with section 6.

(3) PUERTO RICAN APPROVAL.—

(A) Within 180 days after enactment of the terms of implementation for full self-government for Puerto Rico, a referendum shall be held under the applicable provisions of Puerto Rico's electoral laws on the question of the approval of the terms of implementation for full self-government for Puerto Rico.

(B) Approval must be by a majority of the valid votes cast. The results of the referendum shall be certified to the President of the United States.

**SEC. 5. REQUIREMENTS RELATING TO REFERENDA, INCLUDING INCONCLUSIVE REFERENDUM AND APPLICABLE LAWS.**

(a) APPLICABLE LAWS.—

(1) REFERENDA UNDER PUERTO RICAN LAWS.—The referenda held under this Act shall be conducted in accordance with the applicable laws of Puerto Rico, including laws of Puerto Rico under which voter eligibility is determined and which require United States citizenship and establish other statutory requirements for voter eligibility of residents and nonresidents.

(2) FEDERAL LAWS.—The Federal laws applicable to the election of the Resident Commissioner of Puerto Rico shall, as appropriate and consistent with this Act, also apply to the referenda. Any reference in such Federal laws to elections shall be considered, as appropriate, to be a reference to the referenda, unless it would frustrate the purposes of this Act.

(b) CERTIFICATION OF REFERENDA RESULTS.—The results of each referendum held under this Act shall be certified to the President of the United States and the Senate and House of Representatives of the United States by the Government of Puerto Rico.

(c) CONSULTATION AND RECOMMENDATIONS FOR INCONCLUSIVE REFERENDUM.—

(1) IN GENERAL.—If a referendum provided in section 4(b) or (c) of this Act does not result in approval of a fully self-governing status, the President, in consultation with officials of the three branches of the Government of Puerto Rico, the principal political parties of Puerto Rico, and other interested persons as may be appropriate, shall make recommendations to the Congress within 180 days of receipt of the results of the referendum regarding completion of the self-determination process for Puerto Rico under the authority of Congress.

(2) ADDITIONAL REFERENDA.—To ensure that the Congress is able on a continuing basis to exercise its Territorial Clause powers with due regard for the wishes of the people of Puerto Rico respecting resolution of Puerto Rico's permanent future political status, in the event that a referendum conducted under section 4(a) does not result in a majority vote for separate sovereignty or state-

hood, there is authorized to be further referenda in accordance with this Act, but not less than once every 10 years.

**SEC. 6. CONGRESSIONAL PROCEDURES FOR CONSIDERATION OF LEGISLATION.**

(a) **IN GENERAL.**—The majority leader of the House of Representatives (or his designee) and the majority leader of the Senate (or his designee) shall each introduce legislation (by request) providing for the transition plan under section 4(b) and the implementation recommendation under section 4(c) not later than 5 legislative days after the date of receipt by Congress of the submission by the President under that section, as the case may be.

(b) **REFERRAL.**—The legislation shall be referred on the date of introduction to the appropriate committee or committees in accordance with rules of the respective Houses. The legislation shall be reported not later than the 120th calendar day after the date of its introduction. If any such committee fails to report the bill within that period, that committee shall be automatically discharged from consideration of the legislation, and the legislation shall be placed on the appropriate calendar.

(c) **CONSIDERATION.**—

(1) After the 14th legislative day after the date on which the last committee of the House of Representatives or the Senate, as the case may be, has reported or been discharged from further consideration of such legislation, it is in order after the legislation has been on the calendar for 14 legislative days for any Member of that House in favor of the legislation to move to proceed to the consideration of the legislation (after consultation with the presiding officer of that House as to scheduling) to move to proceed to its consideration at any time after the third legislative day on which the Member announces to the respective House concerned the Member's intention to do so. All points of order against the motion to proceed and against consideration of that motion are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the legislation is agreed to, the respective House shall immediately proceed to consideration of the legislation without intervening motion (exception one motion to adjourn), order, or other business.

(2)(A) In the House of Representatives, during consideration of the legislation in the Committee of the Whole, the first reading of the legislation shall be dispensed with. General debate shall be confined to the legislation, and shall not exceed 4 hours equally divided and controlled by a proponent and an opponent of the legislation. After general debate, the legislation shall be considered as read for amendment under the five-minute rule. Consideration of the legislation for amendment shall not exceed 4 hours excluding time for recorded votes and quorum calls. At the conclusion of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the legislation and amendments thereto to final passage without intervening motion, except one motion to recommit with or without instructions. A motion to reconsider the vote on passage of the legislation shall not be in order.

(B) In the Senate, debate on the legislation, and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 25 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees. No amendment that is not germane to the provisions of such legislation shall be received. A motion to further limit debate is not debatable.

(3) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to the legislation described in subsection (a) shall be decided without debate.

(d) **CONSIDERATION BY OTHER HOUSE.**—(1) If, before the passage by one House of the legislation described in subsection (a) that was introduced in that House, that House receives from the other House the legislation described in subsection (a)—

(A) the legislation of the other House shall not be referred to a committee and may not be considered in the House that receives it otherwise than on final passage under subparagraph (B)(ii) or (iii); and

(B)(i) the procedure in the House that receives such legislation with respect to such legislation that was introduced in that House shall be the same as if no legislation had been received from the other House; but

(ii) in the case of legislation received from the other House that is identical to the legislation as engrossed by the receiving House, the vote on final passage shall be on the legislation of the other House; or

(iii) after passage of the legislation, the legislation of the other House shall be considered as amended with the text of the legislation just passed and shall be considered as passed, and that House shall be considered to have insisted on its amendment and requested a conference with the other House.

(2) Upon disposition of the legislation described in subsection (a) that is received by one House from the other House, it shall no longer be in order to consider such legislation that was introduced in the receiving House.

(e) Upon receiving from the other House a message in which that House insists upon its amendment to the legislation and requests a conference with the House of Representatives or the Senate, as the case may be, on the disagreeing votes thereon, the House receiving the request shall be considered to have disagreed to the amendment of the other House and agreed to the conference requested by that House.

(f) DEFINITION.—For the purposes of this section, the term “legislative day” means a day on which the House of Representatives or the Senate, as appropriate, is in session.

(g) EXERCISE OF RULEMAKING POWER.—The provisions of this section are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives and, as such, shall be considered as part of the rules of each House and shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedures of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

#### SEC. 7. AVAILABILITY OF FUNDS FOR THE REFERENDA.

(a) IN GENERAL.—

(1) AVAILABILITY OF AMOUNTS DERIVED FROM TAX ON FOREIGN RUM.—During the period beginning October 1, 1997, and ending on the date the President determines that all referenda required by this Act have been held, from the amounts covered into the treasury of Puerto Rico under section 7652(e)(1) of the Internal Revenue Code of 1986, the Secretary of the Treasury—

(A) upon request and in the amounts identified from time to time by the President, shall make the amounts so identified available to the treasury of Puerto Rico for the purposes specified in subsection (b); and

(B) shall transfer all remaining amounts to the treasury of Puerto Rico, as under current law.

(2) REPORT OF REFERENDA EXPENDITURES.—Within 180 days after each referendum required by this Act, and after the end of the period specified in paragraph (1), the President, in consultation with the Government of Puerto Rico, shall submit a report to the United States Senate and United States House of Representatives on the amounts made available under paragraph (1)(A) and all other amounts expended by the State Elections Commission of Puerto Rico for referenda pursuant to this Act.

(b) GRANTS FOR CONDUCTING REFERENDA AND VOTER EDUCATION.—From amounts made available under subsection (a)(1), the Government of Puerto Rico shall make grants to the State Elections Commission of Puerto Rico for referenda held pursuant to the terms of this Act, as follows:

(1) 50 percent shall be available only for costs of conducting the referenda.

(2) 50 percent shall be available only for voter education funds for the central ruling body of the political party, parties, or other qualifying entities advocating a particular ballot choice. The amount allocated for advocating a ballot choice under this paragraph shall be apportioned equally among the parties advocating that choice.

(c) ADDITIONAL RESOURCES.—In addition to amounts made available by this Act, the Puerto Rico Legislature may allocate additional resources for administrative and voter education costs to each party so long as the distribution of funds is consistent with the apportionment requirements of subsection (b).

#### PURPOSE OF THE BILL

The purpose of H.R. 856 is to provide a process leading to full self-government for Puerto Rico.



## BACKGROUND AND NEED FOR LEGISLATION

*History of Puerto Rico's legal and political status**Puerto Rico and the Caribbean in American history*

During the age of European discovery and colonialism, and later in the Revolutionary period when the American political culture was born, Puerto Rico and the Caribbean islands were geographically, economically and politically an integral part of the North American experience.

Puerto Rico was one of Christopher Columbus' landfalls, and thus was an important part of the European discovery and exploration of the New World. Ponce de Leon, the European discoverer of Florida, was the first Spanish Governor of Puerto Rico. Alexander Hamilton—aide de camp to General Washington during the Revolutionary War, collaborator with Madison in *The Federalist Papers* and at the Constitutional Convention in Philadelphia, as well as the first Secretary of the Treasury of the United States—was born and raised in the Virgin Islands adjacent to Puerto Rico.

Although the Spanish American War was decided on Cuban soil, by July 1898 the progress of the war made the time right for the U.S. occupation of Spanish-ruled Puerto Rico. An armistice was signed by the belligerents on August 12, and after securing Puerto Rico, U.S. forces evacuated the Spanish governor-general on October 18, 1898. At that time, Major General Nelson A. Miles, commanding officer of the invading forces, issued a proclamation which informed the people of Puerto Rico that:

We have not come to make war on the people of a country that for several centuries has been oppressed, but, on the contrary, to bring protection, not only to yourselves but to your property, to promote your prosperity, and to bestow upon you the immunities and blessings of the liberal institutions of our government.

Upon becoming law, H.R. 856 will be the most significant measure enacted by Congress in nearly 100 years for the purpose of delivering on the promise of General Miles' pronouncement, by finally offering the options for full self-government to the people of Puerto Rico.

*Puerto Rico as United States possession*

Puerto Rico was ceded to the United States by the Kingdom of Spain under the Treaty of Peace ending the Spanish-American War, signed at Paris on December 10, 1898, and proclaimed on April 11, 1899. Consistent with the powers of Congress conferred by Article IV, Section 3, Clause 2 of the U.S. Constitution (the Territorial Clause), as well as long-established U.S. Constitutional practice with respect to administration of territories which come under U.S. sovereignty but are not yet incorporated into the Union, Article IX of the Treaty of Paris provided that the "civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." Congress exercised its territorial powers and carried out its role under Article IX of the Treaty of Paris by providing for civilian government and defining the status of the residents under the Foraker

Act (Act of April 12, 1900, c. 191. 31 Stat. 77). Shortly thereafter the Supreme Court ruled that Puerto Rico and the other territories ceded under the Treaty of Paris had the status of unincorporated territories subject to the plenary authority of the U.S. Congress under the Territorial Clause, and that the Constitution and laws of the U.S. would apply in such U.S. possessions as determined by Congress. *Downes v. Bidwell*, 182 U.S. 244 (1901); *Dorr v. United States*, 195 U.S. 138 (1904).

*Puerto Ricans' citizen status*

In 1904 the Supreme Court confirmed that under the Foraker Act the people of Puerto Rico—as inhabitants of a territory which had come under U.S. sovereignty and nationality—were not “aliens” under U.S. immigration law, and were entitled at home or abroad to the protection of the United States. *Gonzales v. Williams*, 195 U.S. 1 (1904). While recognizing that the territory and its residents had come within U.S. nationality by operation of Article IX of the Treaty of Paris, in accordance with that same provision of the Treaty the Court left to Congress the authority and responsibility to determine the citizenship status and rights of the Puerto Rican body politic under U.S. sovereignty.

Thus, under the Foraker Act the residents and persons born in Puerto Rico were classified under Federal law as “citizens of Puerto Rico” until 1917. Under the Jones Act (Act of March 2, 1917, c. 145, 39 Stat. 961), Congress extended statutory U.S. citizenship to residents of Puerto Rico, but less than equal civil rights, and statutory rather than Constitutional citizenship of Puerto Rican residents continued under that arrangement due to the continuation of unincorporated territory status.

The Jones Act also reorganized local civilian government, but in contrast to the incorporation of Alaska, or the determination of Congress in 1916 that the unincorporated territory status of the Philippines would be terminated in favor of independence (39 Stat. 546), the Jones Act for Puerto Rico did not resolve the question of an ultimate status for the territory. Even after internal self-government was established under Public Law 81-600 in 1952, statutory rather than Constitutional citizenship has continued under 8 U.S.C. 1402, and less than equal civil rights for persons born in the territory also continues, as discussed below.

For as long as unincorporated territory status continues, the extent to which rights under the U.S. Constitution apply to actions of the U.S. government in Puerto Rico will continue to be defined by Congress consistent with relevant decisions of the U.S. Supreme Court. For example, in addition to the measures adopted by Congress under the Jones Act in 1917, the U.S. Supreme Court ruled in *Balzac v. People of Puerto Rico*, 258 U.S. 298 (1922), that basic requirements for protection of fundamental individual rights govern the measures taken by our national government where it exercises sovereignty over persons or property.

Thus, under *Balzac* and later cases life, liberty and property cannot be taken without due process and other fundamental protections which apply any place in the world in which the U.S. government exercises sovereign powers of government over persons under

its jurisdiction, including unincorporated territories and other territories or properties owned by the U.S. but not a State of the Union.

However, the fact that the Federal Government is constrained from exercising sovereignty anywhere, including the unincorporated territory of Puerto Rico, in a manner that violates such fundamental rights does not mean that Congress has extended the U.S. Constitution or any part of it fully or permanently to such non-state areas, including Puerto Rico. In its 1957 decision in *Reid v. Covert* (354 U.S. 1), the Supreme Court stated that the exercise of U.S. sovereignty in unincorporated territories, as construed in the *Balzac* decision, “\* \* \* involved the power of Congress to provide rules and regulations to govern *temporarily* territories with wholly dissimilar traditions and institutions \* \* \*” [emphasis added].

As the Supreme Court stated in *Balzac*, for the purpose of determining where U.S. sovereignty, nationality and citizenship has been extended permanently and irrevocably, “It is locality that is determinative of the application of the Constitution. \* \* \*” Unlike the States, unincorporated territories are not localities to which the Constitution has been extended permanently, nor has permanent union, permanent U.S. nationality or equal citizenship been established in such territories. Unless and until Congress extends the U.S. Constitution fully, this will be the condition of Puerto Rico’s status.

That is why even U.S. citizens born in a State, whose rights and status are protected by the 14th Amendment of the U.S. Constitution, lose the ability to enjoy equal legal and political rights when they go to reside in an unincorporated territory. As soon as a person with full Constitutional U.S. nationality and citizenship in the States of the Union establishes legal residence in Puerto Rico (see, 48 U.S.C. 733a), that person joins the ranks of the disenfranchised residents of the territory, and no longer has the same civil, legal or political rights under Federal law as citizens living in those territories and commonwealths which have been fully incorporated into the Union as States along with the original 13 States.

It has been recognized that Congress has broad discretion in making rules and regulations for the unincorporated territories, which measures must be promulgated and implemented in a manner which does not abuse personal rights of due process and equal protection. However, in relation to self-determination for Puerto Rico it is important to note that the fundamental rights requirement of *Balzac* and other cases does not preclude Congress from altering the political status of the territory through the appropriate U.S. Constitutional processes consistent with due process and equal protection principles. *U.S. v. Sanchez*, 992 F.2d 1143 (1993).

At this time no one expects the U.S. Congress to act arbitrarily or unilaterally with respect to status for Puerto Rico. However, an informed self-determination process requires that Congress and the people of Puerto Rico understand that current policy and statutory provisions may change in time, while fundamental Constitutional powers do not. It is impossible to predict what conditions will develop in the future or what measures Congress would determine necessary to promote the national interest if the status of Puerto

Rico remains subject to the discretion of Congress under the Territorial Clause.

*Puerto Rico's "Commonwealth" status as a territory under Federal law*

The current "Commonwealth of Puerto Rico" structure for local self-government was established through an exercise of the authority of Congress under the Territorial Clause (Article IV, Section 3, Clause 2) of the U.S. Constitution, pursuant to which the process for approval of a local constitution was prescribed and the current Puerto Rico Federal Relations Act was enacted. (Public Law 81-600, July 3, 1950, c. 446, 64 Stat. 319; *codified* at 48 U.S.C. 731 et seq.).

Public Law 81-600 authorized the process for democratically instituting a local constitutional government in Puerto Rico. The process prescribed by Congress included authorization for the people of Puerto Rico to organize a government under a constitution approved by the voters. Congressional amendment and conditional approval of the locally-promulgated constitution also was an element of the process, as was acceptance of the Congressionally-determined amendments by the Puerto Rican constitutional convention. This method of establishing a local government charter with consent of both the people and Congress is the basis for the language in Section 1 of Public Law 81-600 (48 U.S.C. 731b) describing the process as being in the "nature of a compact" based on recognition of the "principle of consent."

The subject matter of Public Law 81-600 was limited to organization of a local government as authorized by Congress under the Territorial Clause, and the very existence—as well as the actions of—the local government are subject to the supremacy of the Federal Constitution and laws passed by Congress. Thus, the authority and powers of the constitutional government established under the Public Law 81-600 process are a creation of Federal law, and the approval of the local constitution by the people constitutes their consent to the legal framework defined in Federal law for a form of self-government over internal affairs and administration.

Although Congress presumably would include some procedure which recognizes the principle of self-determination in changing the structure for local self-government in the future, the existing statutory authority for the current "commonwealth" structure can be rescinded by Congress under the same Territorial Clause power exercised to create it in the first place. Public Law 81-600 merely revises the previously enacted territorial organic act adopted by Congress in the 1917 Jones Act, and changes the name to the "Puerto Rico Federal Relations Act" (PRFRA). This analysis is confirmed by the legislative history of PRFRA (H. Rept. 2275), which states:

The bill under consideration would not change Puerto Rico's fundamental political, social, and economic relationship to the United States. Those sections of the Organic Act of Puerto Rico pertaining to the political, social, and economic relationship of the United States and Puerto Rico concerning such matters as the applicability of United States laws, customs, internal revenue, Federal judicial jurisdiction in Puerto Rico, Puerto Rican representation by a

Resident Commissioner, etc., would remain in force and effect, and upon enactment would be referred to as the Puerto Rican Federal Relations Act. The sections of the organic act which Section 5 of the bill would repeal are the provisions of the act concerned primarily with the organization of the local executive, legislative, and judicial branches of the government of Puerto Rico and other matters of purely local concern.

Based upon the present status of Puerto Rico under Public Law 81-600, the Federal courts have ruled that for purposes of U.S. law this arrangement for local territorial government has not changed Puerto Rico's status as an unincorporated territory subject to the plenary authority of Congress under the Territorial Clause; that the right to due process and equal protection of the law applies to Puerto Rico, but this does not include equal enfranchisement in the political process or equal rights and benefits under Federal law as available to citizens residing in the States; that the authority of the Government of the Commonwealth of Puerto Rico is limited to purely local affairs not governed by provisions of the Federal Constitution and Federal laws applicable to Puerto Rico; and that the establishment of local constitutional self-government with the consent of the people was authorized through an exercise of Congressional discretion under the Territorial Clause which is not binding on a future Congress. *Harris v. Rosario*, 446 U.S. 651 (1980); *Examining Board v. Flores de Otero*, 426 U.S. 572, 81-600 (1976); *Rodriguez v. Popular Democratic Party*, 457 U.S. 1 (1982); *U.S. v. Sanchez*, 992 F.2d 1143 (1993).

#### *Legal nature of statutory citizenship*

The statutory United States citizenship of persons born in Puerto Rico was first extended to Puerto Rico by Congress under the Jones Act of 1917, and continues under 8 U.S.C. 1402 during the current period in which the territory has a commonwealth structure of local government. It is important to note that adoption of the local constitution in 1952 pursuant to Public Law 81-600 did not alter the allocation of Constitutional authority nor change the state of U.S. law regarding the citizenship status of residents of the territory.

While the U.S. citizenship of persons born in Puerto Rico is expressly recognized in the local constitution, the current citizenship of persons born in the territory is not created, defined or guaranteed by the local constitution or the commonwealth structure of local self-government. Rather, the current U.S. citizenship of persons born in Puerto Rico is created and defined by Congress in the exercise of its Territorial Clause power and in implementation of Article IX of the Treaty of Paris.

In the exercise of its authority and responsibility toward Puerto Rico Congress has determined to define persons born in Puerto Rico as U.S. citizens subject to the laws of the U.S. regulating U.S. nationality and citizenship. Thus, the citizenship of such persons is as set forth in 8 U.S.C. 1402, which is part of the immigration and nationality law of the United States approved by Congress in the exercise of its authority under Article I, Section 8 of the U.S. Constitution. The earlier citizenship provisions of the Foraker Act and Jones Act cited above have been superseded by 8 U.S.C. 1402.

For example, a Congressional Research Service (CRS) legal analysis in 1990 confirmed that establishment of separate Puerto Rican sovereignty would appear to provide the legal basis for Congress to withdraw statutory citizenship without violating due process. See, Legal Memorandum of John H. Killian, Senior Specialist, American Constitutional Law, CRS, American Law Division, November 15, 1990.

However, rather than automatic termination in every case of the statutory U.S. citizenship of those born in Puerto Rico in the event that the unincorporated territory status of Puerto Rico is resolved in favor of separate sovereignty, on an individual basis persons already enjoying statutory U.S. citizenship rights will be able to retain that status for life by election or entitlement, as provided by Congress.

Thus, in a separate sovereignty scenario U.S. nationality and citizenship would no longer be conferred on persons born in Puerto Rico as of the date U.S. sovereignty ends, or perhaps even earlier during the transition period. Only those persons who acquired U.S. nationality and citizenship under the Treaty of Paris and statutes implementing its provisions during the territorial period would be able to elect to retain that status for life.

