

Proposed Compromise Status Legislation  
for Puerto Rico

and

Companion Memorandum with  
Background & Commentary

Submitted to  
Chairman Raúl Grijalva  
of the House Committee on Natural Resources  
by Rafael Cox Alomar & Christina D. Ponsa-Kraus

October 1, 2021

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The Honorable Raúl Grijalva  
Chair, Committee on Natural Resources  
U.S. House of Representatives  
Washington, D.C. 20515

Re: Memorandum with Background and Commentary on Proposed Compromise Status  
Legislation for Puerto Rico

Dear Chairman Grijalva,

We the undersigned testified as legal experts at the hearing on H.R. 1522 and H.R. 2070 before the House Committee on Natural Resources on June 16, 2021.<sup>1</sup> One of us supports H.R. 1522 and one of us supports H.R. 2070. Both of us, however, believe there is a better way forward than either one of these bills. As we argued in a co-authored opinion piece published in the *Miami Herald* on August 2, 2021, Congress should enact compromise legislation empowering Puerto Ricans to decide their future status by drawing on the strengths of H.R. 1522 and H.R. 2070 and combining these strengths into one bill.<sup>2</sup> Below we explain our proposal for what we call compromise status legislation (hereinafter “CSL”). We have developed our proposal into a draft bill that we submit for your consideration under cover of this letter.

The central premise of our proposal is that Congress should make Puerto Rico an offer—not the other way around. Puerto Ricans have the right to choose their future, but Congress has the power and the duty to offer them a choice. The legislation we propose would specify and define Puerto Rico’s non-territorial status options, including by spelling out the exact language that would appear on a ballot; provide for a federally authorized plebiscite among these non-territorial status options; describe the transition to each option in sufficient detail and to the extent possible before a vote; provide for an objective, nonpartisan, federally funded voter education campaign leading up to the plebiscite; and ensure implementation of the option that wins.<sup>3</sup>

Two prior bills offer models for the legislation we propose: S. 712 (1989) and H.R. 856 (1998).<sup>4</sup> We are aware that each of these bills included some features that elicited opposition from some quarters in Puerto Rico’s status debate. However, both of them provided for a self-

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<sup>1</sup> One of us also testified at an earlier hearing on the same two bills, on April 14, 2021.

<sup>2</sup> “Two bills aim to fix Puerto Rico’s status. Here’s how Congress can end the deadlock,” *Miami Herald*, August 2, 2021. We submit our op-ed under cover of this memorandum.

<sup>3</sup> Note that federal law already provides funds for a voter education campaign and plebiscite, but does not spell out any details other than to require that the campaign be “objective” and “nonpartisan,” with which we agree. This lack of detail regarding the possible options or the plebiscite vote structure has been a key impediment for the Government of Puerto Rico, which has sought on two occasions (2017 & 2020), without success, to gain approval by the Department of Justice for the utilization of these funds in order to carry out a federally sanctioned and funded vote to determine Puerto Rico’s future political status. See P.L. 113-76 (Jan. 17, 2014). See also letter authored by Deputy Attorney General Jeffrey Rosen dated July 29, 2020.

<sup>4</sup> See also H.R. 4765 (1989).

determination mechanism with widespread support both then and now: a federally sanctioned status plebiscite among clearly defined options. Much of what we have included in our draft legislation draws from these bills.<sup>5</sup> While neither of these bills became law, it is our view that they adopted the correct procedural approach to self-determination and that the principal obstacles to their enactment no longer exist. One of those obstacles was resistance among certain members of Congress during the discussions of S. 712 to what was perceived as a self-executing offer of statehood in the absence of a majority vote for statehood in Puerto Rico. That objection is moot here because our proposal provides for the implementation of a status option only if it wins a majority vote.<sup>6</sup>

The second obstacle was the following: In both cases, a longstanding dispute over the definition of commonwealth status stood in the way of consensus. Supporters of commonwealth status, sometimes referred to as “enhanced” commonwealth, argued that it was non-territorial and insisted that it be defined as such in status legislation. Opponents of commonwealth status argued that it was territorial, whether “enhanced” or not, and that, in order to be accurate, any definition of the option must recognize that fact. The disagreement was exacerbated over the years by federal officials who made vague and inconsistent statements about commonwealth status, sometimes implying that it was non-territorial and other times implying that it was territorial. This dispute has now been settled: As recent Supreme Court decisions have confirmed, commonwealth status is territorial.<sup>7</sup> Now that this dispute has been resolved, we believe it is possible to move forward with a status plebiscite among clearly defined, constitutionally viable, and legitimate self-determination options: statehood, independence, and free association (as defined in our proposed draft legislation).

We wish to emphasize that we intend this proposal as a working document, not as the last word. We hope it will provide guidance to the Committee as it considers how to move forward with respect to Puerto Rico’s status. While our proposal is based on our legal and constitutional expertise and on our intimate knowledge of Puerto Rico’s status debate, our goal is not to impose our views on anyone. Rather, our goal is to suggest and explain what we believe is a process that will have widespread support in Puerto Rico – one that would offer

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<sup>5</sup> We identify some of the relevant provisions in this memorandum and in footnotes in our proposed legislation.

<sup>6</sup> Moreover, according to the official results of the November 2020 referendum, there now has been a majority vote in favor of statehood. We are aware that statehood opponents have raised a number of objections to the legitimacy and/or accuracy of the November referendum. However, we believe that regardless of how one interprets the results of the November referendum, Congress should enact status legislation providing for a federally authorized plebiscite among all of Puerto Rico’s legitimate status options. It is therefore unnecessary to address these disputes here.

<sup>7</sup> See Christina D. Ponsa-Kraus, “The Battle for Puerto Rican Statehood,” available at <https://balkin.blogspot.com/2021/04/the-battle-over-puerto-ricos-future.html>; Rafael Cox Alomar, “The Sovereignty Question for Puerto Rico,” available at <https://thehill.com/blogs/congress-blog/politics/435268-the-sovereignty-question-for-puerto-rico>. As we explain below, we believe that Congress should offer Puerto Rico only non-territorial status options, because only non-territorial status options will fulfill the goal of self-determination, which is that of ending Puerto Rico’s territorial status. As a result, we believe that no version of the current commonwealth status should be included as one of the options in a status plebiscite.

Puerto Ricans a choice among all of their constitutionally viable self-determination options and that would actually lead to the implementation of the majority's choice among those options.

**I. Congress should provide for a federally authorized plebiscite among Puerto Rico's self-determination options: see draft CSL Section 4.**

*Comments:* Both H.R. 856 and S. 712 provided for a federally authorized plebiscite, and S. 712 provided for a runoff in case none of the options received a majority of the vote. We propose using the language from H.R. 856 and adding the runoff language from S.712. We recommend a runoff in order to ensure both that the final option selected has the greatest level of legitimacy and public support possible and that it is successfully implemented. We believe a runoff is superior to the ranked choice voting procedure proposed in H.R. 2070 because the ranked choice mechanism poses severe challenges in the context of Puerto Rico's status, including the total lack of voter familiarity with this mechanism and the problem of exhausted ballots (where an option with limited support could end up being selected because of voter resistance to filling out all of the ballot choices).

**II. Congress should specify and define Puerto Rico's self-determination options: see draft CSL Section 4.**

*Comment 1:* H.R. 856 provides accurate and sufficiently detailed definitions of statehood and what it labels "separate sovereignty," and spells out the ballot language for each one. CSL should do the same. However, H.R. 856 includes territorial status ("commonwealth"). (S. 712 included "enhanced Commonwealth," an option erroneously described as non-territorial by its supporters, as explained above.) Territorial status should not be included in any form because it defeats the purpose of self-determination, which is to put an unambiguous end, once and for all, to Puerto Rico's territorial status.

The Department of Justice has stated that territorial status should be included on the ballot, defending its view on the ground that it reflects the Executive Branch position of neutrality among Puerto Rico's constitutionally permissible status options.<sup>8</sup> However, the fact that an option is constitutionally permissible does not mean it is constitutionally required – or morally defensible. Territorial status is neither. It directly undermines the purpose of self-determination, which is to put an end to territorial status. It also defies the wishes of the majority of voters in Puerto Rico, who have repeatedly rejected the continuation of territorial status. Those who have voted for commonwealth status have voted for so-called "non-territorial commonwealth" (also known as improved or "enhanced" commonwealth, as explained above), an option that it is now clear is not constitutionally permissible.<sup>9</sup> In the 1967, 1993, and 1998

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<sup>8</sup> See Department of Justice (DOJ) analysis of H.R. 2070 at <https://naturalresources.house.gov/imo/media/doc/DOJ%20Analysis%20of%20HR%202070.pdf>.

<sup>9</sup> See Christina D. Ponsa-Kraus, "The Battle for Puerto Rican Statehood," available at <https://balkin.blogspot.com/2021/04/the-battle-over-puerto-ricos-future.html>. This blog describes the debate over whether non-territorial commonwealth is constitutionally possible and explains that it is not. See also Letter from Legal and Constitutional Scholars Supporting the Puerto Rico Statehood Admission Act of 2021 and Opposing the Puerto Rico Self-Determination Act of 2021, available at <https://www.law.columbia.edu/sites/default/files/2021-04/Puerto%20Rico%20Letter.pdf> (letter signed by 47 legal and constitutional scholars arguing that non-territorial commonwealth is not constitutionally possible and should not be included among Puerto Rico's self-determination options).

plebiscites, the ballot did not even include territorial status:<sup>10</sup> No political party endorsed territorial status as its preferred choice. In the 2012 and 2017 votes, the ballot included territorial status, and the voters expressly rejected it.

The ballot should not include territorial status even if there is any chance that territorial status could receive a majority of the vote.<sup>11</sup> That is because not even a majority of Puerto Ricans should be given the power to impose continued territorial status on Puerto Rico and its future generations in perpetuity. Puerto Rico's territorial status is the problem that self-determination would solve. To include it among the solutions to that problem does not promote self-determination; it undermines self-determination. The Executive Branch should adopt a position of neutrality among legally permissible non-territorial *self-determination* options.<sup>12</sup>

*Comment 2:* H.R. 856 treats free association as a form of independence, including it in the ballot language on what it labels "separate sovereignty," by which it means sovereignty under international law. One of us believes CSL should follow this approach. One of us believes CSL should list free association as a separate option. In our proposal, we have compromised by including free association as a separate option while defining it with language that reflects the following understanding: The definition of free association should make clear that it is a form of sovereignty under international law, which we label "international sovereignty," and it should specify which powers, rights, and duties would or could be modified by a negotiated free association<sup>13</sup> agreement.<sup>14</sup> CSL should make clear, including in its proposed ballot language on free association, that either party to a free association agreement would retain the power to withdraw from such an agreement and to modify its terms through re-negotiation. Some of the features of free association should be spelled out in CSL, while others would have to be left to negotiation between Puerto Rico and the United States if and when free association won the plebiscite. The former should at least include Congress's position on U.S. citizenship and migration to and from the United States under free association, as well as on issues pertaining

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<sup>10</sup> Nor did the 1959 Fernós-Murray bill or the 1963 Aspinall bill (the first two post-1952 congressional efforts to restructure the territorial arrangement) endorse continued territorial status. See H.R. 5926, 86<sup>th</sup> Cong. (1959) and H.R. 5945, 88<sup>th</sup> Cong. (1963).

