

UNITED STATES-PUERTO RICO POLITICAL STATUS ACT

JULY 26, 1996.—Ordered to be printed

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

R E P O R T

together with

DISSENTING AND ADDITIONAL VIEWS

[To accompany H.R. 3024]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3024) 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.
- 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 expressly recognizes 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 statute for the citizenship status of persons born in Puerto Rico, including extension of special statutory United States citizenship from 1917 to the present.

(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, amended and conditionally approved by Congress, 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, a 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) In November of 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 commonwealth, 46.3 percent statehood, and 4.4 percent independence.

(11) In 1994, President William Jefferson Clinton established the Executive Branch Interagency Working Group on Puerto Rico to coordinate the review, development, and implementation of executive branch policy concerning issues affecting Puerto Rico, including the November 1993 plebiscite.

(12) There have been inconsistent and conflicting interpretations of the 1993 plebiscite results, and under the Territorial Clause of the Constitution, Congress has the authority and responsibility to determine Federal policy and clarify status issues in order to advance the self-determination process in Puerto Rico.

(13) On December 14, 1994, the Puerto Rico Legislature enacted Concurrent Resolution 62, which requested the 104th Congress to respond to the results of the 1993 Puerto Rico Status Plebiscite and to indicate the next steps in resolving Puerto Rico's political status.

(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.

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.

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 shall 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 following questions presented on the ballot as options A and B in a side-by-side format in Parts I and II:

“PART I

“Instructions: Mark the option you choose. Ballots with both options marked in Part I will not be counted.

“A. Puerto Rico should continue the present Commonwealth structure for self-government with respect to internal affairs and administration, subject to the provisions of the Constitution and laws of the United States which apply to Puerto Rico. Puerto Rico remains a locally self-governing unincorporated territory of the United States, and continuation or modification of current Federal law and policy to Puerto Rico remains within the discretion of Congress. The ultimate status of Puerto Rico will be determined through a process authorized by Congress which includes self-determination by the people of Puerto Rico in periodic referenda. If you agree, mark here ____.

“B. Puerto Rico should complete the process leading to full self-government through separate Puerto Rican sovereignty or United States sovereignty as defined in Part II of this ballot. Full self-government will be achieved in accordance with a transition plan approved by the Congress and the people of Puerto Rico in a later vote. A third vote will take place at the end of the transition period in which the people of Puerto Rico will be able to approve final implementation of full self-government. This will establish a permanent political status under the constitutional system chosen by the people. If you agree, mark here: ____

“PART II

“Instructions: Mark the option you choose. Ballots with both options marked in Part II will not be counted.

“If full self-government is approved by the majority of voters, which path leading to full self-government for Puerto Rico do you prefer to be developed through a transition plan enacted by the Congress and approved by the people of Puerto Rico?

“A. Puerto Rico should become fully self-governing through separate sovereignty leading to independence or free association as defined below. If you agree, mark here: ____

“The path of separate Puerto Rican sovereignty leading to independence or free association is one in which—

“(1) Puerto Rico is a sovereign nation with full authority and responsibility for its internal and external affairs and has the capacity to exercise in its own name and right the powers of government with respect to its territory and population;

“(2) a negotiated treaty of friendship and cooperation, or an international bilateral pact of free association terminable at will by either Puerto Rico or the United States, defines future relations between Puerto Rico and the United States, providing for cooperation and assistance in matters of shared interest as agreed and approved by Puerto Rico and the United States pursuant to this Act and their respective constitutional processes;

“(3) a constitution democratically instituted by the people of Puerto Rico, establishing a republican form of full self-government and securing the rights of citizens of the Puerto Rican nation, is the supreme law, and the Constitution and laws of the United States no longer apply in Puerto Rico;

“(4) The people of Puerto Rico owe allegiance to the sovereign nation of Puerto Rico and have the nationality, and citizenship thereof; United States sovereignty, nationality, and citizenship in Puerto Rico is ended; birth in Puerto Rico and relationship to persons with statutory United States citizenship by birth in the former territory are not bases 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 other than the United States;

“(5) upon recognition of Puerto Rico by the United States as a sovereign nation and establishment of government-to-government relations on the basis of comity and reciprocity, Puerto Rico’s representation to the United States is accorded full diplomatic status;

“(6) Puerto Rico is eligible for United States assistance provided on a government-to-government basis, including foreign aid or programmatic assistance, at levels subject to agreement by the United States and Puerto Rico;

“(7) property rights and previously acquired rights vested by employment under laws of Puerto Rico or the United States are honored, and where determined necessary such rights are promptly adjusted and settled consistent with government-to-government agreements implementing the separation of sovereignty; and

“(8) Puerto Rico is outside the customs territory of the United States, and trade between the United States and Puerto Rico is based on a treaty.

“B. Puerto Rico should become fully self-governing through United States sovereignty leading to statehood as defined below. If you agree, mark here: ____

“The path through United States sovereignty leading to statehood is one in which—

“(1) the people of Puerto Rico are fully self-governing with their rights secured under the United States Constitution, which 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 Federal Government or prohibited to the States by the United States Constitution are reserved to the people of Puerto Rico or the State Government;

“(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) residents of Puerto Rico have equal rights 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) Puerto Rico adheres to the same language requirement as in the several States.”.

(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 10 years minimum which leads to full self-government for Puerto Rico consistent with the terms of this Act 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.

(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.

(4) EFFECTIVE DATE FOR TRANSITION PLAN.—The President of the United States shall issue a proclamation announcing the effective date of the transition plan to full self-government for Puerto Rico.

(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 legislation with a recommendation for the implementation of full self-government for Puerto Rico consistent with the ballot choice approved under subsection (a).

(2) CONGRESSIONAL CONSIDERATION.—The plan 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.

(4) **EFFECTIVE DATE OF FULL SELF-GOVERNMENT.**—The President of the United States shall issue a proclamation announcing the date of implementation of full self-government for Puerto Rico.

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 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.

(2) **EXISTING STRUCTURE TO REMAIN IN EFFECT.**—If the inhabitants of the territory do not achieve full self-governance through either integration into the Union or separate sovereignty in the form of independence or free association, Puerto Rico will remain an unincorporated territory of the United States, subject to the authority of Congress under Article IV, Section 3, Clause 2 of the United States Constitution. In that event, the existing Commonwealth of Puerto Rico structure for local self-government will remain in effect, subject to such other measures as may be adopted by Congress in the exercise of its Territorial Clause powers to determine the disposition of the territory and status of its inhabitants.

(3) **AUTHORITY OF CONGRESS TO DETERMINE STATUS.**—Since current unincorporated territory status of the Commonwealth of Puerto Rico is not a permanent, unalterable or guaranteed status under the Constitution of the United States, Congress retains plenary authority and responsibility to determine a permanent status for Puerto Rico consistent with the national interest. The Congress historically has recognized a commitment to take into consideration the freely expressed wishes of the people of Puerto Rico regarding their future political status. 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 a permanent status of Puerto Rico. Nor does any such restriction or limitation arise from the Puerto Rico Federal Relations Act (48 U.S.C. 731 et seq.).

(4) **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 four is inconclusive as provided in this subsection, or a majority vote to continue the Commonwealth structure as a territory, there shall be another referendum in accordance with this Act prior to the expiration of a period of four years from the date such inconclusive results are certified or determined. This procedure shall be repeated every four years, but not in a general election year, until Puerto Rico's unincorporated territory status is terminated in favor of a recognized form of full self-government in accordance with this Act.

SEC. 6. CONGRESSIONAL PROCEDURES FOR CONSIDERATION OF LEGISLATION.

(a) **IN GENERAL.**—The Chairman of the Committee on Energy and Natural Resources shall introduce legislation providing for the transition plan under section 4(b) and the implementation recommendation under section 4(c), as appropriate, in the United States Senate and the Chairman of the Committee on Resources shall introduce such legislation in the United States House of Representatives, providing

adequate time for the consideration of the legislation pursuant to the following provisions:

(1) At any time after the close of the 180th calendar day beginning after the date of introduction of such legislation, it shall be in order for any Member of the United States House of Representatives or the United States Senate to move to discharge any committee of that House from further consideration of the legislation. A motion to discharge shall be highly privileged, and debate thereon shall be limited to not more than two hours, to be divided equally between those supporting and those opposing the motion. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(2) At any time after the close of the 14th legislative day beginning after the last committee of that House has reported or been discharged from further consideration of such legislation, it shall be in order for any Member of that House to move to proceed to the immediate consideration of the legislation (such motion not being debatable), and such motion is hereby made of high privilege. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. For the purposes of this paragraph, the term "legislative day" means a day on which the United States House of Representatives or the United States Senate, as appropriate, is in session.

(b) COMMITMENT OF CONGRESS.—Enactment of this section constitutes a commitment that the United States Congress will vote on legislation establishing appropriate mechanisms and procedures to implement the political status selected by the people of Puerto Rico.

(c) 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 on October 1, 1996, 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. 3024 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 the Constitutional Convention at Philadelphia, and 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 of 1898 the progress of the war made the time right for the U.S. invasion of Spanish-ruled Puerto Rico. An armistice was signed by the belligerents on August 12, and after securing Puerto Rico, the U.S. occupation 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. 3024 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 full self-government to the people of Puerto Rico.

Puerto Rico as U.S. 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 Territorial Clause powers of Congress conferred by Article IV, Section 3, Clause 2 of the U.S. Constitution, 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, Arti-

cle 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 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 had the status of an unincorporated territory subject to the plenary authority of the U.S. Congress under the Territorial Clause, and that the Constitution 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).

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, but for domestic law purposes they were not citizens of the U.S. and did not have equal political and legal rights under the Constitution. *Gonzales v. Williams*, 195 U.S. 1 (1904). Under the Jones Act of 1917 (Act of March 2, 1917, c. 145, 39 Stat. 961), Congress extended statutory U.S. citizenship to residents of Puerto Rico, but continued the less than equal status of Puerto Rican residents. The Jones Act also reorganized local civilian government, but this did not change Puerto Rico’s political status.

The extent to which the people of Puerto Rico have rights under the U.S. Constitution has been defined incrementally by the Supreme Court. It has been recognized that Congress has broad discretion in making rules and regulations for the unincorporated territories, although the Supreme Court also has recognized that the temporary nature of this territorial status and the non-application of the U.S. Constitution as a whole does not mean that the Federal Government can deny “fundamental” personal rights to residents of these “U.S. territories.” *Reid v. Covert*, 354 U.S. 1, 13 (1957). The right to due process of law is one of the fundamental rights applicable in the unincorporated territories, including Puerto Rico. *Balzac v. People of Puerto Rico*, 258 U.S. 298, 312–313 (1922). However, this does not preclude Congress from changing the citizenship status which was extended by statute, or unilaterally altering the political status of the territory. *Rogers v. Bellei*, 401 U.S. 815 (1971); *U.S. v. Sanchez*, 992 F.2d 1143 (1993).

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 Article IV, Section 3, Clause 2 of the U.S. Constitution (“Territorial Clause”), pursuant to which the process for approval of a local constitution was prescribed and the current Puerto Rico Federal Relations Act was enacted. (See, U.S. Public Law 600, July 3, 1950, c. 446, 64 Stat. 319; codified at 48 U.S.C. 731 et seq.)

Public Law 600 comprised 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 people. 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 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 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 through the Public Law 600 process are a creation of Federal process, and the legal effect of the exercise of the rights of the people in approving the local constitution is that there was consent to a form of self-government over internal affairs and administration. Although Congress presumably would include some procedure which recognizes the principle of consent 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 pursuant to the same Territorial Clause power exercised to create it in the first place. Public Law 600 merely revises the previously enacted territorial organic act adopted by Congress under the Jones Act in 1917, and changes the name to the “Puerto Rico Federal Relations Act” (PRFRA). See Historical and Statutory Notes, 48 U.S.C. 731b–e.

The preceding assessment is confirmed in the “Historical and Statutory Notes” found at section 731b, title 48, United States Code Annotated, which state that PRFRA was approved based upon the understandings expressed in House Report 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 [this chapter] 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 [the bill] would be referred to as the Puerto Rican Federal Relations Act [this chapter]. 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 of other matters of purely local concern.

Based upon the present status of Puerto Rico under the PRFRA, the Federal courts have ruled that for purposes of U.S. domestic 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 equal protection of the law applies to Puerto Rico, but under the Territorial Clause Congress has discretion to provide Federal benefits to U.S. citizens in Puerto Rico at a lower level than benefits are provided to citizens residing in the States; that the authority of the Government of the Commonwealth of Puerto Rico is limited to purely local affairs; and that the establishment of local constitutional self-government with the consent of the people was an exercise of Congressional discretion under the Territorial Clause which could be revoked at will by Congress. *Harris v. Rosario*, 446 U.S. 651 (1980); *Examining Board v. Flores de Otero*, 426 U.S. 572, 600 (1976); *U.S. v. Sanchez*, 992 F. 2d 1143 (1993).

Relying on *Rogers v. Bellei*, 401 U.S. 815 (1971) and other Supreme Court rulings interpreting Congressional powers under the Territorial Clause and defining the Constitutional rights and status of persons born in Puerto Rico, the Congressional Research Service (CRS) has concluded that, absent recognition of fully equal citizenship status for people born in the territory protected Constitutionally in the same manner as nationality and citizenship arising from birth in one of the 50 States, the statutory citizenship of the residents of Puerto Rico (now codified at 8 U.S.C. 1402) could be restricted, modified or even withdrawn by Congress as long as the fundamental rights test of the *Insular Cases* as cited above is met, based on the existence of a legitimate Federal purposes achieved in a manner reasonably related to that purpose. Thus, for example, the CRS legal analysis confirmed that establishment of separate Puerto Rican sovereignty would 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.

Puerto Rico's international legal status

The foregoing discussion 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 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 United Nations 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 600. *See*, Appendix IV, "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," Constitutional Documents, Puerto Rico Federal Affairs Administration, Doc. 90, 1988. 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 United Nations that reporting on Puerto Rico would be based on the detailed memorandum to the U.N. Secretary-General put the Members of the U.N. on notice that, among other things, the new constitutional arrangements in Puerto Rico were 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. The United States told the truth to the United Nations in 1953.

The following critical elements of Resolution 748 reveal that while there may have been a meeting of the minds between the United Nations 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 as referred to in Chapter XI of the Charter * * * 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 of general application 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 statements of criteria:

The General Assembly * * * Considers that the manner in which Territories referred to in Chapter XI can become fully self-governing is primarily through the attainment of independence, although it is recognized that self-government can also be achieved by association with another State or group of States if this is done freely and on the basis of absolute equality * * * and the freedom of the population of a Territory which has associated 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 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 completely satisfy, U.N. criteria for full self-government.

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, the lack of voting representation in Congress as the legislative body which determines the form of government and law under which the people of the territory live, the lack of vote for President or Vice President, rights of equal protection and due process which are not the same rights enjoyed by citizens in the States, and retention by Congress of discretion unilaterally to determine the disposition of the territory pursuant to the Territorial Clause of the Constitution, with a procedural rather than legally binding substantive commitment to ascertain the wishes of the people.

It can be argued that the discrepancy between the 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 was the result of a very sophisticated misunderstanding. In other words, perhaps the U.N. simply did not understand 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.

In any event, on December 15, 1960, the General Assembly adopted Resolution 1541 (XV), which is entitled "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. Puerto Rico's

current status does not meet the criteria for any of the options for full self-government under Resolution 1541, but H.R. 3024 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 the Puerto Rico Federal Relations Act, the United States has recognized that Puerto Rico did not achieve full self-government in 1952. While Puerto Rico has not been reinscribed on the U.N. list of non-self-governing territories, this recognition that the territory's ultimate political status has not been resolved has been expressed by every recent President. For example, on November 30, 1992, President George Bush issued a Memorandum for the Heads of the Executive Departments and Agencies 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 * * *.

On March 6, 1996, H.R. 3024 was introduced in the U.S. Congress, accompanied by a statement signed by four committee and subcommittee chairmen of the House of Representatives with jurisdiction and interest in the status of Puerto Rico. See, Appendix III, Congressional Record, March 6, 1996, E299-300. This bill and the statement included by its sponsors in the Congressional Record are strong evidence of 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 domestic nature of the United States-Puerto Rico relationship, there is no basis for the United States to resume annual reporting to the United Nations. The United States-Puerto Rico Political Status Act can ultimately result in full self-government for Puerto Rico.

On December 14, 1994, the Legislature of Puerto Rico adopted Resolution 62, requesting that the U.S. Congress respond to the results of a political status plebiscite conducted in the territory under local law in 1993 (see Appendix I). In that plebiscite, definitions of the three status options of independence, statehood and the current territorial status under the “commonwealth” label as presented to the voters on the ballot were formulated by local political parties which support each such status alternative. Unfortunately, the ballot developed in this manner included proposals which were both unrealistic and in some cases simply unconstitutional.

As a consequence, the results of the 1993 vote (Commonwealth 48.6 percent, Statehood 46.3 percent, Independence 4.4 percent) were extremely difficult to interpret. For example, the ballot definition of “commonwealth” included elements attainable only through statehood, such as permanent union with the U.S. and guaranteed irrevocable U.S. citizenship equal that conferred on persons born in a State of the Union. At the same time, the “commonwealth” option included elements that would amount to a treaty based government-to-government relationship consistent with separate Puerto Rican sovereignty or independence, as well as exemptions from Federal taxation, increased Federal programs and benefits, and a Constitutionally unsustainable binding territorial veto power over Federal laws. The independence and statehood definitions were more discernible, but without a framework for status resolution prescribed by Congress, none of the 1993 ballot options alone provide a basis for orderly change based on self-determination.

Although some Members of Congress spoke out before and after the 1993 vote about the internal inconsistencies in the ballot definitions (see, Congressional Record of November 10, 1993, and September 30, 1994, Appendix II), 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, in Resolution 62 the Legislature of Puerto Rico expressly requested 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 the Congress recommends be taken in order for the people of Puerto Rico to establish for the territory a “process to solve the problem of their political status.”

Resolution 62 must be understood for what it is: a formal request by the duly-constituted Legislature of Puerto Rico that Congress address itself to resolving the status of 3.8 million people who have statutory U.S. citizenship and reside in a territory governed by Federal law, but who do not have equal legal and civil rights with citizens in the states, guaranteed citizenship, or permanent standing within the U.S. Constitutional system. In the nearly 100 years in which the U.S. has exercised sovereignty over this territory under the Treaty of Paris, Congress has never afforded the people an opportunity freely to express their wishes regarding a permanent and fully self-governing political status. This includes the last 40 years, during which, as a signatory to the United Nations Charter, the U.S. has had an obligation to respect self-determination and promote establishment of full self-government in Puerto Rico. The current “commonwealth” arrangements for local self-govern-

ment which exist at the pleasure of Congress and subject to its plenary authority under the Territorial Clause power (Art. IV, Sec. 3, Cl. 2) represented progress when adopted in 1952, but to the disappointment of all concerned it has not fulfilled the U.S. commitment to promote and ultimately deliver on the promise of full self-government for Puerto Rico.

Indeed, the current unincorporated territory status and “commonwealth” system of local self-government, as well as the present statutory citizenship without equal legal and political rights, must be viewed as a temporary and transitional condition which will end upon approval by the people of Puerto Rico and Congress of a change of status in favor of full self-government consistent with incorporation into the U.S. Constitutional system on the basis of equality, or through the establishment of separate sovereignty, nationality and citizenship. To the greatest extent and at the earliest time possible, the rights of people subject to Federal authority must be Constitutionally protected and guaranteed, rather than existing at the pleasure of Congress. If full Constitutional status and the attendant protections along with equal citizenship for the people of Puerto Rico is not intended, then the option of achieving full citizenship through separate sovereignty and nationality must be made available.

The year 1998 will mark the end of an entire century since the cession of Puerto Rico to the U.S. by Spain. Before a second century of territorial administration begins, Congress has a responsibility to establish a process of self-determination that will empower the people to end territorial status of Puerto Rico in favor of a permanent political status. Under relevant resolutions adopted by the General Assembly of the United Nations and customary international law recognized by the United States, as well as U.S. Constitutional law and practice with respect to territories under U.S. sovereignty but not incorporated into the union, the status alternatives available to people with a colonial or non-self-governing history and aspiring to achieve full self-government are: i) integration into an existing nation on the basis of equality; ii) free association based on separate sovereignty, nationality and citizenship; or iii) fully independent nationhood. Of course, if the people are not ready to complete the transition to full self-government and prefer to remain in a temporary unincorporated territory status, that result must be due to the freely expressed wishes of the people rather than failure of Congress to make available to the people the choice to become fully self-governing.

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 of that hearing. Based upon the testimony and materials submitted at that hearing, the approach embodied in H.R. 3024 was developed to enable Congress to define a process of legitimate self-determination for Puerto Rico. In addition, on February 29, 1996, a formal statement addressed to the Legislature of Puerto Rico with respect to the subject matter of

Concurrent Resolution 62 was transmitted by the four chairmen of the committees and subcommittees in the House of Representatives with primary jurisdiction over the status of Puerto Rico. The statement of February 29, 1996, subsequently was included in the Congressional Record to accompany introduction of H.R. 3024 on March 6, 1996 (See, Cong. Rec., March 6, 1996, E299–300, Appendix III).

Differences between H.R. 3024 and other political status proposals for Puerto Rico

H.R. 3024, the “United States Puerto Rico Political Status Act,” is firmly grounded in U.S. practice regarding self-government for unincorporated territories over which this nation exercises sovereignty. The current territorial regime and less-than-equal citizenship status of Puerto Ricans does not constitute full self-government, and will not lead to a permanent status with guaranteed rights until one of the recognized forms of self-government is established through a process of self-determination.

After the U.S. Congress failed to approve legislation on Puerto Rico’s political status in 1992, the Legislature of Puerto Rico authorized a local status vote in 1993. Under the local referendum law, each principal local political party in Puerto Rico was allowed to formulate the ballot definition for the political status option it endorses. The local political party endorsing “Commonwealth” adopted a ballot definition which promised:

The terms of the “Commonwealth” relationship are binding upon Congress in perpetuity, enforceable under an unalterable “bilateral pact” giving Puerto Rico a “mutual consent” veto power over acts of Congress.

Conversion of the current temporary unincorporated territorial status and limited statutory citizenship into permanent union with the U.S. and fully guaranteed citizenship equivalent to birth or naturalization in one of the States.

Increases in Federal outlays to give Puerto Rico parity with the states in taxpayer-funded social spending in Puerto Rico, while at the same time continuing exemption from Federal taxation for U.S. citizens and corporations in Puerto Rico.

