

H.R. 2499: The new status bill before Congress

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Resident Commissioner Pedro Pierluisi last week presented H.R. 2499 in the House of Representatives, a bill “to provide for a federally sanctioned self-determination process for the people of Puerto Rico.” The bill authorizes the Legislature of Puerto Rico to provide for two plebiscites. The first one would have us choose between two options:

1. Puerto Rico should continue to have its present form of political status;
2. Puerto Rico should have a different political status.

If a majority votes for a different political status, a second plebiscite will be held where the options would be:

1. Independence;
2. Sovereignty in association with the U.S.: Puerto Rico and the U.S. should form a political association between sovereign nations that won't be subject to the territorial clause of the U.S. Constitution;
3. Statehood.

The bill doesn't provide for any action to be taken by the president or by Congress according to the results of the second plebiscite.

H.R. 2499 misses the point as to why we should have a federally authorized plebiscite. Our Legislature doesn't need authority from Congress to provide for a status plebiscite. It has that authority and has exercised it on several occasions: 1967, 1993 and 1998. The point regarding a federally authorized plebiscite is to obtain some sort of commitment from Congress that it will take action—up or down—with regard to the wishes of the people of Puerto Rico expressed in the plebiscite. There is no provision in this bill that contains even the semblance of a commitment to that effect from Congress.

What will happen in Puerto Rico if this bill is approved? In the first plebiscite, the option that Puerto Rico should have a different political status will receive a majority because the statehooders and the pro-independence voters will vote for that option. This guarantees a majority.

In the second plebiscite, statehood will obtain a substantial majority because Commonwealth won't be on the ballot. Option 2 on the ballot for the second plebiscite provides for free association not for Commonwealth. Free association is arrived at by way of independence. It is a relationship that can be

broken off at any time by either party. Commonwealth is a relationship in permanent union with the U.S. based on irrevocable U.S. citizenship.

In the plebiscite held in 1998, when Commonwealth wasn't on the ballot, "free association" obtained fewer than 1% of the votes. "None of the above" got a majority in that plebiscite because it was the only option for which Commonwealth supporters could vote. On the ballot provided by the new bill, "none of the above" isn't an option. Commonwealth supporters will have nowhere to vote with this ballot. Statehood will win by a landslide.

This bill does grievous harm to Commonwealth supporters and to the people of Puerto Rico. It deprives Commonwealth supporters of their right to vote. The U.S. Supreme Court decided that our right to vote is a federally protected right in *Rodríguez v. Popular Democratic Party*, a case I had the honor to bring before that court with former Associate Justice Abe Fortas. Commonwealth is a legitimate status option for the people of Puerto Rico as recognized by the U.S. and the United Nations. It has also been recognized as such by President Obama. In an exercise of self-determination for the people of Puerto Rico to choose their ultimate political destiny, you can't structure the process so as to effectively exclude that option from the ballot, without trampling on the right to vote of hundreds of thousands of Commonwealth supporters.

The harm done to the people of Puerto Rico in general is just as grievous or perhaps even more. H.R. 2499 is an invitation by Congress for the people of Puerto Rico to deny their consent to their current political status. The result of the plebiscite will be that Commonwealth, which is our present form of political status, will be delegitimized.

Commonwealth came into being through Public Law 600 of 1950 wherein Congress provided as follows:

"Be it enacted by the Senate and House of Representatives of the U.S.A. in Congress assembled, that, fully recognizing the principle of government by consent, this act is now adopted in the nature of a compact so the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption.

Section 2. This act shall be submitted to the qualified voters of Puerto Rico for acceptance or rejection through an islandwide referendum to be held in accordance with the laws of Puerto Rico. Upon the approval of this act, by a majority of the voters participating in such referendum, the Puerto Rico Legislature is authorized to call a constitutional convention to draft a constitution for the said island of Puerto Rico. The said constitution shall provide a republican form of government and shall include a bill of rights.

Section 3. Upon adoption of the constitution by the people of Puerto Rico, the president of the U.S. is authorized to transmit such constitution to the U.S. Congress if he [or she] finds that such constitution conforms with the applicable provisions of this act and of the U.S. Constitution. Upon approval by Congress, the constitution shall become effective in accordance with its terms."

The people of Puerto Rico overwhelmingly approved Law 600 in a plebiscite held June 4, 1951 and a constitution was drafted that was approved by the people in a referendum on March 3, 1952. Recognizing these events, Congress then approved the Constitution through public Law 447 “as a compact with the people of Puerto Rico.”

As a result of the skewed self-determination process provided for in H.R. 2499, the consent given by the people of Puerto Rico to the compact entered into in 1952 with Congress would be revoked. However, there will be no status change because there is no commitment to that effect from Congress. Puerto Rico would end up in political limbo and the juridical structure of Commonwealth would be in a precarious situation.

H.R. 2499 must be rejected.

