

GAO

Report to the Ranking Minority
Member, Committee on Natural
Resources, House of Representatives

May 1993

PUERTO RICO

Confusion Over Applicability of the Electoral Law to Referendum Process



Human Resources Division

B-249739

May 28, 1993

The Honorable Don Young
Ranking Minority Member
Committee on Natural Resources
House of Representatives

Dear Mr. Young:

By letter of December 5, 1991, you asked us to address congressional concerns about the conduct of the referendum held in the Commonwealth of Puerto Rico in December 1991. The referendum allowed the voters to indicate whether they wanted their constitution amended to adopt six provisions that were designed to affect future political status negotiations with the United States. Specifically, you raised questions about the electoral process and the fairness of the referendum. As agreed with your office, this report discusses (1) the applicability of Puerto Rico's electoral law and regulations to the referendum, (2) allegations made about the referendum process, (3) public and private funds expended for the referendum, and (4) the involvement of Puerto Rican government agencies in the referendum process.

Background

Puerto Rico was ceded to the United States by Spain in 1898 and administered as an insular area.¹ In 1952, the island became a commonwealth with greater self-government. Still, the issue of political status—statehood, independence, or enhanced commonwealth—remains a central focus of Puerto Rican politics. When the Congress approved the Commonwealth of Puerto Rico Constitution in 1952 it did not lay to rest all issues in the continuing debate over the island's political status. However, the past four decades have been marked by repeated efforts to make further adjustments in the island's relationship with the United States.

Bills were introduced in both the U.S. House and Senate during the 102nd Congress calling for a referendum on Puerto Rico's political future, but the Congress did not act on either measure. Subsequently, the presidents of the three major Puerto Rican political parties—the Popular Democratic Party (PDP), the New Progressive Party (NPP), and the Puerto Rican

¹An insular area is an unincorporated island under the sovereignty, but not considered an integral part, of the United States.

Independence Party (PIP) supported a referendum on the island's political status under local legislation.²

On September 17, 1991, the Puerto Rican legislature, controlled by the PDP, passed a bill that authorized a referendum on status-related issues. It did not present the three political status options but asked voters to indicate whether they wanted their constitution amended to guarantee Puerto Rico's unique culture, language, right to self-determination, and other traits while retaining U.S. citizenship. (See app. I.) A "yes" vote on this nonbinding referendum would, in effect, have signaled the voters' support for a subsequent constitutional amendment. Some statehood supporters believed that passage of the constitutional amendment would have strengthened the commonwealth position supported by the majority PDP and would have made future efforts to attain statehood through the U.S. Congress more difficult.³ Accordingly, the NPP opposed the referendum, but participated in the referendum by urging voters to vote "no."

Under Puerto Rican statutes, the referendum required specific enabling legislation. The legislature passed the enabling legislation on October 2, 1991, and set a December 8, 1991, date for the referendum.

The enabling act also appropriated funds for the referendum process. On October 15, 1991, the legislature appropriated additional funds for the electoral activities of the registered political parties during the period leading up to the referendum.

Puerto Rico's electoral law details the rules and requirements governing election processes in the commonwealth. The law also establishes the Puerto Rico State Election Commission (SEC) as the agency responsible for directing, implementing, and supervising any referendum and resolving disputes or challenges to the election process.

The referendum was held on December 8, 1991. About 54 percent of the voters (660,267 vs. 559,163) voted "no," refusing to endorse the provisions of the referendum.

²The three major political parties have different ideologies and differ over Puerto Rico's future political relationship with the United States.

³The PIP, which traditionally represents the independence option, also supported the "yes" option during the referendum process.

Scope and Methodology

To answer your questions about the referendum, we interviewed officials from two of the three major political parties—the NPP and the PIP. Officials from the PDP declined to meet with us. We also interviewed officials from the SEC who oversee referendums, officials from Puerto Rico's Department of Social Services (DSS) responsible for the administration of the Nutrition Assistance Program (Food Stamp Program), and officials from the Puerto Rico Federal Affairs Administration who represent the island on the mainland. In addition, we interviewed officials representing interest groups involved in the referendum, including the Puerto Rico Yes Committee, Puerto Ricans in Civic Action, Puerto Rican Workers Central, and the Puerto Rico U.S.A. Foundation, and analyzed referendum-related documentation provided by them.

