

WASHINGTON POLITICS PUERTO RICAN STYLE: THE ROLE OF THE RESIDENT COMMISSIONER IN USA-PUERTO RICO RELATIONS

ARTICLE

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INTRODUCTION

THE RESIDENT COMMISSIONER IS THE ONLY PUERTO RICAN ELECTED OFFICIAL endowed with the ability to represent the Puerto Rican people in Congress. The Resident Commissioner currently represents the 3.9 million¹ inhabitants of the island of Puerto Rico and faces the difficult task of representing such a large population while having limited voting rights. The office was born after the acquisition of Puerto Rico and other former Spanish colonies after Spain's defeat in the Spanish-American War. The Resident Commissioner is one of six nonvoting representatives in the House of Representatives. The other nonvoting representatives hail from the District of Columbia,

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¹ *Central America and Caribbean: Puerto Rico*, THE WORLD FACTBOOK, (Nov. 13, 2010), available at <https://www.cia.gov/library/publications/theworldfactbook/geos/rq.html>.

Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands and are known as Delegates. While he shares the same powers and privileges as the Delegates he is, however, the only one with the title of Resident Commissioner since the only other territory (the Philippines) that had a Resident Commissioner has since obtained its independence.

This article will examine the figure of the Resident Commissioner by analyzing the office's history and evolution, as well as its current role in Puerto Rican and Washington politics. The article will also analyze the Resident Commissioner's actions and standing on the issues of parity in federal funding and political status in light of The Puerto Rico Democracy Act,² the recently approved healthcare reform, and the federal stimulus bill.

With the passing of time, the Resident Commissioner has gone from the ambassador of an overseas territory to having most of the powers and privileges of members of Congress short of the right to vote. This has demonstrated a marked tendency of Congress (who has plenary power over territories) to be more inclusive of Puerto Rico in the deliberative processes of the House and without express statement or action, brought Puerto Rico closer to having the same powers and privileges as a state.

I. HISTORICAL AND LEGISLATIVE BACKGROUND³

The figure of the Resident Commissioner of Puerto Rico first came into being with the passage of the Organic Act of 1900,⁴ commonly known as the Foraker Act. This Act signified the end of the military government that took hold of Puerto Rico in 1898 after the Spanish-American War and implemented a system of civil government. The Act's authority lies in the United States Congress plenary power to make "all needful Rules and Regulations"⁵ respecting territories in the Territorial clause of the Constitution.

The Act, in section 39, granted Puerto Rico representation in the United States government by creating the office of the Resident Commissioner. The Resident Commissioner was to be elected by popular vote in Puerto Rico every two years. "That the qualified voters of Porto Rico shall . . . choose a resident commissioner to the United States, who shall be entitled to official recognition as such by all Departments"⁶

² H.R. 2499, 111th Cong. (2010).

³ See William Tansill, *The Resident Commissioner to the United States from Puerto Rico: An Historical Perspective*, 47 REV. JUR. UPR 68 (1978).

⁴ Foraker Act of Apr. 12, 1900, ch. 191, 31 Stat 77. 1900.

⁵ U.S. CONST. art. IV, § 3.

⁶ Foraker Act § 39.

Up until the Spanish American War, territories were incorporated into the Union with “a view to ultimate statehood”⁷ and were given non-voting Delegates in Congress to represent them as they underwent the transition from territory to state. On the other hand, “the overseas territories acquired through the peace treaty ending the War of 1898 were considered *unincorporated* territories.”⁸ Unincorporated territories were not considered to be on the path to statehood.⁹ This posed a problem when deciding what kind of representation Puerto Rico would have because it fell in a different category than previous territories. “Although the House passed a bill in 1900 providing for the selection of a Delegate from Puerto Rico, the Senate amended the measure to establish instead an office of Resident Commissioner. The Senate action was predicated on opposition to a potential for statehood that was implicit in establishing the post of Delegate.”¹⁰ The Resident Commissioner was an office specifically designed to represent the different species of territories obtained in the Spanish-American War and “clearly different from that of congressional Delegate.”¹¹

As originally conceived in the Foraker Act, the Resident Commissioner would act as a representative to all Departments of the United States government but was not given an office in Congress like that afforded to the Delegates. The Resident Commissioner was “given neither vote nor voice in congressional deliberations; in fact, he was not even allowed on the floor of the House. His only contacts with the Members were at their private quarters or in committee rooms.”¹²

This means that at the time of the Foraker Act, the Resident Commissioner was not envisioned as a representative to Congress but instead was more of an ambassador of Puerto Rico to the Departments of the federal government. The Resident Commissioner did not have a permanent office in any agency or department of the United States government. He was, in fact, an outsider which had just been granted *official recognition* to represent Puerto Rico in the United States. In other words, he was reduced to a political figure with poorly defined functions and little power.

⁷ Pedro Capó Rodríguez, *Colonial Representation in the American Empire (With Special Reference to Porto Rico)*, 15 AM. J. INT'L L. 530, 533 (1921).

⁸ R. ERIC PETERSEN, RESIDENT COMMISSIONER FROM PUERTO RICO, CONGRESSIONAL RESEARCH SERVICE REPORT 1 (2009) [hereinafter CRS Report on the Resident Commissioner].

⁹ For more information on the concept of unincorporated territories and the case law that developed the concept, see Juan Torruella, *The Insular Cases: The Establishment of a Regime of Political Apartheid*, 77 REV. JUR. UPR 1 (2008).

¹⁰ PETERSEN, *supra* note 8, at 2.

¹¹ *Id.* at 1.

¹² Tansill, *supra* note 3, at 72.

Federico Degetau, elected in 1900, was the first Resident Commissioner. He served two two-year terms from 1901 to 1905.¹³ Halfway through his tenure, in 1902, the House of Representatives passed House Resolution No. 169, which amended House Rule 34 in order to grant the Resident Commissioner access to the floor of the House.¹⁴ This was the first sign of a tendency in the House to approximate the Resident Commissioner to the position of one of a Delegate as opposed to one of an ambassador. Between 1902 and 1904, there were several attempts by members of the House to grant Puerto Rico a Delegate in the House instead of a Resident Commissioner. The most notable attempt was the passing of H.R. 17546 on March 2, 1903. This bill would have replaced the Resident Commissioner with a Delegate elected by the people of Puerto Rico. The Delegate of Puerto Rico proposed in H.R. 17546 would have had the same rights and privileges as the Delegates of other territories. The proposal was, however, defeated in the Senate, where the bill was amended to the point of eliminating any possible reference to a Puerto Rican Delegate.¹⁵

In early 1904 the House Rules were amended to give the Resident Commissioner the “powers and privileges as to committee service and in the House as are possessed by Delegates.”¹⁶ The Resident Commissioner acquired a permanent seat in the House with the right to serve in committee. He also had the right to participate in debate in committee and on the floor but without voting rights in either forum. At this point, the Resident Commissioner became equal to the Delegates in all respects except in name. This means that the Resident Commissioner had the same powers and privileges (as well as the same salary)¹⁷ as the Delegates of Alaska and Hawaii but could not be called a Delegate because Puerto Rico was not to be considered on the statehood track.

After the amendment to the House Rules, Resident Commissioner Degetau was appointed to the Committee on Insular Affairs. Initially, the Resident Commissioner only served on the Committee on Insular Affairs, but starting in 1933, he began to serve on multiple committees.¹⁸ While Resident Commissioners can be elected to any committee, they traditionally retain a seat in the subcommittee on Insular Affairs of the Committee on Natural Resources, the successor to the Committee on Insular Affairs¹⁹ and any other committee they may be assigned

¹³ *Biography of Federico Degetau*, Biographical Directory of the United States Congress, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=D000196> (last visited Nov. 13, 2010).

¹⁴ Tansill, *supra* note 3, at 73.

¹⁵ *See id.* at 73-79 (for a more detailed account of the bills proposing a Puerto Rican Delegate).

¹⁶ PETERSEN, *supra* note 8, at 2 (see H. Res. 197, 58th Cong. 1905).

¹⁷ Tansill, *supra* note 3, at 82.

¹⁸ *See* PETERSEN, *supra* note 8, at 3.

¹⁹ *See House Committee on Natural Resources, Historical Information of the Committee on Resources and Its Predecessor Committees, 1807-2002, Preparation for a Bicentennial, Serial No. 107-G (2002)*, <http://frwebgate.access.gpo.gov/cgi->

to. Being able to participate in Committees other than Insular Affairs has proven to be key to the Resident Commissioner's involvement in Congressional matters other than those exclusively pertaining to the territories as evidenced by the achievements of contemporary Resident Commissioners.

In 1917, with the passing of a new organic act known as the Jones Act,²⁰ the office of the Resident Commissioner sustained a few changes. His term of office was increased to that of four years, the minimum age for election was reduced to 25 years, and furthermore, "he was allowed the same sum for stationery and clerk hire as obtained for members of the House, as well as the same franking privilege."²¹ The increase of the term to four years marks the only difference between the Resident Commissioner and the Delegates. The four-year term can be considered a blessing or a curse. It can be a blessing because it gives stability to the office, even more so than full Members of Congress, which have two-year terms. On the other hand, it inevitably ties the Resident Commissioner to the comings and goings of Puerto Rican local politics since the office is up for election at the same time as every other political office on the island.

The last major statutory change to the office of the Resident Commissioner was in 1970 with the passing of the Legislative Reorganization Act of 1970.²² Thanks to an amendment²³ proposed by then-Resident Commissioner Jorge Córdova, the Resident Commissioner acquired the right to vote in standing committees of the House. "The effect of the amendment was to give the Resident Commissioner the right to vote in any committee on which he was elected to serve, to accrue seniority, and to assume a leadership post within any committee."²⁴

This change is of enormous significance to the role of the Resident Commissioner as it gives him power equal to other Members of Congress at least in Committee. A significant amount of the work in Congress is done at the committee level. Committees hold hearings, question witnesses, draft legislation, and most importantly act as a filter for legislation when they evaluate, vote, and report on bills. The kind of participation and networking done in committee can be invaluable to a Resident Commissioner's work in Congress, since in committee the Resident Commissioner has a vote that counts.