The *Bellei* case cited above establishes that Congress can place conditions precedent or subsequent on such statutory citizenship. To ensure the successful succession of state to nationhood for Puerto Rico and avoid the impairment of U.S. and Puerto Rican sovereignty that would inevitably result from a grant of mass dual citizenship, the Committee expects Congress to include in any status legislation for Puerto Rico the provisions in H.R. 856 which end continued statutory U.S. citizenship based on birth in Puerto Rico during the territorial period upon acquisition of any other citizenship, including that of Puerto Rico. This approach would not prevent dual citizenship on an individual case-by-case basis if the U.S. citizenship of the person was acquired on a legal basis other than birth in Puerto Rico or a relationship to a person whose U.S. citizenship is based on birth in the territory. It will, however, prevent conversion of the current statutory U.S. citizenship into automatic dual citizenship as a result of a change of status to separate sovereignty.

#### *Puerto Rico's international legal status*

The foregoing makes it clear that to the extent the process for approval of the new constitution by the people of Puerto Rico and Congress in 1952 was "in the nature of a compact," its purpose and scope was to establish a local government of limited authority subject to the supremacy of the Federal Constitution and laws.

The notion that the actions and statements of diplomatic representatives in the United Nations (U.N.) characterizing this new constitutional status for purposes of the U.N. decolonization process somehow expanded the legal effect beyond the clear intent of Congress is not supported by the formal measures adopted by the U.N. in this matter. To understand the international dimension of Puerto Rico's status, a review of the relevant international instruments and the U.N. record regarding Puerto Rico is necessary.

As noted above with respect to Puerto Rico's status under U.S. domestic law, the Foraker Act of 1900, the Jones Act of 1917 and Public Law 81-600 each constitute measures to implement Article IX of the Treaty of Paris adopted by Congress in the exercise of its plenary authority over unincorporated territories under the Territorial Clause. However, the Treaty of Paris no longer is the only relevant international agreement regarding the status of Puerto Rico to which the U.S. is a party.

Specifically, after the United States became a party to the U.N. Charter, Puerto Rico was classified as a non-self-governing area under Chapter XI of the Charter, "Declaration Regarding Non-Self-Governing Territories." As such, the U.S. was designated to be a responsible administering power obligated under Chapter XI of the Charter to adhere to U.N. decolonization procedures with respect to Puerto Rico.

This included the specific requirement to transmit reports to the U.N. regarding conditions in the territory under Article 73(e) of Chapter XI of the Charter. In 1953 the U.S. informed the U.N. that it would cease to transmit information regarding Puerto Rico pursuant to Article 73(e) of the Charter based upon establishment of local constitutional government in Puerto Rico under Public Law 81-600. See, "Memorandum by the Government of the United States of America Concerning the Cessation of Transmission of Information Under Article 73(e) of the Charter with regard to the Commonwealth of Puerto Rico." (Appendix A).

Based on that communication from the United States, on September 27, 1953, the General Assembly of the United Nations, by a vote of 22 to 18 with 19 abstentions, adopted Resolution 748 (VIII), accepting the U.S. decision to cease transmission of reports regarding Puerto Rico. The formal United States notification to the U.N. that reporting on Puerto Rico would cease was based on the detailed memorandum to the U.N. Secretary-General which put the Members of the U.N. on notice that, among other things, the new constitutional arrangements in Puerto Rico were limited to "internal affairs and administration" subject to the applicable provisions of the U.S. Constitution, that the new local self-government would be administered consistent with the Federal structure of government in the U.S., and that the precise legal nature of the relationship and Puerto Rico's status was subject to judicial interpretation in the U.S. courts.

Thus, those who suggest that U.S. diplomats overstated the degree of self-government achieved under the Constitution to get the U.N. to go along may be partially right, but that is why countries submit written statements to clarify ambiguities and set the record straight. The formal, written communication which notified the U.N. of the U.S. position clearly and expressly limited the scope of constitutional self-government to local affairs and required compatibility with the Federal Constitution, including judicial interpretation of the relationship by the Federal courts. In this respect, it is correct to conclude the United States told the truth to the U.N. in 1953.

The following critical elements of Resolution 748 reveal that while there may have been a meeting of the minds between the U.N. and the United States as to the result of Resolution 748 for

the international purposes of the world body, the tension created between the U.S. Constitutional process for administering non-state areas under the Territorial Clause and the terms of reference employed by the U.N. in the resolution would contribute to decades of ambiguity which has been actively exploited in the debate between local political parties in Puerto Rico. The failure of Congress to more actively seek to resolve these ambiguities and the overall political status issue also has contributed to the confusion related to the non-binding but politically-relevant U.N. measures adopted in 1953.

The most critical elements of Resolution 748 include the following passages:

The General Assembly \* \* \* Bearing in mind the competence of the General Assembly to decide whether a Non-Self-Governing Territory has or has not attained a full measure of self-government \* \* \* Recognizes that the people of the Commonwealth of Puerto Rico, by expressing their will in a free and democratic way, have achieved a new constitutional status \* \* \* Expresses the opinion that it stems from the documentation provided that the association of the Commonwealth of Puerto Rico with the United States has been established as a mutually agreed association \* \* \* Recognizes that, in the framework of their Constitution and of the compact agreed upon with the United States of America, the people of the Commonwealth of Puerto Rico have been invested with the attributes of political sovereignty which clearly identify the status of the self-government attained by the Puerto Rican people as that of an autonomous political entity. \* \* \*

The meaning and significance of this language from Resolution 748 must be understood in the context of Resolution 742 (VIII), also adopted by the General Assembly on September 27, 1953. That general resolution is entitled "Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government." Resolution 742 establishes the criteria for the General Assembly to determine "whether any Territory, due to changes in its Constitutional status, is or is no longer within the scope of Chapter XI of the Charter, in order that, in view of the documentation provided \* \* \* a decision may be taken by the General Assembly on the continuation or cessation of the transmission of information required by Chapter XI of the Charter." In prescribing the conditions which provide a basis for, *inter alia*, cessation of reporting under Article 73(e), the provisions of the resolution regarding association between a territory and an administering power include the following statement of criteria:

The General Assembly \* \* \* Considers that the manner in which Territories \* \* \* can become fully self-governing is primarily through the attainment of independence, although it is recognized that self-government also can be achieved by association with another State \* \* \* if this is done freely and on the basis of absolute equality \* \* \* and the freedom of the population of a Territory which has as-



sociated itself with the metropolitan country to modify at any time this status through the expression on their will \* \* \* Association by virtue of a treaty or bilateral agreement affecting the status of the Territory, taking into account (i) whether the Constitutional guarantees extend equally to the associated Territory, (ii) whether there are powers in certain matters Constitutionally reserved \* \* \* to the central authority, and (iii) whether there is provision for the participation of the Territory on a basis of equality in any changes in the Constitutional system of the State \* \* \* Representation without discrimination in the central legislative organs on the same basis as other inhabitants and regions \* \* \* Citizenship without discrimination on the same basis as other inhabitants \* \* \* Local self-government of the same scope and under the same conditions as enjoyed by other parts of the country.

As the U.S. domestic legislation which determined the nature of the relationship between the U.S. and Puerto Rico, Public Law 81-600 authorized the people of Puerto Rico to approve a constitution through a process which would be "in the nature of a compact." However, the "compact" was for the creation of a form of local constitutional self-government, which represented progress toward, but did not fulfill or satisfy, U.N. criteria for full self-government constituting completion of the decolonization process.

The conditions supporting this conclusion include the statutory citizenship status of the inhabitants of Puerto Rico which is not equal, full, permanent, irrevocable citizenship protected by the 14th Amendment of the U.S. Constitution, the lack of voting representation in Congress as the legislative body which determines the form of government and laws under which the people of the territory live, the lack of voting rights in elections for President and Vice President, rights of equal protection and due process which have a different application and effect in the territory than in the rest of the Nation, and retention by Congress of the authority (unimpaired by the non-self-executing undertakings regarding the right of self-determination) to determine the disposition of the territory.

Again, it is ultimately consistent with the right of self-determination to terminate an association between metropolitan power and a territory in favor of independence, because independence is by definition consistent with the right of self-determination. Thus, if mutual agreement on the terms of continued association, integration or separate sovereignty cannot be achieved, succession to independence is an option.

It can be argued that the discrepancy between the subsequent interpretation of information provided to the U.N. by the U.S. in 1953 about Puerto Rico's new constitutional status and the reality of Puerto Rico's status under the U.S. Federal political system has been the result of a misunderstanding. For example, some may have been unfamiliar with the Territorial Clause regime under the U.S. Constitutional process.

An alternative view is that the close vote on approval of a somewhat equivocal resolution represented a practical diplomatic accommodation of U.S. insistence in 1953 that Puerto Rico's status

should not be subject to U.N. oversight. Neither of these views, however, alter the result.

More important than such speculation, Section 9 of Resolution 748 reveals the manner in which the U.N. chose to address the fact that adoption of local constitutional self-government began but in and of itself did not necessarily complete the decolonization process for Puerto Rico. This most important provision states that the General Assembly:

Expresses its assurance that, in accordance with the spirit of the present resolution, the ideal embodied in the Charter of the United Nations, the traditions of the people of the United States of America and the political advancement attained by the people of Puerto Rico, due regard will be paid to the will of both the Puerto Rican and American peoples in the conduct of their relations under their present legal statute, and also in the eventuality that either of the parties to the mutually agreed association may desire any change in the terms of this association.

Consistent with this language in Resolution 748, the U.S. repeatedly has confirmed its policy that in addition to the current status and statehood, independence is available to Puerto Rico at any time that is the preference of the people. Although the commonwealth relationship has been accurately characterized as less than full self-government, and criticized in the U.N. over the years on that basis, because it was established and maintained with the consent of the people the U.S. has been able to defend and sustain its policy simply by pointing out that independence is available should the will of the people to retain the present association change.

In this context, the U.S. assertion in the memorandum circulated to the U.N. in 1953 that Puerto Rico had achieved a "full measure" of self-government under its new constitutional status as of 1952 is best understood as an expression that the new relationship gave the people the ability to exercise self-determination and achieve independence at any time, or any other relationship to the U.S. to which agreement might be reached. That, in essence, is what Section 9 of Resolution 748 stated.

H.R. 856 will ensure legitimacy of the status of Puerto Rico by making fully meaningful self-determination possible for the first time in a century, and thereby make a permanent solution to the status question possible.

In this connection, the Committee notes that on December 15, 1960, the General Assembly adopted Resolution 1541 (XV), which established "Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 of the Charter." This resolution clarifies U.N. standards for determining when the non-self-governing status of a territory has been terminated in favor of full self-government, and defines the options available to territories seeking full self-government.

On that basis some have suggested that Puerto Rico should be reinscribed on the U.N. list of non-self-governing areas. Of course, neither the U.S. nor the U.N. sought to apply Resolution 1541 retroactively to Puerto Rico and revisit the question of its status

in 1960. Rather, the U.N. continues to accept as it did in 1953 that Puerto Rico's status is consistent with the right of self-determination and independence because the people have the means to achieve independence through self-determination if that is their will. This is based on: (i) the consent of the people to the current Constitutional association under U.S. sovereignty; (ii) the ability of both the U.S. and Puerto Rico to seek changes to the current arrangements through self-determination in the future according to Section 9 of Resolution 748; and (iii) the U.S. position since 1953 that the U.S. will grant full independence to Puerto Rico any time it wants.

Since 1960, the United States has acted consistent with Resolution 1541 in its dealings with those U.S. territories still on the U.N. list of areas on which the U.S. still reports to the U.N. For example, the U.S. ended the trusteeship in the Pacific Islands on the basis of free association in accordance with Resolution 1541 (See, Public Law 99-239).

Thus, while Resolution 1541 did not apply to Puerto Rico in 1953 because it was not adopted until 1960, if the U.S. and Puerto Rico now determine to change the current relationship pursuant to Section 9 of Resolution 748, the U.S. will act in accordance with the principles of Resolution 1541. This is not because it is a binding or self-executing document, but because the U.S. has found it to be consistent with its commitments under the U.N. Charter and the U.S. national interest to do so in dealing with all the unincorporated territories under U.S. sovereignty, as well in the case of the U.N. trusteeship.

While Puerto Rico's current status does not meet the criteria for any of the options for full self-government under Resolution 1541, H.R. 856 defines a process which could lead to establishment of full self-government consistent with the three status alternatives which have been formally recognized by the United States in consideration of Resolution 1541: full integration on the basis of equality, free association based on separate sovereignty, or absolute national independence.

As a consequence of how international standards regarding decolonization have evolved since 1953, and in view of how the political branches of the Federal Government and the courts have implemented and interpreted the "compact" for local self-government under PRFRA, the United States has recognized that Puerto Rico did not achieve full self-government in 1952.

For example, on November 30, 1992, President George Bush issued a memorandum which stated that:

On July 25, 1952, as a consequence of steps taken by both the United States Government and the people of Puerto Rico voting in a referendum, a new constitution was promulgated establishing the Commonwealth of Puerto Rico. The Commonwealth structure provides for self-government in respect of internal affairs and administration, subject to relevant portions of the Constitution and laws of the United States. As long as Puerto Rico is a territory, however, the will of its people regarding their political status should be ascertained periodically by means of a general right of referendum. \* \* \*

Similarly, in the 104th Congress, the United States-Puerto Rico Political Status Act, H.R. 3024, was first introduced in the U.S. Congress. See, Appendix III, House Report 104-713, Part 1, pp. 55-56. That bill and the statement included by its sponsors (including four committee and subcommittee chairmen with jurisdiction and interest in the status of the Puerto Rico) in the Congressional Record are strong evidence of continued U.S. recognition that Puerto Rico's decolonization process has not been completed as a matter of international or domestic law.

However, it is irrefutable that the United States has provided for an unprecedented level of local self-government in Puerto Rico since 1952. During the past four decades there have been continuing elections conducted pursuant to democratic processes under Puerto Rico law, often resulting in changes in government. Puerto Rico has indeed administered internal affairs and local matters without intrusion by the United States beyond that which is exercised by the Federal Government in the States of the Union. Although Puerto Rico has not yet achieved a permanent political status, given the local self-governance of the territory and the nature of the United States-Puerto Rico relationship, there is no basis for the United States to resume annual reporting to the U. N.

*Puerto Rico's political status and self-determination process: recent developments and current situation*

Following a failed attempt by Congress in 1991 to approve legislation to enable the people to exercise the right of self-determination regarding their political status, a plebiscite to enable the residents of Puerto Rico to express their preferences on the status question was conducted by the local government under Puerto Rican law on November 14, 1993. For the first time in almost a century of U.S. sovereignty, less than a majority of the voters approved the current status of the territory.

Indeed, none of the three options on the ballot—*independence, commonwealth or statehood*—received a majority of votes cast. Controversy ensued after the vote, and still continues, regarding the manner in which the local political parties were allowed—in the absence of status definitions approved by Congress—to define the options on the ballot.

Recognizing that Puerto Rico cannot unilaterally determine its ultimate status within a political framework to which the U.S. also is to be a party in agreement, and that the results of the 1993 plebiscite made further self-determination for Puerto Rico necessary, on January 23, 1997, the Legislature of Puerto Rico adopted Concurrent Resolution 2, requesting the 105th Congress to “\* \* \* respond to the democratic aspirations of the American citizens of Puerto Rico” by approving legislation to authorize “\* \* \* a plebiscite sponsored by the Federal Government, which shall be held no later than 1998.” (Appendix B).

Since, as discussed above, Puerto Rico does not enjoy equal participation or representation in the U.S. political and legal system through which the citizens of the territory are governed, the absence of a democratic majority among the people there in favor of the current commonwealth status as established under Federal law is cause for concern. Among other things, it raises a serious ques-

tion regarding the long-term viability of the present commonwealth structure of local self-government for Puerto Rico as an unincorporated territory subject to the authority of Congress.

The United States is the national body politic in which Puerto Rico presently exists, and Puerto Rico's relationship with the U.S. establishes the current status of the territory internationally and within the U.S. Constitutional and legal system. Thus, the process for approving any new relationship or change of the underlying status involves mutual self-determination by the U.S. as a whole as well as the local body politic composed of U.S. citizens born or residing in Puerto Rico. Thus, Congress also is an indispensable party in any process for defining the options which will be considered for approval by the voters on behalf of Puerto Rico, and by Congress itself on behalf of the United States.

The decision of a majority of the voters not to ratify the current status calls into question the legitimacy of the policy espoused by many in Congress and the Executive Branch to the effect that political leaders in the Federal Government simply should "remain neutral" and support the right of the people to choose their own status. That policy, which constitutes failure of the Federal Government adequately to inform the people of the territory as to what status options the U.S. is willing to consider, effectively deprives the residents of the territory of an opportunity for meaningful self-determination.

Accordingly, the Legislature of Puerto Rico's request in Resolution 2 for a Congressionally-sponsored self-determination process expressly recognized the record which was established regarding the status of Puerto Rico by the Committee on Resources during the 104th Congress. Specifically, the request recognizes the historical importance of the Statement of Principles transmitted by concerned Congressional leaders dated February 29, 1996, responding to a previous request from the Legislature of Puerto Rico to Congress asking for Federally-accepted definitions of status options and self-determination procedures.

In renewing the request to Congress for a Federally-recognized mutual self-determination process, the newly re-elected Legislature also noted in Resolution 2 that the signatories of the Statement of Principles dated February 29, 1996, had "fulfilled their pledge" to the people of Puerto Rico by introducing H.R. 3024 in the 104th Congress.

Resolution 2 goes on to note significant bipartisan sponsorship of H.R. 3024, as well as documentation in the record before Congress of strong support by distinguished Members of the Minority party in Congress for the approach to self-determination for Puerto Rico embodied in both H.R. 3024 and S. 2019—a companion bill in the U.S. Senate.

Resolution 2 the Legislature of Puerto Rico also explicitly notes adoption of House Report 104-713, Part 1 of which establishes that legitimate self-determination for Puerto Rico requires more than a one-stage decision-making process, as well as periodic referenda in the event of an inconclusive vote. The Committee on Rules also filed a report on H.R. 3024 (H. Rept. 104-713, Part 2).

Resolution 2 describes all these provisions embodied in H.R. 3024 and its accompanying reports as "well-founded" ones which rep-

resent “substantial progress” by the 104th Congress toward completion of the decolonization process for Puerto Rico. H.R. 856 as introduced in the 105th Congress on March 3, 1997, represents continuation where the deliberations on H.R. 3024 ended at the close of the 104th Congress. See, Statement of the Hon. Don Young regarding H.R. 4281, September 28, 1996. (Appendix C).

The provisions prescribing self-determination procedures and defining acceptable status options, as explained in House Report 104–713, Part 1, have been modified in some respects as discussed below, but the core elements of the self-determination process contemplated in H.R. 3024 remain central to the structure of H.R. 856. The Committee therefore views House Report 104–713, Part 1, and its appendices as a particularly important and integral part of the record and legislative history which establishes the basis for approval by Congress of H.R. 856.

As this legislation is revised and improved further consistent with its purpose, the Committee will adhere to the underlying understandings and procedure for resolving Puerto Rico’s status expressed in the Statement of Principles dated February 29, 1996, and as embodied in H.R. 3024 and House Report 104–713, Part 1.

The record before the Committee also includes the March 3, 1997, bipartisan request by the Chairman and Ranking Minority Member of the Committee on Resources that each political party in Puerto Rico submit by March 31, 1997, the proposed definition of the status options it endorses for inclusion on the ballot in a referendum under this legislation. (Appendix D). In compliance with that request, the Popular Democratic Party (PDP) submitted a proposed definition of commonwealth, the New Progressive Party (NPP) submitted a proposed definition of statehood, and the Puerto Rico Independence Party (PIP) submitted a proposed definition of separate sovereignty. (Appendix E).

*The 1993 vote—Why does Congress need to act?*

The record now before the Committee strongly suggests that the conflicting and adamantly held views about the meaning of the 1993 plebiscite results, and the controversy which surrounds that process, relates primarily to the fact that the PDP, NPP, and PIP were allowed unilaterally to formulate the definition of “commonwealth,” “statehood” and “independence,” respectively, as those options appeared on the ballot.

The testimony of witnesses and materials presented to the Committee during hearings reveals that the greatest controversy and debate has been with respect to the definition of “commonwealth” as adopted by the PDP and presented to the voters in the plebiscite. This no doubt is due in part to the fact that the “commonwealth” option received the highest number of votes, 48.6 percent, while statehood received 46.3 percent and independence received 4.4 percent.

However, the testimony received by the Committee from the three parties and others concerned also makes it very clear that the focus of attention which the “commonwealth” definition has received also relates to the contents of that ballot option, for in the case of “commonwealth” it quite clearly was a conscious decision of

PDP leaders to define it as they would like Congress to change and improve it, rather than it actually is at this time.

Even though there also are substantial and controversial issues associated with the questions of how the “statehood” and “independence” definitions would be implemented, as discussed below, to a far greater extent than in the case of “commonwealth” the Constitutional structures and legal nature of those two options are relatively well-defined and well-understood.

While both the “statehood” and “independence” definitions were cast in the most favorable light possible and there was some embellishment, the meaning of those options and the choices to be made were fairly clear. It was the “commonwealth” definition that introduced the most complex, historically unprecedented and Constitutionally uncertain proposals, requiring implementation through measures never before adopted by Congress in the combination or with the effect called for in the 1993 ballot language.

The “commonwealth” definition in the 1993 vote reasonably, logically, and without prejudice can and should be seen as a bold “have it both ways” hybrid status option, which is Constitutionally flawed as it purports to combine in one status the primary benefits of both separate sovereignty and statehood, with the primary burdens of neither. Yet, even with this proposal for a new and “enhanced” formulation of the present Federal-territorial relationship, thought by its authors to be irresistible to the voters, “commonwealth” was not approved by a majority. This has required the Committee to look very closely at the “commonwealth” definition and the 1993 plebiscite results.

