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# **Puerto Rico's Political Status and the 2012 Plebiscite: Background and Key Questions**

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## Summary

For the first time since 1998, voters in Puerto Rico went to the polls in November 2012 to reconsider the island's relationship with the federal government (a concept known as "political status"). Voters were asked to answer two questions: (1) whether they wished to maintain Puerto Rico's current political status; and (2) regardless of the choice in the first question, whether they preferred statehood, independence, or to be a "sovereign free associated state." According to results certified by the Puerto Rico State Elections Commission, approximately 54.0% of those who cast ballots answered "no" to the first question. In the second question, approximately 61.2% of voters chose statehood. The island's new governor and territorial legislature contend that the results were "inconclusive."

The plebiscite results are potentially significant if they are interpreted to mark the electorate's desire to change the island's present political status. The significance of the plebiscite remains to be seen, however, particularly because in the same election in which voters arguably endorsed a change in the status quo and favored statehood, they also voted out the pro-statehood incumbent governor and former Resident Commissioner, Luis Fortuño, as well as majorities in the territorial legislature believed to be generally supportive of statehood. No change in Puerto Rico's political status could occur without congressional action.

Events in 2013 suggest that Congress and policymakers in San Juan are considering how to assess the plebiscite and considering next steps. In Washington, on May 15, 2013, Resident Commissioner Pedro Pierluisi introduced H.R. 2000, a bill that proposes a second plebiscite in which voters could answer "yes" or "no" to a single question asking whether they desire statehood for Puerto Rico. The President's FY2014 Commerce, Justice, Science, and Related Agencies budget request includes \$2.5 million for voter education for such a "federally sanctioned" plebiscite. In San Juan, the new governor, Alejandro García Padilla, and a May 14, 2013, concurrent resolution approved by the territorial legislature, contend that the November 2012 plebiscite results were "inconclusive" because a large number of voters chose not to answer the second status question. The governor and the concurrent resolution appear to suggest that if Puerto Rico's political status is to be reconsidered, various options should be available for discussion, including what some contend is an option called "enhanced commonwealth," a position previously rejected by federal task forces spanning different presidential administrations.

This report will be updated periodically as events warrant.

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## Introduction

Congress has considered Puerto Rico's "political status"—a term of art referring to the relationship between the federal government and a territorial government—for more than a century. As **Figure 1** shows, Puerto Rico lies approximately 1,000 miles southeast of Miami and 1,500 miles from Washington, DC. Despite being far outside the continental United States, the island<sup>1</sup> has played a unique role in American politics and policy since the United States acquired Puerto Rico from Spain in 1898. It is the largest of the five<sup>2</sup> major U.S. territories, hosts the biggest population, features heavy traffic and commerce with the mainland, and has long-standing ties with the U.S. military (both as a strategic location and home to service members).

**Figure 1. Puerto Rico and Surrounding Area**



**Source:** CRS figure using data from Map Resources (2012).

Beginning in 1900, Congress delegated authority over most local matters to a civilian territorial government. Over the next 50 years, Congress recognized a delegate to the U.S. House (the Resident Commissioner); granted Puerto Ricans U.S. citizenship; and established a federal-style civilian government, including a popularly elected governor and Legislative Assembly. Whether the island should remain a territory, become a state, or become independent remains unsettled. Status is arguably the dominant issue in Puerto Rican politics, along which parties align and politics is organized.

For the first time since 1998, the people of Puerto Rico went to the polls in November 2012 to vote on whether to change their status and, if so, how. Although the 2012 plebiscite was a

<sup>1</sup> Despite consisting of three major islands, Puerto Rico is typically referred to as "the island," as a reference to the largest island of the same name. Culebra and Vieques are also inhabited. A fourth major island, Mona, primarily serves as a nature preserve.

<sup>2</sup> The other four inhabited territories are American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the U.S. Virgin Islands.

territorial initiative rather than a federal one, there could be notable implications for Congress. Most importantly, whether initiated by the Puerto Rican people or Congress, any change in the island's political status would require congressional action. Beyond the plebiscite, Congress has broad jurisdiction over territories and routinely monitors status developments. Some Members of Congress—especially those with large Puerto Rican constituencies or personal connections to Puerto Rico—also closely follow the issue.

This report provides a foundation for understanding Puerto Rico's status, why those on the island and in Washington continue to be interested in the issue, and how the 2012 plebiscite and its aftermath provides an opportunity to revisit status. The key issues and questions discussed here may be relevant as the House and Senate consider their response.

## **Format and Scope of the Report**

This report is designed to emphasize brief, accessible answers to selected key questions and issues about Puerto Rico's political status and the plebiscite. The discussion below is organized around selected key policy questions, followed by brief answers and additional analysis. The final section highlights issues that may be relevant as Congress considers the plebiscite and interprets the results.