<sup>11</sup> We believe the only way this could happen is if voters misunderstood the definition of the option on the ballot—a risk that would obviously be posed by the inclusion, on a self-determination ballot, of an option that does *not* fulfill the goal of self-determination.

<sup>12</sup> It is worth noting that every single witness who testified at the June 16, 2021 agreed that territorial status should not be included on the ballot.

<sup>13</sup> The DOJ has taken the position that free association is a form of independence. See DOJ analysis of H.R. 1522. See <https://naturalresources.house.gov/imo/media/doc/DOJ%20Analysis%20of%20HR%201522.pdf>. One of us agrees with that conclusion and one of us does not. However, we share the view that Congress should take its own position with respect to this issue and inform the voters of that position by clearly explaining it in status legislation, including by spelling it out in the ballot language for a federally authorized plebiscite.

<sup>14</sup> The United States uses the term "compact" in its existing free association relationships with the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. See Office of Insular Affairs, U.S. Department of Interior, "Compacts of Free Association," at <https://www.doi.gov/oia/compacts-of-free-association>. We do not use that term in our proposal because it has a controversial and contested role in Puerto Rico's status debate. Instead, we use the phrase "Articles of Free Association" to describe the agreement that would embody a free association relationship between Puerto Rico and the United States.

to foreign relations, international trade, fiscal and monetary policy, and security, because these are features that voters should know and understand before they are asked to choose a status option.

### **III. Congress should provide essential information about the transition to each option in status legislation: see draft CSL Sections 6-8.**

*Comment 1:* Congress should describe the terms of a transition to any of the status options with sufficient detail for voters to cast an informed ballot. However, Congress must at the same time recognize that it is impossible to spell out every single detail of a transition and that some details will inevitably need to be decided on after voters make their choice among the available self-determination options. While Congress has the power and duty to set all of the terms of a transition to statehood (*see* U.S. Const. Art. IV, Sec. 3, cl. 1), when it comes to international sovereignty, some of the terms can and must be negotiated between the United States and Puerto Rico only if and when Puerto Ricans vote for that status. Congress should decide what terms it is willing and able to commit to in advance of a vote and what terms it prefers to leave to negotiation after a choice has been made by voters. We propose that Congress adopt most of the transition provisions in S. 712, although we recognize that some would require revision. We have identified the latter in the comments that follow.

*Comment 2:* International sovereignty (both as independence and as free association): See S. 712 Title III. S. 712 Sections III.5.4-6 (“Taxation,” “Currency and Finance,” and “Public Debt”) will require revision.

*Comment 3:* International sovereignty as free association: See S. 712 Title III, with the revisions identified in Comment III.2 above and any additional revisions relevant to free association. For example, S. 712 Sec. III.5.1 addresses citizenship and migration. As we have argued above, Congress should take a position on these two items before a plebiscite. See CSL Sec. 6.10 and 7.7. If Congress takes a different position with respect to these items under independence and free association, the relevant transition language should be revised accordingly (ensuring consistency with the ballot language in CSL Sec. 4).

*Comment 4:* Statehood: See S. 712 Title II. The section titled “Economic adjustment from territory to state” (immediately preceding II.16) could be used as a starting point but would need to be revised to account for PROMESA and other issues that can be anticipated, such as those raised by the DOJ in its memorandum to the House Natural Resources Committee related to H.R. 1522.<sup>15</sup> See CSL Sec. 8.7, 8.12, and 8.13.

### **IV. Congress should ensure implementation of the option that wins: see draft CSL Sections 6-8.**

*Comment:* S. 712, H.R. 856, and H.R. 1522 both have language intended to ensure implementation of the winning option. The relevant language mainly requires the President to take steps toward implementation, which Congress has the power to do. H.R. 2070 also has

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<sup>15</sup> Department of Justice (DOJ) analysis of H.R. 1522, *supra* note 13.

language intended to ensure implementation, but the relevant language requires Congress to enact a joint resolution in the future, which Congress does not have the power to do. We therefore borrow from H.R. 856 for language applicable to all of the options, H.R. 1522 for language applicable to statehood, and S. 712 for language applicable to international sovereignty. See CSL Sec. 5, 6.1-7, 7.1-6, and 8.5(a).

**V. Congress should provide for a voter education campaign: see draft CSL Section 10.**

*Comment:* The proposed voter education campaigns presented to the DOJ for approval under P.L. 113-76<sup>16</sup> in 2017 and 2020 by the Government of Puerto Rico consisted only of materials that promoted voter participation and awareness of the electoral event. In our view it is critical for the voter education campaign to focus primarily on addressing the substance of the definitions presented to voters on the ballot. This is necessary to ensure informed consent and to obtain the greatest possible level of legitimacy (both domestically and before the international community) in the process and public acceptance of its results. For that reason, we propose language providing that the funds made available for the voter education campaign be used to inform voters of the official definitions of each of the self-determination options in the referendum held under this Act. See draft CSL Sec. 10(c).

**Conclusion**

At a time when President Joe Biden is openly committed to restoring America's moral leadership around the world, the time is ripe to put an end to colonialism in Puerto Rico. Morality and colonialism are irreconcilable concepts, which is why Walter Lippmann was right when he admonished us that "the conquest of empires and the governing of empires cannot permanently be the ambition of a truly democratic nation."<sup>17</sup> Thus, there can be no restoration of America's moral compass so long as Puerto Rico remains a colony.

We hope that our proposed legislation, and this cover memorandum, will be of assistance to you as you move forward with the urgent work of enacting a process that will finally achieve the twin goals of self-determination and decolonization for Puerto Rico.

Signed,\*

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<sup>16</sup> See *supra* note 3.

<sup>17</sup> Theodore Roosevelt, Jr. *Colonial Policies of the United States* (New York: Doubleday, 1937), xiii.

Cc:

The Honorable Jenniffer González-Colón  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Alexandria Ocasio Cortez  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Darren Soto  
U.S. House of Representatives  
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The Honorable Nydia Velázquez  
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OP-ED

## Two bills aim to fix Puerto Rico's status. Here's how Congress can end the deadlock | Opinion

BY RAFAEL COX-ALOMAR AND CHRISTINA D. PONS-KRAUS

AUGUST 02, 2021 3:59 PM



In this May 21, 2020 file photo, a Puerto Rican flag flies on an empty beach at Ocean Park, in San Juan, Puerto Rico. CARLOS GIUSTI AP



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Two bills on Puerto Rico's future are deadlocked in Congress. Both aim to solve the same problem: Puerto Rico's subordinate political status. As a U.S. territory, Puerto Rico is home to [3.2 million U.S. citizens](#) who have no voting representation in the federal government. The island lacks full self-government and sovereignty of its own. It is, in other words, a colony of the United States. Puerto Ricans agree on the need for decolonization but disagree on how to get there. And now they are facing off in Congress with no clear way out.

The [Puerto Rico Statehood Admission Act](#), introduced by Rep. Darren Soto (D-FL), responds to a November 2020 [referendum](#) there in which statehood won a Yes/No vote by 52.5%. It offers Puerto Rico admission contingent on a second referendum

and requires the president to declare it a state if “yes” wins again. The [Puerto Rico Self-Determination Act](#), introduced by Rep. Nydia Velázquez (D-NY), provides for a constitutional convention on the island to define all of Puerto Rico’s non-territorial status options followed by a ranked-choice plebiscite among them.

At first glance, both proposals look plausible. Yet the disagreement between the backers of each bill remains entrenched. The witnesses who testified at a recent congressional [hearing](#) expressed more than a mere difference of opinion. Each side seemed almost afraid of the other’s proposal. We can attest to it: The two of us testified on opposite sides.

#### TOP VIDEOS

AD

## CONGRESS MUST HELP

To one of us, the Statehood Admission Act would offer statehood to a woefully under-informed public, risking dire and irreversible consequences. To the other, the Self-Determination Act would consign Puerto Ricans to the same futile status debate that has produced colonialism-by-stalemate for decades. Yet despite the apparent gridlock, we believe there is a path forward: a solution that combines the best features of each bill.

The key is to recognize that it is up to the people of Puerto Rico to choose their future, but it is up to Congress to offer them a choice— and the information they need to make it.

The Statehood Admission Act makes an offer, but includes only one option. The Self-Determination Act includes all options, but requires Puerto Ricans to make the offer. This gets it exactly backwards. A U.S. territory is in no position to decolonize itself. Puerto Ricans can shout statehood, independence or anything else from the rooftops, yet Congress can simply ignore them. But if Congress offers Puerto Rico decolonization options, Puerto Ricans would have, for the first time ever, the real power to decolonize by choosing one.

Congress should enact legislation making Puerto Ricans an offer and empowering them to trigger implementation through their acceptance (as the Statehood Admission Act would do). It must include all decolonization options (as the Self-Determination Act would do). And it must provide voters the information that true self-determination requires — as only Congress can do.

Under domestic and international law, the options are statehood, independence and a status known as free association, in which Puerto Rico’s relationship to the United

States would be governed by a treaty between them. The law defines their essential features. For statehood, they include equality and representation under the U.S. Constitution. For independence and free association, they include separate sovereignty under international law.

Beyond that, Congress must answer certain pressing questions about each option before asking Puerto Ricans to choose. Would federal taxation apply overnight with statehood? (A gradual phase-in is permissible.) Would the United States be willing to grant birthright U.S. citizenship to future generations under free association? (Perhaps, but a guarantee equivalent to the one statehood would provide is impossible.) Not every detail can be settled before a plebiscite. But the questions in need of answers before a vote have one thing in common: Only Congress can answer them.

Congress has the power — and the obligation — to put an end to Puerto Rico's colonial limbo. It should do so without delay.

*Rafael Cox-Alomar is a professor of law at the David A. Clarke School of Law of the University of the District of Columbia and visiting professor of law at Harvard Law School (Winter 2022). Christina D. Ponsa-Kraus is the George Welwood Murray Professor of Legal History at Columbia Law School. They testified as legal experts on opposite sides in a recent hearing on two bills on Puerto Rico's political status before the House Committee on Natural Resources.*



Ponsa-Kraus

[COMMENTS](#) ▼

## AN ACT

To provide a process leading to decolonization and full self-government for Puerto Rico.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### **SEC. 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) Short Title.—This Act may be cited as the “United States-Puerto Rico Final Political Status Resolution Act”.

(b) Table of Contents.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Policy.
- Sec. 4. Plebiscite.
- Sec. 5. Transition and implementation.
- Sec. 6. International sovereignty through independence.
- Sec. 7. International sovereignty through free association.
- Sec. 8. Statehood.
- Sec. 9. Congressional procedures for consideration of legislation.
- Sec. 10. Availability of funds for voter education and the plebiscite.