[bin/getdoc.cgi?dbname=107_cong_house_committee_prints&docid=f:83340.pdf](#) (for more information about the history of the Committee on Natural Resources).

²⁰ Pub. L. No. 368, 39 Stat. 951 (1917).

²¹ Tansill, *supra* note 3, at 82.

²² Pub. L. 91-510, 84 Stat. 1143 (1970).

²³ *Id.* at 1161 (the amendment read as follows: "The Resident Commissioner to the United States from Puerto Rico shall be elected to serve on standing committees in the same manner as Members of the House and shall possess in committees the same powers and privileges as the other Members").

²⁴ PETERSEN, *supra* note 8, at 4.

II. PARLIAMENTARY RIGHTS IN THE HOUSE OF REPRESENTATIVES

The Resident Commissioner, while not a full Member of Congress, has acquired more power and participation since the post's creation. Rule III, clause 3 of the Rules of the House recognizes the Resident Commissioner and Delegates of the Territories as members of the House and enumerates their rights and privileges.²⁵ Delegates and the Resident Commissioner have the same powers and privileges as Representatives to serve on standing and conference committees with full participation and voting rights including: "the right to question witnesses, to debate, offer amendments, vote, offer motions, raise points of order, include additional views in committee reports, accrue seniority, and chair committees and subcommittees."²⁶

The Resident Commissioner's vote in committee has the same weight as that of other members of Congress and so it can be determinant in deciding whether or not a bill will be recommended for approval in the House. This power is limited by the fact that the Resident Commissioner can usually only serve in two committees, and will not be able to vote on bills submitted to other committees. Nevertheless, most bills must be approved in committee before they even have a chance of reaching a vote on the floor of the House. Due to this fact, members of Congress interested in passing certain legislation may seek the support of the Resident Commissioner to aid the approval of the measure. This in turn can enable the Resident Commissioner to bargain in exchange for support of one of his bills. While very limited, the voting power of the Resident Commissioner in committee may enable him to obtain some bargaining power.

The ability of the Resident Commissioner to attain seniority and chairmanships of committees contributes to his standing among other Members of Congress. Becoming Chairperson or Ranking Member of a committee or subcommittee denotes recognition from fellow members of Congress and standing in their respective parties. Carlos Romero-Barceló and Luis Fortuño have both achieved positions of Ranking Member in subcommittees of the Committee on Natural Resources and Pedro Pierluisi, the current Resident Commissioner, was Vice-chair of the Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security during the 111th Congress, a rare achievement for a freshman Congressman.

On the floor of the House, the Delegates and the Resident Commissioner "may not vote in or preside over the House . . . may not vote for Speaker . . . and

²⁵ U.S. Congress, *Constitution, Jefferson's Manual, and Rules of the House of Representatives 111th Congress*, (H.R.Doc. No. 110-162), §§ 675-676 (2009), available at http://www.gpoaccess.gov/hrm/browse_111.html.

²⁶ CHRISTOPHER M. DAVIS, PARLIAMENTARY RIGHTS OF THE DELEGATES AND RESIDENT COMMISSIONER FROM PUERTO RICO, CONGRESSIONAL RESEARCH SERVICE REPORT 1 (2009) [hereinafter CRS Report on Parliamentary Rights].

may not file or sign discharge petitions.”²⁷ They may offer amendments, “sponsor and cosponsor legislation, participate in debate, including managing time, and offer any motion which a Representative may make, except the motion to reconsider.”²⁸

Depending on the ruling party, the Resident Commissioner and Delegates have at times had the same ability to vote and preside as any other member of Congress.²⁹ The vote was, however, “subject to immediate reconsideration if the Delegates and Resident Commissioner’s votes have been decisive”.³⁰ The Committee of the Whole is an important forum where much of the House’s day-to-day business is conducted. In the Committee of the Whole, the House “considers, debates, and votes on amendments to most of the legislation reported out of the standing or select committees. Only after consideration of amendments in the Committee of the Whole is legislation reported to the floor of the House for final, usually perfunctory, consideration.”³¹ Also, “the Committee of the Whole occupies a central role on taxes, appropriations, and all other matters touching upon money.”³² This is of particular importance to Puerto Rico since one of the most important tasks of the Resident Commissioner is to assure appropriations and funding for programs.

The right of Delegates and the Resident Commissioner to vote in the Committee of the Whole has resulted in much controversy and has become object of a political struggle in the House. In the 103rd Congress (1993-1994), the Rules of the House were amended by the Democratic majority to allow the Delegates and the Resident Commissioner to vote in, and to preside over, the Committee of the Whole for the first time. These provisions were later stricken from the Rules as adopted by the Republican majority in the 104th Congress (1995-1996) and remained out of effect until readopted by a Democratic House in the 110th Congress in 2007.³³ Most recently, the provisions were once again repealed by the 112th Congress.³⁴ This political tug-of-war resembles the controversies that arose in Congress after the Spanish-American War. The extent of the political power of the Delegates and the Resident Commissioner is once again a controversial sub-

²⁷ *Id.* at 1.

²⁸ *Id.*

²⁹ *Id.* at 2.

³⁰ *Id.* at 1-2.

³¹ *Michel v. Anderson*, 817 F. Supp. 126, 131 (D.D.C. 1993).

³² *Id.* at 141.

³³ DAVIS, *supra* note 26, at 2.

³⁴ H. RES. 5 Adopting Rules for the 112th Congress Section-by-section Analysis 5, available at: <http://rules.house.gov/RulesRepMedia/file/PDF/HRes%205%20Sec-by-Sec.pdf>.

ject. However, it seems that this time, the reasons behind the controversy may be less an issue of law and more an issue of politics.³⁵

When the rule was first adopted in 1993, then Minority Leader, Robert H. Michel (R-IL) and 12 other representatives filed suit³⁶ against the Clerk of the House, the Delegates of the territories (District of Columbia, Virgin Islands, Guam, American Samoa), and the Resident Commissioner (position held at the time by Carlos Romero-Barceló) claiming the unconstitutionality of the rule since they alleged it diluted Representatives' votes.

The constitutionality of allowing the Resident Commissioner and Delegates to vote in the Committee of the Whole hinges on whether voting in this Committee constitutes an exercise of legislative power. Legislative power in the House is constitutionally reserved to "[m]embers chosen every second [y]ear by the People of the several States."³⁷ "Since the Delegates do not represent States but only various territorial entities, they may not, consistently with the Constitution, exercise legislative power."³⁸

The Court determined that voting in the Committee of the Whole is in fact an exercise of legislative power and such exercise of power would be unconstitutional for Delegates and the Resident Commissioner. Yet, the House provided for a "savings clause" that orders an immediate revote without the participation of Delegates or the Resident Commissioner if a question has been decided by a margin in which their votes are decisive. This "savings clause", according to the Court, renders the votes meaningless. In other words, the vote of the Delegates is only allowed if it is in no way determinant of the outcome of the vote.

[T]he right to vote is genuine and effective only when, under the governing rules, there is a chance, large or small, that, sooner or later, the vote will affect the ultimate result. The votes of the Delegates in the Committee of the Whole cannot achieve that; by virtue of Rule XXIII they are meaningless. It follows that the House action had no effect on legislative power, and that it did not violate Article I or any other provision of the Constitution.³⁹

One of the plaintiffs' arguments against the right of Delegates to vote in the Committee of the Whole was that they could end up indirectly exercising legislative power by trading votes with Full Members. The Court dismisses this argument by stating that "the Court will not assume that Members will trade some-

³⁵ Most of the Resident Commissioners and Delegates elected in recent years aligned with the Democratic Party. See Election Statistics, Office of the Clerk, U.S. House of Representative, Election Statistics, http://clerk.house.gov/member_info/electionInfo/index.html (last visited Feb. 20, 2010).

³⁶ *Michel v. Anderson*, 817 F. Supp. 126 (D.D.C. 1993); *aff'd*, 14 F.3d 623, (C.A. D.C. 1994).

³⁷ U.S. CONST art. I, § 2, cl. 1.

³⁸ *Michel*, 817 F. Supp. at 140.

³⁹ *Id.* at 147-48.

thing for nothing.”⁴⁰ “Although the plaintiffs correctly note that votes are the ‘currency of the House’ for trading purposes, the fact is that under the January 1993 rules change the votes in the wallets of the Delegates are only counterfeit bills. They can never have a final effect on legislation in the House.”⁴¹

The participation of the Resident Commissioner in the Committee of the Whole may have a symbolic effect of granting higher status and greater prestige in the House but “it has no effect, or only at most an unproven, remote, and speculative effect, as far as voting or the exercise of legislative power is concerned.”⁴² The Court is correct in pointing out that considering the effects of the rule is akin to speculation. It is uncertain whether or not this rule has had any effect on the exercise of legislative power by the Resident Commissioner.

It would not be surprising if once the Democrats regain a majority in the House, they again adopt the rule. It comes to show that in Congress it is still *politics as usual* and the Resident Commissioner is just as subject to national politics as any other member of Congress. And while the parliamentary rights of regular members of Congress are not affected by electoral politics, the relative success of Resident Commissioners seems to be more related to the favorability of the political climate and the exercise of political strategy rather than symbolic gestures.

III. THE WORK OF RECENT FORMER RESIDENT COMMISSIONERS

The next section presents a brief overview of the work of the four most recent Resident Commissioners, starting with Carlos Romero-Barceló who remained in office for most of the decade of the 1990s. It aims to serve as an illustration of how Resident Commissioners have fared in their task of representing the people of Puerto Rico.

It is noteworthy that three of the four featured Resident Commissioners are members of the pro-statehood New Progressive Party (PNP for its acronym in Spanish) and they all presented bills proposing referenda to determine the political status of Puerto Rico. Political status has been a top issue in Resident Commissioners’ agendas for the past two decades and will most likely remain a priority as long as the Resident Commissioner is a member of the PNP and status remains unresolved.

