

Legislative Bulletin.....April 29, 2010

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- ***Process:*** Some conservatives believe that the process for the plebiscite is extremely flawed and could result in voter confusion. The bill does not require a majority vote to establish their political destiny under the second-stage plebiscite. Additionally, a person can vote in this election, as long as you were born in Puerto Rico, *even if you do not actually reside there.*
- ***Many, or Most, Puerto Ricans Happy with Status Quo:*** Historically, statehood has traditionally been granted only to territories whose residents display through a vote or in some other fashion overwhelming support to enter the union (important since statehood is forever). For example, when the citizens voted for Hawaiian statehood in 1959, 93% of voters on all major islands voted in favor of statehood. In the last plebiscite in Puerto Rico, more than half the Commonwealth rejected statehood.
- ***Two Official Languages in One Nation:*** Both Spanish and English are the official language of Puerto Rico. However, legislative business is conducted in Spanish, school instruction is in Spanish, and the large majority of the population speaks Spanish and does not speak fluent English.
- ***Conservative Support:*** It is important to note, some conservatives are in support of H.R. 2499. They believe the legislation gives Puerto Rico the same opportunity for self-determination that other U.S. territories were granted in the past, believe the results of the plebiscite would not bind Congress, and believe that Puerto Rican self-determination has been supported by members of the Republican Party for several decades.

For more details on the issues involving H.R. 2499, see pages 3-6.

**H.R. 2499—Puerto Rico Democracy Act
(Del. Pierluisi, D-PR)**

Order of Business: The bill is expected to be considered on Thursday, April 29, 2010 under a structured rule that will provide for one hour of debate equally divided and controlled by the majority and minority, waives all points of order against consideration of the bill except those

arising under clause 9 or 10 of rule XXI (earmarks & “pay-go”), provides for consideration of several amendments, and provides one motion to recommit with or without instructions. A separate document summarizing the accepted amendments will be circulated in a separate document tomorrow.

Summary: The stated purpose for H.R. 2499 is to provide a federally sanctioned self-determination process for the people of Puerto Rico to determine the island’s political relationship with the United States. Also called a plebiscite, the bill requires a direct vote in which the entire electorate (notably defined to include non-residents of Puerto Rico) is allowed to choose between whether Puerto Rico should “continue to have its present form of political status” or if Puerto Rico should “have a different political status.”

If the majority of eligible voters choose to vote in favor of a “different political status”, the Government of Puerto Rico is authorized to conduct additional plebiscites every eight years on the following 3 options:

- **Independence:** Puerto Rico should become fully independent from the United States.
- **Sovereignty in Association with the United States:** Puerto Rico and the United States should form a political association between sovereign nations that will not be subject to the Territorial Clause of the United States Constitution.
- **Statehood:** Puerto Rico should be admitted as a State of the Union.

The bill requires all federal laws that apply to the election of the Resident Commissioner to also apply to the plebiscite directed under H.R. 2499. The bill provides for the Puerto Rico State Elections Commission to certify the results.

The bill also allows for participation in the plebiscite to include all eligible voters under the electoral laws in effect in Puerto Rico at the time the plebiscite is held. In addition, **all United States citizens born in Puerto Rico are eligible to participate** if they comply with Electoral Commission requirements – **regardless of the residency requirement.**

Since official business in Puerto Rico is conducted in Spanish, H.R. 2499 specifically requires all ballots to be printed in English. Finally, the bill requires all costs associated with the plebiscite to be paid for by the Commonwealth of Puerto Rico.

Background Information: In August of 1898 the United States gained Spanish territories after the Spanish-American War. On April 2, 1900, Congress passed the Foraker Act, which established a civilian military in Puerto Rico, applied federal laws of the United States to the island, and established free commerce between the United States and its new territory.

Under the Jones Act of 1917, the people of Puerto Rico became American citizens. In 1948, Puerto Rico was allowed to elect its own governor, and it soon after was granted commonwealth status. In 1952, President Harry Truman signed Public Act 600, which allows Puerto Rico to be governed by its own Congress-approved constitution. Puerto Rico’s status allows it to govern itself on local matters; due to its non-state status, Puerto Rican citizens do not pay federal income taxes, however, they are subject to federal payroll taxes and in turn receive financial assistance from their association with America, including social benefits like food stamps.

