

Committee on Resources

Witness Testimony

Testimony of
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and the Subcommittee on Western Hemisphere
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Mr. Elton Galegly, Mr. Dan Burton, and Mr. Young, Honorable Chairmen of these committees Members, and friends.

It is an honor to have been invited to testify before this unprecedented joint hearing of these two subcommittee's which have jurisdiction over Puerto Rico on such a historical issue. I commend your interest and sincere efforts to address the issue of the self determination of the United States citizens in Puerto Rico.

This is indeed a historic occasion and given the results of the 1993 status plebiscite, whose process and ballot options you are reviewing, the committee's findings may well authoritatively determine the future relationship between the 3.7 million U.S. citizens in Puerto Rico and the United States, which has governed us since 1898.

Far from clouding the issue on status, the island residents in 1993 overwhelmingly endorsed three principles to govern their future relationship with the U.S. Over 95 percent of our residents voted for statehood and commonwealth which promised:

- ÀÀ permanent union with the U.S.
- ÀÀ guaranteed American citizenship
- ÀÀ and economic equality with their mainland counterparts.

And, upon closer analysis of the independence ballot language, it's clear that all Puerto Ricans cherish these rights and goals and seek to perpetuate them.

ANALYSIS OF THE PLEBISCITE PROCESS

1. The Ballot Language Was Defective & Misleading

The plebiscite bill provided for each political party in Puerto Rico to define each status alternative. (See sample ballot)

While the statehood proponent's ballot directly addressed the realization of these goals through the constitutional process, neither the commonwealth nor the independence language were legally, politically or economically viable.

It is self-evident that the disingenuous nature of the ballot language set forth by supporters of both commonwealth and the independence movement:

- ÀÀ misled voters,
- ÀÀ influenced the election's outcome,

ÀÀ were inherently coercive on workers
 ÀÀ and offered unconstitutional and
 impractical alternatives

They were, and remain, intellectually dishonest attempts to gain voter support through rhetoric and pie-in-the-sky promises that have little or no connection with reality.

The Commonwealth Proposition

First, although the commonwealth proposition promised to safeguard the above named three principles, its endorsement of greater self-autonomy, trade protectionism, economic oligopoly and fiscal self-sufficiency flew in the face of constitutional and political impediments.

Indeed, the commonwealth ballot provision was nothing less than a promise of statehood without the obligations attendant, namely federal taxation. Voters, having been told this lie often enough and long enough have come to believe, with Congress' acquiescence, that indeed they could have their cake and eat it, too!

It's utterly disingenuous to capture voter ballots by promising residents a pseudo-Puerto Rican statehood status by disregarding and riding roughshod over the U.S. Constitution. They can't have it both ways: self-government with all the benefits of American citizenship; protection and economic integration without the obligations of federal franchise and federal taxation.

If commonwealth proponents argue, that Puerto Rico represents a nation whose culture and language is different from the U.S., then they should seek independence.

It is their illusion that commonwealth, an unrealizable myth, no more than the continuation of colonial status, is the only way to protect their identity. They conveniently overlook the experience of millions upon millions of immigrants who happily discovered that the constitutional protections afforded them within the states provided a measure of protection they found lacking even in their former homelands.

They renege the responsibilities and loyalties to the United States, and then brazenly demand all the benefits of American citizens under the United States Constitution, conveniently overlooking the fact that our Constitution does not provide for divided loyalties.

In this vein , the commonwealth party's ballot proposition clearly demonstrated the fiction of Puerto Rican self-rule under the U.S. Constitution by endorsing its enhancement and the mutuality of interests between the party and Section 936 companies. Calling for 936's extension was the not so subtle suggestion broadcast, that a vote for status quo was a vote for job security

The Independence Proposition:

The independence proponents were not any less than disingenuous in their ballot language. Independence promised:

ÀÀ unalterable future guarantees of dual
 U.S./Puerto Rican citizenship,
 ÀÀ the rights to continued use of U.S.
 currency,

ÀÀ free access to the US marketplace,
ÀÀ tax incentives for Puerto Rican
investments,
ÀÀ and the continuation of federal aid to the
island.

Their call for dual citizenship, integration into the United States' economy and free migration to the mainland are inconsistent with any and all socio-political notions of an independent nationhood. As with enhanced commonwealth, those relying on these definitions and conditions of independence are really asking for their cake and eating it, too. To a casual observer this amounted to nothing less, once again, than the proposition of statehood without taxation. Just under another legalistic rubric.

