

House Committee on Natural Resources
Legislative Hearing on H.R. 2070, “Puerto Rico Self-Determination Act of 2021” and
H.R. 1522, “Puerto Rico Statehood Admission Act of 2021”
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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 Puerto Rican. I testified at the hearing in April and I appreciate the invitation to appear again today. At the April hearing, I explained why I support H.R. 1522 and oppose H.R. 2070. Rather than repeat those arguments today, I will respond to several criticisms of H.R. 1522.

First: Critics of H.R. 1522 argue that Congress should not respond to the November referendum with an offer of statehood because voter turnout was too low and the margin of victory was too slim. These objections are specious. As a preliminary matter, the claim of unusually low voter turnout is factually baseless. The rate of participation was about the same as for any territorial office, including that of the governor. Moreover, eligibility to vote was based on voter rolls from 2012, and it is well known that Puerto Rico lost nearly a half a million people between 2012 and 2020, which means the official turnout figures substantially understate the actual percentage of voters who reside on the island and turned out to vote. But more fundamentally, the question of voter turnout is a red-herring. Neither international law nor U.S domestic law predicates the legitimacy of a democratic vote—including a self-determination vote—on voter turnout or supermajority requirements. In a democracy, the voters who cast ballots decide the outcome. And under the well-settled rules of democracy, a simple majority prevails absent a fairly adopted rule requiring a supermajority. Under no circumstance do those who lose get to impose a supermajority requirement after the fact. Tacitly acknowledging these elementary truths, even H.R. 2070 does not include a voter turnout or a supermajority requirement. Nor have its supporters insisted on either.

Second: Critics of H.R. 1522 argue that it is not inclusive whereas H.R. 2070 is. If they mean that every option should receive a fair hearing, the criticism fails to recognize that H.R. 1522 is merely one step in a larger process. A fully inclusive debate in Puerto Rico led to the election of a government that ran on a platform of holding a vote on statehood, which it did last November. The “No” option represented all who opposed statehood and was promoted by a vigorous campaign against statehood. Litigation against the referendum failed. The vote resulted in a majority for statehood, which H.R. 1522 would respect by responding to it with a vote on statehood under federal law, in accordance with precedents in other territories. If enough voters choose “No” this time around, they will remain free to pursue their preferred options. No option, no party, and no voter has been excluded from this process.

If critics mean instead that a self-determination process cannot be democratically legitimate unless the ballot includes all legally permissible status options, they are simply incorrect, as “Yes/No” votes on independence all over the globe and throughout history demonstrate. In fact, even the president of the anti-statehood commonwealth party called for a yes-no vote on statehood as recently as 2017, describing it as a “true and unimpeachable” method for determining the will of the people.

That said, I should add that it is not my view that a “Yes-No” vote is the only legitimate self-determination mechanism for Puerto Rico. A ballot including all of the constitutionally valid status options would be another—as long as it met additional criteria of legitimacy. These include, first and foremost, clear, accurate, and federally sanctioned definitions of the options, without which Puerto Ricans would simply be consigned to an inconclusive debate over what each option entails. For example, were such a process to include independence with a free association treaty, it would have to inform voters that such a treaty could not, under international and domestic law, provide the same guarantee of perpetual birthright U.S. citizenship that statehood would provide.

Third and finally: Some statehood opponents object to H.R. 1522 on the ground that Puerto Rico is a nation and that self-determination for a nation, by definition, cannot include the option to become a state of another nation.

Understood as a procedural argument against H.R. 1522, this “nationalism” objection fails. International law recognizes the right of a nation to choose full integration into another nation in a self-determination decision, as for example U.N. General Assembly Resolution 1541(XV) states explicitly. H.R. 1522 simply offers Puerto Ricans that choice. Understood as a substantive argument against statehood itself, it offers no ground for denying Puerto Ricans who disagree the opportunity to vote for statehood. For what it’s worth, the November 2020 referendum is only the most recent evidence that a majority of Puerto Ricans see no inconsistency between their identity and the choice of statehood, which would bring them equality as citizens of the United States.

In sum, these criticisms of H.R. 1522 are without merit. H.R. 1522 provides a clear, careful, and constitutionally sound self-determination process, and Congress should enact it without further delay.