We reviewed Puerto Rico's electoral law and regulations, the enabling legislation authorizing the referendum and related regulations, SEC reports and decisions, and SEC documents accounting for public funds spent on the referendum. We reviewed television and print media materials used by the political parties in various efforts to inform and/or influence voters about the referendum. We also reviewed materials used by the SEC to inform the public about the referendum. In addition, we interviewed and obtained documentation from federal officials at the U.S. Department of Agriculture's Food and Nutrition Service on questions regarding its oversight of Puerto Rico's Food Stamp Program.

We conducted our review in San Juan, Puerto Rico; Washington, D.C.; and New York City between June and October 1992. We did our review in accordance with generally accepted government auditing standards, with the following exceptions:

- We were unable to determine whether federal funds were used by Puerto Rico's DSS to distribute referendum-related materials to Food Stamp recipients because DDS could not provide requested financial records.
- We were unable to fully answer questions about private funds raised in support of referendum positions because the parties were not required to report the collection or expenditure of private contributions to the SEC. As a result, there is no public record on private funds raised or spent on the referendum. The NPP and the PIP provided us estimates of private contributions they collected. As previously noted, the PDP did not meet with us.

Results in Brief

Two laws, Puerto Rico's electoral law and the enabling legislation for the referendum, governed the conduct of the referendum. The enabling legislation specifically applied the electoral law to the referendum, but only if electoral law provisions were not incompatible with the enabling act. When there was conflict between the two laws, the enabling legislation provided that the provisions of the enabling act prevailed. Civic and political groups in Puerto Rico, confused by conflicting provisions of the two laws, alleged that established election requirements were not being followed. The SEC interpreted certain provisions of the electoral law as being incompatible with the enabling act and ruled against each of the allegations raised by these groups.

The incompatibility provision in the enabling act allowed provisions of Puerto Rico's electoral laws that might otherwise have governed the electoral process to be set aside. Thus, activities that might otherwise have been illegal or inappropriate were legally permissible for this referendum. For example, government agencies were not prohibited from commercially advertising their projects and achievements before the referendum. Other activities, such as issuing election regulations without public comment, collecting and spending private donations without recordkeeping and public accountability, and the use of public funds by government agencies in referendum-related activities, occurred under the authority of the enabling act and were not illegal. We were unable to systematically identify private contributions to political parties to finance their campaign activities.

Electoral Law and Enabling Legislation Conflicts Led to Allegations About the Referendum Process

Much confusion existed over the applicability of Puerto Rico's electoral law and regulations to the referendum. Puerto Rico's electoral law was established in 1977 to govern the conduct of its elections. The enabling legislation for the December 1991 referendum specifically invoked the electoral law. However, the enabling legislation also provided that if there was incompatibility between the electoral law and the referendum's enabling act, the provisions of the enabling legislation would prevail.

In addition, some provisions of the electoral law apply specifically to general elections but must be explicitly placed in enabling legislation to apply in a referendum. For example, the electoral law limits private contributions and establishes recordkeeping and reporting requirements for all general elections in Puerto Rico. In Puerto Rico's last political status referendum in 1967, the legislature, through the enabling act, similarly limited private contributions to a party or committee

representing a status option and required a special contributions report to the SEC after the referendum.⁴ However, the enabling act for the 1991 referendum was silent on the issue of private contributions.

The enabling legislation was also silent on other issues such as a public comment period for the regulations accompanying the enabling legislation and the involvement of public agencies in advertising and referendum-related activities. These anomalies resulted in confusion and six formal challenges to the SEC about the referendum process.

SEC Rules on Six Formal Complaints Regarding the Referendum Process

Puerto Rico's electoral law specifies that the SEC is responsible for investigating and resolving matters or controversies submitted to it for consideration.⁵ The four-member SEC consists of an appointed chairman and an election commissioner designated by each of the three major political parties. In the event of a legal challenge or dispute regarding an election, the SEC investigates and renders an administrative ruling that is binding on all parties, subject to appeal in the courts. The SEC's decisions may be rendered in one of two ways, either through unanimous agreement of the three election commissioners or, when the commissioners cannot agree, by direction of the chairman.

Five of the six cases filed with the SEC in conjunction with the December 8, 1991, referendum alleged that the referendum did not comply with the electoral law and regulations, as shown in table 1. All six cases were decided by the SEC chairman, and two were appealed to the local superior court. In one appeal, the superior court affirmed the SEC decision that the electoral law prohibition on broadcasting expenses by government agencies did not apply to the referendum. In the second appeal, the superior court sent the case back to the SEC to exhaust the administrative remedies before the court would hear the merits of the case. A civic group had complained that the electoral law requirement that rules and regulations be published in newspapers and posted in public places had been violated. The case was never litigated because of insufficient time to exhaust administrative remedies before the referendum.

