

PUERTO RICO DEMOCRACY ACT OF 2007

APRIL 22, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 900]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 900) to provide for a federally sanctioned self-determination process for the people of 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 all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Puerto Rico Democracy Act of 2007”.

SEC. 2. PUERTO RICAN DECISION ON PRESENT STATUS.

(a) PLEBISCITE.—The Puerto Rico State Elections Commission shall conduct a plebiscite in Puerto Rico not later than December 31, 2009. The two options set forth on the ballot shall be preceded by the following statement: Instructions: Mark one of the following two options:

(1) Puerto Rico should continue to have its present form of territorial status and relationship with the United States. If you agree, mark here _____.

(2) Puerto Rico should pursue a constitutionally-viable permanent non-territorial status. If you agree, mark here _____.

(b) RECOMMENDATIONS.—If a majority of the validly-cast ballots in the plebiscite favors Option 2, Congress recognizes the inherent authority of the People of Puerto Rico to—

(1) call a Constitutional Convention, constituted by a number of delegates to be determined in accordance to legislation approved by the Commonwealth of Puerto Rico, for the purpose of proposing to the People of Puerto Rico a self-

determination option which, if approved by the People of Puerto Rico in a referendum, would be presented to Congress by the Constitutional Convention; or

(2) conduct a plebiscite administered by the Puerto Rico State Elections Commission to consider a self-determination option with the results presented to Congress.

SEC. 3. APPLICABLE LAWS AND OTHER REQUIREMENTS.

(a) **APPLICABLE LAWS.**—All Federal laws applicable to the election of the Resident Commissioner shall, as appropriate and consistent with this Act, also apply to the plebiscite held pursuant to this Act. Any reference in such Federal laws to elections shall be considered, as appropriate, to be a reference to the plebiscite, unless it would frustrate the purposes of this Act.

(b) **FEDERAL COURT JURISDICTION.**—The Federal courts of the United States shall have exclusive jurisdiction over any legal claims or controversies arising from the implementation of this Act.

(c) **ELIGIBILITY; BALLOT.**—Persons eligible to vote under this subsection shall, upon timely request submitted to the Puerto Rico State Elections Commission in compliance with any terms imposed by the Electoral Law of Puerto Rico, be entitled to receive an absentee ballot for the plebiscite. Each of the following shall be eligible to vote in the plebiscite held under this Act:

(1) All eligible voters under the electoral laws in effect in Puerto Rico at the time the plebiscite is held.

(2) All United States citizens born in Puerto Rico who comply, to the satisfaction of the Puerto Rico State Elections Commission, with all Puerto Rico State Elections Commission requirements (other than the residency requirement) applicable to eligibility to vote in a general election.

(d) **CERTIFICATION OF PLEBISCITE RESULTS.**—The Puerto Rico State Elections Commission shall certify the results of the plebiscite held under this Act to the President of the United States and to the Members of the Senate and House of Representatives of the United States.

SEC. 4. FUNDS.

During the period beginning October 1, 2007, and ending on the date the President determines that the plebiscite required by this Act has been held, the Secretary of the Treasury may allocate, from the funds provided to the Government of Puerto Rico under section 7652(e) of the Internal Revenue Code, not more than \$5,000,000 for this plebiscite to the State Elections Commission of Puerto Rico to be used for expenses of carrying out said plebiscite under this Act, including for voter education materials as certified by the President's Task Force on Puerto Rico's Status as not being incompatible with the Constitution and basic laws and policies of the United States. Such amounts shall be as identified by the President's Task Force on Puerto Rico's Status as necessary for such purposes.

PURPOSE OF THE BILL

The Purpose of H.R. 900 is to provide for a federally sanctioned self-determination process for the people of Puerto Rico.

BACKGROUND AND NEED FOR LEGISLATION

There are four forms of political status defined in the U.S. Constitution: states, a District that is the seat of the federal government, Indian Tribes, and territories. The Constitution does not grant territorial residents the right to be represented in Congress or to vote for the President and Vice President. Through its Territorial Clause, Article 4, Section 3, Clause 2, the Constitution confers on Congress the power to govern territories in local as well as national matters. At the time the Constitution was drafted, the lack of democracy inherent in this model of territorial administration was viewed as acceptable because the territories then claimed under U.S. sovereignty were sparsely populated and considered permanent parts of the country that would ultimately be admitted into the federal Union as states, at which point full rights would be extended to the U.S. citizens residing therein.

This approach—premised on the idea that territorial status was temporary and would ultimately lead to incorporation as a state—

continued as the nation expanded westward. In 1898, however, this model was called into question when the United States acquired the Philippines, along with Puerto Rico and Guam, as a result of the Spanish-American War. There was a concern that treating these newly-acquired territories as previously-acquired territories had been treated would lead to statehood for the Philippines, a troubling prospect for many Americans at the time. At the same time, however, governing territories with established populations without granting them U.S. citizenship and the promise of eventual statehood—or, in the alternative, nationhood—contradicted the democratic principles of government embodied in the U.S. Constitution.

A major national debate on the subject was prematurely quieted by the Supreme Court's decision in *Downes v. Bidwell*, 182 U.S. 244 (1901), which held that the United States could exercise sovereignty over and govern territories that had not yet been incorporated as states, and upon whose residents U.S. citizenship had not yet been conferred. The Court further held that the panoply of rights set forth in the Constitution did not automatically apply to such unincorporated territories. The Court's ruling recognized that Congress had not yet established a policy as to whether Puerto Rico would eventually become a state or an independent nation.

