So, with that, I can say, Governor, we are delighted to have you and please proceed.

STATEMENT OF HON. CARLOS ROMERO BARCELO, FORMER GOVERNOR, COMMONWEALTH OF PUERTO RICO AND PRESIDENT, NEW PROGRESSIVE PARTY, ACCOMPANIED BY HON. LUIS A. FERRE, FORMER GOVERNOR, COMMONWEALTH OF PUERTO RICO; HARRY McPHERSON; AND BENNY FRANKIE CEREZO

Governor ROMERO BARCELO. Thank you, Mr. Chairman.

First of all, I would like to congratulate the Chairman for the opening statement. I think it was a very, very clear statement, and it also explained many things that were up in the air. I think it is helpful for the people of Puerto Rico to have these kinds of statements.

I would like to congratulate, also, Senator Wallop for his statement and for his interest in this issue, and all of the other Senators. Senator Nickles was down in Puerto Rico with us, and Senator Domenici, Senator Burns, Senator Craig, Senator Murkowski, and Senator Bumpers, and all the others that have shown a great interest in this issue and are here today to listen to more about it.

For the record, my name is Carlos Romero Barcelo, and I am the chairman of the New Progressive Party, which is the statehood party in Puerto Rico. I served as mayor for 8 years, mayor of San Juan, and as Governor for 8 years.

And I am privileged to be accompanied here today by the founder of our New Progressive Party, Luis A. Ferre, this man has inspired generations of Puerto Ricans in our quest for political equality, and whose grandson, at this moment, is serving in the armored division in the front lines in the Gulf. And when I finish——

The CHAIRMAN. Governor Ferre's grandson?

Governor ROMERO BARCELO. Yes. And when I finish I would like to have him say a few words on this issue.

The CHAIRMAN. By the way, not to interrupt you, but on that point, I know Puerto Rico had higher losses in the Vietnam War and many other losses in many other wars than most States of the Union. Do you have those figures?

Governor ROMERO BARCELO. For Korea, it was even more so. In Korea we were number 4 in number of dead. And in relation to the population of the States, we would be about number 24 or 25 in population, and we were number 4 in number of dead in Korea.

In Vietnam, we also had very high casualties, but not as high proportionately as in Korea.

Senator BUMPERS. Governor, before you go on, let me pursue that, how many guardsmen and reservists from Puerto Rico are in the Arabian Desert right now?

Governor ROMERO BARCELO. Right now we are 10,000. Yes, which is quite a——

Senator BUMPERS. Do you know how, population-wise, that compares with the other States?

Governor ROMERO BARCELO. Well, the population, I believe is 3.5 million, 3.6 million, which is about 1 percent of the population of the Nation. So the 12,000 would probably be about 4 or 5 percent—

not quite, maybe about 3 percent of the whole force. So it is substantially higher.

The CHAIRMAN. I think that is higher than any State, because I believe that Louisiana, with 8,600 guard and reserve, is number 1 of any State. So you must be the highest, higher than any State.

Governor ROMERO BARCELO. I believe so.

Mr. Chairman, we meet today in a historic moment. Our Nation is poised with our allies to restore the right to self-determination for the Nation of Kuwait. And well over 10,000 sons and daughters of Puerto Rico, all dedicated U.S. citizens, are putting their lives on the line for that worthy cause. And with the cause of self-determination blossoming in every corner of the world from Latvia, Estonia, and Lithuania, and other nations of Eastern Europe, to the Gulf, to Latin America, Congress can do no less in Puerto Rico.

And rather than repeating my entire testimony during the other hearings, I believe I will contribute more usefully to the committee's deliberations by addressing some major issues that arose during the last Congress.

I will not be able to discuss all the ones that appear in my written testimony because I do not have enough time. But I will submit it for the record. I will, however, proceed to discuss the more important, significant ones, and the ones that have been more openly discussed in Puerto Rico.

One of them, the most important issue in the status referendum is the civic issue. In other words, that is the right to vote and the right to participate in the decisions of our nation. In short, equality.

The most discussed issue, however, became the economic issue. And in essence the economic issue boils down to asking yourselves, can the United States afford not to admit Puerto Rico as a State? Can the United States afford to maintain the so-called commonwealth?

The Treasury, the Congressional Budget Office, the Congressional Research Service, the Joint Committee on Taxation, Health and Human Services, and other agencies and the Finance Committee have confirmed that for the Federal Government, Commonwealth is exorbitantly, expensively one-sided. And if its advocates have their way, it can only become more so.

Commonwealth has become a welfare territory where the self-esteem of Puerto Ricans is being undermined because we only beg and receive, but do not contribute to the Federal Treasury. No State receives Federal advantages, much less grants and aid as generous as those paid every year to the commonwealth, without contributing to the Federal Treasury.

And just look at the table appended to my testimony and see how your State compares. There is attachment number 1, there is a table and you will see how much each State receives for every dollar they contribute and how some States receive less than what they contribute and some receive more and how much more the commonwealth receives and how much less Puerto Rico would receive per dollar contributed if it were a State.