For example, the ballot definition of the current status in the 1993 political status plebiscite did not inform the voter—or even acknowledge—that at present Puerto Rico is a U.S. territory, or that the “commonwealth” structure for local constitutional self-government is subject to the supremacy of Federal law as applied to Puerto Rico by Congress in the exercise of its powers under the Constitution.

Thus, instead of confirming the legal nature and political realities of the current status so the voters could make an informed choice, the 1993 ballot description of commonwealth called for changes in the Puerto Rico–U.S. relationship of a fundamental nature. There seems to be no dispute that if the 1993 ballot had described “commonwealth” as it is without the changes to enhance it (formulated and included in that definition by the PDP), popular support for that option among those who support the PDP would have been diminished significantly.

This explains why the “commonwealth” definition in the 1993 plebiscite had as its premise the theory that, as a result of adoption of the local constitution in 1952, the territorial status of Puerto Rico had ended. As a consequence, according to ballot language adopted by the PDP leadership, the status of Puerto Rico was defined as one based on a “bilateral pact that can not be altered except by mutual agreement.” (See, Committee on Resources Hearing 104–56 p. 210, for text of ballot).

Thus, the PDP definition was predicated on the PDP’s long-standing doctrine that Puerto Rico’s status has been converted into a permanent form of associated autonomous statehood which is un-

precedented in the history of U.S. Constitutional federalism. The definition of “commonwealth” on the 1993 ballot also stated that “commonwealth \* \* \* guarantees \* \* \* irrevocable U.S. citizenship” (now guaranteed under the U.S. Constitution only to persons born in one of the States of the Union), as well as exemption from taxation under the label “fiscal autonomy,” and increased Federal social welfare benefits. All the provisions and rights included in the 1993 definition, including the permanency of the current status, would have been binding on Congress in perpetuity, and could not be altered except by mutual consent of both parties.

Although some Members of Congress spoke out before and after the 1993 vote about the internal inconsistencies in the ballot definitions (See, Appendix II, House Report 104–713, Part 1), the 103rd Congress adjourned more than a year after the 1993 plebiscite without breaking its silence regarding the results of that plebiscite.

For that reason, on December 14, 1994, the Legislature of Puerto Rico adopted Resolution 62, expressly requesting the 104th Congress, if it did not “accede” to the 1993 ballot definitions and resulting vote, to determine “the specific status alternatives” the United States “is willing to consider,” and then to state what steps Congress recommends be taken for the people of Puerto Rico to establish for the territory a “process to solve the problem of their political status.” On October 17, 1995, the Subcommittee on Native American and Insular Affairs, Committee on Resources, and the Subcommittee on Western Hemisphere, Committee on International Relations, held a joint hearing in Washington, D.C. on the results of the 1993 plebiscite. All political parties were represented in the hearing, and all interested organizations and individuals were allowed to submit written statements for the record.

Based upon the testimony and materials submitted at that hearing, the approach embodied in H.R. 3024, and now continued in H.R. 856, was developed to enable Congress to define a process of self-determination for Puerto Rico. The events leading to development of this legislation included the formal statement of principles dated February 29, 1996, addressed to the Legislature of Puerto Rico with respect to the subject matter of Concurrent Resolution 62, transmitted by the four chairmen of the committees and subcommittees in the House of Representatives with primary jurisdiction over the status of Puerto Rico. See, Cong. Rec., March 6, 1996, E299–300; Appendix III, House Report 104–713, Part 1.

After reviewing the testimony from the hearing and examining the record in a very deliberate manner, the Committee determined that the notion of an unalterable bilateral pact espoused by the PDP is predicated on the theory that an implied compact supposedly created in 1952 is mutually binding on Puerto Rico and Congress. Under this theory, the principle of consent recognized in Public Law 81–600 with respect to establishment of local constitutional self-government respecting internal affairs supposedly has been elevated onto the plane of government-to-government mutuality. On that basis, it is incorrectly theorized that there is a treaty-like relationship which, again, can be altered only with mutual consent of both governments. Paradoxically, this “bilateral” relationship is presumed to be permanent and within the U.S. Federal system.



This is an unrealistic and inaccurate rendition of the relationship—based on separate sovereignty, nationality and citizenship—which exists between the U.S. and the Pacific island nations party to the Compact of Free Association which ended the U.S. administered U.N. trusteeship in Micronesia. See, Title II of Public Law 99–239.

While such a free association relationship is available to Puerto Rico if that is the option chosen by the voters, U.S. policy and practice relating to free association as defined in international law is not a status which exists within the U.S. Constitutional system. As an international status, free association is not a model which provides a basis for the assertion that a mutual consent relationship was created between Puerto Rico and the U.S. within the U.S. Constitutional system in 1952. Indeed, the notion that an unalterable, permanently binding mutual consent political relationship can be instituted under the U.S. Constitution between an unincorporated territory and Congress has been discredited and rejected by the U.S. Supreme Court as already discussed.

In addition, the Department of Justice (DOJ) has confirmed that mutual consent provisions are not binding on a future Congress, are not legally enforceable, and must not be used to mislead territorial residents about their political status and legal rights. Specifically, on July 28, 1994, the DOJ Deputy Assistant Attorney General issued a legal opinion which included the following statement about “bilateral mutuality” in the case of Puerto Rico: “The Department [of Justice] revisited this issue in the early 1990’s in connection with the Puerto Rico Status Referendum Bill in light of *Bowen v. Agencies Opposed to Soc. Sec. Entrapment*, 477 U.S. 41 (1986), and concluded that there could not be an enforceable vested right in a political status; hence the mutual consent clauses were ineffective because they would not bind a subsequent Congress.” Dept. of Justice Memo, footnote 2, p. 2; See, Committee on Resources Hearing 104–56, p. 312. The DOJ memo also concludes that a ballot definition of “commonwealth” based on the idea of an unalterable bilateral pact with mutual consent at the foundation “would be misleading,” and that “honesty and fair dealing forbid the inclusion of such illusory and deceptive provisions. \* \* \*” The document goes on to state that unalterable mutual consent pacts “raise serious constitutional issues and are legally unenforceable.” Status definitions based on the notion of unalterable mutual consent pact should not be on a plebiscite ballot “unless their unenforceability (or precatory nature) is clearly stated in the document itself.”

The DOJ memo offers, as a sympathetic exercise of discretionary authority by Federal officials rather than as of right, to honor as existing mutual consent provisions (such as that in the Northern Mariana Islands Covenant) even though “unenforceable” as a matter of law. Congress should not indulge such discretionary disposition of the political status and civil rights of U.S. citizens in the territories. Instead Congress must create a process that defines real status options under which the people of Puerto Rico will have real rights that are enforceable.

Given U.S. notification to the U.N. in 1953 that the nature of the “commonwealth” would be “as may be interpreted by judicial decision,” it is significant that in 1980 the U.S. Supreme Court did not

adopt the “free association” theory of Puerto Rico’s status, and ruled instead that Puerto Rico remains an unincorporated territory subject to the Territorial Clause. *Harris v. Rosario*, 446 U.S. 651 (1980).

Recognizing Congress has delegated the powers of local self-government over internal affairs and administration to a constitutional government which serves the same function in the territory that a State government serves in the 50 States of the Union, the Supreme Court also has recognized that in such internal matters as qualifications to serve in the local legislature Puerto Rico functions as an “autonomous political entity” and “like a state” subject to the supremacy of the Federal Constitution. *Rodriguez v. Popular Democratic Party*, 457 U.S. 1 (1982).

However, in respect of the relationship between the territory and the Federal Government, the *Harris v. Rosario* decision is the definitive ruling establishing that the 1952 process “in the nature of a compact” for adopting the local constitution did not alter Puerto Rico’s status as an unincorporated territory subject to the Territorial Clause power of Congress. If change is the will of the Puerto Rican people concerned and Congress, as the 1993 plebiscite would seem to suggest, that can be accomplished through a process such as the one prescribed by H.R. 856.

Those who advocate the “have-it-both-ways” legal theory and the revisionist version of “commonwealth” hold out the unattainable myth that Puerto Rico can somehow enjoy in perpetuity the most precious American rights of membership in the Union and guaranteed citizenship, without having to cast its lot or fully share risks and burdens with the rest of the American political family.

But this expansive and unconstitutional “commonwealth” mythology cannot withstand scrutiny any longer. While sometimes confusing the issue by trying to accommodate those on all sides of this matter, in relevant formal measures the Congress, the Federal courts and the last several Presidents have exercised their Constitutional powers with respect to Puerto Rico in a manner consistent with applicability of the Territorial Clause, continued unincorporated territory status and local self-government limited to internal affairs. See, *U.S. v Sanchez*, 992 F.2d 1143 (1993).

Supporters of the extra-constitutional theory of “commonwealth” explain this away as merely demonstrating the need to perfect free association with permanent union and common citizenship which they insist is the status the U.S. and U.N. recognized in 1953. For example, supporters of the expansive theory of “commonwealth” often cite the case of *U.S. v. Quinones*, 758 F.2d 40, (1st Cir. 1985), because dictum in that opinion adopted some of the nomenclature of the “commonwealth” doctrine.

However, the DOJ has pointed out that reliance on this dictum to advance the expansive and revisionist theory of “commonwealth” is contradicted by the actual ruling of the court in that case, which upheld a Federal law unilaterally altering the 1952 constitution and PRFRA without the consent of Puerto Rico. See, GAO/HRD-91-18, *The U.S. Constitution and the Insular Areas*, April 12, 1991; Letter to GAO from Assistant Attorney General of the United States, Appendix VIII, House Report 104-713, Part 1.

In formulating H.R. 3024 in the 104th Congress so that these complex issues could be sorted out, the Committee originally presented a two part ballot in an attempt to distinguish between the options for full self-government and continuation of a less than fully self-governing status, and to clarify the legal nature of the present commonwealth structure for self-government under a local constitution subject to the Federal Constitutional process.

Because this good-faith attempt to be truthful with the people of Puerto Rico was unfortunately portrayed by many in Puerto Rico as “unfair” and the matter became politicized, the Committee agreed to a one part ballot with three options presented side-by-side—commonwealth, independence and statehood. This revision to H.R. 3024 is reflected in H.R. 856.

To avoid any suggestions that the Committee is being unfair in formulating a definition of “commonwealth” for the ballot provisions of this legislation, at the time H.R. 856 was introduced the Committee invited all three political parties to submit the definitions of the status option each endorses for consideration by the Committee. The Committee agreed that each such proposal would be submitted for a vote before the Committee if the concerned political party so desired.

At the Committee meeting on May 21, 1997, to consider H.R. 856, the Committee Chairman offered an amendment in the nature of a substitute to H.R. 856 which incorporated as much of the language from the proposals made by the local political parties as the Chairman believed to be consistent with truth, accuracy and fairness to the people of Puerto Rico in light of their aspirations for an informed act of self-determination. The amendment offered by the Chairman includes changes to the definitions of all three status options based on consultations with and/or communications and proposals from the Administration, the Minority and the three political parties. The separate sovereignty definition contains many aspects of the independence party’s proposal, including free trade, free transit, and the future status of the U.S. military status in Puerto Rico. The leadership of the independence and statehood parties informed the Committee that they were able to accept the definitions proposed in the Chairman’s amendment.

Only the commonwealth party was unable to support the definition as proposed to and ultimately adopted by the Committee, which includes specific aspects of the commonwealth party’s definition of “commonwealth” regarding Puerto Rico constitutional self-government, United States nationality and citizenship and rights, privileges, and immunities, and levels of Federal benefits and taxes extended to Puerto Rico. Thus, it is necessary in this report to further analyze the commonwealth party’s definition of “commonwealth.”

#### *New “commonwealth” proposal*

In response to the March 3, 1997, invitation of the Committee, on April 9, 1997, the PDP submitted a letter memorializing the new “commonwealth” definition presented at the March 19, 1997, hearing in Washington, D.C., including a mechanism for Congress to consider proposals by Puerto Rico to improve and reform the relationship in the future.

Of course, under the current status, improvements to the “commonwealth” relationship can be proposed to Congress at any time. Thus, there is a strong argument to be made that to determine the ultimate status of the island the choices should not be based on what each political party hopes or proposes the status might become once a particular status is approved, but to the greatest extent possible must be made based on definitions of the Constitutional structures through which the future of Puerto Rico will be determined if a particular status is approved by Congress and the people.

In other words, rather than containing primarily proposals for beneficial implementing provisions that may or may not be approved by Congress in the future under a particular status option, the status definitions should inform the voter primarily about the structural relationship which will exist between the U.S. and Puerto Rico under each status alternative. This better informs the people of the Constitutional structure through which their proposals for beneficial implementation will be approved or disapproved by Congress.

As noted throughout this report, Puerto Rico is an unincorporated territory of the U.S. with internal self-government under a local constitution approved by the people. This form of internal self-government is subject to the supremacy of the Constitution and laws of the United States as made applicable by Congress in the exercise of its authority and responsibility for territories under the Territorial Clause of the Constitution.

This is the structure within which the relationship can be improved as long as commonwealth status as a territory continues. Yet, those who support continuation of the current Federal-territorial relationship—denominated under both Federal law and the local constitution as the Commonwealth of Puerto Rico—have advised Congress that any definition of the current status as “territorial” is unacceptable to the supporters of the “commonwealth” status.

Therefore, commonwealth leaders proposed that Congress offer that option to the voters in an “enhanced” form based on the aspirations of their party. The position of these party leaders is that failure to include their proposals for future changes in Federal law and policy effectively would exclude them and their supporters from the self-determination process.

On that basis it is proposed by party leaders who have submitted the new “commonwealth” definition to the Committee that this option be included on the ballot under H.R. 856 on terms which include the power of nullification over Federal law; conversion of the current permissive statutory citizenship into the same permanent citizenship as persons born in the States of the Union; extension to the unincorporated territory of the same rights, benefits and privileges under all Federal laws as are applicable in the States of the Union; and exemption from Federal income taxation but full Federal programs and services as in the States, with an undefined “equitable contribution.” All of this, like the 1993 definition of “commonwealth,” would be guaranteed by the Constitution and binding for all time on Congress.

The Committee notes that the local political party in Puerto Rico which is identified with commonwealth has taken the position that the definition in H.R. 856 of the current commonwealth structure as it actually exists under Federal law is unacceptable, because it does not reflect the enhanced version of that status proposed by that party. While the local political parties have an important role in the self-determination process, no party has a monopoly over the definition which Congress is willing and able to recognize. There is no right of "mutual consent" to the ballot definition of any status.

In addition to seeking a legitimate process for the voters, it is in the U.S. national interest for Congress to be able to interpret the results of a referendum under this legislation. Accurate definitions as determined by Congress are essential to meaningful results.

As already noted, the definitions of "independence" and "statehood" in H.R. 856 as approved by the Committee are different from the versions submitted by and requested by the local political parties which endorse those options. Thus, the Committee has demonstrated its resolve to exercise reason and judgment about what definitions will fairly and fully inform the voters of the structure of each available status option.

Instead of presenting Congress with the same version of the "commonwealth" definition formulated for the 1993 ballot, the leaders of that party have chosen in 1997 simply to revive the "unalterable bilateral pact" in the form of the new "commonwealth" package submitted to the Committee on Resources in response to its invitation to submit a definition.

As proposed, this relationship would somehow be beyond the reach of Congressional legislative authority, supposedly immune from alteration without Puerto Rico's "mutual consent." Under this proposal, Puerto Rico would be neither a State, nor a territory, but would exist as a category by itself.

This new "commonwealth" package is not new at all. During the last Congress, the PDP President wrote to the Chairman of the Committee on Resources on May 31, 1996, stating the "commonwealth" definition in the 1993 plebiscite was derived from the new "commonwealth" definition "approved" by the House in 1990 in the form of H.R. 4765. The 1997 PDP proposal for new "commonwealth" is virtually the same as the 1990 version referred to in the PDP letter to Chairman Young.

However, the actual language of the new "commonwealth" proposal which now has been offered was not included in the bill approved by the House in 1990. Instead, H.R. 4765 contained the option of a "New Commonwealth Status" without defining its meaning. Apart from the bill itself, the new "commonwealth" definition was included in House Report 101-790, Part 1, accompanying H.R. 4765, along with definitions of "statehood" and "independence" submitted by the political parties concerned, not as a statement of Congressional policy, but as expressions of the aspirations of those political parties. Furthermore, the House Report expressly commented that the PDP proposals included in the report would be considered, but that did not "obligate this Committee or its counterpart Senate committee to necessarily incorporate the \* \* \* description \* \* \* in the legislation." That means the 1990 bill did not commit Congress to any version of "commonwealth."

Also, under the 1990 House bill the present status would have been continued if there was a majority vote for "None of the above." In this way, definition of the current status as it is was avoided.

#### *Conclusion*

H.R. 856 will provide the first Congressionally-sponsored process leading to full self-government for Puerto Rico since United States sovereignty was established nearly 100 years ago. The people of Puerto Rico can achieve full self-government through separate sovereignty or statehood, if a majority are ready for change, or continue the current commonwealth structure for local self-government as a territory. The United States-Puerto Rico Political Status Act will enable Congress to ensure that U.S. sovereignty continues to be exercised in Puerto Rico in a manner consistent with the national interest and the principle of self-determination.

#### COMMITTEE ACTION

H.R. 856 was introduced on February 27, 1997, Congressman Don Young (R-AK), Chairman of the Committee on Resources. A total of 87 Members are cosponsoring the bill, including the Speaker of the House Newt Gingrich (R-GA), and Resident Commissioner Carlos A. Romero-Barceló (D-PR). Three Full Committee hearings were held on the bill: March 19, 1997, in Washington D.C.; April 19, 1997, in San Juan, Puerto Rico; and April 21, 1997, in Mayaguez, Puerto Rico. The Administration testified at the Washington hearing with general observations of the bill and expressing support of the process and objectives of the legislation. Over 50 witnesses appeared at the hearings including top government officials from the legislative and executive branches of the government of Puerto Rico, a number of mayors from the Puerto Rico municipal governments, and various other leaders and individuals evenly representing the three status options of commonwealth, separate sovereignty (including outright independence and separate sovereignty in free association), and statehood.

On May 21, 1997, the Committee met to mark up H.R. 856. Three amendments were offered. First, Chairman Don Young offered an amendment in the nature of a substitute with changes to 40 provisions. Although the bulk of the changes were technical in nature, the primary changes streamlined the three-stage process by eliminating two presidential proclamations, changing the duration of the transition stage from a minimum of 10 years to not more than 10 years, and specifying that the proposed implementation legislation from the President is in the nature of a Joint Resolution recommending the effective date of implementation within the transition period.

Other changes were made to all three status definitions of "commonwealth," "separate sovereignty," and "statehood" to clarify the characteristics associated with each status. In addition, the requirement for periodic referenda in the event there is no majority for separate sovereignty or statehood was modified from once every four years, to not less than once every ten years. Another change required the transition plan under a majority vote for statehood to include the effective date in which the Constitution is to have the same force and effect as in the several States.

To the Young amendment, Congressman George Miller (D-CA) offered an amendment substituting the “commonwealth” definition with the “commonwealth” definition submitted by the Puerto Rico political party advocating commonwealth. The amendment failed on a roll call vote of 10–32, as follows:

Committee on Resources  
U.S. House of Representatives  
105th Congress

Full Committee

Date 5-21-97

Roll No. 1

Bill No. H.R. 856 Short Title "United States-Puerto Rico Political Status Act."

Amendment or matter voted on: Miller Amendment #1

Member	Yea	Nay	Member	Yea	Nay	Member
Mr. Young (Chairman)		x	Mr. Miller	x		
Mr. Tauzin		x	Mr. Markey	x		
Mr. Hansen		x	Mr. Rahall		x	
Mr. Saxton		x	Mr. Vento	x		
Mr. Gallegly		x	Mr. Kildee		x	
Mr. Duncan			Mr. DeFazio	x		
Mr. Hefley			Mr. Faleomavaega	x		
Mr. Doolittle		x	Mr. Abercrombie		x	
Mr. Gilchrest		x	Mr. Ortiz			
Mr. Calvert		x	Mr. Pickett			
Mr. Pombo		x	Mr. Pallone	x		
Mrs. Cubin		x	Mr. Dooley		x	
Mrs. Chenoweth		x	Mr. Romero-Barcelo		x	
Mrs. Linda Smith		x	Mr. Hinchey	x		
Mr. Radanovich		x	Mr. Underwood			
Mr. Jones		x	Mr. Farr	x		
Mr. Thornberry			Mr. Kennedy		x	
Mr. Shadegg		x	Mr. Adam Smith		x	
Mr. Ensign		x	Mr. Delahunt	x		
Mr. Bob Smith		x	Mr. John		x	
Mr. Cannon		x	Ms. Green	x		
Mr. Brady		x	Mr. Kind		x	
Mr. Peterson			Mr. Doggett			
Mr. Hill		x				
Mr. Schaffer		x				
Mr. Gibbons		x				
Mr. Crapo		x	<b>TOTAL</b>	<b>10</b>	<b>32</b>	



Also to the Young amendment, Resident Commissioner Carlos Romero-Barceló offered an en bloc amendment shifting a separate sovereignty measure from the transition stage to the ballot definition as requested by the Puerto Rico party advocating separate sovereignty, and clarifying the transition plan is in fact to reflect the status which received the majority in the initial decision stage vote. The amendment passed on voice vote. The Young amendment in the nature of a substitute, as amended, was adopted by voice vote and the bill was favorably reported to the House of Representatives by a 44 to 1 vote, as follows:

Committee on Resources  
U.S. House of Representatives  
105th Congress

Full Committee

Date 5-21-97

Roll No. 2

Bill No. H.R. 856 Short Title "United States-Puerto Rico Political Status Act."