The report is intended to provide a relatively short overview for congressional readers interested in policy and political matters. It is not intended to substitute for a comprehensive analysis of the complex and culturally sensitive issues surrounding Puerto Rico's more than 100-year affiliation with the United States. Additional policy, political, and historical background appears in other CRS products cited herein. The report also is not intended to be an analysis of the various legal, economic, or other issues that might arise in considering Puerto Rico's political status or a change in its relationship with the United States.

## **Background on Political Parties and Status**

From the outset, it is important to note that the dominant Democratic and Republican party labels found on the mainland do not necessarily translate to Puerto Rican politics. As discussed below, three major Puerto Rican parties dominate instead. At the federal level, positions on status do not necessarily follow clear partisan patterns. Co-sponsorship of status legislation, for example, may unite liberal Democrats with conservative Republicans on one bill, while creating different alliances on another. For those Members who have firm positions on status, personal preference or constituent issues appear to be key motivations. Particularly in recent years, members of both parties in Congress have generally argued that if the island is to choose a different status, clear consensus is necessary among the Puerto Rican people, regardless of the chosen option.

In Puerto Rico, politics tends to revolve around three status perspectives represented by the three most established political parties:

- The status quo or “pro-commonwealth” position is generally associated with the Popular Democratic Party (PDP/PPD).
- The pro-statehood position is generally associated with the New Progressive Party (NPP/PNP).

- The independence position is generally associated with the Independence Party (PIP or *Independistas*). Other options that call for modified versions of the current commonwealth status or independence may appeal to members of one or more parties.

Typically, the two major perspectives other than the status quo, statehood, or independence are (1) “enhanced commonwealth” and (2) “free association.” As discussed below, the former arguably signals a semi-autonomous status whereas the latter suggests independence with closer ties to the United States than a more traditional independence option. As noted elsewhere in this report, the viability of the “enhanced commonwealth” position is not universally accepted.

Views within the three major parties, as well as among other parties and interest groups, are not necessarily uniform. These differences regularly produce active factional groups or officially recognized minor parties. The PDP, NPP, and PIP nonetheless remain the most consistent partisan forces in Puerto Rican politics.

## **Puerto Rico’s Political Status and the 2012 Plebiscite**

### **What Is Puerto Rico’s Current Political Status?**

#### **Brief Answer**

Puerto Rico is a U.S. territory subject to congressional authority derived from the Territory Clause of the U.S. Constitution.<sup>3</sup> Congress recognized island authority over matters of internal governance in 1950 through the Federal Relations Act (FRA) and when it approved the island’s Constitution in 1952.<sup>4</sup> Some contend that these laws and other federal action afford Puerto Rico a unique status embodied in the “commonwealth” concept. This perspective remains a topic of debate. Nonetheless, federal law would have to be changed to alter Puerto Rico’s status, which would require congressional and presidential approval through the normal legislative process.

#### **Discussion**

Puerto Rico’s political relationship with the United States is shaped by constitutional and statutory authority. The Territory Clause of the U.S. Constitution grants Congress “Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”<sup>5</sup> Congress has enacted various statutes to address specific matters concerning the island’s political status. Puerto Rico’s current political status, as determined by federal statute (or otherwise, as noted), is summarized briefly below.

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<sup>3</sup> U.S. Const., Art. IV, Sec. 3, cl. 2. As noted previously, matters of legal and constitutional interpretation are beyond the scope of this report. For background discussion of the Territory Clause, see CRS, *The Constitution of the United States of America: Analysis and Interpretation*, available on the CRS website under the Quick Link “Constitution Annotated.”

<sup>4</sup> See 64 Stat. 319 (popularly known as “P.L. 600” (P.L. 81-600)); and 66 Stat. 327 respectively.

<sup>5</sup> U.S. Const., Art. IV, Sec. 3, cl. 2.

- Spain ceded Puerto Rico (along with Guam and the Philippines) to the United States in 1898 following the Spanish-American War.<sup>6</sup> The U.S. military initially administered the island thereafter.
- Congress established a civilian government in 1900. Among other points, the Foraker Act established an “executive council” consisting of a presidentially appointed civilian governor and various department heads. The new government also included a popularly elected House of Delegates (which shared decision-making power with the executive council) and a U.S.-style judiciary system.<sup>7</sup>
- The Foraker Act also established the Resident Commissioner position to represent island interests in Washington.<sup>8</sup> These duties came to include nonvoting service in the U.S. House of Representatives (the primary role of the Resident Commissioner today).<sup>9</sup> Through the Jones Act (1917), Congress authorized appropriations for legislative staff and franking privileges for the Resident Commissioner.<sup>10</sup>
- Devoted primarily to strengthening Puerto Rico’s civil government, the Jones Act also extended U.S. citizenship to Puerto Ricans and established a bill of rights for the island.<sup>11</sup>
- Congress recognized island authority over matters of internal governance in 1950 through the Federal Relations Act (FRA) and when it approved the island’s Constitution in 1952.<sup>12</sup> No major status changes have occurred since.

