

**COMMITTEE ON ENERGY AND NATURAL
RESOURCES**

Thursday, May 6, 1999

9:30 a.m. - SH-216

**Hearing To Consider The Results Of The
December 1998 Puerto Rico Political Status
Plebiscite**

Statement of The Honorable Pedro Rosselló, Governor of Puerto Rico

Mr. Chairman, and other distinguished members of the United States Senate Committee on Energy and Natural Resources:

My name is Pedro Rosselló. Since 1993, I have been Governor of Puerto Rico. As Governor, I last appeared before this Committee on April 2, 1998, during a workshop on The United States-Puerto Rico Political Status Act.

Many of you will recall that the chief Senate sponsor of that bill was the Honorable Larry Craig of this Committee, and that a companion measure had been approved by the House of Representatives on March 4, 1998.

Many of you will likewise recall that, during the 105th Congress, The United States-Puerto Rico Political Status Act never emerged from this Committee nor reached the Senate floor.

That omission had the effect of aborting an initiative which had come closer than any before it to laying a firm, fair foundation for the resolution of a century-old American dilemma.

It is an American dilemma to which this Committee has devoted a prodigious amount of time - especially during the past ten years.

It was exactly ten years ago that the leaders of all three Puerto Rico political parties issued a unanimous appeal to The White House and Congress. Those political leaders requested substantive action that would permit the people of Puerto Rico to make an informed decision on our ultimate civic destiny.

This Committee -- under the leadership of then-Chairman J. Bennett Johnston Jr. of Louisiana and then-Ranking Republican James A. McClure of Idaho -- grappled earnestly with that complex topic for the better part of two years.

Although no legislation emerged from those diligent efforts, the endeavor definitely did help set the stage for the unprecedentedly constructive Puerto Rico status bill that the House passed last year as H.R. 856.

The Senate Committee on Energy and Natural Resources, therefore, has made a very significant contribution to the arduous Congressional process of addressing and surmounting the challenges posed by what has accurately and succinctly been described as "American democracy's unfinished business."

And today, Mr. Chairman, I am grateful to you and to the Committee for building upon that legacy by holding this hearing. In speaking as Governor, I must commence my presentation by placing the December 13, 1998 Puerto Rico political status plebiscite within its proper historical context.

When I first stood for election to the governorship, in 1992, the tripartite status initiative of 1989 through 1991 was fresh in the collective memory of the Puerto Rican people. Moreover, our voters had not been formally consulted on political status since 1967.

Accordingly, I promised that -- if elected -- I would ask our Legislative Assembly to take immediate action on a status-plebiscite bill.

And so it was that we held a plebiscite in 1993.

However, that venture turned out to be futile in two important respects.

First, and most obviously, it proved futile because no political status option polled an absolute majority of the votes; therefore, it failed to satisfy the fundamental democratic precept regarding "government by consent of the governed."

But there was a second futility factor, as well; a factor that was more subtle than the first, but no less important. Indeed, had it not been for this second factor, there probably would have been an absolute-majority winner.

Factor #2 entered the picture because, in a good-faith attempt to preserve the unanimous consensus that had been instrumental in launching the 1989 self-determination quest, my administration made a point of inviting Puerto Rico's three political parties to define for themselves the political status options that they would endorse in our 1993 plebiscite.

Regrettably, that good-faith gesture resulted in the inclusion on the ballot of a "commonwealth" definition that was utterly unrealistic. And when I say "utterly unrealistic," I do so in the context of parameters that this very Committee clearly stipulated during its extensive examination of the subject from 1989 through 1991.

Undaunted by that Congressional record, the proponents of "commonwealth" campaigned in 1993 on behalf of a definition which they literally proclaimed was a "best-of-two-worlds" solution to the status dilemma; a solution that would have imbued Puerto Rico with many of the

benefits of U.S. statehood and many of the prerogatives of independence, while exempting Puerto Rico from most of the responsibilities inherent in both of those options.

The 1993 "commonwealth" ballot definition, in other words, amounted to a "wish list." It was both politically unattainable and Constitutionally inadmissible.

So it is that the 1993 plebiscite failed in its objective. Although "commonwealth" ostensibly won that plebiscite (polling 48.6% of the vote, slightly ahead of U.S. statehood's 46.3%), it is worth noting that nobody from the "commonwealth" party had the audacity to come up here to the Nation's Capital afterward and argue for Congressional enactment of that party's "best-of-two-worlds" platform. Instead, what happened was that the Legislative Assembly of Puerto Rico adopted a concurrent resolution which formally requested that Congress respond to the outcome of our 1993 status consultation.

