Nos. 18-1334, -1475, -1496, -1514, -1521

In the Supreme Court of the United States

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, *Petitioner*,

v.

AURELIUS INVESTMENT, ET AL., *Respondents*.

AURELIUS INVESTMENT, ET AL., *Petitioners*,

v.

COMMONWEALTH OF PUERTO RICO, *Respondent*.

OFFICIAL COMMITTEE OF UNSECURED CREDITORS, *Petitioner*,

v.

AURELIUS INVESTMENT, ET AL., *Respondents*.

UNITED STATES, *Petitioner*,

v.

AURELIUS INVESTMENT, ET AL., *Respondents*.

UTIER, *Petitioner*,

v.

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, *Respondents*.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

JOINT APPENDIX

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CERTIORARI GRANTED: June 20, 2019

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TABLE OF CONTENTS

TABLE OF CONTENTS

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Nos. 18-1671, 18-1746, 18-1787

AURELIUS INVESTMENT, LLC, ET AL.,

Appellants,

v.

COMMONWEALTH OF PUERTO RICO, ET AL.,

Appellees.

ASSURED GUARANTY CORPORATION, ET AL.,
Appellants,

v.

FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD, ET AL.
Appellees.

UNIÓN DE TRABAJADORES DE LA INDUSTRIA
ELÉCTRICA Y RIEGO (UTIER)
Appellant,

v.

PUERTO RICO ELECTRIC POWER AUTHORITY,
ET AL.,
Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

[Hon. Laura Taylor Swain,* U.S. District Judge]

RELEVANT DOCKET ENTRIES

Date Filed	**Docket Text**
07/24/2018	Civil Case Docketed. Notice Of Appeal (Doc. # 3594) Filed By Appellants Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC And Lex Claims, LLC. Docketing Statement, Transcript Report/Order Form, And Appearance Form Due 08/07/2018. [18-1671] (KC) [Entered: 07/24/2018 02:03 PM]
* * *	
08/09/2018	Joint Motion To Consolidate Cases Filed By Appellants Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC And Lex Claims, LLC. Certificate Of Service Dated 08/09/2018. [18-1671] (TBO) [Entered: 08/09/2018 10:07 AM]

* Of the Southern District of New York, sitting by designation.

* * *	
08/15/2018	Order Entered By Juan R. Torruella, Appellate Judge; Rogeriee Thompson, Appellate Judge And William J. Kayatta, Jr., Appellate Judge: Having Considered The District Court's Ruling And The Filings With This Court, We Conclude That Review Is In Order. The Appeal Shall Proceed Under No. 18-1671. All Papers Filed In Appeal No. 18-8014 Will Be Treated As If Also Filed In Appeal No. 18-1671. Appeal Nos. 18-1746 And 18-1671 Are Consolidated For Purposes Of Briefing And Oral Argument. The Motion To Expedite Briefing Is Granted As Follows: Appellants' Opening Brief Is Due August 22, 2018. Joint Appendix Is Due August 22, 2018. Appellees' Brief(S) Are Due September 21, 2018. Appellants' Reply Brief Is Due October 5, 2018. Extensions Of Time Will Be Disfavored. [18-1671, 18-8014, 18-1746] (KC) [Entered: 08/15/2018 02:29 PM]
* * *	
08/23/2018	Appellants' Brief Filed By Appellants Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC, Assured Guaranty Corporation, And Assured Guaranty Municipal Corporation. Certificate Of Service Dated 08/22/2018. Nine Paper Copies Identical To That Of The

	Electronically Filed Brief Must Be Submitted So That They Are Received By The Court On Or Before 08/27/2018. [18-1671, 18-1746] (DK) [Entered: 08/23/2018 07:01 PM]
* * *	
08/24/2018	Appendix Filed By Appellants Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC And Lex Claims, LLC In 18-1671, Appellants Assured Guaranty Corporation And Assured Guaranty Municipal Corporation In 18-1746. Number Of Volumes: 3. Number Of Copies: 5. Certificate Of Service Dated 08/22/2018. [18-1671, 18-1746] (AP) [Entered: 08/24/2018 08:49 AM]
* * *	
09/07/2018	Order Entered By Juan R. Torruella, Appellate Judge; Rogeriee Thompson, Appellate Judge And William J. Kayatta, Jr., Appellate Judge: The Motion Of UTIER To Expedite Appeal No. 18-1787 Is Granted. The Joint Motion To Consolidate Nos. 18-1671 And 18-1746 With No. 18-1787 Is Granted. The Motion To Modify The Briefing Schedule Is Granted As Follows: UTIER's Brief And The Joint Appendix Will Be Due On September 10, 2018; All Appellees' Briefs Will Be Due On October 1, 2018; And All Reply Briefs Will Be Due On October 24, 2018. We Contemplate Hearing

	These Appeals In November. [18-1671, 18-1746, 18-1787] (GB) [Entered: 09/07/2018 04:18 PM]
* * *	
09/11/2018	Appellant's Brief Filed By Appellant UTIER In 18-1787. Certificate Of Service Dated 09/10/2018. Nine Paper Copies Identical To That Of The Electronically Filed Brief Must Be Submitted So That They Are Received By The Court On Or Before 09/14/2018. [18-1787, 18-1671, 18-1746] (LIM) [Entered: 09/11/2018 11:15 AM]
* * *	
09/17/2018	Amicus Curiae Brief Filed By Amici Curiae Javier Aponte-Dalmau, Carlos Bianchi-Anglero, Ramon Cruz-Burgos, Marcos Cruz-Molina, Carlos O. Delgado-Altieri, Jose Diaz-Collazo, Pedro J. Garcia-Figueroa, Angel Gonzalez-Dalmut, Jorge L. Gonzalez-Otero, Rafael Hernandez-Montanez, Ramon Hernandez-Torres, Rossana Lopez-Leon, Brenda Lopez-De-Arraras, Carmen Maldonado, Jesus Marquez-Rodriguez, Angel Matos-Garcia, Lydia Mendez-Silva, Manuel Natal-Albelo, Julia M. Nazario-Fuentes, Isidro Negron-Irizarry, Luis Ortiz-Lugo, Miguel A. Pereira-Castillo, Roberto Ramirez-Kurtz, Roberto Rivera-Ruiz-De-Porras, Jesus Santa-Rodriguez, Oscar

	Santiago, Jose A. Santiago Rivera, Cirilo Tirado-Rivera, Luis Torres-Cruz, Sergio Torres-Torres, Jose Varela-Fernandez, Luis Vega-Ramos And Heriberto Velez-Velez In 18-1671. Certificate Of Service Dated 08/30/2018. Nine Paper Copies Identical To That Of The Electronically Filed Brief Must Be Submitted So That They Are Received By The Court On Or Before 09/24/2018. [18-1671, 18-1746] (KC) [Entered: 09/17/2018 09:27 AM]
* * *	
09/17/2018	Amicus Curiae Brief Filed By Movants Hector J. Ferrer-Rios And Popular Democratic Party In 18-1671. Certificate Of Service Dated 08/29/2018. Nine Paper Copies Identical To That Of The Electronically Filed Brief Must Be Submitted So That They Are Received By The Court On Or Before 09/24/2018. [18-1671, 18-1746] (KC) [Entered: 09/17/2018 09:51 AM]
* * *	
09/18/2018	Appendix Filed By Appellants Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC And Lex Claims, LLC In 18-1671, Appellants Assured Guaranty Corporation And Assured Guaranty Municipal Corporation In 18-1746, Appellant UTIER In 18-1787. Number Of

	Volumes: 1. Number Of Copies: 5. Certificate Of Service Dated 09/11/2018. [18-1671, 18-1746, 18-1787] (KC) [Entered: 09/18/2018 10:25 AM]
* * *	
10/01/2018	Appellee's Brief Filed By Appellee Official Committee Of Retired Employees Of The Commonwealth Of Puerto Rico. Certificate Of Service Dated 10/01/2018. Nine Paper Copies Identical To That Of The Electronically Filed Brief Must Be Submitted So That They Are Received By The Court On Or Before 10/10/2018. [18-1787, 18-1671, 18-1746] Clerk's Note: Docket Entry Was Edited To Modify The Docket Text. (DK) [Entered: 10/03/2018 01:13 PM]
10/01/2018	Appellees' Brief Filed By Appellees Financial Oversight And Management Board And Puerto Rico Fiscal Agency And Financial Advisory Authority In 18-1671, And Appellee Financial Oversight And Management Board In 18-1746 And 18-1787. Certificate Of Service Dated 10/01/2018. Nine Paper Copies Identical To That Of The Electronically Filed Brief Must Be Submitted So That They Are Received By The Court On Or Before 10/10/2018. [18-1671, 18-1746, 18-

	1787] (DK) [Entered: 10/03/2018 01:21 PM]
* * *	
10/01/2018	Appellee's Brief Filed By Appellee Official Committee Of Unsecured Creditors In 18-1671. Certificate Of Service Dated 10/01/2018. Nine Paper Copies Identical To That Of The Electronically Filed Brief Must Be Submitted So That They Are Received By The Court On Or Before 10/10/2018. [18-1787, 18-1671, 18-1746] (DK) [Entered: 10/03/2018 01:37 PM]
10/01/2018	Appellee's Brief Filed By Appellee American Federation Of State County And Municipal Employees In 18-1671. Certificate Of Service Dated 10/01/2018. Nine Paper Copies Identical To That Of The Electronically Filed Brief Must Be Submitted So That They Are Received By The Court On Or Before 10/10/2018. [18-1671, 18-1746, 18-1787] (DK) [Entered: 10/03/2018 01:42 PM]
* * *	
10/01/2018	Appellee's Brief Filed By Appellee Us. Certificate Of Service Dated 10/01/2018. Nine Paper Copies Identical To That Of The Electronically Filed Brief Must Be Submitted So That They Are Received By The Court On Or Before

	10/10/2018. [18-1746, 18-1671, 18-1787] (DK) [Entered: 10/03/2018 01:58 PM]
10/01/2018	Appellees' Brief Filed By Appellees Aristeia Capital, LLC, Canyon Capital Advisors, LLC, Decagon Holdings 1, LLC, Decagon Holdings 10, LLC, Decagon Holdings 2, LLC, Decagon Holdings 3, LLC, Decagon Holdings 4, LLC, Decagon Holdings 5, LLC, Decagon Holdings 6, LLC, Decagon Holdings 7, LLC, Decagon Holdings 8, LLC, Decagon Holdings 9, LLC, Fideicomiso Plaza, Golden Tree Asset Management LP, Old Bellows Partners LLP, Scoggin Management LP, Taconic Capital Advisors, L.P., Tilden Park Capital Management LP, And Whitebox Advisors LLC In 18-1671. Certificate Of Service Dated 10/01/2018. Nine Paper Copies Identical To That Of The Electronically Filed Brief Must Be Submitted So That They Are Received By The Court On Or Before 10/10/2018. [18-1671, 18-1746, 18-1787] (DK) [Entered: 10/03/2018 02:07 PM]
* * *	
11/01/2018	Reply Brief Filed By Appellant UTIER In 18-1787. Certificate Of Service Dated 11/01/2018. Nine Paper Copies Identical To That Of The Electronically Filed Brief Must Be Submitted So That They Are

	Received By The Court On Or Before 11/05/2018. [18-1787, 18-1671, 18-1746] (LIM) [Entered: 11/01/2018 10:03 AM]
* * *	
11/02/2018	Reply Brief Filed By Appellants Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC And Lex Claims, LLC In 18-1671, And Appellants Assured Guaranty Corporation And Assured Guaranty Municipal Corporation In 18-1746. Certificate Of Service Dated 11/02/2018. Nine Paper Copies Identical To That Of The Electronically Filed Brief Must Be Submitted So That They Are Received By The Court On Or Before 11/05/2018. [18-1671, 18-1746, 18-1787] (DK) [Entered: 11/02/2018 07:46 PM]
* * *	
12/03/2018	Case Argued. Panel: Juan R. Torruella, Appellate Judge; Rogeriee Thompson, Appellate Judge And William J. Kayatta, Jr., Appellate Judge. Arguing Attorneys: Jose A. Hernandez-Mayoral For Popular Democratic Party And Hector J. Ferrer-Rios, Jorge Martinez-Luciano For Ramon Hernandez-Torres, Jorge L. Gonzalez-Otero, Carlos O. Delgado-Altieri, Miguel A. Pereira-Castillo, Rossana Lopez-Leon, Isidro

	Negron-Irizarry, Cirilo Tirado-Rivera, Pedro J. Garcia-Figueroa, Angel Matos-Garcia, Javier Aponte-Dalmau, Jose Varela-Fernandez, Jesus Santa-Rodriguez, Luis Ortiz-Lugo, Jose Diaz-Collazo, Lydia Mendez-Silva, Carlos Bianchi-Anglero, Luis Torres-Cruz, Brenda Lopez-De-Arraras, Manuel Natal-Albelo, Luis Vega-Ramos, Ramon Cruz-Burgos, Rafael Hernandez-Montanez, Roberto Rivera-Ruiz-De-Porras, Jose A. Santiago Rivera, Marcos Cruz-Molina, Julia M. Nazario-Fuentes, Roberto Ramirez-Kurtz, Angel Gonzalez-Dalmut, Jesus Marquez-Rodriguez, Heriberto Velez-Velez, Carmen Maldonado, Oscar Santiago And Sergio Torres-Torres, Theodore B. Olson For Lex Claims, LLC, Aurelius Investment, LLC And Aurelius Opportunities Fund, LLC, Donald B. Verrilli, Jr. For Commonwealth Of Puerto Rico And Financial Oversight And Management Board And Jeffrey B. Wall For Us In 18-1671, Jose A. Hernandez-Mayoral For Popular Democratic Party And Hector J. Ferrer-Rios, Jorge Martinez-Luciano For Ramon Hernandez-Torres, Jorge L. Gonzalez-Otero, Carlos O. Delgado-Altieri, Miguel A. Pereira-Castillo, Rossana Lopez-Leon, Isidro Negron-Irizarry, Cirilo Tirado-Rivera, Pedro J. Garcia-Figueroa, Angel

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02/15/2019	Opinion Issued By Juan R. Torruella, Appellate Judge; Rogeriee Thompson, Appellate Judge And William J. Kayatta, Jr., Appellate Judge. Published. [18-1671, 18-1746, 18-1787] (KC) [Entered: 02/15/2019 03:31 PM]
02/15/2019	Judgment Entered: This Cause Came On To Be Heard On Appeal From The United States District Court For The District Of Puerto Rico And Was Argued By Counsel. Upon Consideration Whereof, It Is Now Here Ordered, Adjudged And Decreed As Follows: The District Court's Ruling That Puerto Rico Oversight, Management, And Economic Stability Act's Protocol For The Appointment Of Financial Oversight And Management Board Members Is Constitutional Is Reversed. The Matter Is Remanded To The District Court With Instructions To Enter A Declaratory Judgment To The Effect That Puerto Rico Oversight, Management, And Economic Stability Act's Protocol For The Appointment Of Financial Oversight And Management Board Members Is Unconstitutional And Must Be Severed. The District Court's Denial Of Appellants' Motions To Dismiss The Puerto Rico Oversight, Management, And Economic Stability

	Act's Title III Proceedings Is Affirmed. Mandate In These Appeals Shall Not Issue For 90 Days, So As To Allow The President And The United States Senate To Validate The Currently Defective Appointments Or Reconstitute The Financial Oversight And Management Board In Accordance With The Appointments Clause, U.S. Const. Art. II, § 2, Cl. 2. During The 90-Day Stay Period, The Board May Continue To Operate As Until Now. Each Party Shall Bear Its Own Costs. [18-1671, 18-1746, 18-1787] (KC) [Entered: 02/15/2019 03:35 PM]
* * *	
02/26/2019	Errata Issued By Court To Opinion (Published) [6233172-2]. [18-1671, 18-1746, 18-1787] (SBT) [Entered: 02/26/2019 07:18 AM]
* * *	
03/01/2019	Petition For Rehearing And Rehearing En Banc Filed By Appellant UTIER In 18-1787. Certificate Of Service Dated 03/01/2019. [18-1787, 18-1671, 18-1746] (RE) [Entered: 03/01/2019 09:42 AM]
03/07/2019	Order Entered By Jeffrey R. Howard, Chief Appellate Judge; Juan R. Torruella, Appellate Judge; Sandra L. Lynch, Appellate Judge; Rogeriee Thompson, Appellate Judge, William

	J. Kayatta, Jr., Appellate Judge, And David J. Barron,* Appellate Judge: The Petition For Rehearing Having Been Denied By The Panel Of Judges Who Decided The Case, And The Petition For Rehearing En Banc Having Been Submitted To The Active Judges Of This Court And A Majority Of The Judges Not Having Voted That The Case Be Heard En Banc, It Is Ordered That The Petition For Rehearing And The Petition For Rehearing En Banc Be Denied. *Judge Barron Is Recused And Did Not Participate In The Consideration Of This Matter. [18-1671, 18-1746, 18-1787] (KC) [Entered: 03/07/2019 02:51 PM]
* * *	
04/24/2019	Motion To Stay Mandate Pending Supreme Court Disposition Filed By Appellee FOMB In 18-1671, 18-1787, 18-1746. Certificate Of Service Dated 04/24/2019. [18-1671, 18-1787, 18-1746] (DBV) [Entered: 04/24/2019 09:50 AM]04/24/2019 09:50 AM]
* * *	
04/24/2019	U.S. Supreme Court Notice Advising A Petition For A Writ Of Certiorari Was Filed On 04/23/2019 And Assigned Case Number 18-1334. [18-1671, 18-1746, 18-1787] (KC) [Entered: 04/26/2019 05:12 PM]

04/29/2019	Response Filed By Appellant UTIER In 18-1787 To Motion To Stay [6249142-2]. Certificate Of Service Dated 04/29/2019. [18-1787, 18-1671, 18-1746] (RE) [Entered: 04/29/2019 03:56 PM]
* * *	
04/29/2019	Response Filed By Appellants Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC And Lex Claims, LLC In 18-1671, Appellants Assured Guaranty Municipal Corporation And Assured Guaranty Corporation In 18-1746 To Motion To Stay [6249142-2]. Certificate Of Service Dated 04/29/2019. [18-1671, 18-1746, 18-1787] (TBO) [Entered: 04/29/2019 04:48 PM]
04/29/2019	Response Filed By Appellee Official Committee Of Unsecured Creditors In 18-1671 To Motion [6249142-2]. Certificate Of Service Dated 04/29/2019. [18-1671, 18-1746, 18-1787] (Lad) [Entered: 04/29/2019 04:54 PM]
04/30/2019	Motion For Leave To File Reply In Support Of Motion To Stay The Mandate Pending Supreme Court Disposition Filed By Appellee FOMB In 18-1671, 18-1746, 18-1787. Certificate Of Service Dated 04/30/2019. [18-1671, 18-1746, 18-1787] (DBV) [Entered: 04/30/2019 11:36 AM]

04/30/2019	Response Filed By Appellants Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC And Lex Claims, LLC In 18-1671, Appellants Assured Guaranty Corporation And Assured Guaranty Municipal Corporation In 18-1746 To Motion [6250561-2]. Certificate Of Service Dated 04/30/2019. [18-1671, 18-1746, 18-1787] (TBO) [Entered: 04/30/2019 03:54 PM]
04/30/2019	Response Filed By Appellant UTIER In 18-1787 To Motion For Leave To File Pleading [6250561-2], Response [6250789-2]. Certificate Of Service Dated 04/30/2019. [18-1787, 18-1671, 18-1746] (Jem) [Entered: 04/30/2019 06:10 PM]
04/30/2019	Order Entered By Juan R. Torruella, Appellate Judge. Upon Consideration Of Appellee Financial Oversight And Management Board For Puerto Rico's Motion For Leave To File A Reply In Support Of Their Motion To Stay Mandate, The Motion Is Allowed. [18-1671, 18-1746, 18-1787] (SBT) [Entered: 04/30/2019 06:24 PM]
05/01/2019	Reply Filed By Appellee FOMB In 18-1671, 18-1746, 18-1787 To Response [6250283-2], Response [6250244-2], Response [6250294-2]. Certificate Of Service Dated 05/01/2019. [18-1671, 18-1746, 18-1787] (DBV) [Entered: 05/01/2019 11:16 AM]

05/06/2019	Order Entered By Juan R. Torruella, Appellate Judge; Rogeriee Thompson, Appellate Judge And William J. Kayatta, Jr., Appellate Judge: In Accordance With Federal Rule Of Appellate Procedure 41(B), This Court Ordered The Withholding Of Its Mandate In This Case For A Period Of 90 Days So As To Allow The President And The Senate To Appoint Members Of The Financial Oversight And Management Board For Puerto Rico In Accordance With The Appointments Clause. With That 90-Day Stay Set To Expire On May 16, 2019, The Board Informs Us That The President Has Announced His Intent To Nominate The Current Members To Serve Out Their Terms, But That The Nominations Have Not Yet Gone To The Senate. The Board Has Also Filed, Apparently With No Sense Of Any Urgency, A Petition For Certiorari. The Board Seeks A Further Stay Of Our Mandate, This Time Under Federal Rule Of Appellate Procedure 41(D)(1), Which Would Stay The Mandate Indefinitely Until The Supreme Court's Final Disposition Of The Case. That Request Is Denied. Instead, The Stay Of Our Mandate Is Extended Sixty (60) Days, Until July 15, 2019. [18-1671, 18-1746, 18-1787] (KC) [Entered: 05/06/2019 10:02 AM]

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05/28/2019	U.S. Supreme Court Notice Advising A Petition For A Writ Of Certiorari Was Filed On 05/24/2019 And Assigned Case Number 18-1475. [18-1671, 18-1746, 18-1787] (KC) [Entered: 05/30/2019 01:30 PM]
05/31/2019	U.S. Supreme Court Notice Advising A Petition For A Writ Of Certiorari Was Filed On 05/28/2019 And Assigned Case Number 18-1496. [18-1671, 18-1746, 18-1787] (KC) [Entered: 06/06/2019 11:25 AM]
06/06/2019	U.S. Supreme Court Notice Advising A Petition For A Writ Of Certiorari Was Filed On 06/05/2019 And Assigned Case Number 18-1514. [18-1671, 18-1746, 18-1787] (KC) [Entered: 06/07/2019 04:42 PM]
06/07/2019	U.S. Supreme Court Notice Advising A Petition For A Writ Of Certiorari Was Filed On 06/05/2019 And Assigned Case Number 18-1521. [18-1787, 18-1671, 18-1746] (KC) [Entered: 06/13/2019 08:47 AM]
* * *	
06/18/2019	Motion To Stay Mandate Pending Supreme Court Disposition Filed By Appellee FOMB In 18-1671, 18-1746, 18-1787. Certificate Of Service Dated 06/18/2019. [18-1671, 18-1746, 18-1787] (DBV) [Entered: 06/18/2019 12:31 PM]

06/20/2019	Letter Regarding Grant Of Certiorari By Supreme Court Filed By Attorney Donald B. Verrilli, Jr. For Appellees Commonwealth Of Puerto Rico And FOMB In 18-1671, Attorney Donald B. Verrilli, Jr. For Appellees FOMB, Andrew G. Biggs, Carlos M. Garcia, Jose B. Carrion, III, Arthur J. Gonzalez, Jose R. Gonzalez, Ana J. Matosantos And David A. Skeel, Jr. In 18-1746, Attorney Donald B. Verrilli, Jr. For Appellee FOMB In 18-1787. Certificate Of Service Dated 06/20/2019. [18-1671, 18-1746, 18-1787] (DBV) [Entered: 06/20/2019 03:00 PM]
06/25/2019	Response Filed By Appellant UTIER In 18-1787 To Motion [6261540-2]. Certificate Of Service Dated 06/25/2019. [18-1787, 18-1671, 18-1746] (RE) [Entered: 06/25/2019 04:02 PM]
* * *	
06/28/2019	Response Filed By Appellants Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC And Lex Claims, LLC In 18-1671, Appellants Assured Guaranty Corporation And Assured Guaranty Municipal Corporation In 18-1746 To Motion To Stay [6261540-2]. Certificate Of Service Dated 06/28/2019. [18-1671, 18-1746, 18-1787] (TBO) [Entered: 06/28/2019 01:55 PM]

06/28/2019	Response Filed By Appellee Official Committee Of Unsecured Creditors In 18-1671 To Motion To Stay [6261540-2]. Certificate Of Service Dated 06/28/2019. [18-1671, 18-1746, 18-1787] (Lad) [Entered: 06/28/2019 06:14 PM]
* * *	
07/02/2019	Order Entered By Juan R. Torruella, Appellate Judge: Appellee Financial Oversight And Management Board For Puerto Rico's Opposed Motion To Stay Mandate Pending Final Disposition Of This Case In The United States Supreme Court Is Allowed. [18-1671, 18-1746, 18-1787] (KC) [Entered: 07/02/2019 11:48 AM]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
COMMONWEALTH OF PUERTO RICO, *et al*.,
Debtors.

