

**House Committee on Natural Resources**  
**Hearing on H.R. 1522, "Puerto Rico Statehood Admission Act," and**  
**H.R. 2070, "Puerto Rico Self-Determination Act"**

**Christina D. Ponsa-Kraus**  
**Testimony**

Good afternoon. My name is Christina D. Ponsa-Kraus. I am a law professor at Columbia University and an expert on Puerto Rico's constitutional status, and I am the author of a letter to Congressional leadership signed by 47 legal and constitutional scholars supporting the Admission Act and opposing the Self-Determination Act. The letter has been introduced into the record.

I am also Puerto Rican myself. I was raised on the island from my infancy until I graduated from high school. I am a native speaker of Spanish. My parents and extended family live in Puerto Rico. I appreciate the Committee's attention to the urgent matter of Puerto Rico's future and the invitation to speak today.

Puerto Ricans reject territorial status, which denies them a guarantee of local self-government and federal representation. Last November, a majority chose statehood in a referendum on the island. The Admission Act responds to that vote, and it is crucial to be clear about how. It does *not* automatically admit the island into statehood. It does *not* impose or force statehood on Puerto Rico. Instead, it *offers* statehood to Puerto Rico. But first, Puerto Ricans must vote in a *second* referendum, in which they can *accept* or *reject* the offer. Only if they *accept* does the Act provide for Puerto Rico's admission into statehood. This is a careful and constitutionally sound process.

The contrast with the Self-Determination Act could not be more stark. This Act contradicts its own title by completely ignoring the referendum. In a thinly veiled attempt to delay, and therefore defeat, an offer of statehood, it sends Puerto Ricans back to the drawing board to have a debate they have been having for seventy years. And it requires Congress to ratify whatever option they choose—something Congress cannot constitutionally bind itself to do.

The Act requires convention delegates to "debate and draft definitions on self-determination options... outside the Territorial Clause." If this language means Puerto Ricans should debate the pros and cons of statehood and independence, it is gratuitous and dilatory. Puerto Ricans do not need a Congressional invitation to debate these options, and they can keep right on debating them even after Congress offers statehood.

If this language means what its principal sponsors have said it means, then the problem gets worse. They have explained that a convention would consider “statehood, independence, free association or any option other than the current territorial arrangement.”<sup>1</sup> This gets wrong a basic point of constitutional law: There are no “other” non-territorial options.

Statehood is non-territorial. Independence is non-territorial. “Free association” has been described as a “third option,” but to be clear: It is a form of independence, with a treaty or compact of free association between two sovereign nations. In short, there are two, and only two, non-territorial options for Puerto Rico: statehood, and independence with or without free association.

By inviting Puerto Ricans to define “other” non-territorial options, this bill revives a debate Puerto Ricans have already had. When the island became a “commonwealth” in 1952, many Puerto Ricans believed it had ceased to be a U.S. territory, become a separate sovereign, and entered into a binding compact with the United States. If there were a compact, Congress would no longer have the power to modify Puerto Rico’s government unilaterally, and the island would at least no longer be a territory.

But they were wrong. As the Supreme Court recently confirmed, even as a “Commonwealth,” Puerto Rico remains a U.S. territory, and Congress retains the power to modify the island’s government unilaterally – as it did, for example, when it created the Financial Oversight and Management Board in 2016.

The myth of non-territorial commonwealth has long prevented Puerto Ricans from reckoning with the constitutional reality that the only alternatives to being a territory are statehood and independence. The last thing Puerto Ricans need is to debate options that are no longer debatable.

The Self-Determination Act invites Puerto Ricans to have a debate they have been having for seven decades and for which they need no Congressional invitation. Yet it deprives them of an offer of statehood, which they have never had, they just asked for, and only Congress can deliver. Congress should pass the Admission Act without delay.

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<sup>1</sup> Rep. Nydia Velázquez & Rep. Alexandria Ocasio-Cortez, *Puerto Rico, Not Congress, Must Determine Its Future. Our Bill Enables It To Do So.*, nbcnews.com, Aug. 25, 2020.