It is also notable that only one of the recent Resident Commissioners, Luis Fortuño, is a Republican. Fortuño is the first modern Republican to serve as Resident Commissioner. The only other Republican to serve as Resident Commissioner was Federico Degetau from 1901 to 1904 in the 57th and 58th Congresses.⁴³

⁴⁰ *Id.* at 144.

⁴¹ *Id.*

⁴² *Id.* at 145.

⁴³ *Biography of Federico Degetau, supra* note 13.

Of the Resident Commissioners profiled in this article, three have been Governors of Puerto Rico. While Romero-Barceló was Governor before he became Resident Commissioner, Aníbal Acevedo-Vilá was elected Governor immediately after leaving the Resident Commissioner office. Luis Fortuño followed the same path as Acevedo-Vilá, from Resident Commissioner to Governor, position he currently holds. The Governorship of Puerto Rico and the position of Resident Commissioner are very closely related. Unlike in the states, the candidates for Governor and Resident Commissioner appear in the same ballot and are considered running mates (not unlike the President and the Vice President in U.S. elections). Governorship is often seen as the next logical step after a term as Resident Commissioner. This is in great part due to the particular election cycle of the Resident Commissioner that sets the term at four years instead of two years. The interaction between the Resident Commissioner and the Governor of Puerto Rico will be discussed later on.

The tables below show how measures sponsored and cosponsored by Resident Commissioners have done over the years. They show that while Resident Commissioners are fairly active when sponsoring bills, their sponsored bills are not usually successful. They see more success when cosponsoring bills, probably due to the fact that the proposing Representative has more leverage in bargaining (due to the right to vote). Cosponsoring is a way the Resident Commissioners have been able to show support for bills and participate in the process without voting.

Table 1. Measures Sponsored by Resident Commissioners, 93rd-110th Congresses⁴⁴

Congress	Measures Introduced	Measures Passed House	Enacted
93 rd (1973-1974)	12		
94 th (1975-1976)	13		
95 th (1977-1978)	30	1	1
96 th (1979-1980)	19	1	
97 th (1981-1982)	18	1	
98 th (1983-1984)	16		
99 th (1985-1986)	8		
100 th (1987-1988)	8		
101 st (1989-1990)	2	2	

44 PETERSEN, *supra* note 8, at 8-9.

102 nd (1991-1992)	5		
103 rd (1993-1994)	3	1	
104 th (1995-1996)	5		
105 th (1997-1998)	6	1	
106 th (1999-2000)	8	1	1
107 th (2001-2002)	19	3	1
108 th (2003-2004)	19	2	1
109 th (2005-2006)	17	3	3
110 th (2007-2008)	27	5	4

Table 2. Measures Cosponsored by Resident Commissioners, 93rd-110th Congresses

Congress	Measures Cosponsored	Measures Passed House	Enacted
93 rd (1973-1974)	57	3	3
94 th (1975-1976)	86	17	7
95 th (1977-1978)	289	12	5
96 th (1979-1980)	437	61	37
97 th (1981-1982)	425	58	24
98 th (1983-1984)	517	129	69
99 th (1985-1986)	495	103	58
100 th (1987-1988)	492	132	57
101 st (1989-1990)	691	127	74
102 nd (1991-1992)	309	94	57
103 rd (1993-1994)	334	67	27
104 th (1995-1996)	164	11	5
105 th (1997-1998)	194	24	8
106 th (1999-2000)	334	59	20
107 th (2001-2002)	158	18	3
108 th (2003-2004)	307	40	13
109 th (2005-2006)	283	71	12

110 th (2007-2008)	400	128	10
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A. Carlos Romero-Barceló (103rd to 106th Congresses)

Carlos Romero-Barceló was elected Resident Commissioner in November of 1992 to the 103rd Congress starting in 1993 and served until the 106th ending in the year 2000. He is a Democrat and member of the New Progressive Party. As one of the longest serving Resident Commissioners, Romero-Barceló had the opportunity to become well acquainted with the workings of Congress and was able to accrue seniority and status in committees and with fellow members of Congress. He sponsored a total of 22 measures and cosponsored 1,026 measures during his term in Congress.⁴⁵

Romero-Barceló quickly ascended in the ranks of Congress. He was elected to the Executive Council of the Democratic Study Group and was the only freshman Representative elected by both his Democratic and Republican colleagues to the Executive Committee of the Environmental and Energy Study Conference, the largest caucus on Capitol Hill.⁴⁶ During his eight-year term in Congress, Romero-Barceló served in the Committees on Natural Resources, Education and Labor, Economic and Educational Opportunities, Education and the Workplace, and National Security. During the 106th Congress, he became Ranking Democrat of the National Parks and Public Lands Sub-committee of the Committee on Natural Resources. This was the “first time in the history of Puerto Rico that a Resident Commissioner acquires such a high-ranking position within a Sub-committee.”⁴⁷

Romero-Barceló “distinguished himself as a voice of reason in the debate on the reduction of federal corporate tax exemption in Puerto Rico, as well as a tireless advocate of the island’s equal inclusion in national health care programs, particularly health care reform initiatives.”⁴⁸ Most notably, he dedicated much of his term advocating for the repeal of section 936⁴⁹ tax incentives for Puerto Rico, federal funds parity, the inclusion of Puerto Rico in health reform, the transfer of Naval lands to the municipality of Vieques, and the celebration of a plebiscite endorsed by Congress to determine Puerto Rico’s political status.

One of Romero-Barceló’s most controversial ideas is that Puerto Rico ought to pay federal taxes in order to receive federal funds on par with the states:

⁴⁵ *Biography of Carlos A. Romero Barceló*, Stennis Center for Public Service Leadership, http://www.stennis.gov/congressionalbio/congressionalbio_show.htm?doc_id=727465 (last visited Nov. 13, 2010).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ 26 U.S.C. § 936 (2006).

Nothing in life is free and much less not paying taxes. Because of not paying federal income taxes, Puerto Rico does not have access to many programs like earned income tax credit, we do not have a nutrition program at the same level as the states of the Union, the Medicaid we have is but a crumb, and in education the help to poor students is limited.⁵⁰

What is interesting is that he saw federal taxes not as a consequence of statehood but as a step to bring Puerto Rico closer to statehood. Paying taxes before becoming a state would be no different to the District of Columbia that pays federal taxes but is not a state with a vote in Congress (leading to the famous motto imprinted on D.C. license plates of “Taxation without Representation”). Yet, federal taxation could eliminate the rational basis to discriminate against Puerto Rico in granting funds.⁵¹

Romero-Barceló supported the elimination of tax exemptions in section 936 of the Internal Revenue Code as a way to justify the granting of more federal aid to Puerto Rico. According to him, the Federal Government was withholding funds from the middle and working class Puerto Ricans to give federal tax exemptions to multinational corporations.⁵² Due to the Resident Commissioner and Governor Rosselló’s advocacy, section 936 was amended in August 1996 in section 1601 of the Small Business Job Protection Act of 1996.⁵³ The elimination of section 936 remains a contentious issue in Puerto Rican politics.

Romero-Barceló was a strong supporter of health reform and sought to include Puerto Rico in the health reform proposed by President Clinton. He successfully negotiated the inclusion of Puerto Rico in the federal health reform with full parity by extending the proposed increase in tobacco excise taxes to Puerto Rico.⁵⁴ In other words, he sought parity by making Puerto Rico pay its share of the tax meant to finance the measure. This never came into effect due to health reform’s defeat in Congress. Nevertheless, it marks an interesting way to achieve parity in certain areas by assigning specific federal taxes to fund a measure.

⁵⁰ Interview with Pablo J. Trinidad, *Aboga de nuevo por el pago de contribuciones federales*, EL NUEVO DÍA, Dec. 10, 1996, <https://www.adendi.com/archivo.asp?num=243455&year=1996&month=12&keyword=Aboga%20de%20nuevo> (translation by author).

⁵¹ In *Califano v. Gautier Torres*, 435 U.S. 1 (1978), the Supreme Court decided that excluding Puerto Rico from federal programs did not violate the Fifth Amendment of the Constitution as long as a rational basis existed for this exclusion. Puerto Rico’s lack of contribution to the federal treasury is considered a reason to justify this exclusion.

⁵² See Leonor Mulero, *Muerte a la Sección 936*, EL NUEVO DÍA, Jan. 31, 1995, <https://www.adendi.com/archivo.asp?num=183851&year=1995&month=1&keyword=Muerte%20a%20la%20seccion>.

⁵³ 110 Stat. 1755, 1827 (1996).

⁵⁴ See Leonor Mulero, *Resolución a favor de la Isla*, EL NUEVO DÍA, May 19, 1994, <https://www.adendi.com/archivo.asp?num=153408&year=1994&month=5&keyword=Resolucion%20a%20favor%20de%20la%20isla>.

Romero-Barceló was an advocate for the elimination of live bombing and the transfer of lands in the island of Vieques back to the Government of Puerto Rico. He introduced legislation for this issue on several occasions such as the Vieques Lands Transfer Act of 1994,⁵⁵ Vieques Lands Transfer Act of 1995,⁵⁶ and HR 5651⁵⁷ “[a]n Act to convey certain Federal lands to the Commonwealth of Puerto Rico.” On January 31, 2000, President Clinton issued a Presidential Directive⁵⁸ detaining live fire exercises in Vieques and mandating a referendum for the people of Vieques to choose whether or not they wanted the Navy to stay. While the final Congressional approval to cease military practices and transfer the lands back Vieques was not until late 2001, there is no question that Romero-Barceló’s eight years in Washington played a key role in resolving the issue of military exercises in Vieques.