RELEVANT DOCKET ENTRIES

Date Filed	**Docket Number**	**Docket Text**
05/03/2017	1	Petition for Relief by The Financial Oversight and Management Board for Puerto Rico on behalf of the Commonwealth of Puerto Rico Pursuant to Title III of PROMESA against All Parties (Filing fee $400 receipt number 0104–5421441.), filed by The Financial Oversight and Management Board for

		Puerto Rico. (Attachments: # 1 Supplement # 2 Exhibit 1 to the Notice of Statement # 3 Exhibit A to the Statement # 4 Exhibit B to the Statement # 5 Exhibit C to the Statement # 6 Civil Cover Sheet # 7 Category Sheet). Filed by HERMANN D BAUER ALVAREZ on behalf of COMMONWEALTH OF PUERTO RICO (Mergal, Carlos)(Entered: 05/09/2017)
* * *		
08/07/2017	913	Motion to dismiss case TITLE III PETITION (September 15, 2017 day objection language) filed by LUIS A OLIVER on behalf of Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC [OLIVER, LUIS] (Entered: 08/07/2017)
* * *		
08/17/2017	1067	ORDER CERTIFYING MATTERS TO THE ATTORNEY GENERAL OF THE UNITED STATES: Related document: 913 Motion to

		dismiss case TITLE III PETITION filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC, AND 914 Motion for Relief From Stay Under 362 [e] filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC. Signed by Judge Laura Taylor Swain on 08/17/2017. (Tacoronte, Carmen) (Entered: 08/17/2017)
08/17/2017	1068	ORDER SCHEDULING BRIEFING AND HEARING Re: 913 Motion to dismiss case TITLE III PETITION filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC, 914 Motion for Relief From Stay Under 362 [e] filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC, AND 1042 Statement of Acknowledgment of Constitutional Challenge and Notice of Potential Participation filed by UNITED STATES OF

		AMERICA. Attorney General's notification of intent to participate due by 10/6/2017. USA's brief due by 11/5/2017. Other parties in interest: Response due by 9/19/2017. Reply due by 9/26/2017. The request made in 933 MOTION to inform Notice of Constitutional Challenge to Federal Statute by Aurelius filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC, is DENIED. Arguments will be heard during the Omnibus Hearing set for 11/15/2017 09:30 AM before Judge Laura Taylor Swain. Signed by Judge Laura Taylor Swain on 08/17/2017.(Tacoronte, Carmen) (Entered: 08/17/2017)
	* * *	
10/02/2017	1392	ORDER REGARDING BRIEFING AND HEARING SCHEDULE IN CONNECTION WITH THE AURELIUS MOTIONS AND UTIER ADVERSARY

		PROCEEDING. Hearing on Motions set for 01/18/2018 at 11:00 AM (AST) before Laura Taylor Swain in USDC–SDNY. Related document:1245 Order. Signed by Judge Laura Taylor Swain on 10/2/2017. (MO). Related document(s) 913 Motion to dismiss case, 914 Motion for Relief From Stay Under 362 [e]. Modified on 10/12/2017 (Tacoronte, Carmen). (Entered: 10/02/2017)
		* * *
11/03/2017	1610	Objection to Motion of Aurelius to Dismiss Title III Petition Filed by AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME) (RE: related document(s) 913).(LEVINE, SHARON) (Entered: 11/03/2017)
		* * *
11/03/2017	1622	Opposition to Motion The Financial Oversight and Management Board for Puerto Rico's Opposition to the Motion to Dismiss Title

		III Petition. filed by COMMONWEALTH OF PUERTO RICO Re: 913 Motion to dismiss case TITLE III PETITION (September 15, 2017 day objection language) filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC filed by HERMANN D BAUER ALVAREZ on behalf of COMMONWEALTH OF PUERTO RICO [BAUER ALVAREZ, HERMANN] (Entered: 11/03/2017)
* * *		
11/03/2017	1627	Statement of / Statement Of The Ad Hoc Group Of General Obligation Bondholders In Support Of Objection And Motion Of Aurelius To Dismiss Title III Petition (RE: related document(s) 913). filed by MARK T. STANCIL on behalf of Ad Hoc Group of General Obligation Bondholders (STANCIL, MARK) (Entered: 11/03/2017)
* * *		

11/03/2017	1629	Objection to the Motion of Aurelius to Dismiss Title III Petition Related document:913 Motion to dismiss case TITLE III PETITION (September 15, 2017 day objection language) filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC filed by ROBERT D. GORDON on behalf of Official Committee of Retired Employees of Puerto Rico [GORDON, ROBERT] (Entered: 11/03/2017)
* * *		
11/03/2017	1631	Objection to /Objection of Official Committee of Unsecured Creditors to Objection and Motion of Aurelius To Dismiss Title III Petition Related document:913 Motion to dismiss case TITLE III PETITION (September 15, 2017 day objection language) filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC filed by G. Alexander Bongartz on behalf of Official Committee of Unsecured

		Creditors [Bongartz, G. Alexander] (Entered: 11/03/2017)
* * *		
11/03/2017	1634	Objection to Motion of Aurelius For Relief From The Automatic Stay Related document:914 Motion for Relief From Stay Under 362 (e). filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC filed by ROBERT D. GORDON on behalf of Official Committee of Retired Employees of Puerto Rico
* * *		
11/03/2017	1638	Opposition to Motion to Dismiss Title III Petition filed by Cyrus Capital Partners, L.P., Taconic Capital Advisors L.P., Whitebox Advisors LLC, Scoggin Management LP, Tilden Park Capital Management LP, Aristeia Capital, L.L.C., Canyon Capital Advisors LLC, Decagon Holdings 1, L.L.C., Decagon Holdings 10, L.L.C., Decagon Holdings 2, L.L.C.,

		Decagon Holdings 3, L.L.C., Decagon Holdings 4, L.L.C., Decagon Holdings 5, L.L.C., Decagon Holdings 6, L.L.C., Decagon Holdings 7, L.L.C., Decagon Holdings 8, L.L.C., Decagon Holdings 9, L.L.C., Fideicomiso Plaza, Jose F Rodriguez–Perello Re: 913 Motion to dismiss case TITLE III PETITION (September 15, 2017 day objection language) filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC filed by GUSTAVO ADOLFO PABON RICO on behalf of Cyrus Capital Partners, L.P., Taconic Capital Advisors L.P., Whitebox Advisors LLC, Scoggin Management LP, Tilden Park Capital Management LP, Aristeia Capital, L.L.C., Canyon Capital Advisors LLC, Decagon Holdings 1, L.L.C., Decagon Holdings 10, L.L.C., Decagon Holdings 2, L.L.C., Decagon Holdings 3, L.L.C., Decagon Holdings 4, L.L.C., Decagon

		Holdings 5, L.L.C., Decagon Holdings 6, L.L.C., Decagon Holdings 7, L.L.C., Decagon Holdings 8, L.L.C., Decagon Holdings 9, L.L.C., Fideicomiso Plaza, Jose F Rodriguez–Perello [PABON RICO, GUSTAVO] (Entered: 11/03/2017)
* * *		
11/03/2017	1640	Opposition to Motion / Opposition of Puerto Rico Fiscal Agency and Financial Advisory Authority to Aurelius's Motion to Dismiss Title III Proceeding filed by PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY Re: 913 Motion to dismiss case TITLE III PETITION (September 15, 2017 day objection language) filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC filed by PETER FRIEDMAN on behalf of PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY

		AUTHORITY [FRIEDMAN, PETER] (Entered: 11/03/2017)
11/06/2017	1641	Statement of Intent to Defend Constitutionality of PROMESA. filed by JEAN LIN on behalf of UNITED STATES OF AMERICA (LIN, JEAN)(Entered: 11/06/2017)
* * *		
11/17/2017	1833	REPLY to Response to Motion Reply in Support of Objection and Motion of Aurelius to Dismiss Title III Petition filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC Re: 913 Motion to dismiss case TITLE III PETITION (September 15, 2017 day objection language) filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC filed by LUIS A OLIVER on behalf of Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC [OLIVER, LUIS] (Entered: 11/17/2017)

* * *		
12/06/2017	1929	Statement of the United States in Support of the Constitutionality of PROMESA (RE: related document(s)913). filed by JEAN LIN on behalf of UNITED STATES OF AMERICA (LIN, JEAN) (Entered: 12/06/2017)
* * *		
12/22/2017	2159	REPLY to Response to Motion The Financial Oversight and Management Board for Puerto Rico's Reply to the United States Memorandum of Law in Support of the Constitutionality of PROMESA. filed by COMMONWEALTH OF PUERTO RICO, PUERTO RICO ELECTRIC POWER AUTHORITY, PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY, PUERTO RICO SALES TAX FINANCING CORPORATION (COFINA), THE EMPLOYEES

		RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO Re: 913 Motion to dismiss case TITLE III PETITION (September 15, 2017 day objection language) filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC filed by HERMANN D BAUER ALVAREZ on behalf of COMMONWEALTH OF PUERTO RICO, PUERTO RICO ELECTRIC POWER AUTHORITY, PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY, PUERTO RICO SALES TAX FINANCING CORPORATION (COFINA), THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO [BAUER ALVAREZ, HERMANN] (Entered: 12/22/2017)
* * *		

12/22/2017	2164	Reply to United States Memorandum of Law in Support of the Constitutionality of PROMESA Filed by AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME)(RE: related document(s)913, 1929, 1930). (LEVINE, SHARON) (Entered: 12/22/2017)
* * *		
12/23/2017	2169	Reply to the United States in Further Support of Objection and Motion of Aurelius to Dismiss Title III Petition Filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC (RE: related document(s) 913, 1929). (ARROYO PORTELA, LOURDES) (Entered: 12/23/2017)
* * *		
01/02/2018	2198	Sur–Reply to In Support of Objection and Motion of Aurelius to Dismiss Title III Petition Re: 913 Motion

		to dismiss case TITLE III PETITION (September 15, 2017 day objection language) filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC filed by LUIS A OLIVER on behalf of Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC [OLIVER, LUIS](Entered: 01/02/2018)
* * *		
01/03/2018	2202	ORDER REGARDING THE LOCATION AND PROCEDURES FOR ATTENDANCE,PARTICIPATION AND OBSERVATION OF THE JANUARY 10, 2018 AURELIUS/UTIER HEARING:. Related documents: 913 Motion to dismiss case TITLE III PETITION filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC, 914 Motion for Relief From Stay Under 362 [e]. filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC. Counsel's

		notice of intention to be heard 01/05/2018 at 12:00 PM (AST). CourtSolutions registration due by 01/08/2018 at 12:00 PM (AST). Signed by Judge Laura Taylor Swain on 01/03/2018.(Tacoronte, Carmen) (Entered: 01/04/2018)
* * *		
01/10/2018	2233	Minutes of Proceedings before Judge Laura Taylor Swain: Motion Hearing held on 01/10/2018. (RE: related document(s)913, 914) (Ramirez, Marian) Modified on 1/10/2018 (Ramirez, Marian). (Entered: 01/10/2018)
* * *		
01/10/2018	2235	***TRANSCRIPT*** of Motion Hearing Held on 01/10/2018 at 10:00 a.m., before Hon. Laura Taylor Swain. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING, TRANSCRIPT RELEASE DATE IS

		4/11/2018. Until that time the transcript may be viewed at the Bankruptcy Court or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber SD Reporters. Notice of Intent to Request Redaction Due by 1/18/2018. Redaction Request Due By 2/1/2018. Redacted Transcript Submission Due By 2/12/2018. Transcript access will be restricted through 4/11/2018. (Agostini, Becky) (Entered: 01/11/2018)
* * *		
07/13/2018	3503	OPINION AND ORDER DENYING 913 Motion to dismiss case TITLE III PETITION (September 15, 2017 day objection language) filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC, and 914 Motion for Relief From Stay Under 362 [e]. filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC. Signed by Judge

		Laura Taylor Swain on 07/13/2018. (Tacoronte, Carmen) (Entered: 07/13/2018)
		* * *
07/17/2018	3594	NOTICE OF APPEAL as to 3503 Opinion and Order by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC. filed by LUIS A OLIVER on behalf of Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC [OLIVER, LUIS](Entered: 07/17/2018)
		* * *
07/23/2018	3674	Adversary case 18–00087. PR (PROMESA): Complaint by ASSURED GUARANTY CORP, ASSURED GUARANTY MUNICIPAL CORP against FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, JOSE B CARRION III, ANDREW G BIGGS, Carlos M Garcia, ARTHUR J GONZALEZ, Jose R Gonzalez, ANA J MATOSANTOS, David A.

		Skeel. (Attachments: # 1 Exhibit Summons– Financial Oversight and Management Board for Puerto Rico # 2 Exhibit Summons– Andrew G. Biggs # 3 Exhibit Summons– Ana J. Matosantos # 4 Exhibit Summons– David A. Skeel, Jr. # 5 Exhibit PROMESA Cover Sheet # 6 Exhibit Category Sheet # 7 Exhibit Summons– Jose B. Carrion III # 8 Exhibit Summons– Carlos M. Garcia # 9 Exhibit Summons– Arthur J. Gonzalez # 10 Exhibit Summons– Jose R. Gonzalez) (BURGOS PEREZ, HERIBERTO) (Entered: 07/23/2018)
* * *		
07/30/2018	3721	ORDER GRANTING 3715 URGENT Joint Motion Requesting Certification of Opinion and Order at Docket 3503 for Immediate Appeal filed by United States of America, Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, Lex Claims, LLC, The Financial Oversight and Management Board for

		Puerto Rico, as Representative of the Commonwealth of Puerto Rico, et al. Signed by Judge Laura Taylor Swain on 07/30/2018.(Tacoronte, Carmen) (Entered: 07/30/2018)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

In re:
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
COMMONWEALTH OF PUERTO RICO, *et al*.,
Debtors.

No. 17 04780-LTS

In re:
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
PUERTO RICO ELECTRIC POWER AUTHORITY (PREPA), *et al*.,
Debtors.

No. 17 AP-228-LTS

UNIÓN DE TRABAJADORES DE LA INDUSTRIA ELÉCTRICA Y RIEGO (UTIER),

Plaintiff,

v.

PUERTO RICO ELECTRIC POWER AUTHORITY; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO; JOSÉ B. CARRIÓN III; ANDREW G. BIGGS; CARLOS M. GARCÍA; ARTHUR J. GONZÁLEZ; JOSÉ R. GONZÁLEZ; ANA J. MATOSANTOS; DAVID A. SKEEL, JR.; AND JOHN DOES 1-7,

Defendants.

RELEVANT DOCKET ENTRIES

Date Filed	**Docket Number**	**Docket Text**
08/06/2017	1	Adversary case 17-00228. PR (PROMESA): Complaint by UTIER against Puerto Rico Electric Power Authority, FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, Jose B. Carrion, ANDREW G BIGGS, CARLOS M. GARCIA, ARTHUR J GONZALEZ, JOSE RAMON GONZALEZ, ANA J MATOSANTOS, DAVID A SKEEL JR. (Attachments: # 1 Exhibit Summons Puerto Rico Electric Power Authority # 2 Exhibit Summons Jose R. Gonzalez # 3 Exhibit Summons Jose B. Carrion III # 4 Exhibit

		Summons Financial Oversight Board # 5 Exhibit Summons David A. Skeel # 6 Exhibit Summons Carlos M. Garcia # 7 Exhibit Summons Arthur J. Gonzalez # 8 Exhibit Summons Andrew G Biggs # 9 Exhibit Ana J Matosantos) (EMMANUELLI JIMENEZ, ROLANDO) (Entered: 08/07/2017)
* * *		
11/10/2017	75	Amended Complaint (First) by ROLANDO EMMANUELLI JIMENEZ on behalf of UTIER against ANDREW G BIGGS, Jose B. Carrion, FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, CARLOS M. GARCIA, ARTHUR J GONZALEZ, JOSE RAMON GONZALEZ, ANA J MATOSANTOS, Puerto Rico Electric Power Authority, DAVID A SKEEL JR. (RE: related document(s)1).

		(EMMANUELLI JIMENEZ, ROLANDO) (Entered: 11/10/2017)
* * *		
08/15/2018	130	OPINION AND ORDER GRANTING 88 Motion to Dismiss Adversary Proceeding Motion to Dismiss Plaintiff's Amended Adversary Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6). filed by Puerto Rico Electric Power Authority, CARLOS M. GARCIA, JOSE RAMON GONZALEZ, ANDREW G BIGGS, ARTHUR J GONZALEZ, ANA J MATOSANTOS, DAVID A SKEEL, FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, Jose B. Carrion. The Clerk of Court is directed to enter judgment accordingly and close this adversary proceeding. Related documents: 89 and 95. Signed by Judge Laura Taylor Swain on 08/15/2018.

		(Tacoronte, Carmen) (Entered: 08/15/2018)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

In re:
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
COMMONWEALTH OF PUERTO RICO, *et al*.,
Debtors.

No. 18 AP 087-LTS

ASSURED GUARANTY CORP.; ASSURED GUARANTY MUNICIPAL CORP.,

Plaintiffs,

v.

THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO; JOSÉ B. CARRIÓN III; ANDREW G. BIGGS; CARLOS M. GARCÍA; ARTHUR J. GONZÁLEZ; JOSÉ R. GONZÁLEZ; ANA J. MATOSANTOS; and DAVID A. SKEEL, JR.;

Defendants.

RELEVANT DOCKET ENTRIES

Date Filed	Docket Number	Docket Text
07/23/2018	1	Adversary case 18-00087. PR (PROMESA): Complaint by ASSURED GUARANTY CORP, ASSURED GUARANTY MUNICIPAL CORP against FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, JOSE B CARRION III, ANDREW G BIGGS, Carlos M Garcia, ARTHUR J GONZALEZ, Jose R Gonzalez, ANA J MATOSANTOS, David A. Skeel. (Attachments: # 1 Exhibit Summons-Financial Oversight and Management Board for Puerto Rico # 2 Exhibit Summons- Andrew G. Biggs # 3 Exhibit Summons- Ana J. Matosantos # 4 Exhibit Summons-David A. Skeel, Jr. # 5 Exhibit PROMESA Cover Sheet # 6 Exhibit Category Sheet # 7 Exhibit Summons- Jose B. Carrion III # 8 Exhibit Summons-Carlos M. Garcia # 9

		Exhibit Summons- Arthur J. Gonzalez # 10 Exhibit Summons- Jose R. Gonzalez) (BURGOS PEREZ, HERIBERTO) (Entered: 07/23/2018)
		* * *
07/30/2018	10	ORDER CERTIFYING MATTERS TO THE ATTORNEY GENERAL OF THE UNITED STATES. Signed by Magistrate Judge Judith G. Dein on 07/30/2018. (Tacoronte, Carmen) (s/c: USAO-PR and USDOJ w/copy of 1 Complaint) (Entered: 07/30/2018)
		* * *
08/02/2018	13	STIPULATION Re: 1 Complaint filed by ASSURED GUARANTY CORP, ASSURED GUARANTY MUNICIPAL CORP (Attachments: # 1 Exhibit Proposed Stipulated Judgment) filed by HERIBERTO J. BURGOS PEREZ on behalf of ASSURED GUARANTY CORP, ASSURED GUARANTY MUNICIPAL CORP [BURGOS PEREZ,

		HERIBERTO] (Entered: 08/02/2018)
08/03/2018	14	STIPULATED JUDGMENT re:13 STIPULATION Re: 1 Complaint filed by ASSURED GUARANTY CORP, ASSURED GUARANTY MUNICIPAL CORP filed by ASSURED GUARANTY CORP, ASSURED GUARANTY MUNICIPAL CORP. Judgment is entered for Defendants and against Plaintiffs. Signed by Judge Laura Taylor Swain on 08/03/2018.(Tacoronte, Carmen) (Entered: 08/03/2018) Adversary Case 3:18-ap-87 Closed (Tacoronte, Carmen) (Entered: 08/03/2018)
08/03/2018	15	NOTICE OF APPEAL as to 14 Judgment by ASSURED GUARANTY CORP, ASSURED GUARANTY MUNICIPAL CORP. (Attachments: # 1 Exhibit A Stipulated Judgment # 2 Exhibit B Opinion & Order) filed by HERIBERTO J. BURGOS PEREZ on behalf of ASSURED GUARANTY

		CORP, ASSURED GUARANTY MUNICIPAL CORP [BURGOS PEREZ, HERIBERTO] (Entered: 08/03/2018)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

In re:
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.[1]

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[1] The Debtors in these Title III Cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are (i) the Commonwealth of Puerto Rico (the *"Commonwealth"*) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (*"COFINA"*) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (*"PRHTA"*) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (*"PREPA"*) (Bankruptcy Case No. 17 BK 04780-LTS) (Last Four Digits of Federal Tax ID: 3747).

OPINION AND ORDER DENYING THE AURELIUS MOTIONS TO DISMISS THE TITLE III PETITION AND FOR RELIEF FROM THE AUTOMATIC STAY

APPEARANCES:

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LAURA TAYLOR SWAIN, United States District Judge

Before the Court are (I) the *Objection and Motion of Aurelius to Dismiss Title III Petition* (Docket Entry No.[2] 913, the "Motion to Dismiss"), and (II) the *Motion of Aurelius for Relief from the Automatic Stay* (Docket Entry No. 914,the"Lift Stay Motion" and, together with the Motion to Dismiss, the "Motions"). The movants are Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, and Lex Claims, LLC (collectively, "Aurelius"). Aurelius argues principally that the debt adjustment case filed for the Commonwealth of Puerto Rico (the "Commonwealth" or "Puerto Rico") under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act, 48 U.S.C. § 2101 *et seq.* ("PROMESA"), must be dismissed as unauthorized. Aurelius also argues that further PROMESA-related activity must be enjoined because the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board"), which filed the Title III proceeding on behalf of the Commonwealth, was appointed in a manner inconsistent with the requirements of the Appointments Clause of Article II, Section 2, Clause 2 of the Constitution of the United States (the "Constitution"). A submission supporting the position advanced by Aurelius was filed by the Ad Hoc Group of General Obligation Bondholders. (Docket Entry No. 1627.) Opposition submissions have been filed by the United States of America (the "United States"), the Oversight Board, the American Federation of State, County and Municipal Employees, the Official Committee of Retired Employees of the Commonwealth of Puerto Rico, the Official Committee of Unsecured Creditors (the "Commit-

[2] All docket entry references are to entries in Case No. 17-BK-3283-LTS, unless otherwise specified.

tee"), the COFINA Senior Bondholders' Coalition (the "COFINA Seniors"), and the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF"). (Docket Entry Nos. 1610, 1622, 1623, 1629, 1631, 1634, 1638, 1640, 1929.) The Court heard argument on the instant Motions on January 10, 2018 (the "Hearing"), and has considered carefully all of the arguments and submissions made in connection with the Motions.[3] For the reasons that follow, the Motion to Dismiss is denied in its entirety and the Lift Stay Motion is denied in light of the determinations set forth below, for failure to show cause.

I.

BACKGROUND

The following summary reflects matters that are undisputed in the parties' submissions, or of which the Court may take judicial notice.

As discussed in more detail below, Puerto Rico became a territory of the United States under the Treaty of Paris, following the Spanish American War of 1898. Treaty of Paris art. 9, Dec. 10, 1898, 30 Stat. 1759. In accordance with the Territories Clause of the Constitution, U.S. Const. art. IV, §3, cl. 2, which provides that Congress "shall have Power to . . . make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States," Congress has provided for military, and then

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[3] The Court also heard oral argument at the Hearing in connection with a motion to dismiss the complaint in *Union De Trabai adores De La Industria Electrica Y Riego* (*UTIER*) *v. PREP A*, *et al,,* 17-AP-228-LTS (D.P.R.), an adversary proceeding filed in PREPA's Title III case that raises issues substantially similar to those argued in this current motion practice. The Court will address that motion in a separate decision.

civilian, local governance of Puerto Rico. Pursuant to a constitution developed by the people of Puerto Rico and approved by Congress, Puerto Rico's status has been that of a Commonwealth since 1952, led by a popularly elected Governor and Legislature. *See* Act of July 3, 1952, 66 Stat. 327; P.R. Const. art. I, §§ 1, 2.

In 2016, in response to the longstanding and dire fiscal emergency of the Commonwealth, Congress enacted PROMESA "pursuant to article IV, section 3 of the Constitution of the United States, which provides Congress the power to dispose of and make all needful rules and regulations for territories." 48 U.S.C.A. § 2121(b)(2) (West 2017).

PROMESA established, among other things, federal statutory authority pursuant to which federal territories, including the Commonwealth, may restructure their debts.[4] *See Id.* § 2194(n).

PROMESA created the Oversight Board as "an entity within the territorial government" of Puerto Rico. *Id.* § 2121(c)(1).[5] Funding for the Oversight Board is derived entirely from the Commonwealth's resources. *Id.* § 2127. The Oversight Board is tasked with developing "a method [for Puerto Rico] to achieve fiscal responsibility and access to the capital markets." *Id.* § 2121(a). In aid of that purpose, PROMESA empowers

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[4] PROMESA is codified at 48 U.S.C. § 2101 et seep References to "PROMESA" provisions in the remainder of this Opinion are to the uncodified version of the legislation unless otherwise indicated. Puerto Rico and its public instrumentalities are not authorized to seek debt relief under the United States Bankruptcy Code.

[5] PROMESA further provides that the Oversight Board "shall not be considered to be a department, agency, establishment, or instrumentality of the Federal Government." 48 U.S.C.A. § 2121(c)(2) (West 2017).

the Oversight Board to, among other things, approve the fiscal plans and budgets of the Commonwealth and its instrumentalities, override Commonwealth executive and legislative actions that are inconsistent with approved fiscal plans and budgets, and commence a bankruptcy-type proceeding in federal court on behalf of the Commonwealth or its instrumentalities. *Id.* §§ 2141-2152; 2175(a). In a Title III proceeding, the Oversight Board acts as the sole representative of the debtor and may "take any action necessary on behalf of the debtor to prosecute the case of the debtor." *Id.* § 2175(a). The Oversight Board is the only entity empowered to propose a plan of debt adjustment on behalf of the Commonwealth or a debtor instrumentality. *Id.* § 2172(a). In carrying out its duties under PROMESA, the Oversight Board may hold hearings, take testimony, and receive evidence; obtain data from the federal and territorial governments; obtain creditor information; issue subpoenas; enter into contracts; enforce certain laws of the Commonwealth; and seek judicial enforcement of its authority. *Id.* § 2124(a), (c)-(d),(f)-(h), (k). While it is created as an entity within the government of Puerto Rico, it is not subject to supervision or control by the Governor of Puerto Rico (the "Governor") or the Legislature of Puerto Rico (the "Legislature"). *Id.* § 2128(a). It is, however, required to submit an annual report to the President of the United States (the "President") and Congress of the United States ("Congress") and the Governor and Legislature. *Id.* § 2148.

The Oversight Board is composed of seven voting members, with the Governor or his designee serving ex *officio* as an additional non-voting member. *Id.*

§ 2121(e)(1), (3).[6] PROMESA provides that the President "shall appoint" the seven voting members as follows: one "may be selected in the President's sole discretion" and six "*should* be selected" from specific lists of candidates provided by congressional leaders.[7] *Id.* § 2121(e)(2)(A)-(B) (emphasis added). PROMESA does not require Presidential nomination and Senate confirmation for the President's discretionary appointees and members chosen from the congressional lists. *Id.* § 2121(e)(2)(E). However, in the event that the President appoints members that are not named on the congressional lists, Senate confirmation is required under PROMESA.[8] *Id.* On August 31, 2016, President Obama appointed the seven voting members, six members from the congressional lists and one member in

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[6] Congress modeled the Oversight Board's structure after an entity created by Congress in 1995 to address a fiscal crisis in the District of Columbia. *See* 162 Cong. Rec. H3604 (daily ed. June 9, 2016) (statement of Rep. Lucas) (stating that, in 1995, Congress "passed a bill very similar to [PROMESA]. We set up a supervisory board that took control of [D.C.'s] finances to help right the ship."); *see also* District of Columbia Financial Responsibility Management and Assistance Act of 1995 ("DCFRMAA"), Pub. L. No. 104-8, 109 Stat. 97 (1995). The Financial Responsibility and Management Assistance Authority ("D.C. Control Board") was established within the District of Columbia government, *see* DCFRMAA, § 101(a), and its members were appointed by the President without Senate confirmation, *id.* § 101(b).

[7] Under PROMESA, the lists may be supplemented upon the President's request. 48 U.S.C.A. § 2121(e)(2)(C).

[8] PROMESA also provides that if any of the seven voting members had not been appointed by September 1, 2016, the President was required to appoint an individual from the list associated with the vacant position by September 15, 2016. 48 U.S.C.A. § 2121(e)(2)(G). Under PROMESA, any vacancies must be filled "in the same manner in which the original member was appointed." Id. § 2121(e)(6).

his sole discretion. (Docket Entry No. 1929, the "U.S. Mem. of Law," at 6.) Board members are appointed to serve for a term of three years and until the appointment of their successors. 48 U.S.C.A. § 2121(e)(5) (West 2017). As of the date hereof, all of the original appointees continue to serve on the Oversight Board. Thus, to date, no appointment to the Oversight Board has been subject to Senate confirmation. Oversight Board members can be removed only by the President, and only for cause prior to the end of the member's term. *Id.* § 2121(e)(5)(B).

On May 3, 2017, the Oversight Board commenced a debt adjustment proceeding on behalf of the Commonwealth by filing a petition in this Court under Title III of PROMESA.[9] (*See* Docket Entry No. 1, the "Title III Petition"). Shortly thereafter, the Oversight Board commenced Title III proceedings on behalf of certain Puerto Rican government instrumentalities, including PREPA.

II.

DISCUSSION

A. Motion to Dismiss

1. Questions Presented

As noted above, Aurelius moves to dismiss the Commonwealth's Title III Petition on the basis that the Oversight Board's membership was not properly appointed and therefore lacked the power to properly invoke Title III of PROMESA by filing the Title III Petition on behalf of the Commonwealth. Section 304(b) of PROMESA provides that the Court, after notice and a hearing, may dismiss a petition that "does not

[9] *See Id.* §§ 2164. 2172-2174.

meet the requirements of' Title III of PROMESA.[10] 48 U.S.C.A. § 2164(b) (West 2017). Section 302 enumerates the statutory prerequisites that a debtor must satisfy to avail itself of relief pursuant to Title III of PROMESA.

Id. § 2162. Specifically, it provides that "[a]n entity may be a debtor" under Title III of PROMESA if:

> (1) the entity is—
>
> (A) a territory that has requested the establishment of an Oversight Board or has had an Oversight Board established for it by the United States Congress in accordance with section 2121 of [PROMESA]; or
>
> (B) a covered territorial instrumentality of a territory described in paragraph (1)(A);
>
> (2) The Oversight Board has issued a certification under section 2146(b) of [PROMESA] for such entity; and
>
> (3) the entity desires to effect a plan to adjust its debts.

Id. § 2162. Aurelius argues that the requirements of Title III are not satisfied in this case because the Oversight Board, as currently constituted, is itself an unlawful entity. Aurelius contends that the selection mechanism established under PROMESA for members of the Oversight Board is unconstitutional under the Appointments Clause, such that the existing Oversight Board could not lawfully make the requisite certifications

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[10] Section 304(b) of PROMESA provides that a Title III petition may not be dismissed during the first 120 days after the commencement of the case. 48 U.S.C.A. § 2164(b) (West 2017). The 120 day waiting period has expired.

and file the petition commencing the Commonwealth's Title III proceeding.

The Appointments Clause of Article II of the Constitution prescribes the method of appointment for "Officers of the United States" whose appointments are not otherwise provided for in the Constitution. U.S. Const. art. II, § 2, cl. 2; *see Buckley v. Valeo*, 424 U.S. 1, 125-26, 132 (1976). In *Buckley*, the Supreme Court held that the term "Officers of the United States," as used in Article II of the U.S. Constitution, is "intended to have substantive meaning" and must include "any appointee exercising significant authority pursuant to the laws of the United States." 424 U.S. 1, 125-26. The Appointments Clause distinguishes between "principal officers," who must be nominated by President with advice and consent of the Senate, and "inferior officers," who may be appointed by the "President alone, Courts of Law, or Heads of Departments." U.S. Const. art. II, § 2, cl. 2.

