

PUERTO RICO DEMOCRACY ACT OF 2009

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OCTOBER 8, 2009.—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. 2499]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2499) 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 2009”.

**SEC. 2. FEDERALLY SANCTIONED PROCESS FOR PUERTO RICO'S SELF-DETERMINATION.**

(a) **FIRST PLEBISCITE.**—The Government of Puerto Rico is authorized to conduct a plebiscite in Puerto Rico. The 2 options set forth on the ballot shall be preceded by the following statement: “Instructions: Mark one of the following 2 options:

“(1) Puerto Rico should continue to have its present form of political status.

If you agree, mark here \_\_\_\_.”

“(2) Puerto Rico should have a different political status. If you agree, mark here \_\_\_\_.”

(b) **PROCEDURE IF MAJORITY IN FIRST PLEBISCITE FAVORS OPTION 1.**—If a majority of the ballots in the plebiscite are cast in favor of Option 1, the Government of Puerto Rico is authorized to conduct additional plebiscites under subsection (a) at intervals of every 8 years from the date that the results of the prior plebiscite are certified under section 3(d).

(c) **PROCEDURE IF MAJORITY IN FIRST PLEBISCITE FAVORS OPTION 2.**—If a majority of the ballots in a plebiscite conducted pursuant to subsection (a) or (b) are cast in

favor of Option 2, the Government of Puerto Rico is authorized to conduct a plebiscite on the following 3 options:

- (1) Independence: Puerto Rico should become fully independent from the United States. If you agree, mark here \_\_\_\_\_.
- (2) Sovereignty in Association with the United States: Puerto Rico and the United States should form a political association between sovereign nations that will not be subject to the Territorial Clause of the United States Constitution. If you agree, mark here \_\_\_\_\_.
- (3) Statehood: Puerto Rico should be admitted as a State of the Union. If you agree, mark here \_\_\_\_\_.

**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 any plebiscites held pursuant to this Act. Any reference in such Federal laws to elections shall be considered, as appropriate, to be a reference to the plebiscites, unless it would frustrate the purposes of this Act.

(b) **RULES AND REGULATIONS.**—The Puerto Rico State Elections Commission shall issue all rules and regulations necessary to carry out the plebiscites under this Act.

(c) **ELIGIBILITY TO VOTE.**—Each of the following shall be eligible to vote in any 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 Commission requirements (other than the residency requirement) applicable to eligibility to vote in a general election in Puerto Rico. Persons eligible to vote under this subsection shall, upon timely request submitted to the Commission in compliance with any terms imposed by the Electoral Law of Puerto Rico, be entitled to receive an absentee ballot for the plebiscite.

(d) **CERTIFICATION OF PLEBISCITE RESULTS.**—The Puerto Rico State Elections Commission shall certify the results of any 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.

(e) **ENGLISH BALLOTS.**—The Puerto Rico State Elections Commission shall ensure that all ballots used for any plebiscite held under this Act include the full content of the ballot printed in English.

(f) **PLEBISCITE COSTS.**—All costs associated with any plebiscite held under this Act (including the printing, distribution, transportation, collection, and counting of all ballots) shall be paid for by the Commonwealth of Puerto Rico.

**PURPOSE OF THE BILL**

The purpose of H.R. 2499 is to provide for a federally sanctioned self-determination process for the people of Puerto Rico.

**BACKGROUND AND NEED FOR LEGISLATION**

Puerto Rico has been a U.S. territory since 1898, when it was ceded to the United States by Spain under the treaty that ended the Spanish-American War. The U.S. Supreme Court has held that Puerto Rico has not been incorporated into the United States (*Downes v. Bidwell*, 182 U.S. 244). This means, among other things, that Puerto Rico's ultimate political status has not been resolved. Incorporated territories are those destined for statehood, whereas unincorporated territories can become sovereign nations or States. Persons born in Puerto Rico have been granted U.S. citizenship by federal statute since 1917.