This table was prepared by Quick Finan Associates, who submitted to the committee a study, an economic study about statehood.

Federal expenditures will grow to $9.8 billion by 1995. And as a commonwealth, not a single dollar would be paid into the United States Treasury in income taxes, inheritance taxes, excise taxes, or duties. How does that compare with Federal spending and Federal taxes in your State?

Corporations in Puerto Rico benefit in the sum of $2.1 billion annually in section 936 tax credit and growing at a rate of 10 percent per year. How do your constituents feel about the generous Federal spending program for a territory whose residents pay no Federal taxes?

The commonwealth advocates want parity in Federal social welfare programs at another $2.5 billion a year, in the unlikely event that they ever succeed in that request.

Now, ask yourself which is fairer to the Federal Government, to the citizens of the various States, this one-way street called commonwealth, or a normal two-way relationship in which Puerto Ricans contribute to the Federal Treasury and take back only what citizens of States are entitled to expect? No more, no less.

Compared to commonwealth, which is a bottomless barrel of expenditures, statehood will bring the Federal Government a $1.7 billion surplus by the year 2000.

The question is when should Puerto Rico be admitted to the Union? This is another issue that arose, and the committee entertained a prolonged debate about whether the Uniformity Clause permits statehood admission while the bill's tax transition is occurring. Professor Gewirtz of Yale, the Justice Department, and other experts said yes. Only the commonwealth's expert said no.

The committee agreed with the majority of you, and S. 712 provided for admission immediately upon the President's proclamation. The Finance Committee rewrote the provision to defer the admission date for 5 years and that is the provision currently in the bill.

In his introductory floor statement, Chairman Johnston expressed his intention to fashion a compromise amendment that would provide for expedited court review. We are pleased that the chairman recognizes the importance of prompt statehood admission if that is the choice of the people of Puerto Rico. Legislators who represented the States of Hawaii and Alaska after their admission confirmed that one of the most critical and sensitive periods for a new State, a period when full congressional representation is most essential, occurs during the years immediately following the statehood admission decision.

I have submitted an amendment for the committee's consideration to achieve that result. We hope the Energy Committee will adopt this amendment after taking account of the following factors:

First, in the unlikely event that the Energy Committee's original provisions may be unconstitutional, the Finance Committee provisions themselves are most likely unconstitutional. The Department of Justice concluded that the Uniformity Clause issues presented by the tax transition provisions arise whether the transition occurs before or after the formal proclamation of statehood.

Once Puerto Rico, by virtue of certification of a referendum choosing statehood, has been destined for statehood, Puerto Rico will have been incorporated into the United States and will have

become subject to the Uniformity Clause. I have submitted as attachment number 2 a copy of the Justice Department's letter, which is in the records also.

The Department concluded: "Thus, the Uniformity Clause issues presented by the transitional tax provisions of S. 712 are not in any meaningful way affected by delaying the onset of statehood once it is decided that Puerto Rico shall become a State."

The Statehood Party shares the conclusion reached by the Energy Committee in 1989. The Uniformity Clause does not preclude the economic transition. The Supreme Court has recognized that on issues like these Congress is entitled to a presumption in favor of the constitutionality of its actions. The Justice Department and constitutional experts have agreed that Congress may provide a limited transition.

The Finance Committee wanted to eliminate all risk, but the Finance Committee provisions have not achieved their stated purpose. Only one sort of provision can do that, one which allows the equivalent of a timely declaratory judgment by the Supreme Court and, if necessary, a final opportunity for Congress for corrective action.

The proposed amendment. The Statehood Party has refined the amendment which was submitted by Senator Moynihan last year to fit within the context of the new non-self-executing bill. The proposed amendment has been sent to the committee for consideration, and at this point I would ask that the proposed amendment be put into the record.

The CHAIRMAN. Without objection.

[The information referred to follows:]

PROPOSED STATUTORY LANGUAGE FOR THE PUERTO RICO STATUS REFERENDUM ACT

(Submitted by the New Progressive Party, Jan. 18, 1991)

What follows is a draft of proposed statutory language providing for expedited judicial review of the Uniformity Clause issue. Also provided is a draft of some additional statutory language needed to conform other provisions of the bill, and a brief explanatory memorandum.

For current Section 201(b), substitute a new paragraph (b) and add new paragraphs (c) and (d) as follows:

(b) Upon the issuance of the proclamation under subsection (a), the Commonwealth of Puerto Rico (hereafter in this title also referred to as "the State") shall, effective on January I, 1993, be declared to be a State of the United States of America, and shall be declared admitted into the Union on an egual footing with the other States, subject to the provisions of paragraph (c) provided, that in the event an appeal is filed under the provisions of Section 216, the admission date will be twenty days after a favorable final judgment of the Court on that appeal.

(c) Fallback. If it is determined pursuant to Section 216 of this title that the admission date provided in paragraph (b), in conjunction with the transition provisions of either Section 213 or Section 214, is inconsistent with the United States Constitution, the Court shall stay the effect of its judgment for a period of ninety days in order to permit the Congress to amend this title so as to bring it into conformity with the Court's judgment. If Congress does not act during that period, then the Commonwealth of Puerto Rico shall, effective on January 1 of the 5th calendar year following the calendar year in which the ratification under section 101(e) of the Puerto Rico Status Referendum Act occurs, be declared to be a State of the United States of America, and shall be declared admitted into the Union on an equal footing with the other states.

