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1973-76; 1985-92

Testimony

Before the Committee on Resources

United States House of Representatives

Hearing on the Report by the President's Task Force on

Puerto Rico's Status

April 27, 2006

The Report by the President's Task Force on Puerto Rico's status denies self-determination to the people of Puerto Rico. The strategy consists of demeaning the dignity and constitutional integrity of commonwealth in the report by characterizing it as a territory under the plenary powers of Congress, by which Congress can deprive Puerto Rico not only of its Constitution but even of American citizenship. The compact through which we entered into the commonwealth relationship is debased by proclamation as a meaningless document which does not bind the Congress and which it need not respect under the Constitution of the United States.

Under this premise the Task Force would provide for a Federally sanctioned plebiscite in which the people of Puerto Rico will be asked to state "whether they wish to remain a territory subject to the will of Congress or to pursue a constitutionally viable path toward a permanent non territorial status with the United States".

It is obvious that the Popular Democratic Party which in 1950 lead the people of Puerto Rico to accept a Congressional proposal --Public Law 600-- to end colonialism through a compact under which we would have the same constitutional sovereignty as a state of the union and which would bind the Congress to exercise its powers over Puerto Rico under the terms of the Federal Relations act, can not participate in such a plebiscite.

It is obvious that the PDP can not be a part of this when we consider that the Party assisted the U. S. delegation in 1953 when it moved the U. N. to strike Puerto Rico from the roster of colonial peoples because it had achieved a non colonial status through the legally binding compact of Commonwealth.

It is all the more obvious that PDP which has defended the constitutional validity of Commonwealth in every plebiscite or referendum held in Puerto Rico from 1950 to this day, can not vote for a proposition which would deprive Puerto Ricans of all the political rights they acquired under the compact.

The petty political maneuver of th is Report is crass and repelling. You simply can not deprive half of the people of Puerto Rico of their right to vote by defining the proposition in the plebiscite for self-determination in such a way as to make voting for it a denial of the legal and democratic principles under which Commonwealth stands.

Just to get a sense of the monstrosity of the proposition lets analyze the statement in the report that Congress under Commonwealth may "determine the island's governmental structure by statute as it has done for Guam or the Virgin Islands". In other words that Congress can repeal the Constitution enacted by the people of Puerto Rico and provide for our governance through a new organic act. For instance a new Foraker Act such as the one it approved in 1900 where we had no U. S. citizenship, the Governor and the principal cabinet officers were appointed by the President of the United States, where the Upper House was an Executive Council appointed by the President, and only the House of Representatives was elected by the people.

Can we take this fear tactic seriously? Not only because it is politically implausible, but also because it is legally impermissible to undo the constituent act of Puerto Rican voters who framed our Constitution and because it would deprive our people of their right to elect their senators and their governor. From either point of view, such a proposition is absolutely ridiculous, absurd, and outrageous.

The Supreme Court of the United States has affirmed in Rodríguez v. Popular Democratic Party, 417 U. S. 1(1982), that the voting rights which Puerto Ricans enjoy to elect their Governor, Senators, and Representatives are protected by the Constitution of the United States. What kind of advise did this Presidential Task Force have which allowed them to in effect affirm that Congress can take away our voting rights?

The Report is so partisan, biased, superficial, and ill founded that it does a grave disservice to the United States and to Puerto Rico. In order to characterize Puerto Rico as a colony under the plenary powers of Congress, it blatantly ignores Federal Court decisions on the local application of federal laws and the position of the U. S. on this matter before the United Nations in 1953.

Since the early days of the Republic, the Supreme Court of the United States has distinguished between the states and the territories in the application of federal laws. In the case of states, Congress can not legislate directly on local matters because the states are sovereign political entities. With regards to the territories, Congress can legislate directly on local matters because they are not sovereign entities. They are political creatures of Congress governed under Organic Acts approved by Congress. The Task Force proclaims that Puerto Rico is a territory and therefore "Congress could legislate directly on local matters".