Through its Territorial Clause (Article 4, Section 3, Clause 2), the Constitution gives Congress full power to govern territories. The only limit on this power is that residents of the territories possess certain fundamental rights that cannot be abridged. The power of Congress includes the authority to govern territories in local as well as national matters. Congress, however, has granted Puerto Rico authority over local matters similar to the authority

possessed by the states. In 1950, Congress enacted a law authorizing Puerto Rico to draft a local constitution, which was ratified by the people of Puerto Rico and approved by Congress in 1952. In the exercise of its powers, Congress may choose to treat Puerto Rico differently than the States, the District of Columbia, and other territories. While Puerto Rico is treated as a state for many purposes, there are significant exceptions with respect to certain programs (e.g., Medicaid, Medicare, Supplemental Security Income) and tax law.

The Constitution does not directly provide for residents of territories to be represented in Congress or to participate in the election of the president of the United States. Pursuant to statute and the Rules of the House, the nearly four million residents of Puerto Rico elect a single Resident Commissioner, who has been given membership in the U.S. House of Representatives and limited voting rights in committees. Because residents of Puerto Rico do not have anything approaching equal voting representation in the government that enacts and enforces their national laws, they do not enjoy full democracy at the national government level.

Puerto Rico has been under the U.S. flag for 111 years and its residents have been U.S. citizens for more than 90 years. Yet, in that time, the people of Puerto Rico have not expressed their views—in a vote authorized by the Government of the United States—on the question of whether they want the current status to continue or, in the alternative, whether they would prefer that Puerto Rico become a State or a sovereign nation, either fully independent from or in an association with the United States.

The debate over Puerto Rico's political status has been—and remains today—the central issue in the territory's political life. In the period immediately following Puerto Rico's acquisition by the United States in 1898, Puerto Rico's leaders generally expected equality and eventual statehood. However, a competing nationalist sentiment emerged among a segment of Puerto Rico's residents. It was spurred in considerable part by Supreme Court rulings that Puerto Rico had not been incorporated into the United States—meaning that it would not necessarily become a state—and by laws enacted in the first two decades of the twentieth century that, in certain respects, granted Puerto Rico less self-government and representation in the national government than it had been afforded under Spanish rule.

Subsequently, certain leaders in Puerto Rico developed ideas for a new political status and relationship between the United States and Puerto Rico. The proposal was a hybrid, containing elements of territory status, statehood, and national sovereignty, and was rooted in the recognition that many residents of Puerto Rico valued their U.S. citizenship and that key U.S. officials opposed independence.

Such hybrid status proposals have undergone various iterations—and been given various names—over the years. Under the most recent version—put forth in 1998 and called “Development of the Commonwealth”—Puerto Rico would be recognized as a nation but in an association with the United States. The U.S. could not withdraw from this association or modify its terms without the consent of Puerto Rico. Certain federal laws would apply in Puerto Rico, but Puerto Rico would have the power to nullify the

application of other federal laws and to limit the jurisdiction of the federal courts. Puerto Rico would also have the power to join international organizations and enter into international agreements. Residents of Puerto Rico would be granted U.S. citizenship in perpetuity and continue to receive all current federal assistance. The federal government would be required to grant Puerto Rico a subsidy—in the form of an annual block grant—and to enact incentives to encourage investment in Puerto Rico. Proposals for such a governing arrangement have been consistently opposed by federal authorities in the executive and legislative branches, including this Committee, on both constitutional and policy grounds. Nevertheless, this hybrid proposal continues to be promoted in Puerto Rico as a feasible status option. Such proposals have resulted in misinformed and inconclusive referenda in Puerto Rico in July 1967, November 1993, and December 1998.

Lack of clear understanding in Puerto Rico regarding its viable, non-territorial status options is a chief reason for this legislation. A federal law would clarify the viable status options and thereby ensure that the self-determination process is well-informed and productive. In addition to the current territory status, there are three real status options that have support in Puerto Rico: (1) independence, (2) national sovereignty in association with the United States, whereby Puerto Rico and the U.S. would form a political association the terms of which would be negotiated between the parties and which would be terminable by either party, and (3) statehood.

#### *Origins of the Bill*

The status referendum held in Puerto Rico in 1998 included a “None of the above” choice, in addition to the current status, independence, nationhood in association with the United States, and statehood. Advocates of the “Development of the Commonwealth” proposal campaigned for a “None of the above” vote. “None of the above” obtained just over 50% of the vote, statehood obtained 46.5%, independence obtained 2.5%, nationhood in association with the United States obtained .02%, and the current status obtained .01%.