After enactment of the FRA and approval of the Constitution, Puerto Rico became known formally as the “Commonwealth of Puerto Rico.” Use of the word “commonwealth” and whether the term carries particular legal or political significance is a topic of substantial historical and scholarly debate—most of which is beyond the scope of this report. A brief summary of the competing major perspectives, however, provides important context for understanding the ongoing status debate.

On one hand, some contend that Puerto Rico’s commonwealth status signifies a unique recognition somewhere between territory and state. This perspective is often called “enhanced commonwealth” or “new commonwealth.” As prominent territories scholar Arnold H. Leibowitz has summarized, those holding this view have

argued that more than local self-government was achieved by the 1950-1952 legislation. It contends that a new legal entity was created with a unique status in American law: the Commonwealth, a status which is an internationally recognized non-colonial status.... Most important, in this view, Commonwealth is not a “territory” covered by the ‘Territory Clause’

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<sup>6</sup> Treaty of Paris, Art. II; 30 Stat. 1754-1755.

<sup>7</sup> 31 Stat. 77.

<sup>8</sup> 31 Stat. 86.

<sup>9</sup> On the Resident Commissioner and evolving duties and parliamentary rights and responsibilities, see CRS Report RL31856, *Resident Commissioner from Puerto Rico*, by (name redacted); and CRS Report R40170, *Parliamentary Rights of the Delegates and Resident Commissioner from Puerto Rico*, by (name redacted).

<sup>10</sup> 39 Stat. 951; 39 Stat. 963.

<sup>11</sup> 39 Stat. 951.

<sup>12</sup> See 64 Stat. 319 (popularly known as “P.L. 600” (P.L. 81-600)); and 66 Stat. 327 respectively.

of the Constitution, nor quite obviously is it a state; rather, Commonwealth is *sui generis* and its judicial bounds are determined by a “compact” which cannot be changed without the consent of both Puerto Rico and the United States.<sup>13</sup>

Others, however, contend that, at least in the Puerto Rican context, the term “commonwealth” does not hold particular legal or political significance. From this viewpoint, “commonwealth” is a stylistic or historical term of art, as used in the formal names of states such as the Commonwealth of Pennsylvania. Some also suggest that commonwealth refers to a form of government, but does not designate a unique non-territorial status. As Leibowitz has observed,

From the outset the non-Commonwealth parties in Puerto Rico, seeking either Statehood or independence ... questioned the concept of the Commonwealth. They have argued that although Congress may delegate powers to a territorial government, the broad powers granted to Congress under the Territorial Clause of the Constitution and the implied powers of the national government remain and may be exercised should the need arise. Further they cite the legislative history of Public Law 600 [the FRA] to challenge the compact and Commonwealth concept.<sup>14</sup>

Debate over significance of the “commonwealth” term notwithstanding, action by Congress would be necessary to alter Puerto Rico’s political status. Doing so, of course, would require passage of legislation by Congress and approval by the President.

Finally, those rejecting the status quo also generally suggest that Puerto Rico’s current status was not intended to be—or perhaps should not be—permanent, and that statehood or independence are natural next steps.

## **What Was the 2012 Status Plebiscite About?**

### **Brief Answer**

The November 2012 plebiscite—a non-binding popular vote—allowed voters in Puerto Rico to express their preference about whether they wanted to maintain their current status relationship with the United States or choose another option. Other options listed on the ballot included (1) statehood, (2) independence, or (3) “sovereign free associated state.” The Puerto Rico Legislative Assembly (territorial legislature) authorized the plebiscite in 2011.

### **Discussion**

A plebiscite could have been federally authorized or initiated within Puerto Rico. In this case, the 111<sup>th</sup> Congress ultimately declined to enact legislation (H.R. 2499) to authorize a status plebiscite, although the measure passed the House in 2010. Those calling for congressional action had suggested that federal “buy-in” would increase a plebiscite’s legitimacy and the chances for a resolution to the status issue.<sup>15</sup> Efforts to call a plebiscite shifted back to Puerto Rico after H.R.

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<sup>13</sup> Arnold H. Leibowitz, *Defining Status: A Comprehensive Analysis of United States Territorial Relations* (Dordrecht, Netherlands: Martinus Nijhoff Publishers, 1989), p. 163. Internal footnotes omitted.

<sup>14</sup> *Ibid.*, p. 164.

<sup>15</sup> For example, Mr. Pierluisi, the Resident Commissioner, stated during floor debate on H.R. 2499: “[The bill] identifies the valid political status options for Puerto Rico and authorizes a congressionally sanctioned plebiscite (continued...)”



