



June 24, 2022



Democratic Party of Puerto Rico



The Honorable Raúl M. Grijalva
Chairman
U.S. House Committee on Natural
Resources
1324 Longworth House Office Building
Washington, DC 20515

The Honorable Bruce Westerman
Ranking Member
U.S. House Committee on Natural
Resources
1329 Longworth House Office Building
Washington, DC 20515

Dear Chairman Grijalva and Ranking Member Westerman:

We, the undersigned organizations, write to thank you for taking into consideration our letter of December 15, 2021 in which we requested that the Committee either bring H.R. 1522, *The Puerto Rico Statehood Admission Act*, immediately to a vote or negotiate and advance compromise legislation to finally decolonize Puerto Rico.¹ Given that the Committee was unable to bring H.R. 1522 to a vote, we welcomed the announcement made on May 19, 2022 of a proposed compromise bill discussion draft, the *Puerto Rico Status Act* ("PRSA"), and now we ask you to please schedule a markup of this bill as quickly as possible. The PRSA is historic because it is the first time Congress has ever proposed binding legislation that would empower the U.S. citizens of Puerto Rico to make a definitive and self-executing choice on whether to become full and equal participants in American society through statehood or to create their own separate country through either independence or independence with free association.

Given the complexity of untangling 124 years of America's territorial colonial relationship with Puerto Rico, we understand that the bipartisan negotiations to develop the PRSA were intense and challenging. We therefore want to commend and express our sincere gratitude to Majority Leader Hoyer, Chairman Grijalva, Resident Commissioner González-Colón, Rep. Velázquez, Rep. Soto, Rep. Ocasio-Cortez, their respective staff members and all others who contributed to crafting the PRSA. We also want to thank the Committee for providing civil society organizations and the general public the opportunity to provide input prior to the formal introduction of the PRSA.

The PRSA is a direct acknowledgement of the fact that the current territory status is fundamentally undemocratic and colonial in nature, that it goes directly against America's founding principles of government by the consent of the governed, and that Congress needs to correct this historic injustice, which has a detrimental impact upon 3.2 million American citizens living under U.S. sovereignty every day. As supporters of statehood for Puerto Rico, we believe that by finally offering Puerto

¹ Letter from Various Organizations to Hon. Raul Grijalva and Hon. Bruce Westerman, Chairman and Ranking Member, H. Comm. on Natural Resources. December 15, 2021. PR51st.com.

<http://www.pr51st.com/wp-content/uploads/2021/12/Letter-to-Congress-Calling-for-Action-on-Statehood-for-Puerto-Rico-December-15-2021-FINAL-4.pdf> (Retrieved June 15, 2022)



Rico's voters a binding and self-executing choice, including the option of statehood, the discussion draft of the PRSA respects the will of the majority of Puerto Rico voters who have formally expressed their desire for statehood in 2012, 2017 and 2020.² We are completely confident that when Congress finally gives the U.S. citizens of Puerto Rico a binding choice to decide the territory's political future, a majority of voters will once again choose statehood.

While we support the PRSA discussion draft as written, and acknowledge that making any changes to it that are not agreed to by all of the parties could cause the bipartisan agreement to fall apart, we believe the Committee must consider making several critical improvements to the legislation before its introduction or during the legislative process. Our recommendations are meant to ensure that the three choices presented to voters in Puerto Rico are constitutionally attainable, defined as clearly as possible so that the most important implications of those choices are clear, and that significant ambiguities in the current PRSA discussion draft can be eliminated or greatly mitigated. Our proposed changes are meant to ensure that voters can provide informed consent, which is necessary to guarantee that the plebiscite results have legitimacy and obtain the greatest degree of public acceptance possible both in Puerto Rico and in the eyes of the U.S. federal government. However, if the choice is between the implementation of these proposed changes or Congress not taking action to approve the PRSA, we would much prefer the approval of the current discussion draft over the perpetuation of the unequal, unjust and fundamentally colonial current territory status.

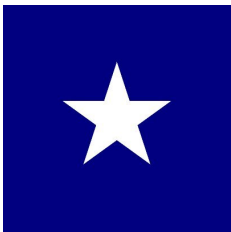
Recommended Clarifications to the "Free Association" Status Option

In Sec. 5(a)(2) the PRSA establishes three non-territorial options for the eligible voters residing in Puerto Rico to choose from: "Statehood", "Independence," or "Sovereignty in Free Association."³ While the constitutional implications of the options of statehood and independence are clearly understood by the general public, the constitutional implications of "Free Association" are not as well understood and give rise to a significant uncertainty that must be clarified.