Continuation of the possessions tax credits (Section 936 of the Internal Revenue Code), as well as entitlement to Federal programs and services, at the same time guaranteeing a right to fiscal autonomy and cultural separatism from the United States.

Given the unrealistic and misleading “have it both ways” nature of this definition, the most remarkable thing about the result of the 1993 referendum is that the “Commonwealth” option received only a slim plurality and less than a majority of the votes cast.

Unlike the 1993 plebiscite, the political status process contemplated by H.R. 3024 recognizes that resolution of Puerto Rico’s political status is not something that is going to result from unilateral action by Puerto Rico. Certainly, there has been no suggestion to date that there will be a change of status that is not approved

by the people in a valid act of self-determination, but H.R. 3024 also establishes that the U.S. has a right to self-determination in its relationship with Puerto Rico. That is why a legitimate self-determination process requires a give-and-take between Congress and Puerto Rico to define and approve the options for change.

H.R. 3024 also recognizes that the current status of Puerto Rico is that of an unincorporated territory under U.S. sovereignty exercised by Congress under the Territorial Clause power, and that defines its relationship to the United States. The current “Commonwealth” system of local self-government has not altered the status of Puerto Rico or the underlying Constitutional relationship. While the territorial status and relationship has lasted nearly 100 years, the “Commonwealth” structure for local self-government organized under a territorial constitution authorized by Congress in the Puerto Rico organic statute is a 40 year arrangement which has not resulted in full self-government.

This “Commonwealth” status was a significant improvement over previous civil administration under the prior organic law, and the new local constitutional arrangements established in 1952 has had strengths of which the U.S. and Puerto Rico properly have been proud over the years. The problem that arises is that those who wish the “Commonwealth” arrangements were something other than what it is attempt to impose their theories and doctrines on the people of Puerto Rico and the people of the United States at the expense of accuracy and objectivity. Thus, as already discussed, any ballot option regarding “Commonwealth” must be formulated carefully based on realistic and correct statements of current law.

Since the current “Commonwealth” unincorporated status is not a basis for achieving full self-government, the original version of H.R. 3024 did not present the status quo as an option. Instead, a decision by the people not to approve any of the legally recognized alternatives for full self-government would have meant that the status quo would continue, and that any changes to the current relationship proposed by Puerto Rico would be made by Congress under the Territorial Clause. This approach mistakenly was perceived by some as one intended to exclude the “Commonwealth” option which received a plurality of votes in the 1993 local plebiscite. Of course, the 1993 definition of “Commonwealth” failed to present the voters with a status option consistent with full self-government, and it was misleading to propose to the voters an option which was unconstitutional and unacceptable to the Congress in almost every respect.

Still, to avoid even the perception of unfairness by otherwise rational people who might not appreciate the history of these issues, the version of H.R. 3024 which has been reported to the full House of Representatives expressly provides that the voters will have an opportunity in the form of ballot options to preserve the current “Commonwealth” status, defined in a manner consistent with the rulings of the U.S. Supreme Court regarding Puerto Rico’s present status. In addition, on June 4, 1996, Congressman Elton Gallegly (R-CA), cosponsor of H.R. 3024 and Chairman of the Subcommittee on Native American and Insular Affairs, included in the Congressional Record a statement about this 1993 ballot definition of the “Commonwealth” status option (See, Appendix VII, Congressional

Record June 4, 1996). Consistent with that statement, the 1993 ballot definition of “Commonwealth” was offered as an amendment to H.R. 3014, only to be unanimously rejected by the Subcommittee of Native American and Insular Affairs at its mark up of this bill on June 12, 1996.

To understand H.R. 3024, Congress must realize it is the official position of the party of “Commonwealth” in Puerto Rico that there is no need for further self-determination in Puerto Rico. This position runs deeper than the short-term tactic of insisting that H.R. 3024 is unnecessary because “the people have spoken” and the 1993 definition of “Commonwealth” simply should be implemented. Everyone knows Congress is not going to implement a ballot option which not only received less than a majority of votes cast, but is unconstitutional and unacceptable as well.

The long-term strategy of the local party identified with “Commonwealth” is to win U.S. and international recognition that Puerto Rico enjoys a fully autonomous status within the U.S. Constitutional system. This is based on a misleading interpretation of the U.N. acceptance in 1953 of the U.S. decision to stop reporting to the world body on Puerto Rico due to the degree of internal self-government under the new constitution in 1952—as already discussed in this report. Even though the U.S. formally advised the U.N. and Puerto Rico all along that the authority of the local government was limited to internal affairs, and was subject to the U.S. Constitution and Federal law as determined by Congress and the courts, “Commonwealth” leaders recently confirmed the party’s position that the U.N. findings in 1953 establish that Puerto Rico is a free state, associated with the U.S. but no longer an unincorporated territory subject to the authority of Congress under the Territorial Clause of the Constitution.

In support of this implausible and paradoxical position, the supporters of this hypothetical hybrid “Commonwealth” status in Puerto Rico assert that Puerto Rico already has a right to permanent union with the U.S. and guaranteed U.S. citizenship, and at the same time has a separate Puerto Rican nationality and sufficient separate sovereignty to conduct its own international relations. Indeed, until the U.S. Department of State intervened, in the late 1980s supporters of the extra-legal “Commonwealth” doctrine in the administration of a former Governor of Puerto Rico and President of the party of “Commonwealth” attempted to negotiate tax sparing treaties with foreign governments. Leaders of the party of “Commonwealth” still insist that in the future the “Commonwealth” of Puerto Rico as established in 1952 will be able to conduct treaty relations in its own name and right once the “misunderstanding” about the nature of the present status is “corrected.”

To this day, the advocates of a revised “Commonwealth” status that creates a separate “nation” within the U.S. Constitutional framework also assert that P.L. 600, the Federal statute passed by Congress in 1950 which authorized adoption of the local constitution approved in 1952, created an “unalterable bilateral pact” which precludes Congress from making any changes in the state of Federal law applicable to the “Commonwealth” without the consent of Puerto Rico. (See 48 U.S.C. 731b–e). Coupled with the assertion

of separate international personality, this extra-constitutional political and ideological doctrine is nothing less than an attempt to convert the statutory delegation of Congressional authority over local affairs in 1952 into a de facto form of the international, treaty-based status of “free association” within the framework of the U.S. Constitution.

This “nation-within-a-nation” political strategy, which ultimately would usurp Federal authority if it were fully carried out, has been epitomized by the adoption of “Free Associated State” as the official Spanish language term for the present status, but using the unrelated term “Commonwealth” as the English term since it was deemed more familiar and acceptable to the United States. In a similar tactic, the language of Federal statutes describing the process for approving the local constitution in 1952 as being “in the nature of a compact” is cited by “Commonwealth” supporters as proof that the statute created a binding, treaty-like, government-to-government compact which—if it were true—would give Puerto Rico a political status superior to the states of the union.

The notion of an unalterable bilateral pact is predicated on the theory that the implied compact supposedly created in 1952 is mutually binding on Puerto Rico and the Congress. The principle of consent recognized in Public Law 600 with respect to establishment of local constitutional self-government respecting internal affairs is elevated, according to this revisionist theory, onto the plane of government-to-government mutuality, and on that basis it is concluded that there is a treaty-like relationship which can be altered only with mutual consent of both governments. This is precisely 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, Public Law 99–239.

While such a relationship presumably is available to Puerto Rico if that is the option chosen by the voters, and it is established by mutual agreement in accordance with U.S. policy and practice relating to free association as defined in international law, such a mutual consent relationship was not created 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 the Congress has been discredited. The Clinton Administration Justice Department 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 Deputy Assistant Attorney General of the United States Department of Justice issued a legal opinion which included the following statement about “bilateral mutuality” in the case of Puerto

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, Report on Joint Hearing of the Committee on Resources and Committee on International Relations, October 17, 1995, p. 312.

The Department of Justice (DOJ) memo also concludes that:

A ballot definition of commonwealth based on the idea of an unalterable bilateral pact with mutual consent as the foundation “would be misleading,” and that “honesty and fair dealing forbid the inclusion of such illusory and deceptive provisions * * *.”

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.

As explained above, Public Law 600 established a process for approval of a new constitution for local self-government, and was described as being “in the nature of a compact” because Congress determined that approval by the voters alone would not have been sufficient to institute constitutional government. Thus, joint action—including approval by the voters followed by approval of Congress—was required. The 1952 statute constituted precisely such a process, which was “in the nature of a compact” to organize a local constitutional government approved by the people to replace the previous local government established unilaterally by Congress.

The approval process for the local constitution did not alter Puerto Rico’s status as an unincorporated territory or create a political status under international or domestic U.S. law which constitutes full self-government. This was made very clear at the time the Puerto Rico Federal Relations Act was approved by House Report 2275. Instead, it was intended that the “Commonwealth” would, as described in a Memorandum of the President regarding Puerto Rico signed by President Kennedy in 1961, “provide for self-government in respect of internal affairs and administration.”

If Congress had intended for the U.S. to enter into a “compact of free association” on a plane of mutuality or at the international level (like the current compact between the U.S. and the Micronesian republics), Public Law 600 would not have prescribed a process which by definition was not a government-to-government or “bilateral” compact at all, but was “in the nature of a compact” limited to internal affairs and administration. Nor if “free association” or a binding, unalterable “bilateral pact” had been intended would

the U.S. have informed the U.N. and Puerto Rico that the U.S. Constitution and Federal law would still apply even after a local constitution was in place, and that the nature of the relationship would be subject to judicial interpretation as a matter of U.S. domestic law.

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. See *Harris v. Rosario*, 446 U.S. 651 (1980).

If the “have-it-both-ways” legal theory advanced by those who advocate the revisionist version of “Commonwealth” were to prevail, Puerto Rico would enjoy in perpetuity the most precious American rights of membership in the national 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 can not 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 the free association with permanent union and common citizenship which they insist in 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 Department of Justice 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 the Puerto Rico Federal Relations Act without the consent of Puerto Rico. See, Appendix VIII, 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.

H.R. 3024 is the most significant decolonization measure for Puerto Rico offered in the last 100 years. By offering Puerto Ricans full self-government through statehood or real separate sovereignty, and defining the option of continued “Commonwealth” based on an accurate account of existing law, H.R. 3024 will end the ambiguity and internal inconsistency that has eroded the moral and Constitutional basis of Federal policy toward the territory for more than 40 years.

COMMITTEE ACTION

H.R. 3024 was introduced on March 6, 1996, by Congressman Don Young (R-AK), Chairman of the Committee on Resources. Co-sponsoring the bill were Speaker of the House Newt Gingrich (R-GA), Congressman Elton Gallegly, Congressman Jose E. Serrano (D-NY), Congressman Patrick J. Kennedy (D-RI), Congressman Nick J. Rahall II (D-VW), Delegate Carlos A. Romero-Barcelo (D-PR), Congressman Benjamin A. Gilman (R-NY), Congressman Dan Burton (R-IN), Delegate Robert A. Underwood (D-GU), Congressman Ken Calvert (R-CA), Congressman James B. Longley, Jr. (R-ME), Congressman Gene Green (D-TX), Congressman Peter Deutsch (D-FL) and Congressman Ron Klink (D-PA). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Native American and Insular Affairs.

On March 23, 1996, the Committee of Resources held a hearing on H.R. 3024 in San Juan, Puerto Rico, and received testimony from the heads of all principal political parties and other interests organizations and individuals, as well as written statements from all concerned parties. The hearings were broadcast live by numerous television and radio stations in Puerto Rico and over 70 media credentials were issued.

On June 12, 1996, the Subcommittee met to mark up H.R. 3024. Three amendments were offered. Delegate Eni F. H. Faleomavaega (D-AS) offered an amendment adding a "Commonwealth" definition from a 1990 House report on Puerto Rico status legislation as a choice leading to full self-government. However, this "Commonwealth" definition in the report was an expression of the political party advocating that status and was meant to merely be a starting point in any future consideration by the Congress, and by no means was it meant to infer there was any endorsement or guarantee of enactment of those provisions. The Subcommittee also rejected this amendment in a 1:8 vote, as follows:

SUBCOMMITTEE ON NATIVE AMERICAN AND INSULAR AFFAIRS—104TH
CONGRESS RECORDED VOTE

Date: June 12, 1996; time: 3:12.

Bill No.: H.R. 3024.

Amendment No. 1; offered by: Faleomavaega.

Rollcall: Defeated (8–1).

	Yeas	Nays	Present		Yeas	Nays	Present
Gallegly		X	.....	Faleomavaega	X	.....	.....
Young		X	.....	Kildee		X	.....
Gilchrest		X	.....	Williams		X	.....
Jones	Johnson		X	.....
Hastings		X	.....	Romero-Barcello		X	.....
Metcalf	Underwood .....			.....
Longley
Total Republicans	4	.....	Total Democrats	1	4	.....

Congressman Pat William offered an amendment with the "commonwealth" definition from the 1993 plebiscite was proposed to be

added as a third choice leading to full self-government in the Initial Decision Stage referendum in addition to separate sovereignty and statehood. Delegate Faleomavaega offered an amendment to the Williams amendment regarding the definition of “commonwealth”; the amendment failed on voice vote. The Williams amendment was then defeated in a 1:10 vote, as follows:

SUBCOMMITTEE ON NATIVE AMERICAN AND INSULAR AFFAIRS—104TH
CONGRESS RECORDED VOTE

Date: June 12, 1996; time: 3:25.

Bill No.: H.R. 3024.

Amendment No. 1; offered by: Williams.

Rollcall: Defeated (10–1).

	Yeas	Nays	Present		Yeas	Nays	Present
Gallegly		X	.....	Faleomavaega	X	.....	.....
Young		X	.....	Kildee		X	.....
Gilchrest		X	.....	Williams		X	.....
Jones	Johnson		X	.....
Hastings		X	.....	Romero-Barcello		X	.....
Metcalf		X	.....	Underwood .....			.....
Longley		X	.....				.....
Total Republicans		6	.....	Total Democrats	1	4	.....

The final amendment in the nature of a substitute offered by Subcommittee Chairman Gallegly was approved in a 10–0 vote, as follows:

SUBCOMMITTEE ON NATIVE AMERICAN AND INSULAR AFFAIRS—104TH
CONGRESS RECORDED VOTE

Date: June 12, 1996; time: 3:45.

Bill No.: H.R. 3024.

Amendment No. 1; offered by: Gallegly.

Rollcall: Passed (10–0).

	Yeas	Nays	Present		Yeas	Nays	Present
Gallegly	X	.....	.....	Faleomavaega	X	.....	.....
Young	X	.....	.....	Kildee	X	.....	.....
Gilchrest	X	.....	.....	Williams	X	.....	.....
Jones .....			.....	Johnson .....			.....
Hastings	X	.....	.....	Romero-Barcello	X	.....	.....
Metcalf	X	.....	.....	Underwood .....			.....
Longley	X	.....	.....				.....
Total Republicans	6	.....	.....	Total Democrats	4	.....	.....

The Gallegly amendment incorporates a number of suggestions of leaders of Puerto Rico and Members of Congress. One primary change permits the people of Puerto Rico to vote to continue the current “Commonwealth” status as a territory, or to proceed towards a status of full self-government of either separate sovereignty or statehood. The provision is based on the suggestion of the President of the Puerto Rico Independence Party (PIP), Reuben

Berrios-Martinez. This choice is included in Part I of a two-part ballot in the first referendum. Part II of the ballot maintains the original choices between full self-government of separate sovereignty leading to independence or free association, or statehood.

Another change requires periodic referenda in Puerto Rico every four years on the same question in the event a majority indicate they are not ready to proceed towards full self-government. This provision is based on the legislative concept of Congressman Dan Burton and Robert Torricelli (D–NJ), Chairman and Ranking Minority Member respectively, of the Subcommittee on Western Hemisphere of the Committee on International Relations, to require periodic referenda in a territory until the status issue is resolved. The periodic voting requirement on status maintains the integrity of the purpose of the bill, which is “to provide a process leading to full self-government”.

The amendment also includes a provision in which a constituent convention would be held in Puerto Rico in the event of a majority vote in favor of separate sovereignty, to determine which form of separate sovereignty is preferred by the people of Puerto Rico: absolute independence or separate sovereignty in free association with the United States. This change is based on a suggestion by President Berrios-Martinez of the PIP. The President of the United States is directed to address proposals and recommendations of the constituent convention (if any) in the Transition Plan submitted to Congress within the 180 day period following the referendum.

Finally, the amendment modifies or adds a number of findings to reflect important events in the chronological development of the United States-Puerto Rico territorial relationship. In addition, changes in the language of the policy section reflects the responsibility of the Federal Government to enable the people of Puerto Rico to freely express their wishes regarding their political status and achieve full self-government.

The bill, as amended, was then ordered to be favorably reported to the Full Committee in the presence of a quorum, by a roll call vote of 10–0, as follows:

SUBCOMMITTEE ON NATIVE AMERICAN AND INSULAR AFFAIRS—104TH
CONGRESS RECORDED VOTE

Date: June 12, 1996; time: 3:45.

Bill No.: H.R. 3024.

Rollcall: Passed 10–0.

Ordered report to Full Committee, subject to technical amendments approved by the minority.

	Yeas	Nays	Present		Yeas	Nays	Present
Gallegly	X	.....	.....	Faleomavaega	X	.....	.....
Young	X	.....	.....	Kildee	X	.....	.....
Gilchrest	X	.....	.....	Williams	X	.....	.....
Jones .....	.....	.....	.....	Johnson .....	.....	.....	.....
Hastings	X	.....	.....	Romero-Barcello	X	.....	.....
Metcalf	X	.....	.....	Underwood .....	.....	.....	.....
Longley	X	.....	.....		
Total Republicans ...	6	.....	.....	Total Democrats	4	.....	.....

On June 26, 1996, the Full Resources Committee met to consider H.R. 3024. Congressman Don Young offered en bloc amendments which passed by voice vote. The en bloc amendments made technical and clarifying changes. The language of certain findings are clarified pertaining to the conditional approval by Congress of the Puerto Rico constitution, the notification to the United Nations by the United States, and the Supreme Court ruling confirming Congressional authority over Puerto Rico as a territory. In Section 4, the Transition Plan only occurs in the event of a ballot choice “of full self-government,” and the Legislature of Puerto Rico “may provide” by local law a constituent convention in the event of a majority vote for separate sovereignty. In Section 5, the periodic referenda requirement applies if a referendum is inconclusive, “or a majority vote to continue the Commonwealth structure as a territory.” Section 7 is clarified regarding the use of Federal excise taxes on foreign rum which go to the Puerto Rico Treasury. The President identifies the amounts to be used for the conduct of referenda without changing the flow of funds to Puerto Rico. In addition, the President is required to submit a report to Congress regarding the amount used to conduct the referendum.

Congressman George Miller (D-CA) offered an amendment to shorten the time line for operation of the bill. It failed by voice vote. Delegate Faleomavaega offered an amendment to change the definition of “commonwealth” on the ballot; it also failed by voice vote. Delegate Faleomavaega then offered an amendment to delete the “free association” language from the ballot; it failed by voice vote. Delegate Faleomavaega offered and withdrew an amendment to change “statehood” language on the ballot. Congressman Bruce F. Vento (D-MN) offered an amendment to strike additional four-year referenda; it failed on a voice vote. Subcommittee Chairman Gallegly offered an amendment to the definition regarding the retention of United States citizenship under separate sovereignty, which was approved by voice vote.

The bill, as amended, was then ordered favorably reported to the House of Representatives, by voice vote in the presence of a quorum.

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 preceding historical and legal materials, including the contents of the February 28, 1996, letter (*see* Appendix V) responding to Resolution 62 from the four chairman of the committees and subcommittees of the House of Representatives with jurisdiction and interest in the status of Puerto Rico.

Section 3. Policies

This is a statement of policy also consistent with the historical and legal materials already reviewed, and which should be read in light thereof. The Committee notes that on June 28, 1996, four distinguished Members of Congress in the minority party with long experience and knowledge of these issues transmitted to the Majority Leader of the Puerto Rico Senate a further response to Resolution 62 and the 1993 vote. This letter is included as Appendix V, and indicates bipartisan support for the policy set forth in Section 3, as well as the overall approach to self-determination and political status resolution embodied in H.R. 3024.

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 an expression of the wishes of the people concerned at each stage:

Initial Decision Stage.—Section 4 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 two-part ballot. Part I of the ballot offers a choice between continuation of the current “Commonwealth” unincorporated territory status quo or to proceed toward full self-government as presented in Part II of the ballot. Under Part II of the ballot, the two choices are: (A) full self-government through separate Puerto Rican sovereignty consistent with independence or free association; or (B) full self-government through equality under U.S. sovereignty leading to statehood.

Transition Stage.—If voters approve further self-determination regarding the preferred path to full self-government approved in the Initial Decisions Stage, within 180 days the President must propose a ten year Transition Plan to implement that status preference to Congress. After Congress approves the Transition Plan under “expedited procedures,” it is presented to the people of Puerto Rico for approval. If the Transition Plan is approved it will commence under an Executive Order of the President.

Implementation Stage.—This stage begins at least two years prior to end of Transition Plan, with the President submitting to Congress a legislative proposal to implement full self-government. Congress approves an Implementation Act and that is submitted for approval by the people in a vote. If the Implementation Act is approved, then full self-government is implemented on the part of the Federal Government by a Presidential Proclamation.

In Part I of the ballot, voters are given a choice to preserve the current “Commonwealth” relationship or take the next step in the overall process created by H.R. 3024, in which Congress would propose to the people of Puerto Rico the terms under which it would be willing to implement the status preference expressed by the people in Part II of the ballot.

Under the two-part ballot, voters are free to choose to continue the current “Commonwealth” based on a preference for that status over other available options. No voter will be “forced” to participate in a choice between statehood and separate sovereignty in order to express any preference for “Commonwealth.” 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 VI.

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.

Here is how it will work: Once there is a majority vote for a new status, Congress will proceed in a deliberate manner and there will be no change imposed. Indeed, there will be no change in status at any of the three stages without approval of the voters, so that the fairness of the self-determination element of the process is beyond reproach. 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.

If at any stage 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 the bill begins anew, subject only to the authority of Congress to amend or repeal the act and replace it with other measures consistent with the authority and responsibility of Congress under the Territorial Clause, the Treaty of Paris and the U.N. Charter.

With respect to Section 4(a), there are specific issues which require detailed explanation to ensure that there will not be any further ambiguity about the state of applicable law and the intent of Congress.

