There they go again

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"Trouble Ahead in Congress" was the title of a column I wrote in CARIBBEAN BUSINESS Nov. 10, 2005. It referred to a letter written at the request of Resident Commissioner Luis Fortuño, by 31 members of the House of Representatives to the U.S. president asking him to take a leadership role in charting a course of action to resolve the status issue by presenting the people of Puerto Rico options that aren't incompatible with the Constitution and basic laws and policies of the U.S. What they were asking the president, at Fortuño's request, was to strike out Commonwealth as an option from a federally mandated plebiscite to force our people to choose between independence, an incorporated territory, or statehood.

The president didn't respond, but a White House Task Force that had been laboring on this matter for almost five years issued a report, which the president hasn't personally endorsed, doing just what the 31 members requested. Exactly what the New Progressive Party (NPP) has been pursuing since Commonwealth, once again, defeated statehood in the 1993 plebiscite sponsored by Gov. Rosselló.

This report is the basis for a bill which the NPP has charged Fortuño to present in Congress when it begins its second session this February. The NPP-White House Task Force 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, through which Congress can deprive Puerto Rico not only of its Constitution but also of U.S. citizenship. The compact through which we entered into the Commonwealth relationship is debased by proclamation as a meaningless document that doesn't bind the Congress and it need not respect under the Constitution of the U.S.

Under this premise, the NPP-White House Task Force bill would provide for a federally sanctioned plebiscite in which the people of Puerto Rico would 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 nonterritorial status with the U.S."

It is obvious the Popular Democratic Party (PDP) 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 would bind Congress to exercise its powers over Puerto Rico under the terms of the Federal Relations Act, can't support such a bill.

It is obvious the PDP can't support this when we consider 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 noncolonial status through the legally binding compact of Commonwealth.

It is all the more obvious the PDP, which has defended the constitutional validity of Commonwealth in every electoral campaign from 1950 to this day, can't vote for a proposition that would deprive Puerto Ricans of all the vested political rights they acquired under the compact.

Sadly, the prediction in my column of Nov. 10, 2005, that there would be trouble ahead in Congress, has come true because the NPP-White House Task Force bill sets up a major and eventually sterile status fight again in Congress between our principal political parties. The petty political maneuver of the bill is so crass and repelling that it won't muster the votes for approval by the Congress. You simply can't deprive half the people of Puerto Rico of their right to vote by defining a proposition in a plebiscite for self-determination in such a way as to make it totally unacceptable to the status they prefer.

Just to get a sense of the monstrosity of the NPP-White House Task Force proposition, let us 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 when we had no U.S. citizenship and where the governor and the principal cabinet officers were appointed by the U.S. president, 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? No, because not only is it 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.

Once Congress uses its territorial powers to vest political rights of self-government in a people by empowering them to enact their own constitution, these rights can't be taken away. It is a divestiture of territorial power that can't be undone. The doctrine of vested rights is deeply embedded in U.S. Constitutional Law. Due process of law protects these rights against deprivation as envisioned by the Task Force.

The U.S. Supreme Court has affirmed in a case that originated from another outrageous NPP constitutional absurdity, Rodríguez vs. Popular Democratic Party, 417 U.S. 1(1982), that the voting rights that Puerto Ricans enjoy to elect their governor, senators, and representatives are protected by the U.S. Constitution. What kind of advice did this presidential Task Force have that allowed them to, in effect, affirm that Congress can take away our voting rights? A statement, whose falsity would be evident to a student of Constitutional Law 101.

We know. The advice was political, intended to serve the cause of the NPP, the fountainhead of such constitutional absurdities. If the favor to Fortuño would have rested with the public opinion effects pursued by such a report, we could just ignore it. But we can't because it will be the basis of another

disguised statehood bill in Congress. A statehood bill, because by excluding Commonwealth as a status with the dignity of the Constitution and the compact with which it was enacted, what the plebiscite the Fortuño bill mandates is a one-way street to statehood. Exactly what the NPP needs to overcome its lack of support for their cause in the polls. Congress will have to pause before engaging in this exercise to bring Puerto Rico kicking and screaming into the Union.

After the demise of the Young Bill in 1998, which intended the same thing, the NPP leadership should realize such an effort will be sterile and a total waste of time. Commonwealth supporters will oppose it not only from the governorship, but from the high moral ground of fairness, which is at the core of the values that ordain the democratic process. It is high time for the NPP to realize the only way a Puerto Rican status bill can get through Congress is by recognizing the right to self-determination belongs to all Puerto Ricans and the ballot must provide for all choices that have been historically supported by the people of Puerto Rico.

It is a sad spectacle, but there they go again.