Because neither “None of the above” nor the “Development of the Commonwealth” proposal could become Puerto Rico’s status, President William J. Clinton called for Puerto Rico’s viable status options to be clarified and for a referendum to take place on those options. The then-Chairman and Ranking Member of this Committee, Don Young (R-AK) and George Miller (D-CA), issued a similar call. To facilitate this process, President Clinton established the President’s Task Force on Puerto Rico’s Status.

In 2005, after extensive consultations with Puerto Rico’s political parties, the Task Force issued a report recommending that Congress provide for a referendum in which the people of Puerto Rico would express their preference between continuing the current territory status and seeking a non-territory status. If the referendum resulted in a majority favoring the current status, the Task Force recommended that further referenda on the question be held periodically. If the referendum resulted in a majority expressing the desire to seek a non-territory status, the Task Force recommended that Congress provide for a referendum between statehood and na-

tionhood. A bill (H.R. 4867) to implement the process recommended by the Task Force was introduced in the 109th Congress by then-Resident Commissioner—and now Governor—Luis G. Fortuño (R-PR) and was co-sponsored by 110 Members. A similar bill (H.R. 900) was introduced in the 110th Congress by Rep. José Serrano (D-NY) and cosponsored by 128 Members, including Resident Commissioner Fortuño. An amended version of the bill was favorably reported by this Committee.

#### COMMITTEE ACTION

H.R. 2499 was introduced on May 19, 2009, by Resident Commissioner Pedro R. Pierluisi (D-PR). It was referred to the Committee on Natural Resources. On June 24, 2009, the Committee held a hearing on the bill. Witnesses included the governor of Puerto Rico, who also serves as the president of one of the territory's three major political parties; the presidents of Puerto Rico's other two major political parties; the presiding officers of the Legislative Assembly of Puerto Rico; the minority leader of the Puerto Rico Senate and a designee of the minority leader of the Puerto Rico House of Representatives; a former governor and resident commissioner; and Representatives Dan Burton (R-IN) and Alan Grayson (D-FL).

On July 22, 2009, the Committee met to consider the bill. Representative Henry E. Brown (R-SC) offered an amendment that would require the Puerto Rico State Elections Commission to ensure that all ballots used for any plebiscite held under the Act include the full content of the ballot printed in English. The amendment was agreed to by a rollcall vote of 35-0, as follows:



Representative Jason Chaffetz (R-UT) offered an amendment that would require that all costs associated with any plebiscite held under this Act be paid for by the Government of Puerto Rico. The amendment was agreed to by voice vote.

Representative Jason Chaffetz (R-UT) offered an additional amendment that would require that two-thirds of voters, rather than a majority, vote in favor of a different political status in the first-stage plebiscite authorized by the bill in order to proceed to the second-stage plebiscite. The amendment would also add a "Sense of Congress" that any status option receiving less than two-thirds support in the second-stage plebiscite should not be the basis of any further legislative action by Congress. The amendment was not agreed to by voice vote.

Representative Paul C. Broun (R-GA) offered an amendment that would require that, if Puerto Rico were to become a State, its official language would be English and all its official business would be conducted in English. The amendment was not agreed to by a rollcall vote of 13-24, as follows:



The bill was then favorably reported, as amended, to the House of Representatives by a rollcall vote of 30–8, as follows:



## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

Section 1 provides that this Act may be cited as the “Puerto Rico Democracy Act of 2009.”

*Section 2. Federally sanctioned process for Puerto Rico’s self-determination*

Section 2(a) would authorize the Government of Puerto Rico to conduct a plebiscite in which individuals eligible to vote under the Act would express their preference as to whether they want Puerto Rico to (1) continue to have its present form of political status or (2) have a different political status. Consistent with the principle of self-determination, the bill would authorize—as opposed to require—the Government of Puerto Rico to conduct this plebiscite.