1. Definition of "Commonwealth" in Part I(A) of the ballot. The controversy surrounding the definition of "Commonwealth" in Puerto Rico arises from partisan disputes about the meaning and legal effect of the Federal and local measures establishing the constitutional government in 1952. Each local political party has its own interpretation of the approval process for the constitution, as well as the manner in which it has been implemented.

For the people of Puerto Rico to be empowered to engage in a free and informed act of self-determination, the definition of Commonwealth must be one which is not formulated 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. Language should be adopted which is accurate, authoritative and balanced as a matter of law. The desirability of the formula to be adopted in the view of the political parties should not control the contents. 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.

While there should be nothing in the definition which is unnecessarily negative or unfavorable to the position of any of the local political parties, the desire to avoid offending local parties should not influence the definition at the expense of truthfulness and accuracy. Ambiguity of language and policy employed in the past by some Puerto Rican and Federal officials who thought they knew what was best for the people of Puerto Rico is what contributed to the difficulty of the current status dilemma. To resolve the problem Congress simply must be accurate and consistent with applicable current law so the people of Puerto Rico can determine for themselves what is in their own best interest under the circumstances which now exist.

The definition of "Commonwealth" contained in Section 4 is necessary because it:

Is based on existing Constitutional arrangements and organic laws defining the status of the Commonwealth and its relationship to the Federal Government, recognizing that any amendments, enhancements or modifications of the existing relationship must be brought about through the existing Constitutional process before becoming part of what "Commonwealth" means;

Is consistent with the measures adopted by the political branches of the Federal Government to establish and implement the current relationship, as well as those of the local constitutional government, as interpreted by the U.S. Supreme Court;

Recognizes supremacy of Federal law, as well as the authority of the local constitutional government under the 1952 constitution.

Under the U.S. Constitution, when there is a legal dispute about the meaning and legal effect of actions taken by the Congress or the President, the Supreme Court has the Constitutional authority and responsibility to interpret the Constitution and determine the meaning and effect of the laws as enacted and implemented by the political branches. It is of fundamental importance, therefore, that in 1980 the U.S. Supreme Court ruled that because of the Territorial Clause status of Puerto Rico it does not violate the Fifth Amendment's equal protection guarantee for Congress by statute to impose a discriminatory classification on the people of Puerto Rico by providing lower levels of Federal programs and benefits than is provided in the States. In reaching this decision the Court stated that:

Congress, which is empowered under the Territory Clause of the Constitution, U.S. Const., Art. IV, Section 3, Clause 2, to "make and needful Rules and Regulations respecting the Territory * * * belonging to the United States," may treat Puerto Rico differently from the States so long as there is a rational basis for its actions. *Harris v. Rosario*, 446 U.S. 651.

The definition of "Commonwealth" in Section 4 has to commend its compatibility with this Supreme Court ruling regarding the sta-

tus of Puerto Rico. That can not be said for any of the other definitions of “Commonwealth” advanced to date.

2. Nationality and citizenship issues. One of the most difficult issues to address in this self-determination process is that of the nationality and citizenship of the people of Puerto Rico in relation to the recognized alternatives for full self-government. Discussion of these issues tends to be quite emotional, for obvious and valid reasons. U.S. nationality and citizenship is a blessing that is synonymous with liberty itself. At the same time, failure of Congress previously to afford the people of Puerto Rico a choice between full, equal U.S. citizenship and the option of separate nationality and sovereign nationhood has prevented the true sentiments of the people from being translated into a recognized form of permanent self-government.

As a result, in addition to the ideas and emotions evoked when the subject of citizenship arises, there is a great deal of confusion about applicable law and policy in this area. The “nation-within-a-nation” myth that there can be two nationalities with what amounts to one citizenship has been allowed to be perpetuated for so long that untying the knot with regard to citizenship is going to be difficult. Yet, doing so in a careful and fair manner is perhaps the single most important task if we are to provide the people of Puerto Rico with a meaningful opportunity to engage in a free and informed act of self-determination.

Too often the discussion of nationality and citizenship in the context of full self-government proceeds from the flawed premise that the rulings of the U.S. Supreme Court regarding dual citizenship and loss of U.S. nationality govern this issue. To the contrary, legal and political principles relating to self-determination and emergence of new nations, as well as the special status that people born in Puerto Rico have under the Territorial Clause and the statutes implementing Article IX of the Treaty of Paris, are more relevant. To ensure that the intent of Congress is well-established and clearly defined in this regard, there are several fundamental points which must be understood.

Section 4 defines the nationality and citizenship principles that will be legally binding in the event that the people vote for separate sovereignty. With respect to nationality and citizenship under a separate sovereignty scenario, it is the intent of the Committee that the governing legal analysis is and will be as follows:

Formulation of a legally effective provision to govern the change of citizenship for the Puerto Rican population in the event of a vote for separate sovereignty is imperative. Although quite properly the future of Puerto Rico will be determined by the eligible voters who qualify to cast a ballot in the status referendum based on compliance with Puerto Rican law requiring residence in the territory, the results of the self-determination process must be implemented fairly with respect to all those who have U.S. citizenship based upon birth in Puerto Rico during the territorial period. That includes those who reside in Puerto Rico and those affected persons who reside in the several States or elsewhere.

Not only must the self-determination process be respected, but in order to implement a vote in favor of separate sovereignty, the international law of nation-state succession as recognized by the

United States also must be observed. This requires a transfer of sovereignty, nationality and citizenship to establish a new nation if that is what the people of Puerto Rico vote to approve.

The U.S. long has recognized that the allegiance of the population of a territory transfers with sovereignty, and failure to adhere to that practice in the context of Puerto Rico's emergence into nation-state status would represent an unjustified and profoundly problematic departure from established U.S. practice. *American Insurance Company v. Canter*, 26 U.S. (1 Pet.) 511, 542 (1828).

It is entirely consistent with the rights of the people of Puerto Rico under those parts of the U.S. Constitution and laws of the U.S. which apply to Puerto Rico at this time for the nationality and citizenship which had been extended to Puerto Rico under the Treaty of Paris to be withdrawn upon the transfer of sovereignty over the territory and population to the government of the Puerto Rican nation-state if that is in accordance with the results of the self-determination process. As long as there is a procedure available for those who wish to retain the citizenship of the U.S. as predecessor sovereign on the same terms it previously had been enjoyed, the succession of nationality and citizenship as part of the succession of sovereignty is consistent with U.S. Constitutional law, this nation's historical practice and customary international law recognized by the United States. *American Insurance Company v. Canter*, 26 U.S. (1 Pet. 511, 542 (1828); O'Connell, *The Law of State Succession* 246 (1956).

Some confusion has arisen in Puerto Rico on this point because the U.S. recognizes that those with citizenship protected by the Fourteenth Amendment will lose that status only by relinquishing it voluntarily and intentionally, *Afroyim v. Rusk*, 387 U.S. 253, 260 (1967). But the case of an individual with full U.S. citizenship acquiring another nationality, or enjoying a benefit or right of citizenship in another country as in the *Afroyim* case, Constitutionally is distinctly related to the case in which a population with statutory citizenship in a less than fully self-governing territory exercises its right of self-determination in favor of separate sovereignty. For that act of self-determination to be honored and implemented in accordance with U.S. Constitutional and international practice, the new nationality of that population must be accorded formal recognition by the U.S. and the international community.

This would not violate the rights of the population of Puerto Rico for reasons which include that it would only happen due to the results of a democratic voting process. As noted below, determination of the status of those who wish to retain the predecessor nation's citizenship would, in this case, be within the discretion of Congress, and ending statutory U.S. nationality and citizenship created by Congress during the territorial period to implement an act of self-determination in favor of separate sovereignty would not be barred constitutionally. *Rogers v. Bellei*, 401 U.S. 815 (1971).

The recognized and well-established procedure of requiring an election between citizenship of the predecessor or successor sovereigns, or otherwise preventing the population concerned from having citizenship and allegiance with respect to both the predecessor and successor nations on an across-the-boards basis, is an essential and imperative feature of a valid, legitimate and credible

separation of sovereignty and succession of state. This feature of the law of state succession has been recognized and practiced by the U.S. throughout our history, as it was under the nationality and citizenship provisions of Article IX of the Treaty of Paris when Puerto Rico was ceded to this nation by Spain, the Foraker Act in 1901 and the Jones Act in 1917.

Thus, it is consistent with U.S. Constitutional and international practice, as well as the international law of state succession, to give people with the nationality of the previous or predecessor sovereign the right individually to choose not to be part of the overall process of succession to the nationality of the successor sovereign. While there are variations of how this is accomplished, it is clear that the domestic law of the predecessor nation governs the retention of the previous nationality and citizenship, and the domestic law of the successor nation governs the acquisition of the nationality and citizenship of the new nation. O'Connell, *The Law of State Succession* 245–248 (1956).

Consequently, Congress will have to prescribe the criteria and procedures to protect the right of all those Puerto Ricans who want to retain their current statutory U.S. citizenship. At the same time, we need to recognize that the Federal Department of Justice has long taken the position, and is on record before Congress, that the statutory citizenship which Congress has conferred on people born in Puerto Rico during the territorial period is not full, equal citizenship protected by the Fourteenth Amendment to the Constitution. See Section-By-Section Comments on S. 244, U.S. Department of Justice, February 5, 1991.

That the current U.S. citizenship of persons born in Puerto Rico during the territorial period is restricted and less-than-equal is self-evident from the fact that this class of citizens, as residents of an unincorporated territory subject to the Territorial Clause, do not have voting representation in Congress, do not vote in national elections, and the U.S. Supreme Court has ruled that Congress can exercise its Territorial Clause powers to treat the U.S. citizens in Puerto Rico in a manner which is not equal to the treatment of U.S. citizens in the several states. *Harris v. Rosario*, 446 U.S. 651, 1980. The Congressional Research Service has concurred in these views, and the record of the Committee's hearings includes documentation of these authoritative legal opinions. See, Legal Memorandum of John H. Killian, Senior Specialist, American Constitutional Law, CRS, American Law Division, November 15, 1990.

The current citizenship status of people born in Puerto Rico was established by Congress in an exercise of its Territorial Clause authority to implement the Treaty of Paris. Article IX of the Treaty of Paris states that the "civil rights" and "political status" of the inhabitants of the Puerto Rico will be determined by Congress. In 1904 the U.S. Supreme Court ruled in *Gonzales v. Williams* that Puerto Ricans have U.S. nationality, but that the specific citizenship status of the population of the territory is subject to the discretion of Congress under the Territorial Clause. In 1917 Congress ended the limited territorial citizenship of Puerto Ricans, but the U.S. citizenship granted by statute since 1917 is limited, restricted and less-than-equal citizenship. Full equal citizenship, irrevocable in the same legal and political sense as citizenship due to birth in

a state of the union, comes only with full integration of Puerto Rico into the union.

Thus, the current citizenship status of Puerto Ricans exists at the discretion of Congress. Because the Constitution has been partially extended to Puerto Rico, including fundamental rights of due process and equal protection, Congress obviously cannot exercise its discretion in an arbitrary and irrational way. But the suggestion that the current citizenship can be guaranteed or that it is irrevocable by a future Congress is dangerously misleading. No such statutory status can bind a future Congress from exercising its Constitutional authority and responsibility under the Territorial Clause to carry out Article IX of the Treaty of Paris.

Indeed, the Congressional Research Service memo cited above concluded that the current statutory citizenship of people born in Puerto Rico can be regulated or even rescinded without violating the equal protection and due process rights which have been extended to Puerto Rico by Congress and the Federal courts. (See, Killian, "Questions in re Citizenship Status of Puerto Ricans," CRS, November 15, 1990). As long as Congress acts for a legitimate Federal purpose and the measures taken are reasonably related to such a purpose, the form of citizenship status provided by Congress for persons born in Puerto Rico can be altered or modified by Congress.

The CRS memo also states that the "possibility of revocation in the event of independence" would not involve the same difficulty of identifying a "legitimate reason" for ending U.S. citizenship for those who acquired it during the territorial period based on being born in Puerto Rico. (See, Killian. p. 4). A vote for separate sovereignty would lead to separate sovereignty, nationality and citizenship. As former attorney General Richard Thornburgh told the Senate during the 1991 hearings on the Puerto Rico status legislation under consideration at that time, the doctrine of state succession would apply and there would be no Constitutional bar to ending U.S. citizenship since U.S. nationality would end as well. Congress cannot agree to separate "nationality" but grant mass common "citizenship" if the voters approve separate sovereignty. That would make no sense, and both legally and politically it would undermine U.S. as well as Puerto Rican sovereignty. The attempt to have it both ways has failed, and will never succeed.

So Congress must preserve the right of statutory citizenship for those who individually do not want to participate in the change of nationality along with the general population. But in doing so, we need to avoid confusing the citizenship rights which we must protect for the U.S. citizens of Puerto Rico who wish to retain that status, on one hand, from the citizenship of persons born or naturalized in a State of the Union and thereby protected by the Fourteenth Amendment to the Constitution, on the other.

This distinction is important because Congress will need to prescribe the nature of the continuing statutory right to U.S. citizenship which Puerto Ricans will have if they choose to maintain allegiance to the United States. As just two examples, such persons must retain the right to renounce U.S. citizenship, and the eligibility of such persons for Federal benefits when residing in Puerto Rico will have to be defined in a manner consistent with the suc-

cession of state doctrine and the fact that the status of Federal programs in Puerto Rico will be determined be subject to agreement of the U.S. and Puerto Rico under a separate sovereignty scenario.

This entire discussion underscores the fact that the statutory right of U.S. citizenship based on birth in Puerto Rico as it is today, and as it will be if the voters approve separate sovereignty, is not full Constitutionally-protected citizenship. If there is going to be an informed act of self-determination in Puerto Rico, the people must know that the only path to full, equal, permanent, irrevocable United States nationality and citizenship for the people of Puerto Rico is through statehood and the Fourteenth Amendment protection that comes exclusively with that Constitutionally-based status.

In the context of the international law of state succession, it also is necessary in order to establish the identity of the new Puerto Rican nation as a state in international law that there be no equivocation, ambivalence or ambiguity about the succession of sovereignty, nationality and citizenship of the population of Puerto Rico as the body politic of the territory under the sovereignty of a new state. If the establishment of separate sovereignty is what the people vote to approve, that is what the U.S. and the new nation of Puerto Rico must seek to bring into existence.

The experience of the U.S. and the free associated states which emerged from the U.S. administered U.N. Trust Territory of the Pacific Islands under a compact of free association demonstrates that the new separate sovereignty, nationality and citizenship of the new nations must be well-defined and clearly established if the separate identity of the new nation is to be believed, accepted and formally recognized by the international community. Any attempt at creation of a new state in name or form only, without the underlying elements and substance of a separate nation-state in the international sense, will not succeed.

At the same time all these issues need to be understood and addressed, the Committee also had to reduce the expression of this freedom of choice regarding citizenship and succession of state requirements to language which could be included on a plebiscite ballot. The final language is found at Section 4(a) of H.R. 3024. However, if we had no constraints in the length of the citizenship definition we more fully would have given expression to the meaning of the provision as follows:

In accordance with the act of self-determination approving separate sovereignty for Puerto Rico, as well as the succession of nationality and government, the people of Puerto Rico owe allegiance to a Puerto Rican nation and have the nationality and citizenship thereof; United States sovereignty, nationality and citizenship is terminated with respect to Puerto Rico and is transferred to the Puerto Rican nation, which has an existence and identity in international law separate and apart from that of the United States; thereafter, birth in Puerto Rico or relationship to a person who became a U.S. national and citizen by statute based on birth in Puerto Rico during the period of U.S. territorial administration is not the basis for U.S. nationality or citizenship; provided that, persons who acquired such statutory U.S. citizenship during the territorial period have a right to be secure in and to enjoy U.S. citizenship for the remainder of their natural lives in accordance with their in-

dividual choice not to participate personally and individually in the succession from U.S. to separate Puerto Rican sovereignty, nationality and citizenship with respect to the territory and population of Puerto Rico; Congress shall prescribe the procedures and criteria to ensure that no such person determining to retain U.S. citizenship shall be denied the right to do so, and that all such persons shall have the ability to exercise their free will in favor of their statutory right of U.S. citizenship. Consistent with this statutory citizenship right, U.S. laws applicable to U.S. citizens shall apply, including the statutory right to renounce U.S. citizenship. There will be an election procedure or other mechanism and criteria through which individuals who do not want to change to Puerto Rican citizenship will not be forced to do so, but neither those who acquire Puerto Rican citizenship nor those who retain U.S. citizenship as part of the process of state succession will have dual U.S. and Puerto Rican citizenship as a result. Any incidence of dual citizenship in individual cases must be on the basis of separate statutory or Constitutional grounds due to birth or naturalization in one of the States of the Union. The special statutory right available to those who elect to retain U.S. citizenship under this traditional arrangement for person born in Puerto Rico during the territorial period requires continued allegiance to the U.S. and will terminate for any otherwise eligible person who becomes a national and citizen, or has and exercises the rights of citizenship, of any nation other than the United States—including the new sovereign nation of Puerto Rico. These restrictions on dual Puerto Rican-U.S. citizenship arising from this transitional citizenship arrangement are determined by the Committee to be necessary in order to ensure that both the U.S. and Puerto Rico will be able to exercise effective control over the territory and population that defined each as a separate nation, respectively—in accordance with their respective constitutional processes and laws. This is required to preserve the sovereignty of each nation and bring about an effective succession of sovereignty, nationality and citizenship in the event separate sovereign status is implemented. This arrangement also ensures continuity and a coextensive relationship as between the statutory citizenship conferred during the territorial period and the statutory citizenship which is available by election or entitlement as Congress may determine. This intended result could be frustrated if the procedures and requirements of U.S. law relating to dual citizenship for persons whose U.S. nationality and citizenship is protected by the 14th Amendment to the Constitution were misapplied in the cases of persons with statutory U.S. citizenship arising from birth in Puerto Rico as recognized under this transitional citizenship arrangement. Rather, Congress must limit the availability of this special transitional statutory citizenship right so that it is circumscribed and not extended beyond what is necessary to ensure that the state of citizenship now enjoyed by persons born in Puerto Rico under the territorial regime can be extended as an equivalent statutory right for life on an individual basis employed in the event Puerto Rico becomes a separate nation.

The actual language of Section 4(a) of H.R. 3024 should be understood as an abridged version of the preceding paragraph.

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. Under those election laws, non-residents who are serving on active duty in the military are allowed to cast absentee ballots, and this exception is acknowledged without creating or authorizing any deviation from current residency and citizenship requirements.

The provisions of Section 5 relating to the authority and procedures for conducting referenda are self-explanatory and unambiguous.

Section 6. Congressional procedures for consideration of legislation

This section prescribes the “expedited procedures” for Congressional action pursuant to this bill 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(l)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(l) 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.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 3024 will have no significant inflationary impact on prices and costs in the operation of the national economy.

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. 3024. 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(l)(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. 3024 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(l)(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. 3024.

3. With respect to the requirement of clause 2(l)(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. 3024 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 18, 1996.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3024, the United States-Puerto Rico Political Status Act, as ordered reported by the House Committee on Resources on June 26, 1996. CBO estimates that H.R. 3024 would result in no significant cost to the federal government. Enacting H.R. 3024 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

Bill purpose.—H.R. 3024 would establish a process for determining and implementing a permanent political status for Puerto Rico. The process would include three stages:

(1) Puerto Rico would hold a referendum by December 31, 1998, whereby voters would choose between Puerto Rico's continued status as a territory of the United States and full self-government. If the voters select the status quo, then another referendum would be held in four years, and if necessary, every four years thereafter. If the voters opt for self-government, they would select on the second part of the ballot between a separate sovereignty from the United States, resulting in either independence or free association, and statehood.

(2) If a majority of voters select self-government, the President would submit legislation to the Congress that provides for a transition of at least 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 legislation to the Congress to implement the selected form of self-government. A third referendum would then be held to approve or disapprove the enacted plan.

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 govern-

ment of Puerto Rico. Under H.R. 3024, the President could elect to specify that some or all of the funds be made available to the Puerto Rico State Election Commission.

Federal budgetary impact.—We estimate that H.R. 3024 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 self-government. Other than such minor costs, H.R. 3024 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 (SSI) and Medicaid, plus changes in receipts from a federal income taxes, which residents of Puerto Rico currently do not pay. Any such changes, however, would be contingent on the outcome of the referendum and future actions of the Congress and the President. It is unlikely that any change could occur before fiscal year 2010. Because the potential budgetary impact of a change in Puerto Rico's status would depend on future legislation, enacting H.R. 3024 would have no direct budgetary impact (other than the minor discretionary costs cited above).

Impact on State, local, and tribal governments.—H.R. 3024 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), but the direct cost of these mandates would not exceed the \$50 million threshold established by that act. This bill would require 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 require 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 require a second referendum in fiscal year 2003.

CBO estimates that the government of Puerto Rico would incur costs of \$5 million to \$10 million for each referendum required by H.R. 3024. Given the timetable established by the bill, we expect that one referendum would be held in fiscal year 1999 and second in either fiscal year 2000 or 2003, depending on the outcome of the first. This estimate is based on the cost of recent elections in Puerto Rico. It includes the cost of voter education as well as the cost of holding elections.

Should the process established by this bill result in a change in the political status of Puerto Rico, this would have a significant fiscal impact on the government of that island. Any such change would be the result of future legislation.

Private-sector mandates.—This bill would impose no new private-sector mandates as defined in Public Law 104-4.

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,

JAMES L. BLUM
(For June E. O'Neill, Director).

COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 3024 contains intergovernmental mandates as defined in Public Law 104-4, but the direct cost of these mandates would not exceed the \$50 million threshold established by that act. As described in the Congressional Budget Office letter included above, the mandate imposed on the Government of Puerto Rico is to hold referenda on the question of self government, at a cost of between \$5-10 million each for holding elections and voter education. The benefit to the United States would be to clarify the intentions of the citizens of Puerto Rico regarding their status. The benefits for Puerto Rican citizens (who also hold reduced U.S. citizenship) is to provide them an opportunity to achieve self government status or to become a State of the United States, in addition to their status quo as citizens of the U.S. Territory. Paying for this intergovernmental mandate will not affect competitive balance between Puerto Rico and the private sector. H.R. 3024 provides funding for the referenda by earmarking existing Federal excise taxes on foreign rum, which are currently collected by the Federal Government and transferred to the Government of Puerto Rico. These funds are intended to provide at least partial funding, which could be supplemented by appropriations from the Government of Puerto Rico. Funding would be made available to the Government of Puerto Rico for distribution. Central ruling bodies of various political parties or other qualifying entities advocating a particular choice for Puerto Rico's political status would be eligible to receive grants. H.R. 3024 is not intended to preempt any Puerto Rican law.