In the last plebiscite held in 1998, residents had five options to choose from: commonwealth, statehood, independence, free association, and none of the above. “None of the above” received a slim majority of votes (for political reasons commonwealth proponents urged supporters to vote for this option) followed by statehood. Although polling shows Puerto Ricans are somewhat evenly split in recent polling, between statehood and their current status, it remains conclusive that statehood does not enjoy support by the strong majority of residents.

Conservative Concerns:

- ***Process:*** Some conservatives believe that the process for the plebiscite is extremely flawed and could result in voter confusion, allows for a simple majority vote in favor of a different political status in the first-stage plebiscite, and does not require a majority vote to establish their political destiny under the second-stage plebiscite. Additionally, H.R. 2499 explicitly allows anyone born in Puerto Rico to vote in the elections. This establishes an **unprecedented voting privilege for a select group of U.S. citizens** based solely on where they were born. Usually, residency is what limits an individual’s right to participate in certain elections.

Some conservatives have expressed concern the plebiscite may confuse voters because it does not allow voters to choose an option to continue the current commonwealth status and replaces it with “Sovereignty in Association with the United States.” This term is vague and could confuse voters or be perceived to look as synonymous with support for independence. A 1998 plebiscite conducted on the matter of statehood had both the pro-statehood vote and the pro-commonwealth vote achieving around 46.5 % of the vote. Only approximately 5% of the population of Puerto Ricans identifies themselves as nationalists and it would be appropriate to assume a significant majority of voters would never vote for independence from the United States. Some conservatives have expressed concern that this ballot language is purposely drafted in order to confuse voters into thinking that the referendum is a choice between statehood and independence. This unfairly frames the choices in a manner favorable towards statehood.

- ***Oppression of the extremely thin majority:*** Historically, statehood has traditionally been granted only to territories whose residents display through a vote or in some other fashion overwhelming support to enter the union. For example, when the citizens voted for Hawaiian statehood in 1959, 93% of voters on all major islands voted in favor of statehood. According to the last plebiscite in Puerto Rico, **more than half the Commonwealth rejected statehood.** H.R. 2499 is structured in a fashion that could allow a vote for statehood by a simple majority.

Under H.R. 2499, the plebiscite allows for a simple majority vote in favor of a different political status in the first-stage plebiscite, and does not require a majority vote to establish their political destiny under the second-stage plebiscite. Some conservative have expressed concern this is problematic because the election process could allow less than the majority of voters to determine Puerto Rico’s political future. Traditionally, in cases like Hawaii and Alaska, voters approved referendums with overwhelming support in the 1950s. Of the approximately 140,000 votes cast, less than 8000 rejected the Admission Act of 1959. Voters approved Alaska’s entrance into the Union by a six to one margin in 1958. Given that statehood is forever, it may be argued that statehood should be supported by not just a plurality, or even a simple majority, but instead a supermajority. Additionally, it could stand to reason that by splitting up factions that do not want

statehood (independence & commonwealth); a minority of voters could pass the statehood referendum.

- ***Potentially Binding:*** Despite claims by some supporters that H.R. 2499, is a “non-binding” measure, some conservatives have expressed concern that the bill opens the door to allow a result in favor of Puerto Rican statehood by Congress extraordinarily quickly through tactics like ***the Tennessee Plan that led to the successful ratification for the entrance of at least five states*** and arguably led to statehood for Alaska as well.

Some conservatives have also expressed concern the bill is actually binding because the bill creates potential avenues to bypass or forcibly pressure Congress into ratifying Puerto Rican statehood. Despite claims that H.R. 2499 is a “non-binding” measure, some conservatives have expressed concern that the bill opens the door to allow a result in favor of Puerto Rican statehood by Congress extraordinarily quickly – without enough time for adequate congressional consideration.

In 1796, before Tennessee was admitted to the union by Congress, they held an election to establish a Congressional delegation without waiting for an enabling act from Congress. The then dispatched their newly elected Congressmen to Washington to demand their seats in Congress. This pressure led Congress to quickly permit Tennessee into the union, and was a plan also followed successfully by Michigan, California, Oregon, Kansas, and Iowa, to achieve statehood. The 2008 platform of the pro-statehood New Progressive Party states it will use the same strategy at the “Tennessee plan”.

