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H.R. 900, PUERTO RICO DEMOCRACY ACT OF 2007; AND H.R. 1230, PUERTO RICO SELF-DETERMINATION ACT OF 2007

LEGISLATIVE HEARINGS

BEFORE THE

SUBCOMMITTEE ON INSULAR AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

March 22, 2007 and April 25, 2007

Serial No. 110-8

Printed for the use of the Committee on Natural Resources

Available via the World Wide Web: http://www.gpoaccess.gov/congress/index.html
or
Committee address: http://resourcescommittee.house.gov

U.S. GOVERNMENT PRINTING OFFICE

34-236 PDF WASHINGTON : 2007

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LEGISLATIVE HEARING ON H.R. 900, TO PROVIDE FOR A FEDERALLY SANCTIONED SELF-DETERMINATION PROCESS FOR THE PEOPLE OF PUERTO RICO (PUERTO RICO DEMOCRACY ACT OF 2007); AND H.R. 1230, TO RECOGNIZE THE RIGHT OF THE PEOPLE OF PUERTO RICO TO CALL A CONSTITUTIONAL CONVENTION THROUGH WHICH THE PEOPLE WOULD EXERCISE THEIR NATURAL RIGHT TO SELF-DETERMINATION, AND TO ESTABLISH A MECHANISM FOR CONGRESSIONAL CONSIDERATION OF SUCH DECISION (PUERTO RICO SELF-DETERMINATION ACT OF 2007)

Thursday, March 22, 2007
U.S. House of Representatives
Subcommittee on Insular Affairs
Committee on Natural Resources
Washington, D.C.

The Subcommittee met, pursuant to call, at 10:00 a.m. in Room 1324, Longworth House Office Building, Hon. Donna M. Christensen [Chairwoman of the Subcommittee] presiding.

Present: Representatives Christensen, Faleomavaega, Grijalva, Bordallo, Rahall, Fortuño, Gallegly, Flake, and Young.

Ms. CHRISTENSEN. Good morning. The legislative hearing by the Subcommittee on Insular Affairs will now come to order.

I ask unanimous consent that Members of the full committee wishing to participate in the proceedings of the Subcommittee be allowed to sit on the dais. Hearing no objection, so ordered.

I also ask unanimous consent that the gentleman from New York, Mr. Serrano, the gentlewoman from New York, Ms. Velázquez, and the gentleman from Illinois, Mr. Gutierrez, be allowed to sit on the dais and participate in the hearing. Hearing no objection, so ordered.

Under Committee Rule 4(g), the Chairman and Ranking Minority Member can make opening statements. At this time I also ask unanimous consent that in lieu of the authors of the two bills

before us appearing as witnesses, Mr. Serrano and Ms. Velázquez, be extended the opportunity to make an opening statement. If any other Members have statements, they can be included in the hearing record under unanimous consent. Hearing no objection, so ordered.

The Subcommittee is meeting today to hear testimony on H.R. 900 and H.R. 1230. H.R. 900, sponsored by Mr. Serrano, will provide for a Federally sanctioned self-determination process for the people of Puerto Rico.

H.R. 1230, sponsored by Ms. Velázquez, will recognize the right of the people of Puerto Rico to call a Constitutional Convention to which the people would exercise their natural right to self-determination, and to establish a mechanism for Congressional consideration of such decision.

I now recognize myself for an opening statement.

STATEMENT OF THE HON. DONNA M. CHRISTENSEN, A DELEGATE IN CONGRESS FROM THE VIRGIN ISLANDS

Ms. CHRISTENSEN. As a co-sponsor of H.R. 1230, it is clear that I favor a bottoms-up approach to resolving Puerto Rico's long-unresolved political status question, one that empowers the people of Puerto Rico to translate their hopes and aspirations into a new and even possibly unique political relationship with the mother country, instead of one that dictates what their choices can and cannot be.

But above any support for one bill over the other, I support the right of the people of Puerto Rico to be fully informed, to have a fair process, and to have all of the possible status options clearly and accurately defined and placed before them.

Keeping this in mind, I want to thank Chairman Rahall for reestablishing the Subcommittee on Insular Affairs. It is well known that Chairman Rahall has been a long-time friend of Puerto Rico, most notably leading the effort in Congress for the funding of Trans Urbano. His presence this morning underscores his continuing interest in Puerto Rico, its people, and his desire to see progress on the status issue.

We will also be joined by the committee's Ranking Member, Mr. Young, as well. As a sole representative of Alaska, one of the last U.S. territories to become a state, he knows political status issues. As we all know, Mr. Young, as Chairman of the Committee, was the main sponsor of the legislation to resolve Puerto Rico's political status in 1998. His leadership and efforts resulted in the House approval of legislation providing for a process to resolve that status.

During today's hearing, all sides of the Puerto Rican status debate will be heard through an ambitious agenda, which includes some four panels consisting of 13 witnesses, all of whom understand the issue and its history well, and the overwhelming majority of whom are full-time residents of the Commonwealth. And we welcome all of you.

Because of the large number of requests to participate in the deliberations on these bills, we found that it was not possible to have a full hearing on the issues involved today. So in approximately one month from today we will convene a second hearing on the bills, at which time we will hear from the leadership of the political

parties, as well as from the Commonwealth, government, and legislature.

I have to say, though, that I am very disappointed that after such a harsh evaluation of Puerto Rico's current status and such a strong statement on the process they feel should be adopted, the Administration is not here with us this morning. I hope that this does not mean that their intention is to drop that bombshell and disappear, but that the Administration will see fit to testify at the second hearing.

It has been more than 108 years since the United States acquired the island of Puerto Rico along with Guam in the Philippines at the end of the Spanish-American War. Since that time, the people of Puerto Rico have been seeking to have their relationship to the United States resolved according to their wishes. It is high time that this occurs, and it is my fervent hope that beginning with this hearing today, we will all see this happen in short order.

I look forward to the testimony we will receive both in person and in writing. And before I conclude and yield to my Ranking Member for his opening statement, I want to say two last things.

First, as I made reference to last year, I do hear dissatisfaction from the people of Puerto Rico with the status quo. But on the socioeconomic issues—housing, education, healthcare, crime, even the politics—and also corruption inside and outside of government. I cannot see, but I stand ready to be educated on how changing political status will improve the conditions that the Puerto Ricans care most deeply about.

I see them as not necessarily being connected, and I also see a danger in tying too closely together as we move through this process.

Second, your neighbors and fellow non-state areas are watching. What happens here, and similarly what happens today with the District of Columbia, while they are not exactly similar, having bearing on us and our process of self-determination.

So let us be mindful, as we pronounce what can and cannot be under the Constitution, that such limitations will have a far greater impact on those of us whose choices are far more limited than our larger cousin, the Commonwealth of Puerto Rico.

I now yield for an opening statement to my colleague and friend, the resident commissioner, Mr. Fortuño.

[The prepared statement of Mrs. Christensen follows:]

Statement of The Honorable Donna M. Christensen, Chairwoman, Subcommittee on Insular Affairs

As a cosponsor of H.R. 1230, it is clear that I favor a bottom-up approach to resolving Puerto Rico long unresolved political status question; one that empowers the people of Puerto Rico to translate their hopes and aspirations into a new and even possibly unique political relationship with their mother country instead of one that dictates what their choices can and cannot be.

But above any support for one bill over the other, I support the right of the people of Puerto Rico to be fully informed, to have a fair process, and to have all of the possible status options clearly and accurately defined and placed before them.

Keeping this in mind, I want to thank Chairman Rahall for reestablishing the Subcommittee on Insular Affairs. It is well-known that Chairman Rahall has been a long-time friend of Puerto Rico, most notably leading the effort in Congress for the funding of Tran Urbano. His presence this morning underscores his continuing interest in Puerto Rico, its people, and his desire to see progress on the status issue.

It is also a pleasure to have the Committee's Ranking Member Mr. Young here as well. As the sole Representative of Alaska, one of the last U.S. territories to become a State, he knows political status issues. As we all know, Mr. Young, as Chairman of this Committee, was the main sponsor of legislation to resolve Puerto Rico's political status in 1998. His leadership and efforts resulted in the House approval of legislation providing for a process to resolve Puerto Rico's status.

I think the presence of Chairman Rahall and Ranking Member Young sends a clear signal that the Committee looks forward to having progress made on this issue in the 110th Congress. I believe that the proceedings of this Subcommittee will help in that effort; and give the Full Committee a better appreciation of both the complexity of this issue and the desire by the people of Puerto Rico for the process to begin.

During today's hearing, all sides of the Puerto Rican status debate will be heard from through an ambitious agenda which includes some four panels consisting of 13 witnesses—all of whom understand this issue and its history well and the overwhelming majority of whom are full time residents of Commonwealth.

Because of the large number of requests to participate in the deliberations on these bills, we found that it was not possible to have a full hearing of the issues involved in one day.

So in approximately one month from today we will convene a second day of hearings on the bills at which time we will hear from the leadership of the political parties from Puerto Rico as well as from the Commonwealth government and legislature

I have to say that am very disappointed that after such a harsh evaluation of Puerto Rico's current status and such a strong statement on the process they feel should be adopted, the Administration is not here. I hope that this does not mean that their intention is to drop that bombshell and disappear, but that the Administration will see fit to testify at the second hearing.

It has been more than 108 years since the United States acquired the island of Puerto Rico, along with Guam and the Philippines at the end of the Spanish American War. Since that time, the people of Puerto Rico have been have been seeking to have their relationship to the United States resolved according to their wishes. It is high time that this occurs and it is my fervent hope that beginning with this hearing today we will all see this happen in short order.

I look forward to the testimony we will receive both in person and in writing and to the answers to some questions that the Committee will have. They will all be taken into consideration as we move to the full committee and seek to move this process to fruition.

Before I conclude and yield to my Ranking member for his opening statement, I want to say two things:

First, as I made reference to last year, I do hear dissatisfaction from the people of Puerto Rico with the status quo—but on the socio-economic issues—housing, education, healthcare, crime, even the politics and corruption in and outside of government. I cannot see, but stand ready to be educated on how changing political status will improve the conditions that Puerto Ricans care most deeply about. I see them as two different things and I also see a danger in tying the two too closely together as you move through this process.

Secondly, your neighbors and fellow non-state areas are watching!

What happens here, and similarly what happens tomorrow with the District of Columbia—while they are not exactly similar—have bearing on us and our process of self determination.

For example, any attempt to "clarify" or make clear that the only two options available to Puerto Rico constitutionally are statehood or independence, automatically limits the options for the Virgin Islands as well as for the other smaller territories to just one; independence or its cousin Free Association—a choice which is not now supported by a majority of constituents.

Commonwealth or some other status under the sovereignty of the U.S., is all that those of us who want to remain part of the United States but are too small to become a state is all that we can aspire to.

So let us be mindful, as we pronounce what can and cannot be under the constitution, that such limitations will have far a greater impact on those of us whose choices are much more limited that our larger cousin, the Commonwealth of Puerto Rico.

I now yield for an opening statement to my colleague and friend, the Resident Commissioner of Puerto Rico, Mr. Fortuño.

STATEMENT OF THE HON. LUIS G. FORTUÑO, THE RESIDENT COMMISSIONER FROM THE COMMONWEALTH OF PUERTO RICO

Mr. FORTUÑO. Thank you, Madame Chair. Madame Chair, I want to take this opportunity to thank you for holding this very important hearing today. It has certainly been a pleasure serving with you in the Subcommittee, and I look forward to continuing to work with you in a bipartisan manner to address the current inequities in the way our nation treats U.S. citizens and nationals, not only in Puerto Rico, but in all of its territories.

I also want to commend Chairman Nick Rahall and Ranking Member Don Young for their longstanding leadership and commitment in ensuring that my constituents, the four million U.S. citizens that reside in Puerto Rico, are granted the opportunity to participate in the truly decolonizing and fair self-determination process.

Furthermore, I want to thank my fellow Subcommittee Members that are here or will join us today, and extend a warm welcome to our other colleagues present in the hearing who are not Members of this Subcommittee, but have taken time from their busy schedules because of their keen interest in this very important matter.

In particular I want to thank my three fellow Puerto Ricans in Congress: José Serrano, Luis Gutierrez, and Nydia Velázquez. During my two years in Congress they have provided me with invaluable insights, but most of all with their friendship.

Last, but not least, I want to welcome all of our witnesses, most of whom have traveled from the island to be with us today to provide the Subcommittee with their views on this vitally important issue.

In our political affairs, consensus is beneficial when it can be achieved. But the fact is that in a democracy, we are based on majority rule.

Today we do not have majority rule in Puerto Rico on the question of a permanent, non-territorial, and fully democratic future political status, even though this is clearly the most critical issue we face as a people. Instead, we have polarity or minority rule because no defined political status option has received a majority in the last two locally sponsored status votes.

Against this backdrop, you may wonder how it is that I can come before you today and tell you that we have a consensus in Puerto Rico on what Congress must do about the political status question. Yet that is exactly what I am here to tell you.

We have an overall consensus in Puerto Rico that our current relation with the U.S. is territorial in nature, not fully democratic, not fully self-governing, not based on equal rights and duties of citizenship, and does not fully implement the principle of government by consent of the governed.

We have an overall consensus that our current political relationship with the United States no longer serves either Puerto Rico or the U.S. well. We have an overall consensus that the time for change into a permanent, non-territorial relationship with the United States is not only long overdue, but urgently needed. The reality is that the island's current status does not enable the people

of Puerto Rico to fulfill their potential for social, economic, and political development.

It is not only a political problem; it is also money invested in Puerto Rico's chronic economic under-performance. This includes the local economic recession, even in the midst of our national economic growth and expansion, as well as high unemployment, while national unemployment is at record lows. This economic reality translates into human discouragement and unrealized dreams, and have forced many of my constituents—some people say about 6,000 per month—to move to the mainland in search for better opportunities and equality.

We have a sacred duty to our children and future generations to stop this cycle of unfulfilled human potential. That is why there is a consensus in Puerto Rico that the current status must be changed to a new status that is permanent and non-territorial; one that redeems the promise of democracy and opportunity for our people.

To be sure, the political parties in Puerto Rico still have the most profound differences on what permanent non-territorial status we prefer. We also disagree on the procedure to achieve majority rule and status issue.

In other words, we agree that there is a problem, but are at odds as to what the solution and the process to reach that solution should be.

But I believe we have a consensus that calls upon Congress to recognize a democratic referendum process, grounded in self-determination by the people, based on options compatible with the Constitution, but formulated with local participation.

In this regard, while I strongly believe that H.R. 900 offers a much better approach and process to resolving once and for all Puerto Rico's status dilemma, I have to admit that H.R. 1230 is more realistic than its previous version in the sense that it recognizes the need for a new status that is non-territorial and permanent. That mere recognition in itself constitutes one step in the right direction.

We, however, still have major differences about how to ensure that the people have a direct vote at each stage of the process and that Constitutionally valid options are proposed instead of options that are legally impossible. Those issues are clearly addressed in H.R. 900 but not so in H.R. 1230.

For example, Governor Acevedo's proposal for enhanced commonwealth, as included in his party's 2004 platform, provides, among other things, number one, that Puerto Rico would be a sovereign nation but in permanent union with the U.S. as part of a covenant to which the United States will be permanently bound.

Two. That Puerto Rico would be able to veto most Federal laws.

Three. That Puerto Rico would be able to invalidate Federal court jurisdictions.

Four. That Puerto Rico would be able to enter into trade and other agreements with foreign nations and join international organizations separate from the U.S.

Five. That the U.S. would continue all current assistance programs to Puerto Rico, plus a new annual block grant for socioeconomic development.

Six. That the U.S. would provide new incentives for investment in Puerto Rico.

Seven. That the U.S. would continue to grant free entry to any goods shipped from Puerto Rico.

Eight. That the U.S. would continue to grant U.S. citizenship to persons born in Puerto Rico.

And nine. That residents of Puerto Rico would not have to pay Federal taxes.

Anyone who objectively reviews the Governor's enhanced commonwealth wish list and is honest about it will have to conclude that the definition that he is trying to sell in Puerto Rico and to some of our colleagues here is unconstitutional and thus not acceptable to the Congress. As a matter of fact, similar proposals have been rejected by this very same committee and the Federal Executive Branch in the past.

My friends, the best of two worlds, as labeled by the Governor's party, does not exist. If it did, I have no doubts that we in Congress would immediately receive 50 other requests for the same deal.

This, quite honestly, is one of my biggest concerns with the Constitutional Assembly approach, where a select and limited group of delegates will be entitled to unilaterally come up with a status proposal that we in the House, in this House, all know would not be acceptable to the U.S. Congress. A Trojan Horse, if you will.

That being said, I firmly believe that most of the issues where we currently lack consensus could be resolved through the very deliberative process we commence today. The success of these hearings and other future proceedings before Congress on this issue will rest on whether or not we are able to advance the goal of Federal sponsorship of a limited status resolution process; one that will enable the issues, and which there is no consensus to resolve by self-determination, majority rule, and government by consent of the governed, selecting by their direct vote their status preference.

It is in this spirit of seeking solutions based on inclusion of all ideas from those with a legitimate interest in this question that I literally welcome and encourage the contributions to this discourse by Representatives Serrano, Velázquez, and Gutierrez, as well as all sectors on the island. Together with all our colleagues in the House and the Senate, we are seized with a solemn and sacred duty, and with God's help, I trust we will acquit ourselves in a way that honors our people and our nation.

Madame Chair, as you know, just a few weeks ago we celebrated the 90th anniversary of the granting of U.S. citizenship by Congress to Puerto Ricans. The final resolution of Puerto Rico's status dilemma has been stalled for too long. Let us work together to unlock this process and bring a final solution to Puerto Rico's century-old colonial predicament. Thank you again.

[The prepared statement of Mr. Fortuño follows:]

Statement of The Honorable Luis G. Fortuño,
Subcommittee on Insular Affairs

Madame Chair, I want to take this opportunity to thank you for holding this very important hearing today. It has certainly been a pleasure serving with you in the subcommittee, and I look forward to continuing to work with you in a bipartisan manner to address the current inequities in the way our Nation treats U.S. citizens and nationals, not only in Puerto Rico, but in all of its territories.

I also want to commend Chairman Nick Rahall and Ranking Member Don Young for their long-standing leadership and commitment in ensuring that my constituents, the 4 million U.S. citizens that reside in Puerto Rico, are granted the opportunity to participate in a truly decolonizing and fair self-determination process.

Furthermore, I want to thank my fellow subcommittee members that are here or will join us today, and extend a warm welcome to our other colleagues present in the hearing, who, while not members of this subcommittee, have taken time from their busy schedules because of their keen interest in this very important matter. In particular, I want to thank my three fellow Puerto Ricans in Congress: José Serrano, Luis Gutierrez and Nydia Velazquez. During my two years in Congress, they have provided me with invaluable insights, but most of all, with their friendship. Last, but not least, I want to welcome all of our witnesses, most of whom traveled from the Island to be with us today to provide the subcommittee with their views on this vitally important issue.

In our political affairs, consensus is beneficial when it can be achieved, but the fact is that, in a democracy, we govern based on majority rule.

Today we do not have majority rule in Puerto Rico on the question of a permanent, non territorial and fully democratic future political status, even though this is clearly the most critical issue we face as a people. Instead, we have plurality or minority rule, because no defined political status option has received a majority vote in the last two locally sponsored status votes.

Against this backdrop, you may wonder how it is that I can come before you today and tell you that we have a consensus in Puerto Rico on what Congress must do about the political status question. Yet, that is exactly what I am here to tell you.

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The reality is that the Island's current status does not enable the people of Puerto Rico to fulfill their potential for social, economic and political development. This is not only a political problem, it is also manifested in Puerto Rico's chronic economic underperformance.

This includes a local economic recession even in the midst of a national economic growth and expansion, as well as high unemployment while national unemployment is at record lows. These economic realities translate into human discouragement and unrealized dreams, and have forced many of my constituents—about 6,000 per month—to move to the mainland in search for better opportunities and equality. We have a sacred duty to our children and future generations to stop this cycle of unfulfilled human potential.

That is why there is a consensus in Puerto Rico that the current status must be changed to a new status that is permanent and not territorial, one that redeems the promise of democracy and opportunity for our people.

To be sure, the political parties in Puerto Rico still have the most profound differences on what permanent non-territory status we prefer. We also disagree on the procedure to achieve majority rule on the status issue. In other words, we agree that there is a problem, but are at odds as to what the solution and the process to reach that solution should be.

But I believe we have a consensus that calls upon Congress to recognize a democratic referendum process grounded in self-determination by the people, based on options compatible with the federal constitution but formulated with local participation.

In this regard, while I strongly believe that H.R. 900 offers a much better approach and process to resolving, once and for all, Puerto Rico's status dilemma, I have to admit that H.R. 1230 is more realistic than its previous version in the sense that it recognizes the need for a new status that is non territorial and permanent. That mere recognition, in itself, constitutes an important step in the right direction.

We, however, still have major differences about how to ensure that the people have a direct vote at each stage of the process, and that constitutionally valid options are proposed instead of options that are legally impossible. Those issues are clearly addressed in H.R. 900, but not so in H.R. 1230. For example, Governor Acevedo's proposal for Enhanced Commonwealth, as included in his party's 2004 Platform, provides, among other things:

1. That Puerto Rico would be a sovereign nation, but in permanent union with the U.S., as part of a covenant to which the United States would be permanently bound;
2. That Puerto Rico would be able to veto most Federal laws;
3. That Puerto Rico would be able to invalidate Federal court jurisdiction;
4. That Puerto Rico would be able to enter into trade and other agreements with foreign nations and join international organizations, separate from the U.S.;
5. That the U.S. would continue all current assistance programs to Puerto Rico, plus a new annual block grant for social and economic development;
6. That the U.S. would provide new incentives for investment in Puerto Rico;
7. That the U.S. would continue to grant free entry to any goods shipped from Puerto Rico;
8. That the U.S. would continue to grant U.S. citizenship to persons born in Puerto Rico, and;
9. That residents of Puerto Rico would not have to pay Federal income taxes.

Anyone who objectively reviews the Governor's Enhanced Commonwealth wish list, and is honest about it, will have to conclude that the definition that he is trying to sell in Puerto Rico and to some of our colleagues here is unconstitutional and thus, not acceptable to the Congress. As a matter of fact, similar proposals have been rejected by this very same Committee and the Federal Executive Branch in the past. My friends, the "best of two worlds", as traditionally labeled by the Governor's party, does not exist. If it did, I have no doubts that we in Congress would immediately receive 50 other requests for the same deal.

This, quite honestly, is one of my biggest concerns with the Constitutional Assembly approach, where a select and limited group of delegates would be entitled to unilaterally come up with a status proposal that we, in this House, all know would not be acceptable to the United States Congress. A Trojan horse, if you will.

That being said, I firmly believe that most of the issues where we currently lack consensus could be resolved through the very deliberative process we commence today.

The success of these hearings and all other future proceedings before Congress on this issue will rest on whether or not we are able to advance the goal of federal sponsorship of a legitimate status resolution process, one that will enable the issues on which there is no consensus to be resolved by self-determination, majority rule and government by consent of the governed, selecting by their direct vote their status preference.

It is in this spirit of seeking solutions based on inclusion of all ideas from those with a legitimate interest in this question that I not only welcome, but encourage, the contributions to this discourse by Representatives Serrano, Velazquez and Gutierrez, as well as all sectors on the Island. Together with all our colleagues in this House and the Senate, we are seized with a solemn and sacred duty, and with God's help I trust that we will acquit ourselves in a way that honors our people and our nation.

Madame Chair, as you know, just a few weeks ago, we celebrated the 90th anniversary of the granting of U.S. citizenship by Congress to Puerto Ricans. The final resolution of Puerto Rico's status dilemma has been stalled for too long. Let's work together to unlock this process and bring final solution to Puerto Rico's century old colonial predicament.

Ms. CHRISTENSEN. Thank you, Mr. Fortuño. I also recognize and welcome at this time again the distinguished gentleman from West Virginia, and the Chairman of the Natural Resources Committee, Mr. Rahall, and recognize him for any statement that he might make.

STATEMENT OF THE HON. NICK J. RAHALL, II, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Mr. RAHALL. Thank you, Madame Chair. I appreciate very much your recognition, as well as your calling this hearing today before the Subcommittee on Insular Affairs on two legislative proposals—H.R. 900, the Puerto Rico Democracy Act, and H.R. 1230, the Puerto Rico Self-Determination Act.

When I was honored to be named Chairman of the Committee on Natural Resources earlier this year, I issued an agenda of American values to guide the committee in its consideration of the many pressing issues we face within our broad jurisdiction. One part of that agenda stated, in reference to the territorial possessions of the U.S., that we must recognize that there is an inherent right of political self-determination.

The document noted, and I quote, "For a majority of our territories, circumstances of history and acquisition are similar. However, timelines to establish any other political status will vary. When appropriate, we should work toward providing clear direction to achieve political status consistent with the U.S. Constitution."

Since the establishment of the Commonwealth of Puerto Rico in 1952, four popular votes have been held on the status issue in three plebiscites and one referendum.

In going back just to the 1970s, at least 40 separate measures have been introduced in Congress to resolve or clarify Puerto Rico's political status. In addition, Congress has held at least 10 hearings, and four measures have received either House or Senate action.

Further, we have the report by the President's Task Force on Puerto Rico's Status, released last year, which was the subject of a hearing by the committee.

With all this background, it does appear to me that among all of the territorial possessions of the United States, this is indeed the time when we should work toward providing clear direction to Puerto Rico to resolve its political status in a manner consistent with the U.S. Constitution.

As such, we are meeting today to examine a simple proposition that nonetheless does elicit complex responses. The proposition is whether or not the people of Puerto Rico are satisfied with the status quo in terms of their political status. The responses are extremely complex, and often tinged with heated political rhetoric and deep-seated emotions.

I believe that this Subcommittee's responsibility is to be an honest broker with the people of Puerto Rico as this issue moves forward. At the same time, I would submit that it would be misleading to ignore the recommendations of the report by the President's Task Force, the positions of previous Administrations, our committee's own record, international law, and indeed, our country's Constitution.

So I conclude by thanking again the distinguished gentlelady from the Virgin Islands, Chairman Donna Christensen, as well as the Ranking Member of this Subcommittee, the gentleman from Puerto Rico, Luis Fortuño, for holding this hearing. I commend my Ranking Member of the full committee, Chairman Don Young, as well as other Members of Congress that have joined us today or will join us for debate on this issue, and listening to those who have come to testify.

Thank you, Madame Chair.

[The prepared statement of Mr. Rahall follows:]

Statement of The Honorable Nick J. Rahall, Chairman, Committee on Natural Resources

Thank you, Madame Chair. Nearly a year ago, when the Full Committee convened a Oversight Hearing to receive testimony on the Report by the President's

Task Force on Puerto Rico's Status, I saluted the twenty-one Puerto Rican families who had lost a loved one in our war with Iraq.

Since then, three more soldiers who call Puerto Rico home have made the ultimate sacrifice to keep our country free. To the Rodriguez, Montalvo, and Soto-Pinedo families; we regret your loss and honor your loved ones, along with the twenty-one other patriotic families in Puerto Rico with a brief moment of silence.

Madame Chair, we are here today because the people of Puerto Rico have been suffering from political status injustice for more than a century. In 1898, when we first raised our stars and stripes beyond our continental borders, did we unwittingly lower the promise of freedom, representation, and democracy upon which we had built our country? If time has been our judge, then the clock seems to favor injustice because more than one-hundred years of disenfranchisement and inequity remain.

This is not to say that the issue has not been raised before this Congress. Everyone in this room, along with the millions in Puerto Rico listening to our proceedings know that Congress has tried to find a way to resolve the status issue. We realize how important the issue of status is for the people of Puerto Rico; it is debated daily, written about often, and divides friends and families.

In going back just to the 1970's, at least forty separate measures have been introduced in Congress to resolve or clarify Puerto Rico's future status. Congress has held at least ten hearings and only four measures have received either House or Senate action. It seems that a lot has been done and very little has been accomplished.

This may hold true in Puerto Rico as well.

In the past century, three plebiscites have gauged the people's desires to advance their current political status in the American family as a U.S. territory. It has become clearer that with each completed plebiscite, all has become vague, with a choice of "None of the Above" garnering more votes than any other political status option on the ballot in the 1998 plebiscite.

Madame Chair, it seems the adage; "the more things change the more they remain the same;" holds true.

I am more optimistic today with the re-establishment of this Insular Affairs Subcommittee and with Ms. Christensen as its chairwoman. She is a thoughtful leader and I trust that she will conduct this proceeding in a fair and balanced manner. In fact, I applaud her for reaching out into the Puerto Rican community to hear from those who may not have been heard in prior proceedings.

Some have criticized this decision, which has in part left the leaders of Puerto Rico's political parties in the gallery; all of whom have appeared before us in prior years, and at least one have served with us. This Committee knows where you stand and we appreciate you coming to give your support for others in the Puerto Rican community wanting to add their voices to the debate. I welcome all of you.

The two bills before us offer very different approaches to resolve the future political status of Puerto Rico. To be clear, I support only one; H.R. 900. It reflects the recommendations of President Bush's Task Force on Puerto Rico's status. It has historical precedence; affording the people of Puerto Rico the same opportunity afforded to every other U.S. territory or protectorate. Status options that have been deemed constitutional and which also have international recognition.

I realize that there are realities for residents of U.S. territories that confront them daily. The application of Federal laws that do not make sense. Being a part of the U.S. sometimes, and not all the time. Enjoying U.S. citizenship, yet having a unique cultural identity that sets you apart from your fellow Americans on the U.S. mainland.

So, it is no surprise that one would want to support a proposed arrangement that recognizes all those feelings of inequality and disenfranchisement and then empowers you to be in control.

However, we cannot tailor that sort of arrangement. To do so, sends a wrong message not only to our other U.S. territories who have yet to walk down the same path that the people of Puerto Rico are on; but also to the States of our Union.

California is one of the largest economies in the world. Mississippi is one of the poorest States in the Nation. How could either one not ponder what it would be like to independently negotiate a trade deal; or have their legislature be able to annul Federal law?

Madame Chair, I feel that this Subcommittee's hearing is important so that the people of Puerto Rico are dealt with honestly. For decades, we have allowed for the realm of possibilities and it is now time for the realm of reality. We need to give them a process steeped in both historical and constitutional precedence.

Ms. CHRISTENSEN. Thank you, Mr. Chairman. It is also my distinct pleasure to recognize the Ranking Member of the full committee, the gentleman from Alaska, Mr. Young, for any statement he might wish to make.

STATEMENT OF THE HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Mr. YOUNG. Thank you, Madame Chairman, and I will submit for the record my total statement, because much of what is in my statement has already been said by Luis Fortuño.

I am a proud sponsor of H.R. 900. As you know, this is not new to me. We passed this out of the committee very nearly unanimously. We had a margin of about 50 votes on the Floor until the morning we had the vote, and the English first group came out in droves, and they ended up passing it by one vote.

I don't believe that will happen this time. I am very excited about this bill in the sense it is very similar to the one we passed before. I will say that the counter-proposal causes me great concern, because I do believe in my heart of hearts that bill is dead on arrival.

We might work out something a little different than 900, but what was asked by the Governor is an impossibility, and there will be no action in this Congress.

So my goal is to continue to go forth, try to solve this I think long-overdue challenge for the people of Puerto Rico. And I want to thank the people of Puerto Rico. As you know, I have been down there many times, and it is an area which I truly love, and the people.

We had our 45th wedding anniversary in Puerto Rico. And I couldn't think of a better person. And whoever has got that cell phone, they had better shut it off.

I really, really appreciate the passion the Puerto Rican people have on this issue and other issues. If you have never been to a horse race or a cockfight in Puerto Rico, you haven't really experienced excitement.

So Madame Chair, with that, I yield back the balance of my time.

[The prepared statement of Mr. Young follows:]

Statement of The Honorable Don Young, Ranking Republican, Committee on Natural Resources

Madame Chairwoman, thank you for holding this hearing today and for a balanced line-up of witnesses.

First off, let me say I'm a proud cosponsor of H.R. 900, a bill authored by my good friend, Mr. Fortuño, the Ranking Republican of this Subcommittee, and Congressman Serrano.

Many in the room today are familiar with my experience dealing with this issue. In the 105th Congress, I sponsored a bill, H.R. 856, to resolve the political status of Puerto Rico. My principle aim was to consider the status question in a manner that complied with the Constitution and that bore in mind the aspirations of the people of Puerto Rico to determine their future.

After three committee hearings, including two in Puerto Rico, the Committee passed the bill, and so did the House.

While H.R. 900 is somewhat different from the bill I sponsored in 1997, it conforms to my basic goal, which is to enable the people of Puerto Rico to determine their status in a manner that is democratic and consistent with historic, legal, and constitutional precedents.

This is not really a "statehood bill," or an "independence bill," or a "status quo" bill per se. This is a procedural bill, one that allows for a transparent, democratic process to resolve the status question.

I recognize and respect the aims of those who support H.R. 1230. But I have some fundamental problems with the bill.

First, it contemplates an outcome which may be unconstitutional. It would give Puerto Rico a chance to have a "new Commonwealth" status that gives it all the benefits of statehood but without the same application of federal law as all other states must bear.

And aside from the constitutional problem, I don't believe the House would pass a bill allowing for this arrangement.

Another problem is that the bill seems to avoid the open, democratic process set forth under H.R. 900. This may tend to create confusion among residents of Puerto Rico who want to settle the status question in a directly democratic fashion.

I applaud Chairwoman Christensen for holding a hearing to focus on some of these academic and constitutional questions surrounding these bills.

I would urge my colleagues to carefully consider what process to use and focus first and foremost on which bill conforms most closely to the Constitution.

Ms. CHRISTENSEN. Thank you, Ranking Member Young. The Chair now recognizes the author of H.R. 900, Representative Serrano, for any statement he may have.

STATEMENT OF THE HON. JOSÉ SERRANO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. SERRANO. Thank you. I really appreciate this opportunity to participate in this hearing. And you would be interested to know that both Ms. Velázquez and I left SBA hearings. She is Chairman of the SBA Committee, and I on Appropriations overseeing SBA's budget. So SBA took second to Puerto Rico today, as it should on any given day.

Let me just comment on the fact that I may be a member, the leader of a group that only has one member: me. And that is anything but the colonial status of Puerto Rico. I know that one of the favorite pastimes in Puerto Rico is trying to figure out whether I support statehood or independence.

I think that is the problem; that for so many years we Puerto Ricans have been asked to be in favor of something, when in fact we should have organized ourselves to be against the colonial status. Get rid of the colony, move it out of the way, and then roll the dice on what comes later and deal as brothers and sisters on the island and in Congress.

And it is with that in mind that I joined Mr. Fortuño. I have always proposed the idea that Puerto Rico first must decide whether it wants to remain in this relationship, or change.

And so H.R. 900 gives us an opportunity to make that decision. And then it puts forth either integration or separation from the American Union as the true alternative.

Now, why do I believe that that is correct? I believe that there are things in life that border, or are, in fact, issues of morality. And I believe as a legislator of 33 years that there is such a thing as legislative morality. So I believe that it is legislatively immoral to present to the people of Puerto Rico a colonial option as one of its choices.

You cannot, in the true American, democratic, constitutional tradition say I give you the choice of joining the Union as a full partner; I give you the choice of becoming a member of the world

community as an independent nation; but I also give you the choice of becoming even a stronger colony. Such a thing doesn't exist, and that is why I have always proposed.

Now, I have to tell you that we make compromises when we want to get something done. So I am not happy with the opening statement of H.R. 900 that says that you wish to remain the same. But I know I can't move to step two if we don't ask that question first. Given a choice, I would never ask that question. I would simply say statehood or independence, and that is the choice.

Now, a comment that was made by our Chairwoman I think merits a comment from me. You say that you like a process that starts from the bottom up. That makes the assumption that the people of Puerto Rico will decide their political future.

It wasn't Puerto Rico that invaded the United States in 1898. It was the United States that invaded Puerto Rico. We have been holding the colony for 109 years. We have to determine whether we want to integrate the colony, or dispose of the colony.

But the U.S. Congress first has to make the determination that this can't continue, and it has to make that change.

Now, as well was said by Mr. Fortuño, which is interesting, no one in Puerto Rico supports the present status. When they say they support commonwealth, they support a new commonwealth, which I call a letter to the Three Kings or a letter to Santa Claus. Because it says let me be a state, but let me be an independent nation; let me change, but not change.

Does Puerto Rico deserve that after 109 years of colonialism? Absolutely. And I would vote for it. Can any Member of Congress outside of three or four of us vote for that? Absolutely not. Because as it was said here, if you go back to your district, somebody is going to ask you that Sunday morning in church, what was it that you gave Puerto Rico that you can't give my district. And that is the problem, that it is not realistic.

Now, also it was said that nothing may change the economics of Puerto Rico. Well, tomorrow we are voting to give the District of Columbia a vote. I will vote for that. Because we know what that integration means. We are also promoting democracy throughout the world, which is good. We know what that means. That is an independent nation, right?

Well, let us face it. Both of those do guarantee certain strong futures. It is the colonial status that guarantees no future at all.

We still live in this Congress in a situation that is sad. I keep bringing up the fact that people have told me at times can I get them stamps for their collection from Puerto Rico. And I still tell the story of the Member of Congress, who is still a Member of Congress, who asked me for currency from Puerto Rico from his collection. So I took a dollar bill from my pocket and gave it to him. And I think that person got the message.

[Laughter.]

Mr. SERRANO. In order for us to move ahead, we have to determine whether we are serious or not. I really would beg those who support the commonwealth to accept the reality that there is such a thing as an enhanced commonwealth; it is called free association. You have to move toward that if you truly believe in an enhanced commonwealth.

But to continue to ask for a commonwealth that is colonial in nature is a disservice to the people of Puerto Rico, is a disservice to this country, and it is a disservice to democracy throughout the world.

I will not rest until the colony is gone. It served a purpose for a long time perhaps, and I give credit to those who took it from where it was to where it is. But it was never the intention of the founders of the commonwealth to keep it as a permanent condition, and it is a condition.

And so I find myself today in a unique situation, a situation similar or identical to what Nydia finds herself in. We were both born in the colony, and now we serve in the Congress of the power that holds the colony. As a Puerto Rican, I don't want my birthplace to be a colony. As an American Congressman, I think it is indecent that my country has colonies in 2007. And this must end.

For that reason I proposed this bill. For this reason I think that the American family will resolve this problem jointly, and the Puerto Rican family will do the same.

Thank you.

Ms. CHRISTENSEN. Thank you, Mr. Serrano. Before I move to the author of H.R. 1230, I ask unanimous consent that the gentleman from Illinois, Mr. Weller, be allowed to sit on the dais and participate in the hearing. Hearing no objections, so ordered.

I also understand, Mr. Weller, that you need to leave us in a few minutes? And we are limiting our opening statements, but I will allow you to acknowledge the witnesses that have traveled today.

STATEMENT OF THE HON. JERRY WELLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. WELLER. Madame Chair, let me just thank you for the courtesy of being able to join you and our colleagues on this very, very important Subcommittee.

I come here today both to support H.R. 900, as well as to echo the comments of the lead sponsors of H.R. 900, my friend, José Serrano, as well as Luis Fortuño, the elected representative of the people of Puerto Rico on behalf of H.R. 900.

I believe Congress has a role to play, and I also believe that H.R. 900 puts into place the appropriate response. I have been a witness as well as a participant in this process over the last 12 years. For some it has been frustrating, but I believe H.R. 900 provides the true answer.

I have a much longer statement I would like to submit for the record. But again, I am here to support H.R. 900. And Madame Chairman, thank you very much for the courtesy of allowing me to present my very brief comments, as well as to express my support. Thank you.

[The prepared statement of Mr. Weller follows:]

Statement of The Honorable Jerry Weller, a Representative in Congress from the State of Illinois

Madam Chairwoman, I am here today to support H.R. 900, the Serrano-Fortuño bill, because I believe Congress has a role to play and a responsibility to enable a process to achieve democratic majority rule in Puerto Rico on the status issue.

The history of frustrating and disagreeable locally sponsored status votes teaches us that a three way choice among options that include a commonwealth definition

already repeatedly rejected by Congress virtually ensures minority rule in the form of indecisive plurality votes.

We need to sponsor a vote with a ballot that enables a majority to vote to continue the current status as defined by federal law, or to seek change. Only if a majority vote to seek a new status would there ever be a vote on statehood or some form of nationhood, either independence or free association. So who is afraid of majority rule, and how is it unfair?

I have heard all the hype about exclusion of commonwealth as an option, and it is just not true. This bill is fair to commonwealth as it really is under current federal law, and may even give it an advantage by asking voters to choose between the known and the unknown.

What is not fair is to return to the practice of asking voters to choose among unattainable options defined in the ideological hot house of local politics, without any federally sponsored process of legitimate and informed self-determination based on constitutionally defined options.

H.R. 1230 will invite yet another agonizing debate and inconclusive process focused on an option that is not legally possible or politically realistic. That does not empower people, that disempowers people.

We should not waste any more time on the notion of a bilateral compact to make Puerto Rico a separate nation under the American flag. I agree with those who believe this is just a delaying tactic to preserve the status quo. The only way the status quo should be preserved any longer is if the majority consent to it in a democratic process, and that is what H.R. 900 ensures.

So we need to shift the focus away from flawed ideology and delay tactics embodied in H.R. 1230, and focus on the real issue and legitimate self-determination as proposed by H.R. 900.

I know there are economic and political arguments that can be made for and against statehood. Personally, I think statehood is probably he best way to ensure that Puerto Rico will develop economically, so that the current $15 billion federal subsidy of commonwealth status ends, and Puerto Rico can prosper enough to afford to pay its own way in the union. Every territory that has become a state has developed and risen to and with the level of the national economy.

I also think it is silly to try to predict whether Puerto Rico will send more Democrats or Republicans to Congress if it becomes a state, because they elect both Republicans and Democrats now, and they are not different than the rest of the U.S. politically. What really matters is whether they have full democratic participation, because what we know is that both parties are competitive in Puerto Rico and will thrive when Americans in Puerto Rico not only attend the national party conventions, but vote in the elections that follow.

However, I don't think the economic and political arguments are as important as the constitutional and moral issues. The territorial clause in Article IV of the Constitution was never intended to result in a century of territorial status for what is now close to 4 million U.S. citizens in Puerto Rico.

How can 4 million U.S. citizens be represented by one non-voting member of the House?

Madame Chairwoman—thank you for the opportunity to share my thoughts and testimony here today.

Ms. CHRISTENSEN. Thank you, Mr. Weller. The Chairman now recognizes the author of H.R. 1230, Representative Velázquez, for any statement she may have.

Ms. VELÁZQUEZ. Thank you.

Ms. CHRISTENSEN. And my Chairwoman of the Small Business Committee.

STATEMENT OF THE HON. NYDIA M. VELÁZQUEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Ms. VELÁZQUEZ. Thank you, Chairwoman Christensen and Minority Ranking Member Fortuño, for holding this important hearing today.

I appreciate the opportunity to be here and offer my views on H.R. 1230, the Puerto Rico Self-Determination Act of 2007.

My friends, here we are today debating on the House Floor a supplemental regarding the war in Iraq. And we, the U.S. Congress, we are in Iraq because we want to empower the people of Iraq.

Well, I am here to empower the people of Puerto Rico. And we should not be afraid to provide for a political vehicle that will allow the people of Puerto Rico, who live in Puerto Rico, come to terms regarding their political destiny.

I am a Puerto Rican Member of the U.S. Congress, and I will not go to Puerto Rico to tell the people of Puerto Rico what is the best political option for them. That is a decision that they have to make.

The path to self-determination for the people of Puerto Rico has been a long, difficult one. It is full of complex factors that warrant thorough discussion in order to make an informed decision.

Previous Congressional initiatives have focused on defining what the options should be for the people of Puerto Rico, but the truth is Puerto Ricans themselves should decide what their options are. That is why I introduced H.R. 1230, the Puerto Rico Self-Determination Act, along with Congressman Gutierrez—that by the way is not here at this moment because he is holding a press conference to announce legislation on immigration—and Congressman Wicker, to recognize that it is the people of Puerto Rico who are best suited to determine their political future.

The residents of the island need to examine the factors themselves, the economic, legal, and social issues that are coming into play. Most importantly, it must be done in a way that allows their opinions to be both heard and considered.

Puerto Rico has not only a natural right to self-determination, but it is also entitled to a process that allows an informed use of that right. You cannot ask or even expect people to choose their future without debating what their options are, and what consequences may arise.

A democratic self-determination process ensures that people are able to debate their ideas and reach consensus themselves on how to proceed. Plebiscites or referendums do not lend themselves to a comprehensive and thoughtful process. Arbitrarily defined Federal concepts that require the Puerto Rican people to choose in a yes-or-no format are not consistent with the practices of self-determination.

I want to take a moment to remind the Committee today that this process will impact eight million Puerto Ricans living in our states and on the island. Congressmen Gutierrez, Serrano, and myself have a significant number of Puerto Rican constituents in our districts, as well as family and friends still living on the island. We must make sure that all of their opinions are taken into account during this vital discussion.

It is for this reason that I am strongly encouraging that this Subcommittee hold hearings on this issue in Puerto Rico, New York, Chicago, and Orlando, so that local community leaders and the general public have an opportunity to participate in this historic process. These discussions cannot take place on Capitol Hill alone, and needs to be seen in the light of day for the Puerto Rican community to see and participate.

Chairwoman Christensen, I appreciate the time you have granted me today to share my thoughts on this important issue. I am hopeful that under your leadership, this hearing will lead to consensus, dialogue, and a fair process for the people of Puerto Rico. They simply cannot afford to spend time watching yet another round of hearings that in the end only compound the already-existing divisions among groups in Puerto Rico.

This is a complicated issue which draws many emotions from the people in Puerto Rico and those Puerto Ricans living in the States that feel passionately about their future. We have an opportunity before us to address this issue in a comprehensive, fair, and transparent manner.

I look forward to working with you and the Members of the Subcommittee in providing the people of Puerto Rico with an unbiased approach that guarantees a true expression of the right to self-determination and their aspirations.

Thank you very much.

[The prepared statement of Ms. Velázquez follows:]

Statement of The Honorable Nydia M. Velázquez, a Representative in Congress from the State of New York

Thank you, Chairwoman Christensen, for holding this hearing today. I appreciate the opportunity to be here and offer my views on H.R. 1230, The Puerto Rico Self-Determination Act of 2007.

The path to self-determination for the people of Puerto Rico has been a long, difficult one. It is full of complex factors that warrant thorough discussion in order to make an informed decision. Previous congressional initiatives have focused on defining what the options should be for the people of Puerto Rico. But the truth is—Puerto Ricans themselves should decide what their options are.

That is why I introduced, H.R. 1230, "The Puerto Rico Self-Determination Act", along with Congressmen Gutierrez and Wicker, to recognize that it is the people of Puerto Rico who are best suited to determine their political future. The residents of the island need to reexamine the factors themselves—the economic, legal and social issues—that are coming into play. Most importantly, it must be done in a way that allows their opinions to be both heard and considered.

Puerto Rico has not only an inalienable right to self-determination, but it is also entitled to a process that allows an informed use of that right. You cannot ask, or even expect, people to choose their future without debating what their options are and what consequences may arise.

A democratic self-determination process ensures that people are able to debate the ideas and reach consensus themselves on how to proceed. Plebiscites or referendums do not lend themselves to a comprehensive and thoughtful process. Arbitrarily defined federal concepts that require the Puerto Rican people to choose in a yes or no format are not consistent with the practices of self-determination.

I want to take a moment to remind the committee today that this process will impact 8 million Puerto Ricans living in our states and on the island. Congressman Gutierrez, Serrano and myself have a significant number of Puerto Rican constituents in our districts, as well as family and friends still living on the island. We must make sure that all of their opinions are taken into account during this vital discussion.

It is for this reason that I am strongly encouraging that this sub-committee hold field hearings on this issue—in New York, Chicago, Orlando and of course, in Puerto Rico; so that local community leaders and the general public have an opportunity to participate in this historic process. These discussions cannot take place on Capitol Hill alone. It needs to be seen in the light of day for the Puerto Rican community to see and participate.

Chairwoman Christensen, I appreciate the time you have granted me today to share my thoughts on this important issue. I am hopeful, that under your leadership, these hearings will lead to consensus, dialogue and a fair process for the people of Puerto Rico. They simply cannot afford to spend time watching yet another round of hearings that, in the end, only compound the already existing divisions among groups in Puerto Rico.

This is a complicated issue which draws many emotions from the people in Puerto Rico, and those Puerto Ricans living in the states, that feel passionately about their future. We have an opportunity before us today to address this issue in a comprehensive, fair and transparent manner.

I look forward to working with you and the Members of the Sub-committee on Insular Affairs in providing the people of Puerto Rico with an unbiased approach that guarantees a true expression of their right to self-determination, and their aspirations.

Ms. CHRISTENSEN. Thank you, Congresswoman Velázquez.

I want to welcome also to the hearing today my fellow delegates, Congressman Eni Faleomavaega of American Samoa; Ms. Madeleine Bordallo, Congresswoman Madeleine Bordallo of Guam; and Congressman Patrick Kennedy of Rhode Island.

I would now like to thank those who responded to the Subcommittee's call to hear from organizations that may not have had the opportunity to be heard by Congress in the past.

We received a great number of requests to appear before us, and we were not able to accommodate all requests.

However, if there are no objections, I would like to take this opportunity to enter into the record the statements of the following people:

Mr. Ricardo Alvarado; Mr. Carlos Chardon; Mr. José Julio Díaz,, President of the New Statehood Movement; Lieutenant-Colonel Freytes; Mr. Arturo Guzman, Chairman of the Institute for the Development, Equality, and Advancement of Puerto Rico; The League of United Latin American Citizens; Mr. Joaquin Marquez, President of the Puerto Rican-American Foundation; Mr. Juan Manuel Garcia Passalacqua; Juan José Nola Acosta; Ms. Luz E. Cuadrado Pitterson; Mr. Mario Porrata; Mr. Dennis Simmons; and Dr. Marissel Velázquez-Vicente, President of the Puerto Rico Association of Physicians and Surgeons.

And hearing no objections, so ordered.

[NOTE: The statements submitted for the record have been retained in the Committee's official files.]

Ms. CHRISTENSEN. I would now like to call up the first panel. Mr. Kenneth Thomas of the Congressional Research Service; Professor Carlos I. Gorrín-Peralta of Puerto Rico's Inter-American University School of Law; Mr. Ramón Luis Nieves, the Executive Director of Movimiento Autonomista Socialdemócrata; Professor Richard Pildes of New York University School of Law; and Thomas C. Goldstein, a lawyer with the firm of Akin Gump Strauss Hauer & Feld.

The Chair now recognizes Mr. Thomas to testify for five minutes. The timing lights on the table will indicate when your time is concluded, and all witness statements will be submitted, the full statements will be submitted for the hearing record.

Mr. Thomas.

STATEMENT OF KENNETH R. THOMAS, LEGISLATIVE ATTORNEY, AMERICAN LAW DIVISION, CONGRESSIONAL RESEARCH SERVICE

Mr. THOMAS. Madame Chairwoman and Members of the committee. My name is Ken Thomas, and I am a legislative attorney with the American Law Division of the Congressional Research Service at the Library of Congress.

I would like to thank you for inviting me to testify today regarding the committee's consideration of H.R. 900, the Puerto Rico Democracy Act of 2007, and H.R. 1230, the Puerto Rico Self-Determination Act of 2007. I would also like to thank Johnny Killian, Sam Garrett, and Keith Bee of my office who helped me in preparation for this hearing.

I would like to start my discussion with H.R. 900. H.R. 900 is based on the recommendations of the President's Task Force on Puerto Rico's Status. That task force report states that there are three constitutionally valid options available to the island: independence, statehood, or the continuation of the commonwealth status, subject to the territorial clause of the U.S. Constitution.

Under H.R. 900 there would be a plebiscite to ask voters to choose between the current commonwealth status or a permanent non-territorial status. If a majority of voters chose the second options, then a second plebiscite would be held to choose between statehood or independence, the latter of which would include free association.

The second bill, H.R. 1230, contemplates convening a Puerto Rican Constitutional Convention, which would formulate a status option to be voted on in a public referendum. If approved, that option would be presented to Congress to be passed as a joint resolution.

There are several aspects of H.R. 1230 that are of special note. While a Constitutional Convention could formulate any one of there options—again, statehood, independence, or commonwealth—any commonwealth status proposed would need to be new or modified. Under H.R. 1230 this appears to mean that a commonwealth status would be "based upon the sovereignty of the people of Puerto Rico, and not subject to the plenary powers of the territorial clause of the Constitution of the United States."

Now, the territorial clause, found in Article IV, Section 3, Clause 2 of the Constitution, provides that the Congress shall have the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

Now, the Supreme Court has held that Congress's power under the territorial clause is extremely broad, and can be exercised even after the authority to govern has been delegated to a territorial government. So the question which needs to be asked is what is this new or modified commonwealth option which could be proposed by the convention, under H.R. 1230?

While I would first like to suggest that the language under H.R. 1230 is ambiguous to exactly how this commonwealth status would be formulated—for instance, this bill, unlike previous recommendations, seeks to withdraw Federal jurisdiction over Puerto Rico in order to achieve the goal of a new commonwealth.

Now, it is not clear how far this withdrawal of Federal jurisdiction is intended to go. For instance, one could argue that this language means that if the Constitutional Convention approves a particular definition of new commonwealth or a particular governmental structure, and Congress approves it, then it is that definition that could not be changed by the Federal government.

In other words, the convention could adopt something like the current commonwealth, where there is both an existing Puerto Rican self-government, but there is also Federal jurisdiction, there are Federal criminal laws, Federal civil laws applicable. That is one interpretation. And this I would refer to as locking in the commonwealth.

Now, another possible interpretation would be that commonwealth status cannot be considered unless it eliminates all Federal jurisdiction over the territory of Puerto Rico; again, a very different possible type of commonwealth.

Now let me briefly address the idea of locking in commonwealth status. Now, I should first say that it is perfectly consistent with the Constitution for the Congress to commit itself not to exercise Federal jurisdiction over the commonwealth, and it is certainly perfectly constitutional for the Congress to act consistently with that pledge.

The question is whether the Congress can, by statute, bind a further Congress so that such a statute cannot be repealed or altered.

Now, some commentators had argued that perhaps the Fifth Amendment due process clause would be relevant here, in that you could have vested political rights that cannot be withdrawn.

Now, without addressing these arguments in particular, let me just note that H.R. 1230 does not appear to be based on the enforcement of Federal rights, but instead on the elimination of Federal jurisdiction. Consequently, the vested political right argument may not be relevant to this bill.

Now, one might also consider the alternative interpretation, where passage of a newer enhanced commonwealth would not just lock in commonwealth status, but it would also remove all Federal jurisdiction over the island of Puerto Rico. This interpretation also raises constitutional issues.

The portion of the Constitution which appears to be most relevant here is, of course, Article IV, Section 3, which addresses both the power to grant statehood and the power to regulate or dispose of territories.

Now, these powers are consistent with three possible options: statehood, territorial status such as commonwealth, or independence.

However, 1230 does not specify an alternative constitutional authority under which Congress could act to create a commonwealth which is not subject to the territorial clause.

You will hear—excuse me.

Ms. CHRISTENSEN. You have a few seconds to wrap up.

Mr. THOMAS. Madame Chairwoman, that concludes my prepared statement. I would be happy to answer any questions that you or other Members of the Subcommittee may have.

Thank you.

[The prepared statement of Mr. Thomas follows:]

Statement of Kenneth R. Thomas, Legislative Attorney, American Law Division, Congressional Research Service, Library of Congress

Madame Chairwoman and members of the Committee:

My name is Ken Thomas. I am a Legislative Attorney with the American Law Division of the Congressional Research Service at the Library of Congress. I'd like to thank you for inviting me to testify today regarding the Committee's consider-

ation of H.R. 900, the "Puerto Rico Democracy Act of 2007" and H.R. 1230, the "Puerto Rico Self-Determination Act of 2007." I'd also like to thank Sam Garrett, an analyst with our Government and Finance Division, who helped me in my preparation for this hearing.

Today, I would like to discuss the specifics of these two bills, including how they might be interpreted by a court and how they would interact with United States Constitution. Let me start with H.R. 900, which would authorize various plebiscites to be held in Puerto Rico on the issue of status. Under H.R. 900, a plebiscite would be held to ask voters to choose between two different status options, both of which are specified in the bill. The first option would be to continue "the existing form of territorial status as defined by the Constitution, basic laws, and policies of the United States." The second option would be to pursue "a path toward a constitutionally viable permanent nonterritorial status." If a majority of voters in this first plebiscite were to choose the option of maintaining the status quo, H.R. 900 would then call for additional plebiscites to be held every eight years to reexamine the voters' status preferences. On the other hand, if a majority of voters chose the second option, "a path toward a constitutionally viable permanent nonterritorial status," H.R. 900 would authorize a second plebiscite. In this second plebiscite, voters would be asked to choose between:

(1) statehood or (2) becoming a "sovereign nation." The second option would include either complete independence or entering into a "free association" relationship with the United States. [1]

The process contemplated by H.R. 900 is based on the recommendations of the President's Task Force on Puerto Rico's Status (Task Force). [2] The Task Force was established by President Clinton in 2000 to, among other things, identify options for the territory's future political status and suggest a process for realizing such options. [3] In December of 2005, the Task Force issued a report on Puerto Rico's relationship with the federal government. The report asserted that there are only three constitutionally valid options available to the island: (1) independence; (2) statehood; or (3) continuation as a U.S. territory subject to the Territorial Clause of the U.S. Constitution. The provisions of H.R. 900 were drafted to be consistent with this finding.

By contrast, H.R. 1230 appears to contemplate a method for addressing the status relationship between Puerto Rico and the federal government that differs significantly from both the process and the status options suggested by the Task Force. One significant difference is that H.R. 1230 contemplates the convening of a Puerto Rican constitutional convention, which would formulate a status option to be considered by the people of Puerto Rico and the Congress. The convening of the convention, however, would be one part of a multi-step process. First, the Puerto Rican government would approve legislation establishing the number of delegates to the convention. Then, an election would be held in Puerto Rico to select those delegates. Once the constitutional convention was convened, the convention delegates would be asked to agree on a proposed "Self-Determination Option" for Puerto Rico. The convention's proposal would then be presented to "the People of Puerto Rico" in a referendum. Finally, if a majority of referendum voters approved the proposed status option, it would become a "Self-Determination Proposal," which would then be presented to Congress to be passed as a joint resolution.

The process suggested by H.R. 1230, however, would not necessarily end if the "Self-Determination Proposal" is passed or rejected by Congress. If Congress were to make any changes to the proposal before passage, then § 4(a)(1) of the bill provides that these changes would be submitted to the Puerto Rican voters for approval in another referendum before the proposal could take took effect. On the other hand, if Congress rejected the proposed status option outright, § 4(a)(2) provides that the constitutional convention may reconvene to develop a new proposal.

There are several aspects of H.R. 1230 that are of special note. First, a "Self-Determination Option" can involve Commonwealth status, statehood or independence. However, if the Commonwealth status is chosen, it must be a "new or modified" Commonwealth. This language appears to be related to the further requirement that, whatever status is chosen—Commonwealth, statehood or independence options—it must be "based on the sovereignty of the People of Puerto Rico and not subject to the plenary powers of the territorial clause of the Constitution of the United States." This language stands in contrast to the Task Force report, which

[1] A "free association" relationship generally entails negotiated legal and economic ties, severable by either side, between sovereign nations.

[2] See U.S. President's Task Force on Puerto Rico's Status, Report by the President's Task Force on Puerto Rico's Status (2005) (Task Force Report).

[3] Executive Order No. 13183, 65 FR 82889 (2000).

suggests that at least one of the status options, Commonwealth, cannot be formulated in a way that is not subject to Congress' power under Territorial Clause.

Of additional interest is the process to be followed by the Congress in the event that a "Self-Determination Proposal" is sent to the Congress by the convention. H.R. 1230 provides that if such option is submitted to Congress, then a joint resolution "shall" be enacted approving both the terms of the proposal and any necessary implementing language. At first impression, the use of the term "shall" would appear to contemplate that Congress would be required, under the bill, to accept the status option submitted by the convention. As will be discussed later, such an interpretation of this language may raise constitutional concerns.

One thing that the two bills do have in common is that they would both allow Puerto Ricans living off the island to participate in the proposed status decision-making. H.R. 900 would allow "all United States citizens born in Puerto Rico" who satisfy eligibility requirements set by the Puerto Rico State Elections Commission to participate in the plebiscites. The bill would thus allow Puerto Ricans born on the island, but not living there today, to participate in the plebiscites. H.R. 1230, on the other hand, appears to allow even broader suffrage. Although "voter eligibility" is not as explicitly addressed as it is in H.R. 900, the bill specifies that the "People of Puerto Rico" would participate in electing constitutional convention delegates and in the referendum on the convention's self-determination proposal. The "People of Puerto Rico" is defined to include resident Puerto Ricans and non-residents "who are either born in Puerto Rico or have one parent born in Puerto Rico."

At this point, I would like to briefly give some background on the political status of Puerto Rico. After the end of the Spanish-American War, the United States and Spain signed the Treaty of Paris, which resulted in Spain relinquishing its claims to various holdings in the Caribbean, including Puerto Rico. The island was then governed by a U.S. military governor from 1898 through1900.

In 1900, the Congress passed the Foraker Act, under which Puerto Rico became an organized territory of the United States.[4] This Act included numerous provisions to raise revenue, and it provided Puerto Rican citizenship for inhabitants of the island who chose not to remain Spanish citizens. The Act also established a civilian government in Puerto Rico, and provided for a non-voting Resident Commissioner to act as the island's representative in Congress.

Soon thereafter, the Supreme Court began a consideration of the island's constitutional status in what have become know as the Insular Cases.[5] For instance, in the case of Downes v. Bidwell,[6] the Court considered whether the constitutional requirement that duties, excises and imposts were to be uniform throughout the United States[7] applied to Puerto Rico. Justice White, in concurrence, established the territorial incorporation doctrine, which was ultimately used in the other Insular Cases. Under this doctrine, incorporated territories would enjoy all of the Constitution's protections, but unincorporated territories, such as Puerto Rico, would only enjoy fundamental constitutional rights and those additional civil rights that Congress provided by statute.

In 1917, Congress passed an Organic Act for Puerto Rico, which is popularly known as the Jones Act.[8] Among other things, the Act granted a bill of rights and statutory citizenship to the people of Puerto Rico. In 1950, the Congress passed the Puerto Rican Federal Relations Act,[9] giving Puerto Rico the right to establish a government and a constitution. This law is considered to be the basis for the modern Commonwealth relationship. In 1951, a referendum was held which approved the provisions of this Act, and the island's electorate subsequently approved a new Puerto Rican constitution. The constitution was then amended and approved by Congress. Since that time, a series of local referendums and plebiscites have been held on the status issue, but no significant change in political status has occurred.

The nature of the existing Commonwealth relationship between Puerto Rico and the United States has long been controversial. It is clear that the creation of the Commonwealth was intended to establish a significant level of self-government for Puerto Rico. However, disagreement exists about whether this relationship, which

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[4] Foraker Act of April 12, 1900, ch. 191, 31 Stat. 77 (1900).

[5] See, e.g., Downes v. Bidwell, 182 U.S. 244 (1901); Dorr v. United States, 195 U.S. 138 (1904); Balzac v. Porto Rico, 258 U.S. 298 (1922).

[6] 182 U.S. 244 (1901).

[7] U.S. Const. Art. I, § 8, cl. 1.

[8] Jones Act of March 2, 1917, ch. 145, 39 Stat. 951 (1917).

[9] Public Law 81–600, ch. 446, 64 Stat. 319 (1950).

was established in the "nature of a compact,"[10] was intended to be binding on both parties, so that changes to that relationship could only be made by mutual consent. A further question is whether, regardless of the intent of the parties, Congress can be constitutionally bound to observe such an agreement.

This debate is also important to the consideration of the status options provided for in the bills before the Committee. As noted, the Task Force has asserted that the only three constitutionally-recognized options available to the island are independence, statehood or continuation as a U.S. territory subject to the Territorial Clause. While H.R. 1230 also provides for three status options—independence, statehood or Commonwealth—it specifies that none of the status options shall be subject to the Territorial Clause. Assuming for the moment that the current Commonwealth status is subject to the Congress' power over territories, H.R. 1230 directly raises the issue of whether such a "new or modified" Commonwealth option not subject to the clause is constitutionally permissible.

Article IV, § 3, cl. 2, the Territorial Clause, provides that "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States...." The Supreme Court has held that Congress's power under the Territorial Clause is extremely broad:

> In the Territories of the United States, Congress has the entire dominion and sovereignty, national and local, Federal and state, and has full legislative power over all subjects upon which the legislature of a State might legislate within the State; and may, at its discretion, intrust that power to the legislative assembly of a Territory.[11]

It should be noted, however, that the Supreme Court has also held that the Congress has wide discretion in how it can provide for self-government in those territories:

> It must be remembered that Congress, in the government of the Territories as well as of the District of Columbia, has plenary power, save as controlled by the provisions of the Constitution, that the form of government it shall establish is not prescribed, and may not necessarily be the same in all the Territories. We are accustomed to that generally adopted for the Territories, of a quasi state government, with executive, legislative, and judicial officers, and a legislature endowed with the power of local taxation and local expenditures, but Congress is not limited to this form.... It may legislate directly in respect to the local affairs of a Territory or transfer the power of such legislation to a legislature elected by the citizens of the Territory.[12]

If Congress delegates authority to local authorities, however, this does not limit Congress' continuing power to act in that territory under the Territorial Clause. In First National Bank v. County of Yankton,[13] the Court said:

> All territory within the jurisdiction of the United States not included in any State must necessarily be governed by or under the authority of Congress. The territories are but political subdivisions of the outlying dominion of the United States. ... The organic law of a Territory takes the place of a constitution as the fundamental law of the local government. It is obligatory on and binds the territorial authorities; but Congress is supreme, and for the purposes of this department of its governmental authority has all the powers of the people of the United States, except such as have been expressly or by implication reserved in the prohibitions of the Constitution.[14]

Considering these parameters, the question arises as to how a court might interpret the language of H.R. 1230 which provides that all of the status options to be considered by the constitutional convention must "be based on the sovereignty of the People of Puerto Rico and not subject to the plenary powers of the territorial clause of the Constitution of the United States."

A preliminary question with which a court might be concerned is just how broad an assertion of sovereignty is contemplated by the bill, as the quoted language may be seen as ambiguous. For instance, an argument might be made this language provides only that, once a status option is chosen and approved by Congress, it was the agreement itself which was no longer subject to Congress's power under the

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[10] The preamble to the Puerto Rican Federal Relations Act provides that: "the Act is now 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." Id.

[11] Simms v. Simms, 175 U.S. 162, 168 (1899).

[12] Binns v. United States, 194 U.S. 486, 491 (1904).

[13] 101 U.S. 129 (1879)(upholding congressional authority over issuance of bonds by counties under the authority of a territory).

[14] Id. at 132. See also Sere v. Pitot, 6 Cr. (10 U.S.) 332, 336 (1810); American Insurance Co. v. Canter, 1 Pet. (26 U.S.) 511, 542 (1828); Shively v. Bowlby, 152 U.S. 1, 48 (1894).

clause. Another interpretation would be that, whatever status option is chosen, that once that option is approved, the Congress would no longer be able to exercise its territorial power over Puerto Rico.

If the first interpretation is correct, then this language would appear to be intended merely to "lock in" whatever status option was chosen by the Congress, by removing Congress' constitutional authority to amend the provisions of the enacted joint resolution. This interpretation would, of course, raise constitutional issues. In fact, it would appear to raise many of the same legal arguments that have been made over the course of years concerning the current Commonwealth status. In general, these arguments, while accepting the fact of continuing federal jurisdiction over the territory of Puerto Rico, have suggested that some essential portion of the existing political structure, such as the Puerto Rican Constitution, is beyond the Congress's power.

The fundamental controversy in this regard appears to be whether the Congress can be bound by political status agreements. For two of the status options provided under H.R. 1230, this would not be a problem. There is little disagreement with the suggestion that, if Congress granted Puerto Rico statehood or independence, these decisions could not be reversed, and that under either of these options, Puerto Rico would no longer be subject to the Territorial Clause. Nor is there any question that Congress, after endorsing a Commonwealth status proposal, could refrain from modifying that decision, so that no issue of constitutional consequence would arise. Thus, the main point at issue is how the legislation as it is constructed is to be interpreted.

It is not clear from H.R. 1230 what legal theory might be presented in this regard. Because of the similarity of the proposal to past theories regarding the Puerto Rican Commonwealth, one could postulate that some of the legal arguments made in that earlier context would be relevant. For instance, commentators have suggested that certain compacts granting self-governmental authority to a territory create "vested political rights." Under the Fifth Amendment, once the United States has vested a property right, then Congress cannot deprive a person of that property without due process of law; nor can that private property be taken for public use without providing just compensation. Under a "vested political rights" theory, a compact granting self-governmental authority to a territory could create such vested property rights, so that a subsequent Congress could not revoke the compact unilaterally. [15]

It is not clear, however, how this argument could be applied to the situation contemplated by H.R. 1230. As noted, the "vested political rights" theory relies on precepts of due process and the takings doctrine, both of which are found in the Fifth Amendment. H.R. 1230, rather than invoking the application of these constitutional protections, focuses on diminishing the authority of Congress under the Territorial Clause. Arguably, the provisions of H.R. 1230 may even work against the strength of the "vested political rights" argument. As noted, the Insular Cases found that the degree to which constitutional rights were applicable in the territories was often to be determined by Congress under the Territorial Clause. However, to the extent that the Territorial Clause was deemed no longer applicable to the "new or enhanced" Commonwealth, then this would appear to diminish the argument that the constitutional prohibition against the deprivation of "vested political rights" was still applicable to Puerto Rico.

Considering the constitutional problems with the "vested political rights" theory, one might consider an alternative interpretation of proposed language under H.R. 1230. Under this second interpretation, the passage of a "new or enhanced" Commonwealth would result, not just in a "locking in" of the status relationship, but also in a removal of all federal jurisdiction over the island of Puerto Rico. This interpretation, however, may raise more significant constitutional issues. As the Congress is limited to its enumerated powers, it must be determined under what authority the United States Congress could establish such a status relationship.

The portion of the Constitution which is most relevant to political status relationships is Article IV, § 3, which addresses three powers of Congress: the power to grant statehood, the power to regulate territories, and the power to dispose of territories. These three powers are consistent with the three status options of statehood,

[15] This theory of vested rights was apparently adopted by the Department of Justice in a 1963 legal opinion, and was reiterated as late as 1975. See Task Force Report, supra note 2 at 6. The Department of Justice apparently reconsidered this opinion after the 1986 Supreme Court decision in Bowen v. Agencies Opposed to Soc. Sec. Entrapment, 477 U.S. 41, 54-56 (1986) (holding that a State's purported contractual right to withdraw its employees from Social Security was not a property right). Since that time, the Department of Justice has apparently held the opinion that a political compact cannot rise to the level of vested property rights. Id.

Commonwealth subject to the Territorial Clause, and independence. H.R. 1230 does not specify under that what alternative constitutional authority Congress could act to create a Commonwealth not subject to the Territorial Clause, and as noted above, the "vested political rights" theory that has been suggested in the past may not be applicable to H.R. 1230.

Further, this second interpretation would result in a significant change in the relationship between federal government and Puerto Rico. Currently, a significant number of criminal or civil federal laws are applicable to Puerto Rico. To the extent that a "new or enhanced" Commonwealth would mean that there is a total loss of federal jurisdiction over Puerto Rico, this would suggest a more significant change in the existing Commonwealth relationship between Puerto Rico and the federal government than has generally been contemplated in the past. While it is certainly the case that the federal government could choose to amend federal laws to exclude their application to the Puerto Rico, this would not eliminate Congress's authority to reinstate such statutory provisions.

Another issue is whether, under H.R. 1230, the Puerto Rican constitutional convention could evade some of these constitutional concerns by proposing an amendment to the United States Constitution. It seems clear that a constitutional amendment could be used to achieve the status option of a "new or enhanced Commonwealth" not subject to the plenary territorial powers of the Congress. Such a status is simply not achievable through a statutory route. Thus, to the extent that the constitutional convention were to provide a "new or enhanced Commonwealth" status option regarding Puerto Rico, it would appear likely that it would need to take the form of a constitutional amendment.

On its face, H.R. 1230 does not specifically appear to limit a status option from being proposed as a constitutional amendment. There are certain aspects of the bill language which suggest that a proposed amendment to the Constitution would be appropriate. First, the bill provides that once a status proposal is submitted to Congress, that it shall be passed as a joint resolution, a legislative vehicle more commonly associated with special legislation such as constitutional amendments than with territorial legislation. Second, the bill itself speaks only in terms of Congressional approval of the joint resolution.[16] Normally, a joint resolution requires the approval of the President to become law. Thus, despite the failure to specify presidential participation, an interpretation of the bill would require either presidential participation or ratification by the states.

A final provision of H.R. 1230 that should be considered is the requirement that Congress "shall," by joint resolution, pass any proposal submitted by the Puerto Rican constitutional convention. The Supreme Court has held that a statute cannot bind a future Congress so that such statute cannot be repealed or altered.[17] As the Court long ago stated:

> The principle asserted is, that one legislature is competent to repeal any act which a former legislature was competent to pass; and that one legislature cannot abridge the powers of a succeeding legislature. The correctness of this principle, so far as respects general legislation, can never be controverted.[18]

Similarly, Congress could not mandate that a future Congress take a specified action such as the passage of a particular proposal.

Adding to the interpretational difficulties here is that, despite the requirement in H.R. 1230 that the Congress "shall" enact any status proposal, the bill specifically contemplates the possibility that Congress could either reject or modify (i.e., not pass) the status proposal. This brings into question whether the use of the term "shall" in this context is truly intended to be mandatory.

On a final note, if the Congress does fail to consider, pass or reject a status proposal, this may lead to other problems with the interpretation of the bill. For instance, as noted above, H.R. 1230 § 4(a)(1) and (2) contemplates additional procedures that can be taken in the event that Congress either modifies or rejects a status proposal. No such provision is made, however, in the event that Congress merely chooses not to consider a joint resolution containing the status options. One might argue that such a situation is contemplated by § 5 of the bill, which provides that the constitutional convention may remain in session until a self-determination proposal is enacted by Federal law. However, under the provisions of § 4(a) cited above,

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[16] See, e.g., H.R. 1230, § 4(a)(1)("If Congress approves the Self-Determination Proposal with any changes or amendments, it shall be submitted in a referendum vote to the People of Puerto Rico for approval before it shall be effective.")

[17] See Eule, Temporal Limits on the Legislative Mandate: Entrenchment and Retroactivity, 1987 Am. B. Found. Res. J. 379.

[18] Fletcher v. Peck, 6 Cr. (10 U.S.) 87, 135 (1810)(Chief Justice Marshall).

the Puerto Rican convention is only authorized to reconvene to propose another status option if Congress rejects the last one. If the Congress never considers the proposal, then it appears that the bill's language would not provide for the consideration of a second self-determination proposal by the convention.

Madam Chairwoman, that concludes my prepared statement. I would be happy to answer any questions that you or other Members of the Subcommittee may have, and I look forward to working with all Members and the staff of the Subcommittee on this issue in the future.

Ms. CHRISTENSEN. Thank you, Mr. Thomas. We will next recognize Professor Gorrín-Peralta.

STATEMENT OF CARLOS I. GORRÍN-PERALTA, PROFESSOR, INTER-AMERICAN UNIVERSITY SCHOOL OF LAW, PUERTO RICO

Mr. GORRÍN-PERALTA. Good morning, Madame Chairwoman and Members of this Subcommittee.

Puerto Rico is a colony of the United States. It has been an unincorporated territory since the relation began in 1898, 109 years ago. Coincidentally, back in 1898 the Constitution was 109 years old.

For 50 percent of its constitutional history, the United States has submitted the people of Puerto Rico to colonial rule, which is a subversion of the basic values on which the American Republic was founded.

The Declaration of Independence says that governments are instituted among men deriving their just powers from the consent of the governed. Self-determination was reaffirmed when the people, through a constitutional convention, adopted the Constitution. Over the blood spilled on Gettysburg, Lincoln would renew the proposition that government of the people, by the people, and for the people should not perish from the earth.

Yet, over the course of the 19th century, the nature of the Republic was transformed. What Jefferson had referred to as the republican ideal of an empire of liberty somehow mutated into a very unrepublican regime that claimed the liberty to rule an empire.

As a result of the doctrine of territorial non-incorporation constitutionalizing the Insular Cases, everyone in Puerto Rico is daily subjected to the obligation of Federal laws from dawn to sundown, and even in our sleep, without our consent.

You will surely hear happy colonials or their retained representatives say that in 1952, the people of Puerto Rico consented wholesale to the present relationship, but that is tantamount to saying that a slave owner may validly maintain a regime of involuntary servitude with the consent of the slaves. No individual may consent to slavery. No people may consent to colonialism.

The world has changed. The day has come for the United States to finally solve the contradiction between colonial rule and fully democratic government. Even Justice White, the judicial artificer of the doctrine of territorial incorporation, spoke in his opinion in Downes v. Bidwell of, and I quote, "obligations of honor and good faith which sacredly bind the United States to terminate the dominion and control when the situation is ripe. The presumption must be," he added, "that Congress will be faithful to its duty under the Constitution."

To comply with international law regarding the colonization, Congress ought to pass legislation that first and foremost declares the unequivocal intention of Congress to divest itself of the powers it has exercised under the territory clause.

The process of self-determination should begin with the free expression of the people of the will to change the present territorial relation. The Congress ought to recognize the inherent constituent power of the people of Puerto Rico to call for the election of a constitutional assembly as depository of the sovereignty of the people to propose, negotiate, and agree to future relations with the United States.

How do H.R. 900 and H.R. 1230 attempt to comply with these proposed standards? H.R. 900 proposes, as has been said, a series of plebiscites to solve the status issue with a clear Congressional purpose to renounce the territorial powers.

In the first plebiscite, should the majority reject the existing territorial status, there would be a clear exercise of self-determination which would require a solution with all deliberate speed.

The bill poses several problems, which I discuss in my written testimony. For example, the ballot language should be simplified and clarified to elicit a yes or no answer to the following proposition I suggest. Puerto Rico should no longer be subject to the powers of Congress under the territory clause of the Constitution of the United States.

H.R. 1230 also has some positive and negative aspects. It would recognize the principle of sovereignty of the people of Puerto Rico, and its inherent authority to call a constitutional convention to propose a self-determination option not subject to the territory clause.

However, H.R. 1230 does a little more. It contemplates that a future Congress will enact a joint resolution to approve the terms of the proposal. That, of course, is wishful thinking at best, since one Congress may not bind a future Congress.

Both H.R. 900 and H.R. 1230 have positive aspects and pitfalls. Both could complement each other by drawing on the positive aspects of each other. What is of paramount importance at this point is that Congress act now to set the process of self-determination and decolonization in motion. H.R. 900 is a step in that direction.

One hundred and nine years ago began a colonial regime which demeans both the colonized and the colonizer. The time has come to send a clear signal to the world that Justice John Marshall Harlan was right when he stated in his dissent in Downes v. Bidwell 106 years ago that, and I quote, "the idea that this country may acquire territories anywhere upon the earth, by conquest or treaty, and hold them as mere colonies or provinces, is wholly inconsistent with the spirit and genius, as well as with the words, of the Constitution."

Thank you very much.

[The prepared statement of Mr. Gorrín-Peralta follows:]

Statement of Carlos Iván Gorrín-Peralta, Professor, Puerto Rico's Inter-American University School of Law

Good morning, Madam Chairwoman and members of this Subcommittee.

Thank you for the invitation to share with you my perspective regarding the two bills under consideration. I will first outline some historical and legal concepts

regarding the relations between Puerto Rico and the United States, as necessary background for my analysis of the two measures.

Puerto Rico is a colony of the United States. It has been an unincorporated territory of the United States since the relation began as an act of war in 1898, one hundred and nine years ago. Coincidentally, in 1898 the Constitution of the United States was one hundred and nine years old. That means that for fifty percent of its constitutional history, the United States has submitted the people of Puerto Rico to the ignominy of colonial rule, which is a subversion of the basic values on which the American Republic was founded.

The Declaration of Independence of 1776, which has been heard more clearly around the world than the shots fired at Lexington and Concord, states that "governments are instituted among men deriving their just powers from the consent of the governed.—[I]t is the right of the people—to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness." That seminal act of self determination was reaffirmed when "the people", through a constitutional convention, as depositary of popular sovereignty, and through ratification of the proposed document, adopted the Constitution of the United States. Blood had been spilled to secure that right of self-determination, and has continued to spill since then throughout the world. Four score and seven years after independence, over the blood spilled on Gettysburg, Lincoln would renew the proposition that government OF the people, BY the people and FOR the people should not perish from the earth.

Yet, over the course of the 19th Century, the nature of the Republic was transformed. What Jefferson had referred to as the republican ideal of an empire of liberty somehow mutated into a very unrepublican regime that claimed the liberty to rule an empire. Constitutionally, the territory clause of the Constitution, which had been conceived as a mere property clause granting the federal government the power to dispose of and make all needful rules and regulations respecting the Northwest territory and other property belonging to the United States, was reinterpreted as granting Congress the power to acquire new territories by purchase or by conquest, and to exercise sovereignty over them, even though their inhabitants were not allowed to participate in their own government.

By the 1890's, dominant racist and imperialistic ideologies resulted in the infamous doctrine of "separate but equal" of Plessy v. Ferguson, 163 U.S. 537 (1896), and in the colonial doctrine of territorial non incorporation, enacted into law in 1900, and judicially constitutionalized in the Insular Cases from 1901 onward. Since then, Congress has purported to exercise constitutional power indefinitely over the nonincorporated territories—Puerto Rico included—as possessions which are not part of, but merely appurtenant to the United States. Never mind that those possessions are not mere tracts of real estate, but are inhabited, as is Puerto Rico, by a distinct and separate people who, despite their inalienable right to self-determination and their inherent constituent power, have never been allowed to exercise their collective rights as a people.