H.R. 3024 imposes no private sector mandates.

CHANGES IN EXISTING LAW

If enacted, H.R. 3024 would make no changes in existing laws.

DISSENTING VIEWS

H.R. 3024 gives the people of Puerto Rico the same kinds of promises they have heard before about plebiscites and future Congressional actions to resolve status. This bill will not resolve the status question because it would allow 15 years or more the additional reconsideration and modification both by future Congress and by the voters of Puerto Rico.

The time frame set out under H.R. 3024 is ridiculously long and gives the United States several possibilities to back out of granting a new status. Under this bill, statehood or independence would not be granted until the year 2011 at the earliest. Foot dragging by either Congress or Puerto Rico could extend that date indefinitely. An entirely new generation of Congress, and potentially four new presidential administrations, would determine whether or not Puerto Rico changes status. The bill calls for 3 rounds of votes by both Congress and the people of Puerto Rico with years of waiting in between for the people of Puerto Rico. Congress need simply not to act on either the transition legislation or the implementation legislation in order to postpone a final resolution of the status question.

During mark up of this legislation by the Resources Committee, Representative George Miller (D-CA) sought to give credibility to the decisionmaking process contained in the bill and to provide certainty as decisions are made. The first vote by the people of Puerto Rico would determine future status. If statehood or independence won, the second vote would decide implementation of the new status. The Miller amendment would have ensured that the results of the status vote would be respected by Congress. If statehood won, it would no longer be a question of “if” but simply “when” Puerto Rico became a State. The same would be true for independence. The Miller amendment was a truth-in-packaging amendment intended to force Congress to be honest with the voters of Puerto Rico about its commitment to respecting the outcome of the plebiscite. Under the Miller amendment, the status question would have been decided and implementation would have been underway by the 100th anniversary of Puerto Rico’s becoming a territory of the United States. Under the approach of the legislation, nothing will be resolved by 1998, or for years—or even decades—thereafter.

The Administration was provided no role in either the formulating or consideration of the legislation. Although a hearing was held on the bill, the Administration was not invited to testify. The Committee was never given the opportunity to receive the expertise of the Departments of State, Justice, Defense, or the Interagency Working Group on Puerto Rico. Surely, if Congress intends to admit a new State or support a new independent nation, it would not do so without first learning how such a change would affect the several States.

There have been 3 votes on status in Puerto Rico and the gap between those supporting statehood and those supporting commonwealth has been narrowing substantially. The results of the vote taken in 1952 was 76.5% for commonwealth and 23.5% for statehood. Many independence supporters boycotted this election. The 1967 plebiscite found that 60.41% supported commonwealth, 38.99% supported statehood, and 0.6% supported independence from the United States. In the 1993 plebiscite 48.4% of voters supported commonwealth, 46.2% supported statehood, and 4.4% supported independence.

In order for there to be a status change in Puerto Rico, that change must be the desire of most people living on the islands. It is essential that a territory fully support and be prepared for the responsibilities it will encounter prior to admission into the Union. Our nation would suffer serious consequences if a State were brought into the Union without the consent of its citizens. Therefore, any legislation leading to such a possibility must be conducted in an open manner with full participation of the Puerto Rico voters.

H.R. 3024 as introduced did not include the possibility of retaining commonwealth, the status that has won all three elections and is advocated by one of the two major political parties in Puerto Rico. This effort to constrain the options offered the people of Puerto Rico was unacceptable and drew criticism from Congressman Miller and the Clinton Administration. Shortly, after introduction of the bill, polls were taken showing that overwhelmingly even statehood supporters believed that commonwealth should be included in the legislation. Eventually, the definition of commonwealth added to the bill was written by statehood supporters and would appear on the ballot without the support of the Commonwealth party.

H.R. 3024 remains transparently skewed to illicit a specific response. In the first round of voting, the bill puts statehood and independence, two diametrically opposing options, together as a new status for the obvious purpose of assuring defeat of Commonwealth. Once that occurs, there would be a second round run-off between commonwealth and independence which must almost certainly result in a victory for statehood, the option favored by the sponsors of this legislation. If this bill proceeds, most of the voters of Puerto Rico will believe Congress tilted the process in order to eliminate their choice, and they will be right.

This bill also calls for the introduction of part of a new status into the available options. The status of free association is lumped together with independence. These are two very separate and distinct status options.

A law enacted on July 3, 1950 authorized a constitutional convention in Puerto Rico to draft a constitution. The constitution has been in effect since July 3, 1952. The constitution established a government which was given the Spanish name of "Estado Libre Asociado" and the English name of "Commonwealth". "Estado Libre Asociado" was purposely translated by the constitutional convention into English as "Commonwealth" so it would not be mistaken for its literal translation of "Free Associated State". At the time, the purpose was to avoid the suggestion that Puerto Rico intended

to be a State of the Union. However, it now can be confused with the status of free association.

Congress spent several years working out the Compacts of Free Association with the Trust Territories of the Pacific and Palau. These compacts require a closer relationship than would be given an independent nation. To combine and confuse these two options is another problem with this bill. Free Association as Congress and the international community uses the term, has never been called for by Puerto Rico voters. During Resource Committee consideration, Representative Eni F.H. Faleomavaega (D-AS) attempted to delete the term from the bill but, with little discussion, was not successful.

Additionally, the status ballot is unmanageably long, confusing and cumbersome. It should be shorter and more intelligible. For example, it is not clear if those supporting Commonwealth in the first round are allowed to move on to the second round.

The issue of what happens to the almost 4 million U.S. citizens if independence is selected is yet another problem with this legislation. As introduced, the bill automatically took U.S. citizenship away from all Puerto Ricans if independence was selected. At the Resources Committee consideration an amendment was accepted which appears to temper the original language some but still leaves the question of whether Puerto Ricans with U.S. citizenship would be treated differently than other U.S. citizens living in foreign countries. This amendment was added without the Committee receiving input from either experts in the area of citizenship or constitutional law. Dealing with citizenship issues would be more appropriate in the transition or implementation legislation than being made part of the ballot on the question of status. Including such language on the ballot may be perceived by some as a threat if independence is supported.

Puerto Rico holds elections every four years at which time the Resident Commissioner, Governor, Legislature, and local officials are chosen. The three political parties in Puerto Rico are all tied to the question of status with the United States. The Popular Democratic Party supports Commonwealth, the New Progressive Party supports Statehood, and the Popular Independence Party supports Independence. H.R. 3024 is being considered during the height of the political season in Puerto Rico, perhaps adding to the level of hyperbole.

There continues to be strong division among the voters of Puerto Rico as to its status with the United States. The almost 4 million U.S. citizens living in Puerto Rico are not afforded the same opportunities as those living in the several States under the current status arrangement. That is unacceptable, and should be addressed. Unfortunately, H.R. 3024 is not the solution.

GEORGE MILLER.
ENI FALEOMAVAEGA.

ADDITIONAL VIEWS

I would like to take this opportunity to expand upon my previous remarks made before the Resources Committee during the markup of H.R. 3024: The United States-Puerto Rico Political Status Act. As anyone will acknowledge, the 3.8 million American citizens in Puerto Rico should have the same degree of rights, advantages, liberties, and responsibilities as any other U.S. citizen.

Since 1917 the people of Puerto Rico have contributed to the social, economic, and cultural history of the United States. They have fought alongside other Americans in war and shared in our times of domestic struggle.

Currently, Puerto Rico is living under territorial status. For decades, this status and the special Section 936 tax provision of the U.S. Internal Revenue Code helped Puerto Rico's economy to mature and develop. To be sure, Section 936 was instrumental in transforming Puerto Rico from an impoverished economic state to one of growth and opportunity.

Unfortunately, times have changed. The dramatic expansion of the global marketplace has begun to show its impact on Puerto Rico's economy. Puerto Rico now faces an unpredictable investment environment in which foreign competition, especially in labor intensive jobs, is on the rise. Moreover, as corporate profits steadily grew, new investment and job creation began to dwindle on the Island. In fact, employment commitments by non-local investors in Puerto Rico, the true beneficiaries of the 936 tax status, have fallen from over 11,000 jobs in 1987 to 4,900 jobs in 1995.

Under the Territorial Clause of the Constitution, Congress clearly has within its powers to legislate on the future political and economic status of Puerto Rico. For several years now the 936 tax status has been under attack in Congress. Once seen as an engine of economic development, 936 is today more commonly thought of as a facilitator of corporate welfare and economic instability.

In many ways the 936 tax status is at an end. Both the 104th Congress and the Clinton Administration have taken steps to fundamentally reform Puerto Rico's economic relationship with the United States. Should 936 status be officially terminated without providing an alternative status neutral job creating program, it is reasonable to assume that the Puerto Rican economy will experience increased job loss (unemployment is already at 12 percent) and economic uncertainty.

Clearly, the economy of Puerto Rico is inexorably tied to the future of the Island's political status. During the 1993 plebiscite, advocates of retaining Commonwealth status declared that Puerto Ricans would be able to retain the 936 tax status and permanently secure the "bilateral pact" with the United States that could not be altered without mutual consent. As this Congress has clearly indicated, these assertions are simply not the case. The United States

has the express authority to dictate the future of Puerto Rico's economic and political status without the approval of the American citizens in Puerto Rico.

Fortunately, the United States has chosen to recognize the right of the people of Puerto Rico to self-determination, including the right to approve any permanent political status which will be established upon termination of the current unincorporated territory status. For years, Puerto Rico has tried to address the issue of political status through unsuccessful referenda. This situation has led to a significant degree of confusion about the future of the Island.

The introduction of The United States-Puerto Rico Political Status Act (H.R. 3024), of which I am an original co-sponsor, is consistent with the established right of all Puerto Ricans to choose their own political destiny. It is the goal of the bill to help Puerto Rico move towards a process of full self government and end almost 100 years of political limbo.

For my part, I have indicated many times before that if I were given the choice of retaining territorial status or ratifying Puerto Rico as the 51st state I would definitively choose the latter. Territorial status has certainly served the people of Puerto Rico well. It is time however, to move on for both political and economic reasons.

Politically, the fact that almost 4 million citizens cannot vote for the President is egregious. If Puerto Ricans can fight in war and potentially die for our nation then they should have the opportunity to vote for the person who decides to send them into battle.

Additionally, the fact that Congress can make substantial funding and legislative decisions upon the people of Puerto Rico without their consent or participation is contradictory to the spirit of Democracy. If Puerto Rico becomes a state, the Island will boast the full voting strength of at least 7 members in the House of Representatives and two in the Senate. These elected officials will be able to fight for the rights and privileges of the Americans living in Puerto Rico.

Economically, the citizens in Puerto Rico currently live in a state of colonialism. The rights and opportunities that are conferred upon the individual states are not equally attributed to the territory of Puerto Rico.

Due to Puerto Rico's current federal tax status many U.S. programs and entitlements are summarily capped. The reason for the cap has traditionally been because of lack of payment of federal income taxes.

Unfortunately, the advantage that Puerto Rico has received in return. Section 936 tax status, is not transferred to the working people and families of Puerto Rico. In fact over 24% of the Puerto Rican economy in 1995 was held by non-resident businesses and corporations. Moreover, many of these businesses, in particular large pharmaceutical companies, have saved as much as \$187,000 per employee annually through Section 936 tax credits. This far exceeds the wages earned by these employees, and signifies huge profit margins for the corporate subsidiaries. Clearly, Section 936, which was designed to facilitate investment in Puerto Rico has worked, but it has done so at the expense of the Puerto Rican people. Large companies have greatly increased their wealth while

working families have struggled. Per capita income in Puerto Rico is more than 50% lower than that of the poorest states in the continental United States.

Concurrently, Puerto Rican residents have not been able to enjoy the same benefits as the states when it comes to federal entitlement and discretionary spending.

In my own state of Rhode Island one of the most important entitlement programs is Medicaid. In 1994 Rhode Island received almost \$500 million Medicaid entitlements to help ensure health and long-term care coverage to poor families and disadvantaged children. Rhode Island has a total population of less than 1 million in which approximately 19 percent was enrolled in the Medicaid program.

By contrast, Puerto Rico's Medicaid disbursement was capped at just over \$122 million for FY95 for a population that is almost 4 times larger. If we compare this statistic to states like Kentucky and South Carolina, which have similar populations to Puerto Rico, we can see first hand the tremendous disparity that the Island faces in Medicaid entitlements. In 1995, Kentucky and South Carolina received about \$1.5 and \$1.4 billion in Medicaid disbursements, respectively, a significant difference from that of Puerto Rico.

The majority of Puerto Ricans are clearly experiencing a second class standard of living. In 1992 over 2.5 million or 66% of Puerto Ricans were classified as living below the poverty level. In the same year almost 50% of the people did not have health insurance. With regard to the current Medicaid formula, Puerto Rico, with its particularly high percentage of below poverty citizens, would stand to significantly increase health care coverage for all who qualify for the program.

Adequate funding for education is equally lacking. In 1993, the average per pupil expenditure in public and secondary education was \$1,779 as compared to almost \$6,700 in Rhode Island. If Puerto Rico was considered with the individual states the Island would rank last in this important category. Additionally, in the same year, 50% of Puerto Ricans did not graduate from high school and less than 15% of the population attained a bachelor's or more advanced degree.

To be sure, the foundation of Puerto Rico's future workforce is not being trained to compete for the high skill/high wage jobs of the 21st century. Under territorial status, the children and Puerto Rican students are disproportionately handicapped to excel in the global marketplace.

Combined, the factors of an ineffectual 936 tax status, capped federal funds, and reduced overall discretionary spending, have led to a substantially lower standard of living for all the American citizens living on the Island. Indeed, the aforementioned statistics seem to indicate that Puerto Rico is not prospering under territorial status.

As I have indicated, with the very real prospect of Section 936 phase-out, Puerto Rico has come to an economic crossroads that can only be addressed by significant political reform. The need for full self government is at hand. If the people of Puerto Rico choose the Statehood option, it is my contention that the Island will begin

to develop the seeds of true economic growth and prosperity. This development will not be based on the failed notion of trickle down economics where the large companies have grown rich while working families remain poor. Rather, with equal participation in U.S. affairs, Puerto Rico will be able to take advantage of every opportunity that the Federal Government and separate states have to offer.

Ultimately, the choice between territorial status and statehood is a choice between stagnation and growth, and between the past and the future. The privileges of statehood are many where the opportunities of territorial status are steadily being erased. I have allied myself with the advocates of statehood because I believe that full integration with the United States is the only way to end centuries of colonialism and disenfranchisement for the people of Puerto Rico.

The United States-Puerto Rico Political Status Act seeks to address this issue in good faith. Only by first addressing the political question can we hope to create an environment of prosperity for all the Americans living in Puerto Rico.

PATRICK J. KENNEDY.

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APPENDIX I

(H. CONC. R. 62)
(Conference)

Approved December 14, 1994
CONCURRENT RESOLUTION 62

To request, on behalf of the People of Puerto Rico, that the One Hundred and Fourth Congress of the United States, promptly express itself on the principles contained in the redefinition of the political formula of the Commonwealth, as submitted to the electors in the Plebiscite on the Political Status held on November 14, 1993, and should the Congress fail to accede to the changes proposed herein, that it states the specific status alternatives it is willing to consider, and the measures it recommends that the People of Puerto Rico should take as part of the process to solve the problem of their political status.

Puerto Rico began its constitutional life upon the ratification of Act 600 of July 3, 1950. The ratification of this Federal statute, which is the foundation of the Commonwealth, was attained through a referendum held on June 4, 1951. Some 506,185 electors participated in said process, that is, 65.08 percent of the total of voters registered in Puerto Rico at that time. Act 600 received 387,016 voters in its favor and 119,169 against, a proportion of 76.5 percent and 23.5 percent, respectively.

On July 23, 1967, sixteen years after the ratification of Act 600. A Plebiscite was held in Puerto Rico so that the People could express their preference as to the three status options: Statehood, Independence and Commonwealth with extended powers, although they were not clearly established. In that Plebiscite 702,601 electors voted, expressing the following preferences: 425,081 or 60.5 percent for the Commonwealth ; 273,315 or 38.9 percent for Statehood; and 4,250 or 0.5 percent for Independence. Supported by this majority, the advocates of Commonwealth, unsuccessfully took the pertinent steps to extend the powers of their political formula between the years 1973 and 1976.

On November 14, 1993, twenty-six years after the Plebiscite of 1967, a second plebiscite was held, based on the legitimate aspirations and the inalienable right of the People to choose a status with full political dignity and no colonial or territorial subordination to the plenary powers of the Congress. The Act which authorized this Plebiscite provided that each of the three participating political parties would have full freedom to draft the principles and scope of their respective status formulas. From this flexible and liberal basis, the three definitions were thus submitted to the electors.

The results of the voting were as follows: 825,181 votes of 48.67 percent for the Commonwealth; 787,612 votes or 46.5 percent for Statehood; and 75,512 votes or 4.5 percent for Independence.

In effect, the Plebiscite held on November 14, 1993, for the first time set the preference for Commonwealth below fifty percent of the electorate. Nevertheless, the results of this process revealed a plurality of votes in favor of said political status, as formally defined and submitted by the Popular Democratic Party, principal advocate of said formula.

The official definition of Commonwealth formulated by the Commonwealth leaders for the Plebiscite foresees a relationship between Puerto Rico and the United States based on a bilateral pact of permanent union which recognizes the sovereignty of the Commonwealth. This pact could be altered only if both parties consent to it.

Furthermore, on the basis of the definition of Commonwealth they drafted and submitted to the electors in the Plebiscite last November 14, the promoters of this status also claim for the urgent action of the Congress to develop their formula. They specifically demand: the reformulation of Section 936 of the Federal Internal Revenue Code in order to guarantee federal tax exemption; the extension of the Supplementary Social Security to Puerto Rico; the granting of parity to the Commonwealth of Puerto Rico as a state for the federal appropriations under the Nutritional Assistance Program and that the local Government be granted powers to protect Puerto Rican agricultural

products from competition with imported products. According to this same definition, all these claims would be made to the Congress without prejudice to the fiscal autonomy which has excluded the Commonwealth from the responsibilities imposed by the Federal Tax system upon the fifty (50) states of the Union.

The preference expressed by the People in the Plebiscite of 1993 for this redefinition of the Commonwealth requires, for it to become a reality, substantial amendments to the Puerto Rico Federal Relations Act. Since this Act is a federal statute, and the United States has jurisdiction over any matter which alters or modifies the political status of Puerto Rico, it is pertinent on the One Hundred and Fourth Congress to evaluate the results of the Plebiscite and fix its position promptly and diligently concerning the claims, it corresponds to the One Hundred the Fourth Congress to clearly state which one of the status alternatives it is willing to consider, and which is the next step that the Congress recommends the People of Puerto Rico to take as part of the process to solve the problem of its political status.

Prompt Congressional action to such effect would allow the People of Puerto Rico to clearly define their real and true options for its political, economic and social development. Now it is up to the One Hundred and Fourth Congress of the United States to express itself regarding this petition of the American citizens of Puerto Rico. **BE IT RESOLVED BY THE LEGISLATURE OF PUERTO RICO:**

Section 1 - To request, on behalf and in representation of the People of Puerto Rico, that the One Hundred and Fourth Congress of the United States, promptly express itself on the principles contained in the redefinition of the political formula of the Commonwealth, as submitted to the electors in the Plebiscite on the Political Status held on November 14, 1993, and should the Congress fail to accede to the changes proposed therein, that it states the specific status alternatives that it is willing to consider, and the measures that it recommends the People of Puerto Rico should take as part of the process to solve the problem of their political status.

Section 2 - The principles and elements referred to in the preceding Section are those contained in the official definition of Commonwealth which the electors who voted in the Plebiscite had before them for their consideration. Said definition reads as follows:

"DEFINITION OF COMMONWEALTH"

A vote for the Commonwealth is a mandate in favor of:

Guaranteeing our progress and security and that of our children within a status of full political dignity, based on permanent union between Puerto Rico and the United States, formalized through a bilateral pact which cannot be altered except by mutual consent.

The Commonwealth guarantees:

- Irrevocable American citizenship;
- A common market, common currency and common defense with the United States.
- Fiscal autonomy for Puerto Rico:
- A Puerto Rican Olympic Committee and self representation in international sports.
- Full development of our cultural identity; with the Commonwealth we are Puerto Ricans first.
- **WE WILL DEVELOP THE COMMONWEALTH THROUGH SPECIFIC PROPOSALS TO CONGRESS. WE WILL IMMEDIATELY PROPOSE.**
- Reformulating Section 936, assuring the creation of more and better jobs;
- Extending Complementary Social Security (SSI) to Puerto Rico;
- Obtaining NAP appropriating at a par with the states;
- Protecting our other agricultural products, in addition to coffee.

Any additional change shall be previously submitted for the approval of the People of Puerto Rico."

Section 3. - A copy of this Concurrent Resolution shall be delivered. Duly translated into the English language, to all members of the United States Congress, to the Inter-Agency Committee appointed by the President of the United States of America, the Honorable William J. Clinton, and to the Secretary General of the United Nations Organization.

Section 4. - The Speaker of the House and the President of the Senate are hereby authorized to appoint a special joint committee to be composed of legislators from the Honorable William J. Clinton, and to the Secretary General of the United Nations Organization.

Section 4. - The Speaker of the House and the President of the Senate are hereby authorized to appoint a special joint committee to be composed of legislators from the three political parties for the sole purpose of personally delivering this Concurrent Resolution to the President to the Senate of the United States and the Speaker of the House of Representatives of the United States and to the leaders of the Congressional minority delegations.

Section 5. - This Concurrent Resolution shall take effect immediately after its approval.



APPENDIX II Congressional Record

PROCEEDINGS AND DEBATES OF THE 103^d CONGRESS, FIRST SESSION

Vol. 119

WASHINGTON, WEDNESDAY, NOVEMBER 10, 1993

No. 157

PUERTO RICO STATUS REFERENDUM

HON. DON YOUNG

OF ALASKA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, November 10, 1993

Mr. YOUNG of Alaska. Mr. Speaker, on November 14th, the United States citizens of the people of Puerto Rico will vote in a referendum regarding their preferred relationship with the United States. This is an historic occasion for the people to finally decide if they want to be a permanent part of these United States.

The statehood status definition is clear and consistent with legislative language used to admit previous territories into the Union. However, I am concerned with the highly unrealistic definitions of what constitutes the status choices of commonwealth and independence.