Amendment or matter voted on: Final Passage

Member	Y	N	Exc.	Member	Y	N	Exc.
Mr. Young (Chairman)	x			Mr. Miller	x		
Mr. Tauzin	x			Mr. Markey	x		
Mr. Hansen	x			Mr. Rahall	x		
Mr. Saxton	x			Mr. Vento	x		
Mr. Gallegly	x			Mr. Kildee	x		
Mr. Duncan		x		Mr. DeFazio	x		
Mr. Hefley				Mr. Faleomavaega	x		
Mr. Doolittle	x			Mr. Abercrombie	x		
Mr. Gilchrest	x			Mr. Ortiz			
Mr. Calvert	x			Mr. Pickett	x		
Mr. Pombo	x			Mr. Pallone	x		
Mrs. Cubin	x			Mr. Dooley	x		
Mrs. Chenoweth	x			Mr. Romero-Barcelo	x		
Mrs. Linda Smith	x			Mr. Hinchey	x		
Mr. Radanovich	x			Mr. Underwood	x		
Mr. Jones	x			Mr. Farr	x		
Mr. Thornberry				Mr. Kennedy	x		
Mr. Shadegg	x			Mr. Adam Smith	x		
Mr. Ensign	x			Mr. Delahunt	x		
Mr. Bob Smith	x			Mr. John	x		
Mr. Cannon	x			Ms. Green	x		
Mr. Brady	x			Mr. Kind	x		
Mr. Peterson				Mr. Doggett			
Mr. Hill	x						
Mr. Schaffer	x						
Mr. Gibbons	x						
Mr. Crapo	x			<b>TOTAL</b>	<b>44</b>	<b>1</b>	

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title; table of contents*

This provision contains the Short Title by which the bill will be known once it becomes an Act, as well as the Table of Contents.

*Section 2. Findings*

This Section contains the findings of Congress with respect to political status and self-determination in the case of Puerto Rico, which are self-explanatory in most respects, especially when read in the context of the historical and legal materials reviewed in the first part of this report, including Resolution 2, adopted by the Legislature of Puerto Rico on January 23, 1997. To ensure that important matters of interpretation will not be made without adequate certainty once this legislation has been enacted, material included by the Committee to reflect its understandings and intentions with regard to this bill is presented under the first part of the report, and as discussed below.

*Finding 1.* This finding recognizes that the United States exercises sovereignty with respect to Puerto Rico pursuant to the Treaty of Paris (30 Stat. 1754), Article IX of which established that the inhabitants of the territory not eligible for or electing to retain Spanish nationality thereupon acquired the nationality of the United States of America, and consequently owed allegiance to and enjoyed the protection of this Nation.

Under Article IX of the Treaty, which continues to have the full force and effect of United States law, it is provided that the “civil rights and political status of the native inhabitants” of Puerto Rico “shall be determined by the Congress.” Based upon the full sovereignty of the United States in Puerto Rico as so established, all Federal authority and responsibility with respect to Puerto Rico, including that set forth in Article IX of the Treaty of Paris, is carried out in accordance with laws of the United States enacted by Congress in the exercise of its powers under the Territorial Clause of the U.S. Constitution.

*Finding 2.* Article IX of the Treaty of Paris provided that the inhabitants of the territory of Puerto Rico were held to have “nationality of the territory.” In *Gonzales v. Williams* (192 U.S. 1 (1904)), the U.S. Supreme Court stated with respect to the status of Puerto Rico that under the terms of the treaty of cession the “nationality of the island became American.” In *Gonzales* the court ruled that under the terms of the treaty the inhabitants of Puerto Rico had no foreign or separate nationality, were not “aliens” under the immigration act of 1891, and were under the “protection” of the United States.

In an exercise of its Territorial Clause authority, Congress implemented Article IX of the Treaty of Paris by conferring the status of “citizens of Puerto Rico” on the inhabitants of the territory under Section 7 of the Foraker Act of 1900, and prescribing the rights of persons having that status. It is clear that the umbrella of U.S. nationality had been extended to the territory, and that the status of “citizens of Puerto Rico” constituted a form of citizenship which was a subset of U.S. nationality. There is no basis for the assertion that separate Puerto Rican nationality was created because a sepa-

rate class of citizenship had been established pursuant to the treaty of cession and the Territorial Clause.

In Section 5 of the Jones Act of 1917 Congress extended U.S. citizenship to Puerto Rico, with less than 250 people availing themselves of the right to remain “citizens of Puerto Rico” by complying with prescribed procedures within six months of the effective date of the Jones Act. Again, all U.S. citizens, whether residing in one of the states, the U.S. territories including Puerto Rico, as well as those who remained “citizens of Puerto Rico” under the Jones Act, had one “nationality” regardless of the legal basis and classification of their “citizenship” under applicable law.

Since the enactment by Congress of Section 202 of the Nationality Act of 1940, followed by the enactment of Section 302 of the Immigration and Nationality Act in 1952, now codified at 8 U.S.C. 1402, all persons who were U.S. citizens or “citizens of Puerto Rico” under the Jones Act have the status of U.S. citizens, as well as the underlying U.S. nationality established by Article IX of the Treaty of Paris. The status of “citizen of Puerto Rico” is not a separate Puerto Rican nationality, a substitute for, or an alternative to the U.S. citizenship status established for the inhabitants of Puerto Rico under 8 U.S.C. 1402, much less the underlying nationality arising from the Treaty of cession.

The citizenship provisions of the Foraker Act no longer apply to persons born in Puerto Rico, and no longer define the status of any person. The term “citizen of Puerto Rico” under 1 LPRC Sec. 7 (based on Section 10 of the Political Code of Puerto Rico), now has a meaning equivalent to local citizenship or residency in the States. Rather than being a form of citizenship based on or having the same meaning as nationality conferred by a national sovereign, “citizenship” of Puerto Rico is a status created under the limited jurisdiction of the local government. It is no different than the residency status defined by Congress for Puerto Rico in 48 U.S.C. 733a.

H.R. 856 does not deny Constitutionally permanent citizenship to people born in Puerto Rico. Instead, it honestly recognizes that Puerto Rico has not yet achieved Constitutional integration with the U.S. sufficient to secure for persons born there the same or equal citizenship status and rights as Americans born or naturalized in the States of the Union. As a permanent feature of U.S. Constitutional law, the 14th Amendment protections which make U.S. citizenship irrevocable only apply in the case of person born or naturalized in one of the States of the Union.

Of course, under the Territorial Clause Congress can approve a statute extending any provision of the Constitution and laws of the United States to Puerto Rico or any other unincorporated territory. However, a future Congress will not be bound by the statute, and can repeal the law. Admission of a territory to statehood under Article IV of the Constitution is the only way to bind Congress forever to political union and application of the Constitution and laws of the United States on the basis of permanent equality.

As discussed earlier, in the 1970 case of *Rogers v. Bellei* (401 U.S. 815), the Supreme Court of the United States limited to persons whose citizenship is based on birth or naturalization in the States of the Union. In ruling that the 14th Amendment does not

make citizenship permanent or irrevocable in the case of persons born outside the U.S. whose citizenship is conferred by statute, and that Congress can terminate U.S. non-constitutional citizenship by the same power through which it is granted, the court stated that:

The central fact, in our weighing of the plaintiff's claim to continuing and therefore current United States citizenship, is that he was born abroad. He was not born in the United States. He was not naturalized in the United States \* \* \* All this being so, it seems indisputable that the first sentence of the Fourteenth Amendment has no application to plaintiff Bellei. He simply is not a Fourteenth Amendment first-sentence citizen. His posture contrasts with that of Mr. Afroyim, who was naturalized in the United States \* \* \*.

Thus, the U.S. Constitution has been judicially interpreted by the high court of last resort to establish that persons born outside the U.S. in a foreign country who acquire statutory U.S. citizenship based on the U.S. citizenship of parents do not have the permanent and Constitutionally-guaranteed citizenship that people acquire upon birth in a State.

This is the same situation in which people born in Puerto Rico find themselves. The statutory citizenship of *Bellei* was established under 8 U.S.C. 1401 based on birth outside the States to U.S. citizens parents. The U.S. citizenship of persons born in Puerto Rico was established under 8 U.S.C. 1402, based on birth in an unincorporated territory. In the case of both nationality of parents or location of birth in an area under U.S. jurisdiction and sovereignty but not a State, there is no Constitutional protection under the 14th Amendment. Rather, as the Supreme Court stated in *Bellei* about the type of citizenship granted under 8 U.S.C. 1401, "That type, and any other not covered by the Fourteenth Amendment, was necessarily left to proper congressional action."

Unlike a person who U.S. citizenship arises from birth to an American parent overseas, persons whose statutory U.S. citizenship is based on birth in Puerto Rico are "subject to the jurisdiction of the United States." This means that in addition to having citizenship that is not Constitutionally guaranteed, persons born in Puerto Rico live under U.S. laws enacted in a political process in which they have less than equal political rights.

Thus, just as the Supreme Court says in the *Bellei* case that Congress could return to the situation before the current immigration laws were adopted, in which persons born outside the U.S. to an American parent did not automatically acquire U.S. citizenship, "proper congressional action" in the case of Puerto Rico could include a return to the arrangement in the 1900 through 1917 period before Congress made birth in Puerto Rico a basis for statutory citizenship.

Under the 1922 case of *Balzac v. People of Puerto Rico* (258 U.S. 298), the U.S. must exercise its powers consistent with the fundamental due process rights that constrain our government wherever it acts. In the case of citizenship in Puerto Rico, this means Congress would have to repeal 8 U.S.C. 1402 by a subsequent stat-

ute for what Congress determines to be legitimate Federal purposes.

The recognition by Congress of a separate Puerto Rican nationality or sovereignty would provide the basis for such an action, as would a determination by Congress that full incorporation and statehood is not intended. That is what Congress decided in the case of the Philippines in 1916.

The application of due process to the actions of the Federal Government in the exercise of U.S. sovereignty in Puerto Rico does not mean Congress cannot determine the citizenship of people born there as it deems consistent with the national interest. The only way to secure Constitutionally-protected citizenship is to complete the process of Constitutional integration so that people born in Puerto Rico also will be born in a State of the Union for purposes of the 14th Amendment.

As the Supreme Court stated in the *Bellei* decision, the attempt to transform the permissive statutory citizenship into an irrevocable status binding on the U.S. in perpetuity, “\* \* \* would convert what is congressional generosity into something unanticipated and obviously undesired by Congress.”

*Finding (3)*. It is important to recognize that Congress can extend the provisions of the Constitution and laws of the United States to an unincorporated territory by statute, and it can subsequently amend, modify or repeal application of any such statute to the territories.

An unincorporated territory which has local self-government over internal affairs under a constitution approved by the local residents has been referred to as a “commonwealth” in the case of both Puerto Rico and the Northern Mariana Islands. These unincorporated territories remain subject to the authority of Congress under the Territorial Clause, but have relations with the Federal Government consistent with applicable organic legislation and local constitutional enabling acts as long as those acts are in effect.

In the case of *Reid v. Covert*, the U.S. Supreme Court accurately described the Territorial Clause power as one which arises from the need for Congress, “\* \* \* to provide rules and regulations to govern *temporarily* territories with wholly dissimilar traditions and institutions \* \* \*” [emphasis added]. The central concept which must be recognized is that the Territorial Clause power was never intended to provide a Constitutional framework for the permanent disenfranchisement of U.S. citizens who have established traditions and institutions of self-government similar to our own.

Once a territory is prepared constitutionally, politically, legally and socially for full self-government through incorporation or separate nationhood, Congress and the people concerned eventually must face the moment of truth. In the case of 36 States of the Union we have examples of decisions by Congress and the territorial body politic to resolve the ultimate status of territories in favor of incorporation leading to statehood—including the case of Hawaii which has many parallels to the Puerto Rico situation. Only Texas was admitted into the Union without being a territory, directly from its prior status as the separate sovereign Republic of Texas.

The Philippines is an example of a territory acquired under the same Treaty of Paris terms under which Puerto Rico was ceded to the U.S., and Congress resolved that status question in favor of independence.

There are prominent leaders in Puerto Rico who believe there is no practical alternative to the current status. Of course, Congress must determine if continuing unincorporated territory status for an indefinite period serves the national interest. The U.S. also has a right to self-determination, and Section 9 of U.N. Resolution 748 accepting the current Puerto Rico status expressly recognizes that both the U.S. and Puerto Rico, as parties to this present relationship, have the right to initiate further self-determination to later the relationship.

As noted by former a distinguished former member of the Committee with extensive expertise in insular law and policy, Robert J. Lagomarsino, in the statement submitted in connection with the hearings on H.R. 856 on March 19, 1997, the U.S. has the option of terminating the current status in favor of independence if mutually agreed terms for continued association cannot be achieved. No one expects that to occur, but in response to the theory and argument that the U.S. is somehow bound in a relationship based on adhesion, the Committee feels compelled to state for the record that Congress retains full authority under the Territorial Clause power to ensure that U.S. sovereignty is exercised in the case of Puerto Rico in a manner consistent with the national interest.

*Finding (4).* In 1950 Congress, followed by the residents of Puerto Rico in a referendum, approved the terms set forth in a Federal statute (Public Law 81-600) under which local constitutional self-government over internal affairs in Puerto Rico would be adopted. This statutory procedure was "in the nature of a compact" to follow the specified procedure leading to internal self-government under a local constitution, and by its terms Public Law 81-600 did not address the issue of Puerto Rico's ultimate political status.

Neither the vote to approve Public Law 81-600 in 1951, nor the vote to approve the local constitution in 1952 presented the residents with the political status alternatives of independence or statehood. Rather, those votes were on approval or disapproval first of Public Law 81-600 as the procedure for establishing local self-government under a constitution, and then on approval or disapproval of the constitution itself. These votes were, however, historic and significant acts of self-determination pursuant to which the institutions of local self-government were established and the residents of Puerto Rico were enabled to exercise sovereignty over internal affairs of the territory.

The 1952 constitution did not create a permanent status for Puerto Rico under the U.S. Constitution binding upon a future Congress, nor did it recognize a separate national sovereignty for Puerto Rico. Rather, the Public Law 81-600 procedure constituted a delegation to Puerto Rico by Congress of powers of administration subject to the retained Territorial Clause authority of Congress with respect to governance in matters within the local sovereignty of a new constitutional government as approved by Congress and the residents of the territory. The nature of Puerto Rico's status in

this respect was properly discerned by the Federal judiciary in the case of *U.S. v. Sanchez*, 992 F.2d 1143 (1993).

It is also important to note that even though the Spanish translation of “commonwealth” means “free associated state,” Puerto Rico did not enter into the international status of “free association” as recognized by the U.N., nor did Puerto Rico establish a relationship to this Nation of “free association” as recognized by the United States, as a result of adopting local constitutional self-government.

The Committee notes that there have been attempts to explain the use of the term “free associated state” in Spanish and “commonwealth” in English as a measure taken to avoid a misunderstanding and ensure that Puerto Rico’s new status under the 1952 local constitution was not confused with the status of the States of the Union. This is curious for two reasons.

First, there was and is little risk that anyone would confuse Puerto Rico’s status under Public Law 81–600 with statehood simply because it is described as that of a free associated state, while there was and is a high likelihood of confusion between the term “free associated state” and free association as that term is used to describe the status of an associated republic with separate national sovereignty. Since Puerto Rico did not achieve separate national sovereignty and simply exercises delegated local sovereignty subject to the supremacy of Federal law, use of the term “free associated state” in Spanish and “commonwealth” in English created a far greater risk of confusion, and actually caused a great deal of misunderstanding, than would have occurred if either of these two labels had been used in both Spanish and English.

The second curious thing about the explanation given for the use of different terminology is that both the PDP as the party which endorses commonwealth and the Federal Government have accepted and promoted the treatment of Puerto Rico as a State to the extent practical and consistent with the U.S. Constitution and Public Law 81–600. The Bush memorandum of 1992, the case of *Rodriguez v. Popular Democratic Party*, and this bill, H.R. 856, are examples of all three branches of government encouraging “state-like” treatment of Puerto Rico on the basis of the present structure of local self-government.

This does not create confusion because it is clear from the organic documents creating the current status that Puerto Rico’s current status is not equivalent to statehood because it is not Constitutionally permanent or guaranteed. Rather than being permanently protected by the 10th Amendment, the status of Puerto Rico is defined by statute and is subject to the discretion of Congress under the Territorial Clause.

There is full awareness in the Federal Government that the Spanish term for the current status is “free associated state,” and the real concern is that this has been used to confuse people in Puerto Rico about whether their current status is that of a U.S. territory or a “state” as that term is used in international law, with separate national sovereignty. In this regard, the Committee notes with concern what seems almost to be a misinformation campaign in Puerto Rico about international law and practice as well as U.S. Constitutional practice as it relates to the legal nature of free association. The Committee therefore appreciates and regards as au-



thoritative the analysis of free association which was submitted by Ambassador Fred M. Zeder in connection with the hearing on H.R. 856 conducted by the Committee on March 19, 1997. Ambassador Zeder was President Reagan's Personal Representative and the U.S. Chief Negotiator who concluded negotiations with the constitutional governments of the Trust Territory of the Pacific Islands, administered by the U.S. under a U.N. trusteeship from 1947 until decolonization was achieved in 1986.

*Findings 5 and 6.* Because of the "attributes of political sovereignty" recognized by the U.N. in Resolution 748, though established "in a free and democratic" manner, remain subject to U.S. Constitutional process, the U.N. expressly recognized in Section 9 of Resolution 748 that "the will of both the Puerto Rican and American peoples" would be respected in the future "in the eventuality that either of the parties to the mutually agreed association may desire any change in the terms of this association."

On the same day that the U.N. General Assembly adopted Resolution 748, it also adopted resolution 742 (VIII), which defined the criteria for a "treaty or bilateral agreement" which would constitute a legitimate associated state relationship consistent with the right of fully sovereign self-government as opposed to local self-government, and these criteria included "\* \* \* the freedom of the population of a Territory \* \* \* to modify at any time this status \* \* \* Representation without discrimination in the central legislative organs on the same basis as other inhabitants and regions \* \* \* [and] Citizenship without discrimination on the same basis as other inhabitants" of the nation with which the territory is associated.

In response and rebuttal to criticism in the U.N. in ensuing years based upon, among other things, perceived variance between the criteria set forth in Resolution 742 and the status of Puerto Rico accepted by the U.N. under Resolution 748, every U.S. President since 1953 has confirmed, consistent with Section 9 of Resolution 748, that the United States continues to recognize the right of self-determination for the residents of Puerto Rico, and that this right can be exercised in favor of independence if that status is freely chosen by the voters and approved through the applicable Constitutional processes of the U.S. and Puerto Rico.

The three status options set forth in U.N. Resolution 1541 form an internationally-recognized basis for completion of a process leading to full self-government. Those established forms of full self-government include national independence, separate sovereignty in free association, or full integration within another nation, which under the U.S. Constitutional system is statehood.

*Finding (7).* The decisions of the United States Supreme Court in the 1980 case of *Harris v. Rosario* (446 U.S. 651) and the 1981 case of *Rodriguez v. Popular Democratic Party* (457 U.S. 1) constitute judicial interpretations which, when taken together, confirm that, consistent with the national sovereignty of the United States in Puerto Rico, Congress continues to exercise authority and responsibility to determine the application of Federal law in Puerto Rico pursuant the Territorial Clause, and that the residents of Puerto Rico enjoy a prescribed degree of local sovereignty over in-

ternal matters which arise under the local constitution adopted in 1952 pursuant to Public Law 81-600.

Thus, neither the delegation of government limited authority over internal affairs through authorization for the adoption of a local constitution under Public Law 81-600, nor the diplomatic measures taken by the United States in 1953 to fulfill its obligations and inform the U.N. with respect to the self-determination process for Puerto Rico, have altered the status of Puerto Rico as an unincorporated territory the United States subject to the authority of Congress under the Territorial Clause.

The two decisions referred to above also correctly reflect that Puerto Rico has political autonomy under the local constitution, but that all local measures of self-government promulgated through the internal constitutional process must be in conformity with the laws of the United States and provisions of the U.S. Constitution applicable to Puerto Rico as determined by Congress.

Thus, the local sovereignty which has been conferred by Congress pursuant to Public Law 81-600 is—as noted in the *Rodriguez* opinion—analogueous to the sovereignty that States retain in the Federal Union. However, the sovereignty of a locally self-governing unincorporated territory is not coextensive with that of a State, due to the fact that the sovereignty of the States is permanently reserved under the 10th Amendment to the U.S. Constitution. In contrast, the local sovereignty of the Commonwealth of Puerto Rico is established within the framework of Public Law 81-600, a statutory measure for the governance of Puerto Rico which is not a permanent status under the Federal Constitution or binding upon Congress or the people of the United States in the future, as recognized in Section 9 of U.N. Resolution 748.

*Finding (10).* Since the “commonwealth” option on the 1993 ballot was defined differently than the current status of Puerto Rico, these results strongly suggest that for the first time since Resolution 748 was adopted by the U.N. the will of the people is to modify the present association as contemplated by Section 9 of that U.N. document. See discussion of findings 5-6, above.

*Finding (11).* As the degree of self-government and social development in the various territories of the United States has evolved, appropriate administrative arrangements have been put in place within the Executive Branch. For example, 35 years after Spain ceded Puerto Rico to the U.S. under the Treaty of Paris, President Franklin D. Roosevelt ended the role of the Department of War as the lead agency for managing Federal policy toward the territory and assigned that responsibility to the Department of the Interior under Executive Order 6726 (May 29, 1934).

The practice of designating the Department of the Interior to manage relations between the unincorporated territories and the Federal Government, including those which had been under military administration due to the circumstances under which the U.S. acquired and/or exercised sovereignty, was followed by President Truman in, for example, the case of Guam (Executive Order 10077, September 7, 1949), and American Samoa (Executive Order 10264, June 29, 1951). In other cases, Congress has prescribed by statute the role of the Department of the Interior, as, for example, in the case of the U.S. Virgin Islands (48 U.S.C. 1541).

Of more immediate relevance here, however, is the manner in which the U.S. has organized itself with respect to Puerto Rico and the Northern Mariana Islands, the two unincorporated territories which have implemented a commonwealth structure of local self-government over internal affairs under constitutions approved by the residents of each territory.

