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Political Status of Puerto Rico: Options for Congress

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Summary

The United States acquired the islands of Puerto Rico in 1898 after the Spanish-American War. In 1950, Congress enacted legislation (P.L. 81-600) authorizing Puerto Rico to hold a constitutional convention, and in 1952, the people of Puerto Rico ratified a constitution establishing a republican form of government for the islands. After being approved by Congress and the President in July 1952 and thus given force under federal law (P.L. 82-447), the new constitution went into effect on July 25, 1952.

Puerto Rico is subject to congressional jurisdiction under the Territorial Clause of the U.S. Constitution. Over the past century, Congress passed legislation governing Puerto Rico's relationship with the United States. For example, residents of Puerto Rico hold U.S. citizenship, serve in the military, are subject to federal laws, and are represented in the House of Representatives by a Resident Commissioner elected to a four-year term. Although residents participate in the presidential nominating process, they do not vote in the general election. Puerto Ricans pay federal tax on income derived from sources in the United States, but they pay no federal tax on income earned in Puerto Rico. In the 110th Congress, the Resident Commissioner may vote in legislative committees and in the Committee of the Whole.

Elements of the U.S.-Puerto Rico relationship have been and continue to be matters of debate. Some contend that the current political status of Puerto Rico, perhaps with enhancements, remains a viable option. Others argue that commonwealth status is or should be only a temporary fix to be resolved in favor of other solutions considered permanent, non-colonial, and non-territorial. Some contend that if independence is achieved, the close relationship with the United States could be continued through compact negotiations with the federal government. One element apparently shared by all discussants is that the people of Puerto Rico seek to attain full, democratic representation, notably through voting rights on national legislation to which they are subject.

Recent reports issued by a presidential task force on the status of Puerto Rico assert that there are only three constitutionally recognized options for the islands: independence, statehood, or continuation as a territory. In response to the 2005 version of the task force report, legislation before the 109th Congress would have addressed the status question through two different mechanisms — plebiscites or a constitutional convention. Congress took no legislative action on those bills. To date in the 110th Congress, three bills regarding Puerto Rico's political status have been introduced. H.R. 900 authorizes a plebiscite in which Puerto Ricans would vote on continuing the status quo or proceeding toward non-territorial status. H.R. 1230 authorizes a constitutional convention and referendum in Puerto Rico to consider status options. The House Natural Resources Committee held a hearing on the bills in October 2007. At that time, the Committee ordered reported favorably an amended version of H.R. 900, which combined elements of the two House bills. (The written report, H.Rept. 110-597, was issued in April 2008.) On August 2, 2007, Senator Salazar introduced S. 1936 which would take another approach: a single plebiscite in which voters would choose between the status quo, independence, free association, or statehood. The Senate Energy and Natural Resources Committee has not acted on that bill.

This CRS report will be updated as events warrant.

governor.[19] In 1950, Congress, the President, and the people of Puerto Rico began a process that led to the Puerto Rican constitution, which is in effect today.[20]

Development of the Constitution of Puerto Rico. Development of the Puerto Rican constitution proceeded in a series of steps. First, in 1950, the 81st Congress enacted and President Truman approved legislation that authorized a constitutional convention to develop the first constitution for the governance of Puerto Rico.[21] Second, voters approved the initiation of the process through a referendum. Third, voters elected delegates to the constitutional convention in 1951, and the delegates worked throughout the year to draft that document. Fourth, the product of the convention — a constitution that established the structure and operation of government in the islands — was approved by the voters of Puerto Rico[22] and submitted to Congress and President Truman early in 1952. Fifth, the 82nd Congress modified the constitution and approved the amended version in July 1952.[23] The Puerto Rican constitutional convention approved the modified document shortly thereafter,[24] and Governor Luis Muñoz Marin declared the constitution in effect on July 25, 1952.

The constitution of 1952 establishes a republican form of government and a bill of rights, sets out provisions related to municipal government (including finance and revenue mechanisms), and outlines the following framework for governance of the islands:

- The Legislative Assembly consists of a 27-member Senate and a 51-member House of Representatives.
- The executive branch is headed by a governor elected to a four-year term. The governor makes executive appointments (with the advice

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[19] P.L. 80-362, 61 Stat. 770.