The federal government is not a government OF the people of Puerto Rico, nor is it in any way validated BY the people, nor does it rule FOR the people of Puerto Rico, but as it should be, for the interests of the people and institutions whom it represents. And yet, everyone in Puerto Rico is daily subjected to the application of federal laws, from dawn to sundown, and even in our sleep. Federal laws apply in Puerto Rico without our consent or real participation in the Congress which enacts them. The federal executive administers such laws in Puerto Rico despite the fact that we do not participate in its election. The federal judiciary interprets and applies the laws in Puerto Rico, despite the fact that the judges are designated by a President we do not elect, and are confirmed by a Senate in which we do not have even nominal participation.

You will surely hear testimony of happy colonials or their retained representatives, to the effect that in 1950 to 1952 the people of Puerto Rico consented wholesale to the present relationship. But that is tantamount to saying that a slave owner may validly maintain a regime of involuntary servitude so long as he asks his slave whether she wants to adopt the rules for her household or whether she prefers that the master continue to dictate those domestic rules. Colonialism, like slavery, violates inalienable rights which may not be validly abrogated or renounced. No individual may consent to slavery; no people may consent to colonialism.

The legislative record of Law 600 of 1950 is clear. The purpose of the enactment was to allow Puerto Rico a greater degree of local self government and to obtain acquiescence of the colonized to the existing territorial relationship. The nature of the relation was to remain intact, as were the legislative authority of this Congress, the executive power of the President, and the judicial jurisdiction of federal courts.

The scheme was made possible by the territory clause and the doctrine of the Insular Cases, which have allowed the denial of the right to self determination, and present a grave inconsistency with the founding values of the Republic. The doctrine defers to the political branches of the federal government the governance of the territories on the basis of political expediency. At the end of the 19th Century colonialism was enthroned as the law of the land, and basic tenets of democracy, liberty and self-determination were set aside to serve the national self-interest through the acquisition of new unincorporated territories.

The world has changed. The national interests that prompted the acquisition of Puerto Rico were strategic and economic. Puerto Rico no longer has the strategic value it once had. Economically, the colony has failed and our society is crumbling. The national self-interest is now best served by a new policy aimed at the disposition of the territory of Puerto Rico and the implementation of measures to promote the right to self-determination. Far from condemning the United States to continue an imperial policy of colonial rule, the doctrine of territorial incorporation leaves ample space for congressional action with respect to the territories. The day has come for the United States to finally solve the contradiction existing for too long between colonial rule and fully democratic government. Even Justice White, the judicial artificer of the doctrine of territorial incorporation, spoke in his opinion in Downes v. Bidwell, 182 U.S. 244 (1901), of "obligations of honor and good faith which—sacredly bind the United States to terminate the dominion and control, when, in its political discretion, the situation is ripe to enable it to do so." Faced with the prospect that his theory could be used to hold an unincorporated territory indefinitely, he stated:

> [T]he presumption necessarily must be that [the legislative] department, which within its lawful sphere is but the expression of the political conscience of the people of the United States, will be faithful to its duty under the Constitution, and, therefore, when the unfitness of a particular territory for incorporation is demonstrated the occupation will terminate.... [No pledge is] more sacred than—that great pledge given by every member of every department of the government of the United States to support and defend the Constitution.

This is the historical and legal background against which decisions are to be made to facilitate a truly meaningful process of decolonization, of disposition of the territory and the exercise of the right to self determination.

The political process necessary to resolve the territorial conundrum is twofold. Substantively, what kind of relationship should exist between Puerto Rico and the United States? The four options mentioned in the Puerto Rican political discourse are: (1) the present territorial relationship under the sovereignty of the United States; (2) full sovereignty under independence as a basis for a new relationship established by treaty; (3) admission as a state of the Union; or (4) sovereignty limited by a compact of free association, as that concept is defined under international law. Of course, the first is not really an option; territoriality is the problem, so it cannot be the solution. The other three will depend on the final decision of the people, and in the case of statehood and free association, the approval by Congress.

The other aspect of the process is procedural: how to reach the final substantive decision. H.R. 900 and H.R. 1230 suggest different approaches. Both have strengths and both have weaknesses. Neither, by itself, is an appropriate measure. But both have elements which could be combined in a new measure. Both pose many questions and raise issues which cannot be addressed in the limited time now available. I will focus on its fundamental design.

In order to comply with international law regarding decolonization, the measure ought to, first and foremost, declare the unequivocal intention of Congress to dispose of the territory, and to divest itself of the powers it has exercised over Puerto Rico under the territory clause of the Constitution. Once Congress complies with its international and constitutional obligation, the process of self-determination should begin with a free expression of the people of the will to change the present territorial relation and to enter into a future relation whereby Puerto Rico shall not be subject to congressional power under the territory clause. In order to promote subsequent actions towards self-determination in Puerto Rico, Congress ought to recognize the inherent constituent power of the people of Puerto Rico to call, through its elected government, for the election of a constitutional assembly, as depositary of the sovereignty of the people, or any other decolonizing mechanism, to propose, negotiate and agree to future relations with the United States that will not be colonial or territorial in nature. Finally, the process of self-determination would culminate with the ratification by the people of the terms of the new relation.

How do H.R. 900 and H.R. 1230 attempt to comply with these proposed standards?

H.R. 900 proposes a series of plebiscites to solve the status issue. In a first plebiscite, the people would select between the existing territorial status and an alternative "viable permanent nonterritorial status." The bill would allow for a valid exercise of self determination if the people were to claim a change in status on the first round of voting. Should a majority reject the existing territorial status, there would be a clear exercise of self determination which would require a solution with all deliberate speed.

There are some problems with the first vote. The language of the ballot defines the alternative as "a constitutionally viable permanent nonterritorial status." The concept of "constitutional viability is ambiguous. It would invite subsequent controversies regarding what is viable or not, when the different political groups would begin specifying their status options for the second round of voting. In addition, the second plebiscite would require that the voter select between statehood and "sovereign nation," grouping here both independence and free association, two distinct options. Free association is by definition not permanent, since any party to the relation may opt out at any time.

The second round of voting presents another pitfall. A rejection of the current status and a demand for change in the first vote would automatically prompt a second plebiscite in which the voter would choose between statehood and another nonterritorial option. Experience shows that a significant number of Members of Congress would not support H.R. 900 because it would contain a self-executing provision that could result in a majority demand for statehood. No one here will come out and say it explicitly, but you know it is true; and that provision might hinder approval of the bill as it stands and stagnate the process. Nothing should stand in the way of congressional action at this time.

On the other hand, if the majority were to select the existing territorial status in the first vote, then another plebiscite would be held eight years later. It could be interpreted that Congress would have implicitly decided to renounce to its territorial powers at some future indefinite date when the people so decide. But there is no explicit declaration to that effect, and furthermore, the bill contemplates the possibility of consent to territoriality for periods of eight years, an excessively long period of territorial government, which contradicts the true intention of the measure which is to end the territorial regime.

The greatest problem with H.R. 900 lies in its absolute silence regarding the inherent constituent power of the people to determine their future. On the contrary, the bill would require that the permanent nonterritorial status be designed and submitted to Congress by the President's Task Force on Puerto Rico's Status, in mere consultation with the Governor, the Resident Commissioner, the President of the Senate and the Speaker of the House of Representatives of Puerto Rico. That is a flagrant denial of self-determination and a usurpation of the constituent power that belongs to the people. Those four officials will not have been endowed, nor can they be endowed by this Congress, with constituent power, nor can they validly represent the people in this matter.

H.R. 1230, on the other hand, also has some positive and negative aspects. First, on the positive side, the bill is premised on an implicit policy of disposition of the territory, that is, a congressional objective to renounce to its territorial powers. The definition of a "self-determination option" would recognize the principle of sovereignty of the people of Puerto Rico and limit options for the future to alternatives not subject to the plenary powers of the territory clause of the Constitution. Some may argue, as they have in the past, that since 1952 this Congress does not exercise plenary powers. Therefore, they would probably argue, if the current language is enacted, that the existing relationship could be a self-determination option. That, of course, is contrary first to the understanding of probably all 535 Members of Congress regarding the plenary nature of all federal powers, as decided almost two hundred years ago in McCulloch v. Maryland, 17 U.S. 316 (1819). In any case, the ambiguity can be avoided by changing the phrase "plenary powers" in Section 2 (2) of the bill, page 2, line 12, to the words "any powers."

Section 3 of the bill would recognize "the inherent authority of the people of Puerto Rico to call a constitutional convention—in accordance to legislation approved by the Commonwealth of Puerto Rico," which under Section 5 would remain in session until a definite self-determination proposal is finally adopted by the people in referendum and "enacted by federal law." There is a major flaw in Section 5. Only a territorial status option or an admission to statehood would culminate in a federal law. Relations under both independence and free association would culminate with the signature and ratification of a treaty. I would suggest that the language be modified as follows: "A constitutional convention—may remain in session until all legal instruments needed for transition to a new nonterritorial relation shall have come into effect."

Despite its positive recognition of the inherent authority of the people, H.R. 1230 does little more. Section 4 contains a non-binding desideratum that whenever the constitutional assembly submits a self-determination proposal to Congress, that future Congress will enact a joint resolution to approve the terms of the proposal. That, of course, is wishful thinking at best, since one Congress may not bind a future Congress. In any event, requiring congressional approval to implement independence would be illegal under international law because once a people select independence, the colonial power may only accede to the demand and facilitate by law, not the decision itself, but the transition to the new status.

In conclusion, both H.R. 900 and H.R. 1230, as I have said before, have positive aspects and pitfalls. By facilitating that the people demand a profound change through a plebiscite, now or eventually, H.R. 900 clearly pursues a policy of disposing of the territory by congressional renunciation of the powers under the territory clause of the Constitution. On the other hand, H.R. 1230 would recognize the authority of the people of Puerto Rico to call for a constitutional convention as the procedural mechanism for the exercise of its right to self-determination.

What is of paramount importance at this point is that Congress act now, to set the process of self-determination and decolonization in motion. H.R. 900 is a step in that direction. In the first plebiscite the people could decide that the time has come to demand a change in the fundamental nature of the relationship. The ballot submitted to the voter should elicit a Yes or No answer to the following proposition:

> Puerto Rico should no longer be subject to the powers of Congress under the territory clause of the Constitution of the United States of America.

Congress has the legal and moral obligation to act. Unfortunately, disagreement among the different political sectors of Puerto Rican society has been used as an excuse for inaction in the past. The result has been congressional complicity during the one hundred and nine years of a colonial regime which demeans both the colonized and the colonizer. A radical transformation of the relationship is in order, now.

The time has come for Congress to finally find it in the best interest of the United States to send a clear signal to the Supreme Court, to the Puerto Rican people and to the world to the effect that Justice John Marshall Harlan was right after all when he stated in his dissent in Downes v. Bidwell, one hundred and six years ago, that "the idea that this country may acquire territories anywhere upon the earth, by conquest or treaty, and hold them as mere colonies or provinces—is wholly inconsistent with the spirit and genius as well as with the words of the Constitution."

Thank you.

Ms. CHRISTENSEN. Next we will hear from Mr. Ramón Luis Nieves.

STATEMENT OF RAMÓN LUIS NIEVES, EXECUTIVE DIRECTOR, MOVIMIENTO AUTONOMISTA SOCIALDEMÓCRATA

Mr. NIEVES. Thank you. I appear before you as Executive Director of Movimiento Autonomista Socialdemócrata, MAS.

MAS is a political organization that advocates for the adoption of a Compact of Free Association between the United States and Puerto Rico.

I also appear as a student of the status issue. As a result of such studies, I published a book titled "Estado Libre Asociado del Siglo XXI," an argument for free association.

MAS has decided not to state an official preference either for H.R. 900 nor H.R. 1230. Our goal is to share our thoughts as to both bills, in the hope that future action by Congress provides for an effective process of self-determination.

The discussion of process must be based on two basic premises: fundamental fairness and expediency. Fundamental fairness requires that any bill approved by Congress provides a mechanism that does not play favorites with any status formula.

The U.S. will violate international law if it fails to recognize on equal grounds the options of statehood, independence, and free association.

The other premise is expediency. The economy of Puerto Rico is currently undergoing an historic crisis. MAS believes that resolution of the status problem is key to the acquisition of the tools required to implement solutions to our economic and social problems. The process to solve the status issue must begin sooner, rather than later.

Our first comment on H.R. 900 is that there is no need to vote in order to express dissatisfaction with the current territorial status. The three political parties in Puerto Rico already advocate for a non-territorial status option.

The proposed first plebiscite will be redundant, and it will delay resolution of the issue.

MAS also objects to the sovereign pathway of the second plebiscite. As it is, H.R. 900 will contribute to play favorites with statehood by merging the association alternative with independence. This approach will certainly help those who have insisted on eliminating political association from any status process.

Congress should not be confused by those who articulate the apparent value of assigning an artificial minority in favor of statehood.

Hence, MAS proposes the following amendments to H.R. 900. Elimination of the first plebiscite and separate columns for statehood, independence, and free association in the remaining electoral event.

Enter H.R. 1230. In Puerto Rico, the language of politics or the politics of language has electoral consequence. The combination of Puerto Rican sovereignty with the concept of new or modified commonwealth should be clarified.

MAS will support the association option as long as it is non-territorial and sovereign in nature. It is clear and in compliance with international law and U.S. Constitutional practice.

H.R. 1230 must be amended to establish a process to implement the association alternative. The complexities of political association require that the option be submitted to the electorate in the form of a statement of principles. MAS has already submitted to the Subcommittee a statement of principles for free association. A similar statement will be the type of proposal submitted to the voters, and then included as part of the joint resolution contemplated in H.R. 1230.

MAS also proposes that Section 4 of H.R. 1230 be amended to provide that in the case of the approval of an association option, Congress instructs the Executive Branches of both the U.S. and Puerto Rico to designate representatives to a bilateral commission 60 days after approval of the joint resolution.

This commission will be in charge of negotiating a compact of free association during a period of no more than two years, with a possibility of an additional one-year extension.

The need for expediency leads MAS to propose that Section 3 of H.R. 1230 be amended to express that the initial process of articulating a self-determination option be limited to two years, with an additional one-year extension declared by the convention itself.

MAS believes that Puerto Rico needs the political and economical powers inherent to sovereign free association in order to maximize the opportunities available for our nation, Puerto Rico, in the global economy. We sincerely hope that this Congress agrees on a fair and expedient mechanism in furtherance of our self-determination, as well as the democratic ideals and international obligations of the United States.

Thank you.

[The prepared statement of Mr. Nieves follows:]

Statement of Ramón Luis Nieves, Esq., Executive Director, Movimiento Autonomista Socialdemócrata

My name is Ramón Luis Nieves. I am an attorney-at-law in the private sector. I appear before you as executive director of Movimiento Autonomista Socialdemócrata (MAS). MAS is a political organization that advocates for the adoption of a Compact of Free Association between the United States (U.S.) and Puerto Rico, and for diverse ideas of social justice and economic development. The option of free association advocated by MAS would be based in the U.S. constitutional experience in the Pacific, but also taking into account the important differences between Puerto Rico and the Micronesian nations, including U.S. citizenship; Puerto Rican national identity and; levels of economic assistance and integration with the U.S.

I also appear as a person who has studied the U.S.-Puerto Rico relationship for half of my life. As result of such studies, I published a book titled "Estado Libre Asociado del Siglo XXI", whose second edition appeared in 2004. The abovementioned book, an argument for free association, contains a critical analysis of Commonwealth status, as well as a detailed analysis of the Compacts of Free Association between the United States, the Federated of Micronesia, the Marshall Islands and Palau. It also includes discussions about the negotiations for "Compact II", approved by the 108th Congress and President George W. Bush in 2003, a process which I followed closely.

Let me begin by commending Chairwoman Donna M. Christensen, for convening hearings to discuss both H.R. 900 and H.R. 1230. We are grateful for the opportunity to appear before the Subcommittee to share our views on both bills.

MAS has decided not to state an official preference either for H.R. 900 nor H.R. 1230. Our goal is to share our thoughts as to both bills, in the hope that future action by Congress provides for an effective procedural mechanism in furtherance of self determination for the Puerto Rican nation.

The Basic Premises: Fundamental Fairness and Expediency

The discussion of process must be based on two (2) basic premises: fundamental fairness and expediency.

The U.S. government must take into account that, since the 19th Century, the Puerto Rican nation has been debating its definitive political status. Three main currents of political thought or aspirations have emerged during the process: independence, statehood and an alternative of political association, which has prevailed in all the referenda held during the last part of the 20th Century.

Fundamental fairness requires that any bill approved by Congress provides a mechanism that does not "play favorites" with any status formula. MAS submits that the U.S. would violate recognized principles of international law, such as the right of self determination, if it approves any process that fails to recognize, on equal grounds, the options of statehood, independence and political association. International law on the subject, as codified by United Nations Resolution 1541 (XV), recognizes integration, independence and free association as separate options of self government. American constitutional experience has also recognized such options when it granted independence to the Philippines; when it incorporated into the Union thirty seven (37) territories and; when Congress approved Compacts of Free Association with the former Strategic Trust Territories in the Pacific.

In addition to the aforementioned legal and constitutional framework, Congress should take notice that no advancement has been made in previous congressional efforts where one or more status options have been excluded from the process. Three options, separated from each other, presented in a fair way for their evaluation and approval by the Puerto Rican nation: that is the fundamental fairness required for any real process to advance.

The other premise of any status process is expediency. The economy of Puerto Rico is currently undergoing a historic crisis. The current crisis of the Puerto Rican economic model includes as factors the end of federal tax incentives (known as IRC Section 936 / 30A), which were an important element of the Puerto Rican economy during most part of the 20th Century; a self inflicted fiscal crisis; problems in governance of the Commonwealth government and social ills and basic inequality in Puerto Rican society, expressed by an increase in substance abuse, alienation, violence at all levels and an alarming decrease of general civility. The Puerto Rican crisis has caused the migration to the U.S. of thousands of well-educated professionals and workers, mostly to Florida, in search of the quality of life and material opportunities that they have not been able to find in our Islands.

MAS believes that resolution of the status problem is key to the acquisition of the tools required to implement permanent solutions to the economic and social problems that affect the Puerto Rico. Hence, MAS submits that the process to solve the status problem must begin sooner rather than later.

In accordance with the abovementioned premises, I hereby submit our comments to H.R. 900 and H.R. 1230.

H.R. 900—"The Puerto Rico Democracy Act of 2007"

H.R. 900 provides for the calling of at least two plebiscites. The first of such plebiscites would be held in 2009. That first plebiscite would allow the Puerto Rican voters to decide if the current territorial status shall continue, or if they would prefer to pursue a path toward a so-called "constitutionally viable permanent nonterritorial status". If the majority of the voters agree with the continuation of territorial status, plebiscites would be held every eight (8) years, until the voters favor the other option.

If voters choose the "pathways" option, a second plebiscite would be held between two (2) alternatives: a path towards statehood, or a path toward a "sovereign nation", either fully independent from or in free association to the U.S. This second plebiscite would be held during the 112th Congress, in 2011, four (4) years and two (2) subsequent terms of Congress later.

If H.R. 900 has been conceived in furtherance of democratic principles for the Puerto Ricans, it would do so very late. Assuming that the voters approve the "pathways" option in 2009, they will not begin to walk towards their chosen "path" until 2011. The proponents of the bill apparently have figured that the process of self determination would be affected if it is debated on an election year for the Presidential election, the Puerto Rican general election, and future congressional elections. This appears to be the only reason for the proposed stalling of our self determination.

However, MAS believes that such considerations are contrary to the urgent economic needs of the Puerto Rican nation. Moreover, the Puerto Rican electorate is more than ready to cast their votes. One hundred and nine (109) years of painful and costly political education is more than enough time. Puerto Ricans should not be required to wait another two, three, or even eight years to conclude the status issue.

MAS also opposes the proposed first plebiscite. In our view, there is no need to vote in order to express dissatisfaction with the current territorial status. The vast majority of Puerto Ricans, and the three registered political parties in Puerto Rico, already have expressed their desire for a non-territorial status option. Even the Popular Democratic Party, which has advocated in the past for minor "modifications" to the current form of Commonwealth, now officially advocates on its platform and by mandate of its governing bodies, for an option of non-territorial political association based in the sovereignty of the Puerto Rican People.

As to the U.S., the apparent consensus in the body politic since the early 1990's is that Puerto Rico remains a territory under the Constitution. Both Congress and the Executive branch have repeatedly referred to Puerto Rico as a "territory". The federal body politic has even described the creation of the Commonwealth during the 1950's as an "arrangement", as opposed to a legitimate political association. The apparent honesty in confessing the colonial nature of its relationship with Puerto Rico serves to explain why the U.S. has not vehemently opposed the annual resolutions passed by the United Nations Committee on Decolonization since the 1990's. The end, both of the Cold War and the strategic significance of the Puerto Rican Islands, accelerated the process whereby the U.S. has come out of its colonial closet.

An additional argument to oppose the first plebiscite proposed on H.R. 900 is that it could severely damage the self determination process itself. If the electorate rejects the current territorial relationship by voting for the "pathways" option, Puerto Ricans would have effectively and directly ended the legitimacy of U.S. sovereignty over Puerto Rico. As argued above, the legitimacy of U.S. sovereignty has already been put into question by the majority of Puerto Ricans in the political discourse.

However, a direct rejection of current territorial status through the ballot would place Puerto Rico in a state of pure and unadulterated colonial rule by the U.S. Puerto Rico would be back to 1949, all over again.

MAS also objects to the "sovereign pathway" proposed as alternative in the second plebiscite contemplated on H.R. 900. This so-called "pathway" runs counter to the premise of fundamental fairness mentioned above. Instead of a sole pathway to sovereignty, MAS proposes separate columns for the independence and free association options.

As it is, H.R. 900 will contribute to "play favorites" with the "pathway" toward statehood. Although some Puerto Ricans desire independence, advocates for statehood have historically claimed that free association, or even minor modifications to Commonwealth status, are really a backdoor to independence. These are precisely the type of political games that have been rejected and vehemently opposed by the Puerto Rican nation in the not so distant past. Congress should not be confused or impressed by those who articulate the apparent value of simplifying the status option in order to manufacture a fraudulent and artificial majority in favor of the "pathway" to statehood.

MAS strongly considers urges you to consider that the option of political association is neither "derivative", nor dependent, on full independence. This position has been validated by U.S. constitutional practice and international law on the subject.

Last, but not least, this Congress must respond a fundamental policy question: whether to allow non-resident persons who claim Puerto Rican descent to participate in the self determination process. H.R. 900 would bar from the process persons who, although born outside of Puerto Rico, claim Puerto Rican descent. On the other hand, H.R. 1230 would allow the vote of non-resident persons either born in Puerto Rico, or who have one parent born in the Islands. This policy question goes to the heart of the debate of national identity. The definition of who could be considered a member of the Puerto Rican nation is fundamental to our process of self determination.

MAS agrees with the approach proposed on H.R. 1230 as to this important issue. The economics of colonialism are mostly responsible for the migration to the U.S. and the national identity issues of people of Puerto Rican descent living in the U.S. Hence, exclusion of persons who claim Puerto Rican descent from a self determination process would be a cruel and cynical position to assume.

H.R. 1230—"The Puerto Rico Self-Determination Act of 2007"

H.R. 1230 provides for the recognition by Congress of "the inherent authority of the People of Puerto Rico to call a Constitutional Convention" for the purpose of proposing a "Self-Determination Option" to the People of Puerto Rico. The so-called "Self-Determination Options" are statehood, independence and a "new or modified Commonwealth status"; all of which "must be based on the sovereignty of the People of Puerto Rico and not subject to the plenary powers of the territorial clause of the Constitution of the United States".

In Puerto Rico, the language of politics, or the politics of language, has electoral consequences. In all fairness, the combination of Puerto Rican sovereignty with the term "new or modified Commonwealth status" should be clarified. The explicit clarification of the non-territorial and sovereign nature of the association option is the paramount issue here. MAS would support the association option as long as its non-territorial and sovereign nature is clear and in compliance with applicable international and U.S. constitutional law.

An important point has to be raised as to the process to consider free association (or the so-called new or improved "sovereign" Commonwealth.) as a "Self-Determination Option". H.R. 1230 must be amended to establish an adequate and workable process to implement the "sovereign association" alternative. In the case of "sovereign association", the nature of the political process would require that the "Self Determination Option" that the Constitutional Convention would submit to the electorate be prepared in the form of a "declaration of principles" of association. The existing Compacts of Free Association, their Subsidiary Agreements, and even the CNMI Covenant, are complex documents which were the result of lengthy negotiations.

MAS includes, as an Exhibit, a "Statement of Principles for Free Association between the United States of America and Puerto Rico". The enclosed "Statement of Principles" is based on the "Hilo Principles" agreed upon between the U.S. and Micronesia during a crucial stage of the Compact I negotiations, in the late 1970's. A similar "statement of principles" would be the type of proposal that, in reality, could be submitted to the electors, and then be included as part of the joint resolution contemplated in Section 4 of H.R. 1230.

Considering the constitutional experience of the U.S. as to the negotiation of compacts of free association, MAS proposes that Section 4 of H.R. 1230 be amended to provide that, in the case of the approval of a "Self Determination Option" named either as "free association" or "sovereign association", the joint resolution to be passed by Congress instructs the executive branches of both the U.S. and Puerto Rico to designate representatives to a bilateral commission, sixty (60) days after its approval. This bilateral commission would be in charge of negotiating, drafting and agreeing on a Compact of Free Association, which would then be submitted both to the Puerto Rican electorate and the Congress. MAS also proposes that the joint resolution instructs the bilateral commission to conduct negotiations for a Compact and its Subsidiary Agreements on a period of no more than two (2) years, with the possibility of an additional one-year extension.

It is proper to address the issue of uncertainty in the time-frame to start the process of self-determination proposed in H.R. 1230. This is a gray area. An instruction by Congress of a time-frame to conclude approval by a Constitutional Convention of a "Self-Determination Option" could be construed as an obstacle to our right of self-determination. However, the abovementioned need for expediency leads the MAS to propose that Section 3 of H.R. 1230 be amended to express that the initial process of proposing a "Self-Determination Option" would not last more than two (2) years, counted from the moment the bill becomes Federal law, with an additional one-year extension, which would be approved by the Convention itself. MAS believes that two (2) years is a fair time-frame to call the Convention, elect the delegates, prepare the proposal, and submit it to the electorate. H.R. 1230 already provides for the situation whereby the voters reject the proposal of the Convention, and such mechanism would not be affected by the proposed time-frame.

Lastly, the Subcommittee must consider a political reality in Puerto Rico as to the procedural alternative of a constitutional convention. The Independence Party of Puerto Rico and the Popular Democratic Party, who favor independence and sovereign association, respectively, currently agree on a constitutional convention as the preferred process of self determination. Together, they represent more than half of the voters in Puerto Rico. However, the pro-statehood New Progressive Party officially opposes the alternative of a constitutional convention. The official objection of the party leadership is that a direct election through plebiscites is by nature more democratic than the People acting through delegates to a Convention. The real basis for their opposition is that the party suspects that pro-independence and pro-association advocates would create a political alliance in favor of sovereign free association.

Sadly, the opposition of the New Progressive Party represents an important roadblock to the procedural mechanism contemplated by H.R. 1230. The party represents almost half of the electorate. Furthermore, the New Progressive Party has a history of ignoring and, in fact, acting in opposition to the democratic wishes of the People. Such was the aftermath of pro-Commonwealth results in the 1967 and 1993 plebiscites, which were not respected by the pro-statehood party. The history of non-compliance with the will of the People by the pro-statehood party presents an important challenge to the mechanism proposed in H.R. 1230.

Conclusion

MAS believes that Puerto Rico needs the political and economical powers inherent to sovereign free association, in order to maximize the opportunities available for our nation in the global economy.

We sincerely hope that the Subcommittee on Insular Affairs takes our comments into consideration. The Puerto Rican nation also hopes that this Congress agrees on a fair and expedient mechanism in furtherance of our right of self determination, as well as the democratic ideals and international obligations of the United States of America.

EXHIBIT

"Statement of Principles for Free Association between the United States of America and Puerto Rico"

1. The United States and the Free Associated State of Puerto Rico shall negotiate and enter into a Compact of Free Association, which could only be altered by mutual consent;

2. The People of Puerto Rico shall retain all powers not specifically delegated in the Compact to the United States;

3. The United Status will provide financial and technical assistance to the Free Associated State of Puerto Rico, in furtheranceof the economic advancement and self

reliance of the People of Puerto Rico. Both nations shall identify target sectors to enhance the social and economic development of Puerto Rico (education, health, infrastructure, etc.), and will collaborate intensively in the design and implementation of strategies for the effective investment of federal funding in initiatives to promote job creation and business development;

4. The Compact of Free Association will provide for the continued transmission of the United Status citizenship. The Constitution and laws of the Free Associated State of Puerto Rico shall provide for the recognition of Puerto Rican citizenship;

5. Puerto Rico will continue to be eligible for U.S. federal grants and assistance, on a government-to-government basis. Individuals shall retain their economic entitlements as U.S. citizens, including their Social Security benefits, as well as other job-related entitlements (as federal employees and veterans);

6. Free transit of goods, services, capitals and persons between the United States and the Free Associated State of Puerto Rico shall be maintained;

7. The Free Associated State of Puerto Rico will have full capacity to conduct its foreign affairs; to enter into, in its own name and right, treaties and other international agreements with governments and regional and international organizations, including the U.N.

8. The Constitution of Puerto Rico will remain in full force and effect, as well as the applicable laws of the U.S. pursuant to the Compact. Nevertheless, the Constitution of Puerto Rico shall be amended to incorporate the new governmental powers obtained through the Compact of Association;

9. The United States and the Free Associated State of Puerto Rico will establish special areas of mutual assistance and cooperation to secure the well-being of both the Puerto Rican and American peoples, for example: law enforcement efforts against drug trafficking; illegal immigration; terrorism; natural disasters; environmental protection; labor protection and standards; communications and; technological advancement to secure the well being of the people and the Puerto Rican economy;

10. The United Status shall maintain full authority and responsibility in security and defense matters of Puerto Rico, in accordance with the provisions of the Compact. The Free Associated State of Puerto Rico shall foreclose access to or use of its territory for the military or strategic purposes of any third country.

Ms. CHRISTENSEN. Thank you, Mr. Nieves. Next we will hear from Professor Richard Pildes.

STATEMENT OF RICHARD PILDES, PROFESSOR, NEW YORK UNIVERSITY SCHOOL OF LAW

Mr. PILDES. Thank you, Madame Chairwoman, for holding this panel on the vital constitutional issues concerning the potential political status of Puerto Rico and other non-state areas. And thank you for inviting me to testify.

I want to focus on one essential point. In my view, H.R. 900 rests on an incorrect, deeply flawed, and inadequate constitutional analysis.

Should the Congress of the United States and the President jointly, through legislation, along with the people of Puerto Rico, agree to legislation that provides greater autonomy for Puerto Rico on the basis of mutual consent, there is nothing in the U.S. Constitution that denies the U.S. Government the power to make this choice.

H.R. 900's language and structure is based on the constitutional analysis in the 2005 Presidential Task Force report. That analysis consists largely of the repetition of a single platitude: one Congress cannot bind another.

While that platitude is true for the run-of-the-mill legislation, in my view that constitutional analysis is deeply flawed for at least four reasons when it comes to matters of political status.

First, the analysis completely ignores American constitutional history and past political practice. From the time of the Constitution's formation, Congress has enacted mutual consent clauses that permanently altered the political status of non-state areas. The famous Northwest Ordinance is the perfect example. That established the process by which Congress pledged to incorporate territories as states in a way that involved mutual consent, and it was permanently binding.

Later Congresses followed the model of the Northwest Ordinance in enacting organic acts for the incorporation of future territories and their admission as states.

The Task Force analysis requires the conclusion that the original Congress, many of whose Members formed the Constitution, and many subsequent Congresses, acted unconstitutionally in establishing this mutual consent process for changing the status of a territory into a state.

Moreover, individual states of the United States have long enacted mutually binding compacts. The United States Supreme Court not only has recognized this practice, it has endorsed it and required that these compacts be enforced according to their terms; and that individual states not be permitted to unilaterally alter the terms of a compact that they have entered into.

Second, the analysis ignores central constitutional doctrine that deals with the complex issues of the U.S. relationship to non-state areas. There are not a lot of cases directly on point, but those that are enforce pledges Congress has made to non-state areas.

For example, once Congress pledges by law to incorporate an area as a state, the United States Supreme Court, in a series of cases, has held that that promise is binding on future Congresses. The Rasmussen case, which I describe in my testimony, is an example.

Second, when it comes to alterations of the political status of individuals, when Congress legislates to change citizenship status, the U.S. Supreme Court has also recognized that that pledge binds subsequent Congresses, and Congress no longer has the power to change the citizenship status that has been granted by law.

Moreover, under the territory clause itself, the United States Supreme Court has recognized that Congress has flexible, pragmatic, and expansive powers which implicate foreign policy matters to decide on the kind of relationship that best suits the United States' association with various non-state areas. After all, the original Constitution only refers by its terms to states and territories. But in the insular cases for better and worse in a complex act of political pragmatism and political morality, the United States Supreme Court recognized that clause empowers Congress to choose new forms of political relationship.

Finally, the United States Justice Department has agreed with my position on the constitutional issue for nearly 40 years. In 1963, when the U.S. Justice Department first took a position on mutual consent clauses involving Puerto Rico, reaffirmed in 1973, reaffirmed when the Northern Mariana Islands, mutual consent clause was adopted by Congress, reaffirmed in 1989 in the Guam Task Force report. Through all of this period, the Department of Justice recognized the constitutional power of the United States to

enter into mutual consent clauses that are binding with respect to matters of political status.

It is only in the early 1990s that the Justice Department made a 180-degree about-face on this issue, on the basis of reasons that I have to say I find constitutionally mysterious.

The Justice Department referred to a Supreme Court case from the 1980s involving Congressional welfare programs, and decided, the Court's decision in that case fundamentally changed 200 years of American constitutional history on mutual consent clauses. For reasons I elaborate on in my written testimony, I find that analysis wholly unavailing and irrelevant to the kinds of issues involving political status to Puerto Rico.

In sum, my view is that Congress's power to enter into mutual consent clauses regarding political status, when the United States determines its foreign policy and political interests are best served by doing so, is supported by longstanding political practice; it is supported by Supreme Court decisions involving the territory clause; it is supported by the longstanding position of the United States Justice Department; and it is supported in my view by sound constitutional analysis.

None of this, in conclusion, is to articulate any position on the specific choices the Puerto Rican people face. My only concern is to eliminate lack of clarity and confusion of how the constitutional structure within those choices should be framed.

Thank you.

[The prepared statement of Mr. Pildes follows:]

Statement of Professor Richard H. Pildes, Sutler Family Professor of Constitutional Law, New York University School of Law

Thank you for inviting me to testify. I specialize in constitutional issues concerning the structure of American government. The United States Supreme Court has cited my scholarship on these issues many times. I am also the co-author of a casebook entitled The Law of Democracy (2nd ed. 2001 and 2006 Supplement). I successfully represented the Puerto Rico Election Commission before the United States Court of Appeals for the First Circuit in the resolution of Puerto Rico's 2004 disputed gubernatorial election. I also successfully represented the government of Puerto Rico before the United States Court of Appeals for the District of Columbia Circuit in litigation concerning the legal status of Puerto Rico under particular federal laws. I am here testifying in my own capacity, based on my academic study of the relevant issues and my knowledge developed during my legal representation.

In my view, were the United States Congress and the people of Puerto Rico to prefer expanding the existing Commonwealth relationship, in a way that provides greater autonomy for Puerto Rico on the basis of mutual consent, it would be unfortunate, even tragic, for that option to disappear due to confusion or error about whether the Constitution permits Congress to adopt such an option. Yet one of the proposed bills, H.R. 900, rests on precisely such confusion about how the Constitution applies to the potential political status of Puerto Rico. H.R. 900 would artificially and wrongly limit a plebiscite to two, and only two, options. H.R. 900 would deny the people of Puerto Rico the right to express their preference for a mutually-binding covenant that would determine Puerto Rico's status to be that of an autonomous, self-governing Commonwealth. H.R. 900 eliminates this option due to a faulty constitutional analysis that assumes, incorrectly, that the Constitution denies Congress the power to enter into such a mutually-binding covenant.

The plebiscite structure H.R. 900 would establish reflects the constitutional conclusions expressed in the December 22, 2005 report of President Bush's Presidential Task Force on Puerto Rico's Status (the Task Force). I would note that none of the members of the Task Force are academic authorities in constitutional law, particularly the exceptionally complex and arcane law that controls the relationship of the United States to various non-state entities, such as incorporated territories, unincorporated territories, the current Commonwealth of Puerto Rico, or entities of other political status with which the United States, for reasons of history and policy,

might desire to form various types of political relationships. Perhaps for that reason, the Task Force's constitutional analysis is unpersuasive and inadequate. The analysis largely consists of the repetition of certain general platitudes that I believe to be wrong in the context of the United States' relationship to Puerto Rico. Time and time again, the United States Supreme Court has insisted that this relationship has "no parallel in our history." Examining Bd. of Engineers v. Flores de Otero, 426 U.S. 572, 596 (1976); Katzenbach v. Morgan, 384 U.S. 641, 658 (1966) (discussing "unique historic relationship between the Congress and the Commonwealth of Puerto Rico"). Proper understanding and analysis of this unique relationship is only confused and obscured, rather than advanced, by the repetition of highly general legal platitudes not designed to address the specific, exceptional context of the United States-Puerto Rico relationship.

The major platitude in the Task Force report, and which appears to be the basis for H.R. 900, is the notion that it "is a general rule that one legislature cannot bind a subsequent one." Task Force Report, at 6. From this "general rule" it purportedly follows that Congress and Puerto Rico cannot enter into a mutually-binding covenant on Puerto Rico's status—even if both Congress and the people of Puerto Rico prefer that option. According to the Task Force report, the United States Constitution, as currently written, "does not allow for such an arrangement." Id. The reason, allegedly, is that such a covenant would involve one Congress binding a later one. Thus, Congress and Puerto Rico could not enter into a mutually-binding covenant to guarantee Puerto Rico's status as an autonomous, non-State entity in permanent association with the United States. As a practical matter, there might be no realistic likelihood that the United States would violate such a solemn commitment, if Congress were to make that commitment. Nonetheless, the Task Force suggests that, as a matter of abstract constitutional theory, such an agreement would not, in principle, be valid.

This superficial analysis is seriously defective. First, constitutional issues involving the political status of entities associated with the United States are too significant, unique, and complex to be addressed through general platitudes such as "one Congress cannot bind another." Like most platitudes, this one is true in many routine contexts of lawmaking. Congress cannot, for example, pass a tax bill and deny a later Congress the power to amend, modify, or repeal that bill. But when it comes to far more fundamental issues involving the basic political status of individuals and entities, platitudes of this sort break down and lose their relevance. Congress' creation of a new political status, for individuals and entities, can be a legal act that transforms the status quo irrevocably, in a way that does bind later Congresses. Not only does the Constitution permit Congress to do so. The Constitution actually requires later Congresses to adhere to the change in political status that an earlier Congress has established.

Thus, with respect to individuals, when one Congress grants statutory citizenship to a class of individuals, that statutory grant does bind later Congresses. When Congress changes the political status of individuals by making them citizens, the United States is bound, constitutionally, to honor this new political status. This commitment of one Congress binds the United States going forward. As the Supreme Court has said, Congress lacks a "general power ... to take away an American citizen's citizenship without his assent." Afroyim v. Rusk, 387 U.S. 253, 257 (1967). That is, once Congress enacts legislation signed by the President (or adopted over his veto), that legislation creates a new political status for individuals; the Constitution itself then denies later Congresses the power to change that status. Afroyim addressed naturalized citizens, who have become citizens only by virtue of legislation. Most commentators agree Afroyim applies in the same way to all statutory grants of citizenship. The United States Department of Justice agrees that it does. See Letter of Assistant Attorney General Robert Raben to The Honorable Frank H. Murkowski, January 18, 2001.

With respect to territories associated with the United States, the constitutional principle is the same. The issue has directly arisen, however, in only one context of which I am aware. In that context, the Supreme Court similarly made clear that when one Congress changes the political status of a territory, later Congresses are bound by that change. Thus, it has long been bedrock constitutional law that, when Congress through legislation pledges to incorporate territory into the United States, that legislative commitment binds subsequent Congresses. See Rasmussen v. United States, 197 U.S. 516 (1905). The congressional pledge to incorporate transforms the legal status of a territory. Congress no longer has the "plenary power" under the Territory Clause, Art. IV, Sec. 3, cl.2, that it had before it enacted legislation to incorporate the territory. Rasmussen involved the Alaska Territory, which the United States had pledged originally, by treaty and statute, to incorporate into the United States. As a result of this statutory pledge, the Court held unconstitutional laws en-

acted by a later Congress that were inconsistent with the earlier Congress' legal commitment to treat the Alaska Territory as an incorporated territory. Rasmussen is just one of many cases in which the Supreme Court, early in the 20th century, established that a congressional statute committing the United States to eventual incorporation of territory into the United States creates an irrevocable commitment that later Congress are constitutionally required to honor. The President's Task Force does not indicate any awareness of Rasmussen or the many cases similar to it, let alone explain why those cases do not show the irrelevance of the "one Congress cannot bind another" platitude in the context of legal changes to the political status of territories.

Of course, one Congress can also irrevocably bind another Congress to a change in political status of a former territory in other, obvious ways. As it did with the Philippines, Congress can enact a statute granting a former territory full political independence. No one would suggest that, as a matter of domestic law, a later Congress could simply pass a new law declaring the Philippines to once again be a mere territory of the United States. Similarly, Congress can transform a former territory into a State, as it did with Hawaii. Again, once one Congress does so, it irrevocably commits the United States to maintaining Hawaii as a state on an equal footing with all other States. See Pollard v. Hagan, 44 U.S. 212 (1845) (discussing equal-footing doctrine). Thus, the United States can act in numerous ways to change the political status of territories or non-state areas of the United States: it can pledge to incorporate them into the United States, it can admit them as a State, it can grant them independence. Any of these changes are irrevocable once made and bind later Congresses. The one thing the United States purportedly cannot do, however, according to the President's Task Force report, is to enter into a mutually-binding agreement to transform a territory into a Commonwealth, with guarantees of the self-governing autonomy of that entity. It would be exceedingly odd for the Constitution to single out, for no apparent reason, this one option as one that Congress does not have the discretion to choose. Surely some substantial explanation should be required before reading the Constitution to require such an odd result. Yet the Task Force report does not even attempt to provide such an explanation.

Moreover, to read the Constitution as denying Congress power to decide what forms of political relationship best serve the interests of the United States would be odd for at least three further reasons. First, the United States has a long history of entering into mutual consent clauses. Section 14 of the famous Northwest Ordinance of 1787, for example, contained six "articles of compact, between the original States and the people and States in the said territory, and [shall] forever remain unalterable, unless by common consent." Van Brocklin v. Tennessee, 117 U.S. 151, 159 (1886). Many early territorial organic acts that Congress enacted incorporated these mutual-consent clauses from the Northwest Ordinance, either expressly or by reference. Clinton v. Englebrecht, 80 U.S. (13 Wall.) 434, 442 (1872). If the constitutional analysis of the President's Task Force is correct, Congress has been acting unconstitutionally for over 200 years, and the fundamental legal structures through which Congress historically has incorporated territory into the United States has been unconstitutional.

Second, individual States can enter into mutually-binding Compacts with other States. States can draft these Compacts so that they are binding absent mutual consent to a change by the other States in the Compact. As former Chief Justice Rehnquist wrote for the Court, the "classic indicia of a compact" between States is that once a State has entered into a Compact, it has no ability "to modify or repeal ... [the Compact] unilaterally. ..." Northeast Bancorp, Inc. v. Board of Governors, 472 U.S. 159, 175 (1985). Nothing in the Constitution denies States the power to further their interests through such arrangements. The platitude that "one legislature cannot bind another" does not apply to these Compacts. See, e.g., Jill Elaine Hasday, Interstate Compacts in a Democratic Society, 49 Fla. L. Rev. 1, 2 (1997) ("An interstate compact is an exception to the rule that one legislature may not restrict its successors.").

Far from being unconstitutional, these arrangements are constitutionally sanctioned, enforced, and protected. Once a State consents to such a Compact, that consent binds the State going forward. See, e.g., West Virginia ex rel. Dyer v. Sims, 341 U.S. 22, 28 (1951); Rhode Island v. Massachusetts, 37 U.S. (12 Pet.) 657, 725 (1838); Green v. Biddle, 21 U.S. (8 Wheat.) 1, 92 (1823). Just as it is obviously advantageous for individuals to have the capacity to enter into binding contracts, it can be advantageous for a State to have the ability to enter into mutually-binding Compacts with other States. But unless the text of the Constitution expressly required it, why should the Constitution deny Congress the exact same power individual States have? If Congress and the President believe the interests of the United States, domestic and international, are best served by entering into a mutu-

ally-binding covenant with a non-state area or territory tied to the United States, under which the United States transforms that territory into a self-governing Commonwealth and pledges not to change the terms of that agreement absent mutual consent, is there anything in the Constitution that would preclude the United States from pursuing its interests in this way? If the text of the Constitution expressly forbid such an arrangement, that would be one thing. But the Task Force report does not claim that. There is nothing in constitutional history, precedent, or logical inference from the powers the Constitution grants Congress that requires such an odd and unlikely result.

Third, even a brief history of American political practices under the Territory Clause refutes the simplicity of the Task Force's analysis. The Constitution itself only mentions two forms of political entity that the United States might govern: States and territories. If Congress' powers were constitutionally limited to forming political relationships between only "States" and "territories," as the Constitution originally understood those categories, Congress would never have had the power to forge the relationships it did for many decades between the United States and Puerto Rico, the Philippines, Guam, and other places. But Congress did form these relationships, in the late 19th century, by creating the novel distinction between "incorporated" territories and "unincorporated" ones. The former are lands the United States has pledged eventually to incorporate as States; the latter entail no such pledge.

Before Congress decided to create this novel distinction, it had long been thought, and widely understood, that a "territory" within the meaning of the Constitution was limited to land the United States possessed with a commitment to turn that land eventually into a State. Nonetheless, the Supreme Court concluded that the Constitution, through the Territory Clause, grants Congress the power and flexibility to create additional forms of political entities beyond the two originally conceived and expressly mentioned in the text. Congress has the power to establish distinct political relationships with these entities. The conclusion that the Constitution grants Congress flexibility to create novel forms of political relationship is, of course, the basis for the Insular Cases, such as Downes v. Bidwell, 182 U.S. 244 (1901). This constitutional principle is also the foundation for the relationship the United States has had with Puerto Rico. Whatever one thinks as a matter of policy or political morality about the desirability of the United States holding lands indefinitely in a status other than statehood, it is clear as a matter of constitutional law that Congress has the power and flexibility, as United States policy interests dictate, to forge new kinds of political relationships and associations with lands formerly held as territories. The Territory Clause has long been a source for expansive and creative congressional policymaking, not a rigid straitjacket. The Court has never invoked the Territory Clause to deny Congress the power to form new types of political relationships and associations. If Congress were to enter into a mutually-binding covenant with Puerto Rico to ensure Puerto Rico's expanded autonomy as a Commonwealth, this history strongly suggests the Court would acknowledge Congress' power to do so.

Indeed, it would be perverse for the Constitution to permit Congress in the early 20th century the power to "invent" a new political status, that of unincorporated territory, that permitted the United States to possess territories in a colonial-like relationship, but then to deny Congress today the power to invent a new relationship, such as an amended and more autonomous Commonwealth, that promotes the self-governance and autonomy of places like Puerto Rico. I do not believe the Constitution, properly interpreted, requires such a perverse result.

In my last remarks, I would like to address the shifting positions of the Department of Justice (DOJ) on these issues over the years. For most of the past 50 years, DOJ concluded that Congress did have the power, constitutionally, to enter into mutually-binding agreements with non-state areas, such as an agreement to respect Puerto Rico's status as a Commonwealth. In 1963, DOJ expressly took the position that such agreements were legally effective; DOJ concluded that Congress had the power to define the political status of a non-state area through a mutually-binding covenant that could not be revoked unilaterally. Once again, in 1973 DOJ confirmed this position—in a memorandum approved by then Assistant Attorney General William Rehnquist—when Congress sought DOJ's advice in conjunction with pending negotiations over the status of Micronesia. Based on DOJ's constitutional analysis, Congress did insert a mutual-consent clause into Section 105 of the Covenant with the Northern Mariana Islands. Yet again, DOJ endorsed the constitutionality of mutual-consent clauses in connection with the First 1989 Task Force Report on the Guam Commonwealth Bill. This history of the DOJ's consistent position is set forth in the DOJ Memorandum, Mutual Consent Provisions in the Guam Commonwealth

Legislation n.2 (July 28, 1994) (written by Teresa Wynn Roseborough, Deputy Assistant Attorney General, Office of Legal Counsel).

For reasons that remain difficult to understand, DOJ suddenly shifted its position in the early 1990s. That shift first occurred when then Attorney General Thornburg testified to Congress in 1991. U.S. Congress, Senate Committee on Energy and Natural Resources, Political Status of Puerto Rico: Hearings Before the S. Comm. on Energy and Natural Resources on S.244, 102 Cong. 210 (1991). The fullest explanation for that shift is in the Roseborough memorandum, above. According to that document, the Supreme Court's 1986 decision in Bowen v. Agencies Opposed to Soc. Sec. Entrapment, 477 U.S. 41 (1986), required this 180-degree change in DOJ's position. I find that position mysterious. Bowen dealt with the routine context of a State's participation in the Social Security system for its employees; in creating this system, Congress had initially permitted States to participate voluntarily and to terminate their participation at a later date. The Act also expressly reserved the right of Congress to amend these terms at any time. In the 1980s, Congress exercised this right to end the option of States to terminate their coverage. Bowen rejected a State's argument that in doing so, Congress had unconstitutionally "taken" the State's property.

Bowen has nothing to do with mutual-consent clauses concerning the fundamental political status of non-state areas. Most obviously, in Bowen the statute expressly reserved Congress' right to amend it at any time. By contrast, the whole point of mutual-consent clauses is that Congress expressly relinquishes the power unilaterally to amend the terms of the agreement. Not surprisingly, Bowen concluded that there could be no "vested right" in an arrangement in which Congress had expressly reserved the right to change that arrangement at any time. See 477 U.S. at 55. That alone is enough to make Bowen irrelevant when Congress instead chooses to enter into a mutual-consent clause over political status. In addition, Congress' power to change, modify, or repeal routine regulatory programs is well-established. But congressional acts that distribute routine regulatory and welfare benefits and burdens are not of the same constitutional stature as those that address fundamental issues of political status. The latter are much more the analogue at the level of territories and non-state areas to what citizenship is at the level of the individual. And as Afroyim recognizes, once Congress changes the political status of individuals and confers citizenship on them, a later Congress no longer has the power unilaterally to revoke that status. One need not go as far as Afroyim to recognize the constitutionality of Congress' adoption of mutual-consent clauses over political status. Afroyim suggests it would be unconstitutional for Congress to attempt to change such an agreement over political status. Without going that far, the doctrine strongly suggests that, at the very least, the Constitution does not prohibit Congress from entering into such agreements.

In sum, H.R. 900 is fundamentally flawed and misleading. It rests on a mistaken constitutional premise. That premise is central to the Task Force report, on which H.R. 900 is based. Congress does have the power, should it choose to use it, to enter into a mutual-consent agreement that would create and respect a more autonomous form of Commonwealth status for Puerto Rico, in which Congress would pledge not to alter the relationship unilaterally. Congress' power to do so is supported by longstanding historical practice, going back to the Northwest Ordinance and the period in which the Constitution was framed; it is supported by Supreme Court doctrine establishing the flexibility Congress has under the Territory Clause; it is supported by the longstanding position of the Department of Justice, before DOJ inexplicably changed positions; and it is supported, in my view, by sound constitutional analysis. H.R. 900 therefore does not give the people of Puerto Rico a full and informed choice of options concerning the potential future status of Puerto Rico. For that reason, Congress ought to reject H.R. 900.

None of this is to state my own personal view on what future status for Puerto Rico would best serve the interests of the Puerto Rican people. That is an issue on which, I believe, the Puerto Rican people should first be permitted to express a free and informed opinion. Nor do any of my comments address questions concerning the current legal and constitutional status of Puerto Rico. But as I noted at the outset, it would be highly unfortunate, even tragic, for Congress to limit artificially the choices in any plebiscite of the Puerto Rican people based on confusion or mistakes about what options the Constitution would permit Congress to adopt. Because H.R. 900 does exactly that, I urge its rejection.

Ms. CHRISTENSEN. Thank you, Professor Pildes. Our last speaker on this panel is Attorney Thomas E. Goldstein.

STATEMENT OF THOMAS C. GOLDSTEIN, PARTNER, AKIN GUMP STRAUSS HAUER & FELD, LLP

Mr. GOLDSTEIN. Madame Chairwoman and distinguished Members of the Subcommittee, my name is Thomas Goldstein.

While I have written on matters of election law, even more relevant here my views are often sought on the question of how the Supreme Court will resolve difficult constitutional questions. And it is my view in that respect that H.R. 900 and its provision for a Federally defined status process is the better option before you. Better in the sense of it has a more realistic chance of surviving review in the Supreme Court of the United States.

Puerto Rico is of course an annexed, but unincorporated, territory with sovereignty retained by Congress. And thus, contrary to the premise of H.R. 1230, the residents of Puerto Rico do not, in fact, exercise—and this is perhaps regrettable—the inherent power or the natural right to make a decision on their political status.

The powers of the people of Puerto Rico, under Article I of the Territorial Constitution, do not reach matters of national sovereignty, including the political status of Puerto Rico. That power is reserved to Congress and constrained by the Constitution, unless and until democracy is actually restored in Puerto Rico.

H.R. 900 is, of course, status-neutral. It favors no legally valid status over any other, and, unlike H.R. 1230, does not place on the ballot a status that is precluded by the Constitution. And that is the reason that I favor it.

H.R. 1230, by contrast, makes a promise that you cannot keep, and that is permanency. Enhanced commonwealth status under the Constitution is most analogous not to the admission of a state or to a compact between states, but to a treaty. And it is firmly settled in the law, and this is not a platitude, that Congress, having entered into a treaty, can later change it by statute. And therefore, it is not the case that under H.R. 1230 there could be a promise of a permanent enhanced commonwealth status that could not be abrogated by Congress.

For those reasons, as well as those set forth in my written statement, it is my conclusion that H.R. 900 provides the best means to redeem government by the consent of the people of Puerto Rico, based on legally valid options under the U.S. Constitution. Those who contend that H.R. 900 is incomplete for failing to include a provision for enhanced commonwealth status undoubtedly have the best interests of the citizenry in mind, but regrettably, such an option is simply not constitutionally available under our system of government.

I would like again to thank you, Chairwoman Christensen and the Members of the Subcommittee, for taking so seriously your responsibility to ensure that essential American democratic values, such as equality and self-determination, are fulfilled in Puerto Rico.

Thank you.

[The prepared statement of Mr. Goldstein follows:]

Statement of Thomas C. Goldstein, Partner,
Akin Gump Strauss Hauer & Feld, LLP

I. Puerto Rico and the Doctrine of Annexed but Unincorporated Territory

Before addressing the constitutional and policy principles implicated by H.R. 900 and H.R. 1230, I would like to direct the Subcommittee's attention to what I believe is at the heart of the Puerto Rico status issue. It is that the interpretation and application of Article IV, Section 3, Clause 2 of the Constitution (the "Territorial Clause"), has resulted in the current problem in which a population of U.S. citizens in Puerto Rico larger than that of half the states in the Union is being governed by Congress indefinitely without a full and equal national citizenship, or access to a democratic process to attain one. As such, the residents of Puerto Rico are, in effect, a disenfranchised subclass of American citizens, without, among other things, equal civil rights or legal status under law, a direct voice in U.S. policy, or voting rights in the election of U.S. national leaders.

I believe this outcome would be a surprise to the Framers of our Constitution. The Framers, it must be recalled, were familiar only with the model of territorial incorporation embodied in the Northwest Ordinance of 1787. For this reason we would have to explain to the Framers that:

- Over the course of the 19th century the U.S. became a global power and by the dawn of the 20th century the U.S. had acquired sovereignty over remote island realms with large non-citizen populations; and
- In a series of decisions in the first quarter of the 20th century, referred to as the "Insular Cases," the Supreme Court created the unincorporated territory doctrine and ruled that Congress could govern such overseas possessions under the Territorial Clause as it had all earlier American territories, but without following the historical model of political status resolution through incorporation and without applying the Constitution to the unincorporated territories in the same manner as it had with prior territories; and
- The unincorporated territory doctrine of the Insular Cases meant that the Constitution did not "follow the flag" to the annexed but unincorporated territories with non-citizen populations; and
- Consistent with the Insular Cases, U.S. citizenship was withheld from the citizens of the Philippines as a step toward that island nation's independence, and the conferral of U.S. citizenship for Alaska and Hawaii was part of the process of incorporation leading to statehood for those territories; and
- In contrast to those precedents, the Supreme Court's 1922 decision in Balzac v. Porto Rico interpreted the conferral of U.S. citizenship on the residents of Puerto Rico as neither putting Puerto Rico on the path toward incorporation nor extending to its residents the rights and protections of the Constitution that came with citizenship in incorporated territories on the path to statehood.

As a result of these and other events, Congress now presides over Puerto Rico as an annexed but unincorporated territory populated by four million disenfranchised U.S. citizens who possess, essentially, the same constitutional status as aliens under the original Insular Cases doctrine. As discussed below, certain "fundamental rights" have been extended on an ad hoc basis by statutory policy and court decisions, but not by direct application of the Constitution. This reality—over one hundred years after the annexation of Puerto Rico and approximately nine decades after U.S. citizenship was conferred on the residents of Puerto Rico—is, arguably, a byproduct of legislative inaction and would concern the Framers, just as it concerns, among others, the sponsors of H.R. 900, H.R. 1230, and the members of the Subcommittee.

II. The Importance of Resolving the Political Status of Puerto Rico

It is in the historical context of the Insular Cases and the Balzac decision that this Subcommittee must address the constitutional and policy implications of H.R. 900 and H.R. 1230.

In combination these two bills present a question to Congress—Can the present dilemma regarding Puerto Rico's political status be resolved through: (1) a status resolution process initiated at the local level like the one outlined in H.R. 1230; (2) a federally sponsored process based on status options and procedures defined by Congress as set forth in H.R. 900; or (3) a process that combines elements of (1) and (2)? It is my conclusion that the record on the Puerto Rico status question before the Natural Resources Committee is clear that Congress possesses the responsibility and exclusive constitutional power to determine the appropriate status resolution. I have further concluded that, although both bills raise important issues about the substance and process of status policy, H.R. 900 is the measure that can best

accomplish the imperative of redeeming government by consent for the people of Puerto Rico based on legally valid options under applicable federal law and policy.

A. H.R. 1230—Puerto Rico Self-Determination Act of 2007

H.R. 1230 seeks to enact a resolution process initiated at the local level via local constitutional convention. Contrary to the language of H.R. 1230, as residents of an annexed but unincorporated territory under the Territory Clause, the people of Puerto Rico do not have "inherent" or "natural" rights of sovereignty recognized by Congress or the Supreme Court under the Constitution. Instead, Article I of the local territorial constitution, which empowers the local government of Puerto Rico to implement the will of the people, is limited to local territorial administration within the scope of powers of the territorial government instituted under federal law. While the considerable degree of self-government that the Puerto Rico territory has achieved under its local territorial constitution and the commonwealth system for administration of internal civil affairs of the territory is an impressive tribute to American democratization, the powers of the local government do not extend to affairs of national sovereignty or to the political status of Puerto Rico. Those powers are expressly reserved to and vested in Congress under the Territorial Clause, as expressly recognized in Article IX of the Treaty of Peace ceding Puerto Rico to the United States, which records that the "civil rights and political status" of Puerto Rico shall be determined by Congress.

While I am convinced that only Congress has the authority to resolve the political status of Puerto Rico, I am not aware of any constitutional limitation that would preclude a local constitutional convention from being a part of a federally authorized status resolution process, particularly once Congress has defined the options and the procedural mechanism for status resolution. To the extent Congress elects to recognize such a convention within the status resolution process, I offer the following suggestions to minimize the risk of confusion and misinterpretation:

- The inclusion of any local constitutional convention should be predicated on a clear recognition that: (1) the current commonwealth system of local government in Puerto Rico, while also adopted at the local level, was created by federal powers as a form for territorial government; and (2) the commonwealth system does not define Puerto Rico's political status.
- To the extent a local constitutional convention is recognized as a means to facilitate local democratic participation in the status resolution process, the participants should recognize that any proposed changes to the local territorial constitution that would purport to change Puerto Rico's political status can be given legal meaning and effect only pursuant to federal statute, based on a federal status resolution policy and process, with options defined or accepted by Congress as compatible with federal law.
- Any provisions in an act of Congress relating to a local constitutional convention should be based on the understanding that such a convention will operate subject to the supremacy of federal law and may not impair the local constitutional process with respect to other initiatives and measures meant to address the political status issue.
- Unless otherwise explicitly agreed and intended, Congress should require that any such local convention operate in a manner compatible with the local territorial constitution and laws of Puerto Rico, so that the federal enabling act is not construed as a unilateral federal amendment of the local constitution as approved by Congress and the people in 1952.

I suggest the foregoing caveats merely as a means to avoid creating any false expectation by the residents of Puerto Rico of congressional recognition of inherent rights or powers not granted to non-state territories by the Constitution or otherwise. Without similar protections, the inclusion of a local constitutional convention risks harming the status process from a political and constitutional perspective. A consequence of which would be to stymie the status process and invite re-submission to Congress of a proposal to give Puerto Rico a status combining features of statehood and sovereign independence—commonly referred to as enhanced commonwealth status—that does not exist under the Constitution and, notably, has never been endorsed by Congress as constitutionally or politically viable. In addition, the foregoing caveats will make clear that the adoption of the 1952 local territorial constitution simply created a system of limited local government and did not establish a constitutionally defined political status.

B. Congress is Obligated to Provide a Lawful Political Status Resolution

As noted above, the power to resolve the political status of Puerto Rico is vested exclusively in Congress and the local constitutional process must operate within any framework created by Congress. By accepting the unincorporated territory doctrine

of the Insular Cases, however, Congress has acquiesced in prolonging a political status for Puerto Rico in which the sovereignty of its people is held in abeyance and residual sovereignty is retained by Congress by operation of the Territorial Clause. Pursuant to the unincorporated territory doctrine, Congress and the federal courts can, and indeed have, extended fundamental rights by statute or court decision, but this is essentially permissive and/or discretionary and can be modified or even reversed through subsequent statutes or court rulings. For example, the federal court decisions in Examining Board v. Flores de Otero, Mora v. Mejias, and Rodriguez v. Popular Democratic Party appear to create a body of federal statutory policy and decisional jurisprudence that extend such fundamental rights as due process and equal protection to certain actions by the federal and local governments in Puerto Rico. The Supreme Court's ruling in Harris v. Rosario, however, confirms the power of wide ranging power of Congress under the Territorial Clause to alter its treatment of Puerto Rico. In addition, cases such as U.S. v. Quinones and U.S. v. Acosta-Martinez confirm that adoption of the local territorial constitution in 1952 did not change the status of Puerto Rico or carve out a zone of local sovereignty beyond the reach of the Territory Clause power of Congress. More importantly, the "fundamental rights" recognized under federal law in Puerto Rico are not part of a constitutionally defined citizenship equivalent to that secured through incorporation and statehood, or through separate nationhood, and, as such, are not part of a status leading to full and equal citizenship at the national level. Stated another way, the unincorporated territory doctrine has not enabled or empowered the U.S. citizens of Puerto Rico to exercise many of the most fundamental rights of all, including the rights to self-determination and government by consent of the governed.

Political status resolution is first and foremost a political question for Congress, and the Insular Cases and Balzac decision represent, if nothing else, a deferral by the federal courts to the political power of Congress under the Territorial Clause. However, like many legal decisions, the Insular Cases and Balzac decision venture into the realm of policy making. It is likely that that in deciding the Insular Cases or Balzac the Supreme Court felt a need not only to clarify the meaning of the territorial statutory policy at issue, but to fill a vacuum created by congressional inaction or ambiguities and inconsistencies created by congressional action.

The organic acts and territorial policies adopted for Hawaii, Alaska, Puerto Rico and the Philippines after 1900 illustrate this ambiguity and congressional inconsistency. Moreover, the disparate treatment of each of those territories in some respects represents a departure from the historical practices and constitutional law of the United States governing territorial status resolution. With regard to the Philippines, Congress declared in 1916 a policy of withholding U.S. citizenship from the Philippines and, on that basis, adopted a policy leading to a local constitutional government as a step to independence. With regard to Puerto Rico, however, Congress in 1917, just months after adopting its policy for the Philippines, conferred U.S. citizenship on the residents of Puerto Rico and left unanswered the effect of citizenship on Puerto Rico's future political status.

Instead of treating the grant of citizenship to the residents of Puerto Rico as a step toward incorporation as it had done with regard to Alaska in Rassmussen v. United States, the Supreme Court, with its decision in Balzac, filled the vacuum on the issue of future status for Puerto Rico by concluding that, contrary to the assumption of the Insular Cases that conferral of citizenship led to incorporation which led to statehood, the extension of U.S. citizenship was not a step toward incorporation for Puerto Rico. There are credible arguments on both sides of whether the Insular Cases were "good law" or "bad law" in trying to resolve the exigencies of America's experiment in imperialism and colonialism in the Philippines and Puerto Rico before U.S. citizenship was extended to Puerto Rico. However, the effects of those decisions on federal territorial policy become more conspicuous with each passing year and render it much more difficult to sustain a favorable view of the Balzac decision separating citizenship from the Constitution and its fundamental promise of government by consent for all U.S. citizens. Further undermining the continuing validity of the Balzac ruling is the questionable justification offered by Chief Justice Taft that any individual aggrieved by the decision could simply move to a State. According to Chief Justice Taft:

> It became the yearning of the Puerto Ricans to be American citizens...and the act gave them the boon. What additional rights did it give them? It enabled them to move into the continental United States and becoming residents of any state there to enjoy every right of any citizens of the United States, civil, social and political.

This passage confirms that the Balzac decision created a class of U.S. citizenship under American sovereignty and under the America flag that could only be redeemed from a discriminatory state of inequality and disenfranchisement by migra-

tion to another part of America. That arguably was not really "good law" in 1922, and it should not be acceptable to Congress as federal law or policy in 2007. Put simply, when Congress' past exercise or failure to exercise its Territorial Clause power gives rise to a constitutional detriment to Puerto Rico, Congress has a concomitant obligation to take responsibility for and ameliorate the failures of that political judgment. For all these reasons, a legally authoritative political status policy for Puerto Rico is not only within the exclusive power of Congress, as recognized by U.S. Senate Resolution 279, adopted September 17, 1998, but also the responsibility of Congress under the Territory Clause power.

C. H.R. 900—Puerto Rico Democracy Act of 2007

As introduced, H.R. 900 meets the criteria for a federal statutory policy on status resolution for Puerto Rico. Implicit in H.R. 900 is the principle that all U.S. citizens are entitled to enjoy two of the most essential American democratic values—equality and self-determination. H.R. 900 accomplishes this by allowing voters to choose for Puerto Rico to either retain its current status or pursue permanent nonterritorial status. Pursuant to H.R. 900, if a majority of voters favors the continuation of existing territorial status, additional votes will continue to be held every eight years unless and until a majority votes to seek permanent nonterritorial status. In my view, this provision is necessary to ensure that a less than fully democratic status does not continue due to the failure of Congress to provide access to a federally sponsored mechanism for expression of the political will of the residents of the territory. Such periodic acts of self-determination as between options determined by Congress to be compatible with the Constitution and applicable federal law are vital to redeem America's democratic principles and the fundamental rights of U.S. citizens in Puerto Rico.

Alternatively, if, and only if, a majority of the voters choose for Puerto Rico to pursue a path toward permanent nonterritorial status, H.R. 900 mandates that a plebiscite be conducted that allows voters to choose between statehood or sovereign nation status, including the possibility of free association, subject to such terms as may be agreed upon by Congress consistent with U.S. constitutional practice and international legal criteria. It bears noting that free association as envisioned by H.R. 900 is based on an agreement between two sovereign nations, and recognition of separate sovereignty, nationality, and citizenship. It also must be terminable at will by either party in order to preserve the right of each nation to independence. Otherwise, if terminable only by mutual agreement, it would give each nation the power to deny the other nation's right to independence, and would therefore not be non-colonial and non-territorial. When crafted within the bounds of these principles, free association can be a useful means for a former colony and a former colonial power to sustain a close and mutually beneficial postcolonial relationship.

By approving H.R. 900, Congress can begin to correct the historical and constitutional dilemma created by the Insular Cases, the Balzac decision, and the incorporated versus unincorporated territory doctrines. Indeed, H.R. 900 is predicated on the need for a federally sponsored process in which Congress exercises it powers regarding a political status resolution for Puerto Rico based on informed self-determination between status options recognized as compatible with federal law and international criteria of decolonization in the modern era. For this reason, it is my view that H.R. 900 is a functionally status neutral approach. H.R. 900 neither favors a particular status nor gives rise to any sort of undue influence leading to a so-called artificial majority. Equally as important, H.R. 900 does not promote politically unrealistic or constitutionally unavailable status options for inclusion on a plebiscite ballot. H.R. 900 does, however, provide a clear path to end the current status policy for Puerto Rico that separates U.S. citizenship from the Constitution without any remedy based on consent of the governed. The end of this policy has the likelihood of leading to a democratically instituted unity of national citizenship and inherent sovereignty at the national level for the inhabitants of the Puerto Rico territory, if that is what a majority want when given the chance to express their will.

It bears noting that, whether by direct right of referendum sponsored by Congress or through a combination to federal and local measures including, but not limited to, a local constitutional convention, there is precedent for periodic votes in order to achieve orderly political status resolution. For example, in 1889 Congress sponsored a status resolution process for Dakota, Montana and Washington. Congress required each territory to propose a constitution "not repugnant to the Constitution of the United States", and to keep submitting such proposals to the voters until one was approved and proclaimed compatible with the federal enabling act by the President of the United States. As I noted in my earlier testimony, Congress may want to enact H.R. 900 exactly as introduced, or it may want to recognize a possible role

for a constitutional convention similar to that proposed in H.R. 1230. As long as the constitutional convention is in some manner compelled to advance proposals determined at the federal level to be compatible with federal law, and the local constitutional process is not impeded from other measures to resolve the status question, there would be no legal reason not to recognize the concept underlying H.R. 1230 as part of an overall status policy. Of course, the local territorial constitution already authorizes constitutional conventions, and a convention called thereunder could possibly propose amendments that would change the status of Puerto Rico if approved by the people and Congress. With or without a local constitutional convention provision, a federally managed process is necessary to facilitate majority rule by the people of Puerto Rico in the determination of whether the current territorial status should continue, or a new political status should be pursued.

CONCLUSION

Congress now presides over Puerto Rico as an annexed but unincorporated territory. Currently, the people of Puerto Rico lack full and equal national citizenship and they lack a status resolution process through which they can acquire full and equal national citizenship. Congress possesses the exclusive constitutional power to determine the appropriate status resolution. Moreover, it is imperative that Congress exercise this power in a fashion that is compatible with the options made available by the Constitution. It is my belief that H.R. 900 provides the best means to accomplish the necessary goal of redeeming government by consent for the people of Puerto Rico based on legally valid options under applicable federal law and policy.

Ms. CHRISTENSEN. Thank you, panelists. I want to remind the Members that Committee Rule 3(c) imposes a five-minute limit on questions.

The Chair will now recognize myself for questions, and follow up with recognizing Members for any questions they might have.

I begin with Attorney Thomas. My first question to you is, in your view, does the Constitution prohibit Congress from entering into an arrangement that establishes a self-governing political status that cannot be changed by mutual consent?

Mr. THOMAS. Madame Chairwoman, I would start first that absolutely the Congress could enter into such an agreement, and could choose by itself to honor the terms of those agreements. And as a matter of fact, I think that is what has principally been done in the case of Puerto Rico.

As to whether Congress could bind itself or bind a future Congress from changing that agreement, my, I guess, essential point is one of locating that constitutional authority.

I do agree with the comment of Professor Pildes that there is, there may well be nothing in the Constitution that prohibits the enhanced commonwealth; however, the Constitution is a document of both limits and powers. And the perhaps more relevant question is where does that power come from in the Constitution.

And I do understand that there are, you know, significant gaps in our constitutional knowledge here because of the lack of case law on some of these issues. However, at this point I can't confidently say that there is a place in the United States Constitution that would provide the authority for a mutual binding agreement between the Federal government and a territory.

Ms. CHRISTENSEN. OK, but the first answer to the question is yes, it is possible, but you don't know that it can bind the following Congress.

Mr. THOMAS. Yes, that is correct.

Ms. CHRISTENSEN. I think that Professor Pildes responded in his testimony to how he feels about that, so I am not going to ask you that question right now.

My question to you, though, is, for those territories that due to size or other reasons are not candidates for statehood or independence at this point, what is your view of the notion that such areas "shall forever remain at the will of Congress?"

Mr. PILDES. Well, Madame Chairwoman, I would say first that the territory clause itself is the source of power for Congress to decide on the appropriate relationship with various non-state areas. So to answer Mr. Thomas's comment, precisely because the territory clause power is so broad and expansive, one of the ways in which Congress might choose to use that power, which is supported by Supreme Court precedent, is to create new forms of relationship, including in my view a binding mutual consent provision.

For other areas, the territory clause gives the United States flexibility and pragmatic policymaking authority to determine the appropriate relationship over time, partly in response to the preference of the people who live in those non-state areas, if those preferences change over time.

Ms. CHRISTENSEN. Thank you. Professor Gorrín, since the people of Puerto Rico, as I understand it, have several times voted in at least a plurality to remain as a commonwealth, it seems to me that the people of Puerto Rico chose themselves to remain in that status; that it is not necessarily being imposed upon them by Congress or the Federal government. Do you disagree with that?

Mr. GORRÍN-PERALTA. Yes, I do, Madame Chairwoman. The original decision in 1950, when the people of Puerto Rico received Law 600 adopted by this Congress, gave Puerto Rico the alternative of deciding whether it wanted to draw up domestic rules for the household, or whether it wanted not to draw up those household rules and wanted Congress to keep on drawing them.

But it had no alternative. It was either a yes-no answer to a colonial relationship. And that, of course, cannot be legal under either constitutional or international law.

So the only time that Congress has admitted to the people of Puerto Rico any kind of question was at that time, and that was an invalid question.

Ms. CHRISTENSEN. I am going to reserve my next questions for the next round, since I am almost out of time, and I will turn to the Ranking Member, Mr. Fortuño, for any questions he may have.

Mr. FORTUÑO. Thank you, Madame Chair. And thank you for all the witnesses coming up today.

My first question is for Mr. Thomas. And I read, last night I read your written statement that you had put into the record. And you mentioned, and actually you were commenting on H.R. 1230, which proposes that a non-territorial or enhanced colonial status be one of the status options.

I believe in your written testimony that you stated that this at some point could require a constitutional amendment here in the United States. Could you expand on that, please?

Mr. THOMAS. Yes. In my written testimony I was speaking to the language of H.R. 1230, which seems to provide a broad discretion to the convention as to the types of proposals they could make. And I would note that the H.R. 1230 speaks of the Congress passing a joint resolution in response to the convention's proposals.

And I just thought that that raised the possibility, and I wouldn't say that this is necessarily the intent of the bill, but I would say it raises the possibility that the proposal which could be submitted from the convention could be one of a constitutional amendment.

And that also has the advantages of avoiding some of the constitutional issues that might arise if the proposal was sent up in the form of a statute.

Mr. FORTUÑO. Mr. Thomas, so that everyone is here and actually hearing us in Puerto Rico understands, what does it take for a constitutional amendment to be approved in the United States?

Mr. THOMAS. In the United States, the Congress, both Houses of Congress would pass the bill by two-thirds. It would not go to the President; it would go directly to the states for ratification by three-fourths of the states.

Mr. FORTUÑO. Last time the country tried this was ERA. Could you tell us what happened?

Mr. THOMAS. In that case, the ERA failed, and I believe there were numerous states that did ratify it. The ERA legislation was actually amended to extend the opportunity for passage, but ultimately it did fail.

Mr. FORTUÑO. When was the last time that the U.S. Constitution was amended?

Mr. THOMAS. The 27th Amendment was fairly recent, although that is an interesting case because that actually was started over 200 years ago as one of the original Bill of Rights, and was not actually ratified until fairly recently.

Mr. FORTUÑO. And the 27th Amendment, what does it state, if I may?

Mr. THOMAS. The 27th Amendment speaks to whether the compensation of Members can be raised without an intervening Congressional election.

Mr. FORTUÑO. And it took 200 years to get through that. Thank you.

Mr. THOMAS. Thank you.

Mr. FORTUÑO. Mr. Goldstein, you have commented on the enhanced colonial status that has been proposed. Could you go further into, for example, the ability for Puerto Rico, non-territorial or enhanced colony of Puerto Rico, to have veto power over Federal legislation, and to invalidate Federal court jurisdiction?

Mr. GOLDSTEIN. I think that that would be in grave constitutional doubt, given, as has been said, the plenary power of the Congress under the territory clause.

If Puerto Rico were to remain in some form of commonwealth status, the plenary power would remain with the Congress. And in addition to the points that were made earlier about the political will to give such a special status to Puerto Rico, I think that it would be highly questionable to give a territory effectively a veto over the application of laws that were passed by Congress.

Congress, nonetheless, could itself provide, as it has, that certain laws don't apply in Puerto Rico. But that is a very different question from giving Puerto Rico the opportunity to veto those laws itself.

Mr. FORTUÑO. The things that the platform, 2004 platform of the party, of the Governor's party, states that actually it will be the

Puerto Rico legislature that will veto our laws here in Congress. That is what they are saying that could be done. Essentially you are saying that that is not doable.

Mr. GOLDSTEIN. That would not be possible.

Mr. FORTUÑO. OK, thank you. Mr. Thomas, I know you—and again, I was reading this last night, and you looked at both bills. Do you have an opinion as to which of the two will actually have, are less likely to survive the constitutional scrutiny of the proposed options? That is, statehood, independence, or this type of free association, or an enhanced—well, basically, we keep it all, but we don't give anything back?

Mr. THOMAS. Well, again I should reiterate that I believe that both bills are constitutional in the sense, well, first of all, that they are really just establishing——

Mr. FORTUÑO. I am sorry, my question is about the options, the actual options. I am sorry.

Mr. THOMAS. Right. And if the Puerto Rican Convention under H.R. 1230 does choose a commonwealth option, and the commonwealth option they do choose is one that would withdraw the Federal jurisdiction, again, that is, in and of itself, not unconstitutional.

But the question is whether it is effective. The question is if then a Congress later came and decided that it was necessary for whatever reason to change some aspect of the commonwealth in a way that the Puerto Rican Convention had decided was inappropriate, I think it would be very difficult to find an argument binding that later Congress from taking that action.

Mr. FORTUÑO. Thank you. I yield back, Madame Chairman.

Ms. CHRISTENSEN. Thank you. At this point, before I move to Mr. Faleomavaega, I ask unanimous consent that the gentleman from Indiana, Mr. Burton, be allowed to sit on the dais and participate in the hearing. And hearing no objection, so ordered. Welcome.

Next, Mr. Faleomavaega, you are recognized for five minutes.

Mr. FALEOMAVAEGA. Thank you, Madame Chairwoman. And I guess you might say this is my maiden speech for this important hearing. And certainly I want to thank Chairman Rahall and Chairman Young; I do call the gentleman from Alaska as Chairman Young, because he was Chairman of this important committee. In fact, he has worn so many hats, I don't know which one that I could really address properly the senior Member from our good friend and colleague from Alaska, Mr. Young.

But I do want to thank you, Madame Chairwoman, for calling this very important hearing. Again, to figure out how we can best determine to give the people of Puerto Rico the best option or the best opportunity to determine for themselves as to what their future should be.

I also want to say at the beginning, I have nothing but the highest respect for my good friend and colleague, Congressman Fortuño, who has represented his district in a most excellent way, not only before this body, but certainly before other members of this institution.

I thank also the gentleman from Indiana, because these gentlemen all have institutional memories, excellent institutional memories, of what has happened for all these years in trying to deter-

mine what can we do for Puerto Rico. And obviously, those of us who represent the insular areas take a tremendous interest always when we talk about political status for Puerto Rico, because it does have very serious implications on the future of the other insular areas, as well.

So I welcome this opportunity again, and look forward to seeing where we are going to be, how we are going to make this determination.

And one of the interesting twists that we find ourselves in, that we have two bills introduced by those who are originally from Puerto Rico—my good friend, the gentleman from New York, Mr. Serrano, and also Ms. Velázquez—for introducing both pieces of legislation.

I have been here almost 20 years now, and there are so many different cross-currents going on, and as has been in the past and is true in the present.

I have a grandson, very interestingly enough. He is part Tahitian, he is Samoan, and he is also Puerto Rican. So I just want to say how far our precenos have traveled, all the way from Puerto Rico to the South Pacific. So I am very proud and so happy that my grandson does have a sense of heritage, and a base or foundation from the good people of Puerto Rico. And I look forward to working with my colleagues here on the committee, and see how we can best resolve this issue of what should be the best option to pursue.

Now, I look at it from a different perspective. The problem we have here so often is that we are almost like in a courtroom situation. You get expert witnesses. If I want someone who kind of bends a little bit toward H.R. 900, I will call Professor Pildes. If I want someone who bends on H.R.—wait a minute, the opposite—900, it is Mr. Goldstein, and if it is 1230, maybe perhaps Professor Pildes. And I wish we didn't have to do it this way, but this issue is not very simple. It is very complex. So many constitutional cross-currents, under-currents, I don't know what to call them.

I recall years ago when we held a hearing right in Puerto Rico. And right in the middle of the hearing, all of a sudden an opinion or a commentary was written by one of the most noted conservative journalists or leader, activist, what you want to call him, by the name of Pat Buchanan. And he comes out and says you give Puerto Rico statehood, we are going to have a welfare state. And that caused a barnstorm, and then all kinds of things flared up and said my gosh, is this what we want to do, in the most—I say it was a very wrong way to look at it, perceive what options should be made available for the good people of Puerto Rico.

