105TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 105–131
1st Session } { Part 1

UNITED STATES-PUERTO RICO POLITICAL STATUS ACT

JUNE 12, 1997.—Ordered to be printed

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

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 856]

[Including cost estimate of the Congressional Budget Office]

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

The amendment is as follows:

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

SEC. 2. FINDINGS.

The Congress finds the following:

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

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

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

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

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

The 1993 vote—Why does Congress need to act?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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