

A referendum to nowhere

By : RAFAEL HERNANDEZ COLON

Volume: 33 | No: 22

Page : 23

Issued : 06/09/2005

The electors of Puerto Rico have been summoned to the polls by the previous Legislature to express their preference on sustaining the present bicameral system or changing it to a unicameral one. They will vote July 10, not to amend the Constitution, which provides for a bicameral legislature, but to mandate the Legislature again summon the electors on July 9, 2007, to vote to amend the Constitution to provide for a unicameral legislature.

I wonder how many of our electors are aware of this? Do they really know the July 10 referendum is merely an expensive public-opinion poll without legal effects on the constitutional order? I don't think there are many electors aware of the importance of their vote; that theirs is but the expression of a wish not binding on the Legislature as a matter of law. I have a strong feeling there is behind all of this a rather loose understanding of our Constitution and of the seriousness that should attend a summons to the electorate so the voters maintain a high rate of participation in the system.

In a previous column, I expressed my views on the unicameral system. It isn't the solution to the discredit some legislators have vested upon the Legislature. It merely compounds the problem by conferring more power on full-time legislators spawning regulation upon regulation on economic and social activity; by creating a counterpower to the governor in the president of the unicameral legislature, which is a recipe for gridlock; and by limiting the process for consideration of bills, which will result in improvident and careless legislation with diminished opportunities for public participation.

The summons to the polls for July 10 isn't only to vote on a bad idea; it is an unconstitutional summons, harmful in itself to our democratic system. Why is this referendum being called? The Statement of Purpose of Law 477 of 2004 states: The unicameral system was considered and discarded by the framers of our Constitution because the bicameral legislature provides a more careful consideration of bills by requiring the approval of two houses, that one chamber is more prone to pass reckless and emotional legislation, and that a bicameral legislature is more difficult to corrupt than a unicameral one.

On the other hand, the Constitutional Convention found and discarded the arguments that the unicameral legislature is less time-consuming, less costly, doesn't generate internal antagonism, and harmonizes the interest of the people in small districts with those of society at large.

The Statement of Purpose then goes on to say that, since the Constitution was approved, there have been legislative studies—1984 and 1995—analyzing the pros and cons of the idea; and there have been reports submitted to the Legislature on this matter. But, and here is the rub, none of these studies have determined what system the people of Puerto Rico prefer. So, to do that, the previous Legislature ordered

the State Elections Commission to hold the referendum that will occur July 10. This is a rather unusual and costly way to find out where public opinion stands on an issue.

The usual way for the Legislature to find out where public opinion stands on a proposition is to hold public hearings and, if it is keen on probing this matter, to hold them in all eight senatorial districts. In addition, the Legislature may commission a public-opinion poll which, if done by Gallup or some other prestigious firm, wouldn't cost over five figures and would be even more precise than the July vote that will be meager and won't respond to a scientifically drawn sample.

The Legislature has chosen the unusual path of holding a referendum to find out where the public stands on the unicameral legislature, but it not only does that, it also provides that if the public is in favor, then a referendum to amend the Constitution is mandated for July 9, 2007. The Legislature can't delegate to the public its constitutional authority to convene a referendum to amend the Constitution.

This is not only an abdication of power, a flight from the responsible exercise of judgment that our democratic system demands from our Legislature, but it is also an act contrary to the Constitution itself and therefore null and void in its inception. The people can't mandate this referendum; only the Legislature acting through the proper procedures can do so.

The procedure provided by our Constitution for amendments to that charter, requires the Legislature approve an amendment by a two-thirds majority, which will then be submitted to the people for approval in a referendum. This two-thirds majority requirement can't be circumvented by holding a referendum for the people to directly mandate a referendum, as is done in Law 477. The mandate for the Legislative Assembly to approve the amendment has no legal effect.

The proper way to find out ultimately what the people think regarding a constitutional amendment is to approve the amendment by a two-thirds majority in both houses of the Legislature and then submit the amendment to the people. If they vote yes, the Constitution will have been amended. If they vote no, we know they didn't want the amendment. This is the procedure that has to be followed.

What we are doing here is engaging in a referendum that will cost \$3.6 million during a fiscal crisis, pretending to mandate another referendum that will cost another \$3.6 million of the taxpayers' money.

That, however, won't happen because a majority in the present Legislature is against the unicameral legislature. The members of the Legislature were elected in 2004 and empowered under our Constitution to exercise their judgment on legislative matters until 2008. Our Constitution doesn't stipulate that the electors can strip them of their powers to amend the Constitution. They can't be mandated to vote against their judgment. What will happen is our people will be frustrated if they express their will to provide for a unicameral legislature through an unconstitutional referendum.