[20] For a chronology of the entities and authorities that have governed Puerto Rico since 1898, see Appendix A of this report.

[21] P.L. 81-600, 64 Stat. 319, 48 U.S.C. 731b. "Fully recognizing the principle of government by consent, sections 731b to 731e of this title are adopted in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption."

[22] By a vote of approximately 387,000 yeas (76%) to 119,000 nays (24%), Puerto Ricans strongly supported the process through which the constitution was developed. Support for the resulting constitution was even stronger — 375,000 yeas (82%) to 83,000 nays (18%).

[23] P.L. 82-447, 66 Stat. 327, 48 U.S.C. 731d.

[24] According to one commission report, the three changes required by Congress to the Commonwealth Constitution "were made by Puerto Rico and approved by the Puerto Rican Constitutional Convention and later by another referendum." See United States-Puerto Rico Commission on the Status of Puerto Rico, *Status of Puerto Rico* (Washington: GPO, 1966), p. 36.

and consent of the Senate),[25] serves as commander-in-chief of the militia, and exercises emergency powers.

- The authority for the judicial branch is vested in a Supreme Court (a chief justice and six associate justices), and other courts established by the Legislative Assembly. The Supreme Court adopts rules for other courts, and the chief justice directs the administration of the commonwealth courts.[26]

The constitution of 1952 modified aspects of civil government for the islands; but neither it nor the related public laws approved by Congress in 1950 and 1952 changed the fundamental relationship between Puerto Rico and the United States.[27] That relationship is determined by the Territorial Clause of the U.S. Constitution.[28] Nonetheless, the relationship — often called the status issue — continues to be the subject of recurring debate in Puerto Rico. The status debate is shaped by varying understandings of the Federal Relations Act, international concerns, and rulings by the Supreme Court.

Federal Relations Act. P.L. 81-600, which authorized the process that led to the constitution of 1952, also continued the provisions of the Jones Act of 1917 that govern the relationship between Puerto Rico and the United States. That set of provisions is commonly referred to as the Federal Relations Act (FRA).[29] The FRA deals with matters that are subject to congressional authority and established pursuant

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[25] The appointment of Secretary of State requires the advice and consent of the House of Representatives as well as the Senate.

[26] A United States district court has operated in Puerto Rico since 1900, when it was established by the Foraker Act. P.L. 56-191, section 34, 56 Stat. 84.

[27] P.L. 81-600 and P.L. 82-447, respectively. For example, the Senate committee report accompanying S. 3336, the bill that became P.L. 81-600, was unambiguous on this point: "This measure is designed to complete the full measure of local self-government in the islands by enabling the 2¼ million American citizens there to express their will and to create their own *territorial* government. [Emphasis added]. S.Rept. 81-1779, p. 2. "This measure would not change Puerto Rico's fundamental political, social, and economic relationship to the United States." Ibid., p. 3. "S. 3336 is not a statehood bill. Nor is it an independence bill. It does not commit the Congress, either expressly or by implication to take any action whatever in respect to either. It in no way precludes future determination by future Congresses of the political status of Puerto Rico." Ibid., p. 4. In this regard, former Attorney General Richard Thornburgh said in an interview, "Although Congress made approval of the local constitution by referendum a condition of its approval of the constitution, the local vote was given legal effect only by federal law, and the constitution entered into force only as allowed by federal law. Consequently, the local constitution does not create or define a separate constitutional sovereignty or vested right to the current status for the residents of the territory or the local government." *Puerto Rico Herald*, October 4, 2002.

[28] U.S. Const., Art. IV, Sec. 3, cl. 2

[29] 48 U.S.C. 731. The FRA includes provisions originally contained in the Organic Act of 1917 (39 Stat. 951) that established a civil government in Puerto Rico. The act of 1917 is referred to as the Jones Act. The Jones Act of 1917 was the second organic act Congress approved for Puerto Rico; the first was the Foraker Act approved by Congress in 1900 (31 Stat. 77).

to federal legislation, such as the citizenship status of residents, civil rights, trade and commerce, taxation and public finance, the administration of public lands controlled by the federal government, the application of federal law over navigable waters, congressional representation, and the judicial process.