Use of the word "Sovereignty" as the main descriptor for the option of "Free Association" is insufficient to ensure that voters understand that for constitutional purposes this option is a *form of independence* outside the protection of the U.S.

² P.R. State Elections Comm'n, *Official Plebiscite Results for 2012, 2017 & 2020*, https://elecciones2020.ceepur.org/Escrutinio_General_93/index.html#es/default/PLEBISCITO_Resumen.xml | https://resultados2017.ceepur.org/Escrutinio_General_79/index.html#en/default/CONSULTA_DE_ESTADU_S_Resumen.xml | http://168.62.166.179/eg2012/REYDI_Escrutinio/index.html#en/default/OPCIONES_NO_TERRITORIALES_I_SLA.xml (last visited June 9, 2022).

³ *The Puerto Rico Status Act Discussion Draft*, H. Comm. on Natural Resources (May 19, 2022), https://naturalresources.house.gov/imo/media/doc/DISCUSSION_DRAFT_Puerto_Rico_Status_Act.pdf.



Constitution.⁴ The bill must make clear to voters that under “Free Association” Puerto Rico must be sovereign under its own constitution so that it can function as a fully independent nation if the “Free Association” is terminated by either party acting unilaterally or simply expires. PRSA should also make clear that the “Free Association” relationship contained in the Articles of Free Association (“AFA”) cannot be guaranteed because the AFA would still need to be approved under federal law as a type of international treaty.⁵ As a treaty-based relationship voters must understand that “Free Association” is not a permanent constitutionally defined status, instead it is defined by the terms of the treaty and continues only as long as the treaty creating the association remains in effect. We appreciate that the bill specifies that under “Free Association” either party can terminate the relationship at any time, but the bill must explicitly inform voters that such termination will result in Puerto Rico’s full and complete independence. Such a monumental change cannot be left as an implied consequence.

Therefore, we recommend amending the “Free Association” option from “Sovereignty in Free Association” to “Independence in Free Association.” Using the word “Independence” before “Free Association” would make the constitutional implications of this option much clearer to voters than using the word “Sovereignty,” whose meaning is more ambiguous and less commonly understood. We also recommend amending Sec. 5(b)(3)(E) by adding the words “which would result in Puerto Rico’s independence.” These changes are necessary to ensure the genuine informed consent of Puerto Rico’s voters who may select this option under the plebiscite proposed by PRSA.

Recommendation for Educational Materials

As part of the “Nonpartisan Voter Education Campaign” proposed in the PRSA, we recommend adding a Sec. 6(b)(5) to ensure that the “Voter Educational Materials” include an explanation of the “Constitutional Implications” of each option. Such an explanation must make clear to voters that the “Free Association” option means national sovereignty, which is a form of independence outside of the protection of the U.S. Constitution, based on a treaty with the United States that can be terminated at any time by either party, resulting in full independence for Puerto Rico. The explanation of “Statehood” should make clear to voters that it means admission into the “Union of States” on equal footing where each state retains its own state

⁴ “Independence is a general term that refers to the possibilities both of full independence from the United States and of a compact of free association, in which Puerto Rico would become a sovereign nation but would continue to have close ties to the United States under the terms of a mutually agreed-upon compact...there is no constitutionally permissible status ‘outside of the Territorial Clause’ other than statehood or independence (including free-association agreements),” U.S. Department of Justice: Analysis of H.R. 2070, the Puerto Rico Self-Determination Act of 2021, H. Comm. on Natural Resources (June 14, 2021), <https://naturalresources.house.gov/imo/media/doc/DOJ%20Analysis%20of%20HR%202070.pdf>.

⁵ “[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur,” U.S. Constitution, Article II, Section 2, Clause 2.



Constitution, state identity, state flag, sovereignty under the 10th Amendment of the U.S. Constitution, and where state citizens have full and equal rights, benefits and responsibilities at the federal level as U.S. citizens in all other states.

Additionally, the educational materials under Sec. 6(b)(1) should also clearly inform voters in Puerto Rico that under the options of “Independence” and “Sovereignty in Free Association,” individuals who retain their U.S citizenship while living in Puerto Rico will be required to report all taxable income to the Internal Revenue Service and to pay federal taxes as U.S. citizens living abroad.⁶

Clarifying Citizenship Provisions

We appreciate the clarity with which the PRSA articulates in Sec. 5(b)(4)(C) that the only status option where the U.S. citizenship of those born in Puerto Rico is “recognized, protected, and secured” under the U.S. Constitution is “Statehood.” That clarity is unquestionable because as a state of the Union, the U.S. citizenship of individuals in Puerto Rico would be protected under the 14th Amendment of the U.S. Constitution, just as it is in every other state.

