

Misguided policy on Puerto Rico

BY RAFAEL HERNÁNDEZ COLÓN



In an unprecedented letter to the presidents of the commonwealth, statehood, and independence parties of Puerto Rico, U.S. Sen. Ron Wyden, the chairman and majority leader of the Senate Energy Committee with jurisdiction over the political

status of Puerto Rico, and U.S. Sen. Lisa Murkowski, ruled out developed commonwealth as an option that may be presented to the people of Puerto Rico in a future referendum.

The policy expressed by Sens. Wyden, an Oregon Democrat, and Murkowski, an Alaskan Republican, goes against the right of self-determination of the Puerto Rican people. It excludes an option sanctioned in 1953 by the United Nations, at the request of the U.S., when Puerto Rico became a commonwealth. U.N. General Assembly Resolution 748 VIII of 1953 not only recognized commonwealth as a legitimate option of self government for Puerto Rico, but it also responded to President Eisenhower's representation that, should Puerto Rico desire a broader measure of self government, the U.S. would correspond to the wishes of the people of Puerto Rico.

The purported policy also goes against the rights of Puerto Ricans as American citizens and, in particular, their right to vote. This is made clear in the Report of the United States-Puerto Rico Commission on the Status of Puerto Rico. This commission was created by Congress through Public Law 88-271, Feb. 20, 1964. The chairman of what is now the Energy Committee, Sen. Henry Jackson, was a member of this commission. It undertook the most extensive study on the political status of Puerto Rico that has been carried out since Puerto Rico came under the sovereignty of the U.S. Its report included three volumes relating to the legal-constitutional factors, economic factors and socio-cultural factors in relation to the status of Puerto Rico. In its conclusions on the legal-constitutional factors, the commission stated:

The key to the continuation and development of the relationship between Puerto Rico and the mainland is U.S. citizenship. This citizenship carries with it basic personal and institutional protections that cannot be encroached upon by the Legislature of Puerto Rico or the Congress of the United States. Present constitutional doctrine, therefore, would not permit any action rendering ineffective the right of U.S. citizens of Puerto Rico to participate in the determination of their future, whether it will be continued and developed Commonwealth, Statehood, or Independence.

The U.S. Supreme Court hasn't altered its constitutional doctrine since that report was issued. On the contrary, it has deepened and strengthened the doctrine prevailing at the time of the report by holding that the voting rights of Puerto Ricans as U.S. citizens are rights protected by the Constitution of the U.S. (*Rodríguez v. Popular Democratic Party* 457 US 1 [1982]).

Developed commonwealth must be on the ballot for a plebiscite to be a fair exercise of the right to vote of U.S. citizens in Puerto Rico when making use of their right to self-determination.

U.S. Sen. J. Bennett Johnston, former chairman and minority leader of the Energy Committee, and U.S. Sen. Malcolm Wallop fully recognized the right of commonwealth supporters to vote for a developed commonwealth when they presented S. 244 102 Cong. First Session Sec. 402 (1991), which provided for a referendum on status options to be held in Puerto Rico. This bill generated the most serious consideration of this matter undertaken by several Senate committees up to this date.

Hundreds of thousands of Puerto Ricans are supporters of a developed commonwealth. They have voted for it in the plebiscites of 1967 and 1993, both of which commonwealth won over statehood and independence. The pro-statehood Legislature then excluded commonwealth from the ballot in 1998 and commonwealth supporters were forced to vote for "none of the above," which won that plebiscite.

The pro-statehood Legislature then excluded developed commonwealth and "none of the above" from the ballot in the plebiscite held in 2012 and structured two ballots in such a way that a majority voted for a change in the current commonwealth status. This majority wasn't only composed of statehood and independence voters. Supporters of a developed commonwealth also favor changes in the current status. The plurality voting for statehood in the second ballot by this process hasn't been taken seriously in Congress.

Exclusion of a developed commonwealth from

the ballot would deprive commonwealth supporters of their right to vote. Developed commonwealth must be on the ballot for a plebiscite to be a fair exercise of the right to vote of U.S. citizens in Puerto Rico when making use of their right to self-determination to propose to Congressional changes in their political status.

Developed commonwealth, however, doesn't mean a sovereign commonwealth, as if Puerto Rico were an independent nation. The U.S. Supreme Court has held that the Commonwealth of Puerto Rico, like a state, is an autonomous political entity "sovereign over matters not ruled by the U.S. Constitution" (*Calero Toledo v. Pearson* 416 U.S. 663 [1974]). Developed commonwealth would include changes in the compact establishing federal relations to provide for a more effective self-government. There is nothing in the Constitution that prevents Congress from making changes to federal laws. Basic democratic principles require that voters may vote for such changes if they prefer commonwealth to statehood or independence.

By disenfranchising the supporters of commonwealth, the policy announced by Sens. Wyden and Murkowski will delegitimize whatever results stem from a referendum and derail the process toward an ultimate solution on status. The proposal by President Obama including commonwealth in the process, subject to an opinion by the U.S. Justice Department as to the constitutional viability of its development, is the way to move the process forward. ■



Rafael Hernández Colón is a three-term (12-year) former governor of Puerto Rico (1973-76 and 1985-92). He served as Justice secretary (1965-67) and Senate president (1969-72). He was president of the Popular Democratic Party for 19 years. Comments on this article are welcome at caribbeanbusiness.pr. Go to the "Sign in" link on the homepage to participate. Emails also may be sent to column@caribbeanbusiness.pr.