In essence both of the above ballot provisions promised more than they could deliver. They pandered to what were thought to be the voter's basest instincts. All the rights and benefits of statehood without any of the burdens, taxation in general. This was not lost on Congress, following the plebiscite's results.

The Statehood Proposition

The only ballot provision that was indeed accurate in its description was statehood. A straightforward statement of the objective. The fact that it managed to garner over 46 percent of the vote against self-serving verbiage enveloped in campaign promises and economic extortion is a testament to the integrity of our people and their commitment to American ideals.

2. The Voting Process Was Contaminated By The Interests Of Section 936 Beneficiaries:

Having established the uniformity of interests endorsed by the voters in the 1993 plebiscite, and explored the fallacious language contained in two of the proposals, I would be remiss if I did not touch on the process under which the balloting was conducted. The evidence is overwhelming that corporate powers interested, not in Puerto Rico's future, but in their own bottom lines, found all too willing allies among commonwealth proponents whose own interests lay in political survival rather than the best interests of their putative constituents.

This observation should not come as a surprise to anyone, after all we have seen every election in Puerto Rico influenced by Section 936. In league with the Commonwealth proponents, Section 936 companies regularly threaten employees with job losses, plant relocation's or automation, every time ballots are cast pitting commonwealth supporters against statehood or independence proponents.

Further, these same resources are mobilized every time Section 936 is examined by Congress. Our newspapers run full page company ads, letter writing campaigns are instigated, marches organized, both in Puerto Rico and the mainland, again brandishing the same threats if change comes. All funded with taxpayer's dollars.

And, these threats are not made in a vacuum. Hand in hand are the commonwealth advocates who place 936's continued existence at their disposal, in arguing against any changes in the status quo. Their party platform incorporates 936 as the economic backbone of our island, and their opponents are targeted as anti-labor.

Not unlike the sugar barons who opposed Hawaiian statehood, the 936 companies with their annual \$4 billion tax breaks had a large stake and financial motivation to oppose any changes in the status quo that would threaten their taxpayer financed corporate welfare handouts. Similarly, the lifeblood of

commonwealth, a constitutionally flawed mirage of bi-lateralism, elevated expediency and politics above principle. The survival of each was and is dependent on maintaining the status quo.

Therein lies their mutual admiration and interdependence. To witness these forces acting in unison requires little imagination. All throughout the 1993 plebiscite campaign the 936 companies operating independently and under the umbrella of their lobbying organization, the Puerto Rico USA Foundation, ran ads, letter writing campaigns and financed employee actions aimed at preserving 936 which, coincidentally, was under fire from the Clinton administration.

Taking to the floors of 936 factories they preach to the converted the economic consequences that would befall them and their employers should the opposition gain power or the status quo changed. Such efforts were not lost on employees, who were told that changes in 936 might mean plant closings and relocations and increased automation leading to job losses. The ads and company rhetoric reported daily in island newspapers hammered these themes home even to the most naive among us.

Nor was it lost on these same employees voting in the plebiscite, that the commonwealth ballot specifically endorsed, not just the retention of 936, but its extension. It did not take a degree in political science to connect the dots: voting for the status quo, i.e., commonwealth, was the only way to protect jobs. There could be no mistake that the connection between 936, commonwealth and the status quo was inseparable.

I ask, how can supporters of the status quo claim legitimacy from this tainted ballot process? My response: Under these conditions it was nothing less than a miracle that economic extortion coupled with political demagoguery failed to carry the day by a majority vote. Commonwealth, for the first time, was rejected 51 percent of the voters

ANALYSIS OF THE RESULTS OF THE PLEBISCITE

It is best summarized by Senator Simon and Representative Young who concluded that :_ " the winning enhanced commonwealth promises were neither politically, economically, nor constitutionally viable".

(The same could just as easily have been said of independence had it prevailed.)

ÀÀ the three basic aspirations of the islander's were endorsed by all.

ÀÀ statehood is the only legal, politically and economically viable option which provides the singular vehicle to achieve this end.

ÀÀ Commonwealth was rejected by 51% of the voters:

But miracles do not happen in a vacuum. Most Puerto Rican voters are politically and economically savvy enough to recognize a con job when they see one. They know that their future and that of their children, in fact all future generations of Puerto Ricans, is inexorably tied to a permanent relationship with the U.S. And that relationship can only be based on sharing in the benefits and obligations of full citizenship and full participation in the constitutional processes that provide the basis of the American dream.