The political status of Puerto Rico was also a priority issue for then-Resident Commissioner Romero-Barceló who introduced legislation along with Representative Don Young of Alaska to order a Congress-sponsored plebiscite to decide the issue of the status of Puerto Rico. The bill, known as the United States-Puerto Rico Political Status Act of 1998⁵⁹ called for a plebiscite for the people of Puerto Rico to decide between four options of status: statehood, independence, commonwealth, or associated republic. On March 4, 1998, the bill passed in the House by a 209-208 margin.⁶⁰ It passed as amended with the Solomon Amendment (H. Amdt. 501),⁶¹ which mandated that Puerto Rico would have English as an official language if it picked statehood. Romero-Barceló was opposed to the English-only condition.⁶² The bill was finally defeated in the Senate. Nevertheless, the bill’s initial success in the House indicates a tendency towards more consideration of the Resident Commissioner’s concerns as well as the increasing importance of the post.

Romero-Barceló was a very active Resident Commissioner that relentlessly pushed for the issues he deemed were important to Puerto Rico. He was able to

55 H.R. 3831, 103rd Cong. (1994).

56 H.R. 2159, 104th Cong. (1995).

57 H.R. 5651, 106th Cong. (1997).

58 William J. Clinton, *Directive to the Secretary of Defense Director, Office of Management and Budget*, <http://www.fas.org/irp/offdocs/pdd/000131-vieques.htm> and <http://www.fas.org/irp/offdocs/pdd/000131-vieques2.htm> (last visited Nov. 13, 2010).

59 H.R. 856, 105th Cong. (1997).

60 Office of the Clerk, Final Vote Results for Roll Call 37, <http://clerk.house.gov/evs/1998/rollo37.xml>.

61 H. Amdt. 501, 105th Cong. (1998), available at <http://www.govtrack.us/congress/amendment.xpd?session=105&amdt=h501>.

62 Jesús Dávila, *Inconcebible para Romero la imposición del inglés bajo el estado federado*, EL NUEVO DÍA, Oct. 24, 1998, <https://www.adendi.com/archivo.asp?num=356229&year=1998&month=10&keyword=Inconcebible%20para%20Romero>.

get Congress and the President to amend section 936, successfully advocated for the end of live bombings in Vieques, set the ground for the transfer of lands, and managed to achieve the passage of a major status bill in the House. Overall, he was an effective and successful, albeit controversial, representative for Puerto Rico during his term as Resident Commissioner.

B. Aníbal Acevedo-Vilá (107th and 108th Congresses)

Aníbal Acevedo-Vilá was elected Resident Commissioner in November, 2000 and served in the 107th and 108th Congresses from 2001 to 2004. He served as a Democrat in Congress and is a member of the pro-commonwealth Popular Democratic Party (PPD for its acronym in Spanish.) He sponsored a total of 38 measures during his term in Congress, of which 5 passed in the House and 2 became law. He cosponsored 465 measures, of which 58 passed in the House. He was elected to serve in the committees on Natural Resources, Agriculture, and Small Business. He was a very active Resident Commissioner in terms of introducing legislation for consideration.

Acevedo-Vilá's work in Congress is best known for concluding the transfer of Navy lands to Vieques, achieving increases in funding for Title I education programs, and extending Medicare reform to Puerto Rico.⁶³ When his term began in 2001, Acevedo-Vilá faced a much different Congress than Romero-Barceló. He faced a Republican House that shared President George W. Bush's ambitions to be fiscally conservative and cut spending. He also began his term with the issue of Vieques still looming but facing a more conservative and pro-military President.⁶⁴

From early in his term, Resident Commissioner Acevedo-Vilá had to carry on the advocacy to remove the Navy from Vieques as soon as possible. One of his first actions as Resident Commissioner was to collect the signatures of members of Congress and write a letter to President George W. Bush requesting a prompt end to all exercises in Vieques.⁶⁵ The debate on Vieques was sidetracked after the terrorist attacks of September 11, 2001⁶⁶ but finally came to an end when the National Defense Authorization Act for Fiscal Year 2002 became law on December 28, 2001.⁶⁷ The law mandated the termination of military exercises on Vieques and ordered the transfer of lands to the Department of the Interior.

⁶³ ANÍBAL ACEVEDO VILÁ, *Aníbal Acevedo-Vilá, Biography*, <http://acevedovila.net/es/biografia/> (last visited Nov. 13, 2010).

⁶⁴ See Leonor Mulero, *Acevedo ante sus primeros 75 días*, EL NUEVO DÍA, Mar. 18, 2001, <https://www.adendi.com/archivo.asp?num=450313&year=2001&month=3&keyword=Acevedo%20ante%20sus%20primeros>.

⁶⁵ *Id.*

⁶⁶ See José A. Delgado, *'Irreal' impulsar ahora la causa de la Isla Nena*, EL NUEVO DÍA, Sept. 22, 2001, <https://www.adendi.com/archivo.asp?num=467687&year=2001&month=9&keyword=Irreal>.

⁶⁷ Pub. L. 107-107, 115 Stat. 1012.

One of Acevedo-Vilá's and Governor Calderón's priorities in Washington was to achieve the passing of an amendment to section 956 of the Internal Revenue Code to provide incentives to corporations doing business in Puerto Rico. The proposed incentives would allow tax breaks for US corporations when repatriating earnings and were not too different from those that used to be provided in section 936. Acevedo's efforts throughout his Congressional term to push for the consideration and approval of the desired amendment to section 956 were, however, ineffective.⁶⁸

In terms of obtaining funds for Puerto Rico, Acevedo-Vilá was successful in achieving parity with states in the obtaining of Title I funds for schools with students with low-income families. The No Child Left Behind Act of 2001 grants Puerto Rico gradual increases in Title I funding until reaching 100% participation in 2007.⁶⁹ Acevedo-Vilá also successfully included Puerto Rico in the Medicare Prescription Drug Improvement and Modernization Act of 2003⁷⁰ which improved payouts to hospitals.

He also introduced and sponsored legislation to designate some rivers in the Caribbean National Forest as components of the National Wild and Scenic Rivers System. This bill known as Caribbean National Forest and Scenic Rivers Act of 2002 became law on December 19, 2002.⁷¹ Furthermore, he was able to obtain funds for Puerto Rico for nutritional assistance, the construction of the Urban Train, and earmarks for municipalities and scientific research.⁷²

Acevedo-Vilá has been criticized for his work in Congress and has been accused of lacking focus. He was also criticized for traveling back to Puerto Rico too much and not getting involved enough in Congressional politics.⁷³ Acevedo-Vilá had his difficulties throughout his term in Congress. In April 2001, he remarked that he found Congressmen to be indifferent to issues related to Puerto

68 See Mildred Rivera Marrero, *Se queda fuera la sección 956*, EL NUEVO DÍA, July 30, 2002, <https://www.adendi.com/archivo.asp?num=51335&year=2002&month=7&keyword=se%20queda%20of%20uera%20la>; José A. Delgado, *'Nocivo' el déficit fiscal para enmendar la 956*, EL NUEVO DÍA, Sept. 28, 2003, <https://www.adendi.com/archivo.asp?num=581943&year=2003&month=9&keyword=nocivo>.

69 See Marga Parés Arroyo, *Anuncia Acevedo Vilá aumentos para el Título I*, EL NUEVO DÍA, May 31, 2002, <https://www.adendi.com/archivo.asp?num=504689&year=2002&month=5&keyword=Anuncia%20Acevedo>.

70 Pub. L. No. 108-173, 117 Stat. 2066.

71 Pub. L. No. 107-365, 116 Stat. 3026.

72 See José A. Delgado, *Recuenta sus logros Acevedo Vilá*, EL NUEVO DÍA, Nov. 30, 2002, <https://www.adendi.com/archivo.asp?num=528540&year=2002&month=11&keyword=Recuenta%20sus%20logros>; Mildred Rivera, *Asignan \$400,000 para ampliar el CCIP*, EL NUEVO DÍA, Feb. 5, 2002, <https://www.adendi.com/archivo.asp?num=487213&year=2002&month=2&keyword=Asignan>.

73 See Frances Rosario, *Críticas a la gestión de Acevedo Vilá*, EL NUEVO DÍA, May 20, 2002, <https://www.adendi.com/archivo.asp?num=503193&year=2002&month=5&keyword=>

Rico.⁷⁴ He faced a more hostile political environment than his predecessor and was in office for only one term. For this reason his achievements seem moderate in comparison.

C. Luis Fortuño (109th and 110th Congresses)

Luis Fortuño was elected Resident Commissioner in November, 2004 and served in the House for the 109th and 110th Congresses as a member of the Republican Party. He is a member of the New Progressive Party in Puerto Rico and is the current Governor of the Commonwealth of Puerto Rico. Fortuño's term in Congress was significant in placing Puerto Rico on the radar of the Republican Party, as Fortuño was the first Republican to serve as Resident Commissioner since Degetau.

Fortuño sponsored a total of 44 measures of which 8 passed the House and 6 became law. He served in the committees of Education and the Workplace, Transportation and Infrastructure, Foreign Affairs, and Natural Resources. For the 110th Congress he was appointed ranking minority member of the Subcommittee on Insular Affairs in the Committee on Natural Resources.

Among measures supported by Luis Fortuño, he was able to pass into law a bill designating the El Toro region of El Yunque National Forest as a component of the National Wilderness Preservation System.⁷⁵ He also attempted to amend the Internal Revenue Code to provide Puerto Ricans with eligibility for earned income tax credit⁷⁶ and unsuccessfully moved to extend the section 936 and 30-A tax credits which had been repealed by the efforts of his predecessor Carlos Romero-Barceló.⁷⁷ He was able to obtain over \$835 million in infrastructure funds for Puerto Rico and a \$24 million Medicaid increase.⁷⁸

Fortuño also tackled the status issue with the Puerto Rico Democracy Act, introduced as HR 4867 in 2006 by both him and Representative José Serrano of New York. The bill called for a plebiscite to decide the status of Puerto Rico. The bill did not get past committee, due in part to the perceived conflict between then-Governor Aníbal Acevedo-Vilá and Luis Fortuño regarding the status issue.

⁷⁴ Sandra Caquias Cruz, 'Indiferentes' los congresistas a los asuntos de Puerto Rico, EL NUEVO DÍA, Apr. 21, 2001, <https://www.adendi.com/archivo.asp?num=450238&year=2001&month=4&keyword=Indiferentes>.