### **SEC. 2. FINDINGS.**

(a) Puerto Rico is governed by the United States under laws enacted by Congress in the exercise of its plenary power to make rules and regulations governing territory belonging to the United States, pursuant to Article IV, Section 3, clause 2 of the federal Constitution;

(b) Territorial status denies Puerto Rico full self-government;

(c) the United States of America recognizes that the people of Puerto Rico have voted in multiple locally sponsored plebiscites in opposition to the continuation of territorial status;

(d) the United States of America, in furtherance of its international obligations under the UN Charter and the Convention on Civil and Political Rights (99 U.N.T.S. 171), recognizes the need to respond to these locally sponsored votes, recognizes the principle of self-determination with respect to Puerto Rico, and recognizes that territorial status does not fulfill the twin goals of self-determination and decolonization;

(e) the United States of America is committed to providing the people of Puerto Rico with the opportunity to decide on their future political status through a plebiscite (and, if necessary, runoff) to be conducted in an inclusive, fair and equitable manner among the constitutionally viable non-territorial options;

(f) the United States is committed to supporting a non-partisan educational campaign regarding the political status options to be presented in the plebiscite in order to ensure the legitimacy of the plebiscite and the broadest possible acceptance of its results; and

(g) the United States of America is committed to working with the people of Puerto Rico to implement whichever status option is chosen by the people of Puerto Rico in the plebiscite (or, if necessary, runoff) under this Act.

### **SEC. 3. POLICY.<sup>1</sup>**

(a) Congressional Commitment.—In recognition of the inherent limitations of territorial status, and the responsibility of the Federal Government to enable the people of the territory to freely express their wishes regarding political status and achieve full self-government, this Act is adopted to enable the majority of the eligible voters of Puerto Rico to choose a permanent, non-territorial, fully self-governing political status

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<sup>1</sup> Adapted from H.R. 856 Sec. 3.

for Puerto Rico and to provide for a transition to and the implementation of said permanent, non-territorial, fully self-governing status.

**SEC. 4. PLEBISCITE.<sup>2</sup>**

(a) Plebiscite.—A plebiscite on Puerto Rico’s political status is authorized to be held not later than one year after the enactment of this legislation. Approval of a status option must be by a majority of the valid votes cast. If there is not a majority in favor of one of the three options defined in this Act, then there shall be, not later than six months from the date of the plebiscite, a runoff vote between the two status options which received the largest number of votes in the plebiscite.<sup>3</sup> The initial plebiscite shall offer voters a choice of one of the three options which shall be presented on the ballot as follows:

“Instructions: Mark the status option you choose as each is defined below. A ballot with more than 1 option marked or no option marked will not be counted.

“A. International Sovereignty through Independence.—If you agree, mark here \_\_\_\_\_.

“The people of Puerto Rico should become fully self-governing through international sovereignty in the form of independence, in which—

“(1) the Republic of Puerto Rico is a sovereign nation which has full authority and responsibility over its territory and population under a constitution of its own adoption which is the supreme law and provides for a republican form of government and the protection of human rights;

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<sup>2</sup> Adapted from H.R. 856 Sec. 4.

<sup>3</sup> S. 712 Sec. 2(c).

“(2) the Republic of Puerto Rico is a member of the community of nations vested with full powers and responsibilities for its own fiscal and monetary policy, immigration, trade, and the conduct in its own name and right of relations with other nations and international organizations, including the rights and responsibilities that devolve upon a sovereign nation under the general principles of international law;

“(3) the residents of Puerto Rico owe allegiance to and have the nationality and citizenship of the Republic of Puerto Rico, and birth in the Republic of Puerto Rico or relationship to persons with statutory United States citizenship by birth in the former territory shall cease to be a basis for United States nationality or citizenship, except that persons who had such United States citizenship have a right to retain United States nationality and citizenship for life, by entitlement or election as provided by the United States Congress;

“(4) the Constitution and laws of the United States no longer apply in Puerto Rico, and United States sovereignty in Puerto Rico is ended;

“(5) the previously vested rights of individuals in Puerto Rico to benefits based upon past services rendered or contributions made to the United States shall be honored by the United States as provided by Federal law; and

“(6) Puerto Rico and the United States shall seek to develop friendly and cooperative relations in matters of mutual interest as agreed in treaties approved pursuant to their respective constitutional processes, and laws including economic and programmatic assistance at levels and for a reasonable period as provided on a government-to-government basis, trade between customs

territories, transit of citizens in accordance with immigration laws, and status of United States military forces.

“B. International Sovereignty through Free Association.<sup>4</sup>—If you agree, mark here \_\_\_\_\_.

“The people of Puerto Rico should become fully self-governing through international sovereignty in the form of free association, in which—

“(1) Puerto Rico is a sovereign nation which has full authority and responsibility over its territory and population under a constitution of its own adoption which is the supreme law, providing for a republican form of government and the protection of human rights, and which has entered into Articles of Free Association with the United States, with such devolution and reservation of governmental functions and other bilateral arrangements as may be agreed to by both Parties under the Articles, which shall be terminable at will by either the United States or Puerto Rico;

“(2) Under free association, Puerto Rico is a member of the community of nations vested with full powers and responsibilities consistent with the rights and responsibilities that devolve upon a sovereign nation under international law, with the exceptions provided for in the Articles of Free Association;

“(3) the residents of Puerto Rico owe allegiance to and have the nationality and citizenship of Puerto Rico, and persons who had United States citizenship have a right to retain United States nationality and citizenship for life, by entitlement or election as provided by the United States Congress;

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<sup>4</sup> This section mirrors the textual design of the Compacts of Free Association between the United States and FSM, RMI, and Palau.



**(4) [Congress should decide whether it will continue to provide for U.S. citizenship by birth with respect to those individuals born in Puerto Rico on or after the enactment of the Articles of Free Association, thus allowing for dual U.S.-Puerto Rican citizenship for this specific class of persons. If so, the ballot language should make clear *both* that Congress will continue to provide U.S. citizenship by birth in Puerto Rico under free association *and* that Congress retains the power to change its policy and cease granting U.S. citizenship by birth in Puerto Rico in the future, but that once a person has U.S. citizenship, they cannot be denaturalized without their consent.]**

“(5) the Constitution of the United States no longer applies in Puerto Rico, the laws of the United States no longer apply in Puerto Rico except as otherwise provided in the Articles of Free Association, and United States sovereignty in Puerto Rico is ended;

“(6) All matters pertaining to the government to government relationship between Puerto Rico and the United States, including but not limited to foreign affairs, trade, finance, taxation, security, and defense, dispute resolution and termination,<sup>5</sup> shall be provided for in the Articles of Free Association.

“C. Statehood.—If you agree, mark here \_\_\_\_\_.

“Puerto Rico should become a State of the Union, in which—

“(1) the people of Puerto Rico are fully self-governing with their rights secured under the United States Constitution, which shall be fully applicable in Puerto Rico and which, with the laws and treaties of the United States, is the

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<sup>5</sup> See Titles One, Two, Three and Four of the Compact with the FSM.

supreme law and has the same force and effect in Puerto Rico as in the other States of the Union;

“(2) the State of Puerto Rico is a part of the permanent union of the United States of America, subject to the United States Constitution, with powers not prohibited by the Constitution to the States and reserved to the State of Puerto Rico or to the people;

“(3) United States citizenship of those born in Puerto Rico is recognized, protected and secured under the United States Constitution in the same way it is for all United States citizens born in the other States;

“(4) rights, freedoms, and benefits as well as duties and responsibilities of citizenship apply in the same manner as in the several States;

“(5) Puerto Rico is represented by two members in the United States Senate and is represented in the House of Representatives in a manner proportionate to the size of its population; and

“(6) United States citizens in Puerto Rico are enfranchised to vote in elections for the President and Vice President of the United States.

(b) Returns of the Plebiscite.<sup>6</sup>—The returns of the plebiscite, and if necessary the runoff vote, held under this Act shall be made by the Puerto Rico Elections Commission to the Governor of Puerto Rico, who shall cause them to be canvassed in the manner provided by law for the canvass of votes cast in general elections in the Commonwealth of Puerto Rico. No later than one week after the votes have been canvassed, the Governor shall certify to the President and to the Congress of the United States the results of the plebiscite, unless a majority is not obtained, in which case the Governor

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<sup>6</sup> Adapted from S. 712 Tit. I Sec. 2(d)-(e).

shall certify to the President of the United States and to the Congress of the United States the results of the runoff vote.

(c) Applicable election laws.— The Federal laws applicable to the election of the Resident Commissioner of Puerto Rico shall, as appropriate and consistent with this Act, also apply to the plebiscite and, if necessary, runoff held under Sec. 4 of this Act. Any reference in such Federal laws to elections shall be considered, as appropriate, to be a reference to the plebiscite and, if necessary, runoff, unless it would frustrate the purposes of this Act.

(d) Jurisdiction.—Any legal dispute or controversy arising out of the electoral processes conducted under this Section shall be adjudicated by the United States District Court for the District of Puerto Rico and the Federal Appellate Court System. The Supreme Court of Puerto Rico, and all other inferior territorial courts, shall have no jurisdiction to entertain any suit, appeal, writ of revision or legal action, arising out of the above-referenced plebiscite and runoff.

**SEC. 5. TRANSITION AND IMPLEMENTATION.**—The status option which has been certified by the Governor pursuant to Section 4(b) of this Act, shall go into effect in accordance with the appropriate Section of this Act.<sup>7</sup> Should the option of international sovereignty through independence be certified by the Governor pursuant to Section 4(b), said option shall go into effect in accordance with Section 6 of this Act. Should the option of international sovereignty through free association be certified by the Governor pursuant to Section 4(b), said option shall go into effect in accordance with Section 7 of this Act. Should the option of statehood be certified by the Governor pursuant to Section 4(b), said option shall go into effect in accordance with Section 8 of this Act.

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<sup>7</sup> S. 712, Tit. I, Sec. 2(e).

**SEC. 6. INTERNATIONAL SOVEREIGNTY THROUGH INDEPENDENCE.<sup>8</sup>—**

Should the option of international sovereignty through independence be certified by the Governor pursuant to Section 4(b) of this Act, said option shall go into effect in accordance with this Section.

Whereas: The United States recognizes that Puerto Rico is historically, sociologically, and culturally a Latin American and Caribbean nation which has been under the sovereignty of the United States since 1898 pursuant to the Treaty of Paris of the same year entered into by the United States and the Spanish Kingdom in the aftermath of the Spanish American War.

Whereas: The United States recognizes Puerto Rico's right to independence.

Whereas: The United States recognizes that Puerto Rico's international sovereignty through independence is a legitimate means to provide Puerto Rico with the political powers and the flexibility necessary to promote and achieve Puerto Rico's development according to its needs and resources and within the framework of present day interdependence.

Whereas: In order to insure lasting friendship, equitable economic relations, and the gradual elimination of the burden which Puerto Rico's extreme economic dependence represents for both nations, the United States declares its intention to guarantee all necessary conditions for a rational and mutually advantageous transition before and after independence, guaranteeing the legitimate interests of both Puerto Rico and the United States.

*Therefore: Be it resolved:* Subject to the provisions of this Act, and upon issuance of the Presidential proclamation required by Section 6.7 of this Act, the Commonwealth

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<sup>8</sup> Adapted from S. 712 Tit. III.

of Puerto Rico is declared to be a sovereign, democratic, and independent nation under international law.

**SEC. 6.1. CONSTITUTIONAL CONVENTION.**

(a) The Legislative Assembly of the Commonwealth of Puerto Rico shall provide for the election of delegates to a Constitutional Convention to formulate and draft a Constitution for the Republic of Puerto Rico. The election of delegates must be held within six months after the certification of the results of the aforementioned plebiscite by the Governor of Puerto Rico to the President of the United States and the Congress of the United States under Sec. 4(b) of this Act.