The political implications are, to me, as the way I look at it, from why even the Congress has not dealt very well in dealing with this issue.

What I am saying here, it is a political issue, more so than saying whether it is constitutional or right or wrong, to try to meet the needs of Puerto Rico.

We are looking at seven potential Members of Congress. Are they going to be Republicans or Democrats? Two Senators; are they going to be Republican or Democrat? That is, from what I recall before Alaska became a state, the fear politically was whether Alaska

was going to be a democratically controlled state. And guess what? They are Republicans.

The same situation happened also with the State of Hawaii. The fear was that Hawaii was going to be Republican, and guess what? They are all Democrats.

So to me, that seems to be the problem that we have here in the Congress, looking at it as a political issue, and not looking at the rightness of what should be done to meet the best course of action for the people of Puerto Rico and their future.

I am sorry, my time is up. I didn't even have a chance to ask questions, but I will hopefully wait for the second round. Thank you, Madame Chair.

Ms. CHRISTENSEN. Thanks, and we will have a second round. I now recognize our Ranking Member on the full committee, Mr. Young, for any questions.

Mr. YOUNG. Thank you, Madame Chairman. I will say that my good friend from American Samoa put it very well. This is a political issue.

But I have one, other than Hawaii, one of the most recent territories that became a state. And I can say this is my interest in this. I make no apologies. I am a statehood person. Because I knew where we were as a territory, and what we could not do, and how we were being treated as a colony.

It was a big fight in the State of Alaska. And we petitioned the Congress, and the Congress responded, and we became a state in 1959.

And in retrospect, if we knew we had as much oil as we had——

[Laughter.]

Mr. YOUNG.—we would have probably become a nation, and I would have become Emperor. But I don't think you would let us do it right now.

But my goal here is to really try to allow Puerto Rico to advance. And I do not believe you can advance as a commonwealth. I say that from my heart. Because we were not able to advance as a commonwealth. We were a territory. And my goal is to listen to the Puerto Rican people, listen to witnesses like we have today. But my ultimate goal is to try to give the Puerto Rican people a choice. And my bill, H.R. 900, does give them a choice.

And if they decide to be an independent nation, God bless you. If you decide to be a state, God bless you. If you decide to be a commonwealth, you are not going to grow. And I am not going to ask God to bless you in that case.

[Laughter.]

Mr. YOUNG. I yield back the balance of my time.

Ms. CHRISTENSEN. Thank you. Before I move to Ms. Bordallo, I also have to ask unanimous consent that the gentleman from Pennsylvania, Mr. Dent, be allowed to sit on the dais and participate in the hearing. And hearing no objection, so ordered.

I now recognize my colleague from Guam, the Congresswoman Madeleine Bordallo, for such questions as she might have.

Ms. BORDALLO. Thank you very much, Madame Chairman, and Ranking Member Fortuño, and of course our distinguished Mr. Young who just left the room, and Mr. Rahall, who was here earlier, and to all of the distinguished witnesses.

It has been a very important morning for me to listen to some of the dialogue on this matter. I represent the territory of Guam. Guam has in the past gone through the same exercises as you have in Puerto Rico over the years. We have introduced a number of pieces of legislation in the U.S. Congress. So I don't know what the future is for Guam, but this is a learning process again for us, and I am sure that in the future we will also be entertaining a status change for Guam.

Now, in examining the, or first, I would like to ask Mr. Thomas a question. I want to thank you and your colleagues in the American Law Division of the Congressional Research Service for all of the professional work that you have done for the committee, for all of us.

I have a general question. Much of your written testimony focused on potential interpretation by the courts of H.R. 1230. And you also touched upon H.R. 900, which is based on the President's Task Force report.

My question then, Mr. Thomas, in examining the task force's report and recommendations, do you note any constitutional deficiencies in the options and the process presented, or in the legal basis that the task force cites for its recommendations? Are there any issues that you see in the task force report with respect to constitutional compatibility, or anything Congress should keep in mind in particular with respect to the legal bases cited by the task force report's recommendations?

Mr. THOMAS. Well, Congresswoman, I would note that the task force really does have two components. One is a process component, and the other is a component regarding status options.

As to the process component, obviously there is a lot of different ways that plebiscites can be held, different variations, and I would certainly have no policy suggestions as to which plebiscite form would be most appropriate.

As to the status options that are presented, as I indicated in my report, I did find that the three general options that are going to be available to Puerto Rico will probably be statehood, independence, and some form of territorial status, such as commonwealth. And I think that is consistent with the task force.

There is, of course, extensive appendices associated with the task force report that goes into great detail regarding some of the legal issues in this. I read those appendices, and thought that they went into a lot of the arguments on both sides, and noted some of the opposing case law, some dicta, some different arguments that could be made. And I thought they did a reasonable job of setting forth that. So I found nothing that I would consider, that would contradict my testimony.

Ms. BORDALLO. So in other words, Mr. Thomas, you found nothing unconstitutional.

Mr. THOMAS. Again, I recognize that the Congress can enter into these agreements. But as to whether these agreements can bind in the future, I would agree with the task force's conclusion on that matter.

Ms. BORDALLO. Thank you. Thank you, Madame Chairman.

Ms. CHRISTENSEN. Thank you. The Chair now recognizes Mr. Burton for five minutes.

Mr. BURTON. First of all, I want to thank you, Madame Chairman, for allowing me to sit in on your meeting. I really appreciate that.

I have worked with Mr. Fortuño and Congressman Young for many years on this issue. I have been to Puerto Rico many times, and I am a very strong supporter of Puerto Rico becoming the 51st state.

But I am also a realist, and I realize that it is extremely important that the people of Puerto Rico have the options presented to them, so they can make the decision themselves. And for that reason, I am a very enthusiastic supporter of H.R. 900, and I certainly hope it passes the committee and goes to the Floor quickly.

And with that, I will yield the rest of my time to the gentleman from Puerto Rico.

Mr. FORTUÑO. Thank you. I want to thank the gentleman from Indiana; thank you for your support, and certainly for being there for so long for this cause. Actually, for an unfinished matter that has to be dealt with. On behalf of the four million citizens that I represent, I thank you for your leadership in this.

I also acknowledge the fact that one of the Members of our Subcommittee and committee is here, Mr. Flake. I am sorry I couldn't make it to today's press conference, but I certainly wanted to be there, and I commend you on your leadership on another important issue that this country, this nation of ours, is facing, immigration, and I support you wholeheartedly.

If I may, coming back to Puerto Rico. Mr. Goldstein, I stayed up until late last night; I was reading all of your testimonies. And you mentioned something in H.R. 1230 there is language that talks about inherent powers of Puerto Rico as a sovereign to do certain things. And I wonder if you have been able to look at what is the authority for the nature of those inherent powers that H.R. 1230 alleges.

Mr. GOLDSTEIN. Yes, sir. The Territorial Constitution does give the citizenry of Puerto Rico certain autonomy and the ability to make certain decisions. But H.R. 1230 I think dramatically overstates, under the current legal regime, the authority of the citizenry to make sovereign decisions, because that power is vested in Congress.

And I think it is unfortunately misleading to the citizenry to suggest that until democracy is restored, that Puerto Rico would have such great control over its destiny that it would be able to, for example, veto Federal legislation, because that is not the way the U.S. Constitution works, regrettably.

So long as there was a commonwealth or enhanced commonwealth status, the power will remain in the Congress. Unless and until Puerto Rico becomes a state or becomes independent, Puerto Rico does not have this inherent sovereign power to exercise so much control as H.R. 1230 suggests.

Mr. FORTUÑO. So essentially, you have serious qualms about whether what has been actually promised to the people of Puerto Rico in the platform of the Governor's party, essentially that we will have veto power over Federal legislation, that we would actually be able as well to limit the jurisdiction of the Federal district courts in Puerto, actually that we will be able to, believe it or not,

benefit from all these free trade agreements and other agreements that our nation enters into.

But by the same token, if some of them are not of our liking, that we will be able to enter into separate agreements. Could you comment on those, as well?

Mr. GOLDSTEIN. I have more than serious qualms. I don't believe that it is a constitutionally permissible arrangement. It is, no doubt, idealistic, in a sense; it would be a wonderful arrangement for the people of Puerto Rico, as it would be for all of the 50 states that currently exist. But it is not something that is recognized by the Constitution.

Mr. FORTUÑO. Actually, with this I will yield back. And I thank you again, Mr. Goldstein. I am convinced that if we could get all that, there will be 50 requests for that before this committee.

I yield back, Madame, my time.

Ms. CHRISTENSEN. Thank you, Mr. Fortuño. I now recognize Mr. Kennedy for five minutes.

Mr. KENNEDY. Thank you, Madame Chair. And I want to thank you, Madame Chair, for allowing me to be here today. I also want to commend the Member from Puerto Rico, Mr. Fortuño, for his leadership on this issue.

It was mentioned, the issue of fairness. The delegate from Puerto Rico, Mr. Fortuño, has been outspoken on behalf of the people of Puerto Rico. And I think all of us, as Members of Congress, are painfully, painfully aware of the fact that although he represents seven times the number of people that each and every one of us represents, there is only one of him. And he doesn't get to go to the Floor of the U.S. Congress right now.

We are about to go for a vote, and he doesn't get to go and vote. If you want the truest test of where the power is under the Constitution right now, it is in this vote. Because we are going to have a vote, and he doesn't get to go vote. The proof is in the pudding right there. He doesn't get to go and vote on the Floor.

So if you want to cut right through all of the talk, that is where the bottom line is. If you want to know where the sovereignty really is, that is where it is. Puerto Ricans don't have the power. And until Congressman Fortuño—and he would actually have six other colleagues, Members of Congress, if the people of Puerto Rico had the right to vote—were able to go and vote right now, then you would have real democracy in Puerto Rico. That is the real issue here, and that is why we are listening to this bill, and why we need to act on this.

Whether the people of Puerto Rico choose to have people go and vote as a state or whether they choose to have independence, that is their choice. But they can't allow this current disenfranchisement to continue.

And Delegate Fortuño, you have been outspoken on this issue, and I commend you for it. And I think your point on this 1230, the notion that under developed commonwealth, that Congress concede power to Puerto Rico to nullify Federal laws, let me ask Mr. Pildes a question, because you brought up the issue of the Northwest Ordinance.

You said the territorial incorporation example of a mutual consent arrangement in the Northwest Ordinance was a statutory pol-

icy subject to alteration by Congress, despite the mutual consent provisions it contained.

But isn't it true that paragraph 14 of the Northwest Ordinance, Article IV of the so-called unalterable compact, expressly states it was subject to "such alterations as shall be constitutionally made to the Articles of Confederation and all acts and ordinances of the Congress of the United States."

And isn't it also true that the Northwest Ordinance was amended in 1789 by Congress, without the consent of the territories?

Mr. PILDES. Representative Kennedy——

Mr. KENNEDY. Yes or no? Well, the answer is yes, in case you needed to know.

Mr. PILDES. May I respond? I am sorry. I just wanted to say that the terms of the ordinance do say that they cannot be altered except by mutual consent.

Mr. KENNEDY. Well, it was altered without the consent of the territories, contrary to your testimony.

Mr. PILDES. I don't believe that is correct, Representative.

Mr. KENNEDY. Well, I can show you——

Mr. PILDES. Yes, we can——

Mr. KENNEDY. I have got it here in case you want it.

Mr. PILDES. I would be happy to look at that, and I would be happy to submit a written response to it, if you want to give me that information.

Mr. KENNEDY. We have got the Library of Congress right here, Ken Thomas is here.

Mr. PILDES. Do you want to ask him the question?

Mr. KENNEDY. No. I have got the Library of Congress here that has refuted your testimony that the Northwest Ordinance that you said had mutually consented to the Articles of Confederation being amended was not true.

Mr. PILDES. Representative Kennedy, the United States Supreme Court has held constitutionally that the one time I am aware of that Congress did try to alter a mutual consent clause for a territory, when it came to Alaska, that that, in fact, was unconstitutional for Congress to do. That is an explicit express holding of the United States Supreme Court in the Rasmussen case.

So as far as I am aware, the only time the U.S. Supreme Court has ever confronted the question, it has held that Congress is bound by a mutual consent clause when it makes that pledge in a statute to a non-state area. And again, that is the Rasmussen case, and there is a whole line of cases that follow Rasmussen which reaffirm that principle.

Mr. KENNEDY. May I ask Mr. Goldstein—actually, my time is up. But if I could ask Mr. Goldstein, once again, does not the power to change the status of the people of Puerto Rico reside with the people or reside with Congress?

Mr. GOLDSTEIN. Congress controls the future of Puerto Rico, and the bills before you seek to take their views and let them make a choice. But it is a Congressional power. Unfortunately, that is true.

Ms. CHRISTENSEN. Mr. Kennedy, your time has expired. Thank you.

I would like to recognize Mr. Flake for five minutes.

Mr. FLAKE. I would like to thank the Chair for convening this hearing.

Let me just go quickly to Mr. Thomas. You mentioned in your testimony that you thought that both bills were constitutional, but you expressed some concern, constitutional concern, in your testimony with regard to H.R. 1230. Are those concerns enough to give you pause about its constitutionality? Or do you still state that that bill is constitutional?

Mr. THOMAS. I guess the best way to phrase it, I would be concerned about its enforceability. And again, this would not arise until such time as Congress chose, if 1230 again led to a plebiscite, led to a commonwealth, enhanced commonwealth status that was to be non-alterable, the issue would not be joined until Congress tried to alter it. And at that time I do believe that the courts would find that the Congress still had the power to alter even a solemnly entered-into agreement.

Mr. FLAKE. So constitutional, but not enforceable.

Mr. THOMAS. That might be the best way to describe it.

Mr. FLAKE. Let me yield my remaining time to Mr. Dent. I know we have a vote quickly.

Mr. DENT. Thank you, Mr. Flake. And also, at the outset I just wanted to say I am very pleased to see that included in today's witnesses we will include representatives from our armed forces from Puerto Rico. I think that is very important.

I do want to commend Madame Chairwoman and the committee staff for inviting these veterans who have done their duty, and are here to ask that we in Congress do our duty and uphold our oath of service as honorably as they did.

That said, regarding the status of Puerto Rico, which is the subject of the hearing today, I am not here to advocate statehood or independence, or even the current status, for Puerto Rico. Instead, I support the process laid out in H.R. 900. And I think we need to clearly define the status options Congress is willing to consider if approved by a majority in a Federally recognized referendum.

And if a majority of our fellow citizens in Puerto Rico are not ready to make the choice Congress is prepared to offer, they can choose to continue their current status, and we can continue to assist the commonwealth in its development goals as a territory, based on the democratic acceptance, and at least for now, the current political status.

And I do again want to applaud Congressmen Serrano and Fortuño and their legislation, which will allow just that kind of freely expressed government by consent on the status issue. Indeed, there would be no vote on statehood or nationhood until a majority seek a new status, and an end to the current status. And this is a sound approach. It is a sound process. And that is why I strongly support H.R. 900.

So why would a guy from Pennsylvania care about this legislation? Well, I, too, like many people, are concerned about the island. I represent a large number of people who have strong ties or roots to the island of Puerto Rico, and many of my constituents are following this issue very closely.

And so as this debate unfolds, I certainly am going to listen to all sides on this issue. And again, I want to thank you, Madame

Chairwoman, for putting on this hearing today. And again I want to applaud Congressmen Serrano and Fortuño for their strong leadership on H.R. 900.

Thank you. I yield back.

Ms. CHRISTENSEN. Thank you. The Chair now recognizes Mr. Serrano for five minutes.

Mr. SERRANO. Thank you so much. There is not that much time left before the vote, but I will do some work here.

Mr. Pildes, just a question probably more on American foreign policy than on anything else.

Did I hear you say that the United States can hold a colony if it is in our best interest?

Mr. PILDES. Well, unfortunately, that was the decision in the insular cases, as you know, in Downes v. Bidwell. And I actually think it would be perverse for the Constitution to be understood to permit that initial move.

But now to be understood to deny Congress the power to expand the self-governing autonomy of Puerto Rico on the basis of some view that the one thing the territory clause does not do is permit Congress to expand the self-government, the autonomy, the political independence of Puerto Rico.

So that is why in my view the Court's decisions in the insular cases actually support an expansive power for Congress to cede some of its territory clause powers, and to respect the decision of the people of Puerto Rico if that is what they prefer in a free and informed process, to become self-governing in relationship with the United States.

Some intermediate form, more autonomous than today, distinct from statehood, strong association with the United States distinct from independence. I believe whatever of these options is right, and whatever the people of Puerto Rico prefer, the Congress and the President, because both have to join in this decision, do have the constitutional power at least to give the Puerto Rican people these different options. And that is all I am really trying to insist on here.

Mr. SERRANO. OK. To, very quickly, Mr. Thomas and Mr. Goldstein. The H.R. 1230 accepts the now well-known Serrano Amendment, which is in H.R. 900, that allows for those of us that were born on the island to vote. In fact, I think 1230 goes a step further and says the children of those born on the island.

I suspect that will probably be the first thing that some people go after constitutionally. Is it your feeling that could hold constitutional muster?

Mr. THOMAS. Congressman, I would be willing to submit a memo on that, not having looked at it closely in some time.

However, the ability of a governmental entity—here a territory with Congressional authorization—to establish the parameters of the voting, of its vote, of who gets to vote, of suffrages, has quite a bit of discretion. And I wouldn't say that there might not be some equal protection issues raised, but I think that as long as there is a rational basis for the extension of suffrage on an even-handed basis I think would survive constitutional scrutiny.

But I would like to, if necessary, develop that further. Thank you.

Mr. GOLDSTEIN. Congressman, I think much would depend on the ultimate status of Puerto Rico and the degree of independence and autonomy that it ultimately elected to secure.

I don't think there would be an equal protection problem. And Congress does have the ability to extend citizenship. A lot would depend, I think, on what came with that citizenship, and the ability——

Mr. SERRANO. No, no. I am talking about during those votes, to have those of us who reside in the States vote in the plebiscites.

Mr. GOLDSTEIN. No, I think that Congress could very likely—I apologize—could very likely, with some logical basis, such as that relationship to the island, choose to allow that level of participation. I don't think that it would violate, it would dilute the votes of citizenry in any substantial way.

I do think if, for example, the Congress were to say the citizens of the State of Indiana—not to pick on Indiana, which is a wonderful place—but were to pick some illogical relationship, there would be problems. But I expect that what you described would be constitutional.

Mr. SERRANO. OK. Let me just close by saying that I will probably have a lot of people in Puerto Rico scratching their heads why I would bring up the subject, but part of the confusion has been seen in Congress in Major League Baseball.

C.Q., a national journal, once published a list of foreign-born Members of Congress, and it listed Ms. Velázquez and I as foreign-born, and it listed Mr. Gutierrez as native-born, because he was born in Chicago.

Major League Baseball says that Bernie Williams is foreign-born, and they have got Martínez as native-born. And so it dilutes the numbers of Puerto Ricans.

So it really can be resolved by Major League Baseball first, and then we can move on to take care of it. Thank you so much.

Mr. FALEOMAVAEGA. Will the gentleman yield?

Mr. SERRANO. Sure.

Mr. FALEOMAVAEGA. I was introduced by one of the Member's colleagues on the Floor of the House as the gentleman from Somalia. [Laughter.]

Mr. FALEOMAVAEGA. Thank you.

Mr. SERRANO. Well, I represent the Puerto Rican capitol of the world, the South Bronx.

Ms. CHRISTENSEN. Would you yield again?

Mr. SERRANO. Absolutely.

Ms. CHRISTENSEN. As far as I know, Bernie Williams' family is from the Virgin Islands. He just happens to be born in Puerto Rico.

Mr. SERRANO. Well, and we gave you a great Governor for a while, right?

Ms. BORDALLO. Sir, would you yield for just a moment? I am also known as the Representative from Guatemala.

Mr. SERRANO. I think I started something here.

Ms. CHRISTENSEN. We are going to entertain a second round of questions. And fortunately, four of us sitting here do not have to vote right now.

But I would like to ask Mr. Nieves, as far as I know, none of the other freely associated states have continuing U.S. citizenship. And I noticed that that is number four in your principles.

Why do you think that that would be possible, to continue to be U.S. citizens under a freely associated state?

Mr. NIEVES. OK. The issue of citizenship is very hard to discuss. But the things that, the decision to grant citizenship to Puerto Ricans was not made by us; it was made by the United States in 1917.

In the case of Puerto Rico, Puerto Ricans, for several historic reasons, have come to value their American citizenship. The things that any movement toward a form of sovereignty, free association, must take into account a historical reality, that Puerto Ricans value American citizenship. Although it could be said that it is a kind of second-class citizenship, but that is the historical reason.

We should make that American citizenship, that there are no constitutional problems for a new arrangement within Puerto Rico and the United States, based on the sovereignty of Puerto Rico, whereby in the free association, there could be a recognition of continued American citizenship.

We submit, Madame Chairwoman, that this is not a legal issue, per se; it is a political decision that could be made by the United States. There are no legal——

Ms. CHRISTENSEN. Impediments.

Mr. NIEVES.—impediments to making that decision.

Ms. CHRISTENSEN. Thank you. Thank you for your answer.

Mr. NIEVES. Thank you.

Ms. CHRISTENSEN. Mr. Goldstein, would you agree that should the new enhanced commonwealth be the choice through whatever process, that it would have to be negotiated? And through that negotiation, can you say with any certainty that none of those provisions of commonwealth could be successfully negotiated? Could you with certainty say that any one of them cannot be negotiated with the United States Government?

Mr. GOLDSTEIN. No, Madame Chairwoman. My concern is only with two things. One is the fundamental promise that H.R. 1230 would be making to the citizens of Puerto Rico that this would be permanent, and that they could count on the U.S. Congress never being able to change the deal. And I don't think that is a promise that could be made.

And my second point is that there are important promises there about the ability to veto Federal laws and Federal jurisdiction that might be at the heart of the citizens' desire to adopt that proposal that would be very problematic under the Constitution.

Ms. CHRISTENSEN. But your answer was no, that you can't say with certainty that they could not be negotiated.

Mr. GOLDSTEIN. That no provision of that could be negotiated, no, that is not my point. But the fundamentals are very doubtful.

Ms. CHRISTENSEN. Thank you. Professor Pildes, can you explain—I would like to go back to some of the conclusions of the President's Task Force. And can you explain in more detail why the Bowen case contradicts many of the conclusions of that task force?

Mr. PILDES. Well, the task force relies on recent Justice Department memoranda in the 1990s that assert that the decision in this

Bowen case by the Supreme Court from the 1980s required a dramatic change in position of the Justice Department regarding whether Congress has the power to enter into these mutual consent clauses over political status.

I gather the theory of the Justice Department as to why Bowen suddenly required this about-face in Justice policy is that Bowen held that California did not have the right permanently to choose to remove itself from the Social Security system once it had entered into that system.

One of the obvious problems with reasoning the Justice Department analysis is that the Social Security system, the relevant Congressional statutes expressly reserve the right of Congress to amend those statutes and change them at any time. So the argument of California, that somehow it had a pledge from Congress never to alter the Social Security system was refuted by the very statute on its face.

And for that reason alone, it seems to me the Bowen case is utterly irrelevant to a statute that would say we pledge to respect the autonomy of Puerto Rico in this particular form, whatever form was adopted. I just find it utterly inexplicable, unless there is some political or policy judgment that is not reflected in the legal analysis, as to how one could conclude that that decision dramatically changed the constitutional doctrine about whether Congress could create one of these mutual consent agreements.

Ms. CHRISTENSEN. Thank you for your answer. Mr. Fortuño, I recognize you for five minutes.

Mr. FORTUÑO. Thank you, Madame Chair, again. Mr. Goldstein, just to finish on the question that Madame Chair just asked you. Is there a legal impediment to Congress guaranteeing a million dollars to each Puerto Rican for life? Legal impediment?

Mr. GOLDSTEIN. There is a different rule that would apply to when you promise someone property, which has been something that, an analogy that has been made for the enhanced commonwealth status. There would be a significant impediment to promising permanent autonomy that Congress could never revisit, and the ability to veto Federal laws and the like.

Mr. FORTUÑO. And the bottom line here is that even if we can have our cake and eat it, too, the next Congress could take it away.

Mr. GOLDSTEIN. That is right. And this could be a promise that could not be kept.

Mr. FORTUÑO. Exactly. That is why it is not permanent. That is the reason why, there are two words in our H.R. 900, permanent and non-territorial. And there is a reason for each word in that legislation, to make sure that we finish this discussion once and for all.

And talking about finishing the discussion once and for all, if I may, Professor Gorrín, even though we differ on the final outcome of this situation, not only our families tied for a long, long time, but I have the utmost respect for you. I would like for you to expand even further on whether we changed our status back in 1952, and whether we selected our status in 1952.

Mr. GORRÍN-PERALTA. Well, the committee would do well to go back to the legislative history of Law 600. That record is quite clear. Everybody was very clear at that time. The Senate com-

mittee that recommended the legislation, the House committee, the State Department, the hearings, the Interior Department at the hearings, and even the Representatives of the Puerto Rican Government at that time, referred once and again that the purpose of that legislation was to give the people of Puerto Rico a greater degree of self local government, and to obtain some kind of collective consent to the current relationship back then. In other words, a consent to the territorial status at that time.

And all those reports and all those positions reiterated that the fundamental relation between Puerto Rico and the United States would not be changed. Even the Governor of Puerto Rico told, in a hearing just like this one at that time, if the Puerto Rican people should go crazy, Congress will always have the power to go back and legislate again.

Mr. FORTUÑO. That is why, indeed, what we have today is not permanent in nature, because Congress any day can change it.

I have just one more question, and that is to Mr. Pildes. Your name sounds familiar. Were you involved in the case stemming out of the 2004 election, by any chance?

Mr. PILDES. I absolutely was, Representative Fortuño.

Mr. FORTUÑO. Who did you represent?

Mr. PILDES. I represented the Puerto Rico Electoral Commission in the First Circuit, on behalf of the Commission's view about how to resolve that disputed election, which was the position that the First Circuit ultimately endorsed.

And I should also add I have represented Puerto Rico in litigation over its status in the United States Court of Appeals for the District of Columbia Circuit. And that litigation centered on the question you were just asking, which is——

Mr. FORTUÑO. During what time did you represent in those cases before the District of Columbia?

Mr. PILDES. That is in my testimony, but I believe it was in the last two years, that litigation.

Mr. FORTUÑO. So under this Administration. So you have worked for this Administration.

Mr. PILDES. In that litigation, I did represent the Government of Puerto Rico. That is correct.

Mr. FORTUÑO. Governor Aníbal Acevedo Vilá's administration.

Mr. PILDES. That is correct.

Mr. FORTUÑO. Thank you very much. I yield back the balance of my time.

[Laughter.]

Mr. PILDES. That is OK.

Ms. CHRISTENSEN. The Chair now recognizes Mr. Faleomavaega for five minutes.

Mr. FALEOMAVAEGA. Thank you, Madame Chair. I appreciate the opportunity again. I do have some questions I would like to share with the members of the panel.

I have the famous or infamous pleasure, when people ask me well, what is your territorial status, you representing American Samoa. And I say we are an unincorporated and unorganized territory of the United States.

[Laughter.]

Mr. FALEOMAVAEGA. Which leads me to my first question to the members of the panel. With my limited understanding of the insular cases, I remember the doctrine of incorporation was first instituted during the insular cases, especially in Downes v. Bidwell, as I recall. And this is where the Supreme Court invented what was known as whether you are an incorporated or unincorporated territory.

And as I recall clearly, Puerto Rico was classified as unincorporated territory. Which means, if I understand that correctly again, that any territory that is to be considered as an unincorporated territory will never see the day of ever becoming a state. That is my understanding of the doctrine of incorporation.

But I would like to ask the members of the panel, what do they understand the doctrine of incorporation. Because it does have serious implications on the whole realm of constitutional court cases and problems of whether or not some provisions or all provisions of the Constitution apply to the insular areas. And Puerto Rico has always been the lead case in anything dealing with insular areas.

And especially I would like to ask my good friend, Professor Peralta, if you could help me with this. Am I correct that the current status of Puerto Rico is an unincorporated territory?

And second, wasn't there a tremendous reluctance on the part of the Congress even to entertain the idea of statehood for Puerto Rico, because they were from a different culture? They didn't speak English? Their whole relationship was more toward Spain than it is with our own country? I just wanted to ask you that question.

Mr. GORRÍN-PERALTA. You are absolutely right, Downes v. Bidwell was the first judicial expression of the theory of non-incorporation, which actually originated in this Congress, when, in 1900, the first organic act for Puerto Rico was approved by Congress. And a tax was established, which was not a uniform tax, as the Constitution orders, for any, for the United States.

Thus, the validity of that tax depended on whether Puerto Rico was part of the United States or not. That is the issue in Downes v. Bidwell. And the United States said that unincorporated territories are not part of, but merely are pertinent to, the United States.

Contrary to the incorporated territories, which had been all previous territories, including the Northwest Territory, which was Federalized in 1784 through the first Ordinance for the Northwest, and thus became part of the United States. It was just a matter of time. The ordinance established that that territory would become several states. The ordinance was amended a few years later, and the number of states increased.

From then on, since the Louisiana Purchase, the acquisition of Mexican territories, the acquisition of Florida, the acquisition of Washington State, et cetera, et cetera, et cetera, all territories had been acquired through instruments of annexation that referred to the rights of the inhabitants of the Northwest Territory, which meant that all new territories during the 19th Century had been annexed as part of the United States. It was just a matter of time before they were to be admitted as states. That was the case also with Alaska and Hawaii. That is why——

Mr. FALEOMAVAEGA. That is where we are right now.

Mr. GORRÍN-PERALTA. That is where we are. And in 1952, that situation did not change, as I said before, because everybody was clear in Congress that the fundamental relationship would not change. The only thing that would change was the local government would not be dictated by Washington through an organic act, but through an exercise of constitutional government by the people of Puerto Rico.

Mr. FALEOMAVAEGA. Would you say—and my time is running down, so I just—would you say that this proposed enhanced form of commonwealth that other faction is trying to pursue here is really almost the same as the current status of a compact of free association? That the three entities Micronesia currently have with the United States—Palau, the Republic of Palau, the Republic of the Marshall Islands, and also the Federated States of Micronesia.

In fact, the term compact of free association was derived from the word commonwealth, which I understand, I am not very good in Spanish, but it means free association, if I am correct on that definition. And the Micronesians just simply adopted the term and expanded it now in terms of having literally a treaty relationship between the United States and these three Micronesian entities that for every 15 years, they will then renegotiate or come back to the table and find out where we go from there as far as their futures are concerned.

But they are independent and sovereign nations. They are members of the United Nations. They participate in international organizations. And the people even there can join the military. But they are not U.S. citizens.

And I am sorry, my time is out again, Madame Chair. I will try to come back again. I know we have got two more panels, but I really want to welcome our members of the panel, Madame Chair. They have been very, very good, and I wish we would have more time to pursue with more questions.

But thank you again.

Ms. CHRISTENSEN. The Chair now recognizes Ms. Bordallo for five minutes.

Ms. BORDALLO. Thank you. Thank you, Madame Chairman.

Attorney Goldstein, this question is for you. The task force report seems to relish in the language if you are a territory, you are at the will of Congress. What are the boundaries of the will of Congress? Could Congress remove the Governor of Puerto Rico, or any of its elected officials from office? Or for that matter, a Governor or any officials from any other territory?

Mr. GOLDSTEIN. To intervene in the ongoing politics of the island could create due process problems for rights that have already been exercised. But it is perfectly clear, I think, that Congress could prospectively dictate what the form of government on the island would be.

So Congress's powers are very, very broad in this respect. And it is regrettable that the citizenry itself doesn't have the kind of autonomy that it deserves.

Ms. BORDALLO. I am gathering that you are saying yes to that.

Mr. GOLDSTEIN. Well, I think it would present, if you were to remove someone from office it could present constitutional problems for the rights of the citizens that have already been exercised to

elect that person in the first place. I think it would be a very, very close constitutional question. It would be at the outer bounds probably of Congress's authority.

Ms. BORDALLO. Well, say that the answer more is leaning to an affirmative.

Mr. GOLDSTEIN. Yes?

Ms. BORDALLO. Do you think any Federal court in this country would actually allow that?

Mr. GOLDSTEIN. Do I think that, on the assumption that Congress has the power to do it, do I think that a Federal court would actually let them do it? The answer is probably yes; that a Federal court would express its dismay at the continued mistreatment of the citizens of Puerto Rico, but it would conclude that Congress's power here is exceptionally broad, if that is the premise of your question.

Ms. BORDALLO. Thank you. And I do have a question for Professor Pildes. I am sure you are familiar with the legislation that is pending before Congress, and which is scheduled, I think, to come to the Floor of the House for a vote tomorrow, as a matter of fact, that would grant the District of Columbia voting representation in the House of Representatives based on Article I of the Constitution's broad authority over D.C.

In your opinion, Professor, is the analysis employed in the deliberations over this bill in any way illustrative of the process and issues that we are discussing here?

Mr. PILDES. I think that that is a fairly unique issue, which poses specific problems. Because when Congress, by statute, tries to enhance representation in the U.S. House of Representatives, then I think there are quite serious constitutional questions about whether the Constitution does or does not permit that particular act.

Congress can treat D.C. as a state for purposes of many Federal statutes, which is has. But the extension of voting rights always means that someone else's voting power is being diminished as a formal matter. And as Mr. Goldstein said earlier, when vote dilution issues are present, there are always very difficult and very serious constitutional issues.

So I don't tend to think, at least as far as I have studied the D.C. bill at this point, that the resolution of that very specific issue about voting power by statute in the House has any direct implication for these issues about the process Congress might set up to allow the people of Puerto Rico, in the first instance, to make their judgment about what political status they would like going forward.

Can I just, for the record, I would like to state one thing?

Ms. BORDALLO. Yes, sure.

Mr. PILDES. I am here testifying in my own capacity as an academic. I am not being paid to be here. My expenses are not being paid by anybody.

When I testify as an academic, I place a very high value on my credibility and my academic statements. And I just would like the record to reflect that.

I have learned about these issues in part through my experience litigating cases, as well as my academic study. But I am here testifying as an academic.

Ms. BORDALLO. Thank you. Thank you, Professor. Thank you, Madame Chair.

Ms. CHRISTENSEN. Thank you. I would like to thank the panelists. And as I dismiss you, I wanted to point out that this panel, as the other two, are made up of individuals recommended by all three political parties, plus the MAS, and with the intention of trying to bring a balanced view on the issues before us.

And as such, we recognize that different panelists may have relationships or affiliations with political parties or organizations representing one view or another. And in the interest of full disclosure, I would just like to say that Akin Gump also has contracts with the Citizens Educational Foundation of Pro Statehood, a lobbying group that works on behalf of Puerto Rico.

So with that, I would like to thank the panelists. You are dismissed.

We are going to take just a five-minute break as we bring up the second panel.

[Recess.]

Ms. CHRISTENSEN. The Subcommittee on Insular Affairs is now back in session. Members will be coming in and out. Those who are voting will be coming back and going back and forth, and we may expect to be rejoined by our fellow delegates. And the rest of the commissioners will be right in.

So I would now like to recognize our second panel. And on that panel we have Mr. Manuel Mejía, the Chairman for the Puerto Rico Chamber of Commerce; Mr. Enrique Baquero, the President of the Puerto Rico Foundation for Democratic Action; and Mr. José Luis Fernández, President of the Inter-American Entrepreneurs Association.

I would like to recognize Mr. Mejía for five minutes.

STATEMENT OF MANUEL A. MEJÍA, CHAIRMAN, PUERTO RICO CHAMBER OF COMMERCE

Mr. MEJÍA. Good morning. Madame Chairwoman and Members of the Insular Affairs Subcommittee, my name is Manuel Mejía. I am the Chairman of the Board of the Puerto Rico Chamber of Commerce.

We want to thank you for the opportunity to express the views and positions of our Chamber regarding the political status of Puerto Rico.

I would like to briefly summarize the salient points of our statement. However, we have submitted our full statement to the Subcommittee, and would appreciate its inclusion in the printed record of these proceedings.

At the outset, I would like to state that I am appearing here not in my personal capacity, but as Chairman of the Puerto Rico Chamber of Commerce. It has 2500 members, plus over 60 affiliate associations who together employ over two-thirds of the island's labor force.

I would like to take this opportunity to congratulate Dr. Christensen on becoming the first female Chairwoman of this Subcommittee.

This hearing is also truly historic for another reason. It is the first where both a Chairwoman and the Ranking Minority Member are delegates from territories.

I would also like to thank you for promptly scheduling a hearing on the two bills before us. Each of those bills implements a different process for resolving the longstanding political status issue. However, because the Puerto Rico Chamber of Commerce does not favor any particular form of political status, I will not discuss here today the merits or the merits of any of those bills. I will focus my presentation on a discussion of those general procedural principles that must be included in each of the bills to ensure a prompt and fair resolution of the status issue.

I will also address the Chamber's concerns regarding the economic and commercial effects of any transition. The first principle must be the principle of informed consent. This requires Congress, regardless of the process chosen, whether a constitutional convention or a referendum, to provide clear guidance regarding constitutional limits. This guidance will enable either the members of the convention or the voters to be fully informed regarding the alternatives before them.

In addition, Congress must provide for a thorough educational program to acquaint voters with the consequences attendant to each alternative. The wider the educational program, the more voters that will participate. An educated electorate assures our nation and the international community that the process has been fair, transparent, and in accordance with international law.

The second principle is the principle of transition. By this I mean that no matter what status is selected by the members of the constitutional convention or by the electorate directly in the referendum, Congress must provide for an orderly transition in order to avoid economic and other dislocation.

The Chamber and its members have a particular concern regarding the effects that a lack of a proper and smooth transition may have on the economy. This transition, depending on the status selected, may affect such matters as taxation, citizenship, language, public entitlement, educational benefits, migration, obligation of terrorists, capital [ph] laws, Federal infrastructure expenditures on the island, Federal procurement, conditions and restriction to the island's access to United States and foreign markets.

The economic well-being of Puerto Rico and its ability to compete in a global market are among the principle concerns of the Puerto Rico Chamber of Commerce. Accordingly, we are extremely concerned about the effects that an improper transition may have on our multi-sectoral economy. You are responsible for providing for a transition in any legislation. Please bear in mind that an orderly transition will be very beneficial to the island, whereas an improper transition can gravely affect Puerto Rice's economy.

In conclusion, the Puerto Rico Chamber of Commerce sincerely hopes that this historic hearing marks the beginning of a new and definite process for resolving the island's political status. We wel-

come any prompt action that you can take to assure the prompt passage of legislation toward that end.

We do urge, however, that any such legislation contain clear constitutional guidelines, a thorough education program, and an orderly transition if a new status is chosen.

The Chamber stands ready to assist this 110th Congress in the drafting of appropriate legislation by providing such data and information as this Subcommittee may require.

I would like to again thank the Subcommittee for its prompt scheduling of this hearing, and for the interest demonstrated in Puerto Rico's future.

[The prepared statement of Mr. Mejía follows:]

Statement of Manuel A. Mejía, Chairman of the Board, Puerto Rico Chamber of Commerce

Madam Chairman and Members of Congress, my name is Manuel Mejía; I am the Chairman of the Board of the Puerto Rico Chamber of Commerce. We want to thank you for the opportunity to express the views and positions of our Institution on this most important issue; Puerto Rico's Political Status.

The issue of the political status has been an open and unresolved question in the history of Puerto Rico. It creates serious divisions among our society, forcing us to devote valuable human and economic resources in its debate, without reaching yet a definite solution. The Puerto Rico Chamber of Commerce certainly appreciates the present Congressional efforts to find a democratic solution to this issue.

Before I enter into the discussion, of the principal issues, allow me to say that today we stand before this distinguished committee as representative for over 2,500 businesses and professionals of all sector and university students as well as a federation of over 60 private sector organizations in the Island jointly employing two thirds of the workforce.

The Puerto Rico Chamber of Commerce does not favor any particular form of political status. Its membership includes individuals from all political perspectives. In this diversity, chamber members have reached a consensus on the need to resolve the status issue and bring emotional and economic stability to our society. Without an organized congressionally sanctioned process, locally celebrated plebiscites on the status issue will continue to create much uncertainty among present and potential investors. Such situation hinders economic prosperity; therefore, this should be resolved as quickly as possible. Neither Congress nor the Puerto Rican people should wait another decade to decide this issue. Once the status question is resolved, efforts could be efficiently channeled to deal with the various social and economic problems of our society.

The Puerto Rico Chamber of Commerce will not address the provisions of H.R. 1230 regarding the process to exercise the right to self-determination thru a Plebiscite versus a Constitutional Convention. Further, we will not address the provisions of H.R. 900 on the two federally sanctioned plebiscite processes. For this reason our comments will be limited to the issues which have to be considered in the transition to any given status formula selected by the people of Puerto Rico. The central focus in our analysis is the economic and social circumstances of our members and, what is more important, those of the people of Puerto Rico. Before entering into the discussion of the process here are some pointers regarding Puerto Rico present economic structure.

Puerto Rico's economic model dates back to the early 1980s. During such years, most developing country governments, with a few exceptions, as well as many international organizations, had in mind a similar model of the development process as they went about their work. That model of how development goals should be attained greatly influenced government policies and institutions. It also profoundly affected national legal systems and the way government officials, lawyers, and legal scholars thought about law and its role in development. Since the late 1980s, most developing countries, in varying degrees, have abandoned that first model of development (Development Model I) and have evolved to a new model (Development Model II) that supersedes it. That has not been the case of Puerto Rico. This fundamental change in development models was in many ways as significant a transformation for developing countries as was the movement in the 1950s and 1960s from dependent to independent political status. This transformation is partially reflected in the change of name used to describe the "Third World: the "developing

countries" of the 1960s have become the "emerging markets" of the 1990s. (The International Lawyer Winter 1999; Volume 33; Number 4 page 876).

Probably all Third World countries entered the decade of the 1960s with a fundamental belief that their governments had the primary responsibility for bringing about economic development. In the minds of most officials, lawyers, and scholars, the belief in government's dominant role evolved into a definite model about the nature of the development process. This model had four elements: (1) public ordering and state planning of the economy and society; (2) reliance on state enterprises as economic actors; (3) restriction and regulation of private enterprise; and (4) limitation and control of the country's economic relations with the outside world. Puerto Rico's model still has these elements present to certain extent. (The International Lawyer Winter 1999; Volume 33; Number 4 page 877)

The position of our institution revolves around two main concerns. One is that the process ought to be fair and well informed, for the people to make an enlightened decision. The other is that, should the people of Puerto Rico decide to change the present status, an orderly and well-defined transition has to be clearly stated. This is of outmost relevance, because the people should know, not only the final outcome of their decision, but the road to reach it, if they are going to issue a responsible vote.

The Process

The self determination process should be dealt on its own merits. It should not be mixed with the normal electoral process. Voters have to be able to focus upon the status issue, apart from any distractions and confusions with other issues. All political parties in the Island have different positions with regard to their desired solutions to the status question. Indeed, each one of them uses the status as the principal issue in their political platforms and as their main identifier. As a result, the issues of governance and administrative policies are mingled in the electoral process with those related to the status and the type and form of future political relations between Puerto Rico and the United States. This situation creates confusion among voters, obscuring their ability to focus on the real issues to be decided at each electoral process. The status question is an ideological and emotional issue, becoming one of the most divisive issues in Puerto Rico. Too many human and economic resources have been spent in debating this issue. It is clear that a final solution is of foremost relevance for the future of our people. By solving the status issue, we will be deciding not only our future, but also the one for the generations to come.

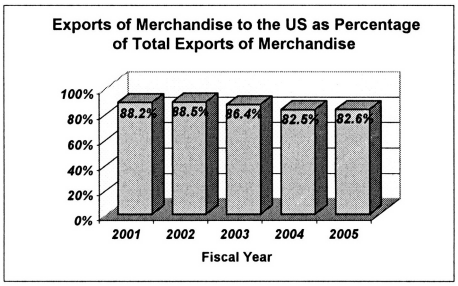
The long-term process to address the status issue in Puerto Rico requires that voters be well-informed on the consequences of their decisions throughout the entire process. Before Puerto Ricans are asked to stamp their status preference on a plebiscite ballot, it is necessary to clearly spell-out the cultural, political and socioeconomic consequences of each political status alternative to be presented.

The information transmitted to the people should be based upon accurate and unbiased data. The data that the Federal Agencies provide with respect to the costs and benefits of each status alternative must be consistent in terms of objectivity and basis. Some examples where consistency and objectivity are of utmost importance are statements about the nature of our American citizenship. Statements on the implications of federal corporate and personal taxation under statehood must be based on scientific estimates. We hereby offer the resources of our institution to help in obtaining additional information about the socioeconomic impact of each status alternative to supplement what has already been obtained, and what needs to be gathered in order to allow the people to make an informed decision.

The only viable alternative to solve Puerto Rico's status issue is a federally sanctioned process. This process must outline very specific steps to accomplish its objectives, the participating institutions for each step in the process, and, very importantly, the responsibility and role of each participant at each step. Our institution believes that the private sector must have a role and a consequent responsibility in this important undertaking. Political parties should welcome the private sector's contributions to this process. On this issue we would like to congratulate Madam Chairman and the distinguished members of this commission for allowing us to testify this morning. We feel that this is an initial step, to encourage a broader participation of private sector institutions in Puerto Rico to complement the views and recommendations of our local government and political parties.

The Outcome and Its Transition

1. The transition



Source: Puerto Rico Planning Board

Puerto Rico's economy has been directed and structured on the basis of its present status. Our economy has achieved a high degree of integration to the U.S. economy. Our total exports in the year 2005 were $56.5 billion. It should be noted that, on the average, 82.6% percent of our exports of merchandise go to the U.S. market. Most of our imports come from the continental U.S., and our financial markets are totally integrated to the national market. The capital stock of Puerto Rico, and the investments made considering the reduction of political risk due to the stability of our relationship with the U.S. and the application of federal laws in interstate cannot be changed overnight. To do otherwise risks grave dislocations and suffering for the people of Puerto Rico if the change is not accompanied with countervailing measures.

Our local tax system is based upon the present flexibility granted to the states and is administered considering local economic conditions as any tax system ought to be. Any change in political status will require a major restructuring of the tax system in Puerto Rico. A drastic and fast change in the local tax system could affect the whole economy.

2. U.S. Citizenship

We are U.S. citizens since 1917, accepting with honor the rights and responsibilities of such citizenship. Our great participation in U.S. military conflicts from World War I to the most recent interventions in Iraq is a clear evidence of this point.

Contradictory statements have confused our people on the nature of our citizenship and its future under different status options should be avoided. We feel that Congress has the duty to state without ambiguity what will happen to our present U.S. citizenship under each status alternative. A clear expression from Congress is necessary to spell out the confusion created by federal and local officials, so that Puerto Ricans can make the appropriate decision.

3. The Federal Tax Treatment of U.S. Corporations

Our industrialization program was developed on the basis of preferential federal tax treatment of U.S. corporations doing business in Puerto Rico. Drastic modifications were made in 1993 and 1996 to Section 936 until its eventual phase out in 2005. These modifications have severely eroded industrialization initiative, not only because tax benefits were diminished, but also because they created uncertainty about the stability of federal policies toward Puerto Rico. Since uncertainty is a formidable enemy of productive investment and economic growth, we now face more difficult conditions to promote the prosperity for our people.

No matter if Puerto Rico chooses to maintain the present commonwealth status, or to become a state or a republic, there is a common interest in promoting the economic development of the Island. We obviously want to prosper. It is not in the best interest of the United States to have a territory, state or an independent neighbor plagued with poverty. Over the past half century Puerto Rico has made, with the assistance of the federal government, big efforts to promote its economic growth. We have worked hard, and achieved great improvements in economic conditions. But more efforts are needed to improve our economic development under our competitive global economy. Even the status quo should be regarded as a transition from poverty to progress, and our economic development strategies are designed from this

perspective. Any change in status has to provide instruments to achieve our common goal of economic development.

It is important for Congress to realize that any successful transition requires an efficient instrument. For that reason, we actively support the efforts of private organizations and of the Government of Puerto Rico to develop new and efficient and effective economic development model, to transform our Island into a developed and prosperous economy. At the very least, Congress ought to clearly state what will be the federal tax treatment to U.S. corporations under each status formula, as well as under the corresponding transition periods, including the period of time for which the corresponding tax treatment is guaranteed.

4. Federal Tax Treatment to Residents and Local Business

People know that the local tax system will have to be adjusted if there is a change in status. We all realize that the present tax structure is consistent with existing conditions, and that any transformation in conditions, as it will be the case if the political status is changed, will result in deep modifications in taxation. The problem is that no reliable information has been produced about what those changes might be.

The role, functions and activities of government differ under each status formula. In a state, the U.S. federal government is in charge of many activities that are the responsibility of local authorities, and federal taxes will be levied on local residents. In a republic, all or most of the activities actually performed by the federal government in Puerto Rico will be transferred to the local government, and it won't be subject to federal laws and regulations. Both scenarios drastically change the needs and tax system for government financing. Transformations of that nature cannot be done overnight without a great risk of serious economic dislocation.

We know of no serious study to document and analyze this most important aspect. It is unfair to ask people to choose between status options and not tell them the consequences of their decisions. At the very least, Congress ought to clearly establish which will be the federal tax treatment to residents under each status, as well as during the different stages of each transition period.

5. Access to U.S. Commercial and Financial Markets

Over the past century, Puerto Rico integrated its economy to the U.S., with obvious mutual benefits. It has been already shown that 82.6% percent of our exports of merchandise are sold in the U.S., and that we depend upon external trade to achieve a reasonable rate of economic growth. Our monetary and financial systems are also totally integrated to the U.S. Most of our productive and infrastructural investments are financed with funds lent from U.S. individuals and institutions, while Puerto Rican savers hold over $20 billion in assets issued by the federal government and private U.S. institutions.

Any modification in the status quo will have consequences in our financial institutions and in the asset values of all citizens. These effects ought to be clearly identified, and measures designed to take advantage from favorable opportunities and to minimize any adverse effect. Again, limited information has been produced in this respect. Here it is necessary to clarify what will be the terms and conditions for Puerto Rico's access to the United States commercial and financial markets under each status formula, including what will be its position with respect to present and future trade agreements that the U.S. engages with foreign countries.

6. Access to Foreign Commercial and Financial Markets

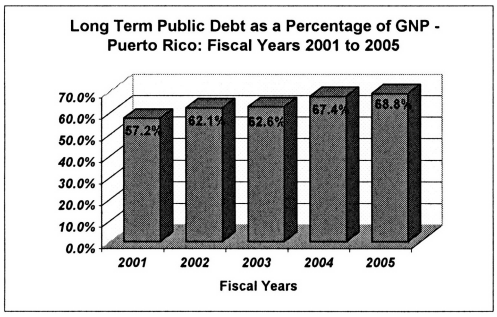
Puerto Rico's economic model is predicated upon the diversification of our economy. It calls for promoting growth in all industrial sectors, and diversifying manufacturing by strengthening the Life Sciences and Biotechnology Sectors. It also seeks to diversify export markets and sources of investment funds. Such policy is consistent with U.S. interests in reducing its trade deficit.

A change in status would modify conditions for the implementation of this economic model. In order to know what modifications we will have to make in our economic development strategies, it is necessary to know which will be the conditions and restrictions to Puerto Rico's access to foreign commercial and financial markets under each status formula, as well as the market penetration of foreign goods in our economy.

7. Long Term Public Debt

The topic of the long term public debt under each status formula is important by itself, as well as in relation to the design of modifications in our tax structure. Our long term public debt has been issued to finance investments in infrastructure. Many of these investments are the responsibility of the federal government in the states of the Union. A sovereign nation in order to benefit from the international

trade agreements will have to establish a level playing field through the rule of law, but harmonized and unified with a free market economy and free market system which in itself will require that investments be made. On the other hand, some of these investments were made to comply with federal laws and regulations. Also, the design of local projects would have to meet or exceed federal regulations, thus constructions costs would be higher, increasing the needed for debt financing.

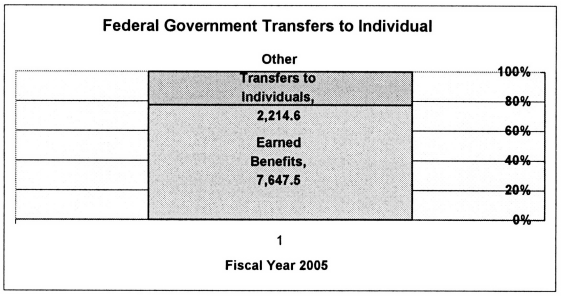


Source: Puerto Rico Planning Board

Long term public debt represents 68.8 percent of Puerto Rico's GNP. Given the tax structure presently available, the Island has no problem in paying for the service of that debt. But with a change in status, the government's ability to raise revenues will also change, and adjustments have to be made to recognize that fact.

Also, Puerto Rico needs to continue its present aggressive program to enhance its infrastructure. That is essential for the competitiveness of our economy. It is, therefore, necessary to know if there will be any constraints for issuing new public debt under the transition periods of the different status formulas.

8. U.S. Transfers



The issue of federal transfers is another that should be properly addressed before the Puerto Rican people are asked to make a decision about the status. Federal transfers to individuals totaled $9,862.1 million in Fiscal Year 2005, accounting for 20.2% percent of personal income in the Island. Of these transfers, 79.0% percent were earned benefits, such as Social Security pensions and Veterans benefits.

It is essential for the people to know what will be the amount and terms of U.S. transfers to Puerto Rico under each status option. That information is vital for the persons to make an informed decision. Particular attention has to be paid to what is going to happen to the contributions that Puerto Rico makes to earmarked funds, such as Social Security, Medicare, and Unemployment Insurance, among others.

9. Travel and Migration

Almost all families have close relatives living in the continental United States. For family ties to be maintained, it is necessary to keep unrestricted travel between the U.S. and Puerto Rico.

Migrations of Puerto Ricans to the continent happened as a derived effect of U.S. citizenship, a significant demand for employment in the United States coupled to high unemployment and low income levels in the Island. In consequence, the issue of migration is related to the previously mentioned U.S. citizenship and economic development, but has a humanitarian dimension by itself. Hence, voters must know

conditions for travel and migration between Puerto Rico and the United States under each status alternative.

Final Remark

In finalizing this presentation it is important to conclude that no law should be approved and consequently the proposed process should not be held if these basic concerns are not properly addressed. Not covering these basic concerns will not have afforded the Puerto Rican voters an opportunity to make an informed decision in selecting among the status options at the time.

The Puerto Rico Chamber of Commerce realizes that some of the key factors that have contributed to our economic development are subject to changes as circumstances vary over time, but we are also aware that drastic changes over a short period of time could prove to be disastrous if the changes occur at a rate faster than the ability of our economy to adjust to them.

Whatever alternative is democratically chosen by the people of Puerto Rico will probably result in economic adjustments and could entail sacrifices on our part. Private enterprise is ready to shoulder its responsibility; however, even in times of budgetary restrain, Congress should be sensitive to our needs and economic realities. Self-sustained economic development can only be achieved through a long term process. With your help, and a great deal of work on our part, we are confident that we can achieve our mutual goal of human progress for the people of Puerto Rico. But an adequate transition period is necessary. It ought to be designed in all relevant details and informed to the people before they are asked to choose.

Once again we would like to express our most sincere gratitude to Madam Chairwoman and the distinguished members of this Committee. The status issue needs to be solved if Puerto Rico is to offer a secure long term investment environment to interested individuals and organizations. Congress needs to act now. Our immediate goal at the Puerto Rico Chamber of Commerce is to focus on the preparation of a strategic plan for Puerto Rico's future economic development. A plan which is capable to adapt and transition into any status alternative and that will guaranty our fellow Puerto Ricans future economic prosperity and a better quality of life.

Thank you.

Ms. CHRISTENSEN. Thank you, Mr. Mejía. Next I recognize Mr. Enrique Baquero for five minutes.

STATEMENT OF ENRIQUE BAQUERO, PRESIDENT, PUERTO RICO FOUNDATION FOR DEMOCRATIC ACTION, SAN JUAN, PUERTO RICO

Mr. BAQUERO. Good afternoon, Madame Chair, Dr. Donna Christensen, distinguished Subcommittee Members. Thank you for the opportunity to discuss my organization's stance on the two measures before this committee relating to the political status of Puerto Rico. We especially thank you for spreading the net wider to hear other voices on this important matter that affects four million Puerto Ricans in particular residing in Puerto Rico.

My name is Enrique Baquero, and I am here as President of the Foundacion Accion Democratica Puertorriquena, a civil society nonpartisan group that advocates national self-determination for the people of Puerto Rico, and also supports a constitutional assembly or convention of Puerto Rican delegates to initiate the process of self-determination.

By way of background, we have been active since 1984, and have participated in previous Congressional hearings on Puerto Rico's political status favoring the inclusion of the sovereign free association option as a separate option in itself, which is different from traditional independence and recognized as such by the United Nation's General Assembly Resolution 1541 of 1960 and 2625 of 1970.

In addition, we have also been active in international activities seeking solidarity for Puerto Rico's right to national self-determination, and for the right of the residents in Vieques to live in peace.

With respect to bills H.R. 1230, sponsored by Congresswoman Nydia Velázquez, and H.R. 900, sponsored by Congressman José Serrano, we believe strongly that these two measures ought to be viewed against certain guiding principles. Let me elucidate.

First, we feel strongly that any process of self-determination should be respectful of international law if it is to meet the true test of a valid self-determination process for the people of Puerto Rico. This means that any territorial status leaving Puerto Rico under U.S. sovereignty violates in essence the inalienable right of national self-determination of the people of Puerto Rico to choose among sovereign non-territorial and non-colonial options, such as those recognized by the United Nations and by international law precedents.

The plain fact is Puerto Ricans are clearly a distinct people, and cannot be excluded from exercising this right which has been reaffirmed in 2004 as an erga omnes right by the International Court of Justice; that is, a right which pertains to all peoples without exceptions, and generates obligations and responsibilities to all states, without exceptions, with reference to the international community.

Therefore, we urge this Subcommittee and Congress to exclude territorial commonwealth as an option in any future consultation to the people of Puerto Rico. To ask Puerto Ricans if we wish to continue being a territory, as stipulated in Section 3[a] of H.R. 900 in its present form, is as absurd and cynical as it would be to ask an inmate due for parole whether he or she would prefer to stay in jail instead of exercising the right to parole.

If the United States sincerely wishes to comply with international law standards, territorial status must be excluded as a valid option. We are persuaded that this is the only way to resolve this stubborn issue between the United States and Puerto Rico in a satisfactory manner, and end what the late Senator Daniel Patrick Moynihan once said about Puerto Rico in a letter to former President Clinton on territorial status, characterizing the relationship as "this remnant of 19th Century imperialism."

Second. Prior to any consultation or plebiscite on Puerto Rico's future political status, Congress ought to recognize the inalienable right of the people of Puerto Rico to elect, in an exercise of its natural right to sovereignty, a constitutional convention of delegates to deliberate on the political future of Puerto Rico. The constitutional convention as a mechanism will give due course to the initiative of the people of Puerto Rico to provide an educational process for a national discussion, as well as multiple opportunities to engage in fruitful conversations and negotiations with Congress.

We recommend that in both the constitutional convention and in all subsequent referenda on political status options, mechanisms be established to allow the inclusion of native-born Puerto Ricans not residing in Puerto Rico, but interested in participating in the process of national self-determination of the Puerto Rican people.

Finally, we reiterate most emphatically that the options of sovereign free association be considered as an option in itself, for this

option is vastly different from independence, statehood, or any other non-territorial option. Free association conveys a special and particular political economic relationship, rendering this option distinct from the other sovereignty-based alternative as is independence.

H.R. 900 version of free association implies that this is identical to independence, thus ignoring important substantive and procedural fundamentals, leading to necessary confusion and distortion, particularly among nonastute [ph] advocates.

In conclusion, a final point. We want this committee to fully understand and appreciate that our organization and similar groups, as well as civil society groups in Puerto Rico, are prepared to reorganize and promote an international campaign against any process of pretended self-determination that includes territorial status as an option, or that resorts to unfair manipulations to obstruct or impede a democratic, just, and rightful level playing field for the competition among the different non-territorial options.

Thank you very much for this opportunity.

[The prepared statement of Mr. Baquero follows:]

Statement of Enrique Baquero, President,
Fundación Acción Democrática Puertorriqueña

Chairwoman Dr. Donna Christensen, distinguished subcommittee members, thank you for the opportunity to discuss my organization's stance on the two measures before this committee relating to the political status of Puerto Rico. We especially thank you for spreading the net wider to hear other voices on this important matter that affects 4 million Puerto Ricans, in particular, residing in Puerto Rico.

My name is Enrique Baquero, and I am here as President of the Fundación Acción Democrática Puertorriqueña (ADP), a civil society non partisan group that advocates national self-determination for the People of Puerto Rico and also supports a Constitutional Assembly or Convention of Puerto Rican delegates to initiate the process of self determination.

By way of background, we have been active since 1994 and have participated in previous Congressional hearings on Puerto Rico's political status favoring the inclusion of the sovereign free association option as a separate option in itself, which is different from traditional independence and recognized as such by the United Nations General Assembly Resolutions 1541 (XV) of 1960 and 2625 (XXV) of 1970. In addition, we have also been active in international activities seeking solidarity for Puerto Rico's right to national self-determination and for the right of residents in Vieques to live in peace.

With respect to bills H.R. 1230 sponsored by Congresswoman Nydia Velazquez and H.R. 900 sponsored by Congressman Jose Serrano, Acción Democrática Puertoriqueña believes strongly that these two measures ought to be viewed against certain guiding principles. Let me elucidate:

(1) We feel strongly that any process of self-determination should be respectful of international law, if it is to meet the true test of a valid self-determination process for the People of Puerto Rico. This means that any territorial status, leaving Puerto Rico under U.S. sovereignty violates in essence the inalienable right of national self-determination of the People of Puerto Rico to choose among sovereign non-territorial and non-colonial options, such as those recognized by the United Nations and by international law precedents. The plain fact is Puerto Ricans are clearly a distinct People, and cannot be excluded from exercising this right which has been reaffirmed in 2004 as an erga omnes right by the International Court of Justice, i.e. a right which pertains to all peoples, without exceptions, and generates obligations and responsibilities to all states, without exceptions, with reference to the international community. Therefore, we urge this sub-committee and Congress to exclude territorial Commonwealth as an option in any future consultation to the people of Puerto Rico. To ask Puerto Ricans if we wish to continue being a territory, as stipulated in Section 3 (a) of H.R. 900 in its present form, is as absurd and cynical as it would be to ask an inmate due for parole whether he or she would prefer to stay in jail instead of exercising the right to parole. If the United States

sincerely wishes to comply with international law standards, territorial status must be excluded as a valid option. We are persuaded that this is the only way to resolve this stubborn issue between the United States and Puerto Rico in a satisfactory manner and end what the late Senator Daniel Patrick Moynihan once said about Puerto Rico in a letter to former President Clinton on territorial status, characterizing the relationship as "this remnant of 19th Century imperialism."

(2) Prior to any consultation or plebiscite on Puerto Rico's future political status, Congress ought to recognize the inalienable right of the People of Puerto Rico to elect, in an exercise of its natural right to sovereignty, a Constitutional Convention of delegates to deliberate on the political future of Puerto Rico. The Constitutional Convention as mechanism would give due course to the initiative of the People of Puerto Rico to provide an educational process for a national discussion as well as multiple opportunities to engage in fruitful conversations and negotiations with Congress.

(3) We recommend that in both the Constitutional Convention, and in all subsequent referenda on political status options, mechanisms be established to allow the inclusion of native born Puerto Ricans, not residing in Puerto Rico but interested in participating in the process of national self-determination of the Puerto Rican people.

(4) Finally, we reiterate most emphatically that the options of sovereign free association be considered as an option in itself. For this option is vastly different from independence, statehood or any other non-territorial option. Although from the point of view of the United States, both independence and free association would mean disposing of the territory and hence ending U.S. sovereign powers over the territory, it is important to bear in mind that under the option of sovereign free association a special political and economic relation is maintained, between the two sovereign nations, through a bilateral treaty of free association as has been done in the case of the freely associated states of Palau, Micronesia and the Marshall Islands with the United States. The nature and content of such a treaty of free association establishes a clear difference between Puerto Rican sovereignty in free association with the United States and Puerto Rican sovereignty under the option of independence. We believe that H.R. 900 attempts to mislead and confuse the people by considering free association as a form of independence status. The foregoing is regarded as a palpable direct and unacceptable manipulation to avoid a level-playing field for all options in order to favor statehood by making people associate free-association with independence.

CONCLUSION

In conclusion, a final point. We want this committee to fully understand and appreciate that our organization and similar groups, as well as civil society groups in Puerto Rico are prepared to organize and promote an international campaign against any process of pretended self-determination that includes territorial status as an option or that resorts to unfair manipulations to obstruct or impede a democratic, just and rightful level-playing field for the competition among the different non-territorial options. I thank you for the opportunity to discuss our firm position on this very important topic, and I am happy to answer your questions.

Thank you very much.

Ms. CHRISTENSEN. The Chair now recognizes Mr. José Luis Fernández for five minutes.

STATEMENT OF JOSÉ LUIS FERNÁNDEZ, PRESIDENT, INTER-AMERICAN ENTREPRENEURS ASSOCIATION, PUERTO RICO

Mr. FERNÁNDEZ. Madame Chair and distinguished Members, thank you for inviting such a representative group of citizens to testify.

My name is José Luis Fernández, President of the Inter-American Entrepreneurs Association in Puerto Rico, an organization founded 46 years ago to promote free enterprise and international business development. We, like most other Puerto Ricans, hope you will provide us with a serious process to answer the question of the territory's status preference.

Our primary interest is the serious deterioration of our island's economic situation due to the lack of resolution as to what the territory's ultimate status will be.

This basic political question denies us the economic advantages of statehood or nationhood needed to compete in the greater American and global economies, distracts attention from economic and social issues, raises questions about what the appropriate economic and social policies are, and discourages investment in Puerto Rico while encouraging investment elsewhere.

A state of confusion, indifference, and uncertainty has permeated over the years. Territory status stopped benefitting Puerto Rico long ago. That is why the status quo only obtained 0.06 percent of the vote the only time it was ever voted on, in 1998. And all other status proposals, including commonwealth proposals, have been for a different governing arrangement.

Dissatisfaction with Puerto Rico's current situation is so great that now there are as many people of Puerto Rican origin in the States as in the islands. Over 3,000 Puerto Ricans a month move to Florida, and a recent poll revealed that at least a third of all Puerto Ricans are seriously considering leaving the territory.

Past local processes to answer the question of our status preference have failed because they have included proposals not attuned to what the Congress would accept based on the Constitution and basic laws and policies of the United States. In most cases, these options have included commonwealth proposals later rejected by the U.S. Government, which would have to act to change Puerto Rico's status.

In the 1998 referendum, the impossible option was a none-of-the-above line, when all of the options that U.S. officials have ever said they would be willing to implement were on the ballot.

H.R. 1230 would repeat the mistake by inviting us to choose a non-territory commonwealth status that would not be statehood or nationhood, when there is no precedent for such a status, and the President's Task Force on Puerto Rico's Status, the Clinton Administration, and the first Bush Administration have all said that there cannot be such a status.

Further, the local political minority that requested H.R. 1230 has repeatedly made it clear that their intent is that the non-territory commonwealth status be their development of the commonwealth proposal. Chairman Don Young and Ranking Democrat Miller of your full committee reported in 1999 that the proposal is based on principles that the committee rejected in 1998. The Clinton Administration specifically rejected it as impossible for constitutional and other reasons in testimony, and in a report to the full committee in 2000 and 2001. And the President's Task Force on Puerto Rico's Status rejected it in December 2005.

The proposal would permanently bind the U.S. to Puerto Rico determining the application of most Federal laws and court jurisdiction; Puerto Rico entering into international trade and other agreements and organizations that states and territories cannot; replacing tax exemptions for the income of U.S. companies in Puerto Rico that Congress just repealed; granting an additional subsidy for the insular government; and continuing all current programs of assist-

ance to Puerto Ricans, totally free entry to any goods shipped from Puerto Rico, and citizenship.

It would be counter-productive and irresponsible for Congress to invite Puerto Rico to propose a non-territory commonwealth status when it knows that the intent of the proponents for such a status is a proposal that Congress would not, and cannot, implement.

By contrast, the Puerto Rico Democracy Act, H.R. 900, proposes a process that includes only real statuses: statehood, independence, and nationhood, in a true free association with the U.S. in addition to the current territory status quo, all of the real statuses that have support in the island.

It would continue the current status if, and for as long as, Puerto Ricans vote for that instead of voting to seek one of the real status alternatives.

My one concern about H.R. 900 is that it would enfranchise non-citizens of Puerto Rico to vote in the determination of Puerto Rico's status preference, even though they may have no real connection with the islands, other than birth, and may never. Like citizens of Puerto Rico, these citizens of the States would also have voting representation in the U.S. Government decision of whether to implement the preference.

Madame Chair and distinguished Members, Puerto Ricans want to finally be able to choose among real statuses that can be implemented by Congress. The ongoing political impasse divides and holds down our people, and only benefits a few select economic interests, some external companies and a select few who work for them, and some lobbyists here in Washington, versus most Puerto Rican entrepreneurs and most Puerto Ricans.

The business community, representative of our people as a whole, abhors the uncertainty of the present status and; abhors the unrealistic process implied by the constitutional convention proposal. Congress should not be in a position to raise expectations that eventually would not be willing to fulfill.

Madame Chair, I appreciate your openness and willingness to listen to the citizens. People need to regain confidence. They are looking for trust, and they are expecting a true commitment.

Please help put an end to this limbo that has forced so many of us to leave the island, consigns almost half of those who remain to poverty, has resulted in Puerto Rico slipping further and further behind the States economically, as reported last year by the Brookings Institution and the Government Accountability Office, and denies us the democracy for which so many Puerto Ricans have sacrificed on behalf of the United States.

Thank you.

[The prepared statement of Mr. Fernández follows:]

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in our islands' economic situation due to the lack of resolution as to what the territory's ultimate status will be. This basic political question:

- Denies us the economic advantages of statehood or nationhood needed to compete in the greater American and the global economies;
- Distracts attention from economic and social issues;
- Raises questions about what the appropriate economic and social policies are; and
- Discourages investment in Puerto Rico while encouraging investment elsewhere.

A state of confusion, indifference and uncertainty has permeated over the years. Territory status stopped benefiting Puerto Rico long ago. That is why the status quo only obtained 0.06% of the vote the only time it was ever voted on—in 1998—and all other status proposals—including "Commonwealth" proposals—have been for a different governing arrangement.

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Past local processes to answer the question of our status preference have failed because they have included proposals not attuned to what the Congress would accept based on the Constitution and basic laws and policies of the United States.

In most cases, these options have included "Commonwealth" proposals later rejected by the U.S. Government, which would have to act to change Puerto Rico's status.

In the 1998 referendum, the impossible option was a "None of the Above" line—when all of the options that U.S. officials have ever said they would be willing to implement were on the ballot.

H.R. 1230 would repeat the mistake by inviting us to choose a non-territory "Commonwealth status" that would not be statehood or nationhood—when there is no precedent for such a status and the President's Task Force on Puerto Rico's Status, the Clinton Administration, and the first Bush Administration have all said that there cannot be such a status.

Further, the local political minority that requested H.R. 1230 has repeatedly made it clear that their intent is that the non-territory "Commonwealth status" be their "Development of the Commonwealth" proposal. Chairman Don Young and Ranking Democrat George Miller of your full Committee reported in 1999 that the proposal is based on principles that the Committee rejected in 1998, the Clinton Administration specifically rejected it as impossible for constitutional and other reasons in testimony and in a report to the full Committee in 2000 and 2001, and the President's Task Force on Puerto Rico's Status rejected it in December 2005.

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political impasse divides and holds down our people and only benefits a few select economic interests—some external companies and a select few who work for them—and some lobbyists here in Washington—vs. most Puerto Rican entrepreneurs and most Puerto Ricans.

The business community—representative of our people as a whole—abhors the uncertainty of the present status and abhors the unrealistic process implied by the Constitutional Convention proposal. Congress should not be in a position to raise expectations that eventually would be unwilling to fulfill.

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Thank you.

Ms. CHRISTENSEN. I thank all of the panelists for your testimony, and I recognize myself for five minutes.

Mr. Mejía, you talked about the fundamental changes that have taken place in development models and the transformation for developing countries over the last 50 years. Do you believe that the current political status of Puerto Rico harms or helps its economic development, in spite of or because of its economic model, which you say dates back to the early 1980s?

Mr. MEJÍA. The situation in Puerto Rico is basically one of uncertainty, and that hinders any economic developments. So it all depends, in the actions of Congress, the future of Puerto Rico.

I certainly want the future, the progress and the future of Puerto Rico to be better than it is right now, and that the people of Puerto Rico have the conditions and the competitive advantage that has been, has been changing through years.

Ms. CHRISTENSEN. But under the current, do you think that the commonwealth in and of itself, the political status was harmful to the economy of Puerto Rico? Or helpful?

Mr. MEJÍA. It has been for some time very beneficial. But time changes, and it is a time for Congress to act.

Ms. CHRISTENSEN. Thank you. Mr. Fernández, in your statement you make reference to the plebiscite, where you state that commonwealth got only .6 percent of the vote. Isn't that not quite accurate, since the PDP was not happy with the definition in that plebiscite, and the fact that none of the above got more, 50 percent or a little over 50 percent? Doesn't that really contradict what you are trying to imply by that .6 percent?

Mr. FERNÁNDEZ. Madame Chair, if you look at the numbers throughout history, there has been a significant change in terms of how people feel about the different options. Regardless of the ideology, regardless of who belongs to which party or some ideology, people are reflecting in these local elections which have not been valid elections, because people really haven't had any confidence in these, unless Congress really guides us through a real serious process leading to that.

But regarding that particular one, where I point out that 0.06 percent only voted for the commonwealth, is according to what the Constitution of the United States and the policies and laws of the United States consider that as a reasonable option, as a reasonable

option. The fact that a lot of people voted for none of the above, and that a lot of people supported statehood, and people supported independence and free association, does imply that people do want to change. Regardless of the outcome of the election, the fact that none of the above, I mean, that is a very, very strong message.

Ms. CHRISTENSEN. But it was a message that was generated by opposition to the definitions by the supporters of commonwealth. So I think it is a pretty strong statement that they could get supportive of commonwealth generally—I am maybe making an assumption here—to vote for none of the above, because they were dissatisfied.

Mr. FERNÁNDEZ. But the fact that we have a none of the above again, and we have people, and over the course of history the different local plebiscites that we have had, numbers have significantly changed. In fact, none of the above, support for other statuses that were not previously considered as part of the options presented to the people, do reflect that people do want to change.

The issue and the point here is that people want to make sure that the process that they are confronted with is a serious process, and that the options that they will be voting for will be respected, and will be accepted by the Congress of the United States. And that is the bottom line.

Ms. CHRISTENSEN. Thank you. I just wanted to try to get in another question to Mr. Baquero. Why do you believe that the option of choosing to continue being a territory, in Section 3[a] of H.R. 900, which you say is absurd and cynical, was included in the bill? Shouldn't the democratic process afford a people the opportunity to choose something that they believe works for them?

Mr. BAQUERO. I think definitely the actual territory is colonial. Following principles established by, as I quote here from the United Nations international law precedents, I think we need to change that. I don't think it is an option.

The only option under the commonwealth status would be free association developed as such. I don't see a territorial status being prevailing in Puerto Rico as an option.

Ms. CHRISTENSEN. I am not sure that territory and commonwealth quite, as being defined, are exactly the same. But my time is up. I am going to recognize Mr. Fortuño for five minutes.

Mr. FORTUÑO. Thank you. And again I want to thank all the members of the panel for flying up here and joining us this afternoon.

One of the purposes for which I commend again the Chairperson, Madame Chair of the Subcommittee for this hearing, one of the purposes of the hearing is to allow for Congress to understand what is going on in Puerto Rico. So if I may, even though it may sound unrelated to the topic, I believe it is certainly related to it, I will ask, if I may, the Chairman of the Chamber of Commerce to briefly describe the economic situation in Puerto Rico as we speak right now, with the latest numbers that have been put out, official numbers, in terms of negative growth for two consecutive years in our economy.

So if you may, Mr. Mejía.

Mr. MEJÍA. For the last couple of years we have certainly lost a competitive advantage due to the uncertainty of our status.

In the 1980s we were the economic example of the under-developed, of the countries that were looking for some type of progress. I mention Singapore Island, such countries. And from that point on, from the nineties on, Puerto Rico has been losing that competitive advantage. And probably the reason for that is that the status issue hasn't been resolved.

Mr. FORTUÑO. Actually, Madame Chair, if I may, I would like to introduce for the record—and we will do so in the next 24 hours, if that is OK with you—a chart with the growth rate in the last 40 years in Puerto Rico. And we will show that since the early seventies on, our economic performance has been lackluster. And actually at this moment, for the first time in our history, our economy is not following the national trend. The national economy has been growing for 43 consecutive months, and now we have had two years where we have had negative growth.

But I believe it will be good for us to understand what has happened to the economy in the last 50 years or so, so we can compare it to the national economy, if I may.

Ms. CHRISTENSEN. Without objection, admitted.

Mr. FORTUÑO. Thank you, I appreciate it.

[The information submitted for the record has been retained in the Committee's official files.]

Mr. FORTUÑO. Mr. Fernández, in your statement you talk about uncertainty, unrealistic processes and expectations. And actually there were some statements somewhat similar in Mr. Mejía's comments relating to the effect of that uncertainty of the present status has over the economic climate in Puerto Rico. Could you expand on that, please?

Mr. FERNÁNDEZ. Sure. I must first say that uncertainty is not good for people, and it certainly is not good for business.

The fact that uncertainty permeates, and the fact that people are concerned about the economic situation of Puerto Rico, the social situation, the situation with public safety and all these other things, that uncertainty unfortunately has driven a lot of professionals, youth, people who would be responsible for the direction of public and private institutions in Puerto Rico, to leave the island.

Unfortunately, we are losing that capital that we need in order to grow our infrastructure in all areas: economic, social, and educational, as well.

The fact that this uncertainty has been leading people is because they look at the political situation, they look at the economic situation, how education is affected by all of this, the social problems that are structural to the situation in Puerto Rico, and they have just lost faith. And I think that we need to give some injection and some hope back to the people.

And that is why a serious process I believe will lead to that direction.

Mr. FORTUÑO. Certainly we need a change, and most people are dissatisfied with what we have.

Final question, if I may, to you, Mr. Fernández. What happened to the economies of Hawaii and Alaska once they became states?

Mr. FERNÁNDEZ. Once they became—increasingly, they have grown dramatically. I mean, and I am sure that Congressman

Young, and I am sure that the Congressmen of Hawaii and Alaska and the Senators, could talk about that more in general.

But we see it. And I have been to Hawaii. I have seen how they have been able to grow their economy, how they have been able to foster their values, their cultural values as well.

But at the same time, the fact that that unresolved business that was happening back then in Alaska and Hawaii gave some stability, gave some security, gave some direction to the people. And that is why they say, you know, if I know where I am going, if I know that things are going to stay stable, I know that I will have an opportunity for growth.

But in the matter that uncertainty permeates, in the matter that people don't know what is going to happen, don't know if their pockets will be filled any time soon, they will have no hope for their families, they will have no hope for the future. We need to change that.

Mr. FORTUÑO. Thank you. Thank you again. Madame, I yield back.

Ms. CHRISTENSEN. Thank you. The Chair now recognizes Mr. Faleomavaega for five minutes.

Mr. FALEOMAVAEGA. Thank you, Madame Chair. And I do apologize for not being here while our distinguished members of the panel had testified before the committee, but I sense that the whole gist of this panel's expertise in terms of their positions or opinions is in reference to the economic conditions and the status of the Commonwealth of Puerto Rico.

As indicated in the White House Task Force report, going back again to the three plebiscites that were held, at least in terms of the records that were taken in 1967, the people of Puerto Rico opted for commonwealth status with 60 percent of the vote, statehood at 39 percent, and for independence, 1 percent.

And then there was a 1993 plebiscite for which people opted for commonwealth at 48 percent, those who wanted statehood was at 46.3 percent, and independence, 4.4 percent.

I thought that perhaps after the 1993 plebiscite that there would be a runoff between commonwealth and statehood. But that was not made possible, so we are right back again to square one.

I understand also I think the latest plebiscite, if you consider it as such, but because of a lot of misgivings and misunderstandings about definitions were in the 1998 plebiscite, where people opted for territorial commonwealth at 6 percent, free association at 29 percent, statehood at 46.49 percent, but none of the above was some 50.3 percent. So here again we are kind of fuzzy in terms of exactly where do the people of Puerto Rico desire to opt for whatever future that they may want to have.

As we hold this hearing, there is a big, big debate, furious as it is, in trying to determine even to give the delegate of the District of Columbia full voting rights. And Eleanor Norton-Holmes represents 600,000 U.S. citizens. They all pay Federal income taxes, and yet they have no full voting rights. So even the Congress is having a little problem even doing this, and there are some very serious constitutional issues. Just as we now find ourselves in, and have been for how many years now, in dealing with the Commonwealth of Puerto Rico.

I had asked some previous questions about the doctrine of incorporation. I don't want to get into the legal stuff, but I think I did mention that years ago, in the middle of a hearing that we held in Puerto Rico—and I was there—that this conservative columnist by the name of Pat Buchanan issued a commentary, saying that if Puerto Rico was to become a state tomorrow, it would become a welfare state, and the United States were going to have to provide a tremendous amount of funding to upkeep the people. Which, you know, it came at the wrong time, and I felt it was very unfair, especially not only to the people of Puerto Rico, but even to the American people, because that was just one opinion.

But my basic position is this. I want to ultimately, whatever option that the people of Puerto Rico want, that is what we should do.

Here is the question that I have for our members of the panel. Suppose the option of statehood is presented in such a way that this is ultimately what the people of Puerto Rico have decided. But are you aware of the fact that just because the people of Puerto Rico opted for statehood, there is no guarantee that Congress is going to grant you statehood?

Mr. BAQUERO. Yes.

Mr. FALEOMAVAEGA. Are you aware of that fact? Because that is another side of the coin, so to speak.

