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Puerto Rican Presidential Voting Rights

WHY PRECEDENT SHOULD BE OVERTURNED, AND OTHER OPTIONS FOR SUFFRAGE

*Sigrid Vendrell-Polanco**

INTRODUCTION

What is now known as The Commonwealth of Puerto Rico, was first, and in its earliest history, an island inhabited by Indigenous people. Located in the middle of the “New World,” it was boasting of potential as an infinitely valuable strategic location for trade.¹ A Caribbean island in Latin America, Puerto Rico has a complex history that includes colonization, wars, and political struggles. Before landing under the control of the United States following the Spanish American War, its people, culture, and customs were the result of four hundred years of colonial Spanish rule following Christopher Columbus’s arrival in 1493.² The native Taíno, the enslaved African people, and the Spanish people came together during the time of Spanish conquest to form much of what we see today as the modern Puerto Rican people and culture.³

The United States acquired Puerto Rico from Spain in 1898, along with several other colonies, in its undertaking of territorial expansion by any means necessary, including the

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¹ JORGE DUANY, *THE PUERTO RICAN NATION ON THE MOVE: IDENTITIES ON THE ISLAND & AND IN THE UNITED STATES* (2002).

² *Id.*

³ *Puerto Rico—History and Heritage*, SMITHSONIAN MAG. (Nov. 6, 2007), <https://www.smithsonianmag.com/travel/puerto-rico-history-and-heritage-13990189/> [<https://perma.cc/LQ7V-PDXT>].

“absorption of ‘inferior’ people and races ‘for ‘their own good.’”⁴ It was not long before the United States began questioning how it would define Puerto Rico’s status as a colony, how the people would react, and how much autonomy they would be granted.⁵ At that time, shortly after its acquisition, it was unclear what rights and benefits the colony would be granted, which rules or laws applied, and whether its inhabitants would be incorporated into the United States as equal people.⁶ However, due to a number of oppressive tactics on the part of the United States, Puerto Rican people very quickly became second-class citizens, not just in practice, but under the law.⁷ Legal precedent was quickly established that recognized Puerto Rico as *technically* part of the United States where it benefited the US government, but not *really* part of the United States where it did not.⁸ Scarcely more than a handful of tariff law cases established this hierarchy⁹ in a time where slavery still existed and colonization was openly advanced,¹⁰ setting the precedent that is still upheld

⁴ Juan R. Torruella, *Ruling America’s Colonies: The Insular Cases*, 32 YALE L. & POL’Y REV. 57, 60–61 (2013) (quoting a British novelist and poet, Rudyard Kipling, who glorified imperialism). See Rudyard Kipling, *The White Man’s Burden*, 12 MCCLURE’S MAG. 290 (1899). The poem was published at the beginning of the Filipinos’ insurrection against the US invasion and was contemporaneous with the US Senate’s ratification of the Treaty of Paris confirming the acquisition of those islands, as well as Puerto Rico and Guam. *Id.*

⁵ See José A. Cabranes, *Citizenship and the American Empire: Notes on the Legislative History of the United States Citizenship of Puerto Ricans*, 127 U. PA. L. REV. 391, 395–98 (1979).

⁶ See *id.*

⁷ See *id.* at 397–98.

⁸ *Downes v. Bidwell*, 182 U.S. 244, 347 (1901) (holding that, although territories were not foreign nations, they were not actually part of the United States within the meaning of the Revenue Clause of the US Constitution).

⁹ See all the traditional *Insular Cases* that dealt with tariffs. See *De Lima v. Bidwell*, 182 U.S. 1, 200 (1901) (holding that territories were not foreign nations for purposes for import/export tariffs); *Goetze v. United States*, 182 U.S. 221 (1901); *Dooley v. United States*, 182 U.S. 222, 236 (1901) (holding that Congress can constitutionally legislate in the territories); *Armstrong v. United States*, 182 U.S. 243, 244 (1901) (affirming *Dooley*); *Downes*, 182 U.S. at 244; *Huus v. New York & Porto Rico Steamship Co.*, 182 U.S. 392 (1901); see also *Hawaii v. Mankichi*, 190 U.S. 197 (1903); *Gonzales v. Williams*, 192 U.S. 1 (1904); *Kepner v. United States*, 195 U.S. 100 (1904); *Dorr v. United States*, 195 U.S. 138 (1904); *Mendezona v. United States*, 195 U.S. 158 (1904); *Rasmussen v. United States*, 197 U.S. 516 (1905); *Trono v. United States*, 199 U.S. 521 (1905); *Grafton v. United States*, 206 U.S. 333 (1907); *Kent v. Porto Rico*, 207 U.S. 113 (1907); *Kopel v. Bingham*, 211 U.S. 468 (1909); *Dowdell v. United States*, 221 U.S. 325 (1911); *Ochoa v. Hernández*, 230 U.S. 139 (1913); *Ocampo v. United States*, 234 U.S. 91 (1914); *Balzac v. Porto Rico*, 258 U.S. 298 (1922); Rebecca Bodenheimer, *The Insular Cases: History and Significance*, THOUGHT CO. (Mar. 20, 2020), <https://www.thoughtco.com/the-insular-cases-history-and-significance-4797736> [perma.cc/3JVV-KGDB].

¹⁰ The remarks of Rep. McClellan as reflected in 33 CONG. REC. 2067 (1900) allude to the fact that the majority of the representatives “propose[d] to hold the Philippines in perpetual servitude.” See Cabranes, *supra* note 5, at 424.

today.¹¹ These cases, known commonly as the *Insular Cases*, sought to define the legal status of US territories acquired following the Spanish-American War.¹² These cases—and a continuing resistance to overturn them—lay the groundwork for why Puerto Ricans, who are now naturalized American citizens, cannot vote in presidential elections. While the larger status of Puerto Rico may not be a solely constitutional question, addressing the issue of Puerto Rican presidential voting rights as a way to initialize decolonization is crucial.

Puerto Rico has been under the United States's colonial rule now for over 125 years because of arbitrary, racist, and harmful case law labeling it an “unincorporated territory.”¹³ The term “unincorporated,” as defined by the *Insular Cases*, is no longer fitting or appropriate for Puerto Rico, as its formal alignment with the United States has resulted in a comprehensive and enduring integration of their histories and societies. However, because of this case law and the Court's calculated refusal to overrule it, Puerto Rico, to this day, maintains its status as a colonial subject of the United States.¹⁴ Puerto Rico *still* does not have the right to vote in US presidential elections or to have members in Congress due to these outdated laws.¹⁵ However, functionally, Puerto Rico no longer fits into the legal distinction of unincorporated, and its citizens should have the same rights that are given to most other US citizens. Several solutions exist to solve this problem: overruling case law, exploring statehood, ratifying constitutional amendments, and enacting statutory laws. It is long overdue that Puerto Rico have these basic voting rights, and until this occurs, the United States will continue to exist in contradiction to its stated values of prioritizing democracy for all.

Part I of this article discusses the history and background of the United States's acquisition of Puerto Rico and how Puerto Rico became the commonwealth territory that it is today. The problematic history between the United States and Puerto Rico

¹¹ See *United States v. Vaello Madero*, 142 S. Ct. 1539, 1541 (2022) (upholding the precedential interpretation that the Constitution allows “Congress [to] sometimes legislate[] differently with respect to the Territories, including Puerto Rico, than it does with respect to the States”).

¹² Cori Alonso-Yoder, *Imperialist Immigration Reform*, 91 *FORDHAM L. REV.* 1623, 1632 (2023).

¹³ See *Vaello Madero*, 142 S. Ct. at 1553–54 (Gorsuch, J., concurring).

¹⁴ See *id.* at 1553–57.

¹⁵ See *Igartua v. United States*, 626 F.3d 592, 594 (1st Cir. 2010), *cert. denied*, 566 U.S. 986 (2012). The Supreme Court had the opportunity to overturn the precedent in 2012, in a case where the United States Court of Appeals for the First Circuit held that Puerto Rico did not have the constitutional right to vote. *Id.*

has been scrutinized in many works; however, this article provides a more recent overview of Puerto Rican contributions to the United States, both in terms of military service and monetary revenue. A current and accurate image of Puerto Rico and its entwinement with the United States is necessary to examine the depth of hypocrisy that its current legal status creates. Part II then explores how Puerto Ricans are a modern example of taxation without representation.

Part III examines the conflict in US case law with regard to Puerto Rican citizens and their disenfranchisement. Specifically, this article examines three contradictions in the territorial law cases: First, that the term “incorporated territory,” has been rendered arbitrary and no longer applicable to US territories, as no inhabited territories currently exist as “incorporated.” Second, that the term “unincorporated,” as defined by the Insular Cases, is no longer fitting or appropriate to Puerto Rico. Finally, that the recent 2022 Supreme Court case, which essentially upheld the Insular Cases, was factually incorrect, as it did not account for Puerto Rican residents who are also federal employees and thus misapplied inconsistent precedent to thousands of citizens.

Part IV of this article then presents several solutions to remedy the conflict. Although there is consensus among advocates of the territories that the Insular Cases should be overturned, this article uniquely argues that, although this may be the beginning of a pathway toward voting rights for Puerto Ricans, overturning the cases—or even overturning only the very narrow issue of incorporation with respect to Puerto Rico—is not enough to secure for its people protected presidential voting rights and a voting member in Congress. Solutions should instead include a pathway to statehood, amending the Constitution, and enacting a statutory right to vote.

I. HISTORY AND BACKGROUND

This section delves into the history and background of Puerto Rico under colonial rule, examining how Spanish conquest and colonialism shaped the island’s cultural identity. In order to understand where Puerto Rico stands, it is important to explore where Puerto Rico began; thus, this section explores Puerto Rico’s transition from Spanish rule to becoming a US territory, highlighting the impact of the Foraker Act and subsequent developments, such as citizenship and autonomy. Furthermore, this section discusses Puerto Rican contributions to the United States, including military service, as well as

artistic and cultural achievements. This underscores the ongoing challenges faced by Puerto Ricans within the context of their historical and cultural significance to the United States.

A. *Puerto Rico Under Colonial Rule*

The plight of the Puerto Rican people and how the island became seen by the United States as a valuable commodity¹⁶ is related to its history of Spanish colonial rule. The Puerto Rican people have always displayed a deep sense of pride in their history and culture,¹⁷ which results from the blending of three peoples over the span of more than four hundred years under Spanish colonial rule.¹⁸ When it was first conquered, Puerto Rico was inhabited by Taíno Indians, a subgroup of the Arawak Indians.¹⁹ Christopher Columbus landed on Puerto Rico during his second voyage to the “New World,” naming it San Juan Bautista.²⁰ Among those who traveled to the New World with Columbus were Juan Ponce de León, another Spanish conquistador.²¹ De León was permitted to explore Puerto Rico in 1508, ultimately founding “mining and agricultural operations.”²² Over time, the native population began to falter, due both to disease and vassalage, leading to a revolt in 1511, which was subdued by the better equipped Spanish forces.²³ De León was eventually succeeded as governor by Diego Columbus, the son of Christopher Columbus.²⁴

San Juan Bautista remained a stable colony under the new governor, who subjugated the Taíno people.²⁵ The Taíno

¹⁶ See Pedro A. Caban, *The Colonizing Mission of the United States in Puerto Rico, 1898–1930*, in TRANSNAT’L LATINO/A CMTYS: RE-EXAMINING POL., PROCESSES & CULTURE 115, 118 (2002), https://scholarsarchive.library.albany.edu/cgi/viewcontent.cgi?article=1025&context=lacs_fac_scholar [perma.cc/LYR7-X2FZ] (explaining that Puerto Rico’s location and people were “a strategic and economic calculus that was pivotal to the United States’ aspirations for hemispheric hegemony and national security”).

¹⁷ See Rachel J. Trotter, *Puerto Rican Culture—Rich with History and Tradition*, FAMILYSEARCH BLOG (Aug. 22, 2023, 1:46 PM), <https://www.familysearch.org/en/blog/puerto-rican-culture-tradition> [perma.cc/4F49-PZGB].

¹⁸ See Torruella, *supra* note 4, at 89–90.

¹⁹ Robert M. Poole, *Who Were the Taino, the Original Inhabitants of Columbus’ Island Colonies?*, SMITHSONIAN MAG. (updated Oct. 5, 2023), <https://www.smithsonianmag.com/history/who-were-taino-original-inhabitants-columbus-island-73824867/> [perma.cc/6R4M-Q2DB].

²⁰ *History of Puerto Rico*, BRITANNICA, <https://www.britannica.com/place/Puerto-Rico/History> [perma.cc/VF5R-DZX7].

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Juan Ponce de León*, HISTORY, <https://www.history.com/topics/exploration/juan-ponce-de-leon> [permalink].

²⁵ *History of Puerto Rico*, *supra* note 20.

population slowly declined as “enslavement and European diseases (smallpox, influenza, measles, and typhus) persisted.”²⁶ Because of this, the Spanish government passed decrees outlawing slavery.²⁷ However, this did not end colonial subjugation: enslaved Africans would be shipped to San Juan Bautista (later renamed to Puerto Rico) in 1513, and the institution of slavery persisted until its abolition in 1873.²⁸

By the time the United States annexed Puerto Rico in 1898 after nearly four hundred years of Spanish rule, “early subsistence-farming activities had evolved into a considerable wealth-generating plantation system, cultivating sugarcane, tobacco, and coffee.”²⁹ And although there was a considerably small Taíno population left,³⁰ a new people and culture had emerged—a combination of the Spanish, the Taíno Indian, and the African.³¹ This makes up what we now call the multicultural, modern-day Puerto Rican.

“Puerto Rico was key to the Spanish Empire” due to it being a “major military post during many wars,” as well as “a stepping stone in the passage from Europe to Cuba, Mexico, Central America, and the northern territories of South America.”³² Puerto Rico is Spain’s only colony from the New World to never gain independence.³³

Thus, when the Spanish American War commenced in 1898, the United States desperately wanted to acquire the Spanish colonies in the Caribbean.³⁴ Puerto Rico was valuable to the United States because it could serve as a means to export surplus manufactured products, as well as a strategic naval base

²⁶ Russell Schimmer, *Genocide Studies Program: Puerto Rico*, YALE UNIV., <https://gsp.yale.edu/case-studies/colonial-genocides-project/puerto-rico> [perma.cc/X4W9-GJNK].

²⁷ By 1512, laws were issued by King Ferdinand II that attempted to adjust relations between the Taíno and the Spaniards due to reports of continued severe treatment toward the Indigenous people. *History of Puerto Rico*, *supra* note 20.

²⁸ Schimmer, *supra* note 26.

²⁹ *Id.*

³⁰ *Id.*; see also Anne C. Stone, *Origins and Genetic Legacies of the Caribbean Taíno*, PNAS, <https://www.pnas.org/doi/full/10.1073/pnas.1716839115> (last visited Feb. 24, 2024) (a University of Copenhagen DNA study has found evidence that, although there were false reports that Taínos went extinct as early as 1605, the true fate of Taínos was not one of total extinction, but assimilation into a new mix of culture); *Traces of Indigenous ‘Taíno’ in Present-day Caribbean Populations*, SCI. DAILEY (Feb. 19, 2018), <https://www.sciencedaily.com/releases/2018/02/180219155009.htm> [https://perma.cc/9VEB-FGUD].

³¹ Poole, *supra* note 19.

³² Marisabel Brás, *The Changing of the Guard: Puerto Rico in 1898*, LIBR. OF CONG., <https://guides.loc.gov/world-of-1898/puerto-rico-overview> [perma.cc/EFE6-2M8Q].