(b) Those qualified to vote in the election of delegates to the Constitutional Convention shall be:

(1) all persons born and residing in Puerto Rico;

(2) all persons residing in Puerto Rico and one of whose parents was born in Puerto Rico;

(3) all persons who at the time of the adoption of this Act shall have resided in Puerto Rico for a period of fifteen years or more; and

(4) all persons who established their residence in Puerto Rico prior to attaining voting age and still reside in Puerto Rico.

(c) The laws of the Commonwealth of Puerto Rico relating to additional voter qualifications and the electoral process shall apply to this election.

(d) The Constitutional Convention shall meet within three months of the election of delegates at such time and place as the Legislative Assembly of the Commonwealth of Puerto Rico shall determine.

(e) The Constitutional Convention shall exercise jurisdiction over all of the territory of Puerto Rico ceded to the United States by Spain by virtue of the Treaty of Paris the 10th day of December 1898.

#### **SEC. 6.2. CHARACTER OF THE CONSTITUTION.**

(a) The Constitutional Convention mandated under the previous Section shall formulate and draft a Constitution establishing a republican form of government which shall guarantee the protection of fundamental human rights.

(b) The fundamental human rights guaranteed by the aforementioned Constitution shall include such rights as due process and equal protection under the law, freedom of speech, press, assembly, association, and religion, the rights of the accused, and any other economic, social and cultural rights as the Constitutional Convention may deem appropriate and necessary.

#### **SEC. 6.3. RATIFICATION OF THE CONSTITUTION.**

(a) The Constitution elaborated by the Constitutional Convention shall be submitted to the people of Puerto Rico for its ratification or rejection no later than one year from the commencement of the Constitutional Convention.

(b) The Legislative Assembly of the Commonwealth of Puerto Rico shall call for a special election for such ratification or rejection, to be held within three months of the submission of the Constitution elaborated by the Constitutional Convention to the people of Puerto Rico.

(c) The special election providing all qualified voters the opportunity to cast a vote for or against the proposed Constitution shall be held in the manner prescribed by the Legislative Assembly of the Commonwealth of Puerto Rico.

(d) Those qualified to vote in this election shall be those possessing the qualifications established in Section 6.1(b) of this Act.

#### **SEC. 6.4. ELECTION OF OFFICERS OF THE REPUBLIC.**

(a) Within one month of the ratification of the Constitution as provided for by Section 6.3 of this title, the Governor of the Commonwealth of Puerto Rico shall issue a proclamation calling for the election of such officers of the Republic of Puerto Rico as may be required by the ratified Constitution.

(b) The election of officers of the Republic shall be held not later than six months after the date of ratification of the Constitution.

(c) The aforesaid election shall be held in accordance with the procedures and requirements established in the Constitution of the Republic of Puerto Rico.

(d) The Governor of the Commonwealth of Puerto Rico shall certify the results of the election to the President of the United States.

#### **SEC. 6.5. JOINT TRANSITION COMMISSION.**

(a) A Joint Transition Commission shall be appointed in equal numbers by the President of the United States and the Constitutional Convention of Puerto Rico no later than one month after the favorable results for the independence option in the plebiscite provided for in Section 4(b) of this Act are announced.

(b) The Joint Transition Commission shall be responsible for expediting the orderly transfer of all functions currently exercised by the Government of the United States in Puerto Rico, or in relation to Puerto Rico, including the recommendation of appropriate legislation.

(c) Any necessary task forces under the aegis of the Joint Transition Commission shall be constituted in the same manner as the Commission.

(d) The Government of the Commonwealth of Puerto Rico and the agencies of the Government of the United States shall collaborate with the Joint Transition Commission and subsequently with the new officers of the Republic of Puerto Rico, to provide for the orderly transfer of the functions of government.

**SEC. 6.6 RESOLUTION OF CONTROVERSIES PRIOR TO INDEPENDENCE.**

(a) From the date of the certification of the results of the plebiscite, or if necessary runoff vote, in favor of international sovereignty through independence, as provided for in Section 4 of this Act, to the President of the United States and the Congress of the United States, and until the date of proclamation of independence, the Supreme Court and all inferior courts of the United States shall have no jurisdiction over any case or controversy arising from the operation of this Act.

(b) Any question arising from the operation of the provisions of this Act concerning the implementation of international sovereignty through independence shall be referred to the Joint Transition Commission established in Section 6.5 for disposition through negotiation. Should the Commission be unable to reach a negotiated solution to a question, it shall submit all points in question to international arbitration under the aegis of the Permanent Court of International Arbitration at The Hague.

**SEC. 6.7. PROCLAMATIONS BY THE PRESIDENT OF THE UNITED STATES AND THE HEAD OF STATE OF THE REPUBLIC OF PUERTO RICO.**

(a) Not later than one month after the official certification of the elected officers of the Republic of Puerto Rico under Section 6.4, the President of the United States shall by proclamation withdraw and surrender all rights of possession, supervision, jurisdiction, control or sovereignty then existing and exercised by the United States over the territory and people of Puerto Rico, and shall furthermore recognize on behalf of the



United States of America the independence of the Republic of Puerto Rico and the authority of the government instituted by the People of Puerto Rico under the Constitution of their own adoption. The proclamation shall state that the effective date of withdrawal of the sovereignty of the United States and recognition of independence shall be the same as the date of the proclamation of independence.

(b) The President of the United States shall forward a copy of the proclamation issued by them to the presiding officer of the Constitutional Convention of Puerto Rico within a week after signature.

(c) Within one week after receiving the presidential proclamation and with the advice of the officer elected as head of state of the Republic, the presiding officer of the Constitutional Convention shall determine the date in which the Government of the Republic shall take office, and shall so notify the Governor of the Commonwealth of Puerto Rico and the President of the United States.

(d) Upon taking office, the head of state of the Republic of Puerto Rico shall immediately issue a proclamation declaring: (1) that Puerto Rico has become a sovereign, independent nation; (2) that the Constitution of the Republic is thenceforth in effect; (3) that the Commonwealth of Puerto Rico and its Government have ceased to exist; and (4) that the Government of the Republic of Puerto Rico will henceforth exercise its powers and duties under its Constitution.

#### **SEC. 6.8. LEGAL AND CONSTITUTIONAL PROVISIONS.**

(a) Upon the proclamation of international sovereignty through independence as provided in this Section, and except as otherwise provided in this title or in any separate agreements thereafter concluded between the United States and the Republic of Puerto Rico—

(1) all property, rights and interests which the United States may have acquired over Puerto Rico by virtue of the Treaty of Paris of 1898, and thereafter by cession, purchase, or eminent domain, with the exception of such land and other property, rights, or interests as may have been sold or otherwise legally disposed of prior to the enactment of this Act, shall vest ipso facto in the Republic of Puerto Rico;

(2) all laws of the United States applicable to the Commonwealth of Puerto Rico immediately prior to the proclamation of independence shall no longer apply in the Republic of Puerto Rico;

(3) all laws and regulations of the Commonwealth of Puerto Rico in force immediately before the proclamation of independence shall continue in force and shall be read with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution of the Republic of Puerto Rico until such time as they shall be replaced with the new legislation: Provided, That any provisions that may be incompatible with the sovereignty of the Republic of Puerto Rico shall be deemed invalid.

#### **SEC. 6.9. JUDICIAL PRONOUNCEMENTS.**

(a) The Republic of Puerto Rico shall recognize and give effect to all orders and judgments rendered by United States or Commonwealth courts prior to the proclamation of independence pursuant to the laws of the United States then applicable to the Commonwealth of Puerto Rico.

(b) All judicial proceedings pending in the courts of the Commonwealth of Puerto Rico prior to the proclamation of independence shall be continued in the corresponding courts under the Constitution of the Republic of Puerto Rico.

(c) Upon the proclamation of international sovereignty through independence, the judicial power of the United States shall no longer extend to Puerto Rico. All proceedings pending in the United States District Court for the District of Puerto Rico shall be transferred to the corresponding Puerto Rican courts of competence under the Constitution of the Republic of Puerto Rico for disposition in conformity with laws applicable at the time when the controversy in process arose. All proceedings pending in the United States Court of Appeals for the First Circuit, or in the Supreme Court of the United States, which may have initiated in the courts of the Commonwealth or in the United States District Court for the District of Puerto Rico shall continue until their final disposition and shall be submitted to the competent authority of the Republic of Puerto Rico for proper execution: Provided, That neither the United States nor any of its officers is a party, in which case any final judgment shall be properly executed by the competent authority of the United States.

**SEC. 6.10. CITIZENSHIP AND IMMIGRATION.**

(a) Every person who, having been born in Puerto Rico, is on proclamation of independence a citizen of the United States and a resident of Puerto Rico, shall also become a citizen of the Republic of Puerto Rico on that date.

(b) Every person born in Puerto Rico after proclamation of independence, and subject to the jurisdiction thereof, shall be a citizen of the Republic of Puerto Rico.

(c) All other persons not specified in subsections (a) and (b) but residing in Puerto Rico shall be granted citizenship in accordance with the Constitution and laws of the Republic.

(d) (1) Every person who is a citizen of the United States and a citizen of the Republic of Puerto Rico in accordance with subsections (a), (b), and (c) shall retain their United

States citizenship and all rights, privileges, benefits and obligations pertaining thereto in an equal footing with all other United States citizens: Provided, That while residing in Puerto Rico that person shall not be subject under United States laws to compulsory military registration and service or to any other condition or obligation contrary to the sovereignty of the Republic of Puerto Rico. (2) Every person specified in subsection (d)(1) shall retain his or her Puerto Rican citizenship and all rights, privileges and benefits pertaining thereto in an equal footing with all other Puerto Rican citizens, and shall retain all of his or her obligations as a Puerto Rican citizen, except that while residing in the United States that person shall not be subject under Puerto Rican laws to compulsory military registration and service or to any other condition or obligation contrary to the sovereignty of the United States.

(e) Every citizen of the United States who becomes a citizen of the Republic of Puerto Rico in accordance with subsections (a), (b), and (c), shall be able to elect: (1) to relinquish their United States citizenship in accordance with United States laws; or (2) to relinquish their Puerto Rican citizenship in accordance with the laws of the Republic.

(f) United States citizens residing in Puerto Rico, but not citizens thereof, shall be entitled to the fundamental rights and freedoms accorded to all persons in Puerto Rico but shall not be eligible for political office and shall not be entitled to vote in Puerto Rico. They shall also be entitled to be naturalized as citizens of the Republic in accordance with nondiscriminatory laws of the Republic.

(g) Citizens of the Republic of Puerto Rico residing in the United States but not citizens thereof shall be entitled to the fundamental rights and freedoms accorded to all persons in the United States but shall not be eligible for political office and shall not be entitled to vote in the United States. They shall also be entitled to be naturalized as

citizens of the United States in accordance with nondiscriminatory laws of the United States.

(h) Citizens of the Republic of Puerto Rico who are not United States citizens may, for a period of twenty-five years after proclamation of independence, enter into and lawfully engage in occupations, and establish residence as immigrants in the United States. These immigrants may be subject to nondiscriminatory limitations as provided for by laws and regulations of the United States.

(i) Every resident of the United States born in Puerto Rico but not a citizen thereof, and their children, may enter into and lawfully engage in occupations, and establish residence as immigrants in Puerto Rico subject to nondiscriminatory laws and regulations of the Republic.