⁴The contribution limits imposed by the 1967 referendum law preceded U.S. Supreme Court decisions that invalidated laws limiting contributions made in support of referendum proposals (*Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290 (1981) and *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978)).

⁵See Puerto Rico: Commonwealth Election Law and Its Application to a Political Status Referendum (GAO/HRD-90-60, May 2, 1990) for more detailed information on the role of the SEC in the election process.

Because the election commissioners from the three political parties could not reach consensus on any of the complaints filed, the decisions fell to the SEC chairman. In one case, for example, a complaint alleged that the SEC did not allow 60 days for public comment on proposed rules and regulations, as required by the electoral law. The SEC ruled that the electoral law provision to allow 60 days for public comment was incompatible with the enabling legislation provision, which required that the regulations be issued 60 days before the date of the referendum. There was not sufficient time, after the development of proposed rules and regulations, to allow 60 days for public comment. The enabling legislation was passed on October 2, 1991, and the SEC approved the rules and regulations about 60 days before the referendum on October 5, 1991.

In another case, a complaint alleged that the electoral law provision that prohibits Puerto Rican government agencies from broadcasting during election years applied to the referendum. There was no prohibition in the enabling legislation on advertising programs and achievements by government agencies during the campaign for the referendum. The SEC ruled that the electoral law applied only for general elections.

Table 1: Disposition of Cases Filed With the SEC Regarding the Referendum Process

Case no.	Date of opinion	Description of case	Complainant	Decision	Decision made by	Appealed in local court
91-011	10/25/91	Applicability of the electoral law requirement that public hearings be held on rules and regulations	Election commissioner	Do not concur that public hearings were necessary to approve rules and regulations	Chairman	No
91-013	11/20/91	Applicability of the electoral law prohibition on broadcasting expenses by government agencies	Private citizen	Does not apply	Chairman	Yes
91-014	11/18/91	Applicability of the electoral law for the distribution of appropriated funds for the transportation of voters to the polls	Election commissioners	Appropriated funds shall be divided equally among the three principal political parties	Chairman	No
91-015	11/18/91	Requests to vote by absentee ballot	Private citizens	Petition denied	Chairman	No
91-017	11/29/91	Applicability of the electoral law limits on campaign contributions	Political leader	Does not apply to the Puerto Rico Yes Committee	Chairman	No
91-018	11/29/91	Applicability of the electoral law requirement that rules and regulations be published and posted	Civic group	Does not apply	Chairman	Yes

Public and Private Funds Expended for the Referendum

The enabling legislation provided \$4.7 million to the SEC to defray the costs of the referendum. Of the \$4.7 million, \$3.0 million was to organize and carry out the referendum, \$1.4 million to inform voters about the referendum, and \$0.3 million to transport voters to the polls. The Puerto Rican legislature also appropriated \$450,000 to be divided equally among the three principal parties for their campaign activities. However, the referendum presented the voters with a "yes" or "no" question rather than a choice among the three status options. Accordingly, an imbalance occurred in the way public funds were applied for and against the referendum. The "yes" vote was supported by both the PDP and PIP and, therefore, received twice as much public money (\$300,000) for campaign activities as the "no" position supported by the NPP (\$150,000).

All three parties engaged in private fund-raising efforts to further finance their campaign activities, as did some public interest groups. The electoral law places limits on private fund-raising and establishes accounting and reporting requirements for general elections, but the enabling act was silent on these matters. Therefore, the restrictions on private contributions did not apply to the referendum. Accordingly, none of the three political parties provided information to the SEC on private contributions, and there is no public record of the amount of private funds raised or spent on the referendum.

NPP officials told us they augmented their public funding with about \$450,000 in private contributions to campaign for the "no" vote in the referendum. PIP officials told us that they spent about \$138,414 in additional private funding on the "yes" vote, and PDP officials did not meet with us to discuss their campaign contributions. Because public records did not exist, we were unable to independently verify the amounts spent by the parties or estimate the total spending on the referendum.

The former chairman of the Puerto Rico Yes Committee, a committee formed by PDP members to advocate the "yes" position, told us that the committee raised about \$600,000 in private contributions. This included about \$25,000 raised at a New York City fund-raising luncheon. Allegations were made both in the press and to Members of Congress that companies with operations located in Puerto Rico, which receive a tax credit equivalent to exemption from federal taxation under section 936 of the Internal Revenue Code, were pressured by government officials to attend the luncheon in New York City and contribute to the PDP's fund raising. We were unable to develop independent information to either confirm or refute the allegations.