³³ *Id.*

³⁴ Caban, *supra* note 16, at 119 (“U.S. officials aspired to convert Puerto Rico into a commercial bridge to Latin America and its people into ambassadors for U.S. interests in the hemisphere.”).

within the Caribbean region.³⁵ Ultimately, the United States gained power over Spanish military facilities and land (120,000 acres total, including the island of Puerto Rico) following the signing of the Treaty of Paris, which ended the war.³⁶ The US government quickly took control of Puerto Rico, setting up military bases “located in the capital city of San Juan along with military bases in the towns of Cayey, Aibonito, Ponce, Mayagüez, Aguadilla and the adjacent island of Vieques.”³⁷ General John R. Brooke also established and commanded a military government in Puerto Rico, as “military governor and head of the army of occupation.”³⁸

B. *Puerto Rico as a United States Territory*

Puerto Rico went from a Spanish territory to a US territory, with its residents eventually gaining citizenship rights. This section discusses how despite that, Puerto Rican citizens and its government are still dependent on the United States and lack autonomous control.

1. Becoming a Territory and Path to Citizenship

In 1900, Puerto Rico was rid of a military government once Congress passed the Foraker Act, which positioned a US controlled government in Puerto Rico.³⁹ The Act established that laws in Puerto Rico would continue so long as they were “not inconsistent or in conflict with the statutory laws of the United States,” replaced the use of Puerto Rican money with US currency, and established a government that was appointed by the US President rather than local popular vote.⁴⁰ This Act was the “first stage of the colonizing mission” of the United States in Puerto Rico.⁴¹ Although the Act mainly resulted in establishing

³⁵ Brás, *supra* note 32.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *John Rutter Brooke*, LIBR. CONG., <https://guides.loc.gov/world-of-1898/john-rutter-brooke> [perma.cc/KY5R-LK8M].

³⁹ *Puerto Rico and the United States*, LIBR. CONG., <https://www.loc.gov/collections/puerto-rico-books-and-pamphlets/articles-and-essays/nineteenth-century-puerto-rico/puerto-rico-and-united-states/> [perma.cc/THR7-23PF].

⁴⁰ Ch. 191, 31 Stat. 77 (1900).

⁴¹ Caban, *supra* note 16, at 117. The reason the laws and policies for different territories varied stems from the fact that the territories all consisted of different peoples and cultures at their acquisition. *See id.* at 118 (“These established overseas societies possessed definable cultures, languages, values, and political systems, but they were different from each other and each posed distinct challenges to U.S. colonial officials. Puerto Rico and Cuba, for example, were perceived as partially European societies, while the Pacific islands were popularly viewed as exotic and somewhat more primitive.”).

a civil system that installed judicial institutions, public education systems, and modernized various infrastructure, it also aimed to “Americanize” the people of Puerto Rico.⁴² Records from 1900 show that many congressional representatives were in favor of fully incorporating Puerto Rico into the United States, but ultimately the majority voted against it so as to benefit from the tax revenue the government could collect if it treated Puerto Rico as a separate “part of” the United States.⁴³ To counteract the oppression and ambiguous status that this Act caused for Puerto Rico and its citizens, Senator Foraker spread propaganda and the narrative that this Act was a noble effort to civilize primitive peoples, not taking into account the fact that Puerto Rico was already a lucrative exporter of agricultural crops.⁴⁴

In an effort to clarify the political status of Puerto Rico and the other acquired territories, a series of cases, termed the Insular Cases, followed the Foraker Act. Thus began a long, complicated history of arbitrary standards that contradicted not only the US Constitution, but also each other⁴⁵ and the precedent in place at the time.⁴⁶ Even though the rulings meant to clarify

⁴² Because of the differences in culture, language, and race between the people of the United States and the people of former Spanish Colonies, the latter would be excluded from United States politics. *See id.* In fact, “U.S. colonial officials believed that through a campaign of Americanization these strange and exotic peoples would be converted into semiliterate, loyal subjects who would apprehend the legitimacy of U.S. sovereignty and accept the new political and economic order that would be imposed on their societies.” *Id.*

⁴³ Cabranes, *supra* note 5, at 433 (citing 33 CONG. REC. 3690 (1900) (remarks of Sen. Foraker)).

⁴⁴ *See* Caban, *supra* note 16, at 118 (“The rationale for Americanization was popularly portrayed as a noble and selfless effort to bestow on the unfortunate primitive peoples the possessions and virtues of U.S. civilization. Yet Americanization was driven by a strategic and economic calculus that was pivotal to the United States’ aspirations for hemispheric hegemony and national security.”).

⁴⁵ *See* Mónica Matos-Desa, *Second Class Citizens: The Case Against Unequal Military Healthcare Benefits for Puerto Rican Veterans*, 16 CARDOZO J. L. & GENDER 291, 295–96 (2010) (“While [*De Lima v. Bidwell* and *Downes v. Bidwell*] may seem to be at odds with each other, together they illustrate the Supreme Court’s attempts to characterize Puerto Rico as a part of the United States at some times, and not of the United States at other times. These decisions created justifications that allowed a relationship that benefited the United States, while classification as a “territory appurtenant” kept Puerto Rico as a possession of the United States, but did not provide for complete inclusion of Puerto Rico into the U.S. legal sphere.”).

⁴⁶ The *Insular Cases*, in a way, served to hold that Congress could indefinitely hold territories as colonies. *See* Cabranes, *supra* note 5, at 437–38 (“[T]he Court effectively approved the retention of the newly acquired territories indefinitely. Although the opinion implied that there would be an end to colonialism at some future date, it set no limits.”). These rulings, although not explicitly overruling precedent from 1856, still substantially expanded the amount of time that the United States could hold colonies. *See* *Dred Scott v. Sanford*, 60 U.S. 393, 446 (1856) (enslaved party), *superseded by constitutional amendment*, U.S. Const. amend. XIV (still precedent in 1901, when the *Insular Cases* were ruled on, regarding maintaining colonies: “But no power is given to acquire a territory to be held and governed permanently in that character”).

the political status of the territories, the rights that the territories did or did not have became very unclear. In particular, the Insular Cases concluded that there was a difference between “unincorporated” and “incorporated” territories, incorporated territories being those that would be given a pathway to statehood.⁴⁷ Furthermore, these cases held that the US Constitution, and thus, constitutional protections, applied only partially to the unincorporated territories because they were inhabited by “alien races.”⁴⁸ Following this case law, Puerto Rico was categorized as an unincorporated territory owned by the United States,⁴⁹ and considered “property” subject to the whims of Congress.⁵⁰ These cases, reprehensibly, remain “good law.”

However, due to general unrest of the people of Puerto Rico and their refusal to outright submit to such rule, not long after the Insular Cases, the Jones-Shafroth Act (Jones Act) was passed in 1917.⁵¹ The United States’s ongoing control over Puerto Rico was unpopular among many residents, prompting amendments to provide Puerto Ricans with a greater role in government.⁵² Over time, a majority of Puerto Ricans eventually sought more extensive local control and a range of other reforms.⁵³ Thus, with the Jones Act, President Woodrow Wilson granted Puerto Rican residents statutory US citizenship—at the time, a progressive step toward something resembling equality for Puerto Rican residents.⁵⁴ Even with the added benefit of a bit more autonomy for Puerto Ricans,⁵⁵ the US government set strong limitations: important positions such as the governor were still appointed by the US president, which meant that the federal government maintained a level of control from afar.⁵⁶

⁴⁷ Christina Duffy Burnett, *Untied States: American Expansion and Territorial Deannexation*, 72 U. CHI. L. REV. 797, 800 (2005).

⁴⁸ See *Downes v. Bidwell*, 182 U.S. 244, 313 (1901) (holding that not only was Puerto Rico not fully protected by the US Constitution, but also that the jurisdiction over unincorporated territories of “alien” races lay within the Congress, which had the authority to enact law within various territories and in certain circumstances).

⁴⁹ Cabranes, *supra* note 5, at 437; see also *id.* at 428 (citing 33 CONG. REC. 2473–74 (1900) (remarks of Sen. Foraker)) (detailing at length the discussion surrounding Puerto Rico and its status as affected by the Foraker Act).

⁵⁰ See John L.A. de Passalacqua, *The Involuntary Loss of United States Citizenship of Puerto Ricans Upon Accession to Independence by Puerto Rico*, 19 DENV. J. INT’L L. & POL’Y 139, 147 (1990).

⁵¹ *Jones-Shafroth Act*, ENCYC. BRITANNICA (Feb. 23, 2023), <https://www.britannica.com/event/Jones-Shafroth-Act> [perma.cc/T8DW-WS43].

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* The added benefits included a bill of rights and a locally elected Senate and House of Representatives. *Id.*

⁵⁶ *Id.*

Additionally, both the governor and the US President retained the authority to veto any laws passed by the Puerto Rican legislature, further emphasizing the continued influence of the United States in Puerto Rico's governance.⁵⁷ Moreover, citizenship was not protected under the US Constitution and could easily be revoked by Congress under certain circumstances.⁵⁸ The more "Americanized" the political structures became, the more the Puerto Rican people came to depend on their colonizer.⁵⁹ Numerous Puerto Rican legal professionals gained expertise in a fresh legal system and familiarized themselves with US legal principles.⁶⁰ Thousands more received training for various roles within the government, such as clerks, technicians, managers, police officers, teachers, and more.⁶¹ Historians have argued that "the increase[ed] unemployment and widespread poverty that followed the U.S. occupation of Puerto Rico" likely led to these same workers "becom[ing] dependent on the colonial state for their livelihood."⁶² Additionally, scholars argue that granting Puerto Ricans citizenship "masked colonialism itself."⁶³

Nevertheless, it would become evident after a few short months that what had seemed to be a progressive step toward equality was in actuality a calculated act by the United States to add forces to its war efforts⁶⁴ and benefit itself should its dominance in the Caribbean be threatened.⁶⁵ "The legislative purposes of the Jones Act included permitting Puerto Ricans to serve in World War I and providing cheap labor."⁶⁶ Along with their newly acquired benefit of citizenship, though still unprotected by the Constitution, Puerto Ricans were eligible to join the US military and move about freely throughout the United States, including the mainland.⁶⁷ Shortly after Puerto Ricans received citizenship, the United States then imposed

⁵⁷ *Id.*

⁵⁸ *See id.*

⁵⁹ Caban, *supra* note 16, at 115.

⁶⁰ *Id.* at 122.

⁶¹ *See id.*

⁶² *See id.*

⁶³ ALVIN PADILLA-BABILONIA ET AL., *THE LAW BETWEEN OBJECTIVITY AND POWER* § 16 (1st ed. 2022).

⁶⁴ *See* Katherine Culliton-González, *Time to Revive Puerto Rican Voting Rights*, 19 *BERKELEY LA RAZA* L.J. 27, 29 (2008).

⁶⁵ Harry Franqui-Rivera, *The Puerto Rican Experience in World War I*, GILDER LEHRMAN INST. AM. HIST. (2018), <https://www.gilderlehrman.org/history-resources/essays/puerto-rican-experience-world-war-i>. [perma.cc/24GT-TJGQ].

⁶⁶ Culliton-González, *supra* note 64, at 29.

⁶⁷ *Id.* (stating that the Jones Act definitively established that Puerto Ricans were US citizens, granting them the ability to travel within the United States without a passport and enlist in the Armed Forces).

mandatory draft requirements, which were enforced within months of the Jones Act.⁶⁸ Thousands of Puerto Ricans fought for the United States in World War I and within twenty years, following the passing of that Act, approximately 70,000 Puerto Ricans moved to mainland United States.⁶⁹ This migration satisfied President Wilson's need for cheap labor during wartime.⁷⁰ However, it was not until 1952 that the residents of Puerto Rico received naturalization. This meant that their citizenship, it can be argued, was now a birthright protected by the US Constitution.⁷¹

2. Puerto Rico Today: Immigration, Voting Rights, and Impact

Today, Puerto Rico has a population of just over 3.2 million people,⁷² down from 3.73 million in 2010.⁷³ Much of this migration can presumably be attributed to the intensely destructive natural disasters the island has experienced in the last several years.⁷⁴ However, in 2021, approximately 5.8 million individuals with Puerto Rican heritage resided in the United States,⁷⁵ and that number continues to rapidly grow. There has always been migration from Puerto Rico to the mainland, with

⁶⁸ *Puerto Ricans Become U.S. Citizens, Are Recruited for War Effort*, HISTORY (Apr. 26, 2023), <https://www.history.com/this-day-in-history/puerto-ricans-become-u-s-citizens-are-recruited-for-war-effort> [perma.cc/H377-6EBG] (detailing that, even after Puerto Ricans could join the US Army, not many actually chose to do so, and that Wilson then signed a compulsory military service act in order to draft them into the ongoing war).

⁶⁹ Franqui-Rivera, *supra* note 65; *Jones-Shafroth Act*, *supra* note 51.

⁷⁰ See Culliton-González, *supra* note 64, at 29.

⁷¹ de Passalacqua, *supra* note 50, at 149. Puerto Ricans can acquire US citizenship through various means, including being born in a state, being naturalized, following the Jones Act, being born on the island within specified time periods, or having a Puerto Rican parent with US citizenship, with the first two being "constitutional citizenships" and the latter four being "legislative citizenships," as outlined in US legal provisions. It can be argued that there is now both constitutionally protected citizenship through naturalization and citizenship derived from enacted and amended law. *See id.* at 156.

⁷² *QuickFacts: Puerto Rico*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/PR> [perma.cc/4HF2-885H].

⁷³ *Historical Population Change Data (1910-2020)*, US CENSUS BUREAU (Apr. 26, 2021), <https://www.census.gov/data/tables/time-series/dec/popchange-data-text.html> [perma.cc/L4P4-B4YK].

⁷⁴ Alejandro Arrieta et al., *Real-Time Migration Tracking to Puerto Rico After Natural Hazard Evacuation*, NAT. HAZARDS CTR. (2021), <https://hazards.colorado.edu/public-health-disaster-research/real-time-migration-tracking-to-puerto-rico-after-natural-hazard-events> [perma.cc/MFA6-LWWN].

⁷⁵ See Mohamad Moslimani et al., *Facts on Hispanics of Puerto Rican Origin in the United States, 2021*, PEW RSCH. CTR. (Aug. 16, 2023), <https://www.pewresearch.org/hispanic/fact-sheet/u-s-hispanics-facts-on-puerto-rican-origin-latinos/> [perma.cc/VY9U-G4JL] (a 2021 analysis of the US Census Bureau's American Community Survey).

New York City initially acting as a major central point for migrants.⁷⁶ Florida has now overtaken New York as the state where most Puerto Rican people reside,⁷⁷ with nearly 1.2 million Puerto Ricans residents.⁷⁸

Because “Puerto Ricans are now United States citizens,” they can freely move from one territory or state to another, due to protections granted by the Fourteenth Amendment, regardless of the historical path that led to attaining that citizenship status and privilege.⁷⁹ But despite the freedom to move freely from state to state, citizens can “only have one domicile” and therefore “citizenship of only one state.”⁸⁰ Once a domicile is changed, state citizenship is forfeited in favor of the newly chosen domicile state.⁸¹ This means that Puerto Rican citizens who permanently move to the mainland become citizens of their newly chosen home state. Although Puerto Ricans have historically faced problems assimilating due to poverty and racial discrimination perpetrated by the US government,⁸² Puerto Rican populations on the mainland are starting to wield increased political influence and cultural impact on the broader society.⁸³ Notably, presidential candidates targeted campaign efforts toward Puerto Rican people so as to influence Puerto Rican voters in Florida for elections in 2016 and 2020.⁸⁴

It is worth noting that, ironically, any other mainland US citizen who previously lived in one of the fifty states but decided to relocate permanently overseas retains their right to vote in presidential elections by an absentee ballot.⁸⁵ How paradoxical,

⁷⁶ *In Spanish Harlem*, LIB. CONG., <https://www.loc.gov/classroom-materials/immigration/puerto-rican-cuban/in-spanish-harlem/> [perma.cc/54B6-47WT].

