



The Insular Cases and the Unincorporated Territory Doctrine and their Effects on the Civil Rights of Residents of Puerto Rico

Memorandum on Federal Voting Rights

**Puerto Rico Advisory Committee to the United States Commission on Civil Rights
March 2025**

I. Introduction

The Puerto Rico Advisory Committee hosted three virtual briefings on May 21, May 30, and June 4, 2024, to hear testimony on the right to vote at the federal level relative to the Insular Cases and the Doctrine of the Unincorporated Territory and its effects on the civil rights of Puerto Rican residents.¹ This memorandum follows two others that focused on the “Overview” phase of this study.²

The Committee plans to continue holding briefings to receive input on the following subtopics approved in July 2022: access to public programs and racial/national discrimination. Over its term, the Committee will publish an additional memorandum on these subtopics, culminating in a final report with recommendations developed by the Committee.

¹ Meeting records and transcripts can be found in Appendix A and B.

Public hearing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights United States, May 21, 2024, (virtual hearing), Transcript (hereinafter “Transcript 3”).

Public Hearing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, May 30, 2024, (virtual hearing), Transcript (hereinafter “Transcript 4”).

Public Hearing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, June 4, 2024, (virtual hearing), Transcript (hereinafter “Transcript 5”).

² Puerto Rico Advisory Committee to the United States Commission on Civil Rights. “The Insular Cases and the Unincorporated Territory Doctrine and Their Effects on the Civil Rights of Residents of Puerto Rico.” February 2024. United States Commission on Civil Rights. https://www.usccr.gov/files/2024-02/english_pr-ac_memo-1.pdf (accessed February 12, 2024).

Puerto Rico Advisory Committee to the United States Commission on Civil Rights. “The Insular Cases and the Unincorporated Territory Doctrine and Their Effects on the Civil Rights of Residents of Puerto Rico – Part II, Economic Perspectives.” November 2024. United States Commission on Civil Rights.

https://www.usccr.gov/files/2024-11/english_pr-ac-memo-2.pdf (accessed November 22, 2024).

This memorandum shares the key findings identified in the testimony described directly by the panelists and includes external sources where necessary. It begins with historical context, and the final sections draw on recommendations shared in the testimony and with the Committee's preliminary recommendations regarding voting rights at the federal level. This final report will include the Committee's recommendations.

The Committee heard testimony on voting rights from various historical, legal, and political theory perspectives, and attempted to understand Puerto Rico's unique situation within the historical and sociopolitical context of the United States based on the testimony received. The Committee recognizes that the Puerto Rican Constitution in Article II, Section 2, guarantees the right to vote at the local level.³

II. Historical Context

Changes in U.S. Expansionism Resulting from the Spanish-American War

Until the *Treaty of Paris of 1898*, when Spain ceded its territories at the end of the Spanish-American War - including Puerto Rico - to the United States, there was a scheme through the *Northwest Ordinance* that guided the expansion of the country and the way that territories became states.⁴ The *Northwest Ordinance*, approved in its final version in 1787, was an effort to manage the vast land between the original colonies and the Mississippi River and required three stages for the admission of new states.⁵ These three stages included: 1) Congressional organization of a provisional government in the territory, 2) the attainment of a minimum population to establish a constitution, and 3) a population of 60,000 to be admitted to the Union.⁶ During the 18th Century, the nation's founders believed territorial expansion was necessary for social stability, economic well-being, and liberty.⁷ New states were treated as temporary territories under this ordinance.⁸

³ Puerto Rico Const. art. II, § II.

⁴ Treaty of Paris of 1898, U.S.-Spain, Dec. 10, 1898, Treaty Series 343; *See also: An ordinance for the Government of the Territory of the United States, Northwest of the River Ohio, Congressional Confederacy (1787).*

⁵ *An ordinance for the Government of the Territory of the United States, Northwest of the River Ohio, Congressional Confederacy (1787).*

⁶ *An Ordinance for the Government of the Territory of the United States, Northwest of the Ohio River, Congressional Confederacy (1787)*, Sec. 3-7, p.1, Art. 5, 2; *See also:* Carlos I. Gorrin Peralta, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, June 4, 2024, transcript 5. p. 10-11 (hereinafter cited as Transcript 5); *See also:* Carlos I. Gorrin Peralta. "The Law of the Territories of the United States in Puerto Rico, the Oldest Colony in the World," Rev. 54(2), University of Miami Inter-American L. Rev. p. 33, 80-81, June 21, 2023.

<https://repository.law.miami.edu/cgi/viewcontent.cgi?article=2663&context=umialr> (accessed October 21, 2024).

⁷ Carlos I. Gorrin Peralta, "Historical Analysis of the Insular Cases: Colonial Constitutionalism Revisited." 56, Revista del Colegio de Abogados de Puerto Rico, p. 31, 50, 1995.

⁸ Carlos I. Gorrin Peralta. "The Law of the Territories of the United States in Puerto Rico, the Oldest Colony in the World," Rev. 54(2), University of Miami Inter-American L. Rev. p. 33, 39, June 21, 2023.

<https://repository.law.miami.edu/cgi/viewcontent.cgi?article=2663&context=umialr> (accessed October 21, 2024).

The Committee received testimony indicating that this process changed dramatically with the Spanish-American War, which panelists argue was part of the United States' plan to take control of the Caribbean and consolidate its own economic and political power.⁹ The United States initially entered the War by supporting Cuba in its struggle to gain independence from Spain.¹⁰ In this process, Spain defended its other territories, including Puerto Rico; later, the United States admitted its interest in obtaining Puerto Rico and other territories.¹¹ The culmination of the War and the acquisition of Puerto Rico and other territories by the United States has led historians to argue that the War was only a transition from Spanish imperialism to American imperialism.¹² From this point on, the annexation of territories no longer responded to the ideology of territorial expansionism, but to economic, strategic, and geopolitical interests in territories with demographic characteristics that were very different from the territories admitted as states under the *Northwest Ordinance*.¹³ This new stage paved the way for the differential treatment Puerto Rico has received from the federal government for more than 126 years in which a “legal but illegal regime” operates, where the government *does not* respond to the sovereignty of the people.¹⁴

Racist Perspectives in the Acquisition and Classification of Territories and the Application of the Constitution in Puerto Rico

When annexing new territories, the United States faced with what to do with such racially and culturally diverse populations. Some argue that, with the *Treaty of Paris of 1898*, the United States decided to become an empire.¹⁵ The Treaty stipulated that Congress would determine the civil rights and political status of the territories' native inhabitants.¹⁶

⁹ Michael González-Cruz, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, May 21, 2024, transcript 3. p. 4 (hereinafter cited as Transcript 3).

¹⁰ Trask, David. “The Spanish-American War.” Library of Congress Research Guides. <https://guides.loc.gov/world-of-1898/overview-essay> (accessed October 21, 2024).

¹¹ Ibid.

¹² Ibid.

¹³ Gorrín Peralta Testimony, Transcript 5, p. 11, 12.

¹⁴ Gorrín Peralta Testimony, Transcript 5, p. 11; *See also*: Adi Martínez Román, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, May 21, 2024, transcript 3. p. 10 (hereinafter cited as Transcript 3). For more information on federal acts implemented by the United States in Puerto Rico after obtaining the territory, please see: https://www.usccr.gov/files/2024-02/spanish_pr-ac_memo-1.pdf.

¹⁵ Martínez Román Testimony, Transcript 3, p. 10-11; *See also*: National Public Radio. “The History of US Intervention And The ‘Birth Of The American Empire.’” January 24, 2017. <https://www.npr.org/2017/01/24/511387528/the-history-of-us-intervention-and-the-birth-of-the-american-empire> (accessed October 21, 2024).

¹⁶ *Treaty of Paris of 1898*, U.S.-Spain, Dec. 10, 1898, Treaty Series 343; *See also*: Carlos I. Gorrín Peralta. “¿Son los proyectos congresionales sobre Puerto Rico instrumentos de descolonización y libre determinación?” 4 AMICUS Rev. Pol. Pub. and Leg. UIPR, p.1. 4, 2021. <https://aldia.microjuris.com/wp-content/uploads/2022/04/Separata-Gorriin.pdf> (accessed August 15, 2024).

The nine Supreme Court justices who heard the first Insular Cases — which contain explicitly racist language describing the territories as peopled by “alien races” and “savage tribes”¹⁷ — established the controversial, unprecedented categories of “incorporated territory” and “unincorporated territory” to distinguish between annexed territories with a path to statehood and newly acquired territories.¹⁸ Panelists argued that the title “unincorporated territory” was associated with territories populated mostly by people of color, where the application of the Constitution is limited.¹⁹

Given the so-called inferiority of the inhabitants of the new territories, Congress had difficulty in deciding to what extent the Constitution applied to Puerto Rico and whether or not the inhabitants were eligible for U.S. citizenship.²⁰ Congress was advised that the Constitution, created by “civilized and educated people,” should not be extended to the “ignorant and lawless brigands who infest Puerto Rico.”²¹ In *Downes v. Bidwell*, Justice White’s opinion argued that these unknown islands, “peopled with an uncivilized race,” were “unfit” to receive citizenship and that if the “conquered are a fierce, savage, and restless people, the conqueror may govern them with a stronger rein to stop their impetuosity and keep them in subjection.”²² This distinction between

¹⁷ *Downes v. Bidwell*, 182 U.S. 244 (1901); *See also: DeLima v. Bidwell*, 182 U.S. 1 (1901).

¹⁸ *Downes v. Bidwell*, 182 U.S. 244 (1901); *See also: Gorrín Peralta Testimony*, Transcript 5, p. 12; *See also: Martínez Román Testimony*, Transcript 3, p. 11; *See also: Adriel Cepeda Derieux & Rafael Cox Alomar, “Saying What Everyone Knows to be True: Why Stare Decisis is Not an Obstacle to Overruling the Insular Cases,”* Columbia Human Rights Law Rev, Vol. 53:3. HRLR. p. 721, 733, May 2022. <https://hrlr.law.columbia.edu/hrlr/saying-what-everyone-knows-to-be-true-why-stare-decisis-is-not-an-obstacle-to-overruling-the-insular-cases/> (accessed on October 22, 2024); *See also: CORRECTED Brief for Financial Oversight and Management Board for Puerto Rico as Amici Curiae supporting the First Circuit’s Ruling on the Appointments Clause Issue, Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*, 590 U.S. 48 (2020) (No.18-1334), p. 2.; *See, by way of example: Dooley v. United States*, 182 US 222 (1901); *Dooley v. United States*, 183 US 151 (1901); *Armstrong v. United States*, 182 US 243 (1901); *Downes v. Bidwell*, 182 US 244 (1901); *Crossman v. United States*, 182 US 221 (1901); *Huus v. New York and Porto Rico Steamship Co.*, 182 US 392 (1901); *Balzac v. Porto Rico*, 258 US 298 (1922).

