

Statement of Senator Eduardo Bhatia
From the Commonwealth of Puerto Rico

Before the Committee on Natural Resources
United States House of Representatives

Against HR 2499

(To provide for a federally sanctioned self-determination process for the people of Puerto Rico.
"Puerto Rico Democracy Act of 2009")

June 24, 2009

eduardobhatia@aol.com

P.O. Box 360643

San Juan, Puerto Rico 00936-0643

Tel. (787) 725-3330

Good afternoon.

My name is Eduardo Bhatia, I am a state Senator in the Commonwealth of Puerto Rico and I appear before you today on behalf of the legislative conference of the pro-Commonwealth Popular Democratic Party.

As all of you, I am a legislator.

A legislator from Puerto Rico totally opposed to HR 2499.

A legislator who, as a young man, was in this very room when Congressmen Ron De Lugo and Mo Udall faced the very same issue in the 1980's. I was here in the 1990's addressing the same issues when Congressman Don Young was chairman of the Committee. I even testified before this Committee in 1998. And for the past four years I was the Representative of the Governor of Puerto Rico in Washington, DC and personally met with many of you who genuinely asked me a simple yet elaborate question: What should be the position of the United States Congress on the political relationship between Puerto Rico and the United States?

The answer rests on two principles that truly represent the democratic aspirations of the people of Puerto Rico:

First, Puerto Rico is a nation. From a sociological standpoint, it is a nation. And the people of Puerto Rico behave as a nation. I strongly encourage you to come visit us and experience it for yourselves.

Second, your predecessors in the United States Congress granted Puerto Ricans United States Citizenship in 1917. That citizenship has meant abundant and numerous rights and responsibilities for the people of Puerto Rico, who cherish and value it.

Now, the only --and I mean only --issue before you today is how to reconcile both concepts within the relationship of Puerto Rico and the United States.

Your predecessors faced and grappled that issue in the 1950's. And the answer for both the people of Puerto Rico and the U.S. Congress was not statehood. And the answer was not independence. They created something called "Commonwealth" that in essence recognized and celebrated the very fundamental nature of the Puerto Rican nation and at the same time formed an everlasting bond through the assurance of United States citizenship. The United Nations and the United States Supreme Court validated the relationship that, although imperfect in many ways, reconciled what seemed as an impossible exercise in policymaking.

Your predecessors were bold, creative, smart, visionary, and open minded in the aftermath of the Second World War. And the people liked it. To be sure, it was that mutual validation in July of 1952 by Congress and the people of the island, which prompted the International Olympic Committee during the 1952 Helsinki Olympics to raise for the first time the flag of Puerto Rico as a nation at that international sports event. It is still being raised today.

Your challenge, of course, is to answer the same question in the 21st century:

Can Puerto Rican nationhood with United States citizenship be reconciled? Yes or no? And if the answer is yes, how to do it?

Of course, those who favor statehood for Puerto Rico and the abundantly rich and resourceful statehood lobby --many of whom are here today-- will try to convince you that the answer is NO. They base their conclusions exclusively on political strategy. You see, it is very simple: as long as "commonwealth" is an option, statehood will not win a plebiscite in Puerto Rico. That was the case in the 1993 plebiscite and again in 1998. The lesson is very clear: people do not want statehood because there is a sense of Puerto Rican nationhood that is threatened by that concept. And rightly so!

And if there is a lesson to be learned from Iraq, from the Basque Country in Spain, from the *Québécois* people in Canada, from the Irish in Northern Ireland, from the Serbians in former Yugoslavia is that nationhood means so much in the core of a society.

But the people of Puerto Rico do not want independence either. Less than 5 percent of the population favors independence because the existence and permanence of United States citizenship would be threatened.

This state of affairs is the result of over 100 years of federal policymaking... Please do not blame the Puerto Ricans! For almost 60 years the way to reconcile both aspirations and keep the right balance was the commonwealth relationship. And even today, when we are faced with the same dilemma, an enhanced form of commonwealth should not be perceived as the problem. It is the answer to the dilemma.

And therein lies the problem with HR2499. In a very simplistic, yet undemocratic and shameful way tries to push statehood without any recognition of the historical aspirations of the people of Puerto Rico and the fine, yet carefully crafted, balance that Commonwealth brought about. This bill violates the commitment of Speaker Nancy Pelosi to create a consensus process. There is no consensus as you have heard over and over today.

And you may ask what is wrong with just consulting the people of Puerto Rico? The devil is in the details.... Consulting them about what? What are the terms of each option? Should it be left to anyone's imagination to come up with illusory arrangements? For example, will Puerto Rico be truly admitted as a state? What are terms of that "sovereign" option? Should it not make more sense to define them fully first in consultation with the people of Puerto Rico and then proceed to a vote when the process is mature for a vote?

It should come as no surprise then that senior Puerto Rican members of Congress, to wit: The Chair of the Hispanic Caucus and Chairwoman of the Small Business Committee Nydia Velazquez and Congressman Luis Gutiérrez from Chicago do not support this bill.

