

No. 18-

IN THE
Supreme Court of the United States

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

Petitioner,

v.

AURELIUS INVESTMENT, LLC, *et al.*,

Respondents.

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

MOTION TO EXPEDITE

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Pursuant to Rule 21 and 48 U.S.C. § 2126(d), Petitioner, the Official Committee of Unsecured Creditors of All Title III Debtors (other than COFINA) (the “Committee”) respectfully moves this Court to advance this case on its docket and expedite its disposition to the greatest extent possible.

BACKGROUND

1. This proceeding arises from Congress’s response to the economic distress currently facing the approximately three million United States citizens living in Puerto Rico. In 2016, Congress passed, and the President signed, the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”). Among other things, PROMESA created a Financial Oversight and Management Board (“Oversight Board”) and charged it with reexamining and restructuring the Commonwealth’s crushing debt and, more generally, with putting the Commonwealth on a road to sustainable fiscal health. Congress created the Oversight Board “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,” and accordingly created the Oversight Board as “an entity within the territorial government” of Puerto Rico. 48 U.S.C. § 2121(b)(2) and (c)(1).

2. A collection of hedge funds filed a motion to dismiss the restructuring cases that had been commenced by the Oversight Board pursuant to the explicit statutory authority it possessed under title III of PROMESA. Specifically, the hedge funds maintained that 48 U.S.C. § 2121(e)(2) — the provision governing the appointment of the Board’s members — was unconstitutional. The hedge funds argued that, despite Congress’s explicit declaration, the members of the Board were not territorial officers at all, but instead were “officers of the

United States” and thus subject to confirmation by the Senate pursuant to U.S. Const. art. II, § 2, cl. 2.

3. The district court denied the motion, holding that when Congress acts pursuant to the Territorial Powers Clause of Article IV, Congress “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.” *Cincinnati Soap Co. v. United States*, 301 U.S. 308, 322-23 (1937). The district court recognized what this Court has said for more than 200 years: Congress possesses an “absolute and undisputed power of governing and legislating” for territories like Puerto Rico. *Sere v. Pitot*, 10 U.S. 332, 337 (1810) (Marshall, C.J.). Thus, when it creates structures of government for territories such as Puerto Rico (or delegates that authority to the people of those territories), it “may do . . . whatever a state might do for itself or one of its political subdivisions,” unconstrained by the separation of powers principles that define our federal system. *Cincinnati Soap Co.*, 301 U.S. at 317–18. *See also In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 318 F. Supp. 3d 537, 549-50 (D.P.R. 2018), *aff’d in part, rev’d in part sub nom. Aurelius Inv., LLC v. Puerto Rico*, 915 F.3d 838 (1st Cir. 2019).

4. The Court of Appeals for the First Circuit reversed, although it acknowledged that doing so was not a “perfect solution” to the case,¹ and further admitted that its resolution of the matter was “difficult to explain” in light of *United States v. Heinszen*, 206

¹ *Aurelius*, 915 F.3d at 861.

U.S. 370, 385 (1907), one of two decisions principally relied upon by the district court.² The Oversight Board petitioned for a writ of *certiorari* on April 23, 2019. *See* No. 18-1334. The Committee’s petition is being filed contemporaneously with this Motion.

REASONS TO GRANT EXPEDITION

1. The grounds for this Motion cannot seriously be disputed. In PROMESA, Congress expressly directed that:

It shall be the duty of the applicable United States District Court, the applicable United States Court of Appeals, *and, as applicable, the Supreme Court of the United States* to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under this chapter.

48 U.S.C. § 2126(d) (emphasis added).

This case undeniably fits within the statutory definition. The Motion to Dismiss brought by the hedge funds was expressly brought “[p]ursuant to 48 U.S.C. §2164(b)” of PROMESA,³ and the title III cases the hedge funds sought to dismiss were brought pursuant to 48 U.S.C. § 2164(f). By the statute’s unambiguous terms, expedition is appropriate.

2. Even if expedition were not compelled by the terms of the statute, however, all parties recognize, and the court of appeals acknowledged, the peril that would result from any “further delay [in] 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

² *Id.* at 853.

³ *See* Motion to Dismiss at 1, No. 17 BK 3283-LTS (D. P.R. August 7, 2017), ECF Docket No 913.


2017.” *Aurelius*, 915 F.3d at 862. Expedition would ameliorate that delay, and hasten the day when the economy of Puerto Rico is restored to health.

CONCLUSION

For the foregoing reasons, Petitioner, the Official Committee of Unsecured Creditors of All Title III Debtors (other than COFINA), respectfully requests that the Court advance this case on its docket and expedite to the greatest possible extent the disposition of this matter.

Respectfully submitted,

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