⁷⁵ H.R. 539 which became Pub. L. No. 109-118.

⁷⁶ H.R. 2181, 109th Cong. (2005)

⁷⁷ Gloria Ruiz Kuilan, *Solicita Fortuño extensión de las secciones 936 y 30-A*, EL NUEVO DÍA, June 4, 2005, <https://www.adendi.com/archivo.asp?num=15443&year=2005&month=6&keyword=Solicita%20Fortu%20no>.

⁷⁸ *Luis Fortuño- Biography*, FORTUNOGOBERNADOR.COM, <http://www.fortunogobernador.com/comisionado.php> (last visited Nov. 13, 2010).

The pro-commonwealth governor pled for authorization to celebrate a constitutional convention while Fortuño wanted a federally sanctioned plebiscite.⁷⁹

Fortuño's most significant achievement was that of quickly ascending the ranks of the Republican Party in the House. Within 100 days of being in Congress he was named Vice-chair of the Congressional Hispanic Conference.⁸⁰ He was promoted to Chair for the 110th Congress. He was also nominated to a group of advisors on Hispanic affairs by the Chair of the Republican National Committee (RNC). Fortuño put Puerto Rico in the Republican Party's radar and will continue to do so as long as he is Governor and an active member of the party.

IV. PEDRO PIERLUISI, THE CURRENT RESIDENT COMMISSIONER

Pedro Pierluisi was elected in November 2008 and is currently serving in the 112th Congress. He is a Democrat and member of the New Progressive Party in Puerto Rico. He was former Resident Commissioner Fortuño's running mate in the 2008 elections. Pierluisi currently serves in the Education and Labor, Judiciary, and Natural Resources Committees⁸¹ (Subcommittee of Insular Affairs). Since beginning his term in 2009, Pierluisi has been as involved and active as if he was a full member of Congress.

In little over a year and a half of being Resident Commissioner he has sponsored 10 bills,⁸² During the 111th Congress he passed the Puerto Rico Democracy Act in the House, managed to get Puerto Rico included in health reform, and obtained for Puerto Rico appreciable economic stimulus funds under the American Recovery and Reinvestment Act (A.R.R.A.).⁸³

Pedro Pierluisi is the Vice-Chair of the Subcommittee on Crime, Terrorism, and Homeland Security of the Judiciary Committee. As a former Attorney General of Puerto Rico, Pierluisi was a welcome addition to the Committee of the Judiciary as his opinion is respected and sought after due to his expertise.⁸⁴ Pierluisi's achievement of the vice-chairmanship of a subcommittee should not be

⁷⁹ José Delgado, *Fortuño escribe a Bush y critica la Constituyente*, EL NUEVO DÍA, Feb. 25, 2005, <https://www.adendi.com/archivo.asp?num=2809&year=2005&month=2&keyword=Fortuno>.

⁸⁰ José Delgado, *Enfocado Fortuño en el Congreso*, EL NUEVO DÍA, Apr. 13, 2005, <https://www.adendi.com/archivo.asp?num=8588&year=2005&month=4&keyword=Enfocado%20Fortuno>.

⁸¹ See Rule X, clause 5 of the House Rules for the 111th Congress, available at http://www.gpoaccess.gov/hrm/browse_111.html (this is the first time a Resident Commissioner serves in three committees at once. Representatives and Delegates are usually allowed only in two committees with some exceptions).

⁸² As of August 2010.

⁸³ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 15.

⁸⁴ Interview with Pedro Pierluisi, Resident Commissioner of Puerto Rico, Resident Commissioner's Fortaleza St. Office, San Juan, P.R. (May 7, 2010).

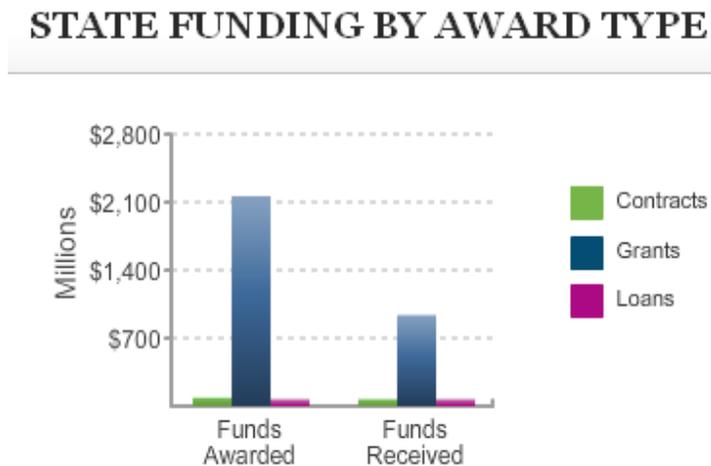
underestimated, as it is rare for a freshman representative to earn a position of this rank.

On July 30, 2010 he introduced The Federal First Offender Improvement Act of 2010, H.R. 6059 to the Judiciary Committee. The Act would amend title 18 of the U.S. Code to provide for deferred sentencing and the possibility of dismissal of drug offenders. As of early 2011, the bill has been referred to committee but not yet debated.⁸⁵ Even if the bill never lives to see the floor of the House, its introduction signals that the Resident Commissioner is concerned with national politics and is interested in passing measures of interest to the nation, not just to Puerto Rico.

A. American Recovery and Reinvestment Act of 2009

Resident Commissioner Pierluisi was successful in getting Puerto Rico a significant amount of stimulus money in the American Recovery and Reinvestment Act (A.R.R.A.) of 2009 that signed into law on February 17, 2009. According to government data, Puerto Rico has so far been awarded over \$2 billion under Section 1512 of A.R.R.A. mostly in the form of grants but also in the form of loans and contracts.⁸⁶

Graph 1. State Funding by Award Type



⁸⁵ Bill Summary & Status H.R. 6059, LIBRARY OF CONGRESS-THOMAS, available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:H.R.6059:@@L>.

⁸⁶ Puerto Rico State/Territory Summary, RECOVERY.GOV, <http://www.recovery.gov/Transparency/RecipientReportedData/Pages/statesummary.aspx?StateCode=PR> (last visited Nov. 13, 2010).

Source: Recovery.gov

Puerto Rico is expecting to receive over \$5.5 billion in A.R.R.A. funds to be divided between the years 2009, 2010, and 2011.⁸⁷ This is a record amount of funds and places the territory among the top recipients of stimulus funds, even when compared with states. Puerto Rico places at #12 among all states and territories in funds awarded, a remarkable feat since Puerto Rico is just a territory.⁸⁸

Under A.R.R.A., Puerto Rico obtained a 30% increase in Medicaid funding, inclusion in the Temporary Assistance to Needy Families (T.A.N.F.) program and additional nutritional assistance under the Puerto Rico Nutritional Assistance Program.⁸⁹ The importance of A.R.R.A. lies in Puerto Rico's dependency on federal funds, especially in the midst of an economic recession. For the fiscal year 2010-11, 4% of Puerto Rico's budget will be funded by A.R.R.A. funds.⁹⁰

A.R.R.A. did not originally contain an increase in Medicaid funding for the territories and Pierluisi had to make significant efforts to obtain it. Among these efforts, he made declarations to the floor of the House in support of increasing Medicaid funding for Puerto Rico⁹¹ and individually petitioned House and Senate leaders for the Medicaid increases in the bill.⁹² He gained leverage by teaming up with the Delegates from the territories to petition House leadership for the additional Medicaid funding⁹³ and also kept communication with House and Senate conferees⁹⁴ during the reconciliation process of A.R.R.A. This resulted in Puerto

⁸⁷ Office of Management and Budget, *Consolidated Risks and Obligations, Fiscal Years 2001-2008 to 2010-11*, 2 (2010), http://presupuesto.gobierno.pr/Tomo_1/resumenpresupuesto/A-Recursos%20Consolidados%20del%20Gob%20de%20PR--AF2011.pdf.

⁸⁸ Interview by Neil Cavuto with Luis Fortuño, Governor, Puerto Rico, in Fox Business (Mar. 16, 2009), http://findarticles.com/p/news-articles/political-transcript-wire/mi_8167/is_20090317/gov-luis-fortuno-interviewed-fox/ai_n50857850/. Interview video, <http://www.youtube.com/watch?v=rQGKHleSyqM> (last visited Aug. 4, 2010).

⁸⁹ *Programa de reinversión y estímulo económico federal para Puerto Rico, Descripción de Programas Estímulo Económico Federal*, Buen Gobierno PR, <http://www.buengobiernopr.com/ARRA/programas.html> (last visited Nov. 13, 2010).

⁹⁰ Office of Management and Budget, Graphical Summary of the 2010-11 Fiscal Year, http://www.presupuesto.gobierno.pr/Tomo_1/ResumenGrafico/resumen%20grafico-2011.pdf.

⁹¹ 55 Cong. Rec. H532-03 (daily ed. Jan. 27, 2009).

⁹² See Letter from Pedro Pierluisi to House Leadership Regarding the American Recovery and Reinvestment Act (Jan. 26, 2009), <http://www.pierluisi.house.gov/PDF/letters/2009/01-26-09-STIMULUS.pdf>; Letter from Pedro Pierluisi to Senate Leadership Regarding Senate Version of the American Recovery and Reinvestment Act (Feb. 3, 2009), <http://www.pierluisi.house.gov/PDF/letters/2009/02-03-09-SENATE.pdf>.

⁹³ See Letter from Territory Representatives to Speaker Pelosi Regarding Medicaid (Jan. 12, 2009), <http://www.pierluisi.house.gov/PDF/letters/2009/01-12-09-SCHIP-MEDICAID.pdf>.

⁹⁴ See Letter from Pedro Pierluisi to House Conferees Regarding the American Recovery and Reinvestment Act (Feb. 11, 2009), <http://www.pierluisi.house.gov/PDF/letters/2009/02-11-09-HOUSE.pdf>; Letter from Pedro Pierluisi to Senate Conferees Regarding the American Recovery and

Rico and the territories obtaining the requested 30% increase in Federal Matching Assistance Percentage (FMAP),⁹⁵ earning Puerto Rico over \$160 million⁹⁶ in additional temporary Medicaid funding.