In the interest of political comity, the current pro-statehood government of Puerto Rico permitted the parties advocating commonwealth and independence to supply their own definitions in the referendum law. The result has been a balanced referendum electoral law, but with exaggerated status definitions on the referendum ballot for commonwealth and, to a lesser degree, independence.

It is ridiculous to suggest that the United States would ever agree to a commonwealth with permanent union between Puerto Rico and the United States. Only by being incorporated into the body politic of the United States can Puerto Rico be considered to be in permanent union.

We are a democracy united by a Constitution which extends equal protection, rights, and privileges to all. The United States will not set aside over two centuries of reliance upon this near-sacred document to be "bound by a bilateral pact that could not be altered, except by mutual consent." Even the North American Free-Trade Agreement (NAFTA) allows a member to end the agreement with a 6-month notice.

United States citizenship is endowed through the U.S. Constitution. It is through incorporation into the Union that one can obtain irrevocable American citizenship, not merely through some commonwealth guarantee. As unfortunate as it may seem, the citizenship of individuals born in Puerto Rico is not protected to the same degree as those born in a state or where the Constitution has been extended in full. This sensitive subject has been addressed and clarified many times in the recent years by the Congressional Research Service, the Department of Justice, and in several congressional hearings.

It is unfortunate that commonwealth purports to be able to obtain the full extension of Federal programs like the Supplemental Security Income (SSI) and food stamps allocations equal to those of the States, without assuming comparable financial responsibilities. It is a facade for commonwealth to infer that section 936 would be retained for very long in the future, let alone being reformed, thereby somehow assuring the creation of more and better jobs.

The independence definition makes a broad assumption that the United States would agree to let individuals in an independent Puerto Rico retain United States citizenship. When the people of the United Nations' trust territory in Micronesia chose to be a freely associated state with the United States, they were denied the option of U.S. citizenship. Many of the other claims of the independence definition are highly speculative as no benefit, program, service, or other right for Puerto Ricans under independence has ever been passed by both Houses of Congress.

The United Nations has resolved this to be the Decade of Decolonization. November 14th will be an opportunity for the people of Puerto Rico to decide how they want to end this decade and century under the United States flag. This is a time for the people of Puerto Rico to

ask themselves if they want to be full-first class citizens as an equal permanent part of the United States. No other status option on the ballot, not commonwealth and certainly not independence, can realistically guarantee equality under the U.S. Constitution.

I will be watching with intense interest and concern as the United States citizens of Puerto Rico choose from among the following referendum status definitions:

STATEHOOD

A vote for statehood is a mandate to reclaim the inclusion of Puerto Rico as a State of the Union.

STATEHOOD

In a non-colonial status of full political dignity:

Will allow us to have the same rights, benefits and responsibilities of the Fifty States;

In a guaranteed permanent union and an opportunity for economic and political progress;

In a permanent guarantee of all the rights provided by the constitution of the United States of America—including the preservation of our culture;

In a permanent guarantee of American citizenship, our dual language, customs and flag;

In complete participation in all Federal programs;

In the right to vote for President of the United States and to elect no fewer than six representative and two senators to Congress.

In exercising our rights as American Citizens, we will negotiate the terms of our admittance, which will be submitted to the people of Puerto Rico for its ratification.

COMMONWEALTH

A vote for commonwealth is a mandate in favor of:

A guarantee for progress, our security and that of our children within a status of complete political dignity based on the permanent union between Puerto Rico and the United States, bound by a bilateral pact that could not be altered, except by mutual consent.

COMMONWEALTH GUARANTEES

Irrevocable American citizenship;
Common market, common currency and common defenses with the United States;

Fiscal autonomy for Puerto Rico;
Puerto Rican Olympic Committee and international sports self-representation;

Complete development of our cultural identity; with the Commonwealth, we are Puerto Rican first.

We will develop the Commonwealth within specific guidelines set forth to Congress. We will immediately propose:

To reform Section 936, assuring the creation of more and better jobs;

To extend Social Security Complementary Insurance (SSI) to include Puerto Rico;

To obtain Food Stamp allocations equal to those of the States;

To protect our other agricultural products, in addition to coffee.

Any additional changes will be submitted to the people of Puerto Rico for their prior approval.

INDEPENDENCE

Independence is the right of self-government of our people; and the enjoyment of all the powers and attributes of sovereignty.

In the execution of this inalienable and irrevocable right, Puerto Rico will govern itself by a Constitution that will establish a democratic government, protect human rights and affirm our nationality and language.

Independence will give Puerto Rico the necessary powers to attain greater development and prosperity, including the powers to protect and stimulate our industry, agriculture and commerce, control immigration and negotiate international accords that would broaden markets and promote investments from other countries.

A Friendship and Cooperation Treaty with the United States and a transition process to achieve independence, in accordance with federally approved House and Senate committee legislation will enable the continuation of acquired Social Security veterans and other benefits; Puerto Rican citizenship and that of the United States, for those who chose to retain it; the right to use our own currency or the dollar; free access to the United States market; tax incentives for North American investments; Federal funding in an amount equal to the current allocation for at least one decade; and the eventual demilitarization of the country.



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of America

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No. 140

House of Representatives

EXPRESSING THE SENSE OF CONGRESS REGARDING THE COMMONWEALTH OPTION PRESENTED IN THE PUERTO RICAN PLEBISCITE

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES
Friday, September 30, 1994

Mr. YOUNG of Alaska. Mr. Speaker, the Legislative Assembly of Puerto Rico enacted a concurrent resolution asking the United States Congress to respond regarding the viability of the commonwealth option of the November 14, 1993 political status plebiscite, which received a slim plurality of the votes cast. I am pleased to join Senator PAUL SANCHEZ in a bipartisan and bicameral response to the legislature's request, which is appropriate given the Congress' constitutional responsibilities for matters affecting the territories.

We are introducing a concurrent resolution of the United States Congress regarding the commonwealth option presented in the plebiscite with utmost respect of the people of Puerto Rico, their elected leaders, and the self-determination process. The resolution is made in good faith and with the best of intentions for the people of Puerto Rico, who have been staunch loyal United States citizens for over three-fourths of this century. Any proposed change to the existing fundamental relationship with our fellow United States citizens in Puerto Rico is very important and is not to be treated lightly.

Of the total votes cast in the plebiscite, 46.3 percent voted for the commonwealth option, 46.3 percent voted for statehood, and 4.4 percent voted for independence. While a plurality of the voters supported commonwealth as defined on the ballot, the majority voted for other status options. Consistent with the plebiscite law, the Legislative Assembly of Puerto Rico petitioned the Congress to express itself concerning the principles of the commonwealth formula.

In analyzing the substance of the commonwealth option it is necessary to also consider the process which lead to the November 14, 1993 plebiscite. In the interest of political comity, the Legislative Assembly of Puerto Rico permitted each of the three political parties advocating one of the three status options of statehood, commonwealth, and independent to provide the status definitions to appear on the plebiscite ballot. The plebiscite law also provided each option equal public education funding, a mutually agreed limitation on total media expenditures by each party, a freeze on government-agency media expenditures 60 days prior to the plebiscite, and independent oversight of the voting process. However, the law's genuine intent to be fair unintentionally fostered a weakness by permitting historically unprecedented hypothetical status definitions on the ballot.

The people were presented a mythical commonwealth option which proposed significant changes to the current relationship between Puerto Rico and the United States, including the execution of a bilateral pact between Puerto Rico and the United States that would be unalterable except by mutual consent, permanent union, the extension of Supplemental Security Income, and equality of food stamps equal to the States without equal fiscal responsibilities. Furthermore, the commonwealth status would guarantee irrevocable United States citizenship, Puerto Rican fiscal autonomy, and a common market, currency, and defense with the United States.

It should not be surprising, given human nature, that a plurality of the people voted for a guarantee of virtually all of the benefits and assistance of U.S. citizenship without the corresponding duties and obligations. Notwithstanding the option of all-the-goodies-without-the-price, and to the grand credit of the people of Puerto Rico, a combined majority chose status options offering additional rights and responsibilities. A near plurality of voters chose statehood with the same rights, benefits, and responsibilities of the 50 States; a small fraction voted for independence with the inherent rights, powers, and obligations of separate sovereignty.

It is essential to a meaningful self-determination process for the United States House and Senate to provide the people of Puerto Rico a sense of the Congress concerning the viability of the elements of the commonwealth formula proposed in the November 14, 1993 plebiscite. Therefore, after extensive examinations and scrutiny and based on bipartisan and bicameral deliberations considering the U.S. Constitution and Federal laws as they relate to the commonwealth formula, a concurrent resolution of the United States House and Senate is being introduced. The commonwealth formula is clearly not an economically or politically viable alternative to the current self-governing, unincorporated territorial status of the Commonwealth of Puerto Rico; and the unalterable bilateral pact that such commonwealth formula proposes as the vehicle for permanent union of Puerto Rico with the United States is not a constitutionally viable alternative to the current self-governing, unincorporated territorial status of the Commonwealth of Puerto Rico.

It is unfortunate that the voters have faced unrealistic and inflated expectations of a supposed commonwealth relationship with the United States. However, this has become an opportunity to set the record straight; to quell the commonwealth fantasy status which continues to be promoted to the detriment of the society it is purported to help. While it is true that the United States-Puerto Rico relationship shares many things in common, no permanent union secured by an unalterable bilateral pact with irrevocable American citizenship is possible under any variation of the proposed commonwealth formula. Our U.S. Constitution provides the only avenue for irrevocable U.S. citizenship, total equality, and permanent union.

I want to commend the people of Puerto Rico for their steadfast faith in our constitutional democracy and for adhering to local and Federal laws during the plebiscite process. Last year's act of self-determination is a model for other communities, as it was peaceful while appropriately exuberant. In contrast to the political and civil turmoil in other areas, Puerto Rico truly merits the motto of "The Shining Star of the Caribbean."

Although the plebiscite has not resolved Puerto Rico's status, hopefully the achievement is real progress in self-determination toward realistic and substantiated status options. I will continue to monitor the self-determination aspirations of our fellow citizens in Puerto Rico, as well as the other United States territories, as a solemn obligation of the Congress.

Following is the full text of the concurrent resolution responding to the Puerto Rico plebiscite status plebiscite of November 14, 1993:

H. CON RES. 300

Whereas the Government of the Commonwealth of Puerto Rico enacted legislation to allow the people of Puerto Rico to express, through a plebiscite, their preference regarding the nature of the future relationship between Puerto Rico and the United States; Whereas the plebiscite ballot contained the status options of statehood, commonwealth, and independence, as defined by the three principal political parties of Puerto Rico;

Whereas, in the plebiscite of November 14, 1993, 46.3 percent of the people of Puerto Rico voted for commonwealth status, 46.3 percent voted for statehood status, and 4.4 percent voted for independence;

Whereas the commonwealth status option presented to the Puerto Rican electorate on November 14, 1993, proposed significant changes to the current relationship between Puerto Rico and the United States, including—

- (1) the execution of a bilateral pact between Puerto Rico and the United States that would be unalterable, except by mutual consent;
- (2) permanent union between Puerto Rico and the United States;
- (3) the extension of supplemental security income (SSI) under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) to citizens of Puerto Rico; and
- (4) equality between Puerto Rico and the States regarding food stamp allocations under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

Whereas the commonwealth status option presented to the Puerto Rican electorate on November 14, 1993, stated that commonwealth status would guarantee—

- (1) irrevocable United States citizenship;
 - (2) Puerto Rican fiscal autonomy; and
 - (3) a common market, common currency, and common defense with the United States;
- Whereas the legislature of Puerto Rico passed a concurrent resolution asking that the Congress make a statement concerning the viability of the commonwealth ballot formula presented to the people of Puerto Rico in the plebiscite of November 14, 1993;

Whereas the Congress holds great respect to Puerto Ricans as citizens of the United States; and

Whereas it is incumbent upon the Congress to express the sense of the Congress concerning the viability of the elements of the commonwealth formula proposed in the November 14, 1993, plebiscite: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that—

- (1) the changes to the political relationship between Puerto Rico and the United States that are described in the option of the Puerto Rico plebiscite of November 14, 1993, known as the commonwealth option would provide to United States citizens who are residents of Puerto Rico the Federal benefits of United States citizens living in the States without the concomitant responsibilities;
- (2) the commonwealth formula presented in the Puerto Rican plebiscite of November 14, 1993, is not an economically or politically viable alternative to the current self-governing, unincorporated territorial status of the Commonwealth of Puerto Rico; and
- (3) the unalterable bilateral pact that such commonwealth formula proposes as the vehicle for the permanent union of Puerto Rico with the United States is not a constitutionally viable alternative to the current self-governing, unincorporated territorial status of the Commonwealth of Puerto Rico.



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, SECOND SESSION

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No. 29

UNITED STATES-PUERTO RICO POLITICAL STATUS ACT

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 6, 1996

Mr. YOUNG of Alaska. Mr. Speaker, today, the introduction of the United States-Puerto Rico Political Status Act will, for the first time in nearly a century of U.S. administration, provide a congressionally recognized framework for the inhabitants of Puerto Rico to freely express their wishes regarding the options for full self-government. I want to acknowledge the insightful leadership of Speaker NEWT GINGRICH in working with the committee to formulate a process to advance the United States-Puerto Rico relationship toward a conclusive one of full self-government. A number of Members have been supportive and instrumental in the development of the legislation, including ELTON GALLEGLY, chairman of the Subcommittee on Native American and Insular Affairs of the Committee on Resources, BEN GILMAN, chairman of the Committee on International Relations, and DAN BURTON, chairman of the Subcommittee on the Western Hemisphere who cochaired with Mr. GALLEGLY the October 17, 1995, joint hearing on the 1993 Puerto Rico status plebiscite. There also has been substantial input from Members on the other side of the aisle.

This matter of tremendous importance to the United States and the nearly 4 million United States citizens in Puerto Rico can only be resolved by adhering to constitutionally and internationally based principles and standards for full self-government. While many may misconstrue this legislation to be designed to benefit a local Puerto Rico political party over another, it is, in fact, a serious bipartisan effort to enact into law a pragmatic process with the long-term objective of resolving the Puerto Rico status dilemma. The legislation divides the process into three manageable stages which follow historical precedent set by the Congress in providing for final political statuses of territories and trust territories during this century.

The first step in the process is the initial decision stage in which voters are asked which fundamental relationship they prefer with the United States—one of separate sovereignty leading to independence or free association or under United States sovereignty leading to statehood.

The second and final steps are the transition and implementation stages which follow the historical patterns of enabling and admission acts for territories becoming States and similar measures for insular areas becoming separate sovereigns.

If this self-determination process does not result in voter approval of one of the recognized options for full self-government, then by democratic choice of the voters—instead of by Fed-

eral mandate—the status quo will continue and Puerto Rico will remain a locally self-governing unincorporated territory under congressional administration.

Under the U.S. Constitution and applicable principles of international law, the three recognized options for full self-government are independence, separate sovereignty in free association with the United States, and full integration into the United States leading to statehood. In order for Congress to determine how to respond to the aspirations of the people of Puerto Rico regarding a permanent, future political status in a manner which promotes and preserves the U.S. long-term national interest, we need to address the status question based on clearly defined principles and standards. This is precisely what the bill does.

Locally conducted plebiscites have been inconclusive, and were unduly influenced by vested interests exploiting the status quo. It is time for the U.S. Congress to meet its responsibility under the Constitution to provide for a self-determination procedure in which the U.S. national interest in resolving the status issue is taken into account, rather than allowing the issue to be dominated by local political rivalries and interference from those who thrive opportunistically on the present territorial status. The United States also has a right of self-determination and this process requires action by both the United States and Puerto Rico in order to advance toward a full self-government relationship.

After 400 years of colonial rule by Spain ended in 1898, it should not have taken another 100 years of American administration for the U.S. Congress to define the options for full and permanent self-government. The United States-Puerto Rico Status Act permits full self-government to be realized in Puerto Rico in definitive steps, with a smooth transition to whatever form of full self-government the people choose: independence, separate sovereignty in free association with the United States, or statehood.

There is an important event which took place recently which is relevant to the introduction of this legislation. On February 29, 1996, I joined three other House committee and subcommittee chairmen from the Committees on Resources and International Relations in responding to Concurrent Resolution 62 of the Puerto Rico Legislature.

In the Concurrent Resolution the legislature asks the 104th Congress to respond to the results of the November 14, 1993, status plebiscite in Puerto Rico, wherein the Commonwealth ballot proposition received a plurality of 48.6 percent votes cast, and to indicate the next steps in resolving Puerto Rico's political status. After extensive research, oversight, and a joint hearing, a substantial record was developed enabling a concise response to Concurrent Resolution 62.

Following is the text of the response to the President of the Senate and Speaker of the House of the Puerto Rico Legislature:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES.

Washington, DC, February 28, 1996.

HON. ROBERTO REXACH-BENITES,

President of the Senate.

HON. ZAIDA HERNANDEZ-TORRES,

Speaker of the House of Commonwealth of Puerto Rico, San Juan, Puerto Rico.

DEAR MR. REXACH-BENITES AND MS. HERNANDEZ-TORRES: The Committee on Resources and the Committee on International

Relations are working cooperatively to establish an official record which we believe will enable to House to address the subject-matter of Concurrent Resolution 62, adopted by the Legislature of Puerto Rico on December 14, 1994. While the specific measures addressing Puerto Rico's status which the 104th Congress will consider are still being developed, we believe the history of the self-determination process in Puerto Rico, as well as the record of the Joint Hearing conducted on October 17, 1995 by the Subcommittee on Native American and Insular Affairs and the Subcommittee on Western Hemisphere, lead to the following conclusions with respect to the plebiscite conducted in Puerto Rico on November 14, 1993.

1. The plebiscite was conducted under local law by local authorities, and the voting process appears to have been orderly and consistent with recognized standards for lawful and democratic elections. This locally organized self-determination process was undertaken within the authority of the constitutional government of Puerto Rico, and is consistent with the right of the people of Puerto Rico freely to express their wishes regarding their political status and the form of government under which they live. The United States recognizes the right of the people of Puerto Rico to self-determination, including the right to approve any permanent political status which will be established upon termination of the current unincorporated territory status. Congress will take cognizance of the 1993 plebiscite results in determining future Federal policy toward Puerto Rico.

2. The content of each of the three status options on the ballot was determined by the three major political parties in Puerto Rico identified with those options, respectively. The U.S. Congress did not adopt a formal position as to the feasibility of any of the options prior to presentation to the voters. Consequently, the results of the vote necessarily must be viewed as an expression of the preferences of those who voted as between the proposals and advocacy of the three major political parties for the status option espoused by each such party.

3. None of the status options presented on the ballot received a majority of the votes cast. While the commonwealth option on the ballot received a plurality of votes, this result is difficult to interpret because that option contained proposals to profoundly change rather than continue the current Commonwealth of Puerto Rico government structure. Certain elements of the commonwealth option, including permanent union with the United States and guaranteed U.S. citizenship, can only be achieved through full integration into the U.S. leading to statehood. Other elements of the commonwealth option on the ballot, including a government-to-government bilateral pact which cannot be altered, either are not possible or could only be partially accomplished through treaty arrangements based on separate sovereignty. While the statehood and independence options are more clearly defined, neither of these options can be fully understood on the merits, unless viewed in the context of clear Congressional policy regarding the terms under which either option could be implemented if approved in a future plebiscite recognized by the federal government. Thus, there is a need for Congress to define the real options for change and the true legal and political nature of the status quo, so that the people can know what the actual choices will be in the future.

4. Although there is a history of confusion and ambiguity on the part of some in the U.S. and Puerto Rico regarding the legal and political nature of the current "commonwealth" local government structure and territorial status, it is incontrovertible that

Puerto Rico's present status is that of an unincorporated territory subject in all respects to the authority of the United States Congress under the Territorial Clause of the U.S. Constitution. As such, the current status does not provide guaranteed permanent union or guaranteed citizenship to the inhabitants of the territory of Puerto Rico, nor does the current status provide the basis for recognition of a separate Puerto Rican sovereignty or a binding government-to-government status pact.

5. In light of the foregoing, the results the November 14, 1993 vote indicates that it is the preference of those who cast ballots to change the present impermanent status in favor of a permanent political status based on full self-government. The only options for a permanent and fully self-governing status are: (1) separate sovereignty and full national independence, (2) separate sovereignty in free association with the United States; (3) full integration into the United States political system ending unincorporated territory status and leading to statehood.

6. Because each ballot option in the 1993 plebiscite addressed citizenship, we want to clarify this issue. First, under separate sovereignty Puerto Ricans will have their own nationality and citizenship. The U.S. political status, nationality, and citizenship provided by Congress under statutes implementing the Treaty of Paris during the unincorporated territory period will be replaced by the new Puerto Rican nationhood and citizenship status that comes with separate sovereignty. To prevent hardship or unfairness in individual cases, the U.S. Congress may determine the requirements for eligible persons to continue U.S. nationality and citizenship, or be naturalized, and this will be governed by U.S. law, not Puerto Rican law. If the voters freely choose separate sovereignty, only those born in Puerto Rico who have acquired U.S. citizenship on some other legal basis outside the scope of the Treaty of Paris citizenship statutes enacted by Congress during the territorial period will not be affected. Thus, the automatic combined Puerto Rican and U.S. citizenship described under the definition of independence on the 1993 plebiscite ballot was a proposal which is misleading and inconsistent with the fundamental principles of separate nationality and non-interference by two sovereign countries in each other's internal affairs, which includes regulation of citizenship. Under statehood, guaranteed equal U.S. citizenship status will become a permanent right. Under the present Commonwealth of Puerto Rico government structure, the current limited U.S. citizenship status and rights will be continued under Federal law enacted under the Territorial Clause and the Treaty of Paris, protected to the extent of partial application of the U.S. Constitution during the

period in which Puerto Rico remains an unincorporated territory.

7. The alternative to full integration into the United States or a status based on separate sovereignty is continuation of the current unincorporated territory status. In that event, the present status quo, including the Commonwealth of Puerto Rico structure for local self-government, presumably could continue for some period of time, until Congress in its discretion otherwise determines the permanent disposition of the territory of Puerto Rico and the status of its inhabitants through the exercise of its authority under the Territorial Clause and the provisions of the Treaty of Paris. Congress may consider proposals regarding changes in the current local government structure, including those set forth in the "Definition of Commonwealth" on the 1993 plebiscite ballot. However, in our view serious consideration of proposals for equal treatment for residents of Puerto Rico under Federal programs will not be provided unless there is an end to certain exemptions from federal tax laws and other non-taxation in Puerto Rico, so that individuals and corporations in Puerto Rico have the same responsibilities and obligations in this regard as the states. Since the "commonwealth" option on the 1993 plebiscite ballot called for "fiscal autonomy," which is understood to mean, among other things, continuation of the current exemptions from federal taxation for the territory, this constitutes another major political, legal and economic obstacle to implementing the changes in Federal law and policy required to fulfill the terms of the "Definition of Commonwealth."