2499 stalled in Congress. In addition, former Resident Commissioner Luis Fortuño (NPP) had returned to San Juan to assume the governorship in 2009. Governor Fortuño urged the Legislative Assembly to authorize a plebiscite, essentially renewing the debate (but not necessarily the form) surrounding H.R. 2499 and building on similar efforts Mr. Fortuño had undertaken while in Congress. Local legislation authorizing the plebiscite was enacted in December 2011.<sup>16</sup>

The plebiscite was held on the same day as the November 6, 2012, general election, which also included three other ballots on races for governor, Resident Commissioner, Legislative Assembly, and municipal offices.<sup>17</sup> As **Figure 2** below shows, the plebiscite ballot included two questions:

- Question 1 asked whether voters wish to retain the territorial status quo or not.
- Question 2 asked voters to choose between three “non-territorial options” regardless of their choice on question 1. As listed on the ballot, these options include (1) statehood, (2) independence, and (3) “sovereign free associated state.”

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(...continued)





process among those options. It shows the highest respect for the people of Puerto Rico by being candid with them about their real status choices.” See Rep. Pedro Pierluisi, “Puerto Rico Democracy Act of 2009,” House debate, *Congressional Record*, daily edition, vol. 156 (April 29, 2010), p. H3032. The surrounding discussion also provides an overview of arguments for and against the plebiscite and about status generally.

<sup>16</sup> Act No. 283 (H.B. 3648), approved December 28, 2011.

<sup>17</sup> Votes for Governor and Resident Commissioner are cast on the same ballot.

**Figure 2. 2012 Plebiscite Sample Ballot**

Not actual size. See figure notes below.

<p><b>PAPELETA OFICIAL</b> <b>OFFICIAL BALLOT</b></p> <p><b>MODELO</b></p>	 <p>COMISIÓN ESTATAL DE ELECCIONES STATE ELECTIONS COMMISSION MARTES, 6 DE NOVIEMBRE DE 2012 TUESDAY, NOVEMBER 6, 2012</p>	<p><b>CONSULTA PLEBISCITE</b></p> <p><b>SAMPLE</b></p>
<p><b>CONSULTA SOBRE EL ESTATUS POLÍTICO DE PUERTO RICO</b> <b>PLEBISCITE ON PUERTO RICO POLITICAL STATUS</b></p>		
<p><b>Instrucciones:</b> Marque la opción de su preferencia. La papeleta con más de una (1) opción marcada en esta sección no será contabilizada. <i>Instructions:</i> Mark your option of preference. Those ballots with more than one (1) mark in this section shall not be tallied.</p> <p><b>¿Está usted de acuerdo con mantener la condición política territorial actual?</b> <i>Do you agree that Puerto Rico should continue to have its present form of territorial status?</i></p>		
<p><b>Sí / Yes</b> _____   <b>No / No</b> _____</p>		
<p><b>Instrucciones:</b> Irrespectivamente de su contestación a la primera pregunta, conteste cuál de las siguientes opciones no territoriales usted prefiere. <i>Instructions:</i> Regardless of your selection in the first question, please mark which of the following non-territorial options would you prefer.</p> <p>La consulta con más de una (1) opción marcada en esta sección no será contabilizada. <i>Those ballots with more than one (1) mark in this Section shall not be tallied.</i></p>		
 <p><b>Estadidad:</b> Prefiero que Puerto Rico sea un estado de Estados Unidos de América, para que todos los ciudadanos americanos residentes en Puerto Rico tengan iguales derechos, beneficios y responsabilidades que los demás ciudadanos de los estados de la Unión, incluyendo derecho a la plena representación en el Congreso y participación en las elecciones presidenciales, y que se requiera al Congreso Federal que promulgue la legislación necesaria para iniciar la transición hacia la estadidad. Si está de acuerdo marque aquí:</p> <p><b>Statehood:</b> <i>Puerto Rico should be admitted as a state of the United States of America so that all United States citizens residing in Puerto Rico may have rights, benefits, and responsibilities equal to those enjoyed by all other citizens of the states of the Union, and be entitled to full representation in Congress and to participate in the Presidential elections, and the United States Congress would be required to pass any necessary legislation to begin the transition into Statehood. If you agree, mark here:</i></p>	 <p><b>Independencia:</b> Prefiero que Puerto Rico sea una nación soberana y totalmente independiente de Estados Unidos y que se requiera al Congreso Federal que promulgue la legislación necesaria para iniciar la transición hacia la nación independiente de Puerto Rico. Si está de acuerdo marque aquí:</p> <p><b>Independence:</b> <i>Puerto Rico should become a sovereign nation, fully independent from the United States and the United States Congress would be required to pass any necessary legislation to begin the transition into independent nation of Puerto Rico. If you agree, mark here:</i></p>	 <p><b>Estado Libre Asociado Soberano:</b> Prefiero que Puerto Rico adopte un estatus fuera de la Cláusula Territorial de la Constitución de Estados Unidos, que reconozca la soberanía del Pueblo de Puerto Rico. El Estado Libre Asociado Soberano se basaría en una asociación política libre y voluntaria, cuyos términos específicos se acordarían entre Estados Unidos y Puerto Rico como naciones soberanas. Dicho acuerdo dispondría el alcance de los poderes jurisdiccionales que el pueblo de Puerto Rico autorice dejar en manos de Estados Unidos y retendría los restantes poderes o autoridades jurisdiccionales. Si está de acuerdo, marque aquí:</p> <p><b>Sovereign Free Associated State</b> <i>Puerto Rico should adopt a status outside of the Territory Clause of the Constitution of the United States that recognizes the sovereignty of the People of Puerto Rico. The Sovereign Free Associated State would be based on a free and voluntary political association, the specific terms of which shall be agreed upon between the United States and Puerto Rico as sovereign nations. Such agreement would provide the scope of the jurisdictional powers that the People of Puerto Rico agree to confer to the United States and retain all other jurisdictional powers and authorities. If you agree, mark here:</i></p>