B. Puerto Rico Democracy Act of 2009 (H.R. 2499)

H.R. 2499, known as the Puerto Rico Democracy Act proposes a plebiscite sanctioned by Congress to decide the political status of Puerto Rico. It authorizes the government of Puerto Rico to conduct a plebiscite giving voters the option to vote to continue Puerto Rico's present political status or to have a different political status. If a majority of ballots favor continuing the present status, it allows Puerto Rico to conduct additional plebiscites every eight years or if the majority favors a different status, to conduct a plebiscite on the options of becoming fully independent from the United States, forming with the United States a political association between sovereign nations that will not be subject to the Territorial Clause of the Constitution, being admitted as a state of the Union, or continuing its present political status.⁹⁷

H.R. 2499 passed in the House on April 29, 2010 with a vote of 223 ayes to 169 nays. This is a significant majority for any bill and is especially significant when compared to the 1998 vote on the United States-Puerto Rico Political Status Act that passed by only one vote. This may indicate a trend indicating that Congress, or at least the House, has become more receptive to issues regarding Puerto Rico.

The renewed interest in the Puerto Rico status issue has been evidenced not only in Congress but also in the White House. On October 30, 2009 President Obama signed an Executive Order expanding the powers of the President's Task Force on Puerto Rico's Status to provide advice to the President and Congress on the issues of status as well as economic development of Puerto Rico.⁹⁸ The signing of the Executive Order and the expanded mandate of the Task Force gave the status debate momentum that helped propel H.R. 2499 to consideration in the House and may have very well aided its passage in Congress.

Pierluisi was also able to ensure the passage of H.R. 2499 by rounding up bipartisan support for the measure. He got Democrats José Serrano (D-NY), George Miller (D-CA), Nick Rahall (D-WV), John Conyers (D-MI), Patrick Ken-

Reinvestment Act (Feb. 10, 2009), <http://www.pierluisi.house.gov/PDF/letters/2009/02-10-09-SENATE.pdf>.

⁹⁵ See section 5001(d) of Pub. L. No. 111-5 (A.R.R.A.).

⁹⁶ *Puerto Rico: Temporary Federal Medicaid Relief*, Kaiser Foundation State Health Facts, <http://www.statehealthfacts.org/profileind.jsp?cat=4&sub=154&rgn=55>.

⁹⁷ Bill Summary & Status H.R. 2499, LIBRARY OF CONGRESS-THOMAS, available at <http://hdl.loc.gov/loc.uscongress/legislation.111hr2499>.

⁹⁸ Exec. Order No. 13517, 3 C.F.R. 266, available at http://edocket.access.gpo.gov/cfr_2010/janqtr/3CFR13517.htm.

nedy (D-RI), Eliot Engel (D-NY), Sam Farr (D-CA), Debbie Wasserman-Schultz (D-FL), and Alan Grayson (D-FL) as well as Republicans Don Young (R-AK), Lincoln Díaz-Balart (R-FL), Ileana Ros-Lehtinen (R-FL), Aaron Schock (R-IL), and Mario Díaz-Balart (R-FL) to cosign a letter expressing their support for H.R. 2499.⁹⁹

After the passage in the House, the bill is to be considered by the Senate. The Senate Committee on Energy and Natural Resources held hearings on the bill on May 19, 2010 but has yet to take further action on the bill.¹⁰⁰ So, while the Resident Commissioner's status bill enjoyed great support in the House, it now faces a Senate that seems unwilling to consider the issue. And while the President's Task Force held public hearings in early March and in May, it has yet to present its report on the issue.¹⁰¹ The status issue seems to be losing all the momentum it had gained over the last months of 2009 and the first half of 2010. And without it, the chances of H.R. 2499 advancing any further in Congress seem bleak.

Nevertheless, Pedro Pierluisi and the New Progressive Party have taken advantage of the passage of H.R. 2499 to propose a local plebiscite in Puerto Rico using the guidelines of H.R. 2499. The passage of H.R. 2499 in the House, while a partial victory in Congress demonstrates an increase in the level of interest for issues relating to Puerto Rico, indicates the Resident Commissioner is gaining more importance as a policymaker, and shows how Congressional decisions influence policymaking and politics in Puerto Rico.

C. Healthcare Reform

One of Pierluisi's most important achievements is having successfully lobbied for the inclusion of Puerto Rico in healthcare reform. Healthcare reform was one of the major issues of the 2008 presidential and congressional elections and the preparation and drafting of a healthcare bill began as soon as the 111th Congress began its first session in January 2009.

The House healthcare bill, H.R. 3962 or the Affordable Health Care for America Act passed on November 7, 2009 and allocated over \$14 billion in Medicaid funding for the territories. It also included the territories in the Health In-

⁹⁹ *Democrats and Republicans Unite to Urge a "Yes" Vote on H.R. 2499*, OFFICE OF THE RESIDENT COMMISSIONER PEDRO PIERLUISI (Apr. 27, 2010), [http://www.pierluisi.house.gov/english/news/2010/Bipartisan%20Members%20of%20Congress%20ourge%20a%20YES%20VOTE%20on%20HR%202499.html](http://www.pierluisi.house.gov/english/news/2010/Bipartisan%20Members%20of%20Congress%20urge%20a%20YES%20VOTE%20on%20HR%202499.html).

¹⁰⁰ Bill Summary & Status H.R. 2499, LIBRARY OF CONGRESS-THOMAS, <http://hdl.loc.gov/loc.uscongress/legislation.11hr2499>.

¹⁰¹ As of February 2011, the Task Force has not yet published its report.

urance Exchange program.¹⁰² Puerto Rico had not originally been included in the House proposals, and in order to change this, Pierluisi enlisted the support of other Congressmen, the House leadership, and the Caucuses. He also teamed up with the Delegates from other territories to petition House leadership for their inclusion in health reform. In July 2009, the Resident Commissioner and the Delegates of the territories wrote a letter to Rep. Henry Waxman, Chairman of the House Committee on Energy and Commerce requesting that the territories be included in the draft bill for health care reform.¹⁰³

The Delegates of the territories also petitioned President Obama to work with House leadership to include the territories in healthcare reform¹⁰⁴ and most importantly the Delegates were also able to receive the support of three major congressional caucuses (the Tri-Caucus). Due to the Resident Commissioner's membership in the Congressional Hispanic Caucus, the membership of the Delegate from the Virgin Islands in the Congressional Black Caucus, and the membership of the Delegates from Guam, American Samoa and Mariana Islands in the Congressional Asian Pacific American Caucus, the chairs of all three caucuses wrote a joint letter to House leadership endorsing the inclusion of the territories in health reform.¹⁰⁵ Caucuses are influential policymaking instruments and having gained the support of three main caucuses was significant to the inclusion of the territories in health reform.

Pierluisi also sought the support of Rep. Charles Rangel, Chairman of the House Ways and Means committee¹⁰⁶ and obtained the support of José Serrano, Nydia Velázquez, and Luis Gutierrez, who wrote House leadership about inclusion of the territories¹⁰⁷ and debated on Puerto Rico's behalf when questioned about the feasibility of including the territories in the reform.¹⁰⁸ The efforts paid

102 *Puerto Rico Included in all Aspects of Health Reform*, PIERLUI.SI.HOUSE.GOV (Oct. 29, 2009), <http://www.pierluisi.house.gov/english/news/2009/Puerto-Rico-Included-In-All-Aspects-Of-Health-Reform.html>.

103 Letter from the Territories Representatives to Chairman Waxman Regarding Health Reform (July 7, 2009), <http://www.pierluisi.house.gov/PDF/letters/2009/07-07-09-WAXMAN.pdf>.

104 Letter from the Territory Representatives to Barack Obama, President of the United States (July 7, 2009), <http://www.pierluisi.house.gov/PDF/letters/2009/07-07-09-OBAMA.pdf>.

105 Letter from Barbara Lee, Mike Honda, Nydia Velázquez, Chairs, Congressional Black, Asian Pacific American and Hispanic Caucuses to House Leadership (July 9, 2009), <http://www.pierluisi.house.gov/PDF/letters/2009/07-09-09-HOUSE.pdf>.

106 Letter from Pedro Pierluisi, Puerto Rico Resident Commissioner, to Charles B. Rangel, Chairman of House Committee on ways and means (July 8, 2009), <http://www.pierluisi.house.gov/PDF/letters/2009/07-08-09-RANGEL.pdf>.

107 Letter from Pedro Pierluisi, Puerto Rico Resident Commissioner, Nydia M. Velázquez, José E. Serrano, Luis V. Gutierrez, Members of Congress, to Nancy Pelosi, Speaker, U.S. House of Representatives (July 24, 2009), <http://www.pierluisi.house.gov/PDF/letters/2009/07-24-09-HEALTH.pdf>.

108 Alexander Bolton, *Puerto Rico and other territories left out of health care reform*, THE HILL, Sept. 22, 2009, <http://thehill.com/homenews/administration/59683-puerto-rico-and-territories-left-out-of-healthcare-reform>.

off as Puerto Rico and the territories were included in the House version of health reform. But the bill approved by the Senate in December did not guarantee participation in the health insurance exchange for the territories and gave less Medicaid funding.¹⁰⁹ To add insult to injury, President Obama's proposal for reconciliation closely followed the Senate bill,¹¹⁰ which left Puerto Rico and the territories devoid of what they gained in the House bill.¹¹¹

Pierluisi, acting as an advocate for Puerto Rico and the other territories asked for better treatment in health reform after President Obama's proposal for reconciliation fell flat in its offerings for the territories. Pierluisi alongside the Delegates of the territories wrote a joint letter to the President, House Speaker Nancy Pelosi and Senate Majority Leader Harry Reid expressing their displeasure with the President's reconciliation proposal.¹¹²

Pierluisi took advantage of the scheduled meeting the President had with the Congressional Hispanic Caucus on March 11, to bring up the issue of including the territories in health reform.¹¹³ Pierluisi was able to make the inclusion of the territories into a major issue that may have had the potential of determining whether the Hispanic Caucus supported health reform. The morning after the meeting, Resident Commissioner Pierluisi had a conference call with the White House to discuss health reform and that afternoon, White House aides met with Congress staff to further discuss the inclusion of territories in health reform.¹¹⁴

109 Robert Friedman, *PR out of insurance exchange in Senate health care bill*, PUERTO RICO DAILY SUN, Nov. 20, 2009, <http://www.prdailysun.com/index.php?page=news.article&id=1258686395>.