So we are back again with the situation of commonwealth status in terms of however you may want to interpret it. Some have said, as I stated earlier, that it seems to me that this enhanced form of commonwealth is almost similar to what the compact of free associations have now been developed by the Republic of Marshall Islands, Palau, as well as the Federated States of Micronesia.

And I want to ask my good friends here on the panel, do you honestly believe that the economy of Puerto Rico will stabilize if Puerto Rico was to become a state tomorrow? Is this the basic tenets of our members of the panel and their opinions on this issue?

Mr. BAQUERO. I think the basic question here is give the people the opportunity. We have to educate a lot. I think we have fallen prey to the political parties' status orientation, and that type of politics in Puerto Rico has created negative effects in the development of democracy.

I think that is why a civil society has to take a role in this, more active than now, and make an issue of this. Because the way to develop Puerto Rico basically through the political status is one option, but we have to create also a new economic plan for the island based on the real facts, not illusions.

Mr. FALEOMAVAEGA. Madame Chair, just one comment I wanted to make. I have the highest respect for my good friend and colleague, Resident Commissioner Fortuño, and the fact that he does support statehood. And I have the utmost respect for his position that he has taken. There is nothing wrong with that.

His predecessor also sat on this committee. He is now the Governor of Puerto Rico. But he opts for a different status, which is primarily commonwealth and however you want to define it.

So we are torn between these two. And this is not being disrespectful for those who advocate independence, as well. But we have been going through this now for 50, 60 years, among these

three options. And I am tortured and really hopeful that some way or somehow we are going to have a major breakthrough that maybe combining the two pieces of legislation that is now before the committee, taking the pluses of both proposed legislations, so that there is fairness in the process.

If there is anything that I think that I would like to advocate very strongly, as I am sure it is the feeling and sentiments of all the Members of Congress, is that we come up with a proposed bill that will be fair to all the people of Puerto Rico. And let the people of Puerto Rico make that decision in terms of their option for their future.

I am sorry. Thank you, Madame Chair.

Ms. CHRISTENSEN. Thank you, Mr. Faleomavaega. The Chair now recognizes Mr. Serrano for five minutes.

Mr. SERRANO. Thank you. I didn't hear the testimony, so I apologize. But I will just stick with some of the concerns that are always voiced.

As you know, I am clear on my opposition to the commonwealth status, and I am clear on opposition to any status that doesn't remove Puerto Rico from the colonial territorial status that it finds itself in now. And that is the one thing that everybody agrees with now on the island, finally. They may not call it a colony, but people understand that this has to change.

Now, one of the arguments always presented is, one, could Puerto Rico survive as an independent nation; and two, can Puerto Rico carry the burden of being a state, in terms of its economy. I don't know if that question has been asked; if it has, I apologize for asking it again, or perhaps asking it differently.

But I would like for you to comment on both, with the full understanding, incidentally, that if Puerto Rico was a state, obviously it would immediately share in all that states share in, within certain responsibilities that it may not have now. And if it was an independent nation, I doubt that after 109, 110, 111 years, the U.S. would simply say goodbye, see you later. There would be a close relationship, probably the closest we would have with anyone in the world, I would say, because it is, you know, a member of the family doesn't leave and totally become not a member of the family.

So can you, any of you, comment, or all of you, on that whole notion? The economy under statehood, and the economy under——

Mr. BAQUERO. I think the basic issue here has to be a transition period for both equations, both for statehood or for independence. Because the economy is right now in a state of like an appendix to the American economy. And to develop properly as a republic, as an independent nation, Puerto Rico needs to have fully transition.

The same with the statehood. That is my opinion.

Mr. FERNÁNDEZ. Well, I think particularly, going back to uncertainty, I think the fact that there is uncertainty in the environment and in the business community, that the citizens in general have no idea as to what is going to happen, has frustrated a lot of people. That is why we are getting our professionals and youth to leave the island.

In terms of the final decision, I think what is really most important is to have a fair process, a serious process, where people could

feel confident that the options that they are voting for are going to be accepted by the Congress. And if people openly express that they favor statehood, or they favor independence, or they favor free association, or the status quo, then that there is a fair process to accept and assimilate that will from the people.

But I think until the people are confronted with that, uncertainty is really fading away hope in general, in Puerto Rico. And I think that that is the key issue that we need to address.

Mr. MEJÍA. The Chamber's concern at this point in time is the process should be fair, and that transition should be a smooth one. Education is power; thus, that will allow the people of Puerto Rico to make an enlightened decision. So whatever process Congress decides to do, it is very important that the people are educated in what are the choices.

Mr. SERRANO. Would it be fair or unfair to suggest that the business community may never truly favor statehood because of the tax issue that it would impose on the island, on that state? Is that a fair statement, or is that an unfair statement on my part?

And please understand, if that was the case, it would be, you know, I have made a career out of pointing out that corporate America every so often thinks of itself first, and the people somewhere down the line, maybe never. So you know, corporate America would now be corporate-new state America or territory America.

So my question is, if you had a vote amongst Puerto Rican businessmen—and I don't mean, you know, Don Pepe or Comer Icoco [ph] and Dutrieri Esso [ph]—just on the tax issue, would they not be in favor of statehood?

Mr. MEJÍA. At this point in time, the Chamber of Commerce is only concerned with a fair process and a smooth transition.

Mr. SERRANO. OK.

Mr. BAQUERO. I think the key is I come back to education. We have to really put the numbers and educate the people as to the real effect of all the alternatives. Because that way, our people will know what is the reality that we are talking about, not illusions.

Mr. FERNÁNDEZ. Let me add, also, Congressman. I think economic stability and growth for business community as well has to do as well with the developments in the political arena. They are not excluded.

I mean, and in the way that the citizens, including the business community, are involved in the political decision-making process for things that have an impact over the economy, over social development, over education, over public safety, over everything that is around us, that is kind of a big statement just right there.

And when people are fully able to either engage in international treaties and be able to do that to expand the economy, or fully integrate as a state, then that sort of full participation in the political decision-making process will get more people to be confident for economic development of Puerto Rico, and that will also be helpful for foreign investment, as well, as to the stability of the island.

Mr. SERRANO. May I just take a few seconds more? If you don't smile, I won't take a second more.

[Laughter.]

Mr. SERRANO. OK, thank you for smiling. See, here is my concern. We get to the nitty-gritty, as we say, we get to a vote. And

that vote then becomes an issue of independence and statehood. And then you see the business community pour a lot of money into that vote. That is why I would hope, and we shouldn't discuss this now, that those both be totally funded to keep people from having to donate to those campaigns.

Then you will get the business community to say well, what do we support? Do we support getting to the burden of paying taxes? Or do we support the uncertainty we think of an independent nation, that it will be another Cuba? You are going to hear all of these silly arguments that have nothing to do with anything, and it will be just the agenda of the business community, which scares the hell out of me.

And then last, I have noticed that if you take a survey, you may find out that a lot of New Yorkers retire in Florida, but they don't retire in Puerto Rico. Non-Puerto Rican New Yorkers. Is that also linked to—I mean, some people may say good that they don't retire here, you know, in droves. But is that linked to the status issue? The uncertainty over political situations?

Mr. FERNÁNDEZ. Or why do we have more Puerto Ricans stateside, on the mainland, than in Puerto Rico, as well?

Mr. SERRANO. Well, that is because of my leadership.

[Laughter.]

Mr. FERNÁNDEZ. But I feel, and that is my personal feeling, that Puerto Rico has a lot to offer. And it is a beautiful place. It is a place with a great infrastructure. It is a place with great opportunities for the region and the international marketplace, as well.

But the fact that people don't feel comfortable in Puerto Rico, and we are losing as much—I mean, the most recent poll that I read was 36.5 percent of people are seriously considering leaving the island—is because of the uncertainty, is because of the public safety, because of the lack of, the uncertainty with the economy, education, and anything related to that. They want to make sure that their families have a share in that. And they are looking for that elsewhere, unfortunately.

Mr. SERRANO. Thank you. Thank you, Madame Chairwoman.

Ms. CHRISTENSEN. You are welcome, Mr. Serrano. I am going to do another round, because I have a couple of questions that I wanted to ask.

Mr. Mejía, you said that in recent years, I believe you said four, that it is in recent years that an uncertainty has, and the economy of Puerto Rico has seen a decline.

To what extent do you think that is related to our removal of 936?

Mr. MEJÍA. The benefits of 936 helped the economic development of Puerto Rico for many years. For reasons of a decision by Congress, that has changed. There was a phase-out of 10 years, and at this point in time Puerto Rico doesn't have the necessary benefits, tax benefits, to be able to improve their economic development. Although I believe Puerto Rico still has a lot to offer, and I believe in the human capital and the desire of all the Puerto Ricans to become entrepreneurs and to move forward. That made a change.

Ms. CHRISTENSEN. 936 did make a change.

Mr. MEJÍA. It did make a change.

Ms. CHRISTENSEN. Thank you. Mr. Baquero, I believe you said that what Puerto Rico needs is a real economic plan. What prevents it from happening under the current status?

Mr. BAQUERO. You have to have a clear definition of purpose, and we don't have it right now.

The way we operate in Puerto Rico with the political system creates, well, they already said uncertainty, in terms of a stability, in terms of doing things in one direction. There is no sense of direction.

One party comes over, change the policy. The other comes back, change the policy again. We need to work together, and that is the problem.

So I think it is obviously establishment. Once we have a clear-cut definition of what we are, what we are going to do, then we can establish the economic plan that Puerto Rico needs and deserves. And it is getting late. It is getting late.

Ms. CHRISTENSEN. Once the choice is decided and stability established because that choice has been made, Puerto Rico can move ahead. It doesn't seem to me that it has to be one or the other.

Mr. BAQUERO. Then we don't have too much fighting among ourselves. That is keeping us divided.

Ms. CHRISTENSEN. Thank you. Thank you. Mr. Fernández, you did say in your testimony that you have one concern about 900, is that it would enfranchise non-citizens of Puerto Rico to vote in the determination of Puerto Rico's status. And then 1230 would enfranchise not only persons born in Puerto Rico, but also possibly children of parents.

I suspect that, you know, that that may be a concern of others in Puerto Rico. How would you suggest we resolve that issue?

Mr. FERNÁNDEZ. I honestly feel, I mean, I wake up in Puerto Rico, go to work in Puerto Rico, have to live the consequences of what permeates around the environment these days. I go to sleep and wake up the next morning in Puerto Rico.

I think it is very important that the people of Puerto Rico, that people who are living in Puerto Rico and who aspire to live in Puerto Rico and further develop their families and their economic environments in Puerto Rico, are able to decide the ultimate status option for Puerto Rico.

As I say, more than the current population of Puerto Rico live in the mainland and abroad. And the fact that we could probably extend that vote to over four million Puerto Ricans who have fully integrated into a state, and now have their kids and everything, they already, they live in a different scenario.

The scenario that we live in Puerto Rico right now is very different. And I think that the desperation or the frustration of the people of Puerto Rico should be respected in the regard that these are, we who live in Puerto Rico need to make sure that we feel confident about the final status decision. Because our aspiration is to remain there.

Ms. CHRISTENSEN. Thank you. Mr. Fortuño, do you wish five minutes?

Mr. FORTUÑO. Yes, very briefly. I have a concern that I believe is shared by many of us. At the rate that we are losing, and it has

been touched upon briefly here, we are losing the best and brightest of Puerto Rico, at a fast pace.

And in addition to Mr. Serrano's leadership certainly, which is I know is the number one reason for it, I have no doubts about it——

Mr. SERRANO. I don't want another person to leave, believe me.

Mr. FORTUÑO. But certainly, I do have—not to Florida, anyway, I know. Which is where most of them are living.

But certainly, what we are discussing here has a direct impact on that. And actually, I have, there are a number of things we need to do.

I believe the issue of uncertainty has been actually raised by all three in one way or another. That is out there, has been out there for a while.

We have been under-performing. Actually, if we look at it, none of the last two years, since the early seventies on, we have been under-performing as an economy.

I just filed a couple weeks ago H.R. 1340. And I will use this to pitch my bill. And essentially that bill is status neutral. That bill doesn't get economic development in the middle of politics, or politics in the middle of economic development. That bill tries to provide for an economic development tool to create jobs in Puerto Rico.

And I have discussed it with Chairman Rahall and Ranking Member Jim McCrery. I invite all of you here to look at it. It would apply to pockets of poverty, not just in Puerto Rico, I mean around the country, including the territories.

And I believe we can do both things. We can try here to try to address the issue of status, and provide for a pathway to solve it; and we can try in this Congress to address, at least in part, the issues of economic development that are affecting Puerto Rico's economy right now.

Having said that, I will again stress what has been mentioned by all three: that this uncertainty provides for what a friend of mine calls the Puerto Rico discount rate. And you know, if this existed in the mainland, it would cost so much more. The value of it would be so much more. And I hear that over and over and over.

On top of that, our tax rates. Oftentimes the issue of taxes has been used as an excuse, saying we cannot move on on status. And actually, if we were to move on to statehood, that would be detrimental. Well, we have proven, and history has proven, that in the country we pay more taxes than anybody else under the American flag. So we have ended up with the worst of both worlds, actually.

And my question here is, Mr. Fernández, if you feel that once we have a process, even before we have a status change, if we have a process that is mandated by Congress, if you feel that that sense of that things will get better will commence to permeate the business sector right away.

Mr. FERNÁNDEZ. A process for providing——

Mr. FORTUÑO. Status, economic.

Mr. FERNÁNDEZ. Definitely. I mean, the fact that the local—again, I want to stress that again. The fact that previous plebiscites, people have been confronted with definitions that have not been approved. People have not had confidence in the process.

People really aspire to participate or engage in a process that they feel confident about. And I think that H.R. 900 clearly, clearly

outlines a process that includes all the possible constitutionally viable options for the people of Puerto Rico in a way that allows, you know, gives space for all sectors of society to be involved, and to look at all constitutionally viable options to the people.

If the people of Puerto Rico are not confronted with a serious process, fully supported by the U.S. Congress, we will keep having elections, keep having elections with local plebiscites and local political parties making, writing the definitions, and there will be more confusion, more frustration. And people will not be confident about a future resolution of this matter.

I think this is a historic time. It is a historic time that we are really taking a serious step into considering this process. And I fully feel confident about the U.S. Congress presenting options that are viable, and that they are willing to accept.

Mr. FORTUÑO. Thank you. I yield back.

Ms. CHRISTENSEN. Thank you. Mr. Serrano, I think you took up half of this round already, but we are willing to recognize you for any questions you might have.

Mr. SERRANO. By the way, I want to thank you for that letter for those items that you want in your district, that you sent to me, to the Appropriations Committee.

[Laughter.]

Mr. SERRANO. I am learning the system well.

[Laughter.]

Mr. SERRANO. Mr. Fernández, you broke my heart.

Mr. FERNÁNDEZ. Thank you.

Mr. SERRANO. As a child, I remember during the Luis Administration, sound trucks going around in Barrio Parisa Majagues telling my parents that there were jobs available in Brooklyn and in the Bronx. That is why they left.

They didn't leave because El Coqui was making too much noise; they didn't leave because the hot water in mani were too hot for them. They didn't leave because El Parma, and I don't mean El Parma you have today, but El Parma was upsetting them.

They left because they had no choice; because of economic conditions. And you should understand that better than anyone else.

Those economic conditions I claim were the direct result of the relationship. So when the relationship is going to be defined—and statehood is forever, and independence is forever, and hopefully there will be no more colonial forever—when that is to be defined, then all the children of the colony should be allowed to participate. It is no different than to ask an American Jew to turn his back on Israel. It is no different to tell African-Americans to turn their back on Haiti or on the Continent of Africa.

But I ask you the difficult question. If you are willing to keep me from voting, are you willing to go on the record now and say that any Cuban, Dominican, Colombian, Mexican who came to Puerto Rico and made a deal with the U.S. Government for citizenship—not for the people of Puerto Rico—that they should be allowed to vote on that plebiscite, and not me?

Mr. FERNÁNDEZ. Congressman, I believe that the Cubans, the Guatemalans, the Salvadorans, and all of the people who became citizens and now live in Puerto Rico; they work in Puerto Rico——

Mr. SERRANO. But they became American citizens, not Puerto Rican citizens, right?

Mr. FERNÁNDEZ. They became American citizens and live in Puerto Rico. No, I mean, U.S. citizens and residents, as well, of Puerto Rico, of course.

But my point is in the regard that they live in Puerto Rico, and that everything that happens around them, in terms of the economy, in terms of the social structures, has an impact over them.

We have millions of Puerto Ricans living abroad.

Mr. SERRANO. And you don't think the conditions that Puerto Rico lives under has an impact on us? What the heck am I doing on this panel right now?

Everything that happens in Puerto Rico has an impact on those of us who were born there, and our generations to follow. I did not have to prove my worth in New York because I was a white, blue-eyed, blond, Anglo Saxon-type American. I had to prove my worth because I was seen as a Puerto Rican.

I had to explain that it was under the American Flag day after day, and still do. Everything that happens in Puerto Rico has an impact on what happens throughout this nation to Puerto Ricans. That is why we left or were forced out by our own government in cahoots with the Federal government, but we were forced—do you think we created the Puerto Rican parade in New York because we like to take a Sunday and march down a big street? Do you think we created a Fiesta Forclorica in Hartford because they had nothing better to do? It was a reaffirmation of who we are.

And may I remind you that before Puerto Ricans discovered, except for some people in this audience, the Puerto Rican Flag in the eighties, the Puerto Ricans were keeping it on the fire escapes in New York since the 1920s.

So really think that out, because whether one party likes it or the other, somo solo una sola nacion, you know. And that has to be remembered forever.

Mr. FERNÁNDEZ. And that leads me—thank you, Congressman. And that leads me to two points.

First, the sense of urgency to come with a serious process to resolve this matter, so that we don't have hundreds of thousands of Puerto Ricans to keep leaving the island because they have no future or they feel they have no future for them.

The sense of urgency—and I really respect your opinion, as well, and because of the situations that they went through in Puerto Rico, as well—sometimes I feel uncomfortable when I get into debates with Puerto Ricans who I admire very much, as well, in the mainland, and have fully integrated to the States, and talk——

Mr. SERRANO. With all due respect, because my time is running out. I really think you need to do more work on this. Fully integrated, I don't know what that means. I am as American as apple pie, and I am a Member of the U.S. Congress. I served in the military. I am as American as apple pie.

But I never stopped being as Puerto Rican as—I mean, we wrap it in paper, but it never changed on the inside. It just changed on the outside.

Mr. FERNÁNDEZ. I refer to the integration to the States.

Mr. SERRANO. So why do you insist on assuming that we have integrated somewhere else, and no longer belong to the nation? We are one nation. And that, I am not asking to vote for Governor or for President of the Republic once it is established. I am not asking for that. I am not asking to vote for any Member of Congress there if Puerto Rico is a state.

But I am saying when this decision is going to be made, it belongs to all the children of the colony. And you shouldn't try to keep some of us out.

Mr. FERNÁNDEZ. If I might say just one thing. I would really like to have an opportunity to share more thoughts about this, Congressman. I really feel that this is a very important issue. It is a very important issue.

But I want to stress and end with the statement that there is a sense of urgency to come into a conclusion of this matter. A sense of urgency.

But I do agree that we have some common ground, and I would like to talk to you about that.

Mr. SERRANO. I am afraid you might convince me.

Ms. CHRISTENSEN. Thank you. I would like to thank this panel for your testimony and your answers to our questions. And this panel is dismissed.

And we are ready to recognize the third panel of witnesses. I believe we can get through on one round. We are going to finish before 4:00.

[Recess.]

Ms. CHRISTENSEN. I would like to now recognize the third panel of witnesses. They are Mr. Jorge Pedroza, the State Council President of Vietnam Veterans of America; Mr. Luis E. González Vales, the Official Historian of Puerto Rica; Ms. Veronica Ferraiuoli, the President of the Puerto Rico Chapter of the Federal Bar Association; Ms. Celina Romany, the President of the Puerto Rico Bar Association; and Ms. Aida Díaz, the President of the Puerto Rico Teachers Association.

The Chair now recognizes Mr. Pedroza to testify for five minutes, and we are going to follow the lights on the table.

STATEMENT OF JORGE E. PEDROZA, STATE COUNCIL PRESIDENT, VIETNAM VETERANS OF AMERICA

Mr. PEDROZA. Madame Chair and Members of the Subcommittee on Insular Affairs, Committee on Natural Resources of the House of Representatives. My name is Jorge Pedroza. I am the President of the Vietnam Veterans of America, Puerto Rico State Council.

I appear before this Congressional committee on behalf of my organization. I served in Vietnam from 1967 to 1968 with the U.S. Army Pathfinder Detachment, Fourth Infantry Division, and proud of it.

Those of us who served in Vietnam performed our duty with honor and pride, to defend and preserve our democratic values and way of life. Hundreds of my brothers-in-arms died in that conflict, and thousands were wounded.

For those of us who came back, there were no parades or celebrations. It took many years and the dedication of the Vietnam Memorial monument in Washington, D.C., which we have in the back,

and a memorial monument in San Juan and many cities around the nation, for the American people to at last extend the Vietnam veterans the recognition and remembrance they justly deserve.

Today I come before the U.S. Congress to request a similar recognition on behalf of over 200,000 veterans who live in Puerto Rico, and the thousands of brave young men and women from Puerto Rico deployed in Iraq, Afghanistan, and throughout all the world, who proudly wear the U.S. Armed Forces uniform.

Our request is simple. Give us the opportunity to actively participate in American democracy. Veterans of Puerto Rico who have so proudly fought in the past, and continue to do so in the present, approve legislation authorizing a plebiscite to provide the veterans and the people of Puerto Rico the opportunity to determine a non-colonial and non-territorial political status.

Puerto Rico is a non-incorporated territory of our nation. It has been such since 1898, when the island was invaded by the U.S. forces under General Miles. U.S. was entrusted with two obligations: civil rights of the inhabitants will be determined by Congress, and political status will be determined by Congress. It means that the obligation accepted by the U.S. Representatives in the Treaty of Paris was to resolve the political status of the island, and that rested in Congress.

The time has come to empower the Puerto Rican men and women to make a decision regarding the island's ultimate destiny. Let the people of Puerto Rico, with your authorization, decide they want to become a State of the Union or an independent republic.

This request for self-determination is supported by the National Organization of the Vietnam Veterans of America. A resolution entitled Self-Determination for Puerto Rico was unanimously approved at the National Convention held on August 3 at St. Louis, Missouri. It calls for the U.S. Congress to define the legal status options available for Puerto Rico, and authorize a plebiscite regarding the island's future. I am including with my remarks a copy of said resolution, which is this that I have at this moment.

I understand you have two bills under consideration. The bill that represents the position adopted by the Vietnam Veterans of America is H.R. 900, introduced by Congressman José Serrano and 93 co-sponsors, including Chairman Nick Rahall and Puerto Rico Resident Commissioner Luis Fortuño. We believe this bill affords the people of Puerto Rico with the opportunity to make an informed decision and directly vote on their status preference on constitutionally valid options, as defined by Congress.

Until you, my honorable ladies and gentlemen of this committee, act, Puerto Rico will continue suffering of being a second-class territory of the Union. And we, the U.S. citizens who have served in the U.S. armed services, have paid our greatest tribute of all—be willing to give our lives for our nation—lack the rights to vote for he who sends us to battle, to he who sends us to defend this nation and the right to decide our political status.

Thank you for giving me this opportunity. God bless our veterans and our soldiers at home and around the world.

[The prepared statement of Mr. Pedroza follows:]

Statement of Jorge E. Pedroza, President, Vietnam Veterans of America Council of Puerto Rico

I was born in Cayey, Puerto Rico on November 6, 1947.

After graduating from high school in May 1967, I volunteered to serve my country in the United States Army in June 1967. I served in the Vietnam War, participating in the 1968 Tet offensive as an U.S. Army Pathfinder 4th Infantry Division in Pleiku South Vietnam. I was honorably discharged from service in June 1970.

Married with 3 children and 2 granddaughters I have lived in Guaynabo, Puerto Rico since then.

In 1987 I joined the Vietnam Veterans of America Organization as President of Chapter 59, which held only 11 members. Today the membership counts 380 hundred.

By 1988, I started a protest movement on behalf of my fellowship veterans against the Department of Veterans Affairs that lasted 4 years. The conclusion was the Giusti Bravo lawsuit vs. U.S. Department of Veterans Affair. 1,000 compensations, which were taken away from our Vietnam veterans in Puerto Rico, were restored as a result by 1992. During that same period; 1993 to 1996, I was able to start new chapters around the island; Yauco, Ponce, and Arecibo. In 1993 I demanded the need for a State Council in Puerto Rico becoming it's president until 1996 and regaining the position unanimously again in May 2001 to present.

At the age of 59 I still have the strength and pride of being a contribution as a servicemen to the greatest country in the world, to all the veterans and to my brothers at war.

STATEMENT

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I appear before this Congressional Committee on behalf of my organization. I served in Vietnam from 1967 to 1968 with the U.S. Army Pathfinder Detachment, 4th Infantry Division.

Those of us who served in Vietnam performed our duty with honor and pride to defend and preserve our democratic values and way of life. Hundreds of my brothers in arms died in that conflict, and thousands were wounded. For those of us who came back there were no parades or celebrations. It took many years and the dedication of the Vietnam Memorial Monument in this Capital city and the Memorial Monument in San Juan and many cities around the nation, for the American people to at last extend to the Vietnam Veterans the recognition and remembrance justly deserved.

Today, I come before the U.S. Congress to request a similar recognition on behalf of over 200,000 thousand veterans who live in Puerto Rico and the thousands of brave young men and women from this island deployed in Iraq, Afghanistan, and through all the world who proudly wear the U.S. Armed Forces uniforms. Our request is simple: give us the opportunity to actively participate in the American Democracy. Veterans of Puerto Rico have so proudly fought in the past and continue to do so in the present. Approve Federal Legislation authorizing a plebiscite to provide the veterans and the people of Puerto Rico the opportunity to determine a non-colonial and non-territorial political status.

Puerto Rico is a non-incorporated territory of our nation. It has been such since 1898 when the island was invaded by the U.S. Forces under General Miles. U.S. was entrusted with 2 obligations: Civil rights of the inhabitants will be determine by Congress, Political status will be determine by Congress.

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Until you my honorable ladies and gentleman of this committee act, Puerto Rico will continue suffering of being a second class territory of the union and we the U.S. citizens who have served in the U.S. Armed Services having paid our greatest tribute of all: Be willing to give our lives for our nation, lack the rights to vote for he who send us to the front lines in combat and the right to decide our political status.

Thank you for giving me this opportunity. God bless our veterans and our soldiers at home and around the world.

NOTE: Additional information submitted for the record by Mr. Pedroza has been retained in the Committee's official files.

Ms. CHRISTENSEN. Thank you, Mr. Pedroza. We will now hear from Mr. Luis González Vales, the Official Historian of Puerto Rico. Five minutes.

STATEMENT OF LUIS E. GONZÁLEZ VALES, OFFICIAL HISTORIAN OF PUERTO RICO

Mr. GONZÁLEZ VALES. Madame Chair, Members of the committee, I am speaking as the Official Historian, a position created by the Legislature in 1903, with tenure for life and not subject to recall by any party.

I am not advocating any status or side. The only consideration that has prompted me to appear before the committee is my feeling that this may be a historic moment in the possible solution to the island's long-standing status controversy.

There is unanimity among all leaders and political groups that after 109 years of U.S. sovereignty over Puerto Rico, it is time to find a solution that provides a democratic form of government at the national government level.

I am confident that from a historical perspective, the Puerto Rico Democracy Act, H.R. 900, would provide a process that addresses this central question in a more direct and precise way than H.R. 1230. In my judgment, it is more democratic, for it places in the hands of all Puerto Rican voters the decision. In addition, it provides at each stage clearly defined alternatives to choose from.

Since 1967, there has been a number of status referendums and plebiscites which have been inconclusive, because the political parties have defined each status option without considering their constitutionality. Therefore, it is the Government of the United States who has to act to change Puerto Rico's status.

The fundamental flaw of H.R. 1230, in my humble opinion, is the inclusion of a new or modified commonwealth status not subject to Federal territory governing powers as an option for Puerto Rico's future status.

Puerto Rico is an unincorporated territory of the United States. Commonwealth is a word in the formal name of its local government adopted with the adoption of the territorial constitution. It is not now a status in the sense that territory, State of the United States, and nations are statuses. And very early—and it has been stated here before—Governor Munoz and Resident Commissioner Fernos agreed with the U.S. Representatives of both Houses of Congress, including this Subcommittee's predecessors and with a

precedent and Federal powers, regarding the territory was not being, the powers regarding the territory were not being relinquished, and that Puerto Rico remains subject to U.S. Government powers under the territory clause. It has been also the conclusion of the Supreme Court and Justice and State Departments.

Puerto Rican proposals for an enhanced commonwealth status have been rejected by the U.S. Government repeatedly since soon after the local constitution was adopted in 1952. In my opinion, there would be a significant difference between the constitutional convention proposed by the H.R. 1230 and the 1950 Convention that resulted in the drafting of the Commonwealth of Puerto Rico Constitution.

Public Law 81.600 included specific parameters to guide the work of the convention. Then a consensus was reached among all convention delegates, regardless of their political affiliation, as to how the local government should be organized, and unanimity was nearly achieved.

Today, with the present polarization among the major political parties, there is a strong possibility that a convention may end deadlock, making the solution to the status question nearly impossible.

H.R. 1230 also excludes one of Puerto Rico's status options: nationhood in a true free association with the United States, which has been recognized by President Clinton and the President's Task Force on Puerto Rico.

H.R. 1230 would further recognize an inherent authority of the people of Puerto Rico to call a constitutional convention in the territory, authority which is provided by U.S. Public Law 81.600.

H.R. 900 otherwise would provide a good process for determining Puerto Rico's status preference, the process recommended by the Presidential Task Force on Puerto Rico's Status, established initially by President Clinton and continued by President Bush. It includes all the options for Puerto Rico recognized to date. It provides for the current status to continue if, and as long as, the voters want it. It provides a process for the issue to be resolved in the future if there is not a majority for seeking the territory's ultimate democratic status in an initial or subsequent vote.

Finally, it is my opinion that Congress, after more than a century of being entrusted with the responsibility by Article IX of the Treaty of Paris of 1898, must act to provide a viable solution to this longstanding issue which has consumed a lot of energies that could be better spent addressing the island's social and economic problems.

I have appeared before you, for I strongly believe that it is time that Puerto Rico ceases to be foreign in a domestic sense.

Thank you.

[The prepared statement of Mr. González Vales follows:]

Statement of Luis E. González Vales,
Official Historian of Puerto Rico

I am speaking as the Official Historian, a position created by the Legislature in 1903, with tenure for life and not subject to recall by any party. I am not advocating any status or side. The only consideration that has prompted me to appear before the Committee is my feeling that this may be a historic moment in the possible solution the Island's long standing status controversy.

There is unanimity among all leaders and political groups that after 109 years of U.S. sovereignty over Puerto Rico is time to find a solution that provides a democratic form of government at the national government level.

I am confident that from a historical perspective the Puerto Rico Democracy Act, H.R. 900, would provide a process could resolve this central question "the ultimate solution to the status issue "whereas H.R. 1230 might not. In my judgment it is more democratic for it places the decision directly in the hands of all Puerto Rican voters. In addition it provides, at each stage clearly-defined "and real status—alternatives to choose from.

Beginning in 1967, the Commonwealth has held a three (3) status referendums which have been inconclusive because the status options have been proposed without considering their constitutionality. It is the Government of the United States who has to act to change Puerto Rico's status, so the federal positions on local status proposals are needed to ensure a meaningful choice.

The fundamental flaw of H.R. 1230 is the inclusion of a "new or modified Commonwealth status" not subject to federal territory governing powers as an option for Puerto Rico's future status (that could be chosen by what is called a "constitutional convention" even thought it would not draft a constitution).

Puerto Rico is an unincorporated territory of the United States. "Commonwealth" is a word in the formal name of its local government adopted with the adoption of the territorial constitution; it is not now a status in the sense that territory, State of the United States, and nation are statuses. Puerto Rico's representatives in the U.S. legislative process that authorized and approved the local constitution, Governor Munoz and Resident Commissioner Fernos, agreed with the U.S. representatives of both houses of Congress—including this Subcommittee's predecessor—and the President's administration that federal powers regarding the territory were not being relinquished. That Puerto Rico remains subject to U.S. Government powers under the Territory Clause has been the conclusion of the Supreme Court, the Justice and State Departments, successive Presidents, the Congress, Government Accountability Office and Library of the Congress, the House of Representatives, and the Senate committee.

Puerto Rican proposals for a "Commonwealth" status have been rejected by the U.S. Government repeatedly since soon after the local constitution was adopted in 1952. Past proposals were made in: legislation in the 1950's; negotiations between Gov. Munoz and the Kennedy White House; legislation in the 1960's; legislation in the 1970's based upon the results of a referendum in 1967 that result in a majority for a "Commonwealth" with some national government powers with continued U.S. jurisdiction benefits; legislation between 1989 and "91; a referendum in 1993 that resulted in a plurality—not a majority—for a "Commonwealth" immune from federal tax and other laws and for restoration of tax exemptions for the Puerto Rico income of companies based in the States that had just been cut by the President and Congress, trade protection for Puerto Rican products that contradicted NAFTA and GATT, and $1.5 billion a year in additional social programs funding; legislation that passed the U.S. House in 1998; and unsuccessfully arguing before the federal court that the definition of the current status on a 1998 referendum ballot was erroneous.

In my estimation there would be a significant difference between the constitutional convention proposed in H.R. 1230 and the 1950 convention that resulted in the drafting of the Commonwealth of Puerto Rico Constitution under which our Government has functioned during the past fifty five years. Public Law 81–600 included specific parameters to guide the work of the Convention. Then a consensus was reached among all convention delegates regardless of their political affiliation as to how the local government should be organized and unanimity was nearly achieved. Today, with the present polarization among the major political parties there is a strong possibility that a convention may end deadlock making the solution to the status question nearly impossible. And this "constitutional convention", unlike de 1950-2 convention would not have the purpose of writing a constitution for an already-determined status; it would have the purpose of choosing a status from among proposals that cannot be reconciled—a choice that should be made by the people directly.

H.R. 1230 also excludes on of Puerto Rico's status options: nationhood in a true free association with the United States, which has been recognized by President Clinton, the President's Task Force on Puerto Rico's status; and H.R. 900.

H.R. 1230 would, additionally, define the "People of Puerto Rico" differently than the reference in the local Constitution of Puerto Rico approved by U.S. Public Law 82-447. The bill includes individuals who do not live in Puerto Rico who were born in the island or who had one parent born in the island. And it would provide for these "non-resident Puerto Ricans" to vote in the determination of the future status of Puerto Rico even if they had no other connection with the island, diluting and

skewing the vote of the actual people of Puerto Rico. There is no precedent in the U.S. law for persons resident in one U.S. jurisdiction to vote in another U.S. jurisdiction.

H.R. 1230 would, further, recognize an "inherent authority" of "the People of Puerto Rico" to call a "Constitutional Convention" in the territory. The authority for Puerto Rico to call a constitutional convention is provided by U.S. Public Law 81–600.

The one questionable provision of H.R. 900 would enfranchise individuals who are not residents of Puerto Rico but who were born in the island to vote in the determination of Puerto Rico's status preference.

H.R. 900 otherwise would provide a good process for determining Puerto Rico's status preference, the process recommended by the President's Task Force on Puerto Rico's Status established by President Clinton through Executive Order 13183 and comprised of senior appointees of President Bush.

It includes all of the options for Puerto Rico recognized to date "continued territory status, U.S. statehood, and nationhood, although it could be argued based on U.N. General Assembly Resolution 1541 that the nationhood option should be separated into separate independent and free association options.

It provides for the current status to continue if—and for as long as—the voters want it.

It provides a process for the issue to be resolved in the future if there is not a majority for seeking the territory's ultimate, democratic status in an initial or subsequent vote on whether to seek a not-territory status.

Finally it is my opinion that Congress, after more than a century of being entrusted with the responsibility by Article IX of the Treaty of Paris of 1898, must act to provide a viable solution to this long standing issue which has consumed a lot of energies that could be better spent addressing the island's socials and economic problems. I have appeared before you for I strongly belief that is time that Puerto Rico ceases to be "Foreign in a domestic Sense". Thank you.

Ms. CHRISTENSEN. Thank you very much, Mr. González. Next I would like to recognize Ms. Veronica Ferraiuoli for five minutes.

STATEMENT OF VERONICA FERRAIUOLI, PRESIDENT, PUERTO RICO CHAPTER OF THE FEDERAL BAR ASSOCIATION

Ms. FERRAIUOLI. Good afternoon. My name is Veronica Ferraiuoli. I am the President of the Puerto Rico Chapter of the Federal Bar Association, and appear before you on its behalf.

The Federal Bar Association is a voluntary non-partisan organization whose main objective is to serve as the representative of the Federal legal profession in Puerto Rico. Currently our chapter boasts about 800 members, and it includes practitioners, judges, and students from all political ideologies.

As a representative of the Federal Bar Association, I am not here to advocate any particular status choice. However, I am here to urge you to protect the integrity and the jurisdiction of the United States District Court for the District of Puerto Rico.

The options under H.R. 900 are clear with respect to the jurisdiction of the Federal Court in Puerto Rico. If status quo is chosen, the Federal Court in Puerto Rico will remain unchanged. If the people of Puerto Rico choose statehood, the Federal Constitution will determine the Federal Court's jurisdiction.

If independence or free association is the choice of the people of Puerto Rico, international law will divest the Federal judiciary of jurisdiction in Puerto Rico. In contrast, the constitutional convention to be held under H.R. 1230 provides no safeguard or guarantee of the Federal Court's continued jurisdiction in Puerto Rico. Without such a guarantee that the Federal Court's current jurisdiction will be respected, as long as Puerto Ricans continue to be citi-

zens of the United States, the Federal Bar Association cannot support this bill.

Changes in the political relationship between Puerto Rico and the United States may necessitate changes in the jurisdiction of the Federal Courts in Puerto Rico. Historically, discussions regarding changes in Puerto Rico's political status have been accompanied by attempts to limit or abolish Federal Court jurisdiction in the island. This, even when the proposals sought to maintain or to grant United States citizenships for Puerto Ricans.

Our written statement details the many attempts at this, all of which have failed to date. Suffice it to say that what began as a court for the foreigners and the wealthy in Puerto Rico has become the court of choice for persons seeking redress or protection from commonwealth action.

After the enactment of the 1964 Civil Rights Act especially, the number of cases seeking redress from commonwealth action filed before the Federal Court has increased substantially. In addition, that court has experienced an increase in the filing of constitutional challenges to both Federal and commonwealth law.

But even in the face of the growing popularity and prestige of the Puerto Rico Federal Court in the minds of the general population, limitations to its jurisdiction continue to be advanced. Veiled in H.R. 1230 is a proposal for a new commonwealth, which provides that while Puerto Ricans will continue to be citizens of the United States by birth, the Puerto Rico District Court's jurisdiction will be limited to matters arising from the Federal Constitution and whichever Federal laws apply in Puerto Rico and are not inconsistent with the laws of the commonwealth.

It would appear that under this proposal, the Federal Court in Puerto Rico would be divested of diversity jurisdiction. In addition, it appears that under this proposal, the Federal Court will lack jurisdiction over statutory challenges to commonwealth law, such as actions under the 1964 Civil Rights Act.

Further, under this proposal the Federal Court's jurisdiction will be left to the whim of the commonwealth, who could enact statutes which would strip the Federal Court of its jurisdiction.

Despite a history of constant attempts to limit the jurisdiction of the Federal Courts in Puerto Rico, it currently holds a privileged place among the Federal District Courts in the United States, territories, or commonwealth-affiliated unions with the United States.

The District Court for the District of Puerto Rico is the only Article III Court in the territories. Moreover, the very differences which have been used in the past to support the integration of Federal jurisdiction to the local court system have placed the Federal forum in a privileged place within the life of the citizens of Puerto Rico. The Federal right to a jury trial in civil cases is unavailable in our local courts, and has made the Federal Courts the forum of choice for plaintiffs in diversity cases.

This notwithstanding, the Federal Court continues to be the preferred forum for American and foreign corporations, which language and practice are more familiar than that of the local courts. Moreover, the fact that commonwealth judges are appointed for terms, as opposed to lifetime tenure, has led to a perception of politicization in the local judiciary cases involving the common-

wealth, since they, the judiciary, depend on the favor of the executive to be reappointed, and of the Legislative Assembly to be confirmed.

Puerto Rico remains subject to Federal powers under the territory clause of the United States. The government initially established pursuant to the Foraker Act, and continued by the Puerto Rican Federal Relations Act, has left many questions unanswered regarding the relationship between Puerto Rico and the United States.

However, the Federal system interacts and coexists with local law. It has become the preferred forum for the people of Puerto Rico to obtain relief from their grievances, and it has become an integral part of the system of justice of Puerto Rico, despite all attempts at abolishing it. More than in any state it has come to represent the liberties guaranteed by the United States Constitution and the Federal laws.

For this reason, the Federal Bar Association, Puerto Rico Chapter, cannot support H.R. 1230. We cannot support a bill which, unlike H.R. 900, fails to guarantee the continued existence of a Federal court system in Puerto Rico, with jurisdiction consistent with that of all states so long as Puerto Ricans continue to be United States citizens.

I thank you for your time.

[The prepared statement of Ms. Ferraiuoli follows:]

Statement of Veronica Ferraiuoli,
Puerto Rico Chapter of the Federal Bar Association

Good morning. My name is Veronica Ferraiuoli. I appear before you on behalf of the Puerto Rico Chapter of the Federal Bar Association (the "FBA").[1]

The FBA is a voluntary, non-partisan organization whose main objective is to serve as the representative of the Federal legal profession in Puerto Rico. Currently, our Chapter boasts about 800 members and it includes practitioners, judges and students from all political ideologies.

As a representative of the FBA, I am not here to advocate any particular status choice. However, I am here to urge you to protect the integrity and the jurisdiction of the United States District Court for the District of Puerto Rico as an integral part of the proceedings before this Subcommittee.

Since all of Puerto Rico's status proposals involve changes in federal law and policy, Puerto Ricans need to know federal positions on the proposed options so they can make an informed, meaningful, and fair choice.

The options under H.R. 900 are clear with respect to the jurisdiction of the federal court in Puerto Rico. If the status quo option is chosen by the people of Puerto Rico, the federal court in Puerto Rico will remain unchanged by this choice. If the people of Puerto Rico choose statehood as their option, Article III of the United States Constitution and federal law will determine the federal court's jurisdiction. If independence is the choice of the people of Puerto Rico, international law will prevail and will divest the federal judiciary of jurisdiction in Puerto Rico.

In contrast, the Constitutional Convention to be held under H.R. 1230 provides no safeguard or guarantee of the federal court's continued jurisdiction in Puerto Rico. Without such a guarantee—that the federal court's current jurisdiction will be respected as long as Puerto Ricans continue to be citizens of the United States, the FBA cannot support this bill.

The History of Federal Jurisdiction in Puerto Rico

The U.S. District Court for the District of Puerto Rico has its genesis in the U.S. Provisional Court for the Department of Puerto Rico. It was established by Governor Davis on June 27, 1899 with judicial power extending to all cases that would other-

[1] The position taken herein is that of the Puerto Rico Chapter of the Federal Bar Association only. The National Council of the Association has not taken any public position regarding these bills.

wise fall within the jurisdiction of the United States circuit or district courts, over violations to the United States Constitution and all common law offenses.[2] The Provisional Court followed the same law and equity principles as the United States courts and, for its procedures, rules, and case management, it was to follow as closely as possible those of the federal courts. Three judges were appointed to the Provisional Court, who were vested the with the same powers as the judges of the other federal circuit or district courts. Spanish citizens still residing in the Island welcomed the Provisional Court; they saw the federal court as the only forum which would guarantee their property rights under the Treaty of Paris. The Provisional Court was, thus, the safe heaven of foreigners seeking protection from the perceived injustices of the local governing body.

Puerto Rico was under military rule from October 18, 1898 through April 30, 1900. On May 1, 1900, the Foraker Act came into effect.[3] This first Organic Act established that the Island was a territory belonging to the United States and contained no provisions for the Island's political development towards statehood or independence. Puerto Ricans were denied U.S. citizenship at that time; a political body was created under the name of the "People of Porto Rico" entitled to the protection of the United States, with no provisions for the implementation of the United States Constitution or the Bill of Rights.

With respect to the federal judiciary, Congress provided for the judicial District of Porto Rico, created pursuant to the Territorial Clause of the United States Constitution, to be the successor of the Provisional Court. Although, this court initially enjoyed the same ordinary jurisdiction on all matters that would come before the district courts or the circuit courts of the United States, Congress extended its jurisdiction to civil matters "where the parties or either of them, are citizens of the United States, or citizens or subjects of a foreign State or States, wherein the matter in dispute exceeds" $1,000.[4] Under this expanded diversity jurisdiction, United States citizens residing in Puerto Rico were granted the option of suing in the insular courts or in federal courts, a right not extended to Puerto Ricans.[5] The establishment of a federal forum where foreign and U.S. citizens could take their civil and constitutional claims proved to be a necessary tool to attract foreign capital since American investors felt wary of a language they did not understand and a legal system with unfamiliar procedures.[6]

It was not long after the Foraker Act came into effect when the deficiencies of the governmental structure established thereunder came to light and local voices started crying out for reform. The structure of the Puerto Rico district court was one of the matters that often came up during the debates to amend the Foraker Act. For example, the Olmstead Bill to amend the Foraker Act, introduced in March 1910, included a clause to limit the federal court's diversity jurisdiction to causes involving American citizens who were not domiciliaries of Puerto Rico.[7] The bill for a new organic act introduced in 1912 by Senator Jones also originally included a provision to limit diversity jurisdiction in the same manner provided for in the Olmstead Bill.[8]

During this period, the federal court came under strong opposition from local institutions. On March 9, 1915, the P.R. House of Delegates approved a resolution calling for the President and Congress to grant Puerto Rico a republican form of government; and further called for the "exclusive jurisdiction of the Puerto Rico Supreme Court...in all matters pertaining to the District and Circuit Courts of the United States."[9] In 1916, the Puerto Rico Bar Association publicly supported the abolition or limitation of the federal court's jurisdiction in Puerto Rico stressing the efficiency and integrity of the insular court judges and the problems caused by the use of the English language in the federal court on the Island, objected to the court's broad jurisdiction, and recommended that the Puerto Rico Supreme Court hear all cases involving federal questions.[10] On April 18, 1916, the House of Delegates again

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[2] General Order No. 88, San Juan, P.R. June 27, 1899, Brigadier General George W. Davis.

[3] Foraker Act, Ch. 191, 31 Stat. 77, 48 U.S.C. § 731; Organic Act of 1099, April 12, 1900, Historical Documents, P.R. Statutes Annotated, Vol. I, 24-29 (1999).

[4] An Act of Congress of March 2, 1901, P.R. Statutes Annotated, Historical Documents, Vol. I, 52-54.

[5] José Trias Monge, Historial Constitucional de Puerto Rico, Vol. I, (Ed. U.P.R. 1980), at 295.

[6] Guillermo A. Baralt, History of the Federal Court in Puerto Rico: 1899-1999 (Publicaciones Puertorriqueñas 2004), at167-168.

[7] The Olmstead Bill had various versions. The principal ones were H.R. 22554 and H.R. 23000, 61st Cong., 2nd Session.

[8] H.R. 13818, 63rd Cong., 2nd Session.

[9] Trias Monge, Historia Constitucional de Puerto Rico, Vol. II (Ed. U.P.R. 1981), at 61.

[10] Baralt, op. cit., at 161.

called for the suppression of the federal court in Puerto Rico and the transfer of its jurisdiction to the Puerto Rico Supreme Court based on the later's "prestige". [11]

The Organic Act of 1917 came into effect on March 2, 1917. [12] The final, approved version of the Organic Act of 1917 ratified the presence of the federal court in Puerto Rico, even over the strenuous objections of the House of Delegates and of the Puerto Rico Bar Association and their requests for the elimination of the federal court. The federal court was granted jurisdiction over "all controversies [exceeding $3,000] where all of the parties on either side of the controversy are citizens or subjects of a foreign State or States, or citizens of a State, Territory, or District of the United States not domiciled in Puerto Rico" and "of all controversies in which there is a separable controversy involving such jurisdictional amount and in which all of the parties on either side of such separable controversy are citizens or subjects of the character aforesaid." [13] This notwithstanding, the United States Supreme Court did limit the federal court's jurisdiction soon thereafter. In late June 1920, the Supreme Court interpreted the Organic Act of 1917 to exclude from federal jurisdiction those cases involving aliens domiciled in Puerto Rico. [14] A year later, that court also found federal jurisdiction to have been denied to American citizens domiciled in Puerto Rico. [15]

The federal court's jurisdiction remained basically unchanged through the status proceedings related to Public Law 600 and the establishment in 1952 of the Commonwealth of Puerto Rico, except for one thing: Public Law 600 granted the federal court in Puerto Rico jurisdiction over diversity cases where neither of the parties were residents of Puerto Rico, even if they resided in the same state. [16] But the ink was not yet dry on Public Law 600 when the jurisdiction of the federal court was challenged. Less than ten years after its enactment, changes to the court's jurisdiction were prominently included in the amendments to Public Law 600 contained in the Fernos-Murray Bill; the applicable provisions provided for the federal court for the District of Puerto Rico to share the same jurisdiction as those of the other States. Federal jurisdiction was also challenged in court, where it was alleged that, as a result of the creation of the Commonwealth, Congress had voluntarily and irrevocably granted Puerto Rico full and absolute responsibility over all internal affairs and, thus, abandoned federal jurisdiction over matters involving strictly Commonwealth law. None of these attempts prospered.

Not long after, though, the federal court in Puerto Rico underwent an important transformation. On September 12, 1966, Public Law 89-571 was signed, making judiciary appointments in the United States District Court for the District of Puerto Rico lifetime appointments under Article III of the United States Constitution. The Senate Report stated that

> Federal litigants in Puerto Rico should not be denied the benefit of judges made independent by life tenure from the pressures of those who might influence his chances of reappointment, which benefits the Constitution guarantees to the litigants in all other Federal courts. [17]

Another reason for lifetime appointment was the following:

> the court is now the only judicial agency on Puerto Rico which is independent of the Commonwealth government and it will aid the district judges to perform their functions impartially, particularly in those cases involving the Federal Government on one side and the Commonwealth government on the other if they have the full independence inherent in a lifetime tenure. [18]

At that time, the prototypical petitioners before the federal court also began to change. After the enactment of the 1964 Civil Rights Act, the number of cases seeking redress from Commonwealth action filed before the federal court increased substantially. In addition, the court has experienced an increase in the filing of constitutional challenges to both federal and Commonwealth law.

What began as a court for the foreigners and the wealthy, has become the court of choice for persons seeking redress or protection from Commonwealth action. However, even in the face of the growing popularity and prestige of the Puerto Rico federal court in the minds of the general population, limitations to its jurisdiction continue to be advanced. For example, in the 1998 plebiscite on status, the Popular

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[11] Trias Monge, Historia Constitucional de Puerto Rico, Vol. II (Ed. U.P.R. 1981), at 61-62.
[12] Organic Act of 1917, March 2, 1917, Ch. 145, 39 Stat. 951.
[13] Organic Act of 1917, Sec. 41.
[14] Agüeros v. Sanjurjo, 11 P.R. Fed. 574 (1920).
[15] Alvarez v. Madera, 12 P.R. Fed. 278 (1921).
[16] This special grant of jurisdiction, which was unique to Puerto Rico's district court, was repealed by Public Law 91-272 of June 2, 1970, 84 Stat. 294, § 13.
[17] 1966 U.S. Cong. and Adm. News 2787.
[18] Id., at 2788.

Democratic Party proposed a new Commonwealth providing that, while Puerto Ricans will continue to be citizens of the United States by birth, the federal court's jurisdiction will be limited to matters arising from the United States Constitution and whichever federal laws apply in Puerto Rico and not in violation with the laws of the Commonwealth of Puerto Rico.[19] It would appear that—under this proposal—the federal court in Puerto Rico would be divested of diversity jurisdiction. In addition, it appears that—under this proposal—the federal court would lack jurisdiction over statutory challenges to Commonwealth law, such as actions under the 1964 Civil Rights Act. Further, under this proposal, any laws that the Commonwealth might enact in the future would strip the federal court of its jurisdiction under the Constitution and federal laws of the United States.

Despite a history of constant attempts to limit the jurisdiction of the federal court in Puerto Rico, it currently holds a privileged place among the federal district courts in the United States' territories or commonwealth in affiliated unions with the United States. The territory of American Samoa has no federal district court. On the other hand, while the territories of the Commonwealth of the Northern Mariana Islands, Guam and the U.S. Virgin Islands do have federal district courts, they are territorial courts in every sense of the word. Although they enjoy the same jurisdiction as all other United States district courts, they are also courts of general jurisdiction for all causes which jurisdiction is not otherwise vested in the local courts and their judges are appointed to ten-year terms.[20] In contrast, the District Court for the District of Puerto Rico is an Article III court, with all the benefits and limitations appurtenant thereto.

The very differences which have been used in support of the integration of federal jurisdiction to the local court system, have placed the federal forum in a privileged place within the life of the citizens of Puerto Rico. The federal right to a jury trial in civil cases—unavailable in local court—has made the federal court the forum of choice for plaintiffs in diversity cases, in light of the inadequate damage determinations made by local courts. This notwithstanding, the federal court continues to be the preferred forum for American and foreign corporations, whose language and practice are usually more familiar than that in local courts. Moreover, the fact that Commonwealth judges are appointed for terms—as opposed to lifetime tenure—has led to a perception of politization of the local judiciary since they depend on the favor of the Executive to be reappointed and of the Legislative Assembly to be confirmed.

Conclusion

Puerto Rico remains subject to federal powers under the Territory Clause of the United States according to the Supreme Court, Justice and State Departments, Congressional Research Service, Government Accountability Office, and successive presidents. The government initially established pursuant the Foraker Act, and continued by the Puerto Rican Federal Relations Act, left many questions unanswered regarding the relationship between Puerto Rico and the United States. Professor Guillermo A. Baralt summarizes some of these questions as follows:

> Does the Constitution of the United States follow the flag? What is the nature and scope of Congress in governing Puerto Rico? Do constitutional amendments apply to the territory of Puerto Rico? What is the constitutionality of this new territorial status, or of the limitations on the rights of the citizens of Puerto Rico?[21]

More than 100 years later and substantial changes to the law, we are still grappling with these questions.

However, we do know what role that the federal court plays in this relationship. The federal system interacts and coexists with local law. It has become the preferred forum for the people of Puerto Rico to obtain relief for their grievances. It has become an integral part of the system of justice of Puerto Rico—despite all attempts at limiting or abolishing it. More than in any State, it has come to represent the liberties guaranteed by the United States Constitution and the federal laws.

For this reason, the FBA cannot support H.R. 1230. We cannot support a bill which, unlike H.R. 900, fails to guarantees the continued existence of a federal

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[19] Governor Acevedo Vilá, the proponent of H.R. 1230, has recently stated that the new "Commonwealth status" he proposes is that adopted by his party's governing board on October 18, 1998, and included in his party's platforms of 2000 and 2004. The President's Task Force and the Department of Justice called this proposal's constitutionality into question because, among other reasons, it would empower Puerto Rico to limit the jurisdiction of federal courts and nullify the application of federal laws in many areas.

[20] 48 U.S.C. § 1821 et seq. (District for the Northern Mariana Islands); 48 U.S.C. § 1612 et seq. (District for the Virgin Islands); 48 U.S.C. § 1424 (District of Guam).

[21] Baralt, op. cit., at 125-126.

court system in Puerto Rico with jurisdiction consistent with that of all States so long as Puerto Ricans continue to be United States citizens.

I thank you for your time.

Ms. CHRISTENSEN. Thank you. I now recognize Ms. Celina Romany for five minutes.

STATEMENT OF CELINA ROMANY-SIACA, PRESIDENT, PUERTO RICO BAR ASSOCIATION

Ms. ROMANY-SIACA. Good afternoon, Madame Chairwoman and Members of the committee. My name is Celina Romany, and I appear before you as President of the Puerto Rico Bar Association, an organization founded in 1840. It is one of the oldest professional associations in the Americas, approximately groups 14,000 lawyers of diverse political and ideological preferences. And notwithstanding this reality, the Colegio de Abogados, as we call it, has historically been an advocate of the decolonization of Puerto Rico, and has advocated for a solution that emerges from Puerto Rico, from its people, the ultimate depository of political sovereignty.

It has consistently supported the need to seriously address this issue with the political will required for correcting the democratic deficit inherent in the denial of a people's fundamental human right to sovereignty and self-determination.

Our Bar Association has provided a constitutional and democratic theoretical and practical perspective, as well as an international law dimension, to a passionate debate that often ends up stationed in parties and political allies.

The long trail that precedes today's Congressional effort speaks for itself, and reflects the U.S. officials' inability to grasp the essential components of a colonial relationship. But more importantly, it also reflects the dangerous paths of the control exercised by partisan politics. The Puerto Rican people have not been able to enter the stage on the political status question, and H.R. 1230, the Puerto Rico Self-Determination Act, constitutes a first entrance. It lays out a significant foundation toward the eradication of a colonial relationship, out of sync with democratic values, and which give voice to all Puerto Ricans, from here and there, in the design and elaboration of their political destiny.

H.R. 1230 additionally provides a first opportunity to build a mechanism for the democratic deliberations of all political sectors. It also represents the first Congressional acknowledgment of a people's natural right to self-determination, the contours of which have been amply refined by an international society much different to the one existing at the U.N. of the fifties, the time when Puerto Rico was removed from the list of non-self-governing territories.

This is the first time in more than 100 years, and this Congress, increasingly representative of a diverse Latino population, increasingly learning to walk the tightrope of national and cultural identities, of plurality and difference, increasingly aware of Latin-American neighbors watching the inconsistencies in our backyard, must rise to the occasion.

A first scenario, that by granting our people the status convention assembly option provided in H.R. 1230, offers a remedy for a

whole century witnessing the egregious violations of basic political human rights.

H.R. 1230 acknowledges the fairness and legitimacy of said convention assembly as a vehicle of expression which allows the articulation of non-colonial alternatives not bound by the straitjacket of the territorial clause and its plenary powers.

In light of this morning's discussion, I might add that the issue before you and before your consideration is how to channel that expression, and avoid destructing historical discussions about the specific contours of substantive status options that stirs passions and misinformation. We should be here today talking about implementing a consensus, as Commissioner Fortuño pointed out, toward the decolonialization, and must underscore as well that the constitutional analysis that has been discussed here today has missed a central point of our constitutional law: specifically, the recognition of a dynamic constitution that distances itself from a strict constructionist approach in dissonance with basic international human rights principles, and which imprisons in an invalid box a territorial clause that, as Professor Pildes suggested, has correctly characterized as one demanding the pragmatism, the flexibility long recognized in foreign policy relations.

I think that the deliberative mechanism proposed by H.R. 1230 proposes the unleashing of a political and negotiation process that guarantees a non-colonial outcome. That is why the Puerto Rico Bar Association has its Board of Governors approve such bill, and has also supported a similar bill in the Puerto Rico Legislature. Puerto Rico is our nation, a Latin-American and Caribbean nation, which has been denied its right to self-determination, notwithstanding several U.N. decolonialization resolutions translating recognized international principles. Regardless of the systematic and prolonged violations of basic and universal human rights, the Executive Branch of this government insists that Puerto Rico is a U.S. commodity, which can indeed be freely trafficked and ceded in any international exchange.

The President's Task Force report, presented to Congress in December 2005, constitutes an unfortunate reminder of the stagnation of the colonial relationship. That task force discourse is not far removed from Senator Joseph Foraker's words of 105 years ago, when he stated that we have a right to legislate with respect to them as we may see fit. Nor is it far removed from the Supreme Court of 106 years ago that justified the territorial clause on the basis of alien races.

Madame Chairwoman, to privilege a constitutional clause that clashes against the wall of basic universal principles and of the political lessons brought about by the convulsions of the 20th Century, amounts to nothing else but to the privileging of imperial periods, an empire camouflaged in self-serving interpretations of the rule of law.

And to conclude, there is no more time to waste. No more detours or delays are acceptable. For the first time this Congress has the opportunity to legitimize the entrance of the Puerto Rican people to the deliberative stage and the outcome of its self-determination deliberation as an equal sovereign.

Thank you.

[The prepared statement of Ms. Romany-Siaca follows:]

Statement of Celina Romany-Siaca, President, Puerto Rico Bar Association (Colegio de Abogados)

My name is Celina Romany and I appear before you as President of the Puerto Rico Bar Association. Our organization, founded in 1840, and one of the oldest professional associations in the Americas, approximately groups on a compulsory basis, 14,000 lawyers of diverse political and ideological preferences. Notwithstanding this reality, the Colegio de Abogados has historically been an advocate of the decolonization of Puerto Rico, both under the Spanish and United States regimes. It has advocated for a solution that emerges from Puerto Rico, from its people, the ultimate repository of political sovereignty. It has consistently supported the need to seriously address this issue with the political will required for correcting the democratic deficit inherent in the denial of a people's fundamental human right to sovereignty and self-determination.

Our Bar Association has played a key advocacy and educational role in the public debate. Through its Constitutional Development Commission has provided a constitutional and democratic theoretical and practical perspective as well as an international law dimension to a passionate debate that often ends up stationed in partisan political alleys.

The long trail that precedes today's congressional effort speaks for itself and reflects the United States officials' inability to grasp the essential components of a colonial relationship. But more importantly, it also reflects the dangerous paths of the control exercised by partisan politics. The Puerto Rican people have not been able to enter the stage on the political status question and H.R. 1230, the Puerto Rico Self Determination Act, constitutes a first entrance. It lays out a significant foundation towards the eradication of a colonial relationship, out of sync with democratic values which give voice to all Puerto Ricans—from here and there—in the design and elaboration of their political destiny.

H.R. 1230 additionally provides a first opportunity to build a mechanism for the democratic deliberations of all political sectors. It also represents the first congressional acknowledgement of a people's natural right to self-determination, the contours of which have been amply refined by an international society much different to the one existing at the United Nations of the 50's, the time when Puerto Rico was removed from the list of non-self-governing territories.

This is a first in more than a hundred years, and this Congress, increasingly representative of a diverse Latino population; increasingly learning to walk the tightrope of national and cultural identities—of plurality and difference; increasingly aware of Latin American neighbors watching the inconsistencies in our backyard, must rise to the occasion. A first scenario that, by granting our people the Status Convention/Assembly option provided in H.R. 1230, offers a remedy for a whole century witnessing the egregious violations of basic political human rights.

H.R. 1230 acknowledges the fairness and legitimacy of said Convention/Assembly as a vehicle of expression which allows the articulation of non-colonial alternatives—not bound by the straight-jacket of the territorial clause and its plenary powers. Section 2 of the bill correctly emphasizes that any "self-determination option" agreed by the Puerto Rican Convention "must be based on the sovereignty of the People of Puerto Rico and not be subject to the plenary powers of the territorial clause of the Constitution of the United States." Another essential provision of the bill is included in its Section 4(a)(2), which establishes that, if Congress rejects a self-determination proposal submitted to it by the People of Puerto Rico, the Convention may reconvene "to adopt another Self-Determination Option;" while Section 5 adds that the Convention "may remain in session until a Self-Determination Proposal is enacted by Federal law." Hence, H.R. 1230 proposes the unleashing of a political, deliberative and negotiation process that must guarantee a non-colonial outcome. Thus, the Puerto Rico Bar Association in a Resolution approved by its Board of Governors, commends and supports bill H.R. 1230.[1]

Puerto Rico is our nation, a Latin-American and Caribbean nation which has been denied its right to self-determination notwithstanding several UN Decolonization Committee resolutions, translating recognized international law principles. Regard-

[1] H.R. 900 is silent as to what Congress should do in case either the "statehood" or the "sovereign nation" option wins; is silent as to the implementation of the winning alternative; and thus it does not map out the direction that the relations between the two nations would follow. In contrast, H.R. 1230 requires Congress to respond to the options previously approved by the People of Puerto Rico and for the expiration of the Convention only when one non colonial status is finally approved by both the People of Puerto Rico and Congress.

less of the systematic and prolonged violations of basic and universal human rights, the Executive Branch of the current government insists that Puerto Rico is a U.S. commodity which can indeed be freely trafficked and ceded in any international exchange. The President's Task Force Report, presented to Congress in December 2005, constitutes an unfortunate reminder of the stagnation of a colonial relationship. The Task Force essential discourse is not far removed from Senator Joseph Foraker's words of a hundred and five (105) years ago when he stated that "we have a right to legislate with respect to them as we may see fit." [2] Nor is it far removed from the Supreme Court of a hundred six(106) years ago that justified the territorial clause on the basis of alien races.[3]

Madame Chair, to privilege a constitutional clause that crashes against the wall of basic universal principles and of the political lessons brought about by the convulsions of the 20th century, amounts to nothing else but to the privileging of imperial periods, an empire camouflaged in self-serving interpretations of the rule of law.

There is no more time to waste; no more detours or delays are acceptable. H.R. 1230, for the first time, legitimizes the entrance of the Puerto Rican people to the deliberative stage and thus the outcome of its self-determination deliberation, as an equal sovereign.

Thank you.

Ms. CHRISTENSEN. Thank you very much. Our last panelist, last but not least, is Ms. Aida Díaz. You will be recognized for five minutes.

STATEMENT OF AIDA DÍAZ, PRESIDENT, PUERTO RICO TEACHERS ASSOCIATION

Ms. DÍAZ. Good afternoon, Honorable Donna M. Christensen, Chair of the Subcommittee, and honorable Members of this committee.

My name is Aida Díaz, President of the Puerto Rico Teachers Association, a non-partisan, voluntary membership organization of 26,000 teachers, which advocates for the welfare of the Puerto Rican teacher since its foundation in 1911. As an organization we have members who belong to the three main political parties, and we do not advocate or endorse any particular statutes.

The teachers appreciate the opportunity to share our thoughts on the two bills introduced in the Congress to provide a process to move Puerto Rico to a new political status, H.R. 900 and H.R. 1230. As educators, we have to take a critical look as to which process promotes a better educational opportunity for the people of Puerto Rico to learn about the political options available to our future.

Objectively, after viewing both bills we firmly believe that H.R. 1230 provides for a better educational experience and a simpler process. We are prepared to endorse H.R. 1230 only if the matters below described are included in the bill. H.R. 1230 promotes a constitutional convention in which elected delegates would debate the full extent of the political options available, would choose one, and have its acceptance put to a vote of the people of Puerto Rico.

The format of a constitutional convention constitutes a process which is less complicated, and thus better suited to reach a definite result within a shorter period of time. It also seems less prone to manipulations of politicians in their characterizations of the op-

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[2] Congressional Record, Senate, March 2, 1900, pág. 2475; cited in Ronald Fernández, The Disenchanted Island: Puerto Rico and the United States in the Twentieth Century 9 (1992).

[3] Downes v Bidwell 182 U.S. 244 (1901), at 286-87

tions as presented to the people; vis-a-vis, a simple plebiscite with the three status options.

H.R. 1230 offers a balanced approach, confers our people ample opportunity to analyze and learn in a detailed manner about the self-determination options.

It could further specify delegates need not to be the exclusive representatives of political parties. Gender representation should be addressed in order to guarantee a balanced representation, since women are a majority of the electorate in Puerto Rico. Congress needs to appropriate funds to share in the financing of this option. Congress needs to put a date certain by which the constitutional convention is constituted.

H.R. 1230 calls for a process of a superior quality. The definition of the political status option shall be the product of the Puerto Rican delegates elected by the people of Puerto Rico. The chosen option should be later ratified by the Puerto Rican electorate.

Under H.R. 900, the political options are defined by the Congress, not by the people of Puerto Rico. H.R. 900 offers a very complicated process with multiple electoral events. Furthermore, the second plebiscite proposal of H.R. 900 is flawed. It pretends to limit the status options available to only two.

There is now consensus in Puerto Rico the present political relationship with the United States is unacceptable. Free association is a recognized international status option which needs to be included. The United States has ample experience in this field with three relationships of free association presently in existence: Federated States of Micronesia, Republic of Marshall Islands, and Palau.

So if the committee prefers H.R. 900 as the vehicle for Puerto Rico to adopt a new political status, then it needs to amend it to eliminate the first plebiscite and legislate on the plebiscite with the three options as recognized by the resolution 1541 of the General Assembly of the United Nations, as approved in 1960.

One, emergency as a sovereign independent state. Two, free association with independent state. Three, integration with an independent state. Also, Congress has to recognize the jurisdiction of the local courts over any plebiscite. Congress also needs to consider the development of an objective educational campaign.

The State Election Commission with an advisory committee constituted of institutions such as ours would implement a campaign to address the political options and the peculiarities of each one objectively. This campaign could serve to clarify concepts debated by the delegates which may need further explanation. Again, this goes further our concern to have an educated electorate.

We urge you to adopt, with amendments, H.R. 1230. Thank you.

[The prepared statement of Ms. Díaz follows:]

Statement of Aida Díaz, President,
Puerto Rico Teacher's Association (PRTA)

Honorable Donna M. Christensen, Chair of the Sub-Committee and honorable members of this committee.

My name is Aida Díaz, President of the Puerto Rico Teachers Association (PRTA), a non-partisan voluntary membership organization of 26,000 teachers which advocates for the welfare of the Puerto Rican teacher since its foundation in 1911.

The teachers appreciate the opportunity to share our thoughts on the two bills introduced in Congress to provide a process to move Puerto Rico to a new political

status, H.R. 900 and H.R. 1230. As educators we have to take a critical look as to which process promotes a better educational opportunity for the People of Puerto Rico to learn about the political options available to our future. Objectively, after reviewing H.R. 900 and H.R. 1230, we firmly believe H.R. 1230 provides for a better educational experience and a simpler process. Educating the electorate about the options are key to our future, since as Epictetus, the Greek philosopher said: "Only the educated are free." And, since this process is to set the Puerto Rican people totally free, they must be well educated as to the political options available and, most importantly, as to how these options promote a better Puerto Rico.

We are prepared to endorse H.R. 1230 if the matters below described are included in the bill. H.R. 1230 promotes a Constitutional Convention in which elected delegates would debate the full extent of the political options available; choose one and have its acceptance put to a vote of the People of Puerto Rico. The format of a Constitutional Convention constitutes a process which is less complicated and thus better suited to reach a definite result within a shorter period of time. It also seems less prone to the manipulations of politicians in their characterizations of the options as presented to the people vis a vis a simple plebiscite with the three (3) status options. H.R. 1230 offers a balance approach, confers our people ample opportunity to analyze and learn in a detailed manner about the self determination options.

H.R. 1230 could further specified: 1. Delegates need no to be the exclusive representatives of political parties; 2. Gender representation should be addressed in order to guarantee a balance representation, since women are a majority of the electorate; 3. Congress needs to appropriate funds to share in the financing of this option; and, 4. Congress needs to put a date certain by which the Constitutional Convention is constituted.

H.R. 1230 calls for a process of a superior quality. The definition of the political status option shall be the product of the Puerto Rican delegates elected by the People of Puerto Rico. The chosen option would be later ratified by the Puerto Rican electorate. Under H.R. 900, the political options are defined by Congress not the People of Puerto Rico. It must be up to our people to decide the political formula or status under which they will be governed in the future "not Congress.

H.R. 900 offers a very complicated process with multiple electoral events. It pretends to limit the status options available to only two (2). There is now consensus in Puerto Rico "the present political relationship with the U.S. is unacceptable. Free Association is a recognized international status option which needs to be included. The U.S. has ample experience in this field with three relationships of Free Association presently in existence: Federated States of Micronesia; Republic of Marshall Islands; and, Palau.

So, if this Committee prefers H.R. 900 as the vehicle for Puerto Rico to adopt a new political status, then its needs to amend it to eliminate the first plebiscite and legislate one plebiscite with the three (3) options as recognized by Resolution 1541 (XV) of the General Assembly of the United Nations as approved in 1960: 1. Emergence as a sovereign independent state; 2. Free Association with and independent state; or 3. Integration with an independent state. Also Congress has to recognize the jurisdiction of the local courts over any plebiscite.

The remarks on H.R. 900 are simply to respond to the request by the Committee to comment on said bill since the Teachers Association is not endorsing said bill.

Congress also needs to consider the development of an objective educational campaign. The State Elections Commission with an advisory committee constituted of institutions such as ours would implement a campaign to address the political options and the peculiarities of each of the options objectively. This campaign could serve to clarify concepts debated by the delegates which may need further explanation. Again, this goes to further our concern to have an educated electorate.

We urge you to adopt with amendments H.R. 1230. Thank you.

Ms. CHRISTENSEN. Thank you very much. Thank you, panelists, for your testimony.

I am going to recognize myself for five minutes. My first question would be to the historian, Mr. González.

How do you respond to the concern of some that by prescribing the choices for the people of Puerto Rico, H.R. 900 dictates a process that doesn't come from the people; and that such a process then would be the denial of the fundamental right of self-determination?

Mr. GONZÁLEZ VALES. In my estimation, Madame Chairman, one of the basic flaws of all the previous status referendums is that the definition of the various alternatives have been left up to the political parties on the island to prescribe. And therefore, you may engage in wishful thinking by providing formulas which will not be acceptable.

The way that the H.R. 900 states it, these are acceptable solutions, constitutionally viable, so the people know exactly what they are voting for at the time of exercising their vote.

Ms. CHRISTENSEN. So your issue is that the definitions need to be clear and accurate, so that people, regardless of the process, but the definitions ought to be clear and accurate.

Mr. GONZÁLEZ VALES. That is clear, Madame.

Ms. CHRISTENSEN. You talk about the fear of a deadlock under the convention process. Would you be more inclined to support 1230 if there were specific parameters included, as you say? You make the reference to 1950.

Mr. GONZÁLEZ VALES. Right.

Ms. CHRISTENSEN. Would you be more inclined to support H.R. 1230 if there were specific parameters?

Mr. GONZÁLEZ VALES. If the process of selecting the delegates is not based on the political affiliations of the delegates, then that could be avoided. But right now, under the political situation in Puerto Rico, the political forces of the two main parties, the PVP and the PNP, are basically pretty much the same. So they would tend to offset one another.

And I would think that a constitutional convention which delegates are chosen on the basis of their political affiliation may end up in a deadlock, and not have a consensus that we did have in the 1950 Constitutional Convention, because there was really a consensus as to the fact that we needed to do something to organize the local government.

And therefore, when you look at the results of the Constitutional Convention and the vote, it was nearly unanimity finally at the end. And that was one of the really fundamental differences that I see from a historical perspective between one offered choice or the other.

Ms. CHRISTENSEN. Thank you. Ms. Díaz, I will ask you this question, because as I understand it, for most referenda it is recommended that the language be at eighth-grade comprehension level so that it is clear, and that the majority of people or everyone can really understand it.

As you look at H.R. 900, do you think that it is, the way the two choices are stated, do you think that it is written at a level that is clear and understandable to most people?

Ms. DÍAZ. Most of the people have to know, we have to get into deep discussion of the both, uh——

Ms. CHRISTENSEN. Both bills?

Ms. DÍAZ. Yes. Because the people know that there is the independence and statehood. But what are the advantages? What are the disadvantages of each form? What are we going to gain? What are we going to lose? How is the future of Puerto Rico going to be, through each formula? That is what they need to know before that.

I am not clear. I am not sure that all Puerto Ricans are ready to vote to choose from both options, because they need to know more. The implications of that decision. And that is what I am advocating for that, for a process to educate our people what are they going to do, and where it is going to—how it is going to be their future after they vote.

Ms. CHRISTENSEN. But if Puerto Rico should continue the existing form of territorial status, as defined by the Constitution, basic laws and policies of the United States, is that——

Ms. DÍAZ. No, that is not clear.

Ms. CHRISTENSEN. Thank you. I now recognize Mr. Fortuño for five minutes.

Mr. FORTUÑO. Thank you. And I thank again the third panel this afternoon; thank you for coming up here.

We have been very fortunate to have everyone who came before us, for all three panels. With all due respect to everyone, however, only one member of the three panels earned his way here. That is Mr. Pedroza.

He and the people he represents earned their way here, because they have been in the line of battle to defend our nation. And I salute you, the veterans that you represent, and the men and women of uniform also of the world that are defending our nation and our values.

And that brings me to my point. How is it that in the 21st Century, we have men and women in uniform that are defending democracy, you know, half around the world, and they could not elect their Commander in Chief?

As far as I am concerned, that is unconscionable, and that has to end as soon as possible.

Mr. Pedroza, do you have a position on that

Mr. PEDROZA. Well, as a combat veteran, as a Puerto Rican combat veteran, American citizen, I see it as an immoral part from the United States toward the Puerto Rican veterans.

Why do I say this? Because when I was in Vietnam, there were many Puerto Ricans who were sick being in Vietnam. They had nobody to write to in Congress who would help them get out of Vietnam.

When I have seen a lot of soldiers from the 50 states of the Nation who would write to their Congressmen, and they were pulled out of Vietnam because of the pull that they had with these Congressmen. So I seen that in my own eyes in Vietnam, when we could not get out of the field, and soldiers from the United States could. So I could see the discrimination right there in Vietnam.

And I am seeing it today in Puerto Rico. At this moment there is thousands of Puerto Rican veterans who are trying to get in the system of the VA, and we don't have a system in Puerto Rico in place. We have a cemetery that has got one year left, national cemetery. And when we come to Congress, when we come to looking for our rights, we have no rights. We have no such rights in Puerto Rico, not like the 50 states in the nation.

So I think that Congress has been dishonest with us. And I think that we Puerto Rican veterans resent this very much. Until we get the moment to vote for the President who sends us to battle, I think that this Congress has to look into that very, very seriously.

Because here we have 20,000 Puerto Ricans at this moment in Afghanistan and Iraq fighting the war, and they can't vote for their Commander in Chief. And to me, that is immoral.

Mr. FORTUÑO. Thank you. And again, I salute you and the many heroes from Puerto Rico that have defended or are defending this very moment our democracy.

Ms. Ferraiuoli, you mentioned correctly, as I see it, that to this day, oftentimes the court of choice of a lot of people in Puerto Rico to seek redress and protection from commonwealth actions having to do with civil rights, discrimination, and many other cases, is the Federal Court.

Have you looked at the proposal that has been made under, that is viable or feasible under H.R. 1230, that would actually eliminate Federal Court jurisdiction in Puerto Rico? And what is your opinion on that?

Ms. FERRAIUOLI. I am sorry, Congressman, are you asking me if I believe it is viable?

Mr. FORTUÑO. If you believe it is viable or not.

Ms. FERRAIUOLI. OK. Well, in my opinion, as long as the Constitution of the United States is supposed to be the governing law, it would not be a viable alternative. You cannot have a state, without a capital S, subject to the Constitution of the United States, and have that state be above the Constitution and the laws of the United States.

One of the first things that you learn when you go to law school is that the sovereign law of the land is the Constitution, and right below that are the statutes of the, the Federal statutes. Below that the Constitution of the states, and last, the statutes and regulations of the states.

What the proposal—and I say veiled in the new commonwealth, because the fact is that H.R. 1230 talks about it in the commonwealth, but doesn't tell you guys what it is that you are allowing the people of Puerto Rico to choose.

The proposal that has been made effectively puts the commonwealth above all Federal law, and would allow the commonwealth to determine which Federal law applies or doesn't apply in Puerto Rico. And would not give the Federal Court jurisdiction over any issue in which commonwealth law is inconsistent with Federal law, which would basically put our constitutional groundwork upside-down.

So in my opinion, it would not be constitutional so long as Puerto Rico is supposed to be part of the United States.

Mr. FORTUÑO. Thank you again. And actually, as you mentioned, it is veiled in H.R. 1230, but it is very clear in the Governor's platform. Thank you again. And I yield back, Madame Chair.

Ms. CHRISTENSEN. Thank you. The Chair now recognizes Mr. Serrano for five minutes.

Mr. SERRANO. Thank you so much. Ms. Romany and Ms. Díaz, unless I misread what you said, you confused me.

You say that El Coredo do Gatos [ph] has always been for ending the colonial status, but you support H.R. 1230, which includes a colonial status as an option.

Would you be in favor, say, of a first step to get rid of the colony before we move to a constitutional convention?

Ms. ROMANY-SIACA. I think, Congressman, that one of the issues that we have to discuss here is to trust the ability of the people of Puerto Rico in the liberation process, that that is what constitutes that convention and the subsequent assembly, to come up with solutions that are non-colonial and non-territorial.

I think we are putting the cart before the horse. I think that the discussion here is about what is the mechanism to actually facilitate that expression. What comes up and comes out of that discussion, I trust that the people of Puerto Rico and those delegates, which are going to have the ability to deliberate, negotiate, expand, study constitutional laws——

Mr. SERRANO. I don't doubt that for a minute, that they have the ability to do that. In fact, if I can jump to Ms. Díaz a second and I will be back to you, this education process you talk about is necessary, of course. But from what I know, Puerto Ricans discuss the status issue more than they discuss baseball. So I think we may be the most educated people in the world on what it is we want and don't want. But you are right, there are still certain adjustments that have to be made as to the information.

But my question to you, Ms. Romany, is, you trust, and I do, too. But if we are truly for ending the colonial status, and that is my position—that is not Ms. Velázquez's position perhaps, it is not Mr. Gutierrez'—my position is cualquier cosa pero al colonia. So how can you offer the colonial status as a, how can you even allow the people to trust them to come back and ask for the colony? Then we are in the same place again.

Ms. ROMANY-SIACA. I think I have a lot of trust in the ability of the constitutional convention to really come out with an outcome that is non-colonial. I think that, you know, the frustration of the status debate throughout the 20th Century is precisely because we haven't been able to exercise a real democratic process. And I think that that democratic process has to take place.

Mr. SERRANO. And I respect that. I just know how formidable the Popular Democratic Party is, and they may get a convention that says no lo digo que somo colonia, porque no somo colonia. But that is OK. I mean, I am not cutting you off; I respect that.

Ms. ROMANY-SIACA. Remember also that this is a convention that is supposed to have a starring role for civil society. And I think we should not underplay that, too. Proprieties and politics also is something that has——

Mr. SERRANO. Well, but that is true, but you know, that is not the reality. The fact of life is that if you have a plebiscite or a constitutional convention, the people running the delegates or the people running the direct vote are the parties. That is what we have going on.