(d) The effective date of statehood shall hereafter in this title be referred to as the "admission date."

For current Section 206(a)(1)(A) substitute the following:

Within 20 days following the Supreme Court's judgment in any action filed pursuant to Section 216 of this title if that judgment leaves the admission date in section 201(b) in effect, or within 20 days following the completion of Congressional action amending this title to bring it into conformity with the Court's judgment, or no later than January 20, 1993 if there is no Supreme Court judgment, the Governor of the Commonwealth of Puerto Rico shall issue a proclamation for the election of two United States Senators and for such number of United States Representatives in Congress as provided in this Act. Such proclamation shall provide that such elections shall occur within 90 days; Provided, however, that if the fallback provisions of section 201(c) become applicable and Congress does not act as provided in that section, the Governor shall issue such proclamation not later than August 1 of the 4th calendar year following the calendar year in which the ratification under section 101(e) of the Puerto Rico Status Referendum occurs, and such proclamation shall provide that such elections shall occur on the first Tuesday in November of such 4th calendar year (or on another date during the autumn of such calendar year as may be provided by legislation enacted by the Commonwealth of Puerto Rico).

Sections 213 and 214

[Listed in Appendix A are conforming amendments to Sections 213 and 214 to provide that the proposed statutory language does not change the phase-in of social welfare benefits, the phase-in of income taxes and the phase-out of certain tax benefits provided in the draft legislation.]

[NEW] Section 216. Expedited Judicial Review

(a) No later than 60 days after the President issues the proclamation under Section 201(a) of this title, (i) any federal taxpayer or any person or entity subject to federal taxation pursuant to Section 214, (ii) any citizen of Puerto Rico, or (iii) any other person or entity who is or will be adversely affected, including any beneficiary of a Federal program described under Section 213, may bring an action in the United States District Court for the District of Puerto Rico for declaratory judgment, in junction, or both, to determine whether Section 201(b), in conjunction with the transition provisions of Sections 213 and 214, is inconsistent with the United States Constitution. Notwithstanding any other provision of law, the District Court of Puerto Rico shall have exclusive jurisdiction over such actions. Failure of any person to bring a timely action will result in foreclosure of that person's claim.

(b) Any action brought under paragraph (a) shall be heard and determined by a District Court of three judges. The district judge before whom the action is filed shall immediately notify the Chief Judge of the United States Court of Appeals for the First Circuit, who as soon as practically possible shall designate two other judges, one of whom shall be another district judge within the First Circuit not within the District of Puerto Rico and one of whom shall be a circuit judge. The judges so designated, and the judge before whom the action was filed, shall serve as members of the court to hear and determine the action. All actions brought under paragraph (a) shall be consolidated before the three-judge District Court designated under this subparagraph.

(c) An appeal may be taken directly to the Supreme Court of the United States from any order issued by the three-judge District Court in an action brought under this section, and the Supreme Court shall have jurisdiction over such direct appeal. Any such appeal shall be taken by a notice of appeal filed within 10 days after the District Court's order is entered.

(d) The District Court and the Supreme Court of the United States shall advance on the docket and expedite to the greatest extent possible the disposition of any matter brought under paragraphs (a), (b), and (c) of this section so as to permit final resolution of all questions prior to the admission date provided in section 201(b).

(e) If the Supreme Court of the United States determines that Section 201(b), in conjunction with the transition provisions of Sections 213 or 214, is inconsistent with the Constitution, the fallback provisions provided in section 201(c) shall automatically take effect.

(f) In any action brought under this section, intervention of right shall, upon timely application, extend to the head of each national political party in Puerto Rico and to each House of the United States Congress without the necessity of adopting a resolution to authorize such intervention.

EXPLANATORY MEMORANDUM

As the Committee well knows, there has been considerable debate about the effective date of statehood: should statehood be effective on January 1, 1993, or four full calendar years after final ratification? Those arguing for the prompt admission date, including representatives of the statehood movement, have plausibly argued that a four year delay after the momentous final vote for statehood would demoralize the people of Puerto Rico, breed confusion for others, and be without historic precedent in other statehood admissions. Once the momentous choice for statehood has been finally made by both the people of Puerto Rico and the United States Congress, there is every reason to get on with new political order that has been created.

Those who have argued for delaying Puerto Rico's admission date have voiced only one concern: that there is uncertainty about whether the U.S. Constitution permits a brief tax and benefit transition period after Puerto Rico formally becomes a state. For that reason, they propose delaying admission for four years until the tax transition period ends. But there is no justification for delaying the effective date of admission if the Constitution allows such a transition immediately following the admission of the new state of Puerto Rico.

A ready, practical route exists for resolving the supposed uncertainty about the constitutionality of an early effective date: a lawsuit, following finul ratification of statehood but preceding Puerto Rico's actual admission to statehood, to test the arguments of those who assert that there is a constitutional problem. The foregoing amendments to the status legislation provide explicit congressional authorization for such a lawsuit.