**Source:** Sample November 2012 plebiscite ballot provided to CRS by the Puerto Rico State Elections Commission, September 2012.

**Notes:** Size and spacing differed on the actual ballot. Ballot wording and format are as provided in the original document. To fit the image in the space herein, CRS removed some white space on the ballot and at the margins of the original file.

The statehood and independence options were essentially self-explanatory, although instructions listed on the ballot provided descriptions of each option. The “sovereign free associated state” option is not a term of art historically associated with the status issue. The term resembles language used to describe “freely associated” states, such as the relationship the United States maintains with the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.<sup>18</sup> As in those areas, the “free associated” option for Puerto Rico would entail, the ballot instructions suggest, independence but ongoing, negotiated ties with the United States. Additional discussion of various ballot options appears in the section of this report titled “Considering the Status Options Presented.”

## **What Were the Results of the 2012 Plebiscite?**

### **Brief Answer**

Results of the plebiscite have been the subject of controversy. According to results certified by the Puerto Rico State Elections Commission, approximately 54.0% of those who cast ballots answered “no” to the first question. In the second question, approximately 61.2% of voters chose statehood. A concurrent resolution approved by the territorial legislature contends that the results were “inconclusive.” The new governor has endorsed the concurrent resolution.

### **Discussion**

On December 31, 2012, the Puerto Rico State Elections Commission (CEE, as the agency is commonly known for its Spanish acronym), issued certified election results as follow.

- On question 1, when asked if Puerto Rico should retain its current status, 53.97% answered “no”; 46.03% answered “yes.”<sup>19</sup>
- On question 2, when asked to select among the three listed status options, 61.16% chose statehood; 33.34% chose “sovereign free associated state,” and 5.49% chose independence.<sup>20</sup>

Debate has emerged in Puerto Rico about whether the certified results accurately reflect voters’ sentiment and all available policy choices. In particular, debate has focused on whether almost 500,000 blank answers on the second question should be included in the total tally, thereby affecting whether any option received a majority. Additional discussion appears in the “Interpreting the Plebiscite Results” section of this report.

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<sup>18</sup> The U.S. administered these island areas on behalf of the United Nations after World War II.

<sup>19</sup> Puerto Rico State Elections Commission, *Certification of Official Results for Plebiscite on Puerto Rico Political Status*, First Question, San Juan, PR, December 31, 2012, provided to CRS by the Puerto Rico State Elections Commission.

<sup>20</sup> *Ibid.*, Second Question.

## Have Other Status Votes Been Held Previously?

### Brief Answer

Puerto Rico held four status plebiscites or referenda before the one in 2012: in 1998, 1993, 1991, and 1967. Ballot wording and options during each plebiscite or referenda differed. A majority of voters did not choose a clear change in Puerto Rico's status on any of these occasions.

### Discussion

None of the previous status votes is exactly comparable to the one authorized for 2012. The votes are also generally not comparable to each other due to varying question wording and order. Most recently, in 1998, a slim majority of voters (50.3%) chose “none of the above” from five status options. The status quo, whether in the form of a “commonwealth” option or another question about whether to revisit status, has received the most votes (but not necessarily a majority) in previous plebiscites or referenda. “Statehood” has been the second-place finisher each of the three times the option has appeared on the ballot. On those occasions, 46.4% (1993 and 1998) and 38.9% (1967) of voters chose statehood.<sup>21</sup>

As these results indicate, voters have been divided on previous status questions. Interpretation of the results has been a topic of debate in Puerto Rico and beyond. The particulars have varied with each popular vote. There have been consistent topics of interest, however, across each vote. Major aspects of debate have been whether the options presented were practically or constitutionally viable, how options were worded and ordered, and how voter turnout may have affected the results.