110 See *The President's Proposal*, WHITEHOUSE.GOV (Feb. 22, 2010), <http://www.whitehouse.gov/sites/default/files/summary-presidents-proposal.pdf> (it closely follows the Senate's language regarding the territories and only differs in that it raises the Medicaid spending cap by 35% rather than 30%).

111 See H.R. 3962, the Affordable Health Care For America Act Section-by-Section Analysis (2009), http://energycommerce.house.gov/Press_111/health_care/hr3962_Section_by_Section.pdf; The Patient Protection and Affordable Care Act as Passed, Section-by-Section Analysis (2009), <http://dpc.senate.gov/healthreformbill/healthbill53.pdf> (in the House bill, the territories were able to receive up to \$4 billion to fund affordability credits in the Insurance Exchange, the FMAP for the territories was raised to match the states, and Medicaid caps for territories are increased by set amounts. The Senate bill does not include the territories in the Exchange, increases FMAP to 55% and increases spending caps by 30%, resulting in a much less beneficial arrangement to the territories).

112 Letter from Pedro Pierluisi, Puerto Rico Resident Commissioner, Madeline Z. Bordallo, Donna Christensen, Eni F. H. Faleomavega, Gregorio Kilili Camacho Sablan, Members of Congress, to Barack Obama, President of the United States, Nancy Pelosi, Speaker, House of Representatives, Harry Reid, Majority Leader, Senator (Feb. 23, 2010), <http://www.pierluisi.house.gov/PDF/letters/2010/02-23-10-HCR.pdf>.

113 Josh Gersten, *Hispanic Caucus on health talks*, POLITICO, Mar. 12, 2010, http://www.politico.com/politico44/perm/0310/on_the_prize_5b69ed85-42f6-4f9d-bc9a-40f502a043e9.html.

114 José Delgado, *Se reanudan conversaciones con la Casa Blanca*, EL NUEVO DÍA, Mar. 12, 2010, <https://www.adendi.com/archivo.asp?num=8984&year=2010&month=3&keyword=conversaciones>.

The contents of the reconciliation bill were announced on March 18, 2010 and in the end, it was much more beneficial to the territories than the Senate bill. While not nearly as generous as the House bill, the reconciliation bill included the territories in the Health Insurance Exchange program, increased federal funding in the Senate bill by \$2 billion and raises the federal funding caps on Medicaid.¹¹⁵ It resulted in a 182% increase in Medicaid funding for Puerto Rico by allocating \$8.624 billion to be distributed from 2011 to 2019.¹¹⁶ This marks a great success for Puerto Rico and the territories, which would have been impossible to achieve without the influence of the Tri-Caucus and, in particular, without the sway of the Congressional Hispanic Caucus.

V. WASHINGTON POLITICS AND STRATEGY

A. Interaction with P.R.F.A.A. and the Governor of Puerto Rico

The Puerto Rico Federal Affairs Administration (P.R.F.A.A.) is the agency that represents the Government of Puerto Rico in Washington, D.C. P.R.F.A.A. lies under the authority of the executive branch of the Puerto Rican government led by an officer appointed by the Governor. P.R.F.A.A.'s main responsibilities include: articulating and advocating Puerto Rico-related policy questions to various government entities; collaborating with the Resident Commissioner, serving as a primary focal point in the nation's capital for the Governor, his staff, and senior officials; providing guidance to individuals, businesses, and other organizations in navigating the federal grants process; providing status reports on federal initiatives and communicating with national, regional and specialty media on issues of importance to the Governor.¹¹⁷ Thus, it can be said that P.R.F.A.A. is the stateside alter ego of the Puerto Rican government.

The functions of P.R.F.A.A. and the Resident Commissioner relate in that they both represent Puerto Rican interests in the nation's capital. P.R.F.A.A. works as the lobbyist arm of the Puerto Rican government and every year hires lobbying and consulting firms to advocate in favor of the issues of importance to the government. While many state and local governments undergo lobbying efforts in the federal capital, Puerto Rico is among the top overall spenders on lobbying, probably due to the Resident Commissioner's lack of voting rights in

¹¹⁵ H.R. 4872, *The Health Care & Education Affordability Reconciliation Act of 2010 Section-by-section Analysis*, RULES.HOUSE.GOV (Mar. 18, 2010), http://www.rules.house.gov/111_hr4872_secbysec.html.

¹¹⁶ *Historic Achievement for Puerto Rico in Health Care Reform Legislation*, PIERLUISI.HOUSE.GOV (Mar. 18, 2010), <http://www.pierluisi.house.gov/english/news/2010/Historic%20Achievement%20for%20Puerto%20Rico%20in%20Health%20Care%20Reform%20Legislation.html>.

¹¹⁷ *PRFAA at Work*, PRFAA.COM, http://www.prfaa.com/prfaa_atwork.asp (last visited Nov. 13, 2010).

Congress.¹¹⁸ For this reason, Puerto Rico needs to work harder than the states to be included in federal programs and to successfully advocate for favorable legislation. In the year 2009, P.R.F.A.A. spent \$1,120,000 on lobbyists and has so far spent \$775,000 for the first two quarters of 2010.¹¹⁹

Being the Puerto Rican people's representative in Congress, the Resident Commissioner is expected to represent the people of Puerto Rico in a great variety of issues and should not engage in single-issue politics. At the same time, he is only one person expected to represent a diverse, relatively large constituency and runs the risk of spreading himself too thin. Lobbyists from P.R.F.A.A. can facilitate the Resident Commissioner's job as long as they are both advocating for the same goals. P.R.F.A.A.'s collaboration with the Resident Commissioner enables him to enlist P.R.F.A.A.'s help if he needs extra lobbying for certain issues or to coordinate their efforts.

The Resident Commissioner, Governor, and P.R.F.A.A. often work with each other to promote programs and laws that benefit Puerto Rico. For example, in 2009 and 2010, P.R.F.A.A. dedicated much of its lobbying efforts to the Puerto Rico Democracy Act and healthcare reform, both top issues in the Resident Commissioner's agenda. The Resident Commissioner and the Governor have also teamed up on various occasions to advance measures favorable to Puerto Rico. For example, on October 2009, Resident Commissioner Pierluisi and Governor Fortuño both met with Senator Dodd (D-CT) to discuss the inclusion of Puerto Rico in healthcare reform.¹²⁰

The Resident Commissioner and P.R.F.A.A. also work independently. For example, Governor Fortuño has held meetings with White House officials supporting Puerto Rico's inclusion in health reform¹²¹ and has testified in the Senate in favor of H.R. 2499¹²² without the company of Resident Commissioner Pierluisi. Similarly, the Resident Commissioner carries on his functions in Washington without the direct oversight of the Governor. Ideally, the two should keep com-

118 See Summer Lollie, *State and Local Governments Aggressively Lobby the Federal Government in Hope of Federal Aid*, OPENSECRETS.ORG, CENTER FOR RESPONSIVE POLITICS (last visited July 2, 2010), <http://www.opensecrets.org/news/2010/07/state-and-local-governments-agressi.html>.

119 *Commonwealth of Puerto Rico: Lobbying and Spending Data 2009*, OPENSECRETS.ORG, <https://fecwatch.org/lobby/clientsum.php?lname=Commonwealth+of+Puerto+Rico&year=2009> (last visited Nov. 27, 2010); *Commonwealth of Puerto Rico: Lobbying and Spending Data 2010*, OPENSECRETS.ORG, <https://fecwatch.org/lobby/clientsum.php?year=2010&lname=Commonwealth+of+Puerto+Rico&id=> (last visited Nov. 27, 2010).

120 *Dodd Meets With Puerto Rican Leaders To Discuss Health Care*, PIERLUIISI.HOUSE.GOV (Oct. 29, 2009), <http://www.pierluisi.house.gov/english/news/2009/Dodd-Meets-With-Puerto-Rican-Leaders-To-Discuss-Health-Care.html>.

121 *Fortuño Pushes for Inclusion in Health Care Reform*, PRFAA.COM (Mar. 26, 2009), <http://www.prfaa.com/news/?p=17>.

122 *Gov. Fortuño Urges Senators to Clarify Puerto Rico's Political Status Options*, PRFAA.COM (May 19, 2010), <http://www.prfaa.com/news/?p=1038>.

munication channels open as to facilitate collaboration but they do not depend on each other nor is one hierarchically above the other.

Usually, the Resident Commissioner and the Governor are members of the same party and are running mates in the ballot in the Puerto Rico elections. This previous relationship carries over to Washington and enables close collaboration. But this may not always be the case since the Resident Commissioner has no formal or legal obligation to follow the Governor or P.R.F.A.A.'s agendas. From 2005 to 2008, when the Governor of Puerto Rico was Aníbal Acevedo-Vilá (PPD) and the Resident Commissioner was Luis Fortuño (PNP), their opposing political views caused a strained relationship between P.R.F.A.A. and the Resident Commissioner.¹²³ This caused them to work against each other and probably adversely affected Puerto Rico's representation in Congress.

This suggests that while the customary relationship between P.R.F.A.A. and the Resident Commissioner is usually collaborative and productive, the formal framework should be revised to enable collaboration in situations like the one that occurred between 2005 and 2008. This is not to say that the Governor, P.R.F.A.A., and the Resident Commissioner should not disagree. But P.R.F.A.A. is a key element to Puerto Rico's representation in Congress and both P.R.F.A.A. and the Resident Commissioner should compromise and work together to ensure Puerto Ricans are adequately represented.

