

the two Congressmen and let you testify and then we will proceed to—we will move to the Honorable Mr. Berríos.

Proceed, Congressman.

STATEMENT OF HON. LUIS G. FORTUÑO, RESIDENT COMMISSIONER OF PUERTO RICO, U.S. HOUSE OF REPRESENTATIVES

Commissioner FORTUÑO. Thank you, Chairman Domenici and Ranking Member Bingaman and all the other Senators present, for ensuring that a hearing is held this year on the fundamental issue of Puerto Rico. I would also like to thank the many elected officials that are present at this hearing, attesting to the importance that they, and the citizens they serve, place in this process.

The report of the President's task force and the legislation to implement these recommendations—it is imperative for establishing 3.9 million U.S. citizens to finally obtain a democratic form of government at the national level. One hundred and 8 years after Puerto Rico was taken through war—

The CHAIRMAN. How many people?

Commissioner FORTUÑO. Three point nine million.

The CHAIRMAN. Three?

Commissioner FORTUÑO. Point nine million. And there are even about 4 million Puerto Rico-Americans on the mainland.

The CHAIRMAN. OK. Thank you.

Commissioner FORTUÑO. There are many reason for Congress to provide, for the first time ever, a federally-sponsored plebiscite in Puerto Rico to decide our political future. However, none speak louder than the valor and courage of the hundreds of thousands of Puerto Rican men and women who have defended our Nation with distinction in every war since 1917. Every time I visit our wounded at Walter Reed, I witness firsthand their dedication and love for our country and the principles for which it stands.

That is the case with Private First Class Manuel Melendez, who was wounded in Iraq and, after a 2-year recovery process, joins us here today. We are honored to have him with us. We have made a disproportionate contribution to our current effort on the war on terrorism. He is only one example as to why we have earned our keep and deserve congressional consideration of our requests for a legitimate process to exercise our right to self-determination.

However, the self-determination process in Puerto Rico is in a state of arrest due to confusion about the options that have been offered to the electorate in every state-sponsored plebiscite held to this day. The task force was charged by President Clinton with clarifying the options and recommending a process for determining the territory's ultimate status. The task force of senior appointees of President Bush agreed with the Clinton administration on the options that are constitutionally viable and recommended a process deferential to the Governor's opposition, to a choice among the options and his insistence that Puerto Ricans support commonwealth. It asks Congress to provide for a plebiscite on whether Puerto Rico should remain an unincorporated territory or seek a non-territorial status. Depending on the results of the first plebiscite, further measures would be taken.

Representatives of a vast majority of Puerto Ricans support this plebiscite. The three political parties unanimously approved a bill in the State legislature requesting action on the status of Puerto Rico. This bill was vetoed by this Governor, who only appears to back initiatives that are intended to further delay any progress in providing the people of Puerto Rico their legitimate right to self-determination by direct votes of my constituents.

Status action for Puerto Rico is consistent with the national Democratic and Republican platforms.

The Governor has stated a number of objections to the report. Some are simply misleading, such as that Congress can take away the U.S. citizenship of Puerto Ricans in the States. It actually says almost the opposite.

Other objections are more subtle. A primary one is that the report considers Puerto Rico to be subject to the powers of Congress's Territory Clause, as has the U.S. Supreme Court, the Departments of Justice and State, this committee, the House of Representatives, the GAO and CRS.

The Governor does want to recognize that commonwealth is really just a word in the formal name of Puerto Rico's government, as it is in the cases of four States and another territory. He complains that the report is unfair for two reasons. One is that it does not accept his new commonwealth as an option. He has asked members to support an alternative process that would authorize Puerto Ricans to determine unilaterally, through a constitutional convention, as opposed to a direct vote by the people, what is an acceptable status option and then bring it to Congress. That alternative process would be a mechanism to try to force a Trojan horse with his new commonwealth proposal.