The 104th Congress, upon convening in January 1995, acknowledged our legislature's petition: that Congress held hearings and drafted a bill, which got the ball rolling on a process that culminated in last year's House passage of The United States - Puerto Rico Political Status Act.

And it was that comprehensive measure which provided the framework for what ought to have been a "foolproof" plebiscite in 1998.

Under The United States - Puerto Rico Political Status Act, this nation could have converted the historically-clouded 100th anniversary of America's unilateral seizure of Puerto Rico into an inspiring occasion for undiluted celebration; this Nation could have observed that centennial by empowering our territory's electorate to make a dignified, meaningful choice among destiny-options delineated for that express purpose by Puerto Rico's Constitutionally-designated overseer -- namely, this institution: the United States Congress.

However, in the absence of that legislation, the 1998 centennial observance unfolded against a different backdrop altogether. And consequently, a shadow fell over the celebration.

We went ahead with our commitment to hold a plebiscite. But, lacking the empowering impetus of a Federal mandate, we were unable to employ a foolproof -- or "fail-safe" -- format.

Why? Because a 1993 Puerto Rico Supreme Court edict obliged us to offer our voters a fifth -- undefined -- alternative, in addition to the options that were defined in H.R. 856.

More than 71% of Puerto Rico's eligible voters participated in the plebiscite on Sunday, December 13, 1998. And in February 1999, I delivered -- to the President of the United States, the Speaker of the House of Representatives and the Majority Leader of the Senate -- copies of the official Puerto Rico State Elections Commission document that certified the outcome of the plebiscite. I understand that each of you has had access to those data, and I am confident that they will be analyzed in detail by the panelists from whom you will be hearing shortly.

To my mind, We the People of Puerto Rico dispatched two forceful and unequivocal messages by means of our most recent plebiscite. The first of those messages was irrefutably transmitted "loud and clear."

A total of over 1.5-million persons cast ballots. Of that total, exactly 993 voters marked their ballots in favor of our current status as a territorial "commonwealth."

This means that, for every 1,577 persons who participated in the plebiscite, only one person manifested support for the status quo; and that level of support equals considerably less than one-tenth of one percent.

Mr. Chairman and members of the Committee, I respectfully submit that this single fact speaks volumes.

During this hearing, it is safe to assume that a variety of interpretations will be offered regarding the significance of the plebiscite outcome.

I would urge, however, that - in evaluating those interpretations - you keep foremost in your minds this one salient fact.

Because whatever else our plebiscite may have signified, it indisputably constituted a virtually-unanimous rejection of the status quo.

Our people's massive disapproval of the status quo underscores their contempt for what my predecessor has described as a "democracy deficit" that afflicts Puerto Rico's current status.

In the July/August 1998 edition of Foreign Affairs magazine, former Governor Rafael Hernandez-Colon published an article entitled, "Doing Right by Puerto Rico: Congress Must Act-99 In that article, this lifelong advocate of "commonwealth" status made the following affirmation about the political status debate on our island: "All factions do agree on the need to end the present undemocratic arrangement, whereby Puerto Rico is subject to the laws of Congress but cannot vote in it."

So there you have it. The political status with which Puerto Ricans must contend today, and with which we have had to contend -- in one guise or another -- for the past 100 years, is a political status that We the People of Puerto Rico emphatically reject as an alternative for the future. And that categorical rejection could not have been more firmly articulated than it was on December 13, 1998.

Now let us move on to the second forceful and unequivocal message that emerged from our recent plebiscite.

This second message pertains to the need for a responsible, conscientious definition of the fifth ballot-option that was vacuously denominated, "NONE OF THE PRECEDING."

I readily concede that many voters selected that option for reasons having nothing whatever to do with political status.

Nevertheless, it must not be ignored that one of our two principal political parties urged voters to mark their ballots in favor of "NONE OF THE PRECEDING" - while simultaneously urging that the people of Puerto Rico be granted an opportunity to vote on a certain specifically-defined option that had been excluded from the ballot because it was not incorporated into H.R. 856, the bill which had been approved earlier that year by the U.S. House of Representatives.

Both H.R. 856 and our plebiscite ballot had defined fully the meanings of U.S. statehood, independent nationhood, and free association under separate sovereignty, as well as the current territorial "commonwealth" arrangement.

