

**Written testimony by Aníbal Acevedo Vilá, former governor of Puerto Rico
before the Subcommittee on Indian, Insular and Alaska Native Affairs of the House of Representatives, on the hearing titled:
Examining procedures regarding Puerto Rico's political status and economic outlook
Wednesday, June 24, 2015
Longworth House Office Building**

I want to thank this Subcommittee and its chairman for holding this hearing and for the invitation to testify. The first time I testified before the full Committee of Natural Resources was back in 1997 when I first became president of the Popular Democratic Party. A few years after that, I became a member of House and of the Committee and, as you know, later I was elected governor of Puerto Rico. One thing is clear with the passing of all those years, there has been no action from Congress to deal with the status of Puerto Rico. And regarding the economic situation of the Island, the actions taken by Congress in the last 20 years have badly hurt our economy. It's clear we are in a worst situation today and that, yes, the United States has failed the people of Puerto Rico despite us being together for so long.

While Puerto Rico first produced sugar and then soldiers, the US and our island worked together. While Puerto Rico provided thousands of our limited acres for military training and an open economy where American businesses flourished and prospered, you told the world we worked together. We have gotten to where we are today, together. A lot of the good and the bad were done by our own hands moreover a lot of the good and the bad were done by your hands too. Now, Puerto Rico is in a deep crisis that is threatening essential government services, including safety, education and healthcare. But contrary to the good old times, this time the US government is keeping its distance.

I must say the title of this hearing is quite revealing. First, it is evident this hearing is not to analyze any pending legislation before this subcommittee, and therefore there's no prospect of actual legislative action in the near future. On the other hand, the fact that the hearing combines the issue of the political relationship between Puerto Rico and the United States and the economic situation in the island is quite revealing, too. As far as I can remember, this is the first time any institution of any of the branches of the federal government have implicitly or explicitly recognized the important linkage between these two areas.

For the last two years I have written and spoken about these two issues. I have submitted for the record a PDF file of a book I published in English in August of last year. I invite you to read it carefully, but I'll briefly explain my conclusions and commendations:

1. It is long past overdue a deep revision of the economic relationship between Puerto Rico and the United States. For many years this subcommittee and the full Committee have approached the issue of that relationship from a political perspective, but that has taken us nowhere other than to this major economic crisis in our modern history. The problems between Puerto Rico and the US are economic as well as political.

2. After many decades of economic progress, the island is running out of time and the United States government and its people need to know it's their problem too, because we are in this crossroads together.
3. The economy has been in recession for more than 8 consecutive years; government has been running deficits for more than 20 years and the government debt service of a debt surpassing \$70 billion is unbearable. As I explain in more detail in my book, with the way things are moving, the day Puerto Rico will have to default in its payment of the debt is fast approaching and Puerto Ricans know that. A recent poll made public shows that 57% of the people are convinced "the debt, as it stands today, cannot be paid, the government should tell so to the bond holders, and a negotiation to restructure the debt should start".
4. This crisis is affecting the capability of the government of Puerto Rico to provide basic services to the people, including health.
5. If the government of Puerto Rico is not able to provide those services, it will become a problem for the United States government. If Puerto Ricans continue leaving the island that will become a U.S. problem. If Puerto Rico can't pay its debts, it will definitely become (and almost is) a U.S. problem. And as I will briefly explain here, the U.S. government might even have a legal responsibility for that \$70 billion debt.

Although Puerto Rico bears a great part of the blame for its economic crisis, the United States is also responsible for it. It's not only the elimination of section 936 of the IRS Code in the 90's without giving Puerto Rico another tool to compensate for that loss. It's also the indiscriminate application of federal laws and regulations to our Island. The United States is the strongest and most developed economy of the world while Puerto Rico is still a developing economy. To impose the economic rules and standards of the most developed economy of the world upon a developing economy is a recipe for disaster.

The most recent report on Puerto Rico of the Federal Reserve Bank of New York (July 2014), specifically mentions as elements that hinder our economic growth, the application of the federal minimum wage and the Jones Act to Puerto Rico, which are both clear examples of economic variables beyond our control. In fact, the chairman of the Natural Resources Committee, congressman Rob Bishop, has publicly expressed concerns about the negative economic impact the application of certain EPA rules can have in Puerto Rico due to our high costs of energy and the need we have to move toward more natural gas.

As someone said sometime ago, "it's the economy, stupid".