Although the initial aspiration of most Puerto Rican leaders was statehood, a competing nationalist sentiment developed among a segment of the Island's residents as time went on, provoked by (among other things), the Island's now decades-long status as an unincorporated territory, the perception that Puerto Rico enjoyed less self-government and representation in the federal government than it had enjoyed under Spain's rule; and the fact that Congress had granted the Island's residents U.S. citizenship in 1917 without an accompanying promise of statehood. U.S. citizenship was granted to residents of Puerto Rico soon after it was decided that the Philippines would be given its independence, and shortly before Puerto Ricans were made eligible to be drafted into the U.S. military.

Later, owing to their recognition that many Puerto Ricans valued their U.S. citizenship and the attendant benefits (including eligibility for some federal programs and assistance), as well as their recognition that many government officials in both the U.S. and Puerto Rico did not favor the prospect of Puerto Rican independence, some nationalists in Puerto Rico developed ideas for a new type of status and relationship between the United States and Puerto Rico. Pursuant to this status proposal, Puerto Rico would be granted some national government powers and a bilateral relationship with the United States that the latter could not unilaterally change. In addition, Puerto Rico would be able to continue U.S. territory benefits. The most important of the leaders who espoused these ideas was Luis Muñoz Marín, who became the territory's highest elected official as president of the Senate after a 1940 election; who served as its first elected governor from 1948 to 1964, and who dominated the Popular Democratic Party (the PDP, not affiliated with the Democratic Party) for years afterwards, especially with respect to the status issue.

Muñoz's decision to shift the PDP from a pro-independence party to a party that favored his enhanced autonomy proposal led to the

founding of the Puerto Rican Independence Party (PIP) in 1946. The substantial support that the PIP initially enjoyed in Puerto Rico was diminished both by increasing Puerto Rican reliance on and allegiance to the United States, and by law enforcement efforts against the independence movement on the part of the Federal Bureau of Investigation and the Muñoz Administration, due to the terrorist activities of extremist nationalist groups.

In general, politics in Puerto Rico has largely been a debate among advocates who support either the enhanced autonomy status proposed by Muñoz and others, statehood, or independence. The current territorial status has never satisfied Puerto Rican leaders.

In 1950, after it declined the request of Puerto Rican leaders and President Truman to adopt a bill that would authorize Puerto Ricans to choose the territory's status from among a slate of options, Congress enacted legislation (P.L. 81-600) that authorized Puerto Rico to draft a local constitution that would be submitted for Congressional approval. The local constitution was to replace provisions in an earlier federal law that organized the government of Puerto Rico. Other provisions of law regarding federal-territorial relations were to continue as the Puerto Rican Federal Relations Act. The constitution would be made contingent upon approval by a referendum of the Puerto Rican people and enacted "in the nature of a compact."

In considering P.L. 81-600, the predecessor to this Committee, the predecessor to this Committee's counterpart in the Senate, and the Executive Branch agreed that the process it provided for would not change Puerto Rico's fundamental relationship vis-à-vis the United States. Governor Muñoz and Resident Commissioner Fernos Isern, both of the PDP, agreed that the law would not end the plenary authority of Congress over Puerto Rico.

A Puerto Rican referendum approved the procedure for adoption of a local constitution set out in P.L. 81-600, and a constitution was subsequently drafted. The constitution was approved by a 1952 federal statute, P.L. 82-447, contingent upon the constitutional convention making certain changes. This process for adoption of a local constitution was referred to as "a compact." Legislative history reiterated that Puerto Rico's relationship to the United States was not being changed by virtue of this process and that congressional authority over Puerto Rico would continue. The constitution took effect after being approved by an insular referendum held in 1952. The referendum was not a political status vote: neither statehood nor independence was on the ballot, and approval of the local constitution did not define a new political status for the territory.

A series of federal laws, all enacted prior to 1950, had provided for an elected legislature and governor, as well as a non-voting Resident Commissioner to serve in the U.S. House of Representatives. The only real authority that Puerto Rico gained through the 1950-52 process was the authority to amend the charter of the local government consistent with federal law and to appoint the insular auditor and local Supreme Court justices. (Other limitations on Puerto Rico's exercise of self-government authority on local matters, including a limit on borrowing authority, were lifted by subsequent statutes.) But the 1950-52 process was noteworthy because it marked the first time that a territory was authorized to draft a constitution without being readied for statehood or nationhood.

The constitution named the local government the “Estado Libre Asociado” in Spanish, which translates literally as “Associated Free State” in English. Under international law, a freely associated state is a sovereign nation in a joint governing arrangement with another nation that either nation can unilaterally end. The United States is in free association with three Pacific island nations that it formerly administered as parts of a trust territory for the United Nations (Micronesia, the Marshall Islands, and Palau). The 1950 and 1952 federal laws clearly did not make Puerto Rico an independent nation in free association with the United States. Because Puerto Rico, by virtue of its status as a territory, was not able to choose, on its own, to become an independent nation, a sovereign nation-state in free association with the United States, or a state, its constitutional convention resolved that the local government would be called “the Commonwealth” in English.