## Potential Issues for Congress

### Has Congress Considered Puerto Rico Status Recently?

#### Brief Answer

Congress has previously considered status legislation occasionally but has not amended Puerto Rico's status since the 1950-1952 period noted above. The most recent substantial activity occurred during the 111<sup>th</sup> Congress (2009-2011), when the House passed H.R. 2499, sponsored by Resident Commissioner Pierluisi. The legislation, which the Senate declined to pass, would have authorized a plebiscite somewhat similar to the one the Puerto Rico Legislative Assembly later authorized for 2012. In the 113<sup>th</sup> Congress, Mr. Pierluisi has introduced H.R. 2000. That bill would authorize a “ratification vote” asking voters a single yes-no question about whether they want Puerto Rico to be admitted as a state.

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<sup>21</sup> For additional detail, see Table B-1 in CRS Report RL32933, *Political Status of Puerto Rico: Options for Congress*, by (name redacted), from which information in this section is adapted. Now-retired CRS specialist Keith Alan Bea originally authored the report and cited material. Rounding of the percentages identified in the text differ slightly in some sources.

## Discussion

Congressional activity on status issues has varied over time. As with many policy issues, long stretches of relative quiet may be followed by active consideration of one or more bills. In the 109<sup>th</sup> Congress (2005-2007), the House and Senate began actively reconsidering status legislation for the first time since 1998.<sup>22</sup> Most of the new legislation proposed authorizing Puerto Ricans to reconsider their political status through a plebiscite, but some measures proposed conventions to draft status proposals.

- In the 113<sup>th</sup> Congress, Mr. Pierluisi has proposed, via H.R. 2000, that another vote be held to “ratify” Puerto Rico’s desire for statehood. Under that proposal, voters would select “yes” or “no” in response to a general description of statehood followed by the question, “Do you want Puerto Rico to be admitted as a State of the United States?”
- Congress most recently substantially considered Puerto Rico’s status during the 111<sup>th</sup> Congress. The House passed (223-169) H.R. 2499 (Pierluisi) on April 29, 2010. The bill would have authorized a two-step plebiscite somewhat similar to the one the Puerto Rico Legislative Assembly authorized for 2012. Similar to question 1 in the 2012 plebiscite, the first plebiscite proposed in H.R. 2499 would have asked voters to choose between a status change and the status quo. If a majority of voters chose change in the first plebiscite, a second plebiscite would have presented a choice between independence, “sovereignty in association with the United States,” or statehood. The version passed by the House, as amended, would have added a fourth question to the second plebiscite, permitting voters to indicate a preference for maintaining commonwealth status. The Senate Committee on Energy and Natural Resources held a hearing on the measure, but it was not the subject of additional action in the chamber.<sup>23</sup>
- The plebiscite approach proposed in H.R. 2499 during the 111<sup>th</sup> Congress was substantially similar to H.R. 900 (Serrano), proposed in the 110<sup>th</sup> Congress. Also during the 110<sup>th</sup> Congress, Senator Salazar introduced S. 1936, which proposed an alternative plebiscite mechanism.
- As an alternative to the plebiscite model, some legislation introduced in recent Congresses has proposed conventions in which Puerto Ricans could develop status proposals rather than choose among predetermined alternatives. During the 110<sup>th</sup> Congress, the House Committee on Natural Resources included one such bill, H.R. 1230 (Velazquez), in a hearing on status legislation. Convention approaches were also proposed during House floor consideration of H.R. 2499 in the 111<sup>th</sup> Congress.

Additional legislative history information appears in another CRS product.<sup>24</sup>

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<sup>22</sup> In 1998, the House passed by a single vote (209-208) a status bill introduced by Rep. Young (AK). The Senate declined to pass the measure but did pass a resolution (S.Res. 279) sponsored by Sen. Torricelli supporting a popular vote. The Senate resolution passed by unanimous consent.

<sup>23</sup> See U.S. Congress, Senate Committee on Energy and Natural Resources, *U.S. Virgin Islands, Republic of the Marshall Islands, Puerto Rico, and Political Status Public Education Programs*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 19, 2010, S. Hrg. 111-666 (Washington: GPO, 2010).

<sup>24</sup> See CRS Report RL32933, *Political Status of Puerto Rico: Options for Congress*, by (name redacted). Now-retired (continued...)

## Which Issues Might be Relevant for Congress?

### Brief Answer

Results of the plebiscite are non-binding. As such, it remains to be seen whether the House and Senate will choose to take additional action on the plebiscite or Puerto Rico's political status in general. The discussion below considers selected issues that might be particularly relevant as Congress considers how or whether to proceed.