However, in both the ballot language and implementation provisions for the options of “Independence” (Sec. 5(b)(2) & Sec. 109) and “Free Association” (Sec. 5 (b)(3) & Sec. 208) the PRSA’s current draft language creates a number of very serious ambiguities regarding the level of protection of the citizenship rights of U.S. citizens born on the island once Puerto Rico exits territorial status and the U.S. cedes sovereignty over the territory and its population. The citizenship provisions in PRSA must make it absolutely clear to Puerto Rico’s voters that, notwithstanding any implicit or explicit statutory guarantees made in the PRSA, as a sovereign nation the U.S. will always retain control over its citizenship policy.⁷ This includes the possibility that a future Congress could mandate that U.S. citizens make an election between retaining U.S. citizenship and obtaining a new Puerto Rican citizenship should they choose to remain in an independent Puerto Rico with or without free association.⁸

Up to now, the legal and policy precedent of the U.S. federal government has been that former U.S. territories which have obtained either “Independence” (the Philippines) or independence with “Free Association” (the former trust territories of the Marshall Islands, Micronesia, and Palau) have established their own separate

⁶ 26 U.S.C. § 911(2022).

⁷ U.S. Constitution, Art. 1, Sec. 8, Cl. 4 & 18.

⁸ See PRSA Sec. 5(b)(2)(C) and Sec. 5(b)(3)(C) which both state that, “persons who have such United States citizenship have a right to retain United States nationality and citizenship for life, by entitlement or election as provided by Federal law” (emphasis added). For a summary of the discussion of the constitutionality of congressionally prescribed expatriation, which is as of yet “unsettled,” see U.S. Library of Congress. (2020). *U.S. Constitution Annotated, Naturalization Power, ArtI.S8.C4.1.2 Expatriation*.

Constitution.Congress.gov. Retrieved June 10, 2022, from

https://constitution.congress.gov/browse/essay/artI-S8-C4-1-2/ALDE_00001063/



nationality and citizenship to enable their orderly succession into nation status with effective sovereign powers over their territory and population.⁹ An exception to this occurred following the U.S. possession of the Panama Canal, where individuals born in the Canal Zone acquired U.S. citizenship unconditionally and maintained their citizenship after enactment of the Panama Canal Treaty through which the U.S. ceded sovereignty over the Canal Zone back to Panama.¹⁰ However, this exception is completely different than the case of Puerto Rico because the Canal Zone was located within an already independent country where the overwhelming majority of the population are citizens of Panama and not U.S. citizens.

The bill must make it absolutely clear to voters Congress' intent in relation to these precedents of federal law and policy. The bill must address whether and how its promise to continue granting statutory U.S. citizenship to individuals born in Puerto Rico can be fulfilled after the U.S. cedes sovereignty over the territory for the duration of the first agreement of the AFA – or make clear that it is making no such promise. Additionally, in the PRSA Congress must not only address what is possible for it to legislate under the limits of the U.S. Constitution, but what is practical, prudent and effective foreign policy for the U.S. We simply do not see any way in which offering to make Puerto Rico an independent country (with or without free association) where the totality of their population would be U.S. citizens would be a practical, prudent or effective foreign policy for the U.S.

For Congress, the only practical, prudent and effective policy when offering Puerto Rico "Independence" and "Free Association" is to let voters on the island know that under either option the federal government's goal must be to eventually phase out U.S. citizenship for the people of Puerto Rico, so that the majority of people in the new country can enjoy their separate nationality and citizenship free and independent of undue influence and control by the U.S. Clarifying this policy goal under the two non-statehood options is critical to ensure that the U.S. does not retain an ongoing right and responsibility to intervene in the internal affairs of the newly independent or freely associated Puerto Rico. Such a scenario would be the current day equivalent of the long-discredited Platt Amendment, through which the U.S. dominated Cuba in the early 20th Century, and would replace current territorial colonialism with another form of colonialism which would be that of a captive and dependent sovereign relationship. An independent or freely associated Puerto Rico where the totality or

⁹ See P.L. 73-127, *Philippines Independence Act*; P.L. 99-239, *Compact of Free Association Act of 1985*; P.L. 108-188, *Compact of Free Association Amendments Act of 2003*; P.L. 99-658, *Compact of Free Association between the United States and the Government of Palau*.