(j) Every person lawfully admitted for permanent residence within the United States and who is a resident of Puerto Rico on proclamation of independence shall continue as resident and shall be entitled to be naturalized as citizen of the Republic of Puerto Rico in accordance with nondiscriminatory laws of the Republic.

#### **SEC. 6.11. DEFENSE.**

(a) The United States shall collaborate with the Republic of Puerto Rico toward the ultimate goal of disarmament, peace, and international relations based on the principles of equality, mutual respect and interdependence. Furthermore, the United States recognizes the right of the People of Puerto Rico to strive toward the total demilitarization of their territory, with the purpose of dedicating all of their efforts and resources to the goals of economic and social development.

(b) The Republic of Puerto Rico shall be closed to any and all military forces of foreign nations. In furtherance of this policy, and to expedite the orderly and gradual

transfer of properties presently under the control of the United States for military purposes in Puerto Rico, the Governments of the United States and the Republic of Puerto Rico shall subscribe to a separate agreement for a reasonable and mutually convenient period of transition.

(c) Negotiations leading to the eventual agreement provided in paragraph (b) shall begin in a special task force designated for such purposes by the President of the United States and the Constitutional Convention of Puerto Rico pursuant to Section 6.5 of this Act. Should this special task force be unable to reach an agreement prior to the proclamation of independence, the negotiations shall continue between representatives appointed by the United States and the Republic of Puerto Rico, until such time as an agreement may be reached.

(d) The Republic of Puerto Rico shall be a nuclear free zone. The United States and the Republic of Puerto Rico shall adhere and fully comply with the provisions of the Treaty for the Proscription of Nuclear Weapons in Latin America of 1967 (Treaty of Tlatelolco).

(e) The Government of the Republic of Puerto Rico shall, as soon as may be practicable, seek integration into the Inter-American defense system by subscribing to the provisions of the Treaty of Mutual Defense of 1948 (Treaty of Rio de Janeiro).

#### **SEC. 6.12. TRADE RELATIONS.**

(a) Until the proclamation of independence: (1) no trade barriers or quotas of any kind shall be imposed on merchandise and articles going into Puerto Rico from the United States or coming into the United States from Puerto Rico; and (2) trade relations shall be as currently provided by law.

(b) During the twenty years following the proclamation of independence, the United States shall not impose trade barriers or quotas of any kind on merchandise and articles coming into the United States from the Republic of Puerto Rico.

**SEC. 6.13. TAXATION. [S. 712 included detailed provisions on taxation, currency and finance, and public debt. We have not included them because these provisions must be completely re-drafted by Congress in consideration of developments since then, such as the repeal of Section 936 of the IRC, the transition of many of the large manufacturing companies in Puerto Rico into “Controlled Foreign Corporations” utilizing the Possessions Tax Credit, and the enactment by Congress of the Tax Cuts and Jobs Act which extended the Global Intangible Low Tax Income (GILTI) to Puerto Rico. The goal of such federal tax transition provisions should be to prevent a significant shock to Puerto Rico’s tax base and economy during a reasonable period of transition into independence by allowing a gradual phase-out of current treatment and or phase-in of new treatment while avoiding the potential of long-term structural vulnerability in Puerto Rico’s economy where a unilateral change in U.S. federal tax law could devastate the new independent nation’s economy. Puerto Rico’s economic development under independence must not depend on being a tax haven for U.S. manufacturers, and instead must be based on the sustainable development of the island’s industries which have or can grow into having real competitive advantages at the national, regional and global level. Otherwise, Puerto Rico could risk similar fates as some of the former European colonies in the Caribbean whose formal political independence is**

**undermined by a continued economic dependence on their former colonial powers.]**

**SEC. 6.14 CURRENCY AND FINANCE. [See note accompanying Sec. 6.13.]**

**SEC. 6.15. PUBLIC DEBT. [See note accompanying Sec. 6.13.]**

**SEC. 6.16. INDIVIDUAL RIGHTS TO ECONOMIC BENEFITS AND GRANTS TO THE REPUBLIC OF PUERTO RICO.**

(a) All vested rights and benefits which accrue to residents of the Commonwealth of Puerto Rico under the laws of the United States from past services or contributions, such as rights and benefits for veterans or relatives of veterans of the Armed Forces of the United States, retired Government employees, or beneficiaries of old age, disability of survivors' insurance benefits under the Social Security Act, shall not be interrupted after the proclamation of independence but will continue until such time as said rights and benefits are completely extinguished according to the applicable laws of the United States. All services which must be rendered as part of these rights and benefits shall be made available through the Government of the Republic of Puerto Rico in accordance with agreements reached by the two nations.

(b) Notwithstanding the provisions in subsection (a), all contributions made by employees and employers in Puerto Rico to the Social Security System with respect to persons who, upon the proclamation of international sovereignty through independence, are residents of the Republic of Puerto Rico and are not yet eligible for old age, disability, or survivors' insurance benefits under the system, shall be transferred to the Government of the Republic of Puerto Rico once said Government establishes its own social security system. The Government of the Republic of Puerto Rico may not use these funds for any purpose other than the establishment and operation of a social



security system. Upon the transfer described herein, the obligations of the United States Government under the Social Security Act with respect to such residents of the Republic of Puerto Rico shall cease.

(c) All other Federal transfer payments to individuals and to the Government of the Commonwealth of Puerto Rico shall be maintained in the form of annual block grants to be used discretionally by the Government of the Republic of Puerto Rico—(1) During the ten fiscal years following the proclamation of independence, the annual block grants shall amount to the annual aggregate funding of all programs which currently extend to the Commonwealth of Puerto Rico, or of all programs which shall have been extended to the Commonwealth of Puerto Rico during the fiscal year immediately prior to the proclamation of independence, whichever shall be greater. (2) The annual block grants shall decrease thereafter on a straight-line basis, at the rate of ten percent each year, beginning on the eleventh fiscal year after the proclamation of independence. At any time during the aforementioned transition period the terms of this subsection may be modified by agreement between the United States and the Republic of Puerto Rico.

#### **SEC. 6.17. TREATY OF FRIENDSHIP AND COOPERATION.**

The United States and the Republic of Puerto Rico shall embody all provisions of this Section in a treaty of friendship and cooperation.

#### **SEC. 7. INTERNATIONAL SOVEREIGNTY THROUGH FREE**

**ASSOCIATION.**—Should the option of international sovereignty through free association be certified by the Governor pursuant to Section 4(b) of this Act, said option shall go into effect in accordance with this Section.<sup>9</sup>

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<sup>9</sup> This section mirrors the textual design of the Compacts of Free Association between the United States and FSM, RMI and Palau.

Whereas: The United States recognizes that Puerto Rico is historically, sociologically, and culturally a Latin American and Caribbean nation which has been subject to the sovereignty of the United States since 1898 pursuant to the Treaty of Paris of the same year entered into by the United States and the Spanish Kingdom in the aftermath of the Spanish American War.

Whereas: The creation of a free and voluntary association between the Governments of the United States and Puerto Rico would vindicate their common interest in maintaining a close and mutually beneficial relationship.

Whereas: The United States recognizes that free association is a legitimate decolonizing formula, both under U.S. constitutional law and international law, as intimated by the International Court of Justice in its advisory opinion in the case of *Western Sahara* (1975) and pursuant to the strictures of UN Resolution No. 1541 (XV) (1960).

Whereas: The United States recognizes that Puerto Rico's status has been fully territorial in nature, and subject to by the Territorial Clause of the federal Constitution, since 1898 and pursuant to Article 9 of the Treaty of Paris of the same year, and that the people of Puerto Rico in the exercise of their sovereign right to self-determination, through their freely expressed will, have the right to accede to the status of an international sovereign and to adopt a Constitution appropriate to that status.

Whereas: The United States and Puerto Rico recognize that a free association relationship would reflect their common desire to terminate their territorial relationship and establish a government-to-government relationship.

Whereas: to the United States recognizes that the people of Puerto Rico have the inherent right to adopt and amend their own Constitution and form of government and

to approve the entry of Puerto Rico into Articles of Free Association with the United States as an exercise of their sovereign right to self-determination.

*Therefore: Be it resolved:* Subject to the provisions of this Act, and upon issuance of the Presidential proclamation required by Section 7.6 of this Act, the Commonwealth of Puerto Rico is declared to be a sovereign, democratic, and fully self-governing nation in free association with the United States; *Be it further resolved:* That, during such relationship of free association, the respective rights and responsibilities of the Government of the United States and the Government of Puerto Rico in regard to this relationship of free association derive from and are as set forth in the Articles of Free Association as provided for in this Act.

**SEC. 7.1. CONSTITUTIONAL CONVENTION AND NEGOTIATION OF THE ARTICLES OF FREE ASSOCIATION.**

(a) The Legislative Assembly of the Commonwealth of Puerto Rico shall provide for the election of delegates to a Constitutional Convention to formulate and draft a Constitution for Puerto Rico under free association. The election of delegates must be held within six months after the certification of the results of the aforementioned plebiscite by the Governor of Puerto Rico to the President of the United States and the Congress of the United States under Section 4(b) of this Act.

(b) Those qualified to vote in the election of delegates to the Constitutional Convention shall be:

- (1) all persons born and residing in Puerto Rico;
- (2) all persons residing in Puerto Rico and one of whose parents was born in Puerto Rico;

(3) all persons who at the time of the adoption of this Act shall have resided in Puerto Rico for a period of fifteen years or more; and

(4) all persons who established their residence in Puerto Rico prior to attaining voting age and still reside in Puerto Rico; and

(c) The laws of the Commonwealth of Puerto Rico relating to additional voter qualifications and the electoral process shall apply to this election.

(d) The Constitutional Convention shall meet within three months of the election of delegates at such time and place as the Legislative Assembly of the Commonwealth of Puerto Rico shall determine.

(e) The Constitutional Convention shall exercise jurisdiction over all the territory of Puerto Rico ceded to the United States by Spain by virtue of the Treaty of Paris the 10th day of December 1898.

(f) There shall be a Bilateral Negotiating Commission which shall conduct negotiations on Articles of Free Association with the United States, to be constituted as provided in Sec. 7.1(g).

(g) No later than three months after the commencement of the Constitutional Convention, the Convention shall elect, by majority vote, 5 members from among its delegates to join the Bilateral Negotiating Commission on behalf of Puerto Rico.

(h) The President of the United States shall designate 5 members to the Bilateral Negotiating Commission, who shall also be nominated for the rank of Ambassador,<sup>10</sup> to negotiate on behalf of the United States.

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<sup>10</sup> Refer to President Carter's nomination of Ambassador Peter Rosenblatt to negotiate Micronesian Compacts (July 21, 1977).

(i) The Bilateral Negotiating Commission shall also be responsible for expediting the orderly transfer of all functions currently exercised by the Government of the United States in Puerto Rico, or in relation to Puerto Rico, including the recommendation of appropriate enabling legislation, as may be required by the Articles of Free Association.

(j) Any necessary task forces under the aegis of the Bilateral Negotiating Commission shall be constituted in the same manner as the Commission.

(k) The Government of the Commonwealth of Puerto Rico and the agencies of the Government of the United States shall collaborate with the Bilateral Negotiating Commission to provide for the orderly transfer of the functions of government as required by the Articles of Free Association.

**SEC. 7.2. CHARACTER OF THE CONSTITUTION AND THE ARTICLES OF FREE ASSOCIATION.**

(a) The Constitutional Convention mandated under the previous Section shall formulate and draft a Constitution establishing a republican form of government which shall guarantee the protection of fundamental human rights.