Puerto Rican Agencies' Involvement in Activities Related to the Referendum

Puerto Rico's government agencies routinely spend public funds to showcase their activities to the citizens through television and the press. The electoral law prohibits the agencies from such advertising in the public media from January 1 of the year a general election is to be held until the day after the election is held. However, the enabling act did not extend this prohibition to the referendum. A citizen's complaint to the SEC alleged that shortly before the referendum, various government agencies sponsored newspaper advertisements and television spots announcing project improvements such as airport renovations and construction of new schools as a means of seeking voter support for the "yes" position sponsored by the governing party, the PDP. The SEC ruled that the electoral law prohibitions, intended to prevent conduct by government agencies in support of specific candidates or political parties, did not apply to the referendum, and agency advertising continued.

Several government agencies were involved in activities related to the referendum. Puerto Rico's DSS, for example, sent a letter to about two-thirds of the Food Stamp⁶ recipients. DSS officials told us that the letter was in response to numerous telephone calls from Food Stamp recipients who were concerned about how their benefits would be affected by the outcome of the referendum. The letter explained that Food Stamp benefits would not be affected, regardless of their vote in the referendum, and encouraged recipients to vote according to their conscience. The letter also reminded recipients that their benefits came from the Nutrition Assistance Program. Although the English language translation of the letter provided to us and the U.S. Department of Agriculture seemed neutral on the question of the constitutional amendment, complainants in Puerto Rico believed the reference to the provision of benefits by the Nutrition Assistance Program was a veiled attempt to showcase or promote a public agency project aligned with the party in office, the PDP.

DSS sent the letter to only two-thirds of the island's Food Stamp recipients, fueling allegations that DSS had targeted letters to families in neighborhoods heavily favoring the PDP. DSS officials countered that a complete mailing was not made because they did not have enough time to send the letter to all Food Stamp recipients by the date of the referendum. DSS officials told us that letters were not targeted but were randomly sent to all municipalities in Puerto Rico. However, they were unable to provide us their sampling procedures or documentation to enable us to verify

⁶Public Law 97-35 replaced Puerto Rico's Food Stamp Program with the Nutrition Assistance Program. Benefits now are paid in cash. The program is administered as a block grant and was capped at \$974 million in fiscal year 1991. Subsequent legislation increased the cap to \$1.13 billion through 1995.

where letters were sent. DSS officials were also unable to explain why they believed a partial mailing would be effective in resolving voter concerns.

Because there was no specific prohibition in the enabling act to preclude DSS from referendum-related activities, the use of Puerto Rican government funds in this instance was not at issue. However, federal law requires that costs to administer the Food Stamp Program be shared equally by the federal government and Puerto Rico. DSS's estimate for producing and mailing the letter was between \$140,000 and \$149,000. We were unable to determine whether the costs for preparing and mailing the letters were shared equally between the federal government and Puerto Rico. DSS officials could not provide us with financial records related to the mailing.

Agency Comments

The chairman of the SEC and the election commissioners from each of the principal political parties provided oral comments on a draft of this report. They generally agreed that the report provided a factual presentation of the events that occurred during the referendum. Each official also provided individual comments and observations involving status issues, the culture of Puerto Rican politics, and the conduct of the referendum. We have summarized these comments here and have incorporated them elsewhere in the report as appropriate.

The chairman of the SEC said that the value of the report was not in its recounting of past events but in its ability to call the legislature's attention to weaknesses in the enabling act that will need to be corrected before a planned plebescite on the island's political status during 1993. In his opinion, stronger language and conclusions in our report about the role of the enabling act relative to the actions of the political parties would help the Puerto Rican legislature further identify shortcomings when authorizing the upcoming plebescite. In a related comment, the NPP commissioner said that the report lacked a discussion of the legal validity of the "democratic rights," which he contends were presented to establish obstacles to statehood.

We believe that the report as presented addresses the specific questions we were asked about the referendum without inappropriately expanding the scope of our inquiry to matters uniquely controlled by the Puerto Rican legislature—such as the possible contents of specific enabling acts.

The chairman also asked that we make a clearer distinction in the scope and methodology section regarding the SEC's role of informing the public about the referendum versus the role of the political parties in attempting to influence voters on the issues contested in the referendum. In response to the chairman's comment, we modified the report language to clarify the distinction between the role of the SEC and the political parties in the referendum process.