I would love to tell you that, you know, pro se Joey, McClinto, de Ruen, Iarotto are not going to be involved. Of course they are going to be involved, and I insist that they be involved. After all, they have been fighting that fight for 1,000 years.

In fact, there was a way to bring back both Don Luis, they should be able to be involved, you know, politically. Of course that is going to happen.

Now, just a correction, Ms. Díaz. You started off by saying that 1230 was the bill you prefer.

Ms. DÍAZ. Yes.

Mr. SERRANO. Then you end up supporting my bill. And I will explain what I mean by that.

You say that the fair bill has to have free association. I refer you to H.R. Section [c], which says if a majority in the first initial plebiscite favors permanent non-territorial status, then a plebiscite will be held only between the two following options: statehood, one, on equal footing with other states; two, sovereign nation, either fully independent or in free association with the U.S. I have included free association as an option for separating from the Union, if you want to call it that. We were never in the Union.

And I have always said that free association has to be there, because I am no fool. That is where I think ilela should come. You know, la comina asion de lela el libre associacion, that is my belief. Most leaders don't believe that, but that is my belief.

So it is there, it is written there. I can get you another copy.

Ms. DÍAZ. OK, no. You say that there are going to be more than one plebiscites. And I say we don't need more than one plebiscite. With only one, we can decide. And that is why——

Mr. SERRANO. Oh, if that was up to——

Ms. DÍAZ.—that with equal process——

Mr. SERRANO. If that was up to me, you are right. That was my original bill a few years ago, that people in this audience read and reread. But you know something? We are having a heck of a time getting the commonwealthers to go along with anything like this.

If we cut them out totally, it would be the uproar that you could never get two votes around here.

Ms. DÍAZ. No, I think the people, it varies the process. That is what I am advocating for, where people would be educated in the different formulas, the results will be different right now.

Mr. SERRANO. She supports H.R. 901, my next——

[Laughter.]

Ms. ROMANY-SIACA. No, no. I told you what I believe.

Ms. CHRISTENSEN. Thank you, Mr. Serrano. The Chair now recognizes Mr. Flake for five minutes.

Mr. FLAKE. Mrs. Díaz, you mentioned that you thought that H.R. 1230 would be less prone to manipulations of politicians.

Ms. DÍAZ. Yes.

Mr. FLAKE. How so?

Ms. DÍAZ. Because you are going to have delegates from different organizations, and you must be sure that we, as teachers, are going to endorse and promote that teachers will be in that assembly; and not politicians, but teachers.

I am not telling you, I am not saying that the politicians shouldn't be members of the assembly, but there should be a balance between politicians and the rest of the people of the country of Puerto Rico. Do you understand me?

Mr. FLAKE. I guess I understand what you are trying to say. But it seems to me that when you have a situation where some have said that they feel that H.R. 1230 may not be constitutional, it certainly might be unenforceable; I just fail to see how it is less prone.

I mean, politics is going to be involved no matter what.

Ms. DÍAZ. Maybe. But they won't be deciding.

Mr. FLAKE. Even to make the case that it would be less prone would seem to be, I don't know, I don't see what you have behind that, that claim.

Ms. DÍAZ. OK. Right now we have had several plebiscites. Those who educate the people, those who deliver the campaigns are politicians, and they confuse. Everyone is saying or telling what they believe.

What we are saying is, let us have an assembly where we have politicians, but the majority are not politicians. And people who the people trust, leaders of our country who have contributed to our country, but who believe in the capacity of our people to decide after they are educated.

Mr. FLAKE. Right. But just so I understand, you believe that that is less prone to political manipulation than a plebiscite?

Ms. DÍAZ. Yes, yes.

Mr. FLAKE. You mentioned in your testimony that you want gender equality.

Ms. DÍAZ. Yes.

Mr. FLAKE. And that females represent more. How do you set about achieving that? Is it just through education? Or is it through set-asides? Or what?

Ms. DÍAZ. How to achieve that? It might be through education, education of the public, but we have to establish a formula. I don't know how we are going to achieve that, but the reality is that more than 50 percent of our voters are women.

Mr. FLAKE. Right. And so you——

Ms. DÍAZ. It is 54 percent.

Mr. FLAKE. But you would have some kind of formula then that would guarantee a certain number of slots for——

Ms. DÍAZ. A formula.

Mr. FLAKE. All right, thank you.

Ms. CHRISTENSEN. Is he gone already? Yes, OK. So we are on our last round. I am going to recognize myself for five minutes.

I just wanted to, on the issue of gender equality, as we prepare for the National Presidential Conventions, it is designed to achieve gender equality. And so there are formulas, there are examples that can be used.

I basically have two questions. The first one is for Ms. Ferraiuoli, because your concern about H.R. 1230 is that there is no guarantee that the Federal Court would continue to exist. But H.R. 1230 does not specify any outcome. It doesn't say that the outcome must not have a Federal Court.

So my understanding is that, as the people decide what that particular status proposal might be, it is very possible that the Federal Court system could be in there. And then while in H.R. 900, if free association or independence were chosen, definitely the Federal Court system would cease to exist.

So can you explain your position?

Ms. FERRAIUOLI. Yes, Madame Chairman. Our concern is having the population of Puerto Rico continue to be U.S. citizens protected by the Constitution of the United States, and presumably by the Federal laws, and not have an adequate forum to seek out those protections.

While you are correct that if independence or free association is chosen, there will not be a Federal Court, we do know that if statehood is chosen, there will be a Federal Court.

The gray area that we are talking about here is the new commonwealth. H.R. 1230 completely throws away the commonwealth that we have right now, and it will only permit a new commonwealth. The only proposal we have seen for a new commonwealth right now is the PDP's 1998 proposal for the new commonwealth, which specifically would limit the Federal Court's jurisdiction.

It is even more radical than the 1976 proposal that was presented to this Congress, and was rejected. That 1976 proposal would continue the Federal Court's jurisdiction as it is right now.

So our concern is that Congress will allow an option in which the United States citizens, residents in Puerto Rico, would be left without a forum to seek out their constitutional claims.

Ms. CHRISTENSEN. So the Federal Court will have jurisdiction over matters that arise from provisions of the Constitution of the United States? And all of the Federal laws that apply to Puerto Rico, consistent with the covenant that has not been negotiated yet, and not in violation with the laws of the Constitution of Puerto Rico, that is not satisfactory to you?

Ms. FERRAIUOLI. No, Madame Chairman. The problem is there is another section in that proposal which allows Puerto Rico to veto the application of Federal law within the commonwealth.

Ms. CHRISTENSEN. I know.

Ms. FERRAIUOLI. And basically what Puerto Rico, what the commonwealth can say is, well, that Federal law doesn't apply.

The jurisdiction granted by that one section, if you see, it only says the U.S. Constitution. It doesn't talk about Federal law.

Ms. CHRISTENSEN. It does, it does. But I need to get to my—it says the Constitution and Federal laws applicable to Puerto Rico. I understand that there may be some veto power inherent in the proposal.

Attorney Romany, can I ask you, you were here for the previous panels. What is your reaction to the statement of Attorney Goldstein that a Federal Court would allow Congress to possibly remove even the Governor of Puerto Rico or some other elected official?

Ms. ROMANY-SIACA. I definitely disagree with that statement. I think that again, Professor Pildes' analysis opens a door, an interesting door, for an expansive interpretation of the Constitution and the plenary powers of the territorial clause.

I think that the Supreme Court at the beginning of the 20th Century is not the Supreme Court of today. And I think we have to deal with a dynamic interpretation of the Constitution. For example, for many years, separate but equal was valid under the constitutional analysis. And there has been a lot of examples in which the Court has really risen to the occasion and interpreted the Constitution in a much more expansive way.

It seems to me that the territorial clause allows for that opportunity in light of the recognition that Congress, in matters of foreign policy, should have flexibility and pragmatism. So I don't think it is going to be, we are going to have that end result. That sounds more like the interpretation of the President's Task Force, which is a very rigid reading and construction of the Constitution,

which is actually inconsistent with many of the expansive constitutional analyses that we have witnesses in this past century, too.

Ms. CHRISTENSEN. Thank you. Mr. Fortuño, you are recognized again for five minutes.

Mr. FORTUÑO. Thank you. Thank you again, and certainly I am puzzled by Ms. Díaz's interpretation of, number one, how does one bill provide for a better educational experience?

I can't see how one bill may provide for a better process, legal process, political process, educational experience. I really don't understand it. And certainly I could not agree more with Mr. Flake's statements as to how can this be, the Constitutional Commission be less prone to manipulation by politicians?

What we will be doing—and I will ask the Official Historian of Puerto Rico to see when was the last time we had a constitutional convention in Puerto Rico, and what happened. But as I see it, we will have politicians running for these positions, and they will get into a smoke-filled room and decide for us that is a better educational experience, and that is less prone to handling by politicians.

So I ask Mr. González Vales, who is the Official Historian of Puerto Rico, what happened in the fifties, early fifties, when we had a constitutional convention, after we were authorized to have one by the master, the U.S. Congress? What happened? Who were elected, and what kind of process we had.

Mr. GONZÁLEZ VALES. The delegates to the Constitutional Convention were selected pretty much on the basis of the political parties then. They were representatives of the two main political parties at that time, which were the PVP and the Partigos Directa Republicano, the Republican Party.

Nevertheless, I think, and you could probably get that from the reading of the minutes of the Constitutional Convention, that there was a sense, a consensus as to the way that we should go about organizing the local government of Puerto Rico. And at the end, when the time for voting the proposals that constituted the various articles of our commonwealth's constitution, they reached almost unanimity. There were very few, I think, I can't recall exactly, but I don't think there were more than three abstentions, and possibly one vote against the Constitution.

So that there was consensus among the people there, that even though they represented different political views, there was consensus on that particular issue.

Now, on a constitutional convention today, unless the makeup of the constitutional convention is predetermined to ensure that there is a balance between the political parties and the other forces in the civil society, we stand the fact that we may end up in a deadlock, because the political forces of the island are pretty much even.

Mr. FORTUÑO. And does H.R. 1230 provide for that "balance" between the political parties and the different groups out there, to guarantee that we will not experience again what we indeed experienced the last time we had one, which is when we were authorized to draft our local governing rules that we call our Constitution at the state level?

Mr. GONZÁLEZ VALES. I think as I read it, and if I understood it correctly, the project, H.R. 1230, doesn't spell out how is the con-

stitutional convention going to be assembled, and on what basis is the representation to that convention be made. So that would be something that would have to be very clearly stated in whatever project is approved if we want to go that way, the way of a constitutional convention.

Mr. FORTUÑO. But certainly it is not. I have read the bill.

Mr. GONZÁLEZ VALES. That is right.

Mr. FORTUÑO. And as you were saying, that is not what it says.

Mr. GONZÁLEZ VALES. That is correct.

Mr. FORTUÑO. The problem that I have, and this happens all the time, is that when we are dealing with commonwealth, it is better to have as the least possible information and the least possible details, because it is the best of both worlds. And that is exactly what I feel that is the flaw here, that we cannot embark in a process and have our people embark in a process, and then not, and telling each one what they want to hear.

People must know what they are going to be voting on. And that is why Mr. Serrano and I have filed H.R. 900, so that people know up front what to expect. What are they voting for. What are the pros and cons.

There is no perfect world. There are pros and cons in every option. I favor one certainly, but there are pros and cons in every one, and people should come in with their eyes wide open, understanding what is it that they are going to be voting on. And that is why I favor, and I hope all my colleagues will support, H.R. 900.

Again, thank you very much.

Ms. CHRISTENSEN. Mr. Fortuño——

[Laughter.)

Ms. CHRISTENSEN. Mr. Serrano, do you wish to be recognized for five minutes?

Mr. SERRANO. Yes. Thank you for the Fortuño thing, but I am not running for Governor any time soon. I am trying to figure out if I can run for President, but that is another issue.

Let me just use my time to first of all thank you for holding this hearing. This is again a historic moment. I don't think it is yet another exercise; I really think that there is a will to reach a conclusion on all sides of this issue. And I thank you for that.

I would also like, I know we are being heard live in Puerto Rico, for people in Puerto Rico to understand that my desire to end the present status is in no way a disrespectful statement about those who have given so much to maintain the present status. I understand the historical significance of it. I understand that at one time it served a major purpose.

But I am a Member of the U.S. Congress, and I have a dual responsibility. One is to wish for the best for my birthplace, and the place that, who knows if I may retire there some day, or be taken there after all of this is over. And also to do the best job that I can, so that the country whose Congress I serve in, where my parents are buried, where my children were born, where I grew up, is the best country that it can be.

And my country has held my birthplace, mi patria, for 109 years in an improper political position. So perhaps I, more than a lot of other people, have the ability not to wear two hats, but to think

with a heart that at times feels divided, not in allegiance, but certainly in fully understanding everything.

I want this country not to ever be accused again of holding a colony anywhere, especially a colony called Puerto Rico. And I want that to end.

I also think that it would be improper to believe that there wouldn't be political involvement. You can't have had 109 years of involvement with the United States, and then think you are going to hold a process to pick a constitutional convention that would not have political involvement in it.

The State Department, much to my dismay, criticized the Constitutional Convention that took place in Venezuela right after President Chavez's victory. They said well, he controlled the convention. Well, of course. The 30-odd party coalition that got him elected, with the same fervor elected his delegates, and they changed the constitution to deal with the issues of the poor and the injustice that Venezuela had been facing. And that was a direct result of that.

So to suggest that the same parties who for all these years have been discussing the status issue would have great influence over who gets elected is not facing reality. I doubt that Dona Juan Eron Pepe would be elected to this convention. I doubt it.

You could set some parameters, like we do for the Democratic party, when you say from the 16th Congressional District you must elect three women and two men, according to what the—you can do that. But I assure you, those three women and two men will be picked by the parties, because the parties have the resources to campaign for them and to get them elected.

We wish it was another system. I would support that. But we don't have it.

Then there is my last concern. If a constitutional convention says to Congress we want statehood, and it is only a matter of a yes or no from Congress, there is no negotiating what statehood is. We already know that. If a constitutional convention says give us free association or give us independence outright, there is no negotiating, other than when or shall we grant it, if we decide to be arrogant about it and not grant the wish, which is always a possibility. But there is no negotiating as to what it is.

But this new commonwealth, this best of two worlds, is not a final statement. It is, I am asking you to consider giving me this laundry list of items that I would like for a new covenant. That will never happen. That will take years to negotiate. That would leave the issue off the table, so we would have gone through that whole process only to have something en gavitado because you can't get 218 votes to pass it in one House, and 51 votes to pass it in the Senate.

We must come back with clear options. We must offer clear options, and the people of Puerto Rico can come back from clear options. Il mejor de lovo mundo. And this thing about a dream that could be a new commonwealth is not practical, does not exist, will not resolve the problem.

If we go that route, then José Carlos Serrano, my grandson, and my son, José Marcos Serrano, the State Senator, will be sitting here years from now discussing the issue of Puerto Rico.

Thank you.

Ms. CHRISTENSEN. Thank you, Mr. Serrano. I would like to thank my colleagues; in particular, my colleague Mr. Fortuño, the Ranking Member of this Subcommittee.

I want to thank the witnesses for their valuable testimony, and the Members for their questions. Members of the Subcommittee may have some additional questions for the witnesses, and we will ask you to respond to these in writing.

The hearing record will be open for 10 days for these responses, as well as for testimony, written testimony, from other people in Puerto Rico or of Puerto Rico descent who would want to have their opinions heard.

Certainly we are very sensitive, as a person coming from another territory, to the issue of not being fully represented or having the full rights of the Constitution extended to us. But we are also very sensitive to the need for the people of Puerto Rico to freely decide what their future political status might be, and we are extremely sensitive to that of our veterans who put their lives on the line for this country. And so I thank you for your service. And my husband was also a Vietnam veteran, and now resides in the U.S. Virgin Islands, where he cannot vote, either. So I understand your issue, I understand your passion.

I hope that this hearing has not only been informative to Congress, but that it has also served as part of the educational process for the people in Puerto Rico who have been listening. So once again, I want to thank our witnesses. And would you like to say something?

Mr. FORTUÑO. If I may, yes. I just want to thank you.

Ms. CHRISTENSEN. I want to recognize my Ranking Member.

Mr. FORTUÑO. If I may, I want to thank you for your leadership, and commend you for having this hearing today.

I want to thank Mr. Rahall and Mr. Young, as well. I want to thank the staff of the committee really, for the phenomenal job they are doing. And if I may, mi mano, José Serrano, thank you for everything you are doing for tu patria.

Ms. CHRISTENSEN. Thank you. If there is no further business before the Subcommittee, the Chair again thanks the Members of the Subcommittee and our witnesses. And the Subcommittee stands adjourned.

[Whereupon, at 2:36 p.m, the Subcommittee was adjourned.]

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LEGISLATIVE HEARING ON H.R. 900, TO PROVIDE FOR A FEDERALLY SANCTIONED SELF-DETERMINATION PROCESS FOR THE PEOPLE OF PUERTO RICO (PUERTO RICO DEMOCRACY ACT OF 2007); AND H.R. 1230, TO RECOGNIZE THE RIGHT OF THE PEOPLE OF PUERTO RICO TO CALL A CONSTITUTIONAL CONVENTION THROUGH WHICH THE PEOPLE WOULD EXERCISE THEIR NATURAL RIGHT TO SELF-DETERMINATION, AND TO ESTABLISH A MECHANISM FOR CONGRESSIONAL CONSIDERATION OF SUCH DECISION (PUERTO RICO SELF-DETERMINATION ACT OF 2007).

Wednesday, April 25, 2007
U.S. House of Representatives
Subcommittee on Insular Affairs
Committee on Natural Resources
Washington, D.C.

The Subcommittee met, pursuant to call, at 3:28 p.m. in Room 1324, Longworth House Office Building, Hon. Donna M. Christensen [Chairwoman of the Subcommittee] presiding.

Present: Representatives Christensen, Fortuño, Faleomavaega, Grijalva, and Bordallo.

Ms. CHRISTENSEN. The legislative hearing by the Subcommittee on Insular Affairs will come to order.

I thank everyone for your patience. There was sort of an emergency meeting called at the White House very late in our planning, and my Ranking Member, the Resident Commissioner, will be here shortly.

I ask unanimous consent that Members of the full committee wishing to participate in the proceedings of the Subcommittee be allowed to sit on the dais. And hearing no objection, so ordered.

I also ask unanimous consent that the gentleman from New York, Mr. Serrano, the gentlewoman from New York, Ms. Velázquez, the gentlewoman from California, Ms. Sanchez, the gentleman from Illinois, Mr. Gutierrez, the gentleman from Indi-

ana, Mr. Burton, the gentleman from Florida, Mr. Wexler, the gentleman from Idaho, Mr. Sali, and the gentleman from Mississippi, Mr. Wicker, be allowed to sit on the dais and participate in the hearing. Hearing no objection, so ordered.

Under Committee Rule 4[g], the Chairman and Ranking Minority Member can make opening statements. If any other Members have statements, they can be included in the hearing record under unanimous consent. Hearing no objection, so ordered.

The Subcommittee is convened to conduct its second of two legislative hearings on H.R. 900 and H.R. 1230. H.R. 900, sponsored by Mr. Serrano, will provide for a Federally sanctioned self-determination process for the people of Puerto Rico. HR. 1230, sponsored by Ms. Velázquez, will recognize the right of the people of Puerto Rico to call a constitutional convention, through which the people would exercise their natural right to self-determination, and to establish a mechanism for Congressional consideration of such a decision.

I want to say at the outset, I am going to recognize myself for my opening statement.

STATEMENT OF THE HON. DONNA M. CHRISTENSEN, A DELEGATE IN CONGRESS FROM THE VIRGIN ISLANDS

Ms. CHRISTENSEN. And good afternoon, once again. It is a pleasure and honor to welcome all of the Puerto Rican elected and past-elected officials, and all the other political leaders, opinion-makers, representatives from the Department of Justice to the House today. And it is a special honor and pleasure to welcome the distinguished Governor of La Isla del Encanto, The Honorable Aníbal Acevedo-Vilá, and Mrs. Acevedo-Vilá.

And while all of you are distinguished in your own right, I also want to recognize our former colleague, The Honorable Carlos Romero Barceló.

We are pleased that the Administration is able to be here this afternoon. You are an important part of this process. So welcome, Governor. Welcome to everyone.

The two bills before us take very different paths to a decision on the future status of Puerto Rico. One provides for a series of two referenda with straight up or down votes, and the other is a constitutional assembly. I have been assiduously reading not only your prepared testimonies, but various newspaper articles and editorials from Puerto Rico, and they have raised certain questions and concerns.

For example, the White House Task Force suggested H.R. 900 is designed to get a clear outcome. But I am more concerned that the people of Puerto Rico have a clear choice, clear in the definitions of the options and in the pros and cons of each, so that they can decide for themselves which more closely addresses their hopes and aspirations for their home, and would make the most positive difference in their lives. For me, that kind of transparency is even more important than the process itself.

I also want to reiterate, because it remains important today, as it was two years ago at a hearing and last month, I want to reiterate my concern that this process and the debate has the potential to confuse, I think, the satisfaction of the people of Puerto Rico

with the economic, educational, health, safety and other concerns with the status question. And while I know many of you who will testify today will disagree with me, in my opinion these important issues can be resolved under any one of the status options.

I would even be concerned that these very serious circumstances, all of which are longstanding, inherited by this and prior Administrations, and recounted in every newspaper daily because they are so predominant in the minds and the lives of the people, that these circumstances may even be an impediment to the ability of the people of Puerto Rico to freely, to freely make a status decision.

At the last hearing, in a few commentaries the question of who would be allowed to vote has been raised. It is a question that is being debated right now in my own Congressional district, your neighbors to the south, the U.S. Virgin Islands, with regard to our own Constitution.

It is my hope that you will also help us understand not only why an almost equal number of native Puerto Ricans who have chosen to make their lives elsewhere would be able to vote in the referendum, but what you understand to be the position of those who live on Puerto Rico now, on this provision.

It is also an often-recanted complaint that the failure of a status decision in Puerto Rico lies with the Congress of the United States. I understand very well that unincorporated territories were not intended to live on in that state forever. But given the fact that Congress has long ceded the right to the people of Puerto Rico to decide their status, does that failure to successfully change this lie with the Congress and the White House, as some may suggest, or with the people's satisfaction with the present political arrangement, if not the socioeconomic one?

The issue of the status of Puerto Rico has always been a very divisive one. But today, given the sense of urgency that the status question be decided, I am hopeful that although we are starting with two very different bills and two very different processes, that we will reach consensus in the end.

This is slated to be our last hearing, so your testimony today and your answers, building on that of the first hearing, is very important to informing and guiding the Subcommittee in its work. So I want to thank everyone who is here to testify, and those who are here to listen, and the media as well, for taking the time to accommodate the Subcommittee today.

[The prepared statement of Mrs. Christensen follows:]

Statement of The Honorable Donna M. Christensen, Chairwoman, Subcommittee on Insular Affairs

Good afternoon.

It is a pleasure and an honor to welcome all of the Puerto Rican elected and past elected officials and other political leaders and opinion makers to your House today. And it is a special honor and pleasure to welcome the distinguished Governor of La Isla de la Encanta—The Honorable Aníbal Acevedo Vilá. And while all of you are distinguished I your own right, I want to also recognize our former colleague, The Honorable Carlos Romero Barceló.

We are also pleased that the administration is able to be here. You are an important part of this process.

Welcome governor. Welcome all!

The two bills before us take very different paths to a decision on the future status of Puerto Rico. One provides for a series of two referenda with straight up or down votes, and the other is a constitutional assembly.

I have been assiduously reading not only your prepared testimonies but various newspaper articles and editorials from Puerto Rico and they have raised certain questions and concerns.

For example, the White House Task Force suggests that H.R. 900 is designed to get a clear outcome. But I am more concerned that the people of Puerto Rico have a clear choice. Clear in the definitions of the options and in the pros and cons of each so that they can decide for themselves which more closely addresses their hopes and aspirations for their home and would make the most positive difference in their lives. For me, that kind of transparency is even more important than the process itself.

I also want to reiterate—because it remains as important today as it was 2 years ago and last month—my grave concern that this process and debate has the potential to confuse the dissatisfaction of the people of Puerto Rico with the economic, educational, health and other concerns with the status question. While I know that many of you who will testify here today will disagree with me, in my opinion these important issues can be resolved under any status.

I would even be concerned that these very serious circumstances—of long standing, inherited by this and prior administrations—and recounted in every newspaper daily because they are so predominant in their minds and lives, may be an impediment to the ability of the people of Puerto Rico to "freely" make a status decision.

At the last hearing and in a few commentaries, the question of who should be allowed to vote was raised. It is a question that is being debated right now in my own Congressional District—your neighbor—with regard to writing our constitution.

It is my hope that you will also help us understand not only why an almost much equal number of native Puerto Ricans who have chosen to make their lives elsewhere should be able to vote in the referenda, but what you understand to be the position of those who live there on this provision.

It is also an often recanted complaint that the failure of a status decision in Puerto Rico lies with the Congress of the United States. I understand that unincorporated territories were not intended to live on in that state forever. But given the fact that Congress has long ceded the right to the people of Puerto Rico to decide their status, does the failure to successfully change this lie with the Congress and the White House as many suggest, but with the people's satisfaction with the present political arrangement, if not the socio-economic one.

The issue of the status of Puerto Rico has always been a very divisive one. Given the sense of urgency that the status question be decided, I am hopeful that although we are starting with two very different bills and processes, we will reach consensus in the end.

This is slated to be our last hearing so your testimony and answers—building on that of the first hearing is important to informing and guiding the Subcommittee in its work.

Thank you for making the time to accommodate the subcommittee.

Ms. CHRISTENSEN. I would like to now thank those individuals and organizations specifically who were not able to appear before the Subcommittee, but have submitted statements for our hearing record.

If there are no objections, I would like to take this opportunity to enter into the record the statements of Philip Arroyo, the New Progressive Party Youth; The Honorable Eudaldo Baez Galib of the Puerto Rican Senate; Mr. Noel Colon Martínez; Lt. Col. Dennis Freytes; Mr. Gregorio Igartua; Ms. Irmgard Pagan, the National Federation of Democratic Women, Puerto Rico Chapter; Mr. Manuel Rodríguez-Orellana, Puerto Rican Independence Party; Mr. Walter Rodrígue; The Honorable Maria de Lourdes Santiago-Negron, Puerto Rican Independence Party Senate Minority Leader; The Honorable Victor Garcia San Inocencio, Puerto Rican Independence Party's House Minority Leader; The Honorable Walter Torres-Maldonado, Mayor of Penuelas and President of the Mayors Association of Puerto Rico; and The Honorable Luis Vega Ramos of the Puerto Rican House of Representatives.

Hearing no objections, so ordered.

[NOTE: The statements submitted for the record referenced above have been retained in the Committee's official files.]

Ms. CHRISTENSEN. OK. When Mr. Fortuño arrives, we will recognize him at an appropriate time for his opening statement.

At this time I would like to recognize the first panel. The Honorable Kevin C. Marshall, Co-Chair of the President's Task Force on Puerto Rico's Political Status, and Deputy Assistant Attorney General, Office of the Legal Counsel, U.S. Department of Justice.

The Chair now recognizes Mr. Marshall to testify for five minutes. The timing lights on the table indicate when your time has concluded. And your entire statement will be included for the hearing record.

STATEMENT OF THE HON. C. KEVIN MARSHALL, CO-CHAIR OF THE PRESIDENT'S TASK FORCE ON PUERTO RICO'S POLITICAL STATUS, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, U.S. DEPARTMENT OF JUSTICE

Mr. MARSHALL. Thank you for this opportunity for the Administration to discuss pending legislation concerning the future political status of Puerto Rico.

The work and report of the President's Task Force on Puerto Rico's Status have contributed to renewed attention to this question recently, including a hearing in April 2006 before the full committee, in which I participated.

As you mentioned, I am a Deputy Assistant Attorney General in the Justice Department's Office of Legal Counsel. As the Attorney General's designee on the task force, I have served as its co-chair. Today, I appear because of that work, but also as a representative of the Administration.

President Clinton, in establishing the task force in 2000, made it the policy of the Executive Branch to help answer the questions that the people of Puerto Rico have asked for years regarding the options for the island's future status and the process of realizing an option. The task force was required to consider and develop positions on proposals without preference among the options for the Commonwealth's future status.

Its recommendations were limited, however, to those options permitted by the Constitution. In establishing the task force, President Clinton also expressly recognized that Puerto Rico's ultimate status has not been determined, and noted the different visions for that status within Puerto Rico. Although Puerto Rico held a plebiscite in 1998, none of the proposed status options received a majority. Indeed, none of the above prevailed, because of objection of the ballot definition of the commonwealth option.

Seeking to determine the constitutionally permissible options and recommended process for realizing an option, the task force considered all status options objectively, without prejudice. It sought input from all interested parties, and met with anyone who requested a meeting.

The task force issued its report in December 2005, and concluded that there were three general options under the Constitution for Puerto Rico's status.

One. Continue its current status as a largely self-governing territory.

Two. Admit Puerto Rico as a state.

Three. Make Puerto Rico independent.

The primary question regarding options was whether the Constitution allows a new commonwealth status that could not be altered without the mutual consent of Puerto Rico and the Federal government. Since 1991, the Justice Department has consistently held that the Constitution does not. The Task Force report reached that conclusion, as well. The report is, of course, not a legal brief, but it does outline the reasoning, and it includes as appendices two extended analyses by the Clinton Justice Department, one of which was sent to the full committee in 2001.

Puerto Rico may remain in its current status indefinitely, but it would remain subject to Congress's authority under the Constitution to regulate U.S. territories.

The report provides additional detail on the other two permissible options: statehood and independence. Regarding independence, the report explains that there are several possible ways of structuring it, including freely associated status. With regard to process, the task force sought to ascertain the will of the people of Puerto Rico in a way that, as we put it, provides clear guidance for future action by Congress. Keys to providing clear guidance are, first, to speak unambiguously about the Constitutional options; and second, to structure the process so that popular majorities are likely.

The task force therefore recommended a two-step process. The first is simply to determine whether the people of Puerto Rico wish to remain as they are.

The task force recommended that Congress provided for a Federally sanctioned plebiscite on this question. If the vote is to remain as a territory, then the second step would be periodic plebiscites to inform Congress of any change in views. If the first vote is to change Puerto Rico's status, than the second step would be another plebiscite in which the people would choose between statehood and independence.

Three points about this process merit explanation in connection with the two bills that the Subcommittee is considering. First, consistent with the Presidential mandate to the task force, the recommended process does not seek to prejudice the outcome, even though it is structured to produce a clear outcome.

Puerto Ricans have before voted by a majority to remain as a commonwealth. They may do so again. But it is critical to be clear about what commonwealth status is and may be. H.R. 1230, in referring to a new or modified commonwealth status as among the status options that are not subject to the plenary powers of the territorial clause of the Constitution, does not further the necessary clarity.

Second, the process does not preclude action by Puerto Rico itself to express its views. H.R. 900, without something like the approach of the task force in allowing the Puerto Rico Elections Commission, until the end of 2009, to hold the first plebiscite.

Finally, the Administration supports the task force report. The report correctly identified the Constitutional options and sets out

a process so Puerto Ricans are heard on the critical question of Puerto Rico's status. The Administration therefore also supports legislation consistent with the report, and recognizes that H.R. 900 sets out a process closely resembling that which the report recommends.

We will work with Congress to ensure that any process to solicit the views of the people of Puerto Rico is transparent, understandable, and fair.

Thank you for this opportunity to share the views of the Administration. I have submitted my written statement for the record. I look forward to taking your questions.

[The prepared statement of Mr. Marshall follows:]

Statement of C. Kevin Marshall, Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice

Thank you, Madame Chairman and Ranking Member Fortuño, for inviting the Administration to discuss pending legislation concerning the future political status of Puerto Rico. The work and report of the President's Task Force on Puerto Rico's Status have contributed to renewed attention to this question in the last few years, including a hearing in April 2006 before the full Committee, in which I participated. President Clinton established the Task Force in December 2000, and President Bush has continued it through amendments of President Clinton's Executive Order. The Executive Order as amended provides for the Task Force to consist of designees of each member of the President's Cabinet, and the Deputy Assistant to the President and Director for Intergovernmental Affairs. I am a Deputy Assistant Attorney General in the Justice Department's Office of Legal Counsel. As the Attorney General's designee on the Task Force, I have served as its Co-Chair. Today I appear because of that work but also as a representative of the Administration.

The status of Puerto Rico, and the options regarding that status, have been issues for many years. In 1992, for example, President George H.W. Bush issued a Memorandum that recognized Puerto Rico's popularly approved Commonwealth structure as "provid[ing] for self-government in respect of internal affairs and administration," described Puerto Rico as "a territory," and directed the Executive Branch to treat Puerto Rico as much as legally possible "as if it were a State." He also called for periodically ascertaining "the will of its people regarding their political status" through referenda.

President Clinton, in his order establishing the Task Force, made it the policy of the Executive Branch "to help answer the questions that the people of Puerto Rico have asked for years regarding the options for the islands" future status and the process of realizing an option." He charged the Task Force with seeking to implement that policy. The Task Force was required to "consider and develop positions on proposals, without preference among the options, for the Commonwealth's future status." Its recommendations are limited, however, to options "that are not incompatible with the Constitution and basic laws and policies of the United States."

On the same day that he issued his Executive Order, President Clinton also issued a Memorandum for the Heads of Executive Departments and Agencies regarding the Resolution of Puerto Rico's status. That memorandum added that "Puerto Rico's ultimate status has not been determined" and noted that the three major political parties in Puerto Rico were each "based on different visions" for that status. Although Puerto Rico held a plebiscite in 1998, none of the proposed status options received a majority. Indeed, "None of the Above" prevailed, because of objection to the ballot definition of the commonwealth option.

Some in Puerto Rico have proposed a "New Commonwealth" status, under which Puerto Rico would become an autonomous, non-territorial, non-State entity in permanent union with the United States under a covenant that could not be altered without the "mutual consent" of Puerto Rico and the federal Government. In October 2000, a few months before President Clinton established the Task Force, the House Committee on Resources held a hearing on a bill (H.R. 4751) incorporating a version of the "New Commonwealth" proposal. William Treanor, who held the same position in the Office of Legal Counsel that I now hold, testified that this proposal was not constitutional.

Thus, the Task Force's duties were to determine the constitutionally permissible options for Puerto Rico's status and to provide recommendations for a process for

realizing an option. We had no duty or authority to take sides among the permissible options.

The Task Force considered all status options, including the current status and the New Commonwealth option, objectively and without prejudice. It also attempted to develop a process for Congress to ascertain which of the constitutional options the people of Puerto Rico prefer. It sought input from all interested parties, including Governor Acevedo-Vilá. The members met with anyone who requested a meeting. I myself had several meetings with representatives of various positions, and also received and benefited from extensive written materials.

The Task Force issued its report in December 2005 and concluded that there were three general options under the Constitution for Puerto Rico's status: (1) continue Puerto Rico's current status as a largely self-governing territory of the United States; (2) admit Puerto Rico as a State, on an equal footing with the existing 50 States; or (3) make Puerto Rico independent of the United States.

As indicated in my discussion of the 1998 plebiscite and the origins of the Task Force, the primary question regarding options was whether the Constitution currently allows a "Commonwealth" status that could be altered only by "mutual consent," such that Puerto Rico could block Congress from altering its status. Since 1991, the Justice Department has, under administrations of both parties, consistently taken the position that the Constitution does not allow such an arrangement. The Task Force report reiterates that position, noting that the Justice Department conducted a thorough review of the question in connection with the work of the Task Force. The report is of course not a legal brief. But it does outline the reasoning, and it includes as appendices two extended analyses by the Clinton Justice Department. The second of these is a January 2001 letter to the Senate Committee on Energy and Natural Resources, a copy of which was sent to the House Committee on Resources on the same date. The report also cites additional materials such as Mr. Treanor's testimony and the 1991 testimony of the Attorney General.

The effect of this legal conclusion is that the "New Commonwealth" option, as the Task Force understood it, is not consistent with the Constitution. Any promises that the United States might make regarding Puerto Rico's status as a commonwealth would not be binding. Puerto Rico would remain subject to Congress's authority under the Territory Clause of the Constitution "to dispose of and make all needful Rules and Regulations respecting the Territory...belonging to the United States." Puerto Rico receives a number of benefits from this status, such as favorable tax treatment. And Puerto Rico may remain in its current Commonwealth, or territorial, status indefinitely, but always subject to Congress's ultimate authority to alter the terms of that status, as the Constitution provides that Congress may do with any U.S. territory.

The other two options, which are explained in the report, merit only brief mention here. If Puerto Rico were admitted as a State, it would be fully subject to the U.S. Constitution, including the Tax Uniformity Clause. Puerto Rico's favorable tax treatment would generally no longer be allowed. Puerto Rico also would be entitled to vote for presidential electors, Senators, and full voting Members of Congress. Puerto Rico's population would determine the size of its congressional delegation.

As for the third option of independence, there are several possible ways of structuring it, so long as it is made clear that Puerto Rico is no longer under United States sovereignty. When the United States made the Philippines independent in 1946, the two nations entered into a Treaty of General Relations. Congress might also provide for a closer relationship along the lines of the "freely associated states" of Micronesia, the Marshall Islands, and Palau. The report explains, with a few qualifications, that, "[a]mong the constitutionally available options, freely associated status may come closest to providing for the relationship between Puerto Rico and the United States that advocates for 'New Commonwealth' status appear to desire."

With regard to process, the Task Force focused on ascertaining the will of the people of Puerto Rico. In particular, it sought to ascertain that will in a way that, as the report puts it, "provides clear guidance for future action by Congress." The keys to providing clear guidance are, first, to speak unambiguously about the options the Constitution allows and, second, to structure the process so that popular majorities are likely. The inconclusive results of the 1998 plebiscite, as well as an earlier one in 1993, did not strike the Task Force as providing much guidance to Congress.

The Task Force therefore recommended a two-step process. The first step is simply to determine whether the people of Puerto Rico wish to remain as they are. The Task Force recommended that Congress provide for a federally sanctioned plebiscite in which the choice will be whether to continue territorial status. If the vote is to remain as a territory, then the second step, one suggested by the first President Bush's 1992 memorandum, would be to have periodic plebiscites to inform Congress of any change in the will of the people. If the first vote is to change Puerto Rico's

status, then the second step would be for Congress to provide for another plebiscite in which the people would choose between statehood and independence, and then to begin a transition toward the selected option. Ultimate authority of course remains with Congress.

Three points about this recommended process merit specific explanation in connection with the two bills the Subcommittee is considering. First, consistent with the presidential mandate to the Task Force, its recommended process does not seek to prejudice the outcome, even though it is structured to produce a clear outcome. At least once before, Puerto Ricans have voted by a majority to retain their current Commonwealth status. They may do so again. But it is critical to be clear about that status. H.R. 1230, in referring to "a new or modified Commonwealth status" as among the status options that are "not subject to the plenary powers of the territorial clause of the Constitution of the United States," does not further the necessary clarity.

Second, the Task Force's recommended process does not preclude action by Puerto Rico itself to express its views to Congress. At the first step, the report recommended that Congress provide for the plebiscite "to occur on a date certain." The Task Force did not, of course, specify that date. But if Congress wished to ensure that some action occurred but not preclude the people of Puerto Rico from taking the initiative, it could allow a sufficient period for local action before that "date certain." If such action occurred and produced a clear result, there might be no need to proceed with the federal plebiscite. H.R. 900 adopts a similar approach in leaving the Puerto Rico Elections Commission discretion to set the date of the first plebiscite but requiring that it occur by December 31, 2009.

Finally, I am authorized to state that the Administration supports the Task Force report. The report correctly identifies the limited options available under the U.S. Constitution for permanent status and sets out a process so Puerto Ricans are heard on the critical question of Puerto Rico's status. The Administration therefore also supports legislation consistent with the report and recognizes that H.R. 900 sets out a process closely resembling that which the report recommends. We will work with Congress to be sure that any process to solicit the views of the people of Puerto Rico is transparent, understandable, and fair.

The Administration knows well the importance of the status question to the loyal citizens of Puerto Rico and to the nation as a whole. We appreciate the Subcommittee's commitment to this matter and the opportunity to share our views.

Ms. CHRISTENSEN. Thank you, Mr. Marshall.

The Chair now recognizes myself for five minutes of questioning. I would ask that we could try to keep the answers concise, so that we could get as many questions in as possible. And I know you are anticipating this one, Mr. Marshall.

Why did it take 16 months for the Administration to say it supports a task force report?

Mr. MARSHALL. You may be anticipating the answer, as well, which is that the internal deliberations that the Executive Branch saw on that question; others are not the sort of thing that I am free to disclose.

Ms. CHRISTENSEN. OK. Well, now, my second question. You specifically cite in your testimony that H.R. 900 is being consistent with the report. Does that mean that the White House would not support a Constitutional assembly to decide on the future status? Couldn't that just as easily come up with a Constitutionally compatible option?

Mr. MARSHALL. The Administration recognized that H.R. 900 is similar to the approach the Task Force recommends, but that doesn't mean the Administration isn't open to other approaches that fairly seek out the views of the people of Puerto Rico.

One requirement I would note, mentioned in my testimony, is that alternatives would need to be limited to the Constitutionally available options. In addition, it is desirable, as the task force set

out, to have a process that is going to produce some sort of result that would provide guidance that Congress might use.

Ms. CHRISTENSEN. OK. I would like to talk a little bit about the enhanced Commonwealth, the new Commonwealth option, and whether or not it is Constitutional or unconstitutional.

Just taking mutual consent for a moment, if the Commonwealth were able to negotiate through a compact or a covenant that Puerto Rico would be excluded from certain Federal laws, it would seem to me that, given the case of the Northern Marianas, which negotiated a covenant with the United States which exempted them from certain Federal laws, that this would be within the realm of possibility. So I am asking why is this something that would be considered not constitutional, or not possible to be accepted as a constitutionally recognized status option?

I know that is kind of a convoluted way of asking the question. Do you understand the question?

Mr. MARSHALL. I think so. I guess we will find out. I think there are two distinct issues there. One is whether Congress could exempt Puerto Rico from some Federal laws, and there the answer is yes. In fact, that is already being done. So I don't think the constitutional question precludes that.

As to mutual consent provision, the Constitution doesn't allow that for the reasons set out in the task force report. The report does discuss the Northern Mariana Islands some, and the short answer is that that compact was entered into at a time when the Executive Branch had a different understanding of the Constitution.

Ms. CHRISTENSEN. So maybe in another Administration, an agreement could be reached that would be able to include, I mean, compacts—I would have to go back and check whether the compact or the covenant that the Northern Marianas developed with the U.S. Government can be changed by mutual consent. But wouldn't that be possible?

Mr. MARSHALL. It would be——

Ms. CHRISTENSEN. It is negotiated by mutual consent.

Mr. MARSHALL. It would be possible to have mutual consent, of course. The constitutional question is whether a Congress could bind itself in future Congresses not to act without mutual consent. But certainly, some sort of consent would presumably be desirable as a matter of policy.

Ms. CHRISTENSEN. Let us see. You have been very good at answering the questions concisely. Let us see.

The task force and several of the other testimonies suggest that the Puerto Rican people should seek some permanent status, either independence or statehood. Isn't it possible that at this time the people of Puerto Rico are not ready to pursue either independence or statehood?

And the other assertion is that Congress has somehow stood in the way of Puerto Rico deciding on a change of status. Do you think that we have stood in the way? Have we prevented Puerto Rico from choosing a status? Well, answer that one first.

Mr. MARSHALL. And so that one, rather than the first one?

Ms. CHRISTENSEN. Go ahead and answer both, if you can.

Mr. MARSHALL. It is certainly possible that the people of Puerto Rico would prefer to stay as they are. The report contemplates that, and I have discussed it again in my prepared statement.

In terms of Congress, I wouldn't begin to impugn the Congress. And in addition, as the report notes, and again as in my prepared statement, I am not aware of any impediment to Puerto Rico itself taking action to express its views to Congress. And the task force report actually contemplated that Congress might want to structure any plebiscites in a way to allow time for that to happen.

Ms. CHRISTENSEN. Thank you. My time is up. I would recognize Mr. Wicker for five minutes of questions.

Mr. WICKER. Well, Madame Chair, your questions are so pertinent and excellent that I am tempted simply to yield my five minutes to you. But I will not do that.

It is frustrating. We are about to have a series of votes which I am told may take some 45 to 50 minutes, and I will not be able to come back and hear the rest of the testimony.

Let me just sort of associate myself with the observation of the Chair with regard to the possibility—indeed, the strong likelihood—that the people of Puerto Rico do not see the necessity of moving toward a permanent status, as defined by the Commission; that is, choosing between absolute independence and statehood. And so to the extent that the question suggested that, I would agree with her.

If I were to ask every witness that will come before this Subcommittee today, Madame Chair, the level of support in the polling for the idea of independence, I suspect the answer would be that the level of support is certainly less than 5 percent; maybe 2 percent to 4 percent of the island inhabitants support independence.

Secretary Marshall, would that be about correct? Did you do polling by the Commission?

Mr. MARSHALL. We did not do any polling, and I wouldn't begin to speculate on that.

Mr. WICKER. So you didn't take testimony to that effect.

Mr. MARSHALL. No.

Mr. WICKER. OK, well, that is fine if you don't know the answer. But I think it is fairly clear that there is a very small amount of support.

Let us say it is 5 percent. My problem with the Commission's recommendation is that if you move toward what the Commission suggests is a permanent solution, either statehood or independence, I think this Congress and the people of Puerto Rico deserve to know that there is a broad consensus for that position. And I would suggest that there is neither a broad consensus for independence nor for statehood among the people of Puerto Rico at this point.

Always before when we have brought a state into the Union, there has been overwhelming support among the people of that territory to come in and be a state. And certainly we know, from the polling and from the previous votes, that we do not have such a broad consensus at this point. And I don't think you get there by H.R. 900, which is the legislative result of the Commission's report.

Essentially, what H.R. 900 does is take two polar opposites, statehood on the one hand and independence on the other hand,

and combine them as option A on the ballot. And against those two combined options, then a commonwealth would have to compete.

Although the Commission said that it was attempting to come forward without preferences among the options, I think the logical consequence of this suggestion would be to pool two polar opposites, combine the votes of those, and then achieve a runoff between what have always in the past been the number two and number three choices among the people of Puerto Rico.

So I do not see any way that we can get to a consensus, get to the sort of overwhelming broad support that we need by this method. And I would also just reject the notion, Madame Chair, that somehow commonwealth is some form of suspended animation that must be quickly done away with. That having that as a more or less permanent option is somehow untenable. Just because someone says it is so doesn't make it true.

The people of Puerto Rico probably want a different kind of, some sort of enhancements and tweaking of the commonwealth position. But I would submit to the Members of this Congress and the Members of this Subcommittee that if you look around the Caribbean, the best economy in the Caribbean is on the Island of Puerto Rico. And to say that the wheels are off of the situation, and that absolutely we must move to something else, I don't think leaps from the facts.

So I realize I have made more of a statement than asking a question, but I do appreciate the Chair's indulgence, and the Subcommittee's indulgence, Madame Chair.

Ms. CHRISTENSEN. Thank you, Mr. Wicker. The Resident Commissioner has agreed to allow Ms. Velázquez to take her five minutes' time of questioning now.

Ms. VELÁZQUEZ. How sweet that is.

Ms. CHRISTENSEN. Because we know that you will be busy on the Floor for the rest of the afternoon.

Ms. VELÁZQUEZ. Thank you very much, Chairlady, and to my great friend and colleague, Mr. Fortuño. Thank you for allowing me to take this opportunity now to question the witness here. I have a bill on the Floor, so I will have to excuse myself, and that will be good for Mr. Marshall. Because I intended not only to use five minutes, but ask for more, since I have so much troublings with your testimony.

Let me start by saying that when you came here last year to talk to us about the findings of your report, I questioned the lack of substance of the report in terms of the economic, social, and cultural considerations. I even compared it to the massive and responsible report, reports that were done in the late sixties and the late eighties, and it seemed superficial in both length and analysis.

Today you come here and you state that the report is not even to be considered a legal brief. Mr. Marshall, what is this document? If it is not good as a legal brief, if it is not good as a research referral document, it is not even good, adequate to illustrate the historical and cultural reality of Puerto Rico, then what good is it?

Mr. MARSHALL. The document is written with its audience in mind, which is to mean written without jargon, written not at great length. We were not paid by the word. And I don't think it was necessary for us to go on at great length. We have laid out the

options clearly, and I think we have hit the major points. There are details we haven't addressed.

Ms. VELÁZQUEZ. Thank you for your answer. The President's Task Force on Puerto Rico Status was comprised of a dozen Executive Branch officials chosen to study the issue of Puerto Rico's status and prepare a report and recommendations to the President and the Congress on the sensitive issues of Puerto Rico's political status.

How many Puerto Ricans, in such an important issue to the people of Puerto Rico, I ask you, how many Puerto Ricans were part of this task force on Puerto Rico?

Mr. MARSHALL. I am not sure, I didn't poll the numbers.

Ms. VELÁZQUEZ. I am sorry?

Mr. MARSHALL. I don't know.

Ms. VELÁZQUEZ. The members from your task force, who were they?

Mr. MARSHALL. I don't know whether any members were from Puerto Rico. I don't think they were, but it is possible.

Ms. VELÁZQUEZ. And you don't think that in such an important issue on Puerto Rico?

Mr. MARSHALL. The task force visited Puerto Rico, particularly Mr. Barrales.

Ms. VELÁZQUEZ. I am going to deal with Mr. Barrales later. How many public hearings did the task force hold in Puerto Rico during the five-plus years since it was established? How many?

Mr. MARSHALL. The co-chairman of the task force went to Puerto Rico and had several meetings, including with political leaders in Puerto Rico. I don't know whether those would qualify as——

Ms. VELÁZQUEZ. Public hearings.

Mr. MARSHALL.—these hearings you are talking about.

Ms. VELÁZQUEZ. Public hearings, public hearings. Not a meeting with the Governor of Puerto Rico or a meeting with individual elected officials, I am saying public hearings, to listen to the people of Puerto Rico.

Mr. MARSHALL. I am not aware of any, as I indicated last year at the hearing.

Ms. VELÁZQUEZ. How many meetings took place with all, or at least a majority, of the task force members present?

Mr. MARSHALL. I believe that is information concerning the internal workings of the Executive Branch, so I am not free to disclose.

Ms. VELÁZQUEZ. Why is it that it is such a secret? That is the problem, you know? That is the problem, sir. You come here, and in your testimony you say that we will work with Congress—I am Congress here, I am a Member of Congress—to be sure that any process to solicit the views of the people of Puerto Rico is transparent, understandable, and fair. And you come in here and say that you can't share how many meetings, because those are Executive Branch privilege?

Sir, let me ask you another question. How many official visits to Puerto Rico did the task force, as a task force, make to Puerto Rico in order to get an in-person assessment of the issue the task force members were supposed to study and evaluate?

Mr. MARSHALL. There were at least two.

Ms. VELÁZQUEZ. With the members. Who were the members who went to Puerto Rico?

Mr. MARSHALL. Mr. Barrales and Mr. Francisco, who is my predecessor.

Ms. VELÁZQUEZ. Mr. Barrales has been co-chair of the task force from the start, and you became co-chair with him after your predecessor, Noel Francisco of the U.S. Department of Justice, left. Is that right?

Mr. MARSHALL. That is correct.

Ms. VELÁZQUEZ. It is also well known that he is not testifying before us today, and he recently left the White House. Through all these years, Mr. Barrales has been the public face of the task force, in terms of trips he took to Puerto Rico, meetings he may have had with elected officials and party representatives, interviews, and comments to the media. Isn't that the case?

Mr. MARSHALL. I am sorry, is what the case?

Ms. VELÁZQUEZ. Isn't that the case that Mr. Barrales was basically the public face of the task force? That he was the one who gave statements and made comments about the task force, either here or in Puerto Rico?

Mr. MARSHALL. Mr. Barrales did speak publicly about the work of the task force.

Ms. VELÁZQUEZ. So my question, then, is the following. Are you aware—I have my last question, since I am not coming back.

Mr. FALEOMAVAEGA. Madame Chair, will the Chair——

Ms. VELÁZQUEZ. Are you aware—if you will allow me.

Mr. FALEOMAVAEGA. Will the Chair yield? Will the Chair yield?

Ms. CHRISTENSEN. To allow her to finish?

Mr. FALEOMAVAEGA. I would love to give a portion of my time, even though I haven't yet, to the gentlelady from New York to continue the question.

Ms. CHRISTENSEN. Thank you.

Ms. VELÁZQUEZ. Are you aware, Mr. Marshall, that Mr. Rubén Barrales, co-chair of the task force until recently, went to Puerto Rico in July 2004, and publicly expressed his support for Puerto Rico becoming the 51st state? Were you aware of that?

Mr. MARSHALL. When I testified to the Senate last November I was asked that question, and it was based on a newspaper article. And I don't know whether that newspaper article's quotation was correct.

Ms. VELÁZQUEZ. So all the papers in Puerto Rico were wrong?

Mr. MARSHALL. Sometimes papers do get things wrong, and I wasn't going to——

Ms. VELÁZQUEZ. Well, it happens a lot with——

Mr. MARSHALL.—testify to what that one said.

Ms. VELÁZQUEZ. Yes, mm-hmm. Sir, he went, representing the White House, on events in Puerto Rico, and even political events in Puerto Rico, and he makes such a statement.

So you were charged in the Executive Order, signed by the President, to create this task force. They say, and the President clearly stated, that they will not interfere with the political dynamics that should take place in Puerto Rico. That they will not, the task force, be charged to express what political preference regarding any polit-

ical status for Puerto Rico. And here you have got your co-chair coming to Puerto Rico.

So do you know how the people of Puerto Rico feel about this process? They are cynical. It lacks transparency. And it is totally unfair and undemocratic. That is what your task force report means for half of the people in Puerto Rico, and for this Member of Congress. We should be more serious, and there should be more honesty when we are dealing with such an important issue that is going to affect 8 million Puerto Ricans.

And I invite you to revisit your task force, and come to the United States and visit the people of Puerto Rican descent, and talk to them, since you didn't do it either here or in Puerto Rico.

Thank you, Madame Chair.

Ms. CHRISTENSEN. Thank you, Ms. Velázquez. The Chair now recognizes the Resident Commissioner, the Ranking Member of the Subcommittee, Mr. Fortuño, for his opening statement.

STATEMENT OF THE HON. LUIS G. FORTUÑO, THE RESIDENT COMMISSIONER FROM THE COMMONWEALTH OF PUERTO RICO

Mr. FORTUÑO. Thank you, Madame Chair. And I ask unanimous consent that my full opening statement be introduced into the record. Thank you.

And I apologize, but I was in a meeting with the President. We discussed this issue, and I will get into that further in this hearing. We have plenty of time. In the meantime, I want to make sure that I make some statements.

Madame Chair, thank you again for calling this hearing. Let me begin by welcoming our distinguished witnesses. While some of us may differ on what Puerto Rico's relationship with the United States should be, we all agree that the current territorial status does not serve Puerto Rico or the United States well.

Rather than restating my position on the two bills before us today, which I have made clear time and again, I will use my time to focus on some fundamental truths Congress should bear in mind.

First, Congress has a constitutional and moral responsibility to act seriously to resolve this century-old colonial issue. As one former Governor of another local party who will testify, or was supposed to testify, today said, it would be, and I quote, "morally unacceptable, unfair, and harmful to Puerto Rico and the United States to simply play with the status issue, because it undermines Puerto Rico's capacity for self-government, inflicts considerable hardship on its society, and drains the U.S. Treasury." And I end quote.

Congress has a responsibility to enable Puerto Rico and its 4 million U.S. citizens to obtain democracy at the national government level. As the former Governor also wrote, and I quote again, "All factions do agree on the need to end the present undemocratic arrangement whereby Puerto Rico is subject to the laws of Congress, but cannot vote in it." And I end quote.

The United States took the island, through war, 109 years ago. Congress is responsible for the territory status under the Treaty of Paris and the Territory Clause of the U.S. Constitution. We Puerto Ricans have repeatedly asked Congress to clarify our options.

Presidents have spoken, and one spoke today, and I will get into that later.

It is now time for Congress to act. It is Federal laws and policies that are the question in Puerto Rico's status debate, not questions of our local aspirations. Puerto Ricans have already proposed what they want. The question is what we can realistically achieve.

Madame Chair, you asked at the last hearing whether the territory's economic problems couldn't be solve without a status change. Reports last year by the Brookings Institution and the GAO provide the answer. After decades of closing the income gap with the States, it has been widening once again. That is why on average 3,000 Puerto Ricans are moving to the mainland every month.

The status issue is not just about democracy for nearly 4 million U.S. citizens. It is also about our quality of life. The desperate proposal of the Governor for an impossible non-territory status that is neither a nation nor statehood, but combined features of both, is aimed at economic opportunity, as well as political power. The problem is that statehood is possible, and nationhood is possible; but the attempt to have both at the same time is not.

Our current territory status is failing, with increasingly severe consequences. That uncertainty, unpredictability, and inherent regulatory and political instability of territory status prevents Puerto Rico's full potential and contribution to the Nation from being realized. That is why double-digit unemployment and a labor participation rate 50 percent less than the national average persistently plague our people. That is why less than half of us are productively creating the wealth that supports the more than half who are under-employed, unemployed, and frustrated by the lack of work opportunity.

Madame Chair, the present territory status took Puerto Rico as far as it could, and is now a serious deterrent, banning us from attaining our aspirations and dreams. A resolution of this matter is badly needed now.

However, the idea that Puerto Rico can hold a convention and define the status it wants is a recipe for continued stagnation on the issue. After more than half a century of repeated commonwealth proposals rejected in Washington, and three local votes confused and made inconclusive by such proposals, it would only make things worse to have a convention intended and gained to ratify yet another such proposal by a coalition of minority faction politicians.

Puerto Rico can be treated like a state, named a commonwealth, as four states are and another territory is in English; named a free-associated state in Spanish, and as 100 other legal, economic, and social policies can be applied by Congress and the Courts. But none of this changes the status to real nationhood or real democracy or real sovereignty or real statehood.

Puerto Rico remains today a territory. We want every child in Puerto Rico to achieve the American Dream: to have the same opportunities their counterparts have in the States. To be able to go all the way to the top, and to end up better off in life than if they did not get that fair shot, playing by the same rules as every other child living under the American flag.

We know Puerto Rican culture is strong enough to continue and strive under statehood, and through nationhood it is possible. But

the steady decline into a failed society because of our unincorporated territory status and a local party's impossible status ideology make our colonial status destructive and intolerable.

We all want the people to decide on the solution, but only Congress can make that happen. H.R. 900 is the only feasible way proposed so far for Congress to so empower our people.

Thank you again.

[The prepared statement of Mr. Fortuño follows:]

Statement of The Honorable Luis Fortuño, the Resident Commissioner in Congress from Puerto Rico

Madame Chair, thank you, again, for calling this important hearing.

Instead of repeating my previous specific comments on the bills, I will focus on some fundamental truths Congress should bear in mind as it addresses this issue.

The first is that Congress has a responsibility to act seriously to resolve this issue—and it would be wrong for it to, in the words of a former governor of my territory of another local party who will testify today, "play with it for a while". As he wrote, "It is morally unacceptable, unfair, and harmful to Puerto Rico and the United States—Such insensitivity undermines Puerto Rico's capacity for self-government, inflicts considerable hardship on its society, and drains the U.S. Treasury."

Congress' basic responsibility is to enable Puerto Rico to obtain democracy at the national government level—something our country stands for around the world. As the former governor also wrote, "All factions do agree on the need to end the present undemocratic arrangement, whereby Puerto Rico is subject to the laws of Congress but cannot vote in it."

The United States took the islands in war 109 years ago. Congress is responsible for the territory's status under the Treaty of Paris and the Territory Clause of the U.S. Constitution. We Puerto Ricans have repeatedly asked Congress to clarify our options. Presidents have spoken. It is now time for Congress to act.

The status issue is not just about democracy for nearly four million U.S. citizens; it also is about our quality of life.

Madame Chair, you asked at the last hearing whether the territory's economic problems couldn't be solved without a status change. Every leader in Puerto Rico knows it can't be. That was the conclusion of hearings our full committee held 22 years ago at the request of the former governor that led to the effort to seek federal status choice legislation he initiated 18 years ago.

It is federal laws and policies that are the question in Puerto Rico's status debate, not questions of our local aspirations. Puerto Ricans have already proposed what they want. The question is what we can realistically achieve.

We all know that the current regime stopped working for us long ago—two or three decades ago as indicated by reports issued last year by the Brookings Institution and the GAO in fact, after decades of closing the income gap with the States, it has been widening. That is why 3,000 Puerto Ricans are moving to the mainland monthly. Economic need is the primary reason that there are now more people of Puerto Rican origin in the States than in the island.

And that is why our current governor wants his impossible "Development of the Commonwealth." It's not just political power, for power's sake. Yes, he wants to make Puerto Rico's situation democratic by being able to enter into foreign agreements and nullify federal law and court jurisdiction. But he also wants the power to enter into foreign agreements to establish a different trade situation for Puerto Rico than for the fifty States. And there would be economic benefit from that. The problem is that he wants the benefits of being American at the same time, for example access as a State to the U.S. market. There are constitutional problems with this—a U.S. area conducting its own foreign policy—as well as policy problems—it would create a giant loophole in U.S. trade barriers.

He wants the power to determine the application of federal laws to, for example, exempt Puerto Rico from the application of the laws requiring the use of American-crewed, built, and owned vessels for cargo between U.S. ports. And that would be economically beneficial "but the federal government is not going to grant it under a U.S. status. It will only happen if Puerto Rico becomes a sovereign nation.

Here the problem is not constitutional, but practical. Puerto Rico is too big and represents too much U.S. vessel shipping for an exemption. You know, Madame Chair, the challenges to the exemption for your much smaller territory that dates to early in the last century. Our colleague from Guam knows how impossible it has been for Guam, which is also much smaller than Puerto Rico and is even much more

distant from the States, to get an exemption despite tens of millions of dollars of lobbying and decades of effort.

And a main reason is the size of Puerto Rico.

You spoke, Madame Chair, about the precedents that Puerto Rico sets for the other territories. The main precedents are that the size and potential economic impact of Puerto Rico prevents exemptions and equality for the much smaller territories.

The truth is Puerto Rico needs to become a State or a nation to substantially improve its economic situation. Both courses offer advantages and opportunities we cannot access now.

So some leaders want nationhood, whether independent from the U.S. or in a free association with it. Others of us want the equality of statehood within this greatest of nations. The Governor and his bill want a "best of both worlds" that has never been accepted by the federal government and never will be and that would continue to consign us to this limbo status of not only a lack of democracy but further economic deterioration and social despair.

Our current territory status is failing with increasingly severe consequences. The uncertainty, unpredictability and inherent regulatory and political instability of territory status prevent Puerto Rico's full potential—and contribution to the nation—from being realized.

That is why double-digit unemployment and a labor participation rate 50% less than the national average persistently plagues our people. That is why less than half the residents of Puerto Rico are productively creating the wealth that sustains and supports more than half the population that is under-employed, unemployed, and frustrated by the lack of opportunity. Madame Chair, the present territory status took Puerto Rico as far as it could, and is now a serious deterrent banning us from attaining our aspirations and dreams. A resolution of this matter is badly needed now.

These are not aliens or immigrants, this is not a debate about letting them in or giving them amnesty or guest worker status. These are our fellow Americans, fourth generation U.S. citizens, living under the American flag within the same national borders as the rest of the United States, just like Americans in the non-contiguous states of Hawaii and Alaska. Many of them are veterans who served in mortal combat alongside the constituents of my colleagues on the Subcommittee, from every State in the Union. Unlike Americans from States, my constituents come home to an economy that is chronically underperforming, in an American colony where they do not even have a right to vote in federal elections or voting representation in Congress.

However, the idea that Puerto Rico can hold a convention and define the status it wants is a recipe for continued stagnation on the issue. After more than half a century of repeated "commonwealth" proposals rejected in Washington and three local votes confused and made inconclusive by such proposals, it would only make things worse to have a convention intended to ratify a proposal such as the already-reject "Development of the Commonwealth" by a coalition of minority faction politicians.

The notion that such a strategy can force the federal government to subvert its objections to the "self-determination will" of Puerto Ricans is folly, if not deception. The example of Guam, where the "commonwealth" proposal was more moderate and where the stakes were much smaller for the U.S., demonstrated this.

Before concluding, let me say I have read the so-called legal analyses that have been submitted in House and Senate hearings on Puerto Rico over the last year. The submissions by local party leaders and their lawyers claim——

- Statutory territorial status policy can be made permanent, and somehow morph into a non-territory status.
- Statutory status policy can be placed beyond the reach of Congress by borrowing irrelevant precedents from federal contract and property law.
- Puerto Rico is already in free association with the U.S.—as the Governor astoundingly suggested to the Senate committee a few months ago.

Enough is enough. What does it take to end this absurd debate—other than clarification from Congress? Just this year, in the Guantanomo detainee cases, the federal courts have ruled yet again that Puerto Rico is subject to federal powers under the Territory Clause.

We all know Puerto Rico can be treated "like a State", named the "Commonwealth"—as are four States and another territory—in English, named a "free associated state" in Spanish, and a hundred other legal, economic, social policies can be applied by Congress and the courts, but none of this changes the status to real nationhood or real democracy, or real sovereignty, or real statehood, because Puerto Rico remains a territory.

I will conclude today by telling my colleagues what I believe all Puerto Ricans really want. We want our children to grow up without being obsessed by an esoteric debate about our identity and status under the supreme law of the nation in which we live.

We want every child in Puerto Rico to achieve the American dream, to have the same opportunities that their counterparts have in the states, to be able to go all the way to the top, and even if they fall short of their biggest dream, end up having more of that dream come true, and end up better off in life, than if they did not get that fair shot, playing by the same rules as every other child living under the American flag.

We want to know that no child in Puerto Rico missed out on a shot at the American Dream because the political status of Puerto Rico was not resolved.

We want our economy to thrive not stagnate, so that the God-given creativity of our people can find expression in productive participation in our society.

We do not want to bequeath an under-developed and under-performing economy and a political, cultural, social identity crisis to our children and grandchildren.

We believe Puerto Rican culture and heritage is strong enough to survive a transition to statehood or separate sovereign nationhood, but not the slow, twilight decline into a failed society that now threatens us under the federal government's unincorporated territory status doctrine, and local party doctrines that attempt but fail to make this colonial status tolerable.

We all want the people to decide on the solution, but only Congress can make that happen. H.R. 900 is the only feasible way proposed so far for Congress to so empower our people.

Ms. CHRISTENSEN. Thank you, Mr. Fortuño. I now recognize Mr. Faleomavaega for five minutes of questions.

Mr. FALEOMAVAEGA. I thank the gentlelady, the Chairwoman of this Subcommittee. And in fairness to the process, I noted that I actually had one minute left, after giving four minutes of my time previously to Ms. Velázquez. But I do thank the gentlelady, and I sincerely hope that our Ranking Member will accept that slight change of period of time for me to ask questions. Is that all right? I just want to be fair to the process.

Mr. FORTUÑO. Yes.

Ms. CHRISTENSEN. Yes.

Mr. FALEOMAVAEGA. Thank you very much. Madame Chairwoman, this is the second phase now in the process that we have conducted these hearings, and I do want to thank my colleague and dear friend, the Resident Commissioner of Puerto Rico, Mr. Fortuño, for his eloquent statement, the positions that he has taken, and certainly he has my utmost respect for his deep understanding of the politics in the situation developing in Puerto Rico.

I do want to say that we have in our presence former colleagues and Members of this committee and Members of Congress, the former Resident Commissioner of Puerto Rico, The Honorable Aníbal Vilá, my dear friend who is now the duly elected Governor of Puerto Rico, and also my good friend, the former Governor, as well as Resident Commissioner, of Puerto Rico, who I see there, and that is Mr. Carlos Romero, who is also here with us. Certainly we also note the presence of our former Governor of Puerto Rico, Mr. Rosselló, and other distinguished dignitaries coming from Puerto Rico.

Madame Chairwoman, I probably consider myself as a deputy expert or whatever for 18 years now that I have been a Member of this committee, and I consider myself a semi-expert about Puerto Rico by this time, with all the hearings, the committee meetings, and so much that we have undertaken in trying to resolve the

problem and trying to resolve the issue of what is best for the people and for the leaders of Puerto Rico.

Mr. Marshall, I have listened closely to your testimony. And, as you may have noted, Ms. Velázquez has asked you some initial questions about how the task force came about, and the recommendations the task force has made.

In order to give any sense of credibility to any task force report or recommendations, I cite the 9/11 Commission and the Iraq Study Group as examples of commissions or task forces, however you want to call it. And as you may have noted, a lot of credibility is given to the substance and recommendations of the Iraq Study Group because they were composed of both Democrats and Republican leaders, especially the national caliber of former Secretary of State Jim Baker. Former Congressman Lee Hamilton has the utmost respect of our colleagues here in the Congress.

My point here is that recommendations offered by the Iraq Study Group was unanimously accepted, and it was made because it had the substance of clear expert advice from the best on both sides of the aisle, so to speak.

Now, as I listen to your testimony and the position that the Administration and the White House has given, that your task force supports H.R. 900. And I just wanted to share with you my concern to the effect that if there is anything that it is my sincere hope that this committee, as well as the Congress, would hope to achieve is that we have to provide a process unfettered by any leanings or any tiltings, if you will, so that the process is truly democratic in scope; so that the people of Puerto Rico truly are given that choice free, and without any encumbrances to suggesting that I am for statehood, I am for commonwealth, or I am for independence.

And I just wanted to ask you, in the process of selecting the members of this task force, was there any consideration given to asking maybe people from another political persuasion to be members of this task force? How were the members of the commission or the task force selected?

Mr. MARSHALL. The composition of the task force is set out in the Executive Order that President Clinton established, and then it was not substantially changed on this point by President Bush when he continued the task force. And the way it is created is each cabinet head designates one member for the task force.

Mr. FALEOMAVAEGA. And I think Ms. Velázquez asked previously, were there any hearings held, public hearings held in Puerto Rico concerning the activities of this task force?

Mr. MARSHALL. With the understanding that Ms. Velázquez seems to have for that term, the answer would be no.

Mr. FALEOMAVAEGA. So the task force just met among themselves, and deliberated on the legal aspects, everything that relates to the status of Puerto Rico? Is this how you conducted your hearings or meetings?

Mr. MARSHALL. Members of the task force went to Puerto Rico. And when they were down there, my understanding is they primarily met with political leaders there, and this was covered in the press.

Mr. FALEOMAVAEGA. So there were no public hearings held or anything.

Mr. MARSHALL. I believe that is correct.

Mr. FALEOMAVAEGA. And of the members, how many members in the task force again? For the record.

Mr. MARSHALL. Well, for the record——

Mr. FALEOMAVAEGA. You are co-chair of the task force. Was it 20 members? Thirty?

Mr. MARSHALL. Well, I would say about 12.

Mr. FALEOMAVAEGA. Twelve members of the task force.

Mr. MARSHALL. The front of the task force report lists all the members.

Mr. FALEOMAVAEGA. Would you say that all the members are from the Republican-oriented Administration?

Mr. MARSHALL. I don't know.

Ms. CHRISTENSEN. Well, I mean, you are co-chair.

Mr. MARSHALL. I had no hand in selecting the members of the task force. I was selected by the Attorney General. I don't know how other cabinet heads went about selecting their members.

Mr. FALEOMAVAEGA. So when you say other cabinet heads, meaning this Administration.

Mr. MARSHALL. Yes.

Mr. FALEOMAVAEGA. For the recommendation?

Mr. MARSHALL. An approach under President Clinton to the Executive Order, President Bush followed the procedure that President Clinton set up for composing the task force.

Mr. FALEOMAVAEGA. My last question. I am just trying to, let us see if I can make the question better.

Ms. CHRISTENSEN. Please make it brief, because you have already exceeded your time. Quickly.

Mr. FALEOMAVAEGA. The members of the task force, they are all members of the Administration, were they not?

Mr. MARSHALL. Yes.

Mr. FALEOMAVAEGA. Thank you.

Ms. CHRISTENSEN. Thank you. The Chair now recognizes Mr. Fortuño for questions.

Mr. FORTUÑO. Thank you. First of all, just to clarify one matter brought up by my colleague from Mississippi, majority rule and not consensus is the standard in self-determination. And actually, there are a number of examples in the case of Wisconsin. In the beginning there was only 25 percent, 30 percent in favor of statehood. Once Congress clarified the options for the voters, that number went up significantly. That is exactly what this Administration is trying to do. The same thing happened to Washington State, and there are many other examples.

However, I want to say something before I ask any questions, Madame Chairwoman. I must recognize for the record that it makes a material contribution to the deliberations of this body and the record upon which Congress must act in this matter when the Administration participates in our hearings, as it has today. To some, this is not perceived to be arrogant in the short term, because there are many other issues. But I truly believe that the manner in which our nation addresses the issues of Puerto Rico's status will have a much greater impact on the future of our nation than many other issues that we are taking care of today.

What is at stake here is whether the years ahead, we have a free, democratic, and prosperous Puerto Rico that can pay its own way, or a dependent colonial state which people must leave if they want a better life, if they still can under whatever positions prevail.

Today's Administration witness, I want to thank him for being available, and for being forthcoming on this legislation on behalf of the Administration. We all know that there were many powerful forces and pressures to stop the progress and impede a solution on this issue, because there is always someone with a vested interest in the status quo no matter how many people, or if the Nation itself, would be better served by a real solution.

And as I told the President today, the Administration should make no apologies whatsoever to anyone for standing up by a task force report and supporting legislation consistent with the findings and recommendations adopted by the departments and agencies of the Administration responsible for Puerto Rico affairs.

Full engagement in this debate, based on the principles confirmed in this report, is the only way to align the Administration with a policy of full, informed, honest, and legitimate democratic self-determination. That is what is best for Puerto Rico and America. So I thank the Administration for coming today and doing what is right for the nation, and what is right for Puerto Rico.

I want to ask you, first of all, in order to be here on behalf of the Administration, there was a process that you had to go through, is that right?

Mr. MARSHALL. Yes.

Mr. FORTUÑO. And your statements had to be cleared probably with OMB, the Office of Management and Budget, and the office, the White House?

Mr. MARSHALL. Our testimony is cleared through the White House.

Mr. FORTUÑO. OK. So when you come here, and you talk, and you speak on behalf of the Administration, you are fully authorized to do that on this issue.

Mr. MARSHALL. Everything I have said in my statement is fully authorized, yes.

Mr. FORTUÑO. And what you said today is the official position of the Bush Administration?

Mr. MARSHALL. Yes.

Mr. FORTUÑO. Can there be a commonwealth status that is not subject to Federal territory clause powers? Is there such a thing as a commonwealth as described by H.R. 1230, a supersized commonwealth, or enhanced commonwealth, as they are trying to portray?

Mr. MARSHALL. No. I should qualify that. The task force report does say that Congress has flexibility in determining what exactly commonwealth status means, and what powers of self-government Puerto Rico has.

Mr. FORTUÑO. But can that bind future Congresses?

Mr. MARSHALL. No.

Mr. FORTUÑO. And is that permanent in nature?

Mr. MARSHALL. Congress's power is permanent, under the territorial clause.

Mr. FORTUÑO. No, but the status, that supersized or enhanced commonwealth, is that permanent in nature?

Mr. MARSHALL. No.

Mr. FORTUÑO. Congress could take away whatever it gives. The next Congress could do that any time, unilaterally.

Mr. MARSHALL. Yes, it could.

Mr. FORTUÑO. And is it your position, and the Administration's position certainly, that this supersized or enhanced commonwealth proposal cannot be a status option, to solve this once and for all, for constitutional and other reasons? Is that what you have said today?

Mr. MARSHALL. It is the Administration's position that a commonwealth provision, including a mutual consent clause, would not be constitutional.

Mr. FORTUÑO. And what happens, then, if a convention, constitutional convention in Puerto Rico says that yes, that supersized or enhanced commonwealth is what we want? Does that solve the problem? Does that provide for a permanent status for Puerto Rico that is non-territorial in nature?

Mr. MARSHALL. I guess the precise answer would be that that convention would think of itself as so providing, but that wouldn't be lawful under the Constitution.

Mr. FORTUÑO. So would it be misleading to Puerto Ricans to enact legislation, including a status proposal, that the Federal government cannot, and will not, implement?

Mr. MARSHALL. I wouldn't want to impugn motives, but it would be unclear.

Mr. FORTUÑO. At the very least, certainly. So essentially what you are telling me, and I assume you are—and actually, you must be, because I certainly read your statement this morning, and I certainly have read several times the task force report and the recommendations.

So essentially, you went over what these supersized or enhanced commonwealth proposals are. And when you state, very clearly in your report, that actually that is not doable, that those options are not encompassed under the U.S. Constitution, I assume that you looked back at what the Justice Department has stated, under at least three consecutive Administrations—Bush 41, Clinton, and Bush 43—and that you certainly looked back at that. And that you still stand by that, by what you stated in the report, regarding that enhanced or supersized commonwealth status option.

Mr. MARSHALL. On the constitutional question, we did look at the views of the Clinton Administration and the first Bush Administration; considered the matter further for ourselves; stand by it. The task force report also does recognize that the Justice Department had a different view dating from the 1960s.

Mr. FORTUÑO. Of the two bills that are before the Subcommittee, is there one bill that is actually closer resembles the recommendations that actually presents to the Puerto Rican voters clear options that are doable under the U.S. Constitution?

Mr. MARSHALL. I believe closely resembles would be an accurate description of H.R. 900.

Mr. FORTUÑO. Thank you very much. I guess we will have another round. Thank you.

Ms. CHRISTENSEN. Thank you, Mr. Fortuño. The Chair now recognizes Mrs. Bordallo for five minutes.

Ms. BORDALLO. Thank you, Madame Chairman, and thank you for calling this hearing. We have been hearing about a status issue for Puerto Rico for many, many years.

I represent the Territory of Guam, Mr. Marshall, and we have gone through a similar process. And believe it or not, we still do not have our future status. The bill came before Congress for over 10 years; we spent millions of dollars, and we just couldn't agree here in the U.S. Congress.

Now, just for clarification, and I think some of the Members have already answered this, but I wanted to go on record very clearly. Does the report of the task force represent the Administration's official position? And I think Mr. Fortuño asked you that.

Mr. MARSHALL. It does, now.

Ms. BORDALLO. Was this report vetted through the OMB process?

Mr. MARSHALL. This report?

Ms. BORDALLO. Yes.

Mr. MARSHALL. The report was prepared by the task force on its own.

Ms. BORDALLO. Did it go through the OMB? Did they look at it? Was there somebody representing OMB on the task force?

Mr. MARSHALL. No.

Ms. BORDALLO. Did it receive unanimous approval of the task force members?

Mr. MARSHALL. Yes.

Ms. BORDALLO. What is the Administration's position on both bills? And I think you did answer that earlier. H.R. 900, you said, was that compatible to their views?

Mr. MARSHALL. What I said is that the Administration supports legislation on this question, and believes that the task force report is a good place to start. And recognizes that H.R. 900 is very similar to what the task force——

Ms. BORDALLO. Closely resembles their views, all right.

Mr. MARSHALL. And I would just add, and then on H.R. 1230, it takes the view of the Constitution with which we disagree.

Ms. BORDALLO. Are there any particular aspects of the task force report or recommendations which were cause for serious deliberation, or which are the product of consensus?

Mr. MARSHALL. All of the task force report is the product of consensus, because all members of the task force agreed with the final report.

Ms. BORDALLO. If so, in other words, were these conclusions easily reached? Or did they take some compromise?

Mr. MARSHALL. I don't think I am free to get into that question in terms of deliberations. I will just say it is evident from the timeframe that we did take a while to reach the final report.

Ms. BORDALLO. So what you are saying to the committee, then, is many aspects of the task force are not public? Is that——

Mr. MARSHALL. The final product is a public document. The deliberations that went into getting into it, to developing that final report, are not. Or at least I don't have the authority to make them public.

Ms. BORDALLO. Mr. Marshall, did the task force consider an enhanced commonwealth as an option for the plebiscite?

Mr. MARSHALL. The task force considered enhanced commonwealth as an option generally, concluded that it wasn't allowed under the Constitution, and therefore, did not include it in the recommended plebiscites.

Ms. BORDALLO. Can you tell us what the deliberations of the task force were with respect to this option?

Mr. MARSHALL. Again, I am not authorized to get into that.

Ms. BORDALLO. My comment before closing here is, I can't imagine a task force without representatives from Puerto Rico, the people of Puerto Rico. I just can't imagine that. I mean, certainly this is going to be a status or an option that will be with the people for the entire future, and they don't have any voice in this? You just took representatives from different Federal agencies, and put them together, and this was the task force to consider the status or to recommend what type of status for the Puerto Rico people? Is this what you are saying?

Mr. MARSHALL. As I indicated in response to the prior question, the composition of the task force was determined by an Executive Order set up by President Clinton. And I would refer you to him for more details on why it was created that way.

Ms. BORDALLO. Well, thank you, Mr. Marshall. I don't think I am going to go up to the former President and ask him. In your own personal opinion, do you think this is fair?

Mr. MARSHALL. I stand by the task force report, and think it is a good product.

Ms. BORDALLO. I didn't ask that question. I said do you think this is fair, without any representative, direct representation from the people of Puerto Rico on the task force?

Mr. MARSHALL. Sorry to be picky, but could you explain what you mean by this?

Ms. BORDALLO. Yes. Well, I said, do you feel personally. I mean, if they were to consider your future, wouldn't you think that your state or your territory would be represented in a task force that is going to discuss the future status?

Mr. MARSHALL. It would depend on the purpose of the task force. The purpose of the task force set out by President Clinton, continued by President Bush, was to be an internal Executive Branch advisory body to give a recommendation to the President.

Ms. BORDALLO. So you feel it was fair.

Mr. MARSHALL. Given that purpose, I believe it was fair.

Ms. BORDALLO. All right. Thank you, Madame Chairman.

Ms. CHRISTENSEN. Thank you, Ms. Bordallo. I will now recognize myself for some questions in a second round.