B. Collaboration with Puerto Rican and Hispanic members of Congress

The Resident Commissioner has a history of collaboration with fellow Hispanic members of Congress. Former Resident Commissioner Baltasar Corrada del Río was one of the founding members of the Congressional Hispanic Caucus in 1976¹²⁴ and since then, Resident Commissioners have participated in the Caucus. The only Resident Commissioner to not be a member of the Caucus was Luis Fortuño due to the Caucus's identification with the Democratic Party.

Congressional Hispanic Caucus membership has proved invaluable to the advancement of favorable legislation to Puerto Rico the most recent example being the passage of healthcare reform. From the beginning of the debate on healthcare, the Caucus became an advocate for the inclusion of Puerto Rico and the territories in the legislation. When the President's proposal was unfavorable to the territories, Pierluisi had an opportunity to discuss the matter directly with the President due to a meeting in the White House scheduled for the Caucus. The meeting gave Pierluisi the opportunity to argue against the proposal directly to the President and his staff. Had he not been a member of the Caucus, the meeting would have probably never taken place.

¹²³ Gloria Luis Kuilan, *Fortuño acusa a Bhatia de acoso*, EL NUEVO DÍA, Oct. 13, 2007, <https://www.adendi.com/archivo.asp?num=86991&year=2007&month=10&keyword=acoso>.

¹²⁴ *CHCI History*, CHCI.ORG, <http://www.chci.org/about/page/chci-history> (last visited Aug. 5, 2010).

The Congressional Hispanic Caucus also admits Senators as members. This is invaluable to the Resident Commissioner since Puerto Rico lacks any representation in the Senate. Senator Robert Menendez (D-NJ) is currently the only Senator who is a member of the Hispanic Caucus but has become one of Puerto Rico's allies in the Senate. For example, during the debates for health care reform, Senator Menendez offered an amendment to the Senate healthcare bill that increased payouts to Puerto Rican hospitals under Medicare.¹²⁵

The Resident Commissioner is also accompanied in the Caucus by three Puerto Rican members of Congress, Nydia Velázquez (D-NY), Luis Gutierrez (D-IL), and José Serrano (D-NY). All three Representatives have constituencies with large Puerto Rican populations and by proxy often represent the interests of Puerto Ricans in the island. Yet the Resident Commissioner and the Puerto Rican Representatives do not always agree on issues, especially that of status. For example Gutierrez and Velázquez both voted against H.R. 2499.¹²⁶ Nonetheless, the four Puerto Ricans were able to come together to support the inclusion of Puerto Rico in healthcare reform.¹²⁷

The three Puerto Rican members of Congress and the members of the Hispanic Caucus are valuable allies to the Resident Commissioner. As the Hispanic population of the United States continues to grow, so does their political power. As of 2008 46.8 million people or 8.9% of the population of the United States was of Hispanic origin.¹²⁸ Out of this group, Hispanics of Puerto Rican descent¹²⁹ make up over 4 million people, making them the second largest group of Hispanics living in the states.¹³⁰ As the Hispanic population grows so does their political power and as representatives of Hispanic constituencies, the power and influence of the Hispanic Caucus only promises to continue to expand, making the Caucus important allies to the Resident Commissioner. Conversely, with the population of Puerto Ricans in the United States already surpassing that of Puerto Ricans in the island, politicians that represent Puerto Rican constituencies may find it advantageous to forge alliances with the Resident Commissioner.

¹²⁵ 155 Cong. Rec. S12637-38 (daily ed. Dec. 7, 2009) (Statement of Sen. Menéndez).

¹²⁶ *House Vote on Passage: H.R. 2499: Puerto Rico Democracy Act of 2010*, GOVTRACK.US, <http://www.govtrack.us/congress/vote.xpd?vote=h2010-242> (last visited Nov. 13, 2010).

¹²⁷ Letter from Pedro Pierluisi, Puerto Rico Resident Commissioner, Nydia M. Velázquez, José E. Serrano, Luis V. Gutiérrez, Members of Congress, to Nancy Pelosi, Speaker, House of Representatives (July 24, 2009), <http://www.pierluisi.house.gov/PDF/letters/2009/07-24-09-HEALTH.pdf>.

¹²⁸ *Statistical Portrait of Hispanics in the United States 2008*, PEW HISPANIC CENTER (Jan. 21, 2010), <http://pewhispanic.org/factsheets/factsheet.php?FactsheetID=58>.

¹²⁹ Not including the island of Puerto Rico.

¹³⁰ *Hispanics of Puerto Rican Origin in the United States, 2007*, PEW HISPANIC CENTER (2009), <http://pewhispanic.org/files/factsheets/48.pdf>.

VI. IS PUERTO RICO ADEQUATELY REPRESENTED IN WASHINGTON?

If one were only to consider that the Resident Commissioner lacks the right to vote directly on legislation and that Puerto Rico has no representation in the Senate or that its citizens lack a right to vote for the President of the United States, then Puerto Rico's representation would be considered lacking. But if one were to take into account that in the 110 years since the office of Resident Commissioner was created in 1900 the Resident Commissioner has gone from a minor player with no access to the floor of the House to a bona fide member of Congress with a permanent office, committee assignments, status and influence, then the current situation can be described as one of significant effectiveness.

Over the years, the Resident Commissioner has obtained almost the same rights and privileges as Representatives of the states short of the right to vote for measures considered in the floor. And at the risk of sounding conformist, this is probably the best Puerto Rico can do shy of becoming a state or amending the U.S. Constitution. As discussed before, the exercise of Legislative power in the House is reserved by the Constitution to members of Congress representing the states and constitutionally cannot be exercised by territorial entities. There is no indication that this state of affairs will change in the foreseeable future.

For this reason, the only way to rightly judge the adequacy of Puerto Rican representation in Washington is to accept that Puerto Rico does not have a vote in Congress and that it must function within the scope of its limitations. Then it becomes a matter of seeing how the Resident Commissioners have been able to work with what they have available to them.

Under the Foraker Act, the Resident Commissioner was initially a powerless and ambiguous figure but over the years the position has gained more influence. While legislation like the Legislative Reorganization Act of 1970 has been important in redefining the role of the Resident Commissioner, most of the post's transformation has been due to changes in how the Resident Commissioner interacts with the House and other Washington figures. The changes in Washington customs and culture rather than formal constitutional or statutory changes have been key to the expansion of the role of the Resident Commissioner. Puerto Rico's gradual incorporation into the Union as well as the growing Hispanic population of the United States and the increasing influence of organizations like the Congressional Hispanic Caucus has also affected the role of the Resident Commissioner.

While the Supreme Court has not repealed the Insular Cases, Congress has moved in the direction of incorporating Puerto Rico rather than keeping it separate from the Union. In a recent case before the U.S. District Court for the District of Puerto Rico, Judge Gustavo Gelpí held that Puerto Rico is an incorporated territory even though Congress has not expressly adopted law to define it as such. Rather, Congress has gradually moved to incorporate Puerto Rico

through affirmative actions.¹³¹ Currently, all federal laws apply to Puerto Rico unless Congress expressly legislates an exception¹³² and Puerto Rico has gradually been gaining parity in the allocation of federal funds.¹³³

With regard to the Resident Commissioner, Congress, particularly the House, has followed the same trend by passing legislation and amending the House Rules to give him or her more participation, consideration, and respect. It is logical to think that further incorporation of the territory comes with more participation for its representative. At the same time, the Resident Commissioner has gained political power through participation in national political parties and involvement in organizations like the Congressional Hispanic Caucus.

Factors like the increasing Hispanic population of the United States and the increasing number of stateside Puerto Ricans have also been fundamental in changing Congress's and the President's perception of Puerto Rico and the Resident Commissioner. For example, due to their large Puerto Rican constituencies, Senators Christopher Dodd of Connecticut, Bob Menendez of New Jersey, and Charles Schumer of New York collaborated with the Resident Commissioner to include Puerto Rico in the health reform.¹³⁴ And while the citizens of Puerto Rico do not vote, the Puerto Ricans in the United States do have this right. As a result, Senators and Representatives with Puerto Rican constituencies will try to retain their constituents' votes by looking out for their kin on the island.

CONCLUSION

The evolution of the office of the Resident Commissioner demonstrates that Puerto Rico's representation in Congress has greatly improved since 1898 due to the Resident Commissioners' resourcefulness and Congress's gradual acceptance and incorporation of Puerto Rico. It can be said that Puerto Rico's representation in Congress has evolved to be rather successful when compared to what it used to be.

That said, while Puerto Rico has gained inclusion and is affected by all national policies and laws it still has little to no say in national politics or foreign policy. But will obtaining six representatives, two senators, and eight Electoral College votes give Puerto Rico more sway over national policy?¹³⁵ The issue has yet to be studied and merits further discussion and analysis.

¹³¹ Consejo de Salud Playa de Ponce v. Rullán, 586 F. Supp. 2d 22 (D.P.R. 2008).

¹³² *Id.*

¹³³ See Alexis Zabdiel Tejada Marte, *Los fondos federales en Puerto Rico: un affair con los Estados Unidos*, 80 REV. JUR. UPR 493 (2011).

¹³⁴ 6.3% in Connecticut, 4.6% in New Jersey, 5.6% in New York. Race and Ethnicity American Fact Finder (2006-2008), U.S. Census Bureau, <http://factfinder.census.gov> (insert state in search field, follow "Go" hyperlink; and then follow "Hispanic or Latino by Origin" hyperlink).

¹³⁵ Estimate of US Representatives based on the number of Representatives held by states with similar populations to Puerto Rico. U.S. *Apportionment Population and Number of Representatives by*

But for now and in the foreseeable future, we must recognize that Resident Commissioners have successfully represented Puerto Rico despite the post's limitations and we should explore ways in which the Resident Commissioner can continue to evolve Puerto Rico's power and representation in Congress within the current legal and constitutional framework.