The term “commonwealth” does not denote a particular political status. The term is used in the formal names of four U.S. States (Massachusetts, Pennsylvania, Virginia, and Kentucky) and another jurisdiction subject to congressional authority regarding territories (the Northern Mariana Islands). Although “commonwealth” does not signify status in the way that the terms “State,” “nation,” and “territory” do, Puerto Rico is often referred to as a “commonwealth” and said to have “commonwealth status.” Further, “commonwealth” is also sometimes used as shorthand to refer to the governing arrangement between the United States and Puerto Rico. Finally, as if these different usages of the word were not confusing enough, “commonwealth” is used to refer to the PDP’s enhanced autonomy proposals.

The confusion over the meaning and significance of the term “commonwealth” has been a major factor contributing to Puerto Ricans not determining their preference regarding the Island’s future political status. (The confusion has also hampered congressional action on this issue.) An aspect of the question in Puerto Rico (although not in the federal government) is whether Puerto Rico is still a territory. Puerto Rican leaders do not want Puerto Rico to be a territory. Use of the word “commonwealth” obscures the issue for many Puerto Ricans, who ask: Is “Commonwealth” a territory status or something different? Does it refer to the status quo or to the PDP’s enhanced autonomy proposal?

In large measure, the confusion is one of semantics. Whether Puerto Rico is called a “commonwealth” or a “territory,” the important issue is the extent of U.S. and Puerto Rican authority. Like other territories, Puerto Rico exercises authority over local government matters that is similar to the authority that states possess, but unlike states, territories do not have a zone of reserved sovereignty that is beyond the reach of Congress in the latter’s exercise of its territorial powers. Thus, the Constitution’s Territorial Clause continues to apply with respect to Puerto Rico, as has been determined by the Supreme Court. See, e.g., *Harris v. Rosario*, 446 U.S. 651 (1980). The same conclusion has also been reached by the Departments of Justice and State, the Government Accountability Office, the Congressional Research Service, and both this Committee and its Senate counterpart. The Supreme Court has also ruled that Puerto Rico is autonomous, like a State, over matters not governed by the Constitution, but this holding is not incon-

sistent with the Court's holding that the Territorial Clause applies—because the Territorial Clause is part of the Constitution and all federal laws applicable to Puerto Rico implement the Constitution and are the supreme law in the territory. See *Rodriguez v. Popular Democratic Party*, 457 U.S. 1 (1982). A PDP contention that the Court's holding in *Harris* is limited to federal programs has no basis in the ruling, which did not so qualify its holding.

The issue of whether Puerto Rico is more properly called a “commonwealth” or a “territory,” like the issue of Congressional authority to alter the current allocation of power between the federal and local governments, both obscures and distracts from the real issue: namely, that Puerto Ricans lack nearly all aspects of voting representation in the federal government that enacts and enforces their national laws. The Resident Commissioner has been granted the authority to vote in committees of the House. The Resident Commissioner has also been granted the authority to vote in the Committee of the Whole—but only if his vote would not determine the outcome of the question at issue. Beyond this, Puerto Ricans are unrepresented in the federal government. By contrast, a state with an equivalent population would have six representatives, two senators, and would participate fully in the election of the President and Vice President (with an eight-member Electoral College delegation). As former PDP Governor Rafael Hernández Colón has written, despite the divergent views that Puerto Ricans have with respect to their preferred political status, “[a]ll factions do agree on the need to end the present undemocratic arrangement whereby Puerto Rico is subject to the laws of Congress but cannot vote in it.”

After the insular constitution took effect in 1952, leaders of the PDP began to claim that Puerto Rico was no longer a territory, congressional authority regarding the Island had been permanently limited, and Congress could not change the federal-territorial governing arrangement or policies encompassed by it. These claims were made despite the fact that leaders of the PDP had agreed with federal officials that the opposite was true when the arrangement was being established, and notwithstanding the fact that the “compact” provided only for the adoption of a local constitution and the continuation of provisions of federal law regarding the Island without placing any limits on federal authority. In essence, the argument of the PDP has been that the governing arrangement cannot be unilaterally changed because it was mutually established and this permanently limits federal territory governing authority. A simplified version of the argument is that the arrangement cannot be changed by Congress because it was called “a compact.”

These “compact” arguments are not supported by the history of the authorization and approval of the federal-territorial arrangement. These arguments are likewise undermined by the federal modifications that have been made to the arrangement since its establishment. For example, The Puerto Rican Federal Relations Act provided that all federal taxes collected on Puerto Rican products would be granted to Puerto Rico. Subsequent statutes have limited the covered products to just one—rum—and authorized the federal government to retain portions of the taxes in the U.S. Treasury for other federal purposes. To cite another example: although the local constitution prohibits capital punishment, subsequently-enacted

federal laws have applied capital punishment in Puerto Rico, thereby overriding the prohibition in the local constitution and belying the claim that mutual consent is required for changes to be made to the federal-territorial governing arrangement.