The Committee believes that it is both logical and sensible to ask eligible voters the threshold question of whether they want to maintain the current status or to pursue a different status before voters are asked to state their preference as to which of Puerto Rico’s alternative options they prefer. The argument has been made that this plebiscite would place the current status at a disadvantage because supporters of the three alternatives to the current status would collectively outnumber supporters of the current status. The factual assumption that underlies this argument is speculative and open to question, not least because some proponents of alternatives to the current status might nonetheless vote for the current status, based on their belief that a vote for an undetermined different status might ultimately lead to an alternative status they do not want. More fundamentally, the Committee strongly believes that if more than 50 percent of eligible voters do not support the present status, Congress and the President should be aware of this fact, and voters should then be able to express their preference among the non-territory alternatives to the present status in a congressionally-authorized vote.

Section 2(b) provides that, if a majority of ballots are cast in favor of continuing the present status, the Government of Puerto Rico is authorized to periodically conduct additional plebiscites on this question. A plebiscite held pursuant to this subsection cannot be held earlier than eight years after the certification of the results of a prior plebiscite on the question. This subsection will provide for the people of Puerto Rico to be consulted at reasonable intervals to obtain their continued consent to an arrangement that does not provide for self-government at the national government level. The Committee believes that an eight-year period between plebiscites strikes a reasonable balance. On the one hand, it will provide continuing congressional authorization for a meaningful process of self-determination in Puerto Rico. On the other hand, it will allow for a substantial interlude between plebiscites, so as to reduce the likelihood that the status debate will unduly complicate efforts to address other important social, economic and political issues in Puerto Rico.

Section 2(c) would authorize the Government of Puerto Rico, in the event that a majority of voters in a plebiscite conducted pursuant to Section 2(a) or 2(b) cast their ballots in favor of a different political status, to conduct a second plebiscite between the options

of (1) independence, (2) national sovereignty in association with the United States, and (3) U.S. statehood. These constitute all of the alternatives to the current status that have any support in the territory, and exclude only the options of Puerto Rico becoming a sovereign nation in association with a nation other than the United States or becoming part of another nation. The three options in the plebiscite also correspond to the options that the United Nations has identified as the options for decolonizing a territory.

Descriptions of independence and U.S. statehood would not be provided on the ballot authorized by this subsection because the meaning of independence is defined in international law and practice and the meaning of U.S. statehood is defined by the U.S. Constitution. National sovereignty in association with the United States is also defined in international law, but this subsection notes that an associated nation of Puerto Rico would not be subject to congressional authority under the Territorial Clause.

### *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 applicable to the plebiscites authorized by the Act.

Section 3(b) would authorize the Puerto Rico State Elections Commission to make all policy necessary to carry out the plebiscites.

Section 3(c) would prescribe the eligibility requirements for voting in the plebiscites authorized by this Act. This subsection would make eligible to vote (1) residents of Puerto Rico who are otherwise eligible to vote under Puerto Rico electoral law and (2) U.S. citizens who were born in Puerto Rico but are not residents of Puerto Rico who are otherwise eligible to vote under Puerto Rico electoral law.

The Committee understands that a substantial number of individuals born in Puerto Rico but not currently residing there hope to return to live in Puerto Rico one day. Accordingly, they can be said to have a practical stake in helping to determine Puerto Rico's future political status. Although some individuals who are of Puerto Rican descent but who were not born in Puerto Rico may also hope to live in Puerto Rico one day, the proportion is likely to be less than the proportion among individuals who were born in Puerto Rico. This subsection makes eligible those born in Puerto Rico but not those of Puerto Rican descent who were not born in Puerto Rico, and thereby chooses place of birth rather than ethnic identity as the eligibility criterion.

Section 3(d) would require the Puerto Rico State Elections Commission to certify the results of the plebiscites authorized by this Act to the President of the United States and to the Members of the Senate and the House of Representatives of the United States.

The Committee notes that the bill would not specify any next steps by Congress once it has received the results of the plebiscite among the three alternatives to the current status because Congress would be better able to determine what should be done based on the identity of the winning option and the margin of victory.

Section 3(e) would require that the Puerto Rico State Elections Commission ensure that all ballots used for any plebiscite held under the Act include the full content of the ballot printed in English.

Section 3(f) would require that all costs associated with any plebiscite held under the Act be paid for by the Government of Puerto Rico.