They need to know that the current status quo, a veritable limbo situation in which Puerto Rico is neither fish nor fowl, with respect to its political legitimacy, has undermined their desire to be equal citizens of the United States, politically and economically. They need to understand that, so long as they are excluded from the national political process that provides representation in Washington, they will also be denied equal

economic opportunities, equal participation in federal programs and equal voice in their own destinies.

PLEBISCITE LESSONS

The only status option constitutionally, politically and economically viable that ensures the achievement of Puerto Rican's goals, as indicated in the 1993 plebiscite, is statehood. Both commonwealth and independence are long on rhetoric but, all too knowingly, unable to deliver on their promises.

Given the circumstances surrounding the plebiscite, and the ballot language options, both of which prejudiced the outcome, what should committee members and the American public conclude from the 1993 vote and what expectations should they anticipate coming from the Puerto Rican people?

It's self-evident that the issue of Puerto Rican status will not go away. Equally compelling is the conclusion that with the inevitable phase-out of Section 936, economic interests will no longer play a significant role, as they have in the last 25 years, in thwarting the self-deterministic views of the Puerto Rican people, by threatening their livelihoods if they vote against the status quo.

- Section 936 Is A Failure

They also know better than anyone on the mainland, or in the 936 corporate boardrooms, that section 936 has created an economic-political axis that, not only seeks to perpetuate its tax raids on the U.S. Treasury but most importantly, has failed to deliver on the economic promises that was its genesis. It is an idle boast that rings hollow in Puerto Rican's ears, that after \$70 billion in 936 tax credits and nearly 100 years of American rule, all that can be said is that our average standard of living is better than Haiti's!

- Congress Must Definitively Deal With The Status Issue

Painfully, no doubt for many of you, Congress will also have to deal with the status issue. You will no longer have the luxury of the cover of commonwealth, with which to obfuscate the matter, or delay an authoritative resolution of the destiny of America's longest held territory and its 3.7 million U.S. citizens.

Allow me to remind you that Puerto Rico has been a U.S. possession, subject to the Territorial Clause of the U.S. Constitution since 1898, which has been interpreted by the courts in the Insular cases to mean that Congress has sole authority to determine how the island is governed. Although this authority has been clear for nearly 100 years, a myth has been perpetuated that Congress and Puerto Rico's United States citizens can bypass the clear language of these laws and interpretations to grant self-governing authority to Puerto Rico. This fiction is the basis of the 'commonwealth' arrangement entered into in 1952. Puerto Rico, after nearly one hundred years of American rule, remains one of the last of the world's colonies. That it is maintained and countenanced by the West's bastion of self-determination and democracy exacerbates the hypocrisy. That this is self-evident is readily gleaned from both the Treaty of Paris in which Spain ceded Puerto Rico, the Territorial Clause of the U.S. Constitution and numerous judicial interpretations in the Insular cases.:

Territorial Clause

"The Congress shall have Powers to dispose of and make all needful Rules and Regulations respecting the Territory, or other property belonging to the U.S." (Article IV, Section 3, Cl. 2)

Treaty of Paris

"The civil rights and the political status of the native inhabitants of the territories hereby cede to the United States shall be determined by Congress." (Article XI, Para 2).

Insular Cases

"Yet this body, Congress and many in P. R. all of whom should know better, have for over forty years perpetuated a fiction that the supreme law of the land and court rulings related thereto, self-evident on their face, can be circumvented to serve narrow political and economic objectives.

At a time when America has been hailed as the champion of democracy and self-determination, the conqueror of evil empires and the tribune leading newly freed peoples, its not too much to ask that its elected representatives set a world example closer to home. We cannot expect the world to blindly follow our lead when the same rights and freedoms we pledge to others are denied to citizens here.

Puerto Ricans have fought for America in every war since 1917 -- and made the supreme sacrifice defending freedom abroad. They have the right, they've earned it, to finally know if, when and how, they can achieve final equality with other citizens and with the fifty states.

It is incumbent upon Congress to let us know where we stand. It's not enough after nearly 100 years to tell us that the United States is unwilling or unable to define the conditions for our entry into the union or for independence. It's not enough to go on with the charade of commonwealth -- a political status not dissimilar to an emperor without any clothes.

Unless and until Congress assumes its responsibilities, Puerto Ricans will continue to be subject to status proponents that promise the sky with never any possibility of delivering anything. Secondly, it's not enough to even set the parameters for status selection, Congress must also agree to abide by the legitimately aspired results. If a majority of voters select one of the feasible status alternatives, Congress must assent in advance, to its expeditious implementation. Otherwise this body will be no more responsible than those on our island who offer empty promises.