In support of their claim, PDP officials have cited statements made by two U.S. representatives to the United Nations during a 1953 debate. The debate concerned Resolution 748, which then-Governor Muñoz prevailed upon the U.N. General Assembly to pass. The U.N. Charter requires a member nation that exercises sovereignty over a “non-self-governing territory” to submit an annual report regarding that territory. Resolution 748 called for Puerto Rico to be removed from the list of non-self-governing territories. The United States was happy to be relieved of its reporting responsibility (and thus supported the Resolution), but it declined to accede to Muñoz’s request that the United States declare that Puerto Rico was no longer a U.S. territory. When confronted with the claims of other member nations that Puerto Rico was not in fact self-governing at the national government level, however, the two U.S. representatives verbally endorsed the PDP’s claims that the “compact” could not be unilaterally amended. Statements by diplomats do not override the Constitution and federal laws, and, in any event, the U.S.’s written submission to the U.N. justifying Resolution 748 was more carefully worded. The written submission emphasized Puerto Rico’s local self-government but did not state that Puerto Rico was no longer a territory exempt from federal authority, nor state that the compact could not be unilaterally changed by the United States. The written submission also explained that Puerto Rico’s local self-government was subject to the U.S. Constitution and federal laws.

As previously noted, notwithstanding the oral statements made during debate over Resolution 748, the Supreme Court has held that the Territorial Clause continues to apply to Puerto Rico. Some concede this point, but assert that federal territory governing authority only applies to the application of federal programs in Puerto Rico—on the rationale that the Supreme Court’s ruling in *Harris v. Rosario*, 446 U.S. 651 (1980), concerned a federal program. However, the decision in *Harris* does not provide any basis for this interpretation. To the contrary, the straightforward holding is that “Congress . . . is empowered under the Territory Clause . . . to ‘make all needful Rules and Regulations respecting the Territory . . . belonging to the United States.’” It is clear that *Harris* was not qualified or limited in the manner posited by some commonwealthers.

Under United States pressure, General Assembly Resolution 748 passed—though only narrowly and with many countries abstaining. The debate over Resolution 748 prompted the United Nations to agree on governing arrangements that would provide full self-government to non-self-governing territories: in United States terms, these arrangements were statehood, independence, and free association. In addition, Paragraph 9 of the Resolution recognized that the federal-territorial relationship was not permanent and could be altered by the parties exercising their powers under applicable constitutional arrangements. Paragraph 9 also expressed the expectation that a permanent status would be chosen in a process that had

due regard for the freely-expressed wishes of the inhabitants of the territory.

In 1959, PDP representatives began to seek national government powers, with the United States continuing to grant domestic programs and citizenship. This effort has continued to the present day and is the other major reason why Puerto Ricans have yet to determine their preference with respect to the Island's ultimate political status. The hope that such a "best-of-both-worlds" status can be created has resulted in many Puerto Ricans not expressing a preference between the only constitutionally-valid permanent non-territorial status options: statehood, independence, and free association. A bill that Puerto Rico's representatives proposed in 1959 which incorporated the "commonwealth" theme was rejected in committee. But, notwithstanding the failure of that bill and other "commonwealth" proposals, the PDP still contends that the full Congress has not provided a definitive response to their ideas.

In 1962, talks with a task force of the Kennedy White House led to an agreement that the "Commonwealth concept" could be developed into "a permanent institution," despite the fact that it cannot provide a democratic form of government at the national government level. The task force also, however, determined that there should be a referendum with the options of independence and statehood included as well. A 1963 bill introduced in response to a request of PDP representatives would have provided for the referendum with a "compact of permanent union" option drafted by a United States-Puerto Rico commission. The compact was to limit U.S. powers in Puerto Rico, provide for Puerto Rican participation in federal activities, and include Puerto Rican financial contributions to the United States. But this compact proposal was rejected in committee.

In 1964, a law was enacted establishing a United States-Puerto Rico commission to study the issue of Puerto Rico's status. In 1966, the commission called for a referendum with the options of statehood, independence, and a developed "commonwealth" in an association that could be binding upon the U.S. The commission also recommended further joint advisory groups on status proposals.

A PDP proposal for some greater powers for Puerto Rico won 60% of the vote in a 1967 referendum. Although the Statehood Republican Party boycotted the referendum—as did the PIP—some pro-statehooders participated and won 39% of the vote. They then founded a new statehood party, the New Progressive Party (NPP). The NPP won most local elected offices in 1968.

By 1965, Cuba had begun asking the United Nations to re-examine Puerto Rico's status. Starting in 1971, Cuba introduced annual resolutions on the issue in the Decolonization Committee. The United States has blocked General Assembly action and stopped cooperating with the Decolonization Committee. The U.S. position has not been, as some assert, that Puerto Rico is not a territory. Rather, the U.S. position of record, based on General Assembly Resolution 748, is that the Decolonization Committee lacks jurisdiction, that the matter is one for the United States and Puerto Rico to resolve, and that Puerto Rico has not sought a new status.

Puerto Rico's economy experienced steady and impressive growth beginning with the Roosevelt Administration policies in the 1940s and continuing through the mid-1970s, which resulted in the Is-

land closing the income gap with the United States. Since the mid-1970's, however, the Puerto Rican economy has stagnated and fallen well behind that of the nation as a whole. In 1984, Hernández Colón was re-elected as Governor on the pledge to focus his attention on the economy rather than status. The Committee was asked to conduct hearings on the state of the Puerto Rican economy. These hearings made plain that economic solutions on the Island are largely tied to political solutions. Policies that are appropriate for a prospective State may not be appropriate for a prospective independent nation, and vice-versa. Accordingly, Puerto Rico's lack of direction towards a permanent political status made it difficult to devise federal policies towards the Island that were sensible and informed.