So it was in Puerto Rico from 1900 to 1952. During that period we were first governed under the Foraker Act and as of 1917 under the Jones Act. We were not sovereign within the U. S. constitutional system. All of this changed when Congress entered into a compact with the people of Puerto Rico in 1952. Through this compact we, not the Congress, created the Commonwealth of Puerto Rico. The Commonwealth has been explicitly recognized as a sovereign entity like the states of the Union by the Supreme Court of the United States. In Examining Bd of Engrs Architects and Surveyors v. Flores de Otero, 486 US 572, 597 (1976) the Supreme Court of the United States said that, under the compact: "Congress reliquinshed its control over the organization of the local affairs of the island and granted Puerto Rico a measure of autonomy comparable to that possessed by the states".

The laws of Congress do not apply locally in Puerto Rico because the Commonwealth is, within the U. S. constitutional system, a sovereign entity. There is a long line of federal cases extending back to 1953 which the Task Force has blithely ignored. These federal cases starting with Mora v. Mejías, 206 F 2d. 377, 387 (1st. Cir. 1953) leading up to Romero v. United States, 38 F 3d. 1204, 1208 (Fed. Cir. 1994), have explicitly ruled that Puerto Rico is no longer a territory and the laws of Congress are no longer locally applicable in Puerto Rico since we have to be treated as a state.

Puerto Rico's relationship by compact to the United States is a bilateral legally binding relationship protected by the U. S. Constitution. This proposition is wrongfully denied by the White House Report on the status of Puerto Rico.

The binding nature of the compact must be determined by a functional and historical analysis of the territorial power vested in Congress. This analysis bears out that Congress can divest itself of the territorial power by enabling territories to enact their own Constitution and join the Union, by granting independence to the territory, or by incorporating the territory and thus triggering the constitutional limitations on its power. And the same by compact as was the case of the Northwest territories and the Ordinance enacted by the First Congress under the U. S. Constitution in 1789.

The use of compacts was very frequent during the first century of American history. Compacts were made

among the States and by the States with Congress. Indeed a congressional practice may be said to have developed qualifying admissions to statehood through compacts.

The case of Green v. Biddle, 8 Wh. 1, 5 L. Ed. 547, decided in 1823 is an excellent example of the use of compacts in early American history to regulate relations among sovereigns. When Virginia agreed to the formation of Kentucky from within her territory, a compact was entered between the inchoate State ofKentucky and Virginia regarding the applicability of Virginia law to interests in land in Kentucky. Kentucky passed an act inconsistent with the compact. It was challenged in the courts. To defend the action taken by Kentucky it was argued to the Supreme Court that the compact was invalid because it surrendered rights of sovereignty which were inalienable. This is the same argument used to challenge the validity of the Commonwealth compact.

The Supreme Court said that this contention "rests upon a principle, the correctness of which remains to be proved. It is practically opposed by the theory of all limited governments, and especially of those which constitute this Union. The powers of legislation granted to the Government of the United States, as well as to the several State governments, by their respective constitutions, are all limited. The article of the Constitution of the United States, involved in this very case, is one, amongst many others, of the restrictions alluded to. If itbe answered that these limitations were imposed by the people in their sovereign character, it may be asked, was not the acceptance of the compact the act of the people of Kentucky in their sovereign character? If then, the principles contended for by Kentucky be a sound one, we can only say that it is one of a most alarming nature, but which, it is believed, cannot be seriously entertained by any American statesman or jurist". 5 L. Ed. 569. In a similar fashion the contention that the compact with the people of Puerto Rico is not binding is one that can not be seriously entertained.

It also was argued to the Supreme Court that the compact did not come within the constitutional prohibition to impair the obligation of contracts. To this the Supreme Court answered: "A slight effort to prove that a compact between two States is not a case within the meaning of the Constitution, which speaks of contracts, was made by the counsel for the tenant, but was not much pressed. If we attend to the definition of a contract, which is the agreement of two or more parties, to do, or not to do, certain acts, it must be obvious that the propositions offered, and agreed to by Virginia, being accepted and ratified by Kentucky, is a contract. In fact, the terms compact and contract are synonymous; and in Fletcher v. Peek, the Chief Justice defines a contract to be a compact between two or more parties. The principles laid down in that case are, that the Constitution of the United States embraces all contracts, executed or executory, whether between individuals, or between a State and individuals; and that a State has no more power to impair an obligation into which she herself has entered, than she can the contracts of individuals. Kentucky, therefore, being a party to the compact which guaranteed to claimants of land lying in that State, under titles derived from Virginia, their rights as they existed under the laws of Virginia, was incompetent to violate that compact, by passing any law which rendered those rights less valid and secure". 5 L. Ed. 570.The use of compacts during the first century of American history to regulate the relationship between Congress and territory, between Congress and States, and between States and other States bears out that the concept of compact is a hallowed institution of American constitutional heritage, firmly rooted in legislative practice and in the precedents of the courts.

