IN THE SUPREME COURT OF THE UNITED STATES

No. 18-1334

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, PETITIONER

v.

AURELIUS INVESTMENT, LLC, ET AL.

No. 18-1475

AURELIUS INVESTMENT, LLC, ET AL., PETITIONERS

v.

COMMONWEALTH OF PUERTO RICO, ET AL.

No. 18-1496

OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ALL TITLE III DEBTORS OTHER THAN COFINA, PETITIONER

v.

AURELIUS INVESTMENT, LLC, ET AL.

No. 18-1514

UNITED STATES OF AMERICA, PETITIONER

v.

AURELIUS INVESTMENT, LLC, ET AL.

No. 18-1521

UNIÓN DE TRABAJADORES DE LA INDUSTRIA ELÉTRICA Y RIEGO, INC., PETITIONER

v.

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, ET AL.

_____

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

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MOTION OF THE UNITED STATES
AND THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD
FOR DIVIDED ARGUMENT

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Pursuant to Rule 28.4 of the Rules of this Court, the Solicitor General, on behalf of the United States, and the Financial Oversight and Management Board (Board) respectfully move that oral argument be allocated among the parties as set forth below. Aurelius, LLC and the Unión de Trabajadores de la Industria Eléctrica y Riego, Inc. (UTIER) oppose this motion.

1. These cases present two questions. The petitions in Nos. 18-1334, 18-1496, and 18-1514 present the question whether the manner of selecting the members of the Board violated the Appointments Clause of the Constitution of the United States. The petitions in Nos. 18-1475 and 18-1521 present the question whether,

under the de facto officer doctrine, the previous acts of the Board may continue to stand in the event the Court determines that the manner of selecting the Board's members violated the Appointments Clause. The United States and the Board have taken the position that the manner of selecting the members of the Board did not violate the Appointments Clause, but that, even if it did, the Board's previous acts need not be invalidated as a result.

2. In our view, all five of these cases should be argued as one case, rather than as two separate cases (one for each question presented). First, for the same reasons that this Court has already ordered that these cases be briefed as one single case, it is also appropriate to order that they be argued as one single case. The questions presented are closely related to each other, and it makes sense for arguing counsel to address them in a single presentation.

Second, arguing these cases as one single case would be consistent with this Court's past practice. On other occasions where the Court has consolidated multiple cases for briefing under a four-brief schedule, the Court has also consolidated the cases for a single oral argument. See, e.g., Tr. of Oral Arg., Sandoz, Inc. v. Amgen, Inc., 137 S. Ct. 1664 (2017) (Nos. 15-1039 & 15-1195); Tr. of Oral Arg., Holder v. Humanitarian Law Project, 561 U.S. 1 (2010) (Nos. 08-1498 and 09-89).

Third, if this Court held argument separately on each of the two issues, it would hear at least ten separate presentations:

the Board's argument, the United States' argument, Aurelius's argument, UTIER's argument, and the Board's rebuttal on the Appointments Clause; and then Aurelius's argument, UTIER's argument, the Board's argument, the United States' argument, and Aurelius's rebuttal on the de facto officer doctrine. We respectfully suggest that a ten-part argument would prove less helpful to the Court than a streamlined five-part argument.

3. Under this Court's ordinary practice, a total of one hour would be allotted for oral argument in these consolidated cases. Cf. Sup. Ct. R. 28.2 ("A cross writ of certiorari * * * will be argued with the initial writ of certiorari * * * as one case in the time allowed for that one case."). If the Court follows that course here, we respectfully request that the Court allow 15 minutes to the Board and 15 minutes to the United States, and that the Court allow the Board to open the argument and to present rebuttal.

Aurelius and UTIER have raised the concern that one hour of oral argument would be insufficient for addressing both questions presented. To the extent this Court shares that concern, the appropriate course would be to enlarge the time for argument, not to hold two separate arguments. After all, counsel before this Court often address two issues in the course of a single argument. If the Court wishes to enlarge the time for argument, we propose allotting a total of 90 minutes, and we respectfully request that

the Court allow 25 minutes to the Board and 20 minutes to the United States.

3. In the event the Court orders these cases to be argued as one case, we respectfully request that the Board be allowed to open the argument and to present rebuttal. On other occasions where the Court has adopted a four-brief schedule, the Court has allowed the party that filed the first brief to open the argument and to present rebuttal. See, e.g., Tr. of Oral Arg., Sandoz, supra (argument opened and concluded by the side that filed the opening brief under a four-brief schedule); Tr. of Oral Arg., Humanitarian Law Project, supra (same).

Nor does the Court need to allow Aurelius and UTIER to present a sur-rebuttal regarding the de facto officer doctrine. The purpose of a rebuttal is to enable the party that has opened the oral argument to address issues raised during the adversary's substantive presentation. Under our proposal, Aurelius would argue after the Board and the United States, and thus would already have the opportunity, during its presentation, to address any points that the Board and the United States have raised regarding the de facto officer doctrine. A sur-rebuttal would be unnecessary. Once again, our proposal tracks this Court's past practice. The Court has not granted sur-rebuttal in other cases briefed under a four-brief schedule. See, e.g., Tr. of Oral Arg., Sandoz, supra (no sur-rebuttal); Tr. of Oral Arg., Humanitarian Law Project, supra (same).

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

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