

## Public funds and status

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The status debate makes us forget there is a legitimate constitutional order in Puerto Rico; that there was a process 53 years ago wherein the people, then under colonial rule, were consulted by Congress as to whether they wished to ordain their own constitution and enter into a relationship with the U.S. in the nature of a compact. Our people accepted that offer and, empowered by Congress, went on to create the present Commonwealth relationship with the U.S.

Puerto Rico's Constitution, created through the exercise of our natural rights to self-government, establishes the scope and function of government; protects our human rights; and is the fundamental law of the land. The United Nations recognized the legitimacy of our relationship to the U.S. through Resolution 748 of 1953. The U.S. Supreme Court also has recognized its legitimacy, stating the Commonwealth, like a state, is an autonomous political entity, sovereign over matters not ruled by the U.S. Constitution. The court has reiterated this assertion in several cases.

One of the terrible consequences of the unending debate generated by the supporters of statehood and independence over Puerto Rico's status is that reality is blurred by politics. This distortion is such that a good part of Puerto Rico's population unwittingly denies our Constitution is a constitution, that our legal order is legitimate, and we as a people have a respectable quantum of power over our own affairs, which no one can take away from us. The NPP majority in the Legislature is enmeshed in this status thicket from which we seem unable to extricate ourselves.

Our Constitution provides that public funds—those raised through our tax dollars—may only be used for public purposes. We have debated the status question for so long, and our governments have engaged in this debate, holding plebiscites and lobbying Congress, that we tend to think anything government does regarding status is a legitimate purpose for which it can spend our tax dollars. Is this so?

There should be no doubt that expressing the will of the people of Puerto Rico to Congress on the matter of status is a legitimate public purpose. Thus, it is legitimate to spend public monies on a plebiscite, or in lobbying Congress to accept the results of the plebiscite, or to legislate a plebiscite itself. However, what if the legislation authorizing the lobbying effort excludes the Commonwealth itself as a viable alternative for the people to choose? Is it legal to use public funds for a purpose that negates the validity of our constitution and excludes the Commonwealth as one of the choices for Puerto Rico's future?

The resolution—the NPP's Plan B, which was approved by the Legislature to create a commission to lobby Congress for a mechanism for the people of Puerto Rico to select a fully democratic, noncolonial,

nonterritorial alternative—squarely raises this question and the island’s comptroller and courts will have to deal with it in due time.

What are fully democratic, noncolonial, nonterritorial alternatives? The resolution creating the commission tells us commonwealth isn’t one of them. The Commonwealth, the resolution’s statement of purpose says time and again, is under the plenary powers of the U.S. Congress. That is, Puerto Rico is colonial territory, which is precisely why the Legislature approved the resolution to petition Congress for an alternative to this form of government.

You can’t spend public dollars to sustain such a proposition. This is a political statement repugnant to our legal order. It is a partisan position that must be pursued through partisan, not public, means. Since 1954, the federal courts consistently have held Congress doesn’t have plenary powers over Puerto Rico. That is why federal laws no longer apply to intrastate transactions in Puerto Rico. This is why the U.S. Supreme Court says we, like the states of the Union, are sovereign over matters not ruled by the U.S. Constitution.

To say we are under the plenary powers of Congress is to say the Puerto Rico constitution is an organic act of Congress providing for the island’s government and the power that created our government was the power of Congress, not the power of the people of Puerto Rico as our constitution solemnly states. Can one spend public monies to lobby Congress to approve legislation premised on such an assertion, contrary to our legal order, to Resolution 718 of the United Nations, and to the rulings of the U.S. Supreme Court?

Judge Calvert Magruder of the U.S. Circuit Court for the First Circuit, often cited by the U.S. Supreme Court on the matters of Puerto Rico’s status, once said that if such a proposition as asserted in the NPP’s Plan B Resolution were true, then Congress would have perpetuated a monumental hoax on the people of Puerto Rico. He, of course, vehemently rejected this idea, as has the U.S. Supreme Court. Can you spend public monies to desecrate our Constitution? Can you spend taxpayers’ dollars, raised under the authority of the constitution itself, to delegitimize the constitution? This is what the NPP legislators will be doing, and this is what the comptroller and our courts will have to deal with.

However, the matter also gets personal. That is, it attains to the personal rights of about one-half our electorate, which is the target of the NPP’s Plan B Resolution before Congress. By excluding commonwealth through their specious and discredited arguments, the NPP will be lobbying in Congress against the rights of half our electorate to self-determination; against our rights to support what we deem best for Puerto Rico; against our rights to petition Congress for the alternative we prefer; and against our rights to speak our minds freely and to choose according to our own conscience.

The NPP has never won a plebiscite. It seeks its first victory by disqualifying its opponent before Congress. It seeks in Washington what it has been unable to achieve at the polls in Puerto Rico. Can you use public funds for such a travesty upon the constitutional order and rights of half the electorate? The comptroller and courts have their work cut out for them.