Establishment of local constitutional government in the “Commonwealth of Puerto Rico” was authorized by Congress under Public Law 81–600 in 1950, and in the “Commonwealth of the Northern Mariana Islands” by Public Law 94–241 in 1976.

In the case of Puerto Rico, the local constitution took effect in 1952, but it was not until July 25, 1961, that President John F. Kennedy issued a memorandum regarding the establishment of self-government “in respect of internal affairs and administration.” This instrument did not assign responsibility for managing Federal policy on Puerto Rico to any one department, but simply notified all Federal authorities to act in a manner consistent with the advent of local territorial government under a constitution approved by the residents of the territory. The Kennedy memo also stated, “If any matters arise involving fundamentals of this arrangement, they should be referred to the Office of the President.”

In the case of the Commonwealth of the Northern Mariana Islands (CNMI), the U.S. administered but did not have sovereignty over the Northern Mariana Islands under a U.N. trusteeship beginning in 1947, but in 1976 the people had voted to come within U.S. sovereignty as an unincorporated territory with U.S. citizenship and internal self-government under a local constitution approved by the people. However, the status of those islands as an unincorporated territory of the U.S. with that “commonwealth” structure of local self-government did not become fully effective until the U.N. trusteeship was terminated in 1986. Thereupon, President Reagan issued Executive Order 12572 on November 3, 1986, acknowledging that other departments and agencies have specific program responsibilities, but assigning “general administrative supervision” of Federal policy and programs in CNMI to the Department of the Interior.

The inconsistency in the administrative arrangements for managing these two “commonwealth” territories does not reveal or create any legal or political distinctions between them. Indeed, it is interesting to note that in 1935 the Philippines became a self-governing “commonwealth” as part of the transition of that body politic from unincorporated territory status to separate sovereignty based on national independence.

On November 30, 1992, President George Bush issued a superseding memorandum which confirmed the Kennedy memo notification of Federal authorities to implement measures in Puerto Rico consistent with the fact that Puerto Rico is a self-governing territory with a commonwealth structure, and to refer any fundamental questions about Puerto Rico’s status to the Office of the President.

However, reflecting intervening rulings of the U.S. Supreme Court providing judicial interpretation of the status of Puerto Rico and the change in the world order between 1961 and 1992, the Bush memo also recognized the need for further self-determination in Puerto Rico to achieve a permanent status. For example, consist-

ent with the ruling of the Supreme Court in *Rodriguez v. Popular Democratic Party*, 457 U.S. 1 (1982), the Bush memo directed departments and agencies to treat Puerto Rico the same as States are treated to the extent practicable.

On December 2, 1994, President William Clinton sent a letter to the Ranking Republican on the House Committee on Natural Resources, the then incoming and current Chairman of the Committee on Resources, advising that an “Interagency Working Group on Puerto Rico” had been organized within the Executive Branch to “ensure serious attention to Puerto Rico’s circumstances, needs and proposals.” The Interagency Group includes several offices within the White House and the Office of Management and Budget.

*Finding (12)*. In addition to its relevance to the purposes of the bill and the initial decision stage as provided in Section 4(a), this finding bears on the requirement for Congress to complete the process for resolving the ultimate status of Puerto Rico through the transition and implementation stages pursuant to Sections 4(b) and 4(c), including in the event of an inconclusive vote result to exercise its authority to complete the decolonization process consistent with the principle of self-determination.

*Finding (15)*. This finding is the most singular, essential and critical expression of the Committee’s intentions and purpose in approving H.R. 856. The previous comment regarding Finding (12) is fully applicable with respect to Finding (15).

### *Section 3. Policy*

This Section provides the Congressionally-prescribed U.S. policy framework for the self-determination process established by the bill. The most important policy statement is that the legislation is adopted by Congress with a commitment to encourage the process through which a permanent and full self-governing status is achieved. Only that will end the disenfranchisement of the people of Puerto Rico.

Subsection 3(b) addresses the 100 year history of English and Spanish as official languages, makes it clear that English language requirements could be imposed on Puerto Rico as a commonwealth that could not be imposed on Puerto Rico if it were a State, and calls for application in Puerto Rico of any national law on language if statehood is implemented.

### *Section 4. Process for Puerto Rican full self-government, including the initial decision stage, transition stage and implementation stage*

This central element of the bill prescribes the three stages of the process leading to full self-government, requiring approval of Congress and submission of the question of whether to move to the next stage as each previous stage is completed.

*Initial Decision Stage*. Section 4(a) provides for a status referendum to be held in Puerto Rico before the end of 1998, in which voters will make choices presented in a three-way ballot with commonwealth, independence and statehood offered side-by-side. The Committee realizes that many in Puerto Rico have argued that placing commonwealth alongside the options for full self-government may permit some to assert that the current status can be

made Constitutionally permanent when that is not the case. However, to avoid any perception of unfairness to any party the three options are being presented together.

Thus, the options on the ballot are:

(A) to retain the Commonwealth of Puerto Rico status as an unincorporated territory;

(B) full self-government through separate sovereignty in the form of independence or free association; or

(C) full self-government through Statehood.

*Transition Stage.* Under Section 4(b), if voters approve separate sovereignty or statehood, within 180 days the President must propose a Transition Plan of no more than ten years to implement that status preference. After Congress approves the Transition Plan under “expedited procedures” under Section 6 of H.R. 856, it is presented to the people of Puerto Rico for approval. Upon its approval the Transition Plan will be implemented in accordance with its terms.

*Implementation Stage.* Section 4(c) is the stage which begins not less than two years prior to end of Transition Plan, with the President submitting to Congress a Joint Resolution with recommendations for the date of termination of the transition and the date of implementation of full self-government. Upon approval by Congress through expedited procedures of the Joint Resolution, Congress approves an Implementation Act which is submitted for approval by the Puerto Rican people in a vote. If the Implementation Act is approved, then full self-government is implemented in accordance with the Joint Resolution approved by Congress.

Voters are free to choose to continue the current commonwealth status based on a preference for that status over the available options for full self-government. For the first time in almost 100 years under the sovereignty of Congress, the people of Puerto Rico will be empowered to choose between local self-government within the Territorial Clause and the two options for a permanent status based on an exercise of sovereignty by the people through which such a permanent and fully self-governing status is achieved.

A copy of the ballot prescribed by Section 4 in English and Spanish is included as Appendix F. In the manner provided in Section 4, Congress will, for the first time, be creating an orderly and informed process for self-determination in Puerto Rico. Instead of allowing local political parties to impose choices between mismatched options which do not withstand Constitutional scrutiny, and which lead to contradictory legal and political results, Congress will bring clarity and validly defined choice into the process consistent with applicable U.S. Constitutional law and international practice recognized by the United States.

Once there is a majority vote for a new status, Congress will proceed in a deliberate manner. By going back to the voters not once, not twice, but three times, Congress will empower the people to redeem the right to self-determination within a framework established by Congress consistent with our values as a Nation and the Constitution.

If at the initial stage under Section 4(a) the voters do not approve measures proposed by Congress to achieve full self-government in accordance with the preference expressed by the voters,

then the self-determination process prescribed in Section 4(a) of the bill begins anew pursuant to Section 5 as discussed below.

For the people of Puerto Rico to be empowered to engage in a free and informed act of self-determination, the definitions of “commonwealth,” “separate sovereignty” and “statehood” must be ones formulated not for the purpose of either confirming or repudiating the positions of the local political parties regarding the legal and political nature of the current status of Puerto Rico or the alternative status options. Rather, language should be adopted which is accurate, authoritative and balanced as a matter of law. While the status definitions were formulated to reflect the aspirations of the three local political parties as far as Constitutional, legal, fiscal, political, and budgetary constraints permit, the desirability of the formula to be adopted in the view of the political parties were not controlling. Congress is responsible for formulating a definition that it accepts as fair, and which has a clear meaning that Congress can respond to if it is approved by the voters. The language in the findings of Section 2, the policy of Section 3, and initial decision ballot definitions and transition provisions of Section 4 clarify the status choices for the benefit of both the people of Puerto Rico and Congress.

*Section 5. Requirements relating to referenda, including inconclusive referendum and applicable laws*

This Section provides the legal framework for conducting referenda under this bill. Current election laws of Puerto Rico requiring U.S. citizenship and satisfaction of residency requirements will apply. For example, under those election laws, non-residents who are serving on active duty in the military are allowed to cast absentee ballots.

The provisions of Section 5 relating to the authority and procedures for conducting referenda include the requirement for a referendum no less than once every ten years if neither statehood nor independence receive a majority of the vote in the initial decision stage under Section 4(a), thus rendering the referendum inconclusive.

If a vote is inconclusive at the transition stage under Section 4(b) or the implementation stage under Section 4(c), then Congress must act under Section 5(c)(1) to implement the referendum results in accordance with Findings 12 and 15 in Section 2.

If the inhabitants of the territory do not achieve full self-government through either integration into the United States or separate sovereignty in the form of absolute independence or free associated republic status, Puerto Rico will remain an unincorporated territory of the United States, subject to the authority of Congress under the Territorial Clause of the U.S. Constitution. In that event, the existing “Commonwealth of Puerto Rico” structure of local self-government over internal affairs and administration under a constitution approved by the people will continue to remain in effect, subject to such alterations, modifications, changes or other disposition of the status of the territory and its population as Congress may deem in the exercise of its Territorial Clause powers to be in the national interest.

Congress historically has recognized a commitment to take into consideration the free expressed wishes of the people of Puerto Rico regarding the future political status of the territory. This policy is consistent with respect for the right of self-determination in areas which are not fully self-governing, but does not constitute a legal restriction or binding limitation on the Territorial Clause powers of Congress to determine the permanent relationship between the United States and Puerto Rico through measures adopted and implemented through the U.S. Constitutional process. Nor does any such restriction or limitation arise from the PRFRA (Public Law 81-600).

*Section 6. Congressional procedures for consideration of legislation*

This Section prescribes the “expedited procedures” for Congressional action in response to the results of referenda conducted under its provisions.

*Section 7. Availability of funds for the referenda*

This Section provides that funding to conduct the referenda required under the bill will be from existing Federal excise taxes on foreign rum, which is covered over to the Puerto Rico Treasury. The President may identify all or part of the excise tax as grants to the State Elections Commission of Puerto Rico for conducting the referenda and for voter education.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Resources’ oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article IV, section 3 of the Constitution of the United States grants Congress the authority to enact H.R. 856.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 856. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under Section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives and Section 308(a) of the Congressional Budget Act of 1974, H.R. 856 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

2. With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 856.

3. With respect to the requirement of clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives and Section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 856 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 3, 1997.*

Hon. DON YOUNG,  
*Chairman, Committee on Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 856, the United States-Puerto Rico Political Status Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are John R. Righter (for federal costs) and Marjorie Miller (for the state and local impact).

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

*H.R. 856—United States-Puerto Rico Political Status Act*

Summary: CBO estimates that H.R. 856 would result in no significant cost to the federal government. Enacting H.R. 856 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 856 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA). Should the bill be enacted, the government of Puerto Rico probably would incur some costs, but these costs would be voluntary and, therefore, not the result of a mandate.

Description of the bill's major provisions: H.R. 856 would authorize a process for determining and implementing a permanent political status for Puerto Rico. The process would include three stages:

(1) The government of Puerto Rico would have the authority to hold a referendum by December 31, 1998, whereby voters would choose between continuing Puerto Rico's status as a territory of the United States or becoming fully self-governing through either separate sovereignty or statehood. If the initial referendum does not result in a majority vote for either separate sovereignty or statehood, the bill would authorize that additional referenda occur not less than once every 10 years.

(2) If a majority of voters select one of the two forms of self-government, the President would have six months to submit legislation to the Congress that provides for a transition period of up to



10 years. In a second referendum, voters would then approve or disapprove the enacted transition plan.

(3) At least two years prior to the end of the transition period, the President would submit a joint resolution to the Congress recommending a date for ending Puerto Rico's transition to full self-governance. A third referendum would then be held to approve or disapprove the enacted terms of implementation.

The bill would help fund the referenda by earmarking existing federal excise taxes on foreign rum. Under current law, the federal government collects and then transfers these taxes to the government of Puerto Rico. Under H.R. 856, the President could elect to make some or all of the funds available to the State Elections Commission of Puerto Rico.

Estimated cost to the Federal Government: CBO estimates that H.R. 856 would result in no significant cost to the federal government. Some minor costs could be incurred to formulate and approve the subsequent legislation required by the bill if the voters of Puerto Rico select one of the two forms of self-government. Other than such minor costs, H.R. 856 would only reallocate, upon request, a portion of funds derived from federal excise taxes already paid to the government of Puerto Rico. The total amount of those funds would not change.

A change in the political status of Puerto Rico could have a significant budgetary impact on the federal government. The potential impact could include changes in spending on federal assistance programs, such as Supplemental Security Income and Medicaid, plus changes in receipts from federal income taxes, which residents of Puerto Rico currently do not pay. Any such changes, however, would be contingent on the outcome of the referenda and future actions of the Congress and the President. Therefore, enacting H.R. 856 would have no direct budgetary impact (other than the minor discretionary costs cited above).

Pay-as-you-go considerations: None.

Estimated impact on State, local, and tribal governments: H.R. 856 contains no intergovernmental mandates as defined in UMRA. If the bill were enacted, the government of Puerto Rico would probably incur some costs, but these costs would be voluntary and not the result of a mandate.

This bill would authorize the Puerto Rican government to hold a referendum no later than December 31, 1998. If a majority of voters choose some form of self-government, the bill would provide for a second referendum in fiscal year 2000 and, possibly, another in about fiscal year 2010. If a majority choose to continue the current commonwealth status of Puerto Rico, the bill would provide for a second referendum within 10 years.

CBO estimates that the government of Puerto Rico would incur costs of \$5 million to \$10 million for each referendum held. Given the timetable established by the bill, we expect that one referendum would be held in fiscal year 1999. The timing of additional referenda would depend on the outcome of the first. This estimate is based on the cost of recent elections in Puerto Rico and includes the cost of voter education as well as the cost of holding elections.

If the process established by this bill resulted in a change in the political status of Puerto Rico, there would be a significant fiscal

impact on the government of that island. Any such change would be the result of future legislation.

Estimated impact on the private sector: The bill would impose no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: John R. Righter. Impact on State, Local, and Tribal Governments: Marjorie Miller.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 856 contains no unfunded mandates.

CHANGES IN EXISTING LAW

If enacted, H.R. 856 would make no changes in existing law.

## ADDITIONAL VIEWS

H.R. 856, the United States-Puerto Rico Political Status Act establishes a process that could result in a permanent change in the political relationship between the United States and Puerto Rico. This bill would authorize a plebiscite in Puerto Rico to determine the future political status aspirations of the 3.8 million American citizens of that island. Also, this bill mandates Congress and the Administration to consider legislation within a reasonable time frame to enact the status which receives a majority vote in that plebiscite.

Enactment of H.R. 856 would represent the first time that the United States Congress has committed itself to considering a statehood admissions act or legislation to assist Puerto Rico in becoming a separate and sovereign nation, should its voters so decide. This is a most serious and solemn matter, and it is the responsibility of the Congress to make every effort to ensure the integrity of the process at each step.

The bill addresses a host of contentious and complex issues. Several positive changes were made at the mark up meeting held by the Committee on Resources on May 21, 1997. The core issue, however, remains the fairness and accuracy of the status options that will be presented to the voters in the plebiscite. If there is a perception that the choices presented to the Puerto Rican voters were unfairly or inaccurately crafted so as to achieve a desired result, the entire process will be tainted.

Puerto Rico holds elections every four years in which over 80% of registered voters participate. This enviable voter turnout makes clear how dedicated to democracy the people of Puerto Rico are. Each of the three major political parties in Puerto Rico are tied to a preferred status option. The New Progressive Party (NPP) supports statehood, the Popular Democratic Party (PDP) supports commonwealth, and the Popular Independence Party (PIP) supports independence.

There has long been strong division among the voters of Puerto Rico with respect to its status with the United States. Three votes have taken place under local authority on the issue of status. The Commonwealth status has prevailed in each case, although the vote for Statehood has substantially narrowed the gap over the years. In 1952, 76.5% supported commonwealth while 23.5% supported statehood. The Popular Independence Party boycotted this plebiscite. A vote taken in 1967 found 60.41% supported commonwealth, 38.99% supported statehood, and 0.6% supported independence. In 1993 the plebiscite results were 48.4% for commonwealth, 46.2% for statehood, and 4.4% for independence. Just last month, one day after the bill was reported by the Resources Committee, El Nuevo Dia, Puerto Rico's largest circulation newspaper, released

the results of a poll on status that reported 43% for commonwealth; 39% for statehood; and 4% for independence.

As introduced, H.R. 856 contained definitions of each status written by those who favor the statehood option to make Puerto Rico the 51st state. Shortly after introduction, a letter was sent by Resources Committee Chairman Don Young and Senior Democratic Member George Miller to the presidents of the three political parties asking them to submit to the Conference alternative definitions they believed would be appropriate for their status choice. The letter affirmed Congress' responsibility and authority for the definitions that ultimately will be included in the legislation.

All three parties responded to the Young/Miller letter regarding the status definitions. The New Progressive Party endorsed the definition of statehood as it already appeared in the bill. The Popular Independence Party and the Popular Democratic Party submitted versions different from the original bill. The definition submitted by the PIP was largely accepted. Both the NPP and PIP now support the language in the bill as reported from Committee.

The provisions submitted by the Commonwealth party were not incorporated into the legislation. The PDP is the only political party not accommodated in the bill, and the only party whose definition was written by those who oppose that option. One need not be an advocate of Commonwealth to recognize the concern of PDP leaders who, unless improvements are made in the definition, would be compelled to urge their voters to endorse a definition of Commonwealth that does not reflect the Party's current perspective.

Many problems exist in Puerto Rico under today's Commonwealth relationship. Almost 4 million American citizens live on the island without access to all benefits received by those in the several states. Puerto Rico does not have a vote on the floor of the House of Representatives and has no representation at all in the U.S. Senate, but must abide by all laws passed by the Congress unless specifically exempted.

The definition proposed by the PDP made significant changes in the current status arrangement between Puerto Rico and the federal government. These changes, which would produce a Commonwealth that is more autonomous than at present, recognizes that the new arrangement would have to be sanctioned by a future Congress. At the mark up of H.R. 856, Representative George Miller proposed to add the definition submitted by the PDP to the bill to comport with the desires of the PDP leadership. That amendment failed, and the definition that remains does not reflect the version of Commonwealth supported by Commonwealth proponents.

While the Committee rejected the definition of Commonwealth as submitted verbatim, changes still need to be made in the definition remaining in H.R. 856 to assure that the option which has prevailed in past plebiscites is fairly stated and reflects an accurate view of commonwealth that is acceptable to the Congress. There is no reason to ask the voters of Puerto Rico to vote on a status option that, should it be approved, would be rejected by the Congress. By the same token, there is little reason to ask voters to approve a definition that does not reflect to a reasonable degree the concept of Commonwealth envisioned by the Party.

Those who refuse to improve the Commonwealth definition in H.R. 856 to bring it closer to the definition written by the PDP risk toppling the entire process by forcing Commonwealth to be defined in unfavorable terms. It will be difficult enough to move a statehood admissions bill through Congress without having it carry the extra burden a questionable plebescite process would surely bring. Those who deny a Commonwealther a fair chance to vote on his or her option are undermining their own cause and the best interests of the voters of Puerto Rico.

We are hopeful that, though continuing negotiations, a Commonwealth definition can be crafted that reflects some of the modifications in the current status sought by the PDP while still being acceptable to the Congress. We believe that this is not only an achievable goal, but a crucial one if the legislation is to pass the Congress and maintain credibility in the Puerto Rican electorate. Only if both of those criteria are met will the outcome of the plebiscite be accepted.

We additionally note several improvements that were made during bipartisan negotiations prior to the Committee's mark-up that improve the bill and increase the likelihood that the status selected by the voters of Puerto Rico are accepted by the Congress. In particular, we are gratified that the period of time for transitioning to the new status approved by a majority of voters now will be no longer than ten years, a substantial improvement over the indefinite period of "at least ten years" contained in the original bill. The Congress, the voters of Puerto Rico, and all other U.S. citizens must recognize that we are not sanctioning a straw poll, but setting in motion a process that is intended to result in profound change for the relationship with Puerto Rico. Reasonable time frames for implementing such changes send a powerful signal that the Congress is serious about taking this action.

GEORGE MILLER.  
WILLIAM DELAHUNT.  
FRANK PALLONE, Jr.  
BRUCE F. VENTO.  
EDWARD J. MARKEY.  
ENI FALEOMAVAEGA.  
SAM FARR.  
MAURICE HINCHEY.  
DONNA CHRISTIAN-GREEN.  
PETER DEFazio.

## ADDITIONAL VIEWS

As Puerto Rico's sole representative in the United States Congress, I want to reiterate my emphatic support of H.R. 856, the United States Puerto Rico Political Status Act, and expand upon my remarks during the Resources Committee hearings and markup of this legislation which will provide a process leading to full self-government for Puerto Rico.

H.R. 856 is a truly historic piece of legislation that will allow the 3.8 million United States citizens residing in Puerto Rico to exercise their inalienable right to self-determination and to resolve, once and for all, their 100 year old colonial dilemma.

Puerto Rico became a territory of the United States in 1898 pursuant to the Treaty of Paris, following the Spanish-American War. The first fifty years of American rule were marked by strong and direct involvement of the United States government in the administration of local Puerto Rican affairs. During this period, Puerto Rico was initially ruled by a military government. The military government was replaced in 1900 by a federally-appointed civil government.

In 1917, Puerto Ricans became United States citizens under the terms of the Jones Act passed by Congress. Since then we have cherished and valued that citizenship with our hearts and our minds and have defended it with our blood. Nearly 200,000 Puerto Ricans have served the United States in this century's armed conflicts. Thousands of them paid the ultimate price.