Finally, some have argued that despite the fact the bill does not oblige Congress to grant statehood, providing Puerto Rico a federally-sanctioned election on the matter is essentially an implied promise it will do so if it passes in a voter referendum. Congress would face enormous pressure to admit Puerto Rico into the union as a state if a federally sanctioned election produces a pro-statehood result. Puerto Rico can conduct a voter referendum at any time on their own to demonstrate how they feel about potential statehood. Some conservatives have expressed concern that the congressional action established under H.R. 2499, to direct Puerto Rico to conduct a plebiscite, amounts to tacit acceptance of approval for statehood by the federal government if the statehood option is chosen in the vote.

Conservative Concerns to Potential Statehood

Additionally, some conservative have expressed concern that many parties involved in this process have not taken into account many of the potential ramifications of adding Puerto Rico as the fifty-first. Some conservative have highlighted these issues to express concern over the impact it could have to not only the people of Puerto Rico, but also to the rest of the United States.

- ***Two Official Languages, One Nation:*** Puerto Rico has made both Spanish and English official languages. However, the language of Puerto Rico's government operations is in Spanish, not English. In addition, while well-educated Puerto Ricans speak English, the 2000 Census estimates that 72% of Puerto Ricans speak English “less than very well”. 85% of the population uses Spanish as their primary language. Some conservatives have expressed concern that H.R. 2499 does not make it a requirement for entry into the union that English be the only official language of Puerto Rico.

There is precedent for insisting that territories adopt English as a precondition for statehood. The Louisiana Enabling Act required predominantly French and Creole-speaking Louisiana to adopt English as the language of its government before it could be admitted to the Union. In addition, Hawaii's official language makes English the default language of government operations.

In Canada, social and political tensions exist between the French-speaking Quebec province and the rest of the nation. Some conservatives have expressed concern the same problems could result – especially as assimilation efforts struggle to succeed with a rapidly growing Spanish-speaking immigrant population already in the United States.

- **Potential Oppression by the Minority:** Some conservative have expressed concern that the option of statehood in the second plebiscite could be declared the winner with as little as one-third plus one of voters supporting the option. Some conservatives have expressed concern that if statehood advocates succeeded in making Puerto Rico a state with a plurality, this could lead to a severe backlash from the majority of population and could deepen political and cultural divisions on the island.

- **More Political Clout than Half the Current States:** Based on current estimates of almost 4 million residents, Puerto Rico would be entitled to six Representatives if it were to become a state today. According to the Congressional Research Service, the impact of adding a new state (Puerto Rico) that is more populous than 24 of the existing 50 states would have the following impact on representation in the House of Representatives:
 - ◆ Florida, Georgia, Nevada, and Utah would all gain a seat relative to the current allocation, regardless of the status of Puerto Rico.
 - ◆ Arizona would gain two seats relative to its current status, but if Puerto Rico became a state Arizona would only gain one seat. Similarly, Texas would gain four seats relative to its current status, but would only gain three seats if Puerto Rico became a state.
 - ◆ South Carolina and Washington would gain a seat relative to their current status, but if Puerto Rico became a state, both remain at their 2000 allocation of House seats.
 - ◆ California, Illinois, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, New York, and Pennsylvania would all lose a seat relative to the current allocation of House seats, regardless of the status of Puerto Rico. Similarly, Ohio would lose two seats relative to its current allocation, regardless of the status of Puerto Rico.
 - ◆ Missouri would lose a seat if Puerto Rico became a state, but would retain the same number of seats relative to its current allocation of House seats if Puerto Rico does not become a state. Similarly, New York would lose two seats if Puerto Rico became a state, but would lose only a single seat relative to its current allocation if Puerto Rico does not become a state.

- **Territorial Bailout:** Forty-five percent of individuals in Puerto Rico were below the poverty line in 2005, almost double the percentage of the poorest U.S. state. Puerto Rico's poverty rate of 44.8 percent in 2008 was more than three times the U.S. national average of 13.2 percent, according to the Census Bureau. While the CBO has not been able to produce a number in 12 years (in 1998 it estimated statehood would increase entitlement spending by \$3 billion per year), it is safe to assume federal spending in Puerto Rico would be much greater in 2010 to the tune of at least several times greater.