Re-elected again in 1988, Governor Hernández Colón proposed that Congress sponsor a referendum among "Commonwealth," statehood, and independence options, with a pledge from Congress that it would implement the results of the referendum. Governor Hernández Colón was joined in his request by the presidents of the NPP and the PIP, as well as by President George H.W. Bush, who used the opportunity of his first address to Congress to urge that body to enact this legislation.

Later, in 1989, the Senate Energy and Natural Resources Committee reported legislation for a referendum on committee-modified versions of statehood, independence and "commonwealth" bills proposed by Puerto Rico's political parties, with the majority choice to be automatically implemented. In the following year, the House passed a different bill, H.R. 4765, which would have provided for a referendum among Puerto Rican "commonwealth," statehood, and independence proposals (without defining those proposals); Congressional consideration of the proposal that won, and a Puerto Rican referendum on the proposal as passed by Congress.

In 1993, the pro-statehood government of Puerto Rico led by Governor Pedro Rosselló conducted a referendum among status options proposed by Puerto Rico's political parties. The PDP submitted a debatable proposal that obtained a slight plurality over statehood, but not a majority. In 1994, the Clinton Administration reacted by proposing that there be yet another referendum with status options that were Puerto Rican proposals as agreed to by the federal government and implementation of the majority choice.

In 1996, the Committee on Resources and the Committee on Rules reported legislation that provided for a two-question referendum. The first question was between continuing unincorporated territory status labeled "Commonwealth" and seeking nationhood or statehood and the second question was between nationhood and statehood. If continuing territory status was chosen, the bill would have provided for periodic referenda on the question. The legislation was not considered by the House.

In 1997, Committee on Resources Chairman Don Young (R-AK) introduced a similar measure, H.R. 856, which called for a referendum where voters could choose between commonwealth, separate sovereignty, or statehood. The legislation passed the House in 1998 and the Senate Energy and Natural Resources Committee held hearings but no further action was taken.

In December 1998, Puerto Rico held a referendum under the authority of local law. The status options offered to voters followed

closely with the status options in legislation being considered by Congress. However, a choice of “None of the Above” was also included on the referendum ballot. In this latest referendum, “None of the Above” received 50.2% of the vote, “Statehood” 46.5%, “Independence” 2.5%, “Free Association” .02%, and “Commonwealth” .01%.

A report, entitled *The Results of the 1998 Puerto Rico Plebiscite* (106th Congress, Serial No. 106–A), issued by Chairman Young and Ranking Member Miller in November 1999, noted that advocates for an alternative commonwealth definition, which did not appear on the 1998 ballot, “contained principles rejected on a bipartisan basis by the Committee on Resources during consideration of H.R. 856.” The report further stated that Congress has the responsibility to provide a process for a Puerto Rican status choice among real options.

In 2000, President Clinton took several steps to resolve the status issue. The first was to host a summit with Puerto Rican leaders and Congressional committee representatives. At the summit, PIP President Berrios proposed that a Presidential task force be formed to continue efforts on the issue into the succeeding administration and that the Presidential candidates be asked to continue the effort. The presidential candidates pledged to do so. The President subsequently established the Task Force with the dual mission of (1) answering Puerto Ricans’ questions about the options and the process for determining Puerto Rico’s status until an ultimate status was implemented, one that provides for a representative form of government at the national government level, and (2) encouraging action on the issue, in consultation with Puerto Rican and Congressional leaders.

The Clinton Administration also responded to a request from this Committee and the Senate Energy and Natural Resources Committee that it provide a report on the status proposals of all three of Puerto Rico’s political parties with an accompanying constitutional analysis. The Clinton Administration found that the proposals of the NPP and PIP were generally acceptable, but that the PDP “Development of the Commonwealth” proposal violated the Constitution in several respects.

These concerns by the Clinton Administration were expressed to this Committee during a legislative hearing held in 2000 on H.R. 4751, which would have implemented the “Development of the Commonwealth” proposal. Testimony presented by the Department of Justice stated that the “mutual consent provisions [of the Developed Commonwealth proposal] are constitutionally unenforceable” because “one Congress cannot bind a subsequent Congress.” In addition, with respect to making a “Developed Commonwealth” legally and constitutionally its own nation, the State Department testified that “the exercise of a parallel and co-existing foreign affairs authority by a subfederal unit of the United States would not only be unconstitutional, but retrogressive and impractical as well.”

In December 2005, the Task Force appointed by President Bush, after considering extensive input from political parties in Puerto Rico, as well as the Island’s elected leaders, finally reported its findings to Congress. It reiterated the U.S. government’s position that Puerto Rico remains an unincorporated territory and rejected

the “Developed Commonwealth” proposal, agreeing with previous positions expressed by earlier Administrations.

The Task Force’s Report addressed other issues as well. For example, it noted that the United States citizenship of Puerto Ricans would have to be addressed in the event that Puerto Rico was to become a nation. Although the general practice in history has been that citizenship follows nationality, a Department of Justice opinion attached to the report concluded that the citizenship of individual Puerto Ricans probably could not be taken away even in the event of independence.