I want to ask you a question about something that gives me a great deal of concern. The task force stated that Congress can cede a territory to another nation. Now, you can understand why I would be concerned about that, right? If it so desired. To me, that is a pre-Civil War view of territories as property that really shouldn't have any place in this century.

Do you think it is credible for a task force of this nature, coming out of the White House, to suggest that our Courts would allow

Congress to cede territory where U.S. citizens reside without their saying so? Or agreeing to it?

Mr. MARSHALL. Well, in this area in particular, Madame Chairman, there is probably a large gap between what the law would technically allow, and what would be desirable. I have addressed this in some questions for the record I have answered in response to the prior hearings.

The fact of the matter is that under the Territorial Clause, Congress has powers to dispose of its territories, which would include relinquishing them. It does not at all argue that that would be a good thing, nor does it appear to be something that is likely to happen without the territory being consulted.

Ms. CHRISTENSEN. I am not a lawyer, and my father, who was one, always reminded me of that. But in the same vein, you said the law can technically provide, but that doesn't mean it is allowable. Wouldn't that also apply to the Congress changing a status that was decided by the people of the territory? Because we keep coming back to if the people of Puerto Rico decided to stay a commonwealth, Congress can change it. Wouldn't that same principle that you just stated to me apply there?

Mr. MARSHALL. I take it you mean the principle that it is desirable not to make changes in the way people are governed without consulting them.

Ms. CHRISTENSEN. Yes. The law may provide, we are provided with the authority to do so, but it is not likely to happen. That is basically how you answered Ms. Bordallo in her question.

Mr. MARSHALL. I can't remember the precise phrasing of your question, but I think it is certainly the Administration's view—and the President has said this before—that any change in Puerto Rico's status, which would include changing the details of the commonwealth within the limits of the Constitution should ultimately be up to the people of Puerto Rico.

Ms. CHRISTENSEN. Thank you. The question really was, even though Congress has the authority, the President in likelihood would not suggest that they would step in and change something that the people of Puerto Rico decided arbitrarily, without consulting the people of Puerto Rico. OK.

Mr. MARSHALL. OK.

Ms. CHRISTENSEN. You also said something to the effect, and I know I may not be quoting you exactly, that the new commonwealth—in the response to that answer, no, there is nothing like the new commonwealth as proposed that exists now, or you may have even said likely to exist. But I think you said at least that it doesn't exist now.

Now, no less a legal scholar than Felix Frankfurter once stated that in deciding the form of the relationship between the United States and its unincorporated territories, the Constitution has left the field wide open to inventive statesmanship that can help evolve new kinds of relationship, so as to combine the advantages of local self-government with those of a confederated union.

Why should Congress pay more attention to the drafters of this report than exercising that that inventive statesmanship defines solutions to relationships that were not contemplated at the time of the Constitution? Do you disagree with Justice Frankfurter?

Mr. MARSHALL. The Administration is all for inventiveness, as I indicated in stating the Administration's view on this question. But it needs to be done within the limits that the Constitution sets. All powers under the Constitution have limits. And I believe we have presented a good argument, as before as to the Clinton Administration, for where those limits are in this area.

Ms. CHRISTENSEN. OK. The report also recommends a two-step process that would put the votes for the two extreme options of statehood and independence competing together against the votes for commonwealth. If this combined vote of statehood and independence defeats commonwealth, we would then have a runoff between statehood and independence.

How can that be fair, to have a process that excludes the option that most of the people, that has the most support in Puerto Rico, by having two other options gang up against that option? Why not have an independence yes-or-no vote, or a statehood yes-or-no vote? And I have other things that I would suggest maybe in asking the question.

Mr. MARSHALL. There may well be other ways to structure this. The constraints that the task force looked to were first the limits of the Constitution, but also taking into account the inconclusive results of prior votes; trying to create a structure that would produce clear results that would provide some sort of guidance that Congress could use in enacting or not.

Ms. CHRISTENSEN. What would be a clear result, to you?

Mr. MARSHALL. A majority vote in favor of an outcome.

Ms. CHRISTENSEN. Does a 50 percent plus one, voting for one status or another? I mean, what is a clear——

Mr. MARSHALL. That would be clear. Whether it would be sufficient as a policy matter to justify Congress in taking some action I can't speak to. There was earlier reference to consensus, and prior admission of states. And it would certainly be prudent to consult that before acting based on a vote of 50-plus-one.

Ms. CHRISTENSEN. Thank you. And I recognize Mr. Fortuño for further questions.

Mr. FORTUÑO. Thank you. I ask the question, does H.R. 900 include all the real status options which have been discussed in the context of Puerto Rico? That is, continuing the current territory status, independence, nationhood and free association with the U.S., and U.S. statehood.

Mr. MARSHALL. I believe so. I am hesitating on whether free association is separately in there as a flavor of independence. I think so.

Mr. FORTUÑO. But it is included there. So would you say that H.R. 900 states clearly to the voters of Puerto Rico what the real options are, under the U.S. Constitution?

Mr. MARSHALL. Yes.

Mr. FORTUÑO. The Governor has proposed an enhanced commonwealth, or supersized commonwealth, under which the United States would be permanently bound to Puerto Rico, a Puerto Rico that could enter into international agreements, honorary sanctions, and that states that it cannot—sorry—it would be bound to granting a substitute to the insular government additional to what is presently granted. It would be replacing, repealing incentives for

U.S. investments, and continue to grant free entry to the U.S. market of any goods shipped from Puerto Rico. All current assistance programs would, actually will continue, and U.S. citizenship will continue to apply.

Is all that possible under a non-territorial enhanced commonwealth status? Is that doable under the U.S. Constitution?

Mr. MARSHALL. It may be that some of those possibilities are allowed through Congress's power under the Territorial Clause, and I wouldn't want to guess on that right now.

Mr. FORTUÑO. But can't they be taken away by a future Congress?

Mr. MARSHALL. Yes.

Mr. FORTUÑO. So it would not be permanent.

Mr. MARSHALL. Correct.

Mr. FORTUÑO. Actually, in addition to that, they have proposed that Puerto Rico would have veto power over Federal legislation, and would be able to curtail Federal court jurisdiction. Is that something that is doable and permanent in a new enhanced commonwealth, under the U.S. Constitution? If it is going to be permanent?

Mr. MARSHALL. It is not something that could be made permanent, assuming that it could be done.

Mr. FORTUÑO. Is it still your position, and the position of the Administration, that this supersized or enhanced commonwealth proposal cannot be a status option, for constitutional and other reasons, if we want to solve this once and for all? To make it permanent?

Mr. MARSHALL. It is still the Administration's position that a commonwealth provision with a mutual consent clause would not be constitutional.

Mr. FORTUÑO. Having a Puerto Rican convention, would that change your opinion?

Mr. MARSHALL. No.

Mr. FORTUÑO. How do you respond to the constitutional flaws of H.R. 1230, as outlined in the testimony that actually Ken Thomas from the Congressional Research Service stated in our last hearing here on March 22? Have you read that statement?

Mr. MARSHALL. I have not.

Mr. FORTUÑO. You have not? OK. Could you provide to us, to the committee, an answer to, once you have analyzed and studied that statement, if there are any responses on your behalf regarding the constitutional flaws that were underlined and underscored by Ken Thomas?

Mr. MARSHALL. We will look at Mr. Thomas's statement.

Mr. FORTUÑO. Can we make sure that the full committee receives that?

Ms. CHRISTENSEN. Without objection.

Mr. FORTUÑO. OK, thank you. Thank you very much.

Mr. Marshall, in Governor Acevedo's statement of today, he cites Professor Aleinikoff. And he states a number of things about how sovereignty can be actually enhanced or develop into something that you have already stated that at least the position of the Administration is that it cannot. Can you enlighten us, and answer whether the Administration, does the Administration, including the

Department of Justice and State, agree with the Governor and the professor, that Puerto Rico should have its own foreign policy and legal capacity to enter treaties, and lead to obligations of laws and treaties as to the U.S.? Treaties that the U.S. enters into, under an enhanced commonwealth status, would you be able to actually enlighten us with that?

And if you need more time, could you submit in writing to this committee the Administration's position on this?

Mr. MARSHALL. I am sorry, can I unpack that question a little bit?

Mr. FORTUÑO. Sure. The idea really is for you to put this in writing, to be very honest. But certainly, if you were to read Governor Acevedo's statement of today, he is stating that indeed, Puerto Rico could enter into foreign treaties. And, under that theory, that this professor states, citing a 19th century concept of sovereignty. And I would like for you to look at Governor Acevedo's statement of today, and provide us with your reaction and the Administration's reaction to those statements, as to whether Puerto Rico could enter into this international treaties under an enhanced commonwealth status, as he is suggesting that we can enter into. And actually suggesting, as well, that that could be a permanent solution to our status problem.

Mr. MARSHALL. I am happy to entertain questions for the record, which I assumed I would be receiving.

Mr. FORTUÑO. Exactly, as well. I know my time is up. Certainly with those two requests, I yield back the balance of my time.

Ms. CHRISTENSEN. Thank you. The Chair now recognizes Mr. Faleomavaega for five minutes.

Mr. FALEOMAVAEGA. Thank you, Madame Chair. And I appreciate Mr. Marshall's patience.

Mr. Marshall, not wanting to put any words in your mouth, but also to take it out of context, but I would like to, if you could restate, if I heard it correctly, you did say that commonwealth status is not constitutional?

Mr. MARSHALL. What is often referred to as enhanced or new commonwealth status——

Mr. FALEOMAVAEGA. No, no, no. The current commonwealth status of Puerto Rico. Did I hear it correctly, you saying that it is not constitutional?

Mr. MARSHALL. I did not say that. The current status is constitutional.

Mr. FALEOMAVAEGA. Can you state that again? Let me ask the question again.

Mr. MARSHALL. The current commonwealth status is constitutional. It is also subject to revision by Congress.

Mr. FALEOMAVAEGA. OK. Well, as I noted here clearly, you did say, verbatim, commonwealth is not constitutional. that is why I am trying to ask you to follow up on this. If this is what you——

Mr. MARSHALL. If I said that, I misspoke.

Mr. FALEOMAVAEGA. OK. So you didn't mean that. Because my next question was, if commonwealth is not constitutional, why hasn't the Department of Justice issued an opinion clearly saying that commonwealth status is not constitutional. But you say that that is not the case.

Mr. MARSHALL. No. I may have misspoken. I refer you to the report, which may be clearer on that.

Mr. FALEOMAVAEGA. What is your understanding of a territory being an unincorporated territory?

Mr. MARSHALL. That generally means a territory that isn't on the road to statehood.

Mr. FALEOMAVAEGA. A territory on the road to statehood? An unincorporated territory?

Mr. MARSHALL. That is the meaning that the Supreme Court developed after the Spanish-American War.

Mr. FALEOMAVAEGA. I beg to differ with you, Mr. Marshall. My understanding is that a territory that has an unincorporated status, it means that it will never see the day of ever becoming a state. That was the result of the Supreme Court decisions on the insular cases, one being Downes v. Bidwell.

Mr. MARSHALL. I have stated—sorry, go ahead.

Mr. FALEOMAVAEGA. No, I just wanted to ask you if that is your understanding of what an unincorporated territory means.

Mr. MARSHALL. My understanding of the concept of unincorporated territory is not that an unincorporated territory can never become a state. Congress is free to admit an unincorporated territory. It is rather an assessment that, given all the circumstances to date, it doesn't appear that the territory is on the way to statehood.

Mr. FALEOMAVAEGA. So my concern for this is because Puerto Rico is an unincorporated territory, according to the legal definitions that I have read.

Mr. MARSHALL. That is correct. And the report also says that.

Mr. FALEOMAVAEGA. And the irony of this is that one of the given options for Puerto Rico's future is that it can become a state, even though it is an unincorporated state. Territory, rather. Do you see my problem?

Mr. MARSHALL. I see your point, but again, I don't think there is anything in the Supreme Court's cases, including Downes, that says Congress cannot later change its mind and decide that an unincorporated territory should be incorporated, including as a state.

Mr. FALEOMAVAEGA. My understanding of the Doctrine of Incorporation was by judicial legislation. It was a series of cases that were decided by the U.S. Supreme Court, which led to the Doctrine of Incorporation. And one of the concerns here, like the territories of Alaska and Hawaii, they were both incorporated territories, which meant that at some future time in these territories' future, that they would eventually become states. And that is what they have become now; they are both states.

And one of the questions that I raise is, if I am correct—and my reading is limited, it really is an understanding—is that historically, Puerto Rico has always been known as an unincorporated territory. And that is why I raise the question, if it is an unincorporated territory, then how does that square with the idea that if that is the case of the status, then where does statehood come into it? Because that is not being, that hasn't been the tradition or the practice of the Doctrine of Incorporation.

Mr. MARSHALL. Again, I agree that Puerto Rico is now unincorporated, but Congress can change that.

Mr. FALEOMAVAEGA. So am I correct? And I don't want to put words in your mouth, sir. What you are saying now, a territory can be unincorporated, and can also be a state if Congress rules it?

Mr. MARSHALL. Yes.

Mr. FALEOMAVAEGA. OK, thank you. In essence, Mr. Marshall, could it be fair to say that, as the official representative of the President of this Administration, the Administration does support statehood as an option?

Mr. MARSHALL. The President himself has said publicly, and I think this goes back at least to 1999, that his personal preference is for statehood. But he has also been quick to say that the ultimate decision is for the people of Puerto Rico.

So in the task force, the Executive Order didn't say please implement the personal preference of the President; it was please figure out what options the Constitution allows, and find a way to ascertain the will of the people on that question.

Mr. FALEOMAVAEGA. Thank you, Mr. Marshall. Thank you, Madame Chair.

Ms. CHRISTENSEN. Thank you, Mr. Faleomavaega. The Chair now recognizes Mr. Burton for—I welcome you to the hearing, and recognize you for five minutes.

Mr. BURTON. Well, thank you very much. I have been for Puerto Rican statehood for a long time, and I believe this bill provides a mechanism through which we can ascertain what the people of Puerto Rico want. And then it also provides a mechanism to get us to a vote in the Congress regarding statehood.

So I don't have a long statement, other than to say I would like to see the next generation of children in Puerto Rico grow up to be United States citizens, and Puerto Rico to be the 51st state. And with that, I will shut up.

Ms. CHRISTENSEN. The Chair now recognizes Ms. Bordallo for five minutes.

Ms. BORDALLO. I have no further questions. If I could, I would like to yield my time to Mr. Serrano. Can I do that?

Ms. CHRISTENSEN. Certainly.

Mr. SERRANO. Thank you so much. Thank you. First of all, Madame Chairwoman, and to the Members of the committee, I thank you for the opportunity to participate, and I thank you for the opportunity that you have given us by having this hearing.

This indeed is a very important hearing, because you can't discuss this subject enough. In fact, we have been discussing it for over 100 years. And one of these days we are going to come to a conclusion.

I want to, from the onset, be very clear, as I was at the last hearing. When I introduced H.R. 900, I did it because H.R. 900 brings about the solution in the way that I think is right, not only for the people of Puerto Rico, but also for this Congress and the people of the United States. For you see, I find myself in a unique situation.

I was born in the Commonwealth, but I am a Member of the Congress of the United States. And so, at any given moment, I see Puerto Rico, its political status, as a Puerto Rican. But at the same time, I can see its political status as a Member of the U.S. Congress.

And as a Puerto Rican, I think it is not proper that 108 years later we are still a colony of the United States, a territory. But I can also tell you that, as an American Congressman, I think it is pretty embarrassing that my country still has a territory in the Caribbean in 2007.

And so to me, this bill resolves those needs that I have, both as a Puerto Rican and as a Member of Congress, to deal with this issue.

Interestingly enough, what the bill does is something that speaks to what Mr. Wicker, who is not here, spoke to before. The bill asked the public very clearly, do you wish to remain as you are, or change your relationship to the United States. Those who say that my bill opposes commonwealth have not given me credit for having to compromise my beliefs in the first part of the bill by allowing the question, do you wish to remain a colony of the United States. That is what it says.

If they vote to change, then I think the only logical, sensible, and legislatively moral question should be, do you want to integrate into the Union, or do you wish to separate from the Union. Again, those who oppose our legislation say that I give no break, no opportunity for an enhanced commonwealth status.

Well, I answer in two ways. I will support any option that ends the colonial status of Puerto Rico. An enhanced commonwealth, as presented in my sister's, Ms. Velázquez's, bill does not accomplish that.

But there is an enhanced commonwealth. It exists already, and it is in my bill. It is called free association. It is one of the independence options, to negotiate a new status which will allow Puerto Rico and the U.S. at any moment to pull out of the relationship, but which could give the people of Puerto Rico sovereignty within a relationship with the United States.

Now, this is not something I made up. Statehood is recognized internationally as giving people sovereignty. Independence is recognized internationally as giving people sovereignty. And as associated, or free association, is internationally recognized as sovereignty.

You cannot, at this stage of the game, come back to the people of Puerto Rico, after a process, and say I offer you to remain a colony. I offer you the opportunity not to vote for a President. I offer you the opportunity not to elect your own President. I offer you the opportunity not to have Members of Congress with a vote representative of your island, and I don't give you the opportunity to elect your own Congress on the island. That is morally improper to come back.

It also attacks everything we stand for. How can we continue to promote our brand of democracy through the Caribbean and through Latin America, and indeed throughout the world, and hold a colony for 108 years?

Mr. Wicker spoke to a very interesting point. He said my bill is unfair because the final decision will be made by the two options that are so opposed to each other: statehood and independence. Not true. It is possible that statehood and independence are totally in agreement, because they are the only two options that end the colo-

nial status of Puerto Rico. Either way, statehood or independence ends that colonial status.

And so, as we sit here today, in recognition of something I said before, I am the leader of a movement that has one member: me. Which is statehood or independence. For years Puerto Ricans I think have made the mistake on the island of being for something; for independence, for statehood, for this, for that. That is a mistake. I think what Puerto Ricans should do is be against something, jointly, together be against the colonial status.

But interestingly enough, even those who support the commonwealth are against the commonwealth, because they don't support this commonwealth. They support a letter to Santa Claus, guaro ferere llamado, saying give me all of these things which will make me look like a state, without the responsibilities of a state. Give me all of these things that will make me look like an independent nation, without really being independent.

My friends, it is time to just reach a conclusion. And my conclusion is that what is good for the people of Puerto Rico is good for the people of the United States. The United States cannot hold a colony in 2007. Puerto Rico cannot be a colony in 2007.

And in concluding, my bill agrees with the other bill in only one way. I am very happy that they accepted the well known Serrano Amendment, which would allow those of us born on the island who reside in the 50 states to be able to vote in this vote.

And I know that that is a controversial issue, but here is my issue, here is my point. Puerto Ricans moved out of Puerto Rico not because they bothered them or because the palm trees were a problem, or because the beaches were too hot, or because the sand bothered their feet. They left because there was an economic condition that created a problem, and that is why they left.

That condition was a direct result of the relationship between the U.S. and Puerto Rico. When that relationship is settled once and for all, and my bill settles it once and for all, then all the children of the colony should be able to vote.

I am not proposing later that I vote for Governor of Puerto Rico if it is a state, or that I vote for President of Puerto Rico if it is a republic. But I am proposing that this one time, in this process, all the children of the colony participate.

Mr. FALEOMAVAEGA. Will the gentleman yield?

Ms. CHRISTENSEN. The gentleman's time has expired.

Mr. FALEOMAVAEGA. Madame Chair, I believe the gentlelady from Guam gave five minutes to the gentleman from New York.

Ms. CHRISTENSEN. We have two more panels, and we have other people who have to ask questions. So Mr. Serrano was wrapping up.

Mr. FALEOMAVAEGA. I do have a very important question that I want to ask the gentleman.

Ms. CHRISTENSEN. I need to move to the, I do need to move to the next Member.

Mr. SERRANO. Thank you, Madame Chairwoman.

Ms. CHRISTENSEN. Thank you. And we did give him almost eight minutes. I ask unanimous consent that the gentleman from Florida, Mr. Díaz-Balart, be allowed to sit on the dais and participate

in the hearing. And if there are no objections, so ordered. And I now recognize Mr. Díaz-Balart for five minutes.

Mr. DÍAZ-BALART. Thank you, Madame Chair, and all distinguished colleagues, for the ability to address you today as though I were a member of this distinguished committee. This is a subject not only of great interest, but close to my heart.

I think that one thing that strikes me in analyzing the Puerto Rican reality is how there is a longing for, change is the word, because of dissatisfaction with the status quo, even from my friends who support the talalio de social over commonwealth.

In other words, what I am trying to say is that I sense, I sense a longing for a final solution, if you will; a permanent solution from the entire spectrum in Puerto Rico. And that is one thing that strikes me as unavoidable.

And so I think that we in Congress should do what we can to allow the final status, the voice of the Puerto Rican people to be heard with regard to the issue of the final status, of a final status.

And that is why I support H.R. 900. It is, I think, a very well-thought-through, amended piece of legislation that is seeking to listen to the people of Puerto Rico with a Congressionally designed framework, so that obviously there is a chance of Congressional action once the people of Puerto Rico speak. Because that is one thing to keep in mind. What we want to avoid is debate here for the sake of debate.

If we want to resolve this issue, then let us try to devise a structure where, when the Puerto Rican people speak, Congress accepts. And I have said—and my approach is somewhat different from prior speakers, both Mr. Burton and Mr. Serrano, who have very strong opinions with regard to the final decision of the Puerto Rican people. My point is I support self-determination. I support the decision of the Puerto Rican people, whatever the Puerto Rican people decide.

And as I have said, once the Puerto Rican people speak, there will be no one in this Congress who will be more adamant, stronger in defense of their decision, than me. But I don't think it is proper for me, as a non-Puerto Rican, to have an opinion with regard to how the people of Puerto Rico should speak, should decide this issue.

I do think this is a fair, Congressionally designed framework for their decision, though. And it says are you for status quo? And it is very respectable. In my view, it is a very respectable option, status quo.

But if not, if you are for a permanent, non-territorial solution, then you have the option of expressing so, and ending the territorial reality, which is the status quo. In other words, this is realistic, in my view. In addition to realistic, a well-thought-through, appropriate, Congressionally designed vehicle framework for a final decision by the people of Puerto Rico with regard to their status.

Congressman Fortuño has worked as I have seen few Members in my 15 years here ever work an issue. In my 15 years here, I don't remember ever meeting a Congressman, a representative, who has worked an issue so diligently, so intensely, so passionately, with arguments that are persuasive; logical, respectable ar-

guments that respect all his colleagues, and have the effect of persuading them, as Mr. Fortuño has done and continues to do.

And I know that Congressman Serrano and I often don't agree. But on H.R. 900, we agree. And I simply want to reiterate, Madame Chair, my respect for the people of Puerto Rico. My best wishes for them. And that I think that this Congress should provide them the respect and the deference of this Congressionally designed framework to let them decide on a final status decision. That is why I support H.R. 900. Thank you very much.

Ms. CHRISTENSEN. Thank you, Mr. Díaz-Balart. The Chair now recognizes Mr. Kennedy for five minutes.

Mr. KENNEDY. Thank you, Madame Chair. I think the greatest evidence to where we are today, as to where Puerto Rico is politically, is the fact that Puerto Rico cannot decide to even decide what to do, without coming to Congress first.

The proof is in the pudding. You are here before us. If you were so sovereign, why not just go and do this? Why bother with us?

The fact is, you can't. Because you are under the United States of America's jurisdiction, so far as the Constitution is involved in the Territorial Clause. And you can put as many plebiscites of your own on the ballot, but they are not worth the paper they are written on if the U.S. Congress doesn't sanction them.

Now, I don't like that any more than you do. And that is why I am behind the Serrano bill. Because I think it is about time that the U.S. Congress actually sanctioned an election where the people of Puerto Rico finally have a choice about their future; where they do not have to wonder whether this plebiscite is going to mean anything, because it is just a mockery of the political process, because everybody knows that it will have no real effect because it isn't sanctioned by Congress. And Puerto Ricans can do whatever they want, but it is not going to mean anything if the U.S. Congress doesn't OK it.

That is why we are here today. Because the U.S. Congress has to give a Federal acknowledgment and OK to this plebiscite for it to be a constitutionally recognized process, by which Puerto Rico then takes the next step for it to choose among those constitutionally recognized options of free association, independence, or statehood.

So people can argue whatever position they would like to argue about Puerto Rico's political status of being a co-equal here, but it seems to me they do not have co-equal footing if they are really at the mercy, if you will, of a Congress where they only have one vote as a Member, where they should have six others if they were a state, for example. Where they do not have the representation that they would otherwise have. And where, frankly, they will not have any say over whether they have the choice or not until Congress says they have the choice. That is pretty insulting.

I find it offensive that they have to wait on us to give them the choice to decide themselves as to whether they have a future or not. So I would like to ask Mr. Marshall to explain, because I think there has been some question here as to how the whole process was arrived at, at which commonwealth was determined to be unconstitutional. Could you take us through that process, as to how, you

know, what the legal process is by which you determined that commonwealth was unconstitutional?

Mr. MARSHALL. Let me first start by clarifying in response to some earlier questions that our view is not that commonwealth is unconstitutional; our view is that a provision that couldn't be changed without the mutual consent of Puerto Rico and the United States, commonly known as new commonwealth or enhanced commonwealth, is unconstitutional.

With regard to that status, the report lays out in some detail what that status means, what the prior view of the Justice Department is, and what the current view is. And then it outlines the reasons for that view. There are also several appendices to the task force report that include much more extended analyses by the Clinton Justice Department.

The short answer is that one Congress is generally not able to bind a future Congress, and that general rule applies to Congress's regulation of territories under the Territory Clause.

Mr. KENNEDY. So that if Puerto Rico wants to have any sovereignty, permanent sovereignty, it could not bank on a commonwealth status, because that status would change in any given Congress if that future Congress decided to change the status.

Mr. MARSHALL. Correct.

Mr. KENNEDY. That is a pretty telling reason why commonwealth does not work as a permanent status. Thank you.

Ms. CHRISTENSEN. The gentleman's time has expired. Thank you, Mr. Kennedy.

The Chair now recognizes Ms. Sanchez for five minutes.

Ms. SANCHEZ. Thank you, Madame Chair. And first let me thank you for allowing me to sit up here with this committee today.

My interest in Puerto Rico, aside from the fact that of course I am Latina, and so I love everybody south of here, but in particular because sitting as one of the Ranking Senior Members of the Armed Services Committee, it just always amazes me what Puerto Ricans are doing for our country.

I just went in March, the beginning of March, to Iraq. And there was a group, large group, led by a woman, Puerto Rican, but all of them were from Puerto Rico, who were going out every night and finding the IEDs on the roadways, clearing the roadways in Iraq so that our troops could travel the next day. I mean, really difficult and dangerous work. And there were the Puerto Ricans.

And I remember the Vieques challenge that we had a few years ago, and the fact that our colleague at the time didn't even have a vote of what was going on, and what we were trying to do. And the Navy pulling out, and the devastation of the economy, the local economy for Puerto Rico.

And do you know, there wasn't anything that could be done here, in a sense. Because really, it is, in a sense, Mr. Serrano, a colony, as you have said before.

So we have this great group of people who are U.S. citizens, but really don't have a say. And, you know, I am born and raised and have grown up in California, so I am a statehooder in that sense. That is what I come from, that is the background I have. I know myself as the rights we have as the great State of California. But

at the same time, I would be remiss to tell Puerto Ricans what they should look like. And I understand that.

So I want you to have that vote to decide what you want to be, with respect to the United States. And I hope, because I know that the Congress has to do it, I hope that we can get that done. Because this issue has been here in the 11 years that I have been in the Congress, and still no resolution to it.

I have just one question for Mr. Marshall, if you will. Can there be a commonwealth status not subject to Federal Territory Clause powers? I am trying to understand why we would put up a vote on something that can be impacted by the Federal government, where even this island doesn't have a vote.

So can there be a commonwealth status not subject to Federal Territory Clause powers?

Mr. MARSHALL. No, unless Puerto Rico were made a state and decided to call itself a commonwealth, like Virginia has.

Ms. SANCHEZ. So is commonwealth status, as described in my good colleague's bill at H.R. 1230, a real possibility? Is that a real possibility? Or are we just putting out something to the people of Puerto Rico that really is not going to work?

Mr. MARSHALL. Your description is correct as to what that bill calls new commonwealth status. New or modified, sorry.

Ms. SANCHEZ. New modified?

Mr. MARSHALL. The bill's language is new or modified commonwealth status. And your description is correct as to that.

Ms. SANCHEZ. So would you consider that to be misleading? I mean, I want the Puerto Ricans to have a vote. I just would feel badly if we, as a Congress, sanctioned something, and had them vote on something; or they thought they could vote on something that then they would turn around and we would do nothing with, or we would say it is unconstitutional, we are not going to do that, or you can't have unilateral power on this.

Is something like H.R. 1230 then misleading, if one would take a vote on that?

Mr. MARSHALL. It is inaccurate and unclear, and it could cause confusion.

Ms. SANCHEZ. OK. Just trying to figure out the differences and what it means for us.

I would like to thank you, Mr. Marshall. I missed your testimony earlier, but I, for myself, am trying to figure out how we get this done and find some common ground. Thank you.

Thank you, Madame Chair, for the time.

Ms. CHRISTENSEN. Thank you, Ms. Sanchez. I ask unanimous consent to include the written opening statement of Mr. Serrano for the record. OK. You have other statements, OK. I recognize you to enter the statements.

Mr. SERRANO. Madame Chairwoman, I have a statement from my colleague from the Bronx, New York, Representative Eliot Engel, in support of H.R. 900 that I would like to turn over to you.

Ms. CHRISTENSEN. Without objection?

Ms. SANCHEZ. Madame Chair?

Ms. CHRISTENSEN. Ms. Sanchez?

Ms. SANCHEZ. May I also submit an opening statement for the record?

Ms. CHRISTENSEN. Yes, without objection. For Fortuño?

Mr. FORTUÑO. Yes. Mr. Don Young from Alaska will not be able to join us, but he asked me to ask for unanimous consent to introduce his written statement into the record.

Ms. CHRISTENSEN. Without objection, so ordered.

Mr. FORTUÑO. It is in support of H.R. 900, as well.

Ms. CHRISTENSEN. Thank you. Without objection, so ordered.

[The prepared statement of Mr. Young follows:]

Statement of The Honorable Don Young, Ranking Member, Committee on Natural Resources

First off, I welcome my many friends and the distinguished leaders from Puerto Rico who have traveled so far to be here with us today.

Thank you all for coming:

- The Honorable and current Governor Aníbal Acevedo-Vilá, also a former Member of Congress;

The distinguished former Governors:

- The Honorable Pedro Rosselló;
- The Honorable Rafael Hernández-Colon; and
- The Honorable Carlos Romero-Barceló, also a former Member of Congress.

I also warmly welcome my fellow legislators:

- The Honorable Kenneth McClintock, President of the Puerto Rican Senate;
- The Honorable José Aponte-Hernández, Speaker of the Puerto Rican House of Representatives;

And their distinguished counterparts:

- The Honorable José Dalmau-Santiago, Senate Minority Leader; and
- The Honorable Héctor Ferrer Ríos, the House Minority Leader.

Finally, I welcome all of our other distinguished witnesses, including from President Bush's Administration, The Honorable Kevin Marshall, Co-Chair of the President's Task Force on Puerto Rico's Political Status and Deputy Assistant Attorney General.

Thank you all for making a very important day in Puerto Rico's and the United States' history.

Madame Chairwoman, thank you for holding this second hearing on the political status of Puerto Rico and to consider H.R. 900, "The Puerto Rico Democracy Act of 2007" of which I am a proud co-sponsor, a bill authored by my good friend, Mr. Fortuño, the Ranking Republican of this Subcommittee on Insular Affairs, and Congressman Jose Serrano (D-NY).

Now there is an alternative bill, H.R.. 1230; but I believe it is not a realistic alternative.

As I stated at the previous hearing on March 22, I believe H.R. 1230 is "DOA-Dead on Arrival" in this Congress.

It is constitutionally flawed and it is politically flawed.

H.R. 1230 would give Puerto Rico a chance to have a "new Commonwealth" status that gives it all the benefits of statehood but without the same application of federal law as all other states must bear.

As my good friend from across the aisle Mr. Serrano pointed out at the last hearing, there are 435 Members of Congress who would want the same deal.

It's just not possible to move that bill thru this House and the Senate.

I have been a strong supporter of Puerto Rico for a long, long time.

In the 105th Congress, I sponsored a bill, H.R. 856, to resolve the political status of Puerto Rico.

After three Committee hearings, including two in Puerto Rico, the Committee passed the bill, and so did the House.

While H.R. 900 is somewhat different from the bill I sponsored in 1997, it conforms to my basic goal, which is to enable the people of Puerto Rico to determine their status in a manner that is democratic and consistent with historic, legal, and constitutional precedents.

The opportunity for Puerto Rico to move forward, however its citizens may choose, is here now and is embodied in H.R. 900.

If Puerto Ricans wish to seize democracy today, and exercise their rights to choose their destination, whatever that might be, then embrace and support a bill that can move the self-determination process forward for all Puerto Ricans.

And win, lose, or draw; or rather, commonwealth, statehood, independence, or free association, Puerto Rico will have the best democratic process available for everyone to participate in-and not one for just a handful of convention delegates.

Thank you Madame Chairwoman.

Ms. CHRISTENSEN. I would like to thank the witness for his valuable testimony, and the Members for your questions and you for your answers, Mr. Marshall. Members of the Subcommittee may have some additional questions, as you have heard, and we will submit them to you in writing, and we would ask for you to respond in writing.

You are now excused, Mr. Marshall, and I would like to recognize the second panel of witnesses.

On the next panel will be The Honorable Aníbal Acevedo-Vilá, the Governor of the Commonwealth of Puerto Rico, and also the President of the Popular Democratic Party. Also, Mr. Rubén Berríos-Martínez, President of the Puerto Rican Independence Party. And finally, The Honorable Pedro Rosselló, former Governor and current Senator, as well as the President of the New Progressive Party.

The Chair, if we are settled, the Chair would now recognize our former colleague, The Honorable Governor Aníbal Acevedo-Vilá, to testify. The timing lights will indicate when your time is concluded. And your formal, full statement will be submitted for the hearing record.

STATEMENT OF THE HON. ANÍBAL ACEVEDO-VILÁ, GOVERNOR, COMMONWEALTH OF PUERTO RICO AND PRESIDENT, POPULAR DEMOCRATIC PARTY

Mr. ACEVEDO-VILÁ. Thank you, Madame Chairman. Thank you for this kind opportunity, and it is really a pleasure to be back in Congress and now testifying on these important issues as Governor of Puerto Rico, and also as the President of the Popular Democratic Party.

As you just mentioned, my written statement is already part of the record, and I will make reference to some part of it. And now, in my written statement I wasn't addressing too much about the White House Task Force report, because that was an issue that has been discussed a lot in the past. But I have to say that after what I have heard just today, I have to make some expressions about that report.

Number one, it is a report that nobody knows how many meetings they had, if they ever met as a group, what kind of internal discussions they had. It didn't go through OMB or any other agency.

Number two, no public hearings nowhere. Just some private meetings in Puerto Rico. And then, when Mr. Marshall was asked by Congresswoman Velázquez why the report was so simplistic, so shallow, his answer was because we were thinking about the audience. And I can only imagine two audiences of that report: this Congress and the people of Puerto Rico. So I take that, as a former Member of Congress, as an insult, and as the Governor of Puerto Rico, as an insult to the people of Puerto Rico. The report was sim-

plistic because apparently we cannot read and understand complex issues with legal arguments.

But then, when he was asked by Congressman Faleomavaega, now we discover that he doesn't know the difference between an unincorporated territory and incorporated territory. So in terms of that report, which is the basis of H.R. 900, I will use an expression we use in Puerto Rico, in Spanish. [Spanish phrase.] That is the seed of this process. A report that had to be written simplistic because apparently maybe Congress or the people of Puerto Rico would not have understood it if it was more complicated or more elaborated.

So I think that in terms of what you have heard today really, really—and then we go to H.R. 900. And the way the votes are counted, every plebiscite has been held in Puerto Rico has been won by commonwealth. You might think that that is a mistake that the people of Puerto Rico voted for that. So now, since there is no way that can statehood win, what they are proposing is let us add the second and the third place jammed in together, so we can defend the first place, and then we will have a runoff election between the second and third place. That is not only undemocratic; that is un-American. I have never heard of a runoff election between the second and third place.

And then, in terms of all those legal arguments about commonwealth, whether it is constitutional or not constitutional, mutual consent, let me first say that until 1991, the position of the Department of Justice was that it was constitutional; that you could agree mutual consent clause. And then that changed. Did the Constitution change? Do we have a different Constitution now than the one we had in 1990, 1989, 1987, 1970? So that just points out that this is basically an issue of political will.

And I have quoted, and I am going to take some time to quote some, some of them, some important callers. And yes, they have written, and I invite all of you to read them, because I believe you can understand them, and you can have a good discussion about what those callers says.

Professor Alexander Aleinikoff, Dean of Georgetown Law School, actual Dean today, published this book in 2002. And he says, "The commonwealth opponent reasoning seems to be this. The United States Constitution knows only the mutually exclusive categories of state and territory. States and full and equal members of the Union, but territories are subject to plenary Federal power. Such plenary power may be surrendered only by moving outside the territory clause by granting statehood or independence."

And then he says, to me what is a challenge to this Congress, "The infamous insular cases recognize the need for Congressional flexibility in handling the unanticipated situation of empire. When flexibility is now by mutual consent of Capitol and former colony exercised to restore dignity and self-government, why should Congressional power suddenly be read narrowly?"

And more specifically, he asked Congress, "The question is whether we can think of solving two notions of sovereignty that permit overlapping and flexible arrangements attuned to complex demands of enhanced autonomy with a broader regulative system

of generally applicable constitutional and human rights and norms."

Responding that, if both Congress and the people of Puerto Rico seek to establish a new relationship that recognizes space within the American constitutional system for autonomous, it will behoove either the Executive Branch or the Judiciary to set such efforts aside in the name of 19th century conceptions of sovereignty.

The Constitution should not be read out of fear and loathing of new understandings of sovereignty, to prevent promising power-sharing arrangement that provide space for political and cultural autonomy.

And Professor Michael Weisman from Yale University says, "The barriers to enhanced commonwealth status are more political than legal." It is said also by Professor Pildes from NYU that testified before this committee, I think it was last month. So this is basically a political argument, not a legal argument.

If you want, if Congress wants to force the people of Puerto Rico to vote for statehood, even though you are not making a compromise to grant it, just say so. That is H.R. 900. It will force the people of Puerto Rico to vote for statehood. But don't use the Constitution as an excuse for that.

But if you are going to do that, then tell the people of Puerto Rico whether we can have a state in which Spanish is the main language in public schools. I learned that Puerto Rico was discovered by Christobal Colon, not Christopher Columbus.

A judicial system that is in Spanish, if one Member of this Congress has an accident in Puerto Rico on the roads, and for some reason have to go to court, that case is going to be in Spanish. We will give you a translator.

So if you are going to force the people of Puerto Rico to vote for statehood, then you have to respond to those questions before the people of Puerto Rico exercise their right of self-determination.

Thank you.

[The prepared statement of Mr. Acevedo-Vilá follows:]

Statement of The Honorable Aníbal Acevedo-Vilá,
Governor of the Commonwealth of Puerto Rico

Good afternoon, Madam Chairwoman and members of the Committee. Once again, I come before you to talk about the political and constitutional relationship between Puerto Rico and the United States. Very briefly, I want to put into perspective the concrete proposals and recommendations I will make today regarding the two bills pending before this Congress: H.R. 900 and H.R. 1230. As Governor of Puerto Rico, it is my obligation to place the current debate in the right context, to help the Committee overcome the temptation of rushing to conclusions that may bring bigger problems to Puerto Rico and the United States in the long run.

For more than a century, Puerto Ricans have lived through a challenging and emotional debate about our political relationship with the United States. However, outside of the 1950-52 process which led to the adoption of Commonwealth status, the relationship between Puerto Rico and the United States has largely been absent from the U.S. national debate, and has produced no movement here in Congress.

For this, Puerto Ricans have paid a high price. Some political parties on the Island have taken full advantage of the situation, basing their existence almost exclusively on their stance regarding status. They have gone so far as to manipulate the process toward their preferred option or to halt progress when they feared the final outcome would not favor them. Now, as the statehood party moves aggressively to re-open this debate in Washington, Congress is placed in a difficult position. Should you repeat the same mistakes of the past, the result is clear: the full array of tricks will be played to reach that party's preferred outcome.

So, after many years of discussion about the right to self-determination of the people of Puerto Rico, there are some principles that we should respect. Every citizen should have an equal say. The system for determining Puerto Rico's political status should be fair and unbiased. Each political status option must be considered on the same footing. And the clear choice of the people should win. That, Madam Chairwoman, is the true definition of democracy.

Today this Congress has before it two fundamentally different approaches. One repeats the same mistakes of the past, allowing and even encouraging the same Puerto Rican political parties to play trick politics with Congress and the people of Puerto Rico. The other brings to the table a new and totally fair process, open equally to all options, putting power in the hands of the people themselves, as opposed to the local political parties.

Let me first discuss H.R. 900, the pro-statehood bill that is "more of the same."

In previous plebiscites to determine the Island's future, participation from our citizens has been high. And for more than five decades, the winner in each referendum has been Commonwealth. Now, the same people who could not convince the citizens of the Island to vote for statehood, are trying—again—to change the rules of the game, crafting a system to force statehood upon Puerto Rico. Rather than give every Puerto Rican an equal opportunity to have his or her voice heard, these statehood advocates have designed a series of referendums that would distort the will of the people.

Supporters of Commonwealth have held a narrow but notable edge over the second-place finisher, statehood, for decades, with the smaller independence movement finishing third. H.R. 900 proposes a two-stage vote. In the first round, our citizens would select either a continuation of an ill-defined Commonwealth or a category that combines statehood and independence.

That would create a merger between those two fundamentally opposite parties and options, with the goal of building a tiny majority over Commonwealth. Once Commonwealth has been knocked out, voters would then choose between only statehood and independence, with statehood assuredly winning. The math is very simple. If you add the second place—statehood—to the third place—independence—then you can fabricate an artificial majority. And that helps eliminate the true popular choice of the people, Commonwealth.

This is the first time I have seen a process in which the run-off election would be held between the second and third place! To support that plan would be destructive and anti-democratic.

It is time for a new, and better, approach. An approach that is fair to everyone and removes the total responsibility and control from the hands of the political parties. This is why I recommend that we entrust the people of Puerto Rico to organize a Constitutional Convention, as proposed by H.R. 1230. This gathering would represent the true will of our citizens, not the political parties determined to promote their own factional interests, even at the expense of fairness or respect. The delegates would be free to consider proposals, eventually proposing an ideal solution to our citizens and then to Congress.

Congress would retain the right to approve, negotiate, modify, or simply reject the proposal coming from the Constitutional Convention. But it would also have the obligation to do the right thing—to assure that it respectfully considers the option presented, and recognizes the Convention's right to propose such an alternative.

In contrast, if Congress decides to define the status options for Puerto Rico, then it has no choice but to follow principles of honest statesmanship and fair play. It would be senseless to do otherwise. If you yield to the tricky games proposed by some politicians, the process will lose credibility, or worse, die stagnated.

As you know, one of the first tricks to come out of the bag in the partisan-driven debates on Puerto Rico's political status is typically camouflaged in legal wrappings. The argument is that that Commonwealth, which historically has been preferred by Puerto Ricans, has no place in the American constitutional framework; that the Constitution is so rigid and formalistic that, just as we if we were living back in the late eighteenth century, it can deal with nothing but states and traditional colonies; that, accordingly, the United States cannot constitutionally produce new arrangements to meet the country's emerging needs. That is the basic premise of the White House Task Force report and of H.R. 900.

I feel a particular need to address this issue today, since it collides head-on with many years of opinions from the best legal minds in the United States. From Judge Magruder in Mora v Mejía, to Justice Breyer in Córdova & Simonpietri, to Justice Brennan in Calero Toledo to so many other landmark decisions. And now, as the new century unfolds, top modern thinkers and scholars are following that same line or analysis. For example, Dean Alexander Aleinikoff from Georgetown Law School,

in his 2002 book, Semblances of Sovereignty, devoted an entire chapter to the Commonwealth of Puerto Rico. He wrote:

The (Commonwealth Opponents') reasoning seems to be this: the United States Constitution knows only the mutually exclusive categories of "State" and "Territory." States are full and equal members of the Union, but territories are subject to plenary federal power. Such plenary power may be surrendered only by moving outside the territory clause by granting statehood or independence. To recognize congressional power to create new categories—such as "enhanced commonwealth"—violates the structure of the Constitution and potentially weakens the position of the states..."

Rejecting that approach and making an implicit challenge to Congress, Aleinikoff states: *"The infamous Insular Cases recognized the need for congressional flexibility in handling the unanticipated situation of Empire. When flexibility is now, by mutual consent of capital and former colony, exercised to restore dignity and self-government, why should congressional power suddenly be read narrowly?"*

And more specifically he asks Congress: *"the question is whether we can think ourselves into notions of sovereignty that permit overlapping and flexible arrangements attuned to complex demands of enhanced autonomy with a broader regulative system of generally applicable constitutional and human rights norms," responding that "if both Congress and the people of Puerto Rico seek to establish a new relationship that recognizes space within the American constitutional system for "autonomous" entities, it ill behooves either the executive branch or the judiciary to set such efforts aside in the name of nineteenth-century conceptions of sovereignty...The Constitution should not be read—out of fear and loathing of new understandings of sovereignty—to prevent promising power-sharing arrangements that provide a space for political and cultural autonomy."*

Similarly, in a recent memorandum, Professor W. Michael Reisman, Professor of International Law at Yale (2006), states:

"Yet in the late twentieth and early twenty-first century, all three branches of the U.S. federal government maintain legal positions on Puerto Rico rooted firmly in a nineteenth-century paradigm of international law....This binary division (between states and territories),...is in fact, anachronistic: It neither accurately reflects nor properly accommodates the diverse political arrangements embodied in the freely associated state of Puerto Rico, the CNMI, and the FAS. Legally created at a later date, those arrangements better represent current law."

And Reisman further concludes: *"Should Puerto Rico decide that an "enhanced" commonwealth status best serves its long term interests, U.S. constitutional law, to our view would likely be able to accommodate that arrangement...; the barriers to enhance commonwealth status are more political than legal."*

Another scholar, Constitutional Law Professor Richard Pildes from NYU testified recently before this same committee that *"were the United States Congress and the people of Puerto Rico to prefer expanding the existing Commonwealth relationship, in a way that provides greater autonomy for Puerto Rico on the basis of mutual consent, it would be unfortunate, even tragic, for that option to disappear due to confusion or error about whether the Constitution permits Congress to adopt such an option."*

And he clearly concludes: *"Congress does have the power, should it choose to use it, to enter into a mutual-consent agreement that would create and respect more autonomous form of Commonwealth status for Puerto Rico, in which Congress would pledge not to alter the relationship unilaterally."*

Finally, Charles Cooper, a former head of the Office of Legal Counsel of the U.S. Department of Justice, in a recent memorandum stated that *"there is no support for a reading of the Constitution that unnecessarily restricts the political arrangements available to the President and Congress in fashioning binding consensual solutions to the Nation's relations with the people of its territories," and that "the relevant Supreme Court cases confirm that Puerto Rico's commonwealth status is predicated upon a binding compact, created through the mutual consent of the sovereign parties and revocable, only by mutual consent of the parties."*

As you can see, in the last five years, many distinguished constitutional law scholars have rejected the basic assumptions of H.R. 900. Each of them has re-validated the 1914 vision of later Justice Felix Frankfurter that *"the form of relationship between the United States and unincorporated territory is solely a problem of statesmanship.... Luckily, our Constitution has left this field of invention open."*

Members of Congress, with that in mind, if you want to impose upon the people of Puerto Rico a petition for statehood, without any commitment to grant it, H.R. 900 accomplishes that. And if you seek to deprive the people of Puerto Rico of a valid Commonwealth option, H.R. 900 does that as well. But please do not use the Constitution as an excuse. Be straightforward, and just say that you support imposing statehood on my people of Puerto Rico, even against the expressed will of

our four million citizens, as H.R. 900 pre-determined outcome intends. But if you want to be fair and creative, discard anachronisms, offer our residents a true process for self-determination and deal with this issue with statesmanship, I recommend H.R. 1230 is right alternative.

In any case, if the future of the Commonwealth is to be subjected to a legalistic, why-not scrutiny, what shall we expect regarding statehood? Many issues come to mind: Are we planning to entitle the fifty-first state to keep forever the Spanish language as its principal language in public schools, in the local courts and in everyday business? Would it be kept immune from the English-only movement? Is the United States ready and willing to accept into the union a distinct society with all the sociological characteristics of a nation like Puerto Rico? What about federal income taxation? How will the federal income taxation system apply in Puerto Rico? Is the local system to be dismantled? If so, how is the government of the fifty-first state to be financed? If you choose to support the statehood bill, H.R. 900, the people of Puerto Rico will deserve, and demand, clear answers to these and many other questions.

Madam Chairwoman, the tricks of H.R. 900 are more than tricks: they are the poison pills that, in the past, account for the death of processes like this one. Our people have rejected statehood over and over, but statehood supporters have returned again and again—adjusting their approach, rephrasing their rhetoric or making minor changes to their proposal, with hopes of obscuring the flaws of their intentions.

It's time for something better, for Congress to decisively help Puerto Rico overcome the status dilemma through a fair and unbiased process. If you are serious about meeting that goal, I urge you to approve H.R. 1230.

Ms. CHRISTENSEN. Thank you, Governor. It is an honor to have you before us again this afternoon.

The next person that we would recognize for five minutes is Mr. Berríos-Martínez of the Puerto Rican Independence Party.

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

Mr. BERRÍOS-MARTÍNEZ. Madame Chairwoman and Members of the Subcommittee and other Members of Congress, today I speak before you not only as President of the Puerto Rican Independence Party, but as a member of the Latin-American Committee for Puerto Rican Independence, representing 33 living political parties of the region, 15 of which are in government, as is the case, for example, of Chile, Argentina, and Brazil.

I quote The Honorable Martin Torrijos, President of Panama, in his address to the Latin-American Congress in support of Puerto Rican independence held last November, and which elected the Latin-American Committee.

I quote. "Puerto Rico is the only Hispanic-American nation that remains under colonial regime. For Latin-Americans, correcting this anomaly must be a matter of principle and a priority of continental proportions. What remains is to agree on whatever is necessary to concrete the Puerto Rican right to constitute an independent republic; to agree as soon as possible on a transition schedule that will, once and for all, solve the problem in a dignified and efficient manner for all involved. Latin America can offer its good offices, promote that agreement, and guarantee compliance for that schedule." I end quote.

Puerto Rico's colonial status constitutes a problem of hemispheric dimensions. Congress is now considering H.R. 900 and H.R. 1230. Any bill that, like H.R. 900, proposes a referendum that includes statehood is doomed to failure. Statehood is a poison pill. Even though you may not publicly admit it, you know that Congress, and

particularly the Senate, will not approve a law that implicitly promises statehood for Puerto Rico.

H.R. 1230, on the other hand, is fatally ambiguous as to the nature of existing relationship. How can you decolonize if you are not willing to recognize the existence of the colony?

The Puerto Rican Independence Party proposes a consensus alternative to both bills. First, a yes-or-no referendum on the following question: Do you want Puerto Rico to have a non-colonial, non-territorial, fully democratic sovereign political status, instead of the present or any other territorial status? This first step, contemplated in H.R. 900, is absolutely necessary.

Commonwealth is the problem, and thus, it cannot be the solution. We must unambiguously put an end to ambiguity.

Second. Congress should express its commitment that once the territorial option is discarded, it will respond promptly to the status option that is chosen by the people of Puerto Rico through a sovereign constitutional convention, convened under the laws of Puerto Rico, among alternatives recognized by international law. By definition, such alternatives exclude not only the present status, but also any form of modified territorial commonwealth status.

Needless to say, the Puerto Rican people have an inherent right to convene a constitutional convention at any time, without the prior approval of Congress. And if the choice were for independence, Congress must not only respond, but it is obligated to grant such a request.

Third. If within a period of six months after the referendum, a sovereign constitutional convention is not convened, is not convened, the President of the United States, in consultation with representatives of the Puerto Rican people, shall, within an additional six-month period, recommend fast-track legislation to Congress. In this legislation Congress would be required to discharge its obligation so that the people of Puerto Rico can exercise their inalienable right to self-determination and independence. The Presidential recommendation could include, among others, one or several referenda in which one or various alternatives would be presented.

In 1950 to 1952, the United States engineered the process of consent to colonialism through a yes-or-no referendum in order to justify and legitimize territorial status. Now, as then, your interests dictate your policies; but now, U.S. interests in Puerto Rico have changed, and commonwealth, an undemocratic, bankrupt status, serves no useful purpose to anyone.

Moreover, commonwealth breeds dependency and statehooders, and Congressional inaction regarding Puerto Rico will inevitably lead to an unwanted statehood petition, sooner rather than later. Now you must undo your own deed. Now it is time to dispose of the territory. Now you need a process to end colonialism.

To summarize, the first referendum proposed in H.R. 900 is a critical step in the right direction. It is the essential element contained in both the Serrano bill and in the White House Task Force recommendations. After all, the White House also knows that a bill that promises statehood has no future.

Approval of a consensus bill along the lines we have proposed will do justice to the Puerto Rican people, and constitute a gesture

of good will toward Latin America that could contribute to bring about an era of mutual understanding to our hemisphere.

I have presented before you, for the record, the Panama Proclamation of Latin-American and Caribbean Countries for the Independence of Puerto Rico, and it is before you for your consideration, also.

Thank you very much.

[The prepared statement of Mr. Berríos-Martínez follows:]

Statement of Rubén Berríos-Martínez, Former Minority Leader in the Puerto Rico Senate, President, Puerto Rican Independence Party

Madam Chairwoman, Members of the Subcommittee and other Members of Congress:

Today I speak before you, not only as president of the PIP, but also as member of the Latin American Committee for Puerto Rican Independence representing 33 leading political parties of the region, fifteen of which are in government, as is the case, for example, of Chile, Argentina and Brasil.

I quote The Honorable Martín Torrijos, President of Panamá and Secretary General of the governing party in his keynote address to the Latin American Congress in support of Puerto Rican Independence held last November and which elected the Latin American Committee.

> Puerto Rico is the only Hispanic American nation that remains under a colonial regime. For Latin Americans, correcting this anomaly must be a matter of principle and a priority of continental proportions. What remains is to agree on whatever is necessary to concrete the Puerto Rican right to constitute an independent republic...to agree as soon as possible on a transition schedule that will "once and for all—solve the problem in a dignified and efficient manner for all involved. Latin America can offer its good offices, promote that agreement, and guarantee compliance and the durability of that schedule.

Puerto Rico's colonial status constitutes a problem of hemispheric dimensions that must be confronted and overcome.

Congress is presently considering H.R 900 and H.R 1230.

Any bill that, like H.R.900, proposes a referendum that includes statehood is doomed to failure. Statehood is a poison pill. Even though you may not publicly admit it, you know that Congress—and particularly, the Senate—will not approve a law that implicitly promises statehood to Puerto Rico.

H.R 1230, on the other hand, is fatally ambiguous as to the nature of the existing relationship. How can you decolonize if you are not willing to recognize the existence of the colony? Moreover, the potential efficacy of H.R. 1230 hinges on the uncertain outcome of the next general election of the Puerto Rico.

The Puerto Rican Independence Party proposes a consensus alternative.

First: A yes or no referendum on the following question:

Do you want Puerto Rico to have a non colonial, non territorial, fully democratic sovereign political status instead of the present or any other territorial status?

This first step—contemplated H.R 900—is absolutely necessary, since territorial commonwealth is the problem that must be discarded in order to arrive at a solution. Commonwealth is the problem and thus it cannot be the solution. We must unambiguously put an end to ambiguity.

Second: Congress should express its commitment that once the territorial option is discarded, it will respond promptly to the status option that is chosen by the people of Puerto Rico through a sovereign constitutional convention convened under the laws of Puerto Rico among alternatives recognized by international law. By definition, such alternatives exclude not only the present status but also any form of modified territorial status. Needless to say, the Puerto Rican people have an inherent right to convene a constitutional convention without the prior approval of Congress; and if the choice were independence, Congress must not only respond but is obligated to grant such a request.

Third, if within a period of six months after the referendum a sovereign constitutional convention is not convened in Puerto Rico, the President of the US, in consultation with representatives of the Puerto Rican people shall, within an additional six month period recommend fast-track legislation to Congress. In this legislation Congress would be required to discharge its obligation so that the people of Puerto Rico can exercise their inalienable right to self determination and independence.

The presidential recommendation could include, among others, one or several referenda in which one or various alternatives would be presented.

In 1950-52, the United States engineered a process of consent to colonialism through a yes-or-no referendum in order to justify and legitimize territorial status. Now, as then, your interests dictate your policies; but now U.S. interests in Puerto Rico have changed and "Commonwealth," an undemocratic, bankrupt status, serves no useful purpose to anyone. Moreover, Commonwealth breeds dependency and statehooders; and congressional inaction regarding Puerto Rico's territorial status will inevitably lead to an unwanted statehood petition, sooner rather than later. Now you must undo your own deed. Now is the time to dispose of the territory. Now you need a process to end colonialism.

To summarize: the first referendum proposed in H.R. 900 is a critical step in the right direction. It is the essential element contained in both the Serrano bill and in the White House Task Force recommendations; after all, the White House also knows that a bill that promises statehood has no future.

Approval of a consensus bill along the lines we have proposed will do justice to the Puerto Rican people and constitute a gesture of good will towards Latin America that could contribute to bring about an era of mutual understanding in our Hemisphere.

Appendix: The Unanimous Official Pronouncement, or "Proclamation," of the Latin American and Caribbean Congress in Solidarity with Puerto Rico's Independence (November 18-19, 2006,Panama City, Panama) is appended here to, and made part hereof.

Appendix to Statement by Rubén Berríos-Martínez
Former Minority Leader in the Puerto Rico Senate
President, Puerto Rican Independence Party

Latin American and Caribbean Congress in Solidarity with
Puerto Rico's Independence
November 18-19, 2006
Panama City, Panama

Proclamation [1]

Commemorating 180 years of the Peoples' Associative Congress of Panama called by the Liberator, Simón Bolívar, to finalize and secure our America's Independence, the Latin American and Caribbean political parties gathered in Panama City in support of Puerto Rico's Independence, and in harmony with the convocation for this event hereby

Resolve:

To *reiterate* to the World our solidarity and support for the cause of Puerto Rico's independence, an historic and principled claim of our America. Latin America and the Caribbean will not be truly independent until all its nations are.

To *create* a Permanent Working Committee for Puerto Rico's Independence [2] to coordinate and implement this Congress' resolutions.

To *establish* Solidarity and Support Committees in each of our nations to educate and create awareness regarding the need to integrate Puerto Rico, through its full sovereignty and independence, to the concert of free nations and thereby promote the best relations among the nations of this Hemisphere.

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[1] Unanimously approved by 33 political parties from 22 nations attending the Congress.

[2] The Committee was constituted by senator Ricardo Núñez, of Chile's Socialist Party; The Honorable Raúl Alfonsín, former President of Argentina; The Honorable Ricardo Alarcón, President of the National Assembly of Cuba; Horacio Serpa, of Colombia's Liberal Party; Rolando Araya, President of the Socialist International for Latin America; Gustavo Carvajal, Founding President of the Permanent Conference of Latin American Political Parties (COPPPAL); senator Hugo Rodríguez Filippi, of Uruguay's Socialist Party; Rubén Giustiniani, President of the Socialist Party of Argentina; Tomás Borges, of the Sandinista Front of National Liberation of Nicaragua; Nils Castro, Secretary for International Affairs of Panama's Revolutionary Democratic Party (PRD); Cuauhtémoc Cárdenas, of Mexico's Foundation for Democracy, Alternatives and Debates; senator Antonio Cafiero, of Argenitna's Justicialista Party and President of COPPPAL; and Rubén Berríos Martínez and Fernando Martín, President and Executive President, respectively, of the Puerto Rican Independence Party. Subsequently, an additional and final member from Brazil's Workers Party (PT) will be selected by that party and join the Committee.

To *offer* to both the Puerto Rican nation as well as the Government of the United States, our cooperation and good offices, including the role of interlocutors and the tasks to lay the groundwork that may be necessary at the several levels of the Government of the United States, leading to a Hemispheric dialogue to resolve Puerto Rico's colonial problem.

To *urge* our respective governments that the Latin American and Caribbean community of nations promotes, as a region, the General Assembly of the United Nations Organization's urgent re-examination of the case of Puerto Rico in light of new international and regional conditions.

To *espouse* by all possible means the cause of Puerto Rico's independence.

To *support* the liberation of Puerto Rican political prisoners, a claim already made by the most diverse ideological sectors of the people of Puerto Rico.

To *express* to the Puerto Rican Independence Party our support, solidarity, and recognition, upon its 60th anniversary, for its constant and selfless struggle for Puerto Rico's freedom.

Panama City
November 19, 2006

Translated by the Secretariat for North American Relations of the Puerto Rican Independence Party.

Ms. CHRISTENSEN. Thank you. And the Chair now recognizes the former Governor and current Senator, Pedro Rosselló, to testify for five minutes.

STATEMENT OF THE HON. PEDRO ROSSELLÓ, FORMER GOVERNOR AND CURRENT SENATOR, COMMONWEALTH OF PUERTO RICO AND PRESIDENT, NEW PROGRESSIVE PARTY

Mr. ROSSELLÓ. Chairwoman Christensen, Members of the Insular Affairs Committee, Members of Congress, for the record, my name is Pedro Rosselló. I have come here today to express my support for H.R. 900.

And in so doing, I have likewise come to exercise my right, under the United States Constitution First Amendment, "to petition the government for a redress of grievances."

As some of you know, perhaps all too well, my grievances are many, and in that regard I must acknowledge that I have grown a bit weary of petitioning the government for a redress of grievances. Because I have now been obliged to do it for pretty close to two decades.

Still, others have been doing it for much longer. Going back for 106 years—that is five generations of Puerto Ricans—have been petitioning Congress. And even after 106 years, we have yet to see our principal grievance redressed.

For the record, together with my testimony I have submitted a chronology of constitutional actions on Puerto Rico's status. The chronology's earliest entries pertain to the 57th Congress, which convened during 1901 to 1902. With respect to this issue, Congressional action may be a misnomer, because no final action on Puerto Rico's status has ever been taken by Congress.

Nevertheless, the topic has been broached in no fewer than 66 bills or resolutions on the House side, while in the Senate a total of 27 legislative measures have been filed.

The Constitution empowers the people of the several states that govern our nation through elected officials. But that same Constitution grants you and the other Members of Congress unilateral power to govern every resident of Puerto Rico and every other territory.

We, the people of Puerto Rico and the other territories, have absolutely no tangible authority at the Federal level, direct or indirect. Never once since 1989 has Congress deigned to inquire of the people of Puerto Rico whether they are content with this arrangement.

Congress has listened. Congress has tinkered. And Congress has tried at times to be supportive. And Congress has frequently been generous with public monies. Yet never once, since 1989, has Congress deigned to seek the consent of the governed.

The Puerto Rico Democracy Act of 2007 is only a small, single step in that direction. If enacted, though it will be an historic step because it will mark a long-overdue first step, a first step in the direction of converting a colonial empire back into a democratic republic. And let us not forget that the founders of that democratic republic committed their lives, their fortunes, and their sacred honor to a protracted revolution against the inherent inequities of colonial empire.

It has been alleged that I have occasionally waxed a little testy, a little bit testy on Capitol Hill. Perhaps that is true, and perhaps today is such a day.

For example, how, one may ask, can I justify brazenly brandishing a term so provocative as colonial empire. Well, here is how. Nowhere does the Constitution so much as imply, let alone proclaim, that the United States shall ever have the authority to betray its own revolutionary origins by acquiring and indefinitely possessing colonies.

So how is it possible that 53 years after Brown v. Board of Education we live in a land whose Supreme Court continues to hold that the civil rights of U.S. citizens can be capriciously curtailed by means of geographic segregation, just as it once shamefully embraced the validity of separate but equal as a racial segregation doctrine?

The Plessy v. Ferguson doctrine that legalized racial segregation has been dead and buried since 1954. Yet its sister doctrine of geographic segregation, promulgated by the Supreme Court in Downes v. Bidwell, incredibly to this day lives on. Somehow that judicial atrocity has survived no fewer than 106 years of steady progress on virtually every other front in America's never-ending struggle to form a more perfect union.

The exclusionary mindset manifested in Downes v. Bidwell explains how Puerto Rico has acquired the dubious distinction of being the jurisdiction that holds the all-time record for most years as an American territory.

And the questions are, what do we, the people of Puerto Rico, want. What do we, the people of the United States, want? Do we, the people, support the perpetuation of a policy of colonial imperialism? Or do we favor having our nation rediscovery its roots as a democratic republic?

Geographical discrimination is no less insidious and no less odious than any other type of arbitrary injustice. But in one important respect, geographical discrimination, what I call the American territorial ghetto, is downright bizarre.

A U.S. citizen of any ancestry, including Puerto Rican, retains the right to vote for President if he or she moves from any state

to any foreign country. A U.S. citizen of any ancestry, including Puerto Rican, acquires the right to vote in local and Federal elections if he or she establishes residence in one of the 50 states, even if the person in question was born and raised in a territory or in a foreign country.

Nevertheless, there exists one grotesque corollary to these rules. Any American citizens who relocate from a state to a U.S. territory is immediately stripped of all political rights at the Federal level. This person automatically loses the right to vote for President, loses the right to voting representation in Congress, and loses the protection of the full panoply of civil rights that the Constitution guarantees to citizens residing anywhere else.

Even though the stars and stripes flies over Puerto Rico, an American citizen's full constitutional rights are summarily denied entry there. It was this outrageous catch-22 that prompted me, six months ago, to deliver a petition to the Inter-American Commission on Human Rights, a body that was created by, and which reports to, the Organization of American States.

That petition articulates a grievance; namely, that by denying full democratic participation in national affairs to its Puerto Rico-domiciled citizens, the Government of the United States is clearly violating the civil and human rights of those citizens. For the record, I have submitted a copy of our grievance to the Subcommittee.

All across the globe, perennially subjugated people are today either breathing free or advancing hopefully in that direction. The United States is applauding and promoting this inspiring trend. Brave Americans, including thousands of Puerto Ricans, are putting their lives on the line to support this cause in Iraq, in Afghanistan, and elsewhere. Well, over 50 Puerto Ricans have died in those conflicts since 2001. Numerous others have been wounded and/or decorated for their valor.

However, there is a powerful irony in all of this, because the Pentagon is sending Puerto Rican military personnel——

Ms. CHRISTENSEN. Gov. Rosselló.

Mr. ROSSELLÓ.—the Middle East for the purpose of defending liberties that are denied to those very same Puerto Ricans in their own——

Ms. CHRISTENSEN. Governor, could I ask you to wrap up, please?

Mr. ROSSELLÓ. I would be glad to do so. I understand that after 106 years of testimony, you need no more than five minutes of my testimony. Therefore, I would also take my leave at this point, if I cannot finish my statement.

Ms. CHRISTENSEN. Well, to be perfectly honest, and for the record, I gave the Governor just short of eight minutes. Mr. Berríos finished his in about six, and you are now a little over eight minutes. And so I think I have been very fair. So I am asking you to wrap up, not to—you have a few seconds to wrap up your testimony.

And please remember also that your full testimony is a part of the official record of the committee.

Mr. ROSSELLÓ. Madame Chairwoman, I will conclude, and I will take my leave at this point. I submit the rest of my remarks for the record. Thank you.

[The prepared statement of Mr. Rosselló follows:]

Statement of Pedro Rosselló, MD, MPH., Governor of Puerto Rico, 1993-2001, Member of the Senate of Puerto Rico, 2005-, President of the New Progressive Party of Puerto Rico, 1991-1999; 2003-

Chairwoman Christensen: good day to you, as well as to Ranking Member Fortuño and to each of the other members of the Insular Affairs Subcommittee of the House Committee on Natural Resources.

For the record, my name is Pedro Rosselló. I am President of the New Progressive Party of Puerto Rico. From 1993 until 2001, I was Governor of Puerto Rico and I am currently a Senator in the Puerto Rico Legislative Assembly.

I have come here today to express my support for H.R. 900, the Puerto Rico Democracy Act of 2007; in so doing, I have likewise come to exercise my right—under the United States Constitution's First Amendment—"to petition the Government for a redress of grievances."

As some of you know—perhaps all too well—my grievances are many; and in that regard, I must acknowledge that I have grown a bit weary of petitioning the Government for a redress of grievances, because I have now been obliged to do it for pretty close to two decades.

Still, others have been doing it for much longer: going back 106 years—that's five generations, Puerto Ricans have been petitioning Congress; and even after 106 years, we have yet to see our principal grievance redressed.

For the record, together with my testimony, I have submitted a chronology of Congressional actions on Puerto Rico's status. The chronology's earliest entries pertain to the 57th Congress, which convened during 1901 and 1902. Its most recent entries pertain to the 109th Congress, which adjourned at the end of 2006.

With respect to this issue, "Congressional actions" may be a misnomer, because no final action on Puerto Rico's status has ever been taken by Congress. Nevertheless, the topic has been broached in no fewer than 66 bills or resolutions on the House side, while the total number of Senate measures filed is 27.

The Constitution empowers the people of the several states to govern our Nation through elected officials; the people of those states have democratically delegated the task of governance to you and to the other members of the Congress, as well as to our President.

But that same Constitution grants you and the other members of the Congress unilateral power to govern me, along with every other resident of Puerto Rico and every other U.S. territory!

We the People of Puerto Rico and the other territories have absolutely no tangible authority at the federal level—direct or indirect.

Never once, since 1898, has Congress deigned to inquire of the Puerto Rican people whether they are content with this arrangement.

Congress has listened; and Congress has tinkered; and Congress has tried, at times, to be supportive; and Congress has frequently been generous with public monies.

Yet never once, since 1898, has Congress deigned to seek "the consent of the governed": never once has Congress inquired of the Puerto Rican people whether they are satisfied with an arrangement under which Congress ultimately holds all of the cards, and under which Puerto Ricans perennially possess zero votes on how those cards will be played.

The Puerto Rico Democracy Act of 2007 is only a single, small step. If enacted, though, it will be an historic step because it will mark a long-overdue first step—a first step in the direction of converting a colonial empire back into a democratic republic; and let us not forget that the Founders of that democratic republic committed their lives, their fortunes and their sacred honor to a protracted revolution against the inherent inequities of colonial empire.

It has been alleged that I have occasionally waxed a bit testy on Capitol Hill. Perhaps that is true, and perhaps today is such a day. For example: how, one might ask, can I justify brazenly brandishing a term so provocative as "colonial empire"?

Well, here's how...

The Constitution clearly envisions territories as being prospective states. That's why the Constitution's "territorial clause" appears in the same two-paragraph Section that sets forth the process for admitting new states.

Nowhere does the Constitution so much as imply—let alone proclaim—that the United States shall ever have the authority to betray its own revolutionary origins by acquiring and indefinitely possessing colonies.

So how is it possible that—53 years after Brown versus Board of Education—we live in a land whose Supreme Court continues to hold that the civil rights of U.S.

citizens can be capriciously curtailed by means of geographic segregation, just as it once shamefully embraced the validity of "separate but equal" as a racial segregation doctrine?

The *Plessy versus Ferguson* doctrine, that legalized racial segregation, has been dead and buried since 1954. Yet its sister doctrine of geographic segregation, promulgated by the Supreme Court in Downes versus Bidwell, incredibly lives on. Somehow, that judicial atrocity has survived no fewer than 106 years of steady progress—on virtually every other front—in America's never-ending struggle to form a more perfect Union!

The exclusionary mindset manifested in Downes versus Bidwell explains how Puerto Rico has acquired the dubious distinction of being the jurisdiction that holds the all-time record for most consecutive years as an American territory; Oklahoma held the record, at 104 years, until we broke it in 2003; and since then, of course, we have been setting a new record every year.

What do *We the People of Puerto Rico* want?

What do *We the People of the United States* want?

Do *We the People* support the perpetuation of a policy of colonial imperialism? Or do we favor having our nation rediscover its roots as a democratic republic?

Filed on February 7, 2007 and sponsored by—among scores of others—a majority of the members of this Subcommittee, H.R. 900 will at last pose those questions; and if I may say so, it's about time—better late than never!

Geographical discrimination is no less insidious, and no less odious, than any other type of arbitrary injustice. But in one important respect, geographical discrimination—what I call "the American territorial ghetto"—is downright bizarre.

- A U.S. citizen of any ancestry, including Puerto Rican, retains the right to vote for President if he or she moves from any state to any foreign country.
- A U.S. citizen of any ancestry, including Puerto Rican, acquires the right to vote in local and federal elections if he or she establishes residence in one of the 50 states—even if the person in question was born and raised in a territory or a foreign country.

That's all well and good.

Nevertheless, there exists one grotesque corollary to those rules.

Any American citizen who relocates from a state to a U.S. territory is immediately stripped of all political rights at the federal level!

This person may never ever have set foot outside U.S. soil—yet he or she automatically loses the right to vote for President; loses the right to voting representation in Congress; and loses the protection of the full panoply of civil rights that the Constitution guarantees to citizens residing elsewhere.

Even though the Stars and Stripes flies over Puerto Rico, an American citizen's full constitutional rights are summarily denied entry there—and it is Uncle Sam himself who mans the barricades!

It was this outrageous "Catch 22" that prompted me, six months ago, to deliver a petition to the Inter-American Commission on Human Rights—a body that was created by, and which reports to, the Organization of American States [OAS].

That petition articulates a grievance: namely, that—by denying full democratic participation in national affairs to its Puerto Rico-domiciled citizens—the government of the United States is clearly violating the civil and human rights of those citizens. For the record, I have submitted a copy of our grievance to the Subcommittee.

In addressing the Human Rights Commission, my fellow petitioners and I contend that the United States stands in clear violation of commitments contained in two unequivocal documents that the entire membership of the OAS has adopted—both collectively and individually. Those documents are the American Declaration of the Rights and Duties of Man and the Inter-American Democratic Charter.

All across the globe, perennially subjugated peoples are today either breathing free or advancing hopefully in that direction.

The United States is applauding and promoting this inspiring trend.

Brave Americans, including thousands of Puerto Ricans, are putting their lives on the line to support this cause—in Iraq, in Afghanistan, and elsewhere. Well over 50 Puerto Ricans have died in those conflicts since 2001; numerous others have been wounded and/or decorated for their valor.

However, there is a powerful irony in all of this—because the Pentagon is sending Puerto Rican military personnel to the Middle East for the purpose of defending liberties that are denied to those very same Puerto Ricans in their own homeland!

As I mentioned a moment ago, all across the planet, perennially subjugated peoples are today either breathing free or advancing hopefully in that direction; and the United States is applauding and promoting that ongoing phenomenon.

Nevertheless—incongruous though it be—the law of our own land persists in contradicting this inspiring global trend.

Where the United States is concerned, it seems that democracy does not begin at home; instead, the law of our own land persists in mandating geographical discrimination against certain communities of American citizens who reside on American soil; in other words, American law gives its blessing to the indefinite existence of an American constitutional-rights ghetto.

Herein lies a truly national conundrum; herein lies the unfinished business of American democracy.

Colonialism, on planet Earth, is nearly extinct. Nobody, anywhere, has a kind thing to say about it.

Imperialism is a dirty word. Nobody, anywhere, has a kind thing to say about it.

So how on Earth can the United States of America conceivably countenance its retention of a colonial empire, without at least asking its subject peoples for their consent on the supremely sensitive matter of their inferior civic status?

The answer is that it cannot; and that is why passage of the Puerto Rico Democracy Act of 2007 is long overdue.

I plead guilty to waxing testy at times. But I plead innocent to any accusations of wanton hyperbole.

So when I say "long overdue," I mean exactly that.

In my defense, I offer a quotation. Its source is a person with whom some of you may be personally acquainted. Here are his words:

"Puerto Rico has a long history of petitioning the Congress. They have had elections down there. They have had petitions. They have had ad hoc commissions. They have had petitions signed by a third of their voters".

"What the problem has been is not a problem with Puerto Rico. The problem has been with the Congress. We have had over 30 bills introduced. We have had statehood bills, 16 of them; independence bills, seven of them; enhanced commonwealth bills, three of them. We have had combination bills. And they never get anywhere."

The person who said that was The Honorable J. Bennett Johnston.

As the then-Chairman of the U.S. Senate panel that is responsible for territorial affairs, J. Bennett Johnston uttered those words during an executive session of his Senate Committee on Energy and Natural Resources more than 16 years ago—on February 27, 1991.

Before the 20th century expired, additional Puerto Rico status bills were filed. They never got anywhere, either.

In the autumn of 2005, I published a book wherein the preceding quotation appears. For your perusal, I am herewith submitting a copy of that book—which is appropriately entitled, The Unfinished Business of American Democracy.

Immediately after quoting Senator Johnston, my book contains a paragraph wherein I make the following statement:

"Glib souls that they tend to be, Members of Congress customarily are able to concoct reasonable-sounding explanations for their failure to accomplish anything on this front. Yet there is no escaping the fact that their collective lack of political will is the principal cause of the inertia in which Puerto Rico's status dilemma has been mired for a full century. Congressional foot-dragging has undercut, undermined, eroded and ultimately doomed a whole succession of Puerto Rico-originated initiatives aimed at eradicating the territory's colonial limbo."

Since I wrote that paragraph, several more Puerto Rico status bills have been tossed into the Congressional hopper. One of those bills is H.R. 900.

Distinguished members of the Insular Affairs Subcommittee, you know better than I that significant legislative action is rarely easy to achieve.

H.R. 900 is unquestionably significant, because it would begin to address the legitimate grievances of the American citizens of Puerto Rico.

However, H.R. 900 has the uncommon virtues of also being simple and straightforward and eminently meritorious. The enactment of this significant piece of legislation should be easy to achieve.

On behalf of a century-plus of Congressional witnesses from Puerto Rico, I respectfully ask that you succeed where more than 50 previous Congresses have failed. I ask that you resoundingly recommend approval of the Puerto Rico Democracy Act of 2007, and I respectfully request that you adopt the following amendment that will expedite the self-determination process: in Section 3(a) of H.R. 900, I ask that you replace the phrase, "December 31, 2009," with the phrase, "December 31, 2008."

Thank you very much.

Ms. CHRISTENSEN. Thank you. And as all written testimony, it is accepted for the record. I would hope that you would stay for questions. Anyway, thank you for your testimony.

I will now recognize myself for five minutes for questions, maybe not even five minutes. As a matter of fact, let me revise that. Mr. Serrano is here; he will have to go and vote. Let me recognize Mr. Serrano for his questions.

Mr. SERRANO. Thank you so much. Let me just say how honored I am to have these distinguished leaders, including the one that just left, in front of me. We Puerto Ricans do have a temper at times, and I think after 108 years it is possible that the behavior can be different in different ways.

Mr. Berríos, just a quick question for you, because I do have a vote pending. You may not be wrong. There are days when I wake up and realize or feel that statehood is never a possibility in this Congress. Are you suggesting that there is a way we can address this issue without including statehood in a bill? Obviously the easiest way would be to have a bill that says get rid of the territory, you know, dispose of it. That is not being presented right now.

Do you think we could do this without including statehood? In other words, the two options.

Mr. BERRÍOS-MARTÍNEZ. I will answer shortly. I only want to say I am very sorry Gov. Rosselló is not here, but I just hope that when Congress slams the door on statehood, he walks out also with me, because that is the way to do it. I cannot understand neither him nor any other leader that—and I must say this—talks as clearly as he has done today, and nevertheless insists on wanting to marry that person that doesn't want to marry him. That falls under the political Stockholm Syndrome. You don't ally yourself with the oppressor and with the empire. You struggle against the empire. I am sorry he is not here, but I was going to say it before him.

Yes, I think there is a way. If you insist on including statehood, no bill will be approved here. You all know that, basically. Privately, most of you have told me that—and I am not referring to you. Everybody knows that.

A nation that is building a wall on its southern frontier with Mexico will never accept 4 million Latin-Americans as a state of the Union, with 4 million more inside the United States. That will not happen in the foreseeable future.

Therefore, I think you must find a way to get around this if you want to approve a bill. And the way I have proposed I think is the way out.

I must be completely frank regarding my proposal. The first part obviously does not include statehood, my first point, my first step. The second step regarding the constitutional convention includes, indirectly, very indirectly, statehood, because statehood can participate, and I hope they do, in the constitutional convention in Puerto Rico. But that is very indirectly.

Now, if the constitutional convention is not convened in six months, then in the other step, the third step, you don't have to include statehood. You didn't include statehood in 1950 to 1952. You didn't include anything except the territorial colonial government. And then you argued before the U.N. that Puerto Rico had self-determined itself. And it was false. You gave Puerto Ricans

only one choice: either this bad system, or this bad system. And Puerto Rico chose the ones, the system they thought was not as bad as the other one.

But why don't you do it again? Why don't you make a good offer? Like other colonial powers have done. A good offer of independence. If there is no, if the Puerto Rican people in a constitutional convention do not opt for another alternative, sovereign alternative, why not? Your obligation is to dispose of the territory. You didn't ask anybody in Puerto Rico whether you come in, in 1898. You came in through the force of arms. So why not fully exercise your obligation to expose of the territory, and make an offer to the Puerto Rican people? An offer we cannot resist.

Mr. SERRANO. Thank you. I wanted to clarify that, thank you.

Gov. Acevedo-Vilá, with all due respect, I think you made quite a bit of news here today. You said that my bill forces people in Puerto Rico to vote for statehood.

Now, if they are given a choice in the second round, assuming they reject commonwealth in the first round, between statehood and independence, then you must know something I don't know; that most people who vote for commonwealth now will vote for statehood. So I guess your statement today, and the big news in the Puerto Rican press tomorrow, will be that Governor Acevedo-Vilá said that given a choice between statehood and independence, most populares will vote for statehood.

And I tell you, it is my bill, but I am not sure that will happen. It might be that you are so autonomous, your party, that you will vote for independence.

Mr. ACEVEDO-VILÁ. You know me better than that, but I describe what your bill does. It sums the second and third place in order to defeat the first place.