### Discussion

This section comments on selected issues that may be relevant as Congress considers the plebiscite, with an emphasis on issues that may be most relevant to the House and Senate. The analysis is divided into two categories: (1) considering the status options presented and (2) interpreting the plebiscite results. Other factors not discussed here could also be relevant, particularly as additional developments occur and more information becomes available.

#### *Considering the Status Options Presented*

- The options presented on the 2012 ballot have generated controversy in some cases. In particular, because the instructions asked voters to select an option in question 2 regardless of their answer to question 1, some argued that the options favored statehood, which is historically a more popular option than independence or free association. The statehood and independence options on the ballot were largely self-explanatory. The “sovereign free associated state” option was somewhat less clear, although the description listed on the ballot provided additional information. Because free association implies independence (but presumably more ongoing connections to the United States than the “independence” option), the final ramifications of this option remain to be seen if it were selected in the future.
- The 2012 ballot provided no option for expressing a preference for the status quo (generally, the “pro-commonwealth” position) other than answering “yes” to question 1. In particular, it is unclear which option—if any—to question 2 was desirable for those who prefer the status quo (presumably PDP supporters). The legislation authorizing the plebiscite suggests that the “sovereign free associated” language was adapted from PDP platform language, a point that some in the PDP have disputed.
- This report focuses on the plebiscite method because it is the focus of current debate. As noted previously, however, some have advocated that if status is to be revisited, an approach such as a convention should be used rather than one that presents pre-determined options. Those opposed to a convention generally suggest that it would not necessarily select from constitutionally viable options.

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(...continued)

CRS specialist Keith Alan Bea originally wrote the report. (name redacted) contributed recent updates.

The 2012 ballot did not include “enhanced commonwealth” status—which some (particularly some in the PDP) have suggested may be an option for Puerto Rico, and which those favoring the perspective have suggested could afford Puerto Rico a status somewhere between that of a territory and that of a state. The May 2012 concurrent resolution approved by the Puerto Rico Legislative Assembly, and endorsed by the governor, calls on the federal status education campaign proposed in President Obama’s FY2014 budget request to “incorporate[] all options, including the enhanced Commonwealth, based on the principles of fairness and equity.”<sup>25</sup> Recent White House Task Force reports and many (but not all) in Congress have argued that the enhanced commonwealth option is unconstitutional.<sup>26</sup>

- President Obama’s FY2014 Commerce, Justice, Science, and Related Agencies budget proposal includes \$2.5 million for “objective, nonpartisan voter education about, and a plebiscite on, options that would resolve Puerto Rico’s future political status.”<sup>27</sup> Funding would go to the CEE. The proposal would condition such funding on certification to congressional appropriators, from the U.S. Attorney General, that “the voter education materials, plebiscite ballot, and related materials are not incompatible with the Constitution and laws and policies of the United States.” This language, which appears to be a reference to precluding the “enhanced commonwealth” concept, might be particularly important given recent legislative activity. Specifically, in December 2010, Senate Energy and Natural Resources Committee Chairman Jeff Bingaman and Ranking Member Lisa Murkowski wrote to President Obama noting that enhanced or “new” commonwealth “is incompatible with the Constitution and basic laws of the United States in several respects.”<sup>28</sup>

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<sup>25</sup> Puerto Rico Legislative Assembly, Con. Res. 24, May 14, 2013; English translation, <http://prfaa.pr.gov/news/wp-content/uploads/2013/05/rks-242.pdf>. See also Puerto Rico Federal Affairs Administration, “Governor of Puerto Rico endorses President Obama’s Position on Status,” press release, May 15, 2013, <http://prfaa.pr.gov/news/?p=2460>.

<sup>26</sup> See, for example, U.S. President’s Task Force on Puerto Rico’s Status, *Report by the President’s Task Force on Puerto Rico’s Status* (Washington: March 2011), available at [http://www.whitehouse.gov/sites/default/files/uploads/Puerto\\_Rico\\_Task\\_Force\\_Report.pdf](http://www.whitehouse.gov/sites/default/files/uploads/Puerto_Rico_Task_Force_Report.pdf). The position that “enhanced commonwealth” was not constitutionally viable also appeared in previous versions of the report issued during the George W. Bush Administration. In December 2010, Senate Energy and Natural Resources Committee Chairman Jeff Bingaman and Ranking Member Lisa Murkowski wrote to President Obama noting that enhanced or “new” commonwealth “is incompatible with the Constitution and basic laws of the United States in several respects.” See Letter from Sens. Jeff Bingaman and Lisa Murkowski, Chairman and Ranking Member (respectively), Senate Committee on Energy and Natural Resources, to President Obama, December 1, 2010. For additional historical perspective on administration perspectives referenced in the letter, see Letter from Robert Raben, Assistant Attorney General, to Sen. Frank Murkowski, Chairman, Senate Committee on Energy and Natural Resources, January 18, 2001. For additional views and debate, see also, for example, witness statements and responses to written questions in U.S. Congress, Senate Committee on Energy and Natural Resources, *U.S. Virgin Islands, Republic of the Marshall Islands, Puerto Rico, and Political Status Public Education Programs*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 19, 2010, S. Hrg. 111-666 (Washington: GPO, 2010).