¹⁹ Martínez Román Testimony, Transcript 3, p. 11; *See also: Brief for Financial Oversight and Management Board for Puerto Rico as Amici Curiae supporting the First Circuit’s Ruling on the Appointments Clause Issue, Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*, 590 U.S. 48 (2020) (No.18-1334), p. 20.

²⁰ *Downes v. Bidwell* 182 U.S. 244 (1901); *See also: Brief for Financial Oversight and Management Board for Puerto Rico as Amici Curiae supporting the First Circuit’s Ruling on the Appointments Clause Issue, Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*, 590 U.S. 48 (2020) (No.18-1334), p. 21.

²¹ Brief for Financial Oversight and Management Board for Puerto Rico as Amici Curiae supporting the First Circuit’s Ruling on the Appointments Clause Issue, *Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*, 590 U.S. 48 (2020) (No.18-1334), p. 20; *See also: Simeon E. Baldwin, The Constitutional Questions Incident to the Acquisition and Government by the United States of Island Territory*, 12, no. 6, Harvard Law Rev. 393 (1899) <https://doi.org/10.2307/1321530>, p. 415.

²² *Downes v. Bidwell*, 182 US 244 (1901), p. 302, 306; *See also: Brief for Financial Oversight and Management Board for Puerto Rico as Amici Curiae supporting the First Circuit’s Ruling on the Appointments Clause Issue, Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*, 590 U.S. 48 (2020) (No.18-1334), p. 21.

two types of territories, which were supposed to have been temporary categorizations and are based on racist ideas, still affects more than 3 million U.S. citizens living in Puerto Rico today.²³ Congress reached an agreement to pass the *Foraker Act* in 1900, establishing a civil government obligated to federal authority in Puerto Rico under the understanding that it would not become a state.²⁴

The testimony received by the Committee indicates that the Insular Cases have provided a justification for the continuation of unconstitutional practices.²⁵ Today, these practices would not withstand careful legal scrutiny.²⁶ The racist motivations and lack of support in constitutional text, structure, and history would make them a legal anomaly.²⁷ *Reid v. Covert* is an exception, with four of the justices describing territorial incorporation as a dangerous doctrine that undermines the government.²⁸

²³ Brief for Financial Oversight and Management Board for Puerto Rico as Amici Curiae supporting the First Circuit’s Ruling on the Appointments Clause Issue, Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC, 590 U.S. 48 (2020) (No.18-1334), p. 2; *See also*: US Census Bureau. “Quick Facts, Puerto Rico.” July 2023 Population Estimates. <https://www.census.gov/quickfacts/fact/table/PR/PST045222> (accessed February 15, 2024).

²⁴ *Foraker Act of 1900*, Pub. L. No. 56-191, 31 Stat. 77, c. 191 (codified in scattered sections of 48 U.S.C.); *See also*: Brief for Financial Oversight and Management Board for Puerto Rico as Amici Curiae supporting the First Circuit’s Ruling on the Appointments Clause Issue, Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC, 590 U.S. 48 (2020) (No.18-1334), p. 20.

²⁵ Adriel Cepeda Derieux & Rafael Cox Alomar, “*Saying What Everyone Knows to be True: Why Stare Decisis is Not an Obstacle to Overruling the Insular Cases*,” *Columbia Human Rights Law Rev*, Vol. 53:3. HRLR. p. 721, 771, May 2022. <https://hrlr.law.columbia.edu/hrlr/saying-what-everyone-knows-to-be-true-why-stare-decisis-is-not-an-obstacle-to-overruling-the-insular-cases/> (accessed on October 22, 2024); *See also*: Brief for Financial Oversight and Management Board for Puerto Rico as Amici Curiae supporting the First Circuit’s Ruling on the Appointments Clause Issue, Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC, 590 U.S. 48 (2020) (No.18-1334), p. 15; *See also*: Christina D. Ponsa-Kraus, George Welwood Murray Professor of Legal History, Columbia Law School, Written Statement for the Briefing before the Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights, June 4, 2024, at 3 (hereinafter Ponsa-Kraus Statement).

²⁶ Adriel Cepeda Derieux & Rafael Cox Alomar, “*Saying What Everyone Knows to be True: Why Stare Decisis is Not an Obstacle to Overruling the Insular Cases*,” *Columbia Human Rights Law Rev*, Vol. 53:3. HRLR. p. 721, 771, May 2022. <https://hrlr.law.columbia.edu/hrlr/saying-what-everyone-knows-to-be-true-why-stare-decisis-is-not-an-obstacle-to-overruling-the-insular-cases/> (accessed on October 22, 2024); *See also*: Brief for Financial Oversight and Management Board for Puerto Rico as Amici Curiae supporting the First Circuit’s Ruling on the Appointments Clause Issue, Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC, 590 U.S. 48 (2020) (No.18-1334), p. 15; *See also*: Christina D. Ponsa-Kraus, George Welwood Murray Professor of Legal History, Columbia Law School, Written Statement for the Briefing before the Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights, June 4, 2024, at 3 (hereinafter Ponsa-Kraus Statement).

²⁷ *Ibid*.

²⁸ *Reid v. Covert*, 354 US 1, 14 (1957); *See also*: Adriel Cepeda Derieux & Rafael Cox Alomar, “*Saying What Everyone Knows to be True: Why Stare Decisis is Not an Obstacle to Overruling the Insular Cases*,” *Columbia Human Rights Law Rev*, Vol. 53:3. HRLR. p. 721, 768, May 2022. <https://hrlr.law.columbia.edu/hrlr/saying-what-everyone-knows-to-be-true-why-stare-decisis-is-not-an-obstacle-to-overruling-the-insular-cases/> (accessed on October 22, 2024).

Territorial status was originally understood to be temporary

The Territorial Clause of the Constitution, adopted in 1787, authorizes Congress to “dispose of,” or have discretion over, the territories.²⁹ At that moment in history, however, this power would have been understood to be temporary since, until the beginning of the 20th Century, the acquired territories were on a path to becoming states under *the Northwest Ordinance*.³⁰ The Territorial Clause does not authorize Congress to govern the territories indefinitely.³¹ Furthermore, it does not allow Congress to govern indefinitely under racist ideologies without the participation of the people, a practice that changed with the Insular Cases and that has kept Puerto Rico trapped within an uncertain and degrading space.³² Panelist Adriel Cepeda Derieux, Deputy Director of the Voting Rights Project at the American Civil Liberties Union, told the Committee that the democratic deficit that characterizes the relationship between the United States and Puerto Rico “has no parallel in the legal framework” of the country, and, unlike other shameful deficits in the history of the country – such as slavery – no steps have been taken to remedy this relationship.³³ The creation of the non-incorporation doctrine departs from more than a century of precedent and conflicts with the enumerated powers of government.³⁴

The Sociopolitical Context in the United States During the Annexation of Puerto Rico may have Greatly Influenced the Federal Government's Treatment of the Island

The social and political context that the United States was experiencing at the time Puerto Rico was annexed may have influenced the federal government's treatment of the island.³⁵ Testimony

²⁹ US Const. art. IV, § 3, Clause 2.

³⁰ *An Ordinance for the Government of the Territory of the United States, Northwest of the Ohio River; Congressional Confederation (1787)*; See also: Martínez Román Testimony, Transcript 3, p. 10; See also: José Manuel Saldaña, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, May 21, 2024, transcript 3. p. 22 (hereinafter cited as Transcript 3); See also: Cepeda Derieux Testimony, Transcript 3, p. 14; See also: César A. López Morales. “*Making the Constitutional Case for Decolonization: Reclaiming the Original Meaning of the Territory Clause*.” *Columbia Human Rights Law Rev.* Vol. 53:3. HRLR, p. 772, 799, May 2022. <https://hrlr.law.columbia.edu/hrlr/making-the-constitutional-case-for-decolonization-reclaiming-the-original-meaning-of-the-territory-clause/> (accessed October 22, 2024).

³¹ Martínez Román Testimony, Transcript 3, p. 10; See also: Adriel I. Cepeda Derieux, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, May 21, 2024, transcript 3. p. 14 (hereinafter cited as Transcript 3); See also: César A. López Morales. “*Making the Constitutional Case for Decolonization: Reclaiming the Original Meaning of the Territory Clause*.” *Columbia Human Rights Law Rev.* Vol. 53:3. HRLR, p. 772, 792, May 2022. <https://hrlr.law.columbia.edu/hrlr/making-the-constitutional-case-for-decolonization-reclaiming-the-original-meaning-of-the-territory-clause/> (accessed October 22, 2024); See also: Carlos I. Gorriñ Peralta. “*The Law of the Territories of the United States in Puerto Rico, the Oldest Colony in the World*,” *Rev.* 54(2), University of Miami Inter-American L. Rev. p. 33, 75, June 21, 2023. <https://repository.law.miami.edu/cgi/viewcontent.cgi?article=2663&context=umialr> (accessed October 21, 2024).

³² Cepeda Derieux Testimony, Transcript 3, p. 14; See also: Saldaña Written Testimony, 3.

³³ Cepeda Derieux Testimony, Transcript 3, p. 14.

³⁴ U.S. Const. art. I, § 8; See also: Brief for Financial Oversight and Management Board for Puerto Rico as Amici Curiae supporting the First Circuit’s Ruling on the Appointments Clause Issue, *Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*, 590 U.S. 48 (2020) (No.18-1334), p. 3.

