

Status bills before the Legislature

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Volume: 33 | No: 10

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Issued : 03/17/2005

The Legislature has before it three bills—one from each party—to provide for a mechanism through which the people of Puerto Rico would express their will as to what should be our political future. Senate bills 362 and 366 presented by the New Progressive and the Independence parties respectively, provide for a referendum to petition Congress for a fully democratic, noncolonial or territorial status. The intended purpose of these bills is to bring the pressure of public opinion upon Congress to get it to act upon the status of Puerto Rico.

Senate Bill 333 presented by the Popular Democratic Party, would provide a choice to the people of Puerto Rico between (1) a petition to Congress for a referendum between Commonwealth, Statehood, or Independence, or (2) a constitutional assembly which would do the petitioning for the people. The intended purpose of this bill is to provide the people with a choice between the referendum that the NPP favors—with qualifications—and the constitutional assembly, which the PDP favors.

I see no possibility of the NPP and the PDP coming to an agreement on a bill for a referendum that excludes Commonwealth from the referendum mandate and NPP Bill S 362 does just this. The Statement of Motives of the bill states the present Commonwealth is under the plenary powers of the Congress and is thus a colony. In a series of columns I published in CARIBBEAN BUSINESS, I went into this matter in depth and demonstrated this isn't so. Puerto Rico, as stated by the United Nations and the Supreme Court of the United States, is an autonomous political entity sovereign over matters not ruled by the Constitution in the same way that states of the Union are sovereign over these matters.

The Statement of Motives further states that the development of Commonwealth into a more perfect relationship—an amendment to the compact in order to terminate the democratic deficit existing in the relationship—isn't possible under the U.S. Constitution. To this end, it refers to opinions the federal Justice Department is said to have expressed at the request of the task forces created by the White House at the behest of the NPP to examine the status of Puerto Rico.

So, the Commonwealth is either a colony as it stands or not viable if it were perfected by revising the compact. Therefore, when the people of Puerto Rico vote in the NPP referendum to petition Congress for noncolonial or nonterritorial alternatives, the Commonwealth in whatever form, isn't included in their petition.

This simply isn't acceptable to the PDP and, more than that, it is wrong. The authoritative interpretation of the U.S. Constitution with regards to a more perfect Commonwealth, was made for Congress by the commission created by Congress under P.L. No. 88-271 (1964) to study all the laws, treaties,

constitutions, and agreements with regards to the relationship between Puerto Rico and the U.S. This commission concluded as follows:

- The people of Puerto Rico and the Congress of the U.S. have the power under the Constitution of the U.S. to establish any of the three status alternatives: Commonwealth, Statehood, or Independence.
- Each one of these alternatives provides equal dignity and equality of political status.
- It is appropriate that the people of Puerto Rico should pursue a more perfect Commonwealth, unless it chooses another political status.

The commission that made these findings for Congress under Law 88-271 was composed of representatives of the U.S. president, members of Congress, and representatives of the three political parties in Puerto Rico. It commissioned studies by legal scholars in the U.S. and held hearings where jurists from the U. S. and from the three political parties in Puerto Rico presented their opposing views. It worked on this matter for two years before it presented its report to Congress. No study after that has gone into this question in such a fashion. No latter-day legal opinion has the standing of a report prepared by a commission specially created by Congress to investigate this matter.

It was this commission that concluded a more perfect Commonwealth is constitutionally viable. The proposals that the PDP has made to Congress and in referenda in Puerto Rico, stem from the premises established in its report to Congress. The history of all the efforts in political or constitutional creativity, such as the New Deal, that have eventually prevailed in the U.S. is that when initially proposed they were controversial but finally they obtained the approval of the Supreme Court. Commonwealth, said Chief Justice Earl Warren of the Supreme Court of the U.S., when Commonwealth was created, is the most notable experiment in American constitutionalism of the 20th century. To deny the people of Puerto Rico the opportunity to petition Congress for a more perfect Commonwealth is to deny half of our electorate its rights to self-determination, to freedom of expression, and to petition Congress for a redress of grievances.

When I testified last week before the Senate committee considering S 362, former Gov. Pedro Rosselló, president of the NPP and now a senator and member of the commission, stated that he would be willing to strike out the Statement of Motives from the bill. This would be a good step forward but it doesn't resolve another problem with the bill, which is quite important.

This problem is that, given the controversy over the nature of Commonwealth that the Statehood and the Pro-Independence parties have raised in Congress since the victory of Commonwealth in the 1993 plebiscite, which lead to the defunct Young bill declaring that Commonwealth was not a means for full self-government for the people of Puerto Rico, the issue will have to be addressed by Congress before it can authorize a referendum in Puerto Rico for the people to vote on noncolonial or nonterritorial alternatives.

This means that there will be no unity of purpose from the people of Puerto Rico in Congress regarding the plebiscite bill that the NPP pursues. The NPP will pursue a Young Bill type of disposition for Commonwealth by branding it colonial or territorial. The PDP will mobilize against their efforts. The result will be yet another deadlock in Congress. I will go into this further in my next column.

