

## The plebiscite authorized by Congress and economic recovery



BY RAFAEL HERNÁNDEZ COLÓN

The fiscal crisis and the prolonged recession that Puerto Rico is undergoing present challenges that, to be surmounted, require innovative, bold and continued policies over an expanse of more than four years. Continuity of developmental and economic policies hasn't been possible

in Puerto Rico since the pro-statehood New Progressive Party (NPP) governments came into power, on and off, since 1969. Contrary to Commonwealth governments, NPP governments prioritize the political goal of statehood over economic development. When the NPP is in power, they seek to assimilate the Commonwealth government to the government of a state of the Union. Their incorporation of the federal minimum wage to our island economy and the surrender of Section 936 of the Internal Revenue Code—because it wasn't constitutionally possible under statehood—bear out their style of government and their priorities.

To put in place a policy framework to surmount the fiscal crisis and the economic recession, and thereafter continue economic development, the people of Puerto Rico must chart a course toward the future that will give continuity to these policies. This requires a resolution as to status. The report of the White House Task Force on the status of Puerto Rico viewed this quite clearly.

**“[T]he Task Force recognizes that the status question and the economy are intimately linked. Many participants in the forums conducted by the Task Force argued that uncertainty about status is holding Puerto Rico back in economic areas. And although there are a number of economic actions that should be taken immediately or in the short term, regardless of the ultimate outcome of the status question, identifying the most effective means of assisting the Puerto Rican economy depends on resolving the ultimate question of status.”**

Resolving the status question requires a meeting of the minds between Congress and the people of Puerto Rico. In the past, there have been serious differences among congressional committees, the White House Task Force and our political parties as to the constitutional viability of the status alternatives proposed by our parties in their electoral platforms or in bills sponsored in Congress. This has been a continued stumbling block in moving forward the resolution of the status question in Congress. Now the White House and Congress have devised a way to resolve this problem.

Congress and the president of the United States have acted to chart a course for Puerto Rico to take its final decision as to status. They have provided

for a plebiscite wherein we will first come to a meeting of the minds as to the constitutional, legal and policy viability of the status alternatives: commonwealth, statehood, free association and independence. Our Legislature will first define the alternatives. Then the State Elections Commission will refer them to the U.S. Department of Justice, which will determine if they are viable under the U.S. Constitution, laws and policies. Once the Justice Department notifies the viability of the definitions to the congressional committees on appropriations, the U.S. Treasury will disburse \$2.5 million to the State Elections Commission, which will use it to inform our voters as to the significance of the definitions and provide educational materials regarding each alternative.

This procedure, instituted by Congress, will provide our people the certainty that their vote will be for alternatives upon which Congress may also vote to finally determine our status. It constitutes a moral and political obligation by Congress to respond to our determination. It doesn't, however, constitute a legal obligation for Congress. Self-executing legislation on this matter isn't viable in Congress. This was borne out by the joint efforts of all three Puerto Rico parties from 1989 to 1991 when they tried to get such a bill through Congress. It was impossible mainly because Congress wouldn't make a previous commitment on statehood. Any interested reader who may want to look deeper into this matter may examine an article I published in Volume 65, Number 3 of the Law Review of the University of Puerto Rico, 1996. A political and moral obligation to respond to our determination is the strongest obligation that we can get from Congress because the decision on our status, in as much as it involves statehood, entails making a major political decision on the part of Congress, which it won't undertake until a majority of our people petition for statehood.

The legislation by Congress to make this plebiscite viable has a four-year duration. The PDP faces this choice: Either it engages Congress and carries out the plebiscite now or it runs the risk of losing the 2016 election and having an NPP legislature define the options for the plebiscite. The latter isn't an option. The NPP holds the position that an improved commonwealth may not appear in the plebiscite ballot. This is why those of us who support an improved commonwealth had to vote under “none of the above” in the 1998 plebiscite held under NPP auspices. This is why, contrary to the White House Task Force position, the improved commonwealth didn't appear in the 2012 skewed ballot of the plebiscite held under NPP legislation. Let no one mistake what was called a sovereign commonwealth in that ballot as an improved commonwealth. The sovereign commonwealth in the 2012 ballot was free association, Micronesia style, with no U.S. citizenship or the federal programs

we have in Puerto Rico. Let no one mistake that the actual “territorial” status mentioned in the first ballot included improved commonwealth. It didn't. Let everybody understand that supporters of an improved commonwealth have always pursued changes in the actual “territorial” status.

So, the PDP has decided to engage Congress within this four-year term. This is a wise decision, for it allows the people of Puerto Rico to set their political course for the coming critical years in which economic policy coming from Congress can't continue to go back and forth between administrations. Policies hovering over the commonwealth-statehood dichotomy guide congressional actions today. By engaging Congress in this plebiscite, a course will be set by a majority of the people of Puerto Rico as to the future of Puerto Rico, and congressional legislation will occur within that framework, regardless of who holds elective office in Puerto Rico.

This doesn't mean that the fully improved commonwealth will occur within the next four years or that statehood will happen in that time span. But it will mean that if an improved commonwealth wins a majority, important measures will be taken by Congress and prejudicial measures won't be taken to aid in our economic recovery and development. On the other hand, if a majority of the people of Puerto Rico vote for statehood, it will mean that Congress, within the next four years, will declare Puerto Rico an incorporated territory, which is the first step toward statehood.

So, we will be charting two alternative and different futures for our future economic recovery and development. The White House Task Force has said that before Puerto Rico becomes a state, Congress may phase in federal taxes and parity in the few federal programs in which it doesn't exist today. It will be a very different scenario for businesses, economic activity and jobs than the improved commonwealth scenario, with the fiscal autonomy, that we now have, and other measures that Congress can tailor to an improved commonwealth for economic recovery.

We are facing a decisive moment. Puerto Rico and the United States are better off by facing it now with a fully democratic process with all the alternatives on the table, than running the risk of a skewed process unfailingly structured by the NPP toward the triumph of statehood by eliminating improved commonwealth from the ballot. ■

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