⁷⁷ *Hispanic or Latino Origin by Specific Origin*, U.S. CENSUS BUREAU, <https://data.census.gov/table?q=B03001:+HISPANIC+OR+LATINO+ORIGIN+BY+SPECIFIC+ORIGIN&tid=ACSDT1Y2019.B03001&hidePreview=true> [perma.cc/TR3D-K7L2].

⁷⁸ Dánica Coto & Adriana Gomez Licon, *Puerto Rico, Unable to Vote, Becomes Crucial to US Election*, ASSOCIATED PRESS (Oct. 18, 2020, 9:02 PM), <https://apnews.com/article/election-2020-race-and-ethnicity-joe-biden-donald-trump-puerto-rico-3018eade64921c72b0ebb1df3f22061e> [perma.cc/7FCG-K8M6].

⁷⁹ de Passalacqua, *supra* note 50, at 152.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Even as recently as 2022, the Court held that a resident of one of the fifty states or Washington, DC can receive benefits, while residents of Puerto Rico and other territories should not, effectively upholding the *Downes* ruling that Puerto Ricans are still considered “alien” peoples. See *United States v. Vaello Madero*, 142 S. Ct. 1539, 1541 (2022); *id.* at 1552–53 (Gorsuch, J., concurring).

⁸³ See *In Spanish Harlem*, *supra* note 76.

⁸⁴ See Coto & Gomez Licon, *supra* note 78.

⁸⁵ The Overseas Citizens Voting Rights Act affords “[e]ach citizen residing outside the United States . . . the right to register absentee for, and to vote by, an absentee ballot in any Federal election in the State, or any election district of such State, in which he was last domiciled immediately prior to his departure from the United States and in which he could have met all qualifications to vote in Federal elections” if “he has

then, that the United States prioritizes the presidential voting right of expatriates, who may wish to permanently leave the United States, while simultaneously withholding such suffrage from Puerto Ricans—a considerable number of whom favor joining the United States as its fifty-first state.⁸⁶ In other words, the United States is more worried about protecting Americans that want to leave the United States rather than Americans who want to stay in the United States. Illogically, Puerto Ricans who decide to either remain in Puerto Rico or return to Puerto Rico from one of the fifty states lose their state residency and thus, the right to vote in presidential elections.⁸⁷ In contrast to mainland state citizens (including former residents of Puerto Rico), Puerto Ricans that retain or reclaim their territorial citizenship do not have the right to vote directly in presidential elections, thus limiting their impact on US policy.⁸⁸

3. Current Restrictions and Limitations of Puerto Rican Government

Despite the grant of citizenship, Puerto Rico still has very limited powers within its own government. Even after the transition from American martial law to a local autonomous rule in 1917, where Puerto Rico gained authority and control of its own internal affairs, the United States retained major final veto powers over any decisions made on the ground.⁸⁹ Although the head of government is the elected Governor, the Chief of State remains the President of the United States, making autonomy an illusion—the US federal government and its broad congressional powers will always have the last say.⁹⁰ Puerto Rico's executive branch, headed by the governor who is elected every four years, is composed of cabinet members that

complied with all applicable State or district qualifications and requirements⁸⁷ that are consistent with the Act. Overseas Citizens Voting Rights Act of 1975, Pub. L. No. 94-203, 89 Stat. 1142 (1976) (codified as amended at 42 U.S.C. § 1973dd).

⁸⁶ Roque Planas, *Puerto Rico Status Vote Proposed by White House*, HUFFINGTON POST (Apr. 10, 2013), http://www.huffingtonpost.com/2013/04/10/puerto-rico-status-vote_n_3056579.html [perma.cc/8UUL-KMZL].

⁸⁷ de Passalacqua, *supra* note 50, at 151 n.40.

⁸⁸ Puerto Rico residents may still have an indirect impact on these elections, as many previously attempted to influence their family members living in mainland states, particularly in 2020. *See* Coto & Gomez Licon, *supra* note 78.

⁸⁹ Caban, *supra* note 16, at 136; *see also Jones-Shafroth Act*, *supra* note 51.

⁹⁰ *See, e.g., Fin. Oversight & Mgmt. Bd. for P.R. v. Centro de Periodismo Investigativo, Inc.*, 598 U.S. 339, 351 (2023) (holding that although Puerto Rico has a local constitutional right to access public government records, that the Financial Oversight and Management Board for Puerto Rico—put in place by the federal government—enjoys sovereign immunity). The Board, due to sovereign immunity, faces no local accountability, and the federal government continues to have the last say.

lead the commonwealth's executive departments.⁹¹ The legislative power is divided between the Chamber of Representatives and Senate, which are elected by the population for terms lasting four years.⁹² Finally, the judicial system is composed of a Supreme Court with nine justices, all named by the Governor, and Puerto Rico's federal government also has a US Attorney and seven district court judges appointed by the President of the United States.⁹³

Even with a limited form of autonomous government and control over local internal affairs, the US federal government still controls. Puerto Rican institutions oversee only internal affairs.⁹⁴ Even then, the US federal government controls in matters encompassing "foreign relations, commerce, trade, and more, as long as there is a US law that supersedes Puerto Rican law."⁹⁵ Although Puerto Rican residents are, for the most part, governed by US federal laws, they still do not have the same voting rights as residents of the fifty states.⁹⁶

This leads us to the conflict that the people of Puerto Rico face, one that is intimately tied to the denial of voting rights in presidential elections. Among the distinctions between the states and Puerto Rico as a commonwealth is the absence of voting representation and the United States's unwillingness to grant Puerto Rico the same funding (such as for Medicaid) that it grants to states.⁹⁷ Puerto Rico differs significantly from the fifty states with exemptions from certain parts of the Internal Revenue Code (IRC), no voting representation in the US Congress, residents being unable to vote in presidential elections, and not having certain state revenues assigned. While these distinctions might seem small, the value of the rights denied to Puerto Rican residents is great. The impact is

⁹¹ P.R. CONST. art. IV, §§ 1–2, 4.

⁹² *Id.* art III., § 1; *id.* art. VI, § 4.

⁹³ *Supreme Court*, JUD. BRANCH P.R., <https://poderjudicial.pr/eng/supreme-court/> [perma.cc/7P5A-NEZ4]; *Meet the U.S. Attorney: U.S. Attorney W. Stephen Muldrow*, U.S. ATT'Y'S OFF. DIST. P.R. (Oct. 7, 2021), <https://www.justice.gov/usao-pr/meet-us-attorney> [perma.cc/3DSU-N5GD]; *Judge's Info*, U.S. DIST. CT. DIST. P.R., <https://www.prd.uscourts.gov/judges-info> [perma.cc/Q8EG-RXAN].

⁹⁴ Izzie Ramirez, *The Real Source of Puerto Rico's Woes*, VOX (Oct. 10, 2022), <https://www.vox.com/future-perfect/2022/10/10/23391700/puerto-rico-hurricane-recovery-colonialism-debt> [perma.cc/8CXH-FJ4D].

⁹⁵ *Id.*

⁹⁶ Raquel Reichard, *Why Isn't Puerto Rico a State?*, HISTORY (July 12, 2023), <https://www.history.com/news/puerto-rico-statehood> [perma.cc/5LKS-8UWD].

⁹⁷ *Id.*; see also Nicole Rapfogel, *Without Congressional Action, Puerto Rico Faces Severe Medicaid Funding Cuts*, CTR. AM. PROGRESS (Nov. 3, 2022), <https://www.americanprogress.org/article/without-congressional-action-puerto-rico-faces-severe-medicaid-funding-cuts/> [perma.cc/KRP5-KE53].

monumental in the everyday lives of Puerto Rican residents—their livelihood, their land, and their of dignity of life.

C. *Puerto Rican Contributions to the United States*

Puerto Rican residents have contributed much to the success and history of the United States. Whether through military service, important scientific discoveries, or contributions to the arts and other areas, Puerto Rico has been instrumental in making the United States the superpower it is today.

1. Military Service and Federal Workforce in Puerto Rico

One of the most important contributions from Puerto Ricans has been their overwhelming loyalty to the US military. Shortly following its acquisition, Puerto Ricans have been enlisted in the US military, starting with the “Battalion of Porto Rican Volunteers,” formed after the 1898 Spanish American War.⁹⁸ Between that time and World War I, military engagement “was limited to a single regiment of no more than 2,500 men who performed local colonial duties.”⁹⁹ However, “World War I mark[ed] . . . the beginning of Puerto Rican units serving outside the island and of Puerto Rican mass participation in the armed forces of the United States.”¹⁰⁰ Despite the United States’s self-interested motives for passing the Jones Act, on July 5, 1917, a total of 104,550 Puerto Ricans completed draft registration, a remarkable outcome given the limited infrastructure of paved roads and vehicles.¹⁰¹ The success of this first registration day was largely attributed to local volunteers who meticulously guided men across the island, ensuring they knew where to register and what steps to take.¹⁰² Ultimately, a total of 236,853 men “enlisted for selective service.”¹⁰³ Out of the numerous volunteers and draftees summoned for examination, only 17,855 were deemed eligible and instructed to join the service.¹⁰⁴ Although a small percentage of those who actually enlisted were deemed eligible, it is nothing short of remarkable

⁹⁸ Franqui-Rivera, *supra* note 65.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

that almost 19 percent¹⁰⁵ of the Puerto Rican population showed such support to the United States and were willing to fight “the ‘war to end all wars.’”¹⁰⁶

Today, Puerto Ricans remain a big presence in the US military.¹⁰⁷ All male Puerto Rican citizens must register for selective service and, under penalty of imprisonment, must answer the call to a draft, if the occasion ever arises.¹⁰⁸ However, many Puerto Rican residents voluntarily serve in the military and continue to do so. Puerto Rican residents have fought in World War II, the Korean War, the Vietnam War, and, most recently, Operations Iraqi Freedom and Enduring Freedom.¹⁰⁹ In 2017, there were approximately 330,000 Puerto Rican veterans, and around 35,000 Puerto Ricans were actively serving in the military.¹¹⁰ “The Puerto Rico Army/Air National Guard and Reserve components [would add] another 10,000 Puerto Ricans in uniform,”¹¹¹ totaling over 375,000 Puerto Ricans who had either served as “veterans or [were] in uniform.”¹¹² This number excludes thousands who served in the national guard.¹¹³ Notably, Puerto Ricans stand out as the sole Latino group that is “over-represented in the military.”¹¹⁴

While serving for any branch of the US Military, Puerto Rican service members must pay federal income taxes as well as Puerto Rican income taxes, as they are considered federal workers employed by the US government.¹¹⁵ This means that

¹⁰⁵ The population of Puerto Rico in 1917 was an estimated 1,250,000 people. See BRIAN R. MITCHELL, *INTERNATIONAL HISTORICAL STATISTICS: THE AMERICAS, 1750–2000* 5 (5th ed. 2008).

¹⁰⁶ Franqui-Rivera, *supra* note 65.

¹⁰⁷ Harry Franqui-Rivera, *Voices: Too Many of Puerto Rico’s Veterans Are Moving Away*, NBC NEWS (May 28, 2017, 11:43 AM), <https://www.nbcnews.com/news/latino/voices-too-many-puerto-rico-s-veterans-are-moving-away-n764676> [perma.cc/23QU-ZE5B].

¹⁰⁸ *Who Needs to Register?*, SELECTIVE SERV. SYS., <https://www.sss.gov/register/who-needs-to-register/> [perma.cc/8JKY-M79Y]; see Matos-Desa, *supra* note 45, at 298–99 (explaining that the Jones Act assigned Puerto Ricans certain citizenship duties, such as mandatory military draft requirements).

¹⁰⁹ *Id.* (outlining Puerto Rican military history, including Puerto Rican citizen involvement in World War I, World War II, the Korean American War, the Vietnam War, the Gulf War, and the war on terror in Afghanistan and Iraq).

¹¹⁰ Franqui-Rivera, *supra* note 107.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ See Adriana De Jesús Salamán, *U.S. Employees in Puerto Rico and Territories Face Huge Pay Gap*, NOTICEL, (May 16, 2019, 7:52 PM) <https://www.noticel.com/economia/english/20190517/u-s-employees-in-puerto-rico-and-territories-face-huge-pay-gap/> [perma.cc/F55R-9WA7]; *Topic No. 901, Is A Person With Income From Puerto Rico Required to File a U.S. Federal Income Tax Return?*, IRS (June 15, 2023), <https://www.irs.gov/taxtopics/tc901> [perma.cc/G9VA-HKX6].

they, unlike any other service member, must pay a double taxation.¹¹⁶ The same is true for all federal workers residing in Puerto Rico. Any resident of Puerto Rico who is employed by the US federal government, whether it be a district judge or an agency employee, must pay both federal and Puerto Rican income taxes.¹¹⁷

2. Other Puerto Rican Contributions to American Society

Puerto Ricans also make significant contributions to American society, especially in academics and popular culture. In academia, programs have been created throughout the United States that study Hispanic influence on American culture.¹¹⁸ Bad Bunny is a popular Puerto Rican music artist who has influenced US culture; he set several records, including being the first Latin and Puerto Rican artist to be Billboard's top artist with an all-Spanish album, and earning the top album of the year.¹¹⁹ Rita Moreno won an Oscar for her performance in the classic film *West Side Story*.¹²⁰ Puerto Ricans have also made considerable contributions to the national pastime. Some consider one of the greatest baseball players of all time to be Roberto Clemente, who is in the "3,000-hit club, won four batting titles, twelve Gold Gloves, two World Series, [and] a National League MVP award."¹²¹ Other notable Puerto Rican baseball players include Francisco Lindor, Edwin Díaz, and Carlos Correa.¹²²

Puerto Ricans have been named to prominent positions the US judiciary. José Cabranes was the inaugural Puerto Rican appointed to a federal court on the US mainland, appointed in 1979 to the United States District Court for the District of

¹¹⁶ See *Topic No. 901*, *supra* note 115; see also *infra* n.139.

¹¹⁷ *Topic No. 901*, *supra* note 115.

¹¹⁸ See, e.g., *Latinx Studies*, DEPT ROMANCE LANGUAGES & LITERATURES, HARV. UNIV., <https://rll.fas.harvard.edu/latinx-studies> (last visited Feb. 24, 2024); *Latino Studies*, PRINCETON UNIV., <https://www.princeton.edu/academics/area-of-study/latino-studies> [perma.cc/L67C-WT76].

¹¹⁹ Griselda Flores, *Bad Bunny's History-Making Accomplishments: A Timeline*, BILLBOARD (Jan. 17, 2023), <https://www.billboard.com/lists/bad-bunny-timeline-history-making-accomplishments/dec-1-2020/> [https://perma.cc/RQ6V-CWGB].

¹²⁰ Sarah Bahr, *Oscars Rewind: When Rita Moreno Made History and Thanked No One*, N.Y. TIMES (updated Mar. 17, 2022), <https://www.nytimes.com/2022/03/11/movies/rita-moreno-oscar-west-side-story.html> (last visited Feb. 24, 2024).

¹²¹ *Roberto's Story*, ROBERTO CLEMENTE FOUND., <https://www.robertoclementefoundation.com/roberto-clemente-bio/> [perma.cc/QD5T-RPLT].