(b) The fundamental human rights guaranteed by the aforementioned Constitution shall include such rights as due process and equal protection under the law, freedom of speech, press, assembly, association, and religion, as well as the rights of the accused, and any other economic, social and cultural rights as the Constitutional Convention may deem appropriate and necessary.

(c) All matters pertaining to the government to government relationship between Puerto Rico and the United States, including but not limited to foreign affairs, trade,

finance, taxation, security, and defense, dispute resolution and termination,<sup>11</sup> shall be provided for in the Articles of Free Association.

(d) Notwithstanding the enactment of the Articles of Free Association with the United States, the people of Puerto Rico retain for themselves the freedom to modify the status of Puerto Rico, along with their Constitution, through the expression of their will by democratic means and through the required constitutional processes.<sup>12</sup>

### **SEC. 7.3. RATIFICATION OF THE CONSTITUTION AND THE ARTICLES OF FREE ASSOCIATION.**

(a) The Constitution elaborated by the Constitutional Convention and the Articles of Free Association negotiated by the United States and Puerto Rico, as provided in Sec. 7.1 of this Act, shall be submitted to the people of Puerto Rico for their ratification or rejection no later than \_\_\_\_ after the commencement of deliberations by the Convention and negotiations by the Bilateral Negotiating Commission.

(b) The Legislative Assembly of the Commonwealth of Puerto Rico shall call for a special election for such ratification or rejection, to be held within three months of the submission of the Constitution elaborated by the Constitutional Convention and the Articles of Free Association negotiated by the United States and Puerto Rico to the people of Puerto Rico.

(c) The special election providing all qualified voters the opportunity to cast a vote for or against the proposed Constitution and Articles of Free Association shall be held in the manner prescribed by the Legislative Assembly of the Commonwealth of Puerto Rico.

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<sup>11</sup> See Titles One, Two, Three and Four of the Compact with the FSM.

<sup>12</sup> See UN Res. 1541 (1960).

(d) Those qualified to vote in this election shall be those possessing the qualifications established in Section 7.1(b) of this Act.

**SEC. 7.4. ELECTION OF OFFICERS OF PUERTO RICO UNDER FREE ASSOCIATION.**

(a) Within one month of the ratification of the Constitution and Articles of Free Association as provided for by Section 7.3, the Governor of the Commonwealth of Puerto Rico shall issue a proclamation calling for the election of such governmental officers of Puerto Rico as may be required by the ratified Constitution.

(b) The election of said officers shall be held not later than six months after the date of ratification of the Constitution and Articles of Free Association.

(c) The aforesaid election shall be held in accordance with the procedures and requirements established in the Constitution of Puerto Rico.

(d) The Governor of the Commonwealth of Puerto Rico shall certify the results of the election to the President of the United States within one week of the completion of the canvassing of the votes pursuant to the election laws of Puerto Rico.

**SEC. 7.5. RESOLUTION OF CONTROVERSIES PRIOR TO FREE ASSOCIATION.**

(a) From the date of the certification of the results of the plebiscite, or if necessary runoff vote, in favor of international sovereignty through free association to the President of the United States and the Congress of the United States as provided for in Sec. 4(b) of this Act, and until the date of proclamation of international sovereignty through free association, the Supreme Court and all inferior courts of the United States shall have no jurisdiction over any case or controversy arising from the operation of this Act.

(b) Any question arising from the operation of the provisions of this Act concerning the implementation of international sovereignty through free association shall be referred to the Bilateral Negotiating Commission established in Section 7.1 for disposition through negotiation. Should the Commission be unable to reach a negotiated solution to a question, it shall submit all points in question to international arbitration under the aegis of the Permanent Court of International Arbitration at The Hague.

**SEC. 7.6. PROCLAMATIONS BY THE PRESIDENT OF THE UNITED STATES AND THE HEAD OF STATE OF PUERTO RICO.**

(a) Not later than one month after the official certification of the elected officers of Puerto Rico under Section 7.4, the President of the United States shall by proclamation withdraw and surrender all rights of possession, supervision, jurisdiction, control or sovereignty then existing and exercised by the United States over the territory and people of Puerto Rico, except as otherwise provided by the Articles of Free Association, and shall furthermore recognize on behalf of the United States of America the international sovereignty of Puerto Rico and the authority of the government instituted by the People of Puerto Rico under the Constitution of their own adoption. The proclamation shall state that the effective date of withdrawal of the sovereignty of the United States and recognition of international sovereignty through free association shall be the same as the date of the proclamation of international sovereignty through free association.

(b) The President of the United States shall forward a copy of the proclamation issued by them to the presiding officer of the Constitutional Convention of Puerto Rico within a week after their signature.



(c) Within one week after receiving the presidential proclamation and with the advice of the officer elected as head of state of Puerto Rico, the presiding officer of the Constitutional Convention shall determine the date in which the Government of Puerto Rico shall take office, and shall so notify the Governor of the Commonwealth of Puerto Rico and the President of the United States.

(d) Upon taking office, the head of state of Puerto Rico shall immediately issue a proclamation declaring: (1) that Puerto Rico has become a sovereign nation under international law, in free association with the United States; (2) that the Constitution of Puerto Rico under free association is thenceforth in effect; (3) that the Commonwealth of Puerto Rico and its Government have ceased to exist; and (4) that the Government of Puerto Rico will henceforth exercise its powers and duties under its Constitution and pursuant to the Articles of Free Association.

## **SEC. 7.7. PROPOSED ARTICLES OF FREE ASSOCIATION BETWEEN PUERTO RICO AND THE UNITED STATES.**

Upon the proclamation of international sovereignty through free association as provided in this Section, all matters pertaining to the government to government relationship between Puerto Rico and the United States, including but not limited to foreign affairs, trade, finance, taxation, security, and defense, dispute resolution and termination of the free association status,<sup>13</sup> shall be provided for in the Articles of Free Association. The following Articles shall be included in the Articles of Free Association:

### **ART. \_\_\_\_ . SELF-GOVERNMENT.<sup>14</sup>**

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<sup>13</sup> See Titles One, Two, Three and Four of the Compact with the FSM.

<sup>14</sup> See Title One (Governmental Relations), Article I, FSM Compact.

The people of Puerto Rico, acting through the Government established under the Constitution of their own adoption, are sovereign and fully self-governing.

**ART. \_\_\_\_ . FOREIGN AFFAIRS.<sup>15</sup>**

(a) The Government of Puerto Rico has the capacity to conduct foreign affairs and shall do so in its own name and right, except as otherwise provided in these Articles.

(b) The foreign affairs capacity of the Government of Puerto Rico includes (1) the conduct of foreign affairs relating to the law of the sea and marine resources, including the harvesting, conservation, exploration or exploitation of living and non-living resources from the sea, seabed or subsoil to the full extent recognized under international law; (2) the conduct of its commercial, diplomatic, consular, economic, trade, banking, postal, civil aviation, communications, and cultural relations, including negotiations for the receipt of developmental loans and grants and the conclusion of arrangements with other governments and multilateral financial institutions.

(c) The Government of the United States recognizes that the Government of Puerto Rico has the capacity to enter into, in its own name and right, treaties and other international agreements with governments and regional and international organizations.

(d) In the conduct of its foreign affairs, the Government of Puerto Rico confirms that it shall act in accordance with the principles of international law and shall settle its international disputes by diplomatic means.

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<sup>15</sup> See Title One (Governmental Relations), Article II, FSM Compact.

(e) The Government of the United States shall support applications by the Government of Puerto Rico for membership or other participation in regional or international organizations as may be mutually agreed.

(f) In recognition of the foreign affairs capacity of the Government of Puerto Rico, the Government of the United States, in the conduct of its foreign affairs, shall consult with the Government of Puerto Rico on matters that the Government of the United States regards as relating to or affecting the Government of Puerto Rico.

(g) The Government of the United States may assist or act on behalf of the Government of Puerto Rico in the area of foreign affairs as may be requested and mutually agreed from time to time. The Government of the United States shall not be responsible to third parties for the actions undertaken by the Government of Puerto Rico with the assistance or through the agency of the Government of the United States pursuant to this section unless expressly agreed.

(h) At the request of the Government of Puerto Rico and subject to the consent of the receiving state, the Government of the United States shall extend consular assistance on the same basis as for citizens of the United States and/or citizens of Puerto Rico residing in Puerto Rico for travel outside Puerto Rico, the United States and its territories and possessions.

(i) The Government of Puerto Rico has full authority and responsibility to regulate its foreign communications, and the Government of the United States shall provide communications assistance as mutually agreed.<sup>16</sup>

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<sup>16</sup> See Title One (Governmental Relations), Article III, FSM Compact

(j) Except as otherwise provided in these Articles, or its related subsidiary agreements, all obligations, responsibilities, rights and benefits of the Government of the United States under the Treaty of Paris of 1898, are no longer assumed and enjoyed by the Government of the United States.

**ART. \_\_\_\_ . SECURITY AND DEFENSE RELATIONS.<sup>17</sup>**

(a) The Government of the United States devolves to the Government of Puerto Rico full authority and responsibility for security and defense matters in or relating to Puerto Rico.

(b) The Government of Puerto Rico confirms that it shall act in accordance with the principles of international law and the Charter of the United Nations in the exercise of this authority and responsibility.

(c) The United States and Puerto Rico recognize that an armed attack in the Caribbean Basin directed against the territories of either of the Parties would be dangerous to its own peace and safety and declare that they would act to meet the common danger in accordance with their respective constitutional processes.<sup>18</sup>

(d) In order more effectively to achieve this objective, the United States and Puerto Rico separately and jointly by self-help and mutual aid will maintain and develop their individual and collective capacity to resist armed attack directed from without against their territorial integrity and political stability.

(e) Puerto Rico hereby forecloses access to or use of Puerto Rican territory by military personnel or for the military purposes of any third country.

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<sup>17</sup> See Title Three, FSM Compact.

<sup>18</sup> The mutual defense framework is available under the Micronesian framework. See Title Three of FSM Compact. Refer to US—Taiwan Mutual Defense Treaty (1954).

**ART. \_\_\_\_ . TRADE RELATIONS.<sup>19</sup>**

(a) Puerto Rico does not belong to the customs territory of the United States. The U.S. Coastwise Trade Laws, including the Jones Act and its cabotage requirements, are no longer applicable to Puerto Rico.

(b) Puerto Rico and the United States shall establish a free trade area.<sup>20</sup> The objectives of this arrangement, as elaborated more specifically in a subsidiary free trade agreement, shall include national treatment, most-favored-nation treatment, and transparency, in order to: (a) encourage expansion and diversification of bilateral trade; (b) guarantee cross-border movement of, goods and services; (c) promote conditions of fair competition; (d) substantially increase investment opportunities in the territories of the Parties; (e) provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory; and (f) further bilateral, regional, and multilateral cooperation to expand and enhance the benefits of these Articles of Free Association.

**ART. \_\_\_\_ . FINANCE AND TAXATION. [Because the political branches in Washington are at the verge of considering important amendments to the IRC—amendments which could potentially transform international taxation with grave implications to Puerto Rico's global competitiveness—this section will require up to date analysis and fresh thinking.]**

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<sup>19</sup> See Title Two (Economic Relations), Article IV, FSM Compact.