This means, of course, that whatever hurdles are inherent in any of the propositions, they must be cleared prior to a status vote. Each status option and its language, if that choice becomes the voter's own, must be reviewed with a view toward Congressional implementation, through the appropriate legislation.

In the case of independence, for example, Congress may state under what on-going political and economic relations it might grant Puerto Rico its complete autonomy. However, Puerto Ricans should be under no illusion that such conditions are anything but general guidelines and be forewarned that any and all negotiations to that end will only take place after a Puerto Rican vote, since one Congress can't bind another.

As for commonwealth, Congress must be honest with our people and let them know just what the Constitution, the courts and various treaties have said about such an arrangement's efficacy. If we want complete autonomy within the U.S. orbit, it's an impossibility. If we want veto power over Congressional actions regarding the island, it's an impossibility.

Finally, if we truly believe we are a nation apart, we can't pledge allegiance to the U.S. and the flag for which it stands. There is no room or accommodation under the American flag for two loyalties even though there is, indeed, room to accommodate and protect the cultural differences of the great mosaic that is at once both the strength and attraction of the U.S.

- Congress Must Implement Our Status Decision

And if statehood is to be the choice, then Congress owes us the duty to admit P. R. as the fifty-first state. Discussions about language and cultural differences, party orientation, economic assistance, geography and other distinctions -- without a difference -- must be resolved beforehand. And, candidly, they have been resolved favorably in previous instances where putative states bearing similar challenges to national uniformity were deemed fit to enter the union.

These committees, charged with oversight over our island territory, must begin the final authoritative dialog that leads Puerto Rico and Puerto Ricans to a final and conclusive closure of the relationship between the island and Washington which has been its ruler since 1898. It is a large and historic responsibility and one which congress, the mainland American people and the 3.7 million U.S. citizens of our island can no longer shirk.

We look to you to find the facts and set the policies that will help us chart our course. It was for these hard decisions that you were elected. You should look to us to make the ultimate decision that will determine whether after nearly 100 years of American rule we will finally embrace union with the new world's leader, or set sail on our own independent course. This is the hard decision we must make under definitive guidelines; It is one we are prepared to make after 500 years of colonial status.

CONCLUSIONS

Therefore, one must conclude:

1. ...that the circumstances under which the 1993 plebiscite was held, and the ballot provisions describing two of the status options were so contaminated by external coercive factors and pie-in-the-sky promises as to be so fatally flawed, so to render the results null and void.

a)

2. ...any future plebiscite must be free of both misleading ballot provisions and any intervention by economic interests committed to the status quo who can use the workplace to coerce job holders to vote not on principle but for principal.

a)

3. ...it is clear that Puerto Ricans legally have only two legal status choices, statehood or independence. They must decide which will provide the democratic guarantees they have fought for and the economic opportunities they deserve.

a)

1. ...Congress also has only two choices with respect to the future relationship of the U.S.

2. with Puerto Rico:

ÀÀ a legal obligation to recognize the reality that there is no middle ground between Puerto Rico entering the union or going it alone

ÀÀ a commitment to abide by the results of a plebiscite in which these options are offered.

x

1. ...the plebiscite must be binding on both Puerto Rico and Congress.

a)

2. ...a moral obligation, if statehood is chosen, to expedite the admission process.

a)

It is clear that the 1993 plebiscite was null and void with respect to determining the will of the 3.7 million Puerto Ricans, all American citizens, who reside in the United State's oldest territory, the 100 year old colony of Puerto Rico.

RECOMENDATIONS

1. Congress should establish the policy that Statehood or Independence are Puerto Rico's only options.

The myth of commonwealth, an extra-legal fabrication, foisted upon 3.7 million U.S. citizens was created to whose benefit ?

ÀÀ Commonwealth serves Congress by postponing its moral obligation to accede to the constitutional aspirations of the 3.7 million U.S. citizens of Puerto Rico: without this fiction, Congress would have to grant Puerto Rico statehood

ÀÀ Commonwealth serves political interests in Puerto Rico who covet power more, than serving the interests of its constituencies: without this fiction they would be powerless.

ÀÀ Finally, commonwealth serves Section 936 companies economic interests since any change in Puerto Rico's status would end the tax credit: without this fiction the \$3-\$4 billion in annual tax credits extracted from the U.S. Treasury would be lost.