³⁵ Keyssar Testimony, Transcript 5, p. 4.

indicates that from the time the Constitution was written through the Reconstruction era after the Civil War (roughly 1787 to 1877, before the Spanish-American War), there was an increase in faith in democracy and an expansion in access to the right to vote.³⁶ For example, state legislatures eliminated the requirement of owning property in order to vote.³⁷ When the Constitution was originally written, the right to vote was primarily restricted to White male property owners and taxpayers.³⁸ In addition, three significant amendments to the Constitution were approved. The 13th Amendment abolished slavery in 1865 at the end of the Civil War.³⁹ The 14th Amendment, which, in its first clause, established that every person born or naturalized in the United States is a citizen and prohibited states from depriving citizens of the equal protection of the law within their jurisdictions.⁴⁰ When it was ratified, the citizenship clause of the 14th Amendment was directed toward people who had been enslaved, but has since generally instituted the concept of birthright citizenship.⁴¹ The 15th Amendment, instituted in 1870, stated that the right to vote could not be denied to anyone because of race, color, or previous condition of servitude.⁴²

Although the Constitutional convention briefly considered the adoption of a national voting rights law, it rejected this idea and gave authority over elections to the states.⁴³ The first Article of the Constitution states that the conduct of elections shall be the responsibility of state legislatures.⁴⁴ This individual state authority paved the way for discriminatory laws that limited voting access for certain members of the population, a practice that was expanded after Reconstruction.⁴⁵ Despite new amendments to the Constitution, states across the South implemented laws that restricted the voting rights of Black people, such as poll taxes and literacy requirements.⁴⁶ Northern states also

³⁶ Keyssar Testimony, Transcript 5, p. 4-5.

³⁷ Keyssar Testimony, Transcript 5, p. 4-5; *See also*: U.S. National Archives. “Road to the Voting Rights Act – Voting Rights from 1789 to 1869.” The Reagan Library Education Blog. March 29, 2022. <https://reagan.blogs.archives.gov/2022/03/29/road-to-the-voting-rights-act-voting-rights-from-1789-to-1869/#:~:text=These%20movements%20proved%20to%20be,before%20the%20Civil%20War%20began> (accessed October 21, 2024).

³⁸ Keyssar Testimony, Transcript 5, p. 4; *See also*: Torres McBride, Angelys. “The Evolution of Voting Rights in America.” National Constitution Center. May 27, 2021. <https://constitutioncenter.org/blog/the-evolution-of-voting-rights-in-america> (accessed October 21, 2024).

³⁹ United States Constitution (U.S. Const.), 13th Amendment, § 1.

⁴⁰ United States Constitution (U.S. Const.), 14th Amendment, § 1; Keyssar Testimony, Transcript 5, p. 4–5.

⁴¹ United States Constitution (U.S. Const.), 14th Amendment, § 1; *See also*: U.S. Congress. “Amendment 14.S1.1.1 Historical Background on Citizenship Clause.” Constitution Annotated. https://constitution.congress.gov/browse/essay/amdt14-S1-1-1/ALDE_00000811/ (accessed October 21, 2024).

⁴² United States Constitution (U.S. Const.), 15th Amendment, § 1.

⁴³ *Federal Elections Bill of 1890*, H.R. 11045, 51st Cong. (1890); *See also*: Alexander Keyssar, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, June 4, 2024, transcript 5, p. 5 (hereinafter cited as Transcript 5).

⁴⁴ United States Constitution (U.S. Const.) art. I, § IV.

⁴⁵ United States Constitution (U.S. Const.) art. I, § IV; *See also*: Library of Congress. “Voters and Voting Rights.” Presidential Elections and Voting in U.S. History. <https://www.loc.gov/classroom-materials/elections/voters/> (accessed October 22, 2024); *See also*: Keyssar Testimony, Transcript 5, p. 5.

⁴⁶ Keyssar Testimony, Transcript 5, p. 5; *See also*: Library of Congress. “African American Voting Rights.” Presidential Elections and Voting in U.S. History. <https://www.loc.gov/classroom-materials/elections/voters/african-americans/> (accessed October 22, 2024).

used similar practices, like making voter registration more complicated for foreign-born and poor workers to vote.⁴⁷

Racial divisions increased further in the years leading up to the Spanish–American War, when, in 1896, the Supreme Court ruled in favor of the United States in *Plessy v. Ferguson*.⁴⁸ This decision legalized racial segregation in the country and tested the “equal protection” principle of the 14th Amendment.⁴⁹ Notably, several of the justices who participated in the *Plessy v. Ferguson* decision later participated in *Downes v. Bidwell*, one of the Insular Cases.⁵⁰

Another relevant example of voter suppression from this era was the lack of access to voting for American women. In *Minor v. Happersett*, the Supreme Court ruled against a woman who was not allowed to register to vote.⁵¹ She argued that she had been denied her rights under the 14th Amendment, and the Supreme Court unanimously found that the right to vote was not guaranteed under the 14th Amendment, stating that citizenship does not guarantee suffrage.⁵²

After the Spanish-American War, the United States acquired Puerto Rico and other territories under these sociopolitical conditions and a bleak democratic environment. In this context, it became acceptable to deny the right to vote to people considered "inferior."⁵³ This was likely the worst moment for democracy in the country at that time, and it points to future restrictive policies imposed by the federal government toward Puerto Rico—such as the Foraker Act and the Insular Cases—that were consistent with the discriminatory practices that had emerged.⁵⁴

III. Preliminary Findings

FINDING I - Puerto Rico's Territorial Relationship with the United States is the Main Limitation to Obtaining the Right to Vote at the Federal Level

The lack of voting rights at the federal level excludes Puerto Rican residents from democratic participation.

⁴⁷ Keyssar Testimony, Transcript 5, p. 5-6; *See also*: National Humanities Center. “Voter Suppression in the 19th Century North: The Other Disfranchisement and What It Tells Us About Voter Rights Today.” <https://nationalhumanitiescenter.org/education-material/voter-suppression-in-the-19th-century-north-the-other-disfranchisement-and-what-it-tells-us-about-voter-rights-today/> (accessed October 23, 2024).

⁴⁸ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

⁴⁹ *Plessy v. Ferguson*, 163 U.S. 537 (1896); *See also*: U.S. Constitution (U.S. Const.) 14th Amendment, § 1; *See also*: Keyssar Testimony, Transcript 5, p. 5.

⁵⁰ *Plessy v. Ferguson*, 163 U.S. 537 (1896); *See also*: *Downes v. Bidwell*, 182 U.S. 244, 244 & n.1 (1901).

⁵¹ *Minor v. Happersett*, 88 U.S. 162 (1874); *See also*: Keyssar Testimony, Transcript 5, p. 6.

⁵² *Minor v. Happersett*, 88 U.S. 162 (1874), p. 88 U.S. 178; *See also*: Keyssar Testimony, Transcript 5, p. 6.

⁵³ Keyssar Testimony, Transcript 5, p. 6.

⁵⁴ *Foraker Act of April 12, 1900*, 31 Statute 77, c. 191, 48 United States Code Annotated (USC) § 731; *See also*: Keyssar Testimony, Transcript 5, p. 4, 6.

Article II of the U.S. Constitution outlines how the nation's president is elected; electors are appointed in each state based on the number of senators and representatives in Congress from each jurisdiction.⁵⁵ As a territory, Puerto Rico is not eligible to appoint electors and, as a result, cannot vote for president.⁵⁶ In addition, it has very limited representation in Congress, having only a Resident Commissioner in the House of Representatives who does not have the authority to vote in Congress plenary sessions.⁵⁷ According to testimony received by the Committee, Puerto Rico's territorial status has impeded the island's sovereignty and limited residents' participation in decisions that impact their lives.⁵⁸ Excluded from democratic participation in the United States by the lack of voting rights at the federal level, Puerto Rico does not have the same rights as U.S. citizens in the states or residents of an independent nation.⁵⁹

Panelist Dr. Michael González-Cruz, Professor of Social Sciences at the University of Puerto Rico, Mayagüez Campus, quoted historian Ernest Renan in describing this situation as a “daily plebiscite” in which “colonized peoples do not have the sovereignty required to produce the goods and services their citizens need to validate their most basic human rights.”⁶⁰ In her written testimony, Dr. Christina Ponsa-Kraus, George Welwood Murray Professor of Legal History at Columbia University Law School, described the denial of the federal vote as an indefensible action that represents a profound violation of citizen equality and is the basic premise of a democratic government.⁶¹

Panelist Cepeda Derieux stated that the lack of representation in the federal government, coupled with the establishment through the Insular Cases that only fundamental rights apply to Puerto Rico, has created the feeling that “the rights of the United States Bill of Rights are for others, not for the residents of Puerto Rico.”⁶² In a brief submitted to the Committee, panelist Professor Carlos Gorrín Peralta, Professor of Constitutional Law at the Interamerican University of Puerto Rico, stressed that the federal government is not a government for the people of Puerto Rico since they are subject to the application of laws by entities over which they have no nominal participation.⁶³ Dr. Ponsa-Kraus shared that electoral representation will not solve all the problems in Puerto Rico or anywhere else.⁶⁴ Still, it does solve the lack of power in the legislative processes that affect the

⁵⁵ United States Constitution (U.S. Const.) art. II, § 1.

⁵⁶ *Id.*

⁵⁷ 48 USC § 891.

⁵⁸ González-Cruz Testimony, Transcript 3, p. 6; *See also*: Martínez Román Testimony, Transcript 3, p. 9.

⁵⁹ United States Constitution (U.S. Const.) art. II, § 1; *See also*: González-Cruz Testimony, Transcript 3, p. 6; *See also*: Saldaña Testimony, Transcript 3, p. 25.

⁶⁰ González-Cruz Testimony, Transcript 3, p. 8; *See also*: Renan, Ernest. *What is a Nation?* (New York, Columbia University Press, 1882.) <https://doi.org/10.7312/rena17430> (accessed August 13, 2024).

⁶¹ Ponsa-Kraus Statement, at 1.

⁶² Cepeda Derieux Testimony, Transcript 3, p. 16.

⁶³ Gorrín Peralta, Carlos I. “Puerto Rico and the United States at the Crossroads,” in *Reconsidering the Insular Cases: The Past and Future of the American Empire* (Gerald Neuman & Tomiko Brown-Nagin eds., Harvard Univ. Press 2015) <https://doi.org/10.2307/j.ctvjz81gw>.