Such a situation would create false expectations in Puerto Rico resulting in greater frustration among my constituents and unnecessary tension between the Federal Government and the island.

To understand why his complaint is baseless and his bill is a dangerous mistake, you have to understand his new commonwealth. Under his proposal, Puerto Rico would be empowered to exercise veto power over Federal laws and to limit Federal court jurisdiction. It would be able to enter into trade and other international agreements and organizations. The United States will be obligated to provide new incentives for investment and to continue to grant all current aid to Puerto Ricans without paying Federal income taxes.

In addition, as if that were not enough, it would have to continue to provide free entry of goods shipped from Puerto Rico or through Puerto Rico, as well as permanent U.S. citizenship to residents born in Puerto Rico.

Congress ultimately will not accept an alternative that is not feasible under the U.S. Constitution, as stated by the Justice Department under the last three presidents. Under the Governor's plan, after much aggravation and effort, we would end up exactly where we started.

The Governor's other fairness complaint is that a vote between territorial status and seeking a non-territorial status will result in a majority for a non-territorial status. Setting aside the contradiction with his contention that Puerto Rico is not a territory,

why shouldn't the majority of the people be able to seek a form of government that is democratic at the national level if they want one of those options? And if they do, neither the rejected territorial status nor the impossible new commonwealth should be options.

Mr. Chairman and distinguished Senators, this issue will persist and fester and 3.9 million people for whom the United States is responsible will lack full democratic democracy at the national level. Congress must formally recognize its moral responsibility and join the executive branch in clarifying that Puerto Rico remains in a territorial status and that the new commonwealth proposal is unconstitutional, and thus, impossible to consider. It must then provide a process for Puerto Ricans to determine their preference among real and viable options.

Thank you again. I will be pleased to answer any questions.
[The prepared statement of Commissioner Fortuño follows:]

PREPARED STATEMENT OF HON. LUIS G. FORTUÑO, RESIDENT COMMISSIONER OF
PUERTO RICO, U.S. HOUSE OF REPRESENTATIVES

The report of the President's Task Force on Puerto Rico and legislation to implement its recommendations in a manner approved by Congress is imperative to achieve a democratic form of government at the national level for the 4 million U.S. citizens in Puerto Rico.

The self-determination and political status resolution process in Puerto Rico is in a state of arrest, due to the ill-defined and confusing state of federal law and policy concerning Puerto Rico's status options. As a result, Puerto Rico remains the last large and heavily populated U.S. territory living under the anachronisms of America's imperial experiments in the distant past.

There are many here in Washington who promise to respect whatever status choice Puerto Rico chooses, but in the next breath say the problem is we can not make up our minds. Yet, the reason we do not have majority rule in Puerto Rico on the status issue is that Congress has failed to act in accordance with U.S. historical practice and constitutional precedents for territorial status resolution.

Without becoming unduly legalistic, let me say that the political dilemma we face is rooted in fatally flawed federal jurisprudence that has deviated since 1922 from the preceding 135 years of American territorial law going back to the Northwest Ordinance of 1787.

The historical norms for territorial status resolution were:

- Withholding U.S. citizenship and adopting a policy of non-incorporation leading to independence, as in the case of the Philippines, or
- Conferral of U.S. citizenship, triggering application of the U.S. Constitution and incorporation, the result confirmed by the U.S. Supreme Court in the cases of Alaska and Hawaii. *Hawaii v. Mankichi*, 190 U.S. 197 (1903); *Rasmussen v. U.S.*, 197 U.S. 516 (1905).

In 1901, the Supreme Court had ruled that Congress could govern the non-citizen populations of the Philippines and Puerto Rico as non-incorporated territories under U.S. nationality without extending the U.S. Constitution. *Downes v. Bidwell*, 182 U.S. 244 (1901) In *Rasmussen*, however, the Supreme Court ruled that territories with U.S. citizen populations were incorporated into the nation, and that the U.S. Constitution applied by its own force consistent with territorial status.