¹²² David Adler, *Clemente Tops List of Greatest Players from PR*, MLB (Sept. 9, 2020), <https://www.mlb.com/news/best-puerto-rican-baseball-players-of-all-time> (last visited Feb. 24, 2024); *Edwin Díaz*, MLB, <https://www.milb.com/player/edwin-diaz-641521> (last visited Feb. 24, 2024).

Connecticut.¹²³ He was later appointed to the United States Court of Appeals for the Second Circuit in 1994.¹²⁴ Sonia Sotomayor became the first Latina and the first Puerto Rican Supreme Court Justice in US history.¹²⁵ Whether in politics, sciences, or in the arts, Puerto Ricans have greatly influenced American modern day society.

II. PUERTO RICAN TAXATION (WITHOUT REPRESENTATION)

Beyond military, social, and cultural contributions to mainland United States, Puerto Rico also contributes financially, albeit unfairly and without adequate political representation. As explained in detail here, one of the most notable distinctions between the commonwealth of Puerto Rico and the states is its general exemption from federal income taxation under the IRC.¹²⁶ However, employers in Puerto Rico still pay other federal US taxes, such as social security, Medicare, and unemployment.¹²⁷ And in certain cases, such as with US government employees or members of the Armed Forces, Puerto Rican residents still pay federal income tax.¹²⁸ In fact, out of the four billion dollars that Puerto Rico produced in 2021 in US tax revenue, more than half of it was due to federal income and FICA taxes withheld from Puerto Rican residents.¹²⁹ Thousands of federal workers can account for more than half of the generated tax revenue coming out of Puerto Rico.¹³⁰ Logic would dictate that the obligation to pay federal income tax would accompany all the same benefits that other state residents who must pay federal income tax enjoy.

Despite its lack of representation, Puerto Rico continues to be taxed somewhat equally to mainland America. In 2022, in

¹²³ José A. Cabranes, U.S. CT. APPEALS SECOND CIR., <https://www.ca2.uscourts.gov/judges/bios/jac.html> [perma.cc/6AYX-ZB6H].

¹²⁴ *Id.*

¹²⁵ Orlando Mayorquin, *Sonia Sotomayor: What to Know About the First Latina Supreme Court Justice*, USA Today (Apr. 3, 2022), <https://www.usatoday.com/story/news/politics/2022/04/03/who-is-sonia-sotomayor-latina-scotus-justice/7005906001/> [perma.cc/PE66-YP3Q].

¹²⁶ See generally SERAFIN MÉNDEZ-MÉNDEZ ET AL., NOTABLE CARIBBEANS AND CARIBBEAN AMERICANS: A BIOGRAPHICAL DICTIONARY (2003); I.R.C. § 933.

¹²⁷ *Topic No. 903, U.S. Employment Tax in Puerto Rico*, IRS (Aug 11, 2023), <https://www.irs.gov/taxtopics/tc903> [perma.cc/RYP2-9254].

¹²⁸ *Topic No. 901*, *supra* note 115.

¹²⁹ See *SOI Tax Stats - Gross Collections, by Type of Tax and State - IRS Data Book Table 5*, IRS (Apr. 14, 2023), <https://www.irs.gov/statistics/soi-tax-stats-gross-collections-by-type-of-tax-and-state-irs-data-book-table-5> [https://perma.cc/HXG6-BUJM]. Additionally, Puerto Rico has, in the past, generated more tax revenue than some states. See *id.*

¹³⁰ See *SOI Tax Stats - Gross Collections, by Type of Tax and State - IRS Data Book Table 5*, *supra* note 129.

the most recent Supreme Court decision challenging the lack of rights of and benefits granted to the people of Puerto Rico, Justice Kavanaugh delivered the opinion that upheld the Insular Cases as precedent for Congress to “make all needful Rules and Regulations respecting the Territory . . . belonging to the United States.”¹³¹ The Court’s pretense was that this precedent “protects” Puerto Ricans from “most federal income, gift, estate, and excise taxes.”¹³² Justice Kavanaugh reasoned that if Puerto Rico were to receive Supplemental Security Income (SSI) and other benefits for which it remained ineligible, mainland citizens might demand that it also pay more federal taxes from which it is currently exempt.¹³³ Aside from the fact that this statement is factually inaccurate, Justice Kavanaugh went on to hold that “the equal-protection component of the Fifth Amendment’s Due Process Clause [does not] require Congress to make Supplemental Security Income benefits available to residents of Puerto Rico to the same extent that Congress makes those benefits available to residents of the States,” because of “longstanding historical practice, and this Court’s precedents.”¹³⁴ This case should be overruled due to the factual flaws at root in the decision.

First, it is not true that all Puerto Rican citizens are exempt from federal income taxes.¹³⁵ Further, even for those who are, Puerto Rican residents still pay other federal, nonincome taxes.¹³⁶ Statements in the 2022 opinion¹³⁷ regarding taxes that Puerto Rican residents pay or do not pay are not entirely accurate. It is unethical to lead readers to conclude that Puerto Rican residents do not pay as much in taxes as the average mainland citizen.¹³⁸ The reality is that many do. In April 2020, there were roughly 14,000 federal employees in Puerto Rico.¹³⁹ Additionally, there were 9,500 retired federal employees.¹⁴⁰ This adds up to approximately 25,000 Puerto Rican residents who were required to pay federal income taxes on top of Puerto Rican

¹³¹ *United States v. Vaello-Madero*, 142 S. Ct. 1539, 1541, 1543 (2022) (citing U.S. CONST. art IV, § 3, cl. 2).

¹³² *See id.* at 1543 (attempting to cloak the lack of equal benefits granted to Puerto Rico as a protection against federal taxes).

¹³³ *Id.*

¹³⁴ *Id.* at 1541.

¹³⁵ *Topic No. 901, supra* note 115.

¹³⁶ *Id.*

¹³⁷ *Vaello Madero*, 142 S. Ct. at 1541.

¹³⁸ *See id.* at 1543 (failing to take into account the thousands of Puerto Rican residents who do, in fact, pay federal income taxes due to their federal employment).

¹³⁹ BEN LEUBSDORF & CAROL WILSON, CONG. RSCH. SERV., R47716, CURRENT FEDERAL CIVILIAN EMPLOYMENT BY STATE AND CONGRESSIONAL DISTRICT 3 (2023).

¹⁴⁰ De Jesús Salamán, *supra* note 115.

income taxes.¹⁴¹ Although the Court offers the federal income tax exemption for some Puerto Rican residents as a justification for the validity of the holding of the case, it fails to address the thousands of Puerto Rican residents that *are* in fact subject to the full tax rules for “mainland” citizens.

Even if not *all* Puerto Rican residents pay federal income taxes, all Puerto Ricans are required in fact to pay *other* federal taxes, including federal payroll taxes, like their counterpart “mainland” citizens (including unemployment taxes, Social Security, and Medicare).¹⁴² All Puerto Rican residents must also pay customs taxes and federal commodity taxes.¹⁴³ It is a reality of life for Puerto Rico residents that they must pay federal taxes, even if the amount varies.

Painting the picture that Puerto Rican residents are generally tax exempt and using it as a reason to uphold years of precedent that most scholars, and even Supreme Court Justices, agree should now be abandoned borders on unethical misrepresentation or willful ignorance.¹⁴⁴ Additionally, if Justice Kavanaugh had reviewed current statistics about the economic state of the people of Puerto Rico, he would have found that:

with a higher poverty level and higher unemployment than any of the 50 states even before Hurricane Maria, most of Puerto Rico’s residents would not pay income tax. Like nearly half of their fellow citizens in the states, most of the residents of Puerto Rico don’t earn enough to pay income taxes.¹⁴⁵

¹⁴¹ See *Topic No. 901*, *supra* note 115.

¹⁴² Sindy Marisol Benavides, *After SCOTUS Ruling, Puerto Rico Statehood Even More Imperative*, LEAGUE UNITED LATIN AM. CITIZENS (Apr. 28, 2022), https://lulac.org/news/in_the_news/after_scotus_ruling_puerto_rico_statehood_even_more_imperative/ (last visited Feb. 24, 2024).

¹⁴³ *Id.*

¹⁴⁴ *United States v. Vaello Madero*, 142 S. Ct. 1539, 1554 (2022) (Gorsuch, J., concurring) (“The flaws in the Insular Cases are as fundamental as they are shameful. Nothing in the Constitution speaks of ‘incorporated’ and ‘unincorporated’ Territories. Nothing in it extends to the latter only certain supposedly ‘fundamental’ constitutional guarantees . . . Nothing in it authorizes judges to engage in the sordid business of segregating Territories and the people who live in them on the basis of race, ethnicity, or religion.”); see generally Nelson Torres-Rios, *Racial Barriers to Equal Protection: United States v. Vaello Madero*, 49 RUTGERS L. REC. 102 (2022); Helen Phillips, *The United States Has Left Children in the Territories Behind: Why the United States Should Extend the Supplemental Nutrition Assistance Program to Puerto Rico, American Samoa, and the Northern Mariana Islands*, 32 KAN. J.L. & PUB. POL’Y 119 (2022); Christina Duffy Ponsa-Kraus, *The Insular Cases Run Amok: Against Constitutional Exceptionalism in the Territories*, 131 YALE L.J. 2449 (2022).

¹⁴⁵ *Puerto Rico Statehood: Pros and Cons*, PR51ST (Apr. 4, 2022), <https://www.pr51st.com/puerto-rico-statehood-pros-and-cons/> [https://perma.cc/FV5D-DAX4]; see also *Vaello Madero*, 142 S. Ct. at 1543 (implying that holding Puerto Rico accountable to a different tax scheme would be detrimental for the island rather than beneficial. On the contrary, if it were subject to all tax schemes, it would then also be subject to all tax benefits, which would be more helpful to the Puerto Rican people).

Other recent Supreme Court cases regarding Puerto Rico's debt are even more egregious. In *Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*, the Supreme Court ruled that, although the US President has the power to appoint board members to the enacted governmental body that controls Puerto Rico's purse strings, those board members are not, in fact, "Officers of the United States" because "Congress did not intend to make the Board members" such.¹⁴⁶ However, in *Financial Oversight and Management Board for Puerto Rico v. Centro de Periodismo Investigativo, Inc.*, the Court also went on to rule that the financial oversight board "generally retain[ed] sovereign immunity" and therefore cannot be sued in federal court—leaving Puerto Rican citizens with little recourse against the presidentially-appointed board, meaning that it was not accountable to the people over which it had financial control.¹⁴⁷ It all amounts to a long-rejected principle of this nation—taxation without representation—in the case of Puerto Rico: no right to a presidential vote, no voting representation in Congress, and little recourse against a controlling federal government.

III. THE CONFLICT: LEGAL CONTRADICTIONS AND DISENFRANCHISEMENT

It is irrefutable that Puerto Rico, its people, its economy, and its great influence in the middle of Latin America is a great political asset to the United States. Aside from the military presence in the Caribbean, Puerto Ricans have influenced American history in every major conflict since World War II.¹⁴⁸ Puerto Ricans have also contributed to the immense diversity of cultures in the United States.¹⁴⁹ However, even in light of Puerto Rico's political and cultural impact, the US government continues to treat the residents of this commonwealth nation as second class foreign citizens.¹⁵⁰ The United States still denies Puerto Ricans constitutional protections afforded to all

¹⁴⁶ *Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Aurelius Inv., LLC*, 140 S. Ct. 1649, 1661 (2020). This meant that the members could be appointed "without Senate confirmation." *Id.* at 1654.

¹⁴⁷ *Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Centro de Periodismo Investigativo, Inc.*, 598 U.S. 339, 351 (2023).

¹⁴⁸ Matos-Desa, *supra* note 45, at 299–301.

¹⁴⁹ See *supra* Section I.C.2.

¹⁵⁰ The Supreme Court had the opportunity to overturn precedent in 2012 in a case where the United States Court of Appeals for the First Circuit held that "[s]ince Puerto Rico is not a state, and cannot be treated as a state under the Constitution for these purposes, its citizens do not have a constitutional right to vote for members of the House of Representatives." See *Igartua v. United States*, 626 F.3d 592, 594 (1st Cir. 2010), *cert. denied*, 566 U.S. 986 (2012).

mainland citizens, refuses to overrule outdated and arbitrary case law, and continues to deny them the right to vote for their President or take part in Congress.¹⁵¹

This section highlights the case law that has structured Puerto Rico and that continues to shape legislation through the racist, imperial attitudes from 1901. In examining these decisions, this section will show how case law on territorial issues regarding presidential voting rights is arbitrary and outdated. Puerto Rico, in reality, is a de facto incorporated territory, and can no longer be considered unincorporated. However, while it would be a fantastic victory and a pathway toward enfranchisement, overturning the Insular Cases is not enough to grant Puerto Ricans the right to a presidential vote.

A. *Case Law on Presidential Voting Rights and Representation is Arbitrary and Outdated*

A 2022 Supreme Court case, *Vaello Madero*, upheld the Insular Cases and the arbitrary label of calling Puerto Rico an unincorporated territory—a label that was created by Congress in 1901 and has no relevance in the way our nation functions today. The Insular Cases, which consist of six pivotal decisions regarding the territories of the United States, were decided in the very early stages of territorial acquisition.¹⁵² The nineteenth-century conditions under which they were decided have long since changed and are no longer applicable. At the time the Insular Cases were decided, they drew a distinction between what were “incorporated” or “unincorporated” territories.¹⁵³ An incorporated territory was defined as one that was considered a part of the United States, on a path to statehood, and in which the protections of the US Constitution would apply in its entirety.¹⁵⁴ In contrast, a territory that was not incorporated was defined as one that was not on a path to statehood, and thus, “in an international sense . . . was not a foreign country . . . [but] was foreign to the United States in a domestic sense.”¹⁵⁵ Therefore, the fact that Puerto Rico was, at its acquisition, not immediately intended for statehood has had harmful and lasting ramifications on how Puerto Rico exists today.¹⁵⁶ Specifically, the

¹⁵¹ *Id.* at 594–95.

¹⁵² *See supra* note 9 and accompanying text.

¹⁵³ *See Downes v. Bidwell*, 182 U.S. 244, 287–344 (1901) (White, J., concurring).

¹⁵⁴ *Id.* at 305–12.

¹⁵⁵ *Id.* at 341–42.

¹⁵⁶ *See id.*

designation between incorporated or unincorporated territories now functions as just an arbitrary label, since all previously incorporated territories are now states.¹⁵⁷

Originally, the terms incorporated and unincorporated were not established by enacted law, but rather created within case law. “Justice White’s concurring opinion in *Downes*[] *v. Bidwell* formally established the doctrine of incorporation and the concept of an unincorporated territory.”¹⁵⁸ In the opinion of Justice White, treaties either showed intent and language to incorporate a territory or they merely surrendered the right to a nation’s authority over to Congress.¹⁵⁹ Justice White “believed that the Treaty of Paris did not incorporate Puerto Rico into the United States, making it . . . an unincorporated territory.”¹⁶⁰ The concurrence created a status for Puerto Rico based on the fact that Puerto Rico was new to the United States but not assimilated nor entwined with the American people.¹⁶¹

1. Puerto Rico Can No Longer Be Classified as an Unincorporated Territory

Puerto Rico’s status as an unincorporated territory, controlled by Congress, still stands to this day, and it must be abolished for several reasons. First, it seems a ridiculous notion to hold so steadfastly to a decision that was made in conjunction with a foreign nation, in such a contentious situation as negotiating and signing a peace treaty to end a war.¹⁶² Spain’s decision to cede Puerto Rico and Guam, following the Spanish American War, came after nearly a month of negotiating with the United States and as an afterthought as to whether Spain would grant Cuba independence.¹⁶³ Looking at Justice White’s definition of the term unincorporated closely, it is interesting to note that the definition requires a study of what Spain’s intent was in ceding

¹⁵⁷ See *The Last Time Congress Created a New State*, NAT’L CONST. CTR. (Mar. 12, 2023), <https://constitutioncenter.org/blog/the-last-time-congress-created-a-new-state-hawaii> [<https://perma.cc/Y229-KBTP>].

