

Statement of Resident Commissioner Luis Fortuño
at the second hearing of the Subcommittee on Insular Affairs
on H.R. 900, the Puerto Rico Democracy Act, and H.R. 1230
April 25, 2007

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 Guantanamo 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.