Thus, the Alaska and Hawaii cases on extension of the U.S. Constitution should have been applied to Puerto Rico when Congress extended U.S. citizenship in 1917. Instead, in 1922 a deeply divided U.S. Supreme Court made a fateful error and decided, notwithstanding the conferral of U.S. citizenship, that extension of the U.S. Constitution to Puerto Rico should be left to the discretion of Congress. *Balzac v. Puerto Rico*, 258 U.S. 298.

The *Balzac* decision was a 5-4 ruling that gave Congress license to govern the U.S. citizens of Puerto Rico in the same manner as non-citizens in non-incorporated territories, without the restraints or protection of the U.S. Constitution. Although statements of justices indicate that the Supreme Court clearly expected this to be temporary until Congress adopted a status resolution policy, Congress has ruled Puerto Rico as a vestige of empire past, without a democratic form of government at the national level for 108 years.

For territories under the Northwest Ordinance, incorporation and eventual statehood were the only options. Modern principles of self-determination, under the U.N. Charter and human rights treaties to which the U.S. is a party, mean that Puerto Rico also has the option of becoming a separate sovereign nation through independence or free association.

However, the existence of additional options does not eliminate the problem created by extending U.S. citizenship but not the U.S. Constitution to Puerto Rico while it is a U.S. territory. Having denied protections of the U.S. Constitution to the U.S. citizens of Puerto Rico wrongfully for more than eight decades as a matter of domestic law, Congress needs to act immediately to correct the judicial error of the *Balzac* ruling in 1922 and sponsor a self-determination process satisfying both domestic and international standards.

LOCAL STATUS IDEOLOGY

It was not until 1950, that Congress authorized a local constitution allowing self-government only in local affairs not otherwise governed by federal laws, which are applied by Congress without consent of the citizens.

The controlling faction of the territory's "commonwealth" party asserts Puerto Rico is no longer a territory, and that adoption of the local constitution in 1952 established Puerto Rico as a "commonwealth" with national sovereignty. (Another faction of the party, which favors free association does not subscribe to this fiction.) The current Governor is President of the party and he asserts that it is only a matter of time before the U.S. accepts that—

- Puerto Rico is not a U.S. territory, but a sovereign nation
- Federal laws, including federal wiretap and death penalty statutes, can apply in Puerto Rico only upon consent of the local government
- Federal law is no longer supreme, but co-equal to Puerto Rican law
- Puerto Rico has sovereign power to enter into international agreements in its own name and right as a nation, and conduct its own international relations
- U.S. citizenship and political union is guaranteed forever, as in the case of a state of the union
- Federal services, programs and benefits will increase and be guaranteed, but Puerto Ricans will always be exempt from federal income tax
- Puerto Rico will remain within the customs territory of the U.S., but enter into its own trade agreements with other nations
- Puerto Rico will have the power to limit the jurisdiction and operation of the federal court.
- The U.S. can permanently and irrevocably cede its sovereign power over Puerto Rico to the "commonwealth", and retain only such sovereign powers in Puerto Rico as may be delegated to the U.S. by Puerto Rico.
- Under the innocuous label "Development of Commonwealth"; this virtual confederacy is unalterable by Congress in perpetuity without local consent
- Disputes between governments would be settled by sovereign-to-sovereign negotiations since federal law is no longer supreme.

Based on this status doctrine, the Governor asserts that Puerto Rico can have the benefits of both statehood and independence, and not be required to make the difficult choice between the two. Accordingly, the Governor argues that a choice between options recognized under federal law will create an "artificial majority", because statehood and independence supporters will "gang up" against the territory status that he insists Puerto Rico does not have.

The Governor proposes that the solution to the status question is for Congress to authorize a local convention to choose among statehood, independence, and a development of the current status—which he intends would be his "Development of Commonwealth" proposal.

