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# Political Status of Puerto Rico: Brief Background and Recent Developments for Congress

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## Summary

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 has played a significant role in American politics and policy since the United States acquired Puerto Rico from Spain in 1898.

Puerto Rico's *political status*—a term of art referring to the relationship between the federal government and a territorial one—is an undercurrent in virtually every policy matter on the island. Even in seemingly unrelated federal policy debates, Puerto Rico status often arises at least tangentially. In the foreseeable future, oversight of Puerto Rico is likely to be relevant for Congress as the House and Senate monitor the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA; P.L. 114-187) enacted during the 114<sup>th</sup> Congress. Status also shaped the policy context surrounding the U.S. Supreme Court's decision in the 2016 *Sanchez Valle* case. This report does not provide an economic or legal analysis of these topics; instead, it provides policy and historical background for understanding status and its current relevance for Congress.

In 2016, Puerto Rico voters elected a Governor, Resident Commissioner, and majorities in the territorial legislature affiliated with the pro-statehood New Progressive Party (NPP). This choice represents a departure from the previous four years. Consequently, if the 115<sup>th</sup> Congress chooses to reexamine the island's relationship with the United States, the House and Senate could encounter more agreement among the island's political leaders than in the recent past. Congress has not enacted any recent legislation devoted specifically to status. In the 114<sup>th</sup> Congress, H.R. 727, which did not advance beyond introduction, would have authorized a plebiscite (popular vote) on the statehood question.

Puerto Rican voters most recently reconsidered their status through a 2012 plebiscite. On that occasion, a majority chose a change in the status quo through statehood, although interpreting the results has been controversial. If Congress chose to alter Puerto Rico's political status, it could do so through statute. Ultimately, the Territory Clause of the U.S. Constitution grants Congress broad discretion over Puerto Rico and other territories.

This report will be updated in the event of significant legislative or status developments.

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## Introduction

This report provides policy and historical background about Puerto Rico’s *political status*—a term of art referring to the relationship between the federal government and a territorial one. The report emphasizes recent developments that are likely to be most relevant for Congress. Congress has not altered the island’s status since 1952, when it approved a territorial constitution. Status is the lifeblood of Puerto Rican politics, spanning policy and partisan lines in ways that are unfamiliar on the mainland. It is unsurprising, then, that status played a secondary but nonetheless important contextual role in recent congressional attention to the island’s ongoing financial crisis, as well as U.S. Supreme Court consideration of the island’s sovereignty regarding criminal prosecutions.

The 2016 territorial election results suggest that if the 115<sup>th</sup> Congress chooses to reexamine the island’s relationship with the United States, the House and Senate could encounter more pro-statehood agreement among the island’s political leaders than in the recent past. Puerto Rican voters most recently considered that question in a 2012 plebiscite (popular vote). A future plebiscite, backed partially by already appropriated federal funds for an educational campaign, is possible. Because the U.S. Constitution grants Congress broad discretion over territories, the House and Senate may choose to reexamine Puerto Rico’s—or another territory’s—political status, or to decline to do so. If Congress chose to alter Puerto Rico’s political status, it could do so through statute regardless of whether a plebiscite were held or what sentiment such a vote revealed.

This report 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. The report also is not intended to be an analysis of the various legal, economic, or social issues that might arise in considering Puerto Rico’s political status or a change in its relationship with the United States. Parts of this report are adapted from another CRS product, which provides additional discussion of the 2012 plebiscite.<sup>1</sup>

## Brief General Background

Puerto Rico has been the subject of strategic and political attention for more than 500 years.<sup>2</sup> Spain was the first colonial power to claim the island. Christopher Columbus landed on the west coast of the main island of present-day Puerto Rico on November 19, 1493. There, he encountered native Taíno Indians, who called the island “Borinquén” (or, in some spellings, “Borinkén”).<sup>3</sup> As one scholar has noted, “[a] permanent foothold was finally established in 1508, when Juan Ponce León led a group of settlers from Hispaniola.”<sup>4</sup> Spanish colonizers forced the Taíno into servitude, and “[b]y 1521, the Indian *Borinquén* had become another Spanish

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<sup>1</sup> See CRS Report R42765, *Puerto Rico’s Political Status and the 2012 Plebiscite: Background and Key Questions*, by (name redacted)

<sup>2</sup> For additional discussion of the topics discussed in this paragraph, see, for example, Arturo Morales Carrión, *Puerto Rico: A Political and Cultural History* (New York: W.W. Norton), pp. 3-8; Robert M. Poole, “What Became of the Taino?,” *Smithsonian*, October 2011, p. 58; and Manuel Maldonado-Denis, *Puerto Rico: A Socio-Historic Interpretation*, trans. Elena Vialo (New York: Random House, 1972), pp. 13-16.