Mr. SERRANO. No. It brings the non-colonial second and third options, and it——

Mr. ACEVEDO-VILÁ. We have discussed this many times.

Mr. SERRANO. That is right. But you have never clarified the first point.

Mr. ACEVEDO-VILÁ. We don't agree. What I see is that on every opportunity, since you are so intelligent and so smart, you come up with a different way of summing up the votes just to eliminate commonwealth.

Mr. SERRANO. You know, that got Joe Biden into a lot of trouble, that comment you just made. But that is OK, I accept it as a compliment, because I am from Puerto Rico.

Now, listen to me again. Listen to my——

Mr. ACEVEDO-VILÁ. And, and——

Mr. SERRANO. I can ask you in Spanish or I can ask you in English. It is up to you. How do you know what we don't know? How do you know the outcome of the second vote? Are you telling us that you know——

Mr. ACEVEDO-VILÁ. Because you are making the second——

Mr. SERRANO. No. How do you know that populares are secretly statehooders? How do you know that? I don't know that.

Mr. ACEVEDO-VILÁ. No. Maybe, maybe, you know what? Maybe populares and commonwealth are one vote. One vote. Remember, we want a plebiscite with none of the above, precisely because they

were trying to impose tricks on the people of Puerto Rico. We want with none of the above.

Mr. SERRANO. Let me conclude——

Mr. ACEVEDO-VILÁ. So in that sense, in that sense, and I say this with due respect, if H.R. 900 is approved, and that is the process that is given to the people of Puerto Rico, what you are going to have is really uncertainty. What you are going to have is the people of Puerto Rico getting the feeling that—it is two theories. Either you are imposing statehood, or, after Mr. Berríos just explained, you are imposing independence.

Mr. SERRANO. Well, no, my——

Mr. ACEVEDO-VILÁ. So that is the process that the people of Puerto Rico are rejecting today, and will reject tomorrow. So that is not the way of addressing this important issue.

Mr. SERRANO. OK, my time is up. So let me just conclude by saying that I agree with you; I am pretty smart and intelligent.

[Laughter.]

Mr. SERRANO. And I can see a colonial status in any way, shape, or form. And your so-called enhanced commonwealth may be a good deal, but it is a colonial status. Give me a non-colonial status, and I will support it, because I am intelligent and smart.

Mr. ACEVEDO-VILÁ. That conclusion is based on legal interpretations that I firmly believe are wrong. And in that sense, I think that the challenge that you have, as Members of Congress, is to come up with new, with new schemes, legal schemes, that will give dignity, sovereignty to the people of Puerto Rico, and that will allow improve the current relationship. And that is possible. You have that power, we have that power. It is a matter of political will.

Mr. SERRANO. Thank you.

Mr. ACEVEDO-VILÁ. Not of using the Constitution——

Mr. SERRANO. Madame Chairwoman, thank you for your time and for your patience with me. And let me just for the record say that dignity and respect is either joining the family or declaring your independence. There is no other colonial status that can be dignified.

Ms. CHRISTENSEN. Thank you, Mr. Serrano. And the Chair now recognizes Mr. Fortuño for questions.

Mr. FORTUÑO. Thank you. Thank you, Madame Chair. Governor, I am reading your platform, 2004 platform. And it states very clearly that you and your party adopt as the supersized or enhanced commonwealth proposal the one that was approved by the governing board of your party on October 15, 1998. Is that correct or wrong?

Mr. ACEVEDO-VILÁ. Yes.

Mr. FORTUÑO. So I have it here, and that is exactly what you all said that would be your proposal. If we may look at your proposal, I am trying to make this easier for everyone, you are saying that Puerto Rico will be a sovereign nation, but in permanent union with the United States; that the covenant will permanently bind the U.S. to its terms, when we have heard not just one, not two, but three Administrations, from two Republicans and one Democrat, telling you no, that is not doable.

Puerto Rico will be able to veto most Federal laws. I am just reading what you all put together. That Puerto Rico will be able to invalidate Federal court jurisdiction. It will be able to enter into trade and other agreements with foreign nations and join international organizations separate from the U.S. The U.S. will provide new incentives for investment without paying any Federal taxes. The U.S. will continue all current assistance programs without paying Federal taxes, plus an annual block grant. The U.S. will continue to grant free entry to any goods from Puerto Rico, and the U.S. will continue to grant U.S. citizenship to Puerto Ricans, to people born in Puerto Rico.

Three Administrations have told you that what you are proposing is not doable. What part of no don't you understand? What is un-American is to try to deny the 4 million U.S. citizens an opportunity to select an option.

And actually, the option is there. A third option is there, and actually we are more than willing, and I am telling you up front that I am more willing, and I know my friend José Serrano is willing as well, to work on that third option. It is free association.

Do you have the pantalones to move on and work on free association as a third option, so that we can solve this once and for all, and allow the people of Puerto Rico to decide this once and for all? That is my concern here. We want something solved, and for the time being, as long as your lobbyists don't try to block this process from moving along, then it makes it more and more and more difficult.

Is this——

Mr. ACEVEDO-VILÁ. Are you meeting failure?

Mr. FORTUÑO. I am sorry?

Mr. ACEVEDO-VILÁ. Are you meeting failure already?

Mr. FORTUÑO. No. Today we won a big round. And you were trying, through Charlie Black, to try not to have the Administration actually put forth anything in writing, or come here. Not only did they come here, but they said it very clearly: that they stand behind the recommendations of the task force.

I was with the President a few hours ago. I can tell you that the President is fully behind this. His senior staff is fully behind this. He reconfirmed that today, as we were talking at the White House.

I only hope that you will stop these delaying tactics, and allow for the people of Puerto Rico to have the opportunity to select one option. And if you want to work really—I am talking seriously—from here we go up to my office, and we work on that free association option.

But you have to understand that not one, not two, three Administrations have told you that this is not doable, and have told you what is doable. I urge you, are you willing to sit down and really work on a free association option that is doable under the U.S. Constitution, so that we can allow the people of Puerto Rico to decide directly? Are you willing to do that?

Mr. ACEVEDO-VILÁ. Let me react to your additional statement. Beyond the fact that you are summarizing the proposal and not using the actual language, but that is not important.

Mr. FORTUÑO. That is OK. We will submit for the record exactly what you have in your proposal so we can allow the committee to

understand. Can we submit that for the record, so that the committee understands what is in it?

Mr. ACEVEDO-VILÁ. It has been submitted many times.

Mr. FORTUÑO. I know. But I just want to submit it again so that everyone understands that I am telling the truth here.

Ms. CHRISTENSEN. Without objection.

Mr. FORTUÑO. Thank you.

[NOTE: The information submitted for the record by Mr. Acevedo-Vilá has been retained in the Committee's official files.]

Mr. ACEVEDO-VILÁ. Can I react and respond?

Ms. CHRISTENSEN. Yes.

Mr. ACEVEDO-VILÁ. OK. First let me talk a little bit about the President's endorsement. Now, let us first go to the three Administrations. Is this Congress? Don't we have separation of powers? Or do you guys only do what the Administration tells you?

Laws require that——

Mr. FORTUÑO. I and the President agree——

Mr. ACEVEDO-VILÁ.—the Senate, the House, and with all due respect——

Mr. FORTUÑO.—and that is what we are trying to do.

Mr. ACEVEDO-VILÁ. I haven't finished. You are mentioning three Administrations, and my question to you is, this is Congress. This is Congress. For how many Administrations did African-Americans were denied their rights? And that was a good argument, to tell them you shouldn't go back to Congress and try to get legislation that is fair? Because you know, five Administrations, 10 Administrations have denied that to you.

Mr. FORTUÑO. But are you willing to work on a third option of free association?

Mr. ACEVEDO-VILÁ. I am responding to all your points. I am responding to all your points.

Mr. FORTUÑO. Except we are running out of time here.

Mr. ACEVEDO-VILÁ. I am responding to all your points. And in terms of the importance of the endorsement of President Bush to your bill, and this Congress, isn't he endorsing the surge in Iraq? And this Congress——

Mr. FORTUÑO. Madame Chair, we are trying to—I reclaim my time.

Mr. ACEVEDO-VILÁ. No, my point is——

Mr. FORTUÑO. I reclaim my time immediately.

Mr. ACEVEDO-VILÁ. My point is that we come to Congress to deliberate. And you are telling Congress you shouldn't deliberate and discuss anything, because the President has already spoken. And that is not the way the system works.

Mr. FORTUÑO. If you want to talk about something else, that is fine.

Mr. ACEVEDO-VILÁ. That is not the way the system works.

Mr. FORTUÑO. The door is open to work on a free association option as a third option.

Mr. ACEVEDO-VILÁ. In terms of the future of Puerto Rico and the future development of commonwealth, I will discuss that with the people of Puerto Rico. And eventually, with the whole Congress. And I will spend as much time as I have to make this or the next

Congress to understand that the best option for the people of Puerto Rico, and the best option for the United States, is to work to enhance commonwealth.

Mr. FORTUÑO. The door is open. It is free association. Three Administrations have told you, and what part of no don't you understand?

Mr. ACEVEDO-VILÁ. Mr. Fortuño, Mr. Fortuño, you guys are so afraid of commonwealth, that you are not willing even to put the name commonwealth on the ballot. Because in your bill, not even the name commonwealth is on the ballot. You know why? Because whenever statehood has been on the ballot, and commonwealth has been on the ballot, you know what has been the result. The people of Puerto Rico has rejected statehood. They reject statehood today, they reject statehood tomorrow.

Mr. FORTUÑO. Madame Chair, the witness isn't answering the question.

Ms. CHRISTENSEN. Thank you. The time of the gentleman has expired. I now recognize Mr. Faleomavaega for five minutes.

Mr. BERRÍOS-MARTÍNEZ. Madame Chair, can I comment on Mr. Fortuño's question?

Ms. CHRISTENSEN. Mr. Faleomavaega.

Mr. FALEOMAVAEGA. I gladly yield.

Mr. BERRÍOS-MARTÍNEZ. I want to be as candid and as clear as possible. I have been, I think, today to see if we—we have to stop beating around the bush.

The leaders of the PDP today, of the Commonwealth Party, are willing to accept work for less than the minimum wage. That is what it is all about. That is commonwealth. It is all right that they do that.

But the question Congress has to ask itself is whether, at this juncture in time, one can work for less than the minimum wage. The history of slavery should be clear enough. There are stages you surpass, and once you pass that stage, you don't go back.

And colonialism is one of those things humanity has progressed beyond. And therefore, it is an insult, it is an insult for people to be told that the only option they should have is colonialism or slavery or working for less than the minimum wage. Even though that is true, Congress is giving them the chance to ask the Puerto Rican people. But why say the two polar opposites will unite against the center?

No. It is the people who don't believe in the colony and the people who believe in the colony. There are many commonwealthers who don't believe in the colony, and they will vote against the colony, together with the statehooders and the independentistas. And then we will sort things out among alternatives which are not colonial.

Don't beat around the bush any more. They don't believe in going away from colonialism. They believe in permanent union. You have been told today, they have a right to espouse that. But they have been told, they have told you once and over again, and the Governor has repeated today, they don't believe in going out of colonialism. They want to live in that mudhole forever.

Mr. FALEOMAVAEGA. Reclaiming my time, Madame Chair. I do want to thank Mr. Martínez for his statements.

I just want to ask Gov. Vilá a couple of questions. And basically, as I have tried to outline the provisions of both bills—and I want to see if I am correct in this, Gov. Vilá—on the specific provisions of H.R. 900 there are three options. One for independence, one for free association or statehood. Is that your——

Mr. ACEVEDO-VILÁ. It is not clear on the second one.

Mr. FALEOMAVAEGA. H.R. 900.

Mr. ACEVEDO-VILÁ. I know, but on the second round, when commonwealth is out of the question. Because in that bill, which I again—and the people of Puerto Rico, the majority of the people of Puerto Rico reject that bill—even if the people vote for statehood, for commonwealth, define commonwealth.

Mr. FALEOMAVAEGA. Governor, may I——

Mr. ACEVEDO-VILÁ. No, no. Then it says that well, you guys had it wrong, you know. You have to vote again. Eight years from now you will vote again. So, you know, that is the way to force the vote.

Then on the second round they talk about statehood, they talk about independence, and then they talk about free association, but defined as independence.

Mr. FALEOMAVAEGA. But, Governor, again I am trying to get to my point here. The three options outlined in H.R. 900 are this: independence, free association, and statehood. Am I correct in this, in your reading of the bill?

Mr. ACEVEDO-VILÁ. Yes. But if they are finishing a free association as——

Mr. FALEOMAVAEGA. That has not been defined.

Mr. ACEVEDO-VILÁ.—part of independence, yes.

Mr. FALEOMAVAEGA. But it has not been defined under H.R. 900.

Mr. ACEVEDO-VILÁ. No, you are right.

Mr. FALEOMAVAEGA. The reason for my asking is because there is a distinction between free association and one of independence.

Now, free association in terms of how the Micronesian States have taken their relationship with the United States, you know it is every 15 years they renegotiate the status of the unique political relationship between the United States and Palau, the Marshall Islands, and the Federated States of Micronesia.

Now, what they have done is simply taken free association from the definition of commonwealth from Puerto Rico, which is friestado or something, I am sorry——

Mr. ACEVEDO-VILÁ. Balot libre social.

Mr. FALEOMAVAEGA. Yes, OK. They took that definition of commonwealth in Spanish and adopted it, but defining it in a different fashion.

So what I am suggesting, I am asking you, Governor, as was Mr. Martínez, there is a definite distinction here. The fact that free association, is this essentially what you have in mind for enhanced commonwealth as an option you have in H.R. 1230?

Mr. ACEVEDO-VILÁ. The thrust of the argument is, and that is what the problem with the White House report is, number one, whether you can reach an agreement based on mutual consent, which is a recognition of sovereignty. Because if you recognize mutual consent, you are recognizing the power of the other side to reach the agreement.

And you have heard here, they say that is impossible. But in that sense—and the second one is U.S. citizenship for people born in Puerto Rico. The way this Administration and this report and H.R. 900 defines free association is without no mutual consent possibility, and without no possibility of U.S. citizenship. And in that sense, that is something that is rejected by the people of Puerto Rico.

Mr. FALEOMAVAEGA. I might also add, Governor, there is a fourth option that has not been discussed here. And that is a covenant relationship with the United States, which currently the Commonwealth of Northern Mariana Islands have, in a very unique fashion, which is based on mutual consent.

Mr. ACEVEDO-VILÁ. I agree with you. But if you accept H.R. 900 and the White House Task Force report, that one is unconstitutional, also. So that is the problem.

The problem is that they are using legal arguments to leave the people of Puerto Rico, and I will add Guam, American Samoa, without options. Using the Constitution. They are using the Constitution to deprive our people of new options, of new alternatives. And to deprive Congress of alternatives, of new options.

Mr. FALEOMAVAEGA. I am so sorry that Gov. Rosselló had to leave. But again, for you, Mr. Martínez, I know my time is up, and I am at the mercy of Madame Chair here.

Mr. FORTUÑO. I will be very short. Madame Chair, if I may, let the record be straight that I am more than willing to work on that third option. It is free association as has been defined by the Justice Department over and over again.

Mr. BERRÍOS-MARTÍNEZ. Of course, there are three, four, and 10 options besides those accepted by international law, which are free association, independence, and statehood or integration. They are all territorial options. You can be a territory like the Northern Marianas, you can be a territory like the Virgin Islands, you can be a territory like Puerto Rico. And Congress will itself have the prerogative to rule over that territory. So of course you have many types of territories. We are seeing of them sitting right here. And you can improve them.

But not, not as permanent political status recognized by international law. Neither by U.S. Constitutional law. That is the issue here. So why don't we face it, and talk it like it is?

Ms. CHRISTENSEN. The gentleman's time is expired. I now recognize Ms. Bordallo for five minutes.

Ms. BORDALLO. Thank you, Madame Chair. I am not going to take my five minutes, but I know there are two panels that are still to be heard. But I do want to thank the very distinguished leaders of Puerto Rico who traveled all the way here to Washington. Of course, I travel a little bit further to Washington, from Guam.

But I do want to thank them very much for participating. And thank you very much, gentlemen, for your time. Thank you, Madame Chair.

Ms. CHRISTENSEN. Thank you, Ms. Bordallo. I recognize myself now for five minutes.

I will start with Mr. Berríos. In your statement you say that the political efficacy of H.R. 1230 depends on the outcome of next

year's election. Could you explain what you mean by that? I mean, if I remember correctly, no matter which process has occurred in the past, the party in power has always had some more influence over the outcome.

Mr. BERRÍOS-MARTÍNEZ. Yes, of course. It is not only ambiguous, but it depends on the efficacy. That means if the PDP wins, if Mr. Acevedo-Vilá wins, he has already announced what he will propose in the next session. Then he promises a constitutional convention, with the colonial commonwealth or one of the colonial modified versions of the colony.

So if he wins, then we have in Puerto Rico a constitutional convention which will solve nothing, because commonwealth is the problem; and thus, it cannot be the solution. That is what I mean by the fact that it depends on the outcome.

The one I am proposing does not depend on the outcome of the next election. First, because the first step is mandated from here. Second, because a real constitutional convention has to be called in Puerto Rico with international options. And if it is not called, then Congress must dispose of the territory. That doesn't depend on who wins the next election.

I must warn you, also, that Mr. Acevedo's party has won several times, with several promises, and we are still in the unincorporated territory of Puerto Rico, for 50 years. So you know, have that in mind.

Ms. CHRISTENSEN. Thank you. Governor, would you also respond to that question? And in the process, could you answer for me, does the H.R. 1230 process have, is it geared toward one specific outcome? Or can that constitutional assembly just as easily come up with a status that could be statehood or independence?

Mr. BERRÍOS-MARTÍNEZ. It is a different approach. It is a new approach. And as I said in my written statement, I invite this Congress not to make the same mistakes that were made in the past.

I think this hearing is a good example of why the constitutional convention should be the alternative. First, you have seen our divisions. Even one is missing now.

[Laughter.]

Mr. BERRÍOS-MARTÍNEZ. And what H.R. 900 is doing is bringing those divisions here. Through a constitutional convention you create a mechanism for the people of Puerto Rico to internally go through our divisions and try to find common grounds. So that is number one.

Number two—and I say this with all due respect, and I know there have been votes—but you are discussing the most important issue in terms of the future of Puerto Rico. You are trying to tell the people of Puerto Rico that this Congress is going to decide and make clear what are the options. And this room has been empty the whole day. I think that is a good example why we shouldn't repeat the same mistakes.

H.R. 1230 basically says we recognize that the people of Puerto Rico have the power to call a constitutional convention, and we will respond, we will hear them. We will hear them. That way the people of Puerto Rico will vote for delegates. I don't know what is going to be the outcome of that; maybe the majority of the dele-

gates will be for statehood, maybe not. Maybe when they sit down as a group, they change their opinion.

And once they have a proposal, which has to be validated by the people of Puerto Rico, they will come to Congress. And Congress, if it is statehood, the alternative, will say well, it has to be statehood in Spanish, it has to be in English what judicial system, taxes and all that. Maybe the people of Puerto Rico will say wait, we don't want that offer. Maybe Congress will say forget about statehood. Maybe there won't be any response from Congress. Then the constitutional convention and the people of Puerto Rico will know where we stand.

The same thing with new commonwealth. What I am asking for new commonwealth is to give the same opportunity that you are willing to grant to statehood. Because, again, the issue, you know, what kind of statehood are we talking? Those are very important issues.

Some of you have been in Puerto Rico and seen the campaigns. The Statehood Party is telling my party that we can become the 51st state and still have our national Olympic team. They put T.V. ads with that.

They have said to my people, don't worry about Spanish in the schools; the school system will be in Spanish. The judicial system will be in Spanish. So why, you know—H.R. 900 says we don't have to respond to those questions in order to offer statehood. Ah, but in order to offer commonwealth, we will respond to all the questions beforehand.

The constitutional convention will allow the people of Puerto Rico to have those internal discussions, and then come here and make a proposal in which Congress will react.

Mr. FALEOMAVAEGA. Madame Chairwoman——

Ms. CHRISTENSEN. I am sorry, but maybe you can answer. I just want to get one question in before my time is totally up. And I am going to ask it to the Governor, but I will also let you respond.

In your opinion, Governor, is the current economic situation in Puerto Rico related to its status? I have this article here that—I know I am still learning, and I may have missed some of the words in Spanish, because it is in Spanish. But you have four leading economists, I think they are very well-respected economists, who talk about the economy. And their recommendation is a restructuring.

And in all of the things that they list, they don't list anything about changing status.

Mr. ACEVEDO-VILÁ. I am going to ask you a question, not for you to answer, just as my initial answer.

Is the economic situation in Mississippi, who is the poorest state and has been the poorest state for the last 50 or 100 years—and I read in the New York Times the other day that in Mississippi and the South, the birth rates are coming down instead of going up—is that a consequence of statehood? Is the economic situation of Mississippi a consequence of statehood?

In terms of developing commonwealth, we can sit down with Congress and reach agreements that will empower the people of Puerto Rico in areas that will be beneficial economically for Puerto Rico and for the United States. But in terms of dealing short term

with our situation is the same challenges that any independent country or any other jurisdiction in the United States has.

And again, I have heard a lot about this issue in terms of statehood, and how is statehood an economic boom. And my answer is what happened to Mississippi? The per capita income of Mississippi is not the same as California, or Texas.

Mr. BERRÍOS-MARTÍNEZ. Madame Chairwoman, regarding this question let me tell you that of course it has a direct influence on the economic problems of Puerto Rico. The only way to put Puerto Rico on its own two feet is to internationalize its market and its investment opportunities, and that can only be done through the full powers of sovereignty.

But I must, to end my words, say something. As you know, I referred to the fact that I don't understand how some people will refer to the United States as an empire, and yet want to marry that empire.

On the other hand, I don't understand how somebody can say that things have to be resolved in Puerto Rico, and agrees with the political system, where everything is so from here. Because that is what commonwealth is all about. It is not with we here that you command Puerto Rico, it is without anybody here. You have been commanding Puerto Rico since 1898. You are still commanding Puerto Rico, because you make all rules, regulations, and laws that apply to all basic facets of Puerto Rican life.

And those people that say we have to solve things in Puerto Rico are those who agree that you command your destiny from the United States. I can't understand that contradiction, either.

Ms. CHRISTENSEN. Thank you. My time has long expired, and I want to thank the witnesses for their very informative testimony, and again, the Members for their questions and for your answers to our questions.

We may have more questions for you, which we will send in writing, and we ask you to respond in writing.

Mr. BERRÍOS-MARTÍNEZ. Thank you.

Ms. CHRISTENSEN. Thank you again. I would now like to recognize the third panel of witnesses, and they are The Honorable Kenneth D. McClintock, President of the Puerto Rican Senate; The Honorable José Aponte, Speaker of the Puerto Rican House of Representatives; The Honorable José Dalmau, Senate Minority Leader of the PDP; The Honorable Héctor Ferrer, House Minority Leader, Popular Democratic Party; and The Honorable Carlos Romero Barceló, former Governor and former Member of Congress.

[Pause.]

Ms. CHRISTENSEN. The Chair now recognizes Senator McClintock for five minutes.

STATEMENT OF THE HON. KENNETH D. McCLINTOCK, PRESIDENT, PUERTO RICAN SENATE

Mr. MCCLINTOCK. Thank you very much. In the 31 years since I first appeared before this Subcommittee, two things have happened with complete certainty.

First, I haven't gotten any younger. And second, the argument that I have heard the most to excuse 108 years of Congressional inaction is that American citizens in Puerto Rico have to speak

with one voice to resolve its status, a standard that hasn't kept you from dealing with racial segregation, oil drilling in the ANWR, protection of the Everglades, or immigration reform, for example.

As President of the Senate, may I remind you that two years ago, Puerto Rico did speak with one voice when a historic tri-partisan unanimous majority in the Senate and in the House supported a bill asking you to allow Puerto Ricans to choose among non-territorial and non-colonial options, exactly what H.R. 900 proposes. While the Governor unexpectedly vetoed the bill he promised to sign, fully two thirds of our Senate continued supporting what H.R. 900 proposes.

H.R. 900 provides a reality check, for Puerto Ricans to choose among the real options: continuing the current territory status, or moving to statehood, independence, or nationhood in a true free association with the U.S. The Governor has wrongly insisted that the majority supports so-called commonwealth, but no one can be sure until there is a vote among real options, which H.R. 900 would provide.

The current status, without any doubt, is subject to the Territories Clause of the Constitution. Some so-called commonwealth supporters defend it, stating that it just needs some development toward a non-territorial commonwealth status. Since what they call commonwealth is a territorial status, a non-territory commonwealth status is, by definition, an oxymoron.

The fatal flaw in H.R. 1230 is that it includes an impossible proposal as an option, while it excludes a real status alternative. The excluded real status is free association. The impossible proposal is what Congressman Fortuño has called the supersized commonwealth that the Governor espouses, and that CRS made clear isn't possible, for constitutional and basic policy reasons.

Enacting a Federal law listing a non-territory commonwealth status as an option, as the Governor proposes, would invite Puerto Rico to choose an alternative that Congress cannot, and would not, grant, which would be a cruel hoax.

H.R. 1230 is less democratic than H.R. 900. Under H.R. 900, the people would choose their preferred status. Under H.R. 1230, a convention, likely to be comprised of politicians who would speak among each other, as well as we speak among each other here, would choose, and the people would ultimately only be able to accept or reject the selected proposal; thus cornering the people into accepting a proposal that they would otherwise not have chosen by a majority.

The purpose of the constitutional convention in H.R. 1230 is different from that of the constitutional conventions held by the 50 states, held by Puerto Rico in 1951, authorized under the Constitution of Puerto Rico, held by the U.S., and held by all four other populated current territories. The purpose of those constitutional conventions was to organize governments under an already determined political status. The purpose of this constitutional convention would be to choose a political status.

Finally, have you given any thought as to how much longer Congress is empowered to keep us as a territory? The segregationist majority of the Supreme Court that resolved Plessy v. Ferguson in 1896, and the first of the Insular cases, believed that Congress

could keep colonies forever. Justice Harlan, whose dissent in Plessy became the unanimous opinion of the Court in Brown v. Board of Education, stated in his Insular case dissent his belief that the Territories Clause was never intended by its anti-colonial drafters to justify Congress keeping territories forever.

Which interpretation do you support? The segregationist view that separate but equal forever, be it racial or geographical, is constitutional? Or do you support Justice Harlan's view? If you reject the segregationist view, inaction is no longer an alternative. The only alternative is to establish a process that will allow you to dispose of the territory of Puerto Rico or admit us into the Union. H.R. 900 clearly sends Puerto Rico on that path.

On a personal note, may I say, if you look at every coin in your pocket, you will see the phrase e. pluribus unum—among many, one. H.R. 900 would allow us someday to become of the many, one. We are not part of that one today.

Thank you.

[The prepared statement of Mr. McClintock follows:]

Statement of The Honorable Kenneth D. McClintock, [1]
President, Senate of Puerto Rico

I appeared before this Subcommittee for the first time 31 years ago, on January 20th, 1976, at the age of 18.[2] Since then, two things have happened with complete certainty; first, I haven't gotten any younger, and secondly, the argument that I've heard the most to excuse 108 years of Congressional inaction is that the American citizens in Puerto Rico have to speak with one voice to resolve the status dilemma, a standard that hasn't kept you from dealing with other highly divisive domestic issues, such as racial segregation[3] "in the past—and, more recently, oil drilling in the ANWR,[4] the protection of the Everglades[5] and the very delicate issue of immigration reform.

As President of the Senate, may I remind you that two years ago, Puerto Rico spoke with one voice when a historic tri-partisan unanimous vote in the Senate was followed by a unanimous vote in the House in favor of a measure[6], in which every one of Puerto Rico's elected senators and representatives voted for a referendum in which the People of Puerto Rico would ask the Congress to commit to resolve Puerto Rico's status dilemma. Unexpectedly, Governor Acevedo vetoed the bill, after having made the commitment that he would sign it as it was approved.

Since then, the White House issued its report, and, in spite of the Governor's inexplicable veto of the bill, two-thirds of Puerto Rico's Senate supports H.R. 900 and opposes H.R. 1230.

H.R. 900 would provide a "reality check" for Puerto Ricans to choose among the real status options that have support in the territory—continuing the current terri-

[1] I have been an at-large Senator from the New Progressive Party since 1993. I'm currently in my fourth term. From 1993 to 2000, I chaired the Committee on Federal and Economic Affairs and from 1994 to 2000 I also chaired the Government Affairs Committee. I served as the first Hispanic Chairman of the Council of State Governments during 1999 and as the second President of the Parliamentary Conference of the Americas in 2000. From 2001 to 2004 I was the Senate Minority Leader and in 2005 became the thirteenth President of the Senate.

[2] Hearings by the Territorial and Insular Affairs Subcommittee of the Committee on Interior and Insular Affairs, January 20, 1976, San Juan, Puerto Rico. Among numerous other appearances before Congressional committees, I also appeared before the full Committee on Resources of the United States House of Representatives on April 19, 1997 in San Juan, Puerto Rico regarding H.R. 856, known as the Young Bill.

[3] It's a well-known historical fact that when President Lyndon Johnson signed the 1964 Civil Rights Act, he would tell aide Bill Moyers that with a stroke of a pen he had just delivered the South to the Grand Old Party for the foreseeable future. As Senator Barack Obama has noted, President Johnson chose the "right side of the battle", notwithstanding the fact this was, and has been, the most divisive issue our Country has ever faced. Obama, Barack, The Audacity of Hope: Thoughts on Reclaiming the American Dream. Crown Publishers. p. 27, 2006.

[4] See CRS-Issue Brief IB10111, Arctic National Wildlife Refuge (ANWR): Controversies for the 108th Congress, September 29th, 2004.

[5] See http://www.americanparknetwork.com/parkinfo/content.asp?catid=85&contenttypeid=14

[6] Substitutive of House Bills 1014, 1054 and 1058

tory status, U.S. Statehood, independence, and nationhood in a true free association with the U.S.

The bill is based upon the findings and recommendations of the President's Task Force on Puerto Rico's Status established by President Clinton and comprised of senior appointees of President Bush who consulted with Puerto Rico's leaders and studied the issue anew. They generally agreed with the Clinton Administration on the options.

From the past Co-Chairman of the President's Task Force, Mr. Rubén Barrales, I know that the two step-choice process was proposed in deference to Gov. Acevedo, who wrongly insisted that the majority of Puerto Ricans had always supported "commonwealth", and who opposed the Puerto Rican people choosing among all the options.

"Commonwealth" is understood in Washington to refer to Puerto Rico's territory status. The evidence is that Puerto Ricans do not support it, but no one can be sure until there is a vote among real options. The only time that the status as it exists was on the ballot—in 1998—it received less than one-tenth of one percent of the vote. Many commonwealthers voted for "None of the Above" along with many "independentistas"[7]. Commonwealthers did so because they were told by the current Governor that was the way to vote for the "Development of the Commonwealth" proposal. (See the article incorporated into my full statement.[8]) This demonstrated why federal action is needed to clarify the real status options and was the reason that President Clinton agreed to establish the Task Force during a meeting with leaders of all three local parties. In the 1952 referendum, there was no "commonwealth" status option on the ballot. A proposal for a "commonwealth"—different than the present—won the 1967 referendum, but it was rejected by this subcommittee's predecessor. Another proposal for a "commonwealth" different than the present obtained a slight plurality over statehood in 1993, but it was not accepted by the Clinton Administration or congressional leaders. As former Governor Hernández Colón has written, "all factions do agree on the need to end the present undemocratic arrangement"[9]—and this is illustrated by the status proposals of the three parties and of the faction of the "commonwealth" party that supports free association.

The current political status of Puerto Rico is, without any doubt, subject to the Territorial Clause of the Constitution of the United States. Some "commonwealth" supporters defend the current political status stating that it just needs some development, in the direction to a non-territorial Commonwealth status. Since what they call "commonwealth" is a territorial status, a non-territory "commonwealth" status is by definition an oxymoron.

The fatal flaw of Governor Acevedo's H.R. 1230 is that it includes an impossible proposal as an option and excludes a real status. The excluded real status is free association, which Acevedo opposes but is supported by a growing faction within his party. The impossible proposal is the "commonwealth Status", as the testimony of the Congressional Research Services constitutional expert made clear at the last hearing and was not rebutted by Acevedo's constitutional expert at the hearing.

Repeated statements of Acevedo and his representatives and statements in the "Development of the Commonwealth" proposal itself, as to the purpose of the convention that H.R. 1230 would support, make clear that the non-territory "commonwealth status" is intended to be Governor Acevedo's "Development of the Commonwealth". This proposal has been rejected as impossible—for constitutional and basic policy reasons—by the Clinton Administration and every Congressional leader who has commented on it, as well as by President Bush's Task Force. Under the proposal, Puerto Rico would be a nation to which the U.S. is permanently bound, with the power to enter into international agreements; but the U.S. would also be permanently obligated to grant a subsidy, in addition to the present one, new incentives for U.S. investment, all current assistance to Puerto Ricans, free entry to any goods shipped from Puerto Rico, and U.S. citizenship. Federal laws would apply and the federal courts would rule but only to the extent agreed to by the local government[10].

Enacting a federal law listing a non-territory "commonwealth status" as an option, when the intent of the proponents is the "Development of the Commonwealth" proposal, would be to invite Puerto Rico to choose as its status preference a proposal that Congress cannot, and would not grant—a cruel hoax.

Another fundamental flaw of H.R. 1230 is that it is designed to result in a "stacked deck" against one of the real options, statehood, and produce an artificial

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[7] Spanish for Pro-Independence voters.

[8] "PDP unveils commonwealth definition", San Juan Star, October 17, 1998.

[9] "Doing Right by Puerto Rico: Congress Must Act", Foreign Affairs, August 1998.

[10] See Exhibit 1, "Popular Democratic Party Development of the Commonwealth" approved by the Governing Board of the Popular Democratic Party On October 15, 1998.

majority for the "commonwealth" nationhood proposal. As stated by local senators who support Gov. Acevedo's proposal,[11] the plan is to form a coalition with Pro-independence voters and other nationalists in a convention to outvote statehood delegates. "Independentistas" and other nationalists would probably agree, also knowing that the "commonwealth" proposal would be rejected in Washington, leaving true nationhood as the only option.

H.R. 1230 is also less democratic than H.R. 900. Under H.R. 900, the people would pick Puerto Rico's proposed status. Under H.R. 1230 a convention, likely to be comprised of politicians, would select among the status proposals for the people and the people would only be able to accept or reject the selected proposal. This is intended to corner the people into accepting a proposal that they would otherwise not choose by majority.

The purpose of the "constitutional convention" in H.R.1230 is different from that of the constitutional conventions Puerto Rico held in the early 1950s, authorized under the Constitution of Puerto Rico, held by the United States, held by the 50 States, and held by all four other populated current territories. The purpose of those constitutional conventions was to organize governments under an already determined political status; the purpose of this "constitutional convention" would be to choose a status.

Finally, as the Congress decides whether to act to dispose of the territory or admit it as a new state, you should ask yourselves for how much longer do you believe that Congress should be empowered to make needful rules and regulations, and keep us as the territory we've been for over a century.

The segregationist vision that permeated the U.S. Supreme Court majority opinion in Plessy versus Ferguson in 1896[12] spilled over into the first of the Insular Cases which suggests that Congress could keep colonies forever.[13] Justice Harlan, whose dissent in Plessy[14] became the unanimous opinion of the Court in Brown[15], stated in his Insular Case dissent his belief that the Territories Clause of the Constitution was never intended by its anti-colonial drafters to justify 108 years of colonialism[16]

Which constitutional interpretation do you support today; the segregationists' view that separate-but-equal forever, be it racial or geographical, is constitutional, or Justice Harlan's view that Puerto Rico cannot be treated differently forever?

As Justice Harlan, I believe that the Clause's drafters, who only five years before had won a war against colonialism, never intended for you to continue ruling indefinitely over Puerto Rico as a territory. If you share our belief, inaction is no longer an alternative. The only alternative is to establish a process that will allow you to dispose of the territory of Puerto Rico or admit us into the Union. H.R. 900 clearly sends Puerto Rico on that path.

Thank you.

EXHIBIT 1

POPULAR DEMOCRATIC PARTY
DEVELOPMENT OF THE COMMONWEALTH

The people of Puerto Rico, in the exercise of their sovereignty, their natural right to self government and their free will as ultimate sources of their political power,

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[11]

[12] 163 U.S. 537 (1896). Plessy, is the 1896 case in which the United States Supreme Court declared constitutional the separate and unequal treatment of Afro-American citizens, a case which was later struck down in several contemporary cases, notably Brown v. Board of Education of Topeka, 347 U.S. 483 (1953), which held that separate is inherently unequal.

[13] The following are known as the Insular Cases: De Lima v. Bidwell, 182 U.S. 1 (1901); Goetze v. United States, 182 U.S. 221 (1901); Dooley v. United States, 182 U.S. 222 (1901); Armstrong v. United States, 182 U.S. 243 (1901); Downes v. Bidwell, 182 U.S. 244 (1901); Huus v. New York & Porto Rico Steamship Co., 182 U.S. 392 (1901). For a critical discussion of the colonialist doctrine set forth in the Insular Cases, see Justice Torruella's dissent in Igartua-de la Rosa v. U.S., 417 F.3d. 145, 158-166 (2005).

[14] In Plessy v. Ferguson, supra, p. 559, Harlan's dissent stated that "[b]ut in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law."

[15] Supra Footnote 12.

[16] In Downes v. Bidwell, supra, p. 380, Harlan's dissent stated that "[t]he idea that this country may acquire territories anywhere upon the earth, by conquest or treaty, and hold them as mere colonies or provinces,—the people inhabiting them to enjoy only such rights as Congress chooses to accord to them,—is wholly inconsistent with the spirit and genius, as well as with the words, of the Constitution."

hereby reaffirm the validity of the Commonwealth established as an autonomous political body, that is neither colonial or territorial, in permanent union with the United States under a covenant that cannot be invalidated or altered unilaterally and proposes its autonomic development. The relationship between Puerto Rico and the United States will continue to be based on common defense, market and currency and on the irrevocability of the U.S. citizenship, acquired by birth and protected by the U.S. Constitution.

This relationship guarantees the autonomous development of Puerto Rico based on the democratic precept of government with the consent of the governed and the recognition that Puerto Rico is a nation with its own history, idiosyncracy, culture and Spanish language.

To achieve its maximum economic progress and well-being, the people of Puerto Rico propose to develop Commonwealth retaining all the powers that are not delegated to the United States. Under Puerto Rico's fiscal autonomy, economic development areas will be identified in which joint action can produce jobs and other benefits for both parties, including the flexibility in the use of federal funds, providing that programs of direct aid to individuals will continue as they are present. The Commonwealth will be able to enter into commercial and tax agreements, among others, with other countries, and belong to regional and international entities, consistent with the common interests of defense and security between the United States and Puerto Rico, as agreed to in the covenant.

Once the request for the development of the people of Puerto Rico is approved, a Constituent Assembly will be called to negotiate with the U.S. government the terms and conditions of the covenant, which will include a mechanism to approve the application of legislation approved by the U.S. Congress.

ARTICLE I—PUERTO RICAN IDENTITY

A. PUERTO RICAN NATIONALITY

Puerto Ricans have a common history, idiosyncracy, culture and language that constitute a specific nationality separate from that of any other nation.

B. PUERTO RICAN CITIZENSHIP

Persons born in Puerto Rico are Puerto Rican citizens by birth and their Puerto Rican citizenship is transmittable to their descendants as determined by the Commonwealth and would have the rights, privileges and obligations that derive from it.

ARTICLE II—BASIS OF THE UNION

The union between Puerto Rico and the United States will continue to be based on the following fundamental elements determined by Puerto Rico freely and in agreement with the United States:

A. COMMON CITIZENSHIP

People born in Puerto Rico will continue to be citizens of the United States by birth and this citizenship will continue to be protected by the Constitution of the United States and by this Covenant and will not be unilaterally revocable.

B. COMMON DEFENSE

The United States will maintain authority and responsibility over defense matters. This will include: the same responsibility for the defense of Puerto Rico and its people as the United States and its people; denying and limiting military or strategic access to Puerto Rico to any foreign power, maintaining the bases or other military installations currently operating in Puerto Rico as well as the National Guard; stipulating that the case of the Municipality of Vieques will be the object of the highest attention in agreement with the legitimate call of its residents; and, any additional need would be considered and dealt with through specific and separate agreements.

C. COMMON CURRENCY

The U.S. dollar is and will continue to be the currency in Puerto Rico.

D. COMMON MARKET

A common market will continue to exist between Puerto Rico and the United States, by which the free flow of goods and services between the two countries will continue.

ARTICLE III—DISTRIBUTION OF POWERS

A. SELF GOVERNMENT

The Commonwealth emanates from the power of the people to govern themselves, and for that reason, the people of Puerto Rico retain all the powers that have not been delegated to the United States.

B. DELEGATION OF POWERS

The powers related to the Federal laws related to defense, currency, U.S. citizenship, Social Security, Medicare, unemployment insurance, banks and brokerage, Postal Service and the programs for providing social and educational assistance to citizens and veterans are delegated to the United States. In addition, international relations are delegated to the extent consisted with this Covenant.

C. SHARED POWERS

Areas of special cooperation will be identified in which the United States and the Commonwealth will exercise shared powers for the benefit of both people through the process established in Article XII.

ARTICLE IV—RIGHTS OF CITIZENS

A. CONSTITUTIONAL RIGHTS

The U.S. citizens residing in Puerto Rico will be protected by all the rights, privileges and immunities granted by the Constitution of the United States and the Commonwealth.

B. ECONOMIC BENEFITS

The Federal programs that provide social and educational assistance directly to Puerto Rico's residents, such as the Nutritional Assistance Program, Pell Grants and educational loans, among others, will continue and be guided by the applicable Federal and State regulations.

The United States recognizes as acquired rights Federal programs for veterans and Social Security, Medicare, and unemployment insurance benefits for which Puerto Rican workers and employers have made and will continue to make the corresponding Federal contributions.

ARTICLE V—ECONOMIC DEVELOPMENT

A. WITH THE UNITED STATES OF AMERICA

To promote Puerto Rico's economic development, and considering the present and future relations between Puerto Rico and the United States, the U.S. commits to provide the Commonwealth an annual block grant adjusted for inflation, so the Government of Puerto Rico can continue to provide social assistance, develop public works and infrastructure, and provide incentives for the creation of jobs and socioeconomic development.

The U.S. and Puerto Rico will identify and agree on areas of economic development in which joint action will produce jobs and other economic benefits for both parties, including the creation of special incentives programs for investment in the islands.

B. INTERNATIONAL

The Commonwealth will have control over international trade and will establish a policy to promote its maximum economic development. To that effect, it will have the capacity to enter into commercial and tax agreements, among others, with other countries, consistent with the common interests of the defense and security of Puerto Rico and the United States.

The Commonwealth will be able to enter into international agreements and belong to regional and international organizations consistent with the common interests of the defense and security of Puerto Rico and the United States.

The United States commits to support the participation or membership of Puerto Rico in the agreements and organizations to which this article refers.

ARTICLE VI—FEDERAL LANDS

The Government of the United States will transfer to Puerto Rico the lands that now it has in Puerto Rico with the exception of those lands that are used for common defense or that are necessary to exercise the powers delegated in this Covenant.

ARTICLE VII—AREAS OF SPECIAL COOPERATION

Puerto Rico and the United States will establish other areas of special cooperation intended to guarantee the quality of life of Puerto Ricans and to continue nourishing from the collective experiences of institutional and local development of both peoples.

For the sake of an orderly and calm future and development in harmony with the cultural, spiritual, psychological, and economic nature of both peoples, Puerto Rico and the United States commit to jointly determine strategies to: control drug trafficking; regulate communications; protect the borders from illegal immigration; protect the environment and recognize guarantees of mutual benefit consistent with international rules; promote a new basis for cooperation between workers and management; deal with natural disasters; share technological advances in the sectors of agriculture, medicine, pharmacology, criminal justice, and other disciplines in the areas of Natural and Social Sciences and Humanities.

ARTICLE VIII—FEDERAL COURT

The Federal Court will have jurisdiction over matters that arise from: provisions of the Constitution of the United States and of the Federal laws that apply to Puerto Rico consistent with this Covenant and not in violation with the laws of the Constitution of Puerto Rico. Spanish and English will be the official languages of that court.

ARTICLE IX—RESOLVING DISPUTES

A. NEGOTIATION COMMITTEE

Any controversy about the interpretation of this Covenant will be resolved through negotiations between the parties to this Covenant that is the United States and the Commonwealth of Puerto Rico. In all negotiations, the Commonwealth of Puerto Rico will be represented by a negotiating committee of three (3) members appointed by the governor and confirmed by seventy-five percent (75%) of each of the two (2) legislative houses of Puerto Rico.

At least, two (2) of the three (3) members of the committee should believe in the political philosophy described in this Covenant, that is, be Commonwealthers. In the same manner, the United States of America will be represented by a committee of three (3) members appointed by the President of the United States

B. COMMISSION TO RESOLVE DISPUTES

If it is not possible to resolve a controversy through a negotiation between the parties, the controversy will be submitted to the Commission to Resolve Disputes. This commission will have five (5) members, two (2) appointed by the Commonwealth of Puerto Rico, two (2) appointed by the United States of America and a fifth member appointed by majority of these four (4). The five (5) members will select a chairman from their membership.

Decisions of this Commission in disputes between the Governments of the Commonwealth of Puerto Rico and the United States of America regarding the interpretation of this Covenant will be final and firm.

ARTICLE X—LEGALITY

The agreement between the people of Puerto Rico and the government of the United States of America will have the force recognized by the constitutional and international rights in force as a bilateral covenant that recognizes rights and delegates powers, based on mutual consent that cannot be unilaterally renounced or altered.

ARTICLE XI—SYMBOLS

The symbols, flags and hymns of the Commonwealth of Puerto Rico will continue to be as at present.

ARTICLE XII—OTHER INTERNATIONAL ASPECTS

The Commonwealth of Puerto Rico will retain the authority to ratify cultural, educational, scientific and sports agreements.

ARTICLE XIII—NEGOTIATION

a. Once this development proposal is approved by the people of Puerto Rico, a Constituent Assembly will be called that will negotiate with the Government of the United States the terms and conditions of the association between Puerto Rico and the United States and the specific drafting of such agreement on behalf of the people of Puerto Rico. This Constituent Assembly will not be able to adopt proposals that undermine or cancel the mandate expressed by the people of Puerto Rico or that undermines the precepts of common citizenship, market, currency and defense, or against the Puerto Rican national identity.

b. The Constituent Assembly will design and propose to the Government of the United States a mechanism for a specific agreement regarding the application of legislation approved by the Congress of the United States after the adoption of the covenant and that the people of Puerto Rico wish to have extended to Puerto Rico.

The people of Puerto Rico will elect a Resident Commissioner who will represent Puerto Rico before the Government of the United States and who will be considered a Member of the U.S. House of Representatives for purposes of all legislative matters that have to do with Puerto Rico, but whose role will also be extended to representing Puerto Rico before the Executive Branch of the United States.

c. The main political parties of Puerto Rico will be represented in the Constituent Assembly and will be able to nominate candidates to be part of the assembly.

d. The Covenant will take effect after it has been negotiated and approved by the Government of the United States and the Constituent Assembly, and it has been approved by the people of Puerto Rico in a referendum called for that purpose.

e. Any change to the terms of this Covenant will have to be approved by the people of Puerto Rico in a special vote conducted consistent with its democratic processes and institutions.

f. The Constituent Assembly will not have authority to alter, modify, amend, and/or change the Constitution of the Commonwealth of Puerto Rico.

Approved by the Governing Board of the Popular Democratic Party
On October 15, 1998

Ms. CHRISTENSEN. Thank you. The Chair now recognizes Mr. Aponte for five minutes.

STATEMENT OF THE HON. JOSÉ APONTE-HERNÁNDEZ, SPEAKER OF THE PUERTO RICAN HOUSE OF REPRESENTATIVES

Mr. APONTE-HERNÁNDEZ. Buenos tardes. I come before you not to press my personal position with regards to what I consider to be the most beneficial status option for the people of Puerto Rico—statehood. Rather, I take this opportunity to inform this committee of the main initiative undertaken by the House of Representatives with regards to the political status of Puerto Rico.

The initiative to which I am referring was the truly historic achievement by the House of Representatives of Puerto Rico, referred to as the substitute to House Bills 1014, 1054, and 1058. This measure, approved unanimously, would have provided the people of Puerto Rico with the opportunity to vote yes or no, demanding the President and the Congress respond to their claim to reserve our political status among the fully democratic options of a non-colonial and non-territorial nation.

Unfortunately, Governor Acevedo-Vilá vetoed the measure, after all of his conditional amendments were included, and after his minority leaders had indicated that he would sign it. Eight and a half months later, the first recommendation proposed in the report by the person in task force was almost identical to what was proposed in our bill.

Let me be clear. A minority of the members of the House of Representatives of Puerto Rico fully support approval of H.R. 900, with the amendments presented in my written testimony.

Madame Chairwoman, Puerto Rico is at a critical juncture. Your fellow citizens in Puerto Rico have waited far too long. Many have even become skeptical of the prospect of Congressional action on this issue.

For example, this hearing brings back memories of one held almost 17 years ago, before the Committee of Insular and International Affairs. To those that remember that hearing, they may find a clear resemblance of this one.

Some of the political leaders from our island who were witnesses that day are also here with us this afternoon. Just as today, that hearing was chaired by the delegate from the U.S. Virgin Islands. Unfortunately, nothing changed.

Over 200 years ago, the citizens of the 13 original colonies had similar grievances against the British Government. In 1775, Patrick Henry eloquently declared, and I quote, "Shall we try argument, sir? We have been trying that for years. Have we anything new to offer upon the subject? Nothing. We have held the subject up in every light of which it is capable, but it has been all in vain. Shall we resort to entreaty and humble supplication? What terms shall we find which have not been already exhausted? We have petitioned, we have demonstrated, we have supplicated, we have prostrated ourselves before this wrong. Is life so dear and peace so sweet as to repurchase, at the price of chain and slavery? Forbid it, Almighty God. I know not what course others might take; but, as for me, give me liberty or give me death." End quote.

These are truly ominous words that, in a way, I dread. As the Puerto Rican and proud American that I am, I still have a firm belief in my government, and in this Congress. It is important to heed the words of Congressman Serrano, from the previous hearing by this Subcommittee, when he expressed that my country has held my patria in bondage for more than a century, and I want it to end. I do, too.

It is time to put an end to the discrimination and colonialism by my nation, and with regards to my people. And the time to act is now. We, the people, your fellow citizens from Puerto Rico, are ready to act. The ball is in your court.

May God bless America, and in particular all my fellow Puerto Ricans who place their hopes for their future in your hands. Thank you very much.

[The prepared statement of Mr. Aponte-Hernández follows:]

Statement of The Honorable José F. Aponte-Hernández, Speaker of the House of Representatives of Puerto Rico

On behalf of the nearly 4 million U.S. citizens who reside in Puerto Rico, which my fellow 50 representatives and I proudly and responsibly represent in our House of Representatives, let me recognize the importance of this hearing and the significance of the legislative process which in earnest begins today. Thank you for responding to the petition brought forth to you by our Legislative Assembly.

This morning, I come before you not to express my personal position and choice with regards to what I consider to be the most beneficial status option for the people of Puerto Rico; but rather, as an opportunity to inform the United States House of Representatives of the three main initiatives undertaken by the House of Represent-

atives of Puerto Rico throughout the past two years with regards to the political status of Puerto Rico and the basis for these.

First and foremost, I would like to share with you the historic achievement originated and spearheaded by the House of Representatives of Puerto Rico that resulted in the measure referred to as the Substitute to House Bills 1014, 1054 and 1058 (Enclosure 1). As per Section 7 of that substitute bill, the people of Puerto Rico would have been provided with the opportunity to vote yes/no on the following proposition:

> We, the People of Puerto Rico in the exercise of our right to self-determination, demand from the President and the Congress of the United States of America, before December 31, 2006, an expression of their commitment to respond to the claim of the People of Puerto Rico to solve our political status among fully democratic options of a non-colonial and non-territorial nature.

As anyone involved may attest, that measure was a product of honest and frank negotiations with fellow representatives of the three delegations in the House (thus representing the traditional status options in Puerto Rico), as well as with the Governor of Puerto Rico by means of his party's minority leaders both in the House and Senate. The result was a status bill which garnered the UNANIMOUS APPROVAL in both chambers.

That included not only the vote of members of the majority pro-statehood New Progressive Party; but also, those of the minority pro-independence Puerto Rican Independence Party and the pro-commonwealth Popular Democratic Party. Sadly in an unexpected move, Governor Acevedo-Vilá vetoed the measure after all of his conditional amendments were included and after his minority leaders had indicated that the Governor would sign the aforementioned measure. History and the people of Puerto Rico will judge him for not being truly committed in addressing this issue and for having fear of the future and the inevitable consequences of change and self-determination.

It is noteworthy to point out that eight and half months later, the first recommendation proposed in the Report by the President's Task Force on Puerto Rico's Status was almost identical to what was proposed in the Substitute to House Bills 1014, 1054 and 1058. Definitely, the historic consensus first achieved in our House of Representatives provided the President's Task Force with the keystone from which to begin an irreversible process that would result in Puerto Rico's self-determination.

Second, on April 21, 2005, the House of Representatives of Puerto Rico approved House Concurrent Resolution 25 (Enclosure 2), which petitioned

> Congress and the President of the United States of America to respond to the democratic aspirations of the United States citizens of Puerto Rico in order to ensure that with all deliberate speed, they provide us with an electoral method through which we, ourselves, may choose which shall be our political relationship with the United States of America, if any, from among fully democratic non-territorial and non-colonial alternatives.

Third and finally, on February 12, 2007 the House of Representatives of Puerto Rico approved House Concurrent Resolution 102 (Enclosure 3), which requests

> the 110th Congress to respond to the democratic aspirations of the people of Puerto Rico with all deliberate speed, accepting the recommendations contained in the Report of the President's Task Force on Puerto Rico's Status, of December 22, 2005, providing through legislation for the holding of a plebiscite by virtue of which the people of Puerto Rico may express themselves regarding if they desire to continue as a territory of the United States of America, subject to the plenary powers of Congress, or if they desire to undertake a constitutionally viable course of action towards a permanent status that is neither territorial, nor colonial and to order the establishment of a Joint Committee, bestow it with its duties and for other purposes.

As you may see, this recent mandate of the House of Representatives of Puerto Rico is totally in line with H.R. 900, formally known as the "Puerto Rico Democracy Act of 2007." Furthermore, let me be as clear as possible when I state that a majority of the members of the House of Representatives of Puerto Rico fully support congressional approval of H.R. 900.

Nonetheless, on behalf of a majority of the people of Puerto Rico, let me request that the celebration of any initial referenda be done within the timeframe of the 110th Congress, so as to avoid any conflict with any future Congress and also, because the U.S. citizens who reside in Puerto Rico have been denied with such an opportunity for much too long. Also, in order to conclude the long overdue problem of Puerto Rico's self-determination, you must make certain that the status options

provided in any referendum to the U.S. citizens who reside in Puerto Rico be limited to those that are constitutional viable, non-territorial, non-colonial and fully democratic in nature. In other words, they must be limited to options that guarantee full self-government by the people of Puerto Rico.

On February 28 of this year, Representative Nydia Velázquez filed H.R. 1230. This measure supported in Puerto Rico by Governor Acevedo-Vilá and his Popular Democratic Party proposes the recognition of "the right of the People of Puerto Rico to call a Constitutional Convention through which the people would exercise their natural right to self-determination, and to establish a mechanism for congressional consideration of such decision." I wish that this Subcommittee may have the time and opportunity to seriously consider what is proposed by this measure. Particularly, I would like for you to ponder—how democratic would it be for a select and limited group of individuals to decide the future of all Puerto Ricans as to our final status option? Moreover—wouldn't the calling of a constitutional convention run contrary to our entrenched concept of participatory democracy and the constitutional principle of one person, one vote?

Therefore, I believe it would be extremely important to request legal opinions, from both the United States Department of Justice and the Congressional Research Service, as per the constitutionality of both measures.

I commend Chairman Rahall, Ranking Republican Member Young and this Subcommittee in addressing the issue of Puerto Rico's self-determination. To many people, Puerto Ricans seemingly do not get their act together as to what do they want to do—the kind of relationship that we would like to have with the United States. Then, among so many pressing issues facing our Nation—immigration—the war against terrorism—the fiscal deficit—budget priorities—just to name a few—does it make sense to spend time and effort in dealing with such a controversial issue?

Let me convey to you why it is the right thing to do.

This Congress represents the citizens of the greatest Nation in the face of this Earth. Most nations around the World look upon us—the United States of America—to provide the political, economic and moral leadership as the undisputed leader of the Free World. As such, we are the beacon of freedom and democracy.

Today this Nation has thousands of our brave men and women who serve in our Armed Services risking their lives in order to provide hope and guarantee freedom and democracy in Irak and Afghanistan. Among those everyday heroes, there are many Puerto Rican soldiers serving in the various branches of the U.S. Military who have responded to the call of duty and ably served in the military operations in this War against Terrorism; including several units and or detachments of our U.S. Army Reserves and National Guard. Sadly, many have also paid the ultimate sacrifice to our Nation by giving their lives in this war effort.

Yet, this should come as no surprise to anybody, as Puerto Rico is the proud home of many of our Nation's military heroes, including four recipients of the Congressional Medal of Honor. Let me tell you the brief story of Captain Euripides Rubio, from Ponce, Puerto Rico, who was one of the four Congressional Medal of Honor recipients. His tremendous sacrifice occurred in November of 1966. Although he himself suffered three serious wounds as part of an intensive fire fight, he was helping to evacuate other wounded personnel when he discovered a smoke grenade had fallen too close to friendly lines. In preparation for friendly airstrikes, the smoke grenades were used to mark the Viet Cong position. Captain Rubio intended to avert an unnecessary tragedy and ran to reposition the grenade. He was immediately "struck to his knees" by enemy fire. Despite his many wounds, he grabbed the grenade, lumbering through the deadly onslaught of enemy gunfire, and made it to within 20 meters of the enemy position. Hurling the already smoking grenade into the midst of the enemy, he fell for the final time. His death made a difference. The hostile position was destroyed because the friendly air strikes were able to use the repositioned grenade as a marker.

This moving anecdote is no different from that of Fernando Luis García, Carlos James Lozada, Héctor Santiago-Colón or many of the close to 1,300 Puerto Ricans who have given their lives in the service to our Nation. Probably, Gen. Douglas MacArthur put it best, when he said "I wish we had more like them."

Regretfully, I have to remind everyone of the extreme irony of the service of so many of my fellow Puerto Ricans. Our Nation—the United States of America—has allowed for the sacrifice of so many of our men and women to be somewhat in vain.

We have fought valiantly and without objection ever since we came under the American flag. Yet, this flag which stands for freedom, liberty and justice everywhere it flies does not protect my fellow Puerto Ricans from disparate and discriminatory treatment by my Nation. We fight for liberty and democracy all over the World—yet we have been denied one of the most basic of human and civil rights—the right to self determination.

For example, how contrary to the values and principles that have always defined our Nation is it to have so many servicemen go to war and, sometimes even giving their lives, without having the basic fundamental right to vote for their Commander-in-Chief or for the Members of Congress who have the right to declare war. This discriminatory practice has been validated by Supreme Court decisions that incredibly are still valid today, such as Balzac v. People of Porto Rico and more recently in Harris v. Rosario.

In the latter case, appellees claimed that the lower level of AFDC reimbursement provided to families with needy dependent children in Puerto Rico violated the equal protection guarantee of the Fifth Amendment of our Constitution. Surprisingly, the United States Supreme Court disagreed and found that Congress is empowered under the Territory Clause of the Constitution to "...treat Puerto Rico differently from States so long as there is a rational basis for its actions." In other words...can there be a truly rational basis to discriminate with regards to the need of children who are U.S. citizens just because they happen to live in Puerto Rico? I guess none of you would feel comfortable with such decision making. Could there be something more un-American? After all, wasn't disparate and discriminatory treatment from the British Government what led our forefathers to independence and later establishing this more perfect union?

Furthermore, the paradox and the inequity of living in the "Commonwealth" of Puerto Rico—the "unincorporated" U.S. territory—the "oldest colony in the World" (as aptly described by former Chief Justice José Trías-Monge, who also happened to be the primary legal scholar involved in the forging of our current "commonwealth territorial arrangement") ...is such that if any of you decide to move to Puerto Rico and maintain the desire to vote in federal elections as an absentee voter of your last state of residence, you would be denied the right to do so, as we are neither a state of the Union or the District of Columbia, nor a foreign or overseas jurisdiction under the Uniformed Overseas Citizens Absentee Voting Act of 1986. On the other hand, if you happened to be in Tehran, Iran, P'yongyang, North Korea, Havana, Cuba or any other rogue nation where there is no U.S. Embassy, you just need to go to the U.S. Interest Section of the appropriate foreign embassy in order to cast your ballot (assuming that you already filled out in advance a Federal Post Card Application for an absentee ballot). As a U.S. citizen, don't even think about moving to Puerto Rico if you wish to continue exercising the most fundamental of rights of our democracy—of any democracy—the right to vote for those who legislate and make decisions that may affect your daily lives in any way or manner. In other words, we do live in a land of unequal rights.

Even though we may have been blessed with many of the benefits of our citizenship—America cannot tolerate—and our flag—defended by the blood of so many of our people—cannot be put to shame by further legitimization and a continuation of the misguided policy of separate and unequal.

Do these policies make any sense to you? I guess they would only makes sense to those who feel comfortable with categorizations such as those that describe Puerto Rico—as foreign in a domestic sense—belonging to, but not a part of the United States—separate and unequal. Is it possible to have colonialism by consent?...or slavery by consent for arguments sake? Was separate but equal valid and acceptable? Can there be consent to discrimination? Can there be true democracy in Puerto Rico with unequal rights under the law? That is the moral challenge before you today.

To those of you who might be somewhat confused with our political reality, let me state for the record that Puerto Rico is not a sovereign state in association with the United States. There is no compact in our case, as opposed to the Republic of the Marshall Islands, the Federated States of Micronesia and the Freely Associated State of the Republic of Palau, all of whom negotiated compacts with the United States. Neither are we recognized by any other country as being a sovereign state.

The United States is the only sovereign in Puerto Rico. In accordance with Article IV, Section 3, Clause 2 of the United States Constitution "[t]he Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." That is why the people of Puerto Rico come before you time after time—because primary constitutional authority rests exclusively in the Congress.

Thus, even though the official name of our government in Spanish is "Estado Libre Asociado", we are not a free associated state (as the name of our Government in Spanish claims to be) with our Nation—but rather, we are just the U.S. territory with the largest degree of internal self-government by virtue of an act of Congress.

As the proud American citizen that I am, I cannot possibly be satisfied or resign myself to being less than a full-fledged citizen of our Nation. To me it would be just

like if African Americans would have remained satisfied with the untenable condition of segregation—as if separate but equal could ever be right.

It is clear that your fellow citizens from Puerto Rico can no longer remain within the current arrangement. Change towards a final solution that needs to be fully democratic, non-territorial and non-colonial has to take place. We cannot be denied the inalienable right to self-determination; whereby we would be able to achieve a status option that provides for full self-government, be it either under independence, free association or statehood.

This human and civil right firmly entrenched in the constitutional principles of our Nation, as well as in International Law, requires that the people of Puerto Rico be given a true and fair exercise of their right to self determination. But in order to have a real and meaningful process of self-determination, we need to know what Congress and the President of the United States understand as *constitutionally viable* and politically acceptable from among the possible status options. If not, we would only have a futile process, just like our three locally sponsored status plebiscites that led to nothing, while further confusing our people as to what is really attainable under our three traditional status alternatives (regarding this last point I would respectfully refer you to H.R. 4751 from the 106th Congress, whereby this same committee had the opportunity to analyze the contents of the "Enhanced Commonwealth" alternative still proposed by the Popular Democratic Party).

In other words, without an expression by Congress and the Executive Branch, as to what is constitutionally and politically viable, everything would be a charade. For example, periodic elections in the People's Republic of China or in Cuba do not make them bastions of democracy.

That is why I commend *our* President, George W. Bush, for his vision and continued commitment in addressing this issue—in trying to put an end to this *unfinished business of American democracy*. He was firm and resolute in providing leadership on an issue that thirsts for a high moral ground.

To that end, President Bush made sure that the directive begun by former President William Jefferson Clinton, whom I also should commend as per the establishment of the President's Task Force on Puerto Rico's Status, would be successful in achieving its stated objectives. Amidst all the efforts generated by people who do not want this issue to move forward, the President did not allow the members of his Task Force to stray from the course of clearly and correctly addressing this issue. Seldom has such leadership been exercised by a President with regards to the political aspirations of your fellow citizens who reside in Puerto Rico.

On December 22, 2005, President George W. Bush's Task Force on Puerto Rico's Status made public its Report on the issue, which included a series of recommendations for the United States Congress to consider and act upon. That Report represents the final work product of a group of responsible and highly professional individuals which represented most of the important agencies of the Executive Branch. In earnest, they devoted more than a year in analyzing the issue, studying documents and meeting with members of Puerto Rico's three political parties on multiple occasions. The result was a surgically precise and legally correct document that is crystal clear as to what needs to be done to resolve this issue.

As you may be fully aware, there are people, both in Puerto Rico and here in the mainland, who would rather not have this issue take center stage at the national level. One could easily denominate them as the powerful "Forces of Inertia". You may have heard them talk about self determination, but their track record in torpedoing any step that may lead to the exercise of full self-government befits Dr. Kevorkian.

As all of you know, it is easier to kill an initiative than to convince others about its importance and merits. Therefore, since they are very able as to what they do in order to achieve their nefarious goal, there are three important myths that I want to dispel from your minds.

First myth—that Puerto Ricans need to get their act together first and present the federal Government with the solution to this issue.

I would begin my reply by formulating the following question—how could we get our act together if the people have been confused and misinformed for decades as to what is truly available under each of the traditional status options?

The role of the Federal Government in providing for a final solution to our centuries old dilemma is essential to this process, not because we feel or act as subservient to anyone (as that would be totally un-American), but because we fully respect and adhere to the rule of law; and *under the current Commonwealth territorial arrangement we do not have the power—nor the right—to change our current status or relationship with the United States in a unilateral manner.* The recognition of this congressional power over those of us who reside in Puerto Rico is a legal and political reality over which we have no control. Nonetheless, that does not mean

that any process undertaken by the Federal Government would preclude or inhibit continuous dialogue and negotiation by the people of Puerto Rico regarding the specifics and details of each option, the process or processes that need to be undertaken to finally enable this final choice by our people, as well as the implementation of the selected option.

For the past thirty years, the political and ideological blocks in Puerto Rico have been bogged down in a political quagmire. No side commands a solid absolute majority. Misinformation and confusion as per the future and our real status options reigns supreme. That is the reason for the results of the three plebiscites of local initiative (1967, 1993 and 1998). None have led to anything, particularly those of 1967 and 1993 where the option of "Enhanced Commonwealth" resulted as the winner (although that may also be the fault of proponents who really did not want Congress to take action with regards to their status options or to the issue in general). Why would a constitutional convention be any different?

Therefore, it should become clear that, in order to resolve this issue once and for all, the Federal Government, and Congress in particular need to assume their constitutional prerogatives and responsibilities over the nearly four million U.S. citizens who reside in Puerto Rico. Failing to do so would only complicate the problem further.

Second myth—that Puerto Ricans do not wish to change their status—why force something that they do not want?

This myth is based on pure misinformation.

Some people in the mainland may ask—haven't Puerto Ricans long favored Commonwealth in plebiscite after plebiscite? NO.

Back in the early 1950's when the Commonwealth territorial arrangement came into life, no plebiscite or referenda among options was ever held. In strict accordance with Public Law 600, on June 4, 1951 a referendum was held whereby the people of Puerto Rico were presented with the question whether we wanted to follow the path to have a Constitution of our own or remain subject to an Organic Act. Then, on March 3, 1952 the people of Puerto Rico voted overwhelmingly in favor of the Constitution as it was drafted by the Constitutional Convention whose members they had elected. As you see, neither process could ever be confused with a true process of self-determination—as there was never a ballot in which voters were provided with status choices.

In the first plebiscite or status referenda ever conducted, held in 1967, almost 60% of voters favored an "Enhanced Commonwealth" option. Statehood achieved close to 40%, as the Puerto Rican Independence Party boycotted the plebiscite accounting for almost no votes in favor of Independence. As I have indicated before, there was no concerted effort undertaken by commonwealth advocates for Congress to take action on the vote.

The next plebiscite was held in 1993 and another version of "Enhanced Commonwealth" won the electoral vote; this time though, with a plurality of less than 49% of the vote. Again, the pro-commonwealth Popular Democratic Party took more than half a year to inform the House Subcommittee with jurisdiction over Puerto Rico regarding the results of the 1993 Plebiscite. The result was a subcommittee hearing on October 17, 1995.

Then, in 1998, in a plebiscite in which the current Commonwealth (or status quo) was an option—that option failed to garner 1% of the vote. Therefore, as anyone may see—there is clearly NO mandate by the Puerto Rican electorate to maintain our current Commonwealth territorial arrangement as is.

Befitting the level of confusion and misinformation that exists among Puerto Ricans with regards to true contour of the options that would be really available, the write-in column, titled "None of the Above", garnered over 51% of the vote. It is important to point out that voter participation in these plebiscites hovered around 75 to 85% and in poll after poll, people select this issue as either the most important one that needs to be addressed. or at the very least among their top 5. Obviously, this shows the existence of a clear consensus among Puerto Ricans, overlapping ideological and party lines, yearning for a resolution to this issue.

Third myth—that the White House Report which is the basis for H.R. 900 is skewed towards statehood and unfair in its treatment of Commonwealth.

This myth has two different fronts.

First, the procedural one, that the initial round was presented in order to corner the supporters of Commonwealth with the choice of rejecting "to pursue a Constitutionally viable path toward a permanent non-territorial status with the United States," while sponsoring an "artificial majority" of pro-statehood and pro-independence supporters who would obviously vote in favor of such a proposal.

This argument is completely flawed for a couple of reasons. On the one hand, on what grounds would commonwealth supporters reject the aforementioned language

proposed by the President's Task Force for the first round? Don't they want to establish and clarify once-and-for-all that their "Enhanced Commonwealth" is constitutional and a permanent non-territorial status? After all, pro-commonwealth Popular Democratic Party legislators voted unanimously in favor of language that was even stronger in its stance with regards to the issue in the Substitute to House Bills 1014, 1054 and 1058.

On the other hand, any coalition of voters which might favor the aforementioned language proposed by the President's Task Force for the first round do not constitute an "artificial" grouping; but rather, a true measure of the consensus in Puerto Rico that transcends ideologies and party lines with regards to the need for a final resolution to this centuries old dilemma.

Second, the substantive one, that the Report contains a biased and incorrect description of the current Commonwealth territorial arrangement; and furthermore, that it is incorrect as well in not recognizing Free Association as an option in the second round proposed in its second recommendation.

With regards to the Report's description of our current Commonwealth territorial arrangement, I would just reiterate what I have stated earlier in this testimony, as well as the legally sound conclusions reached by the United States Department of Justice on this same issue as included in the Task Force's Report.

As per the supposed intentional omission of Free Association, the reason for its non-inclusion is very simple. Free Association is a legitimate decolonizing option as recognized by International Law and by our own political experience with various strategic territories in the Pacific Ocean which we had previously held in "trusteeship" for several decades after the Second World War. The Report does not contradict this reality and our own experiences. On the contrary, the Report recognizes Free Association, albeit as an offshoot of separate sovereignty or independence. The reason for the position taken by the Task Force in its Report is based in constitutional, legal and political restraints of our Nation, as only Statehood and Independence can truly be permanent options. On the other hand, if Puerto Rico were to become a sovereign nation in free association with the United States, such a relationship would be based on a treaty—but everybody has to keep in mind that no treaty can unilaterally force the United States to relinquish its constitutional and political prerogatives to withdraw unilaterally whenever it may see fit.

This shows the sound legal positions taken by the members of the Task Force and their commitment in making sure that the people of Puerto Rico may understand the implications of each option in the most clear and precise manner.

Besides all the compelling arguments for Congress to address the issue of Puerto Rico's self-determination, for many of you there could be another very important reason for this issue to be resolved now...that is the cost of Puerto Rico to the American taxpayer. In a book titled "Pay to the Order of Puerto Rico: The Cost of Dependence to the American Taxpayer" Alexander Odishelidze and the renowned Arthur B. Laffer concluded that our current Commonwealth territorial arrangement "is enormously costly to the American people" over the past 20 years alone, it has been a $200 billion drain on the American taxpayer. From my perspective, the worst part of it all is that it has been equally, if not more costly for the Puerto Rican people, who are taxed in ways they cannot see...by growth that has not occurred...and sound policies that cannot develop and flourish in dependency."

Today, Puerto Rico receives over $20 billion a year in federal funds, although in essence, and particularly with the current misguided policies in place at the state level, we certainly need more. The failed economic policies of which Governor Acevedo-Vilá has been part, demonstrate the total bankruptcy of the current Commonwealth territorial arrangement. There is no economic model for the future well-being of our people. The only manner in which they have masked the severe limitations and failure of their model is by bloating the government payrolls and forcing outward migration to the mainland.

The economy is stagnant, if not close to becoming paralyzed. Even though our unemployment rate has been hovering between 10 and 12% for the past few years, the reality of our bleak situation can be further understood by looking at our employment participation rates. For example, according to the 2000 Census, Puerto Rico's employment participation rate was at 40.7%; well below the 63.9% of the U.S. mainland. Many of your fellow citizens who reside in Puerto Rico have just lost any hope for employment and have rather decided to live on welfare. That is why over 50% of all Puerto Ricans live below the federal poverty level.

A primary solution of the past two pro-commonwealth administrations has been a sharp increase in the government payrolls. Puerto Rico's daily English newspaper, The San Juan Star, reported on September 6, 2005 that the previous Calderón-Acevedo Vilá Administration was responsible for increasing government payrolls by 14.37% between 2001 and 2005.

Under Commonwealth, and particularly in the last five years, migration to the mainland has increased dramatically. Researchers in Florida have indicated that every month, close to an average of 5,000 Puerto Ricans move to the Greater Orlando area. With our social and economic situation worsening year after year—what could we expect next? If there were various real concerns that were discussed after the Katrina temporary displacement of many Gulf residents—what would an exponential increase in a permanent northward migration of our people cause here in the mainland?

Worse of all, rather than being an agent of hope, the current Administration of Governor Acevedo-Vilá has not provided a concrete and realistic plan for broad-based economic development. In addition to their ineptitude in dealing with the socio-economic needs of the majority of Puerto Ricans, the current Commonwealth territorial arrangement limits the effectiveness as to what could really be done to improve the quality of life for all our people.

Madam Chairwoman, Puerto Rico is fast approaching one of its most critical moments in its history. Your fellow citizens from your neighboring islands have waited for far too long...many have even become skeptical of the prospects of congressional action on this issue. There is a growing feeling across ideological lines is that our current situation is totally untenable. Are you aware how many times we have come before Congress full of hope, only to return back to our Island empty handed and completely disappointed?

For example, this hearing brings back bittersweet memories of another one held almost seventeen years ago; specifically on June 28, 1990, when the then Subcommittee on Insular and International Affairs was considering H.R. 4765, also known as the "Puerto Rico Self-Determination Act." To those that remember that hearing they may find an eerie resemblance with this one. The arguments and the positions undertaken by the three political parties are practically the same. Some of the political leaders from our Island who were witnesses that day are also here with us this morning. Just as today, that hearing was chaired by the delegate from the United States Virgin Islands. Regretfully, what spurred so much optimism to us in Puerto Rico back then, led to utter disenchantment a few months later.

Over 200 years ago the citizens of the thirteen original colonies had strikingly similar grievances against the British Government. On March 23, 1775 Patrick Henry eloquently declared

Shall we try argument? Sir, we have been trying that for the last ten years. Have we anything new to offer upon the subject? Nothing. We have held the subject up in every light of which it is capable; but it has been all in vain. Shall we resort to entreaty and humble supplication? What terms shall we find which have not been already exhausted? Let us not, I beseech you, sir, deceive ourselves. Sir, we have done everything that could be done to avert the storm which is now coming on. We have petitioned; we have remonstrated; we have supplicated; we have prostrated ourselves before the throne, and have implored its interposition to arrest the tyrannical hands of the ministry and Parliament. Our petitions have been slighted; our remonstrances have produced additional violence and insult; our supplications have been disregarded; and we have been spurned, with contempt, from the foot of the throne! In vain, after these things, may we indulge the fond hope of peace and reconciliation. "Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty or give me death!

These are truly ominous words that, in a way, I dread and fear. As a Puerto Rican and proud American that I am, I still have a firm belief in my Government and in this Congress. Thus, I hope that my Nation pay close attention to its history and to the principles that led to the independence from the United Kingdom and the subsequent establishment of a more perfect union.

To that end, it is important to heed the words of Congressman José E. Serrano from the previous hearing by this Subcommittee, when he expressed that "[m]y country has held my patria in bondage for more than a century...I want it to end."

Congressman Serrano, we fully agree with you! It is time to put an end to blatant discrimination and to colonialism by my Nation with regards to my people...and the time to act is now!

WE THE PEOPLE...your fellow citizens who reside in Puerto Rico are ready to act. The ball is in your court.

May God enlighten you to act according to what may be best for your fellow citizens who reside in Puerto Rico.

May God bless America...and in particular all my fellow Puerto Ricans who place their hopes for their future in your hands.

Thank you very much.

Ms. CHRISTENSEN. Thank you, Mr. Aponte. Next I would recognize The Honorable Carlos Romero Barceló for five minutes.

STATEMENT OF THE HON. CARLOS ROMERO BARCELÓ, FORMER GOVERNOR, COMMONWEALTH OF PUERTO RICO AND FORMER MEMBER OF THE UNITED STATES CONGRESS

Mr. ROMERO BARCELÓ. Thank you, Madame Chairman. I think I would like to approach my presentation, oral presentation from a distant perspective.

All this afternoon I haven't heard anyone speak about U.S. citizenship, about the citizens' rights. And I would like to approach it from that aspect.

Recently we had, in Washington, we had a voting rights march. It was April 12, based on the revolutionary cry of no taxation without representation. In Puerto Rico we have no representation without taxation.

Now, since we are not taxed, they say you should be happy that you don't have representation, because you don't have to pay Federal income taxes. I have had some Members of Congress, some Members of the Senate, had some people in the industrial world, some businessmen, say why would you want to be a state? You don't have to pay Federal income taxes. My answer to that is, how much are you willing to sell your political rights for?

Anyone that sells their political rights is not entitled to have them. And that is what we are talking about, political rights. We are talking about the rights of citizens.

Let us forget about statehood. Let us forget about independence. Let us forget about commonwealth. Let us talk about the people of Puerto Rico, who are U.S. citizens, and have been natural-born U.S. citizens since 1917. That is 90 years franchised U.S. citizens.

Now, I ask you, Madame Chairman, and any Member of this committee, are you willing to support that a law be passed now in Congress taking the voting rights away from a part of a state or a full state, and say now we are going to take your voting rights away, but we are going to give you Federal tax exemption? Would you vote for such a bill?

Now, let us go back to the time of slavery, when Abraham Lincoln issued the Proclamation. Did he say well, first let us have a referendum with all the slaves to see if they want freedom or not. No, there was not a matter of referendum. It was a matter of something that is wrong, that has to be corrected. And what is wrong? That there are 4 million U.S. citizens who are disenfranchised, and nothing is being done about it.

Now, part of those 4 million U.S. citizens are right now in Iraq and Afghanistan, fighting to bring democracy to Iraq and Afghanistan, foreign nations. Some of them die, and those that have died, their mothers, their fathers, their wives, the children, are denied the voting rights that he is over there fighting for, for that alien country. But the Nation denies him those voting rights.

We are talking about commonwealth. The commonwealth is the problem. If Puerto Rico were a state or we were a republic, we wouldn't be here talking about any referendum. We are talking about a referendum because we have 4 million U.S. citizens who are denied the right to vote and the right to representation.

I was here in Congress for eight years, eight years without a vote. The first part, I had that vote, they would call in the committee as a whole to vote. You know, well, you vote, yes, you participate. But if a number of, the Resident Commissioner and the delegate votes are the ones that carry the vote, then there is a reconsideration, and then they don't vote in the reconsideration. The vote is all right as long as not the deciding vote. So that is not really a vote.

But anyway, then when the Democratic party lost, then even that vote was taken away. So I was here for eight years; very, very frustrating. And we were entitled to six or seven representatives, and two senators.

Now, we in Puerto Rico, we don't pay Federal income taxes. But because we don't pay Federal income taxes, the courts have decided also that we are not entitled to the same benefits that our poor people, those, the destitute, the needy, the single women with children that can't work, the elderly, are not entitled to the same benefits.

I know, Madame Chairwoman, that you are fighting for to get Medicaid to Virgin Islands. We don't have it, either. But do you know what your big obstacle is? The fact that Puerto Rico is not entitled, the fact that we don't pay Federal income taxes. And we are not a state. If we were, you would get it, because the amount of money is not that significant compared to the amount of money in Puerto Rico.

Do you know how much we get now? Two hundred million dollars. You know how much Puerto Rico would be getting for healthcare for the needy, for the poor? Two billion dollars a year. Now, what that would mean for healthcare in Puerto Rico. Are you going to support that? Is that fair? Is that what Congress stands for? Is that what this nation stands for? Don't we stand for rights, for voting rights? What is democracy?

We don't have democracy in Puerto Rico. We have local democracy, but we don't have democracy in the Nation that we are citizens of, because we are denied the right to vote and the right to representation. That is what this is all about.

How can you say, are we going to have a plebiscite or something? That is, somebody is going to object to the fact that we are going to decide whether we want the right to vote or not?

I think it is time that the people of Puerto Rico were told by Congress, look, we are happy that you are U.S. citizens. But look, you have to make a decision. First of all, you don't need a free ride economically any more as far as taxes are concerned. You should assume all your full responsibilities. And you should decide whether you want to have the right to vote, or the right to representation, or not, because that is what U.S. citizenship means. That is what America is all about.