But absent altogether was the option being supported by this major political party that was urging our electorate to vote in the blank, empty fifth column.

For precisely that reason, a high priority of this 106th Congress should be to examine thoroughly the legislative viability and the Constitutional validity of this additional alleged option -- this "stealth option" -- which was surreptitiously promoted during our latest plebiscite via the "NONE OF THE PRECEDING" column on our ballot. I respectfully invite this Committee to take a hard, close look at this "fifth column" alternative - an alternative which was formally embraced by the Governing Board of Puerto Rico's Popular Democratic Party on October 15, 1998, and which was presented to our people as that Party's blueprint for "developing" the "commonwealth" status.

Take a hard, close look at what this "NONE OF THE PRECEDING" "stealth option" promises to the Puerto Rican people.

- Observe that it calls for "a compact that cannot be invalidated or altered unilaterally"; a compact that entails "recognition that Puerto Rico is a nation," and which establishes that Puerto Ricans "constitute a specific nationality distinguishable from that of any other nation."
- Observe that this option stipulates that "Persons born in Puerto Rico are Puerto Rican citizens by birth," while likewise stipulating that "People born in Puerto Rico will continue to be citizens of the United States by birth and this citizenship will continue to be protected by the Constitution of the United States and by this compact and will not be unilaterally revocable."
- Observe that these dual citizens are to "be protected by all the rights, privileges and immunities granted by the Constitution of the United States and the Commonwealth."
- Observe how this compact would guarantee that the "Federal programs that provide social and education assistance directly to Puerto Rico's residents -- such as the Nutritional Assistance Program, Pell Grants and educational loans, among others -- will continue and will be guided by applicable Federal and State regulations."
- Observe that, under this "fifth column" format, "the United States is committed to providing the Commonwealth an annual block grant adjusted for inflation," as well as

"the creation of special incentive programs for investment in the island"; and nowhere is there any mention of making any contribution through the payment of Federal taxes.

- Observe also, however, that "The Commonwealth will have control over international trade" and "To that effect, it will have the capacity to enter into -- among others -- commercial and tax agreements with other countries." Furthermore, "The Commonwealth will be able to enter into international agreements and belong to regional and international organizations... And what about the United States District Court for the District of Puerto Rico? On that score,
- Observe that -- under this Popular Democratic Party proposal -- "The Federal Court will have jurisdiction over matters that arise from provisions of the Constitution of the United States and of the Federal laws that apply to Puerto Rico, consistent with this compact and not in violation of the dispositions of the Constitution of Puerto Rico." Finally,
- Observe too that this compact contemplates the creation of "a specific agreement regarding the applicability of legislation approved by the Congress of the United States after the adoption of the compact and which the people of Puerto Rico desire to have made applicable to Puerto Rico."

All of the above items are contained in the "other option" that was presented to the Puerto Rican people as a reason for endorsing the ballot column labeled "NONE OF THE PRECEDING."

All of the above items were duly ratified by the Popular Democratic Party Governing Board, two months before our people went to the polls. And this "compact" is the only Puerto Rico destiny option that has yet to be studied and declared legitimate by Congress and by judicial precedent.

Accordingly, I respectfully submit that -- in addressing "American democracy's unfinished business" -- this Committee should place a high priority on scrutinizing this "other option," which has been officially endorsed by the leadership of Puerto Rico's pro-"commonwealth" political party.

OUR NATION'S MOST BASIC CIVIC VALUES demand that neither this Committee, nor the Senate, nor the Congress as a whole shirk the Constitutional duty to "make all needful rules and regulations respecting the territory and other property belonging to the United States," as set forth in the Constitution's Article AM Section 3, Clause 2.

On December 24, 1998, The Washington Post analyzed last year's plebiscite in an editorial. Several key passages from that essay merit repeating:

"The biggest vote, 50.2% [sic], went to a 'none of the above' catch-all category supported in good part by pro-commonwealth voters who were indulging a best-of-both-worlds fantasy definition of commonwealth (many privileges, few obligations) that Congress would never approve."

"The plebiscite was a flop. It measured only erratically, not conclusively, the sentiment on the island."

"But it is not only the Puerto Ricans who have been unable to get their act together. Congress is at similar fault."

"Here lies the fault that must be remedied. Congress must select and fairly define the Puerto Rican status choices it would be prepared to accept."

