

Testimony
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Public Forum – “Puerto Rico Status Act” (draft)
Committee on Natural Resources
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My name is Ramon-Luis Nieves. I am an attorney and former senator for the district of San Juan, Puerto Rico. For the past twenty-five years, I have advocated for free association as a status option for the people of Puerto Rico and the government of the United States of America. As part of my efforts to advocate for free association, I have published several books and law review articles on the subject.

Even though I am a member and former senator of the Partido Popular Democrático, I appear before you in my personal capacity. That said, it is an undeniable fact that thousands of *Populares* support free association. Even with no support from any political party, 455,000 Puerto Ricans voted for free association on a 2012 plebiscite. Also, for the past thirty-two years, the Partido Popular Democrático has formally advocated for a “non-colonial, non-territorial” association between Puerto Rico and the United States.

I appear before you in support of the draft bill known as the “Puerto Rico Status Act”. The draft is not perfect. However, this draft presents an important turning point in the colonial drama between Congress and Puerto Rico. As someone stated, “when you are traveling in circles, every point is a turning point”.

The legislative intent behind the draft bill is quite clear. If enacted, Congress will formally – and finally - disclose the parameters of the three different status options it is willing to offer to the People of Puerto Rico.

The draft bill is premised on the fact that Puerto Rico remains an unincorporated territory subject to the plenary powers of Congress. Notwithstanding the process to create the Commonwealth between 1950-1952, nor the false and misleading statements made by the U.S. government before the United Nations in 1953, Puerto Rico remains a colony of the United States. If anybody disagrees with this statement, please consider that our state legislators are currently preparing a budget that may be disallowed or even substituted by an unelected and undemocratic Junta created by Congress.

The legislative intent of the draft is to propose “non-colonial, non-territorial” options to be voted by the People of Puerto Rico. The concept of the bill could be different. Congress may propose a plebiscite including all kinds of status options – even options subject to the Territorial Clause of the U.S. Constitution. But that is a different bill. Including or excluding territorial options – such as the current territorial status, or even an “enhanced Commonwealth” similar to the Covenant of the Northern Mariana Islands – is a policy decision made by Congress.

I welcome the opportunity of starting a serious conversation on free association.

This draft closes the door on misleading statements suggesting that free association is “some kind of independence”. International law considers free association as an option on its own right, neither dependent nor derivative from independence.

Free association is perhaps the most flexible of status options. Understanding this fundamental characteristic of free association is critical. Political will is the only parameter to be followed in shaping a compact of free association between the People of Puerto Rico and the government of the United States. Both in international law, and in U.S. practice dealing with three Compacts of Free Association since 1986, this option allows for the parties to shape a mutually convenient relationship.

My first comment is that this draft fails to clearly distinguish between free association and independence. The actual content of the options appear to be quite similar.

Sections 106 and 205 of the draft propose basically the same terms regarding “withdrawal” of U.S. sovereignty in both options. I propose that even though this language works under independence, the terms of free association actually become effective after formal signing of a Compact, its approval by voters in Puerto Rico, a compact implementation act, and a presidential proclamation.

Also, Sections 106(c) and 212(c) on decreasing annual block grants are similar under free association and independence. I suggest that the fiscal relationship between the governments of the United States and the Free Associated State of Puerto Rico is to be defined after considerable negotiation of the terms of the Compact of Free Association. The draft “jumps the gun”, pretending to impose arbitrary fiscal terms even before representatives for both nations sit down to negotiate the Compact.

As to the name of the option, I submit that “Sovereignty in Free Association with the United States” is wrong. Both in international law and U.S. practice since the late 1960’s, the option is called “Free Association”. Adding other “names” to this option only adds fuel to local political games that intend to further confuse the will of the People of Puerto Rico.

I will now address the controversial issue of U.S. citizenship in a Compact of Free Association.

Perhaps one of the most important myths destroyed by this draft is the alleged impossibility of continued transmission of U.S. citizenship under free association. However, the draft imposes conditions on continued transmission of citizenship that make no sense on a free association scenario.

Puerto Ricans - U.S. citizens since 1917 - wish to remain so, and to retain their rights to further transmit such legal status to their sons and daughters. Continued transmission of U.S. citizenship by Puerto Ricans under free association is a policy decision governed by political will and the terms of the Compact. There are no legal, constitutional, or significant policy constraints on the U.S. agreeing on continued transmission of U.S. citizenship after the effective date of the Compact.

As stated by the U.S. Department of Justice in 2000,

[A]s a matter of constitutional law, Congress has the power to provide both that, after independence, those who are currently United States citizens shall retain their citizenship (even if they choose to reside in Puerto Rico), and Congress could also provide that these citizens could pass United States citizenship to their children, even if born thereafter in Puerto Rico, i.e., outside the United States and subject to the sovereignty of another nation -- an independent Puerto Rico.¹

If – as stated by the DOJ – there are no legal nor constitutional restraints to allow for continued transmission of U.S. citizenship even under *independence*, why does the draft propose further limits to that right under free association?

¹ *Statement of William M. Treanor, Deputy Assistant to the Attorney General, Department of Justice, Office of Legal Counsel before the Committee on Resources United States House of Representatives presented on October 4, 2000*, <https://www.puertoricoreport.com/wp-content/uploads/2017/03/House-Committee-on-Natural-Resources-Full-Committee-Hearing-on-H.R.-4751-October-4-2000.pdf>

Perhaps, a much simpler language may be proposed to solve this issue:

“United States citizenship of those born in Puerto Rico, and further transmission of such legal status, will be recognized, protected, and secured under the terms of the Compact of Free Association.”

Finally, I propose that the Committee engages advocates of free association in the following days to further refine this draft. Respectfully, we cannot pretend this process to be serious if advocates for statehood insist on imposing conditions on free association, while being quite vague on their preferred option. Perhaps that is why the draft is silent on critical issues such as federal taxation under statehood; the impact of federal taxes on the recent Plan of Adjustment to deal with Puerto Rico’s post-bankruptcy scenario and; the issue of language. This, while including a nonsensical proposal under free association to transfer Social Security funds of Puerto Rican individuals to the local government. I imagine that statehood advocates are already drafting copy for political attack ads using this nonsensical Social Security business.

Self-determination principles require that Congress sits down with advocates of non-colonial, non-territorial options, and offer the best possible and mutually-agreeable conditions to the People of Puerto Rico.