Puerto Rico currently has a budget deficit of \$3.2 billion, equal to 29 percent of the government's total outlays for 2009. Some conservatives remain concerned this number is extremely high – despite impressive efforts by Governor Fortuno to reduce them from 44 percent in the previous fiscal year.

Notable Conservative Argument in Support of H.R. 2499

Some conservatives are in support of H.R. 2499, including a number of former RSC Chairman and several of its founding Members. The office of Rep. Dan Burton, an RSC founder, believes:

As we all know, **H.R. 2499, the Puerto Rico Democracy Act**, comes to the floor tomorrow, and already, many misconceptions about the bill are being circulated by its various conservative opponents. Such fallacies should not distract you from the true nature of this bill.

This bill does **NOT** grant Puerto Rico Statehood. The Puerto Rico Democracy Act simply authorizes a popular vote allowing Puerto Ricans (who are U.S. citizens) to express their preference regarding their political status in relation to the United States.

It's as simple as that. In a first plebiscite, they will be asked whether they favor the status quo or would prefer another option. If, and only if, the people of Puerto Rico vote in favor of another option, a second plebiscite would be held to gauge the support of voters for one of three options: 1) statehood, 2) sovereignty in association, or 3) independence.

The results of these plebiscites will then be reported to Congress, and no further action on either part is required. H.R. 2499 is **NOT** the same bill offered in 1998, which required Congress to act on the results of the plebiscite. This plebiscite(s) is **non-binding**.

Puerto Rico is a U.S. territory acquired by war over 111 years ago. Despite this fact, Puerto Ricans have never had a federally sanctioned plebiscite in order to determine their preference, and Puerto Rico's status continues to remain unresolved. The people of Puerto Rico should be allowed to exercise the same right and privilege to decide their future as other United States Territories. Although Congress – in conformity with Article 4, Section 3 of the Constitution – rightly, retains the exclusive power to further continue the legal and constitutional process, H.R.2499 provides a fair and viable option to allow the people of Puerto Rico to have their say in that process.

As for the English-only question, no one has been more supportive of English as the official language of the United States than conservative supporters of this bill, but the question of whether English should be Puerto Rico's **ONLY** official language is irrelevant to the question of whether the Puerto Rican people should be allowed to express their non-binding opinion about the future of the territory.

On the political side, Alaska and Hawaii became states, the popular assumption was that Alaska would be a solidly Democratic delegation and would be balanced by a solidly Republican Hawaii. The exact opposite has been the case. Puerto Rico has a Republican Governor, San Juan has a long-time Republican Mayor, and many Puerto Ricans are social conservatives. When we first took over the majority here in Congress in 1994-95, Puerto Rico had a Democrat Governor, and he had **ALREADY** enacted most of the planks of the Contract with America.

Even if Puerto Rico votes to become a State, AND Congress passes legislation to grant statehood (again it's up to the Congress not the plebiscite), it will most likely end up being like any other state. Political affiliation will depend on how district lines are drawn, how strong individual candidates are, and how much money they are able to raise and spend.

Committee Action: On May 19, 2009, the bill was referred to the Committee on Natural Resources. On July 22, 2009, the Committee on Natural Resources held a mark-up and ordered the bill reported, as amended, by the yeas and nays of a vote of 30 - 8.

Administration Position: A Statement of Administration Policy (SAP) for H.R. 2499 is unavailable at press time.

RSC Bonus Fact: If another state were created, a new United States flag would have to be created to reflect the new addition to the union. Since there is no rule for arranging the stars, advocates for Puerto Rico statehood display a 51-star flag with the stars [in an interesting circular configuration](#).

Cost to Taxpayers: According to CBO, enacting this legislation would have no significant impact on the federal budget because costs of conducting the votes would be paid by Puerto Rico.

Does the Bill Expand the Size and Scope of the Federal Government? Not directly, but the bill could easily result in making Puerto Rico the 51st state - which could increase the size of the federal government.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10th Amendment? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? According to Committee Report 111-294, H.R. 2499 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

Constitutional Authority: Committee Report 111-294 cites Article I, section 3 of the Constitution of the United States grants Congress the authority to enact this bill.

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