⁶⁴ Ponsa-Kraus Statement, at 1.

lives of all people and is a basic requirement of a legitimate and responsible government.⁶⁵ Dr. Ponsa-Kraus said, this “achievement would finally eliminate the rot at the core of Puerto Rico’s relationship with the United States and open the door to a new relationship based on citizen equality and sovereignty under statehood, or equality as a separate and sovereign nation under independence.”⁶⁶

The Lack of Democratic Participation in Puerto Rico is Due to the Colonial Relationship with the United States

Some panelists agreed that this lack of democratic participation resulted from the colonial relationship between Puerto Rico and the United States and the lack of application of all constitutional rights, including the deprivation of the federal vote.⁶⁷ It is important to note that Puerto Rico does not have the right to the federal vote because it is not a state, not because it is an incorporated or unincorporated territory.⁶⁸ According to panelist Cepeda Derieux, “It is not understood whether Puerto Rico could have federal representation even if Congress were to say tomorrow that it is now an incorporated territory. Puerto Rico is where 37 other territories were before being admitted as states.”⁶⁹

Even if the distinction between incorporated and unincorporated territories is eliminated, Congress’ plenary powers and its ability to continue discriminating against Puerto Rico remain intact.⁷⁰ Panelist Dr. Rafael Cox Alomar, Attorney and Professor of Law at the UDC David A. Clarke School of Law, explained that “as long as Puerto Rico is a territory, whether incorporated or unincorporated, Congress will continue to exercise its plenary powers under the Territorial Clause to treat Puerto Rico differently than the states in the allocation of federal funds, among other things, as long as there is a rational basis to justify the unequal treatment.”⁷¹ Dr. Cox Alomar summarized: “Even if the Insular Cases were abolished, our colonial problem would remain intact.”⁷²

Cepeda Derieux shared the example of the federal district of Washington DC, which, in not being a state, needed a federal constitutional amendment so that its residents could vote for president.⁷³

⁶⁵ Ponsa-Kraus Statement, at 1.

⁶⁶ Ponsa-Kraus Statement, at 4.

⁶⁷ Martínez Román Testimony, Transcript 3, p. 27-28; *See also*: Gorrín Peralta Testimony, Transcript 5, p. 12.

⁶⁸ Cepeda Derieux Testimony, Transcript 3, p. 14-15.

⁶⁹ Cepeda Derieux Testimony, Transcript 3, p. 15.

⁷⁰ Rafael Cox Alomar, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, June 4, 2024, transcript 5. p. 8 (hereinafter cited as Transcript 5).

⁷¹ United States Constitution (U.S. Const.) art. IV, § 3; *See also*: Cox Alomar Testimony, Transcript 5, p. 8; *See also*: Ponsa-Kraus Statement, at 3.

⁷² Cox Alomar Testimony, Transcript 5, p. 7-8.

⁷³ United States Constitution (U.S. Const.), 23rd Amendment, § I; *See also*: Cepeda Derieux Testimony, Transcript 3, p. 15.

The Constitution authorized the creation of an area "not exceeding 10 miles square" that would not be a state to serve as the federal district.⁷⁴ Washington D.C. residents have not had federal representation and pro-statehood bills have called for the federal district to be even more limited to an area including only the White House, Congress, and other federal buildings since they have no residential population.⁷⁵ This example demonstrated that the title of "incorporated" or "non-incorporated" did not impact the outcome and that the Insular Cases have been an obstacle to a democratic resolution in Puerto Rico.⁷⁶

The Constitution Excludes Territories from the Right to Vote

The Committee heard testimony on the paradox of how several sections of the Constitution implement federal voting rights for the states while excluding citizens in the territories. Panelist Dr. Luis Fuentes-Rohwer, Professor of Law at the Maurer School of Law at Indiana University, Bloomington, reviewed the relevant sections of the Constitution on states' rights in federal elections. The second section of Article I states that "The House of Representatives shall be composed of Members chosen every second year by the people of the several States."⁷⁷ Regarding electors, Dr. Fuentes-Rohwer explained that Article II states that "Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the total number of Senators and Representatives that to which the State may be entitled in Congress" and shared these examples to emphasize how the language of the Constitution clearly applies only to the states.⁷⁸

This exclusion exists in the Constitution's amendments as well. The 14th Amendment, for example, speaks to the rights of American citizens and says that no state may deprive any person of life, liberty, and property without due process of law, and may not deny the equal protection of the laws.⁷⁹ The emphasis on states raises the question of how these protections apply to territories.

Panelist Dr. Alexander Keyssar, Matthew W. Stirling, Jr. Professor of History and Social Policy at Harvard University's John F. Kennedy School of Government, explained that the 14th and 15th

⁷⁴ United States Constitution (U.S. Const.) art. I, § VIII; *See also*: Cepeda Derieux Testimony, Transcript 3, p. 20; *See also*: CORRECTED Carlos I. Gorrín Peralta. "Voto presidencial en Puerto Rico: ¿Otra vez?" Vol. 1:2 AMICUS Rev. Pol. Pub. & Leg. UIPR 130, p. 130, 133, (May 2018). <https://www.derecho.inter.edu/wp-content/uploads/2019/05/AMICUS-Vol-Num2-Final.pdf> (accessed October 30, 2024).

⁷⁵ Washington, D.C. Admission Act, H.R. 51, 117th Cong. (2021); *See also*: Cepeda Derieux Testimony, Transcript 3, p. 20.

⁷⁶ Cepeda Derieux Testimony, Transcript 3, p. 15.

⁷⁷ United States Constitution (U.S. Const.) art. I, § II; *See also*: Luis Fuentes-Rohwer, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, June 4, 2024, transcript 5. p. 15 (hereinafter cited as Transcript 5).

⁷⁸ United States Constitution (U.S. Const.) art. II, § II; *See also*: Fuentes-Rohwer Testimony, Transcript 5, p. 15.

⁷⁹ United States Constitution (U.S. Const.), 14th Amendment, § I; *See also*: Fuentes-Rohwer Testimony, Transcript 5, p. 16.

Amendments to the Constitution were the first interventions by the federal government to define the scope of suffrage and, although they did not confer the right to vote upon anyone specifically, they specified that the right to vote could not be denied or abridged ‘on account of race, color, or previous condition of servitude.’⁸⁰ He further explained that even with these amendments, African Americans in the Southern U.S. faced obstacles in accessing the right to vote after the Civil War.⁸¹ Even though the Supreme Court established that the right to vote is a fundamental right in a free and democratic society, the testimony indicated that this was not considered in a way that could benefit Puerto Rico.⁸² Dr. Fuentes-Rohwer mentioned that the federal law UOCAVA (“*Uniformed and Overseas Citizens Absentee Voting Act*”), which allows voting for military personnel and citizens abroad, includes Puerto Rico and the other territories within its definition of “state,” but it is not considered a state for federal voting rights.⁸³ This lack of clarity keeps Puerto Rico in limbo, where it does not have access to the fundamental right to vote at the federal level while its residents are U.S. citizens.

FINDING II—The Committee heard testimony on strategies for making Puerto Rico a priority at the federal level since the country's current treatment of the island goes against its fundamental principles.

Strategies Congress Can Take to Drive Action on Puerto Rico

Panelists argued that Congress can use several strategies to influence other entities with the authority to implement laws. One of them, according to panelist Eduardo Bhatia Gautier, former President of the Senate of Puerto Rico and John L. Weinberg/Goldman Sachs & Co. Visiting Professor at the School of Public and International Affairs at Princeton University, would be to act at the congressional level to pressure the Supreme Court to reconsider previous determinations. He said, “Congress has the responsibility not to wait for the Supreme Court to repeal, it has the responsibility to address these issues of the Insular Cases and make it clear that this doctrine should not be the supreme law of the United States.”⁸⁴ Panelists commented that there is only legislative action on public policy when there is a crisis; otherwise, nowadays, bills are approved very

⁸⁰ United States Constitution (U.S. Const.) 14th and 15th Amendments; *See also*: Keyssar Testimony, Transcript 5, p. 5.

⁸¹ Keyssar Testimony, Transcript 5, p. 5.

⁸² *Yick Wo vs. Hopkins*, 118 U.S. 356, 370 (1886); *See also*: *Reynolds vs. Sims*, 377 U.S. 533, 554 (1964); *See also*: Fuentes-Rohwer Testimony, Transcript 5, p. 15-16.

⁸³ 52 USC Ch. 203, §20310(6); *See also*: Congressional Research Service. “Absentee Voting for Uniformed Services and Overseas Citizens: Roles and Process, In Brief.” September 4, 2020.

<https://crsreports.congress.gov/product/pdf/IF/IF11642> (accessed August 13, 2024); *See also*: Fuentes-Rohwer Testimony, Transcript 5, p. 16–17.

⁸⁴ Eduardo Bhatia Gautier, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, May 30, 2024, transcript 4. p. 16 (hereinafter cited as Transcript 4).

slowly.⁸⁵ This stalemate has become more common within such a polarized political environment, but even so, affirmative actions by Congress are significant.⁸⁶ Panelist Dr. Keyssar shared his impression of this impasse:

“There is a serious concern that if Puerto Rico had electoral votes, those votes would go to the Democratic Party, and right now they are fighting over every possible electoral vote. But the point is to make clear the inconsistency of our practice with our values and to keep pushing that point, year after year, until a political moment presents itself where we can mobilize behind that and get something done.”⁸⁷

The Importance of Strengthening Alliances with a Diversity of Coalitions Across the Country

Panelists suggested that members of Congress should take the initiative to foster alliances with coalitions focused on a variety of issues to elevate Puerto Rico on the national agenda.⁸⁸ Bhatia Gautier emphasized that the number of Hispanic members of Congress has grown dramatically in the last twenty years, which could create the opportunity to place the issue of Puerto Rico more consistently on the agenda.⁸⁹ Despite the stereotype that Hispanics are primarily concerned with immigration, and Puerto Rico is inserted into the Hispanic demographic of the United States, Bhatia Gautier argued that Puerto Rico can insert itself into this and other issues effectively to advance the discussion on the challenges it faces from numerous angles.⁹⁰

To be even more effective, panelists commented that Puerto Rico should create partnerships at the local level across the country, not just with stakeholders in Washington D.C., to identify common challenges.⁹¹ Although local challenges may vary, there are issues in each place where alliances, unity, and brotherhood can be established.⁹² It would be important to collaborate in bringing these issues forward, thus integrating the problems that Puerto Rico faces as a territory.⁹³ In addition, they commented that more communication with the other territories is needed to strengthen the case for the rights of the territories.⁹⁴ Bhatia Gautier stated, “I do believe that Puerto Rico has

⁸⁵ Bhatia Gautier Testimony, Transcript 4, p. 17.

⁸⁶ Kenneth Davison McClintock-Hernandez, testimony. Public Briefing before the Puerto Rico Advisory Committee to the United States Commission on Civil Rights, Web Briefing, May 30, 2024, transcript 4, p. 16 (hereinafter cited as Transcript 4).