Section 201

The amendments to Section 201 provide that the admission date for statehood shall be January 1, 1993, with a fallback proviso if the Supreme Court concludes that the earlier admission date, in conjunction with the transition provision of Section 213 and Section 214, is inconsistent with the Constitution. The report accompanying this action should indicate that Congress has made the determination that the January 1, 1993, admission date is both appropriate as a policy matter and legally permissible as a constitutional matter. The courts are more likely to uphold what Congress has done where Congress makes clear that it has carefully assessed both the policy and constitutional question, and made carefully considered judgments.

Should the courts conclude that the January 1, 1993 admission date, in conjunction with the transition provisions of this title, are inconsistent with the Constitution, a fallback provision takes immediate effect. Congress is allowed 90 days to amend this title so as to bring it into conformity with the courts' judgment (during which time the court's judgment is stayed pursuant to Section 216(e)). But should Congress not act, section 201(c) could automatically make the admission date January 1 of the 5th calendar year following the Act's final ratification, thereby postponing the admission date four years until the transition period ends. The 90 day period for congressional action is designed to allow Congress, if it wishes, to bring this title into conformity with the courts' judgment in a way that would enable statehood to be effective earlier than the fallback date four years in the future. To give just one example: Suppose the courts conclude that there is a relatively small constitutional problem with the January 1, 1993 admission date. Congress might well conclude that it would be both unfair and imprudent to postpone statehood four full years when the specific constitutional deficiency could be readily corrected in a way that permits an earlier statehood admission date. But if Congress chooses to take no action in response to the court's ruling, the fallback admission date provided in Section 203(c) would automatically apply.

Congress in the past has specifically provided "fallback" provisions in individual statutes when the constitutionality of certain sections have been at issue during the legislative process. Section 274(f) of the Balanced Budget and Emergency Deficit Control Act (Gramm-Rudman-Hollings) is a prominent recent example of such a fallback provision—and one that the Supreme Court explicitly endorsed when it struck down Section 251 of the Act. *Bowsher* v. *Synar.* 478 U.S. 714, 735 (1986). See also the 1968 Amendment to the Northern Cheyenne Allotment Act, 82 Stat. 425, § 2, noted below.

Section 206(a)(1)(A)

The amendment to Section 206(a)(1)(A), which concerns the process for electing Senators and Representatives makes this paragraph consistent with a January 1, 1993 admission date, but keeps the Finance Committee's formulation should the fallback admission date become applicable. The dates provided reflect an attempt to address two potentially competing concerns involving activities that may take place in the limited time period between final ratification and the admission date: (1) a desire to avoid initiating the election process prior to any Supreme Court decision on the constitutionality of the January 1, 1993 admission date provided in section

216; and (2) a desire to have Senators and Representatives in place before the January 1, 1993 admission date, or as soon thereafter as possible.

Section 216

Section 216 is a new section and provides for expedited judicial review, prior to the January 1, 1993 admission date, of whether the admission date, in conjunction with the tax and benefit transition provisions, is consistent with the Constitution. Questions have been raised about whether the tax transition provisions are permitted under the Uniformity Clause and whether the benefit transition provisions are permitted under the Due Process Clause of the 5th Amendment and the Equal Protection Clause of the 14th Amendment. As noted earlier, this Committee has concluded that it is strongly in the interest of the people of both the United States and Puerto Rico to have an admission date as promptly as possible following the final ratification of statehood and also to provide a brief tax and benefit transition for the new state. After receiving the views of a broad range of people, the Committee has concluded that there is no constitutional problem with following this sensible policy course.

But there are compelling reasons to test that conclusion prior to the actual admissions date. Consider the main constitutional issue that has been raised, that the tax transition provisions in conjunction with the January 1, 1993 admissions date violate the Uniformity Clause. We strongly believe they do not. But if litigation is delayed until after Puerto Rico is actually admitted as a State, and if the courts determine that the Uniformity Clause is violated by providing a newly admitted State a tax transition period, there are only two possible remedies, each profoundly disturbing. The first would be to set aside Puerto Rico's admission as a state and postpone admission until the tax transition period ends. This alternative, effectively expelling a State from the Union and its representatives from Congress, would almost certainly be unconstitutional. See *Texas* v. *White,* 74 U.S. 700 (1868); *Powell* v. *McCormack,* 395 U.S. 486 (1969). The second possible remedy in a post-admission date lawsuit would be to adjust taxes, either immediately and dramatically raising the taxes of persons in Puerto Rico (with back taxes owed for the period since the statehood admission date) or immediately and dramatically lowering the taxes of everyone in the other 50 states (with refunds for "excess" taxes). The economic consequences for Puerto Rico of the former course would be devastating (and at odds with what all parties to the debate in Congress recognize, that a tax transition is essential for Puerto Rico) and the revenue consequences for the United States of dramatically lowering everyone else's taxes renders that course equally unimaginable.