<sup>3</sup> Columbus called the island “San Juan Bautista.”

<sup>4</sup> Arturo Morales Carrión, *Puerto Rico: A Political and Cultural History* (New York: W.W. Norton), p. 6. Hispaniola lies west of Puerto Rico and includes present-day Haiti and the Dominican Republic.

settlement in an expanding empire.”<sup>5</sup> For the next 400 years, Puerto Rico served as a Spanish agricultural and mining outpost in the Caribbean.

When the United States defeated Spain in the Spanish-American War (1898), the United States acquired Puerto Rico, Guam, and the Philippines from Spain via the Treaty of Paris.<sup>6</sup> Puerto Rico provided the United States with a central location from which to exercise military and strategic power in the Caribbean, particularly before World War II.<sup>7</sup> The U.S. military briefly administered the island until Congress established a civilian government in 1900, as discussed below.

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



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

Today, Puerto Rico is both deeply integrated into American society and insulated from it. On one hand, the American flag has flown over San Juan, the capital, for more than 100 years. In addition, those born in Puerto Rico are U.S. citizens. Many live and work on the mainland and serve in the military. On the other hand, as shown in **Figure 1**, the island<sup>8</sup> is geographically isolated from the mainland United States; it lies approximately 1,500 miles from Washington and 1,000 miles from Miami. Residents of Puerto Rico lack full voting representation in Congress,

<sup>5</sup> Arturo Morales Carrión, *Puerto Rico: A Political and Cultural History* (New York: W.W. Norton), p. 8.

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

<sup>7</sup> For a brief overview of the historic U.S. military presence in and around Puerto Rico, see, for example, Humberto García Muñiz, “U.S. Military Installations in Puerto Rico: Controlling the Caribbean,” in *Colonial Dilemma: Critical Perspectives on Contemporary Puerto Rico*, ed. Edwin Meléndez and Edgardo Meléndez (Boston: South End Press, 1993), pp. 53-65.

<sup>8</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.

typically do not pay federal income taxes on income earned on the island, do not have the same eligibility for some federal programs as those in the states, do not vote in presidential elections (although they may do so in party primaries), and enjoy a culture and predominant Spanish language that some argue more closely resembles Latin America than most of the 50 states.

## **Why Status Might be Relevant for Congress**

Some regard status as the fundamental political question that drives everything else about the Puerto Rico-U.S. relationship. Others see status as a distraction from more compelling everyday policy and economic challenges. Perhaps because that debate remains unsettled, status is an undercurrent in virtually every policy matter on the island.<sup>9</sup> Federal policy debates generally are less affected by status, but here, too, status often arises at least tangentially. As such, even a basic knowledge of the topic may be helpful in multiple policy areas. In the foreseeable future, oversight of Puerto Rico is likely to be relevant for Congress as the House and Senate monitor the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA; P.L. 114-187)<sup>10</sup> enacted during the 114<sup>th</sup> Congress (discussed elsewhere in this report and in other CRS products<sup>11</sup>) in response to the island's financial crisis.

## **Brief Political Status and Policy History**

Puerto Rico is a U.S. territory subject to congressional authority derived from the Territory Clause of the U.S. Constitution.<sup>12</sup> The Territory Clause 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>13</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.

- After military governance since the United States acquired Puerto Rico in 1898, Congress established a civilian government on the island 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 decisionmaking power with the executive council) and a U.S.-style judiciary system.<sup>14</sup>

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<sup>9</sup> For a recent example of island policy debates on other areas and status, see, for example, Carlos “Johnny” Méndez-Núñez, “A New Way of Governing in Puerto Rico,” *The Hill*, blog posting, November 28, 2016, <https://origin-ny1.thehill.com/blogs/congress-blog/politics/307654-a-new-way-of-governing>. As of this writing, Méndez-Núñez is reportedly Speaker-Elect of the Puerto Rico House of Representatives.