#### 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 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. 2499—Puerto Rico Democracy Act of 2009*

H.R. 2499 would allow Puerto Rico to conduct a vote on whether the island should retain its current relationship (a commonwealth) with the United States or pursue a different political status. If the vote favored retaining its current political status, Puerto Rico would be authorized to conduct an additional vote every eight years. If the vote favored a different political status, the legislation would allow Puerto Rico to conduct a second vote among three self-determination options (independence, sovereignty in association with the United States, or statehood). CBO estimates that enacting this legislation would have no significant impact on the federal budget because costs of conducting the votes would be paid by Puerto Rico.

H.R. 2499 contains no intergovernmental or private-sector mandates as defined in Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 2499 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 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

During the Full Natural Resources Committee markup of H.R. 2499, the Puerto Rico Democracy Act, Congressman Jason Chaffetz offered an amendment that required that a two-thirds vote, not a simple majority, apply to any federally sanctioned plebiscite vote to end the current 111 year relationship the United States has with the Commonwealth of Puerto Rico. In addition, the amendment stipulated that if less than two-thirds of the voters in Puerto Rico selected either Statehood, Independence or a Freely Associated State status that it was the Sense of Congress that no further legislative action should occur on that option.

The amendment was offered for several reasons. First, during the past 60 years, the voters in Puerto Rico have gone to the polls to express their views on four separate locally sanctioned plebiscites. While the results of the first two plebiscites were an endorsement of Commonwealth status, the last two votes were inconclusive. If the people of Puerto Rico desire to end their current relationship, then we believe that at least 66 percent of those voting should make that decision.

Second, this requirement is consistent with what transpired in the territories of Alaska and Hawaii. In fact, on June 27, 1959, 132,938 residents of Hawaii voted affirmatively on the question of: "Shall Hawaii immediately be admitted into the Union as a State." There were only 7,854 residents who voted no on statehood which means that 94 percent of those voting wanted to end their territorial status. Almost a year earlier, 40,452 Alaskan residents voted on the nearly identical question of: "Shall Alaska immediately be admitted into the Union as a State." By contrast, 8,010 Alaskan residents voted no on statehood. This represented a resounding 84 percent favorable vote for statehood. As we know, 50 years ago, Alaska and Hawaii became our 49th and 50th states respectively and there has been no debate that the overwhelming majority of their citizens supported statehood. Based on the results of the Alaska and Hawaii plebiscites, this level of support should not be insurmountable.

Finally, the issue of Puerto Rico's political status has been debated passionately and in some isolated cases violently for decades. Based on past election results, it is more than likely that up to 50 percent of the population of the Commonwealth of Puerto Rico or nearly 2 million people may feel disenfranchised by the results of any plebiscite. As a hypothetical example, if the voters choose to petition the Congress for statehood, then clearly their case is enhanced if 84 or 94 percent of their voters have affirmatively endorsed this idea. In contrast, if only 51 percent of voters support statehood, this may well have a chilling impact on Puerto Rico's success of achieving statehood.

During Committee debate on this amendment, the sponsor indicated that becoming a state is similar to a marriage. On their wedding day, nearly every bride and groom hopes that their respective families will support their decision to enter into this union. However, there are instances where some members of the respective families oppose the impending union and will by their actions or inactions bring marital discord to the newlyweds. In this example, the effect is limited to the married couple. However, in the case of Puerto Rico, unhappy results will have a profound effect on millions of Puerto Ricans who may well feel that a change in their political status is being forced upon them.

We believe that a 66 percent majority vote is not undemocratic, unfair or unattainable based on the experiences in Alaska and Hawaii. Congress can establish any standard it wants as a precondition for statehood. For example, in 1807, the formerly predominantly French territory of Louisiana adopted English as its official language as a precondition for its admission into the Union as a State. Instead of being a deterrent, we believe this level of local support for either Statehood, Independence or a Freely Associated State status will help the people of Puerto Rico make their case to the Congress.

The election outcome in Puerto Rico must be clean, unambiguous, fair and supported by a significant majority of the residents of the Commonwealth. It is regrettable that the proponents of H.R. 2499 felt that this amendment was premature and were unwilling to accept this standard to help them in their effort to clarify the future political status of Puerto Rico. It is our hope that as H.R. 2499 moves through the legislative process, the proponents of this measure will see the wisdom of our approach.

JASON CHAFFETZ.  
CYNTHIA LUMMIS.