¹⁵⁸ Matos-Desa, *supra* note 45, at 296 (referencing Justice White’s concurring opinion in *Downes*).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* (citing *Downes*, 182 U.S. at 341–42 (White, J., concurring)).

¹⁶¹ See *Downes*, 182 U.S. at 341–42 (White, J., concurring).

¹⁶² LEON WOLFF, *LITTLE BROWN BROTHER: HOW THE UNITED STATES PURCHASED AND PACIFIED THE PHILIPPINE ISLANDS AT THE CENTURY’S TURN* 164 (2006) (describing Spain’s decision to cede Guam and Puerto Rico to the United States during negotiations under the terms of the Treaty of Paris in 1889).

¹⁶³ *Id.*

the nations.¹⁶⁴ He explained that the difference between an incorporated territory and an unincorporated territory is whether the treaty either showed intent to incorporate that territory, slating it for statehood, or if it merely transferred authority over the nation.¹⁶⁵ However, in reality, this definition requires that a very small group of individuals, in very heated discussions, perfectly define and decide the fate of nations for all time. Justice White's definition unreasonably does not allow for any future political developments, growth of nations, or combining of cultures. It only cares about several individuals' judgements and decisions at one point in time. How can we reasonably expect eleven people in a room, six of whom were Spanish—not only foreign to the United States,¹⁶⁶ but also presumably holding extremely combative attitudes toward their enemy—to decide the fate of an entire people? No reasonably prudent person in this day and age would find this standard appropriate.

Second, no argument can be made that Puerto Rico remains "foreign to the United States in a domestic sense."¹⁶⁷ For all the reasons previously stated, Puerto Rico and its people have been deeply interwoven into the fabric of American history, and its people are people of the United States.

Third, "[n]othing in the Constitution speaks of 'incorporated' and 'unincorporated' [t]erritories."¹⁶⁸ The term incorporated and the idea of an unincorporated territory were first presented in the Insular Cases to differentiate between "those places 'incorporated' into the United States and forming an integral part thereof (including the states, the District of Columbia, and the 'incorporated territories'); and those places not incorporated into the United States, but merely 'belonging' to it (which came to be known as the 'unincorporated territories')."¹⁶⁹ However, in practice, incorporated or unincorporated territories did not have major differences:

[T]he significance of the distinction between incorporated and unincorporated territories has been substantially exaggerated.

¹⁶⁴ See *Downes*, 182 U.S. at 342–44 (White, J., concurring) (considering the intent of the treaty and whether a nation was ceded with the intent of becoming a state, or if it was simply surrendered to another nation's authority).

¹⁶⁵ *Id.* at 312.

¹⁶⁶ WOLFF, *supra* note 162, at 164. (describing Spain's decision to cede Guam and Puerto Rico to the United States during negotiations under the terms for the Treaty of Paris in 1889).

¹⁶⁷ *Downes*, 182 U.S. at 341 (White, J., concurring).

¹⁶⁸ *United States v. Vaello Madero*, 142 S. Ct. 1539, 1554 (2022) (Gorsuch, J., concurring).

¹⁶⁹ Duffy Burnett, *supra* note 47, at 799–800.

Contrary to the long-standing consensus, the incorporated/unincorporated distinction did not mirror a distinction between places where the Constitution applied “in full” and places where only its “fundamental” provisions applied. To the contrary, incorporated and unincorporated territories were much more similar in this respect than scholars have argued; and whether a place was within or outside the narrowly defined “United States” rarely determined whether a given constitutional provision applied there.¹⁷⁰

Rather, this “label” was put in place to allow the United States to cede territories, should it decide to do so.¹⁷¹

Fourth, it is highly improbable that the United States will ever relinquish sovereignty over Puerto Rico. And the reality is that the United States never fully intended to relinquish *any* of the territories it acquired over the years. Thus, the distinction between incorporated and unincorporated should have never been borne. As previously discussed, Puerto Rico’s economy, people, money, and history are too closely intertwined with the United States for any reasonable person to believe that the functions of the legal label created in the Insular Cases should still apply today. Although that may not be true of all current territories, it is certainly true of Puerto Rico.¹⁷² Even setting aside the ludicrous language seen in those cases regarding the description of the Puerto Rican people,¹⁷³ much of the reasoning for those decisions was rooted in the fact that the people of Puerto Rico were not Americans—they were not part of the United States and they were foreign peoples unfamiliar with American values, customs, ideals, and were unequal to the white American. While the inequality aspect was never true, the notion that Puerto Rican people are not deeply entangled with the United States is factually incorrect.

2. Puerto Rico Has Arguably Been a de Facto Incorporated Territory Since 1917

Even if the Court wants to maintain the precedent regarding these arbitrary labels, Puerto Rico must be considered

¹⁷⁰ *Id.* at 801–02.

¹⁷¹ *See id.* (proposing the idea that the *Insular Cases* allowed the United States to, instead of colonizing, put in place certain protections for itself and the territories by labeling them unincorporated so as to be able to more easily relinquish sovereignty).

¹⁷² This article recognizes the differences between the people and history of Puerto Rico and the people and histories of other territories.

¹⁷³ *See Vaello Madero*, 142 S. Ct. at 1553 (Gorsuch, J., concurring) (citing *Downes v. Bidwell*, 182 U.S. 244 (1901)) (describing the people of Puerto Rico as “alien races, differing from us in religion, customs, laws, methods of taxation, and modes of thought” and holding that the Constitution did not apply because Puerto Rico was not “inhabited only by people of the same race”).

a de facto incorporated territory. The Insular Cases, while problematic, included a safeguard to protect peoples of acquired nations should the United States decide at a later time that it might want to incorporate an unincorporated territory.¹⁷⁴ It was the intention of *Downes* to grant this incorporated label to territories where “Congress might express an intention to ‘incorporate’ a Territory into the United States at a future date;” thus, “in a Territory like that the Constitution must apply fully and immediately.”¹⁷⁵

It is also important to note that much of Congress’s early decisions with regard to Puerto Rico turned on the fact that it was struggling to set precedent that would be applied to the Philippines, also a colony of the United States at the time the Jones Act was enacted.¹⁷⁶ Although certain scholars perceive the passage of legislation establishing Puerto Rico’s “commonwealth status” as a deliberate statement by Congress, disavowing any intent to modify the island’s existing political ties with the United States, this article contends that Congress, in practice, continued to act in a manner that implicitly advanced a deeper integration of Puerto Rico into its relationship with the United States.¹⁷⁷

Although the legal designation of unincorporated granted to Puerto Rico under the Insular Cases has been arbitrary for many years, and thus can no longer be a basis for decisions regarding that status, Puerto Rico has, in practice, been treated by the United States as having the status of incorporated for over one hundred years, beginning with granting its residents citizenship in 1917. Even if the Court continues to rely on citizens’ residency as a determining factor in its incorporated or unincorporated status, the argument that Puerto Rico is unincorporated fails. Residents of Puerto Rico move around the

¹⁷⁴ *Downes*, 182 U.S. at 339 (White, J., concurring).

¹⁷⁵ *Vaello Madero*, 142 S. Ct. at 1553 (citing *Downes*, 182 U.S. at 339 (White, J., concurring)).

¹⁷⁶ “In granting United States citizenship to the people of Puerto Rico, Congress intended to distinguish between the Puerto Ricans, regarded worthy of a permanent association with the United States, and the Filipinos who had vigorously and ‘ungratefully’ resisted American rule.” Cabranes, *supra* note 5, at 489–90.

¹⁷⁷ See *id.* (arguing that “[t]he legislative history of the commonwealth relationship leaves no doubt that Congress did not intend to change the island’s political status”). But see Culliton-González, *supra* note 64, at 33 (“In 1965, Congress enacted the Voting Rights Act (‘VRA’). Section 4(e) of the VRA was specifically intended to protect the voting rights of Puerto Rican citizens.”); see also *United States v. Cnty. Bd. of Elections of Monroe Cnty.*, 248 F. Supp. 316, 323 (W.D.N.Y. 1965) (holding that the VRA is constitutional); *Katzenbach v. Morgan*, 384 U.S. 641, 648 (1966) (holding that state power in regard to voting rights is not “immune to the limitations of the Fourteenth Amendment”).

United States just as freely as any “mainland” residents.¹⁷⁸ In fact, current census data shows that there are over five million people identified as Puerto Rican living within the mainland states.¹⁷⁹ There is no rational basis to uphold legislation that allows a resident of Puerto Rico to simply move to one of the fifty states or Washington, DC and magically be granted all the protections and rights under the Constitution.¹⁸⁰ Similarly, there is no rational basis to uphold legislation that allows a lifelong resident of, say Pennsylvania, to retire in Puerto Rico, move their permanent residence there, and all of a sudden lose some protections granted to her by the Constitution—simply for moving her residence to a different location within the United States. As Justice Sotomayor stated in her dissent in *Vaello Madero*, “there is no rational basis for Congress to treat needy citizens living anywhere in the United States so differently from others. To hold otherwise, as the Court does, is irrational and antithetical to the very nature of . . . the equal protection of citizens guaranteed by the Constitution.”¹⁸¹

3. Unclear Direct Consequences on Voting Rights Following the Potential Overturning the Insular Cases

If the Insular Cases are overturned, with respect to the very narrow issue of the incorporation of Puerto Rico, Puerto Rico would then, theoretically, be afforded the full extent of constitutional protections, as is technically afforded to the single, uninhabited, and incorporated territory that the United States currently governs (Palmyra Atoll).¹⁸² However, this recognition would only be so helpful, since the Constitution, despite several amendments to expand voting rights, does not provide an affirmative right to vote to any US citizens. Rather, US citizens are represented by electors in presidential

¹⁷⁸ The Jones Act “provided U.S. citizenship to Puerto Ricans retroactively to the date Puerto Rico became a U.S. territory,” therefore permitting Puerto Ricans to “travel inside the U.S. without a passport.” Culliton-González, *supra* note 64, at 29.

¹⁷⁹ *Hispanic or Latino Origin by Specific Location*, *supra* note 77.

¹⁸⁰ *United States v. Vaello Madero*, 142 S. Ct. 1539, 1557 (2022) (Sotomayor, J., dissenting) (“[T]here is no rational basis for Congress to treat needy citizens living anywhere in the United States so differently from others.”).

¹⁸¹ *See id.*

¹⁸² *Definitions of Insular Area Political Organizations*, U.S. DEPT. INTERIOR, <https://www.doi.gov/oia/islands/politicatypes#:~:text=incorporated%20territory,applies%20in%20the%20several%20States> [<https://perma.cc/4HEB-TJTM>].

elections.¹⁸³ Thus, it is important to note the limitations of such a reversal of case law.

First, the reversal of such case law would not negate Puerto Rico's territorial status, but only consider it incorporated, which is not much of a distinction from unincorporated territories. In practice, the only recognized incorporated territory, Palmyra Atoll, is uninhabited, and thus, Congress has not had to recently distinguish how to treat one differently from the other.¹⁸⁴ Therefore, whether it is labeled as unincorporated or incorporated, Puerto Rico would still be subject to the Territorial Clause of the Constitution.¹⁸⁵ Under this broad clause, Congress is allowed to "make all needful rules and Regulations respecting the Territory belonging to the United States."¹⁸⁶ And in case law that is still valid today, the Court has held that, "[i]n the Territories of the United States, Congress has the entire dominion and sovereignty, national and local, Federal and state, and has full legislative power over all subjects upon which the legislature of a State might legislate within the State."¹⁸⁷ Thus, theoretically, though the incorporation designation would grant Puerto Rico all protections under the Constitution, there may then be a great legal and political debate to follow, as the US Congress and courts would need to reconcile the increased autonomy with existing congressional powers under the Territorial Clause. Therefore, it could take years for any real resolution to come out of such a reversal of case law creating an incorporated Puerto Rico.

IV. THE SOLUTION

Many scholars, attorneys, judges, and even Justices have proposed solutions to the problem surrounding the anomalous status of the territories. However, with hundreds of years' worth of case law continuing to be upheld and expanded upon, it is much more complicated to grant Puerto Rican residents the right to vote for President and a voting member of Congress than to just "Overturn the Insular Cases!" Decisions have continued to build on the Insular Cases, expanding them, creating more

¹⁸³ *Bush v. Gore*, 531 U.S. 98, 104 (2000) ("The individual citizen has no federal constitutional right to vote for electors for the President of the United States.").

¹⁸⁴ *Definitions of Insular Area Political Organizations*, *supra* note 182.

¹⁸⁵ "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State." U.S. CONST. art. IV.

¹⁸⁶ *Id.*

¹⁸⁷ *Simms v. Simms*, 175 U.S. 162, 168 (1899).

issue-specific law, and producing ramifications where different territories are all subject to different applications. In the most recent ruling on the Insular Cases, *United States v. Vaello Madero*, the Court stated that Congress must occasionally enact distinct legislation for each territory in order to reflect the territory's local factors.¹⁸⁸ It held that “[t]he Territory Clause of the Constitution . . . affords Congress broad authority to legislate with respect to the U.S. Territories” and that while doing so, Congress should weigh “the needs of the United States as a whole,” along with “the unique histories, economic conditions, social circumstances, independent policy views, and relative autonomy of the individual Territories.”¹⁸⁹

While, for the most part, the case law is extremely harmful and outdated, some recent Supreme Court decisions acknowledge important rights for territories that should be maintained.¹⁹⁰ Notably, however, the longstanding and narrow issue of the incorporated/unincorporated designation must be abolished in order for Puerto Rico to have true autonomy. In addition, it is important to consider whether statehood could be a viable alternative. Other solutions to the conflict include the possibility of amending the Constitution and, finally, exploring the possibility of creating statutory law that grants Puerto Rican residents the right to vote in presidential elections and a provides them with a voting member in Congress.

A. *Overtuning the Narrow Issue of Incorporated/Unincorporated Designation Is a Start*

As discussed previously, it is no longer accurate to hold that the territory of Puerto Rico is unincorporated under the meaning of the Insular Cases.¹⁹¹ Since its early mention in case law, the court ruled on the “intent[]” of Congress, deciding that, in 1901—at least temporarily—Puerto Rico was not intended to

¹⁸⁸ *United States v. Vaello Madero*, 142 S. Ct. 1539, 1541 (2022).

¹⁸⁹ *Id.*

¹⁹⁰ See *Fitisemanu v. United States*, 1 F.4th 862, 865 (10th Cir. 2021), *cert. denied*, 143 S. Ct. 362 (2022) (where local elected representatives argued that a change to the legal status of American Samoa would be against the desires of their constituents and potentially disrupt fundamental traditional customs). For example, citizenship could disrupt the “social structure of American Samoa . . . organized around large, extended families called ‘aiga.’” *Id.* at 866.