<sup>10</sup> 130 Stat. 549.

<sup>11</sup> See CRS Report R44532, *The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA; H.R. 5278, S. 2328)*, coordinated by (name redacted) ; and CRS Insight IN10485, *PROMESA (H.R. 5278) and Puerto Rico*, by (name redacted) .

<sup>12</sup> U.S. Const., Art. IV, Sec. 3, cl. 2. 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>13</sup> U.S. Const., Art. IV, Sec. 3, cl. 2.

<sup>14</sup> 31 Stat. 77.

- The Foraker Act also established the Resident Commissioner position to represent island interests in Washington.<sup>15</sup> These duties came to include nonvoting service in the U.S. House of Representatives (the primary role of the Resident Commissioner today).<sup>16</sup> Through the Jones Act (1917), Congress authorized appropriations for legislative staff and franking privileges for the Resident Commissioner.<sup>17</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>18</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>19</sup> No major status changes have occurred since.

After enactment of the FRA and approval of the territorial 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 not addressed herein. A brief summary of the competing major perspectives, however, provides important context for understanding the ongoing status debate.

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 longtime 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’ 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>20</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

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<sup>15</sup> 31 Stat. 86.

<sup>16</sup> For additional discussion, see CRS Report R40170, *Parliamentary Rights of the Delegates and Resident Commissioner from Puerto Rico*, by (name redacted) .

<sup>17</sup> 39 Stat. 951; 39 Stat. 963.

<sup>18</sup> 39 Stat. 951.

<sup>19</sup> See 64 Stat. 319 (popularly known as “P.L. 600” (P.L. 81-600)); and 66 Stat. 327 respectively.

<sup>20</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.

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>21</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.

## **Political Parties and Status**

The dominant Democratic and Republican party labels found in the mainland United States do not necessarily translate to Puerto Rican politics. 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 *Independentistas*). In recent years, the PIP has not received sufficient electoral support to be certified a major party, but the independence perspective continues to be a factor in the status debate.

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.

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.” 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. The viability of the “enhanced commonwealth” position is not universally accepted.

At the federal level, positions on status do not necessarily follow clear partisan patterns. For those Members of Congress 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 selected option.

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<sup>21</sup> Arnold H. Leibowitz, *Defining Status: A Comprehensive Analysis of United States Territorial Relations* (Dordrecht, Netherlands: Martinus Nijhoff Publishers, 1989), p. 164.



# Recent Policy and Political Developments Most Relevant for Congress

## The 2016 Elections in Puerto Rico

In the 2016 general election, Puerto Rico voters selected NPP candidates for both the Governor and Resident Commissioner posts. The pro-statehood NPP also retained majorities in the territorial House and Senate. Governor-Elect Ricardo Rosselló reportedly “intends to make joining the union [as a state] the central focus of his administration.”<sup>22</sup> Soon after the November election, some in the NPP began urging congressional action to admit Puerto Rico as a state.<sup>23</sup>

In his election night victory speech, according to one media report, Rosselló called his election an “unequivocal mandate to tell the world that the transition to statehood has started,” which he will promote through the Tennessee Plan.<sup>24</sup> The “Tennessee Plan” is a term of art referring to the method by which Tennessee and six other states joined the union.<sup>25</sup> Each territory employed this method somewhat differently, but the central thrust of the Tennessee Plan involves organizing a political entity that is essentially a state in all but name. Steps typically include drafting of a state constitution, election of state officers, and sending an elected congressional delegation to Washington to lobby for statehood.<sup>26</sup> These developments notwithstanding, there is no single path to statehood. Changing Puerto Rico’s political status by the Tennessee Plan or any other method ultimately would require a statutory change by Congress with presidential approval.

## The 2012 Plebiscite in Brief

Puerto Rico has held five status plebiscites (popular votes) or referenda since adopting its current relationship with the United States. These votes were held in 2012, 1998, 1993, 1991, and 1967. Ballot wording and options during each plebiscite or referenda differed. Most recently, in 2012, 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.” **Figure 2** shows a sample ballot.

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,

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<sup>22</sup> Danica Coto, “Top Candidate Wants Puerto Rico Statehood,” *Chicago Tribune*, November 6, 2016, p. 27.