It was not until 1948, however, that Puerto Ricans were allowed by the United States Congress to elect their own governor. Then, in 1950, the United States Congress passed the Puerto Rico Federal Relations Act which authorized Puerto Rico to establish a local self-government structure in the image of state governments. The intent was to create a provisional form of local self-rule until the status issue could be resolved. Puerto Rico would remain an unincorporated territory of the United States, subject to the authority and plenary powers of Congress under the territorial clause of the Constitution which states that "Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the territory or other Property belonging to the United States" (Article IV, Section 3).

The fact is that ours is a colonial relationship that clearly contradicts the basic tenets and principles of democracy. One in which Puerto Rico's economic, social and political affairs are, to a large degree, controlled and influenced by a government over which we exercise no control and in which we do not participate.

Congress has not only the power, but also the moral obligation to put an end to the disenfranchisement of the 3.8 million United States citizens that reside in Puerto Rico. H.R. 856, with its broad bipartisan support of nearly 90 cosponsors—including Speaker

Newt Gingrich and Minority Leader Richard Gephardt—clearly evidences that this is not a Republican issue nor a Democratic issue. The issue here is whether the United States, as a nation, and as the example and inspiration of democracy throughout the world, can continue to deny equality and maintain 3.8 million of its own citizens disenfranchised.

After 100 years, our nation has finally begun to recognize that its colonial relationship with Puerto Rico is unsustainable and is clearly not in the best interests of neither Puerto Rico nor the United States. On June 6, 1997, the Washington Post published an editorial entitled *An Obligation of Equality* that evidences the growing concern nationwide regarding the disenfranchisement of the United States citizens of Puerto Rico. I would like to conclude my remarks by having this editorial be made part of the Resources Committee Report on H.R. 856, as it reflects why I adamantly support enactment of the United States Puerto Rico Political Status Act.

#### AN OBLIGATION OF EQUALITY

Americans don't have long to get accustomed to the possibility that they may soon be considering admitting Puerto Rico as the 51st state. This outcome arises from the fact that, largely unattended, Congress is heading toward organizing a referendum next year giving the territory's nearly 4 million residents a "once and for all" choice of its relationship to the United States. The key moment came a few weeks ago, when the House Resources Committee approved 44 to 1 a bill from Chairman Don Young (R-Alaska) allowing Puerto Ricans to decide the future of their island. This old question is being brought to a new boil by the approach of the centennial of the Spanish-American War, in which the United States acquired bits of global empire. To many people, 100 years of American sovereignty over a territory denied full rights is enough.

The proposed referendum offers voters a choice among statehood, independence and the existing "commonwealth." Commonwealth, however, enters the contest under a double burden. It has been tried over the decades and found wanting by many, and it is now widely seen as anachronistically "colonial," even though it was a status voluntarily chosen and repeatedly affirmed. Chairman Young said in May, when his bill was passed in committee: "It is time for Congress to permit democracy to fully develop in Puerto Rico, either as a separate sovereign republic or as a state if a majority of the people are no longer content to continue the existing commonwealth structure for local self-government." Its supporters tried hard in committee to sweeten the definition of commonwealth that would be put to referendum. They failed. For now, anyway, the island's statehood party is on a roll.

For Puerto Ricans, the status question bears deeply on identity as well as practical benefit. Closely related is the issue of language; the committee declared that English—a minority language in Puerto Rico—shall apply "to the same extent as Federal law requires throughout the Unit-

ed States.” Tough issues of taxes and benefits must also be calculated.

For Americans. \* \* \* But wait a minute. Puerto Ricans are already Americans. The issue for all of us is that they are citizens without full political rights, including a vote in Congress. This is the anomaly the proposed referendum is meant to remedy. Whatever the Puerto Rican choice, we continental Americans have an obligation of equality to our fellow citizens on the island.

CARLOS ROMERO-BARCELO.



APPENDICES

- A. Memorandum of United States to the General Assembly of the United Nations Regarding Status of Puerto Rico, 1953
- B. Resolution 2, Legislature of Puerto Rico, January 23, 1997
- C. Statement of Chairman Don Young, Congressional Record, September 28, 1996
- D. Letter of March 3, 1997, inviting submission of status definitions by local political parties in Puerto Rico
- E. Status definitions submitted by local political parties in Puerto Rico
- F. Ballot for Referendum under H.R. 856



APPENDIX A

Memorandum of United States to the General Assembly of the United Nations Regarding Status of Puerto Rico, 1953.

MEMORANDUM BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE CESSATION OF TRANSMISSION OF INFORMATION UNDER ARTICLE 73(e) OF THE CHARTER WITH REGARD TO THE COMMONWEALTH OF PUERTO RICO

INTRODUCTION

1. The United States Government, in pursuance of Article 73(e) of the Charter of the United Nations, has, in accordance with Resolution 66(I) adopted by the General Assembly of the United Nations on December 14, 1946, transmitted annually to the Secretary-General since 1946 information on Puerto Rico. During this period successive advances have been made in the growth and development of self-governing institutions in Puerto Rico and in the vesting of powers of government in the Puerto Rican people and their elected representatives. This process has reached its culmination with the establishment of the Commonwealth of Puerto Rico and the promulgation of the Constitution of this Commonwealth on July 25, 1952.

2. With the establishment of the Commonwealth of Puerto Rico, the people of Puerto Rico have attained a full measure of self-government. Accordingly, the Government of the United States has decided that it is no longer appropriate for it to submit information on Puerto Rico pursuant to Article 73(e) of the Charter.

3. Resolution 222(III), adopted by the General Assembly on November 3, 1948, states that, having regard to the provisions of Chapter XI of the Charter, it is essential that the United Nations be informed of any change in the constitutional position and status of any non-self-governing territory as a result of which the responsible government concerned thinks it unnecessary to transmit information in respect of that territory under Article 73(e) of the Charter. The Members of the United Nations concerned are requested by this resolution to communicate to the Secretary-General, within a maximum period of six months, such information as may be appropriate, including the constitution, legislative act or executive order providing for the government of the territory and the constitutional relationship of the territory to the government of the metropolitan country.

4. As a result of the change in the constitutional position and status of Puerto Rico as described in this memorandum, the Government of the United States considers it unnecessary to transmit further information under Article 73(e) of the Charter concerning the Commonwealth of Puerto Rico. The United States Government desires that the United Nations be fully informed of the background of this deci-

sion. Accordingly, and in pursuance of Resolution 222(III), this memorandum has been prepared and, together with a copy of the Constitution of the Commonwealth of Puerto Rico and a letter from the Governor of Puerto Rico is transmitted to the Secretary-General for circulation to the Members of the United Nations for their information.

2:

#### CONSTITUTIONAL DEVELOPMENT OF PUERTO RICO UNDER UNITED STATES ADMINISTRATION

5. Puerto Rico has been administered by the United States since 1898 when Spain ceded its sovereignty to the island under terms of the Treaty of Paris. Puerto Rico had a military government until 1900 when the United States Congress enacted the first organic law providing for a civil form of government. The establishment of the Commonwealth in July 1952 marks the culmination of a steady progression in the exercise of self-government initiated by the first organic law.

6. The first organic law, known as the Foraker Act, provided for a Governor appointed by the President of the United States, with the advice and consent of the Senate of the United States, a legislative assembly in which the lower house was elected but the upper house was composed of the heads of executive departments of the government and five other persons, all appointed by the President with the advice and consent of the Senate; and a supreme court, the members of which were also appointed by the President with the advice and consent of the Senate, justices of the lower courts being appointed by the Governor with advice and consent of the upper house of the legislature. The act provided for Puerto Rico's representation before all departments of the Federal Government by a popularly elected Resident Commissioner. The Resident Commissioner has a seat in the House of Representatives of the Congress of the United States.

7. In 1917, the scope of self-government was increased with enactment by the Congress of a second organic law known as the Jones Act. Under it, the people of Puerto Rico elected both houses of their legislature, and the popularly elected upper house advised and consented to the Governor's appointment of justices of the lower courts. The President retained authority to appoint the Governor, the justices of the supreme court, the heads of the departments of justice and education, and the auditor, but all other heads of executive departments were appointed by the Governor. The people of Puerto Rico became citizens of the United States. The protection of a bill of rights patterned on the bill of rights of the United States Constitution was extended to Puerto Rico. Provision for representation before the various departments of the Federal Government remained. The legis-

lature could repass a bill over the Governor's veto, but if the Governor did not then approve it, it did not become law unless it received the approval of the President.

8. In 1946, the President appointed as Governor, with the advice and consent of the Senate, a Puerto Rican who had formerly been Resident Commissioner from Puerto Rico. This was the first time that a Puerto Rican had been appointed Governor.

9. In 1947, the Congress authorized the people of Puerto Rico to elect their Governor, beginning with the general election in 1948, and provided a line of succession in the event of a vacancy in the position of Governor or of the Governor's temporary absence or disability. The elected Governor was authorized to appoint all the members of his cabinet, the heads of the executive departments, including the attorney general and commissioner of education. No change was made at that time in the provisions respecting appointment of the auditor and justices of the supreme court.

#### DEVELOPMENT AND ADOPTION OF THE CONSTITUTION OF THE COMMONWEALTH OF PUERTO RICO

10. In 1948, the candidates for Governor and Resident Commissioner from Puerto Rico, who were elected by very substantial majorities, ran on a platform calling for the adoption by the people of Puerto Rico of a constitution of their own drafting, within the framework of a continuing relationship with the United States to which the people of Puerto Rico would consent. In that election, the candidates who advocated statehood for Puerto Rico and independence for Puerto Rico were defeated. An overwhelming number of candidates for the legislature who ran on the same program as the successful candidates for Governor and Resident Commissioner were also elected. In accordance with the expressed wishes of the people of Puerto Rico, there was introduced in the Congress a bill to provide for the organization of a constitutional government by the people of Puerto Rico. It was enacted on July 3, 1950 as Public Law 600, 81st Cong. (64 Stat. 319).

11. That law expressly recognized the principle of government by consent, and declaring that it was "adopted in the nature of a compact", required that it be submitted to the voters of Puerto Rico in an island-wide referendum for acceptance or rejection. If the act were approved by a majority of participating voters, the Legislature of Puerto Rico was authorized to call a constitutional convention to formulate a constitution, which would become effective upon its adoption by the people if approved by the Congress after a finding by the President that it conformed with the applicable provisions of the act and of the Constitution of the United States. Those provisions of the Organic Act which related to matters of local government would

thereupon be repealed, while the remaining provisions of the Organic Act, relating to such matters as Puerto Rico's economic relationship to the United States, the force and effect of applicable Federal laws, and continued representation in Washington, would thenceforth be known as the Puerto Rican Federal Relations Act. The Congress made only two stipulations with respect to the content of the constitution to be adopted; that it provide a republican form of government and that it include a bill of rights.

12. Four political parties participated in the campaign preceding the referendum: two advocated approval of Public Law 600, 81st Congress, one opposed it, and one was divided in its position. On June 4, 1951, 506,185 persons, 65.08 percent of the 777,675 qualified voters of Puerto Rico, participated in the referendum, and 76.5 percent of those voting approved the act. On August 27, 1951, ninety-two delegates were elected to a constitutional convention, representing the Popular Democratic, the Statehood and the Socialist parties. The convention met in September 1951, and concluded its painstaking work in February 1952. An official English and an official Spanish version of the constitution were adopted, and the text was published in the four daily newspapers of Puerto Rico in both languages. Copies of the document were distributed throughout the Island.

13. On March 3, 1952, the constitution was submitted for adoption or rejection. Of the 783,610 qualified voters, 456,471 participated in the referendum. Of these, 373,594 or 81.84 percent of those voting supported adoption of the constitution; only 82,877 or 18.16 percent of those voting disapproved it. All of the elections and referenda held in Puerto Rico in connection with the development of the constitution were on the basis of universal adult suffrage without property or literacy requirements. Puerto Rico has had universal adult suffrage since 1929. There have been no property requirements since 1906 and the last literacy requirements were removed in 1935.

14. On April 22, 1952, the President transmitted the Constitution to the Congress with his recommendation for approval, and by Public Law 447, 82nd Cong. (66 Stat. 327), signed by the President on July 3, 1952, the Congress approved the Constitution subject to certain conditions which were to be submitted for approval to the Puerto Rican Constitutional Convention. Public Law 447, in its preambular provisions, recalled that the Act of July 3, 1950 "was adopted by the Congress as a compact with the people of Puerto Rico, to become operative upon its approval by the people of Puerto Rico"; that the people of Puerto Rico had overwhelmingly approved this Act and that the Constitution of Puerto Rico had been drafted by a Constitutional Convention; that the Constitution was adopted by the people of Puerto

Rico in a referendum; that the President of the United States had declared that the Constitution conformed fully with the applicable provisions of the Act of July 3, 1950 and the Constitution of the United States, that it contained a Bill of Rights, and provided for a republican form of government; and that the Congress of the United States had considered the Constitution and found that it conformed with the stipulated requirements. The operative part of the Public Law 447 recorded the approval by the Congress of the United States of the Constitution of the Commonwealth of Puerto Rico subject to certain conditions, among which was that the following new sentence be added to Article VII: "Any amendment or revision of this Constitution shall be consistent with the resolution enacted by the Congress of the United States approving this Constitution, with the applicable provisions of the Constitution of the United States, with the Puerto Rican Federal Relations Act, and with Public Law 600, 81st Cong. adopted in the nature of a compact." The Puerto Rican Constitutional Convention considered and approved these conditions. On July 25, 1952, the Governor of Puerto Rico proclaimed the establishment of the Commonwealth of Puerto Rico under its Constitution.

#### PRINCIPAL FEATURES OF THE CONSTITUTION OF THE COMMONWEALTH

15. The Constitution of the Commonwealth, as it became effective with the approval of the Congress, provides that "Its political power emanates from the people and shall be exercised in accordance with their will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States of America" (Art. I, Section 1). The Constitution of the Commonwealth is similar to that of a State of the Federal Union. It establishes a tri-partite form of government, with a popularly elected Governor, a popularly elected bi-cameral legislature and a judicial branch. The heads of all executive departments are appointed by the Governor, with the advice and consent of the Puerto Rican Senate; appointment of the Secretary of State also requires the consent of the House of Representatives. It should be noted that with the establishment of the Commonwealth neither the President nor the United States Senate participates in any way in the appointment of any official of the government of the Commonwealth.

16. The Legislative Assembly, which is elected by free, universal and secret suffrage of the people of Puerto Rico, has full legislative authority in respect to local matters. The Commonwealth has the power to impose and collect taxes, and to contract debts. Acts of the Legislative Assembly become law upon approval of the Governor, or,

in the event that an act is vetoed by the Governor, upon its reenactment by two-thirds of the total number of members of which each house is composed. The President may no longer prevent a bill repassed over the Governor's veto from becoming law by disapproving it. The protection of a bill of rights is extended to persons in Puerto Rico. All public officials must take an oath to support the Constitution of the United States and the Constitution and laws of the Commonwealth. Amendments to the Constitution may be proposed by the Legislative Assembly, and will be voted on at a referendum, becoming effective if ratified by a majority of the electors voting thereon. The Constitution does not restrict the substance of future amendments, except to provide that they shall be consistent with the act approving the Constitution, with the applicable provisions of the Federal Constitution with the Puerto Rican Federal Relations Act, and with the act of Congress authorizing the drafting and adoption of a Constitution.

17. The judiciary of the Commonwealth is independent under the Constitution. The justices of the Supreme Court are no longer appointed by the President but are appointed by the Governor with the advice and consent of the Senate of Puerto Rico. Justices hold office during good behavior and may be removed, after impeachment, for causes specified in the Constitution. The number of justices may be increased only by law at the request of the court itself. No judge may make a direct or indirect financial contribution to any political organization or party, or hold any elective office therein, or participate in any political campaign or be a candidate for elective office unless he has resigned his judicial office at least six months prior to his nomination. Although judgments of the Supreme Court of Puerto Rico may be appealed to the United States Court of Appeals, decisions of the United States Supreme Court have established that the Supreme Court of Puerto Rico is the final authority on the meaning of a Puerto Rican law and that its decision interpreting such a law may not be reversed unless the interpretation is "inescapably wrong" and the decision "patently erroneous"; it is not sufficient to justify reversal that the Federal Court merely disagree with the Puerto Rican Supreme Court's interpretation. There continues to be a Federal District Court in Puerto Rico, but its jurisdiction does not differ from the jurisdiction of Federal District Courts functioning within the boundaries of States.

18. Under the Constitution, there is full and effective participation of the population of Puerto Rico in the Government of Puerto Rico. Article II, section 1, provides that no discrimination shall be made on account of race, color, sex, birth, social origin or condition, or political



or religious ideas and requires the laws to embody these principles. Puerto Rico is divided by the Constitution into senatorial and representative districts for purposes of electing members of the Legislative Assembly, and provision is also made for election of senators and representatives elected at large. By a special procedure established by Article III of the Constitution, minority parties are assured of representation which recognizes their island-wide voting strength. Elections will be held every four years.

19. Article II, section 2, requires that the laws shall guarantee the expression of the will of the people by means of equal, direct, and secret universal suffrage and shall protect the citizen against any coercion in the exercise of the electoral franchise. Article VI, section 4, provides that every person over twenty-one years of age shall be entitled to vote if he fulfills the other conditions determined by law and prohibits depriving a person of the right to vote because he does not know how to read or write or does not own property.

#### PRESENT STATUS OF PUERTO RICO

20. The people of Puerto Rico continue to be citizens of the United States as well as of Puerto Rico and the fundamental provisions of the Constitution of the United States continue to be applicable to Puerto Rico. Puerto Rico will continue to be represented in Washington by a Resident Commissioner whose functions are not altered by the establishment of the Commonwealth. Matters of foreign relations and national defence will continue to be conducted by the United States, as is the case with the States of the Union.

21. At the request of the people of Puerto Rico and with the approval of the Government of the United States, Puerto Rico has voluntarily entered into the relationship with the United States which it has chosen to describe as a "commonwealth" relationship. The term "commonwealth" was adopted by Puerto Rico as the official English designation of the body politic created by the Constitution (the official Spanish title is "estado libre asociado"), to define the status of that body as "a state which is free of superior authority in the management of its own local affairs but which is linked to the United States of America and hence is a part of its political system in a manner compatible with its Federal structure", and which "does not have an independent and separate existence" (Resolution No. 22 of the Constitutional Convention). By the various actions taken by the Congress and the people of Puerto Rico, Congress has agreed that Puerto Rico shall have, under that Constitution, freedom from control or interference by the Congress in respect of internal government and adminis-

tration, subject only to compliance with applicable provisions of the Federal Constitution, the Puerto Rican Federal Relations Act and the acts of Congress authorizing and approving the Constitution, as may be interpreted by judicial decision. Those laws which directed or authorized interference with matters of local government by the Federal Government have been repealed.

22. In Hawaii, Alaska, Guam and the Virgin Islands of the United States the chief executive is appointed by the President with the advice and consent of the Senate, not popularly elected by the people; the executive officer immediately subordinate to the Governor is appointed by the President, either alone or with the advice and consent of the Senate, but not by the Governor; and judges of the highest courts exercising local jurisdiction are appointed by the President with the advice and consent of the Senate, not by the Governor. This is so provided by their respective organic acts as enacted by the Congress. This is not the case with respect to Puerto Rico. The people of Puerto Rico will participate effectively in their government through universal, secret and equal suffrage, in free and periodic elections in which differing political parties offer candidates, and which are assured freedom from undemocratic practices by the Constitution itself. These elections will be conducted in the future, as they have been in the past, without interference by the United States. The people of Puerto Rico have complete autonomy in internal economic matters and in cultural and social affairs under a Constitution adopted by them and approved by the Congress.

23. Under the Puerto Rican Federal Relations Act, there will still be free trade with the United States, only United States coins and currency will be legal tender in Puerto Rico, and the statutory laws of the United States not locally inapplicable will, with some exceptions, have the same force and effect in Puerto Rico as in the United States. United States internal revenue laws do not apply in Puerto Rico, and the people of Puerto Rico will continue to be exempt from Federal income taxes on the income they derive from sources within Puerto Rico. The proceeds of United States excise taxes collected on articles produced in Puerto Rico and shipped to the United States and the proceeds of customs collected on foreign merchandise entering Puerto Rico are covered into the Treasury of Puerto Rico for appropriation and expenditure as the legislature of the Commonwealth may decide.

24. The final declaration of the Constitutional Convention of Puerto Rico (Resolution No. 23), expresses the views of the people of Puerto Rico as to the status they have now achieved.

"When this Constitution takes effect, the people of Puerto Rico shall thereupon be organized into a commonwealth established within the terms of the compact entered into by mutual consent, which is the basis of our union with the United States of America.

"Thus we attain the goal of complete self-government, the last vestiges of colonialism having disappeared in the principle of Compact, and we enter into an era of new developments in democratic civilization."

#### CONCLUSION

25. The United States Government, therefore, has decided that, with the entry into force on July 25, 1952, of the new constitutional arrangements establishing the Commonwealth of Puerto Rico, it is no longer appropriate for the United States to continue to transmit information to the United Nations on Puerto Rico under Article 73(e) of the Charter. This conclusion constitutes a recognition of the full measure of self-government which has been achieved by the people of Puerto Rico.

APPENDIX B  
Resolution 2, Legislature of Puerto Rico, January 23, 1997.

(House Concurrent Resolution 2)  
CONCURRENT RESOLUTION

To request of the One Hundred Fifth Congress and the President of the United States of America to respond to the democratic aspirations of the American citizens of Puerto Rico, in order to achieve a process that guarantees the prompt decolonization of Puerto Rico by means of a plebiscite sponsored by the Federal Government, which must be held no later than 1998.

STATEMENT OF MOTIVES

As the present century draws to a close and a new millennium full of hope is about to begin, men of good will must act affirmatively to leave any colonial vestige behind them.