He asserts that residents of Puerto Rico support "commonwealth" based upon a slight plurality in a 1993 local referendum, when less than a majority voted for a "Commonwealth" proposal that was not accepted by the Clinton Administration or in the Congress.

In 1998, another local status vote did not produce a majority vote for any status option. The current status as recognized under federal law was rejected by 99.9% of the voters.

These local votes demonstrate Puerto Rico does not have majority rule on status, and the U.S. citizens of the territory have effectively withdrawn consent to the current territory status.

The local constitutional convention proposal of the Governor is, simply a diversionary tactic. It is not needed because Article VII, Section 2 of our local constitution already provides the exclusive procedure for calling a constitutional convention,

with a more democratic procedure based on approval of a convention by a majority of voters.

To confuse, confound and befuddle his own party, the people of Puerto Rico, and Congress, the Governor's party has commissioned respected lawyers to cobble together the best possible legal arguments supporting the commonwealth party platform making Puerto Rico a nation permanently linked to the U.S. in a confederation.

I am attaching a series of scholarly commentaries which reject the legal briefs the Governor has presented to Congress and the White House, in a failed attempt to derail federal policy on Puerto Rico's status that is compatible with the Constitution and laws of the United States.

CONCLUSION

There are many reasons for Congress to authorize a federally sponsored plebiscite in Puerto Rico, but nothing is truly more important than the patriotism of the Puerto Rican men and women who have served with honor and distinction in every war since we became citizens of the United States in 1917, 89 years ago. Puerto Ricans have fought in defense of our Nation, and the democratic principles of freedom for which it stands, since World War I. They have fought, and many have made the ultimate sacrifice, on the—battlefields of Europe and Africa, the Pacific and Korea, Vietnam and the Middle East, and recently in Afghanistan and Iraq. I regularly visit our wounded at Walter Reed, and am honored to witness first-hand their dedication and love for our Nation.

We have made a disproportionate contribution to our current effort on the War on Terrorism. We have earned our keep, and we deserve congressional consideration of our request for a fair and legitimate process to exercise our right to self-determination.

After 108 years of territorial status, Puerto Rico remains the longest standing territory in the history of the United States. Congress retains jurisdiction over the Puerto Rican status issue, so we have a constitutional responsibility to address the issue. Although Congress has consistently expressed its commitment to respect the right of self-determination of the people of Puerto Rico, Congress has never sponsored a plebiscite to allow the people of Puerto Rico to express themselves on their preference based on options that are compatible with the U.S. Constitution and basic laws and policies of the United States.

The only way to restore majority rule locally and achieve democracy and government by consent at the national level is to begin an orderly process of self-determination. I support the recommendation of the Task Force established by President Clinton and comprised of senior appointees of President Bush: a congressionally-provided-for plebiscite on whether to seek a non-territory status. Only if a majority vote to seek a new status, would a second step be taken to choose among the options accepted by the federal government and specifically, by the Justice Department under Presidents George H.W. Bush and Bill Clinton, and the current President, as permanent in nature.

This is a moderate and measured approach to the issue. It is the minimum that Congress can—and should—do to fulfill its historical role under the U.S. Constitution to redeem the promise of America in Puerto Rico.

The CHAIRMAN. Thank you very much.

Now we will ask you, the distinguished Rubén Berríos, if you would testify, please.

STATEMENT OF RUBÉN BERRÍOS MARTÍNEZ, PRESIDENT, PUERTO RICAN INDEPENDENCE PARTY

Mr. BERRÍOS. Mr. Chairman and members of the Committee, there is more than enough testimony and evidence in the recent record of the U.S. Congress to promptly approve legislation regarding the status of Puerto Rico. Suffice to state certain facts and issues in Puerto Rico—the bankruptcy and failure of a colonial commonwealth experiment is self-evident.

In the United States, the White House report on the consideration recognizes what the Puerto Rican Independence Party has been saying for more than half a century; that juridically, Puerto