Aurelius argues principally that the Appointments Clause procedures were mandatory notwithstanding PROMESA's statutory appointment provisions because the members of the Oversight Board are either (i) principal "Officers of the United States" who could only be validly appointed through presidential nomination and Senate confirmation or, in the alternative, (ii) inferior officers of the United States whose appointment was improperly delegated to the President. (Mot. to Dismiss at 13.) Aurelius requests that the Court dismiss the Title III Petition and terminate this proceeding.

The United States, which has exercised its statutory authority to intervene in these proceedings to defend PROMESA's constitutionality (*see* 28 U.S.C. § 2403(a)), argues that PROMESA's appointment mechanism is not subject to the Appointments Clause because (i) the

Oversight Board members are territorial officers rather than "Officers of the United States," and (ii) the Appointments Clause does not govern the appointment of such territorial officers. (*See generally* U.S. Mem. of Law.) In support of its position, the United States cites historical practice and argues that Congress's plenary power over the territories is not subject to the distribution of powers provisions that regulate the federal government. (*Id.* at 8-15.) The Oversight Board primarily raises the same argument. (Docket Entry No. 1622, the "FOMB Opposition," at 7-21.) In addition, the Oversight Board contends that (i) the Appointments Clause does not constitute a "fundamental" constitutional provision and, as such, it does not apply to Puerto Rico, and (ii) even if the Appointments Clause is applicable, the Oversight Board members were properly appointed. (*Id.* at 23-31.) The other opponents raise substantially similar arguments to those advanced by the United States and the Oversight Board. (*See generally*, Docket Entry Nos. 1610, 1629, 1631, 1634, 1638, 1640.) The Oversight Board, the Committee and AAFAF further argue that the Court should hold the Oversight Board's past actions *de facto* valid in the event that the Court finds the Oversight Board's appointment unconstitutional. (FOMB Opp. at 32; Docket Entry No. 1631 at 27; Docket Entry No. 1640 at 31.)

The principal question thus presented for the Court on this motion practice is whether the Constitution required compliance with the Appointments Clause in the appointment of the Oversight Board members. If such compliance was required, the Court must examine whether the process that was undertaken pursuant to PROMESA was sufficient to meet the constitutional requirement and, if the process was not compliant, whether the Petition must be dismissed as noncom-

pliant with PROMESA. The Court turns now to the principal question. Because Puerto Rico is a territory of the United States, rather than a state, or part of the federal government, and because Congress identified the Constitution's Territories Clause as the source of its authority in enacting PROMESA, the Court looks first to the text and historical interpretation and application of the Territories Clause.

2. Congress's Power Under the Territories Clause

The Territories Clause of Article IV of the Constitution vests Congress with the "[p]ower to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const., Art. IV, § 3, cl. 2. The Supreme Court has long held that Congress's power under this clause is both "general and plenary." *Late Corp. of the Church of Jesus Christ of Latter-Day Saints v. United States*, 136 U.S. 1, 42 (1890) (reasoning that the people of the United States became the "sovereign owners" of the territory of Utah upon its acquisition, that the United States as their government exercises power over the territory subject only to the provisions of the Constitution, and that Congress therefore could supersede pre-acquisition legislative acts). Acting under the Territories Clause, Congress may, for example, create local governments for the territories of the United States. *See*, *e.g.*, *United States v. Wheeler*, 435 U.S. 313, 321-22 (1978) (stating that "a territorial government is entirely the creation of Congress," while noting the unique status of Native American tribes, whose prior sovereignty is preserved in certain respects). The constitutional division between state sovereignty over affairs within state borders and affairs ceded to the federal government pursuant to the Constitution is not applicable to territories, whose governments are

"the creations, exclusively, of [Congress], and subject to its supervision and control." *Benner v. Porter*, 50 U.S. 235, 242 (1850); *see also Cincinnati Soap Co. v. United States*, 301 U.S. 308, 323 (1937) (explaining that "[i]n dealing with the territories . . . Congress in legislating is not subject to the same restrictions which are imposed in respect of laws for the United States considered as a political body of states in union").

A federal territory's "relation to the general government is much the same as that which counties bear to the respective States, and Congress may legislate for them as a State does for its municipal organizations." *First Nat'l Bank v. Yankton Cty.*, 101 U.S. 129, 133 (1879). Congress can thus amend the acts of a territorial legislature, abrogate laws of territorial legislatures, and exercise "full and complete legislative authority over the people of the Territories and all the departments of the territorial governments." *Id.* With respect to territorial governance, Congress exercises the governance powers reserved under the Constitution to the people in respect of state matters. *Id.* In this sense, Congress occupies a dual role with respect to the territories of the United States: as the national Congress of the United States, and as the local legislature of the territory. *See Cincinnati Soap Co.*, 301 U.S. at 317 ("A [territory] has no government but that of the United States, except in so far as the United States may permit. The national government may do for one of its dependencies whatever a state might do for itself or one of its political subdivisions, since over such a dependency the nation possesses the sovereign powers of the general government plus the powers of a local or a state government in all cases where legislation is possible."); *see also Keller v. Potomac Elec. Power Co.*, 261 U.S. 428, 442-43 (1923) (recognizing that, in exercising Congress's substantially identical power over

the District of Columbia, Congress had power to create courts "of the District, not only with the jurisdiction and powers of federal courts in the several states, but with such authority as a state may confer on her courts"); *Am. Ins. Co. v. 356 Bales of Cotton*, 26 U.S. (1 Pet.) 511, 546 (1828) (recognizing the power of Congress to create a territorial court with jurisdiction that could not otherwise have been constitutionally granted to a state court); *United States v. McMillan*, 165 U.S. 504, 510-11 (1897) (explaining that territorial courts are not "courts of the United States, and do not come within the purview of acts of Congress which speak of courts of the United States' only," although Congress exercises the combined powers of the general government, and of a state government with respect to territories and could directly legislate for any territory or "extend the laws of the United States over it, in any particular that congress may think fit.").[11]

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[11] On July 6, 2018, the Court received and reviewed a supplemental informative motion filed by Aurelius (Docket Entry No. 3451, the "Aurelius Supplement") The Court subsequently received and reviewed informative motions filed by the Oversight Board, the United States, and the COFINA Seniors in response to the Aurelius Supplement. (Docket Entry Nos. 3494, 3495, 3500.) In its submission, Aurelius cites the Supreme Court's June 22, 2018 decision in *Ortiz v. United States*, 138 S. Ct. 2165 (2018), for the propositions that military and territorial courts are created pursuant to similar powers, and if separation of powers concerns pertain to one they must necessarily pertain to the other. (Docket Entry No. 3451 at 5.) The *Ortiz* Court's focus has no such implications, however. The Court was examining the question of whether the military court rulings before it were within its appellate jurisdiction. It cited past examples of judicial proceedings in state, military and territorial courts from which it had entertained appeals, emphasizing the judicial review, as opposed to executive action or original determination, aspects of the matter that was before it in *Ortiz*. *Ortiz* does not speak to the question of whether

Due to its unique role with respect to federal territories, Congress may act "in a manner that would exceed its powers, or at least would be very unusual, in the context of national legislation enacted under other powers delegated to it. . . ." *Palmore v. United States*, 411 U.S. 389, 398 (1973) (upholding creation of criminal courts for District of Columbia whose judges are not life-tenured). For example, as discussed in more detail below, the Supreme Court has held that the non-delegation doctrine, which prohibits Congress from delegating its legislative authority to another branch of the Government, does not preclude Congress from delegating its legislative authority to a territorial government. *See*, *e.g.*, *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100 (1953) (upholding delegation by Congress of legislative authority to District of Columbia in the context of a challenge to a District law prohibiting racial discrimination); *Cincinnati Soap Co.*, 301 U.S. at 323 (rejecting argument that a revenue measure constituted an unlawful delegation and explaining that the "congressional power of delegation to a [territorial] government is and must be as comprehensive as the needs").

Congress can create a territorial court or any other entity that is not a court of the United States and is not subject to the Appointments Clause. The *Ortiz* Court's treatment of the Appointments Clause is similarly inapposite, as the Court held that Congress was empowered to permit the challenged military officer to perform in the job in question and the appellant's Appointments Clause argument (which the Court rejected) concerned whether a single person could be both a principal and an inferior officer of the United States, an issue that is not raised here. *See Ortiz*, 138 S. Ct. at 2183-84. The supplemental informative brief also cites the *Lucia* case, which is similarly inapposite as it involved a distinction between an officer of the United States and an employee. *Lucia v. S E C.*, 138 S. Ct. 2044 (2018).

The Supreme Court's jurisprudence regarding territorial courts is instructive with respect to the distinction between territorial and federal entities. In *American Insurance Co.*, the Supreme Court considered a challenge to the admiralty jurisdiction conferred on territorial courts of Florida by a territorial legislature established by congressional legislation. 26 U.S. 511. Chief Justice Marshall, writing for a unanimous Court, drew a distinction between "Constitutional" courts established pursuant to Article III of the Constitution, which, *inter alia*, commits admiralty jurisdiction to the life-tenured federal judiciary, and courts established pursuant to congressional legislation for the territory of Florida. The judges of the Florida territorial courts established by Congress were appointed only for terms of years. Because Congress had acted under "those general powers which that body possesses over the territories of the United States," the constitutional constraint on admiralty jurisdiction was inapplicable to the "legislative courts" created for the territory and the territorial court, unlike a non-"Constitutional" court situated within a state, could validly rule on admiralty matters. *Id.* at 546. Legislative Courts in territories derive their power from Congress's ability to create courts under the Territories Clause of the U.S. Constitution and are vested with jurisdiction by Congress. *Id.* Their structure and jurisdiction need not comport with those prescribed by the Constitution for courts exercising the "judicial power of the United States" pursuant to Article III. ' ' The jurisdiction with which they are invested, is not a part of that judicial power, which is defined in the [third] article of the Constitution, but is conferred by Congress in the execution of those general powers . . . over the territories of the United States." *Id.* at 546. Chief Justice Marshall explained that:

> Although admiralty jurisdiction can be exercised in the states in those Courts, only, which are established in pursuance of the [third] article of the Constitution; the same limitation does not extend to the territories. In legislating for them, Congress exercises the combined powers of the general, and of a state government.

Id.

Subsequent Supreme Court decisions likewise recognized Congress's power to create judicial structures within territories that have characteristics peculiar to those territories and could not necessarily have been established as courts exercising power on behalf of the United States. *See*, *e.g.*, *Benner*, 50 U.S. at 244-45 (holding that, upon admission of Florida as a state, the prior legislative courts created by Congress "in the exercise of its powers in the organization and government of the Territories" could not exercise jurisdiction of matters invoking the judicial power of the United States under Article III of the Constitution and "[n]o place was left unoccupied for the Territorial organization"); *Clinton v. Englebrecht*, 80 U.S. 434 (1871) (stating that "[t]he judges of the Supreme Court of the Territory [of Utah] are appointed by the President under the act of Congress, but this does not make the courts they are authorized to hold 'courts of the United States'"). Just as territorial courts can, if permitted by Congress, exercise powers that Congress could not have granted to similar courts within the states of the United States, the Constitution does not require Congress to incorporate the structural assurances of judicial independence in Article III of the Constitution (*e.g.*, life tenure and protection against reduction in pay) in establishing such courts. The Supreme Court

so held in *Palmore*, a decision concerning the Superior Court for the District of Columbia. 411 U.S. 389 (1973). Upholding the Superior Court's exercise of jurisdiction of federal criminal felony proceedings, the Court reasoned that its approach was "consistent" with the "view of [the] Court" concerning territorial courts. *Id.* at 403. Congress can thus create territorial entities that are distinct in structure, jurisdiction, and powers from the federal government.

Turning to Puerto Rico, Congress has long exercised its Article IV plenary power to structure and define governmental entities for the island. Puerto Rico became a territory of the United States, under the Treaty of Paris, following the Spanish American War of 1898. Treaty of Paris, Art. 9, Dec. 10, 1898, 30 Stat. 1759. The Treaty of Paris expressly committed to Congress the task of determining " [t]he civil rights and political status" of the inhabitants of Puerto Rico. *Id.* Shortly thereafter Congress, acting pursuant to its power under the Territories Clause, enacted the Foraker Act and established a civilian government for Puerto Rico. Organic Act of 1900, ch. 191, 31 Stat. 77; *see also Puerto Rico v. Sanchez Valle*, 136 S. Ct. 1863 (2016).

In 1917, Congress again addressed the governance of Puerto Rico by enacting the Jones Act. That federal statute granted United States citizenship to the people of Puerto Rico and allowed the residents of Puerto Rico to elect a bicameral legislature by popular vote. *See* Organic Act of Puerto Rico, ch. 145, §§ 5, 26, 39 Stat. 951, 953, 958 (1917). Then, in 1947, Congress further shaped Puerto Rico's government by enacting the Elective Governor Act and allowing the residents of Puerto Rico to elect their own governor. *See* Act of Aug. 5, 1947, ch. 490, §1,61 Stat. 770, 771 (1947). In 1950, Congress passed Public Law 600 and gave the Puerto

Rican people the right to form an elected self-government and adopt a constitution. Act of July 3, 1950, ch. 446, § 1, 64 Stat. 319 (1950). Pursuant to Public Law 600, the people of Puerto Rico approved a draft constitution and submitted it to Congress for its approval. *See id.* Congress revised and, on July 3, 1952, approved the Puerto Rico Constitution. *See* Act of July 3, 1952, ch. 567, 66 Stat. 327 (1952). On July 25, 1952, the Governor proclaimed the effectiveness of the Puerto Rico Constitution and a new political entity was born, the Commonwealth of Puerto Rico. P.R. Const. art. I, §§ 1, 2. In creating these governance structures for Puerto Rico, Congress delegated its direct territorial governance authority to institutions it established for Puerto Rico in a manner that would not have been permissible in the context of the exercise of its powers within the federal government.

As the Supreme Court observed in *John R. Thompson Co.*, "[t]he power of Congress to delegate legislative power to a territory is well settled." 346 U.S. at 106. The Court went on to note that:

> [i]t would seem then that on the analogy of the delegation of powers of self-government and home rule both to municipalities and to territories there is no constitutional barrier to the delegation by Congress to the District of Columbia of full legislative power subject of course to constitutional limitations to which all lawmaking is subservient and subject also to the power of Congress at any time to revise, alter or revoke the authority granted.

Id. at 109. In *Cincinnati Soap Co.*, the Supreme Court held that the non-delegation doctrine did not preclude Congress from delegating its legislative authority to the territorial government of the Philippines.

301 U.S. 308. The Court explained that Congress ' s plenary power over the territories "is not subject to the same restrictions which are imposed in respect of laws for the United States considered as a political body of states in union." *Id.* at 323. Similarly, in *United States v. Heinszen*, the Supreme Court rejected the argument that Congress was unable to delegate its legislative authority, under the Territories Clause, to the President. 206 U.S. 370, 384-85 (1907).

In summary, Congress has plenary power under the Territories Clause to establish governmental institutions for territories that are not only distinct from federal government entities but include features that would not comport with the requirements of the Constitution if they pertained to the governance of the United States. It has exercised this power with respect to Puerto Rico over the course of nearly 120 years, including the delegation to the people of Puerto Rico elements of its plenary Article IV authority by authorizing a significant degree of local self-governance. Such territorial delegations and structures may, however, be modified by Congress. *John R. Thompson*, 346 U.S. at 109. Congress purported to do so in creating the Oversight Board as an entity of the territorial government of Puerto Rico. The Court now turns to the question of whether the Oversight Board is a territorial entity and its members officers of the territorial government, or whether its members are officers of the United States who must be appointed pursuant to procedures consistent with the requirements of the Appointments Clause.

3. The Oversight Board

Congress explicitly invoked the Territories Clause, and only the Territories Clause, as its source of authority in enacting PROMESA:

> Constitutional Basis - The Congress enacts [PROMESA] pursuant to article IV, section 3 of the Constitution of the United States, which provides Congress the power to dispose of and make all needful rules and regulations for territories.

48 U.S.C.A. § 2121(b)(2) (West 2017). Aurelius argues, nonetheless, that the appointment of Oversight Board members is governed by Article II of the Constitution which, according to Aurelius, requires unfettered nomination by the President and confirmation by the Senate of Oversight Board members as principal officers of the United States. Aurelius urges this proposition on the basis of (i) the federal (as opposed to territorial) authority of the appointing institution, (ii) what Aurelius characterizes as federal control and supervision of the Oversight Board's operations, and (iii) Oversight Board authority that Aurelius contends extends beyond local territorial matters. (Mot. to Dismiss at 18.) The United States, the Oversight Board, and other opponents point to similar factors in arguing that the Oversight Board is territorial and its members lawfully appointed.[12] While neither the parties nor the Court's own research has identified a definitive set of factors relevant to the determination of whether an entity is territorial or federal, many of the factors argued by the parties have

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[12] The United States argues that the Court should consider the "Oversight Board's creation , statutory objectives, authority, characteristics, and relationship with the Federal Government." (U.S. Mem. of Law at 21.) The Oversight Board argues that the Court should consider whether (i) Congress invoked its Article IV power in creating the entity and (ii) the entity's objectives and authority are local rather than national, or whether its responsibilities over local affairs are subordinate and incidental. (FOMB Opp. at 13.) Other parties-in-interest advance similar or alternative standards.

been considered in connection with controversies over whether congressionally created entities are private or governmental.[13]

Having examined the factors argued by the parties, the Court finds that Congress's invocation of the Territories Clause is consistent with the entity it purported to create, that the method of selection that Congress fashioned for the membership of the Oversight Board is consistent with the exercise of plenary congressional power under that Clause, and that neither Presidential nomination nor Senate confirmation of the appointees to the Oversight Board is necessary as a constitutional matter to legitimize the exercise of the Oversight Board's powers under PROMESA because the members of the Oversight Board are not "Officers of the United States" subject to the Appointments Clause.

a. Authority for Creation of Board

As noted above, Congress explicitly stated that it was acting pursuant to the Territories Clause when it enacted PROMESA, creating the Oversight Board as a new entity within the Government of Puerto Rico. Congress is entitled to substantial deference when it acts pursuant to its plenary Article IV power. *See*,

[13] In the context of determining whether an entity is a federal instrumentality for constitutional purposes, the Supreme Court has looked at factors similar to those advanced by the parties. Specifically, in *Lebron v. National Railroad Passenger Corporation*, 513 U.S. 374, 383-400 (1995), and *Department of Transportation v. Association of American Railroads*, 135 S. Ct. 1225, 1231-33 (2015), the Supreme Court considered the creation, objectives, and practical operation of an entity in determining whether the nominally private entity should be treated as a federal government instrumentality for purposes of individual rights and separation of powers.

e.g., *Romeu v. Cohen*, 265 F.3d 118, 124 (2d Cir. 2001) (upholding, "[g]iven the deference owed to Congress [under the Territories Clause]" and in light of other constitutional provisions relating to voting rights, a statute providing that Puerto Rican citizens who moved from mainland States to Puerto Rico could not vote in federal presidential elections); *Quiban v. Veterans Admin.*, 928 F.2d 1154, 1160 (D.C. Cir. 1991) (stating that "[t]o require the government . . . to meet the most exacting standard of review . . . would be inconsistent with Congress's '[l]arge powers' to 'make all needful Rules and Regulations respecting the Territory . . . belonging to the United States'" and thus applying a rational basis test in evaluating the constitutionality of exclusion of veterans of Philippine armed forces from certain federal benefits) (citations omitted).

Congress's determination that it was acting pursuant to its Article IV territorial powers in creating the Oversight Board as an entity of the government of Puerto Rico is entitled to substantial deference. Indeed, Supreme Court jurisprudence regarding Congress's governance of the territories consistently looks to Congress's express declaration regarding whether it is acting pursuant to its power under the Territory Clause of Article IV of the Constitution. *See*, *e.g.*, *Cincinnati Soap Co.,* 301 U.S. at 323; *Binns v. United States*, 194 U.S. 486, 494 (1904). As shown above, those powers are plenary and include the power to create and shape the contours of territorial governments. *Cf. Palmore*, 411 U.S. at 407 (holding that courts in the District of Columbia are local rather than federal because Congress "expressly created" the courts pursuant to its plenary authority and created a body with authority over matters of "strictly local concern").

This factor thus weighs in favor of the legitimacy of the Oversight Board as currently constituted.

b. Can Congress Create an Entity that Is Not Inherently Federal?

Aurelius argues that a fundamental distinction exists between officials appointed by the federal government and those who take their office by virtue of local, territorial authority. (Mot. to Dismiss at 18.) Specifically, Aurelius contends that individuals appointed to their office by the federal government are federal officers, regardless of whether or not the office has federal or national responsibilities. (*Id.* at 19.) Under the premise advanced by Aurelius, Congress is incapable of both creating and filling a territorial office or entity. Rather, the only officers who may be considered "territorial" are those who are popularly elected by the residents of a federal territory. (Id. at 21.)

Aurelius' argument that only Puerto Rico itself could have created an entity that was not effectively part of the federal government is unavailing because it ignores both the plenary nature of congressional power under Article IV and the well-rooted jurisprudence, discussed above, that establishes that any powers of self-governance exercised by territorial governments are exercised by virtue of congressional delegation rather than inherent local sovereignty. Thus, creation of an entity such as the Oversight Board through popular election would not change the Oversight Board's ultimate source of authority from a constitutional perspective. Aurelius' argument is therefore meritless. Popular elective authority in territories of the United States derives from Congress, which explicitly states in PROMESA that it has exercised its own power to create a territorial entity.

Aurelius relies principally on two decisions and historical practice in support of its argument. (*Id.* at 18-19.) It cites *Wise v. Withers*, in which the Supreme Court concluded that a justice of the peace in the District of Columbia was an "Officer of the United States" for purposes of a statute exempting such officers from military service. 7 U.S. (3 Cranch) 331, 335-37 (1806). The Court did not, however, analyze whether the justice of the peace was an "Officer of United States" for constitutional purposes.[14] Moreover, to the extent *Wise* can be read as establishing that presidential appointment or congressional creation of an office renders the appointee or the institution to which the person is appointed federal, the Supreme Court has deviated from this view in subsequent decisions. *See*, *e.g.*, *Englebrecht*, 80 U.S. at 447 (presidential appointment of territorial judges does not render their courts "courts of the United States" within the meaning of the Constitution). Aurelius also relies on *United States v. Hartwell,* where the Supreme Court considered whether a clerk employed in the federal Treasury Department was an "officer" of the federal government for purposes of federal bank fidelity and embezzlement statutes. 73 U.S. 385, 397 (1867). Although the *Hartwell* Court noted that the defendant had been appointed by

[14] The *Wise* Court appears to have relied on *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), as settling the proposition that a justice of the peace for the District of Columbia is an officer of the United States. *Wise*, 7 U.S. (3 Cranch) at 336 (stating that " [i]t has been decided in this court, that a justice of the peace is an officer"). However, the proposition that Marbury was an officer of the United States was not contested in that 1803 case and the *Marbury* Court's decision did not expressly address the significance of the identity of the appointing authority or the significance of the method of appointment for the determination of the officer status of the appointee.

"the head of a department within the meaning of the constitutional provision upon the subject of the appointing power," the Court's focus was on the language of the statute and on the general nature of government office, rather than on the Constitutional status of the office held by the defendant. *See id.* at 393-95. No issue was presented as to whether the defendant could have been an officer of any government other than that of the United States.

Turning to historical practice, Aurelius points to territorial offices that were established during the early years of the country's history, including positions with authority over the Northwest Territory. (Mot. to Dismiss at 19.) In the instances Aurelius cites, Congress provided for the government positions and required that the appointees be appointed by the President and confirmed by the Senate. Aurelius argues that these historical examples evidence an "established" practice and general understanding that federally appointed positions are inherently federal offices. (Id.) Aurelius further argues that historical practice also indicates that officials who are elected by the people of a territory (or who are appointed by popularly elected representatives) are not officers of the federal government. (*Id.* at 21-22.)

The Oversight Board, and various parties in interest, fundamentally disagree with Aurelius' position and, instead, argue that the source of an official's appointment is irrelevant in determining whether the office is territorial or federal. (*See*, *e.g.*, FOMB Opp. at 18.) Noting that "there is no evidence . . . that Congress believed advice and consent was constitutionally required" in the past instances where Congress decided to require that certain territorial offices be filled through advice and consent (*id.* at 11), the

Oversight Board contends that Aurelius putative distinction between a federally appointed and a popularly elected official is baseless because a territorial "official's authority *always* derives from Congress." (*Id.* at 19 (emphasis in original) (citing *Sanchez Valle*, 136 S. Ct. at 1875 ("[Behind] the Puerto Rican people and their Constitution, the 'ultimate' source of prosecutorial power remains the U.S. Congress.")).) The Oversight Board argues that "any time Congress exercises its Article IV power to confer authority on a territorial government, it does so by means of a federal "statute." (Id.at 20); *cf. Barnes v. District of Columbia*, 91 U.S. 540 (1875) (holding that the board of public works for the District of Columbia was a part of the municipal government. Although its members were "nominated by the President" with the "advice and consent of the Senate," the Court held that "it is quite immaterial, on the question whether [the] board is a municipal agency, from what source the power comes to these officers,—whether by appointment of the President, or by the legislative assembly, or by election."); *Metro. R. Co. v. District of Columbia*, 132 U.S. 1, 8 (1889) ("The mode of appointing [] officers does not abrogate [an entity's] character as a municipal body politic. We do not suppose that it is necessary to a municipal government, or to municipal responsibility, that the officers should be elected by the people.").

The Court agrees with the Oversight Board that neither the case law nor the historical practice cited by Aurelius compels a finding that federal appointment necessarily renders an appointee a federal officer. Any time Congress exercises its Article IV power it does so by means of a federal statute, and all local governance in Puerto Rico traces back to Congress. *See United States v. Sanchez*, 992 F.2d 1143, 1152 (11th Cir. 1993) (stating that although "Congress has [] delegated more

authority to Puerto Rico over local matters . . . . this has not changed in any way Puerto Rico's *constitutional* status as a territory, or the source of power over Puerto Rico. Congress continues to be the *ultimate source of power* pursuant to the Territory Clause of the Constitution") (citing *United States v. Lopez Andino*, 831 F.2d 1164, 1176 (1st Cir. 1987) (Torruella, J, concurring)) (emphasis in original). The fact that the Oversight Board's members hold office by virtue of a federally enacted statutory regime and are appointed by the

President does not vitiate Congress's express provisions for creation of the Oversight Board as a territorial government entity that "shall not be considered to be a department, agency, establishment, or instrumentality of the Federal Government." 48 U.S.C.A. § 2 121(c) (West 2017). The jurisprudence, historical practice, and Congress's express intention establish that Congress can and has created a territorial entity in this case.

c. Control and Supervision of the Oversight Board

Aurelius argues that a defining characteristic of an entity's territorial or federal status is whether the federal government controls the ongoing operations of the entity. (Mot. to Dismiss at 22.) Aurelius argues that the federal government continues to control and supervise the Oversight Board because of the following:

> (i) The Oversight Board reports to the President and Congress under Section 208 of PROMESA. 48 U.S.C.A. § 2148(a) (West 2017).
>
> (ii) The Oversight Board's ongoing ethics obligations are governed by federal conflicts

> of interest and financial disclosure statutes. *Id.* § 2129.
>
> (iii) The Oversight Board members may be removed by the President. Id. § 2121(e)(5)(B)
>
> (iv) The Commonwealth's Governor may not remove Board members and "[n]either the Governor nor the Legislature may . . . exercise any control, supervision, oversight, or review over the Oversight Board or its activities." *Id.* § 2128(a).
>
> (v) The Oversight Board wields its authority pursuant to the provisions of a federal statute, PROMESA.

(Mot. to Dismiss at 22-23.) The Oversight Board argues, *inter alia*, that these qualities are not determinative of whether the office is territorial or federal, because federal appointment and removal have historically been common attributes of territorial offices due to Congress's unique role in structuring local governance for federal territories. (FOMB Opp. at 20.) In fact, the United States contends that "the nature of degree of the Federal Government's supervision of the Oversight Board is consistent with the Oversight's Board territorial character." (U.S. Mem. of Law at 23.) These points are well taken.