¹⁰ See 8 U.S.C. § 1403(a) (2022), where any person born in the Canal Zone on or after February 26, 1904, acquired U.S. citizenship if at least one parent was a U.S. citizen, and 8 U.S.C. § 1403(b) (2022) where any persons born in the Republic of Panama on or after February 26, 1904, with at least one U.S. citizen parent "employed by the Government of the United States or by the Panama Railroad Company, or its successor in title," acquired U.S. citizenship.



vast majority of its residents and citizens are also U.S. citizens would result in the island being a sovereign on paper while the U.S. would retain de-facto responsibility, control and dominance over the island and its people. That would not be in the interest of either the U.S. or of Puerto Rico, and the PRSA must make that explicit and clear.

Clarifying Implementation Provision for “Free Association”

Additionally, we urge you to amend Sec. 209(d)(3) to provide clarification as to what happens if voters on the island choose “Free Association” and the Bilateral Negotiating Commission (“BNC”) fails to complete the AFA within the two years following the commencement of constitutional convention. The current draft of the PRSA only says that the BNC shall “endeavor to complete” the AFA within a two-year timeframe.¹¹ Given that the current draft bill does not indicate what occurs if the BNC fails to meet that deadline, we propose that if the BNC fails to meet their duty and complete the AFA by the two-year deadline, that the bill clarify that Puerto Rico’s political status shall revert to “Independence” as described in Sec. 5(b)(2) and Title 1, Sec. 101 of the PRSA.¹²



In Sec. 210(b), the PRSA further states that if the AFA are completed and presented to voters, but voters reject the AFA, the process provided in Sec. 210 shall be repeated.¹³ As drafted this will only lead to a repeated vote, but would not provide an opportunity for the BNC to correct or re-negotiate underlying cause of the rejection of the AFA. Additionally, Sec. 210(a)(2) does not address what would occur if the Government of the United States fails to approve the completed AFA. We recommend that the PRSA be amended to provide at least one additional opportunity for the BNC to re-negotiate the issues in the AFA that lead to the agreement’s rejection by Congress. If the repeated attempt to approve the AFA by either party fail, then the bill must specify that Puerto Rico’s political status shall revert to “Independence” as described in Sec. 5(b)(2) and Title 1, Sec. 101 of the PRSA.



Puerto Rico’s voters must be made fully aware that the only constitutionally guaranteed option their vote for “Free Association” offers them is that of “Independence.” Unlike the “Statehood” or “Independence” options, under “Free Association” a future Congress would need to approve the AFA for “Free Association” to come into effect. The bill must make it absolutely clear to voters that such approval of the AFA by a future Congress cannot be guaranteed, and therefore



¹¹ *The Puerto Rico Status Act Discussion Draft*, H. Comm. on Natural Resources 37 (May 19, 2022), https://naturalresources.house.gov/imo/media/doc/DISCUSSION_DRAFT_Puerto_Rico_Status_Act.pdf.

¹² On Page 38, Line 1 of the PRSA, we recommend inserting a new Sec. 209(d)(4) with the following amendment language: “If the Bilateral Negotiating Commission fails to complete the Articles of Free Association not later than 2 years after commencement of the constitutional Convention, the status of Puerto Rico shall be Independence as provided for in Sec. 101.”

¹³ *Id* at 38.



when voting for “Free Association” the only guarantee that the voters will have is that of Puerto Rico’s “complete and unencumbered independence.”¹⁴

Conclusion

For Puerto Rico to ever truly prosper and reach its full potential, it needs full democracy. In this bill, Congress can finally offer the people of Puerto Rico a fair choice between legitimate, constitutionally attainable and implementable status options so that Island voters can definitively end more than 500 years of colonialism. Only Congress has the power to pass federal legislation for this purpose, and it is past time for Congress to take up its responsibility to the millions of fellow American citizens in Puerto Rico. The people of Puerto Rico deserve an opportunity to begin building a viable, competitive and fully democratic future, and the PRSA must offer it to them.

We again wish to thank all the members of Congress that worked to reach this compromise which we hope can swiftly pass both chambers of Congress and be signed into law this year. We are in full support of this historic proposal, and the input we have provided is meant to improve the legislation. Now, we need your leadership to move the bill through the legislative process as quickly as possible before the current window of opportunity draws to a close. We will continue our citizen advocacy efforts, but we look to you to lead, and to do everything in your power to make this bill become law. The time to take action is now.

Sincerely,

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¹⁴ Letter from Dana Boente, Acting Deputy Attorney General, to Hon. Ricardo Rosselló, Governor of Puerto Rico, April 13, 2017. Puerto Rico Report. <https://www.puertoricoreport.com/wp-content/uploads/2017/04/Hon-Ricardo-Rossello-Nevarres-Letter-DOJ-Apr-13-2.pdf> (Retrieved June 15, 2022)

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