The President’s Task Force recommended that Congress provide for the people of Puerto Rico to choose whether to continue the status quo or seek a permanent non-territorial status. If a majority of Puerto Ricans vote to continue territory status, the Task Force recommended that additional plebiscites be conducted on a periodic basis, so as to ensure that Puerto Ricans continue to have a process to seek a democratic status and have intervals between status votes. If the Puerto Rican people, at some point, choose to seek an alternative permanent status, the Task Force recommended that Congress should then provide for a plebiscite with statehood, independence, and, possibly, free association options. After a status is chosen, Congress should begin the transition process.

One hundred and ten years after Puerto Rico was acquired from Spain, its 3.9 million U.S. citizens still have an unsettled political status. All peoples are entitled to a form of government that provides for equal voting representation in the making and implementation of their laws. Puerto Rico’s current status, as a form of government subject to congressional authority under the Territory Clause, cannot be considered permanent, even if called “commonwealth.” Although Congress has the authority to manage the self-determination process for Puerto Rico based on constitutionally-viable options, a Congressionally-sponsored vote in Puerto Rico has never taken place in more than a century under U.S. sovereignty.

Recent legislative proposals introduced in the U.S. House of Representatives

109th Congress

H.R. 4867 (Fortuño, R-PR)—Puerto Rico Democracy Act; would have enacted the recommendations made in the Report by the President’s Task Force on Puerto Rico’s Status. Would have authorized a plebiscite to be held during the 110th Congress, giving voters the option to vote for continued U.S. territorial status (status quo) or for a path toward a constitutionally viable permanent non-territorial status (statehood or independence). Provided for subsequent action based on results.

H.R. 4963 (Duncan, R-TN)—Puerto Rico Self Determination Act of 2006; authorized the calling of a constitutional convention through the election of delegates for the purpose of establishing a mechanism for self-determination. Political status choices could have included new commonwealth, statehood, and independence.

106th Congress

H.R. 4751 (Doolittle, R-CA) , Puerto Rico-United States Bilateral Pact of Non-territorial Permanent Union and Guaranteed Citizen-

ship Act; would have recognized Puerto Rico into a permanent union with the United States as a non-territorial autonomous political body, which would retain all powers not delegated to the U.S. with guaranteed irrevocable U.S. citizenship. The text of this legislation is similar to the proposal that the PDP approved as its definition for commonwealth.

105th Congress

H.R. 856 (Young, R-AK)—United States-Puerto Rico Political Status Act; authorized a process to determine the ultimate status of Puerto Rico and defined options. While the NPP and PIP supported the bill's statehood and independence options respectively, the PDP opposed the language defining commonwealth. The bill passed the House with no further action by the Senate.

COMMITTEE ACTION

H.R. 900 was introduced on February 7, 2007, by Representative José E. Serrano (D-NY). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Insular Affairs. On March 22 and April 25, 2007, the Subcommittee convened legislative hearings on H.R. 900 and an alternative measure (H.R. 1230) sponsored by Representative Nydia Velázquez (D-NY).

Over the course of the two legislative hearings, the Subcommittee heard from 25 witnesses, including the Governor of Puerto Rico, the presiding officers and principal minority leaders of the Legislative Assembly of Puerto Rico, the presidents of Puerto Rico's two other major political status-based political parties, a representative of the President of the United States, other officials of Puerto Rico, representatives of other Puerto Rican political and non-partisan organizations, constitutional experts, and the Congressional Research Service.

On October 23, 2007, the Subcommittee was discharged from further consideration of H.R. 900 by unanimous consent and the full Natural Resources Committee met to consider the bill.

Chairman Nick J. Rahall, II (D-WV) offered an amendment in the nature of a substitute (ANS). The Rahall ANS would provide for a single plebiscite to be held no later than December 31, 2009, giving voters the option to vote to continue the current U.S. territorial status (status quo) or for a constitutionally viable permanent non-territorial status. The ANS did not include any further plebiscites. Instead, if the non-territorial status option were to receive a majority of votes cast, then the results of the plebiscite would be submitted to the President's Task Force on Puerto Rico's Status to develop recommendations to the Congress.

Delegate Donna Christensen (D-VI) offered an amendment to the Rahall ANS which would strike Section 2(b) of the Rahall amendment, which called on the President's Task Force on Puerto Rico, in consultation with leaders of Puerto Rico, to make recommendations to Congress within six months of the plebiscite required by Section 2(a) if a majority of validly cast ballots favored a non-territorial status. Instead the Christensen amendment provides for Congress to recognize the authority of Puerto Rico to either convene a constitutional convention or hold a subsequent plebiscite to determine the people's choice for Puerto Rico's future political status

and relationship with the United States. The Christensen amendment was agreed to by voice vote.

Delegate Eni Faleomavaega (D-AS) offered an amendment (Faleomavaega .031) to the Rahall ANS which would have the people of Puerto Rico choosing between three status options: continuing the existing Commonwealth, admission as a State, or a sovereign nation. If no status received a majority of votes cast, then the two status options receiving the most votes would be placed on the ballot in the next election. The amendment was withdrawn, without objection.

Delegate Faleomavaega offered a second amendment (Faleomavaega .032) to the Rahall ANS. Similar to the previous amendment, Faleomavaega .032 would propose the same status options; however, in the event that no status option received a majority of the votes cast, separate referenda would be required—no later than two years of each other—on the two status options receiving the most votes. The amendment was not agreed to by voice vote.