Furthermore, Aurelius reads excessive significance into the provisions of PROMESA upon which it relies. Although Section 208 of PROMESA does require the "[Oversight] Board [to make] reports to the President and Congress" (Mot. to Dismiss at 22), such reports must simultaneously go to the Governor and Legislature. 48 U.S.C.A. § 2148 (West 2017). They are no more indicative of supervision by federal authorities than of supervision by the territorial authorities. Indeed,

PROMESA's express prohibition of the exercise of control over the Oversight Board by the Governor and Legislature (*see id.* § 2128(a)) suggests that the reporting requirement is not an instrument of control or supervision at all. Notably, the statute provides that the Oversight Board may use the reporting mechanism as an opportunity to provide "recommendations to the President and Congress on changes to [PROMESA] or other Federal laws . . . that would assist [Puerto Rico] in complying with any certified Fiscal Plan." *Id.* § 2148(a)(3). The fact that the President and Congress are included in the list of parties entitled to receive the Oversight Board's annual report does not mean that the Oversight Board is subject to the federal government's control.[15] Nor is it unprecedented for Congress to require a territorial officer to report to the federal government. For example, under the Jones Act, the Governor was required to report annually to Congress and the executive branch, despite the fact that the Governor was elected by the people of Puerto Rico. Jones Act § 12.

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[15] In *Association of American Railroads*, the Supreme Court considered whether Amtrak constituted a federal entity rather than a private one for constitutional purposes. 135 S. Ct. 1225 (2015). Specifically, the Association of American Railroads sued the Department of Transportation and others, claiming that the section of Passenger Rail Investment and Improvement Act of 2008 ("PRIIA") requiring Amtrak to jointly develop standards to evaluate performance of Amtrak's intercity passenger trains was unconstitutional. In determining that Amtrak constituted a federal instrumentality for constitutional purposes, the Court cited the fact that Amtrak was required to submit various annual reports to Congress and the President, among many other factors. *Id.* at 1232. The Court also considered Amtrak's creation, objectives, and practical operation. Although the Oversight Board in this case provides annual reports to the President and Congress, that factor is not alone dispositive.

The fact that members of the Oversight Board may not be removed by the Governor or the Legislature and are, instead, only removable by the President "for cause" is indicative of the autonomy and independence that Congress intended for the Oversight Board rather than of control by the federal government. *See*, *e.g.*, *Humphrey's Ex'r v. United States*, 295 U.S. 602 (1935) (upholding a for cause removal provision in the context of the Federal Trade Commission); *Mistretta v. United States*, 488 U.S. 361, 411 (1989) (Congress "insulated" Sentencing Commission members from Presidential removal except for good cause "precisely to ensure that they would not be subject to coercion."). Some mechanism for removal was obviously necessary as a practical matter. Provision for removal by the territorial Governor or Legislature would have undermined the express statutory preclusion of the exercise of control by those authorities over the Oversight Board. Removal by act of Congress would have raised practical impediments to swift action when necessary. Delegating removal authority to the President, the most powerful executive officer in the nation, and limiting such removal to circumstances where there is cause, appears to ensure that the power will not be used lightly and is thus consistent with the intended independence of the Oversight Board. The Court finds no basis for interpretation of the removal provision as an indicator of federal control that would render the board members officers of the United States rather than territorial officials.

Aurelius is correct in asserting that the Oversight Board exercises authority that was "conferred by a federal statute" and that the nature of its work often requires the Oversight Board to turn to the requirements specified in a federal statute. That is not, however, remarkable, since the Oversight Board was

created as an instrumentality of a territory that is under the sovereign control of the federal government. Congress is capable of operating only through the enactment of legislation. As detailed above, Congress has established the structure of Puerto Rico's local governance on numerous instances and, in each instance, it has done so through the enactment of legislation. Territorial governments are "the creations, exclusively, of the legislative department" and the local governance within a federal territory is necessarily derived from Congress. *Benner*, 50 U.S. at 242. For example, the Commonwealth's own constitution was subject to congressional approval prior to becoming effective. The facts that the Oversight Board's authority was conferred upon it by a federal statute and that the statute delineates its duties do not of themselves render the Oversight Board a federal entity.

d. Oversight Board's Statutory Objectives and Scope of Authority

The parties generally agree that the Court should examine the objectives and authority of the Oversight Board to determine whether they are targeted towards purely local matters. (*See*, *e.g.*, Mot. to Dismiss at 18; FOMB Opp. at 14.) The plain language of the statute indicates that the Oversight Board's objectives and authority are centered on Puerto Rico. PROMESA is specifically directed towards federal territories and the purpose of the Oversight Board is confined to an express territorial objective: "provid[ing] a method for [Puerto Rico] to achieve fiscal responsibility and access to the capital markets." 48 U.S.C.A. § 2121(a) (West 2017). Pursuant to PROMESA, the Oversight Board is required to maintain an office in Puerto Rico. *Id.* § 2122. The Oversight Board's primary responsibilities are solely concentrated on Puerto Rico's economic

recovery. *See*, *e.g.*, *id.* §§ 2141 (approval of fiscal plans), 2164 (commencement of restructuring court proceedings). The Oversight Board does not receive funding from the federal government and is instead funded entirely by Puerto Rico.[16] *Id.* § 2127. The Oversight Board acts as Puerto Rico's representative in invoking the debt adjustment authority of the federal government, just as a private debtor, trustee, or debtor in possession would do in settling an estate or pursuing a reorganization under the federal Bankruptcy Code. Puerto Rican law, as opposed to federal law, prescribes the Oversight Board's investigative authority. *Id.* § 2124(f). PROMESA's express declaration that the Oversight Board is not a federal agency exempts the Board from numerous federal laws that apply to federal agencies (*e.g.*, the Freedom of Information Act ("FOIA") and the Administrative Procedure Act (the "APA")). *See* 5 U.S.C.A. §§ 55 l(l)(c), 552(f) (2017) (FOIA applies to "each authority of the Government of the United States," but not "the governments of the territories"); 5 U.S.C.A. § 701(b)(1)(c) (2017) (regarding the APA and providing the same exclusion). While it is true that Congress has chosen to apply federal ethics rules and requirements to the Oversight Board, the invocation of that body of law does not change the substantive focus or nature of the exercise of authority of the Oversight Board to purposes extraneous to Puerto Rico's economic health and future prospects, nor does it expand PROMESA's reach beyond the affairs of covered territories. The Oversight Board's statutory objectives and scope of

[16] *Compare Ass'n of Am. R.Rs.*, 135 S. Ct. at 1232 (considering the fact that an entity was dependent on federal financial support in considering whether such entity was "federal").

authority thus mark its character as territorial rather than federal.

e. Selection Mechanism

Given that the Oversight Board is a territorial entity and its members are territorial officers, Congress had broad discretion to determine the manner of selection for members of the Oversight Board. Congress exercised that discretion in empowering the President with the ability to both appoint and remove members from the Oversight Board. The President's role in the selection process does not change the fundamental nature of the Oversight Board, which is a territorial entity. Nor does the manner of selection constitute an improper delegation of power[17] or encroachment on the President's

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[17] Aurelius cites *Metropolitan Washington Airports Authority v. Citizens for Abatement of Aircraft Noise, Inc.*, 501 U.S. 252 (1991) ("MWAA"), in support of the proposition that Congress's Property Clause authority is subject to separation of powers. In that case, an Act of Congress authorized the transfer of operating control of two airports from the Department of Transportation to the Metropolitan Washington Airports Authority (the "Authority"). The Authority was created pursuant to a compact between the state of Virginia and the District of Columbia. The Act of Congress also authorized the creation of a board of review (the "Review Board"), consisting solely of congressional members and vested with the authority to veto decisions made by the Authority's board of directors. The Supreme Court held that the Review Board was unconstitutional on separation of powers grounds, notwithstanding the fact that Congress was acting pursuant to the Property Clause. MWAA, 501 U.S. at 270-71. Specifically, through the Review Board, Congress either encroached on the Executive Branch by exercising executive power or failed to satisfy the bicameralism and presentment requirements by exercising legislative power. *Id.* at 276. Importantly, the Court's holding was premised on a finding that the Review Board was a federal entity wielding federal power. In this case, the Oversight Board does not include members of Congress and, as explained above, the Oversight

general appointment authority, because Congress used its Article IV powers and did not attempt to allow the President to appoint the Board as a federal entity within the Executive Branch. *Cf. Brewery, D.C. Fin, Responsibility & Mgmt. Assistance Auth.*, 953 F. Supp. 406, 410 (D.D.C. 1997) (rejecting a separation-of-powers challenge involving the D.C. Control Board because "[t]he Executive Branch has no constitutional role with respect to the District that corresponds or competes with that of Congress"). Although historical practice, as detailed above, indicates that Congress has required Senate confirmation for certain territorial offices, nothing in the Constitution precludes the use of that mechanism for positions created under Article IV, and its use does not establish that Congress was obligated to invoke it.

f. Conclusion – Motion to Dismiss the Petition

Affording substantial deference to Congress and for the foregoing reasons, the Court finds that the Oversight Board is an instrumentality of the territory of Puerto Rico, established pursuant to Congress's plenary powers under Article IV of the Constitution, that its members are not "Officers of the United States" who must be appointed pursuant to the mechanism established for such officers by Article II of the Constitution, and that there is accordingly no constitutional defect in the method of appointment provided by Congress for members of the Oversight Board. Since the alleged defect in the appointment method is the only ground upon which Aurelius argues that the Commonwealth's Title III Petition fails to comport with the requirements of

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Board is an entity within the territorial government of Puerto Rico that exercises power delegated to it by Congress.

PROMESA, Aurelius' motion to dismiss the Petition is denied. In light of the foregoing determinations, it is unnecessary to address the parties' remaining arguments.

B. Motion to Lift the Automatic Stay

In connection with its Motion to Dismiss, Aurelius filed a Lift Stay Motion seeking either (i) clarification that the automatic stay under 11 U.S.C. §§ 362 and 922 (made applicable to Title III proceedings generally by 48 U.S.C. § 2162(a)) does not apply to its effort to invalidate the actions of the current Oversight Board, or, in the alternative, (ii) relief from the stay so that Aurelius may pursue an independent action for declaratory and injunctive relief outside the Title III case against the Oversight Board based on the same arguments that Aurelius has advanced in support of its Motion to Dismiss. At the Hearing, counsel for Aurelius stated that Aurelius filed the Lift Stay Motion as a precaution to ensure that it could obtain full scope injunctive relief if it were to prevail on its Appointments Clause challenge. (Tr. P. 36, 16-24.) For the reasons detailed above, Aurelius has failed to demonstrate any prospect of entitlement to injunctive relief. Accordingly, there is no cause for relief from the automatic stay to pursue an injunction and the Lift Stay Motion is denied in its entirety.

III.

CONCLUSION

For the foregoing reasons, the Objection and Motion of Aurelius to Dismiss Title III Petition (Docket Entry No. 913) is denied, and the Motion of Aurelius for Relief from the *Automatic Stay* (Docket Entry No. 914) is denied as well. This Opinion and Order resolves docket entry nos. 913 and 914.

SO ORDERED.

Dated: July 13, 2018

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD
FOR PUERTO RICO,
as representative of
THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.[1]

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[1] The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

PROMESA
Title III

No. 17 BK 3567-LTS

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
PUERTO RICO HIGHWAYS & TRANSPORTATION AUTHORITY,

Debtor.

Adv. Proc. No. 18-____

ASSURED GUARANTY CORP.; ASSURED GUARANTY MUNICIPAL CORP.,

Plaintiffs,

v.

THE FINANCIAL OVERSIGHT AND MAN-AGEMENT BOARD FOR PUERTO RICO; JOSÉ B. CARRIÓN III; ANDREW G. BIGGS; CARLOS M. GARCÍA; ARTHUR J. GONZÁLEZ; JOSÉ R. GONZALEZ; ANA J. MATOSANTOS; DAVID A. SKEEL, JR.,

Defendants.

ADVERSARY COMPLAINT

Plaintiffs Assured Guaranty Corp. and Assured Guaranty Municipal Corp. ("Assured" or "Plaintiffs") allege as follows:

NATURE OF THIS ADVERSARY PROCEEDING

1. In 2016, Congress enacted the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA" or the "Act"), Pub. L. No. 114-187, 130 Stat. 549 (2016), a federal law permitting the Commonwealth of Puerto Rico (the "Commonwealth") and its instrumentalities to restructure their debts in a federal court under Title III of the Act.

2. Most significantly, PROMESA created the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board" or the "Board"), a body with the sole power to execute and administer PROMESA and to act as the sole representative of any debtor (be it the Commonwealth or any of its instrumentalities) in a Title III proceeding in federal court.

3. By virtue of PROMESA, the Board's powers, the degree of control over the Board by the United States, and other factors herein described, the voting members of the Board are "Officers of the United States" within the meaning of the Appointments Clause of the Constitution. U.S. Const. art. II, § 2, cl. 2.

4. But none of the Board's members was appointed in conformity with the Appointments Clause. Rather, as per PROMESA's unprecedented appointment procedures, the Board members were effectively chosen by individual members of Congress and were never confirmed by the U.S. Senate. This violates both the Appointments Clause and the Constitution's guarantee of the separation of powers.

5. The Appointments Clause and other separation-of-powers deficiencies in PROMESA and the method by which the Board's members were chosen renders their appointments unconstitutional and the acts which

they have undertaken, including initiation of the Title III cases, void *ab initio*.

6. Plaintiffs insure general obligation bonds ("GO Bonds") issued by the Commonwealth. The Board filed a Title III petition on behalf of the Commonwealth on May 3, 2017.

7. Plaintiffs also insure bonds issued by the Puerto Rico Highways and Transportation Authority ("PRHTA"). PRHTA is an instrumentality of the Commonwealth on whose behalf the Board filed a Title III petition on May 21, 2017.

8. To date, the Board has taken numerous actions as described herein, including but not limited to the filing of the Title III petitions on behalf of the Commonwealth and PRHTA and developing fiscal plans for the Commonwealth and for PRHTA (most recently on, respectively, June 29, 2018 and April 20, 2018), that violate Commonwealth law and PROMESA itself, exacerbating the separation-of-powers defects inherent in the manner of the Board members' appointments.

9. These actions and others, carried out by unconstitutional officers, have visited and continue to visit irreparable harm on Plaintiffs.

10. Plaintiffs therefore respectfully request that this Court grant Plaintiffs declaratory and injunctive relief, declaring that the Board members were unconstitutionally appointed, that their acts to date have been unlawful, and that they and the Board are enjoined from taking any further actions until they have been replaced by constitutionally appointed officers.

THE PARTIES

11. Plaintiff Assured Guaranty Corp. is a Maryland insurance company with its principal place of business at 1633 Broadway, New York, New York 10019.

12. Plaintiff Assured Guaranty Municipal Corp. is a New York insurance company with its principal place of business at 1633 Broadway, New York, New York 10019.

13. Defendant Financial Oversight and Management Board for Puerto Rico was created under Section 101(b)(1) of PROMESA. The members of the Board qualify as "Officers of the United States" under the Appointments Clause.

14. Defendant José B. Carrión III is a voting member of the Board and in that capacity possesses all the powers granted by PROMESA to Board members. Plaintiffs sue José B. Carrión, and any successor thereto, in his official capacity.

15. Defendant Andrew G. Biggs is a voting member of the Board and in that capacity possesses all the powers granted by PROMESA to Board members. Plaintiffs sue Andrew G. Biggs, and any successor thereto, in his official capacity.

16. Defendant Carlos M. García is a voting member of the Board and in that capacity possesses all the powers granted by PROMESA to Board members. Plaintiffs sue Carlos M. García, and any successor thereto, in his official capacity.

17. Defendant Arthur J. González is a voting member of the Board and in that capacity possesses all the powers granted by PROMESA to Board members. Plaintiffs sue Arthur J. González, and any successor thereto, in his official capacity.

18. Defendant José R. González is a voting member of the Board and in that capacity possesses all the powers granted by PROMESA to Board members. Plaintiffs sue José R. González, and any successor thereto, in his official capacity.

19. Defendant Ana J. Matosantos is a voting member of the Board and in that capacity possesses all the powers granted by PROMESA to Board members. Plaintiffs sue Ana J. Matosantos, and any successor thereto, in her official capacity.

20. Defendant David A. Skeel, Jr. is a voting member of the Board and in that capacity possesses all the powers granted by PROMESA to Board members. Plaintiffs sue David A. Skeel, Jr., and any successor thereto, in his official capacity.

JURISDICTION AND VENUE

21. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because this case arises under the United States Constitution. This Court further has jurisdiction under 48 U.S.C. § 2126(a), which grants jurisdiction to this Court over "any action against the Oversight Board." This Court also has jurisdiction under 48 U.S.C. § 2166(a).

22. Personal jurisdiction over each of the Defendants is proper under 48 U.S.C. § 2166(c).

23. Venue is proper under 48 U.S.C. § 2167.

BACKGROUND

I. PROMESA

24. On or around June 30, 2016, Congress passed PROMESA and President Obama signed it into law.

25. As relevant here, PROMESA accomplished three things.

26. First, it created the Oversight Board, 48 U.S.C. § 2121, vesting it with the authority, among other things, to develop budgets for the Commonwealth and its instrumentalities, *id*. § 2142.

27. Second, PROMESA required the Board to develop a Fiscal Plan to "provide a method to achieve fiscal responsibility and access to the capital markets." 48 U.S.C. § 2141(b)(1). The plan could not be validly certified unless, among other things, it "respect[s] the relative lawful priorities or lawful liens . . . in the constitution, other laws, or agreements of [the Commonwealth] in effect prior to" PROMESA's enactment. *Id.* § 2141(b)(1)(N). The Fiscal Plan is the standard with which the Commonwealth's and PRHTA's budgets must comply. *Id.* §§ 2141(c)(1), 2142(c). No Fiscal Plan for the Commonwealth or any Commonwealth instrumentality (including PRHTA), and no budget for the Commonwealth or PRHTA for any fiscal year, is effective without a certification from the Board. *See*, *e.g.*, *id.* §§ 2141(c), 2142(e)(1)– (2), 2143(c)–(d).

28. Finally, PROMESA created a mechanism, known as Title III, for the adjustment of certain of Puerto Rico's debts, including debts of its instrumentalities. *See* 48 U.S.C. § 2164.

II. The Powers Of The Oversight Board

29. PROMESA gives the Board significant authority under federal law over the Commonwealth and its instrumentalities.

30. Only the Board can initiate Title III proceedings, as it has done here. *Id.* § 2164(a).

31. Within the Title III proceeding, the Board is the sole representative of, and decision-maker for, the

Title III debtor, *id.* § 2175(b), thereby completely supplanting the role that locally elected officials play in Chapter 9 cases, *cf.* 11 U.S.C. §§ 109(c)(2), 904.

32. The Board has the exclusive power to propose a plan of adjustment for the debtor in Title III. *See* 48 U.S.C. § 2172.

33. The Board also possesses broad federal investigative and enforcement powers.

34. It can hold hearings, take testimony, receive evidence, and administer oaths "as the Oversight Board considers appropriate" "for the purpose of *carrying out*" federal law (*i.e.*, PROMESA). 48 U.S.C. § 2124(a) (emphasis added).

35. It enjoys a broad subpoena power to compel the attendance of witnesses or the production of "materials of any nature relating to any matter under investigation by the Oversight Board." *Id.* § 2124(f)(1).

36. PROMESA even permits the Board to deploy these investigative powers to police "the disclosure and selling practices" of Commonwealth and instrumentality bonds, including any potential "conflicts of interest maintained by" brokers, dealers, or investment advisers—issues that could extend far outside of Puerto Rico. *Id.* § 2124(*o*).

37. The Board has exercised these investigative powers in numerous ways. *E.g.*, Press Release, *Oversight Board to Conduct Investigation of Puerto Rico's Debt* (Aug. 2, 2017), *available at* https://juntasupervision.pr.gov/wp-content/uploads/wpfd/49/598239c5a7286.pdf.

38. In addition, the Board "may seek judicial enforcement of its authority to carry out its responsibilities under [PROMESA]." 48 U.S.C. § 2124(k).

39. Although PROMESA characterizes the Board "as an entity within the territorial government" of the Commonwealth, 48 U.S.C. § 2121(c)(1)–(2), PROMESA also goes to great pains to establish the Board as an independent federal overseer of the Commonwealth and any related fiscal matters, immune from interference from the democratically elected Commonwealth government or the people of Puerto Rico, *id*. § 2128(a) ("Neither the Governor nor the Legislature" may "exercise any control, supervision, oversight, or review over the Oversight Board or its activities," or "enact, implement, or enforce any statute, resolution, policy, or rule that would impair or defeat the purposes of [PROMESA], as determined by the Oversight Board.").

40. Further, Board members are subject only to *federal* ethics laws, not Common- wealth laws, *id*. § 2129, and they enjoy numerous other trappings of federal power, *see id.* § 2122 (use of federal facilities); *id.* § 2124(n) (support from GSA); *id.* § 2124(c) (use of federal information).

41. The only person who can remove a member of the Board is the President. *See id*. § 2121(e)(5)(B). III. The Selection Of Oversight Board Members

42. Officers of the United States must be appointed in accordance with the requirements of the Constitution's Appointments Clause, which provides that the President:

> shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . [*all*] *Officers of the United States*, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as

> they think proper, *in the President alone*, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2 (emphases added).

43. The Appointments Clause thus recognizes three categories of federal officials: (1) principal officers, whose appointment may be made only by the President with the Advice and Consent of the Senate; (2) "inferior Officers," whose appointment may be vested "in the President alone, in the Courts of Law, or in the Heads of Departments"; and (3) employees, to whom the Clause does not apply. *See Edmond v. United States*, 520 U.S. 651, 660–61 (1997); *see also Lucia v. SEC*, 138 S. Ct. 2044, 2051 (2018); *Freytag v. Comm'r of Internal Revenue*, 501 U.S. 868, 880–81 (1991).

44. "[A]ny appointee exercising significant authority pursuant to the laws of the United States" is an officer and subject to the Appointments Clause. *Buckley v. Valeo*, 424 U.S. 1, 126 (1976); *see also Lucia*, 138 S. Ct. at 2051; *Freytag*, 501 U.S. at 880–81.

45. The Oversight Board's members are not appointed in accordance with these constitutional requirements. Instead, PROMESA established unprecedented procedures for the appointment of the seven voting members. *See* 48 U.S.C. § 2121.[2]

46. The Act provides that six members be selected from lists of pre-approved individuals submitted to the President by House and Senate leaders.

47. One "Category A" member and one "Category B" member would be selected from separate lists submit-

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[2] PROMESA provides that "[t]he Governor, or the Governor's designee, shall be an ex officio member of the Oversight Board without voting rights." 48 U.S.C. § 2121(e)(3).

ted by the Speaker of the House of Representatives; two "Category C" members would be selected from a single list submitted by the Majority Leader of the Senate; a "Category D" member would be selected from a list submitted by the Minority Leader of the House of Representatives; and a "Category E" member would be selected from a list submitted by the Minority Leader of the Senate. *Id*. § 2121(e)(2)(A)(i)–(v), (e)(2)(B).

48. Only the seventh member, "Category F," could be selected in the President's sole discretion. *Id*. § 2121(e)(2)(A)(vi).

49. PROMESA further provides that if the President chose from those lists, the nominees would not require Senate confirmation. *Id*. § 2121(e)(2)(E).

50. "Off-list" nominations—nominations of individuals not included on a list for a given category—require Senate Confirmation. *Id.* § 2121(e)(1)(E).

51. But if off-list nominees were not confirmed by the Senate by September 1, 2016—a mere two months after PROMESA's enactment (during most of which time the Senate was on its summer recess)—the President was required to select members from the lists provided by members of Congress. *Id.* § 2121(e)(2)(G).

52. As one House Report stated, PROMESA's appointments procedure "ensures that a majority of [the Board's] members are effectively chosen by Republican congressional leaders on an expedited timeframe."[3]

53. The President ultimately acceded to PROMESA's procedure and restricted his appointment power to the

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[3] House Comm. on Natural Resources, H.R. 5278, *"Puerto Rico Oversight, Management, Economic Stability Act" (PROMESA), Section by Section*, at 5, *available at* https://naturalresources.house.gov/UploadedFiles/Section_by_Section_6.6.16.pdf.

Board members put forward by Congressional leadership. Thus, none of the Board members was confirmed by the Senate. *See President Obama Announces the Appointment of Seven Individuals to the Financial Oversight and Management Board for Puerto Rico* (Aug. 31, 2016), https://goo.gl/4ZeKuK; 48 U.S.C. § 2121(e)(2)(E), (e)(2)(G), (e)(2)(A)(vi).

54. Because the Board members exercise significant federal authority as described herein, and answer only to the President of the United States, they are principal officers of the United States, who must be nominated by the President and confirmed by the Senate. None of the Board members was so appointed.

55. Even if the Board members were inferior officers, their appointments were invalid because the Constitution permits Congress to vest the appointment power for such officers in "the President alone"; but no portion of the executive appointment power may be vested in Congress or any of its members.

56. In other litigation similarly challenging the constitutionality of the Board members' appointments, the Board has declared that it is not subject to the Appointments Clause.

57. Similarly, on that same basis, the Board has contended that its actions to date, including the filing of the Title III petition, are not invalid because of an Appointments Clause or separation-of-powers violation.

IV. The Board's Unlawful Actions To Date

58. Plaintiffs are providers of financial guaranty insurance, which is a type of insurance whereby an insurer guarantees scheduled payments of interest and principal as and when due on a bond or other obligation. Plaintiffs insure scheduled principal and

interest payments when due on municipal, public infrastructure, and structured financings both in the United States and around the world.

59. Plaintiffs insure GO Bonds issued by the Commonwealth. As "public debt," the GO Bonds are entitled to a first-priority payment status under the constitution of the Commonwealth (the "Commonwealth Constitution") and related statutes (including the OMB Act, as defined below) and are entitled to payment before all other obligations payable from the Commonwealth's general revenues. Under Plaintiffs' insurance agreements with respect to the GO Bonds, Plaintiffs are deemed to be the sole holders of the GO Bonds they insure for the purpose of giving any consent or direction or taking any other action that the holders of the insured GO Bonds are entitled to take under the applicable bond resolutions.

60. Plaintiffs insure approximately $1.34 billion of GO Bonds currently outstanding. Because of defaults resulting from, among other things, the Commonwealth Fiscal Plan (as defined below) and the Compliance Law (as defined below) with respect to principal and interest payments due on the GO Bonds on July 1, 2016; January 1, 2017; July 1, 2017; January 1, 2018; and July 1, 2018, Plaintiffs have paid approximately $524.7 million in aggregate claims by GO Bondholders and are now fully subrogated to the rights of the GO Bondholders for the claims they paid. In addition, Plaintiffs hold GO Bonds independently of their insurance policies.

61. Plaintiffs also insure bonds issued by PRHTA (the "PRHTA Bonds"). PRHTA is a public corporation created by Act No. 74-1965 (the "PRHTA Enabling Act") to assume responsibility for the construction of highways and other transportation systems in Puerto

Rico. Pursuant to the PRHTA Enabling Act, PRHTA issued the PRHTA Bonds under general bond resolutions (the "PRHTA Resolutions") adopted in 1968 and 1998.

62. Pursuant to the PRHTA Enabling Act and PRHTA Resolutions, the PRHTA Bonds are secured by a gross lien on pledged special revenues consisting of (i) revenues derived from PRHTA's toll facilities (the "Pledged Toll Revenues"); (ii) gasoline, diesel, crude oil, and other special excise taxes levied by the Commonwealth (the "Pledged Tax Revenues"); and (iii) special excise taxes consisting of motor vehicle license fees collected by the Commonwealth (together with the Pledged Tax Revenues, the "Pledged Special Excise Taxes," and together with the Pledged Tax Revenues and the Pledged Toll Revenues, the "Pledged Special Revenues"). The Resolutions constitute security agreements, and Plaintiffs' security interests in the Pledged Special Revenues under the Resolutions are perfected, including by the filing of financing statements.

63. The Secretary of Treasury of the Commonwealth acts as a collection agent on behalf of the PRHTA Bondholders with respect to the Pledged Special Excise Taxes. Upon collection, the Secretary of Treasury is required by statute to hold the Pledged Special Excise Taxes in a segregated account for the benefit of PRHTA and its bondholders. From the time of their collection, the Pledged Special Excise Taxes constitute trust funds that are property of the PRHTA Bondholders and not of the Commonwealth. *See* 13 L.P.R.A. § 31751(a)(1); 9 L.P.R.A. §§ 2013(a)(2), 2021, 5681 (collectively, and including any related statutes, the "PRHTA Excise Tax Statutes"). Pursuant to the PRHTA Excise Tax Statutes, the Pledged Special Excise Taxes may not be used for any purpose other than payment

of the PRHTA Bonds, and the PRHTA Excise Tax Statutes give rise to statutory liens in favor of Plaintiffs and other PRHTA Bondholders on the Pledged Special Excise Taxes. *See* 11 U.S.C. § 101(53).