The simplest solution to this dilemma is the lawsuit provided for in Section 216. The section provides for expedited judicial action before a three judge District Court in Puerto Rico, with an expedited direct appeal to the Supreme Court of the United States. Congress has frequently provided for specific and often expedited litigation to test the constitutionality of particular legislation it has adopted. Some prominent recent examples are: the Federal Election Campaign Act of 1971, 2 U.S.C.A. § 437h; the Flag Protection Act of 1989, 18 U.S.C.A. § 700; the Amendment to the Northern Cheyenne Allotment Act of 1926, 82 Stat. 425, § 2; and Gramm-Rudmann-Hollings itself. The text of relevant portions of each of these Congressional precedents is attached hereto. The language proposed for Section 216 parallels in significant part the language used in these earlier Congressional precedents.

There is nothing the slightest bit non-justiciable about a suit brought in advance of the actual commencement of an allegedly illegal act. Indeed, such suits are routine. Anticipatory actions for injunctions, for example, are very common. And the whole purpose of creating the declaratory judgment action many years ago was to provide "a means by which rights and obligations may be adjudicated in cases involving an actual controversy that has not reached the stage at which either party may seek a coercive remedy." C. Wright, *Law of Federal Courts* 671 (4th ed. 1983). Courts, of course, have refused to entertain cases if the future events are "not sufficiently real or immediate," see C. Wright, *supra,* at 672 n.11, but the suit contemplated under Section 216 would raise an altogether "real and immediate" issue. Such a suit could be brought only after ratification of statehood is final; and since a January 1, 1993 effective date for admission is provided in the Act, there is no uncertainty at all about whether the allegedly illegal situation is about to occur.

The Federal Election Campaign Act of 1971, the Gramm-Rudman-Hollings Act, and the amendments to the Northern Cheyenne Allotment Act noted earlier, all provided for litigation to determine the constitutionality of the legislation in advance of actually unconstitutional actions implementing it. In fact, such litigation was brought as provided in the Act, and in all these suits the Supreme Court had no hesitance whatever in considering the cases justiciable. See *Buckley* v. *Valeo,* 424

U.S. 1 (1976) (Federal Election Campaign Act); *Bowsher* v. *Synar,* 478 U.S. 714 (1986) (Gramm-Rudman-Hollings Act); *Northern Cheyenne Tribe* v. *Hollowbreast,* 425 U.S. 649 (1976) (1968 Amendment to the Northern Cheyenne Allotment Act of 1926). Other well-known anticipatory actions include *United States Civil Service Commission* v. *National Ass'n of Letter Carriers,* 413 U.S. 548 (1973); *Pacific Gas & Electric Co.* v. *State Energy Resources Conserv. & Devel. Com'n,* 461 U.S. 190 (1983); *Duke Power Co.* v. *Carolina Environmental Study Group,* 438 U.S. 59 (1978).

Section 216 provides that certain parties are authorized to sue, and in addition provides more generally that any "adversely affected" person or entity may sue. The purpose of these provisions is to make clear that Congress seeks to go as far as the outer limits of Article III of the Constitution permit in creating standing to sue in this instance, and thereby to provide the maximum assurance that a plaintiff with standing will prosecute this lawsuit. In general, standing under Article III requires a party to allege some form of "injury" or "stake" in the litigation, however small. See, e.g., *Allen* v. *Wright,* 468 U.S. 737 (1984); *Baker* v. *Carr,* 369 U.S. 186 (1962). Congress itself—and this is the critical point in the present context—has very broad power to define who has an "injury" or "stake" and what counts as an "injury" or "stake". Thus, the Supreme Court has again and again made clear that Congress has extremely broad power to create standing. Congress can create standing in parties even where the courts would find that those parties would lack standing absent such congressional action, "even where the plaintiff would have suffered no judicially cognizable injury in the absence of statute".[1] As the Supreme Court stated in *Sierra Club* v. *Morton,* 405 U.S. 727, 732 n.3 (1972), and has reaffirmed many times since:

> "[W]here a dispute is otherwise justiciable, the question whether the litigant is a 'proper party to request an adjudication of a particular issue . . . is one within the power of Congress to determine." [2]

In the present instance, Section 216 provides several categories of people with standing to sue. All might well have standing to raise the constitutional issues here even without any specific congressional authorization; but their standing is clearly strengthened by Congress' (1) explicitly providing for their standing as parties having an injury or stake to vindicate in the litigation; and (2) explicitly indicating in the Committee Report that Congress seeks to go to the outer limits of Article III in authorizing standing to sue in this instance.