Regarding Puerto Rico's \$72 billion public debt, there is also a shared responsibility. All that debt was originally incurred when Puerto Rico had a positive credit rating by the American credit agencies, and was all originally sold in the strongly regulated federal

municipal bond market. The years in which the amount of money being borrowed exploded, was during the time the Federal Reserve Bank carried out its expansive monetary policy with near zero interest rates. To that same extent, the crisis of the banking system in the U.S., which almost collapsed in 2008, had a similar origin. In our case, if we were incurring in too much debt, it was in part because the Fed kept the interest rates artificially low, which in turn opened the appetite in Wall Street for higher yielding bonds from Puerto Rico, all under the watchful eyes of the various federal credit rating agencies.

I firmly believe the United States has to be part of the solution to Puerto Rico's economic and debt crises. I firmly believe we are in this together, and not as a legal argument, but because there is a shared responsibility, but at the end of the day, it might be the legal responsibility that will move the U.S. to action. The U.S. Supreme Court might decide that the U.S. Government is responsible for Puerto Rico's debt.

Let's understand how that debt was incurred. Puerto Rican bonds are regulated by Federal law (Section 745 of title 48 of the United States Code). Our bonds have been marketed based on a federal law, playing by the federal rules. This provision was adopted in 1917 as part of the plenary powers of Congress over the territory of Puerto Rico. Congress ordered the other states not to tax our bonds, something that clearly Congress has no power to do with regards to specific state bonds.

For the last 25 years or more, the official position of the United States Department of Justice, the House and Senate committees with jurisdiction over Puerto Rico and the White House reports of both presidents, George W. Bush and Barack Obama, have established that even after the establishment of the Commonwealth of Puerto Rico in 1952, Puerto Rico is still a non incorporated territory. The most recent report from the White House specifically states: "under Commonwealth option, Puerto Rico would remain, as it is today, subject to the Territory Clause of the U.S. Constitution" (March 2011). Therefore, it could be argued the powers that Congress had to establish section 745 in 1917 granting triple tax exemption to our bonds, are the same powers they have today to keep that exemption and impose it upon the fifty states. All this legal and financial history is a clear indication the U.S. government has a shared responsibility over our debt.

In January 8, 2007, the United States Supreme Court ruled on the case of *Limtiaco v. Camacho* (549 U.S. 483 (2007)). The issues are quite particular, but the rationale of the decision is very interesting. There was a "local" dispute between the governor of Guam and his attorney general regarding a bond issuance and whether it was an infringement of a debt limitation disposition included in the federal Organic Act of Guam. The governor obtained a declaration from the Guam Supreme Court that the issuance of bonds to fund the territory's continuing obligations, authorized by Guam's legislature, was not in violation of debt limitation disposition contained in the Organic Act of Guam, contrary to the contention of Guam's attorney general. The United States Court of Appeals for the Ninth Circuit dismissed the attorney general's appeal. The United States Supreme Court reversed. It is the last paragraph of the Court's opinion, written by Justice Thomas, that brings some light to the federal government's responsibility in regards to the debt of a

territory:

“It may be true that we accord deference to territorial courts over matters of purely local concern. This case does not fit that model, however. The debt-limitation provision protects both Guamanians and the United States from the potential consequences of territorial insolvency. Thus, this case is not a matter of purely local concern.”

For many years during my political life I have argued against the definition of Commonwealth as a territory. That was my main argument when I first testified before this committee back in 1997. Nevertheless, the official position of this committee and the United States government is that we are still a territory. If that is the case, taken together with cited section 745, there is a strong argument the United States might bear “the potential consequences” of Puerto Rico’s insolvency and that the \$72 billion debt “is not a matter of purely local concern”. The federal government cannot say that we “remain, as it is today, subject to the Territory Clause of the U.S. Constitution” in order to deny Puerto Rico the powers to solve our economic and social crisis, and now turn around and say they have no responsibility regarding our debt because the debt crisis is a “a matter of purely local concern”.

You cannot have your cake and eat it too.

THE CLOCK IS TICKING. The government of Puerto Rico has entertained many important economic, fiscal and government reform initiatives. They were urgent and needed, but the crisis is beyond all that. If the United States government and its people do not realize soon Puerto Rico is a problem that needs to be addressed with new thinking and new approach, the United States will soon wake up with a new domestic crisis with international ramifications.

I have no doubt that we can solve our crisis and come out of it stronger if you realize that we are still together and come to the table to work with us. One-sided solutions won’t work whether they come from your side or ours.

That’s why I request a joint resolution of Congress requesting the Treasury Department and the Federal Reserve to roll up their sleeves and do more than just give us advice. They need to get involved and be part of the solution. They have the power and the tools to help us. We are willing to sacrifice, but we need a fighting chance. No country, no state, no jurisdiction has gotten out of a crisis like ours without a bankruptcy law, a central bank intervention or help from outside.

Call our relation a bilateral compact or a colonized territory. At this time, it all means one thing: we are in this together.

Thank you for inviting me and don’t hesitate to contact me if you want a deeper discussion.