64. The Pledged Toll Revenues likewise constitute trust funds collected and held by PRHTA on behalf of PRHTA bondholders and are property of PRHTA bondholders and not the Commonwealth. *See* 9 L.P.R.A. § 2013(a)(2).

65. The PRHTA Resolutions and PRHTA Excise Tax Statutes in turn require PRHTA to transfer the Pledged Special Revenues to the fiscal agent for the PRHTA Bonds on a monthly basis. The Commonwealth covenanted with the holders of the PRHTA Bonds in the PRHTA Enabling Act that it would "not limit or restrict the rights or powers . . . vested in [PRHTA by the PRHTA Enabling Act] until all such bonds at any time issued, together with the interest thereon, are fully met and discharged." 9 L.P.R.A. § 2019.

66. The PRHTA Bonds are non-recourse bonds, payable solely from the Pledged Special Revenues. Moreover, because PRHTA Bonds are secured by a "gross lien" on all of the Pledged Special Revenues, operating expenses of PRHTA may be paid only after PRHTA satisfies its debt service and reserve fund requirements with respect to PRHTA Bonds.

67. Plaintiffs insure approximately $1.4 billion of PRHTA Bonds currently outstanding. Under their insurance agreements, Plaintiffs are deemed the sole owners of the PRHTA Bonds that they insure for purposes of consents and other bondholder actions, and retain the power to exercise rights and remedies of PRHTA bondholders. Plaintiffs also are recognized as third-party beneficiaries under the PRHTA Resolutions.

In addition, Plaintiffs hold PRHTA Bonds independently of their insurance policies.

68. As a result of the Fiscal Plans (as defined below) and the Compliance Law (as defined below), among other things, PRHTA defaulted with respect to debt service payments due on PRHTA Bonds insured by Plaintiffs on or around July 1, 2016; January 1, 2017; July 1, 2017; January 1, 2018; and July 1, 2018. As a result of these defaults, Plaintiffs have paid claims under their insurances policies insuring the PRHTA Bonds in an amount aggregating approximately $200 million. Plaintiffs are now fully subrogated to the rights of PRHTA Bondholders for the claims they paid.

69. Section 8 of Article VI of the Commonwealth Constitution (the "Constitutional Debt Priority Provision") creates a priority for GO Bonds and other "public debt" over the Commonwealth's other expenditures by requiring the "public debt" to be paid "first":

> In case the available resources including surplus for any fiscal year are insufficient to meet the appropriations made for that year, interest on the public debt and amortization thereof shall first be paid, and other disbursements shall thereafter be made in accordance with the order of priorities established by law.

P.R. Const. art. VI, § 8.

70. In addition to giving priority to the GO Bonds and other "public debt," the Constitutional Debt Priority Provision incorporates other legal priorities, created by statute, by stating that, following payment of the public debt, "other disbursements shall . . . be made in accordance with the order of priorities established by law." P.R. Const. art. VI, § 8. Among the statutory priorities granted constitutional protection are (i) the

statutory priorities established by the PRHTA Excise Tax Statutes and (ii) the statutory priorities established by the Commonwealth's Management and Budget Office Organic Act, Act No. 147-1980 (the "OMB Act").

71. The PRHTA Excise Tax Statutes grant bondholders the most senior possible lien on the Pledged Special Excise Taxes, consistent with the Constitutional Debt Priority Provision. These statutes grant bondholders first-priority liens on the Pledged Special Excise Taxes, subject only to the conditions that, in a fiscal year in which the Commonwealth's available resources are insufficient to meet the appropriations made for that year, the Pledged Special Excise Taxes may (i) be used solely to pay the public debt, but (ii) only if the public debt remains unpaid after a first application of all available resources to the payment of public debt. *See* 9 L.P.R.A. § 2021, 5681; 13 L.P.R.A. § 31751(a)(1). These conditions have never been satisfied because the Commonwealth has at all relevant times had sufficient available resources to pay the public debt in accordance with the Constitutional Debt Priority Provision.

72. Section 4(c) of the OMB Act sets the "priority guidelines" for the disbursement of available resources in a fiscal year in which the Commonwealth's available resources are insufficient to meet the appropriations made for that year. The first priority is assigned to "payment of interest and amortizations corresponding to the public debt." 23 L.P.R.A. § 104(c)(1).

73. The second priority is assigned to "commitments entered into by virtue of legal contracts in force, judgments of the courts in cases of condemnation under eminent domain, and binding obligations to safeguard the credit, reputation and good name of the Government of the Commonwealth of Puerto Rico,"

including, to the extent applicable, the PRHTA Bonds. *Id.* § 104(c)(2).

74. The third priority is assigned to "regular expenses," related to "[c]onservation of public health," "[p]rotection of persons and property," "[p]ublic education programs," "[p]ublic welfare programs," and "[p]ayment of employer contributions to retirement systems and payment of pensions to individuals granted under special statutes," followed by "remaining public services in the order of priority determined by the Governor." *Id.* § 104(c)(3)(A)–(E). Necessary "adjustments due to reductions may be made" to the appropriations for any of these enumerated "service areas." *Id.* § 104(c)(3)(E).

75. The lowest priorities are assigned to "construction of capital works or improvements" (fourth priority), *id.* § 104(c)(4), and "contracts and commitments contracted under special appropriations" (fifth priority), *id.* § 104(c)(5).

76. On or about March 13, 2017, the Oversight Board certified the Commonwealth's original 2017–2026 fiscal plan as developed by the Oversight Board (including as amended or superseded, the "Commonwealth Fiscal Plan").

77. On or about June 29, 2018, the Oversight Board certified the Commonwealth's most recent revised 2018–2023 fiscal plan as developed by the Oversight Board.

78. On or about May 2, 2017, the Oversight Board certified PRHTA's original 2017– 2026 fiscal plan as developed by the Oversight Board (including as amended or superseded, the "PRHTA Fiscal Plan," and together with the Commonwealth Fiscal Plan, the "Fiscal Plans").

79. On or about April 20, 2018, the Oversight Board certified PRHTA's revised 2018–2023 fiscal plan as developed by the Oversight Board.

80. The Commonwealth Fiscal Plan requires that the Commonwealth unlawfully pay other expenses of government ahead of the GO Bonds and other public debts, in violation of the Constitutional Debt Priority Provision.

81. The Fiscal Plans also require the Commonwealth to unlawfully divert the Pledged Special Excise Taxes from PRHTA and its bondholders to the Commonwealth. The Pledged Special Excise Taxes constitute trust funds held by PRHTA on behalf of PRHTA bondholders and are not the property of the Commonwealth. Further, the Fiscal Plans require the Commonwealth to misappropriate for its own general use the Pledged Special Excise Taxes.

82. The Fiscal Plans therefore disregard constitutional and statutory priorities and liens granted to GO Bondholders and PRHTA Bondholders, and subordinate debt service to all expenses.

83. The PRHTA Fiscal Plan likewise diverts and misappropriates Pledged Special Revenues to pay all of PRHTA's expenses on a first priority basis, disregarding the PRHTA Bondholders' first priority gross lien on those pledged revenues.

84. The PRHTA Fiscal Plan sets aside no amounts for payments on PRHTA Bonds during the six-year forecast period.

85. Under PROMESA, once fiscal plans are certified for the Commonwealth and its instrumentalities (including PRHTA), all governmental actions must comply with the certified fiscal plans. This includes actions

taken during the pendency of these Title III proceedings.

86. Section 202 of PROMESA requires the budgets of the Commonwealth and its instrumentalities, including PRHTA, to comply with the applicable certified fiscal plans. 48 U.S.C. § 2142.

87. Section 204 of PROMESA requires future Commonwealth legislation to comply with the certified fiscal plans of the Commonwealth and its instrumentalities, including PRHTA. 48 U.S.C. § 2144.

88. As a result of the requirement in the Commonwealth Fiscal Plan that the Commonwealth subordinate debt service on the GO Bonds to all expenses of the Commonwealth, Plaintiffs have suffered and will continue to suffer defaults on the GO Bonds that they insure, which defaults have caused and will continue to cause significant, material, and irreparable harm to Plaintiffs.

89. As a result of the requirement in the Fiscal Plans that the Commonwealth misappropriate the Pledged Special Revenues from PRHTA and its bondholders, the subordination of debt service to all expenses as set forth in the Fiscal Plans, and the failure of the PRHTA Fiscal Plan to provide for any bond payments for the next six years, Plaintiffs have suffered and will continue to suffer defaults and claim payments on the PRHTA Bonds that they insure, which defaults have caused and will continue to cause significant, material, and irreparable harm to Plaintiffs.

90. As set forth above, defaults have already occurred, causing Plaintiffs to incur significant expenses in paying insurance claims on the GO Bonds and PRHTA Bonds, therefore causing significant, material, and irreparable harm to Plaintiffs.

91. On or about April 29, 2017, the Commonwealth enacted the Fiscal Plan Compliance Law, P. de la C. 938 (the "Compliance Law").

92. Chapter 4 of the Compliance Law directs the agencies and instrumentalities of the Commonwealth, including PRHTA, to transfer all income in excess of operating expenses to the Puerto Rico Department of the Treasury, in spite of other statutory provisions giving PRHTA bondholders liens over and priority rights to those proceeds.

93. Chapter 4 of the Compliance Law makes no provision for payment by PRHTA of its secured debt.

94. Chapter 6 of the Compliance Law amends Act No. 230-1974 (July 23, 1974), and provides that special state funds created by law for specific purposes, including the Pledged Special Excise Taxes, must be used only "in accordance with the Recommended Budget by the Office of Management and Budget and the Fiscal Plan." Chapter 6 further provides: "Should there be any inconsistency between the law and the use of the funds with the Fiscal Plan, the purpose provided for in the Fiscal Plan . . . shall prevail." The effect of Chapter 6 of the Compliance Law is to deprive Plaintiffs and others of benefits and property interests to which they are entitled by law.

95. The Compliance Law, and its unlawful disregard for preexisting liens and priorities, is a direct and proximate result of the Fiscal Plans developed by the Oversight Board.

96. As a result of the Compliance Law, Plaintiffs have been unlawfully deprived of their liens and priorities over the Pledged Special Revenues. The Compliance Law has therefore caused significant, material, and irreparable harm to Plaintiffs.

97. On May 21, 2017, the Oversight Board commenced a proceeding on behalf of PRHTA under Title III of PROMESA.

98. Plaintiffs' constitutional, statutory, and contractual rights and property interests are being adjudicated in a proceeding initiated by an unconstitutional entity. The commencement of the Title III proceeding therefore has caused significant, material, and irreparable harm to Plaintiffs.

FIRST CLAIM FOR RELIEF
(Declaratory Relief Against All Defendants
for Violations of the Appointments Clause
and Separation of Powers)

99. Plaintiffs hereby incorporate all preceding paragraphs.

100. This case comes within this Court's jurisdiction for the reasons already pleaded herein.

101. The Board members are officers of the United States whose appointments were unlawful under the Appointments Clause and principles of separation of powers for the reasons already pleaded herein.

102. The facts alleged show that there is a substantial controversy between Plaintiffs and Defendants as it concerns the constitutionality of the appointment of the members of the Board under PROMESA and the lawfulness of the filing of the Title III petitions for the Commonwealth and for PRHTA as well as other actions taken by the Board described herein.

103. Plaintiffs and Defendants have adverse legal interests.

104. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

105. Plaintiffs respectfully request declaratory relief pursuant to 28 U.S.C. §§ 2201–2202 that because the Board members are officers of the United States whose appointments were unlawful under the Appointments Clause and principles of separation of powers, their actions to date are void *ab initio*, including the filing of the Title III petitions.

106. Plaintiffs respectfully request any further necessary and proper relief under 28 U.S.C. § 2202.

SECOND CLAIM FOR RELIEF

(Injunctive Relief Against All Defendants for Violations of the Appointments Clause and Separation of Powers)

107. Plaintiffs hereby incorporate all preceding paragraphs.

108. An unconstitutionally appointed officer lacks authority to take actions belonging to his or her office, including, in the context of these cases, the filing of the Title III petitions, the development of Commonwealth and/or PRHTA budgets, and the development of Commonwealth and/or PRHTA fiscal plans.

109. The Board members are officers of the United States whose appointments were unlawful under the Appointments Clause and principles of separation of powers for the reasons already pleaded herein.

110. Accordingly, their actions to date are void *ab initio*.

111. The Board's actions have caused and continue to cause irreparable constitutional injury to Plaintiffs.

112. Plaintiffs therefore respectfully request that the Court enjoin Defendants from taking any further action whatsoever until the Board members have been

lawfully appointed in conformity with the Appointments Clause.

PRAYER FOR RELIEF

Plaintiffs respectfully request, therefore, that the Court:

1. Declare that, under the Appointments Clause, the Oversight Board's members are officers of the United States whose appointments were unlawful.

2. Declare void *ab initio* the unlawful actions taken by the Oversight Board to date, including but not limited to:

a. The development of the Commonwealth Fiscal Plan;

b. The development of the PRHTA Fiscal Plan; and

c. The filing of the Title III cases on behalf of the Commonwealth and PRHTA.

3. Enjoin Defendants from taking any further action whatsoever until the Board members have been lawfully appointed in conformity with the Appointments Clause.

4. Any other relief the Court may deem proper.

Dated: July 23, 2018

Respectfully submitted,

/s/ Matthew D. McGill

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UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

In re:
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD
FOR PUERTO RICO,
as representative of
PUERTO RICO ELECTRIC POWER AUTHORITY (PREPA),

Debtor.[1]

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[1] The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations.)

Case No. 17-04780 (LTS)

In re:
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
PUERTO RICO ELECTRIC POWER AUTHORITY (PREPA),

Debtor.

Adv. Proc. No. 17-228-LTS

UNIÓN DE TRABAJADORES DE LA INDUSTRIA ELÉCTRICA Y RIEGO (UTIER),

Plaintiff,

v.

PUERTO RICO ELECTRIC POWER AUTHORITY; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO; JOSÉ B. CARRIÓN III; ANDREW G. BIGGS; CARLOS M. GARCÍA; ARTHUR J. GONZÁLEZ; JOSÉ R. GONZÁLEZ; ANA J. MATOSANTOS; DAVID A. SKEEL, JR.; AND JOHN DOES 1-7,

Defendants.

OPINION AND ORDER GRANTING DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S AMENDED ADVERSARY COMPLAINT

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LAURA TAYLOR SWAIN,
United States District Judge

Before the Court is the *Motion to Dismiss Plaintiff's Amended Adversary Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6)* (*see* Docket Entry No. 88 in Adversary Proceeding No. 17-00228, the "Motion")[2], filed by the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board"), and the Puerto Rico Electric Power Authority ("PREPA"). José B. Carrión III, Andrew G. Biggs, Carlos M. García, Arthur J. González, José R. González, Ana J. Matosantos, David A. Skeel, Jr., and John Does 1-7 (collectively with the Oversight Board and PREPA, the "Defendants"). Plaintiff Unión de Trabajadores de la Industria Eléctrica y Riego ("UTIER" or "Plaintiff") asserts that the

[2] All docket entry references are to entries in Adversary Proceeding No. 17-00228, unless otherwise specified.

Oversight Board, which filed the Title III proceeding on behalf of PREPA, was appointed in a manner inconsistent with the requirements of the Appointments Clause of Article II, Section 2, Clause 2 of the Constitution of the United States (the "Constitution"). Accordingly, Plaintiff argues, all of the Oversight Board's prior acts are void and its members are unconstitutionally holding office. Consequently, Plaintiff seeks an injunction barring the Oversight Board from continuing its work under PROMESA.

Defendants move pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) to dismiss the Complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted. The Official Committee of Unsecured Creditors (the "Committee"), the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF"), and the American Federation of State, County and Municipal Employees ("AFSCME") intervened in the above-captioned adversary.[3] *(See* Docket Entry Nos. 56, 92, 93.) The Committee joins the Defendants' Motion. (Docket Entry Nos. 89.[4]) AAFAF filed a brief in support of Defendants' Motion. (Docket Entry No. 96.) AFSCME joins the Defendants' Motion solely to the extent that it argues that Plaintiff fails to state a claim pursuant to Rule 12(b)(6) (Docket Entry No. 95) and opposes the Motion to the extent that it seeks dismissal pursuant to Rule 12(b)(1) (Docket Entry No. 99). The United States of America filed a statement (Docket Entry No. 101) supporting the position

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[3] The Court entered an order on October 27, 2017 granting the Committee with intervention rights in this adversary processing. (*See* Docket Entry No. 56.)

[4] The Committee incorporates by reference the arguments made in its objection to the Aurelius Motions. *(See* Docket Entry No. 1631 in Case No. 17-BK-3283).

advanced by Defendants and incorporating by reference the arguments made in its responsive submission to the Aurelius Motions[5] (Docket Entry No. 1929 in Case No. 17-BK-3283). The Court heard argument on the instant Motion on January 10, 2018 (the "Hearing"), and has considered carefully all of the arguments and submissions made in connection with the Motion.[6] For the following reasons, Defendants' Motion is granted.

I.
BACKGROUND

The Court incorporates by reference the factual summary set forth in section I of the Court's Opinion and Order on the Aurelius Motions. The following additional background facts are drawn from the *First Amended Adversary Complaint* (Docket Entry No. 75, the "Complaint") filed by UTIER in the above-captioned action on November 10, 2017. UTIER is a labor union that represents certain employees of PREPA. (Compl. ¶ 15.) UTIER asserts that it has a responsibility under

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[5] *See* note 6 *infra.*

[6] The Court also heard oral argument at the Hearing in connection with (I) the *Objection and Motion of Aurelius to Dismiss Title III Petition* (Docket Entry No. 913 in Case No. 17-BK-3283-LTS, the "Aurelius Motion to Dismiss"), and (II) the *Motion of Aurelius for Relief from the Automatic Stay* (Docket Entry No. 914 in Case No. 17-BK-3283-LTS, the "Aurelius Lift Stay Motion" and, together with the Aurelius Motion to Dismiss, the "Aurelius Motions"). The Aurelius Motions raise issues substantially similar to those argued in this current motion practice. The Court addressed the Aurelius Motions in a separate decision. *(See* Docket Entry No. 3503 in Case No. 17-BK-3283-LTS, the "Opinion and Order on the Aurelius Motions.") The defined terms used in the Court's Opinion and Order on the Aurelius Motions are hereby incorporated by reference except to the extent provided herein.

its collective bargaining agreement[7] to protect and defend the rights of PREPA's employees. *(Id.* ¶ 16.)

Plaintiff contends that the government of Puerto Rico (the "Government") enacted certain legislation between 2014 and 2017 that is "directed at undermining and impairing [the] CBA." *(Id.* ¶ 24.) Plaintiff further claims that this legislation has been "illegally adopted" by Defendants in the fiscal plan for the Commonwealth certified on March 13, 2017 (the "Commonwealth Fiscal Plan"), in the PREPA fiscal plan certified on April 28, 2017 (the "PREPA Fiscal Plan"), and in the PREPA budget approved on June 30, 2017 (the "PREPA Budget"). *(Id.* ¶¶ 24-25.) Specifically, Plaintiff identifies four pieces of legislation (collectively, the "Challenged Legislation") that "alter, impair, take away without just compensation, or nullify different aspects of the CBA" through the PREPA Fiscal Plan and the PREPA Budget. *(Id.* ¶ 25.)

First, on June 17, 2014, the Government enacted the "Government of the Commonwealth of Puerto Rico Special Fiscal and Operational Sustainability Act," Act Num. 66 of June 17, 2014 ("Act Num. 66"). *(Id.* ¶ 25(a).) Plaintiff argues that Act Num. 66 violates the CBA by limiting the number of vacation and sick days UTIER members can accumulate. *(Id.)* The second piece of legislation challenged by Plaintiff was enacted

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[7] The most recent collective bargaining agreement ("CBA") negotiated by UTIER on behalf of its members had a stated effective period of August 2008 through August 2012. *(Id.* ¶ 17.) Although a new collective bargaining agreement has not been negotiated, Plaintiff maintains that the CBA remains valid and binding under a provision of the prior agreement that provides that the agreement "will continue dictating the labor relations between PREPA and UTIER until a new collective bargaining agreement is negotiated and comes in effect." *(Id.* ¶ 61.)

on January 23, 2017. The "Act to Attend to the Economic, Fiscal, and Budget Crisis and to Guarantee the Functioning of the Government of Puerto Rico," Act Num. 3 of January 23, 2017 ("Act Num. 3") allegedly suspends "all collective bargaining agreement provisions . . . contrary to its clauses." *(Id.* ¶ 25(b).) Plaintiff also contends that the "Administration and Transformation of the Human Resources of the Government of Puerto Rico Act," Act Num. 8 of February 4, 2017 ("Act Num. 8") impairs the CBA by allowing the Government to consolidate and eliminate services, create a unified system of job classifications, implement a merit system applicable to all agencies and corporations, and facilitate the transfer or movement of employees between agencies. *(Id.* ¶ 25(c).)Finally, Plaintiff argues that the "Fiscal Plan Compliance Act," Act Num. 26 of April 29, 2017 ("Act Num. 26") "eliminates monetary compensation for excess vacation and illness days, alters the amount of days an employee can accrue of vacation or illness to make it less, eliminates any and all monetary compensations, and sets a time limit for the use of excess vacation or illness days" in violation of the CBA. *(Id.* ¶ 25(d).)

II.
DISCUSSION

Defendants move pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6)[8] to dismiss the Complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted. A court presented with motions to dismiss under both Rules 12(b)(1) and 12(b)(6) should ordinarily decide

[8] Rules 12(b)(1) and 12(b)(6) are applicable to this adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7012.

jurisdictional questions before addressing the merits. *Deniz v. Municipality of Guaynabo*, 285 F.3d 142, 149 (1st Cir. 2002). The party invoking the jurisdiction of a federal court carries the burden of proving the existence of grounds for the exercise of jurisdiction. *Johansen v. United States*, 506 F.3d 65, 68 (1st Cir. 2007). The court also has an independent duty to assess whether it has subject matter jurisdiction of an action. *See* Fed. R. Civ. P. 12(h)(3); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990).

Plaintiff's Complaint sets forth the following four Prayers for Relief. In its First Prayer for Relief, Plaintiff seeks declaratory relief that Section 101 of PROMESA, which provides for the appointment mechanism of the Oversight Board, violates the Appointments Clause and the Separation of Powers principles of the Constitution of the United States of America. (Compl. ¶ 113.) In its Second Prayer for Relief, Plaintiff seeks declaratory relief that, in light of the alleged Appointments Clause violation, the "members of the Oversight Board are therefore unconstitutionally holding office by definition." *(Id.* ¶ 115.) In its Third Prayer for Relief, Plaintiff seeks declaratory relief that the acts and determinations taken by the Oversight Board "from the time of their appointments to the present are unconstitutional and null" due to the asserted constitutional violations. *(Id.* ¶ 117.) Plaintiff's Fourth Prayer for Relief seeks injunctive relief preventing Defendants from pursuing any Title III case or exercising any other power or authority provided by PROMESA until such time that the members of the Oversight Board "are recast to comply with the Appointments Clause of the United States Constitution and an Oversight Board is constitutionally appointed." *(Id.* ¶ 119.)

A. Rule 12(b)(1): Subject Matter Jurisdiction

1. Redressable Injury

Defendants move to dismiss the Amended Complaint pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction. Specifically, Defendants argue that UTIER and its members lack constitutional standing because UTIER has not established that it has suffered a concrete injury. (Mot. at 1.) In support of that assertion, Defendants contend that the PREPA Fiscal Plan serves merely as a "business plan" and, as such, UTIER has not and cannot plead any distinct injury caused by the actions of the Oversight Board. Plaintiff argues that it is a creditor with a pecuniary interest in the outcome of PREPA's Title III case.[9] (Docket Entry No. 100, the "Opposition," at 20.) Specifically, Plaintiff asserts that the outcome of thousands of pending judicial and administrative proceedings and the recovery of unappealable judgments, in actions brought by UTIER against PREPA, are at stake in this Title III case. *(Id.)* Moreover, Plaintiff argues that the Challenged Legislation, which Plaintiff further alleges was adopted by the Oversight Board into the PREPA Fiscal Plan and the PREPA Budget, substantially impairs its collective bargaining agreement. *(Id.* at 20-21.)

In resolving a Rule 12(b)(1) motion to dismiss an action for lack of standing, the court must "credit the plaintiff's well-pled factual allegations and draw all

[9] AFSCME advances a similar argument and contends that UTIER has standing, solely by virtue of its status as a creditor, to challenge PREPA's bankruptcy filing as deficient. (*See* Docket Entry No. 99 at 5.) The Court does not address this argument. As discussed *infra*, UTIER sufficiently pleads that it has suffered an injury-in-fact, that the harm is fairly traceable to the Oversight Board, and that injury is likely to be redressed by a favorable judicial decision in this action.

reasonable inferences in the plaintiff's favor." *Sanchez ex rel. D.R.-S. v. United States*, 671 F.3d 86, 92 (1st Cir. 2012). To demonstrate constitutional standing, a plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). Plaintiff, as "[t]he party invoking federal jurisdiction[,] bears the burden of establishing these elements." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

Here, Plaintiff alleges that the Oversight Board has certified a fiscal plan that incorporates the Challenged Legislation and, as a result, alters, impairs, takes without just compensation, or nullifies various agreed-upon provisions of the CBA. Crediting these factual allegations, and drawing "all reasonable inferences in [Plaintiff's] favor," the Court finds that, for the purposes of a constitutional standing analysis, Plaintiff has sufficiently pled that it has suffered an injury-in-fact, that the harm is fairly traceable to the Oversight Board and the consequence of the Oversight Board's respective actions, and that injury is likely to be redressed by a favorable judicial decision in this action. *See Sanchez*, 671 F.3d at 92; *Spokeo*, 136 S. Ct. at 1547.

2. Limitations on Jurisdiction Under PROMESA Section 106(e)

Section 106(e) of PROMESA provides that:

> There shall be no jurisdiction in any United States district court to review challenges to the Oversight Board's certification determinations under this Act.

11 U.S.C.A. § 2126(e) (West 2017.)

Defendants, citing to Section 106(e) of PROMESA, argue that Plaintiff lacks prudential standing and the Court lacks subject-matter jurisdiction over Plaintiff's Third and Fourth Prayers for Relief because "UTIER is not in the zone of entities or individuals to whom Congress granted the right to challenge certifications of fiscal plans and budgets." (Mot. at 2.) Plaintiff argues that Section 106(a) of PROMESA grants this Court with jurisdiction to review and entertain "any action" against the Oversight Board, including questions regarding the constitutionality of the Oversight Board. (Opp. at 25.)

As explained in this Court's decision on the Aurelius Motions, Section 106(e) of PROMESA does not deprive the Court of jurisdiction to entertain claims that a fiscal plan is invalid or unenforceable as violative of a clause of the federal Constitution. *See Ambac Assurance Corp. v. Commonwealth of Puerto Rico (In re Fin. Oversight and Mgmt. Bd. for P.R.)*, 297 F. Supp. 3d 269, 284 (D.P.R. 2017). The Third and Fourth Prayers for Relief are not implicated by Section 106(e) because they do not challenge the Oversight Board's certification of the PREPA Fiscal Plan or claim that PROMESA's fiscal plan certification predicates have not been met. Accordingly, the Court turns to the merits of Plaintiff's Prayers for Relief.

B. Rule 12(b)(6): Failure to State a Claim

To survive a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 12(b)(6), a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The court accepts as true the non-conclusory factual allegations in the complaint and makes all reasonable inferences in the plaintiff's favor. *Miss. Pub. Emps.'*

Ret. Sys. v. Boston Sci. Corp., 523 F.3d 75, 85 (1st Cir. 2008). The court may consider "documents the authenticity of which are not disputed by the parties . . . documents central to plaintiffs' claim, [and] documents sufficiently referred to in the complaint." *Id.* at 86 (citations omitted). The complaint must allege enough factual content to nudge a claim "across the line from conceivable to plausible." *Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009) (citing *Twombly*, 550 U.S. at 570).

The crux of Plaintiff's Complaint is the argument that Section 101 of PROMESA, which provides for the appointment mechanism of the Oversight Board, violates the Appointments Clause and the Separation of Powers principles of the Constitution of the United States of America. As the Court recently explained in its Opinion and Order on the Aurelius Motions, Congress exercised its powers under the Territories Clause of the Constitution in approving Puerto Rico's Constitution and in enacting PROMESA. The Territories Clause empowers Congress to make rules and regulations for Puerto Rico, and to alter those rules as well. *In re Fin. Oversight and Mgmt. Bd. for P.R.*, __ F. Supp. 3d __, 2018 WL 3425294, at *6 (D.P.R. July 13, 2018). The Court held as follows in its Opinion and Order on the Aurelius Motions:

> [T]he Oversight Board is an instrumentality of the territory of Puerto Rico, established pursuant to Congress's plenary powers under Article IV of the Constitution, . . . its members are not "Officers of the United States" who must be appointed pursuant to the mechanism established for such officers by Article II of the Constitution, and . . . there is accordingly no constitutional defect in the method of

> appointment provided by Congress for members of the Oversight Board.