⁸⁷ Keyssar Testimony, Transcript 5, p. 31-32.

⁸⁸ McClintock-Hernandez Testimony, Transcript 4, p. 18.

⁸⁹ Bhatia Gautier Testimony, Transcript 4, p. 19-20; *See also*: Congressional Hispanic Caucus. “Members.” <https://chc.house.gov/members> (accessed August 13, 2024).

⁹⁰ Bhatia Gautier Testimony, Transcript 4, p. 19-20.

⁹¹ Bhatia Gautier Testimony, Transcript 4, p. 21-22.

⁹² McClintock-Hernandez Testimony, Transcript 4, p. 23.

⁹³ Bhatia Gautier Testimony, Transcript 4, p. 21-22.

⁹⁴ *Ibid.*

many spheres, many places where it could join forces and create alliances that are not being created at this time.”⁹⁵

The Treatment of Puerto Rico is in Conflict with the Fundamental Principles of the United States

Panelists agreed that the treatment of Puerto Rico by the federal government goes against the United States's fundamental principles. Current practices are completely inconsistent with the formal and proclaimed values of the United States as a country, especially when it likes to see itself as the oldest democracy in the world and as a great defender of political rights at the international level.⁹⁶ Panelist Dr. Adi Martínez Román, Co-Founder and Co-Director of the organization Right to Democracy, referred to the country’s Declaration of Independence and its focus on the role of the people within governance.⁹⁷ “That is something that is at the root of the very founding of the United States because they recognized that importance [of public participation],” Dr. Martínez Román shared.⁹⁸ Similarly, Cepeda Derieux argued “That foundation, that the government derives its power from the governed, is the premise from which the United States Constitution is based on. By suggesting that a people can be governed indefinitely, without their consent, and by doing so for decidedly racist reasons, the Insular Cases remain a stain on federal jurisprudence.”⁹⁹

The Insular Cases have allowed for a blatant denial of the territories’ capacity for self-determination and are gravely inconsistent with U.S. ideology.¹⁰⁰ In her written testimony, Dr. Ponsa-Kraus explained “The fundamental essence of voting representation within a democratic society is to ensure that citizens of that society have a clear voice, choice, and opportunity to participate in democratic deliberation and decision-making. The denial of voting representation subverts the very essence of democracy.”¹⁰¹

Treating Puerto Rican Residents as Second-class Citizens

Panelists also discussed the federal government’s treatment of Puerto Rican residents as “second-class citizens” in which the island’s issues are not prioritized, even though the United States is

⁹⁵ Bhatia Gautier Testimony, Transcript 4, p. 21-22.

⁹⁶ Keyssar Testimony, Transcript 5, p. 31-32; Philip Alston, “Statement on Visit to USA” (by UN Special Rapporteur on Extreme Poverty and Human Rights) December 15, 2017 <https://www.ohchr.org/en/statements/2017/12/statement-visit-usa-professor-philip-alston-united-nations-special-rapporteur> (accessed October 22, 2024).

⁹⁷ United States Declaration of Independence, 1776; *See also*: Martínez Román Testimony, Transcript 3, p. 10.

⁹⁸ Martínez Román Testimony, Transcript 3, p. 10.

⁹⁹ Cepeda Derieux Testimony, Transcript 3, p. 13.

¹⁰⁰ Carlos I. Gorrín Peralta, "Historical Analysis of the Insular Cases: Colonial Constitutionalism Revisited." 56, *Revista del Colegio de Abogados de Puerto Rico*, p. 31, 50, 1995.

¹⁰¹ Ponsa-Kraus Statement, at 3.

considered the most democratic country in the world.¹⁰² Professor Kenneth Davison McClintock-Hernández, former Secretary of State of Puerto Rico, Senior Public Policy Advisor at POLITANK*, and Adjunct Professor at Interamerican University and EDP University, argued before the Committee that citizenship itself is unique and not second-class. He commented that “the locality is second-class in terms of not being allowed to exercise a function.”¹⁰³

The Amici Curiae legal brief in *US v. Vaello Madero* (2022), emphasized that none of the territories are inhabited by a White, non-Hispanic majority, while most of the states do have a White, non-Hispanic majority population. It is argued that the fact that Congress treats regions of the country with a majority Black population differently should not be ignored.¹⁰⁴ The Amici Curiae highlights that in Puerto Rico specifically, over 99% of the population is of Hispanic origin and that residents of all territories have been subject to race-based discrimination.¹⁰⁵

Dr. Ponsa-Kraus commented in her written testimony that the denial of federal voting rights in Puerto Rico creates a structural relationship of subordination between the island and the United States that imposes second-class citizenship in an offensive way and reinforces the inferiority of an entire people on a daily basis.¹⁰⁶ She writes that this rejection leads to the denial of other civil rights.¹⁰⁷

FINDING III – Despite not having the right to vote at the federal level, Puerto Rico has authority over its local elections.

The Constitution of Puerto Rico Authorizes Local Elections

Despite the lack of voting rights at the federal level, Puerto Rico is responsible for its elections at the local level, which are not affected by the U.S. Constitution.¹⁰⁸ This right was established as part of the Constitution of Puerto Rico.¹⁰⁹ The Constitution includes the Bill of Rights and the responsibilities of local governments. Although citizenship was declared a matter for the federal government, the right to vote operates separately and is determined largely by law at the state level.¹¹⁰

¹⁰² Bhatia Gautier Testimony, Transcript 4, p. 14-15.

¹⁰³ McClintock-Hernández Testimony, Transcript 4, p. 15.

¹⁰⁴ *United States v. Vaello Madero*, 596 U.S. ____ (2022). No. 20-303. Amici Curiae Brief.

¹⁰⁵ *Id.*

¹⁰⁶ Ponsa-Kraus Statement, at 1.

¹⁰⁷ Ponsa-Kraus Statement, at 2.

¹⁰⁸ Cepeda Derieux Testimony, Transcript 3, p. 15, 27.

¹⁰⁹ Puerto Rico Const. art. VI, sec. IV.

¹¹⁰ Keyssar Testimony, Transcript 5, p. 4; *See also*: National Constitution Center. “The Citizenship Clause.” <https://constitutioncenter.org/the-constitution/articles/amendment-xiv/clauses/700> (accessed August 28, 2024).

The Role of the Resident Commissioner

Federal law allows Puerto Rico to elect a Resident Commissioner to the United States House of Representatives every four years, but this person cannot vote in the House, only within the Committees of which they are a member.¹¹¹ The Resident Commissioner represents more than three million residents of Puerto Rico, while, by comparison, this same population would require at least four representatives in any of the states.¹¹² Furthermore, by not being able to vote in Congress, they have limited influence in negotiating legislation.¹¹³ The Resident Commissioner advocates for the inclusion of Puerto Rico in the allocation of federal programs, an area which also lacks parity compared with the states.¹¹⁴ Furthermore, there is no counterpart to the Resident Commissioner in the United States Senate, a body that does not include any representation for Puerto Rico or the other territories.¹¹⁵

Other Public Positions in Local Government

Notably, Puerto Rico's lack of representation in the Senate also means it is not represented in the selection of federal judges, who make many important decisions that affect the Island.¹¹⁶ Professor McClintock Hernández explained that there is no debate about this in Puerto Rico and argues that “we have become a submissive people, who beyond saying that we are pro-independence or pro-freestate or pro-statehood, we do not really discuss the negative impact of not being able to participate in the election of these officials.”¹¹⁷

Panelists highlighted the issue of electoral equality. They argue that Puerto Rican residents should have a say in their representation and the actions taken regarding pressing issues, such as climate change.¹¹⁸ They also argue that the right to an “equal, direct, and secret” vote, as described in the Puerto Rican Constitution, is at risk under the PROMESA law. They consider it an imposition of Congress's plenary powers on the Island.¹¹⁹ Furthermore, any amendment that could be made to the Puerto Rican Constitution must be compatible with the United States Constitution.¹²⁰

¹¹¹ 48 USC §891; *See also*: U.S. Const. Art. I, sec. II; *See also*: Saldaña Testimony, Transcript 3, p. 24.

¹¹² Ponsa-Kraus Statement, at 1.

¹¹³ *Ibid*.

¹¹⁴ *Ibid*.

¹¹⁵ Ponsa-Kraus Statement, at 1-2; *See also*: McClintock-Hernández Testimony, Transcript 4, p. 8-9.

¹¹⁶ McClintock-Hernandez Testimony, Transcript 4, p. 9; *See also*: United States Courts. “FAQs: Federal Judges.” <https://www.uscourts.gov/faqs-federal-judges> (accessed September 13, 2024).

¹¹⁷ McClintock-Hernandez Testimony, Transcript 4, p. 9.

¹¹⁸ McClintock-Hernandez Testimony, Transcript 4, p. 12.

¹¹⁹ Puerto Rico Const. art. II, sec. II; *See also*: 48 U.S. Code Chapter 20; *See also*: Cox Alomar Testimony, Transcript 5, p. 7.

¹²⁰ Puerto Rico Const. art. VII, sec. III; *See also*: Gorrín Peralta Testimony, Transcript 5, p. 27-28.

The Centralization of the Federal Government has Alienated Puerto Rico's Voice and Participation

Panelists spoke about the centralization of the federal government and how this has alienated the voice of Puerto Rican residents. Bhatia Gautier spoke about how the federal government has left federalism behind and has made important decisions based in the nation's capital that are applicable in each state and territory in a unitary manner.¹²¹ He stated:

“The will of the people of Puerto Rico is not reflected anywhere there. That was not the idea in 1952; it could not be the idea, and that cannot be the plan for democratic political development for Puerto Rico. What changed dramatically here in the last 65 years was the way the United States governs all its states. This is an assertion that I do not make only about the territories, but the difference is that the states of the United States have representation in Congress.”¹²²

This has led to a decline in democracy for jurisdictions such as the territories, which do not have federal representation.¹²³

FINDING IV - The Committee heard testimony on the debate concerning the different visions of American citizenship and Puerto Rican cultural identity

Limitations of Centralized Government and the Concept of Territorial Autonomy

Panelists discussed the fact that Puerto Rico's options for its future status exist within a framework in which the United States has not been flexible in creating official spaces for ethnic groups and territorial enclaves.¹²⁴ Bhatia Gautier told the Committee: “Contrary to the experiences of other countries, which have opened important and valuable spaces with their political enclaves, the polarized reality and internal political struggles of the United States do not allow the opportunity to create democratic institutions outside of being a federated state.”¹²⁵ Bhatia Gautier referred to enclaves in Scotland, Spain, Canada, and Ireland and pointed out how these places have survived conflicts, problems of identity and democracy and have managed to ensure that all residents have representation—something that is lacking in Puerto Rico.¹²⁶ “At the height of the 21st Century, none of these communities face the inflexibility, intransigence, and rigidity that the United States federal government has shown towards its territories,” said Bhatia Gautier.¹²⁷

¹²¹ Bhatia Gautier Testimony, Transcript 4, p. 5, 6.