¹⁹¹ See *Downes v. Bidwell*, 182 U.S. 244, 340 (1901) (holding that the treaty that ceded Puerto Rico to the United States did not intend to incorporate it). “It is to me obvious that the above quoted provisions of the treaty do not stipulate for incorporation, but on the contrary expressly provide that the ‘civil rights and political status of the native inhabitants of the territories hereby ceded,’ shall be determined by Congress.” *Id.*

be incorporated into the United States.¹⁹² A strict reading of *Downes* suggests that it was not just an explicit congressional decision to label Puerto Rico as unincorporated, but instead an assumption made by the judicial branch.¹⁹³ In the case of Puerto Rico, adhering to the concept of *stare decisis* would signify adhering to the decision that Congress made in 1901 in an effort to set precedent for other territories that it found more difficult to control.¹⁹⁴ Congressional records show that many representatives at the time were not opposed to incorporating Puerto Rico due to its easy acceptance of US rule, but ended up instead categorizing it with other, more resistant territories in an effort to make a statement.¹⁹⁵ In case after case, the Court upheld Congress's initial decision, which was based on a very limited set of circumstances at the time.¹⁹⁶ It is abhorrent that the United States can cling to *stare decisis* when it results in such an illogical result, applying a reasoning that was isolated to Puerto Rico's early acquisition.

Additionally, it can just as easily be argued that Congress's intent has changed, even if it has never explicitly declared Puerto Rico an incorporated territory.¹⁹⁷ Congress's changed attitude can be seen through many of its actions toward the residents of Puerto Rico, including but not limited to: granting its residents naturalized citizenship, treating its citizens living in any one of the fifty states no different (legally) than any lifelong "mainland" resident citizen, and encouraging Puerto Rican referendums to explore the possibility of statehood.¹⁹⁸

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ Even in 1900, the congressional meeting discourse showed that representatives intended that Puerto Rico eventually become incorporated. It was determined that it would not be, at least initially, in order to make a point to the Philippines. Cabranes, *supra* note 5, at 425 (citing 33 CONG. REC. 2000-01 (1900) (remarks of Rep. Newlands)).

¹⁹⁵ *Id.* ("Among the imperialists who might be disposed toward the incorporation of Puerto Rico, however, there remained a concern that legislation for Puerto Rico necessarily established a precedent for the Philippines.")

¹⁹⁶ *See id.*

¹⁹⁷ *United States v. Vaello Madero*, 142 S. Ct. 1539, 1553 (2022). For a similar argument about congressional intent over time indicating a change in status, see *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2490 (Roberts, C.J., dissenting) (arguing that Congress's actions "intend[ed] to terminate the reservation and create a new State in its place").

¹⁹⁸ *See Jones Act of Puerto Rico*, Pub. L. No. 64-368, 39 Stat. 951 § 9 (1917); *Vaello Madero*, 142 S. Ct. at 1558 (ruling that Vaello Madero would be entitled to SSI benefits if he were a resident of one of the fifty states, or Washington, DC, just as other mainland residents are); Sara Dorn, *Push For Puerto Rico Statehood Vote Gets One Step Closer With House Approval—But Faces Long Odds In Senate*, FORBES (Dec. 15, 2022, 2:17 PM) <https://www.forbes.com/sites/saradorn/2022/12/15/house-passes-bill-allowing-puerto-rico-statehood-vote/?sh=6be6dbef68bd> [<https://perma.cc/LJ7X-DYXU>] ("The

The power lies within the Supreme Court to overturn, at the very least, the very limited issue of Puerto Rico as an incorporated territory. It is worth repeating that this article suggests overturning the very narrow issue of incorporated versus unincorporated as it applies to Puerto Rico only.¹⁹⁹ As has been addressed, not all territories would like the same treatment or designation under US law.²⁰⁰ American Samoa, for example, has gone so far as to insert itself as an interested party in a case regarding citizenship for its inhabitants.²⁰¹ In that case, the American Samoan government argued against any changes to its own current unincorporated territorial arrangement, because it may endanger its fundamental, traditional practices.²⁰²

In his concurring opinion in *Vaello Madero*, Justice Gorsuch stated that Justice White's decision in *Downes* argued that Puerto Rico differed from the territories in the American West because Congress had not taken sufficient steps to demonstrate its intent to fully integrate the island.²⁰³ But has Congress not done enough? Although previous courts rejected similar arguments, given Justice Gorsuch's concurrence in *Vaello Madero*, the US judicial branch may be entering an era where it is prepared to review such an argument in favorable light. And more than that, it is well overdue that the Supreme Court finally abolish this unincorporated designation and formally incorporate Puerto Rico into the United States.

As discussed in Part I, even changing the designation of Puerto Rico from unincorporated to incorporated may not be enough to secure voting representation due to major conflicts between the broad powers of the territorial law and protections afforded under the Constitution. However, there is one major case law argument that could be made to quash any debate regarding voting representation in incorporated territories. Recently, a US district court held that the right to vote is not a

Biden Administration supported the measure, and called on Congress to 'put the future of Puerto Rico's political status in the hands of Puerto Ricans.'").

¹⁹⁹ *Downes v. Bidwell*, 182 U.S. 244, 340 (1901).

²⁰⁰ See *Fitisemanu v. United States*, 1 F.4th 862, 865 (10th Cir. 2021) ("Also in opposition [were] the intervenor-defendants ('Intervenors'), elected officials representing the government of American Samoa, who argue that not only is the current arrangement constitutional, but that imposition of birthright citizenship would be against their people's will and would risk upending certain core traditional practices.").

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ See *United States v. Vaello Madero*, 142 S. Ct. 1539, 1553 (2022) (discussing *Downes*, 182 U.S. at 293).

“fundamental” right in so-called “unincorporated” Territories.²⁰⁴ The United States Court of Appeals for the Seventh Circuit concurred with this decision.²⁰⁵ Critically, the wording of the opinion left open the possibility to argue that if the fundamental right to vote is not a fundamental right in an unincorporated territory,²⁰⁶ it is a fundamental right in an incorporated territory. Bringing suit on this issue would allow the court to follow case law²⁰⁷ already in place that implies that should a territory be incorporated into the United States, its residents must be granted the fundamental right to vote.

B. *Puerto Rico as a State*

Because the territory of Puerto Rico is a territory labeled as a commonwealth, its residents cannot vote in presidential elections. That right is only reserved for residents of one of the fifty states and Washington, DC under amendments to the Constitution. One way to get around this detrimental technicality is to consider Puerto Rico for statehood. However, there are positives and negatives for the argument that Puerto Rico should become a state.

1. Possible Loss of Cultural Identity

While statehood could bring enormous advantages, it also comes with significant disadvantages that should not be overlooked. Should statehood be achieved, Puerto Rico could lose much of what remains of its cultural identity, its primary language, as well as many of its established holidays and traditions.²⁰⁸ Although both English and Spanish are the official languages of Puerto Rico, Spanish is, without a doubt, the dominant language on the island.²⁰⁹ It is taught as the primary language in schools, while English is taught as a required secondary language.²¹⁰ In a nation where the people are proud of

²⁰⁴ *Segovia v. Bd. of Election Comm'rs for Chicago*, 201 F. Supp. 3d 924, 935 (N.D. Ill. 2016) (stating that “United States citizens living in territories do not have the same fundamental right to vote as United States citizens residing in Illinois”).

²⁰⁵ *Segovia v. United States*, 880 F.3d 384, 390 (7th Cir. 2018).

²⁰⁶ *See id.*

²⁰⁷ Although the judgement was vacated due to lack of jurisdiction of the federal courts, dicta was created. *Id.*

²⁰⁸ *Puerto Rico Statehood: Pros and Cons*, *supra* note 145.

²⁰⁹ *Yo Soy (I am): The Historical Trajectory of Language in Puerto Rico*, LIB. CONG., <https://guides.loc.gov/language-in-puerto-rico> [<https://perma.cc/VX5L-WCDR>] (describing Spanish as the “language of instruction in Puerto Rico’s public education system” as of 1949).

²¹⁰ *Id.*

their cultural identity, the decline of it could certainly cause resentment. Many of the Puerto Rican residents would think of it as deleting their identity and that of their ancestors.²¹¹

The detriments of becoming a state and the cultural loss that can follow can be seen through Hawaii. The State of Hawaii was officially annexed by the United States in 1900.²¹² Following the attacks on Pearl Harbor, the islands of Hawaii were placed under martial law until October 1944.²¹³ It was not until 1959 that Hawaii became the fiftieth state of the United States.²¹⁴ Resentment for the United States's overthrowing of the Hawaiian government and annexation of the islands existed after statehood.²¹⁵ Sovereignty movements still exist, with scholars and activists arguing that the lack of self-determination was the "root cause of the [Maui] wildfires."²¹⁶ This same resentment could arise in Puerto Rico if statehood ultimately becomes the beginning of the end for its Hispanic, Taíno, and African cultures and traditions.

Similar issues around language loss could also arise in Puerto Rico. Today in Hawaii, although "nearly everyone knows how to speak at least a few words and phrases of Hawaiian . . . the practice of primarily speaking the Hawaiian language from birth . . . nearly died."²¹⁷ Additionally, Hawaii, as a state, only officially celebrates two traditional Polynesian holidays: Prince Jonah Kuhio Kalanianoʻe Day and King

²¹¹ Kailey Latham, *Puerto Rico Unsettled Territory: Statehood Issue Stirs Passions About Puerto Rican Identity*, WALTER CRONKITE SCH. JOURNALISM & MASS COMMUN (Oct. 29, 2012), <https://cronkite.asu.edu/projects/buffett/puertorico/identity.html> [<https://perma.cc/8C7H-RHCH>].

²¹² *Annexation of Hawaii: Topics in Chronicling America*, LIB. CONG., <https://guides.loc.gov/chronicling-america-annexation-hawaii> [<https://perma.cc/9CA3-RMNS>].

²¹³ Erin Blakemore, *After Pearl Harbor, Hawaii Spent Three Years Under Martial Law*, HISTORY (Mar. 18, 2021), <https://www.history.com/news/hawaii-wwii-martial-law> [<https://perma.cc/Y3RY-JHKH>].

²¹⁴ *Hawaii Statehood, August 21, 1959*, NAT'L ARCHIVES (Mar. 10, 2023), <https://www.archives.gov/legislative/features/hawaii#:~:text=On%20August%2021%2C%201959%20Hawaii%20became%20the%2050th%20state.&text=For%20more%20information%2C%20visit%20the,archives%40nara.gov>. [<https://perma.cc/JD4Y-MKCS>].

²¹⁵ Kelly Nakamura, *Hawaii's Long Road to Becoming America's 50th State*, HISTORY (Aug. 21, 2023), <https://www.history.com/news/hawaii-50th-state-1959> [<https://perma.cc/A2R7-42TW>].

²¹⁶ Kimmy Yam, *Why Hawaiian Sovereignty Has Undeniable Context for the Maui Fires*, NBCNews (Aug. 24, 2023), <https://www.nbcnews.com/news/asian-america/hawaiian-sovereignty-undeniable-context-maui-fires-rcna100972> [<https://perma.cc/8FZ2-Y3XY>].

²¹⁷ Sara Kehaulani Goo, *The Hawaiian Language Nearly Died. A Radio Show Sparked Its Revival*, NPR (June 22, 2019), <https://www.npr.org/sections/codeswitch/2019/06/22/452551172/the-hawaiian-language-nearly-died-a-radio-show-sparked-its-revival> [<https://perma.cc/2GUT-3WVX>].

Kamehameha I Day.²¹⁸ Interconnected with these linguistic and cultural losses is the physical loss of land.²¹⁹ Unfortunately, this has already happened in Puerto Rico, with American companies buying up attractive land and developing it.²²⁰ Although Hawaiians have managed to preserve some of their cultural identity, it seems to be more informally practiced, rather than actively preserved by the state.²²¹ Puerto Rico might suffer the same fate under statehood.

2. Economic Implications of Statehood

In addition to losing its cultural identity, Puerto Rico could face significant economic challenges if it were to become a state. In a report published by the US General Accountability Office (GAO) in 2014, it was determined that “statehood would mean that everyday Puerto Ricans would be saddled with \$2.3 billion in new federal taxes that they do not pay today.”²²² The GAO stated:

[A]s a result of statehood, changes to Puerto Rico government spending and revenue could ultimately affect the government’s efforts to maintain a balanced budget . . . statehood could [therefore] result in reduced Puerto Rico tax revenue. If Puerto Rico’s government wished to maintain pre-statehood tax burdens for individual and corporations, it would need to lower its tax rates, which could reduce tax revenues.²²³

²¹⁸ *State Observed Holidays*, STATE OF HAWAII, <https://dhrd.hawaii.gov/state-observed-holidays/> [<https://perma.cc/KY9E-JM4M>].

²¹⁹ Rob Perez & Agnel Phillip, *The Government Promised to Return Ancestral Hawaiian Land, Then Never Finished the Job*, PROPUBLICA (Dec. 19, 2020, 5:30 AM), <https://www.propublica.org/article/the-government-promised-to-return-ancestral-hawaiian-land-then-never-finished-the-job> [<https://perma.cc/T6C2-ZD7W>] (“Public agencies had occupied thousands of acres intended to return Native people to their ancestral lands, paying little or no compensation for decades as the sites were used for military bases, game preserves, schools and other purposes. . . . [o]ver the years, the U.S. government has provided about 900 acres as compensation for its unauthorized takings.”).

²²⁰ Many American mainland investors are moving to Puerto Rico in attempts to purchase land because of hefty tax incentives. See Nicole Acevedo, *Do Puerto Rico Tax Breaks Displace Locals to Benefit the Wealthy? Here Are 5 Things To Know*, NBCNEWS (Sept. 18, 2023), <https://www.nbcnews.com/news/latino/tax-breaks-puerto-rico-wealthy-displacement-five-things-to-know-rcna104683> [<https://perma.cc/A9J2-WVJN>] (“Puerto Ricans who have lived their entire lives in tight-knit communities . . . allege they are being priced out . . . because wealthy developers are buying up nearby residential properties. What’s driving the change are tax breaks that give thousands of investors, traders and other kinds of wealthy people incentives to partly relocate to Puerto Rico.”).

²²¹ Angela Louise R. Tiangco, *Selling Aloha: The Fight for Legal Protections Over Native Hawaiian Culture*, 29 WM. & MARY J. WOMEN & L. 489, 518 (2023).

²²² Adrian Brito, *GAO Confirms Statehood Too Costly For Puerto Rico and the U.S.*, HUFFINGTON POST (June 2, 2014), https://www.huffpost.com/entry/gao-confirms-statehood-to_b_5070172 [<https://perma.cc/K4V7-M9DP>].

²²³ *Id.*

Slashing about half of its budget could only deepen the island's financial struggles.²²⁴ This could likely only exacerbate an economic crisis created by existing issues of "government debt, unemployment, and financial corruption."²²⁵ Natural disasters have already deepened these problems.²²⁶

Shortly before Hurricane Maria, in 2016, the US Congress enacted the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), instituting a dedicated committee to supervise the process of restructuring Puerto Rico's debt and promoting its economic recuperation.²²⁷ The seven-person oversight board was appointed by the President, following recommendations only from Congress and not the wider Puerto Rican population.²²⁸ Although the Governor of Puerto Rico holds a position on the board, he is as an *ex officio* member, without the ability to cast a vote.²²⁹ The PROMESA oversight board's authority "supersedes the powers of Puerto Rico's legislature and governor."²³⁰ It "has *in its sole discretion* the power to approve the local budget, reject any fiscal plans, order hiring freezes, . . . and void any local law that it deems objectionable."²³¹ Regrettably, the Supreme Court recently ruled that, although the Puerto Rican Constitution guarantees the right of access to public records, the Financial Oversight Board has no obligations to provide any financial information to the Puerto Rican public, as it has been ruled immune from suit in US district court.²³² Without any recourse to even monitor their financial status, Puerto Ricans cannot truly evaluate the actual state of finances of the island as they process the decision to support statehood.