"[N]othing less will satisfy the obligation to convert an imperial property into a place of dignity for American citizens who are equal in rights to all others."¹

I totally agree

A day later, Christmas Day, the New York Times weighed in with an editorial of its own. Here is some of what The Times had to say:

"The only clear message from the recent plebiscite in Puerto Rico is that the question of the island's political future remains deeply divisive. Congress's failure to sponsor orderly balloting that would give the island's 3.8 million voters a meaningful say about their political status has not helped."

"Much of the debate has focused on what is possible under a commonwealth status."

"Congress can reduce the confusion by crafting a referendum with input from Puerto Rican leaders on all sides that accurately reflects the options available. 'None of the above' does not move Puerto Ricans any closer to defining their future." I agree.

Now, once more, let me quote a passage from last summer's Foreign Affairs article by my immediate predecessor:

"It is morally unacceptable, unfair, and harmful to Puerto Rico and the United States for Congress to relegate the issue to business as usual - that is, do nothing, wait for a Puerto Rican initiative, play with it for a while but take no action, wait for the next initiative, and repeat the cycle. Such insensitivity undermines Puerto Rico's capacity for self-government, inflicts considerable hardship on its society, and drains the U.S. Treasury."

Again, Mr. Chairman and members of the Committee, I agree with those declarations by Rafael Hernandez-Colon, who served as a pro-"commonwealth" Governor of Puerto Rico.

Last but not least, former United States Attorney General Dick Thornburgh has carefully scrutinized the results of our 1998 plebiscite; and the following sentences are excerpted from essays that Mr. Thornburgh has written on the topic.

"Suggestions that a large but indecipherable vote for 'None of the Above' constitutes approval of the status quo border on the absurd..."

'... [O]nly Congress can define terms for statehood, separate nationhood or continuation of the current status so that informed self - determination is possible."

"Territorial history demonstrates that the recent vote in Puerto Rico was but one step in a larger self - determination process for which Congress is ultimately responsible. For example, in the territory of Wisconsin the vote for statehood was 25% in 1842, 30% in 1843, and 22% in 1844. After each of those setbacks, pro-statehood leaders petitioned Congress to set the terms for admission so a more informed vote could occur (just as Puerto Rico's elected leaders are doing). Once Congress responded by defining the terms for admission, the pro-statehood vote in Wisconsin soared to 83%, resulting in admission."

Mr. Thornburgh goes on to cite an analogous situation in the territory that eventually became the State of Washington. There, statehood polled 47% of the vote in 1869 and 30% in 1871. Not until after Congress defined the terms for self - determination did a 60% majority opt for statehood.

In conclusion, there is one more paragraph by Mr. Thornburgh that should be quoted in its entirety.

"So instead of being puzzled because elected statehood leaders in Puerto Rico are asking Congress to act on the basis of the recent plebiscite, let's remember that America became the greatest nation in the history of the world by empowering people with the tools for informed self - determination. Sooner or later Congress will have to do the same for Puerto Rico, and the sooner the better for Puerto Rico and the nation as a whole."

To that I can only add, Amen.

Thank you, Mr. Chairman and members of the Committee.

SENATOR THOMAS: You refer always that the language wasn't clear. What did you do about that? You did this in '93. The results were basically the same. You apparently went through the same process. You are the governor. Why didn't you change things so that you would have had fair questions?

GOVERNOR ROSSELLÓ: Well, let me again go over a point that I made in my statement. In 1993, we allowed each political party to define its own formula. I did that. I sent the bill to our legislature. I assume full responsibility. But now [I]t say it was a major mistake, because you cannot allow simply the political parties to set up a wish list of what they want.

If I had acted as a statehooder, under that premise I could have probably defined a statehood where Puerto Rico would come in with four Senators instead of two Senators, but that is not constitutionally valid. So yes, I agree. In my responsibility, I made a mistake in 1993 by allowing the political parties to make the definition.

I think that mistake has to be corrected and the definitions have to be placed where they belong, in the Congress. In 1998, again we used Congress's definitions, and those that were in H.R. 856.

We took them and we put it in our ballot. But I must say that in the bill that I presented to the legislature there was no fifth column.

The fifth column was added by our legislature on the basis of jurisprudence that was established by our Supreme Court, State Supreme Court, that said that in any event like this a fifth column, maybe in the case, for example, of a candidate a write-in column, should be added.

That was a definition for a blank space that was not gone over by this Congress and was not included in H.R. 856. My responsibility was to take whatever Congress did, and I had hoped that this committee and this Senate had acted in accordance with the House to make sure that this would have been mandated.