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[1] *Warth* v. *Seldin,* 422 U.S. 490, 514 (1975). See also *Linda R.S.* v. *Richard D.,* 410 U.S. 614, 617 n.3 (1973) ("It is, of course, true that 'Congress may not confer jurisdiction on Art. III federal courts to render advisory opinions' . . . But Congress may enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute."); *Gladstone, Realtors* v. *Village of Bellwood,* 441 U.S. 91, 100 (1979) ("Congress may, by legislation, expand standing to the full extent permitted by Art. III"); *United States* v. *Richardson,* 418 U.S. 166, 178 n.11 (1974) (although rejecting citizen and taxpayer standing in that case, Court reaffirms that "Congress could grant standing to taxpayers or citizens, or both, limited, of course, by the 'cases' and 'controversies' provision of Art. III."); *Trafficante* v. *Metropolitan Life Ins. Co.,* 409 U.S. 205, 212 (1972) (White, J., joined by Powell and Blackmun, JJ., concurring) ("Absent the [Congressional statute], I would have great difficulty in concluding that petitioners' complaint in this case presented a case or controversy within the jurisdiction of the District Court under Art. III of the Constitution. But with that statute purporting to give [plaintiffs] the right also to sue in court, I would sustain the statute insofar as it extends standing to [plaintiffs here]").

[2] See footnote 1. Indeed, there are significant and recent cases supporting the view that Congress has the power to create standing in parties who can show no personal injury at all, but who simply sue as private attorneys general to enforce a legal requirement. *United States* v. *Hughes Helicopters. Inc.,* 714 F.Supp 1084 (1989) (one of at least 4 recent cases upholding the False Claims Act's standing provisions allowing informers to sue without showing any injury from the alleged illegality); *Metropolitan Washington Coalition for Clean Air* v. *District of Columbia,* 511 F. 2d 809, 814 n.26 (D.C. Cir. 1975) (upholding and applying Clean Air Act's provision allowing "any person" to sue without allegation of injury); *Wilder* v. *Thomas,* 854 F. 2d 605, 613 (2d Cir. 1988) (same). In *Flast* v. *Cohen,* 392 U.S. 83 (1968), Justice John Marshall Harlan, the distinguished judicial conservative and spokesman for judicial restraint, dissented from the Court's allowance of taxpayer standing in the absence of a Congressional statute; but, in famous discussion, he went on to state:

"[I]ndividual litigants have standing to represent the public interest, despite their lack of economic or other personal interests, *if Congress has appropriately authorized such suits* . . . Any hazards to the proper allocation of authority among the three branches of the Government would be substantially diminished if public actions had been pertinently authorized by Congress and the President."

Id. at 131-32 (emphasis added). While the principle articulated in these opinions is not at all necessary to support standing under Section 216, such cases show how far the courts have gone in supporting Congress' powers to create standing.

Federal taxpayers are giving standing to sue because their interests as taxpayers are at the core of what the Uniformity Clause seeks to protect. In prior Uniformity Clause cases, the typical plaintiffs have been taxpayers claiming that their taxes are inconsistent with the requirements of the Uniformity Clause. E.g., *United States* v. *Ptasynski,* 462 U.S. 74 (1983) (taxpayer challenge, under Uniformity Clause, to Crude Oil Windfall Profit Tax Act). Similarly here, for example, taxpayers within the 50 states obviously have a stake in assuring that their taxes are imposed consistently with the Uniformity Clause. Taxpayers within Puerto Rico, even those who will temporarily pay lower taxes when the tax transition period provided in Section 214 goes into effect, also have a stake in resolving the Uniformity Clause issue by declaratory judgment before the January 1, 1993 effective date; they might be subject to financially destructive orders to pay back taxes if litigation challenging the early admission date were brought and won after the admissions date.

The Uniformity Clause by itself would surely allow federal taxpayers to bring suit here; but any possible doubt would be eliminated by Congress explicitly providing that they have a cognizable stake entitling them to sue.

Secondly, Section 216 also provides standing to any persons or entities "adversely affected." This is a general catch-all standing provision, frequently used by Congress. E g., Administrative Procedure Act, 5 U.S.C. § 1365(g); Balanced Budget and Emergency Deficit Control Act (Gramm-Rudman-Hollings) 2 U.S.C. § 922(A)(2). The courts have construed this language as consistent with the Article III requirement of an "injury" or "stake" *Sierrra Club* v. *Morton,* 405 U.S. 727 (1972). And particularly where Congress has indicated that it seeks to go to the other limits of Article III in authorizing standing, the courts have broadly construed such provisions to permit a broad range of parties to sue, even where such parties might not have standing absent the congressional authorization of standing to those "adversely affected". See *Middlesex Cty. Sewerage Auth.* v. *Sea Clammers,* 453 U.S. 1, 16-17 (1981); *Trafficante* v. *Metropolitan Life Ins. Co.,* 409 U.S. 205, 209 (1972) (construing Act allowing any "person aggrieved" to bring suit as "a congressional intention to define standing as broadly as is permitted by Article III"); *id* at 212 (White, J., joined by Powell and Blackmun, J.J. concurring) (standing possible because of Congressional authorization, even though standing unlikely otherwise).

Federal taxpayers, already specifically provided for, would of course be "adversely affected." But under this provision, others would also have standing to sue. As "adversely affected" persons, beneficiaries or prospective beneficiaries of the federal programs in Section 213 would have standing to raise whether the admission date, in conjunction with the benefit transition provisions, is consistent with the 5th Amendment Due Process Clause and the 14th Amendment Equal Protection Clause. Or to give another example, voters in congressional elections would have standing to challenge the admission date since they could allege that an early and unconstitutional statehood admission date would dilute the votes of their representatives in Congress by prematurely increasing the number of Senators and Congressmen. See *Coleman* v. *Miller,* 307 U.S. 433 (1939) (standing based on alleged dilution of representatives' vote); *Baker* v. *Carr,* 369 U.S. 186 (1962) (standing based on alleged vote dilution).

