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.

BACKGROUND AND NEED FOR LEGISLATION

History of Puerto Rico's legal and political status

Puerto Rico and the Caribbean in American history

During the age of European discovery and colonialism, and later in the Revolutionary period when the American political culture was born, Puerto Rico and the Caribbean islands were geographically, economically and politically an integral part of the North American experience.

Puerto Rico was one of Christopher Columbus' landfalls, and thus was an important part of the European discovery and exploration of the New World. Ponce de Leon, the European discoverer of Florida, was the first Spanish Governor of Puerto Rico. Alexander Hamilton—aide de camp to General Washington during the Revolutionary War, collaborator with Madison in The Federalist Papers and at the Constitutional Convention in Philadelphia, as well as the first Secretary of the Treasury of the United States—was born and raised in the Virgin Islands adjacent to Puerto Rico.

Although the Spanish American War was decided on Cuban soil, by July 1898 the progress of the war made the time right for the U.S. occupation of Spanish-ruled Puerto Rico. An armistice was signed by the belligerents on August 12, and after securing Puerto Rico, U.S. forces evacuated the Spanish governor-general on October 18, 1898. At that time, Major General Nelson A. Miles, commanding officer of the invading forces, issued a proclamation which informed the people of Puerto Rico that:

> We have not come to make war on the people of a country that for several centuries has been oppressed, but, on the contrary, to bring protection, not only to yourselves but to your property, to promote your prosperity, and to bestow upon you the immunities and blessings of the liberal institutions of our government.

Upon becoming law, H.R. 856 will be the most significant measure enacted by Congress in nearly 100 years for the purpose of delivering on the promise of General Miles' pronouncement, by finally offering the options for full self-government to the people of Puerto Rico.

Puerto Rico as United States possession

Puerto Rico was ceded to the United States by the Kingdom of Spain under the Treaty of Peace ending the Spanish-American War, signed at Paris on December 10, 1898, and proclaimed on April 11, 1899. Consistent with the powers of Congress conferred by Article IV, Section 3, Clause 2 of the U.S. Constitution (the Territorial Clause), as well as long-established U.S. Constitutional practice with respect to administration of territories which come under U.S. sovereignty but are not yet incorporated into the Union, Article IX of the Treaty of Paris provided that the "civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." Congress exercised its territorial powers and carried out its role under Article IX of the Treaty of Paris by providing for civilian government and defining the status of the residents under the Foraker

Act (Act of April 12, 1900, c. 191. 31 Stat. 77). Shortly thereafter the Supreme Court ruled that Puerto Rico and the other territories ceded under the Treaty of Paris had the status of unincorporated territories subject to the plenary authority of the U.S. Congress under the Territorial Clause, and that the Constitution and laws of the U.S. would apply in such U.S. possessions as determined by Congress. *Downes* v. *Bidwell,* 182 U.S. 244 (1901); *Dorr* v. *United States,* 195 U.S. 138 (1904).

Puerto Ricans' citizen status

In 1904 the Supreme Court confirmed that under the Foraker Act the people of Puerto Rico—as inhabitants of a territory which had come under U.S. sovereignty and nationality—were not "aliens" under U.S. immigration law, and were entitled at home or abroad to the protection of the United States. *Gonzales* v. *Williams,* 195 U.S. 1 (1904). While recognizing that the territory and its residents had come within U.S. nationality by operation of Article IX of the Treaty of Paris, in accordance with that same provision of the Treaty the Court left to Congress the authority and responsibility to determine the citizenship status and rights of the Puerto Rican body politic under U.S. sovereignty.

Thus, under the Foraker Act the residents and persons born in Puerto Rico were classified under Federal law as "citizens of Puerto Rico" until 1917. Under the Jones Act (Act of March 2, 1917, c. 145, 39 Stat. 961), Congress extended statutory U.S. citizenship to residents of Puerto Rico, but less than equal civil rights, and statutory rather than Constitutional citizenship of Puerto Rican residents continued under that arrangement due to the continuation of unincorporated territory status.

The Jones Act also reorganized local civilian government, but in contrast to the incorporation of Alaska, or the determination of Congress in 1916 that the unincorporated territory status of the Philippines would be terminated in favor of independence (39 Stat. 546), the Jones Act for Puerto Rico did not resolve the question of an ultimate status for the territory. Even after internal self-government was established under Public Law 81–600 in 1952, statutory rather than Constitutional citizenship has continued under 8 U.S.C. 1402, and less than equal civil rights for persons born in the territory also continues, as discussed below.