And if you don't want that, say it, and then we will give you independence. That is what this Congress can do. And what is wrong with that?

But the commonwealth supporters, oh, they like to, you know, mix this up and make it look complicated. Even the beginning, when they called the name commonwealth, Madame Chair, you know, in Spanish it is Estado Libre Social.

But what happened? When we wanted to call it free associated state here, the lawyer for the commonwealth, here in Washington, what was his name; you are crazy. The associated state is not going to fly in Congress, let us look for another name in English. And that is the commonwealth. Commonwealth, what does it mean? Political entity.

Commonwealth is not a status. The territorial status is called commonwealth, just like we have the Commonwealth of Pennsylvania, which is a state of the Union. We have a Commonwealth of Kentucky, which is a state of the Union. It is not a status. It means political entity. But they want to muddy the waters and confuse the issues. And the issue here is U.S. citizens of Puerto Rico, who have been 90 years without a vote, disenfranchised. Do you want to be enfranchised? Yes or no. There is only one way. There is only one way to be enfranchised, to be a state.

And there is only, you don't want to be enfranchised, you want equality, you want democracy? Then you want democracy, you want to be for rights, a citizen, then be a Republican if you don't want to be enfranchised. And that is what I think this committee should really understand when we look at bill 900, which is a way to solve this problem.

Thank you very much, Madame.

[The prepared statement of Mr. Romero Barceló follows:]

Statement of Carlos Romero Barceló,
Former Governor of Puerto Rico

To end our territorial status we need to secure voting rights through an informed act of self-determination, leading to equal rights and obligations as citizens under our national constitution. As some Members of Congress so eloquently explained at the last hearing, it all comes down to voting rights. Either you have them, or you don't.

Many Americans forget that the Constitution itself, originally did not include voting rights as a Constitutional right, which citizens in the states take for granted. It is, after all, citizens in the several states who elect the electors who actually chose the President, and citizens in the several states who elect senators and voting representatives to Congress. Voting rights have been guaranteed and regulated by state law since America became a nation.

Originally, most states allowed only white males over 21 to vote, provided they owned real property with a specified value. White males who had no property were the first to demand and win equal voting rights. Then in 1870, racial discrimination in federal and state voting rights was put to rest by the 15th Amendment. Racial minorities were finally allowed to vote provided they were male and over 21, could pass literacy tests designed to prevent black men from voting, and could afford to pay poll taxes.

It took another 50 years for women to win, in 1920, under the 19th Amendment, the same voting rights given to former male slaves a half century earlier. And it was another 44 years later that the 24th Amendment, ratified in 1964, ended denial of voting rights through the economic discrimination of poll taxes. The 26th Amendment gave the vote to 18 year olds, ending the last vestige of the original franchise, limited to white males over 21 who owned property.

Residents of Puerto Rico are the last large class of completely disenfranchised Americans. Because of the sacrifices of those who went before us, we do not need to defy oppression under the color of law, at the risk of our lives. We do not need to stand in front of tanks, as our contemporaries around the world have had to do, from Tiananmen Square in Beijing, to Red Square in Moscow. All we need to do is summon the courage to choose between real options.

At a time when the U.S. is spending hundreds of billions to try to give Afghanistan and Iraq the democracy which we are denied, we dither over definition of choices that are obvious.

But, we have fallen into a trap. Too many of our people have supported an unacceptable trade-off of so-called special treatment for the territory, in exchange for our

support of the disenfranchised territory called "Commonwealth". Too many of us have embraced a second class citizenship, that other Americans in the states, have given up their lives, to overcome. In exchange for partial income tax exemption, too many American citizens in Puerto Rico, have accepted and tolerated a less than equal status. One that our fellow American citizens in the states have rejected.

We pay billions in federal taxes every year, yet we cling to the myth of fiscal autonomy. The partial exemption from some federal taxes, on some local income, is hardly a smart bargain in exchange for equal voting rights and real political power. If a person sincerely believes in democracy, would he sell his right to vote and to have equal representation? Whoever does so, cannot honestly believe in democracy.

Instead of taxation without representation, we have "no representation without taxation". The President and Congress justify our lack of voting rights and representation, by saying that we shouldn't complain about the fact that we can't vote because we don't have to pay income taxes for the income we earn in Puerto Rico. Yet we pay more local income taxes than most Americans. Our partial tax exemptions come with a price that includes lack of voting rights, lack of representation and lack of right for our people to enjoy equal economic opportunity.

The real tragedy is that we do not have equal rights, but we do have equal sacrifices. Those economically privileged few who thrive under the status quo, seem quite content to preserve their privileges under the current relationship, while our young people are sent off to fight and die, so people in foreign lands can have rights, they and their families are denied back home in the colony.

We should not stand for this discrimination. And, neither should Congress. H.R. 900 provides for a process to at least make status resolution for Puerto Rico possible. It is the least we can do; the least we must do, to honor our brave soldiers and sailors, and to honor ourselves before our children.

H.R. 900 is predicated on these fundamental principles, but accommodates the status quo, by allowing the voters to express their wish for things to remain as they are now.

The H.R. 1230 proposal for a local constitutional convention on status is not a serious proposal, it is a cynical diversionary tactic, a waste of time, and should not be recognized under federal law.

I urge Congress to approve H.R. 900.

Ms. CHRISTENSEN. Thank you. I now recognize The Honorable José L. Dalmau-Santiago for his testimony.

STATEMENT OF THE HON. JOSÉ L. DALMAU-SANTIAGO, SENATE MINORITY LEADER, POPULAR DEMOCRATIC PARTY

Mr. DALMAU-SANTIAGO. Thank you. Honorable Chairwoman and Members of this committee, I will testify before you today in my native language, Spanish, which is the native language of the people of Puerto Rico. I do this because, as is the case with almost all Puerto Ricans, I feel more comfortable in expressing myself in my native tongue than in English.

However, for the benefit of those of you who don't speak or understand Spanish, I have provided an English translation of my remarks.

[Translated from Spanish.] Honorable Christensen. As a fervent defender of the commonwealth status of Puerto Rico for over 50 years, I appear before this Subcommittee to present my views and recommendations toward H.R. 900 and H.R. 1230, two bills presented before the Congress regarding the status of Puerto Rico.

However, our current relation with the United States requires amendments to allow our country to gain the full advantages of a global economy.

Mentioning some of the issues that must be discussed in this current evaluation process, for example; the restrictions established under the Coastwise Laws. Currently, Puerto Rico is restricted to use only United States merchant vessels for its imports and ex-

ports, this restriction imposes an additional cost on an island that depends almost 100 percent on merchant vessels for its imports and exports.

Obviously, this restriction is a competitive limitation for Puerto Rico. The commonwealth must possess the right to hire merchant vessels on a competitive and effective level. This would benefit customers, create new incentives for venture investors and business owners, and it would help stimulate the economy of the island.

Exemption of the Coastwise Laws is nothing new to the Congress since the United States Virgin Islands, Mariana Islands, Guam, American Samoa, Wake, and Midway are exempt from such provision. This exclusion is indispensable for the development of strategic projects in Puerto Rico; for example, the Transport Port of the Americas Rafael Cordero Santiago in Ponce, Puerto Rico.

Other important issues are related to fiscal matters, issue that can be expanded in a later written statement to the Subcommittee if the Members are interested. I have a serious concern that I must share with this Subcommittee.

Puerto Rico has more than 100 years of relationship with the United States, the last 55 under the agreement of the commonwealth status. In the last 50 years we have celebrated multiple plebiscites for the people of Puerto Rico to choose their preferred status option. In all of those plebiscites both independence and statehood have been rejected by the voters in Puerto Rico. There have also been numerous Congressional efforts to promote a process of auto-determination of which I can mention the Bennett Johnston Bill, Young Bill, and the initiatives being evaluated today.

The truly central aspect to this process is if the Congress has the will to respect and enforce the will of the Puerto Rican people. I ask you, Members of Congress, are you prepared to concede statehood to Puerto Rico, or the modifications under a new commonwealth compact, if that is the will of the Puerto Rican people? This is the most important issue to us as political leaders in the island, in Congress willing to the obey the majority will in the island.

It is your obligation and your duty to answer this question. Are you willing to accept as a state to the Union a nation that local statehood supporters insist will permit state court proceedings in Spanish, international representation outside of the Federal government, separate Olympic delegation, and public education in Spanish?

I can recommend a process that permits Puerto Ricans to reach a consensus freely and democratically about the real and viable status options that must be presented before the people. I am talking the constitutional convention. This alternative helps the development of an extensive dialogue, a clear debate, and permits reaching a consensus between the different status factions in the island.

The constitutional assembly is not an unknown mechanism for the United States, nor Puerto Rico. The Constitution of the United States was adopted in 1787 in a constitutional convention celebrated in Philadelphia. The Constitution of the Commonwealth of Puerto Rico was enacted from a consensus in the Assembly celebrated between September of 1951 and July of 1952.

Both Magna Cartas are documents that have created the backbone for democratic societies, as well as for governments that de-

fend civil rights. These documents are the guiding principles of our democracies, respected by the people, of whom we feel proud, and that many citizens have paid the ultimate prize defending such values and principles.

The constitutional assembly is also the mechanism most used by the different territories of the United States in their process to become a state of the Union. The constitutional assembly must be evaluated by this Subcommittee as the real and only viable alternative to solve the status issue in Puerto Rico.

I recommend that any effort to attend the status of Puerto Rico has to recognize that the alternatives must come from Puerto Rico, and not the Congress, and that the best mechanism to reach the necessary consensus between all different ideologies in the island is the constitutional convention.

Therefore, I strongly endorse H.R. 1230 for proposing a constitutional convention as the mechanism to solve the status issue. I ask this Subcommittee and the Congress to approve H.R. 1230 for the well-being of the people of Puerto Rico.

Thank you.

[The prepared statement of Mr. Dalmau-Santiago follows:]

Statement of José L. Dalmau-Santiago, Minority Leader, Popular Democratic Party, Senate of the Commonwealth of Puerto Rico

Honorable Christensen and Members of the Subcommittee:

As a fervent defender of the Commonwealth status of Puerto Rico, which has greatly served the people of Puerto Rico for over fifty years, I appear before this subcommittee to present my views and recommendations toward H.R. 900 and H.R. 1230, two bills presented before the Congress regarding the status of Puerto Rico.

However, our current relation with the United States requires amendments to allow our country gain the full advantages of a global economy.

Mentioning some of the issues that must be discussed in this current evaluation process, for example; the restrictions established under the Coastwise Laws (Cabotage Laws). Currently, Puerto Rico is restricted to use only United States merchant vessels for its imports and exports, this restriction imposes and additional cost on an island that depends in an almost One Hundred Percent (100%) on merchant vessels for its imports and exports. Obviously, this restriction is a competitive limitation for Puerto Rico. The Commonwealth must posses the right to hire merchant vessels on a competitive and effective level, this would benefit consumers, create new incentives for venture investors and business owners, and it would help stimulate the economy of the island.

Exemption of the Coastwise Laws is nothing new to the Congress since the United States Virgin Islands, Mariana Islands, Guam, American Samoa, Wake, and Midway are exempt from such provision. This exclusion is indispensable for the development of strategic projects in Puerto Rico, for example the Transport Port of the Americas Rafael Cordero Santiago in Ponce, Puerto Rico.

Other important issues are related to fiscal matters, issue that can be expanded in a later written statement to the subcommittee if the members are interested. I have a serious concern that I must share with this subcommittee. Puerto Rico has more than a hundred years of relationship with the United States, the last Fifty Five (55) under the agreement of the Commonwealth status. In the last Fifty years (50) we have celebrated multiple plebiscites for the people of Puerto Rico to choose their preferred status option, in all of those plebiscites both independence and statehood have been rejected by the voters in Puerto Rico. There have also been numerous congressional efforts to promote a process of auto determination of which I can mention the Bennet Johnston Bill, Young Bill, and the initiatives being evaluated today.

The truly central aspect to this process is if the Congress has the will to respect and enforce the will of the Puerto Rican people. I ask you, Members of Congress, are you prepared to concede statehood to Puerto Rico or the modifications under a new Commonwealth compact if that is the will of the Puerto Rican people? This is the must important issue to us as political leader in the island, in Congress willing

to obey the majority will in the island. It is your obligation and your duty to answer this question. Are you willing to accept as a State to the Union a nation that local statehood supporters insist will permit state court proceedings in Spanish, international representation outside of the Federal Government, separate Olympic Delegation, and public education in Spanish?

I can recommend a process that permits Puerto Ricans to reach a consensus freely and democratically about the real and viable status options that must be presented before the people. I am talking about the Constitutional Convention. This alternative helps the development of an extensive dialogue, a clear debate, and permits reaching a consensus between the different status factions in the island.

The Constitutional Assembly is not an unknown mechanism for the United States nor Puerto Rico. The Constitution of the United States was adopted in 1787 in a Constitutional Convention celebrated in Philadelphia. The Constitution of the Commonwealth of Puerto Rico was enacted from a consensus in the Assembly celebrated between September of 1951 and July of 1952. Both Manga Cartas are documents that have created the backbone for democratic societies, as well as for governments that defend civil rights. These documents are the guiding principles of our democracies, respected by the people, of whom we feel proud and that many citizens have paid the ultimate prize defending such values and principles.

The Constitutional Assembly is also the mechanism most used by the different territories of the United States in their process to become a State of the Union. The Constitutional Assembly must be evaluated by this subcommittee as the real and only viable alternative to solve the status issue in Puerto Rico.

I recommend that any effort to attend the status of Puerto Rico has to recognize that the alternatives must come from Puerto Rico and not the Congress and that the best mechanism to reach the necessary consensus between all different ideologies in the island is the Constitutional Convention.

Therefore I strongly endorse H.R. 1230 for proposing a Constitutional Convention as the mechanism to solve the status issue. I ask this subcommittee and the Congress to approve H.R. 1230 for the well-being of the people of Puerto Rico.

Ms. CHRISTENSEN. Thank you. And the last speaker on this panel would be The Honorable Héctor Ferrer Ríos.

STATEMENT OF THE HON. HÉCTOR FERRER RÍOS, HOUSE MINORITY LEADER, POPULAR DEMOCRATIC PARTY

Mr. FERRER RÍOS. Madame Chairwoman, Commissioner Fortuño, and Members of the Subcommittee.

My name is Héctor Ferrer Ríos. I am the Minority Leader of the House of Representatives of Puerto Rico for the Popular Democratic Party.

I welcome the opportunity to present and share my views on behalf of over a million Puerto Ricans which believe not only in the commonwealth, but also in a process of true self-determination, through a Puerto Rican constitutional convention.

The status of Puerto Rico brings passion in the daily discussion of our collective lives. I believe the current status, commonwealth, has fulfilled its purpose. What started in 1952 between the U.S. and Puerto Rico, el Estado Libre Asociado, has been good for both nations.

It is time to develop a new commonwealth status, which responds to the new global economy and political trends.

House Bill 900 provides for a Federally sanctioned self-determination process for the people of Puerto Rico. This proposed bill is based entirely on the report issued by the President's Task Force on December 22, 2005, which has not been, as a matter of fact, adopted by the President. Let me correct my statement. That has just been adopted. I wonder why. An outgoing present of an outgoing President.

The report summarizes its finding by concluding that Congress can directly legislate and change the island's governmental structure unilaterally; that the Federal government may relinquish U.S. sovereignty by ceding Puerto Rico to another nation; that U.S. citizens born in Puerto Rico may be deprived of their citizenship at any time, because of the statutory nature of it, and that the Federal Constitution somehow prohibits the U.S. Government from entering into a relationship with Puerto Rico based on mutual consent.

These outrageous and disturbing conclusions are the roots of our bill, which by itself also violates the principles of American democracy and Republicanism. Let me explain myself.

House Bill 900 proposes a two-stage process for a plebiscite in where commonwealth, the option that has won every single plebiscite held in Puerto Rico, will be faced against statehood and independence, not on equal terms. The first stage will automatically unite statehooders and independent defenders in one options, against commonwealth, creating an artificial majority with the sole purpose of eliminating the only option that, like I said before, has won every plebiscite in the commonwealth.

Moreover, stage two faces off statehood, that, as a matter of fact, for the purpose of this bill or any other bill, has never been fully explained of its definition, limitations, and consequences to the people of Puerto Rico, against independence and free association. In fact, these two options, independence and free association, in the last plebiscite only summed 7 percent of the votes casted.

Are these the principles of democracy and Republicanism the United States was founded? I don't think so. Neither should anyone.

However, House Bill 1230, presented by Ms. Velázquez, truly embraces the principle under which the United States was conceived: the process of the constitutional convention has been used since the times of the founding fathers—for example, Annapolis Convention, 1786; Philadelphia Convention, 1787; which drafted the United States Constitution—and by individual states to create, replace, or revise their own constitution.

As we can see, it is a proven mechanism within the United States history.

It is a process of full representation by elected delegates, delegates of the people, just like you and me. It is, after all, the process through which this government was created. But there is a much important issue that should be addressed in these hearings, an issue that surpasses my support to the constitutional convention, and that only is recognized in House Bill 1230.

The bill is not presented on the basis of four pages of immoral of illegal conclusions, like House Bill 900. It is presented on the principle of self-determination and sovereignty of the people of Puerto Rico.

It is the universal and natural right of the people of Puerto Rico to exercise its supreme authority of sovereignty over ourselves by way of defending our moral and legal rights, the same as every nation is entitled to, to decide our destiny. In other words, to exercise our natural right to self-determination.

The United States was founded under a political value system that stresses liberty and rights as their central value. Where its people have natural rights and government has the responsibility of protecting these rights and liberties. These are the same principles and values adopted by the United Nations General Assembly in various resolutions about the peoples' right of self-determination by virtue of that right. They freely determine their political status, and freely pursue their economic, social, and cultural development.

House Bill 1230 is, without a doubt, the right way of attending the political status of Puerto Rico. This bill represents the best of the United States and Puerto Rico.

The people of Puerto Rico have the right to pursue its political, economic, and social development. These are my people's rights that I defend before you. It is your responsibility, Members of Congress, to embrace our will.

Thanks for your time and the opportunity to address the Subcommittee.

[The prepared statement of Mr. Ferrer Ríos follows:]

Statement of Honorable Héctor Ferrer Ríos, Minority Leader of the House of Representatives of Puerto Rico

Madam Chairwoman and Members of the Subcommittee. My name is Héctor Ferrer Ríos, I am the Minority Leader of the House of Representatives of Puerto Rico for the Popular Democratic Party.

I welcome the opportunity to present and share my views on behalf of almost one million of Puerto Ricans, which believe, not only in the Commonwealth, but also, on a process of true self-determination through a Puerto Rican Constitutional Convention.

I appreciate the interest that the Subcommittee has shown in dealing with this important matter in the lives of all Puerto Ricans.

The status of Puerto Rico brings passion in the daily discussion of our collective lives. I belief the current status, Commonwealth, has fulfill its purpose. What started in 1952 between the U.S. and Puerto Rico, el Estado Libre Asociado, has been good for both nations.

But the circumstances have changed. We don't live in the Cold War of the 50's, or in the underdeveloped nation that was Puerto Rico. It is time to develop a New Commonwealth Status, which responds to the new global economy and political trends.

House Bill 900, provides "for a federally sanctioned self-determination process for the people of Puerto Rico". This proposed bill, is based entirely on the report issued by the President's Task Force on December 22nd, 2005, which has not been, as a matter of fact, adopted by the President.

The "report", summarizes its findings by concluding that Congress can directly legislate and change the island's governmental structure unilaterally; that the Federal Government may relinquish U.S. sovereignty by ceding Puerto Rico to another nation; that U.S. citizens born in Puerto Rico may be deprived of their citizenship at any time because of the statutory nature of it, and that the Federal Constitution, somehow, prohibits the U.S. Government from entering into a relationship with Puerto Rico base on mutual consent.

These outrageous, disturbing and disrespectful conclusions are the roots of a bill, which by itself, also violates, the principles of American Democracy and Republicanism. Let me explain myself.

House Bill 900 proposes a two stage process for a plebiscite in where Commonwealth, the option that has won every single plebiscite held in Puerto Rico, will be faced against Statehood and Independence, not in equal terms. The first stage will automatically unite statehooders and independence defenders in one option, against Commonwealth, creating an artificial majority, with the sole purpose of eliminating the only option that, like I said before, has won every plebiscite, Commonwealth.

Moreover, stage two faces off statehood, that as a matter of fact, for the purpose of this bill or any other bill, has never been fully explained of its definition, limitations and consequences to the people of Puerto Rico, against independence and free-association. In fact, these two options, in the last plebiscite, only summed seven percent of the votes casted.

Are these the principles of Democracy and Republicanism the United States was founded? I don't think so. Neither should anyone.

However, House Bill 1230, presented by Ms. Velázquez, which "recognizes the right of the People of Puerto Rico to call a Constitutional Convention through which the people would exercise their natural right to self-determination, and to establish a mechanism for congressional consideration of such decision.", truly embraces the principles under which the United States was conceived.

The process of the Constitutional Convention has been used, since the times of the Founding Fathers, for example; Annapolis Convention (1786); Philadelphia Convention (1787), which drafted the Unites States Constitution; and by individual states to create, replace, or revise their own constitutions. As we can see, it is a proven mechanism within the United States history.

It is a process of full representation by elected delegates, delegates of the people just like you and me. It is after all the process through which this government was created.

But, there is a much important issue that should be addressed in these hearings. An issue that surpasses my support to the Constitutional Convention and that only is recognized on House Bill 1230.

The bill is not presented on the basis of four pages of immoral or illegal conclusions, like House Bill 900. It is presented on the principles of self-determination and sovereignty of the people of Puerto Rico. It is the universal and natural right of the people of Puerto Rico to exercise its supreme authority of sovereignty over ourselves, by way of defending our moral and legal rights, the same as every nation is entitled to, to decide our destiny. In other words, to exercise our natural right to self-determination.

The United States was founded under a political values system, that stresses liberty and rights as their central values. Where its people have natural rights and government has the responsibility of protecting these rights and liberties.

These are the same principles and values adopted by the United Nations General Assembly in various resolutions about the peoples' right "of self-determination by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

House Bill 1230 is without a doubt, the right way of attending the political status of Puerto Rico. This bill represents the best of the United States and Puerto Rico.

The people of Puerto Rico have the right to pursue its political, economic and social development.

These are my peoples rights, that I defend before you.

It is your responsibility, Members of Congress, to embrace our will.

Thanks for your time, and the opportunity to address the subcommittee.

Ms. CHRISTENSEN. Thank you. I will recognize myself for five minutes for questions. And I want to begin with a question that I would ask to the entire panel, because it is an issue that has not been addressed, even though it is something, it is a provision that is found in both bills.

Both of them envision participation of non-resident Puerto Ricans in any final plebiscite on status. Do you each support that? And have you been able to assess the sentiment of the people of Puerto Rico on that issue?

Mr. MCCLINTOCK. In our nation there have been varying degrees of allowing people to vote, depending on their nexus to the jurisdiction where they would be voting.

In Puerto Rico, for example, we only allow people who are students or military personnel, or flight attendants and so forth, to vote absentee. In other states, many more people are allowed to vote absentee.

The Federal government allows people who have not lived in a state for 30 years and live in Paris, an American in Paris, can vote for President 30 years after they left the U.S. So there is varying degrees regarding that issue.

My only concern is that whoever is allowed to vote have enough of a nexus with Puerto Rico to at least know what is going on in

Puerto Rico, and have some reasonable possibility of returning to Puerto Rico.

If you ask a Puerto Rican living on the mainland how long does it take to go from San Juan to Ponce, and they tell you three and a half hours, that person should not be able to vote, because we have had an expressway that cuts that down to an hour for the past 30 years.

Ms. CHRISTENSEN. It would seem to me that that would be very difficult to determine, you know.

Mr. MCCLINTOCK. Yes. At the very least they should be required to have been, if they don't live in Puerto Rico, to have been born in Puerto Rico or born of a Puerto Rican parent. And the reason I say a Puerto Rican parent is because I wasn't born in Puerto Rico, I was born in London, England, from a Puerto Rican mother.

Ms. CHRISTENSEN. Mr. Aponte? Sorry.

Mr. MCCLINTOCK. But it is really a policy decision that you, as Congress, have to make.

Ms. CHRISTENSEN. But as the other panelists answer, I am very much interested in knowing what the people of Puerto Rico feel about, that those who live there feel about it.

Mr. APONTE-HERNÁNDEZ. It is difficult to establish a policy. What a people, what a Puerto Rican had the opportunity to vote in a referendum, because the foreigners of the people.

I went to university in 2005, and many Puerto Ricans born in U.S. in mainland, not in the island, and never went to Puerto Rico, never goes to Puerto Rico. But they claim that they were Puerto Ricans. Have they the same benefits that, that is ours in the island? It is difficult. We have to pass over you in that way.

Mr. ROMERO BARCELÓ. Madame Chairperson, it is a very hard question for me, and let me tell you why, for emotional, personal reasons.

Serrano is a friend of mine. This issue is close to his heart.

Ms. CHRISTENSEN. I know.

Mr. ROMERO BARCELÓ. But I have always disagreed on that. I feel that someone who is not going to receive either the benefits or the prejudices of his decision should not be allowed to vote. And, you know, how do you define it? It is very difficult to define.

One bill says those born in Puerto Rico. Well, if somebody was born in the Puerto Rico. Let us say a couple moves from Missouri to Puerto Rico on a job, and they are there for five years, the last year they have a son. They move back to Missouri. And then he has never gone back to Puerto Rico. His parents were not Puerto Rican, but he was born in Puerto Rico. He lived there his first year of his life. All he knows about Puerto Rico is what he reads once in a while in the news or sees in the television. And he is entitled to vote?

Ms. CHRISTENSEN. Well——

Mr. ROMERO BARCELÓ. Another case, where a couple moves to Puerto Rico, and they have children. Their son is five years old, and he goes to school in Puerto Rico. He goes to high school, he goes to college, gets a job in Puerto Rico, gets married, has children.

And then in the job they say oh, we need you in Florida, so they send him to Florida. Now he is in Florida. And he is going to be

there in Florida. But he would like to vote, but he can't, because he wasn't born in Puerto Rico. But his parents were Puerto Rican, and he was there in Puerto Rico living. Now, how do you——

Ms. CHRISTENSEN. I think the bill provides for people who are registered voters and are already in Puerto Rico. If he moves away, but still continues his residency and voting rights.

Mr. ROMERO BARCELÓ. That is, if somebody is a registered voter in Puerto Rico and moves away, and is still registered, that means he is temporarily away. And those people definitely, they will have, they can vote, if they go to Puerto Rico.

Now, whether they can be given absentee votes, those that are registered in Puerto Rico and are planning to return and have domiciled residence in Puerto Rico, that could be worked out, definitely.

Ms. CHRISTENSEN. Mr. Dalmau.

Mr. DALMAU-SANTIAGO. I think that every Puerto Rican that could be affected by this process or by this bill could be vote in the process.

Ms. CHRISTENSEN. That doesn't quite answer, but I will accept it.

Mr. FERRER RÍOS. If I recall correctly the question, it is if Puerto Ricans who live in the States or any other nation can vote on this process? That was the question, right?

Ms. CHRISTENSEN. Yes. The bill, both bills provide that persons who were born in Puerto Rico but live away can vote. And one provides that if you, one of your parents was born in Puerto Rico, you can vote.

Mr. FERRER RÍOS. Well, I do believe it is a correct amendment to the bills. I also think that Puerto Ricans, sons of Puerto Ricans that were born here in the States may vote on this issue. It all depends on whatever the hearing says, but I am in favor of it.

Ms. CHRISTENSEN. OK. Well, we want to be guided by people who live and know. I would just add, before I turn the mike to recognize Mr. Fortuño for questions, that you would be aware, I am sure, that many people, for reasons of health in the Virgin Islands, go to Puerto Rico to have their children. One of my siblings was born in Puerto Rico. And you have to take those kinds of things into consideration, as well.

Mr. FORTUÑO. Thank you. I welcome Governor Romero and the leaders from Puerto Rico who made it here. We only have five minutes, so I will try to be quick.

With all due respect to everyone, in this panel there is one person that has a lot more experience than anybody else, and that is Gov. Romero. And, Governor, I will ask you, my recollection is that since I can remember, one of the main issues used against statehood was that a sales tax would be imposed on the people of Puerto Rico if we became a state.

And I asked you if that is true, and if it is also true that this Governor, who just left, imposed on us a 7 percent sales tax just recently.

Mr. ROMERO BARCELÓ. Not only the sales tax, but in the campaigns the, particularly in the last month of every campaign, the popular party misled the people. Because they said not only the sales tax would be imposed, it would become a state, because we already had a sales tax, but it was a hidden sales tax. It was called

an excise tax, which was very, very prejudicial, not only to the people, but also to the businessmen, because they had to pay the tax before they sold their products.

But beyond that, they also told the people that if we became a state, the Federal government would be collecting property tax. And the Federal government does not collect property tax anywhere in the nation. It is the state government or the local county or the municipality, but not the Federal government.

But they have always lied about the tax situation. And the tax benefits, the tax exemptions in Puerto Rico, for income tax earned in Puerto Rico are only for the wealthiest. Because the people in Puerto Rico, our local income taxes are higher than the Federal income tax and most state tax put together. So the middle class, the worker, the people in Puerto Rico pay more income taxes than they do in the nation. And the only ones that really benefit from the tax exemptions are the wealthiest of all corporations.

Mr. FORTUÑO. Thank you. I also wanted to clarify something. Mississippi has been brought up several times, that the per capita income in Mississippi is more than twice the per capita income in Puerto Rico today. And that should be clarified in the record for everyone.

Mr. ROMERO BARCELÓ. And not only that, Mr. Commissioner, also the fuel. About 20 years ago the difference between the per capita income between Mississippi and Puerto Rico was much less than it is now. The gap has widened.

Mr. FORTUÑO. Exactly. The gap is widening as we speak.

Mr. ROMERO BARCELÓ. And with all of the states. And part of the reason for that is because the poor people in Puerto Rico do not receive the same benefits. The needy people, the single women with children, the elderly, the people who have problems with mental problems, they don't receive the same benefits as they do in the mainland, in the rest of the states. So that creates an immediate difference at the lowest level of income.

Mr. FORTUÑO. Gov. Acevedo-Vilá actually published in today's roll call an article called Self-Determination is Key to Puerto Rico's Status Debate. I mean, his last paragraph—and I will quote from what he wrote—says, "Puerto Ricans are excited by the island's progress in economic development, education, infrastructure growth, and fiscal stability, among others."

Without laughing while you are answering, Gov. Acevedo-Vilá published this today in——

Mr. ROMERO BARCELÓ. What is he talking about? Who is he talking about?

Mr. FORTUÑO. Well, about Puerto Rico.

Mr. ROMERO BARCELÓ. Oh, Puerto Rico?

Mr. FORTUÑO. I know, for example, in terms of fiscal stability, isn't it true that we have had a deficit for the last three years while he has been Governor? And that Puerto Rico has the lowest credit rating of any jurisdiction under the U.S. flag?

Mr. ROMERO BARCELÓ. Not only that, but the Banco Popular finished, they had their yearly report. And they said that the recession in Puerto Rico is not part of the nationwide economy; it is a locally created recession.

Mr. FORTUÑO. For two years.

Mr. ROMERO BARCELÓ. That is what the Banco Popular's report. And the Banco Popular is certainly not involved in the politics in that report. They are trying to inform the people about what the bank is doing, and what is happening in Puerto Rico.

Mr. FORTUÑO. We will include, for the record, some economic data that will show, among other things, in the last five years Puerto Rico has experienced the slowest growth rates since the early eighties in Puerto Rico.

Also has the lowest achievement test scores of a nation, in terms of the location, are in Puerto Rico. So that is clarified.

I will close, Governor, with your opinion on the constitutional convention, and why do you oppose it.

Mr. ROMERO BARCELÓ. The constitutional convention is a sham. I mean, first of all, what is a constitutional convention can vote for? A constitutional convention is called in to either amend a constitution, or to draft a new constitution; not to tell the people, or jurisdiction, what they should opt for their future. That is ridiculous.

To put 20, 30 people elected to tell the people of Puerto Rico what their future is going to be, and submit it into a vote, that is ridiculous. After we decide where we want to go—do we want to be a state, do we want to be a republic—then we can call a constitutional convention, to either amend our local Constitution as a state, or else have a new Constitution as a republic. That is what a constitutional convention is for. Not to tell the people what they should opt for in the future. That would be ridiculous.

And then to say, the bill goes further—it is more ridiculous even. It says after the first constitutional convention, if the people don't vote for the option that is offered to them, then there will be another, that same constitutional convention can then draft another option to submit again to the people. This bill is not a serious bill. This bill has been filed just to create obstructions and to separate those people who want Puerto Rico to solve their status issue, to confuse them, and have something to perhaps prevent the H.R. 900 from getting a majority vote on the Floor.

Mr. FORTUÑO. Very quickly, since we have the Governor here, Gov. Acevedo-Vilá held this position in the last previous four years. He never filed that bill. Do you know why he never filed that bill? Could it be that now they are filing this bill just to stall and try to stop the process?

Mr. ROMERO BARCELÓ. Because they are afraid of the referendum. The commonwealth hasn't won all the referenda; that is not true.

The people of Puerto Rico have voted against commonwealth as a majority in the last three referendums. But the things is that the referendum has gotten more votes than other formulas individually, but the people have rejected the relationship between the Nation and Puerto Rico.

The majority of the people reject the relationship. So we are now being governed without the consent of the governed. And that is also undemocratic.

Mr. FORTUÑO. Thank you again, and thank you for the panel.

Mr. APONTE-HERNÁNDEZ. I want to make a correction, because in the last plebiscite, the commonwealth has not had the majority. None of the above, the people of Puerto Rico don't support the com-

monwealth, the active commonwealth. And vote in majority, none of the above.

Ms. CHRISTENSEN. Thank you. I now recognize Mr. Faleomavaega for five minutes.

Mr. FALEOMAVAEGA. Thank you, Madame Chair. I want to again thank Gov. Romero for his most eloquent statement, as I have always known him over the years, and also still very consistent in terms of his strong views in the political future of Puerto Rico.

I do want to note again and ask the members of the panel, my good friend, President McClintock, as I have tried to dissect or divide or some form of understanding of the two versions that we have before us of the bills. H.R. 900 provides these options: independence, free association, or statehood. And I hope my good friend, Mr. Fortuño, will correct me on that.

Now, the provisions or options for H.R. 1230 is commonwealth for a new or modified commonwealth status, one option. Statehood or independence. What this boils down to, as much as I can—I welcome your comments—we have a problem here with definitions. How do you define free association? How do you define commonwealth, or enhanced commonwealth?

There is no question about statehood or independence. I think that is pretty much understood throughout our dialogue here.

And one of the ironies as I observed here, we have a Governor who is pro-commonwealth, elected by the people of Puerto Rico, and my good friend, Mr. Fortuño, the Resident Commissioner, elected, but for statehood. I am confused. And I know, because my good friend is good-looking, and I know that is probably the reason why he got elected Resident Commissioner. Not only is he intelligent, but I am smart, if I want to put that categorization again.

But truly——

Mr. FORTUÑO. They said that about Barack Obama the other day.

Mr. FALEOMAVAEGA. But I do want to ask, especially——

Mr. MCCLINTOCK. I may add that you also have two attractive speakers and Senate Presidents who are also for statehood, just as Fortuño.

Mr. FALEOMAVAEGA. OK, well taken.

Mr. MCCLINTOCK. Seriously, H.R. 900 provides a two-step process. The first step is where Congress asks a question that it has not dared ask in 108 years.

Mr. FALEOMAVAEGA. Well, here is my problem. There is definitely a question of process. This is what we are getting fuzzy on, OK?

Mr. MCCLINTOCK. Yes.

Mr. FALEOMAVAEGA. There is no question that this is one issue that I notice we are hung up on. And then the definition, as we have been taught, as I have tried exhorting, my understanding of free association and the classy examples of free association, if you want to talk, discuss that as a political status, are the Micronesian entities of Palau, probably the Marshall Islands, and the free Federated States of Micronesia.

Mr. MCCLINTOCK. Well, you provide sovereignty, and then you turn to a negotiation.

Mr. FALEOMAVAEGA. Right. But there are some conditions, though, on how free association has evolved, and the way it is going to be applied by the Micronesian entity is quite different.

Mr. ROMERO BARCELÓ. One of the things is that all the ones that have the free association, they are not U.S. citizens.

Mr. FALEOMAVAEGA. That is true, but——

Mr. ROMERO BARCELÓ. And that is what the commonwealth supporters are afraid of. They are afraid that then the people—we want a status without U.S. citizens.

Mr. FALEOMAVAEGA. I am reclaiming my time. These entities also, the citizens are allowed to join the military. And they can also become U.S. citizens once they join the military. And that is a very unique situation, too.

Mr. ROMERO BARCELÓ. Aliens are allowed to join the military.

Mr. FALEOMAVAEGA. The citizens of the Republic of the Marshall Islands, Palau, and the Federated States of Micronesia, can join the military, and they can become U.S. citizens as an option once they are in the military. There is approximately five to six hundred Micronesians now serving in the armed services of the United States, some very, very, outstanding performers, just like our people from Puerto Rico or all the other entities, as well.

My point is that, is there an agreement that we definitely have a problem with definitions? We definitely have a problem with process. Is there some way that we can formulate, or some way—I know my good friend, Mr. Fortuño, has a different definition of free association. I have a different definition of association, and I am sure Gov. Vilá has a different definition of enhanced commonwealth, since that seems to be one of the options stated under provisions of H.R. 1230.

I want to ask my good friends who are pro-commonwealth if, what is their understanding of how you are defining—I know it is there, but is there anything different from what has been stated earlier by my good friend, Mr. Fortuño, as to what enhanced commonwealth status does or proposes to do?

Mr. FERRER RÍOS. Let me answer a question with one, just one example. A new commonwealth or enhanced commonwealth would be in agreement with the United States that the Jones Act or the law don't apply to Puerto Rico. That may be a new commonwealth.

Mr. FALEOMAVAEGA. You are only talking about one instance, because there could be several other factors that you negotiate.

Mr. FERRER RÍOS. I am just giving you one example.

Mr. FALEOMAVAEGA. Right, right.

Mr. FERRER RÍOS. I am just giving you one example. That relation with the United States with Puerto Rico has to be drawn on the table. And that is one example of what we can have as a new commonwealth.

Mr. FALEOMAVAEGA. I do want——

Mr. FERRER RÍOS. A new commonwealth, if I may, has to be based on the principle of developing economy of Puerto Rico. And I think that is the key here.

Mr. FALEOMAVAEGA. Let me tell you, I know my time is up, I just want to say right now, in my humble opinion, we definitely have a problem with definitions. How free association and commonwealth are going to be properly defined, so that the people of

Puerto Rico know exactly the differences of these two options. We know what independence is about, we know what statehood is about.

Mr. FERRER RÍOS. Not in Puerto Rico, though. Not in Puerto Rico. The people of Puerto Rico, they don't know what statehood is.

Mr. ROMERO BARCELÓ. This is all by H.R. 900. This is all by H.R. 900. Because the first question on the referendum, the first referendum would be do you want to have a non-territorial status. And then if the people say they want to have a non-territorial status, that means they don't want commonwealth. So that is solved, that problem is solved by the first question.

But if they say yes, they do want a territorial status, then you have to go to——

Mr. FALEOMAVAEGA. My time is up, Ms. Chairman. But I will say in closing, Madame Chair, I am a very proud grandfather. My grandson, his mother is Puerto Rican. Can she vote?

Mr. ROMERO BARCELÓ. She doesn't live in Puerto Rico, she is not a resident in Puerto Rico, I don't think so.

Mr. FALEOMAVAEGA. Thank you.

Mr. ROMERO BARCELÓ. Anyway, the problem is, why should somebody that has the right to vote and the right to representation, in your case not because they are also a territory, but someone that has the right to vote and the right to representation tell me that I cannot have a right to vote or a right to representation?

Mr. FERRER RÍOS. I believe she can. I believe she can.

Mr. APONTE-HERNÁNDEZ. The problem is the definition. In 1952, we have some definition for commonwealth. In 1977, 1967, we have another. In 1993, we have another one. In 1998, another one. And now, the proposal of commonwealth has another definition, and they don't know what he wants for commonwealth.

Ms. CHRISTENSEN. Thank you. Again, I want to thank the witnesses for their testimony and their answers. We may forward questions to you in writing, and would ask that you—oh, Mr. Dalmau, sorry.

Mr. DALMAU-SANTIAGO. Yes.

Ms. CHRISTENSEN. I will allow this last statement, because I think he was answering the question.

Mr. DALMAU-SANTIAGO. I want only to invite this committee to celebrate a hearing in Puerto Rico.

Ms. CHRISTENSEN. Thank you. Again, thank you for your testimony and for your answers to our questions.

I would like to now recognize the fourth panel, the fourth and final panel. They include Mr. Fernando Martín, Executive President of the Puerto Rican Independence Party; Mr. Nestor Duprey, Spokesman for the Puerto Ricans for Free Association and Social Justice; and Mr. Juan Manuel Garcia Passalacqua, Writer and Columnist.

We would like the final panel to take their seats. He is trying to get there, OK.

Thank you, and thank you for your patience. It has been a long afternoon into the evening. I now recognize Mr. Martín for five minutes.

STATEMENT OF FERNANDO MARTÍN, EXECUTIVE PRESIDENT, PUERTO RICAN INDEPENDENCE PARTY

Mr. MARTÍN. Good afternoon.

Ms. CHRISTENSEN. Could we keep the noise in the back down, please?

Mr. MARTÍN. Puerto Rico is the only nation of even remotely comparable population where the most fundamental and important laws regulating its collective life are made by the legislature of another country, and are administered and enforced by the government of this other country, without the participation of the subject people.

This indefensible and unacceptable condition of subordination and servitude has existed for more than 100 years, since the United States, having demanded and obtained Puerto Rico as booty of war from Spain, first organized a civil government for its newly acquired possession.

That such an anachronistic and mutually demeaning state of affairs has persisted until the present requires explanation. Two fundamental policy considerations in the U.S. have sustained colonialism in Puerto Rico during the 20th century. The first has been the determination to exercise absolute control over Puerto Rico for military, strategic, and geopolitical reasons. The two World Wars reinforced this overarching motivation, while the subsequent Cold War made the need for such control even more acute.

In other circumstances, such long-range national security considerations would have led to annexation as a territory followed by eventual statehood. Here is where the second bedrock explanation for the persistence of colonialism comes into play. For in contrast to Hawaii, where by 1898 the natives were already a small minority overwhelmed by an immigration process which rapidly Americanized the new arrivals, and with an Anglo-Saxon elite long in control of politics and the economy, Puerto Rico presented a totally different situation.

Here was a full-blown Latin-American nation densely populated, Spanish-speaking, intensely proud of its cultural identity, and possessing its own indigenous and entrenched political and economic elite. It did not require William Howard Taft's colonial and political experience to recognize that it was inconceivable that Puerto Rico could ever be a state of the Union, because it was, in fact, a different nation.

It was obvious then, as it is today, that Puerto Rico is a non-compatible donor to the historical project of American Federalism. After all, if Puerto Rico were a real candidate for statehood, why not Jamaica or Guatemala? Many desperately poor in these countries might perhaps support it, albeit, as in Puerto Rico, for the wrong reasons.

This is why the imposition of U.S. citizenship in Puerto Rico in 1917, together with the reaffirmation that such a step did not incorporate Puerto Rico, was such a pragmatic manifestation of the underlying basis of U.S. policy toward Puerto Rico.

U.S. citizenship was, at the same time, both an attempt to close off the path toward independence, while not opening the one that might lead to statehood. This left only the option of reforms within the statutes of non-incorporated territory.

It no doubt remained as to what U.S. policy would be toward Puerto Rico thereafter. It was to be a colony indefinitely. And so it continued to be until the relationship has recently been brought sharply into question in the United States by the profound geopolitical and military consequences of the collapse of the Soviet Union and the end of the Cold War.

The armed forces no longer have any significant presence in Puerto Rico. That other traditional lobbying ally for colonialism, the 936 companies, are now a mere memory of the time when any change in political status would have meant the end of their Federal tax privileges.

The only reason remaining for the U.S. to support continued colonialism would be if this were the only way to ward off the possibility of an embarrassing statehood bid. Yet the truth is to the contrary; continued colonialism will only breed evermore statehooders.

Furthermore, international opinion, particularly in Latin America and the Caribbean, is increasingly demanding that Puerto Rico be recognized its independence. The United Nations Committee on the Colonization, for example, has been approving resolutions unanimously during the past five years, recognizing Puerto Rico's inalienable right to independence, and our party is presently engaged, together with the most representative political forces in Latin America and the Caribbean, in a campaign that will culminate in a similar resolution by the General Assembly.

The decolonization committee has consistently called for the U.S. Government to take the necessary steps that will promote the exercise of our right to self-determination, according to international law. Only a process that will lead to a serious and responsible offer of independence, that must begin by putting an end to the colonial option, and will inevitably require considerable straight talking on the part of Congress as to why statehood is not an alternative to be acceptable to the U.S. Only this will finally put an end to this failed and discredited colonial experiment that has gone on for far too long, to the detriment of both our nations.

The proposal put forward earlier today by the President of the PIP, Rubén Berríos, if approved in its essential components, will undoubtedly put in motion a process that can only lead to decolonization and independence. For the first time in more than 100 years, there are no fundamental contradictions between your interests and ours, as far as political status is concerned. It is up to Congress to seize this opportunity without delay.

Thank you very much.

[The prepared statement of Mr. Martín follows:]

Statement of Fernando Martín, Executive President of the Puerto Rican Independence Party

Puerto Rico is the only nation of even remotely comparable population where the most fundamental and important laws regulating its collective life are made by the legislature of another country, and are administered and enforced by the government of the other country, without the participation of the people who are thus governed. Even local laws enacted by Puerto Rico's Legislative Assembly "as well as municipal ordinances and administrative regulations" must conform to the constitution and laws of another country, the United States.

This indefensible and unacceptable condition of subordination and political servitude has existed for more than one hundred years since the United States, having demanded and obtained Puerto Rico as booty of war from Spain in 1898, first orga-

nized a civil government for its newly acquired possession through the Foraker Act of 1900.

That such an anachronic and mutually demeaning state of affairs has persisted until the present requires explanation. Two fundamental policy considerations in the U.S. have sustained colonialism in Puerto Rico during the 20th century. The first has been the determination to exercise absolute control over Puerto Rico for military, strategic and geopolitical reasons. The first and second world wars reinforced this overarching motivation while the subsequent era of the Cold War made the need for such control even more acute.

In other circumstances such long range national security considerations would have led to annexation as a territory followed by eventual statehood. Here is where the second bedrock explanation for the persistence of colonialism comes into play; for in contrast to Hawaii where by 1898 the native Hawaiians were already a small minority overwhelmed by an immigration process which rapidly Americanized the new arrivals, and with an Anglo-Saxon elite firmly in control of politics and the economy, Puerto Rico presented a totally different situation.

Here was a full blown Latin American nation densely populated, Spanish speaking, intensively proud of its cultural identity, mature in its cultural manifestations "not only in folklore but in high culture" and possessing its own indigenous and entrenched political and economic elite. It did not take William Howard Taft's colonial, political and judicial experience to recognize (as he did in Balzac, the culmination of the Insular Cases) that it was inconceivable that Puerto Rico could ever be a state of the union because it was in fact, a different nation. It was obvious then, as it is today, that Puerto Rico is a non compatible donor to the historical project of American federalism. After all, if Puerto Rico were a real candidate for statehood, why not Jamaica or Guatemala? Many desperately poor in these countries might perhaps support it, as in Puerto Rico, for the wrong reasons.

This is why the imposition of U.S. citizenship in 1917, together with the reaffirmation that such a step did not incorporate Puerto Rico, is such a paradigmatic manifestation of the underlying basis of the U.S. policy toward Puerto Rico. United States citizenship was at the same time, both an attempt to close off the path towards independence while not opening the one that might lead to statehood. This left only the option of reforms within the status of non incorporated territory. No doubt remained as to what U.S. policy would be towards Puerto Rico thereafter: it was to be a colony indefinitely. And so it continued to be until it has recently been brought into question in the United States by the profound geopolitical and military consequences of the collapse of the Soviet Union and the end of the Cold War.

The armed forces of the United States no longer have any significant presence in Puerto Rico. That other traditional lobbying ally for colonialism, the 936 companies, are now a mere memory of the time when any change in political status would have meant the end of their federal tax privileges (which under 936 applied only if the profits were generated in a possession).

The only reason remaining for the U.S. to support continued colonialism would be if this were the only way to ward off forever the possibility of an embarrassing statehood bid. Yet the truth is to the contrary; continued colonialism will only breed evermore statehooders.

Furthermore, international opinion, particularly in Latin America and the Caribbean will increasingly demand that Puerto Rico be recognized its independence. The United Nations Committee on Decolonization, for example, has been approving resolutions unanimously during the past five years recognizing Puerto Rico's inalienable right to independence and our party is presently engaged—together with the most representative political forces in Latin America and the Caribbean—in a campaign that will culminate in similar resolution by the General Assembly. The Decolonization Committee has consistently called for the Government of the United States to take the necessary steps that will promote the exercise by the People of Puerto Rico of their right to self determination according to international law.

Only a process that will lead to a serious and responsible offer of independence that must begin by putting an end to the colonial option, and will inevitably require considerable straight talking on the part of Congress as to why statehood is not an alternative that could be acceptable to the U.S. in the foreseeable future, will finally put an end to this failed and discredited colonial experiment that has gone on for far too long to the detriment of both our nations.

The proposal put forward earlier today by the President of the PIP, Rubén Berríos, if approved in its essential components will undoubtedly put in motion a process that can only lead to decolonization and independence.

For the first time in more than one hundred years there are no fundamental contradictions between your interests and ours as far as political status in concerned. It is up to Congress to seize this opportunity without delay.

Ms. CHRISTENSEN. Thank you. The next person we will hear from is Mr. Nestor Duprey Salgado. We recognize you for five minutes.

STATEMENT OF NESTOR DUPREY SALGADO, SPOKESMAN, PUERTO RICANS FOR FREE ASSOCIATION AND SOCIAL JUSTICE

Mr. SALGADO. Thank you, Madame Chair and Members of the Subcommittee.

I appear before you as spokesperson of Movimiento Autonomista Socialdemócrata, also known in English as Puerto Ricans for Free Association and Social Justice. We advocate for the development of Puerto Rico's current relationship with the United States to a compact of free association.

MAS follows in the tradition of more than 20 years, whereby supporters of free association have appeared before Congress. As MAS has previously addressed the substantive and procedural aspects of both H.R. 900 and H.R. 1230, I should underline at this time that MAS firmly believes that any bill passed by Congress must recognize three separate status options, presented to the Puerto Rican electors in a fair and balanced way. Statehood, independence, and free association. No more, no less.

International law and U.S. constitutional practice have recognized free association as a valid, non-colonial and non-territorial self-determination option.

Free association is based on the sovereignty of the people of Puerto Rico. Puerto Rico would delegate or share several areas of authority with the United States. The existing compacts of free association between the U.S. and the Micronesian nations have been negotiated and executed under the treaty-making power of the U.S. Constitution.

The compacts are clearly outside Congressional authority under the Territorial Clause of the Constitution.

Some argue that Congress has the authority to partially or permanently cede some of its plenary powers over Puerto Rico under the Territorial Clause. MAS believes that it is a risky proposition that will ultimately leave the new form of association between Puerto Rico and the U.S. in substantially the same place that it is now: at the mercy of future actions and interpretations of Congress, the Justice Department, and the Federal Courts.

Furthermore, the existing compacts of free association are a recognized model in U.S. constitutional practice that would accommodate all the political and economic authority desired by the majority of Puerto Ricans that do not believe in statehood or independence. When we are talking about the enhanced commonwealth, what we are really talking about is free association.

MAS understands that the best way for an association agreement to work is to forgo altogether the Territorial Clause, and use the International Agreement Clause of the Constitution. Puerto Rico must become a sovereign nation, all while entering at the same time into a compact of free association with the United States. This was exactly the way in which the Micronesian Compacts were established since 1986.

Contrary to what some have argued in the past, free association is not independence. Free association is bilateral by nature, and re-

quires mutual consent. Contrary to independence, it is based on the concepts of association, mutual trust, and understanding.

Most of those who have studied the process that concluded in the signing of the existing compacts of free association have agreed on some very important issues. First, U.S. citizenship possessed by Puerto Ricans by birth since 1917 cannot be unilaterally revoked by Congress.

Second. Dual U.S. and Puerto Rico citizenship is not only possible, but desirable. There are no constitutional or legal impediments for the permanence of U.S. citizenship in the case of sovereign free association. It is only a matter of political will.

Third. Some argue that you have to become an independent nation first, and then enter into an association. That is wrong. The Freely Associated States of the Pacific went directly from trust territory status to political association with the U.S. Puerto Rico and the U.S. can commence negotiation toward free association without the need to change the current relationship.

In conclusion, free association is the only viable alternative that harmonizes both United States and Puerto Rico interests. It would provide Puerto Rico economic tools to deal with our problems in a dignified relationship of security and trust with the U.S. The United States would acquire a most desired partner in Latin America, in a democratic friendship of mutual interests and values, all while promoting self-sufficiency, economic growth with social justice.

Madame Chair and Members of the Subcommittee, I came here as part of a new generation of Puerto Ricans who are tired of discussing the status issue. We want to solve it. And this afternoon, the Resident Commissioner, Mr. Fortuño, opens a door to propose amendments to H.R. 900 to separate free association as a distinct option, as it is recognized by international law and U.S. constitutional experience.

I invite you, Commissioner, in representation not of your party, not of your ideal, but of the people of Puerto Rico, of all Puerto Ricans, to work out an inclusive process that includes the three alternatives that the people of Puerto Rico traditionally supports: statehood, independence, and association with the United States in a compact of free association.

Thank you, Madame Chairwoman and Members of the Subcommittee.

[The prepared statement of Mr. Duprey Salgado follows:]

Statement of Nestor Duprey Salgado, Spokesperson, Movimiento Autonomista Socialdemócrata

Madame Chair, members of the Subcommittee:

My name is Nestor Duprey Salgado. I appear before this Subcommittee as spokesperson of the Movimiento Autonomista Socialdemócrata (MAS). MAS is a non-governmental organization that advocates for the development of Puerto Rico's current relationship with the United States to a Compact of Free Association, in compliance with U.S. and International law. MAS follows in the tradition of more than 20 years whereby supporters of Free Association have appeared before the Congress to advocate for this political status alternative.

As MAS has previously addressed the substantive and procedural aspects of both H.R. 900 and H.R. 1230, I should underline at this time that MAS firmly believes that any bill passed by Congress must recognize three separate status options, presented to the Puerto Rican electors in a fair and balanced way: statehood, independence and free association. No more, no less.

International Law and U.S. constitutional practice have recognized Free Association as a valid non-colonial and non-territorial self-determination option. The Compacts of Free Association adopted since 1986 between the Federated States of Micronesia, the Marshall Islands, Palau and the United States are recognized both as international agreements and U.S. domestic law.

Free Association is based on the sovereignty of the People of Puerto Rico. In the exercise of said sovereignty, Puerto Rico would delegate or share several areas of authority with the United States. The existing Compacts of Free Association between the U.S. and the Micronesian nations have been negotiated and executed under the Treaty Making Power of the U.S. Constitution. The Compacts are clearly outside congressional authority under the Territorial Clause of the Constitution.

Some argue that Congress has the authority to partially and permanently cede some of its plenary powers over Puerto Rico under the Territorial Clause. MAS believes that is a risky proposition that will ultimately leave the new form of association between Puerto Rico and the U.S. in substantially the same place that it is now: at the mercy of future actions and interpretations of Congress, the Justice Department and the Federal Courts. Furthermore, the existing Compacts of Free Association are a recognized model in U.S. constitutional practice that would accommodate all the political and economic authority desired by the majority of Puerto Ricans that do not believe in statehood or independence.

MAS understands that the best way for an association agreement to work is to forgo altogether the Territorial Clause and use the International Agreements Clause of the Constitution. Puerto Rico must become a sovereign nation, all while entering at the same time into a Compact of Free Association with the United States. This was exactly the way in which the Micronesian Compacts were established since 1986.

Contrary to what some have argued in the past, Free Association is not independence. Free Association is bilateral by nature and requires mutual consent. Contrary to independence, it is based on the concepts of association, mutual trust and understanding.

Having said this, it is proper to clarify certain important issues regarding the viability and nature of a Compact of Free Association between Puerto Rico and the United States.

Most of those who have studied the process that concluded in the signing of the existing Compacts of Free Association have agreed on some very important issues that I most highlight today:

1. U.S. citizenship possessed by Puerto Ricans by birth since 1917 cannot be unilaterally revoked by the Congress. The overwhelming weight of legal authority is that citizenship is an individual right that cannot be taken away arbitrarily by Congress without violating fundamental constitutional principles.
2. Dual U.S. and Puerto Rico citizenship is not only possible, but desirable. Dual U.S. citizens now include persons from Israel and Mexico, and the list is growing. Even the Department of Justice has concluded that in the case of Puerto Rico, there are no constitutional or legal impediments for the permanence of U.S. citizenship in the case of sovereign free association. It is only a matter of political will.
3. Some argue that you have to become an independent nation first and then enter into an association. That is wrong. The Freely Associated States of the Pacific went directly from trust territory status to political association with the U.S. Puerto Rico and the U.S. can commence negotiations toward free association without the need to change the current relationship.
4. MAS also understand that economic self reliance must be a fundamental principle in a future relationship with the US. Economic dependence runs counter to the interests of the Puerto Rican nation and the U.S. government. As an essential part of a model of free association, we believe that both nations must agree on a new economic covenant. As happened in the Micronesian experience, both nations would agree on an economic arrangement that includes the strategic assignment of federal funds; the creative use of trust funds, as well as other economic incentives.

Free Association is the only viable alternative that harmonizes both United States and Puerto Rico strategic interests. It would provide Puerto Rico the economic tools to deal with our problems in a dignified relationship of security and trust with the U.S. At the same time, the United States would acquire a must desired partner in Latin America and in the global community, in a democratic friendship of mutual interests and values, all while promoting self-sufficiency, economic growth with social justice.

Congress has an obligation to fulfill. It is two-fold: to provide for a fair, inclusive and effective process of self determination and, secondly, to offer the complete array

of non-territorial options recognized by International Law in the simplest and clearest way possible. Thus, you must offer Free Association as a distinct alternative to all others. Free association must be able to stand on its own feet as the people of Puerto Rico make their choice in the ballot box.

After more than 109 years of U.S. rule, Puerto Rico is more than ready to take the next step forward in its process of self-determination. While some forces in Puerto Rico insist on maintaining and preserving the status quo, Congress should assume its responsibility and promptly enact legislation providing the People of Puerto Rico with a much awaited federally sanctioned self-determination process. The People of Puerto Rico are ready. We wait for your response and action.

Ms. CHRISTENSEN. Thank you. Finally, our final panelist will be Mr. Juan Manuel Garcia Passalacqua, Lawyer, Writer, and Political Analyst.

STATEMENT OF JUAN MANUEL GARCIA PASSALACQUA, LAWYER, WRITER, POLITICAL ANALYST

Mr. PASSALACQUA. Thank you, Madame Chairman. I appear before you hereby in support of H.R. 900 of Congressman José Serrano, without amendments.

I do so as a student of constitutional law at Harvard University Law School; as a visiting professor of constitutional law at Yale University; as an advisor on constitutional issues in the Caribbean for the Council on Foreign Relations in New York; and as a member of the Ambassadors Circle of the Carter Center in Atlanta.

I give you those qualifications only to support my endorsement of H.R. 900.

I support H.R. 900 for 10 reasons that are in my written statement, and I will not use too much of my time for that purpose. But I want to make a point that has not been made this afternoon by anybody else.

Your action now is necessary, in view of the decision of the Circuit Court of Appeals for the District of Columbia of February 7, that I recommend you read carefully, all of you.

The case is Boumediene v. Bush. And in it, the Court unanimously insisted once again that since 1900, Puerto Rico is an unincorporated territory of the United States. That decision, in the cases of Intregua Guantanamo and Boumediene v. Bush, was affirmed without opinion by the Supreme Court of the United States of America. And that affirmative action by the Supreme Court, ladies and gentlemen of this commission, make it the law of the land as of this month.

So there should be no question whatsoever that that is the issue that this 111th Congress has to address, this one and the next one.

I must quote to you what the opinion says, because it is a fascinating aspect of this question. The detainees in the Guantanamo prison cite the Insular cases in which fundamental personal rights extended to U.S. territories like Puerto Rico. But in each of those cases, referring to the extension of constitutional rights to Puerto Ricans, Congress exercised its power under Article IV, Section 3 of the Constitution, to regulate territory or other property belonging to the United States of America.

Those cases, says the Court, affirmed by the Supreme Court, do not establish anything regarding the sort of sovereignty that the detainees say exists at Guantanamo. Here, in the Guantanamo case, Congress and the President have specifically disclaimed the

sort of territorial jurisdiction that they assert in Puerto Rico. That is the law of the land.

Now, I am, of course, surprised that no one else has quoted that case to you, but I am more surprised still that the Governor of Puerto Rico thought of quoting to you one book by Aleksei Aleinikoff. And I must contribute to this hearing by suggesting that you read nine other books that say what the Governor has refused to say here.

So let me use very quickly my time to cite the following. Amy Kaplan and Donald Pease, Cultures of U.S. Imperialism. Matthew Fry Jacobsen, the United States Encounters Foreign People at Home and Abroad. Amy Kaplan again, the Anarchy of Empire in the Making of U.S. Culture. Gary Lawson and Guy Seidman, the Constitution of Empire, Territorial Expansion in American Legal History. Robert Statham, Colonial Constitutionalism, the Tyranny of United States Off-Shore Territorial Policy and Relations. Bartholomew Sparrow, the Insular Cases and the Emergency of the American Empire. And most notably, Nancy Morris, Puerto Rico Culture, Politics, and Identity.

If you want to read one book recommended by the Governor of Puerto Rico, I, as a professor, am recommending nine other books, so you can read them all.

Finally, I am delivering to your staff here 10 exhibits, addendums of my statement, including, Madame Chairman and Members of the committee, one proposed bill that I have submitted already to the staffers in the Senate of the United States that would simplify matters absolutely. I again recommend the approval of H.R. 900 without amendments.

But in the case that you are tempted to amend H.R. 900 in the markup session or on the Floor, I insist that you consider my bill that has a very simple title. It is only a one-page bill, whose title is to dispose of the territory of Puerto Rico, in light, of course, of Boumediene v. Bush.

Thank you very much.

[The prepared statement of Mr. Passalacqua follows:]

Statement of Juan Manuel Garcia Passalacqua,
Professor and Political Analyst

Members of the Subcommittee on Insular Affairs of the House of Representatives:

I appear before you hereby in support of H.R. 900 of Congressman Jose Serrano, without amendments. I do so, for ten reasons that I will enumerate. I am a graduate of Harvard University and have served as Visiting Professor of Political Science at Yale University. I am at present a member of the Council on Foreign Relations in New York and of the Ambassadors Circle of the Carter Center in Atlanta. It is with those qualifications that I appear before you in writing.

I support H.R. 900 because: It recognizes our nation of8 million beings. It denounces our century old colonialism. It announces persistence in our anti-colonialism. It makes clear it is your responsibility to end it. It recognizes the right of all those born in Puerto Rico wherever they reside, to participate in deciding our country's future. It constructs that decision to demand that some option gets a clear majority. It challenges you to act. It forces the White House and the full Congress to respond to our people's demands. And, finally, it makes possible the end our consent to colonialism in Puerto Rico in the year 2009. Those ten reasons should be enough to move you.

Furthermore, since this hearing has been called to include an academic analysis of the conundrum before you, I want to contribute to it, the intellectual analysis you have invited.

Your action is necessary in view of the decision of the Circuit of Appeals Court for the District of Columbia of last February 7 in the case of Boumediene v. United States, in which it insisted Puerto Rico is, since 1900, an unincorporated territory of the United States. That is what this III the Congress has to end after more than a century of indecision and avoidance.

For the sake of brevity,] will just recommend instead of extensively citing, a series of published academic texts that by their reasoning would support the approval of H.R. 900: Amy Kaplan and Donald E. Pease, Cultures of US. Imperialism; Mathew Frye Jacobson, The United Stales Encounters Foreign Peoples at Home and Abroad; Amy Kaplan again, The Anarchy of Empire in the Making of US. Culture; Alexander Aleinikoff, Semblances of Sovereignty: The Constitution, the State and American Citizenship; Gary Lawson and Guy Seidman, The Constitution of Empire: Territorial Expansion and American Legal History; Robert Statham, Colonial Constitutionalism: The Tyranny of United States' Offshore Territorial Policy and Relations; Bartholomew H. Sparrow, The Insular Cases and the Emergence of American Empire; and most important of all Nancy Morris, Puerto Rico: Culture, Politics and Identity.

Reading those eight texts will be enough to convince you to adopt H.R. 900. I am of course available to elaborate for you the relevance of these and other texts published in recent years, as well as the relevance of the cases of In re Guantanamo and Boumediene v. United States, and I request that these brief remarks be made part of the record of these hearings.

Ms. CHRISTENSEN. Thank you, Mr. Passalacqua. And thank you for giving us a little, some abstracts in one of your commentaries on April 22, so that I wouldn't have to try to read all of those books before today. So I have a little idea of what they say.

Mr. PASSALACQUA. Thank you, Madame Chairman.

Mr. FORTUÑO. By the way, Madame Chair, if I may say so, I also used this as a reference for today's hearing.

[Laughter.]

Ms. CHRISTENSEN. Thank you. I am going to try to get three questions in, in my five minutes.

Mr. Martín, in your testimony you said that the people in Jamaica or Guatemala, for the wrong reasons, for example, might also choose statehood. Might the same thing happen in Puerto Rico? People might choose statehood for the wrong reasons? And what would those, and what do you mean by wrong reasons?

Mr. MARTÍN. That is precisely what I say in my statement, that albeit, like in Puerto Rico, for the wrong reasons. Because I am convinced that in Puerto Rico, in the vast majority of support for statehood is simply a function of a sense of insecurity and dependence. That if Puerto Ricans are faced at some point with an option of independence that is seen as viable, and that is seen as a choice that it will not be penalized, as has been seen for the past 100 years, I have no doubt that the people of Puerto Rico, like any other people, will choose independence.

So in that sense, the political preferences of the Puerto Ricans expressed in votes, as should be relatively obvious, is really a function of how they perceive the consequences of such a, of such a vote. And historically, Puerto Ricans have been conditioned to believe that a vote for independence is sort of like jumping off an eighth floor without a parachute. And therefore, it is not surprising that only around 5 percent of the people have enough faith to say I will do it anyway, because historically U.S. policy has been that if Puerto Rico were to become independent, it would mean the closing off of the U.S. market, the closing off of all substantial trade,

once Puerto Rico had been turned into a dependent country economically.

So it is not at all strange to me that independence is very much a minority faction. The day when independence is seen in another way, when a reasonable offer is made of independence, as should be made, you can be quite sure that independence will, in the end, be chosen by most people.

If to that you add that colonialism is disrobed publicly for what it really is, and that statehood is presented with some political sincerity—that is to say, with the small print that would evidently be used by Congress—at some point, Puerto Ricans may choose statehood. At some point.

This may happen, that the statehooders have been growing in Puerto Rico. Whenever that happens, or before it happens, at some point, Congress will have to say what are the terms and conditions under which statehood for Puerto Rico would be possible, if at all, and on what timetable. Whenever that day comes, we will also see that the vote for statehood will then become a function of that alternative, and not simply a function of an obstruction.

Ms. CHRISTENSEN. Thank you. Mr. Duprey, in your testimony you referred to U.S. citizenship and dual citizenship. When you talk about that in the free association, are you speaking of those who would already be citizens when, at the time of the compact or the agreement? Or are you talking about persons born in Puerto Rico after that?

Mr. DUPREY. Right. I am talking about U.S. citizens at the moment of the signing of the compact. In the negotiations between the people, the Government of Puerto Rico and the Government of the United States, we have to negotiate what we are going to do about citizenship in a future relationship.

But there is a consensus in the legal community that there is, it is very difficult to take away the citizenship, the U.S. citizenship of the Puerto Ricans who have it now.

Ms. CHRISTENSEN. And I agree with that. I agree with that. But I have seen one definition, or one tenet, some of the tenets of free association that have been proposed, and they include American citizenship. That is why I ask that question.

Mr. DUPREY. Yes. I think that that is some other political will at the time of the negotiation. And it is something that, as you can know—I know that Mr. Fortuño knows—it is some other hotly political debate in Puerto Rico. But you need to separate what is the political debate and what is the legal reality of the issue of citizenship, U.S. citizenship, in the case of Puerto Rico.

Ms. CHRISTENSEN. Thank you. Mr. Passalacqua, one of the quotes that you have from Robert Statham, the University of Guam, ends with "now either incorporate or release Puerto Rico." And you said that you agree with everything that you quoted in here.

So my question is a simple one. Do you consider free association to be one of those that would be included in releasing Puerto Rico?

Mr. PASSALACQUA. I agree with my friend, Nestor Duprey, that if the Resident Commissioner, as he offered, is willing to invite to his office the representatives of free association, they will be more than capable of proposing a treaty of free association that can be

included as a separate alternative in the plebiscite. And then have a runoff between the two that garner more votes.

Therefore, I very strongly urge the friends at this table to accept the invitation extended by the Resident Commissioner. Write up the Treaty of Free Association Proposal, and to the Resident Commissioner, to, in reciprocity for that gesture, accept a runoff after the first vote.

Ms. CHRISTENSEN. Thank you. I now recognize Mr. Fortuño for questions.

Mr. FORTUÑO. Thank you. I again want to thank all the members of the panel for being here, for your contribution to this discussion. And I think it is very important, actually, what we are trying to do here.

We are trying to legislate. And you may see us discussing different aspects as this is going on. We are trying to legislate here. And Mr. Duprey, Mr. Passalacqua, I will tell you something that I haven't said publicly.

Last year, when we had, back in March we had hearing here, Mr. Acevedo-Vilá did not show up, but he sent Mr. Dalmau. I offered Mr. Dalmau the offer I made public today. I have followed that up with other representatives from Acevedo-Vilá.

Today, openly, in open mic, I restated my statement. Obviously, Mr. Duprey, you have the pantalones he doesn't have. So I will take you up on that one, because it has been a year. I will assume that my offer expired, and I will take you up, and I will work with you and your organization to try and see if we can legislate in a way that allows for that third option, to, one way or another, be clearly included in this legislative process.

And my desire, as you all know, I have my status preference. But I have a responsibility that goes beyond that. And that is for the people of Puerto Rico to have clearly defined options, so that they can make an informed and honest choice among options that are doable, that are constitutionally feasible, that is not pie in the sky. That is not [Spanish phrase], as José Serrano, my friend, says all the time, that is really something that is doable. We owe that to the 4 million residents of Puerto Rico. And I am more than willing to engage in that dialogue. And I know many others on this dais and Members of the full committee are willing to engage, as well.

So I restate my statement.

Mr. DUPREY. You know one of your predecessors, Luis Vegas Ramos, I think that is a phrase that can guide us in this process. Puerto Rico por encima de todo. Puerto Rico of all.

And I think that we are part of our new generation. As I said in my statement, that don't want to discuss any more this issue. I don't know how many hearings we need to solve this issue.

We know which are the controversies. We know which are the real options. Forget about the political labels; we know which are the real options. There are only three. Free association, statehood, and independence. Let us legislate, and let the people decide.

Mr. FORTUÑO. That is the way I see it, and again, the doors in my office are open to indeed achieve that. Since the Governor has been actually running away from that decision. And actually, many in his party have been running away from that decision for 50

years. So the fact that he has been doing it for one years is not that bad, I guess.

Mr. Garcia Passalacqua, I am glad that you raised the recent Court decision having to do with the Guantanamo situation. And indeed, I know it is shocking at times, and some of my colleagues have been shocked by the statement in the report that indeed, you know, we could be ceded to a foreign power, whatever. We are property of the United States. And I was very glad to hear what you had to say.

I also would like to restate very clearly. The Clinton Administration and the Bush Administration, in different ways and fashions, have stated very clearly that free association is one of the real options to solve this issue once and for all. So we have Democrats and Republicans stating the same thing, and the time is now, indeed, to move forward.

And I just wanted to close with that statement. I wanted to thank Chairwoman, I wanted to thank you all for being here. And I wanted to thank the committee staff for hanging on there. And I only wish that the next step will be a markup session, so that the people of Puerto Rico will have clearly defined options before them. And if we can achieve that, I think we will all have discharged our responsibilities to the citizens, ones that we serve or represent.

Thank you again, Madame Chairwoman, thank you for your leadership. And good night.

Ms. CHRISTENSEN. Thank you. And again, let me thank the witnesses on behalf of the Subcommittee and the committee for being here, for your patience, and for your testimony and your answers to our questions.

We may have more questions as we review the transcript of this hearing, and we would be submitting them to you in writing. And the hearing record is held open for 10 days, as well.

This is our last hearing. I think that we have worked together, Mr. Fortuño and I, to ensure that all perspectives have been brought to the table. We have been very liberal in our time, and tried to accommodate each party's wishes to the best of our ability. And I think it has worked well for the Subcommittee and committee; it has been very well informed.

So again, thank you. And this Subcommittee hearing stands adjourned.

[Whereupon, at 7:41 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

[A statement submitted for the record by Hon. Eliot L. Engel, a Representative in Congress from the State of New York, follows:]

Statement submitted for the record by Eliot L. Engel

The Commonwealth of Puerto Rico has a long, proud history and it has become an integral part of the United States. The people of Puerto Rico have contributed immeasurably to American culture in every way imaginable, including in the political arena, music, business, cuisine, creative writing, sports, and science. Perhaps the most important contribution made by the Puerto Rican people has been to our national defense. They have bravely served in the U.S. military in every major war since WWI and during the current conflict in Iraq, 29 Puerto Rican soldiers have made the ultimate sacrifice.

The people of Puerto Rico have given us so much but for over 100 years now, we have failed to give them a fair opportunity to determine their own future and their own form of government. Every U.S. President over the past 50 years has supported self determination. However, politics here and in Puerto Rico has denied the Puerto Rican people an opportunity to voice their true desires about whether they would like to continue as a commonwealth, achieve independence, or become our 51st state.

My friend and colleague, Representative Jose Serrano, has written legislation which will remedy this situation. By creating a sensible two plebiscite structure, and requiring plainly worded questions describing the different options, H.R. 900, the Puerto Rico Democracy Act of 2007, will allow the Puerto Rican people to decide how they would like to be governed. We owe it to the Puerto Rican people to work together and pass this important legislation so this group of U.S. citizens can sensibly plan their future.

[A statement submitted for the record by Hon. Ron Kind, a Representative in Congress from the State of Wisconsin, follows:]

Statement of The Honorable Ron Kind, a Representative in Congress from the State of Wisconsin

Madam Chairman: While I am not a member of the Subcommittee, as a cosponsor of H.R. 900, I would like to weigh-in to add my voice to those supporting the bill. It offers us the opportunity to transcend the confused and befuddled ideological debate that has kept Congress and the people of Puerto Rico from finding a solution to the issue of the island's status. In keeping with the traditions and ideals of our nation, this bill will allow the people of Puerto Rico to determine their own destiny.

It is fitting that we consider this legislation one week after the House passed the D.C. House Voting Rights Act, which would give residents of the District of Columbia a voice in the House of Representatives so that they, too, may have the same democratic voice as their fellow citizens in every other city, town, and village in the 50 United States.

The Puerto Rico Democracy Act of 2007 would test the assertion made by some that a majority of voters in the territory favor continuation of the status quo. If that is, indeed, the case, this bill will accept the democratic verdict of the people and maintain the current relationship with the United States. Alternatively, it would allow a majority of citizens the ability to exercise their right to call for change if that is what they desire.

H.R. 900 offers a fair, status neutral, and, most importantly, a constitutionally valid approach to discerning the will of the people of Puerto Rico. This bill is the best way to establish true and legitimate majority rule in Puerto Rico on the question of whether or not the voters want to maintain the current status as defined by federal law. Such a determination is the first step that must be taken. Congress should become involved in deciding next steps only if a majority of Puerto Ricans rejects continuation of the current status.

H.R. 1230 is the alternative proposed by opponents of H.R. 900. By proposing that the island's status be determined through a constitutional convention, it would allow a less democratic local process than is currently required under the local constitution. Such a convention could produce a proposal based on the local commonwealth party's platform rather than one that is supported by a majority of residents, and which Congress would likely reject.

The responsible course for Congress is to approve H.R. 900 and find out if the people of Puerto Rico do or do not want change. Only then will this body be able to move forward with a status determination that meets the needs and the will of the people who would be affected.

[A statement submitted for the record by Hon. Loretta Sanchez, a Representative in Congress from the State of Califonnia, follows:]

Statement of The Honorable Loretta Sanchez, a Representative in Congress from the State of California

Madame Chair,

Thank you for allowing me to participate in this important discussion, and for calling this hearing on the future of Puerto Rico. The two bills we will review here today concern the most glaring lack of democracy under our flag. Last week, this

House voted to grant the District of Columbia, and its 60,000 residents, the right to be represented in our government. There has been a lot of attention to the issue, but an even more egregious disenfranchisement is going on almost without notice.

There are nearly four million people in Puerto Rico. They have been U.S. citizens for 90 years but they remain without a single real vote in the government that makes and implements their national laws. This, even though ALL of their leaders want a democratic government at the national level.

There is scarcely a more important issue before the Congress than righting this historical wrong.

It is of special significance to those of us who are Latino or who represent Latinos. One of the reasons that the issue has not been resolved is the wrong-headed view that equal rights and responsibilities and permanence within our Union should not be an option for our fellow citizens in Puerto Rico because of their Latin culture. I reject that view completely.

I personally have no preference regarding the territory's ultimate status; Puerto Ricans have earned the right to make the choice among all the options—statehood, independence, nationhood in a free association with the United States. They even could choose to continue as a territory if they don't want to decide yet on the islands' ultimate status.

One of the bills before you, the Puerto Rico Democracy Act, H.R. 900, which I have co-sponsored, would enable Puerto Ricans to make the choice among all the options.

The other bill, H.R. 1230, would not. It excludes one of the options, free association.

It also would include the ill-defined option of a "Commonwealth", a proposal that would only confuse and further delay the choice.

This "option" for a non-territory "Commonwealth status" has already been rejected by the Clinton Administration on constitutional and basic policy grounds, as well as by President Bush's Task Force on Puerto Rico's status. It is a proposal that Congress could not accept even if it wanted to.

Under this proposal, Puerto Rico would be a nation with the power to enter into international agreements but the United States would be permanently bound to it, granting:

- an additional subsidy to the insular government;
- all current aid to Puerto Ricans;
- free entry to all goods shipped from the islands; and
- citizenship.

U.S. laws would apply and U.S. courts would have jurisdiction—but the "Commonwealth" government would be able to nullify federal authority.

To be fair and meaningful, the decision has to be made among real choices of status.

I urge the Subcommittee to favorably report H.R. 900 without delay and enable Puerto Rico to finally attain a democratic national government.

Thank you again, Madame Chair, for letting me join you here today.

[A statement submitted for the record by Hon. Nydia M. Velázquez, a Representative in Congress from the State of New York, follows:]

Statement of The Honorable Nydia M. Velázquez, a Representative in Congress from the State of New York

Thank you, Chairwoman Christensen, for holding this hearing today. I appreciate the opportunity to be here and offer my views on our bipartisan bill H.R. 1230, The Puerto Rico Self-Determination Act of 2007. It is so important that we clarify what is really at stake here.

As I have said from the beginning—the path to self-determination for the people of Puerto Rico must be a conclusion that Puerto Ricans forge themselves. Whether they reside in Puerto Rico, New York, Illinois or Florida—it is up to them to decide their future.

In addition to discussing H.R. 1230, we are also focusing on the alternative legislation, H.R. 900, today. While this bill is well intended, it mandates a flawed process. It only exacerbates the divisions on the island and fails to offer any hope to settle the matter.

The status of Puerto Rico has been an issue for the past century—any solution today needs to be one that has the consensus and support of the people of Puerto Rico. This is why I introduced "The Puerto Rico Self-Determination Act." I saw the

need for a true path towards a long-term solution to the status issue. This is a bipartisan bill, co-sponsored by my colleagues Congressmen Gutierrez and Wicker. H.R. 1230 represents a fair and just path because it seeks to bring consensus to the over 8 million Puerto Ricans that live on the island, and in the States.

It is apparent that the real issue here is process. Members of Congress cannot favor Puerto Ricans deciding their future, but then support legislation that dictates the key terms to them, and fails to define those terms. What happened to real freedom to choose? I thought we were talking about a self-determination process, not Congressional mandates and meddling. The best thing Congress can do is to step aside; it is the Puerto Ricans process of self-determination we are trying to discuss here.

Congress' best role at this stage should be to facilitate, not dictate. My friends, a vote can only be fair when you know what you are voting for and know the consequences of that vote. Have we not learned the hard way in Congress the consequences of voting for something without having all the correct information? How can we ask Puerto Ricans to make the most important decision without helping them see what it all means?

You may be asking why H.R. 1230 is better? This bill does provide for a democratic self-determination process. It is fair—Congress does not place one group or idea ahead of any other. It is open—groups advocating for one option or another get to convince voters that their way is the best option. It is transparent—the people will be able to decipher what the options mean to them, for the future of Puerto Rico, and then vote. H.R. 1230 ensures people will be able to debate the ideas and reach consensus.

The Governor of Puerto, and the followers in his party, perceive H.R. 900 as unfair. Just looking back at history, you will see that bills that have been perceived in similar ways in the past, by either of the main parties, have not succeeded. Without a consensus the process would always be under suspicion by a large segment of the population in Puerto Rico. If this is a true self-determination process, it would not be for us to define their status option for them—it would be for them to define it on their own consensus. That is what my bill allows.

Chairwoman Christensen, I appreciate the time you have granted me today and I urge you to act judiciously on this important issue. I would like to again strongly encourage you to convene a third hearing so that this sub-committee can hear from local community leaders in New York, Illinois and Florida. They are also part of this process and their opinions must be heard. Thank you.