Id. at *12.

Plaintiff's claims for declaratory relief thus fail to state a claim upon which relief may be granted, as does Plaintiff's request for injunctive relief, which seeks to bar the Oversight Board from exercising powers specifically granted to it by PROMESA.

CONCLUSION

For the foregoing reasons and for substantially the relevant reasons set forth in the Opinion and Order on the Aurelius Motions, the Motion is granted and the Complaint is dismissed in its entirety. The Clerk of Court is directed to enter judgment accordingly and close this adversary proceeding.

This Opinion and Order resolves Docket Entry Nos. 88, 89, and 95.

SO ORDERED.

Dated: August 15, 2018

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

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Nos. 18-1671, 18-1746, 18-1787

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AURELIUS INVESTMENT, LLC, *et al.*,

Appellants,

v.

COMMONWEALTH OF PUERTO RICO, *et al.*,

Appellees.

———

ASSURED GUARANTY CORPORATION, *et al.*,

Appellants,

v.

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD, *et al.*,

Appellees.

———

UNIÓN DE TRABAJADORES DE LA INDUSTRIA ELÉCTRICA Y RIEGO (UTIER),

Appellant,

v.

PUERTO RICO ELECTRIC POWER AUTHORITY, *et al.*,

Appellees.

———

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

[Hon. Laura Taylor Swain,* *U.S. District Judge*]

Before: Torruella, Thompson, and Kayatta, *Circuit Judges*.

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Donald B. Verrilli, Jr., with whom Ginger D. Anders, Chad I. Golder, Sarah G. Boyce, Rachel G. Miller-Ziegler, Munger, Tolles & Olson LLP, Martin J. Bienenstock, Stephen L. Ratner, Timothy W. Mungovan, Mark D. Harris, Chantel L. Febus, Proskauer Rose LLP, Hermann D. Bauer, Ubaldo M. Fernandez, and O'Neill & Borges LLC were on brief, for appellee The Financial Oversight and Management Board for Puerto Rico.

Walter Dellinger, Peter Friedman, John J. Rapisardi, William J. Sushon, and O'Melveny & Myers LLP on brief, for The Puerto Rico Fiscal Agency and Financial Advisory Authority.

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* Of the Southern District of New York, sitting by designation.

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José A. Hernandez-Mayoral, with whom Rafael Hernandez-Colón, and Héctor Ferrer-Rios, were on brief, as amicus curiae, for the Popular Democratic Party of Puerto Rico and its President.

Jorge Martinez-Luciano, with whom Emil Rodriguez-Escudero, M.L. & R.E. Law Firm, Anibal Acevedo-Vilá and Law Office Anibal Acevedo-Vilá were on brief, as amici curiae.

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Ian Heath Gershengorn, Lindsay C. Harrison, William K. Dreher, Catherine Steege, Melissa Root, Robert Gordon, Richard Levin, A. J. BennazarZequeira, and Bennazar, Garcia, & Milian, C.S.P. on brief, for The Official Committee of Retired Employees of the Commonwealth of Puerto Rico.

Charles J. Cooper, Michael W. Kirk, Howard C. Nielson, Jr., John D. Ohlendorf, Haley N. Proctor, Cooper & Kirk, PLLC, Rafael Escalera, Carlos R. Rivera-Ortiz, Sylvia M. Arizmendi-López de Victoria, and Reichard & Escalera on brief, for Creditors-Appellees the Cofina Senior Bondholders' Coalition.

Manuel A. Rodriguez-Banchs, and Matthew S. Blumin, on brief, for appellee American Federal of State, County & Municipal Employees.

February 15, 2019

TORRUELLA, *Circuit Judge*. The matter before us arises from the restructuring of Puerto Rico's public debt under the 2016 Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA"). This time, however, we are not tasked with delving into the intricacies of bankruptcy proceedings. Instead, we are required to square off with a single question of constitutional magnitude: whether members of the Financial Oversight and Management Board created by PROMESA ("Board Members") are "Officers of the United States" subject to the U.S. Constitution's Appointments Clause. Title III of PROMESA authorizes the Board to initiate debt adjustment proceedings on behalf of the Puerto Rico government, and the Board exercised this authority in May 2017. Appellants seek to dismiss the Title III proceedings, claiming the Board lacked authority to initiate them given that the Board Members were allegedly appointed in contravention of the Appointments Clause.

Before we can determine whether the Board Members are subject to the Appointments Clause, we must first consider two antecedent questions that need be answered in sequence, with the answer to each deciding whether we proceed to the next item of inquiry. The first question is whether, as decided by the district court and claimed by appellees, the Territorial Clause displaces the Appointments Clause in an unincorporated territory such as Puerto Rico. If the answer to this first

question is "no," our second area of discussion turns to determining whether the Board Members are "Officers of the United States," as only officers of the federal government fall under the purview of the Appointments Clause. If the answer to this second question is "yes," we must then determine whether the Board Members are "principal" or "inferior" United States officers, as that classification will dictate how they must be appointed pursuant to the Appointments Clause. But before we enter fully into these matters, it is appropriate that we take notice of the developments that led to the present appeal.

BACKGROUND

The centerpieces of the present appeals are two provisions of the Constitution of the United States. The first is Article II, Section 2, Clause 2, commonly referred to as the "Appointments Clause," which establishes that:

> [The President] . . . shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2.

The second is Article IV, Section 3, Clause 2, or the "Territorial Clause," providing Congress with the "power to dispose of and make all needful Rules and Regulations respecting the Territory . . . belonging to the United States." U.S. Const. art. IV, § 3, cl. 2.

A. Puerto Rico's Financial Crisis

The interaction between these two clauses comes into focus because of events resulting from the serious economic downfall that has ailed the Commonwealth of Puerto Rico since the turn of the 21st Century, *see* Center for Puerto Rican Studies, *Puerto Rico in Crisis Timeline*, Hunter College (2017), https://centropr.hunter.cuny.edu/sites/default/files/PDF_Publications/Puerto-Rico-Crisis-Timeline-2017.pdf; *see generally* Juan R. Torruella, *Why Puerto Rico Does Not Need Further Experimentation with Its Future: A Reply to the Notion of "Territorial Federalism"*, 131 Harv. L. Rev. F. 65 (2018), and its Governor's declaration in the summer of 2015 that the Commonwealth was unable to meet its estimated $72 billion public debt obligation, *see* Michael Corkery & Mary Williams Walsh, *Puerto Rico's Governor Says Island's Debts Are "Not Payable"*, N.Y. Times (June 28, 2015), https://www.nytimes.com/2015/06/29/business/dealbook/puerto-ricos-governor-says-islands-debts-are-not-payable.html. This obligation developed, in substantial part, from the triple tax-exempt bonds issued and sold to a large variety of individual and institutional investors, not only in Puerto Rico but also throughout the United States.[1] Given the unprecedented expansiveness of the default in terms of total debt, the number of creditors affected, and the creditors' geographic diversity, it became self-evident that the Commonwealth's insolvency necessitated a national response from Congress. Puerto Rico's default was of particular detriment to the municipal bond market where Commonwealth bonds are traded

[1] Since 1917 Congress has authorized exemption of Puerto Rico bonds from taxation by the federal, state, and municipal governments. *See* An Act to provide a civil government for Porto Rico, and for other purposes, ch. 145, § 3, 39 Stat. 953 (1917).

and upon which state and local governments across the United States rely to finance many of their capital projects. *See* Nat'1 Assoc, of Bond Lawyers, *Tax-Exempt Bonds: Their Importance to the National Economy and to State and Local Governments* 5 (Sept. 2012), https://www.nabl.org/portals/0/documents/NABL_White_Paper.pdf.

From 1938 until 1984, Puerto Rico was able, like all other U.S. jurisdictions, to seek the protection of Chapter 9 of the U.S. Bankruptcy Code when its municipal instrumentalities ran into financial difficulties. *See Franklin Cal. Tax-Free Trust* v. *Puerto Rico*, 805 F.3d 322, 345-50 (1st Cir. 2015) (Torruella, J., concurring). But without any known or documented explanation, in 1984, Congress extirpated from the Bankruptcy Code the availability of this relief for the Island. *Id.* at 350. In an attempt to seek self-help, and amidst the Commonwealth's deepening financial crisis, the Puerto Rico Legislature passed its own municipal bankruptcy legislation in 2014. *See* Puerto Rico Public Corporation Debt Enforcement and Recovery Act of 2014, 2014 P.R. Laws Act No. 71; *see generally* Lorraine S. McGowen, *Puerto Rico Adopts a Debt Recovery Act for Its Public Corporations*, 10 Pratt's J. Bankr. L. 453 (2014). The Commonwealth's self-help journey, however, was cut short by the Supreme Court in *Puerto Rico* v. *Franklin Cal. Tax-Free Tr.*, 136 S. Ct. 1938 (2016), which invalidated the Puerto Rico bankruptcy statute. Coincidentally, the Supreme Court decided *Franklin Cal*. on June 13, 2016 – seven days before the following congressional intervention into this sequence of luckless events.

B. Congress Enacts PROMESA

On June 30, 2016, Congress's next incursion into Puerto Rico's economic fortunes took place in the form

of Public Law 114-187, the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA),[2] 48 U.S.C. § 2101 *et seq.* , which Congress found necessary to deal with Puerto Rico's "fiscal emergency" and to help mitigate the Island's "severe economic decline." *See id.* § 2194(m)(1). Congress identified the Territorial Clause as the source of its authority to enact this law. *See id.* § 2121(b) (2).

To implement PROMESA, Congress created the Financial Oversight and Management Board of Puerto Rico (the "Board"). Congress charged the Board with providing independent supervision and control over Puerto Rico's financial affairs and helping the Island "achieve fiscal responsibility and access to the capital markets." *Id.* § 2121(a). In so proceeding, Congress stipulated that the Board was "an entity [created] within the territorial government" of Puerto Rico, *id.* § 2121(c)(1), which "shall not be considered to be a department, agency, establishment, or instrumentality of the Federal Government," *id.* § 2121(c) (2), and that it was to be funded entirely from Commonwealth resources, *id.* § 2127.[3]

Although PROMESA places the Board "within" the Puerto Rico territorial government, Section 108 of PROMESA, which is labeled "Autonomy of Oversight Board," *id.* § 2128, precludes the Puerto Rico Governor and Legislature from exercising any power or authority over the so-called "territorial entity" that PROMESA

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[2] Since its proposed enactment this legislation has been labeled by the acronym "PROMESA," which in the Spanish language stands for "promise."

[3] A new account – under the Board's exclusive control – was required to be established by the Puerto Rico government within its Treasury Department to fund Board operations.

creates. Instead, it subordinates the Puerto Rico territorial government to the Board, as it unambiguously pronounces that:

> (a) . . . Neither the Governor nor the Legislature may –
>
> (1) exercise any control, supervision, oversight, or review over the . . . Board or its activities; or
>
> (2) enact, implement, or enforce any statute, resolution, policy, or rule that would impair or defeat the purposes of this chapter, as determined by the . . . Board.

Id. § 2128(a).

PROMESA also provides additional authority and powers to the Board with similarly unfettered discretion. For example, Section 101(d)(1)(A) grants the Board, "in its sole discretion at such time as the . . . Board determines to be appropriate, "the designation of "any territorial instrumentality as a covered territorial instrumentality that is subject to the requirements of [PROMESA]." *Id.* § 2121(d)(1)(A). Under Section 101(d)(1)(B), the Board, "in its sole discretion, "may require the Governor of Puerto Rico to submit "such budgets and monthly or quarterly reports regarding a covered territorial instrumentality as the . . . Board determines to be necessary . . ." *Id.* § 2121(d) (1) (B). Pursuant to Section 101(d) (1) (C), the Board is allowed, "in its sole discretion," to require separate budgets and reports for covered territorial instrumentalities apart from the Commonwealth's budget, and to require the Governor to develop said separate documents. *Id.* § 2121(d) (1) (C). Per Section 101(d) (1) (D), the "Board may require, in its sole discretion," that the Governor "include a covered territorial instrumentality in the

applicable Territory Fiscal Plan." *Id.* § 2121(d) (1) (D). Further, as provided in Section 101(d) (1) (E), the Board may, "in its sole discretion," designate "a covered territorial instrumentality to be the subject of [a separate] Instrumentality Fiscal Plan." *Id.* § 2121(d) (1) (E). Finally, Section 101(d) (2) (A) bestows upon the Board, again "in its sole discretion, at such time as the . . . Board determines to be appropriate," the authority to "exclude any territorial instrumentality from the requirements of [PROMESA]." *Id.* § 2121(d)(2)(A).

PROMESA also requires the Board to have an office in Puerto Rico and elsewhere as it deems necessary, and that at any time the United States may provide the Board with use of federal facilities and equipment on a reimbursable or non-reimbursable basis. *Id.* § 2122. Additionally, Section 103(c) waives the application of Puerto Rico procurement laws to the Board, *id.* § 2123(c), while Section 104 (c) authorizes the Board to acquire information directly from both the federal and Puerto Rico governments without the usual bureaucratic hurdles, *id.* § 2124(c). Moreover, the Board's power to issue and enforce compliance with subpoenas is to be carried out in accordance with Puerto Rico law. *Id.* § 2124(f).[4] Finally, PROMESA directs the Board to ensure that any laws prohibiting public employees from striking or engaging in lockouts be strictly enforced. *Id.* § 2124(h).

We thus come to PROMESA's Title III, the central provision of this statute, which creates a special bankruptcy regime allowing the territories and their

[4] We note that 48 U.S.C. § 2124(f) (1) makes reference to the Puerto Rico Rules of Civil Procedure of 1979, 32 L.P.R.A. App. Ill, even though those rules were repealed and replaced by the Puerto Rico Rules of Civil Procedure of 2009, 32 L.P.R.A. App. V.

instrumentalities to adjust their debt. *Id.* §§ 2161-77. This new bankruptcy safe haven applies to territories more broadly than Chapter 9 applies to states because it covers not just the subordinate instrumentalities of the territory, but also the territory itself. *Id.* § 2162.

An important provision of PROMESA's bankruptcy regime is that the Board serves as the sole representative of Puerto Rico's government in Title III debtor-related proceedings, *id.* § 2175(b), and that the Board is empowered to "take any action necessary on behalf of the debtor" – whether the Commonwealth government or any of its instrumentalities – "to prosecute the case of the debtor," *id.* § 2175(a).

C. Appointment of Members to PROMESA's Board

PROMESA establishes that the "Board shall consist of seven members appointed by the President," who must comply with federal conflict of interest statutes. *Id.* § 2121(e) (1) (A).[5] The Board's membership is divided into six categories, labelled A through F, with one member for Categories A, B, D, E, and F, and two members for Category C. *Id.* § 2121(e) (1) (B).[6] The Governor of Puerto Rico, or his designee, also serves on the Board, but in an *ex officio*, non-voting capacity. *Id.* § 2121(e) (3). The Board's duration is for an indefinite period, at a minimum four years and likely more,

[5] Section 2121(e)(1)(A) of PROMESA cross-references section 2129(a), which, for its part, incorporates 18 U.S.C. § 208's dispositions governing conflicts of interest.

[6] As will be discussed in detail below, the assigned category affects a prospective Board member's eligibility requirements and appointment procedure.

given the certifications that Section 209 of PROMESA requires.[7]

Pursuant to Section 101(f) of PROMESA, individuals are eligible for appointment to the Board only if they:

> (1) ha[ve] knowledge and expertise in finance, municipal bond markets, management, law, or the organization or operation of business or government; and
>
> (2) prior to appointment, [they are] not an officer, elected official, or employee of the territorial government, a candidate for elected office of the territorial government, or a former elected official of the territorial government.

Id. § 2121(f). In addition, there are certain primary residency or primary business place requirements that must be met by some of the Board Members. *Id.* § 2121(e) (2) (B) (i), (D) (requiring that the Category A

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[7] Section 209 of PROMESA states that the Board shall terminate when it certifies that:

> (1) the applicable territorial government has adequate access to short-term and long-term credit markets at reasonable interest rates to meet the borrowing needs of the territorial government; and
>
> (2) for at least 4 consecutive fiscal years -
>
> (A) the territorial government has developed its Budgets in accordance with modified accrual accounting standards; and
>
> (B) the expenditures made by the territorial government during each fiscal year did not exceed the revenues of the territorial government during that year, as determined in accordance with modified accrual accounting standards.

48 U.S.C. § 2149.

Board Member "maintain a primary residence in the territory or have a primary place of business in the territory").

Of particular importance to our task at hand is Section 101(e) (2) (A), which outlines the procedure for the appointment of the Board Members:

> (A) The President shall appoint the individual members of the . . . Board of which –
>
> (i) the Category A member should be selected from a list of individuals submitted by the Speaker of the House of Representatives;
>
> (ii) the Category B member should be selected from a separate, non-overlapping list of individuals submitted by the Speaker of the House of Representatives;
>
> (iii) the Category C member should be selected from a list submitted by the Majority Leader of the Senate;
>
> (iv) the Category D member should be selected from a list submitted by the Minority Leader of the House of Representatives;
>
> (v) the Category E member should be selected from a list submitted by the Minority leader of the Senate; and
>
> (vi) the category F member may be selected in the President's sole discretion.

Id. § 2121(e)(2)(A).

In synthesis, pursuant to this scheme, six of the seven Board Members shall be selected by the President from the lists provided by House and Senate leadership, with PROMESA allowing the President to select

the seventh member at his or her sole discretion. Senatorial advice and consent is not required if the President makes the appointment from one of the aforementioned lists. *Id.* § 2121(e) (2) (E). In theory, the statute allows the President to appoint a member to the Board who is not on the lists, in which case, "such an appointment shall be by and with the advice and consent of the Senate." *Id.* Consent by the Senate had to be obtained by September 1, 2016 so as to allow an off-list appointment, else the President was required to appoint directly from the lists. And because the Senate was in recess for all but eight business days between enactment of the statute and September 1, one might conclude that, in practical effect, the statute forced the selection of persons on the list.

As was arguably inevitable, on August 31, 2016, the President chose all Category A through E members from the lists submitted by congressional leadership and appointed the Category F member at his sole discretion.[8]

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[8] *President Obama Announces the Appointment of Seven Individuals to the Financial Oversight and Management Board for Puerto Rico*, The White House Off. of the Press Sec'y (Aug. 31, 2016), https://obamawhitehouse.archives.gov/the-press-office/2016/08/31/president-obama-announces-appointment-seven-individualsfinancial. The appointees included Andrew G. Biggs, a resident scholar at the American Enterprise Institute, and former holder of multiple high ranking positions in the Social Security Administration; José B. Carrión III, an experienced insurance industry executive from Puerto Rico and the President and Principal Partner of HUB International CLC, LLC, which operates therein; Carlos M. García, a resident of Puerto Rico, the Chief Executive Officer of BayBoston Managers LLC, Managing Partner of BayBoston Capital LP, who formerly served as Senior Executive Vice President and board member at Santander Holdings USA, Inc. (2011-2013), among other executive posts at Santander entities (1997-2008), and as Chairman of the Board, President, and CEO of the Gov-

It is undisputed that the President did not submit any of the Board member appointments to the Senate for its advice and consent prior to the Board Members assuming the duties of their office, or, for that matter, at any other time.

D. Litigation Before the District Court

In May 2017, the Board initiated Title III debt adjustment proceedings on behalf of the Commonwealth in the U.S. District Court for the District of Puerto Rico. *See* Title III Petition, *In re Commonwealth of P.R.*, Bankruptcy Case No. 17-BK- 3283 (LTS) (D.P.R. May 3, 2017). This was followed by the filing of several other Title III proceedings on behalf of various Commonwealth government instrumentalities. *See* Title III Petitions in: *In re P.R. Sales Tax Fin. Corp. (COFINA)*, Bankruptcy Case No. 17-BK-3284 (LTS) (D.P.R. May 5, 2017); *In re Emps. Ret. Sys. of the Gov't of the Commonwealth of P.R. (ERS)*, 17-BK-3566 (LTS) (D.P.R. May 21, 2017); *In re P.R. Highways and Transp. Aut. (HTA);* Bankruptcy Case No. 17-BK-3567 (LTS) (D.P.R. May 21, 2017); *In re P.R. Elec. Power Auth. (PREPA)* [hereinafter *In re PREPA]*, Bankruptcy

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ernment Development Bank for Puerto Rico (2009-2011); Arthur J. González, a Senior Fellow at the New York University School of Law and former U.S. Bankruptcy Judge in the Southern District of New York (1995-2002); José R. González, CEO and President of the Federal Home Loan Bank of New York, which he joined in 2013, former Chief Executive Officer and President of Santander Bancorp (2002-2008), and President of Santander Securities Corporation (1996-2001) and the Government Development Bank of Puerto Rico (1986-1989); Ana J. Matosantos, President of Matosantos Consulting, former Director of the State of California's Department of Finance (2009-2013) and Chief Deputy Director for Budgets (2008-2009); and, David A. Skeel Jr., professor of Corporate Law at the University of Pennsylvania Law School, which he joined in 1999.

Case No. 17-BK-4780 (LTS) (D.P.R. Jul. 7, 2017). Thereafter, some entities – now the appellants before us – arose in opposition to the Board's initiation of debt adjustment proceedings on behalf of the Commonwealth.

Among the challengers are Aurelius Investment, LLC, et al. and Assured Guaranty Corporation, et al. ("Aurelius"). Before the district court, Aurelius argued that the Board lacked authority to initiate the Title III proceeding because its members were appointed in violation of the Appointments Clause and the principle of separation of powers. The Board rejected this argument, positing that its members were not "Officers of the United States" within the meaning of the Appointments Clause, and that the Board's powers were purely local in nature, not federal as would be needed to qualify for Appointments Clause coverage. The Board further argued that, in any event, the Appointments Clause did not apply even if the individual members were federal officers, because they exercised authority in Puerto Rico, an unincorporated territory where the Territorial Clause endows Congress with plenary powers. This, according to the Board, exempted Congress from complying with the Appointments Clause when legislating in relation to Puerto Rico. In the alternative, the Board argued that the Board Members' appointment did not require Senate advice and consent because they were "inferior officers." The United States intervened on behalf of the Board, pursuant to 28 U.S.C. § 2403(a), to defend the constitutionality of PROMESA and the validity of the appointments and was generally in agreement with the Board's contentions.

The other challenger to the Board's appointments process, and an appellant here, is the Union de Trabajadores

de la Industria Electrica y Riego ("UTIER"), a Puerto Rican labor organization that represents employees of the government-owned electric power company, the Puerto Rico Electric Power Authority ("PREPA"). The Board had also filed a Title III petition on behalf of PREPA, *see In re PREPA*, *supra*, which led the UTIER to file an adversary proceeding as a party of interest before the District Court in which it raised substantially the same arguments as Aurelius regarding the Board Members' defective appointment, *see Union de Trabajadores de la Industria Electrica y Riego* v. *P. R. Elec. Power Auth.*, No. 17-228 (LTS) (D.P.R. Aug. 15, 2018); *see also* Adversary Complaint, *Union de Trabajadores de la Industria Electrica y Riego* v. *P.R. Elec. Power Auth.*, No. 17-229 (LTS) (D.P.R. Aug. 7, 2017) (describing the terms of the UTIER-PREPA collective bargaining agreement).

E. The District Court's Opinion

The district court, in separate decisions, ruled against Aurelius and UTIER and rejected their motions to dismiss the Board's Title III petitions. *In re Commonwealth of P.R.*, Bankruptcy Case No. 17-BK-3283 (LTS) (D.P.R. July 3, 2018); *Assured Guar. Mun. Corp,* v. *Fin. Oversight and Mgmt. Bd. for P.R.*, No. 18-87 (LTS) (D.P.R. Aug. 3, 2018); *UTIER* v. *PREPA*, No. 17-228 (LTS). In brief, the district court determined that the Board is an instrumentality of the Commonwealth government established pursuant to Congress's plenary powers under the Territorial Clause, that Board Members are not "Officers of the United States," and that therefore there was no constitutional defect in the method of their appointment. The court arrived at this conclusion after considering the jurisprudence and practice surrounding the relationship between Congress

and the territories, including Puerto Rico, along with Congress's intent with regards to PROMESA.

The district court based its ruling on the premise that "the Supreme Court has long held that Congress's power under [the Territorial Clause] is both 'general and plenary.'" Such a plenary authority is what, according to the district court, allows Congress to "establish governmental institutions for territories that are not only distinct from federal government entities but include features that would not comport with the requirements of the Constitution if they pertained to the governance of the United States." The district court further pronounced that Congress "has exercised [its plenary] power with respect to Puerto Rico over the course of nearly 120 years, including the delegation to the people of Puerto Rico elements of its . . . Article IV authority by authorizing a significant degree of local self-governance."

The district court also relied on judicial precedents holding that Congress may create territorial courts that do not "incorporate the structural assurances of judicial independence" provided for in Article III of the Constitution – namely, life tenure and protection against reduction in pay – as decisive authority. From the perdurance of these non-Article III courts across the territories (excepting, of course, Puerto Rico which although still an unincorporated territory has had, since 1966, an Article III court),[9] the district court

[9] Act of Sept. 12, 1966, Public Law 89-571, 80 Stat. 764 (granting judges appointed to the District of Puerto Rico the same life tenure and retirement rights granted to judges of all other United States district courts); *see also Examining Bd. of Engineers, Architects & Surveyors* v. *Flores de Otero*, 426 U.S. 572, 594 n.26 1976) ("The reason given [by Congress] for [Public Law 89-571] was that the Federal District Court in Puerto Rico 'is in its

reasoned that "Congress can thus create territorial entities that are distinct in structure, jurisdiction, and powers from the federal government."

Turning to the relationship between Congress and Puerto Rico, the district court noted that "Congress has long exercised its Article IV plenary power to structure and define governmental entities for the island," in reference to the litany of congressional acts that have shaped Puerto Rico's local government since 1898, including the Treaty of Paris of 1898, the Foraker Act of 1900, the Jones-Shafroth Act of 1917, and Public Law 600 of 1950.

Furthermore, with regards to PROMESA and its Board, the district court afforded "substantial deference" to "Congress's determination that it was acting pursuant to its Article IV territorial powers in creating the . . . Board as an entity of the government of Puerto Rico." The district court then proceeded to consider whether Congress can create an entity that is not inherently federal. It concluded in the affirmative, because finding otherwise would "ignore [] both the plenary nature of congressional power under Article IV and the well-rooted jurisprudence . . . establish[ing] that any powers of self-governance exercised by territorial governments are exercised by virtue of

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jurisdiction, powers, and responsibilities the same as the U. S. district courts in the (several) States.'" (quoting S. Rep. No. 89-1504 at 2 (1966))); *Igartua-De La Rosa* v. *United States*, 417 3d 145, 169 (1st Cir. 2005) (en banc) (Torruella, J., dissenting) ("An Article III District Court sits [in Puerto Rico], providing nearly one-third of the appeals filed before [the Court of Appeals for the First Circuit], which sits in Puerto Rico at least twice a year, also in the exercise of Article III power."); *United States* v. *Santiago*, 23 F. Supp. 3d 68, 69 (D.P.R. Feb. 12, 2014) (collecting cases and scholarly articles).

congressional delegation rather than inherent local sovereignty." Accordingly, the district court found that the "creation of an entity such as the . . . Board through popular election would not change the . . . Board's ultimate source of authority from a constitutional perspective." The court deemed this so because "neither the case law nor the historical practice . . . compels a finding that federal appointment necessarily renders an appointee a federal officer." The district court therefore concluded that the Board is a territorial entity notwithstanding

> [t]he fact that the . . . Board's members hold office by virtue of a federally enacted statutory regime and are appointed by the President [,] [because this] does not vitiate Congress's express provisions for creation of the . . . Board as a territorial government entity that "shall not be considered to be a department, agency, establishment, or instrumentality of the Federal Government."

After ruling that the Board is a "territorial entity and its members are territorial officers," the district court finally determined that "Congress had broad discretion to determine the manner of selection for members of the . . . Board," which Congress "exercised . . . in empowering the President with the ability to both appoint and remove members from the . . . Board." On this final point, the district court observed that "[a]lthough historical practice . . . indicates that Congress has required Senate confirmation for certain territorial offices, nothing in the Constitution precludes the use of that mechanism for positions created under Article IV, and its use does not establish that Congress was obligated to invoke it."