<sup>23</sup> Jose Aponte-Hernandez, “Puerto Rico Takes Giant Leap Toward Statehood,” *The Hill*, blog posting, November 15, 2016, <https://origin-ny1.thehill.com/blogs/congress-blog/politics/305990-puerto-rico-takes-giant-leap-towards-statehood>. Aponte-Hernandez is a former Speaker of the territorial House of Representatives and remains a legislator.

<sup>24</sup> Cindy Burgos Alvarado, “Rosselló Says He Will Be ‘Last Governor of the Colony,’” *Caribbean Business*, November 8, 2016, <http://caribbeanbusiness.com/rossello-says-he-will-be-last-governor-of-the-colony/>; accessed via CRS Factiva subscription.

<sup>25</sup> Tennessee was the first territorial area admitted to the union as a state. For historical background, see, for example, John Whitfield, *The Early History of Tennessee: From Frontier to Statehood* (Paducah, KY: Turner Publishing Company, 1999), p. 125. Other former territories that followed statehood paths similar to the Tennessee Plan include, in chronological order, Michigan, Iowa, California, Oregon, Kansas, and Alaska.

<sup>26</sup> See, for example, Grupo de Investigadores Puertorriqueños, *Breakthrough from Colonialism: An Interdisciplinary Study of Statehood* (Río Piedras, PR: Editorial de la Universidad de Puerto Rico, 1984), pp. 1209-1215. Some of these steps would be relevant for Puerto Rico, while others would not; an analysis of the topic is beyond the scope of this report.

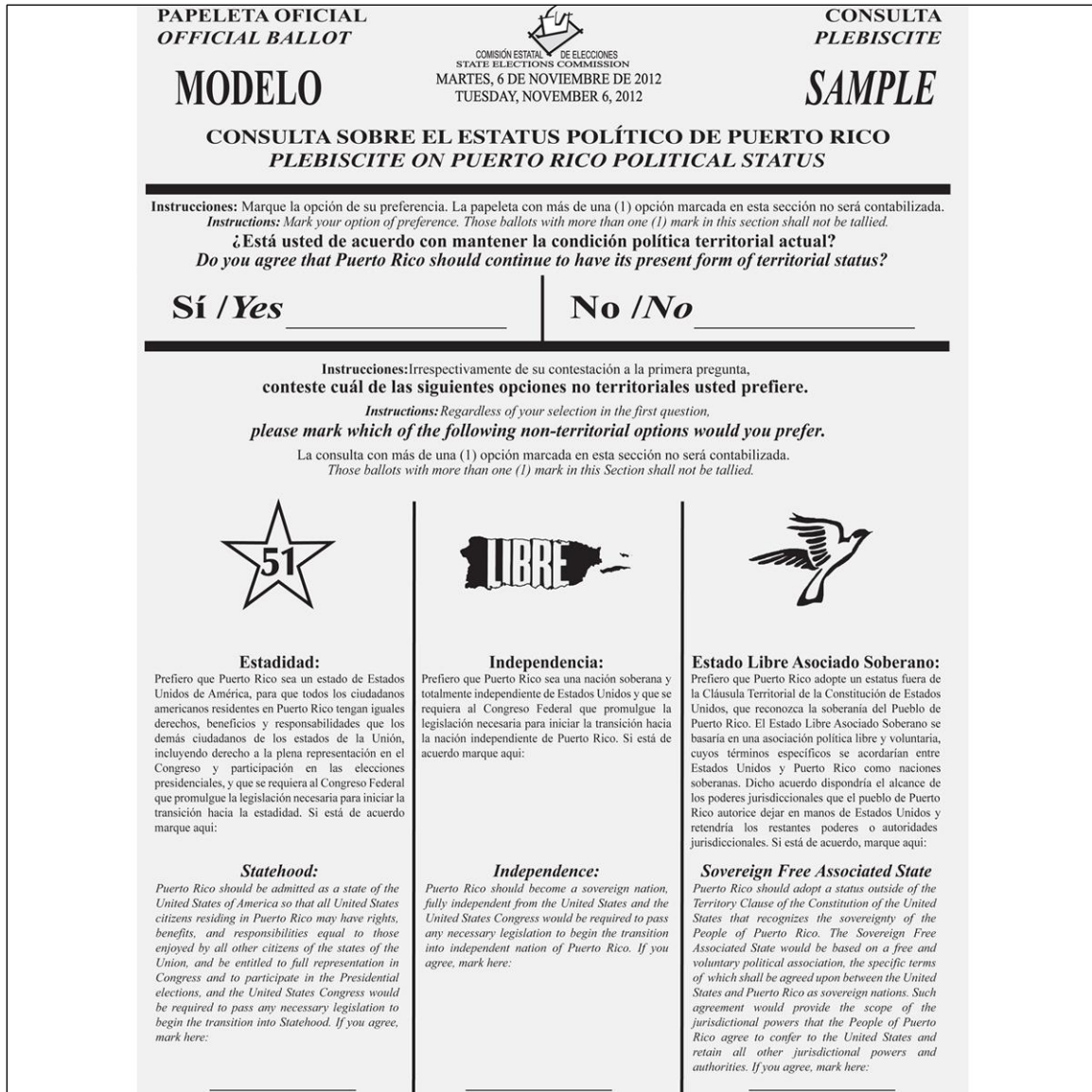
approximately 61.2% of voters chose statehood.<sup>27</sup> However, results of the plebiscite were controversial. Debate focused on whether almost 500,000 blank answers on the second question should be included in the total, thereby affecting whether any option received a majority. A concurrent resolution approved by the territorial legislature and supported by PDP Governor Alejandro García Padilla (who was elected on the same day as the plebiscite) contended that the results were “inconclusive.” Another CRS report provides additional detail about the 2012 plebiscite.<sup>28</sup>