8. In addition, it is important to recognize that the existing Commonwealth of Puerto Rico structure for local self-government, and any other measures which Congress may approve while Puerto Rico remains an unincorporated territory, are not unalterable in a sense that is constitutionally binding upon a future Congress. Any provision, agreement or pact to the contrary is legally unenforceable. Thus, the current Federal laws and policies applicable to Puerto Rico are not unalterable, nor can they be made unalterable, and the current status of the inhabitants is not irrevocable, as proposed under the "commonwealth" option on the 1993 plebiscite ballot. Congress will continue to respect the principle of self-determination in its exercise of Territorial Clause powers, but that authority must be exercised within the framework of the U.S. Constitution and in a manner deemed by Congress to best serve the U.S. national interest. In our view, promoting the goal of full self-government for the people of Puerto Rico, rather than remaining in a separate and unequal status, is in the best interests of the United States. This is particularly true due to the large population

of Puerto Rico, the approach of a new century in which a protracted status debate will interfere with Puerto Rico's economic and social development, and the domestic and international interest in determining a path to full self-government for all territories with a colonial history before the end of this century.

9. The record of the October 17, 1995 hearing referred to above makes it clear that the realities regarding constitutional, legal and political obstacles to implementing the changes required to fulfill the core elements of the "commonwealth" option on the ballot were not made clear and understandable in the public discussion and political debate leading up to the vote. Consequently, Congress must determine what steps the Federal government should take in order to help move the self-determination process to the next stage, so that the political status aspirations of the people can be ascertained through a truly informed vote in which the wishes of the people are freely expressed within a framework approved by Congress. Only through such a process will Congress then have a clear basis for determining and resolving the question of Puerto Rico's future political status in a manner consistent with the national interest.

Ultimately, Congress alone can determine Federal policy with respect to self-government and self-determination for the residents of Puerto Rico. It will not be possible for the local government or the people to advance further in the self-determination process until the U.S. Congress meets its moral and governmental responsibility to clarify Federal requirements regarding termination of the present unincorporated territory status of Puerto Rico in favor of one of the options for full self-government.

The results of the locally administered 1993 vote are useful in this regard, but in our view are not definitive beyond what has been stated above. The question of Puerto Rico's political status remains open and unresolved.

Sincerely,

DON YOUNG,
Chairman, Committee
on Resources.
ELTON GALLEGLY,
Chairman, Subcommittee
on Native American
and Insular Affairs.
BEN GILMAN,
Chairman, Committee
on International Relations.
DAN BURTON,
Chairman, Subcommittee
on the Western Hemisphere.

APPENDIX IV

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 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.

Congress of the United States

Washington, DC 20515

APPENDIX V

June 28, 1996

Senator Charlie Rodriguez
Majority Leader, Puerto Rico Senate
The Capitol
San Juan, Puerto Rico 00901

Dear Senator Rodriguez,

As the senior democrats on the House Resources and International Relations Committees we have always been concerned about the economic and political future of Puerto Rico. As the 104th Congress considers proposed legislation regarding the process of self-determination for Puerto Rico, we believe that it is time to reexamine the status issue in light of the 1993 plebiscite.

On December 14, 1994 the Legislature of Puerto Rico adopted Concurrent Resolution 62 which sought congressional guidance regarding the results of the 1993 status plebiscite. Recently, the Chairmen of the relevant committees and subcommittees that deal with Puerto Rico's political status responded to this important resolution. Although we agree with many portions of the letter, we would like to outline some of our views on the issue as well.

We believe that the definition of Commonwealth on the 1993 plebiscite ballot was difficult given Constitutional, and current fiscal and political limitations. Through numerous Supreme Court and other Federal Court decisions, it is clear that Puerto Rico remains an unincorporated territory and is subject to the authority of Congress under the territorial clause. Another aspect of this definition called for the granting of additional tax breaks to Section 936 companies and an increase in federal benefits in order to achieve parity with all the states without having to pay federal taxes. It is important that any judgement on the future of Puerto Rico be based on sound options that reflect the current budgetary context in the United States. This context should also reflect the bi-partisan agreement being worked on by Congress which reduces Section 936 benefits.


Since Congress has neither approved nor resolved the 1993 plebiscite results, we are in favor of legislation that will establish a future process of self-determination for the people of Puerto Rico. This legislation should include a requirement for status plebiscites to take place within a certain number of years and define various status options in a realistic manner.

Senator Charlie Rodriguez
June 28, 1996
Page Two

In two years, Puerto Rico will celebrate its 100th year as part of the United States. Congress has both a political and moral responsibility to ensure that the 3.5 million Americans living in Puerto Rico have a right to express their views on the important issue of political status on a regular basis.

We hope this additional response to Concurrent Resolution 62 is helpful.

Sincerely,


ROBERT TORRICELLI
Member of Congress


LEE HAMILTON
Member of Congress


BILL RICHARDSON
Member of Congress


DALE KILDEE
Member of Congress

APPENDIX VI

**Ballot language for the Initial Decision Stage Referendum on Puerto Rico's political status
per the United States-Puerto Rico Political Status Act, H.R. 3024, Section 4(a)**

Part I

Instructions: Mark the option you choose. Ballots with both options marked in Part I will not be counted.

A. Puerto Rico should continue the present Commonwealth structure for self-government with respect to internal affairs and administration, subject to the provisions of the Constitution and laws of the United States which apply to Puerto Rico. Puerto Rico remains a locally self-governing unincorporated territory of the United States, and continuation or modification of current Federal law and policy to Puerto Rico remains within the discretion of Congress. The ultimate status of Puerto Rico will be determined through a process authorized by Congress which includes self-determination by the people of Puerto Rico in periodic referenda.

B. Puerto Rico should complete the process leading to full self-government through separate Puerto Rican sovereignty or United States sovereignty as described in Part II of this ballot. Full self-government will be achieved in accordance with a transition plan approved by the Congress and the people of Puerto Rico in a later vote. A third vote will take place at the end of the transition period in which the people of Puerto Rico will be able to approve final implementation of full self-government. This will establish a permanent political status under the constitutional system chosen by the people.

If you agree, mark here: _____

If you agree, mark here: _____

Part II

Instructions: Mark the option you chose. Ballots with both options marked in Part II will not be counted. If full self-government is approved by the majority of voters, which path leading to full self-government for Puerto Rico do you prefer to be developed through a transition plan enacted by the Congress and approved by the people of Puerto Rico?

A. Puerto Rico should become fully self-governing through separate sovereignty leading to independence or free association as defined below.

B. Puerto Rico should become fully self-governing through United States sovereignty leading to statehood as defined below.

If you agree, mark here: _____

If you agree, mark here: _____

[Continued on reverse]

The path of separate Puerto Rican sovereignty leading to independence of free association is one in which -

- (1) Puerto Rico is a sovereign nation with full authority and responsibility for its internal and external affairs and has the capacity to exercise in its own name and right the powers of government with respect to its territory and population;
- (2) a negotiated treaty of friendship and cooperation, or an international bilateral pact of free association terminable at will by either Puerto Rico or the United States, defines future relations between Puerto Rico and the United States, providing for cooperation and assistance in matters of shared interest as agreed and approved by Puerto Rico and the United States pursuant to this Act and their respective constitutional processes;
- (3) a constitution democratically instituted by the people of Puerto Rico, establishing a republican form of full self-government and securing the rights of citizens of the Puerto Rican nation, is the supreme law, and the Constitution and laws of the United States no longer apply in Puerto Rico;
- (4) The people of Puerto Rico owe allegiance to the sovereign nation of Puerto Rico and have the nationality, and citizenship thereof; United States sovereignty, nationality, and citizenship in Puerto Rico is ended; birth in Puerto Rico and relationship to persons with statutory United States citizenship by birth in the former territory are not bases 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 other than the United States;
- (5) upon recognition of Puerto Rico by the United States as a sovereign nation and establishment of government-to-government relations on the basis of comity and reciprocity, Puerto Rico's representation to the United States is accorded full diplomatic status;
- (6) Puerto Rico is eligible for United States assistance provided on a government-to-government basis, including foreign aid or programmatic assistance, at levels subject to agreement by the United States and Puerto Rico;
- (7) property rights and previously acquired rights vested by employment under laws of Puerto Rico or the United States are honored, and where determined necessary such rights are promptly adjusted and settled consistent with government-to-government agreements implementing the separation of sovereignty; and
- (8) Puerto Rico is outside the customs territory of the United States, and trade between the United States and Puerto Rico is based on a treaty.

The path through United States sovereignty leading to statehood is one in which-

- (1) The people of Puerto Rico are full self-governing with their rights secured under the United States Constitution, which is the supreme law and has the same force and effects 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 Federal Government or prohibited to the States by the United States Constitution are reserved to the people of Puerto Rico or the State Government;
- (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) residents of Puerto Rico have equal rights 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) Puerto Rico adheres to the same language requirements as in the several States.

Texto de la papeleta electoral para el Plebiscito de la Etapa Inicial de Decisión sobre el status político de Puerto Rico, de acuerdo con la Ley del Status Político de los Estados Unidos y Puerto Rico, H.R. 3024, Sección 4(a)

Parte I

Instrucciones: Marque la opción que prefiere. Las papeletas que tengan marcadas ambas opciones en la Parte I no se contarán.

A. Puerto Rico debe continuar con la estructura actual de autogobierno de Estado Libre Asociado con respecto a la administración y los asuntos internos, sujeto a las disposiciones de la Constitución y las leyes de los Estados Unidos que se aplican a Puerto Rico. Puerto Rico continúa siendo un territorio localmente autogobernado y no incorporado de los Estados Unidos y la continuación o modificación de la Ley y las políticas federales vigentes con respecto a Puerto Rico quedan a discreción del Congreso. El status final de Puerto Rico se determinará mediante un proceso autorizado por el Congreso, el cual incluye la autodeterminación por parte del pueblo de Puerto Rico en plebiscitos periódicos.

Si está de acuerdo, marque aquí ____.

B. Puerto Rico debe completar el proceso que conduzca al pleno autogobierno mediante una soberanía separada de Puerto Rico o la soberanía de los Estados Unidos, según se describe en la Parte II de esta papeleta. El pleno autogobierno se logrará de conformidad con un plan de transición aprobado por el Congreso y el pueblo de Puerto Rico en una votación futura. Una tercera votación tendrá lugar al final del período de transición, en la cual el pueblo de Puerto Rico podrá aprobar la implementación definitiva del pleno autogobierno. Esto establecerá un status político permanente bajo el sistema constitucional elegido por el pueblo.

Si está de acuerdo, marque aquí ____.

Parte II

Instrucciones: Marque la opción que prefiere. Las papeletas que tengan marcadas ambas opciones en la Parte II no se contarán. Si la mayoría de los electores aprueba un pleno autogobierno, ¿cuál de las fórmulas que conducen al pleno autogobierno de Puerto Rico prefiere usted que se desarrolle por medio de un plan de transición legislado por el Congreso y aprobado por el pueblo de Puerto Rico?

A. Puerto Rico debe convertirse en una nación autogobernada plenamente mediante una soberanía separada que conduzca a la independencia o a la asociación libre, según se define a continuación.

Si está de acuerdo, marque aquí ____.

B. Puerto Rico debe convertirse en un estado autogobernado plenamente mediante la soberanía de los Estados Unidos que conduzca a la estadidad, según se define a continuación.

Si está de acuerdo, marque aquí ____.

[continúa al dorso]

La fórmula de una soberanía puertorriqueña separada que conduzca a la independencia o asociación libre es aquella en que -

- (1) Puerto Rico es una nación soberana con autoridad y responsabilidad plenas en cuanto a sus asuntos internos y externos y tiene la capacidad de ejercer, en su propio nombre y derecho, los poderes del gobierno con respecto a su territorio y población;
- (2) un tratado negociado de amistad y colaboración, o un pacto bilateral internacional de libre asociación que puede ser terminado a voluntad por Puerto Rico o los Estados Unidos, define las relaciones futuras entre Puerto Rico y los Estados Unidos y dispone la colaboración y asistencia en asuntos de interés mutuo, según acordado y aprobado por Puerto Rico o los Estados Unidos, de conformidad con esta Ley y sus respectivos procesos constitucionales;
- (3) una constitución instituida democráticamente por el pueblo de Puerto Rico, que establece una forma republicana de pleno autogobierno y que asegura los derechos de los ciudadanos de la nación puertorriqueña, es la ley suprema, y la Constitución y las leyes de los Estados Unidos ya no aplican en Puerto Rico;
- (4) El pueblo de Puerto Rico debe lealtad a la nación soberana de Puerto Rico y tiene la nacionalidad y ciudadanía de la misma; la soberanía, nacionalidad y ciudadanía de los Estados Unidos en Puerto Rico ha concluido; el nacimiento en Puerto Rico y la relación con personas que tienen ciudadanía estatutaria de los Estados Unidos por nacimiento en el antiguo territorio no sirven de base para la nacionalidad o 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 ciudadanía de los Estados Unidos de por vida, por derecho o por elección, según lo disponga el Congreso de los Estados Unidos, basado en la continua lealtad a los Estados Unidos: *siempre y cuando* dichas personas no tengan dicha nacionalidad y ciudadanía estatutaria de los Estados Unidos al mismo tiempo que tienen o mantienen los derechos de lealtad, nacionalidad y ciudadanía en alguna otra nación soberana que no sean los Estados Unidos;
- (5) al reconocer los Estados Unidos a Puerto Rico como una nación soberana y establecerse relaciones entre gobiernos basadas en el respeto y la reciprocidad, a la representación de Puerto Rico en los Estados Unidos se le concederá pleno estado diplomático;
- (6) Puerto Rico es elegible para obtener la asistencia de los Estados Unidos que se provee de un gobierno a otro, incluyendo ayuda extranjera o asistencia por medio de programas, a los niveles acordados entre los Estados Unidos y Puerto Rico;
- (7) se protegen los derechos de propiedad y otros derechos adquiridos previamente e investidos por medio del empleo bajo las leyes de Puerto Rico o de los Estados Unidos, y cuando se determina necesario, dichos derechos se ajustan y acuerdan en forma coherente con los convenios entre gobiernos que implementan la separación de la soberanía; y
- (8) Puerto Rico está fuera del territorio aduanero de los Estados Unidos, y el comercio entre los Estados Unidos y Puerto Rico se basa en un tratado.

La fórmula por medio de la soberanía de los Estados Unidos que conduzca a la estadidad es aquella en que -

- (1) El pueblo de Puerto Rico tiene pleno autogobierno y derechos asegurados bajo la Constitución de los Estados Unidos, la cual es la ley suprema y tiene la misma fuerza y vigor que en los demás Estados de la Unión;
- (2) el Estado soberano de Puerto Rico está en unión permanente con los Estados Unidos, y los poderes que no han sido delegados en el Gobierno Federal o prohibidos a los Estados por la Constitución de los Estados Unidos están reservados al pueblo de Puerto Rico o al Gobierno Estatal;
- (3) la ciudadanía de los Estados Unidos para aquellos que nacen en Puerto Rico está garantizada, protegida y asegurada de la misma manera en que lo está para todos los ciudadanos de los Estados Unidos nacidos en los demás Estados;
- (4) los residentes de Puerto Rico tienen los mismos derechos y beneficios, así como los mismos deberes y responsabilidades de la ciudadanía, incluyendo el pago de impuestos federales, que tienen aquellos en los Estados individuales;
- (5) Puerto Rico es representado por dos miembros en el Senado de los Estados Unidos y es representado en la Cámara de Representantes en proporción a la población;
- (6) Los ciudadanos de los Estados Unidos en Puerto Rico tienen el derecho de votar en las elecciones de Presidente y Vicepresidente de los Estados Unidos; y
- (7) Puerto Rico se adhiere a los mismos requisitos lingüísticos que existen en los demás Estados individuales.



APPENDIX VII

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, SECOND SESSION

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No. 80

House of Representatives

REVISION OF UNITED STATES-
PUERTO RICO POLITICAL STA-
TUS ACT, H.R. 3024

HON. ELTON GALLEGLY

OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, June 4, 1996

Mr. GALLEGLY. Mr. Speaker, today I am submitting for the RECORD a revision of H.R. 3024, the "United States-Puerto Rico Political Status Act." The purpose of the revised version is to enable Members of Congress to consider the actual language of the political status option which was presented to voters as the definition of the "Commonwealth" political status option in a 1993 plebiscite conducted by Puerto Rican authorities under local law. The local political parties in Puerto Rico formulated the ballot definitions in that plebiscite.

On December 14, 1994, the Legislature of Puerto Rico adopted Concurrent Resolution 62, requesting the 104th Congress, if unwilling to accede to and implement the definition of "Commonwealth" from the 1993 ballot, to state "... the specific status alternatives that it is willing to consider, and the measure it recommends the people of Puerto Rico should take as part of the process to solve the problem of their political status." Before responding to Concurrent Resolution 62, on October 17, 1995, the Subcommittee on Native American and Insular Affairs, Committee on Resources, and the Subcommittee on the Western Hemisphere, Committee on International Relations, conducted hearings on the 1993 plebiscite results in which representatives of each principal political party testified and persons of all persuasions were afforded the opportunity to submit statements for the record.

Based on the record of that hearing (see, Joint Hearing Report, Serial No. 104-56 [Committee on Resources]), Chairman DON YOUNG and I introduced H.R. 3024 along with 13 other cosponsors to the request of the Puerto Rico Legislature in Concurrent Resolution 62. H.R. 3024 reflects the best judgment of its sponsors with respect to how PUERTO RICO's political status can be resolved consistent with the U.S. Constitution and this Nation's commitment to self-determination. The definition of "Commonwealth" on the ballot in the 1993 plebiscite was not included in the bill as introduced for reasons which include those set forth in the letter of February 29, 1996, from Chairman DAN BURTON and I as the two subcommittee chairmen who conducted the joint hearing on October 17, 1995, signed as well by our respective full committee chairmen. See, CONGRESSIONAL RECORD, March 6, 1996, E299-300.

On March 23, 1996, a comprehensive hearing on H.R. 3024 was conducted by the Committee on Resources in San Juan, PR. Again, all parties were afforded an opportunity to testify or submit written statements. On the basis of the exhaustive record now before the committee and extensive consultations with interested individuals, political parties, and elected officials in Puerto Rico, the Subcommittee on Native American and Insular Affairs is prepared to consider further H.R. 3024.

Obviously, it would be unfair and irresponsible to allow the deliberative process of Congress regarding H.R. 3024 to be held hostage by those who, for whatever reason, may prefer to delay or prevent a considered and unambiguous Federal response to the 1993 plebiscite. However, to accommodate the widest possible range of rational and responsible views on this matter, Chairman YOUNG has taken the time to consider the record carefully, and he has agreed to support revisions to the bill based on comments and recommendations made in hearings and during consultation with some of our colleagues, representatives of the major parties, and other concerned parties.

Thus, for example, we are prepared to ensure that a valid definition of "Commonwealth" consistent with applicable rulings of the U.S. Supreme Court is included in the democratic process under this bill—even though the present status would not have changed under the original version unless the voters approved a new status. In addition, the revised version of H.R. 3024, with the 1993 "Commonwealth" definition prepared by the local political party which supports that status option, is being made available for consideration by the subcommittee and interested Members of Congress.

The constitutional, fiscal, and political obstacles to implementation of both the core elements and most provisions of the 1993 "Commonwealth" definition remain, as indicated in the February 29 letter cited above. Still, Chairman YOUNG has demonstrated exceptional sensitivity toward the difficult issues which arise from the inclusion of this "best of both worlds" definition on the 1993 ballot, and its approval by a slight plurality but less than a majority of the voters. Under the U.S. Constitution only Congress can determine what political status options it is willing to consider as requested by Concurrent Resolution 62, but Chairman YOUNG's decision to present the 1993 definition to Congress for its consideration reflects his commitment to the most open and bipartisan approach possible.

I want to express my admiration for the conscientious and careful approach which Chairman YOUNG has taken in this matter. While some of the people of Puerto Rico and even some Members of Congress may well prefer this legislation not be considered on the mer-

its, there is no credible basis for further delay. The process of hearings and accommodation of the views of others which Chairman YOUNG has overseen has been exceptionally fair, and, by ensuring that people in Puerto Rico know that the 1993 definition of "Commonwealth" is considered by Congress in the original form without alteration, Chairman YOUNG has demonstrated unprecedented flexibility and openness.

That is why some 60 Members, including Democrats and Republicans, are now cosponsors of the United States-Puerto Rico Political Status Act, H.R. 3024. That is why we are going to move forward without further delay.

The revision to H.R. 3024 is made by inserting the following language on line 22, page 9, of H.R. 3024 as introduced on March 6, 1996:

(3) A path of Commonwealth, in which—

"(A) the Commonwealth is a mandate in favor of guaranteeing our progress and security as well as that of our children within a status of equal political dignity, based on the permanent union between Puerto Rico and the United States encompassed in a bilateral pact that cannot be altered except by mutual agreement;

"(B) the Commonwealth guarantee—

"(i) irrevocable United States citizenship;

"(ii) common market;

"(iii) common currency;

"(iv) common defense with the United States;

"(v) fiscal autonomy for Puerto Rico;

"(vi) Puerto Rico Olympic Committee and our own international sports representation; and

"(vii) full development of our cultural identity, under Commonwealth we are Puerto Ricans first;

"(C) we will develop Commonwealth through specific proposals to be brought before the United States Congress; and

"(D) we will immediately propose—

"(i) reformulate section 696, ensuring creation of more and better jobs;

"(ii) extend the Supplementary Security Insurance to Puerto Rico;

"(iii) obtain Nutritional Assistance Program allocations equal to those received by the States; and

"(iv) protect other products of our agriculture, in addition to coffee."

APPENDIX VIII

U.S. Department of Justice



Washington, D.C. 20530

APR 12 1991

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

Dear Ms. Morra:

Thank you for the opportunity to comment on the GAO draft report entitled: "U.S. Possessions, Applicability of Relevant Provisions of the U.S. Constitution." We appreciate this opportunity all the more because the question of whether a provision of the Constitution applies to the territories and Commonwealths of the United States is, like any other constitutional issue, of great concern to the Department of Justice. Moreover, the litigation conducted by the Department of Justice, pursuant to 28 U.S.C. § 516 for the various Departments, includes lawsuits that involve the status of the territories and Commonwealths and the application to them of the Constitution and of other provisions of federal law. Indeed, we are currently engaged in such litigation.