The United States of America has contributed to fundamental changes towards democracy and full participation in political processes in other countries, thus asserting the universal principles of human rights.

Just as the United States has successfully promoted democratic values in the international sphere, it is now appropriate for that nation to attend to the claims for full political participation of the 3.75 million American citizens of Puerto Rico.

On November 14, 1993, the Government of Puerto Rico supported a plebiscite on Puerto Rico's status. Three different political options were submitted to the People: Statehood, represented by the New Progressive Party; Independence, represented by the Puerto Rican Independence Party; and Commonwealth, represented by the Popular Democratic Party. This last option, redefined by its advocates, is based on a bilateral pact that cannot be revoked or amended unilaterally by Congress. It had the following essential elements: first, parity of founding with the states in federal assistance programs; second, tax exemption within the scope of the former Section 936 of the United States Internal Revenue Code, since repealed; and third, the power of the Commonwealth to impose tariffs on agricultural products imported into Puerto Rico. The Commonwealth option obtained 48.2% of the votes cast in the 1993 plebiscite, while Statehood obtained 46% and Independence, 4%. In a prior plebiscite, convoked by the Government of Puerto Rico in 1967, Commonwealth had obtained 60% of the votes, while Statehood obtained 37.8%.

On December 14, 1994, the Legislative Assembly of Puerto Rico approved Concurrent Resolution No. 62. By means of this Resolution, Congress was asked to state its opinion on the redefinition of Commonwealth mentioned above. If the elements of that redefinition were deemed not to be viable, Congress was requested to inform the people of Puerto Rico about which status options it would be willing to consider in order to resolve our colonial problem, and what procedural steps should be taken to this effect.

On February 29, 1996, the leaders of the United States House of Representatives Committee on Resources of the One Hundred Fourth Congress and its Subcommittee on Insular and Native American Affairs, together with the House Committee on International Relations and its Subcommittee on the Western Hemisphere, answered the People and the Legislative Assembly of Puerto Rico by means of a Statement of Principles, indicating the unfeasibility of accepting the redefinition of Commonwealth submitted in the 1993 plebiscite. These same Congressional leaders also expressed their interest in promoting Federal legislation so that the One Hundred Fourth Congress could expedite the steps to be followed in resolving the status problem of Puerto Rico. They fulfilled their pledge by submitting H.R. 3024 and S.R. 2019 with bipartisan support, for the purpose of responding to Concurrent Resolution No. 62, approved in 1994 by the Legislative Assembly of Puerto Rico.

On June 28, 1996 four Congressmen who are members of the Minority Delegation of the House of Representatives of the United States also responded to Concurrent Resolution No. 62, through a letter in which they stated that "it is clear that Puerto Rico remains a non-incorporated territory that is subject to the authority of Congress under the Territorial Clause. . .", thus upholding the conclusions set forth in the February 29, 1996 letter, mentioned above.

Barely a month later, on July 11, 1996, eleven Congressmen belonging to the Minority Delegation of the House of Representatives of the United States sent a letter to the Minority Leader of the House, stating their total support of H.R. 3024, which had been presented to that body in response to Concurrent Resolution No. 62.

The Subcommittee on Insular and Native American Affairs of the United States House of Representatives, exercised primary jurisdiction over the matters set forth in Concurrent Resolution No. 62. While studying and approving H.R. 3024 on June 12, 1996, the Subcommittee considered proposals—rejected until then—for the adoption of the redefinition of Commonwealth, either as included in the 1993 plebiscite ballot or, as an alternative, the non binding and never-adopted definition presented in a 1990 legislative report to the United States House of Representatives on the status of Puerto Rico. Both proposals on Commonwealth were overwhelmingly defeated in votes of ten to one for the first, and eight to one, for the second.

On June 26, 1996, the House Committee on Rules adopted House Report 104-713, Part 2, which endorsed well-founded provisions for the purpose of facilitating congressional consideration of the measures that responded to the results of the self-determination process, as contemplated in H. R. 3024, which set forth a 3-stage decision-making process, with periodic referenda in the event of an inconclusive result in any of the stages.

We recognize that substantial progress was achieved during the One Hundred Fourth Congress in establishing a federal policy to promote the decolonization of Puerto Rico. But today, at the commencement of the work of the One Hundred Fifth Congress, the reality of the situation is that after almost a century during which Puerto Rico has been under the sovereignty of the United States, the Federal Government has never approved or implemented specific measures geared to promoting a process in a conclusive, binding manner, by which the American citizens of Puerto Rico may democratically express their wishes regarding their final political status.

We also recognize that even though important votes on the political status in Puerto Rico were carried out in 1967 and 1993 under the auspices of the Government of Puerto Rico, other voting events will be required in order to resolve the status question once and for all; and that Congress has still not defined the interests and responsibilities of the Federal Government regarding that process.

The need to resolve Puerto Rico's political status persists. It must be carried out by means of an effective and enlightened process, whose legitimacy is acceptable to Congress, acting in the exercise of the sovereignty of the United States over Puerto Rico, pursuant to the full powers granted under the Territorial Clause of the Constitution of the United States, Article IV, Section 3, Clause 2 and which enables the People of Puerto Rico to achieve a sovereign political status through realistic and decolonizing alternatives.

Following the plebiscites carried out by local initiative in 1967 and 1993 and the corresponding results, the Congress of the United States has refused to accept and implement as permanent and binding the definition of Commonwealth that was presented to the voters in 1993. As a result, we must establish a process based on options defined in such a way that both Congress and the American citizens of Puerto Rico recognize that a choice based upon perpetuating the lack of political suffrage and the subordination to the plenary powers of Congress under the Territorial Clause does not represent the best interests of the residents of Puerto Rico nor the rest of the United States.

The final, permanent status of Puerto Rico should be consistent with the democratic principles of freedom, human rights and the goals of political, economic and social development that constitute the legacy of a century in which the political status of Puerto Rico has evolved within the flexibility allowed under the American constitutional framework. Although historical forces have caused the ongoing evolution of Puerto Rico towards self-determination to be delayed at sometimes and accelerated at others, now is the time to take the final step. This historic moment requires the adoption of measures that are carefully pondered yet decisive, in order to solve the political status of Puerto Rico by the beginning of a new century and a new millennium.

In 1998 Puerto Rico must not complete one hundred years of colonialism under the American flag without at least being in an irreversible, inevitable process of decolonization.

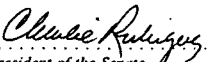
*BE IT RESOLVED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:*

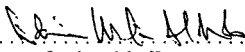
Section 1.-To request of the One Hundred Fifth Congress and the President of the United States of America to respond to the democratic aspirations of the American citizens of Puerto Rico, in order to achieve a means of guaranteeing the prompt decolonization of Puerto Rico through a plebiscite sponsored by the Federal Government, to be held no later than 1998.

Section 2.-It is hereby ordered that this Concurrent Resolution be delivered to all members of the Congress of the United States of America, to the President, the Hon. William J. Clinton, and to the Secretary General of the United Nations.

Section 3.-The Speaker of the House of Representatives and the President of the Senate of Puerto Rico are hereby authorized to designate a Special Joint Committee made up of legislators from the three political parties of Puerto Rico, for the sole purpose of personally delivering the text of this Concurrent Resolution to the Speaker of the House Representatives and the President Pro-Tempore and the Majority Leader of the Senate, and to the leaders of the Minority delegations of the Congress.

Section 4.-This Concurrent Resolution shall take effect immediately after its approval.

  
 President of the Senate  
 Charlie Rodriguez

  
 Speaker of the House  
 Edison Misla-Aldarondo

(Approved January 23, 1997)



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 104<sup>th</sup> CONGRESS, SECOND SESSION

Vol. 142

WASHINGTON, MONDAY, SEPTEMBER 30, 1996

No. 138

## House of Representatives

### THE UPDATED UNITED STATES- PUERTO RICO POLITICAL STA- TUS ACT

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Saturday, September 28, 1996

Mr. YOUNG of Alaska. Mr. Speaker, today I am introducing the updated United States-Puerto Rico Political Status Act, H.R. 4281, which contains provisions regarding the role of language in Federal and local law as developed in consultation with the Republican Policy Committee during our deliberations on H.R. 3024 regarding English.

I want to thank Members of the House Leadership, including key chairmen from various committees, for contributing their time and energy at this hectic point of the Congress in forging a consensus regarding the need for the Congress to consider this important measure affecting the people of Puerto Rico. I particularly want to commend Mr. CHRISTOPHER COX, Chairman of that Committee, for bringing to bear his considerable expertise and providing intellectual leadership in seeking the kind of compromise that could and should have been reached.

It was just yesterday, on Friday, September 27, that I introduced H.R. 4228, a version of the United States-Puerto Rico Political Status Act with proposed revisions we had hoped would provide a basis for final agreement on this legislation. It was expected that we then would take the revised bill to the floor of the House for a vote in the form of an amended H.R. 3024: the original bill providing for resolution of Puerto Rico's status through a Congressionally prescribed process of self-determination.

Although overwhelming approval of H.R. 3024 by the House was at hand, key sponsors of H.R. 3024 were not willing to go to the floor and ask for its approval without making a one-word change that would have brought the proposed revisions within the boundaries of limited government, rule of law and constitutionality. I had agreed to include the amendments as proposed in H.R. 4228 in order to move the process forward and try to resolve differences about the bill, and I stood by that commitment. But it became clear that unless there was a correction of one word the bill would not meet the most minimal test of constitutionality, and many of the bill's strongest supporters felt that was an unacceptable way to proceed.

To be specific, Section 4(b)(C)(7) of the amendments as proposed would impose a requirement that English be the exclusive language of instruction in public schools in Puerto Rico should it become a state. Although the Congressional Research Service had provided a written legal opinion to the author of this provision on July 31, 1996, concluding on the basis of *Coyle v. Smith* (221 U.S. 559) that this provision would not withstand even the lowest standard of constitutional scrutiny, its inclusion was resisted upon.

The commitment of the 104th Congress to

English as our national language could have been carried out in the context of self-determination for Puerto Rico by simply changing the word "the" in the last sentence of Section 4(a)(C)(7) to the word "a," which would have been consistent with the use of the word "an" instead of "the" in the preceding sentence. This imprecision and inconsistency, coupled with the failure to address a valid constitutional question, led to inability of several Members to concur in the process that would have been required to bring the matter before the House.

The sponsors of this bill had wanted to see it approved by the House prior to the adjournment of the 104th Congress because we felt that we had a commitment to do all within our means to implement the principles set forth in a February 29, 1996, response to Legislature of Puerto Rico Resolution 62 of November 14, 1994, asking the 104th Congress to establish constitutionally valid political status definitions for Puerto Rico. However, the desire to get our work done in a timely way, out of respect for the elected legislature in Puerto Rico and commitment to resolution of the status of 3.7 million U.S. citizens, was not seen by key Members as sufficient cause to ignore a constitutional flaw in the language, especially one that so easily and reasonably could have been corrected.

I believe in limits on Federal power, and I believe in the 10th Amendment reservation of rights to the States and to the people. I took an oath of office to uphold the Constitution, to protect and defend it, and while I was willing to introduce H.R. 4228 as I agreed to do in order to move this bill forward through the process, it was not acceptable to the sponsors of the bill to knowingly ignore a constitutional infirmity.

I am as ready as anyone to vote for a law that I believe to be constitutional even though I know it will be tested and may be struck down as a result of judicial review. That is how our constitutional system works. But that is not what this problem was all about. Here we were faced with a proposal to impose on the U.S. citizens of Puerto Rico, should they choose and should Congress grant admission to the union, a requirement that Congress has never imposed on any other State.

Making clear the determination and commitment of Congress regarding English as the official language of the Federal government in Puerto Rico should it become a State, and regarding continuation of the current law in Puerto Rico making English an official language, is something we could have worked out as the legislation moved forward. Those provisions were acceptable at this stage and could have been refined. But the imposition of a Federal requirement that violates the 10th Amendment and would discriminate against U.S. citizens in a future State of Puerto Rico has an almost coercive or even punitive dimension that should not be part of a democratic self-determination process.

It is bad enough that U.S. citizens residing in Puerto Rico do not have equal rights under the current territorial clause status. To suggest

that inequality would continue if Congress admits Puerto Rico as a State is something to which the sponsors of this legislation would not be a party. With statehood comes equal protection and due process rights which Congress cannot take away, and the proposal to deny a future State of those rights knowing that such denial is constitutionally impermissible can only have the effect of confusing rather than clarifying the choices before Congress and the voters in the territory.

Ironically, the provision imposing English language as the exclusive language of public instruction would be constitutionally plausible if it were imposed on the Commonwealth of Puerto Rico in an exercise of the territorial clause of Congress at the present time. Only as a State or a separate nation will Puerto Rico be constitutionally protected from the degree of Congressional discretion that exists under our Constitution with respect to unincorporated territories such as Puerto Rico. A constitutionally guaranteed status subject to the same limitations on Federal powers as other States enjoy, or a status governed by the law of nations and treaties between sovereign countries, are the options that would enable the people of Puerto Rico to protect and preserve their language and their culture.

Only the current status leaves the residents of Puerto Rico, with their current less than equal statutory citizenship rights and impermanent political status, vulnerable to the broad discretion of a future Congress, which will not be bound legally or politically by whatever status arrangement may exist today. These are the realities that need to be understood so that informed self-determination can take place.

Misinforming the people in Puerto Rico that, in the event of statehood, Congress could do something that we know it cannot do in a State would impede rather than advance the goal of free and informed self-determination. That is why one word, not even a noun or verb, was too important for the sponsors of this bill to ignore.

The bill I am introducing today, H.R. 4281, contains a new Section 3(b), a new Section 4(a)(C)(7), and a new Section 4(b)(1)(C) that will be referred to as we develop legislation to be introduced in the 105th Congress which will address the issue of English as an official language in a manner that supports rather than undermines the process for free and informed self-determination under the United States-Puerto Rico Political Status Act when it becomes law.

## APPENDIX D

Letter of March 3, 1997, inviting submission of status definitions by local political parties in Puerto Rico.

ONE HUNDRED NINETY CONGRESS

DON YOUNG, ALASKA, CHAIRMAN  
W.J. BRYANT, LOUISIANA  
JAMES V. HANSEN, UTAH  
JIM BAYTON, NEW JERSEY  
ELTON GALLOP, CALIFORNIA  
JOHN J. DUNGAN, JR., TENNESSEE  
JOEL HEPLEY, COLORADO  
JOHN T. DODDLETT, CALIFORNIA  
WAYNE T. GILCHRIST, MARYLAND  
KEN CALVERT, CALIFORNIA  
RICHARD W. POMBO, CALIFORNIA  
BARBARA CLIVER, WYOMING  
HELEN CHEWNETT, IDAHO  
LINDA SMITH, WASHINGTON  
GEORGE F. RADANOVICH, CALIFORNIA  
WALTER E. JONES, JR., NORTH CAROLINA  
WILLIAM H. BRACY THORNBERRY, TEXAS  
JOHN E. BRIDEN, NEVADA  
ROBERT F. SMITH, OREGON  
CHRIS CANNON, UTAH  
KEVIN BRADY, TEXAS  
JOHN PETERSON, PENNSYLVANIA  
ROCK HILL, MONTANA  
BOB SCHUPPEL, COLORADO  
JIM GIBSON, NEVADA  
MICHAEL D. CRAPO, IDAHO

**U.S. House of Representatives**  
**Committee on Resources**  
**Washington, DC 20515**

March 3, 1997

GEORGE MILLER, CALIFORNIA  
RANKING DEMOCRATIC MEMBER  
EDWARD J. MARKEY, MASSACHUSETTS  
RICK J. RAHALL, JR., WEST VIRGINIA  
BRUCE F. VENTO, MINNESOTA  
DALE E. HELDE, MICHIGAN  
PETER A. DEFAZZO, OREGON  
DREW F. SALSOMARASCA, AMERICAN SAMOA  
NEIL ABERCROMBIE, HAWAII  
SULLIVAN F. ORTEGUEZA, TEXAS  
OWEN B. PICKETT, VIRGINIA  
FRANK PALLONE, JR., NEW JERSEY  
CALVIN H. COOLEY, CALIFORNIA  
CARLOS A. ROMERO-BARCELÓ, PUERTO RICO  
MAURICE D. HINCHY, NEW YORK  
ROBERT A. UNDERWOOD, GUAM  
SAM FARR, CALIFORNIA  
PATRICK J. KEHNEY, RHODE ISLAND  
ADAM SMITH, WASHINGTON  
WILLIAM D. DELAHUNT, MASSACHUSETTS  
CHRIS JOHN, LOUISIANA  
DONNA CHRISTIAN-GREEN, VIRGIN ISLANDS  
NOCK LAMPSON, TEXAS  
RON KIND, WISCONSIN

LYDDA A. JONES  
CHIEF OF STAFF  
ELIZABETH HEGGINSOHN  
CHIEF COUNSEL  
JOHN LAWRENCE  
DEMOCRATIC STAFF DIRECTOR

Dr. Pedro Rosselló  
President of the New Progressive Party  
PO Box 1992  
San Juan, Puerto Rico 00910

Dear President Rosselló:

On February 27, 1997, the "United States-Puerto Rico Political Status Act" was introduced in the House of Representatives, the text being identical to H.R. 4281, as introduced on September 28, 1996. During the next several weeks, the House Committee on Resources will hold hearings to solicit comments and testimony on the provisions of the bill from interested parties.

A critical aspect of this legislation are the definitions of the status options to be placed on the ballot and Congress is ultimately responsible for crafting the definition which will be contained in the bill. There is no purpose in presenting to the people of Puerto Rico a status definition which does not represent an option that the Congress will be willing to ratify should it be approved in a plebiscite.

As the president of one of the three major political parties in Puerto Rico, we request that you submit to the Committee on Resources the definition which you believe would be most appropriate for the status option you support. We assure you that your specific definition regarding your status preference will be presented to all of the Committee Members for consideration at the time of mark-up, and will include a vote by the Committee if that is your desire. In order for the Committee deliberations to proceed in a timely manner, all definitions must be received by the Committee by Monday, March 31, 1997.

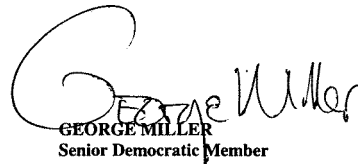
During this same period, the three political parties will be invited to appear before the Committee at the first hearing of the Committee in Washington, on March 19, 1997, to present their views on all sections of the bill, including the various procedural and operational aspects of the proposed referendum and status preference. However, as stated above, your specific legislative status definition for the subsequent markup may be submitted up to the end of March.

You will receive a separate letter regarding the hearing and the submission of a statement. As also announced, subsequent hearings in San Juan and Mayaguez in April will permit others in Puerto Rico to express their views regarding their preferred relationship with the United States.

If you have any questions regarding this invitation, please do not hesitate to contact us personally or T.E. Manase Mansur of the Majority staff at (202) 226-7400 or Marie Howard Fabrizio of the Democratic staff at (202) 226-2311. We look forward to your participation and to enactment of a fair and definitive bill concerning Puerto Rico's future status this year.

Sincerely,

  
DON YOUNG  
Chairman

  
GEORGE MILLER  
Senior Democratic Member



## APPENDIX D

Letter of March 3, 1997, inviting submission of status definitions by local political parties in Puerto Rico.

## ONE HUNDRED FIFTH CONGRESS

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**U.S. House of Representatives**  
**Committee on Resources**  
 Washington, DC 20515

March 3, 1997

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 RICK LAMPEA, TEXAS  
 RON KING, WISCONSIN

LLOYD A. JONES  
 CHIEF OF STAFF  
 ELIZABETH MEGGINSON  
 CHIEF COUNSEL  
 JOHN LAURINCE  
 DEMOCRATIC STAFF DIRECTOR

The Honorable Ruben Berrios-Martinez  
 President of the Puerto Rico Independence Party  
 PO Box 3434  
 San Juan, Puerto Rico 00901

Dear President Berrios-Martinez:

On February 27, 1997, the "United States-Puerto Rico Political Status Act" was introduced in the House of Representatives, the text being identical to H.R. 4281, as introduced on September 28, 1996. During the next several weeks, the House Committee on Resources will hold hearings to solicit comments and testimony on the provisions of the bill from interested parties.

A critical aspect of this legislation are the definitions of the status options to be placed on the ballot and Congress is ultimately responsible for crafting the definition which will be contained in the bill. There is no purpose in presenting to the people of Puerto Rico a status definition which does not represent an option that the Congress will be willing to ratify should it be approved in a plebiscite.

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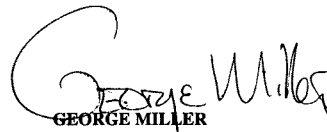
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DON YOUNG  
Chairman

  
GEORGE MILLER  
Senior Democratic Member

A-1: ENDIX D

Letter of March 3, 1997, inviting submission of status definitions by local political parties in Puerto Rico.