A final category of persons authorized to sue are citizens of Puerto Rico. While their standing is not as self-evident as that of federal taxpayers or beneficiaries, Congress in other contexts has previously provided standing to "any person." Clean Air Act, 42 U.S.C. § 1857h-2(a); see *Metropolitan Washington Coalition for Clean Air* v. *District of Columbia,* 511 F.2d 809, 814 n.26 (D.C. Cir. 1975) (upholding this standing provision). The Supreme Court has explicitly stated that even if people generally do not have standing in their capacity as citizens, "Congress could grant standing to taxpayers or citizens, or both." *United States* v. *Richardson,* 418 U.S. 166, 178 n.11 (1974). The citizen-standing provision here would recognize that citizens of Puerto Rico have a stake sufficient to provide standing to bring a declaratory judgment concerning the effective date of statehood, including (for example) a stake in knowing definitively when the United States Constitution will apply fully in Puerto Rico. Furthermore, as noted above, there is precedent for Congress authorizing standing to persons even absent any personal stake, and the courts upholding such suits. See footnote 2 *supra.*

The Committee report should note that standing to raise a challenge to one aspect of the post-admissions date transition would allow a party to litigate the other aspects. That is because the tax and benefit provisions are interrelated. Some Committee Members, for example, justify a benefit transition because of their commitment to a tax transition. Starting with the belief that a tax transition is essential to avoid economic dislocations in Puerto Rico, they are led to embrace a benefit transition as a "symmetrical" policy that will secure a version of revenue neutrality. At least as a practical matter, therefore, a beneficiary challenging the benefit transition provisions will be able, if he or she chooses, to litigate the constitutionality of the tax transition provisions as well; the presence of the tax transition features will be part of the justification offered for the benefit provisions and therefore the constitutionality of those tax transition provisions will be brought into play.

The standing provisions of section 216(a) are supplemented by the provisions of Section 216(f) granting intervention of right to the head of each national political party in Puerto Rico and to each House of Congress. Others would have to initiate the lawsuit, but Section 216(f) assures that these specified entities would have an unconditional right to participate fully in any litigation brought, including the right to participate in oral argument. Intervenors do not have to satisfy Article III's requirements for those who initiate litigation. Rule 24(a)(1) of the Federal Rules of Civil Procedure provide an unconditional right to intervene whenever a federal statue confers such a right. Congress has provided for such intervention rights in many previous statutes. See. e.g., 28 U.S.C.A. § 2403(a) (Supp. 1989) (granting the United States or a state the right to intervene in cases where the constitutionality of an Act of Congress or a state statute is in question); 33 U.S.C. § 1365(b)(1)(B) (1982) (granting any adversely affected citizen the right to intervene in a civil or criminal action prosecuted by the Administrator of the Environmental Protection Agency).

Section 216(e) provides that the court shall stay its judgment for 90 days to permit Congress to amend this title so as to bring it into conformity with the court's judgment, as provided in Section 201(c). The courts frequently stay their judgments to give time for conforming actions to be implemented, and the Supreme Court did so in *Bowsher* v. *Synar* when it struck down provisions of Gramm-Rudman-Hollings.

The other provisions of Section 216 provide for venue, the convening off a three-judge District Court, consolidation of the actions, direct appeal to the Supreme Court, and expedited consideration of this lawsuit so as to permit final resolution of all questions prior to the January 1, 1993 admission date.

Governor ROMERO BARCELO. Thank you, sir.

The new amendment accommodates concerns raised during the Finance Committee's markup. First, Congress will not lose control of the process, as it might have in a self-executing process.

Second, the proposed amendment provides certainty as to the transition's terms and duration for the voters of Puerto Rico and for the U.S. taxpayers.

The other issue that we would like to address ourselves to is section 402's definition of "commonwealth," which we consider as extremely vague and misleading. Section 402 purports to define the relationship with the Nation that citizens of Puerto Rico would enjoy if they were to select commonwealth.

The provision is vaguely worded and thus difficult to interpret. The only public interpretation thus far has appeared in a very misleading advertisement published in Puerto Rico's press. I have submitted that as attachment 3, and you will see in that ad it says that there is a permanent union with the United States, there is sovereignty, it says, "equal to that of the States of the Union, and also the additional autonomy that corresponds to us as a people, social justice, parity with the States in Federal social programs."

There are a set of statements in that ad that are not only misleading, they are incorrect and they are not true. Throughout this legislative process, the chairman has insisted that it is essential to provide the voters of Puerto Rico with an accurate description of what each of the available status options would provide. If we are to provide accurate definitions, then section 402 must be rewritten to prevent two equally harmful forms of information:

One, interpretations of section 402 which ultimately prove to be misleading because some of section 402's provisions are unsustainable under the Constitution or other law; and two, misreadings of section 402 of the type that already have occurred in the advertise-

ments published in Puerto Rico. The "principles of commonwealth" as set forth in section 402 describes a strange creature that, if it were an animal, would be a kind of flying amphibian, able to operate on land, in the depths of the sea, and in the air, but not well on any of them.