<sup>20</sup> Refer to CAFTA-DR, Ch. 1. *See also* Article IV FSM Compact.

**ART. \_\_\_\_ . CURRENCY.<sup>21</sup>**

The currency of the United States shall be the official circulating legal tender of Puerto Rico. Should the Government of Puerto Rico act to institute another currency, the terms of an appropriate currency transitional period shall be as agreed with the Government of the United States.

**ART. \_\_\_\_ . PUBLIC DEBT. [Because the debt ceiling formula, along with the balanced budget requirement and debt priority ranking in case of default, will be included in the new Puerto Rico Constitution (as is the case today see P.R. Const. Art. VI, Secs. 2, 6, 7 and 8), including this section here might be unnecessary.]** PROMESA is no longer applicable to Puerto Rico.

**ART. \_\_\_\_ . CITIZENSHIP AND IMMIGRATION.**

Residents of Puerto Rico born before the enactment of the Articles of Free Association who acquired U.S. citizenship by birth in Puerto Rico shall maintain their U.S. citizenship after the entry into full force and effect of the Articles of Free Association. **[Congress should decide whether it will continue to provide for U.S. citizenship by birth with respect to those individuals born in Puerto Rico on or after the enactment of the Articles of Free Association, thus allowing for dual U.S.-Puerto Rican citizenship for this specific class of persons.]**

**ART. \_\_\_\_ . INDIVIDUAL RIGHTS TO ECONOMIC BENEFITS AND GRANTS. [To be negotiated in full in light of Puerto Rico's unique legal and demographic realities and the U.S.'s fiscal considerations.]**

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<sup>21</sup> See Title Two (Economic Relations), Article V, FSM Compact.

**ART. \_\_\_\_ . APPROVAL AND EFFECTIVE DATE.<sup>22</sup>**

The Articles shall come into effect upon mutual agreement between the Government of the United States and the Government of Puerto Rico after completion of the following:

(a) Approval by the Government of Puerto Rico in accordance with its constitutional processes.

(b) Approval by the Government of the United States in accordance with its constitutional processes.

**ART. \_\_\_\_ . REPRESENTATION<sup>23</sup>**

Relations between the Government of the United States and the Government of Puerto Rico shall be conducted in accordance with the Vienna Convention on Diplomatic Relations. In addition to diplomatic missions and representation, the Governments may establish and maintain other offices and designate other representatives on terms and in locations as may be mutually agreed.

**ART. \_\_\_\_ . DISPUTE RESOLUTION.<sup>24</sup>**

(a) The Government of the United States shall confer promptly at the request of the Government of Puerto Rico and that Government shall confer promptly at the request of the Government of the United States on matters relating to these Articles or its subsidiary agreements.

(b) In the event the Government of the United States or the Government of Puerto Rico, after conferring, determines that there is a dispute

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<sup>22</sup> See Title Four (General Provisions), Article I, FSM Compact.

<sup>23</sup> See Title One (Governmental Relations), Article V, FSM Compact.

<sup>24</sup> See Title Four (General Provisions), Article II, FSM Compact.

and gives written notice thereof, the two Governments shall make a good faith effort to resolve the dispute between themselves.

(c) If a dispute between the Government of the United States and the Government of Puerto Rico cannot be resolved within 180 days of written notification in the manner provided in these Articles, either Party to the dispute may refer it to international arbitration under the aegis of the Permanent Court of Arbitration at The Hague.

**ART. \_\_\_\_ . AMENDMENT.<sup>25</sup>**

These Articles may be amended by mutual agreement of the Government of the United States and the Government of Puerto Rico, in accordance with their respective constitutional processes.

**ART. \_\_\_\_ . TERMINATION.<sup>26</sup>**

(a) These Articles may be terminated by mutual agreement of the Government of Puerto Rico and the Government of the United States, in accordance with their respective constitutional processes.

(b) These Articles may be terminated by the Government of the United States in accordance with its constitutional processes. Such termination shall be effective on the date specified in the notice of termination by the Government of the United States but not earlier than six months following delivery of such notice. The time specified in the notice of termination may be extended by mutual agreement of the Parties.

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<sup>25</sup> See Title Four (General Provisions), Article III, FSM Compact.

<sup>26</sup> See Title Four (General Provisions), Article IV, FSM Compact.



(c) These Articles may be terminated by the Government of Puerto Rico in accordance with its constitutional processes. Such termination shall be effective on the date specified in the notice of termination by the Government of Puerto Rico but not earlier than six months following delivery of such notice. The time specified in the notice of termination may be extended by mutual agreement of the Parties.

**ART. \_\_\_\_ . SURVIVABILITY.**<sup>27</sup> Should termination occur, economic and other assistance by the Government of the United States shall continue only if and as mutually agreed by the Governments of the United States and Puerto Rico, and in accordance with the Parties' respective constitutional processes.

**SEC. 8. STATEHOOD.**<sup>28</sup> Should the option of statehood be certified by the Governor pursuant to Section 4(b) of this Act, said option shall go into effect in accordance with this Section.

Whereas: Upon admission as a State, Puerto Rico would cease being a territory of the United States.

Whereas: Puerto Rico would be admitted as a sovereign State of the Union, with its current Constitution, on an equal footing and in true permanent union with the other fifty States.

Whereas: Admission to the Union has historically been a flexible and varied process which has been adapted to the individual circumstances of each new State.

Whereas: Congress, has the constitutional power to facilitate the admission of new States.

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<sup>27</sup> See Title Four (General Provisions), Article V, FSM Compact.

<sup>28</sup> Adapted from S. 712, H.R. 856, and H.R. 1522.

Whereas: Congress is willing to provide for a smooth process of adjustment from the tax structure of the territorial status to the Federal fiscal system.

Whereas: The State of Puerto Rico would be assured of its reserved state right under the Constitution to continue to maintain both Spanish and English as its official languages, as well as of its right to preserve and enhance its particular cultural characteristics.

Whereas: Statehood creates the only permanent union with the United States that is consistent with the “more perfect union” of equal States established by the United States Constitution.

Whereas: Statehood entails fundamental political and economic improvement for Puerto Rico.

Whereas: Statehood entails economic self-reliance and social justice, including parity for Puerto Rico’s residents in those aspects of Federal legislation that cover the residents of the several States.

Whereas: Statehood means political equality, and, specifically, the right to participate in the process of election of the President and Vice-President of the United States as well as the right to elect two United States Senators and the corresponding number of Members of the United States House of Representatives.

Whereas: Statehood means that all benefits and protections of the United States Constitution would be fully bestowed on the People of the Commonwealth of Puerto Rico together with the guarantee of full protection by the Federal judicial system.

Whereas: Statehood entails the immediate full extension of Federal entitlements and legislation providing parity for the residents of Puerto Rico in all Federal programs.

Whereas: The State of Puerto Rico would assume all the responsibilities of a State of the Union.

Whereas: Statehood is a political formula recognized by the international community through UN Resolution 1541 (XV) (1960) of the General Assembly of the United Nations and through Resolution 1469 (XIV) (1959) of that body, which was adopted upon the admission of the new States of Alaska and Hawaii.

Whereas: Statehood embodies the highest degree of autonomy and sovereignty in a true permanent union in perpetuity with the several States.

*Therefore: Be it resolved:* Subject to the provisions of this Act, and upon issuance of the Presidential proclamation required by Section 8.5 of this Act, the Commonwealth of Puerto Rico is declared to be a State of the United States of America, and is declared admitted into the Union on an equal footing with the other States in all respects whatsoever.

**SEC. 8.1. CONSTITUTION.**—The Constitution of the State of Puerto Rico shall always be republican in form and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. The Constitution of the Commonwealth of Puerto Rico, as approved by Public Law 82–447 (1952) and subsequently amended, is hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified, and confirmed as the Constitution of the State of Puerto Rico. Upon admission, Puerto Rico shall be known as The State of Puerto Rico.

**SEC. 8.2. TERRITORY AND BOUNDARIES.**—Subject to the provisions of this Section, the State shall consist of all of the islands, together with their appurtenant reefs,

seafloor, and territorial waters in the seaward boundary, presently under the jurisdiction of the Commonwealth of Puerto Rico.

**SEC. 8.3. STATE TITLE TO LAND AND PROPERTY.—**

(a) The State and its political subdivisions shall have and retain title to all property, real and personal, which it currently holds.

(b) Any lands and other properties that, as of the date of admission of Puerto Rico into the Union, are set aside pursuant to law for the use of the United States under any (A) Act of Congress, (B) Executive order, (C) proclamation of the President, or (D) proclamation of the Governor of the Commonwealth of Puerto Rico, shall remain the property of the United States; except that the State of Puerto Rico shall have the exclusive right to explore, exploit, lease, possess and use all seabed, natural, and mineral resources lying within the two hundred mile economic zone continental shelf boundary around the waters of the Archipelago of Puerto Rico; however, all other rights of sovereignty in regards to the continental shelf and waters, shall belong to the United States except those already vested in Puerto Rico.

(c) Not later than five years after the date of admission of Puerto Rico as a State of the Union, each Federal agency having control over any land or property that is retained by the United States pursuant to this Section shall submit a report to the President and the Congress concerning the need for such land or property. If the President determines that any such land or property is no longer needed by the Federal Government, it shall be forthwith conveyed to the State of Puerto Rico.

(d) All laws of the United States reserving to the United States the free use or enjoyment of property which vests in or is conveyed to the State of Puerto Rico or its political subdivisions pursuant to this Section or reserving the right to alter, amend, or

repeal laws relating thereto, shall cease to be effective upon the admission of Puerto Rico into the Union.

#### **SEC. 8.4. CLAIMS TO FEDERAL LANDS AND PROPERTY.**

(a) The Commonwealth and its people recognize all rights and titles to any lands or other property not granted or conferred to the Commonwealth or its political subdivisions by or under the authority of this Act, the right or title to which is now held by the United States or subject to disposition by the United States.

(b) (1) Nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by applicable laws of the United States. (2) Nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that any applicable law authorizes, establishes, recognizes, or confirms the validity or invalidity of any such claim, and the determination of the applicability of any law to any such claim shall be unaffected by anything in this Act.

(c) No taxes shall be imposed by the State upon any lands or other property now owned or hereafter acquired by the United States.

(d) Notwithstanding any other provisions of this Act or any other provision of law, in compensation for the lands now held by the United States, the Congress shall appropriate Federal payments to be assigned to the State of Puerto Rico, in the amount of \_\_\_\_\_ annually, during the next \_\_\_\_\_ years, for the sole purpose of assisting the State in the payment of its present public debt and liabilities.

#### **SEC. 8.5. ADMISSION, ELECTIONS, LEGAL DISPUTES.<sup>29</sup>**

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<sup>29</sup> Adapted from Sec. 7, H.R. 1522.

(a) Presidential Proclamation.—Upon receipt of the Governor’s certification of the plebiscite results pursuant to Section 4(b), the President of the United States shall issue a proclamation declaring the date Puerto Rico is admitted as a State of the Union on an equal footing with all other States, which date shall be not later than one year from the date on which the aforementioned certification of the plebiscite results was received by the President of the United States. Upon issuance of the proclamation by the President, Puerto Rico shall be deemed admitted into the Union as a State.