¹²² Bhatia Gautier Testimony, Transcript 4, p. 6.

¹²³ Bhatia Gautier Testimony, Transcript 4, p. 6-7.

¹²⁴ Bhatia Gautier Testimony, Transcript 4, p. 4.

¹²⁵ Bhatia Gautier Testimony, Transcript 4, p. 7.

¹²⁶ Ibid.

¹²⁷ Ibid.

This concept, also known as territorial autonomy, has emerged as a form of decentralization following a rejection of uniform models of government which allows a region to organize its affairs without interference from the central government and to empower its minority population.¹²⁸ Territorial autonomy exists in several forms, including democratic autonomy – achieved through voting (e.g., Quebec and Scotland) – and post-conflict autonomy, achieved through peace agreements (i.e., Northern Ireland).¹²⁹ The characteristics of territorial autonomy include self-government and a defined territory with its own borders, symbols, and policies.¹³⁰ Territorial autonomy is an evolving institution about which there is little knowledge and has been analyzed from different academic perspectives with a focus on the West.¹³¹ The literature indicates that the case of Puerto Rico, long considered under the colonial framework, shares several important characteristics with the concept of democratic territorial autonomy.¹³²

The Role of Language in American Citizenship and Inclusion and the Significance for Puerto Rico

The Committee received testimony on how the United States addresses language and cultural diversity issues. The United States has never had an official language.¹³³ Despite legislative efforts to amend the Constitution, the reality is that English functions as the national language.¹³⁴ By comparison, at the local level, Puerto Rico has declared both English and Spanish as official languages on the Island, and they can be used interchangeably throughout the government.¹³⁵ The Equal Protection Clause under the 14th Amendment to the United States Constitution protects people on the basis of race, ancestry, national origin, or ethnicity; the rights of racial and ethnic minorities must be protected in order to fulfill civil rights purposes.¹³⁶ Although the term “national origin” is found in the Constitution and the Civil Rights Act of 1964, it has been argued that the

¹²⁸ Barter, Shane Joshua. “Understanding Self-Government: Varieties of Territorial Autonomy.” *Journal of Autonomy and Security Studies*. 8(1) 2024, 6-30. DOI: <https://doi.org/10.61199/jass.142991> (accessed October, 21, 2024).

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ Faingold, Eduardo D. "Language Rights and the Law in the United States and the Territories. Lexington Books. 2018, p. 8; *See also*: Raúl Serrano Geys, Raúl, Carlos I. Gorrín Peralta. “*Puerto Rico y la estadidad: Problemas constitucionales.*” Vol. 40. *Revista del Colegio de Abogados de Puerto Rico*, p. 3. 1979. *Note*: English was declared the official language of the United States on March 1, 2025, after the Committee approved the text of this memorandum. *See*: Executive Office of the President, “Designating English as the Official Language of the United States.” Executive Order 14224 of March 1, 2025 <https://www.federalregister.gov/documents/2025/03/06/2025-03694/designating-english-as-the-official-language-of-the-united-states>.

¹³⁴ *Ibid.*

¹³⁵ PR Title I, Chapter V, §59; *See also*: Faingold, Eduardo D. "Language Rights and the Law in the United States and the Territories. Lexington Books. 2018, p. 19, 22-23.

¹³⁶ Constitution of the United States (U.S. Const.) amend. XIV, § I; *See also*: Faingold, Eduardo D. "Language Rights and the Law in the United States and the Territories. Lexington Books. 2018, p. 29.

term should be amended and defined to include “language” as one of the protected classes because it is currently unclear what language practices are included under “national origin.”¹³⁷

Professor Gorrín Peralta spoke about the start of the bilingual education movement during the 1960s and 1970s in the United States.¹³⁸ This movement was intended to protect cultural minorities and create a melting pot of cultures so that immigrants could learn English quickly and assimilate into American society.¹³⁹ Bilingual education has several meanings. On the one hand, it has a bilingual-bicultural approach that includes the study of the history and culture of the student's native language, and on the other hand, it uses the native language for the purpose of a swift and effective transition to the English language and American culture.¹⁴⁰ In 1967, the Bilingual Education Act was passed, and it was the first time that Congress recognized the importance of bilingual education.¹⁴¹ In 1978, one of several amendments to the act was made to support educational opportunities for children with limited English proficiency to learn the language through their own language and culture.¹⁴² For Professor Gorrín Peralta, these advances were not necessarily due to respect for cultural diversity, but rather as an effort to separate people from their nationality so that they could become part of the “melting pot of cultures.”¹⁴³

It was during this period of bilingual education proliferation that voting access for citizens with limited English proficiency expanded. Notably, the Voting Rights Act of 1965, as amended in 1975, prohibits any citizen from being denied the right to vote for failure to comply with a “test or device” in a federal or state election and expands protections for persons with limited English proficiency in elections.¹⁴⁴

It has been argued that the Spanish language will continue to be fundamental to the future of Puerto Rico even if there is a change in its status, as debated during the Congressional plebiscite hearings in 1989.¹⁴⁵ At that time, Congressman J. Bennett Johnston said it would be best to leave the language issue out of the bill to avoid attempts to reinforce English as the official language. By

¹³⁷ Constitution of the United States (U.S. Const.) amend. XIV, § I; *See also*: Civil Rights Act of 1964, Pub.L. 88-352, 78 Stat. 241 (1964); *See also*: Faingold, Eduardo D. "Language Rights and the Law in the United States and the Territories. Lexington Books. 2018, p. 63.

¹³⁸ Gorrín Peralta Testimony, Transcript 5, p. 24-25.

¹³⁹ *Ibid*.

¹⁴⁰ Raúl Serrano Geys, Raúl, Carlos I. Gorrín Peralta. “*Puerto Rico y la estadidad: Problemas constitucionales*.” Vol. 40. Revista del Colegio de Abogados de Puerto Rico, p. 8. 1979.

¹⁴¹ Pub.L. 90-247; *See also*: Raúl Serrano Geys, Raúl, Carlos I. Gorrín Peralta. “*Puerto Rico y la estadidad: Problemas constitucionales*.” Vol. 40. Revista del Colegio de Abogados de Puerto Rico, p. 7. 1979.

¹⁴² Pub.L. 90-247, amended in 1978; Raúl Serrano Geys, Raúl, Carlos I. Gorrín Peralta. “*Puerto Rico y la estadidad: Problemas constitucionales*.” Vol. 40. Revista del Colegio de Abogados de Puerto Rico, p. 10. 1979.

¹⁴³ Gorrín Peralta Testimony, Transcript 5, p. 24-25.

¹⁴⁴ Pub.L. 89-110, as amended in 1975; *See also*: Raúl Serrano Geys, Raúl, Carlos I. Gorrín Peralta. “*Puerto Rico y la estadidad: Problemas constitucionales*.” Vol. 40. Revista del Colegio de Abogados de Puerto Rico, p. 22. 1979.

¹⁴⁵ Gorrín Peralta Testimony, Transcript 5, p. 24-25; *See also*: United States Senate. “Hearings before the Committee on Energy and Natural Resources. 101st Congress. First Session on S. 710, S. 711, and S. 712 To provide a Referendum on the Political Status of Puerto Rico. June 1 and 2, 1989. Part 1.”

https://www.google.com/books/edition/_/Z040AAAIAAJ?hl=en&gbpv=1 (accessed August 14, 2024).

including it, Puerto Rico would be interpreted as insisting on separatism due to its cultural differences.¹⁴⁶

Panelists Expressed Pessimism on there being Interest in Multinationalism in the United States

Aside from its cultural and linguistic differences, the Committee heard testimony about the difficulties Puerto Rico may face by not having enough collaborators to develop alternative options to territorial status, such as multinationalism. Panelists shared that the territories are challenged by the lack of political space or allies to prioritize arguments for their struggles. Bhatia Gautier commented that it would be ideal to diversify how the issue of Puerto Rico is understood in the United States, saying:

“The vast majority believes that either Puerto Rico becomes a state of the union or becomes an independent republic. The focus of this discussion, however, is the citizenship of the United States as well as the cultural identity of Puerto Rico and the other territories. Other countries were able to reconcile both things. In the scenario of opportunities given to Puerto Rico, it does not appear...The agenda, therefore, is to explore the importance of political representation at the federal level for the national enclaves.”¹⁴⁷

For Bhatia Gautier, this would be important for all territories to strengthen national unity and democracy.¹⁴⁸ However, panelists discussed how these ideas do not enter the current political debate. Dr. Cox Alomar said:

“American liberals fundamentally believe that Puerto Rico is subsumed within the American whole. The liberal movement in the United States ironically does not recognize that Puerto Rico is a sociologically defined nation. Through this, they are benevolently applying American exceptionalism.”¹⁴⁹

Professor Gorrín Peralta does not believe that a multinational federation can exist because, in his opinion, the United States does not accept multinational diversity.¹⁵⁰ According to Dr. Keyssar, the assimilation norm known as the “melting pot” of the 20th Century has disappeared.¹⁵¹ However, cultural differences are being accepted, and this has materialized through access to

¹⁴⁶ United States Senate. “Hearings before the Committee on Energy and Natural Resources. 101st Congress. First Session on S. 710, S. 711, and S. 712 To provide a Referendum on the Political Status of Puerto Rico. June 1 and 2, 1989. Part 1.” https://www.google.com/books/edition/_/Z040AAAAIAAJ?hl=en&gbpv=1 (accessed August 14, 2024).

¹⁴⁷ Bhatia Gautier Testimony, Transcript 4, p. 7-8.

¹⁴⁸ Ibid.

¹⁴⁹ Cox Alomar Testimony, Transcript 5, p. 24.

¹⁵⁰ Gorrín Peralta Testimony, Transcript 5, p. 24-25.