For as long as unincorporated territory status continues, the extent to which rights under the U.S. Constitution apply to actions of the U.S. government in Puerto Rico will continue to be defined by Congress consistent with relevant decisions of the U.S. Supreme Court. For example, in addition to the measures adopted by Congress under the Jones Act in 1917, the U.S. Supreme Court ruled in *Balzac* v. *People of Puerto Rico,* 258 U.S. 298 (1922), that basic requirements for protection of fundamental individual rights govern the measures taken by our national government where it exercises sovereignty over persons or property.

Thus, under *Balzac* and later cases life, liberty and property cannot be taken without due process and other fundamental protections which apply any place in the world in which the U.S. government exercises sovereign powers of government over persons under

its jurisdiction, including unincorporated territories and other territories or properties owned by the U.S. but not a State of the Union.

However, the fact that the Federal Government is constrained from exercising sovereignty anywhere, including the unincorporated territory of Puerto Rico, in a manner that violates such fundamental rights does not mean that Congress has extended the U.S. Constitution or any part of it fully or permanently to such non-state areas, including Puerto Rico. In its 1957 decision in *Reid* v. *Covert* (354 U.S. 1), the Supreme Court stated that the exercise of U.S. sovereignty in unincorporated territories, as construed in the *Balzac* decision, "* * * involved the power of Congress to provide rules and regulations to govern *temporarily* territories with wholly dissimilar traditions and institutions * * *" [emphasis added].

As the Supreme Court stated in *Balzac,* for the purpose of determining where U.S. sovereignty, nationality and citizenship has been extended permanently and irrevocably, "It is locality that is determinative of the application of the Constitution. * * *" Unlike the States, unincorporated territories are not localities to which the Constitution has been extended permanently, nor has permanent union, permanent U.S. nationality or equal citizenship been established in such territories. Unless and until Congress extends the U.S. Constitution fully, this will be the condition of Puerto Rico's status.

That is why even U.S. citizens born in a State, whose rights and status are protected by the 14th Amendment of the U.S. Constitution, lose the ability to enjoy equal legal and political rights when they go to reside in an unincorporated territory. As soon as a person with full Constitutional U.S. nationality and citizenship in the States of the Union establishes legal residence in Puerto Rico (see, 48 U.S.C. 733a), that person joins the ranks of the disenfranchised residents of the territory, and no longer has the same civil, legal or political rights under Federal law as citizens living in those territories and commonwealths which have been fully incorporated into the Union as States along with the original 13 States.

It has been recognized that Congress has broad discretion in making rules and regulations for the unincorporated territories, which measures must be promulgated and implemented in a manner which does not abuse personal rights of due process and equal protection. However, in relation to self-determination for Puerto Rico it is important to note that the fundamental rights requirement of *Balzac* and other cases does not preclude Congress from altering the political status of the territory through the appropriate U.S. Constitutional processes consistent with due process and equal protection principles. *U.S.* v. *Sanchez,* 992 F.2d 1143 (1993).

At this time no one expects the U.S. Congress to act arbitrarily or unilaterally with respect to status for Puerto Rico. However, an informed self-determination process requires that Congress and the people of Puerto Rico understand that current policy and statutory provisions may change in time, while fundamental Constitutional powers do not. It is impossible to predict what conditions will develop in the future or what measures Congress would determine necessary to promote the national interest if the status of Puerto

Rico remains subject to the discretion of Congress under the Territorial Clause.

Puerto Rico's "Commonwealth" status as a territory under Federal law

The current "Commonwealth of Puerto Rico" structure for local self-government was established through an exercise of the authority of Congress under the Territorial Clause (Article IV, Section 3, Clause 2) of the U.S. Constitution, pursuant to which the process for approval of a local constitution was prescribed and the current Puerto Rico Federal Relations Act was enacted. (Public Law 81–600, July 3, 1950, c. 446, 64 State. 319; *codified* at 48 U.S.C. 731 et seq.).

Public Law 81–600 authorized the process for democratically instituting a local constitutional government in Puerto Rico. The process prescribed by Congress included authorization for the people of Puerto Rico to organize a government under a constitution approved by the voters. Congressional amendment and conditional approval of the locally-promulgated constitution also was an element of the process, as was acceptance of the Congressionally-determined amendments by the Puerto Rican constitutional convention. This method of establishing a local government charter with consent of both the people and Congress is the basis for the language in Section 1 of Public Law 81–600 (48 U.S.C. 731b) describing the process as being in the "nature of a compact" based on recognition of the "principle of consent."