(b) Elections.—Not more than one month after such proclamation, the Governor of the State of Puerto Rico shall issue a declaration which shall designate and announce the dates and other requirements for primary and general elections under applicable Federal and local law for representation in the Senate and the House of Representatives.

(c) Resident Commissioner.—The office of Resident Commissioner shall cease to exist upon the swearing in of the first Member of the House so elected.

(d) Certification of Results. —The President of the State Elections Commission of Puerto Rico shall certify the results of such primary and general elections to the Governor. Within 10 days of the date of each certification, the Governor shall declare the results of the primary and general elections, and transmit the results of each election to the President of the United States, the President pro tempore of the Senate, and the Speaker of the House of Representatives.

(e) Any legal dispute or controversy arising out of the electoral processes conducted under this Section shall be adjudicated by the United States District Court for the District of Puerto Rico and the Appellate Federal Court System. The Courts of the State of Puerto Rico shall not have jurisdiction to entertain any suit, appeal, writ of revision or legal action, arising out of these elections.

**SEC. 8.6. SENATORS AND REPRESENTATIVES.** The State of Puerto Rico upon its admission into the Union shall be entitled to Senators and Representatives. The Senators and Representatives elected shall be entitled to be admitted to seats in Congress and to all the rights and privileges of Senators and Representatives of the other States in the Congress of the United States.

(a) In the first election of Senators, the two senatorial offices shall be separately identified and designated, and no person may be a candidate for both offices. Nothing in this Section shall impair the privilege of the Senate to determine the class and term to which each of the Senators-elect shall be assigned.

(b) In the first election of Representatives following admission, and subsequent elections until the next Census-based reapportionment cycle, the Commonwealth of Puerto Rico shall be entitled to the same number of Representatives as the State whose most recent Census population was closest to, but less than, that of Puerto Rico, and such Representatives shall be in addition to the membership of the House of Representatives as now prescribed by law: *Provided*, that any such increase in the membership shall not operate to either increase or decrease the permanent membership of the House of Representatives as prescribed in the Act of August 8, 1911 (37 Stat. 13), nor shall such temporary increase affect the basis of apportionment established by the Act of November 15, 1941 (55 Stat. 761); for the Eighty-third Congress and each Congress thereafter, unless Congress acts to increase the total number of members of the House of Representatives. Thereafter, the State of Puerto Rico shall be entitled to such number of Representatives as provided for by applicable law based on the next reapportionment. The apportionment of congressional districts for the first election and

subsequent election of Representatives shall be conducted as provided for by the Constitution and laws of the State of Puerto Rico.

**SEC. 8.7. CONTINUITY OF LAWS, GOVERNMENT, AND OBLIGATIONS.<sup>30</sup>**

Upon the admission of the State of Puerto Rico into the Union, the following shall apply:

(a) CONTINUITY OF LAWS.—All of the territorial laws in force in the Commonwealth of Puerto Rico on the date of issuance of the proclamation Section 8.5(a) shall be and continue in force and effect throughout the State, until amended, modified or repealed by the State. All of the laws of the United States shall have the same force and effect within the State as elsewhere in the United States.

(b) CONTINUITY OF GOVERNMENT.—The individuals holding legislative, executive, and judicial offices of Puerto Rico shall continue to discharge the duties of their respective offices when Puerto Rico becomes a State of the Union in, under, or by authority of the government of the State, as provided by the constitution and laws of the State.

(c) CONTINUITY OF OBLIGATIONS.—All contracts, obligations, liabilities, debts, and claims of the Commonwealth of Puerto Rico and its instrumentalities at the moment of admission shall continue in full force and effect as the contracts, obligations, liabilities, debts, and claims of the State of Puerto Rico and its instrumentalities when Puerto Rico becomes a State of the Union.

(d) PROMESA.—**[Congress should draft a provision for the repeal of PROMESA, including Titles I, II, and V, and to give continuity to proceedings for debt adjustment under Title III which may still be pending at the moment of admission, if any, with the clarification that the**

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<sup>30</sup> Adapted from Sec. 9, H.R. 1522.



**Government of the State of Puerto Rico shall represent itself in the proceedings instead of having the FOMB represent Puerto Rico. Congress should clarify that any public debt issued by Puerto Rico or its instrumentalities after the date of admission shall be treated the same as public debt issued in any other state for federal tax purposes.]**

**SEC. 8.8. CONTINUATION OF SUITS.**

(a) No writ, action, indictment, cause, or proceeding pending in any court of the Commonwealth of Puerto Rico, shall abate by reason of the admission of the State of Puerto Rico into the Union, but shall proceed within such appropriate State courts as are now established under the Constitution of the Commonwealth, or shall continue in the United States District Court for the District of Puerto Rico, as the nature of the case may require.

(b) All civil causes of action and all criminal offenses, which shall have arisen or been committed prior to the admission of the State, but as to which no writ, action, indictment, or proceeding shall be pending at the date of such admission, shall be subject to prosecution in the appropriate State courts or in the United States District Court for the District of Puerto Rico in like manner, to the same extent, and with like right of appellate review, as if such State had been created and such State courts had been established prior to the accrual of such causes of action or the commission of such offenses. The admission of the State shall effect no change in the procedural or substantive laws governing causes of action and criminal offenses which shall have arisen or been committed, and any such criminal offenses as shall have been committed against the laws of the Commonwealth of Puerto Rico, shall be tried and punished by the appropriate courts of the State, and any such criminal offenses as shall be

committed against the laws of the United States shall be tried and punished in the United States District Court for the District of Puerto Rico.

**SEC. 8.9. APPEALS.** Parties shall have the same rights of judicial review of final decisions of the United States District Court for the District of Puerto Rico or the Supreme Court of the Commonwealth of Puerto Rico, in any case finally decided prior to the admission of the State of Puerto Rico into the Union, whether or not an appeal therefrom shall have been perfected prior to such admission. The United States Court of Appeals for the First Circuit and the Supreme Court of the United States, shall have the same jurisdiction in such cases as by law provided prior to the admission of the State into the Union. Any mandate issued subsequent to the admission of the State, shall be to the United States District Court for the District of Puerto Rico or a court of the State, as appropriate. Parties shall have the same rights of appeal from and appellate review of all orders, judgments, and decrees of the United States District Court for the District of Puerto Rico and of the Supreme Court of Puerto Rico, in any case pending at the time of admission of the State into the Union, and the Supreme Court of Puerto Rico and the Supreme Court of the United States shall have the same jurisdiction therein, as by law provided in any case arising subsequent to the admission of the State into the Union.

**SEC. 8.10. MILITARY LANDS.**

(a) Subject to the subsection (b) and notwithstanding the admission of the State of Puerto Rico into the Union, authority is reserved in the United States for the exercise by the Congress of the United States of the power of exclusive legislation, as provided by article I, section 8, clause 17, of the Constitution of the United States, in all cases whatsoever over such tracts or parcels of lands as, immediately prior to the admission of

the State, are controlled or owned by the United States and held for defense or Coast Guard purposes.

(b) (1) The State of Puerto Rico shall always have the right to serve civil or criminal process within such tracts or parcels of land in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed within the State but outside of such tracts or parcels of land. (2) The reservation of authority in the United States for the exercise by the Congress of the United States of the power of exclusive legislation over such lands shall not operate to prevent such lands from being a part of the State of Puerto Rico, or to prevent the State from exercising over or upon such lands, concurrently with the Federal Government, any jurisdiction which it would have in the absence of such reservation of authority and which is consistent with the laws hereafter enacted by the Congress pursuant to such reservation or authority. (3) The power of exclusive legislation shall vest and remain in the United States only so long as the particular tract or parcel of land involved is controlled or owned by the United States and used for defense or Coast Guard purposes, except that the United States shall continue to have sole and exclusive jurisdiction over such military installations as have been or may be determined to be critical areas as designated by the President of the United States or the Secretary of Defense.

**SEC. 8.10. UNITED STATES NATIONALITY.** No provision of this Act shall operate to confer United States nationality, to terminate nationality lawfully acquired, or to restore nationality terminated or lost under any law of the United States or under any treaty to which the United States is or was a party.

**SEC. 8.11. REPEAL AND AMENDMENT OF INCONSISTENT LAWS.** All Federal and territorial laws, rules, and regulations, or parts of Federal and territorial

laws, rules, and regulations, applicable to Puerto Rico that are incompatible with the political and legal status of statehood under the Constitution and the provisions of this Act are repealed and terminated as of the date of statehood admission proclaimed by the President under Section 8.5(a) of this Act. Except for those parts that are not in conflict with this Act and the condition of statehood, the following shall be deemed repealed upon the effective date of the admission of Puerto Rico as a State:

(a) The Puerto Rican Federal Relations Act of 1950 (Public Law 81–600).

(b) The Act of March 2, 1917 (Public Law 64–368).

(c) The Act of April 12, 1900 (Public Law 56–191).

**SEC. 8.12. TAXATION. [Transition provisions for the application of federal taxes to the State of Puerto Rico must be drafted by Congress in consideration of developments subsequent to prior legislation, such as those described in the note accompanying Sec. 6.13.]**

**SEC. 8.13. ECONOMIC ADJUSTMENT FROM TERRITORY TO STATE. [S. 712, Title II, Sec. 16 could be used as a starting point but would need to be revised to account for PROMESA and other issues that can be anticipated, such as those raised by the DOJ in its memorandum of April 12, 2021, to the House Natural Resources Committee on H.R. 1522.]**

**SEC. 8.14. TERMS AND CONDITIONS.** The State of Puerto Rico is assured of its reserved State right under the Constitution to continue to maintain both Spanish and English as its official languages, as well as of its right to preserve and enhance its rich Hispanic cultural heritage. However, all records and proceedings of all agencies, departments, offices and courts of the United States Federal Government operating in Puerto Rico, shall continue to be conducted and kept in the English language as

heretofore. The Commonwealth of Puerto Rico's present Official Languages Act, 1 L.P.R.A. 51-55 (Laws of Puerto Rico, 1902), making Spanish and English official State languages, is a State prerogative protected by the Constitution of the United States.

**SEC. 9. CONGRESSIONAL PROCEDURES FOR CONSIDERATION OF LEGISLATION. [See, e.g., H.R. 856 Sec. 6.]**

**SEC. 10. AVAILABILITY OF FUNDS FOR VOTER EDUCATION, THE PLEBISCITE AND, IF NECESSARY, THE RUNOFF VOTE.<sup>31</sup>**

(a) In general.—The Puerto Rico Elections Commission shall carry out a non-partisan educational campaign through traditional paid media related to the plebiscite under Section 4.

(b) Authorization of appropriations.—There is authorized to be appropriated \$2,500,000, for the Puerto Rico Elections Commission to carry out a plebiscite vote, and if necessary there is also authorized to be appropriated an additional amount of \$2,500,000 for a runoff vote, under Section 4. **[Congress should reassign funds from PL 113-76 for this purpose.]**

(c) Authorization of appropriations.—There is authorized to be appropriated for the Puerto Rico Elections Commission, \$5,000,000 to carry out a voter education campaign ahead of the plebiscite under Section 4. The Federal Election Commission shall ensure that funds made available under this paragraph are used to inform voters of the official definitions of each of the political status options in the plebiscite held under this Act. All educational materials shall give equal exposure to each of the status options appearing on the ballot as provided in Sec. 4 of this Act.

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<sup>31</sup> Adapted from Sec. 5, H.R. 2070