But Washington must not abdicate its responsibilities even under this enlightened approach. It must come to grips with constitutional reality and recognize that commonwealth is a myth and tell the Puerto Rican people so much.

2. Congress should introduce and pass legislation authorizing a self determination process for the US citizens in Puerto Rico in which any and all future plebiscites must entail the only two constitutional options: statehood or independence. Congress must let us know this.

But that is not enough: 3. We also demand that Congress accede to the will of the people of Puerto Rico, if statehood is chosen Congress is morally obligated to grant statehood, the last imprimatur of parity with the fifty states, having bestowed citizenship and demanded of us the supreme sacrifice in five wars.

Correspondingly, we have earned that star. No American territory has remained a colony as long as Puerto Rico, without obtaining entry into the union. No United States citizens have given so much of their commitment to the U.S. constitution for so long and yet have remained second class citizens in their own land.

If Congress is unwilling, by its overt actions over the past 100 years, to abide to a decision of the Puerto Rican people, through a process of self determination, to seek entry into the union, then we must prepare to go it alone. We have earned the right to a fifty-first star, Congress has held it out, there must be no renegeing on that promise.

Make no mistake !

ÀÀ Congress by refusing in 1993 to level with the Puerto Rican people as to what rights and obligations were entailed in their status options, evaded its constitutional responsibilities under the Territorial Clause.

ÀÀ As a pre-condition for that status plebiscite, and for any others in the future, it must clearly enunciate what every first year law student knows to be true:

4. There is no middle ground between statehood and independence unless you're for colonization.

And....Congress must say in no uncertain terms that it will abide by the results. Unless Congress is willing to categorically state that it will seriously entertain Puerto Rican statehood if that's what the voters decide, to have us go through another plebiscite is an empty gesture and an exercise in futility.

5. Future Status Plebiscites Must be Process Neutral

It goes without saying that any future plebiscite must truly reflect the freely determined will of the voters, having cast their ballots according to matters of conscience. To assure that end, influence from corporations whose tax exemption is tied to the status of Puerto Rico must be eliminated both tacitly and factually from the self determination process.

Further, during the transition from Section 936 to the new economic stimulus package, corporate and individual contributions on behalf of any economic interest must be prohibited in any political campaign or plebiscite involving the island's status. Only in this manner can voters freely exercise their right to determine which, if any, status option is appropriate.

Section 936, an economic failure, must be replaced with an economic development plan along the lines suggested by Representative Young: enterprise zones, wage credits, full federal program parity and taxation of island residents.

The truth be told that Section 936 has been an economic failure. It has neither created the jobs nor the industries to drive Puerto Rico's economic development. The 936 companies acknowledge as much when they claim economic success, at a price of \$4 billion a year in taxpayer dollars, by comparing Puerto Rico's per capita income to that of Haiti! At a cost to the U.S. Treasury of \$70 billion since 1973 one would expect that Puerto Ricans would enjoy a standard of living better than half Mississippi's, but that is not the case.

Thus, we are pleased that the House Ways and Means Committee has determined to end Section 936. Thus, 936 companies will not have an interest in preserving the status quo and elections will be free of the economic coercion that has distinguished past contests and influenced workers in their choice of status options.

However, we recognize the need to provide for an orderly economic transition from Section 936 to new development options. Congress should look closely at one such proposal that Representative Young has talked of introducing.

In exchange for 936 he would phase-in full state-like programs for Puerto Rico and encourage private sector growth through capital grants for infrastructure development and through private and non-profit enterprise funding to spur new industries.

Young's proposal also subjects island residents to federal taxation. Combined with the \$3 billion savings from the 936 tax credit, the U.S. Treasury would see no diminution in revenues. Nor will Puerto Rican's see any change in their tax burden as program costs are shifted to Washington.

During the transition period, to assure that 936 companies remain neutral, Congress should pass legislation prohibiting hard or soft dollar corporate contributions to status plebiscite campaigns in Puerto Rico. Any use of corporate funds or services or facilities or materials should be prohibited, either directly or indirectly, to one or more parties to the contest or in any way independent of such parties to influence the outcome of any such vote.

With 936 reformulated, Puerto Rico will enjoy dynamic new economic growth that will prepare it for a new plebiscite, in which either statehood or independence will be the sole options. Without the influence of 936 economic interests, the people of Puerto Rico will finally be able to freely express their wills and choose the option of statehood that best fulfills the status to which they have aspired, earned and been promised.

Thank you.

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