In addition, the Department of Justice performs many law enforcement functions for, and provides much law enforcement assistance to, the U.S. territories and Commonwealths, including prosecutions by U.S. Attorneys Offices and investigations by the Federal Bureau of Investigation and the Drug Enforcement Administration. The U.S. territories and Commonwealths, except American Samoa, are included in the 95 federal judicial districts. These districts have U.S. Attorneys and Marshals responsible for the enforcement of federal laws. Given the Department's presence in the territories and Commonwealth and its responsibilities for law enforcement in those areas, it is evident that the Department of Justice has a crucial interest in the question of the applicability of the Constitution of the United States to those areas.

I.

In compliance with your request we shall focus first on the applicability of the Territory Clause of the Constitution (art.

IV, § 3, cl. 2)¹ to the Commonwealths of Puerto Rico and the Northern Mariana Islands and the territories of Guam, American Samoa, and the Virgin Islands. Those five areas are under the sovereignty of the United States,² but not States or included in States. National Bank v. County of Yankton, 101 U.S. 129, 133 (1880) has established that "[a]ll territory within the jurisdiction of the United States not included in any State must necessarily be governed by or under the authority of Congress" under the Territory Clause.

Various factions within the Commonwealths of Puerto Rico and the Northern Mariana Islands have argued that the Territory Clause does not apply there.³ The United States has sovereignty in these Commonwealths, however, and under the Constitution and applicable law, the source of constitutional authority for exercise of federal authority in all areas under the sovereignty of the United States is the Territory Clause. The argument that the Territory Clause does not apply is tantamount to a claim that there is no constitutional source for federal lawmaking in Puerto Rico and the Northern Marianas, and that these entities are basically independent sovereigns. Not surprisingly, every court to consider the Territory Clause issue has reaffirmed that the Territory Clause provides the fundamental constitutional source of authority governing the relationship between the U.S. and the Commonwealths.

A. Puerto Rico.

In Harris v. Rosario, 446 U.S. 651 (1980), the Supreme Court unanimously stated that the Territory Clause governs the

¹ The Territory Clause provides in pertinent part:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.

² The United States acquired sovereignty over those five areas as follows: Puerto Rico and Guam, Article II of the Treaty of Paris of December 10, 1898, 30 Stat. 1754, 1755; American Samoa, cessions of April 10, 1900 and July 16, 1904, accepted, ratified, and confirmed by the Act of February 20, 1929, 48 U.S.C. § 1661; Virgin Islands, Convention with Denmark of August 4, 1916, Art. I, 39 Stat. (Pt. II) 1706; Northern Mariana Islands Covenant, Section 101, 90 Stat. 263, 264 (1976), 48 U.S.C. § 1681 note.

³ The applicability of the Territory Clause to American Samoa, Guam and the Virgin Islands has not been questioned, to our knowledge; therefore, we do not refer to those territories.

relationship between the United States and Puerto Rico. While one Justice dissented, he did not take issue with the basic proposition that the Territory Clause governs the relationship. No court has ever held that the Territory Clause does not apply to this relationship, and several cases from the First Circuit after Harris have reaffirmed that the clause applies. United States v. Torres, 826 F.2d 151, 154 (1st Cir. 1987); Perez de la Cruz v. Crowley Towing and Transportation Co., 807 F.2d 1084, 1088 (1st Cir. 1986). See also the concurring opinion of Judge Torruella in U.S. v. Lopez Andino, 831 F.2d 1164, 1173 (1st Cir. 1987) (footnote, emphasis omitted):

Although some events subsequent to the passage of P.L. 600 have tended to overlook and obscure the facts, the legislative history of that Act [the Puerto Rico - Federal Relations Act of July 3, 1950, 64 Stat. 369] leaves no doubt that even though its passage signaled the grant of internal self-government to Puerto Rico, no change was intended by Congress or Puerto Rico authorities in the territory's constitutional status or in Congress' continuing plenary power over Puerto Rico pursuant to the Territory Clause of the Constitution.

Puerto Rico has in the past relied on a dictum in United States v. Quinones, 758 F.2d 40, 42 (1st Cir. 1985), stating that in 1952 Puerto Rico ceased "being a territory of the United States subject to the plenary powers of Congress as provided in the Federal Constitution." The Court did not state that the Territory Clause does not govern the relationship between the Federal Government and the Commonwealth of Puerto Rico. Had it done so it would have been overruled by the later First Circuit cases of Torres and De La Cruz, *supra*. The result of Quinones confirms that the Territory Clause continues to apply to the underlying relationship because it holds that Congress could render the wiretap provisions of the Omnibus Crime Control Act of 1968 applicable to Puerto Rico and thereby overcome the prohibition against wiretaps contained in the Constitution of Puerto Rico. The authority of Congress to make the Crime Control Act applicable to Puerto Rico is necessarily derived from the Territory Clause. Considering that a 1980 Supreme Court decision as well as two Court of Appeals decisions, dated 1986 and 1987, all specifically hold that the Territory Clause applies to Puerto Rico, there cannot be, as far as any branch or agency of the Federal Government is concerned, any doubt as to the applicability of the Territory Clause to Puerto Rico.

B. The Commonwealth of the Northern Mariana Islands

The Northern Mariana Islands came under the sovereignty of the United States as the result of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Pub. L. No. 94-241, 90 Stat. 263; 48 U.S.C. § 1681 note, which has the status of a law (Covenant § 1001(b)).

In the case of the Commonwealth of the Northern Mariana Islands, two Ninth Circuit decisions have held that the Territory Clause governs the relationship between the United States and the Commonwealth, and no decision has ever held to the contrary. In Wabot v. Villacrusis, 908 F.2d 411, 421 & n.17 (9th Cir. 1990), the Court of Appeals had to decide whether Congress could make certain U.S. constitutional provisions inapplicable to the Northern Marianas. The Court held that Congress had that power under the Territory Clause, which governs the relationship between the United States and the Commonwealth.

In Micronesian Telecommunications Corp. v. NLRB, 820 F.2d 1097, 1100 n.2 (9th Cir. 1987), the Court of Appeals had to decide whether the federal National Labor Relations Act applies to the Commonwealth. The Court found decisive the fact that the Act states that it applies to "territories." The Court quoted with approval from the pertinent Senate Report:

"Although described as a commonwealth, the relationship [between the United States and the CNMI] is territorial in nature with final sovereignty invested in the United States and plenary legislative authority vested in the United States Congress."

Citing S. Rep. No. 596, 94th Cong., 2d Sess. 2 (1976), reprinted in 1976 U.S. Code Cong. & Ad. News 448, 449.

The cited statement from the Senate Report is consistent with every piece of legislative and negotiating history surrounding the Covenant and the U.S.-Commonwealth relationship, all of which show both that the Territory Clause applies to that relationship and that the negotiations for the Northern Mariana Islands themselves stated that it applies.

1. The authoritative Report of the Joint Drafting Committee -- a Report issued on the day the Covenant was signed, approved by both the United States and CNMI delegations, incorporated into the official record of the negotiations⁴ and

⁴ S. Rep. No. 433, 94th Cong., 1st Sess. 403 (1975).

designed to record the intent of the parties concerning certain provisions of the Covenant -- explicitly states that "it is understood that the authority of the United States" [to enact legislation applicable to the Northern Mariana Islands] will be exercised in the Commonwealth through, "among other provisions of the United States Constitution, Article IV, Section 3, Clause 2," i.e., the Territory Clause.⁵

2. The Section-by-Section Analysis of the Covenant⁶ prepared by the Marianas Political Status Commission, which represented the Northern Mariana Islands during the status negotiations -- a report that, like the Joint Drafting Committee report, was issued on the date the Covenant was signed⁷ -- refers at least five times to the Territory Clause as the source of the authority of Congress to legislate for the CNMI. The analysis explicitly states that:

From the point of view of the United States, the existence of the power under Article IV, Section 3, Clause 2, is a fundamental part of a close and permanent relationship with any political entity which is not a state of the union.

⁵ S. Rep. No. 433, *supra*, at 403, 404; Hearing Before the Senate Comm. on Interior and Insular Affairs on S.J. Res. 107, Joint Resolution to Approve the "Covenant to Establish A Commonwealth of the Northern Mariana Islands in Political Union with the United States of America," and for Other Purposes, 94th Cong., 1st Sess. 786 (1975) (hereinafter "Senate Hearing").

⁶ Section-by-Section Analysis of the Covenant (Feb. 15, 1975), reprinted in Senate Hearing, at 356-496 (1975); Hearing Before the House Subcomm. on Territorial and Insular Affairs, Committee on Interior and Insular Affairs on H.J. Res. 549, H.J. Res. 550, and H.J. Res. 547 to Approve the "Convenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America," 94th Cong., 1st Sess. 626-65 (1975) (hereinafter "MPSC Analysis").

⁷ This section-by-section analysis was widely distributed within the Northern Marianas in three different languages prior to the plebiscite voting overwhelmingly in favor of union with the United States. Senate Hearing at 55, 99, 248, 261, 263. The analysis was presented to Congress and reproduced in the legislative history. Its contents were represented to be the views of the Commonwealth negotiators as well as to reflect most accurately the aspirations and concerns of the people of the Northern Marianas at the time they negotiated and approved the Covenant. Senate Hearing at 54-55, 254; House Hearing at 626.

The report goes on to explain

Article IV, Section 3, clause 2 [the Territory Clause] will continue to be the mechanism through which Congress will legislate with respect to the Northern Marianas.⁸

3. This very question was raised in Congress at the time that the Covenant was before the Senate Interior Committee for approval. Senator J. Bennett Johnston asked both the President's representative to the Covenant negotiations and the CNMI's chief negotiator whether the parties to the Covenant agreed on the issue of the source of Congress' authority to legislate in the Commonwealth. The response from Ambassador Williams, the United States' representative at the Covenant negotiations, was as follows:

[T]he authority of the United States to legislate for the Northern Marianas includes article IV, section 3, clause 2 of the U.S. Constitution, pursuant to which the Congress has a legislative power over the territories far broader than it enjoys over the States.

Senate Hearing at 213. Following this response, Senator Johnston noted for the record that, in view of the importance attributed by him to this issue, he had submitted a copy of his question in advance to Senator Edward DLG Pangelinan, the Chairman of the Marianas Political Status Commission, the chief negotiator for the Northern Mariana Islands and head of the delegation from the CNMI. The Senator asked Mr. Pangelinan on the record whether he concurred with Ambassador Williams' response. Mr. Pangelinan responded,

Yes. The delegation [from the CNMI⁹] does concur with what the Ambassador has said, Mr. Chairman.

Id.

In sum, the executive, legislative, and judicial branches of the United States government, as well as the duly authorized

⁸ MPSC Analysis, at 13-14, reprinted in Senate Hearing at 371-72; House Hearing at 630.

⁹ The delegation from the CNMI included the counsel of the Marianas Political Status Commission as well as representatives of the political parties, legislative bodies, executive authority, and of all the islands Senate Hearing at 246-247.

representatives of the Northern Marianas at the time the Covenant was signed, all agree that the Territory Clause applies to the Northern Mariana Islands. The current assertions made by the Commonwealth that the Territory Clause does not apply to the Commonwealth referred to in your letter of March 11, 1991, thus disavow the solemn assurances previously given by the representatives of the Northern Mariana Islands to Congress.

The Commonwealth's change of position is based on a palpable misinterpretation of the Covenant. The Commonwealth now asserts that the Territory Clause does not apply to it, because that Clause is not specifically enumerated in Section 501(a) of the Covenant.¹⁰ Section 501(a), however, recognizes in so many words that certain provisions of the Constitution apply to the Northern Mariana Islands by their own force, hence, that the Section does not purport to contain an exclusive listing of all of the provisions of the Constitution that are applicable to the Commonwealth. The purpose of Section 501(a), rather, is to enumerate and make applicable to the Commonwealth, as if it were one of the several States, certain provisions of the Constitution that normally would not apply to it of their own force, especially certain constitutional provisions that in terms are

¹⁰ Section 501(a) provides, in pertinent part:

To the extent that they are not applicable of their own force, the following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several States: Article I, Section 9, Clauses 2, 3, and 8; Article I, Section 10, Clauses 1 and 3; Article IV, Section 1 and Section 2, Clauses 1 and 2; Amendments 1 through 9, inclusive; Amendment 13; Amendment 14, Section 1; Amendment 15; Amendment 19; and Amendment 26.

48 U.S.C. § 1681 notes. The Commonwealth's argument that the Territory Clause does not apply to it seeks comfort to some extent in dicta in two decisions that note that the Territory Clause is not listed in section 501 of the Covenant but do not purport to draw any legal consequences from this exclusion. Fleming v. Dept. of Public Safety, 837 F.2d 401 (9th Cir. 1988), cert. denied, 488 U.S. 889 (1988); Hillblom v. United States, 896 F.2d 426 (9th Cir. 1990). In Fleming the United States was not a party to the proceedings and did not participate in them. In Hillblom the Government did not brief the issue of the applicability of the Territory Clause because it was not necessary for the decision. In neither case did the court hold that the Territory Clause did not apply to the Commonwealth.

applicable only to States. Section 501(a) thus is not a catalog determining which provision of the Constitution shall apply to the Commonwealth. It rather extends to the Commonwealth certain provisions of the Constitution that apply only to States, in particular those granting the basic rights of United States citizenship.¹¹

The Report of the Joint Drafting Committee, setting forth the intent of both parties to the Covenant, fully supports this reading of section 501(a). The Report states as follows:

Subsection 501(a). This Subsection is intended, among other things, to extend to the people of the Northern Mariana Islands the basic rights of United States citizenship and to make applicable to them certain of the constitutional provisions governing the relationship between the federal government and the States, as if the Northern Mariana Islands were a State. As reflected in this Subsection the parties recognize that certain provisions of the Constitution of the United States will apply to the Northern Mariana Islands of their own force by virtue of Article I of this Covenant.¹²

¹¹ Accordingly, Fleming, *supra*, at 405, held that the Eleventh Amendment which deals with immunity of States from suit does not apply to the Commonwealth because it is not included in Section 501(a). Fleming probably has been overruled in Ngiraingas v. Sanchez, __ U.S. __, 110 S. Ct. 1137 (1990).

¹² Similarly, the Section-by-Section Analysis of the Covenant prepared by the Marianas Political Status Commission explains section 501(a) as follows:

Section 501. Section 501 deals with the application of the United States Constitution to the Northern Mariana Islands. The purpose of the Section is to extend to the people of the Northern Marianas the basic rights of United States citizenship, just as those rights are enjoyed by the people in the states. The Section is also intended to make applicable to the Northern Marianas, as if it were a state, certain of the Constitutional provisions governing the relationship between the federal government and the states.

Senate Hearing at 397.

S. Rep. No. 433, supra, at 405.

Because the Territory Clause does not deal with the basic rights of citizenship or with federal-state relations, it was neither necessary nor appropriate to include it among the Constitutional provisions listed in section 501(a) of the Covenant. As set forth in detail above, Article I provides that the Northern Marianas is under the sovereignty of the United States and under County of Yankton, supra, the Territory Clause is necessarily the medium through which Congress exercises its authority in the Commonwealth. The Territory Clause thus applies to the Commonwealth by its own force. See also Harris v. Rosario, supra.

Based on the language of the Covenant, its negotiating and legislative histories, and the relevant judicial decisions, there is no bona fide dispute that the Territory Clause applies to the Commonwealth of the Northern Mariana Islands.

II.

The remainder of your draft report covers a wide range of topics, many of which are extremely complex. In view of the short period of time given for our review, we cannot give your draft report the thorough review which we would give to it under normal circumstances. Our comments, therefore, are necessarily selective and our silence does not necessarily mean we agree with your conclusions.

As a general observation, we would avoid the use of the term "possession" when referring to the territories of American Samoa, Guam and the Virgin Islands, and the Commonwealth of the Northern Mariana Islands and Puerto Rico. The term appears to be offensive to the people living in those areas, and has the connotations of an area that has neither an organic act nor a constitution. In our view, the term "an unincorporated area under the sovereignty of the United States that is not a State or included in a State" technically would be more accurate. Given that this definition is rather unwieldy, we have used your term "insular area", with the understanding that it does not include States that are islands, such as Hawaii. We would rewrite the paragraph entitled "Background" on page 5 as follows:

Background

According to the Insular Cases and their progeny¹³ areas under the sovereignty of the United States that are not States

¹³ Downes v. Bidwell, 182 U.S. 244 (1901); Hawaii v. Mankichi, 190 U.S. 197 (1903); Dorr v. United States, 195 U.S. 138 (1904); Balzac v. Porto Rico, 258 U.S. 298 (1922).

fall into two categories: incorporated and unincorporated. The first group comprises those that are destined to become States: to those the Constitution of the United States applies in full. Included in the other group are those areas that are not intended for statehood; to those only fundamental parts of the Constitution apply of their own force. Downes v. Bidwell, 182 U.S. 244, 290-91 (1901). Although the Court has not precisely defined which parts of the Constitution are fundamental, it has held various parts to be fundamental. See, Balzac v. Porto Rico, 258 U.S. 298, 312-13 (1922) (due process); Examining Board v. Flores de Otero, 426 U.S. 572, 599-601 (1976) (Equal Protection Clause of the Fourteenth Amendment or the Equal Protection Element of the Due Process Clause of the Fifth Amendment);¹⁴ Torres v. Puerto Rico, 442 U.S. 465, 468-71 (1979) (prohibition against unreasonable search and seizure either of the Fourth Amendment directly or by operation of the Fourteenth Amendment).

On the other hand, the right to a jury trial has not been held fundamental, Balzac, *supra*; see also, Commonwealth of the Northern Mariana Islands v. Atalig, 723 F.2d 682 (9th Cir 1984), *cert. denied*, 467 U.S. 1244 (1984).

Apart from those provisions that apply to the insular areas of their own force, Congress has introduced other parts of the Constitution into them by legislation. Here again a distinction must be made. Sometimes those provisions have been made applicable only as a protection against the local government. See e.g., the Bill of Rights in the Organic Acts of Guam and the Virgin Islands, 48 U.S.C. §§ 1421b (a)-(t); 1561 (except the last two paragraphs). On the other hand, some constitutional provisions have been introduced into those areas so as to be effective against the federal government. See e.g., 48 U.S.C. § 1421b(u) (Guam); the Covenant with the Northern Mariana Islands, 48 U.S.C. § 1681 note, § 501; 48 U.S.C. § 1561, penultimate paragraph (Virgin Islands). [With respect to American Samoa, we have no information concerning the Bill of Rights contained in a military order issued by the Governor. On the other hand, the Constitution of American Samoa, adopted by a Constitutional Convention and approved by the Secretary of the Interior, contains a Bill of Rights.]

We would rewrite the paragraph dealing with the Uniformity Clause, n.8, including in it the topic dealing with taxation, as follows:

¹⁴ The Court felt it unnecessary to resolve the question whether the constitutional protection of the residents of the Commonwealth of Puerto Rico is based in the Fifth or the Fourteenth Amendment.

The Uniformity Clause of art. I, § 8, cl. 1 of the Constitution provides that all duties, imports, and excises shall be uniform throughout the United States. In 1901 the Supreme Court held in Downes v. Bidwell, *supra*, one of the Insular Cases, and involving custom duties, that this clause did not apply to special customs duties imposed on imports from Puerto Rico to the United States, because Puerto Rico, as an unincorporated territory, was not a part of the United States within the meaning of the Uniformity Clause. In spite of that decision, Puerto Rico is now a part of the customs territory of the United States. 19 U.S.C. § 1401(h). The other four insular areas, however, are not. Id. Covenant with the Northern Mariana Islands, Section 603.

Similarly, because the insular areas are exempt from the uniformity requirement with respect to taxation, the federal income tax is not required to apply to income from sources within an insular area earned by a resident of that area. 26 U.S.C. §§ 931, 932, 936. The Internal Revenue laws of the United States do not apply to Puerto Rico which has its own income tax laws, derived from the Internal Revenue Code of 1939, 48 U.S.C. § 734. Until 1988 American Samoa, Guam, and the Northern Mariana Islands were required by statute to have a local income tax that was a mirror system of the Federal Income Tax. (American Samoa Code, title 11, Chapter 04; 48 U.S.C. 1421i(e) (Guam); Covenant with the Northern Mariana Islands, Section 601. Pursuant to Section 1271 of the Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085, 2591, those three insular areas are now authorized to enact their own income tax laws in lieu of the mirror system, provided, they enter into an implementing agreement with the United States. Up to now, only American Samoa has done so. American Samoa Code Ann., title 11 (1988). Guam plans to enact its own system. Tax Implementation Agreement of United States - Guam of April 3-5, 1989. The Virgin Islands continue to be required by statute to implement a local tax that is a mirror of the federal tax law. 48 U.S.C. §§ 1397, 1642. Changes were made to that law by the Tax Reform Act of 1986 that are too complex to be discussed here.

The Constitution contains another uniformity requirement. art. I, § 8, cl. 4, relating to rules of naturalization and bankruptcy laws. Statutes have been enacted on the theory that these two uniformity requirements do not extend to the insular areas. Thus there are some variations between the application of the naturalization and bankruptcy laws to the States and some of the insular areas. For instance, the Immigration and Naturalization Act does not apply to American Samoa and the Northern Mariana Islands (Immigration and Naturalization Act, § 101(a)(38), 8 U.S.C. § 1101(a)(38)), and the provision relating to the establishment of bankruptcy courts as units of the district courts (28 U.S.C. §§ 151, 152) does not apply to any insular area other than the Commonwealth of Puerto Rico. In Guam, the Virgin Islands and the Northern Mariana Islands, the

District Court itself has been given the jurisdiction of a bankruptcy court. 48 U.S.C. §§ 1424(b), 1612, 1694(a).

Page 5, last line and n.8. Since the term "national" refers to all persons who owe permanent allegiance to the United States, whether citizens or not, we suggest that, the report refer to the residents of American Samoa who owe permanent allegiance to the United States but are not United States citizens, as "non-citizen nationals," in accord with the 1986 amendment to § 341 of the Immigration and Nationality Act, 8 U.S.C. § 1452(b).

Page 6, line 11. Add footnote after the word "rights." There is, however, a difference between the direct application of a Constitutional provision to an insular area either by its own force or by federal statute and the situation where the protection is contained only in the local Bill of Rights. In the former case, the Constitutional protection can be vindicated in the federal courts, in the latter situation, the only local courts would have jurisdiction over the controversy. This difference was discussed in Mora v. Mejias, 206 F.2d 377 (1st Cir. 1953).