It suggests that Puerto Rico can, when it chooses, enjoy the status of a State, of an unincorporated territory, or of an independent Nation that has negotiated its own deal with the United States in some kind of unwritten or nonexistent compact. It has at least as much sovereignty as States have, but if that should prove confining it has something more; it has a degree of autonomy or the right to be subject only to its own laws.

That right somehow or other flows out of its location in the Caribbean Sea, among other things.

Exactly why Congress would want to adopt such a creature or what the Court will make of it if it does is difficult to say. I hope and trust that there will be substantial changes in this definition to make it more closely resemble something recognizable and comprehensible before this legislation becomes law.

Three examples will help to illustrate this problem. First, citizenship. According to advertisements published by commonwealth advocates, section 402 provides permanent U.S. citizenship, guaranteed and irrevocable, same as that of those born in the States, for Puerto Ricans under commonwealth. Whether a sitting Congress can confer such citizenship upon present and future residents of a territory which is allegedly not subject to the sovereignty of Congress was the subject of extensive debate in the 101st Congress.

Most legal experts concluded that only statehood confers permanent, irrevocable citizenship to present and future residents. Thus, the legal sustainability of this supposed new citizenship status is doubtful.

Second, parity. The same advertisements have boasted that a majority for commonwealth would confer parity with States in Federal social programs. Since neither section 402 nor any other provision of the bill would confer such parity, and since it is not available under current law, this is just not true.

The Finance Committee made it clear, as the chairman stated here today, that as it slightly increased certain Federal entitlements for Puerto Rico, that in exchange for such increase the commonwealth will from now on be subject to pay-as-you-go revenue neutrality.

Thus, any claim that this bill confers parity with the States is a gross misrepresentation. Not only does the bill fail to do that, it does quite the opposite. It establishes a dramatic new precedent, which Finance Committee members made clear during markup shall apply to the commonwealth option in the future. For any increase in Federal benefits under the commonwealth option, there shall be a corresponding decrease in commonwealth tax privileges and fiscal autonomy.

Only statehood confers parity in Federal programs, and only under statehood can Puerto Rico prosper, as Congress now inevitably erodes Puerto Rico's tax exemptions under section 936. As a State, Puerto Rico would provide additional confidence to investors

and new economic opportunities not available under commonwealth.

The third example, sovereignty. The advertisement claims section 402 confers a peculiar new superior form of sovereignty upon Puerto Rico: "equal to that of the States of the Union and also the additional autonomy that corresponds to us as people."

Actually, section 402 does not confer sovereignty equal to the States. It says: "Puerto Rico enjoys sovereignty like a State to the extent provided by the Tenth Amendment." Now, you have read the Tenth Amendment. I would like to say, what does that mean?

If lawyers cannot understand it, how can the people of Puerto Rico be expected to understand that statement? This statement is the most confusing, ambiguous, and misleading of all. The Tenth Amendment, one of the least-litigated amendments, merely states the truism that: "All powers not delegated to the United States by the Constitution nor prohibited to it by the States are reserved to the States."

Now, what does that have to do with Puerto Rico, a territory? Puerto Rico is not a State. It is a territory, subject to the Constitution's Territorial Clause, under which Congress enjoys plenary power over Puerto Rico, a constitutional empowerment that Congress cannot revoke, rescind, or deny to a future Congress. And that must be made clear to the people of Puerto Rico. Otherwise, we would be misleading the voters of Puerto Rico.

How can it then be said that the commonwealth relationship can only be altered or revoked by mutual consent? We know this is not true.

This committee should pause and consider just how much sovereignty it proposes to delegate to the territory of Puerto Rico. Are you giving up your constitutional sovereignty? Is the commonwealth sovereignty equal to that of the States? Is it even greater than that of the States, as the ad implies? You must clear up and settle this issue now or this bill you are enacting will merely confuse the voters of Puerto Rico and invite endless litigation. The present ambiguity and imprecision has already allowed the Puerto Rican people to be misinformed.

The other issue we would like to tackle or discuss today, is the reference made by commonwealthers that the bill is tilted toward statehood. No, no. The bill is lopsidedly tilted for commonwealth. Even after Puerto Rico becomes a State, section 213 of the bill as drafted would limit the level of entitlement benefits in the food stamp program and the supplemental security income for the aged, blind, and disabled under the SSI program for Puerto Rican citizens below the level for citizens of other States.

Section 213, addressing the food stamp program, establishes a limit for any State whose per capita income is below 50 percent of the national per capita income of the United States. What happens is that as drafted this provision does not apply to any State of the Union. It only applies to Puerto Rico.

That is discriminatory. How can Congress limit our SSI and food stamp benefits when we become a State at levels below that of other States, yet demand from us equal tax responsibilities and equal obligations to serve our country in time of war? Is that fair?