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<sup>27</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>28</sup> See CRS Report R42765, *Puerto Rico’s Political Status and the 2012 Plebiscite: Background and Key Questions*, by (name redacted)

Figure 2. Sample 2012 Plebiscite Ballot



**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.

## Legislation in the 114<sup>th</sup> Congress

Status was not a major component of debate in the 114<sup>th</sup> Congress. Status was, however, a contextual issue as Congress considered legislation related to the island’s ongoing economic crisis. The 114<sup>th</sup> Congress did not enact any legislation directly affecting Puerto Rico’s political status, but committees held hearings that partially addressed the topic.

## Statehood Admission Bill

One bill devoted to Puerto Rico’s political status was introduced in the 114<sup>th</sup> Congress. H.R. 727 (Pierluisi) would have authorized the Puerto Rico State Elections Commission to “provide for a vote” in the territory on admitting Puerto Rico as a state. The bill did not advance beyond introduction.

H.R. 727 specified that the proposed ballot “shall” include a single question: “Shall Puerto Rico be admitted as a State of the United States? Yes \_\_\_ No \_\_\_.” The bill further specified a statehood admission process to be followed, to conclude on January 1, 2021, if a majority of voters selected statehood. Puerto Rico could hold such a status vote (including on statehood) whether or not Congress authorized such a vote in advance. Similarly, Congress could admit Puerto Rico as a state, or decline to do so, at its discretion, through statute.

## PROMESA and Status

Much of the status debate emphasizes governance, political participation, and democratic principles rather than economic issues or other policy matters. Furthermore, the relationship between status and economics is subject to ongoing debate, with some arguing that the two issues are inextricably linked and others replying that the status debate distracts from longstanding economic problems. Most recently, Puerto Rico’s ongoing financial crisis has, however, shaped some aspects of recent attention to status, as discussed briefly below. As noted previously, economic issues are otherwise beyond the scope of this report.<sup>29</sup>

In June 2016, Congress enacted legislation responding to an ongoing economic crisis in Puerto Rico. The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA; P.L. 114-187) establishes a process for restructuring the island government’s public debt. PROMESA also establishes a federal oversight board, formally known as the Financial Oversight and Management Board for Puerto Rico, with “broad powers of budgetary and financial control over” the island.<sup>30</sup>

Status was not a central component of the congressional deliberation over PROMESA, although some Members addressed status in testimony or floor statements.<sup>31</sup> Some hearings also addressed the topic.<sup>32</sup> Perhaps most consequentially for the status debate, some of those who opposed PROMESA, including some Members of Congress, characterized the broad powers provided to the oversight board as undemocratic. In particular, opponents objected to the board’s powers to approve fiscal plans submitted by the Governor and to approve territorial budgets, among

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<sup>29</sup> This includes a discussion of Puerto Rico’s tax status, which relates to its political status as a territory rather than a state. For additional discussion of tax policy in U.S. territories, see CRS Report R44651, *Tax Policy and U.S. Territories: Overview and Issues for Congress*, by (name redacted)

<sup>30</sup> CRS Report R44532, *The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA; H.R. 5278, S. 2328)*, coordinated by (name redacted) ; p. 1.