The Commerce Clause

The Commerce Clause (art. I, § 8, cl. 3 of the Constitution) confers upon Congress the power "To regulate Commerce with Foreign Nations, and among the several States, and with the Indian tribes." There are two aspects to the Commerce Clause; first, the power of Congress to enact legislation; and second, the clause's negative implication that prohibits the States from burdening interstate or foreign commerce, frequently called the Dormant Commerce Clause. The question is whether those two aspects of the Commerce Clause also apply to the unincorporated insular areas.

The judicial decisions in this area have not been consistent.

First Circuit

In 1947, - i.e. before the Puerto Rican Federal Relations Act became effective, - the Court of Appeals for the First Circuit ruled in Buscaglia v. Ballester, 162 F.2d 805, 807 (1st Cir.), cert. denied, 332 U.S. 816 (1947), that the two aspects of the Commerce Clause did not apply to Puerto Rico, because:

it adds nothing to the comprehensive power given to Congress by the Constitution, Art. IV, Section 3, Cl. 2, to legislate with respect to national territory, and it can have no consequential effect of limiting territorial action since Congress already has the power under Art. IV, Section 3, Cl. 2, *supra*, to limit such action to any extent it

chooses, even to the extent of annulling local legislation. See § 34 of the Organic Act. 39 Stat. 951, 961, 48 U.S.C.A. § 822 et seq.

It should be noted that the specific authority to annul local Puerto Rican legislation was repealed in the Puerto Rico-Federal Relations Act; similarly the Covenant with the Northern Marianas Islands does not contain that authority. Congress, however, continues to reserve the power and authority to annul the laws of the legislatures of Guam and the Virgin Islands. 48 U.S.C. § 1423i (Guam); § 1574(c) (Virgin Islands).¹⁵ In Caribtow Corp. v. Occupational Safety and Health Review Comm'n, 493 F.2d 1064, 1068 n.11 (1st Cir. 1974) which involved the application of the Occupational Health and Safety Act to Puerto Rico, the Court observed that it saw no occasion to reconsider Buscaglia because it was clear that Congress had the authority to apply that Act to Puerto Rico either under the Commerce or under the Territory Clause. It will be noted that under Buscaglia, relief from the action of a insular area that imposes a burden on interstate or foreign commerce would require specific Congressional legislation under the Territory Clause, and could not be obtained by litigation based on the Dormant Commerce Clause.

Sea-Land Service, Inc. v. Municipality of San Juan, 505 F. Supp. 533, 539-45 (D.P.R. 1980), coalesced the Dormant Commerce and Territory Clauses by concluding,

We thus hold that, in the absence of clear congressional acquiescence to the contrary, Puerto Rico is constrained by the prohibitory implications of the Commerce Clause as construed by the Supreme Court of the United States. This, however, does not mean that the Commerce Clause applies to Puerto Rico ex proprio vigore, but that its prohibitive effect is binding on the Commonwealth through the Territorial Clause, Art. IV, § 3, Cl. 2 as an implied corollary of congressional commerce powers thereunder.

Id. at 545 (Footnotes omitted).

We read this opinion to the effect that the prohibitions of the Dormant Commerce Clause constitute a self executing element of the Territory Clause.

¹⁵ It appears, however, that for more than a century Congress has not exercised its annulment authority, a standard feature of the territorial organic acts.

Under this ruling an action of the government of an insular area that imposes a burden on interstate or foreign commerce may be challenged in court; Congressional action is no longer the only way to review it. Several decisions of the United States District Court for the District of Puerto Rico have interpreted Sea-Land Services to the effect that the Dormant Commerce Clause applies to Puerto Rico. See Seatec Int'l Ltd. v. Secretary of the Treasury, 525 F. Supp. 980, 982 (D.P.R. 1981); Pan American Computer Corp. v. Data General Corp., 562 F. Supp. 693, 701 (D.P.R. 1983), Garcia v. Bauza Salas, 686 F. Supp. 965, 972 (D.P.R. 1988), reversed on other grounds, 862 F.2d 905 (1st Cir. 1988); Trailer Marine Transport Corp. v. Ortiz, 733 F. Supp. 490, 495 (D.P.R. 1990).

Third Circuit

Southerland v. St. Croix Taxicab Ass'n, 315 F.2d 364, 368-69 (3rd Cir. 1963) concluded that a taxicab regulation imposed by the Government of the Virgin Islands constituted an unreasonable burden on interstate commerce and thus violated the Dormant Commerce Clause of the Constitution. JDS Realty Corp. v. Government of the Virgin Islands, 824 F.2d 256, 259-60 (3d Cir. 1987) opined:

The Virgin Islands urges us to follow Buscaglia v. Ballester, 162 F.2d 805 (1st Cir. 1947), in which the court found that the commerce clause did not apply to Puerto Rico. The court reasoned that because Congress has the comprehensive power to regulate territories under the territorial clause, Art. IV, § 3, cl. 2, the powers granted to Congress by the commerce clause are unnecessary when dealing with a territory.

We do not find the Buscaglia court's reasoning persuasive. It does not follow from the fact Congress has the power to regulate the territories that the powers conferred on Congress by the commerce clause are not applicable to unincorporated territories. Moreover, it is worth noting that the effect of countenancing the Virgin Islands' argument is that an unincorporated territory would have more power over commerce than the states possess.

We conclude that the powers granted to Congress by the commerce clause are implicit in the territorial clause. See Sea-Land Services, supra, 505 F.Supp. at 545. We hold, therefore, that the commerce clause

applies to the Virgin Islands, absent an express statement to the contrary from Congress.

The Supreme Court vacated that judgement and remanded the case to the Court of Appeals to consider the question of mootness. 484 U.S. 999 (1988). Upon remand the Court of Appeals found that controversy had become moot and ordered the action to be dismissed. 852 F.2d 66 (3d Cir. 1988).

Fifth Circuit

United States v. Husband R. (Roach), 453 F.2d 1054, 1059 (5th Cir. 1971) cert. denied 406 U.S. 935 (1972), held that because the Governor of the Canal Zone was a federal officer, the limitations placed by the Commerce Clause on state legislative bodies did not apply to the Government of the Canal Zone.

Ninth Circuit

Anderson v. Mullaney, 191 F.2d 123, 128 (9th Cir. 1951) involving the imposition by the territorial legislature of discriminatory license fees on non-residents of the then incorporated territory of Alaska, held that the Commerce Clause did not by its own force operate as a constitutional limitation in the territorial government. On the other hand, the court could not conceive:

that in granting legislative power to the Territorial Legislature it was intended that the power should exceed that possessed by the legislature of a State in dealing with commerce. The words "all rightful subjects of legislation" describing the extent to which the legislative power of the Territory should extend, 48 U.S.C.A. § 77, do not include the imposition upon commerce such as that here involved of burdens which a State might not create under like circumstances.

Id.

The Supreme Court affirmed the principle that a territory can have no greater power vis-a-vis federal legislative than a State, Mullaney v. Anderson, 342 U.S. 415 (1952), but grounded the decision not on the Commerce Clause but in the Privileges and Immunities Clause of Article IV, Section 2.

Three decisions of the Court of Appeals for the Ninth Circuit, rendered between 1964 and 1970, assumed without discussion that the Commerce Clause precluded Guam from collecting taxes that burdened interstate commerce. See Manila

Trading & Supply Co. (Guam) v. Maddox, 335 F.2d 150, 51 (9th Cir. 1964); Asiatic Trans-Pacific, Ins. v. Maddox, 371 F.2d 132 (9th Cir. 1967); Pacific Broadcasting Corp. v. Riddell, 427 F.2d 519 (9th Cir. 1970).

In 1985, the Ninth Circuit held in a case involving monopolistic practices authorized by the local legislature that the negative implications of the Commerce Clause do not apply to Guam. Sakamoto v. Duty Free Shoppers, Ltd., 764 F.2d 1285, 1286-88 (9th Cir. 1985) cert. denied, 475 U.S. 1081 (1986). The opinion described Guam as an unincorporated territory enjoying only such powers as have been delegated to it by the Congress in the Organic Act of Guam, its government being in essence an instrumentality of the federal government; the plenary control by Congress on the Guam government being illustrated by the provision that Congress may annul any act of the Guam legislature. From this the opinion inferred that, because it is the function of the Dormant Commerce Clause to preserve Congressional authority, the Clause does not apply to a creature of Congress such as the government of Guam.¹⁶

When Sakamoto was before the Supreme Court on petition for certiorari, the Solicitor General of the United States at the request of the Court submitted a brief as *amicus curiae* in which he took the position that the Court of Appeals was in error in ruling that the negative implications of the Commerce Clause do not apply to Guam; he felt, however, that the burden on interstate commerce complained of was too insubstantial to warrant Supreme Court review. The Solicitor General questioned the argument of the 9th Circuit that Guam was merely an agency of the federal government. While he took the position that the Dormant Commerce Clause would not apply to Guam by its own force, he concluded that by statute Congress had made clear its intent that the clause should apply. The Supreme Court's denial of certiorari may have been prompted by the insubstantiality of the alleged burden on commerce.

Intra-Insular Area Transactions

The Commerce Clause authorizes Congress to regulate commerce among the States. There are, however, a number of statutes regulating activities within a territory or within the District

¹⁶ The court distinguished Anderson v. Mullaney, *supra*, on the ground that, when that case was decided, Alaska was an incorporated territory to which all provisions of the Constitution applied. 764 F.2d at 1287. The court also opined that the three cases, decided between 1964 and 1970, *supra*, were not controlling precedent because the issue of the applicability of the Dormant Commerce Clause to Guam was never raised or discussed in them. 764 F.2d at 1288.

of Columbia, including the Sherman Act, 15 U.S.C. § 3, which declares illegal:

Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal.

The Supreme Court has held that, as to transactions wholly within the District of Columbia, the constitutional source of authority for this part of the Sherman Act cannot be the Commerce Clause, since the restraint of trade is purely local in character. The Court concluded that Congress' plenary power to legislate for the District of Columbia, under Art. I, sec. 8, cl. 17 of the Constitution provided authority for the statute. Atlantic Cleaners & Dyers, Inc. v. United States, 286 U.S. 427 (1932).

The same problem arose in connection with Puerto Rico in Puerto Rico v. Shell Co., 302 U.S. 253 (1937) and while the Court did not identify the constitutional basis for application of the Sherman Act to Puerto Rico, its reference to Atlantic Cleaners in Shell indicates that that source is necessarily the Territory Clause, and so the Court of Appeals for the First Circuit interpreted the Shell case in Caribtow v. Occupational Safety and Health Commission, supra 493 F.2d at 1068 n.11.¹⁷

¹⁷ The Court in Caribtow said in that footnote:

Although this court said in Buscaglia v. Ballester, 162 F.2d 805 (1st Cir.), cert. denied, 332 U.S. 816, 68 S. Ct. 154, 92 L.Ed. 393 (1947) that the Interstate Commerce Clause does not apply to Puerto Rico, we have no occasion here to reconsider that opinion in the light of intervening events. Under either that clause, or the Territorial Clause, Art. IV, § 3, cl.2, see Puerto Rico v. The Shell Co., 302 U.S. 253, 58 S. Ct. 167, 82 L.Ed. 235 (1937), it is clear that Congress has the power to apply the Occupational Safety and Health Act to Puerto Rico.

Relying on Puerto Rico v. Shell, the Supreme Court held in a per curiam opinion that Section 3 of the Sherman Act applies to intra-territorial transactions in Samoa again not specifically identifying the constitutional source of the legislation. United States v. Standard Oil Co. of California, 404 U.S. 558 (1972).

Jury Trials

We would reorganize the discussion on jury trials on pp. 11-13 as follows:

Trial by Jury

The Sixth and Seventh Amendments address the right to trial by jury in criminal prosecutions and civil cases, respectively. The Supreme Court has held that the right to a trial by jury is not a fundamental right that applies to the unincorporated territories by its own force. Dorr v. United States, 195 U.S. 138, 148 (1904) (Philippine Islands); Balzac v. Porto Rico, 258 U.S. 298, 304-14 (1922) (Puerto Rico); see also Commonwealth of the Northern Mariana Islands v. Atalig, 723 F.2d 682, 688-91 (9th Cir.) cert. denied 467 U.S. 1244 (1984) (Northern Mariana Islands).¹⁸ By statute, the Elective Governor Acts of 1968, the Sixth and Seventh Amendments have been extended to Guam (48 U.S.C. 1421b(u)), and to the Virgin Islands, 48 U.S.C. 1561, penultimate paragraph. Section 501(a) of the Covenant with the Northern Mariana Islands makes the Sixth and Seventh Amendments applicable to the Northern Mariana Islands with the proviso that trial by jury shall not be required in any civil action or criminal prosecution based on local law, except where required by local law. The constitutionality of the provision was upheld in Commonwealth of Northern Mariana Islands v. Atalig, *supra*.

[We note that Balzac v. Porto Rico was a criminal, not a civil case]. We would not include in this report the extent to which jury trials are available under the local laws of the insular areas.

As has been pointed out above, the Supreme Court held in Examining Board v. Flores de Otero, 426 U.S. 572, 599-601 (1976), that the Equal Protection Clause of the Fourteenth Amendment or the Equal Protection Element of the Fifth Amendment is one of the fundamental parts of the Constitution that applies to Puerto Rico, an unincorporated insular area, by its own force. There is

¹⁸ King v. Morton, 520 F.2d 1140, 1147 (D.C. Cir. 1975) held that the right of jury trial extends to America Samoa, unless circumstances prevailing there are such that such trial would be "impractical and anomalous." On remand the district court found in King v. Andrus, 452 F.Supp. 11, 17 (D.D.C. 1977) that a jury trial in America Samoa would not be "impractical and anomalous."

little doubt that this ruling applies also to the other unincorporated insular areas.¹⁹

In addition, Congress has extended by statute the Due Process Clause of the Fifth Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to Guam (48 U.S.C. § 1421b(u)); to the Commonwealth of the Northern Mariana Islands (Covenant Section 501(a)); and the Virgin Islands (48 U.S.C. § 1561, penultimate paragraph). The Equal Protection Clause normally permits distinctions or classifications that are based rationally related to legitimate governmental objectives. G. D. Searle v. Cohn, 455 U.S. 404, 408 (1982). A stricter standard of review, however, prevails where the classification interferes with the exercise of a fundamental right (Shapiro v. Thompson, 394 U.S. 618, 638 (1969)), or where it applies a "suspect" test, such as race, religion or national origin. (Graham v. Richardson, 403 U.S. 365, 371-72 (1971)). In those cases the local statute can be upheld only if it can be shown that the classification is based on a "compelling governmental interest." See, e.g., Shapiro v. Thompson, 394 U.S. at 634 (emphasis in original).

In American Samoa and the Northern Mariana Islands, land is scarce and local culture is based to a great extent on the ownership of land. The Constitution of American Samoa (Art. I, § 3) and, as required by the Marianas Covenant §§ 501(b), 805, Article XII of the Constitution of the Northern Mariana (Art. XII) have imposed limitations on the sale of land to persons not of Samoan ancestry or of Northern Mariana descent, respectively. These restrictions were upheld in Craddick v. Territorial Registrar, *supra*; and Wabot v. Villacrusis, 898 F.2d 1381, 1390-92 (9th Cir. 1990) (Northern Mariana Islands.) Wabot based this result on the power of Congress under the Territory Clause to except the right to equal access to the ownership of real estate from the operation of the Equal Protection Clause.

Voting Rights

We would add the following:

p. 17. In Puerto Rico, an amendment to Article VI, Section 4 of the Constitution, adopted in 1970, lowered the voting age from 21 to 18 years.

Footnote 53. Add at end of footnote See Virgin Islands Code, Title 18, Sec. 261.

¹⁹ In Craddick v. Territorial Registrar, Ap. No. 10-79 (H.C. Am. Sam. Apr. 23, 1980) the High Court of American Samoa ruled that the Equal Protection guaranty constitutes a fundamental right applicable to American Samoa.

The principle of one man-one vote as an incident of equal protection established in Baker v. Carr, 369 U.S. 186, 208-37 (1962) was applied in Puerto Rico in Rodriguez v. Popular Democratic Party, 457 U.S. 1, 7-8 (1982). The decision, however gave Puerto Rico considerable leeway in determining the manner in which to fill interim vacancies without the necessity of a full scale special election id. at pp. 5, 12-14.

The Covenant with the Northern Mariana Islands, provides in section 203(c) that the Constitution of the Northern Mariana Islands will provide for equal representation for each of its three major islands in one house of a bicameral legislature in spite of the large disparity in the number of inhabitants in the islands. Section 501(b) of the Covenant provides in effect that the application of the Constitution of the United States to the Northern Mariana Islands shall be without prejudice to the validity of section 203. While the constitutionality of this provision is by no means free of doubt, the court's reasoning in Wahol v. Villacrucis, supra, - that the Territory Clause provides Congress with the authority to override otherwise applicable constitutional guaranties - may also be applicable to this provision of the Covenant.

We have cursorily examined Appendix I of your report and have the following initial observations which, in view of the complexity of the subject matter, cannot be considered complete.

1. Art. I, § 7, cls. 2 and 3, the Presentation Clauses, are fundamental parts of the Constitution going to the heart of the separation of powers. They therefore necessarily govern Congressional legislation applicable to the insular areas.
2. Art. I, § 8, cl. 1. The uniformity clause of this provision does not apply by its own force to the unincorporated insular areas. Downes v. Bidwell, 182 U.S. 244 (1901). Puerto Rico, however, has been placed by statute within the customs territory of the United States. 19 U.S.C. 1401(h).
3. Art. I, § 8, cl. 3. The complexities of the applicability of the Commerce Clause to the insular areas have been discussed above.
4. Art. I, § 8, cl. 4. Bankruptcy and Naturalization. It will be noted that this clause also contains a uniformity provision. See discussion above.
5. Most of the following structural clauses (cl. 5-9 and 11-16), especially the military ones, probably also apply to the insular areas, either directly or as the result of the plenary power of Congress under the Territory Clause.

6. Art. II, § 2, cl. 1. The provisions of this clause relating to the President's authority as Commander-in-Chief and the pardon power apply to the insular areas.

7. Art. II, § 2, cl. 2, relating to the President's treaty making and appointments powers, is a fundamental part of the Constitution, going like the Presentation Clause to the heart of the separations of powers. This clause, therefore, applies necessarily the making of international agreements applicable to the insular areas, and to the appointment of federal officers in the insular areas. The question of the applicability of the Appointments Clause to the insular areas is not academic. It surfaced recently in connection with the Guam Commonwealth Bill, the Puerto Rico Status Referendum bill, and the Insular Policy Report.

8. The same considerations set out in para. 7 apply to Art. II, § 2, cl. 3, the Recess Appointment Power.

9. Art. IV, § 3. The Take Care and Commissioning Clauses apply to the insular areas.

10. Art. III, § 2. This provision is relevant to the four insular areas that have district courts (Puerto Rico, Guam, the Northern Mariana Islands, and the Virgin Islands) because these district courts have the jurisdiction of federal district courts established under Article III of the Constitution. (Puerto Rico: 28 U.S.C. §§ 119, 451; Guam: 48 U.S.C. § 1424(b); Northern Mariana Islands, Covenant Section 402(a), 48 U.S.C. § 1694(a); Virgin Islands: 48 U.S.C. § 1612.) For the purposes of the diversity jurisdiction, citizens of an insular area are considered to be citizens of a State, 28 U.S.C. § 1332(d).

11. Art. IV, § 1. The Full Faith and Credit Clause to an insular area has been extended to the insular areas. 28 U.S.C. § 1738.

12. Art. VI, § 2, the Supremacy Clause. The Supremacy Clause as one of the structural provisions of the Constitution necessarily applies to the insular areas, with the caveat that only those provisions of the Constitution, laws and treaties applicable to the specific insular area are the supreme laws therein. Section 102 of the Covenant with the Northern Mariana Islands has been drafted specifically to take that consideration into account.

13. First Amendment. Balzac v. Porto Rico, 258 U.S. 298, 314 (1922) indicates by implication that the First Amendment applies to Puerto Rico.

14. Fifth Amendment. (a) Requirement of indictment by Grand Jury. This requirement does not apply to local prosecutions. Northern Mariana Islands: Indictment by a grand jury shall not be

required in a criminal prosecution based on local law, except where required by local law. Covenant Section 501(a); Virgin Islands: Offenses against local law shall continue to be prosecuted by information, except where local law requires prosecution by indictment. 48 U.S.C. § 1561, penultimate paragraph. See also 48 U.S.C. § 1424(c) relating to Guam.

(b) Due Process. See discussion, supra.

(c) Double Jeopardy. For purposes of double jeopardy the Federal and insular governments are considered to emanate from the same sovereignty. Hence, successive prosecutions in federal and insular area courts for the same offense are not permissible. Puerto Rico v. Shell Co., 302 U.S. 253, 264-66 (1937); United States v. Wheeler, 435 U.S. 313, 318-22 (1978), citing with approval Puerto Rico v. Shell, supra.²⁰

15. Fourteenth Amendment(a): First sentence, citizenship. This sentence does not apply to insular areas by its own force. Downes v. Bidwell, 182 U.S. 244, 306-15 (1901). It has been extended by statute to the Northern Mariana Islands as if they were part of the several States: Covenant, Section 501(a); for statutory provisions governing United States citizenship relating to Puerto Rico, the Virgin Islands and Guam: See 8 U.S.C. §§ 1402, 1406, 1407. Persons born in American Samoa are non-citizen nationals, 8 U.S.C. §§ 1408, 1101(a)(29), unless their parents were citizens or they themselves have become citizens by way of naturalization.

(b) Due Process and Equal Protection. See discussion, supra.

16. Twenty Sixth Amendment. See discussion under Voting Rights.

²⁰ In United States v. Lopez Andino, 831 F.2d 1164, 1167-68 (1st Cir. 1987) the prevailing opinion took the position that the United States and Puerto Rico were separate sovereignties for double jeopardy purposes. As the concurring opinion points out, however, that part of the opinion was a gratuitous dictum because the federal and local offenses charged were separate crimes. Therefore separate prosecutions would be permissible, even if the federal government and Puerto Rico are considered a single sovereignty. The majority opinion also disregarded the reaffirmance of Shell in Wheeler, see in particular 435 U.S. 319-20, n.13.

In view of the time limitations imposed on us, we have not been able to comment on Appendix II of your report.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry H. Flickinger", followed by a small flourish.

Harry H. Flickinger
Assistant Attorney General
for Administration

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