

CRS Report for Congress

Political Status of Puerto Rico: Options for Congress

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statehood or independence as a sovereign nation. Continuation or even enhancement of this status leaves the governance of Puerto Rico subject to the Territorial Clause, and therefore subject to congressional action. Others disagree, arguing that the current status can be a permanent status option that requires adjustments (“enhancements”) over time.

As the 110th Congress reexamines the political status of Puerto Rico, a number of policy issues might arise, among which are the following:

- What process will be used to consider the political status options?
- How is each option to be defined?
- What impact would Puerto Rican statehood have on the U.S. Congress?
- What associated policy matters might be raised if Congress debates status?

Each of these issues is discussed below.

Process Options. Past congressional debate and discussions on the political status of Puerto Rico have focused not only on the end result (“Will the status change, and if so, what will it be?”), but also on the process by which the debate and vote were to proceed. The process used to identify, discuss, and vote on status options would likely be established before debate begins on the “final” status options. Bills considered by the Puerto Rican legislature in 2005 dealt with one step of the process — a call from the people of Puerto Rico for a federal response to the status issue. But the parties in Puerto Rico could not reach consensus on a procedural matter, and the governor vetoed the measure. The gubernatorial veto of the measure recently approved by the Puerto Rican legislature and the history of controversy and popular votes on status proposals suggest that procedural questions will require careful planning and decisions. Arguably, an agreement on procedure is necessary for the resolution of subsequent complex questions (e.g., the definition of status options).

Neither the U.S. Constitution nor precedents establish procedures and firm boundaries for the resolution of controversies concerning the political status of a territory of the United States. Throughout U.S. history, various procedures have been used to determine whether a territory affiliated with the United States changes its status to statehood, or independence with legal ties of free association (or a sovereign nation), or remains a territory.

History, however, presents some broad outlines and variations. The process of debate involves the following:

- assessment of how a change of status for the territory might affect national interests of the United States;
- assessment of the viewpoints of the affected population;
- development of a means by which the preferences of the population are presented to Congress; and
- consideration of legislative mechanisms through which Congress and the President act on the status options.

Although the process for resolving the political status question varies, one element remains common throughout the nation's history — Congress exercises an essential role in the process and resolves (or decides not to resolve) the question.

Brief summaries of some of the processes used in the past to resolve political status issues follow. These summaries do not begin to exhaust or explore the full range of issues aired during the debates on changes in the political status of territories; they are offered as examples to provide basic information on historical precedents.

Paths to Statehood. Historically, the transition of a territory to statehood has taken a variety of procedural paths.⁷⁴ The path for some territories was long and even torturous, taking many years and involving strife and loss of life. The path for other territories was relatively straightforward. One team of researchers specifically tasked to look at the issue from the perspective of the status debate on Puerto Rico identified six paths.⁷⁵ The report issued by the team categorized those paths as follows:⁷⁶

1. the union of the first 13 colonies, each of which wrote its own constitution;⁷⁷
2. unilateral action in territories to present an organized “state” to Congress (including electing representatives to Congress) for consideration to be admitted to the Union, also known as the “Tennessee plan”;⁷⁸

⁷⁴ The U.S. Constitution provides for the admission of new states “by the Congress into this Union,” but does not specify a process to be followed; the pertinent constitutional provision proscribes certain actions from being taken, i.e., no state formed within another, by the conjoining of two or more states or parts of states without consent of legislatures and Congress. See U.S. Constitution, Art. IV, Sec. 3, cl. 1.

⁷⁵ Grupo de Investigadores Puertorriqueños, *Breakthrough from Colonialism: An Interdisciplinary Study of Statehood* (Río Piedras, Puerto Rico: Editorial de la Universidad de Puerto Rico, 1984), pp. 1207-1226. Hereafter cited as *Breakthrough*.

⁷⁶ It might be argued that other “paths” to statehood could be identified, or other configurations of the above might be developed. For example, options 1 and 5 might be considered in concert since they both include states admitted to the union primarily through initiatives undertaken by residents of the future states, with little or no congressional action.

⁷⁷ Connecticut, Delaware, Georgia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia.

⁷⁸ Tennessee, Michigan, Iowa, California (some contend that California entered as an independent republic operating under military government rule), Oregon, Kansas, and Alaska. For a description of the Tennessee Plan process, see *Breakthrough*, pp. 1209, 1210; see also William Tansill, *Elections of Congressional Delegation Prior to the According of Statehood*, Legislative Reference Service, 1955.