Despite these challenges, including the possible increase in taxes to the people of Puerto Rico, there could be great, long-term economic advantages for the island's economy, should the island become a state. Statehood would bring a quantifiable increase in federal funds, should the money go to

²²⁴ *Id.*

²²⁵ Aditya Mehta, *Revitalizing the Puerto Rican Economy After Hurricane Maria*, 1 CARDINAL EDGE 1, 1 (2021), <https://ir.library.louisville.edu/cgi/viewcontent.cgi?article=1069&context=tce> (last visited Feb. 24, 2024).

²²⁶ *Id.*

²²⁷ Tom C.W. Lin, *Americans, Almost and Forgotten*, 107 CALIF. L. REV. 1249, 1268 (2019).

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.* at 1269.

²³¹ *Id.*

²³² *Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Centro de Periodismo Investigativo, Inc.*, 598 U.S. 339, 351 (2023).

the right place.²³³ Experts estimate that Puerto Rico may “receive up to \$12.5 billion more in federal benefits, including Medicare and Medicaid” if it becomes a state.²³⁴ Therefore, despite the risk of some economic harms, statehood would ultimately be beneficial in bringing forth immediate equal rights (on paper), as well as financial assistance—through increased Medicare and Social Security benefits, the ability to receive SSI while a resident of Puerto Rico, and the right to file for bankruptcy, which would quash PROMESA financial oversight and allow Puerto Rico the same right to federal financial assistance as every other state.²³⁵ Through statehood, the Puerto Rican people could be free from disparate treatment under the current laws that apply to territories.

3. Voting Rights and Representation in Congress

Despite all of the negatives that may come with statehood, Puerto Rico would gain significant benefits from becoming a state. As the fifty-first state, the people of Puerto Rico would gain voting members in the US Congress, and perhaps most importantly, the right to vote for their President. With a population that is higher than twenty-one of the fifty states plus Washington, DC, Puerto Rico would have five seats in the House of Representatives, which is more than twenty-two of the existing states.²³⁶ There is no telling what kind of unprecedented influence Puerto Rico could have on politics as a state, especially given its history of high turnout.

²³³ Amelia Cheatham & Diana Roy, *Puerto Rico: A U.S. Territory in Crisis*, COUNCIL ON FOREIGN RELS. (Sept. 29, 2022, 11:40 AM), <https://www.cfr.org/background/puerto-rico-us-territory-crisis#:~:text=dismissed%20this%20option-,Statehood,Medicaid%2C%20according%20to%20recent%20estimates> [https://perma.cc/3X5Z-2NPH].

²³⁴ *Id.*

²³⁵ See Danica Coto, *Puerto Rico Gov Approves Referendum in Quest for Statehood*, ASSOCIATED PRESS (Feb. 29, 2017, 6:39 PM) <https://apnews.com/article/eeec5f33ca0740198cceb511d8e64ce5> [https://perma.cc/LS2C-YWCK]; *Following the Money: Would Statehood Be a Better Investment for the U.S.?*, PR51ST (Nov. 18, 2020), <https://www.pr51st.com/following-the-money-would-statehood-be-a-better-investment-for-the-u-s/> [https://perma.cc/PXP9-8MLQ].

²³⁶ See Ryan Struyk, *Here's What Would Happen to US Politics if Puerto Rico Became a State*, CNN (Oct. 14, 2017, 10:51 AM), <https://www.cnn.com/2017/10/14/politics/puerto-rico-state-congress-white-house/index.html> [https://perma.cc/7UAL-4CMV] (“With 3.4 million people currently living in Puerto Rico, the island would be entitled to five seats in the US House, according to this formula. (They’d get the 128th, 209th, 294th and 378th seats, in addition to their automatic seat) . . . The five unlucky states that would lose one seat each [-] Minnesota, California, Texas, Washington and Florida.”); see also *QuickFacts: Puerto Rico*, *supra* note 72; *United States House of Representatives Seats by State*, ENCYC. BRITANNICA (Aug. 9, 2023), <https://www.britannica.com/topic/United-States-House-of-Representatives-Seats-by-State-1787120> [https://perma.cc/WCD4-QFEH].

In the 2000 election, Puerto Rico had a voter turnout “rate of 82 percent among registered voters and 74.2 percent of voting eligible population—a higher rate than any of the 50 states, and 23 percent higher than the national rate.”²³⁷ In 2011, before Hurricane Maria, which devastated Puerto Rico’s infrastructure, Puerto Rico had a population of roughly 3.8 million citizens, and thus would have had seven presidential electors if it had the right to vote in presidential campaigns.²³⁸ Those numbers have decreased slightly to roughly 3.3 million, likely in large part due to heavy migration to the “mainland” following Hurricane Maria.²³⁹

But the consistent voter turnout and high population of eligible voters in Puerto Rico shows that Puerto Ricans would gain great influence in the politics and laws of the United States as fully enfranchised citizens. This is because Puerto Rico has an overwhelmingly high voter turnout rate.²⁴⁰ As a commonwealth nation of the United States, Puerto Rican residents have voted on their political status six times in the past fifty-six years. The first three times, Puerto Ricans voted against a chance at statehood and independence.²⁴¹ However, in the 2012 referendum, 52 percent of voters voted that they were dissatisfied with their current commonwealth status.²⁴² Of those that rebuked commonwealth status, 61 percent voted in favor of statehood in a follow-up question.²⁴³ The 2017 referendum was

²³⁷ *What We Can Learn From Puerto Rico*, FAIR VOTE (June 15, 2011), <https://fairvote.org/what-we-can-learn-from-puerto-rico/> [<https://perma.cc/Y43X-2PN4>].

²³⁸ *See id.*

²³⁹ Sasah Issenberg, *The Mystery of the Puerto Rican Voter*, SLATE (Jan. 27, 2012, 6:31 PM), <https://slate.com/news-and-politics/2012/01/puerto-rico-voter-turnout-why-is-it-so-high.html> [<https://perma.cc/SS8Z-38XR>]; *Hispanic or Latino Origin by Specific Location*, *supra* note 77; *Puerto Rico: The Exodus After Hurricane Maria*, CBSNEWS (Sept. 21, 2018), <https://www.cbsnews.com/news/puerto-rico-exodus-after-hurricane-maria-cbsn-originals/> [<https://perma.cc/F6BT-WCH3>].

²⁴⁰ *Voter Turnout in the 2020 Plebiscite*, PR51ST (Jan. 27, 2021), <https://www.pr51st.com/voter-turnout-in-the-2020-plebiscite/> [<https://perma.cc/U4QU-XPQP>].

²⁴¹ In 1967, Puerto Rico held the first plebiscite to determine the people’s opinion about the political status of Puerto Rico. *See Consulta de Resultados de Elecciones Generales, Plebiscitos y Referendos de Status del 23 de Julio de 1967*, ELECCIONES EN P.R., <https://electionspuertorico.org/cgi-bin/eventos.cgi?evento=1967> [<https://perma.cc/7MQV-Z2NM>]. Sixty percent of the population voted to remain a commonwealth of the United States, 39 percent voted for statehood, and less than 1 percent voted for independence. *Id.* In the second plebiscite, held in 1993, Puerto Ricans, again, reaffirmed their commonwealth status. Larry Rohter, *Puerto Rico Votes To Retain Status As Commonwealth*, N.Y. TIMES (Nov. 15, 1993), <https://www.nytimes.com/1993/11/15/us/puerto-rico-votes-to-retain-status-as-commonwealth.html> (last visited Feb. 24, 2024). About 46 percent of the Puerto Rican population voted for statehood, while about 48 percent of the population voted to remain the commonwealth status. *Id.* In this referendum, about 4 percent of the population voted in favor of complete independence from the United States. *Id.*

²⁴² Planas, *supra* note 86.

²⁴³ *Id.*

severely underattended due to boycotts surrounding local scandals²⁴⁴ involving Puerto Rico's then-governor.²⁴⁵ Nevertheless, the results heavily favored statehood.²⁴⁶ The most recent referendum, held in 2020, also saw a majority of Puerto Ricans vote in favor of statehood.²⁴⁷

In December 2022, the House of Representatives passed a bill that could enable Puerto Rico to conduct a legally binding referendum, determining whether to pursue statehood or independence,²⁴⁸ something that has never happened before. Unfortunately, despite the bill being approved by the House back in 2022, the Senate did not arrange a floor vote.²⁴⁹ Thus, the bill was recently reintroduced in the House, proposing a binding plebiscite for 2025.²⁵⁰ Although the bill still needs to once again pass in the House and then pass in the Senate, the fact that it was successful in the past²⁵¹ shows that there is support for Puerto Rican statehood, which would bring Puerto Rico constitutional protections, the right to vote in presidential elections, and representation in Congress.

Finally, it would be remiss not to briefly acknowledge that adding the territories as states to the union could be seen as simply solidifying and formalizing colonial victory over the territories. However, for the reasons outlined above, statehood could be an important step toward Puerto Rico achieving greater rights and protections and, ultimately, full independence.

²⁴⁴ Leaked conversations between the then-Governor Rosselló and his associates surfaced, revealing that Rosselló purposefully withheld crucial hurricane assistance from needy Puerto Ricans impacted by hurricanes Irma and Maria, along with exchanges that also involved ridiculing the victims instead of offering support. Andrea Bossi, *How Bad Bunny Influenced Puerto Rico's 2019 Movement, 'Ricky Renuncia,'* FORBES (Dec. 26, 2019, 5:54 PM), <https://www.forbes.com/sites/andreabossi/2019/12/26/how-bad-bunny-influenced-puerto-ricos-2019-movement-ricky-renuncia/?sh=6ae76aea4b5d> [<https://perma.cc/NMG7-ATDK>].

²⁴⁵ See *id.*; Frances Robles, *23% of Puerto Ricans Vote in Referendum, 97% of Them for Statehood*, N.Y. TIMES (June 11, 2017), <https://www.nytimes.com/2017/06/11/us/puerto-ricos-vote-on-the-question-of-statehood.html> (last visited Feb. 24, 2024).

²⁴⁶ *Id.*

²⁴⁷ *Plebiscito Resultados Isal*, COMISIÓN ESTATAL DE ELECCIONES (Mar. 12, 2021, 10:58 AM), https://elecciones2020.ceepur.org/Escrutinio_General_93/index.html#en/default/PLEBISCITO_Resumen.xml (last visited Feb. 24, 2024).

²⁴⁸ Dánica Coto & Farnoush Amiri, *House Approves Referendum to 'Decolonize' Puerto Rico*, ASSOCIATED PRESS (Dec. 15, 2022), <https://apnews.com/article/referendums-puerto-rico-b96884274da9c970e710b6d7d2f65a4d> [<https://perma.cc/LF8Z-BU4Z>].

²⁴⁹ Justin Papp, *Bipartisan Group Restarts Push for Puerto Rico Statehood Vote*, ROLL CALL (Apr. 20, 2023, 5:44 PM), <https://rollcall.com/2023/04/20/bipartisan-group-restarts-push-for-puerto-rico-statehood-vote/> [<https://perma.cc/P5LM-256L>].

²⁵⁰ *Id.*

²⁵¹ *Id.*

C. *Amend the Constitution: Grant Puerto Ricans the Right to Vote in Presidential Elections and Provide a Voting Member of Congress*

Apart from statehood, another way Puerto Ricans could gain the right to full voting power is to amend the US Constitution and grant Puerto Rico presidential voting rights and a voting member in Congress. This is a daunting task because of how difficult the process is to amend the US Constitution. However, it has been done in the past for Washington, DC for the same purpose that Puerto Ricans would be proposing here.²⁵² Thus, when it comes to a right to vote, which is the primary focus of this article, this would be the best and most concrete solution. It would solely apply to Puerto Rico (and possibly any other territory whose people affirm that they would like the right to vote) and would allow the United States to address all other legal issues pertaining to the territories at a later time.

One of the biggest obstacles Puerto Rico might face under this proposed solution would be other states feeling threatened by Puerto Rico's extraordinary voter turnout and large population. Before Hurricane Maria, Puerto Rico had a voter turnout rate of 82 percent, which is higher than any of the fifty states.²⁵³ Although that has since decreased, presumably because of the COVID-19 pandemic and strict lockdowns,²⁵⁴ with a population of about 3.3 million citizens, Puerto Rico would still have seven presidential electors and five seats in the House of Representatives. This means that Puerto Rico would have more representation than about twenty-one current states.²⁵⁵ Overcoming these states' opposition would probably be the biggest threat to amending the Constitution.

Further, the process of amending the Constitution was designed by the founding fathers to be a thorough and difficult process. The Constitution lays out the process and states that "an amendment may be proposed either by the Congress with a two-thirds majority vote in both the House of Representatives and the Senate or by a constitutional convention called for by

²⁵² U.S. CONST. amend. XXIII.

²⁵³ Issenberg, *supra* note 239; *Voter Turnout in the 2020 Plebiscite*, PR51ST (Jan. 27, 2021), <https://www.pr51st.com/voter-turnout-in-the-2020-plebiscite/> [<https://perma.cc/G856-MY3S>].

²⁵⁴ *See id.*

²⁵⁵ *Distribution of Electoral Votes*, NAT'L ARCHIVES, <https://www.archives.gov/electoral-college/allocation> [<https://perma.cc/F45X-3VU8>].

two-thirds of the State legislatures.”²⁵⁶ In the history of this country, no amendment has ever been proposed by a constitutional convention; rather, all have been proposed by Congress.²⁵⁷ Congress must present the amendment in the form of a joint resolution.²⁵⁸ Because the President has no constitutional role in the process to amend the Constitution, the original document is sent to the Office of the Federal Register.²⁵⁹ However, a joint resolution, drafted into a proposed amendment, does not become part of the Constitution until it is ratified by three-fourths of the states.²⁶⁰ This means that thirty-eight out of the fifty states must vote in its favor.²⁶¹ As can be seen above, the difficulty of amending the Constitution will only be exacerbated by some states potentially feeling threatened by Puerto Rico’s high voter turnout. It will be even more difficult given the “reality that some have shown that they are not, in fact, committed to full democratic participation.”²⁶²

Even so, already in our nation’s history, several constitutional amendments have been passed to expand voting rights. The Nineteenth Amendment, ratified in 1920, granted women the right to vote.²⁶³ The Twenty-Fourth Amendment, passed in 1964, attempted to eliminate practices that some states used to deny African-Americans a right to vote.²⁶⁴ The Twenty-Sixth Amendment, passed in 1971, lowered the voting age in both state and federal elections to eighteen years.²⁶⁵ Most important and relevant to Puerto Rico’s plight in acquiring expanded voting rights, however, is the Twenty-Third Amendment, which gave the residents of Washington, DC the right to vote in presidential elections.²⁶⁶ An amendment similar to the Twenty-Third Amendment is arguably the most pointed solution in acquiring presidential voting rights and voting representation in Congress, (though some scholars have suggested a different approach within the amendment, but still

²⁵⁶ *The Constitutional Amendment Process*, NAT’L ARCHIVES, <http://www.archives.gov/federal-register/constitution/> [<https://perma.cc/9JQX-BDBS>].

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *See id.*

²⁶² Christina Pazzanese, *Enshrine an Affirmative Right to Vote*, HARV. GAZETTE (Nov. 21, 2022), <https://news.harvard.edu/gazette/story/2022/11/enshrine-an-affirmative-right-to-vote-tomiko-brown-nagin/> [<https://perma.cc/8BEC-T8B6>] (“Amendment would demonstrate ‘absolute commitment’ to full participation in U.S. democracy.”).