The subject matter of Public Law 81–600 was limited to organization of a local government as authorized by Congress under the Territorial Clause, and the very existence—as well as the actions of—the local government are subject to the supremacy of the Federal Constitution and laws passed by Congress. Thus, the authority and powers of the constitutional government established under the Public Law 81–600 process are a creation of Federal law, and the approval of the local constitution by the people constitutes their consent to the legal framework defined in Federal law for a form of self-government over internal affairs and administration.

Although Congress presumably would include some procedure which recognizes the principle of self-determination in changing the structure for local self-government in the future, the existing statutory authority for the current "commonwealth" structure can be rescinded by Congress under the same Territorial Clause power exercised to create it in the first place. Public Law 81–600 merely revises the previously enacted territorial organic act adopted by Congress in the 1917 Jones Act, and changes the name to the "Puerto Rico Federal Relations Act" (PRFRA). This analysis is confirmed by the legislative history of PRFRA (H. Rept. 2275), which states:

> The bill under consideration would not change Puerto Rico's fundamental political, social, and economic relationship to the United States. Those sections of the Organic Act of Puerto Rico pertaining to the political, social, and economic relationship of the United States and Puerto Rico concerning such matters as the applicability of United States laws, customs, internal revenue, Federal judicial jurisdiction in Puerto Rico, Puerto Rican representation by a

> Resident Commissioner, etc., would remain in force and effect, and upon enactment would be referred to as the Puerto Rican Federal Relations Act. The sections of the organic act which Section 5 of the bill would repeal are the provisions of the act concerned primarily with the organization of the local executive, legislative, and judicial branches of the government of Puerto Rico and other matters of purely local concern.

Based upon the present status of Puerto Rico under Public Law 81–600, the Federal courts have ruled that for purposes of U.S. law this arrangement for local territorial government has not changed Puerto Rico's status as an unincorporated territory subject to the plenary authority of Congress under the Territorial Clause; that the right to due process and equal protection of the law applies to Puerto Rico, but this does not include equal enfranchisement in the political process or equal rights and benefits under Federal law as available to citizens residing in the States; that the authority of the Government of the Commonwealth of Puerto Rico is limited to purely local affairs not governed by provisions of the Federal Constitution and Federal laws applicable to Puerto Rico; and that the establishment of local constitutional self-government with the consent of the people was authorized through an exercise of Congressional discretion under the Territorial Clause which is not binding on a future Congress. *Harris* v. *Rosario,* 446 U.S. 651 (1980); *Examining Board* v. *Flores de Otero,* 426 U.S. 572, 81–600 (1976); *Rodriguez* v. *Popular Democratic Party,* 457 U.S. 1 (1982); *U.S.* v. *Sanchez*, 992 F.2d 1143 (1993).

Legal nature of statutory citizenship

The statutory United States citizenship of persons born in Puerto Rico was first extended to Puerto Rico by Congress under the Jones Act of 1917, and continues under 8 U.S.C. 1402 during the current period in which the territory has a commonwealth structure of local government. It is important to note that adoption of the local constitution in 1952 pursuant to Public Law 81–600 did not alter the allocation of Constitutional authority nor change the state of U.S. law regarding the citizenship status of residents of the territory.

While the U.S. citizenship of persons born in Puerto Rico is expressly recognized in the local constitution, the current citizenship of persons born in the territory is not created, defined or guaranteed by the local constitution or the commonwealth structure of local self-government. Rather, the current U.S. citizenship of persons born in Puerto Rico is created and defined by Congress in the exercise of its Territorial Clause power and in implementation of Article IX of the Treaty of Paris.

In the exercise of its authority and responsibility toward Puerto Rico Congress has determined to define persons born in Puerto Rico as U.S. citizens subject to the laws of the U.S. regulating U.S. nationality and citizenship. Thus, the citizenship of such persons is as set forth in 8 U.S.C. 1402, which is part of the immigration and nationality law of the United States approved by Congress in the exercise of its authority under Article I, Section 8 of the U.S. Constitution. The earlier citizenship provisions of the Foraker Act and Jones Act cited above have been superseded by 8 U.S.C. 1402.

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.