<sup>31</sup> See, for example, discussion in U.S. Congress, Senate Committee on Finance, *Financial and Economic Challenges in Puerto Rico*, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., September 29, 2015, S. Hrg. 114-307 (Washington: GPO, 2016); U.S. Congress, House Committee on Natural Resources, Subcommittee on Indian, Insular and Alaska Native Affairs, *Examining Procedures Regarding Puerto Rico’s Political Status and Economic Outlook*, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., June 24, 2015, Serial No. 114-13 (Washington: GPO, 2015); U.S. Congress, House Committee on Natural Resources, Subcommittee on Indian, Insular and Alaska Native Affairs, *The Need for the Establishment of a Puerto Rico Financial Stability and Economic Growth Authority*, 114<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 2, 2016, Serial No. 114-30 (Washington: GPO, 2016).

<sup>32</sup> See, in particular, U.S. Congress, House Committee on Natural Resources, Subcommittee on Indian, Insular and Alaska Native Affairs, *Examining Procedures Regarding Puerto Rico’s Political Status and Economic Outlook*, oversight hearing, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., June 24, 2015, Serial No. 114-13 (Washington: GPO, 2015).

others.<sup>33</sup> Although not necessarily addressing the oversight board explicitly, proponents generally argued that, in the absence of bankruptcy protection for territories, PROMESA was necessary to help the island's government to restructure its debts in an orderly fashion. Critics, on the other hand, contended that the oversight board undermines the mutually agreed status relationship established in 1952.<sup>34</sup> Connections between PROMESA and status also were a component of the 2016 Puerto Rico elections (discussed previously).<sup>35</sup>

One brief section of PROMESA explicitly addresses status. Specifically, Section 402<sup>36</sup> of the law states that “[n]othing in this Act shall be interpreted to restrict Puerto Rico’s right to determine its future political status, including” through another plebiscite as authorized in the FY2014 omnibus appropriations law (P.L. 113-76). That language is a reference to \$2.5 million for “objective, nonpartisan voter education about, and a plebiscite on, options that would resolve Puerto Rico’s future political status.”<sup>37</sup> These plebiscite-education funds remain available until expended, but Congress placed conditions on their release that appear to exclude the “enhanced commonwealth” status option as a choice on the ballot.<sup>38</sup> A December 2016 report released by a congressional task force established in PROMESA (devoted primarily to economic issues) recommended that if such

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<sup>33</sup> On the board’s powers, see, in particular, Titles II and III of PROMESA (P.L. 114-187); and CRS Report R44532, *The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA; H.R. 5278, S. 2328)*, coordinated by (name redacted) .

<sup>34</sup> For various congressional perspectives on PROMESA, in addition to the hearings cited above, see, for example, Senate debate throughout the day on June 28, 2016, *Congressional Record*, daily edition, vol. 162, part 104 (June 28, 2016). On opposition to the oversight board in particular, see, for example, the colloquy between Sens. Robert Menendez and Bernie Sanders, “PROMESA,” remarks in the Senate, *Congressional Record*, daily edition, vol. 162, part 104 (June 28, 2016), p. S4610.

<sup>35</sup> See, for example, Eric Platt, “An Island’s Exodus,” *Financial Times* online, August 26, 2016; accessed via CRS Factiva subscription.

<sup>36</sup> 130 Stat. 586.

<sup>37</sup> 128 Stat. 61.

<sup>38</sup> The \$2.5 million was initially included in the House version of the FY2014 Commerce-Justice-Science (CJS) appropriations bill (H.R. 2787). The House Appropriations Committee report accompanying that bill recommended conditioning the 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.” See U.S. Congress, House Committee on Appropriations, *Commerce, Justice, Science, and Related Agencies Appropriations Bill, 2014*, report to accompany H.R. 2787, 113<sup>th</sup> Cong., 1<sup>st</sup> sess., July 23, 2013, Report 113-171 (Washington: GPO, 2013), p. 59. Although the CJS bill was superseded by the omnibus measure, relevant explanatory-statement language notes that “[r]eport language included in H.Rept. 113-171 ... that is not changed by this explanatory statement or this Act is approved.” See “Explanatory Statement Submitted by Mr. Rogers of the House Committee on Appropriations Regarding the House Amendment to the Senate Amendment on H.R. 3547, Consolidated Appropriations Act, 2014,” *Congressional Record*, daily edition, vol. 160, part 9, Book II (January 15, 2014), p. H475. Furthermore, the relevant budget justification document included similar language, as did previous Congressional correspondence. See U.S. Department of Justice, Office of Justice Programs, *FY2014 Performance Budget*, p. 29, <http://www.justice.gov/jmd/2014justification/pdf/ojp-justification.pdf>. In addition, 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 status “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).