**ONE HUNDRED FIFTH CONGRESS**

DON YOUNG, ALASKA, CHAIRMAN  
 W.J. BILLY TAUZIN, LOUISIANA  
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 RICHARD W. POMBO, CALIFORNIA  
 BARBARA CUBIN, INDIANA  
 HELEN CHENOWETH, IDAHO  
 LINDA SMITH, WASHINGTON  
 GEORGE P. RADANOVICH, CALIFORNIA  
 WALTER B. JONES, JR., NORTH CAROLINA  
 WILLIAM M. MARC THORNBERRY, TEXAS  
 JOHN E. BRADEN, NEVADA  
 ROBERT F. SMITH, OREGON  
 CHRIS CANNON, UTAH  
 KEVIN BRADY, TEXAS  
 JOHN PETERSON, PENNSYLVANIA  
 RICK HILL, MONTANA  
 BOB SCHAFER, COLORADO  
 JIM GIBBONS, NEVADA  
 MICHAEL D. CRAPO, IDAHO

**U.S. House of Representatives**  
**Committee on Resources**  
 Washington, DC 20515

March 3, 1997

GEORGE MILLER, CALIFORNIA  
 RANKING DEMOCRATIC MEMBER  
 EDWARD J. MARKEY, MASSACHUSETTS  
 NICK F. RAHALLI, WEST VIRGINIA  
 BRUCE F. VENTO, MINNESOTA  
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 ERIC P. FALCHOWSKI, AMERICAN SAMOA  
 NELA ABERCROMBIE, HAWAII  
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 CALVIN M. DOOLY, CALIFORNIA  
 CARLOS A. ROMERO MARCELO, PUERTO RICO  
 MAURICE D. HINGNEY, NEW YORK  
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 DONNA CHRISTIAN-GREEN, VIRGIN ISLANDS  
 NICK LAMSON, TEXAS  
 RON KNO, WISCONSIN

LOYD A. JONES  
 CHIEF OF STAFF  
 ELIZABETH MEGGINSON  
 CHIEF COUNSEL  
 JOHN LAWRENCE  
 DEMOCRATIC STAFF DIRECTOR

The Honorable Anibal Acevedo Vilá  
 President of the Popular Democratic Party  
 PO Box 4355  
 San Juan, Puerto Rico 00902

Dear President Vilá:

On February 27, 1997, the "United States-Puerto Rico Political Status Act" was introduced in the House of Representatives, the text being identical to H.R. 4281, as introduced on September 28, 1996. During the next several weeks, the House Committee on Resources will hold hearings to solicit comments and testimony on the provisions of the bill from interested parties.

A critical aspect of this legislation are the definitions of the status options to be placed on the ballot and Congress is ultimately responsible for crafting the definition which will be contained in the bill. There is no purpose in presenting to the people of Puerto Rico a status definition which does not represent an option that the Congress will be willing to ratify should it be approved in a plebiscite.

As the president of one of the three major political parties in Puerto Rico, we request that you submit to the Committee on Resources the definition which you believe would be most appropriate for the status option you support. We assure you that your specific definition regarding your status preference will be presented to all of the Committee Members for consideration at the time of mark-up, and will include a vote by the Committee if that is your desire. In order for the Committee deliberations to proceed in a timely manner, all definitions must be received by the Committee by Monday, March 31, 1997.

During this same period, the three political parties will be invited to appear before the Committee at the first hearing of the Committee in Washington, on March 19, 1997, to present their views on all sections of the bill, including the various procedural and operational aspects of the proposed referendum and status preference. However, as stated above, your specific legislative status definition for the subsequent markup may be submitted up to the end of March.

You will receive a separate letter regarding the hearing and the submission of a statement. As also announced, subsequent hearings in San Juan and Mayaguez in April will permit others in Puerto Rico to express their views regarding their preferred relationship with the United States.

If you have any questions regarding this invitation, please do not hesitate to contact us personally or T.E. Manase Mansur of the Majority staff at (202) 226-7400 or Marie Howard Fabrizio of the Democratic staff at (202) 226-2311. We look forward to your participation and to enactment of a fair and definitive bill concerning Puerto Rico's future status this year.

Sincerely,

  
DON YOUNG  
Chairman

  
GEORGE MILLER  
Senior Democratic Member

APPENDIX E  
Status definitions submitted by local political parties in Puerto Rico.



Dr. Pedro Rosselló  
Presidente

**Partido Nuevo Progresista**

March 25, 1997

The Honorable Don Young, M.C.  
Chairman  
Committee on Resources  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the gracious hospitality extended to those of us who participated in your Committee's Washington, D.C. hearing on March 19. We shall look forward to welcoming you and your colleagues to Puerto Rico when the Committee's hearings on H.R. 856 resume here next month.

By this means, I am pleased to respond to the request contained in the letter of March 3 which you signed jointly with Congressman George Miller, Ranking Democratic Member of the Resources Committee.

On behalf of the New Progressive Party [NPP], I hereby affirm that **the NPP officially endorses the seven-point definition of statehood that is contained in the *United States-Puerto Rico Political Status Act*** as introduced last month in the U.S. House of Representatives. Having thoroughly studied the wording of said definition, taking into account the exhaustive research and seriousness of purpose that informed its elaboration, we conclude that no major modifications of the definition are necessary and that to propose minor modifications might serve only to impede the expeditious process that I advocated in my statement to the Committee on March 19. We understand that, under the definition that would appear in the referendum ballot, under statehood, as contained in H.R. 856, Puerto Rico would enter the Union on an equal footing with all of the other 50 states, consistent with the 10th Amendment of the U.S. Constitution.

With appreciation and kindest best wishes.

Sincerely,

Pedro Rosselló  
President, New Progressive Party

c: Hon. George Miller, M.C.

P. O. Box 1992 Fernández Juncos Station, San Juan, P.R. 00910 • Tel. 721-1996

APPENDIX E  
Status definitions submitted by local political parties in Puerto Rico.

**PARTIDO INDEPENDENTISTA PUERTORRIQUEÑO**

March 31, 1997

The Hon. Don Young  
Chairman  
Resources Committee  
U.S. House of Representatives  
Washington, D.C.

Dear Congressman Young:

Enclosed you will find the Puerto Rican Independence Party's proposal for the definition of the Independence alternative as a modality of Puerto Rican Sovereignty (as we propose that the bill read instead of "separate sovereignty"), in H.R. 856.

Parts (1), (2), and (3) are straightforward declarations as to the nature of independence and its inherent legal consequences.

Part (4) recognizes individually vested rights, whether statutory or constitutional in origin.

Part (5) formulates the legal vehicle which would structure the relations between both nations after independence and elicits from the present Congress a policy statement as to crucial economic, trade, and free transit issues which would necessarily have to be included in any agreement leading to independence. After almost one hundred years of colonial relationship as an unincorporated territory, the withdrawal of U.S. sovereignty over Puerto Rico must take into account the economic and social realities created by U.S. policies. These policies are principally responsible for the presence of more than two million Puerto Ricans in the United States (including a very substantial transient population), and for an economic structure integrated into the U.S. market and chronically dependent on U.S. transfer payments. Our proposal takes these realities into account.

PUERTO RICO 00920-9990



The Hon. Don Young, Chairman  
March 31, 1997  
Page 2

Finally, as regards the last clause of Part (5), I wish to underscore that in any negotiation concerning the future status of U.S. armed forces in Puerto Rico, we shall continue to have as our objective the full demilitarization of Puerto Rico which, in the aftermath of the Cold War, will also serve to promote U.S. interests, regional harmony, and international understanding.

Needless to say, our proposal is couched in a style of legislative language that is open to modification and improvement so long as the fundamental objectives are met. We look forward to working with you and your staff in order to achieve a bill that will fulfill the obligation to decolonize Puerto Rico.

Cordially yours,



Senator Rubén Berríos Martínez  
President  
Puerto Rican Independence Party

cc: The Hon. George Miller  
Ranking Minority Member  
Resources Committee  
U.S. House of Representatives  
Washington, D.C.

**PARTIDO INDEPENDENTISTA PUERTORRIQUEÑO**

**Puerto Rican Sovereignty**

**B(1) In the case of Independence:**

(1) Puerto Rico is a sovereign Republic which in the exercise of its inalienable right to independence and self determination has complete authority and responsibility over its territory and population under a Constitution democratically adopted by the People of Puerto Rico providing for a republican form of government and the full protection of human rights, and subject only to the approval of the People of Puerto Rico.

(2) The Republic of Puerto Rico becomes an equal member of the community of nations vested with the full range of powers and prerogatives which are recognized to all independent states by the law of nations, including: the power to establish fiscal, monetary, immigration and international trade policy, as well as the choice of currency; the right to enter into treaties, including economic, commercial, and tax treaties; to establish relations with other nations; and to participate in international organizations.

(3) The people of Puerto Rico shall be citizens of the Republic of Puerto Rico.

(4) The rights of individuals in Puerto Rico to benefits acquired by virtue of services rendered or contributions made to the United States shall be honored by the United States.

(5) A Treaty of Friendship and Cooperation defines future relations between Puerto Rico and the United States in matters of mutual interest pursuant to their respective constitutional processes, and with respect to which the Congress hereby expresses its support for the following principles: an economic transition period, including a Development Fund financed by annual payments based on the present level of Federal spending in Puerto Rico; free trade between both nations; free transit of Puerto Rican and U.S. citizens between both nations; and the demilitarization of Puerto Rico.

NUEVO, PUERTO RICO 00920-9990





**Popular Democratic Party**

Aníbal Acevedo Vilá, Esq.

PRESIDENT

Box 9065788, San Juan, Puerto Rico, 00906-5788  
(787) 721-2000 • 725-7234/4270 • FAX: 724-2964

April 9, 1997

Don Young  
Chairman  
Committee on Resources  
2331 Rayburn House Office Building  
Washington, D.C. 20515-0201

Dear Chairman Young:

During my testimony to the Resources Committee on the March 19, 1997 hearings on H.R. 356, I presented the Popular Democratic Party's definition of the Commonwealth status, 13 days before the March 31 deadline.

Even though the definition was fully spelled out then, it has been brought to my attention that, as a formality, an additional letter is requested by the Committee to conform to the formal request. Hence, the following is the definition of commonwealth that you requested:

The new Commonwealth of Puerto Rico would be joined in a union with the United States that would be permanent and the relationship could only be altered by mutual consent. Under a compact, the Commonwealth would be an autonomous body politic with its own character and culture, not incorporated into the United States, and sovereign over matters covered by the Constitution of Puerto Rico, consistent with the Constitution of the United States.

The United States citizenship of persons born in Puerto Rico would be guaranteed and secured as provided by the Fifth Amendment of the Constitution of the United States and equal to that of citizens born in the several states. The individual rights, privileges and immunities provided for by the Constitution of the United States would apply to residents of Puerto


Don Young  
Page 2  
April 9, 1997

Rico. Residents of Puerto Rico would be entitled to receive benefits under Federal Social Programs equally with residents of the several States contingent on equitable contributions from Puerto Rico as provided by law.

To enable Puerto Rico to arrive at full self-government over matters necessary to its economic, social, and cultural development under its constitution, a Special Constitutional Convention would submit proposals for the entry of Puerto Rico into international agreements and the exemption of Puerto Rico from specific Federal laws or provisions thereof. The President and the Congress, as appropriate, would consider whether such proposals would be consistent with the vital national interests of the United States in the transition plan provided for in Section 4 of this Act. The Commonwealth would assume any expenses related to increased responsibilities resulting from these proposals.

Do not hesitate to call me should you have any questions. I look forward to seeing you in Puerto Rico on April 19th.

Sincerely,



**ANIBAL ACEVEDO VILÁ**

APPENDIX F  
Ballot for Referendum under H.R. 856.

**Instructions:**  
mark the status option you choose as each is defined below. Ballots with more than one option marked will not be counted.

"A. COMMONWEALTH -- If you agree, mark here \_\_\_\_

"Puerto Rico should remain Commonwealth, in which --

"(1) Puerto Rico continues the present Commonwealth structure for constitutional self-government with respect to internal affairs and administration;

"(2) Puerto Rico is an unincorporated territory of the United States, and the provisions of the Constitution and laws of the United States, including those provisions for rights, privileges and immunities of United States citizens, apply to Puerto Rico as determined by Congress;

"(3) persons born in Puerto Rico have statutory United States nationality and citizenship as prescribed by Congress;

"(4) the qualified voters of Puerto Rico elect a non-voting Resident Commissioner to the United States who serves in the House of Representatives;

"(5) the levels of Federal benefits and taxes extended to the residents of Puerto Rico are established by federal law as deemed equitable by Congress;

"(6) Puerto Rico uses the currency of the United States, is within the United States customs territory and defense system, and English language requirements of the Federal Government apply, as provided by law;

"(7) the extension, continuation, modification, and termination of Federal law and policy applicable to Puerto Rico and its residents is within the discretion of Congress; and

"(8) the ultimate status of Puerto Rico will be established through a process authorized by Congress which includes self-determination by the residents of Puerto Rico in periodic referenda.

"B. SEPARATE SOVEREIGNTY -- If you agree, mark here \_\_\_\_

"The people of Puerto Rico should become fully self-governing through separate sovereignty in the form of independence or free association, in which --

"(1) Puerto Rico is a sovereign Republic which has full authority and responsibility over its territory and population under a constitution which is the supreme law, providing for a republican form of government and the protection of human rights;

"(2) the Republic of Puerto Rico is a member of the community of nations vested with full powers and responsibilities for its own fiscal and monetary policy, immigration, trade, and the conduct in its own name and right of relations with other nations and international organizations;

"(3) the people owe allegiance to and have the nationality and citizenship of the Republic of Puerto Rico;

"(4) the Constitution and laws of the United States no longer apply in Puerto Rico, and United States sovereignty in Puerto Rico is ended, thereupon birth in Puerto Rico or

relationship to persons with statutory citizenship by birth in the former territory shall cease to be a basis for United States nationality or citizenship, except that persons who had such United States citizenship have a statutory right to retain United States nationality and citizenship for life, by entitlement or election as provided by Congress, based on continued allegiance to the United States; Provided, That such persons will not have this statutory United States nationality and citizenship status upon having or maintaining allegiance, nationality, and citizenship rights in any sovereign nation, including Puerto Rico, other than the United States;

"(5) the previously vested rights of individuals in Puerto Rico to benefits based upon past services rendered or contributions made to the United States shall be honored by the United States as provided by Federal law;

"(6) Puerto Rico and the United States seek to develop friendly and cooperative relations in matters of mutual interest as agreed in treaties approved pursuant to their respective constitutional processes and laws, including economic and programmatic assistance at levels and for a reasonable period as provided on a government-to-government basis, trade between customs territories, transit of citizens in accordance with immigration laws, and status of United States military forces; and

"(7) a free association relationship may be established based on separate sovereign republic status as defined above, but with such delegations of some government functions and other cooperative arrangements as agreed to by both parties under a bilateral pact terminable at will by either the United States or Puerto Rico.

"C. STATEHOOD -- If you agree, mark here \_\_\_\_

"Puerto Rico should become fully self-governing through Statehood, in which--

"(1) the people of Puerto Rico are fully self-governing with their rights secured under the United States Constitution, which shall be fully applicable in Puerto Rico and which, with the laws and treaties of the United States, is the supreme law and has the same force and effect as in the other States of the Union;

"(2) the sovereign State of Puerto Rico is in permanent union with the United States, and powers not delegated to the United States by the Constitution to the States, are reserved to the State of Puerto Rico or to the people;

"(3) United States citizenship of those born in Puerto Rico is guaranteed, protected and secured in the same way it is for all United States citizens born in the other States;

"(4) the people of Puerto Rico have equal rights, privileges, immunities, and benefits as well as equal duties and responsibilities of citizenship, including payment of federal taxes, as those in the several States;

"(5) Puerto Rico is represented by two members in the United States Senate and is represented in the House of Representatives proportionate to the population;

"(6) United States citizens in Puerto Rico are enfranchised to vote in elections for the President and Vice President of the United States; and

"(7) English is the official language of business and communication in federal courts and Federal agencies as made applicable by Federal law to every other State, and Puerto Rico is enabled to expand and build upon existing law establishing English as an official language of the State government, courts, and agencies."

APPENDIX G  
Ballot for Referendum under P. F. 856.

Instrucciones: Marque la opción de status que prefiera de acuerdo a la definición de cada una más adelante.  
Una papeleta que tenga más de una (1) opción marcada no se contará.

"A. ESTADO LIBRE ASOCIADO - Si está de acuerdo, marque aquí \_\_\_

"Puerto Rico debe retener el Estado Libre Asociado, en el cual -

"(1) Puerto Rico continúa con la estructura actual de Estado Libre Asociado de autogobierno constitucional con respecto a los asuntos internos y a la administración;

"(2) Puerto Rico es un territorio no incorporado de los Estados Unidos, y las disposiciones de la Constitución y de las leyes de los Estados Unidos, incluyendo aquellas disposiciones sobre derechos, privilegios e inmunidades de los ciudadanos de los Estados Unidos, se aplican a Puerto Rico según lo dispuesto por el Congreso;

"(3) las personas nacidas en Puerto Rico poseen la nacionalidad y la ciudadanía estatutaria de los Estados Unidos según lo dicta el Congreso;

"(4) los votantes habilitados de Puerto Rico eligen un Comisionado Residente en los Estados Unidos, no votante, quien sirve en la Cámara de Representantes;

"(5) los niveles de beneficios e impuestos federales que se extienden a los residentes de Puerto Rico se establecen por ley federal según lo que el Congreso considere equitativo;

"(6) Puerto Rico utiliza la moneda de los Estados Unidos, se encuentra dentro del territorio aduanero y del sistema de defensa de los Estados Unidos, y los requisitos del idioma inglés del Gobierno Federal se aplican, según lo dispuesto por la ley federal;

"(7) la extensión, la continuación, la modificación y la terminación de la ley y la política federal vigentes en Puerto Rico y que se aplican a sus residentes, se encuentran bajo la discreción del Congreso; y

"(8) el status final de Puerto Rico será establecido a través de un proceso autorizado por el Congreso, el cual incluye la autodeterminación de los residentes de Puerto Rico mediante plebiscitos a llevarse a cabo periódicamente.

B. SOBERANÍA SEPARADA - Si está de acuerdo, marque aquí \_\_\_

"El pueblo de Puerto Rico debe convertirse plenamente autogobernante a través de una soberanía separada en forma de independencia o de asociación libre, en la cual -

"(1) Puerto Rico es una república soberana que tiene autoridad y responsabilidad plenas sobre su territorio y su población, bajo una constitución que es ley suprema; la cual provee una forma republicana de gobierno y la protección de los derechos humanos;

"(2) la República de Puerto Rico es miembro de la comunidad de naciones, dotada de autoridad y responsabilidad plenas para conducir su propia política fiscal y monetaria, la inmigración, el comercio y la conducta de relaciones con otras naciones y organismos internacionales en su propio nombre y derecho;

"(3) el pueblo de Puerto Rico le debe lealtad a, y tiene la nacionalidad y la ciudadanía de la República de Puerto Rico;

"(4) La Constitución y las leyes de los Estados Unidos ya no se aplican en Puerto Rico y la soberanía de los Estados Unidos termina en Puerto Rico; por lo tanto, el nacimiento en Puerto Rico o la relación a personas de ciudadanía estatutaria de los Estados Unidos por motivo de nacimiento en el territorio cesará de ser la base para la nacionalidad o la ciudadanía de los Estados Unidos, excepto que las personas que tenían dicha ciudadanía de los Estados Unidos tienen el derecho estatutario de retener la nacionalidad y la ciudadanía de los Estados Unidos de por vida; ya sea por derecho o por elección, según lo dispuesto por el Congreso de los Estados Unidos y basado en la lealtad continua a los Estados Unidos; Siempre y cuando dichas personas no tengan dicha nacionalidad y ciudadanía estatutaria de los Estados Unidos mientras tengan o mantengan la lealtad, la nacionalidad y los derechos de ciudadanía en alguna otra nación soberana que no sean los Estados Unidos, incluyendo la República de Puerto Rico;

"(5) Los derechos previamente adquiridos de los individuos en Puerto Rico a beneficios basados en servicios prestados o en contribuciones hechas anteriormente a los Estados Unidos, serán honrados por los Estados Unidos, según lo dispuesto por la ley federal;

"(6) Puerto Rico y los Estados Unidos buscan desarrollar relaciones de amistad y colaboración en asuntos de interés mutuo, según lo acordado en tratados aprobados de acuerdo con sus procesos y leyes constitucionales respectivos, incluyendo la ayuda económica y de programas a los niveles y por un período que sea razonable según lo dispuesto en acuerdo de gobierno a gobierno, el comercio entre territorios aduaneros, el tránsito de ciudadanos de acuerdo con las leyes de inmigración y el status de las fuerzas armadas de los Estados Unidos; y

"(7) una relación de libre asociación puede establecerse con base en el status de república soberana que se define anteriormente, pero con la delegación de algunas funciones gubernamentales y otros arreglos cooperativos según lo acordado por ambas partes bajo un pacto bilateral que puede ser terminado, a voluntad, por los Estados Unidos o por Puerto Rico.

"C. ESTADIDAD - Si está de acuerdo, marque aquí \_\_\_

"Puerto Rico debe convertirse plenamente autogobernante a través de la Estadidad, en la cual -

"(1) el pueblo de Puerto Rico tiene pleno autogobierno con sus derechos protegidos bajo la Constitución de los Estados Unidos, la cual será totalmente aplicable en Puerto Rico y la cual, junto con las leyes y tratados de los Estados Unidos, constituye la ley suprema y tiene la misma fuerza y vigor que en los otros Estados de la Unión;

"(2) el estado soberano de Puerto Rico se encuentra en unión permanente con los Estados Unidos, y los poderes no delegados a los Estados Unidos por la Constitución, ni prohibidos a los Estados por la Constitución, están reservados al Estado de Puerto Rico o a su pueblo;

"(3) la ciudadanía de los Estados Unidos de aquellos nacidos en Puerto Rico se garantiza, se protege y se asegura de la misma manera en que se hace por todos los ciudadanos de los Estados Unidos nacidos en los otros Estados;

"(4) el pueblo de Puerto Rico tiene los mismos derechos, privilegios, inmunidades y beneficios, así como los mismos deberes y responsabilidades de la ciudadanía, incluyendo el pago de impuestos federales, que tienen aquellos en diversos estados;

"(5) Puerto Rico está representado por dos miembros en el Senado de los Estados Unidos y tiene representación en la Cámara de Representantes en proporción a la población;

"(6) los ciudadanos de los Estados Unidos en Puerto Rico tienen el derecho al voto en las elecciones para presidente y vicepresidente de los Estados Unidos; y

"(7) el inglés es el idioma oficial de negocios y de la comunicación en el tribunal y las agencias federales según se aplica por ley federal a todos los demás Estados, y se permite a Puerto Rico a expandir y construir sobre las leyes existentes que establecen el inglés como idioma oficial del gobierno, los tribunales y las agencias estatales."