Delegate Faleomavaega offered a third amendment (Faleomavaega .030) to the Rahall ANS. This amendment would propose three separate referenda, one for each status option. The result of each respective referendum would precipitate further action by the U.S. Congress. The amendment was withdrawn, without objection.

The Rahall amendment in the nature of a substitute, as amended by the Christensen amendment, was adopted by voice vote, and the bill was favorably reported, as amended, to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that this Act may be referred to as the “Puerto Rico Democracy Act of 2007.”

Section 2. Puerto Rican decision on present status

Section 2(a) would require the Puerto Rico State Elections Commission to conduct a plebiscite not later than December 31, 2009 in which eligible voters (as defined in Section 3(c)) would select their preference, from among two options, as to whether Puerto Rico should (1) continue its present form of territorial status and relationship with the United States, or (2) pursue a constitutionally viable permanent non-territorial status.

Section 2(b) would recognize that, should a majority of voters in the plebiscite express the preference for Option (2), Puerto Rico has the authority to (1) call a constitutional convention, in accordance with Puerto Rico’s constitution and local laws, that could propose a non-territorial status option which, if approved by the Puerto Rican people in a referendum, would be presented to the Congress, or (2) conduct a plebiscite, administered by the Puerto Rico State Elections Commission, to consider a non-territorial status option, with the results of that plebiscite presented to the Congress. The Committee believes that Section 2(b) recognizes mechanisms which Puerto Rico already has the authority to undertake pursuant to its local constitution. Furthermore, the Committee emphasizes that

Section 2(b) should not be read to limit or preclude the Government of Puerto Rico from employing any procedural mechanism for choosing a non-territorial status option so long as that mechanism comports with Puerto Rico's constitution and local laws.

It is the intent and expectation of the Committee that any convention or plebiscite would be conducted only after the plebiscite required by Section 2(a), and only if a majority of voters in that plebiscite cast their ballots in favor of pursuing a constitutionally viable permanent non-territorial status (i.e., Option 2).

The Committee recognizes that if Option 2 were implemented, such implementation would require legislative action to relinquish Congress's authority over Puerto Rico under the Territorial Clause of the U.S. Constitution.

A convention or a plebiscite on such a constitutionally viable permanent non-territorial status option would choose one of three status options: (1) independence, (2) nationhood in a free (i.e., unilaterally terminable) association with the United States, or (3) U.S. statehood. These choices represent all of the possible non-territorial status options that are currently viable under the U.S. Constitution and international law. The Committee emphasizes its expectation, which is consistent with the colloquy held between Chairman Rahall and Resident Commissioner Fortuño during the Full Committee's markup of H.R. 900, that a convention, plebiscite, or other procedural mechanism should only consider non-territorial status options that are compatible with the Constitution and basic laws and policies of the United States. To best ensure this criterion is met, the delegates to the convention or the drafters of the options to be included in the plebiscite should consult with federal authorities on issues of U.S. law and policy.

The Committee agrees with the statement of then-Chairman Don Young and Ranking Member George Miller in a report to the Committee, dated November 19, 1999, that a new or modified Commonwealth status proposal rests on "principles rejected on a bipartisan basis by the Committee." Such a proposal is not a viable status option and cannot be accepted under any circumstance because it is incompatible with the Constitution and basic laws and policies of the United States. This conclusion has been supported by:

- the Clinton Administration, through statements by the President's Interagency Group on Puerto Rico and the Departments of Justice, State, and Labor during a hearing of the Committee in 2000 and during a Justice Department report to the Committee in 2001;
- the Bush Administration, through the President's Task Force on Puerto Rico's Status in its December 2005 and 2007 Reports, and in statements during the Committee's 2006 hearing on the report and in Administration statements during the Committee's April 25, 2007 hearing on this legislation;
- the Congressional Research Service at the March 22, 2007 hearing on this legislation; and
- Committee Members from both political parties during each of the above referenced hearings.

Section 3. Applicable laws and other requirements

Section 3(a) would make all federal laws that are applicable to the election of the Resident Commissioner of Puerto Rico in the

United States Congress applicable to the plebiscite mandated by Section 2(a) on the question of whether voters want to continue Puerto Rico's current status or to seek a constitutionally viable permanent status not subject to Territorial Clause authority, unless application of those federal laws would frustrate the purposes of this legislation.

Section 3(b) would vest in the federal courts exclusive jurisdiction over any legal claims or controversies arising out of the implementation of the plebiscite required by Section 2(a).

Section 3(c) would prescribe the eligibility requirements for voting in the plebiscite required by Section 2(a).

Section 3(d) would require the Puerto Rico State Elections Commission to certify the results of the plebiscite required by Section 2(a) to the President of the United States and to the Senate and House of Representatives of the United States.

Section 4. Funds

Section 4 would provide that the Secretary of the Treasury may allocate to the Puerto Rico State Elections Commission for the purposes of conducting the plebiscite required by Section 2(a) up to \$5 million from the funds already required to be provided to the Government of Puerto Rico for unspecified purposes.