- Would the legislation be self-executing? That is, would Congress enact legislation that requires no further congressional action once the people of Puerto Rico reach consensus on a status option? Would congressional approval of self-executing legislation be consistent with the responsibility of Congress under the Territorial Clause?
- If the Puerto Rican legislature and Governor Acevedo Vilá remain unable to reach agreement on legislation to initiate the process, would Congress respond to a concurrent resolution adopted solely by the legislature?⁹³
- Would a plurality or a majority of registered voter participation be required to indicate support for a final status option? Are there circumstances under which a plurality vote for a status option would be acceptable to Congress and the people of Puerto Rico? None of the 110th Congress bills establish minimum thresholds for support among voters (e.g., minimum percentages for a result to be considered valid). A plurality rather than a majority vote could be particularly likely in the S. 1936 plebiscite because the bill would present four options to voters simultaneously. Similarly, none of the 110th Congress legislation guarantees that voters would choose any of options presented.
- Would Puerto Ricans who reside on the mainland or in other parts of the United States besides Puerto Rico be eligible to vote on the status proposal? The two House bills introduced in the 110th Congress contain language suggesting that Puerto Ricans living outside the islands would be allowed to participate.
- At what stage (or stages) in the decisionmaking process would the people of Puerto Rico participate? In the election of officials specifically tasked with resolving the issue? In establishing the status definitions? In voting on the definitions established by others, including federal officials? In a referendum on legislation approved by the Puerto Rican legislature or by Congress?

Definitions of Status Options. Definitions or, more specifically, the lack of definitions of the political status options for Puerto Rico compound the complexity of the debate. Agreement on standard definitions of the terms may be elusive, even if the terms are initially accepted as defined. In particular, the lack of a clear and stable legal definition for the term “commonwealth” complicates the debate. Some argue that Congress should define the terms. Others, however, advocate direct

⁹³ On January 23, 1997, the legislature enacted Concurrent Resolution 2, “requesting Congress to sponsor a vote based on definitions it would be willing to consider if approved by voters.” See U.S. Congress, Senate Committee on Energy and Natural Resources, *Puerto Rico Status*, workshop, April 2, 1998, 105th Cong., 2nd sess. (Washington: GPO, 1998), p. 3.

involvement by the people of Puerto Rico, or their elected leaders, in setting the definitions. The history of debate, particularly the 1998 plebiscite, indicates that in the absence of constitutionally valid status options and definitions acceptable to Congress, the debate over status yields few or no conclusive results.⁹⁴

Brief summaries of aspects of each status option follow in order to provide basic information on the options. The information below does not represent official descriptions of status options, but is provided only to give general background information. The options are presented in alphabetical order.

Commonwealth. The commonwealth option represents a continuation of the current status of Puerto Rico. The territorial clause of the United States Constitution empowers Congress with the authority to regulate territories.⁹⁵ Commonwealth status for Puerto Rico is based on statutory provisions⁹⁶ and the Constitution of Puerto Rico that established a republican form of self-government. Under current federal law, residents of Puerto Rico enjoy U.S. citizenship, but many contend that the Puerto Rican identity reflects a degree of autonomy that enables the island to remain somewhat separate from, but part of, the United States.⁹⁷ Some support an enhanced or “new” commonwealth status and seek changes in the current relationship to increase the autonomy of Puerto Rico. Aspects of enhanced commonwealth considered but rejected by Congress in 1991 and 2001 included providing the government of Puerto Rico authority to certify that certain federal laws would not be applicable to the commonwealth, mandating that the President consult with the governor on appointments to federal offices in Puerto Rico that require Senate approval, recognizing a permanent relationship between Puerto Rico and the United States that cannot be unilaterally changed, and establishing economic relationships with other nations.⁹⁸ Concepts associated with enhanced or new commonwealth have

⁹⁴ Constitutional implications of three status options (“new commonwealth,” statehood, and independence) were reviewed by the Department of Justice in response to a congressional request. See Robert Raben, Assistant Attorney General, U.S. Dept. of Justice, letter to The Honorable Frank H. Murkowski, Chairman, Senate Committee on Energy and Natural Resources, January 18, 2001. Hereafter cited as *Raben Letter*.

⁹⁵ U.S. Constitution, Art. IV, Sec. 3.

⁹⁶ Puerto Rico Federal Relations Act, P.L. 81-600, 64 Stat. 319.

⁹⁷ In 1992, President George H.W. Bush described the relationship of the Commonwealth to the United States with regard to the administration of federal programs, as follows: “Because Puerto Rico’s degree of constitutional self-government, population, and size set it apart from other areas also subject to federal jurisdiction under Article IV, section 3, clause 2 of the Constitution, I hereby direct all federal departments, agencies, and officials, to the extent consistent with the Constitution and the laws of the United States, henceforward to treat Puerto Rico administratively as if it were a state, except insofar as doing so with respect to an existing federal program or activity would increase or decrease federal receipts or expenditures, or would seriously disrupt the operation of such program or activity.” U.S. President (Bush), “Memorandum for the Heads of Executive Departments and Agencies,” *Federal Register*, vol. 57, December 2, 1992, p. 57093.

⁹⁸ Title IV, S. 244, in U.S. Congress, Senate Committee on Energy and Natural Resources, *Political Status of Puerto Rico*, hearing on S. 244, 102nd Cong., 1st sess., January 30 and
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