The Task Forces' impudent falsehood on the juridical nature of Commonwealth is not the only infirmity of the document. The Report flies in the face of the assertions made by the United States in the Cessation Memorandum it presented to the United Nations General Assembly in 1953. Under the treaty creating the U.N., those members that have colonies must report annually to the U. N. on the advances made in the colonies towards self-government. Thus, the United States undertook through treaty to develop a full measure of self-government for Puerto Rico. Commonwealth was one way under the treaty to reach self-government. he U. N. Treaty is the supreme law of the land on the same footing of supremacy as the Constitution. The Task Force Report denies that this nation had the power to discharge its treaty obligations by entering into a binding compact for self-government for Puerto Rico. If the United Nations recognizes Commonwealth as a status of self-government it must be because the member nations have sovereign powers to affect such an association with dependent territories. Will the United States be the exception? Who so mighty that its sole power supports the entire apparatus of the United Nations and yet so weak that it cannot comply with an obligation under the charter?

The U. S. filed reports on the advancement to self government forPuerto Rico up to 1952. In 1953 it presented a Cessation Memorandum informing the General Assembly that it would cease submitting such information because Puerto Rico had become a Commonwealth. The Cessation Memorandum noted that Public Law 600 had expressly recognized the principle of government by consent, and declaring that it was

"adopted in the nature of a compact", required that it be submitted to the voters of Puerto Rico in an island-wide referendum for acceptance or rejection. The Cessation Memorandum also noted that Public Law 447, "in its preambular provisions, recalled that the [Public Law 600] 'was adopted by the Congress as a compact with the people of Puerto Rico. ...'".

In describing the principal features of the Constitution of the Commonwealth, the Cessation Memorandum noted that the new Constitution, as specifically approved by Congress, expressly provides that it "shall be exercised in accordance with [the people's] will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States of America". The Memorandum also advised the United Nations that the Puerto Rico Legislature had been given "full legislative authority with respect to local matters".

Under the heading "Present Status of Puerto Rico", the Cessation Memorandum declared:

By the various actions taken by the Congress and the people of Puerto Rico, Congress had agreed that Puerto Rico shall have, under that Constitution, freedom from control or interference by the Congress in respect of internal government and administration, subject only to compliance with applicable provisions of the Federal Constitution, the Puerto Rican Federal Relations Act and the acts of Congress authorizing and approving the Constitution, as may be interpreted by judicial decision.

Finally, Mason Sears, the United States Representative to the Committee on Information from Non-Self-Governing Territories, explained the legal significance under American law of the fact that Puerto Rico's Constitution was the result of a compact:

A most interesting feature of the new constitution is that it was entered into in the nature of a compact between the American and the Puerto Rican people. A compact, as you know, is far stronger than a treaty. A treaty usually can be denounced by either side, whereas a compact cannot be denounced by either party unless it has the permission of the other.

Relaying on these representations made by the United States, the General Assembly approved Resolution 748, VIII, approving the cessation of information on Puerto Rico stating that:

" ... in the framework of their Constitution and of the compact agreed upon with the United States of America, the people of the Commonwealth of Puerto Rico have been invested with attributes of political sovereignty which clearly identify the status of self-government attained by the Puerto Rican people as that of an autonomous political entity".

The White House Task Force report characterizing the Commonwealth as a territory under the plenary powers of Congress in effect says that the United States lied to the United Nations when it moved the General Assembly to accept the

cessation of information on the development of Puerto Rico towards self-government because, through the compact, we had achieved the status of an autonomous political entity.

In leading the world as the only super power, the U. S. requires more than economic or military power. It also requires moral legitimacy. The Report of White House task force on Puerto Rico is a step down the slippery slope of the justification of policy through falsehoods. This Report will live in infamy.