Although the constitution of 1952 provides for self-government by Puerto Ricans, Congress ceded none of its own plenary authority over the islands. From time to time Congress has reasserted that authority by enacting legislation pertinent to local matters. For example, Congress amended FRA provisions dealing with local urban development and slum clearance authority.[30]

International Attention. International attention to the political status of Puerto Rico introduced another element into consideration of the islands' relationship to the United States. From 1946 through 1953, the United States submitted annual reports to the United Nations on its territories of Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa. The General Assembly of the United Nations agreed, in 1953, to terminate the requirement for annual reports after considering statements by Puerto Rican and federal officials on the establishment of the Commonwealth.[31] This agreement, however, has not resolved the issue for all. As summarized by one analyst:

> Few domestic issues have consistently generated as much international debate as that of Puerto Rico. It has been on the U.N. agenda since representatives of the Puerto Rican Nationalist party went to San Francisco for the signing of the U.N. Charter in June, 1945. Although the U.S. government may have convinced itself that it removed Puerto Rico from the international agenda in 1953, few others are convinced.[32]

Supreme Court Decisions. Federal court decisions also influenced the debate over status. At the beginning of the 20th century, the Supreme Court issued a series of decisions generally referred to as the Insular Cases.[33] In them, the Court

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[30] The FRA authorizes the government of Puerto Rico to establish authorities for slum clearance and urban redevelopment but prohibits such entities from imposing taxes, and it authorizes the legislature of Puerto Rico to empower such authorities to undertake urban renewal projects. Congress amended this provision in 1955, subsequent to implementation of the constitution of 1952. See 48 U.S.C. 910, 910a. The FRA also authorizes the Puerto Rican legislature to enable such authorities to issue financial instruments (bonds or other obligations) to accomplish slum clearance and urban redevelopment objectives. See 48 U.S.C. 914.

[31] United Nations General Assembly, "Cessation of the Transmission of Information Under Article 73e of the Charter in Respect of Puerto Rico," in *Resolutions Adopted by the General Assembly at Its Eighth Session During the Period from 15 September to 9 December 1953* (New York: General Assembly Official Records, 1953), Supplement No. 17 (A/2630), pp. 25-26.

[32] Robert A. Pastor, "Puerto Rico as an International Issue," in Richard J. Bloomfield, ed., *Puerto Rico: The Search for a National Policy* (Boulder: Westview Press, 1985), p. 114.

[33] *DeLima v. Bidwell*, 182 U.S. 1 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Downes v. Bidwell*, 182 U.S. 224 (1901); *Dorr v. United States*, 195 U.S. 138 (1904); *Balzac*

(continued...)

declared that territories are not integral parts of the United States, but are possessions, and that certain fundamental rights, but not all constitutional rights, extend to residents of the territories.[34] In general, analysts and legal practitioners agree with this contention.[35] Others, however, notably those who advocate for the continuation of the commonwealth, argue that other Supreme Court rulings indicate that Puerto Rico holds a unique status in relation to the United States.[36] They argue that in these cases, the justices concluded that Puerto Rico may exercise certain authority in a fashion comparable to that of the states.[37] Such decisions, however, do not alter the basic relationship of Puerto Rico to the United States as defined under the Territorial Clause of the U.S. Constitution.

Status Debates and Votes, 1952-1998

Despite the 1952 constitution, the status issue has proven to be perennial and has repeatedly been the subject of partisan debate and popular vote in Puerto Rico since 1952. Moreover, each of Puerto Rico's three political parties is closely associated with a status preference. Popular Democratic Party — *Partido Democrático Popular* (PDP) — favors "Commonwealth" status, whether in the original form approved by Congress in 1950 or, as expressed in the 1998 plebiscite and party platform documents in 2004, an expanded version with additional authority for the government of Puerto Rico. The New Progressive Party — *Partido Nuevo Progresista* (PNP) — favors statehood. And the Puerto Rican Independence Party — *Partido Independentista Puertorriqueño* (PIP) — favors independence.

1967 Plebiscite. Following the recommendation of the Commission on the Status of Puerto Rico (established pursuant to P.L. 88-271, 78 Stat. 17), the

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[33] (...continued)
v. Porto Rico, 258 U.S. 298 (1922).