¹⁵¹ Keyssar Testimony, Transcript 5, p. 26.

voting ballots in various languages as a result of the amendments to the Voting Rights Act, for example.¹⁵² Keyssar said that although there is a line of thought in the United States open to multinational and multicultural practices, the current political moment is one of a reactionary and uncertain environment that goes against these ideas.¹⁵³

FINDING V - Panelists agreed that residents of Puerto Rico have the political right to a process of self-determination.

Right to Self-determination as a Political Right

Panelist Dr. Gorrín Peralta spoke about the seriousness of the fact that Puerto Rico has not had the right to its own determination despite being under American colonialism for more than a century and commented:

“We have never been able to exercise our right to self-determination to get out of the colonial situation and move freely towards our development as a people. Legally, this constitutional right has been denied. Judicially, according to the constitutional law of the United States, the right of the people to vote, which is guaranteed by the International Covenant on Civil and Political Rights, has been denied.”¹⁵⁴

In the case of Puerto Rico, the right to vote at the federal level and the right to self-determination have been denied, and the difference between the two was discussed in the testimony. Panelist Gorrín Peralta commented that the right to vote is an individual right and the right to self-determination where a people determines its future and its forms of government and development, is a collective right.¹⁵⁵ In a document submitted to the Committee, Professor Gorrín Peralta comments, "Ours is not a problem of “civil rights” of individuals, as that concept is used in the United States, limited to the historical problem of racism and discrimination. It is a problem of violating the collective right of peoples to self-determination.”¹⁵⁶ Regarding current legislative

¹⁵² Pub.L. 89-110, as amended in 1975; *See also*: Keyssar Testimony, Transcript 5, p. 26.

¹⁵³ Keyssar Testimony, Transcript 5, p. 26.

¹⁵⁴ Gorrín Peralta Testimony, Transcript 5, p. 14; *See also*: Assembly General Assembly of the United Nations. “Resolution 2200A (XXI), International Covenant on Civil and Political Rights.” 16 December 1966. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (accessed 24 October 2023); *Committee note*: The right to self-determination is recognized statutorily but constitutionally in the United States.

¹⁵⁵ Gorrín Peralta Testimony, Transcript 5, p. 29; *See also*: Gorrín Peralta, Carlos I. “Puerto Rico and the United States at the Crossroads,” in *Reconsidering the Insular Cases: The Past and Future of the American Empire* (Gerald Neuman & Tomiko Brown-Nagin eds., Harvard Univ. Press 2015) <https://doi.org/10.2307/j.ctvjz81gw>; *Committee Note*: The Committee considers that the right to self-determination, in addition to being a collective right, is also an individual right. See the footnote above for the link to the International Covenant on Civil and Political Rights.

¹⁵⁶ Carlos I. Gorrín Peralta. “¿Son los proyectos congresionales sobre Puerto Rico instrumentos de descolonización y libre determinación?” 4 *AMICUS Rev. Pol. Pub. and Leg. UIPR*, p.1, 13, 2021. <https://aldia.microjuris.com/wp-content/uploads/2022/04/Separata-Gorrin.pdf> (accessed August 15, 2024).

efforts in Congress on non-territorial options for Puerto Rico, Professor Gorrín Peralta explained that the challenge is that the meaning of statehood, independence, or a Freely-Associated State has not been well defined, but if consensus were reached on non-territorial options, it could lead to a new relationship with the United States that is not subject to the exercise of plenary powers by Congress under the territorial clause.¹⁵⁷

Several panelists agreed that self-determination is a fundamental political right that allows people to belong to a society where they can participate in creating dialogue.¹⁵⁸ Dr. Martínez Román mentioned “it is through speech, through participation, that we are part of society. Therefore, speech cannot be a privilege for some; it must be a right of all.”¹⁵⁹ She commented that voting is only one element of democracy, but it is important as part of constructing the system in which we live.¹⁶⁰ The fact that millions of people remain in an anti-democratic limbo goes against the United States Constitution.¹⁶¹

Puerto Rico can Use the Social Struggles of the United States as an Example to Follow

Panelists commented that Puerto Rico's situation is a moral and political issue that could find inspiration in the civil rights movement in the United States.¹⁶² Dr. Fuentes-Rohwer said:

“It took the Voting Rights Act of 1965 to allow people, African Americans, to vote in numbers that we haven’t seen since the 19th Century. So, when I think about that, I think about how people fought in the streets, on Bloody Sunday, in Birmingham, in the Civil Rights Movement and what it took to move the country, this country, forward.”¹⁶³

Furthermore, Dr. Keyssar argued that making a substantive change in Puerto Rico's situation is a matter of political will. He gave the example of the subtitle of the Voting Rights Act of 1965, a law to enforce the 15th Amendment, which was implemented a century after the 15th Amendment.¹⁶⁴ This shows that it is possible to take action after a long period of time and political mobilization and activity to push for change are absolutely essential.¹⁶⁵ However, Dr. Keyssar clarified that at that time, the Republican Party had some interest in emancipating African Americans for its political benefit. In this

¹⁵⁷ Gorrín Peralta Testimony, Transcript 5, p. 28.

¹⁵⁸ Martínez Román Testimony, Transcript 3, p. 9.

¹⁵⁹ Ibid.

¹⁶⁰ Martínez Román Testimony, Transcript 3, p. 12.

¹⁶¹ Cepeda Derieux Testimony, Transcript 3, p. 14.

¹⁶² Fuentes-Rohwer Testimony, Transcript 5, p. 19.

¹⁶³ Pub. L. 89–110 (1965); Fuentes-Rohwer Testimony, Transcript 5, p. 19.

¹⁶⁴ Pub. L. 89–110 (1965); *See also*: United States Constitution (U.S. Const.) 15th Amendment; *See also*: Keyssar Testimony, Transcript 5, p. 19–20.

¹⁶⁵ Keyssar Testimony, Transcript 5, p. 19–20.

moment of extreme political polarization, he is pessimistic that Puerto Rico can achieve access to the rights it is entitled to.¹⁶⁶

Panelists also commented that it is difficult to link the right to self-determination with the right to vote within the context of the United States. There have been attempts to connect the issue of the territories within the framework of international law, but, according to Dr. Fuentes-Rowher, “citizenship and the right to vote are not greatly understood in the ways most of us have come to understand them.”¹⁶⁷

The Committee heard testimony indicating that the problems facing Puerto Rico have always been separate from the civil rights struggle in the United States. “...It was always divorced from the struggle for civil rights and voting rights at the federal level,” said Dr. Cox Alomar, “...that is, by the time Puerto Rico entered the American orbit, the 15th Amendment was already in place and had already been addressed and fought for.”¹⁶⁸

Dr. Cox Alomar explained that the barriers Puerto Rico faces in terms of federal voting in the United States should not be confused with those of African Americans. In his perspective, Puerto Rico is a nation, a people of its own, that was invaded by the federal government, with a robust political and legal link to the United States, and this was not the experience of African Americans.¹⁶⁹ For him, this situation cannot be resolved through an amendment, as in the case of Washington, D.C., but through self-determination because there is no parallel.¹⁷⁰ “The Puerto Rican context really has no parallel in the American expansionist experience...,” says Dr. Cox Alomar “...Puerto Rico has been traversing a rather unique but unfortunate path, and that is something we must constantly remind our colleagues on the mainland.”¹⁷¹ Professor Gorrín Peralta agrees with this perspective. The 15th Amendment states that the right to vote cannot be denied or restricted on the basis of race, color, or previous condition of servitude. In his opinion, this does not apply to Puerto Rico because it is a colonial issue.¹⁷²

IV. Recommendations from panelists

Throughout the testimony received, the Committee heard different perspectives on how the lack of federal voting rights in Puerto Rico could be improved. Although these ideas are not recommendations formulated by the Committee, it is important to integrate them into this document to present the options highlighted by panelists. In this memorandum, the Committee

¹⁶⁶ Keyssar Testimony, Transcript 5, p. 19-20.

¹⁶⁷ Fuentes-Rohwer Testimony, Transcript 5, p. 29.

¹⁶⁸ Cox Alomar Testimony, Transcript 5, p. 7.

¹⁶⁹ Cox Alomar Testimony, Transcript 5, p. 20-21.

¹⁷⁰ *Ibid.* See: Finding I.

¹⁷¹ Cox Alomar Testimony, Transcript 5, p. 21.

¹⁷² United States Constitution (U.S. Const.), 15th Amendment, § I; *See also* Gorrín Peralta Testimony, Transcript 5, p. 21.

does not take a stance on the content of these recommendations and will submit its own recommendations in the final report.

Relationship between Puerto Rico and the United States

- Support the movement holding conversations about the existence of the colonial framework and confront it with the United States. There has been no recognition of the fact that the colonial framework affects Puerto Rico and the other territories, and the United States has a responsibility to act based on its constitutional and international obligations. This would be an important step before considering a solution on status.¹⁷³
- Support educating elected officials and clarifying that granting federal voting rights is not just about increasing the number of members of Congress. It is important to understand the full picture - the past, present, and future of the relationship with Puerto Rico - using legitimate data.¹⁷⁴
- Consider applying the 14th Amendment to Puerto Rico. The Equal Protection Clause could certainly be invoked with respect to Puerto Rican citizens if the courts or political authorities decided to do so, which they have not had in mind so far.¹⁷⁵

Self-determination

- Support people in deciding their future through self-determination.¹⁷⁶
- Advocate for a binding plebiscite that is inclusive, consensual, civil, peaceful, and not biased towards one outcome or another, to advance the cause of decolonization.¹⁷⁷
- The Commission should consider promoting an educational campaign through civic organizations, universities, and the media on the right of Puerto Rican citizens to participate in a plebiscite that allows them to choose a non-colonial political relationship recognized by the United States and international law. The Commission should support the institution of observers during the eventual plebiscite, the dissemination of expert observations on the plebiscite process and the reporting of the plebiscite election results to Congress, and the reporting of the results of the decolonization process to international organizations with which the United States is affiliated.¹⁷⁸
- The Commission should declare that rights that are being denied to the people of Puerto Rico due to the constitutional, statutory and territorial policy framework. The Commission should advise the government of the United States to take affirmative

¹⁷³ Martínez Román Testimony, Transcript 3, p. 21.

¹⁷⁴ Fuentes-Rohwer Testimony, Transcript 5, p. 31.

¹⁷⁵ Keyssar Testimony, Transcript 5, p. 26.