The Puerto Rico State Elections Commission may use such funds for voter education materials—which the Committee believes will be necessary given the confusion in Puerto Rico with respect to the Island's current status and its non-territorial status options—if the materials are certified by the President's Task Force as not containing assertions that are incompatible with the Constitution and basic laws and policies of the United States. This provision was included because misleading and factually incorrect contentions have been made and non-viable proposals have been offered with respect to Puerto Rico's current status and its alternative status options in past status referenda in the Island.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV, section 3 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) 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 this bill. However, clause 3(d)(3)(B) 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 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to provide for a federally sanctioned self-determination process for the people of Puerto Rico.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII 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 this bill from the Director of the Congressional Budget Office:

H.R. 900—Puerto Rico Democracy Act of 2007

H.R. 900 would require Puerto Rico to conduct a plebiscite (a direct vote where an electorate is asked to either accept or reject a particular proposal) by the end of 2009 on whether the island should retain its current relationship with the United States or pursue a permanent nonterritorial status. If the vote favors the ending of territorial status, the legislation would recommend that Puerto Rico convene a constitutional convention or conduct a second plebiscite with other self-determination options (i.e., independence). In addition, H.R. 900 would allow the Department of the Treasury to fund the first plebiscite with up to \$5 million from the excise tax on rum imported into the United States that is currently paid to Puerto Rico (that amount is known as the tax cover over).

CBO estimates that enacting this legislation would have no significant impact on the federal budget because all excise taxes collected on imported rum would be spent under current law. Under the bill, up to \$5 million of the excise tax collections would be used to fund the plebiscite; thus, a portion of that money would be spent differently than under current law.

H.R. 900 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would require the Puerto Rico State Elections Commission to hold a vote to determine whether Puerto Rico will remain a U.S. territory or move toward permanent nonterritorial status. The commission also would have to certify the result of that election to the President and the Congress. Information provided by the Puerto Rico State Elections Commission indicates that the vote would be held during the regularly scheduled election in 2008; therefore, CBO estimates that the mandates would impose costs that would be well below the threshold established in UMRA (\$66 million in 2007, adjusted annually for inflation). The bill would authorize the Secretary of the Treasury to allocate up to \$5 million of the excise tax cover over that Puerto Rico receives under current law to comply with the bill. CBO expects that amount would be sufficient to cover the costs of holding the vote. H.R. 900 contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs) and Elizabeth Cove (for the state and local impact). This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill would require the Puerto Rico State Elections Commission to hold a vote to determine whether Puerto Rico will remain a U.S. Territory or move toward permanent non-territorial status, which would be an intergovernmental mandate, however the Congressional Budget Office estimates that the costs of this mandate would be small and would not approach the threshold established in the Unfunded Mandates Reform Act.

EARMARK STATEMENT

H.R. 900 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

ADDITIONAL VIEWS

While the amended version of H.R. 900 was passed by the Committee on voice vote, I had at that time, and still have, serious reservations about the bill in its current form. Should the bill move forward for additional consideration, we will need further opportunity to address concerns expressed during both the Subcommittee hearings and the Committee mark up. While I believe the amendment to the bill adopted by the Committee improved the bill, I still feel that the bill, as reported, is unfair and falls short of what this Congress is capable of producing to help Puerto Ricans chart a better future for their political status with the United States.

The amendment did however accomplish two important objectives. First, the Task Force on Puerto Rico's Status will not have any role in the process after the first vote in Puerto Rico. The work of the Task Force was the subject of much criticism in Puerto Rico and in the Congress and its continued involvement in this process, as originally contemplated by H.R. 900, would not have been positive. Second, the amendment recognizes the inherent authority of the people of Puerto Rico to call a Constitutional Convention, or to conduct a plebiscite, that will present self-determination options to the voters in Puerto Rico and, if approved, to the Congress. As the plain language of the amendment states, the Constitutional Convention will be free to consider any self-determination option. The language is clear, and should not be subject to any other interpretation.

I believe it is necessary to reaffirm the intent of the amendment that a Constitutional Convention may consider any self determination option, both because it is the fair and right thing to do, but also because the bill may be prone to confusion and manipulation as a result of the way the first vote is currently structured. That vote essentially asks whether the people of Puerto Rico want to "continue to have its present form of territorial status and relationship with the United States" or "pursue a constitutionally-viable permanent non-territorial status." These are all terms that are not easily defined, and the bill, as reported, does not even attempt to define them.

It is clear that many of the terms in the bill, H.R. 900, are offensive to Commonwealth supporters among others. The language authorizing the initial vote presented to the people of Puerto Rico under H.R. 900, as approved by the Committee on Natural Resources, is confusing and susceptible to manipulation. More seriously, however, it would seem to pit all options against Commonwealth—the one option that has received at least a plurality in all previous votes. In large part because of the inherent confusion and unfairness of the vote offered in H.R. 900, I believe it would be preferable to simply let the people of Puerto Rico to begin the process of resolving their political status by calling a Constitutional

Convention to draft a proposal for both the people of Puerto Rico and the Congress to consider. The Constitutional Convention, however, should not operate in a vacuum, and I would expect the Convention to consult with the Committees of jurisdiction, as well as with the Administration, in terms of whether any particular proposal is feasible before submitting it to the people of Puerto Rico and the Congress for further action.

I continue to believe we should have a free and fair process, allowing the people of Puerto Rico to choose between Commonwealth status, statehood, or independence, as in the past. And the election should not be unfairly tilted toward any one of these three choices.

JOHN J. DUNCAN, Jr.