[34] See, in particular, *Balzac v. Porto Rico*, 258 U.S. 312-313 (1922). In 1975 the court reaffirmed that Congress and the Supreme Court could determine "the personal rights to be accorded to the inhabitants of Puerto Rico." See *Examining Board v. Flores de Otero*, 426 U.S. 590. The Supreme Court ruled that Congress "may treat Puerto Rico differently from states so long as there is a rational basis for its actions." See *Harris v. Rosario*, 446 U.S. 651 (1980).

[35] For a discussion on the authority of Congress to exercise jurisdiction over Puerto Rico see Arnold H. Leibowitz, *Defining Status: A Comprehensive Analysis of United States Territorial Relations* (Boston: Kluwer/Academic pub., 1989). See also Richard Thornburgh, "A Constitutional Path to Self-determination for Puerto Rico," remarks to the Symposium on the Politics and Economics of Puerto Rico, sponsored by the Harvard Institute for International Development, Cambridge, MA, April 28, 1998, available at [http://www.puertorico-herald.org/issues/vol2n10/thornburgh-path.html], visited March 2, 2007.

[36] Rep. Jamie Fuster, "Puerto Rico Self-Determination Act," remarks in the House, *Congressional Record*, vol. 136, October 10, 1990, pp. 28335-28336.

[37] See *Fornaris v. Ridge Tool Co.*, 400 U.S. 41 (1970). *Rodriguez v. Popular Democratic Party*, 457 U.S. 1 (1982), followed by a federal Court of Appeals decision in *United States v. Manuel Quinones*, 758 F. 2d 40 (1985). Also, *Examining Board v. Flores de Otero*, 426 U.S. 596; *Córdova & Simonpietri Ins. Co. v. Chase Manhattan Bank*, 649 F2d 36 (1981).

In particular, the task force in 2007 noted that use of the term "commonwealth" with respect to Puerto Rico "describe[s] the substantial political autonomy enjoyed by Puerto Rico" and "appropriately captures Puerto Rico's special relationship with the United States." However, the task force said, the island remains a U.S. territory subject to the congressional plenary powers under the Territorial Clause.[70] This language suggests that although the task force perhaps more explicitly recognized a degree of Puerto Rican autonomy than it did in the 2005 report, the 2007 report nonetheless reiterated that the Territorial Clause grants Congress wide jurisdiction over the island as long as Puerto Rico remains a U.S. territory. As in 2005, the task force also concluded that so-called "enhanced commonwealth" was constitutionally impermissible.[71]

The 2007 task force report also reiterated the 2005 recommendations concerning:

- a "federally sanctioned plebiscite" to determine whether Puerto Ricans wish to maintain the status quo or pursue a "constitutionally viable" status option;
- the need for a second plebiscite that would present choices between either statehood or independence if Puerto Ricans choose to pursue non-territorial status in the first plebiscite; and
- the view that plebiscites should occur "periodically" to revisit the status question if Puerto Ricans choose to maintain the status quo.[72]

Issues of Debate on Political Status

The establishment of the Commonwealth in 1952 did not resolve all questions on the political status of Puerto Rico. Puerto Rico remains a territory of the United States, subject to congressional authority under the Territorial Clause of the U.S. Constitution. Some Puerto Ricans, however, believe the Commonwealth enjoys a unique relationship to the United States and the federal government, and that it has some attributes of separate sovereignty.[73] Others argue that commonwealth status is a temporary political status that falls short of two permanent status options —

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[70] Ibid., p. 5.

[71] Ibid., pp. 6-7.

[72] Ibid., pp. 10-11.

[73] They argue that Puerto Rico has a culture and identity separate from the United States by pointing to the presence of a Puerto Rican National Olympic Committee (see [http://www.olympic.org/uk/organisation/noc/index_uk.asp?id_assoc=9]; visited March 2, 2007, and, in past years, to the tax treatment of corporations and individuals in Puerto Rico. For information on tax policies, see CRS Report RL32708, *Federal Taxes and the U.S. Territories: An Overview*, by David L. Brumbaugh. Also, some officials reportedly refer to Puerto Rico as a "country." See, for example, Rosario Fajardo, "AAV, Fortuño Agree on Need to Move Status Issue," *San Juan Star*, February 15, 2005, p. 4: " 'I believe the moment has come for the country to have the opportunity of choosing between different alternatives,' [Governor Anibal] Acevedo Vilá said."

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.