Two of the three commissioners commented that, while the report generally did a good job of avoiding unfair characterizations, it failed to capture the unique culture of politics in Puerto Rico and, consequently, did not readily provide a good understanding of the context in which the referendum was conducted. We agree with both officials. While the report does provide a discussion of the historical context for the referendum, it does not attempt to educate the reader about the cultural differences between electoral events in Puerto Rico and similar events in the states. We believe that such a discussion, while informative, is not essential to understanding the factual bases for the issues discussed in this report.

The commissioner for the PIP noted that while the PIP supported the "yes" option, it did so for different reasons than the PDP and that its advertising differed from the government's position. He commented that the PIP supported the "yes" option because it represents a "non-colonial, non-territorial position based on sovereignty." Accordingly, he differed with our observation that unequal amounts of public funds were devoted to the two sides in the referendum. In addition, the NPP commissioner said the report lacked conclusions on the fairness of referendum activities such as the distribution of public funds equally among the three major political parties.

We continue to believe that the allocation of public funds equally among the parties for the referendum resulted in an uneven distribution of monies. This was the distribution established by the Puerto Rican legislature, and we did not evaluate its merits compared to any other options for public funding.

The PDP commissioner commented that the reason members of his party did not meet with us related to questions raised in a June 9, 1992, letter from the Governor of Puerto Rico to the Comptroller General. In the letter, the Governor questioned GAO's authority to investigate the referendum, since it was conducted under local authority. We responded to the Governor's letter on June 24, 1992, and advised him that it is not unusual

for GAO, on behalf of the Congress, its committees, or Members, to investigate activities not directly financed with federal funds or conducted under specific federal statutes. We informed the Governor that we hoped to be able to conclude our review with the cooperation of the government of Puerto Rico and, with the exceptions noted in the report, this occurred.

We are sending copies of this report to the Governor of Puerto Rico, the Resident Commissioner, chairman of the SEC, the election commissioners, representatives of the Puerto Rico Federal Affairs Administration, DSS officials, the leaders of the three major political parties in Puerto Rico, selected officials from private and civic groups in Puerto Rico, federal officials from Agriculture's Food and Nutrition Service, as well as appropriate congressional committees and Members of Congress. We will make copies available to others upon request.

If you or your staff have any questions about this report, please call me on (202) 512-7225. Other major contributors are listed in appendix II.

Sincerely yours,



Gregory J. McDonald
Director, Human Services Policy
and Management Issues

Contents

Letter	1
Appendix I The Six Provisions Voted on in the December 1991 Referendum	14
Appendix II Major Contributors to This Report	15
Table	6

Table 1: Disposition of Cases Filed With the SEC Regarding the Referendum Process	
--	--

Abbreviations

DSS	Department of Social Services
NPP	New Progressive Party
PDP	Popular Democratic Party
PIP	Puerto Rico Independence Party
SEC	Puerto Rico State Election Commission

The Six Provisions Voted on in the December 1991 Referendum

On October 2, 1991, the Enabling Legislation of the Referendum on the Claim for Democratic Rights, Law No. 86, was approved by the Puerto Rican legislature. This law required a "yes" or "no" vote on a package containing six provisions:¹

- "the inalienable right to determine our political status, freely and democratically;
- the right to choose a status of full political dignity without colonial or territorial subordination to the full powers of the Congress;
- the right to vote for the three status alternatives—commonwealth, statehood, and independence—based on the sovereignty of the People of Puerto Rico;
- the right that the winning alternative in a status consultation shall require more than half the votes that are cast;
- the right that any consultation on status guarantees, under any alternative, our culture, language and identity, which includes our international sports representation; and
- the right that any consultation on status guarantees, under any alternative, the American citizenship safeguarded by the Constitution of the United States of America."

¹The Office of Legislative Services of the Legislature of Puerto Rico certified that the English translation of the enabling legislation, which contains the six provisions to be voted on, is complete and correct.

Major Contributors to This Report

Human Resources
Division, Washington,
D.C.

George F. Poindexter, Assistant Director, (202) 512-7213
Truman Hackett, Assignment Manager

New York Regional
Office

Vincent R. Morello, Evaluator-in-Charge
Sarita Valentin, Evaluator

Office of the General
Counsel, Washington,
D.C.

Dayna Shah, Assistant General Counsel
Damaris Delgado-Vega, Attorney

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20884-6015

or visit:

Room 1000
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC

Orders may also be placed by calling (202) 512-6000
or by using fax number (301) 258-4066.

United States
General Accounting Office
Washington, D.C. 20548

Official Business
Penalty for Private Use \$300

First-Class Mail
Postage & Fees Paid
GAO
Permit No. G100