²⁶³ U.S. CONST. amend. XIX.

²⁶⁴ *Id.* amend. XXIV.

²⁶⁵ *Id.* amend. XXVI.

²⁶⁶ *Id.* amend. XXIII.

advocate for an amendment, nonetheless),²⁶⁷ but also is likely to be the most difficult to effect.

Washington, DC has similar territorial status to Puerto Rico. It is not a state, as the founders of the United States wanted to prevent the nation's capital from being a part of any state.²⁶⁸ Therefore, Washington, DC remains a territory of the United States.²⁶⁹ Its residents are, thus, not residents of any state. Even though the district does not have a voting member in Congress, it was granted presidential voting rights (by way of presidential electors) with the Twenty-Third Amendment to the US Constitution.²⁷⁰ In its own fight and victory for at least the right to vote in presidential elections, Washington, DC residents made similar arguments to those included herein for Puerto Rican residents.²⁷¹ And in 1960, Congress was sympathetic to those same arguments, except as they applied to residents of DC.²⁷² Note that this was around the same time that the Supreme Court upheld protections enacted by Congress for Puerto Rican voters on the mainland.²⁷³ Reports from congressional records deliberating the passage of the Twenty-

²⁶⁷ See generally Emmanuel Arnaud, *A More Perfect Union for Whom?*, 123 COLUM. L. REV. F., 84 (2023) (reviewing JOHN F. KOWAL & WILFRED U. CODRINGTON III, *THE PEOPLE'S CONSTITUTION: 200 YEARS, 27 AMENDMENTS, AND THE PROMISE OF A MORE PERFECT UNION* (2021)) (arguing for an amendment for voting rights in the territories where each territory would get its own senator and congressperson as if it were a state, not just one super senator/representative).

²⁶⁸ See Tessa Berenson, *Here's Why Washington D.C. Isn't a State*, TIME (Apr. 15, 2016, 1:57 PM), <https://time.com/4296175/washington-dc-statehood-history/> [<https://perma.cc/66MP-FL6S>] (“[T]he founders worried that if the capital were to be a state, the members of the government would be unduly beholden to it. Madison envisioned that voting members of a D.C. state would be able to ‘insult’ or ‘interrupt’ the proceedings of government to get their way, simply by virtue of physical proximity to the halls of power.”).

²⁶⁹ *Id.*

²⁷⁰ *Id.* (“When the capital was officially moved to D.C., residents lost voting representation in Congress and the Electoral College, as well as a say in Constitutional Amendments and the right to home rule. Members of the district won a victory in 1961 with the passage of the 23rd amendment to the Constitution, which granted them votes in the electoral college.”).

²⁷¹ Jessica Bulman-Pozen & Olatunde C.A. Johnson, *Federalism and Equal Citizenship: The Constitutional Case for D.C. Statehood*, 110 GEO. L.J. 1269, 1324 (2022) (examining 106 CONG. REC. 1759 (1960) and compiling statements of various representatives who would rule on the passing of the Twenty-Fourth Amendment).

²⁷² Brian P. Smentkowski, *Twenty-third Amendment*, BRITANNICA, <https://www.britannica.com/topic/Twenty-third-Amendment> [<https://perma.cc/4EWF-2Z5D>]. States later ratified, and it was certified in March 1961. *Id.*

²⁷³ See Culliton-González, *supra* note 64, at 33 (“In 1965, Congress enacted the Voting Rights Act (“VRA”). Section 4(e) of the VRA was specifically intended to protect the voting rights of Puerto Rican citizens.”); see also *United States v. Cnty. Bd. of Elections of Monroe Cnty.*, 248 F. Supp. 316, 323 (W.D.N.Y. 1965) (holding the VRA constitutional); *Katzenbach v. Morgan*, 384 U.S. 641, 652 (1966).

Third Amendment show the legal justifications for its passing.²⁷⁴ One representative stated:

[I]t is difficult to realize that the citizens of this great city are unable to express their preference at the ballot box for the office of President or Vice President. The people of the District are no different than those in the cities you and I represent. The Treasury consumes their tax dollar in the same fashion as they do any other revenue. No boy was disqualified from serving in the Armed Forces because he was a resident of the District of Columbia. The District has a population equal to or larger than several States²⁷⁵

Another Senator was quoted stating that “[t]his is America. We do not believe in second-class citizenship.”²⁷⁶ Yet another Senator said that “[t]axation without representation is still the lot of our local citizens.”²⁷⁷ Thus, in the end, Congress agreed that “[o]nly enfranchisement would make D.C. residents ‘full-fledged American citizens.’”²⁷⁸ The Twenty-Third Amendment was therefore passed, stating:

Section 1. The District constituting the seat of Government of the United States shall appoint . . . :

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State

Section 2. The Congress shall have power to enforce this article by appropriate legislation.²⁷⁹

The same justifications used by congressmen to support the amendment’s ratification is true here, with regard to Puerto Rican resident citizens. The people of Puerto Rico are no different than those of any other state or city of the United States. The Treasury consumes their tax dollars in the same fashion as it does any other form of revenue. No person is disqualified from serving in the Armed Forces because he is a resident of Puerto Rico. Puerto Rico has a population equal to or larger than several states. “This is America,” and as poignantly noted in 1960, “[w]e [should] not believe in second-class

²⁷⁴ 106 CONG. REC. 1759 (1960).

²⁷⁵ *Id.* at 12563 (statement of Rep. John Lindsay).

²⁷⁶ *District of Columbia Representation and Vote: Hearings on H.J. Res. 529 Before Subcomm. No. 5 of the H. Comm. on the Judiciary*, 86th Cong., 2nd Sess. 5 (1960) (statement of Sen. Kenneth Keating).

²⁷⁷ 106 CONG. REC. 1759 (1960) (statement of Sen. Kenneth Keating).

²⁷⁸ Bulman-Pozen & Johnson, *supra* note 271, at 1309 (citing 106 CONG. REC. 12564 (1960) (statement of Rep. John Foley)).

²⁷⁹ Derek T. Muller, *Twenty-Third Amendment Problems Confronting District of Columbia Statehood*, 2021 HARV. J.L. & PUB. POL’Y PER CURIAM 1, 11 (2021).

citizenship.”²⁸⁰ Thus, the same legal justifications that existed for amending the Constitution for Washington, DC in 1960 exist today for Puerto Rican residents.

As described above, a constitutional amendment, albeit challenging, is possible. But it comes with limitations as well. An amendment without statehood has proven to be a challenge for Washington, DC, as it is now advocating for its own statehood.²⁸¹ Should Puerto Rico set its sights on statehood, it should note “that the Twenty-Third Amendment, which empowered the electoral power of the District of Columbia, is now a barrier to statehood via ordinary legislation.”²⁸² One open door may close another—or at least, make it more difficult for it to open.

Furthermore, it is worth noting briefly that the United States has continually failed to provide an affirmative right to vote for all citizens,²⁸³ a reality that has contributed to the pervasive and enduring suppression of minority votes.²⁸⁴ Puerto Rico’s lack of a right to vote in presidential elections is, simply put, an extension of this legacy. Thus, should a broad amendment to the Constitution be considered nationally, voting rights could be accomplished not only for Puerto Ricans, but also for other territories that may want to opt in as well.

D. *Statutory Right to Vote*

A final alternative solution, although still a difficult task, would be for Puerto Rico to proposition Congress to grant its residents the right to vote under federal statute, along with changes or amendments to the Electoral College. This would require Congress to pass an act granting Puerto Ricans the right

²⁸⁰ Paraphrasing the words of Senator Kenneth Keating, but with respect to Puerto Rico. *District of Columbia Representation and Vote: Hearings on H.J. Res. 529 Before Subcomm. No. 5 of the H. Comm. on the Judiciary*, 86th Cong. 5 (1960) (statement of Sen. Kenneth Keating) (“This is America . . . We do not believe in second-class citizenship.”).

²⁸¹ See Muller, *supra* note 279, at 1 (“If the legislation [proposing statehood for Washington, DC] succeeds, the District of Columbia becomes a new state and leaves behind a new, substantially smaller District named ‘Capital.’ The Twenty-Third Amendment guarantees that the new District would have three electoral votes, no matter how few people reside in it. Proposals like H.R. 51 do not adequately address this issue. Statehood, if it proceeds, should be conditioned on repeal of the Twenty-Third Amendment. Potential alternative statutory solutions to the Twenty-Third Amendment—which do not exist in the present bill—present constitutional, legal, and practical problems.”).

²⁸² *Id.* at 12.

²⁸³ See *Bush v. Gore*, 531 U.S. 98, 104 (2000).

²⁸⁴ See Neil Weare, *Equally American: Amending the Constitution to Provide Voting Rights in U.S. Territories and the District of Columbia*, 46 STETSON L. REV. 260, 280–82 (2017).

to vote and reforming the Electoral College so that Puerto Rico is granted electors and treated like a state.

Any member in Congress can introduce legislation, which is then referred to a special committee with the requisite jurisdiction on the issue of the legislation.²⁸⁵ The assigned committee holds hearings and makes a committee report before the legislation goes through a floor debate and voting.²⁸⁶ If the legislation gets a majority vote for final passage, it is referred to the other chamber, where the same process is undertaken.²⁸⁷ Again, a majority vote is needed for the legislation to survive both chambers.²⁸⁸ Both the Senate and the House of Representatives must approve the final conference report on a bill for it to pass.²⁸⁹ It then goes to the President of the United States.²⁹⁰ If the President approves of everything in the legislation and signs it, or takes no action for ten days, the legislation becomes law.²⁹¹ The President also has the option to veto the legislation.²⁹²

Although this process is long, tedious, and difficult to overcome, it is much easier and occurs much more often than amending the Constitution. Proposed legislation could declare the territory of Puerto Rico an incorporated territory for purposes of constitutional protections, but in the same act, also grant it the status of a state for purposes of federal elections.²⁹³ If overturning specific issues in case law is not possible, Congress can simply take the issue out of the Court's hands by enacting appropriate legislation that explicitly grants Puerto Ricans voting rights. Although proposed legislation would achieve the goal of attaining for Puerto Rico the fundamental right to vote and other benefits and protections under the Constitution, it may also be accompanied by mandatory participation in tax schemes not currently applicable to Puerto

²⁸⁵ *Introduction and Referral of Bills*, CONGRESS.GOV, <https://www.congress.gov/legislative-process/introduction-and-referral-of-bills> (last visited Feb. 24, 2024).

²⁸⁶ *Committee Consideration*, CONGRESS.GOV, <https://www.congress.gov/legislative-process/committee-consideration> (last visited Feb. 24, 2024).

²⁸⁷ *Resolving Differences*, CONGRESS.GOV, <https://www.congress.gov/legislative-process/resolving-differences> (last visited Feb. 24, 2024).

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Presidential Actions*, CONGRESS.GOV, <https://www.congress.gov/legislative-process/presidential-action> (last visited Feb. 24, 2024).

²⁹¹ *Id.*

²⁹² *The Federal Legislative Process, or How a Bill Becomes a Law*, NAT'L ASS'N EDUC. YOUNG CHILD., http://www.naeyc.org/policy/federal/bill_law [<https://perma.cc/59UP-9SU7>].

²⁹³ See U.S. CONST. art. IV, § 3, cl. 2.

Rican residents,²⁹⁴ and may be debated or in jeopardy for years to come.

As noted previously, what can be enacted by Congress can also be repealed by Congress. It would be a travesty for Puerto Ricans to be granted voting rights, only to have those rights arbitrarily taken away at the whim of Congress or any one party in power for a limited time. It may also set a wildly dangerous precedent—if Congress can repeal what our legal system has deemed a fundamental right on a whim, what other whims are acceptable? Could it repeal those rights because of political implications? Could it repeal them because of high voter turnout? Could it repeal them because of voter preferences? The standard for repeal may become a slippery slope.

CONCLUSION

The United States gained its independence through a rebellion based on the belief that the people should be able to govern themselves—that the people deserve a democratic system free of forced centralized rule. This is reflected in the Fifteenth Amendment of the Constitution, which prohibits the government from denying the right to vote based on race.²⁹⁵ This is also reflected in later amendments regarding the right to vote: the Nineteenth, Twenty-Third, and Twenty-Fourth amendments.²⁹⁶ These amendments to the Constitution imply that *all* naturalized citizens have the right to vote.

That right should not be denied to Puerto Rican residents, particularly not based on its status as an unincorporated territory. Not only is the label of unincorporated an arbitrary term—it implies that there are, in fact, inhabited, incorporated territories, which there are not—but Puerto Rico has already become a *de facto* incorporated territory. This is evident in its deep entanglement with US economics, policies, history, and culture. An accurate picture of just how entangled Puerto Rican residents are with other mainland US citizens reveals contradictions in the territorial law cases. The term unincorporated, as defined by the Insular Cases, is no longer fitting or appropriate to Puerto Rico. Additionally, the Court's

²⁹⁴ See *United States v. Vaello Madero*, 142 S. Ct. 1539, 1543 (2022). Justice Kavanaugh wrote that a consequence of extending SSI to Puerto Rico would be that mainland citizens could then insist that Puerto Ricans pay some other federal taxes, from which they are otherwise mostly currently exempt. *Id.* He then went on to threaten that this would be burdensome for Puerto Rico financially, warning of the economic hardships that may result from receiving certain benefits. *Id.*

²⁹⁵ U.S. CONST. amend XV.

²⁹⁶ *Id.* amends. XIX, XXIII, XXIV.

reasoning as to why it must uphold the Insular Cases in *Vaello Madero* is inaccurate and leaves thousands of Puerto Rican residents that do not fit the description of “not paying US taxes”²⁹⁷ without recourse and in limbo as to what laws apply to them. Overturning those specific issues in the case law as they relate to Puerto Rico, granting the island statehood, and either amending the Constitution or enacting statutory law to grant voting rights all remain viable options to allow Puerto Rican residents the right to cast presidential votes.

Puerto Rico’s most obvious and immediate solution is to bring attention to the problem. The average American has no knowledge that this injustice has been occurring for the past century.²⁹⁸ Only 54 percent of Americans polled in 2017 knew that Puerto Ricans were US citizens.²⁹⁹ This shows that many Americans are uneducated on the subject.³⁰⁰ Knowledge is instrumental in progress. Not just knowledge of the problems, but knowledge on how to advocate to fix the problem. Puerto Rico cannot progress if its American counterparts have no knowledge of the injustice. Moreover, the Puerto Rican people cannot progress without the greater public having a general understanding of the conflicts in law that create these issues in the first place. Whether it be through overturning specific issues regarding Puerto Rico’s unincorporated status, amending the Constitution, achieving statehood, or passing federal legislation, the process must begin first with communicating knowledge of the injustice, followed by gaining the support of those who will not tolerate it.

The US government cannot, in good faith, stand on the sidelines on this topic anymore. It must decide to remedy its misapplication of justice and the law, commit to a fair and just reading of the case law, interpret it through a modern-day lens, and evaluate all options by which to grant Puerto Rican residents relief. The United States needs to uphold its democratic values and allow democracy for all its people.

²⁹⁷ *Vaello Madero*, 142 S. Ct. at 1541.

²⁹⁸ Dropp & Brendan Nyhan, *Nearly Half of Americans Don't Know Puerto Ricans Are Fellow Citizens*, N.Y. TIMES (Sept. 26, 2017), <https://www.nytimes.com/2017/09/26/upshot/nearly-half-of-americans-dont-know-people-in-puerto-ricans-are-fellow-citizens.html> (last visited Feb. 24, 2024).

²⁹⁹ *Id.*

³⁰⁰ *Id.*