a plebiscite is held, Congress “analyze the result ... with care and seriousness of purpose, and take any appropriate legislative action.”<sup>39</sup>

## **Policy and Political Developments After *Sanchez Valle***

Just as status provides context for debates about other areas of public policy, status also can arise in legal cases that primarily concern other topics. In June 2016, the Supreme Court of the United States issued an opinion in *Puerto Rico v. Sanchez Valle*.<sup>40</sup> This report does not provide a legal overview of the case, which concerned the application of the U.S. Constitution’s Double Jeopardy Clause to criminal prosecutions in Puerto Rico.<sup>41</sup> As another CRS product explains, the case examined “whether defendants in a criminal case can be prosecuted under the local laws of Puerto Rico if they have been previously convicted under federal criminal law for the same conduct.”<sup>42</sup>

The Court’s opinion did not alter Puerto Rico’s political status. However, those interested in the status debate followed the case closely in anticipation of how the Court would describe the island’s relationship with the United States. The majority opinion addressed the island’s political and status history to establish background for the double-jeopardy analysis. Particularly important for status discussions, the Court traced the “ultimate source” of Puerto Rico’s prosecutorial power to Congress. As the Court summarized, Puerto Rico’s “Constitution, significant though it is, does not break the chain” of congressional authority.<sup>43</sup> As CRS has written elsewhere, although *Sanchez Valle* was “limited [and] did not address broader issues of Puerto Rico’s sovereignty,” the holding suggests that “when Congress passes legislation affecting Puerto Rico’s government, as it did recently with the passage of ... PROMESA, *Sanchez Valle* would not appear to suggest a limit on Congress’s constitutional authority over Puerto Rico.”<sup>44</sup>

Puerto Rican politicians representing diverse perspectives have suggested that *Sanchez Valle* signals that the commonwealth status does not provide the local autonomy that some, particularly in the PDP, have long suggested.<sup>45</sup> In addition, some have suggested that *Sanchez Valle* is inconsistent with the U.S. government’s previous characterization to the United Nations (U.N.) of Puerto Rico’s status. In brief, the U.N. determined in 1953 that Puerto Rico, in light of enactment

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<sup>39</sup> U.S. Congress, Congressional Task Force on Economic Growth in Puerto Rico, *Report to the House and Senate*, 114<sup>th</sup> Cong., 2<sup>nd</sup> sess., December 20, 2016, p. 84.

<sup>40</sup> *Sanchez Valle*, 136 S. Ct. 1863. As another CRS product explains, the Court held that “because Puerto Rico operates under power delegated to it by Congress, it is not to be treated as a separate sovereign for purposes of the Double Jeopardy Clause.” See CRS Legal Sidebar WSLG1688, *Supreme Court Says Dual Prosecutions by the Federal Government and Puerto Rico Violate Double Jeopardy*, by (name redacted) .

<sup>41</sup> For additional discussion of the Double Jeopardy 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>42</sup> CRS Legal Sidebar WSLG1688, *Supreme Court Says Dual Prosecutions by the Federal Government and Puerto Rico Violate Double Jeopardy*, by (name redacted) .

<sup>43</sup> *Sanchez Valle*, 136 S. Ct. 1867. For an opposing viewpoint, see Justice Breyer’s dissent, joined by Justice Sotomayor; and Eva Lloréns Vélez, “Justice’s Dissenting Opinion Lays Bare Puerto Rico-U.S. Relationship,” *Caribbean Business*, June 9, 2016, <http://caribbeanbusiness.com/justices-dissenting-opinion-lays-bare-puerto-rico-u-s-relationship/>.