It is very clear to me as a Puerto Rican, as a legislator and as a long time observer and participant in this progression that the people of Puerto Rico want to continue the course of action that allowed the United States and Puerto Rico to reconcile the two principles of local nationhood and U.S. citizenship.

And it can be done, but the way to do it is not HR 2499. It is through a process of mutual consent; of mutual negotiation; a process of creative policymaking and of recognizing and celebrating the most fundamental democratic principles and bonds that have made the relationship work for so long.

That is why I favor a more coherent process that many in Puerto Rico and here in Washington, D.C. call a constitutional convention. Just like it has been done for so many other genuine political dilemmas in the history of the United States, I favor a constitutional convention to carefully craft a future for Puerto Rico. It is the only way to inject common sense to this debate.

Members of Congress: that is exactly what President Barack Obama is trying to do. In a letter dated February 12, 2008, he stated:

As President, I will work closely with the Puerto Rican government, its civil society, and with Congress to create a genuine and transparent process of self-determination that will be true to the best traditions of democracy. As President, I will actively engage Congress and the Puerto Rican people in promoting this deliberative, open and unbiased process, that may include a constitutional convention or a plebiscite, and my administration will adhere to a policy of strict neutrality on Puerto Rico status matters. My Administration will recognize all valid options to resolve the question of Puerto Rico's status, including commonwealth, statehood, and independence.

So, today my first conclusion would be: let the White House take the lead on this issue. A new President who has the background to fully understand the depth of the nationhood argument and is sensitive to the political aspirations of an island-people should be given room to elaborate a plan for the United States in consultation with Puerto Rico. HR 2499 shuts the door to a new White House and essentially follows old, tainted and discredited views on what to do about Puerto Rico.

I am aware that this debate –and HR2499- are polluted with the existence of two recent reports that were designed to deny any future development of the Commonwealth. The Bush Reports adopt the legal conclusion that the U.S. Constitution somehow prohibits a relationship with Puerto Rico based on mutual consent, which is anchored in the will of the people of Puerto Rico, along with U.S. citizenship. The real effect of the reports is nil as the Executive has no authority to interpret the law and numerous federal appellate and Supreme Court decisions on the matter. However, the statehood lobby intends to give this fallacious report great weight and this Congress would in fact be giving this Bush era relic legal authority were it to move forward on HR 2499.

And to those in this room who favor statehood and for purely political reasons insist that an enhanced commonwealth is impossible under the United States Constitution, I challenge you today to go a few blocks from here to the Georgetown Law School and spend 15 minutes with Dean Alexander Aleinikoff who has clearly stated:

If both the Congress and the people of Puerto Rico seek to establish a new relationship that recognizes space within the American constitutional system for "autonomous" entities, it ill behooves either the executive branch or the judiciary to set such effort aside in the name of nineteenth-century conceptions of sovereignty.¹

Moreover, constitutional Law Professor, Richard Pildes, from the New York University School of Law, while describing the Bush Reports on the status of Puerto Rico constitutional analysis as "*unpersuasive and inadequate*," concludes that regarding the possible future development of Commonwealth:

In my view, were the United States Congress and the people of Puerto Rico to prefer expanding the existing Commonwealth relationship, in a way that provides greater autonomy for Puerto Rico on the basis of mutual consent, it would be unfortunate, even

¹ Aleinikoff, Alexander, *SEMBLANCE OF SOVEREIGNTY*, pages 92-93, Harvard University Press (2002)

*tragic, for that option to disappear due to confusion or error about whether the Constitution permits Congress to adopt such an option.*²

Professor Pildes stated in his testimony before the Subcommittee on Insular affairs on March 22, 2007, that:

*“Congress does have the power, should it choose to use it, to enter into a mutual-consent agreement that would create and respect more autonomous form of Commonwealth status for Puerto Rico, in which Congress would pledge not to alter the relationship unilaterally.”*³

Similar conclusions were reached by Charles Cooper, former head of the Office of Legal Counsel at the U.S. Department of Justice:

*“In short, there is no support for a reading of the Constitution that unnecessarily restricts the political arrangements available to the President and Congress in fashioning binding consensual solutions to the Nation’s relations with the people of its territories.”*⁴

All of these outstanding constitutional scholars are available to clarify these notions before proceeding with this ill-conceived bill.

Finally, Mr. Chairman, as my second and last conclusion, I would urge this Committee to reject HR 2499 as it represents a setback for the aspirations of the people of Puerto Rico. There is a much better path and the White House is working with the leadership of Puerto Rico to craft the much needed consensus to move forward this debate. Give them a chance.

Thank you.

² Pildes, Richard, TESTIMONY BEFOR THE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON INSULAR AFFAIRS OF THE U.S. HOUSE OF REPRESENTATIVE ON H.R. 900 AND H.R. 1230, page 1, March 22, 2007

³ Id., pages 6-7.

⁴ Cooper, Charles, THE POWER OF CONGRESS TO VEST JURIDICAL STATUS IN PUERTO RICO THAT CAN BE ALTERED ONLY BY MUTUAL CONSENT, page 7, September, 2005 (Memorandum presented to the U.S. Department of Justice on behalf of the Government of Puerto Rico).