The district court was certainly correct that Article IV conveys to Congress greater power to rule and regulate within a territory than it can bring to bear within the fifty states. In brief, within a territory, Congress has not only its customary power, but also the power to make rules and regulations such as a state government may make within its state. *See* U.S. Const. art. IV, § 3, cl. 2; *D. C.* v. *John R. Thompson Co.*, 346 U.S. 100, 106 (1953); *Simms* v. *Simms*, 175 U.S. 162, 168 (1899). As we will explain, however, we do not view these expanded Article IV powers as enabling Congress to ignore the structural limitations on the manner in which the federal government chooses federal officers, and we deem the Board Members – save its *ex officio* member[10] – to be federal officers.

DISCUSSION

A. The Territorial Clause Does Not Trump the Appointments Clause

However much Article IV may broaden the reach of Congress's powers over a territory as compared to its power within a state, this case presents no claim that the substance of PROMESA's numerous rules and regulations exceed that reach. Instead, appellants challenge the way the federal government has chosen the individuals who will implement those rules and regulations. This challenge trains our focus on the power of Congress vis-a-vis the other branches of the federal government. Specifically, the Board claims

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[10] No Appointments Clause challenge has been brought concerning the Governor of Puerto Rico, or the Governor's designee, who serves as an *ex officio* Board member without voting rights. See 48 U.S.C. § 2121(e)(3). Our holding is therefore limited to the seven Board Members appointed pursuant to 48 U.S.C. § 2121(e)(1)-(2).

that Article IV effectively allows Congress to assume what is otherwise a power of the President, and to share within the two bodies of Congress a power only assigned to the Senate.

We reject this notion that Article IV enhances Congress's capabilities in the intramural competitions established by our divided system of government. First, the Board seems to forget – and the district court failed to recognize and honor – the ancient canon of interpretation that we believe is a helpful guide to disentangle the interface between the Appointments Clause and the Territorial Clause: *generalia specialibus non derogant* (the "specific governs the general"). *See*, *e.g.*, *Turner* v. *Rogers*, 564 U.S. 431, 452-53 (2011) (Thomas, J., dissenting) (applying this canon in the context of constitutional interpretation in a conflict between the Due Process Clause and the voting rights. *See* 48 U.S.C. § 2121(e) (3). Our holding is therefore limited to the seven Board Members appointed pursuant to 48 U.S.C. § 2121 (e) (1)-(2). Sixth Amendment); *Albright* v. *Oliver*, 510 U.S. 266, 273-74 (1994) (plurality opinion).

The Territorial Clause is one of general application authorizing Congress to engage in rulemaking for the temporary governance of territories. *See Reid* v. *Covert*, 354 U.S. 1, 14 (1957) (plurality opinion). But such a general empowerment does not extend to areas where the Constitution explicitly contemplates a particular subject, such as the appointment of federal officers. Nowhere does the Territorial Clause reference the subject matter of federal appointments or the process to effectuate them. On the other hand, federal officer appointment is, of course, the *raison d' etre* of the Appointments Clause. It cannot be clearer or more unequivocal that the Appointments Clause mandates

that it be applied to *"all* . . . Officers of the United States." U.S. Const. art II, § 2, cl. 2 (emphasis added). Thus, we find in answering the first question before us a prime candidate for application of the *specialibus* canon and for the strict enforcement of the constitutional mandate contained in the Appointments Clause.

Consider next the Presentment Clause of Article I, Section 7. Under that clause, a bill passed by both chambers of Congress cannot become law until it is presented to, and signed by, the President (or the President's veto is overridden). U.S. Const. art. I, § 7, cl. 2. Surely no one argues that Article IV should be construed so as to have allowed Congress to enact PROMESA without presentment, or to have overridden a veto without the requisite super-majority vote in both houses. Nor does anyone seriously argue that Congress could have relied on its plenary powers under Article IV to alter the constitutional roles of its two respective houses in enacting PROMESA.

Like the Presentment Clause, the Appointments Clause constitutionally regulates how Congress brings its power to bear, whatever the reach of that power might be. The Appointments Clause serves as one of the Constitution's important structural pillars, one that was intended to prevent the "manipulation of official appointments" – an "insidious . . . weapon of eighteenth century despotism." *Freytag* v. *Comm'r*, 501 U.S. 868, 883 (1991) (citations omitted); *see also Edmond* v. *United States*, 520 U.S. 651, 659 (1997) . The Appointments Clause was designed "to prevent[] congressional encroachment" on the President's appointment power, while "curb[ing] Executive abuses" by requiring Senate confirmation of all principal officers. *Edmond*, 520 U.S. at 659. It is thus universally

considered "among the significant structural safeguards of the constitutional scheme." *Id.*

It is true that another restriction that is arguably a structural limitation on Congress's exercise of its powers – the nondelegation doctrine – does bend to the peculiar demands of providing for governance within the territories. In normal application, the doctrine requires that "when Congress confers decisionmaking authority upon agencies," it must "lay down by legislative act an intelligible principle to which the person or body authorized to [act] is directed to conform." *Whitman* v. *Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001) (quoting *J.W. Hampton, Jr. , & Co.* v. *United States*, 276 U.S. 394, 409 (1928)) . Otherwise, Congress has violated Article I, Section 1 of the Constitution, which vests "[a]11 legislative Powers herein granted . . . in a Congress of the United States." *Id.; see also* U.S. Const. art. I, § 1. In connection with the territories, though, Congress can delegate to territorial governments the power to enact rules and regulations governing territorial affairs. *See John R. Thompson Co.*, 346 U.S. at 106 ("The power of Congress to delegate legislative power to a territory is well settled."); *Cincinnati Soap Co.* v. *United States*, 301 U.S. 308, 321-23 (1937); *see also Simms*, 175 U.S. at 168 ("In the territories of the United States, Congress has the entire dominion and sovereignty, national and local, Federal and state, and has full legislative power over all subjects upon which the legislature of a state might legislate within the state; and may, at its discretion, intrust that power to the legislative assembly of a territory."). The Supreme Court has analogized the powers of Congress over the District of Columbia and the territories to that of states over their municipalities. *See John R. Thompson Co.*, 346 U.S. at 109. In the state-municipality context, " [a] municipal cor-

poration . . . is but a department of the State. The legislature may give it all the powers such a being is capable of receiving, making it a miniature State within its locality." *Barnes* v. *D. C.* , 91 U.S. 540, 544 (1875); *see also John R. Thompson Co.*, 346 U.S. at 109 ("It would seem then that on the analogy of the delegation of powers of self-government and home rule both to municipalities and to territories there is no constitutional barrier to the delegation by Congress to the District of Columbia of full legislative power subject of course to constitutional limitations to which all lawmaking is subservient and subject also to the power of Congress at any time to revise, alter, or revoke the authority granted."). The Supreme Court has also made clear that, in delegating power to the territories, Congress can only act insofar as "other provisions of the Constitution are not infringed." *Atl. Cleaners & Dyers* v. *United States*, 286 U.S. 427, 435 (1932).

The territorial variations on the traditional restrictions of the nondelegation doctrine pose no challenge by Congress to the power of the other branches. Any delegation must take the form of a duly enacted statute subject to the President's veto. Furthermore, the territorial exception to the nondelegation doctrine strikes us as strongly implicit in the notion of a territory as envisioned by the drafters of the Constitution. The expectation was that territories would become states. *See Downes* v. *Bidwell*, 182 U.S. 244, 380 (1901) (Harlan, J., dissenting). Hence, Congress had a duty – at least a moral duty – to manage a transition from federal to home rule. While the final delegation takes place in the act of formally creating a state, it makes evident sense that partial delegations of home-rule powers would incrementally precede full statehood. Accordingly, from the very beginning, Congress

created territorial legislatures to which it delegated rule-making authority. *See*, *e.g.*, An Ordinance for the Government of the Territory of the United States north-west of the river Ohio (1787), ch. 8, 1 Stat. 50, 51 n. (a) (1789).

None of these justifications for limiting the nondelegation doctrine to accommodate one of Congress's most salient purposes in exercising its powers under Article IV applies to the Appointments Clause. Nor does the teaching of founding era history. To the contrary, the evidence suggests strongly that Congress in 1789 viewed the process of presidential appointment and Senate confirmation as applicable to the appointment by the federal government of federal officers within the territories. That first Congress passed several amendments to the Northwest Ordinance of 1787 "so as to adopt the same to the present Constitution of the United States." *Id.* at 51. One such conforming amendment eliminated the pre-constitutional procedure for congressional appointment of officers within the territory and replaced it with presidential nomination and appointment "by and with the advice and consent of the Senate." *Id.* at 53.

More difficult to explain is *United States* v. *Heinszen*, 206 U.S. 370, 384-85 (1907) . The actual holding in *Heinszen* sustained tariffs on goods to the Philippines where the tariffs were imposed first by the President and then thereafter expressly ratified by Congress. In sustaining those tariffs, the Court stated that Congress could have delegated the power to impose the tariffs to the President beforehand, citing *United States* v. *Dorr*, 195 U.S. 138 (1904), a case that simply held that Congress could provide for criminal tribunals in the territories without also providing for trial by jury. *Id.* at 149. *Heinszen* cannot be explained as an instance of

Congress enabling home rule in a territory. Rather, it seems to allow Congress to delegate legislative power to the President, citing the territorial context as a justification. *Heinszen*, though, has no progeny that might shed light on how reliable it might serve as an apt analogy in the case before us. Moreover, *Heinszen* concerned a grant of power by Congress, not a grab for power at the expense of the executive.

For the foregoing reasons, we find in the nondelegation doctrine no apt example to justify an exception to the application of the Appointments Clause within the territories. An exception from the Appointments Clause would alter the balance of power within the federal government itself and would serve no necessary purpose in the transitioning of territories to states.

Further, the Board points us to *Palmore* v. *United States*, 411 U.S. 389 (1973). That case arose out of Congress's exercise of its plenary powers over the District of Columbia under Article I, Section 8, Clause 17, powers which are fairly analogous to those under Article IV. *See John R. Thompson Co.*, 346 U.S. at 105-09. The Court held that Congress could create local courts – like state courts – that did not satisfy the requirements of Article III. *Palmore*, 411 U.S. at 410. The Board would have us read *Palmore* as an instance of Congress's plenary powers over a territory trumping the requirements of another structural pillar of the Constitution. We disagree. The Court explained at length how Article III itself did not require that all courts created by Congress satisfy the selection and tenure requirements of Article III. *Id.* at 407 ("It is apparent that neither this Court nor Congress has read the Constitution as requiring every federal question arising under the federal law, or even every criminal prosecution for violating an Act of Congress,

to be tried in an Art. III court before a judge enjoying lifetime tenure and protection against salary reduction."). Rather, the requirements of Article III are applicable to courts "devoted to matters of national concern," *id.* at 408, and that local courts "primarily . . . concern[ed] . . . with local law and to serve as a local court system" created by Congress pursuant to its plenary powers are simply another example of those courts that did not fit the Article III template (like state courts empowered to hear federal cases, military tribunals, the Court of Private Land Claims, and consular courts), *id.* at 404, 407, 408. In short, Article III was not trumped by Congress's creation of local courts pursuant to its Article I power. Rather, Article III itself accommodates exceptions, and the local D.C. court system fits within the range of those exceptions. That there are courts in other territories of the same ilk does not alter this analysis. *Palmore* therefore offers no firm ground upon which to erect a general Article IV exception to separation-of-powers stalwarts such as the Appointments Clause.

Finally, nothing about the "Insular Cases"[11] casts doubt over our foregoing analysis. This discredited[12]

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[11] *De Lima* v. *Bidwell*, 182 U.S. 1 (1901); *Goetze* v. *United States*, 182 U.S. 221 (1901); *Dooley* v. *United States*, 182 U.S. 222 (1901); *Armstrong* v. *United States*, 182 U.S. 243 (1901); *Downes*, 182 U.S. 244; *Huus* v. *New York & Porto Rico Steamship Co.*, 182 U.S. 392 (1901).

[12] *See*, *e.g.*, Christina Duffy Burnett, *A Convenient Constitution?: Extraterritoriality After Boumediene*, 109 Colum. L. Rev. 973, 982 (2009) (noting the Insular Cases have "long been reviled" for concluding that "the Constitution does not 'follow the flag' outside the United States"); Jamal Greene, *The Anticanon*, 125 Harv. L. Rev. 379, 437 (2011) (criticizing that "the Insular Cases relied on *Dred Scott* as authority for the constitutional relationship between Congress and acquired territories"); Andrew Kent, *Boumediene,*

lineage of cases, which ushered the unincorporated territories doctrine, hovers like a dark cloud over this case. To our knowledge there is no case even intimating that if Congress acts pursuant to its authority under the Territorial Clause it is excused from conforming with the Appointments Clause, whether this be by virtue of the "Insular Cases" or otherwise. Nor could there be, for it would amount to the emasculation from the Constitution of one of its most important structural pillars. We thus have no trouble in concluding that the Constitution's structural provisions are not limited by geography and follow the United States into its unincorporated territories. *See Downes*, 182 U.S. at 277 (Brown, J.) (noting that "prohibitions [going] to the very root of the power of Congress to act

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Munaf, and the Supreme Court's Misreading of the Insular Cases, 97 Iowa L. Rev. 101 (2011); Charles E. Littlefield, *The Insular Cases*, 15 Harv. L. Rev. 169, 170 (1901) ("The Insular Cases, in the manner in which the results were reached, the incongruity of the results, and the variety of inconsistent views expressed by the different members of the court, are, I believe, without a parallel in our judicial history."); Gerald L. Neuman, *Anomalous Zones*, 48 Stan. L. Rev. 1197, 1221 (1996) (observing that "the colonialism authorized in the Insular Cases . . . was not justified by either peculiar necessity or consent"); Efrén Rivera Ramos, *The Legal Construction of American Colonialism: The Insular Cases (1901-1922)*, 65 Rev. Jur. U.P.R. 225 (1996); Juan R. Torruella, *The Insular Cases: The Establishment of a Regime of Political Apartheid*, 29 U. Pa. J. Int'l L. 283 (2007); Adriel I. Cepeda Derieux, Note, *A Most Insular Minority: Reconsidering Judicial Deference to Unequal Treatment in Light of Puerto Rico's Political Process Failure*, 110 Colum. L. Rev. 797 (2010); Lisa María Pérez, Note, *Citizenship Denied: The Insular Cases and the Fourteenth Amendment*, 94 Va. L. Rev. 1029 (2008); see also José A. Cabranes, *Puerto Rico: Colonialism as Constitutional Doctrine*, 100 Harv. L. Rev. 450 (1986) (reviewing Juan R. Torruella, The Supreme Court and Puerto Rico: The Doctrine of Separate and Unequal (1985)).

at all, irrespective of time or place" are operative in the unincorporated territories).

Notwithstanding this doctrine, appellant UTIER asks us to go one step further and reverse the "Insular Cases." Although there is a lack of enthusiasm for the perdurance of these cases,[13] which have been regarded as a "relic from a different era," *Reid*, 354 U.S. at 12, and which Justice Frankfurter described as "historically and juridically, an episode of the dead past about as unrelated to the world of today as the one-hoss shay is to the latest jet airplane," *Reid* v. *Covert* 351 U.S. 487, 492 (1956) (Frankfurter, J., reserving judgment), we cannot be induced to engage in an ultra vires act merely by siren songs. Not only do we lack the authority to meet UTIER's request, but even if we were writing on a clean slate, we would be required to stay our hand when dealing with constitutional litigation if other avenues of decision were available, and we believe there are in this case.

In this respect, we are aided again by the Supreme Court's decision in *Reid*, which although refusing to reverse the "Insular Cases" outright, provides in its plurality opinion instructive language that outlines the appropriate course we ought to pursue in the instant appeal:

> The "Insular Cases" can be distinguished from the present cases in that they involved the power of Congress to provide rules and regulations to govern temporarily territories with wholly dissimilar traditions and institutions whereas here the basis for governmental power is American citizenship. . . . *[I]t is our*

[13] *See supra* note 12.

judgment that neither the cases nor their reasoning should be given any further expansion.

Reid, 354 U.S. at 14 (plurality opinion) (emphasis added); see also *Boumediene* v. *Bush*, 553 U.S. 723, 765 (2008) ("Our basic charter cannot be contracted away . . . . The Constitution grants Congress and the President the power to acquire, dispose of, and govern territory, not the power to decide when and where its terms apply.").

The only course, therefore, which we are allowed in light of Reid is to not further expand the reach of the "Insular Cases." Accordingly, we conclude that the Territorial Clause and the "Insular Cases" do not impede the application of the Appointments Clause in an unincorporated territory, assuming all other requirements of that provision are duly met.

B. Board Members Are "Officers of the United States" Subject to the Appointments Clause

We must now determine whether the Board Members qualify within the rubric of "Officers of the United States," the Appointments Clause's job description that marks the entry point for its coverage. The district court determined that the Board Members do not fall under such a rubric. We disagree.

We begin our analysis by turning to a triad of Supreme Court decisions: *Lucia* v. *SEC*, 138 S. Ct. 2044 (2018); *Freytag*, 501 U.S. 868; and *Buckley* v. *Valeo*, 424 U.S. 1 (1976). From these cases, we gather that the following "test" must be met for an appointee to qualify as an "Officer of the United States" subject to the Appointments Clause: (1) the appointee occupies a "continuing" position established by federal law; (2) the appointee "exercis[es] significant authority"; and (3) the significant authority is exercised "pursuant to

the laws of the United States." *See Lucia*, 138 S. Ct. at 2050-51; *Freytag*, 501 U.S. at 881; *Buckley*, 424 U.S. at 126. In our view, the Board Members readily meet these requirements.

First, Board Members occupy "continuing positions" under a federal law since PROMESA provides for their appointment to an initial term of three years and they can thereafter be reappointed and serve until a successor takes office. 48 U.S.C. § 2121(e)(5)(A), (C)-(D). The continuity of the Board Members' position is fortified by the provision that only the President can remove them from office and then only for cause. *Id.* § 2121(e) (5) (B) . In fact, the Board Members' term in office could well extend beyond three years, as PROMESA stipulates that the Board will continue in operation until it certifies that the Commonwealth government has met various fiscal objectives "for at least 4 consecutive fiscal years." *Id.* § 2149(2).

Second, the Board Members plainly exercise "significant authority." For example, PROMESA empowers the Board Members to initiate and prosecute the largest bankruptcy in the history of the United States municipal bond market, *see* Yasmeen Serhan, *Puerto Rico Files for Bankruptcy*, The Atlantic (May 3, 2017), https://www.theatlantic.com/news/archive/2017/05/puerto-rico-files-for-bankruptcy/525258/, with the bankruptcy power being a quintessential federal subject matter, *see* U.S. Const. art. I, § 8, cl. 4 ("The Congress shall have Power . . . [t]o establish uniform Laws on the subject of Bankruptcies throughout the United States."). The Supreme Court recently reminded the Commonwealth government of the bankruptcy power's exclusive federal nature in *Franklin Cal. Tax-Free Trust*, 136 S. Ct. at 1938.

The Board Members' federal authority includes the power to veto, rescind, or revise Commonwealth laws and regulations that it deems inconsistent with the provisions of PROMESA or the fiscal plans developed pursuant to it. *See* 48 U.S.C. § 2144 ("Review of activities to ensure compliance with fiscal plan."). Likewise, the Board showcases what can be construed as nothing but its significant authority when it rejects the budget of the Commonwealth or one of its instrumentalities, *see id.* § 2143 ("Effect of finding of noncompliance with budget"); when it rules on the validity of a fiscal plan proposed by the Commonwealth, *id.* § 2141(c)(3); when it issues its own fiscal plan if it rejects the Commonwealth's proposed plan, *id.* § 2141(d) (2) (authorizing the Board to develop a "Revised Fiscal Plan"); and when it exercises its sole discretion to file a plan of adjustment for Commonwealth debt, *id.* § 2172(a) ("Only the Oversight Board . . . may file a plan of adjustment of the debts of the debtor."). The Board can only employ these significant powers because a federal law so provides.

Moreover, Board Members' investigatory and enforcement powers, as carried out collectively by way of the Board, exceed or are at least equal to those of the judicial officers the Supreme Court found to be "Officers of the United States" in *Lucia*. *See* 138 S. Ct. at 2053. There, the Supreme Court held that administrative law judges are "Officers of the United States," in part, because they can receive evidence at hearings and administer oaths. *Id.* PROMESA grants the Board Members the same right and more. *See* 48 U.S.C. § 2124(a); *id.* § 2124(b) ("Any member . . . of the Oversight Board may, if authorized by the Oversight Board, take any action that the Oversight Board is authorized to take by this section."); *id.* § 2124(c) ("Obtaining official data"); *id.* § 2124(f) ("Subpoena

power"). In short, the Board Members enjoy "significant discretion" as they carry out "important functions," *Freytag*, 501 U.S. at 881, under a federal law – qualities that the Supreme Court has considered for decades as the birthmark of federal officers who are subject to the Appointments Clause.

Third, the Board Members' authority is exercised "pursuant to the laws of the United States." The Board Members trace their authority directly and exclusively to a federal law, PROMESA. That federal law provides both their authority and their duties. Essentially everything they do is pursuant to federal law under which the adequacy of their performance is judged by their federal master. And this federal master serves in the seat of federal power, not San Juan. The Board Members are, in short, more like Roman proconsuls picked in Rome to enforce Roman law and oversee territorial leaders than they are like the locally selected leaders that Rome allowed to continue exercising some authority. *See*, *e.g.*, Louis J. Sirico, Jr., *The Federalist and the Lessons of Rome*, 75 Miss. L.J. 431, 484 (2006); *Davila Asks House for Reily Inquiry*, N.Y. Times (Apr. 5, 1922), https://timesmachine.nytimes.com/timesmachine/1922/04/05/112681107.pdf. (comparing the then-appointed Governor of Puerto Rico to a Roman proconsul)

The United States makes two arguments in support of the district court's opinion and PROMESA's current appointments protocol that warrant our direct response at this point. First, the United States argues that historical precedent suggests the inapplicability of the Appointments Clause to the territories. Second, the United States contends that if we find for appellants, such a ruling will invalidate the present-day democratically elected local governments of Puerto Rico and

the other unincorporated territories because the officers of such governments took office without the Senate's advice and consent. We reject each argument in turn.

The relevant historical precedents of which we are aware lead us to a different conclusion than that claimed by the United States. Excepting the short period during which Puerto Rico was under military administration following the Spanish-American War, the major federal appointments to Puerto Rico's civil government throughout the first half of the 20th century all complied with the Appointments Clause.

Beginning in 1900 with the Foraker Act, the Governor of Puerto Rico was to be nominated by the President and confirmed by the Senate to a term of four years "unless sooner removed by the President." An Act temporarily to provide revenues and a civil government for Porto Rico, ch. 191, 31 Stat. 77, 81 (1900). The Foraker Act also mandated presidential nomination and Senate confirmation of the members of Puerto Rico's "Executive Council" (which assumed the dual role of executive cabinet and upper chamber of the territorial legislature). *Id.* The Executive Council consisted of a secretary, an attorney general, a treasurer, an auditor, a commissioner of the interior, a commissioner of education, and five other persons "of good repute." *Id.* In addition, the Foraker Act also subjected the justices of the Puerto Rico Supreme Court, along with the marshal and judge of the territorial U.S. District Court for the District of "Porto" Rico, to the strictures of the Appointments Clause. *Id.* Even the three members of a commission established to compile and revise the laws of "Porto" Rico were made subject to the Appointments Clause. *Id.*

The Foraker Act regime lasted until 1917, when Congress passed the Jones-Shafroth Act. *See* An Act to

provide a civil government for Porto Rico, ch. 145, 39 Stat. 951 (1917). Here again, Congress provided for all key appointments by Washington to Puerto Rico's territorial government to meet the Appointments Clause: the governor, attorney general, commissioner of education, supreme court justices, district attorney, U.S. marshal, and U.S. territorial district judge were to be appointed by the President with the advice and consent of the Senate. *Id.* In sum, between 1900 and 1947 – the last time the Island had a federally-selected Governor – each of the presidentially appointed Governors of Puerto Rico acquired their office after receiving the Senate's blessing.[14]

As the United States would have it, Congress's requirement of Senate confirmation for presidential nominees in all of the aforementioned contexts was mere voluntary legislative surplusage. This position, however, directly contravenes the published opinions of the United States' own Office of Legal Counsel issued as recently as 2007. *See* "Officers of the United States Within the Meaning of the Appointments Clause," 31 Op. O.L.C. 73, 122 (2007) ("[A]n individual who will occupy a position to which has been delegated by

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[14] The early appointments to high-level office in the territorial governments of the Philippines, Guam, and the Virgin Islands also conformed with the Appointments Clause. *See* Organic Act of Guam of 1950, § 6, 64 Stat. 512 (1950) (providing that the Governor of Guam "shall be appointed by the President, by and with the advice and consent of the Senate of the United States"); Organic Act of Virgin Islands, § 20, 49 Stat. 1807 (1936) (providing for the presidential nomination and Senate confirmation of the Governor, who will then be under supervision of the Secretary of the Interior). Even the Panama Canal Zone, during its period under United States control, had a Governor appointed by the President "by and with the advice of the Senate." *See* Panama Canal Act, 37 Stat. 560 (1912).

legal authority a portion of the sovereign powers of the federal government, which is 'continuing,' must be appointed pursuant to the Appointments Clause."); *see also* Jennifer L. Mascott, *Who Are "Officers of the United States"*, 70 Stan. L. Rev. 443, 564 (2018) ("Extensive evidence suggests that the original public meaning of 'officer' in Article II includes all federal officials with responsibility for an ongoing statutory duty."). At a minimum, the United States' posture runs head against the sound principle of legislative interpretation bordering on dogma that "'[l]ong settled and established practice is a consideration of great weight in proper interpretation of constitutional provisions' regulating the relationship between Congress and the President." *NLRB* v. *Noel Canning*, 134 S. Ct. 2550, 2559 (2014) (citing *The Pocket Veto Case*, 279 U.S. 655, 689 (1929)) . Furthermore, the United States fails to support its assertion with legislative history or other evidence establishing that Congress's largely consistent adherence to Appointments Clause procedures in appointing territorial officials was gratuitous. Lacking such an explanation, we believe it is more probable that Congress was simply complying with what the Constitution requires. Furthermore, that largely consistent compliance with Appointment Clause procedures in hundreds if not thousands of instances over two centuries belies any claim that adherence to those procedures impedes Congress's exercise of its plenary powers within the territories.

The United States, as well as the Board, also point to the manner in which Congress has for centuries allowed territories to elect territorial officials, including for example the governor of Puerto Rico since 1947. *See* An Act to amend the Organic Act of Puerto Rico, ch. 490, 61 Stat. 770 (1947). Congress created many of these territorial positions and they were filled not

through presidential nomination and Senate confirmation, but rather by elections within the territory. The Board's basic point (and the United States' basic point as well) is this: If we find that the Board Members must be selected by presidential nomination and Senate confirmation, then that would mean that, for example, all elected territorial governors and legislators have been selected in an unconstitutional manner.

We disagree. The elected officials to which the Board and the United States point – even at the highest levels – are not federal officers. They do not "exercise significant authority pursuant to the laws of the United States." *See Lucia*, 138 S. Ct. at 2051; *Freytag*, 501 U.S. at 881; *Buckley*, 424 U.S. at 126; *see also United States* v. *Germaine*, 99 U.S. 508, 511-12 (1878). Rather, they exercise authority pursuant to the laws of the territory. Thus, in Puerto Rico for example, the Governor is elected by the citizens of Puerto Rico, his position and power are products of the Commonwealth's Constitution, *see* Puerto Rico Const. art. IV, and he takes an oath similar to that taken by the governor of a state, *id.* § 16; *see also*, *e. g.*, N.Y. Const. art. XIII, § 1; Ala. Const. art. XVI, § 279; N.H. Const. pt. II, art. 84.

It is true that the Commonwealth laws are themselves the product of authority Congress has delegated by statute. *See Puerto Rico* v. *Sanchez Valle*, 136 S. Ct. 1863, 1875 (2016). So the elected Governor's power ultimately depends on the continuation of a federal grant. But that fact alone does not make the laws of Puerto Rico the laws of the United States, else every claim brought under Puerto Rico's laws would pose a federal question. *See Viqueira* v. *First Bank*, 140 F.3d 12, 19 (1st Cir. 1998) ("[T]he plaintiffs' complaint alleges manifold claims under Puerto Rico law, but it fails to assert any claim arising under federal law.