<sup>44</sup> CRS Legal Sidebar WSLG1688, *Supreme Court Says Dual Prosecutions by the Federal Government and Puerto Rico Violate Double Jeopardy*, by (name redacted) .

<sup>45</sup> See, for example, Jack Casey and Robert Slavin, “Puerto Rico Governor Criticizes Feds on Sovereignty,” *The Bond Buyer*, December 29, 2015, accessed via CRS Factiva subscription; Ismael Torres, “Puerto Rico Leaders Agree on Need to Change Political Relations with U.S.,” *Caribbean Business*, June 10, 2016, accessed via CRS Factiva subscription; and Rafael Matos, “Puerto Rico’s Rude Awakening,” *New York Times*, July 14, 2016, p. 27.

of the territorial constitution and the Federal Relations Act, was sufficiently self-governing to terminate a previous U.S. reporting requirement that applied to non-self-governing territories.<sup>46</sup> However, meetings of the U.N. Special Committee on Decolonization remain a venue for debating the island's political status and for U.N. monitoring of the island's relationship with the United States.

At the Special Committee's June 2016 meetings, after *Sanchez Valle*, representatives of various Puerto Rican parties and interest groups testified that the ruling suggested the need to reexamine the island's relationship with the United States.<sup>47</sup> In particular, Governor García Padilla (PDP) has suggested that in light of *Sanchez Valle* and "through PROMESA, the United States has effectively backtracked from the democratic accomplishments of 1953 and must respond for this new position before the international community."<sup>48</sup>

The Special Committee's attention to Puerto Rico post-*Sanchez Valle* is not necessarily remarkable in and of itself, as the committee and the U.N. regularly examine territorial issues worldwide. Furthermore, as a practical matter, the Decolonization Committee's inquiries on Puerto Rico tend to be comparatively less prominent in Washington policy debates than in those held on the island. Consequently, the topic might or might not be a prominent aspect of future congressional attention to Puerto Rico's status debate. Nonetheless, it is potentially noteworthy that both the departing and incoming Governors, representing two opposing political parties (PDP and NPP, respectively), testified that *Sanchez Valle* raises questions about the island's degree of self-governance.<sup>49</sup>

## Outlook

Congress first began considering Puerto Rico's political status more than a century ago. History suggests that the debate will continue in Washington and on the island for the foreseeable future. As the 115<sup>th</sup> Congress monitors implementation of PROMESA, status is likely to be a contextual factor. Going forward, whether Congress chooses to revisit the island's status as a central issue as opposed to a contextual one likely depends on whether the 2012 plebiscite results and 2016 elections are interpreted as widespread support for statehood, and on whether Congress believes it has an obligation to address status in addition to related policy issues such as PROMESA.

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<sup>46</sup> The United States submitted annual reports to the U.N. General Assembly between 1946 and 1952 on progress toward the island's political status. In 1953, in light of adoption of the territorial constitution and other factors, the U.N. regarded Puerto Rico as sufficiently self-governing to end the annual reporting requirement. See United Nations, General Assembly, "Cessation of the Transmission of Information Under Article 73e of the Charter in Respect of Puerto Rico," in *Resolutions Adopted by the General Assembly at Its Eighth Session During the Period from 15 September to 9 December 1953* (New York: General Assembly Official Records, 1953), Supplement No. 17 (A/2630), pp. 25-26.

<sup>47</sup> See United Nations, Special Committee on Decolonization, "Special Committee on Decolonization Approves Text Calling Upon United States Government to Expedite Self-Determination Process for Puerto Rico," press release, June 20, 2016, <http://www.un.org/press/en/2016/gacol3296.doc.htm>.

<sup>48</sup> Governor Alejandro García Padilla, "Address by Governor García Padilla at Puerto Rico Present and Future: A Comprehensive Overview of Federal Relations and the Economy," prepared remarks delivered at Puerto Rico Federal Affairs Administration forum, December 13, 2016, <http://prfaa.pr.gov/address-by-governor-garcia-padilla-at-puerto-rico-present-and-future-a-comprehensive-overview-on-federal-relations-and-the-economy/>.

<sup>49</sup> United Nations, Special Committee on Decolonization, "Special Committee on Decolonization Approves Text Calling Upon United States Government to Expedite Self-Determination Process for Puerto Rico," press release, June 20, 2016, <http://www.un.org/press/en/2016/gacol3296.doc.htm>.

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