<sup>27</sup> U.S. Department of Justice, Office of Justice Programs, *FY2014 Performance Budget*, p. 29, <http://www.justice.gov/jmd/2014justification/pdf/ojp-justification.pdf>.

<sup>28</sup> See Letter from Sens. Jeff Bingaman and Lisa Murkowski, Chairman and Ranking Member (respectively), Senate Committee on Energy and Natural Resources, to President Obama, December 1, 2010. For additional historical perspective on administration perspectives referenced in the letter, see Letter from Robert Raben, Assistant Attorney General, to Sen. Frank Murkowski, Chairman, Senate Committee on Energy and Natural Resources, January 18, 2001. For additional views and debate, see also, for example, witness statements and responses to written questions in U.S. Congress, Senate Committee on Energy and Natural Resources, *U.S. Virgin Islands, Republic of the Marshall Islands, Puerto Rico, and Political Status Public Education Programs*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 19, 2010, S. Hrg. 111-666 (Washington: GPO, 2010).

### *Interpreting the Plebiscite Results*

- The plebiscite results are potentially significant if they are interpreted to mark the electorate's desire to change the island's present political status. The significance of the plebiscite remains to be seen, however, particularly because in the same election in which voters arguably endorsed a change in the status quo and favored statehood, they also voted out the pro-statehood incumbent governor and former Resident Commissioner, Luis Fortuño, as well as majorities in the territorial legislature believed to be generally supportive of statehood. No change in Puerto Rico's political status could occur without congressional action.
- As noted previously, since the 2012 plebiscite, debate has ensued about whether the certified results tallied by the CEE correctly represent voter sentiment or available status choices. Most of the controversy concerns how or whether to consider ballots that did not answer question 2 (so-called "blank votes"; in this report called "blank answers"). Before the election, the PPD encouraged its supporters to boycott the second question.
- The certified results list 498,604 "blank votes," but do not include them when calculating percentages listed in the final results. Specifically, the certified results that reflect approximately 61.2% in favor of statehood are calculated from votes cast using the three options listed on the ballot—statehood, "sovereign free associated state," and independence. Those ballots total 1,363,854 votes cast. The concurrent resolution passed by the Puerto Rico Legislative Assembly and endorsed by the governor, however, calculates percentages including the ballots that did not answer question 2 (called "blank ballots" in the resolution, although they are really blank answers to one question on the ballot). The results listed in the concurrent resolution for question 2 are: 44.4% favoring statehood, 24.3% favoring "sovereign free associated state," 4% favoring independence, and 26.5% blank answers. To summarize, a key issue of debate is, essentially, which denominator should be used when calculating election results (in other words, how large the ballot universe should be). The CEE results are based on only those ballots with answers using the available options and find a majority favoring statehood. The results listed in the Legislative Assembly concurrent resolution, by contrast, count the blank answers, which increases the denominator (i.e., makes the pool of votes larger) and results in no option receiving a majority. Although it is clear that, before the plebiscite, the PPD encouraged its supporters to boycott question 2, in the absence of additional information, voter intent in casting blank answers on individual ballots is unclear.
- Congress has generally emphasized the need for a clear choice surrounding status if it is to take legislative action. It remains to be seen whether the 2012 plebiscite or the "ratification" vote proposed in H.R. 2000, if approved, would be interpreted in Washington as providing a sufficient mandate one way or another to move forward with reconsidering Puerto Rico's political status.
- Only those registered to vote in Puerto Rico were permitted to participate in the plebiscite. Some previous proposals to revisit status (e.g., H.R. 900 introduced in the 110<sup>th</sup> Congress) have proposed that those born on the island but living elsewhere also be permitted to participate.



## **Conclusion**

Congress first began considering Puerto Rico's political status more than a century ago. Some suggest that voters on the island took a decisive step toward change in their answers to question 1 in the 2012 plebiscite, and that a majority opted for statehood in question 2. Those who support the 2012 plebiscite generally suggest that the choices presented in the plebiscite are the best consensus options available. Others contend that the status quo is preferred and that the 2012 plebiscite design was weighted in favor of statehood and that the results were inconclusive. Congress might now make its own assessment of the results. The issues raised here are by no means exhaustive, but do appear to represent major points of interest surrounding the plebiscite. Updates will be provided as events warrant.

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