¹⁷⁶ Cox Alomar Testimony, Transcript 5, p. 9.

¹⁷⁷ González-Cruz Testimony, Transcript 3, p. 31; Gorrín Peralta Testimony, Transcript 5, p. 30.

¹⁷⁸ González-Cruz Testimony, Transcript 3, p. 7-8.

measures under the third paragraph of Article I of the International Covenant on Civil and Political Rights. This Article has been in force for the United States since June 1994 and states that all peoples have the right to self-determination and that countries that have others under their control have the affirmative obligation to respect and promote it. One option to promote self-determination is to organize a constitutional status assembly that would elaborate the various options that the people of Puerto Rico can have, as a way to resolve this situation which has contradicted the founding values of the American republic. The assembly could negotiate terms with the government and the Congress of the United States that would be acceptable for the various options. With that information, the people of Puerto Rico and Congress could then decide what path Puerto Rico should follow in the future.¹⁷⁹

Alternatives for the Territory

- Consider examples of status beyond just statehood or independence. The simplest way for citizens in the territories to gain the right to vote is for the territories to achieve statehood. However, one has to consider that for legitimate reasons of cultural or ethnic identity, the territories may not be interested in full integration. There are already many examples of countries that have opened their constitutional space to include the vote of citizens residing in territorial enclaves while protecting their autonomy and national integrity. The alternatives cannot be only the fusion as a state or independence as a republic. Examples from other countries can be an option in exploring how to create opportunities to access the vote, although the United States has been so intransigent and uninterested in undertaking this.¹⁸⁰

Insular Cases

- We must insist on the repeal of the Insular Cases immediately.¹⁸¹

V. Preliminary Recommendations of the Committee on the Subtopic of Federal Voting Rights

Having reviewed the testimony at this stage of the study’s “Federal Voting Rights” subtopic, the Advisory Committee offers the following preliminary recommendations:

¹⁷⁹ Gorrín Peralta Testimony, Transcript 5, p. 17-18.

¹⁸⁰ Bhatia Gautier Testimony, Transcript 4, p. 8.

¹⁸¹ Bhatia Gautier Testimony, Transcript 4, p. 4; *Committee Note*: In 2024, the Department of Justice announced a change in its practice whereby it will no longer include reference to the Insular Cases in its litigation. *See*: <https://www.justice.gov/jm/1-21000-applicability-constitutional-provisions-us-territories>

1. The United States Commission on Civil Rights should:
 - a. *Speak out about the right to vote as a fundamental right.*
 - b. *Recognize the need to define and resolve the political status through electoral consultation.*

2. The U.S. Commission on Civil Rights should submit this memorandum to and ask the U.S. Congress to:
 - a. *Enable a valid electoral process to address the issue of Puerto Rico's political status under the direction of Congress.*
 - b. *Draft, along with representatives of each of the status options, clear and precise definitions so that the people of Puerto Rico can exercise their right to self-determination in an informed manner.*

Conclusion

This memorandum was approved by a majority vote of 4 to 1 at a meeting of the Committee held on February 26, 2025. One Committee Member statement was submitted.

Appendix

Documents related to the Committee's study of this topic can be consulted at the following link:

<https://usccr.app.box.com/folder/249382622004?s=fukc86iegef918ivu53td5rc6uyxpl8e>

- A. Agendas, minutes and presentation slides
- B. Transcripts
- C. Written testimony and sources submitted by panelists
- D. Committee Member Statements

- Statement from Committee Member José O. Olmos

The Insular Cases and the Unincorporated Territory Doctrine and its effects on the civil rights of
the residents of Puerto Rico

Puerto Rico Advisory Committee to the United States Commission on Civil Rights
United States Civil Rights Commission

Commentary in Opposition to Federal Voting Rights Memorandum # 3 by José O. Olmos

On February 26, 2025, I voted against Memorandum #3 on federal voting rights, developed by the Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights. My opposition is based on the fact that, in order to exercise the right to vote at the federal level, it is essential that the expressed will of the citizens residing in Puerto Rico, through their vote, and in accordance with the electoral laws of the territory, be recognized, respected, and accepted by Congress, without being sabotaged by the opposing factions in Puerto Rico.

The task that this committee has undertaken, of investigating the impact of the Insular Cases and the Unincorporated Territory Doctrine, and its effects on the civil rights of the residents of Puerto Rico, is of the utmost importance. The search for the truth and the identification of solutions to the problems of the unequal relationship between the world's most powerful nation and the territory of Puerto Rico has been carried out with diligence. In evaluating all of the presentations and memoranda submitted by the committee, especially the most recent one, it is apparent that the final report will have four clear conclusions:

- Denying the full access of U.S. fundamental rights to Puerto Ricans is a political decision.

- The U.S. government could, at any time, unilaterally extend all constitutional rights to Puerto Rico through statehood. It could also grant it national sovereignty.
- Political and economic factors have kept Puerto Rico in limbo for more than 125 years.
- The exercise of the vote by Puerto Ricans to express their preference on status does not exert enough pressure on the U.S. Congress to move them to resolve the status issue.

This committee's research focuses on Puerto Rico's political relationship with the United States. A relationship framed by constitutional and legal precedent, especially the Insular Cases (1901-1905). The two previous memoranda submitted by the committee reiterate that the island's status is subordinate to the legal doctrine set forth by the Supreme Court in the Insular Cases. This doctrine establishes the following:

- Puerto Rico is an unincorporated territory, which means that the U.S. Constitution does not fully apply here.
- Congress, authorized by the Territorial Clause and the judicial interpretations of the Insular Cases, has the power to determine which rights Puerto Ricans enjoy.
- Puerto Ricans are U.S. citizens, but they do not have the same political rights as citizens of the states. They do not have voting representation in Congress or the right to vote for the president.

The legal, political, and academic consensus in Puerto Rico and in the United States that Puerto Rico is that it is a separate jurisdiction under the federal supervision of the U.S. Congress, and that the political rights of Puerto Ricans depend on the legislative discretion of Congress.

In the quest for Congress to heed the demands of the people of Puerto Rico, citizens have resorted to the exercise of the vote as a means to demand their rights and present their demands to Congress. Since 2012, the people of Puerto Rico have responded to four convenings from their leaders to express themselves through referendums. In these four convenings, the people of Puerto Rico have expressed themselves in favor of the union with the U.S. as a federated state. Despite exercising the right to a democratic vote, in an exercise of voting validated by the laws of the Government of Puerto Rico, and presenting the results to Congress, it has been impossible to obtain a response to the demands of the voters. It is important to note that the government of Puerto Rico has the inherent power in its constitution and laws to call for a vote without the need for the authorization of Congress.

Since none of the members of the U.S. Congress have direct accountability to the island's voters, they are not incentivized to respect the will of American citizens in Puerto Rico. This indifference is compounded by the political and propaganda activism of the Puerto Rican political opposition and its allies in the United States, and potential foreign allies, to discredit the Puerto Rican electoral process. This anti-democratic coalition, which is against statehood, has been defeated in every referendum voted on the island in the past 15 years.

Inquiring¹⁸² about the evident campaign to discredit Puerto Rico's electoral process by the political opposition, Professor Carlo Gorrin, a defender of convening the Constituent Assembly, could not explain this conduct.

“José: Yes. Good afternoon, everyone. Excellent panel, thank you for dedicating your time to this event [Inaudible 01:17:11]. I am struck by the situation that once the Insular Cases disappear, which everyone predicts, what will replace them? I am also intrigued by the repeated assertion by various panelists that the solution is not judicial or legal, but political. My question is directed to Professor Gorrin. He suggests calling a Constituent Assembly, but I find this vision interesting because the Constituent Assembly must be called and organized through state law, the electoral law of the territory of Puerto Rico, as it was for the 1952 plebiscite and all other convocations of the state assemblies where the Puerto Rican Assembly has called the people to make a decision.

There is talk of a Constituent Assembly that must also be called because it is within Puerto Rico's legal framework, where the legislative assembly calls the people to vote through a law. However, there is a tendency to discredit the results of legislative assemblies, electoral, political calls, referendums, and plebiscites that have been in recent years duly and legally convened by the Puerto Rican Assembly, and the legislators, and to create the laws. Yet, it is inferred that the Constituent Assembly, which must go through the legislative assembly to be carried out, has a superior moral standing compared to the others. Could you explain this situation to me, how some have an inferior level while the Constituent Assembly is seen as the ultimate moral solution to Puerto Rico's colonial problem? Thank you very much.”

The investigative effort of this committee, in relation to the vote, has focused on the federal level. A fundamental factor has been overlooked: for citizens residing in Puerto Rico to vote at the federal level, Puerto Rico must first become a state of the U.S. federation.

¹⁸² Insular Cases Project – Voting Rights Panel #3 Transcript – June 4, 2024, pg. 24.

On several occasions, I asked the speakers: How can we get the United States to really respond to the request of Puerto Ricans? Is that likely to change? How can we achieve statehood in Puerto Rico? Despite the diverse opinions of the speakers, these questions have not been conclusively answered. I also asked the speakers and expressed in public hearings to the other members of the committee my concern about the persistence of the political opposition to attack and try to discredit the electoral process when the results are in favor of statehood and their insistence to use that same electoral process to advance their political vision. In other words, to achieve political objectives in favor of statehood, the electoral system is useless. But it does serve to advance their separatist desires.

If the goal of our effort is to end the territorial status, either by making the island a state of the U.S. federation, or a sovereign and independent nation, it is fundamental that the citizens' vote, exercised subject to the electoral Laws and Regulations of Puerto Rico, be recognized, accepted, and abided by the U.S. Congress and the island's political opposition.

Conclusion.

I reiterate my opposition to the contents of Memorandum # 3 on Federal Voting Rights. The focus on the right to vote at the federal level without being a state of the Union is incorrect, since in order to exercise that right, it is necessary to first be a state. The path to statehood is through the vote of U.S. citizens residing in Puerto Rico, a process regulated by local laws.

I recommend that the Commission on Civil Rights organize an investigation on how some political and civil factions violate the civil rights of Puerto Rican voters by declaring, propagandizing, and attempting to delegitimize the electoral process regulated by the Puerto Rico Electoral Law.

Submitted today, March 11, 2025, to be included as part of Memorandum #3, via email to vmoreno@usccr.gov.

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Puerto Rico Advisory Committee to the United States Commission on Civil Rights

Term: January 21, 2022, to January 20, 2026

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