Accordingly, no jurisdiction lies under 28 U.S.C. § 1331."); *Everlasting Dev. Corp*. v. *Sol Luis Descartes*, 192 F.2d 1, 6 (1st Cir. 1951) ("Of course, in so far as the controversy relates to the construction of an insular [Puerto Rico] tax exemption statute, that is not a federal question.").

C. The Board Members are Principal Officers of the United States

Having concluded that the Board Members are indeed United States officers, we now turn to the specific means by which they must be appointed pursuant to the Appointments Clause. If the officer is a "principal" officer, the only constitutional method of appointment is by the President, by and with the advice and consent of the Senate. U.S. Const. Art. II, § 2, cl. 2; *Edmond*, 520 U.S. at 659. But when an officer is "inferior," Congress may choose to vest the appointment in the President alone, the courts, or a department head. *Edmond*, 520 U.S. at 660; U.S. Const. Art. II, § 2, cl. 2. And the Board argues (but we do not decide) that the President appointed the Board Members notwithstanding the restricted choice from congressional lists.

In *Morrison* v. *Olson*, the Supreme Court held that an independent counsel was an "inferior" officer because she was subject to removal by the attorney general and because she had limited duties, jurisdiction, and tenure, among other factors. 487 U.S. 654, 671-672 (1988). More than a decade later, the Court held that an "inferior" officer was one "whose work is directed and supervised at some level by others who were appointed by Presidential nomination with the advice and consent of the Senate." *Edmond*, 520 U.S. at 663. Our circuit later squared the two cases by holding that *Edmond's* supervision test was sufficient, but not

necessary.[15] *See United States* v. *Hilario*, 218 F.3d 19, 25 (1st Cir. 2000). Therefore, inferior officers are those who are directed and supervised by a presidential appointee; otherwise, they "might still be considered inferior officers if the nature of their work suggests sufficient limitations of responsibility and authority." *Id.*

The Board Members clearly satisfy the *Edmond* test. They are answerable to and removable only by the President and are not directed or supervised by others who were appointed by the President with Senate confirmation. 48 U.S.C. § 2121(e) (5) (B); *Edmond*, 520 U.S. at 663. Considering the additional *Morrison* factors does not change the calculus. Though the Board Members' tenure "is 'temporary' in the sense that [they are] appointed essentially to accomplish a single task, and when that task is over the [Board] is

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[15] There has been long-lasting confusion as to whether *Morrison* is still good law. *See NLRB* v. *SW Gen., Inc.*, 137 S. Ct. 929, 947 (2017) (Thomas, J., concurring) ("Although we did not explicitly overrule *Morrison* in *Edmond*, it is difficult to see how *Morrison's* nebulous approach survived our opinion in *Edmond*."); Akhil Reed Amar, *Intratextualism*, 112 Harv. L. Rev. 747, 810, 811 (1999) (arguing that *Morrison* provided "a doctrinal test good for one day only" and that in *Edmond* the Supreme Court "apparently abandoned *Morrison's* ad hoc test"); *but see In re Grand Jury Investigation*, 315 F. Supp. 3d 602, 640 (D.D.C. 2018) (considering the *Morrison* factors in determining that special counsel is an inferior officer of the United States). More recently, in *Free Enter. Fund* v. *Public Co. Accounting Oversight Bd.*, the Supreme Court held that members of the Public Company Accounting Oversight Board, who were supervised by the SEC, were inferior officers. 561 U.S. 477, 510 (2010). In so doing, the Court cited *Edmond* for the proposition that "[w]hether one is an 'inferior' officer depends on whether he has a superior." *Id.* However, the *Edmond* language has already been analyzed by this court and reconciled with *Morrison.* Because *Free Enterprise* does not explicitly overrule *Morrison*, it does not affect our precedent.

terminated," *Morrison*, 487 U.S. at 672, the Board's vast duties and jurisdiction are insufficiently limited. Significantly, while the independent counsel in *Morrison* was unable to "formulate policy for the Government or the Executive Branch," PROMESA explicitly grants such authority. *See* 48 U.S.C. § 2144(b) (2). And whereas the jurisdiction of the independent counsel was limited, *Morrison*, 487 U.S. at 672, the Board's authority spans across the economy of Puerto Rico – a territory with a population of nearly 3.5 million – overpowering that of the Commonwealth's own elected officials. Under *Edmond* and *Morrison*, the Board Members are "principal" United States officers. *See Hilario*, 218 F.3d at 25. They therefore should have been appointed by the President, by and with the advice and consent of the Senate. Art. II, § 2, cl.2.

THE REMEDY

Having concluded that the process PROMESA provides for the appointment of Board Members is unconstitutional, we are left to determine the relief to which appellants are entitled. Both Aurelius and the UTIER ask that we order dismissal of the Title III petitions that the Board filed to commence the restructuring of Commonwealth debt. In doing so, appellants suggest that we ought to deem invalid all of the Board's actions until today and that this case does not warrant application of the *de facto* officer doctrine. It would then be on a constitutionally reconstituted Board, they say, to ratify or not ratify the unconstitutional Board's actions. Appellants also request that we sever from 48 U.S.C. § 2121(e) the language that authorizes the Board Members' appointment without Senate confirmation.

There is no question but that in fashioning a remedy to correct the constitutional violation we have found

it is unlikely that a perfect solution is available. In choosing among potential options, we ought to reduce the disruption that our decision may cause. But we are readily aided by several factors in this respect.

First, PROMESA itself contains an express severability clause, stating as follows:

> Except as provided in subsection (b) [regarding uniformity of similarly situated territories], if any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter, or the application of that provision to persons or circumstances other than those as to which it is held invalid, is not affected thereby, provided that subchapter III is not severable from subchapters I and II, and subchapters I and II are not severable from subchapter III.

48 U.S.C. § 2102.

Such a clause "creates a presumption that Congress did not intend the validity of the statute in question to depend on the validity of [a] constitutionally offensive provision." *Alaska Airlines, Inc,* v. *Brock*, 480 U.S. 678, 686 (1987).

Severability in this instance is especially appropriate because Congress, within PROMESA, has already provided an alternative appointments mechanism, at least as to six of the Board Members. PROMESA directs that if the mechanism we found unconstitutional is not employed, "[w]ith respect to the appointment of a Board member . . . such an appointment *shall be by and with the advice and consent of the Senate*, unless the President appoints an individual from a list, ... in which case no Senate confirmation is required." 48 U.S.C. § 2121(e) (2) (E) (emphasis added).

Accordingly, we hold that the present provisions allowing the appointment of Board Members in a manner other than by presidential nomination followed by the Senate's confirmation are invalid and severable. We do not hold invalid the remainder of the Board membership provisions, including those providing the qualifications for office and for appointment by the President with the advice and consent of the Senate.

Second, we reject appellants' invitation to dismiss the Title III petitions and cast a specter of invalidity over all of the Board's actions until the present day. To the contrary, we find that application of the *de facto* officer doctrine is especially appropriate in this case.

An ancient tool of equity, the *de facto* officer doctrine "confers validity upon acts performed by a person acting under the color of official title even though it is later discovered that the legality of that person's appointment . . . to office is deficient." *Ryder* v. *United States*, 515 U.S. 179, 180 (1995) (citing *Norton* v. *Shelby Cnty.*, 118 U.S. 425, 440 (1886)); *see also* Note, *The De Facto Officer Doctrine*, 63 Colum. L. Rev. 909, 909 n.l (1963) ("The first reported case to discuss the concept of *de facto* authority was The Abbe of Fountaine, 9 Hen. VI, at 32(3) (1431)."). A *de facto* officer is "one whose title is not good in law, but who is in fact in the unobstructed possession of an office and discharging its duties in full view of the public, in such manner and under such circumstances as not to present the appearance of being an intruder or usurper." *Waite* v. *Santa Cruz*, 184 U.S. 302, 323 (1902). Our sister court for the D.C. Circuit has described the doctrine as "protect[ing] citizens' reliance on past government actions and the government's ability to take effective and final action." *Andrade* v. *Lauer*, 729 F.2d 1475, 1499 (D.C. Cir. 1984).

Here, the Board Members were acting with the color of authority – namely, PROMESA – when, as an entity, they decided to file the Title III petitions on the Commonwealth's behalf, a power squarely within their lawful toolkit. And there is no indication but that the Board Members acted in good faith in moving to initiate such proceedings. *See Leary* v. *United States*, 268 F.2d 623, 627 (9th Cir. 1959). Moreover, the Board Members' titles to office were never in question until our resolution of this appeal.

Other considerations further counsel for our application of the *de facto* officer doctrine. We fear that awarding to appellants the full extent of their requested relief will have negative consequences for the many, if not thousands, of innocent third parties who have relied on the Board's actions until now. In addition, a summary invalidation of everything the Board has done since 2016 will likely introduce further delay into a historic debt restructuring process that was already turned upside down once before by the ravage of the hurricanes that affected Puerto Rico in September 2017. *See* Stephanie Gleason, *Puerto Rico's Bankruptcy Delayed, Moved to New York Following Hurricane Maria*, The Street (Sept. 26, 2017), https://www.thestreet.com/story/14320965/1/puerto-rico-s-bankruptcy-delayed-moved-to-new-york-following-hurricane-maria.html. At a minimum, dismissing the Title III petitions and nullifying the Board's years of work will cancel out any progress made towards PROMESA's aim of helping Puerto Rico "achieve fiscal responsibility and access to the capital markets." 48 U.S.C. § 2121(a).

We therefore decline to order dismissal of the Board's Title III petitions. Our ruling, as such, does not eliminate any otherwise valid actions of the Board prior to the issuance of our mandate in this case. In so

doing, we follow the Supreme Court's exact approach in *Buckley*, 424 U.S. at 1, which involved an Appointments Clause challenge to the then recently formed Federal Election Commission. Although the Court held that the Commission was in fact constituted in violation of the Appointments Clause, *id.* at 140, it nonetheless found that such a constitutional infirmity did "not affect the validity of the Commission's . . . past acts," id., at 142. We conclude the same here and find that severance is the appropriate relief to which appellants are entitled after they successfully and "timely challenge[d] . . . the constitutional validity of" the Board Members' appointment. *Ryder*, 515 U.S. at 182-83.

Finally, our mandate in these appeals shall not issue for 90 days, so as to allow the President and the Senate to validate the currently defective appointments or reconstitute the Board in accordance with the Appointments Clause. *Cf. Weinberger* v. *Romero-Barce16*, 456 U.S. 305, 312-313 (1982). During the 90-day stay period, the Board may continue to operate as until now.

CONCLUSION

In sum, we hold that the Board Members (other than the ex officio Member) must be, and were not, appointed in compliance with the Appointments Clause. Accordingly, the district court's conclusion to the contrary is reversed. We direct the district court to enter a declaratory judgment to the effect that PROMESA's protocol for the appointment of Board Members is unconstitutional and must be severed. We affirm, however, the district court's denial of appellants' motions to dismiss the Title III proceedings. Each party shall bear its own costs.

So ordered.

Reversed in part and Affirmed in part.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 18-1671

IN RE: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE COMMONWEALTH OF PUERTO RICO; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE PUERTO RICO ELECTRIC POWER AUTHORITY (PREPA); THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE PUERTO RICO SALES TAX FINANCING CORPORATION, A/K/A COFINA; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO,

Debtors.

AURELIUS INVESTMENT, LLC; AURELIUS OPPORTUNITIES FUND, LLC; LEX CLAIMS, LLC,

Movants – Appellants,

AD HOC GROUP OF GENERAL OBLIGATION BONDHOLDERS,

Creditor,

v.

IN RE: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE COMMONWEALTH OF PUERTO RICO; FINANCIAL OVERSIGHT AND MANAGEMENT BOARD,

Debtors – Appellees,

UNITED STATES; AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES; OFFICIAL COMMITTEE OF RETIRED EMPLOYEES OF THE COMMONWEALTH OF PUERTO RICO; OFFICIAL COMMITTEE OF UNSECURED CREDITORS; PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY; CYRUS CAPITAL PARTNERS, L.P.; TACONIC CAPITAL ADVISORS, L.P.; WHITEBOX ADVISORS LLC; SCOGGIN MANAGEMENT LP; TILDEN PARK CAPITAL MANAGEMENT LP; ARISTEIA CAPITAL, LLC; CANYON CAPITAL ADVISORS, LLC; DECAGON HOLDINGS 1, LLC; DECAGON HOLDINGS 2, LLC; DECAGON HOLDINGS 3, LLC; DECAGON HOLDINGS 4, LLC; DECAGON HOLDINGS 5, LLC; DECAGON HOLDINGS 6, LLC; DECAGON HOLDINGS 7, LLC; DECAGON HOLDINGS 8, LLC; DECAGON HOLDINGS 9, LLC; DECAGON HOLDINGS 10, LLC; FIDEICOMISO PLAZA; JOSE F. RODRIGUEZ-PEREZ; CYRUS OPPORTUNITIES MASTER FUND II, LTD.; CYRUS SELECT OPPORTUNITIES MASTER FUND, LTD.; CYRUS SPECIAL STRATEGIES MASTER FUND, L.P.; TACONIC MASTER FUND 1.5 LP; TACONIC OPPORTUNITY MASTER FUND LP; WHITEBOX ASYMMETRIC PARTNERS, L.P.; WHITEBOX INSTITUTIONAL PARTNERS, L.P.; WHITEBOX MULTI-STRATEGY PARTNERS, L.P.; WHITEBOX TERM CREDIT FUND I L.P.; SCOGGIN INTERNATIONAL FUND, LTD.; SCOGGIN WORLDWIDE FUND LTD.; TILDEN PARK INVESTMENT MASTER FUND LP; VARDE CREDIT PARTNERS MASTER, LP; VARDE INVESTMENT PARTNERS, LP; VARDE INVESTMENT PARTNERS

OFFSHORE MASTER, LP; THE VARDE SKYWAY MASTER FUND, LP; PANDORA SELECT PARTNERS, L.P.; SB SPECIAL SITUATION MASTER FUND SPC; SEGREGATED PORTFOLIO D; CRS MASTER FUND, L.P.; CRESCENT 1, L.P.; CANERY SC MASTER FUND, L.P.; MERCED PARTNERS LIMITED PARTNERSHIP; MERCED PARTNERS IV, L.P.; MERCED PARTNERS V, L.P.; MERCED CAPITAL, L.P.; ARISTEIA HORIZONS, LP; GOLDEN TREE ASSET MANAGEMENT LP; OLD BELLOWS PARTNERS LLP; RIVER CANYON FUND MANAGEMENT, LLC,

Creditors – Appellees.

No. 18-1746

IN RE: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE COMMONWEALTH OF PUERTO RICO; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE PUERTO RICO ELECTRIC POWER AUTHORITY (PREPA); THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE PUERTO RICO SALES TAX FINANCING CORPORATION, A/K/A COFINA; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO,

Debtors.

ASSURED GUARANTY CORPORATION; ASSURED GUARANTY MUNICIPAL CORPORATION,

Plaintiffs – Appellants,

v.

THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD OF PUERTO RICO; UNITED STATES; ANDREW G. BIGGS; JOSE B. CARRION, III; CARLOS M. GARCIA; ARTHUR J. GONZALEZ; JOSE R. GONZALEZ; ANA J. MATOSANTOS; DAVID A. SKEEL, JR.,

Defendants – Appellees.

No. 18-1787

IN RE: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE COMMONWEALTH OF PUERTO RICO; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE PUERTO RICO ELECTRIC POWER AUTHORITY (PREPA); THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE PUERTO RICO SALES TAX FINANCING CORPORATION, A/K/A COFINA; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO,

Debtors.

UNION DE TRABAJADORES DE LA INDUSTRIA ELECTRICA Y RIEGO (UTIER),

Plaintiff – Appellant,

v.

PUERTO RICO ELECTRIC POWER AUTHORITY (PREPA); THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD; JOSE B. CARRION, III; ANDREW G. BRIGGS; CARLOS M. GARCIA; ARTHUR J. GONZALEZ; JOSE R. GONZALEZ; ANA J. MATOSANTOS; DAVID A. SKEEL, JR., JOHN DOES 1-7,

Defendants – Appellees,

UNITED STATES,

Interested Party – Intervenor.

Before

Torruella, Thompson, and Kayatta, *Circuit Judges*.

ORDER OF COURT

Entered: May 6, 2019

In accordance with Federal Rule of Appellate Procedure 41(b), this Court ordered the withholding of its mandate in this case for a period of 90 days so as to allow the President and the Senate to appoint members of the Financial Oversight and Management Board for Puerto Rico in accordance with the Appointments Clause. *See Aurelius Inv., LLC* v. *Puerto Rico*, 915 F.3d 838, 863 (1st Cir. 2019). With that 90-day stay set to expire on May 16, 2019, the Board informs us that the President has announced his intent to nominate the current members to serve out their terms, but that the nominations have not yet gone to

the Senate. *See* Presidential Announcement, April 29, 2019, https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-appoint-personnel-key-administration-posts-24/. The Board has also filed, apparently with no sense of any urgency, a petition for certiorari.

The Board seeks a further stay of our mandate, this time under Federal Rule of Appellate Procedure 41(d)(1), which would stay the mandate indefinitely until the Supreme Court's final disposition of the case. That request is denied. Instead, the stay of our mandate is extended sixty (60) days, until July 15, 2019. Fed. R. App. P. 41(b).

By the Court:

Maria R. Hamilton, Clerk

cc:

Helgi C. Walker, Theodore B. Olson, Matthew D. McGill, Luis A. Oliver-Fraticelli, Katarina Stipec Rubio, Jeremy Max Christiansen, Lucas Townsend, Lochlan Francis Shelfer, Wandymar Burgos-Vargas, Hermann D. Bauer-Alvarez, Timothy W. Mungovan, Donald B. Verrilli Jr., Susana I. Penagaricano Brown, Carla Garcia-Benitez, Ubaldo M. Fernandez, Chantel L. Febus, Michael R. Hackett, Stephen L. Ratner, Margaret Antinori Dale, John E. Roberts, Mark David Harris, Martin J. Bienenstock, Ehud Barak, Daniel Jose Perez-Refojos, Michael Luskin, Stephan E. Hornung, Chad Golder, Michael A. Firestein, Lary Alan Rappaport, Ginger D. Anders, William D. Dalsen, Jeffrey W. Levitan, Sarah G. Boyce, Rachel G. Miller Ziegler, Guy Brenner, Andres W. Lopez, Walter Dellinger, Peter M. Friedman, John J. Rapisardi, Suzzanne Uhland, William J. Sushon, Mariana E. Bauza Almonte, Mark R. Freeman, Michael Shih, Laura Myron, Jose Ramon

Rivera-Morales, Lawrence S. Robbins, Richard A. Rosen, Mark Stancil, Donald Burke, Ariel N. Lavinbuk, Kyle J. Kimpler, Walter Rieman, Andrew N. Rosenberg, Karen R. Zeituni, Manuel A. Rodriguez-Banchs, Matthew S. Blumin, Antonio Juan Bennazar-Zequeira, Ian Heath Gershengorn, Richard B. Levin, Robert D. Gordon, Catherine Steege, Melissa M. Root, Diana M. Batlle-Barasorda, Juan J. Casillas-Ayala, Luc A. Despins, Alberto Juan Enrique Aneses-Negron, Georg Alexander Bongartz, Michael E. Comerford, Sylvia M. Arizmendi-Lopez de Victoria, Rafael Escalera-Rodriguez, Charles J. Cooper, Fernando Van Derdys, Carlos R. Rivera-Ortiz, Susheel Kirpalani, David Michael Cooper, Gustavo Adolfo Pabon-Rico, Howard C. Nielson Jr., Haley N. Proctor, Michael W. Kirk, John Ohlendorf, Ralph C. Ferrara, Ann M. Ashton, Raul Castellanos-Malave, Joseph P. Davis III, Katiuska Bolanos-Lugo, Monsita Lecaroz-Arribas, Emil J. Rodriguez Escudero, Jorge Martinez-Luciano, Anibal Acevedo-Vila, Jose A. Hernandez-Mayoral, Hector J. Ferrer-Rios, Heriberto J. Burgos-Perez, Ricardo F. Casellas-Sanchez, Diana Perez-Seda, Rolando Emmanuelli-Jimenez, Yasmin Colon-Colon, Jessica Esther Mendez-Colberg, Lindsay C. Harrison, William K. Dreher

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 18-1671

IN RE: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE COMMONWEALTH OF PUERTO RICO; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE PUERTO RICO ELECTRIC POWER AUTHORITY (PREPA); THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE PUERTO RICO SALES TAX FINANCING CORPORATION, A/K/A COFINA; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO,

Debtors.

AURELIUS INVESTMENT, LLC; AURELIUS OPPORTUNITIES FUND, LLC; LEX CLAIMS, LLC,

Movants – Appellants,

AD HOC GROUP OF GENERAL OBLIGATION BONDHOLDERS,

Creditor,

v.

IN RE: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE COMMONWEALTH OF PUERTO RICO; FINANCIAL OVERSIGHT AND MANAGEMENT BOARD,

Debtors – Appellees,

UNITED STATES; AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES; OFFICIAL COMMITTEE OF RETIRED EMPLOYEES OF THE COMMONWEALTH OF PUERTO RICO; OFFICIAL COMMITTEE OF UNSECURED CREDITORS; PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY; CYRUS CAPITAL PARTNERS, L.P.; TACONIC CAPITAL ADVISORS, L.P.; WHITEBOX ADVISORS LLC; SCOGGIN MANAGEMENT LP; TILDEN PARK CAPITAL MANAGEMENT LP; ARISTEIA CAPITAL, LLC; CANYON CAPITAL ADVISORS, LLC; DECAGON HOLDINGS 1, LLC; DECAGON HOLDINGS 2, LLC; DECAGON HOLDINGS 3, LLC; DECAGON HOLDINGS 4, LLC; DECAGON HOLDINGS 5, LLC; DECAGON HOLDINGS 6, LLC; DECAGON HOLDINGS 7, LLC; DECAGON HOLDINGS 8, LLC; DECAGON HOLDINGS 9, LLC; DECAGON HOLDINGS 10, LLC; FIDEICOMISO PLAZA; JOSE F. RODRIGUEZ-PEREZ; CYRUS OPPORTUNITIES MASTER FUND II, LTD.; CYRUS SELECT OPPORTUNITIES MASTER FUND, LTD.; CYRUS SPECIAL STRATEGIES MASTER FUND, L.P.; TACONIC MASTER FUND 1.5 LP; TACONIC OPPORTUNITY MASTER FUND LP; WHITEBOX ASYMMETRIC PARTNERS, L.P.; WHITEBOX INSTITUTIONAL PARTNERS, L.P.; WHITEBOX MULTI-STRATEGY PARTNERS, L.P.; WHITEBOX TERM CREDIT FUND I L.P.; SCOGGIN INTERNATIONAL FUND, LTD.; SCOGGIN WORLDWIDE FUND LTD.; TILDEN PARK INVESTMENT MASTER FUND LP; VARDE CREDIT PARTNERS MASTER, LP; VARDE INVESTMENT PARTNERS, LP; VARDE INVESTMENT PARTNERS

OFFSHORE MASTER, LP; THE VARDE SKYWAY MASTER FUND, LP; PANDORA SELECT PARTNERS, L.P.; SB SPECIAL SITUATION MASTER FUND SPC; SEGREGATED PORTFOLIO D; CRS MASTER FUND, L.P.; CRESCENT 1, L.P.; CANERY SC MASTER FUND, L.P.; MERCED PARTNERS LIMITED PARTNERSHIP; MERCED PARTNERS IV, L.P.; MERCED PARTNERS V, L.P.; MERCED CAPITAL, L.P.; ARISTEIA HORIZONS, LP; GOLDEN TREE ASSET MANAGEMENT LP; OLD BELLOWS PARTNERS LLP; RIVER CANYON FUND MANAGEMENT, LLC,

Creditors – Appellees.

No. 18-1746

IN RE: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE COMMONWEALTH OF PUERTO RICO; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE PUERTO RICO ELECTRIC POWER AUTHORITY (PREPA); THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE PUERTO RICO SALES TAX FINANCING CORPORATION, A/K/A COFINA; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO,

Debtors.

ASSURED GUARANTY CORPORATION; ASSURED GUARANTY MUNICIPAL CORPORATION,

Plaintiffs – Appellants,

v.

THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD OF PUERTO RICO; UNITED STATES; ANDREW G. BIGGS; JOSE B. CARRION, III; CARLOS M. GARCIA; ARTHUR J. GONZALEZ; JOSE R. GONZALEZ; ANA J. MATOSANTOS; DAVID A. SKEEL, JR.,

Defendants – Appellees.

No. 18-1787

IN RE: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE COMMONWEALTH OF PUERTO RICO; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE PUERTO RICO ELECTRIC POWER AUTHORITY (PREPA); THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE PUERTO RICO SALES TAX FINANCING CORPORATION, A/K/A COFINA; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS REPRESENTATIVE FOR THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO,

Debtors.

UNION DE TRABAJADORES DE LA INDUSTRIA ELECTRICA Y RIEGO (UTIER),

Plaintiff – Appellant,

v.

PUERTO RICO ELECTRIC POWER AUTHORITY (PREPA); THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD; JOSE B. CARRION, III; ANDREW G. BRIGGS; CARLOS M. GARCIA; ARTHUR J. GONZALEZ; JOSE R. GONZALEZ; ANA J. MATOSANTOS; DAVID A. SKEEL, JR., JOHN DOES 1-7,

Defendants – Appellees,

UNITED STATES,

Interested Party – Intervenor.

ORDER OF COURT

Entered: July 2, 2019

Appellee Financial Oversight and Management Board for Puerto Rico's opposed motion to stay mandate pending final disposition of this case in the United States Supreme Court is allowed. See Fed. R. App. P. 41(d).

By the Court:

Maria R. Hamilton, Clerk

cc:

Helgi C. Walker, Theodore B. Olson, Matthew D. McGill, Luis A. Oliver-Fraticelli, Katarina Stipec Rubio, Jeremy Max Christiansen, Lucas Townsend, Lochlan Francis Shelfer, Wandymar Burgos-Vargas, Hermann D. Bauer-Alvarez, Timothy W. Mungovan, Donald B. Verrilli Jr., Susana I. Penagaricano Brown, Carla Garcia-Benitez, Ubaldo M. Fernandez, Chantel L. Febus, Michael R. Hackett, Stephen L. Ratner, Margaret

Antinori Dale, John E. Roberts, Mark David Harris, Martin J. Bienenstock, Ehud Barak, Daniel Jose Perez-Refojos, Michael Luskin, Stephan E. Hornung, Chad Golder, Michael A. Firestein, Lary Alan Rappaport, Ginger D. Anders, William D. Dalsen, Jeffrey W. Levitan, Sarah G. Boyce, Rachel G. Miller Ziegler, Guy Brenner, Andres W. Lopez, Walter Dellinger, Peter M. Friedman, John J. Rapisardi, Suzzanne Uhland, William J. Sushon, Mariana E. Bauza Almonte, Mark R. Freeman, Michael Shih, Laura Myron, Jose Ramon Rivera-Morales, Lawrence S. Robbins, Richard A. Rosen, Mark Stancil, Donald Burke, Ariel N. Lavinbuk, Kyle J. Kimpler, Walter Rieman, Andrew N. Rosenberg, Karen R. Zeituni, Manuel A. Rodriguez-Banchs, Matthew S. Blumin, Antonio Juan Bennazar-Zequeira, Ian Heath Gershengorn, Richard B. Levin, Robert D. Gordon, Catherine Steege, Melissa M. Root, Diana M. Batlle-Barasorda, Juan J. Casillas-Ayala, Luc A. Despins, Alberto Juan Enrique Aneses-Negron, Georg Alexander Bongartz, Michael E. Comerford, Sylvia M. Arizmendi-Lopez de Victoria, Rafael Escalera-Rodriguez, Charles J. Cooper, Fernando Van Derdys, Carlos R. Rivera-Ortiz, Susheel Kirpalani, David Michael Cooper, Gustavo Adolfo Pabon-Rico, Howard C. Nielson Jr., Haley N. Proctor, Michael W. Kirk, John Ohlendorf, Ralph C. Ferrara, Ann M. Ashton, Raul Castellanos-Malave, Joseph P. Davis III, Katiuska Bolanos-Lugo, Monsita Lecaroz-Arribas, Emil J. Rodriguez Escudero, Jorge Martinez-Luciano, Anibal Acevedo-Vila, Jose A. Hernandez-Mayoral, Hector J. Ferrer-Rios, Heriberto J. Burgos-Perez, Ricardo F. Casellas-Sanchez, Diana Perez-Seda, Rolando Emmanuelli-Jimenez, Yasmin Colon-Colon, Jessica Esther Mendez-Colberg, Lindsay C. Harrison, William K. Dreher