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**State Government & Tribal Relations  
Committee**

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**HJM 4009**

**Brief Description:** Requesting Congress to incorporate Puerto Rico into the United States.

**Sponsors:** Representatives Stokesbary, Caldier, MacEwen, Griffey, Barkis, Chambers, Smith, Gildon, Irwin, Shea, McCaslin, Young, Walsh, Dolan, Appleton, Macri and Lovick.

**Brief Summary of Bill**

- Requests that Congress make Puerto Rico an incorporated territory.
- Requests that Congress apply all law and policy to Puerto Rico on the same basis as in the states.

**Hearing Date:** 2/22/19

**Staff:** Desiree Omli (786-7105).

**Background:**

Puerto Rico is a group of islands in the Caribbean Sea that lies between the Virgin Islands and the Dominican Republic, approximately 1,000 miles southeast of Florida. Puerto Rico was colonized by Spain when Christopher Columbus arrived in 1493, and it remained a Spanish possession until the United States acquired it as a territory following the Spanish-American War in 1898.

Under Article IV of the United States Constitution, Congress has the power to make rules and regulations for U.S. territories. Congress passed the Foraker Act in 1900 to give Puerto Rico a civilian government that was primarily appointed by the United States, although it included a body of representatives elected by the people. Federal statutes generally applied to Puerto Rico, and Puerto Rico was empowered to enact local laws as well.

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The United States Supreme Court issued a series of opinions in the first decade of the 20th century concerning territories like Puerto Rico. In these cases, known as The Insular Cases, the Court created a distinction between incorporated and unincorporated territories. Whereas the Supreme Court considered Alaska to be an incorporated territory, the Supreme Court considered Puerto Rico to be an unincorporated territory. As an unincorporated territory, the Constitution does not apply to Puerto Rico in full; only the fundamental rights to life, liberty, and property apply. Although Congress granted more autonomy to Puerto Rico in 1917—also granting U.S. citizenship to all Puerto Ricans born on or after April 25, 1898—the Supreme Court in 1922 held that Puerto Rico remained unincorporated. To be incorporated, there must be an express declaration from Congress, or at least an "implication so strong as to exclude any other view."

Although there is no legal relationship between incorporation and statehood, all incorporated territories have become states (with the exception of an island in the Territory of Hawaii that was not included in the state), whereas unincorporated territories—such as American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands—are not generally considered to be on a path to statehood.

Congress extended more autonomy to Puerto Rico in the middle of the 20th century. The islands were permitted to elect their own governor in 1947 and hold a constitutional convention in 1950. Puerto Rico adopted a constitution in 1952, which includes its own Bill of Rights. The Supreme Court has also concluded that additional federal constitutional protections—the First Amendment right to free speech and the Fourth Amendment protection against unreasonable searches—are fundamental enough to apply to Puerto Rico. But Congress has chosen not to implement all federal programs in Puerto Rico. For instance, Puerto Ricans pay into and may receive retirement benefits under the Social Security Act, but Supplemental Security Income health-care benefits (SSI) are not available to Puerto Rican residents.

In a pair of cases in 1979 and 1980, the Supreme Court held that the Equal Protection component of the Fifth Amendment did not require Congress to provide Puerto Ricans with SSI benefits or Aid to Families with Dependent Children benefits. Congress had a rational basis for excluding Puerto Rico, the Court concluded, because its residents did not pay federal taxes, extending the program would be costly, and the benefits could disrupt the Puerto Rican economy. On February 4, 2019, however, a federal district court judge in Puerto Rico ruled that the exclusion of Puerto Ricans from the SSI program was unconstitutional.

### **Summary of Bill:**

This bill asks Congress to:

- make Puerto Rico an incorporated territory; and
- apply all law and policy to Puerto Rico on the same basis as in the states.

**Appropriation:** None.

**Fiscal Note:** Not requested.