No. 19-____

IN THE

Supreme Court of the United States

AMBAC ASSURANCE CORPORATION,

Petitioner,

v.

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

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether 11 U.S.C. § 904 and 48 U.S.C. § 2165 prohibit a bankruptcy court from enforcing the provisions of the Bankruptcy Code against municipal debtors.

2. Whether 11 U.S.C. § 922(d)—which creates an exception to the automatic stay of debt enforcement actions during the pendency of bankruptcy proceeding for the "application of pledged special revenues"—mandates that there is no automatic stay of debt enforcement actions with respect to special revenues.

PARTIES TO THE PROCEEDING

Ambac Assurance Corporation, petitioner on review, was the plaintiff-appellant below.

Financial Oversight and Management Board for Puerto Rico; Puerto Rico Fiscal Agency and Financial Advisory Authority, through the Secretary of Justice; Puerto Rico Highways and Transportation Authority, through the Secretary of Justice; Ricardo Rossello Nevares, through the Secretary of Justice; Raul Maldonado Gautier, through the Secretary of Justice; Jose Ivan Marrero-Rosado; Jose B. Carrion, III; Christian Sobrino Vega; Andrew G. Biggs; Carlos M. Garcia; Arthur J. Gonzalez; Jose R. Gonzalez; Ana J. Matosantos; David A. Skeel, Jr.; and Elias Sanchez, respondents on review, were the defendants-appellees below.

Official Committee of Unsecured Creditors, respondent on review, was an intervenor below.

RULE 29.6 DISCLOSURE STATEMENT

Ambac Assurance Corporation respectfully states that it is a wholly owned subsidiary of Ambac Financial Group, Inc. Ambac Financial Group, Inc. is a public corporation whose stock is traded on the Nasdaq stock exchange. There is no parent corporation or publicly held corporation that owns 10% or more of the stock of Ambac Financial Group, Inc.

RELATED PROCEEDINGS

This petition arises out of the following adversary proceeding:

- *Ambac Assurance Corp.* v. *Commonwealth of Puerto Rico et al.*, No. 3:17-AP-00159 (LTS) (D.P.R. Feb. 27, 2018), *aff'd*, No. 18-1214 (1st Cir. June 24, 2019).

This adversary proceeding is part of two debt adjustment proceedings under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act, 48 U.S.C. §§ 2101 *et seq*.:

- *In re Financial Oversight and Management Board for Puerto Rico*, No. 3:17-BK-3283 (LTS) (D.P.R.).
- *In re Puerto Rico Highways and Transportation Authority*, No. 3:17-BK-3567 (LTS) (D.P.R.).*

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* For a full list of other adversary proceedings, *see* https://www.prd.uscourts.gov/promesa/select-case-information.

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PETITION FOR A WRIT OF CERTIORARI

Ambac Assurance Corporation respectfully petitions for a writ of certiorari to review the judgment of the First Circuit in this case.

OPINIONS BELOW

The First Circuit's opinion (Pet. App. 1a-18a) is reported at 927 F.3d 597. The District Court's opinion (Pet. App. 19a-76a) is reported at 297 F. Supp. 3d 269.

JURISDICTION

The First Circuit entered judgment on June 24, 2019. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the Appendix (Pet. App. 77a-89a).

INTRODUCTION

In the 1930's, Congress recognized the need to provide federal bankruptcy relief for local governments facing "[e]conomic disaster." *United States* v. *Bekins*, 304 U.S. 27, 53-54 (1938). It therefore enacted the municipal bankruptcy legislation that would ultimately become Chapter 9 of the Bankruptcy Code. More recently, Congress addressed the need to bring an end to the Commonwealth of Puerto Rico's fiscal crisis and to restore the Commonwealth's "access to capital markets." 48 U.S.C. § 2121(a). The result was the Puerto Rico Oversight, Management, and Economic Stability Act, Pub. L. No. 114-187, 130 Stat. 549 (2016) (PROMESA), which duplicates and directly incorporates many of the provisions of Chapter 9.

In the decision below, the First Circuit badly misinterpreted two of those provisions, departing from the established understanding of key parts of the municipal Bankruptcy Code, contorting PROMESA, and unsettling the municipal bond market. First, the First Circuit held that Section 305 of PROMESA—and the Chapter 9 provision on which it is modelled, Section 904—bar a debt adjustment court from enforcing the federal statutory regime governing debt adjustment against the Commonwealth and debtor-municipalities. Pet. App. 9a-12a. Then the panel held that Section 922(d) of Chapter 9—a key provision ensuring the continued payment of "special revenue" bond debt during a bankruptcy—does virtually *nothing* to ensure the continued payment of that debt. *Id.* at 12a-16a.

Both of those holdings conflict with the settled understanding of the municipal Bankruptcy Code in general and the protections for "special revenue" bonds in particular. The reaction of the bond markets has made that clear: As a result of the opinion below and the First Circuit's similar opinion in *In re Financial Oversight & Management Board for Puerto Rico* ("*Assured I*"), 919 F.3d 121 (1st Cir. 2019),[1] three major rating agencies have downgraded or threatened to downgrade their ratings of "special revenue" bonds. That convulsive reaction to the decision below has not only unsettled the bond markets and hurt bondholders, but will also impede municipalities' ability to raise money through special revenue bonds, which have long been a key tool for financing important public works and projects such as sewers and roads.

It is vital for this Court to restore the correct interpretation of Chapter 9 and PROMESA, and undo the profound harms that the First Circuit's errors have inflicted on the parties to the Commonwealth's debt-adjustment proceedings, municipalities, and their bondholders nationwide. The petition should be granted.

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[1] The *Assured* decision arises from the same Title III proceedings, concerns the treatment of the same Commonwealth bonds, and addresses the same basic legal issues. A petition for certiorari in *Assured* is currently pending before the Court. Because of the substantial overlap between the two cases, this Court may wish to consider the petitions in tandem or consolidate the cases.

STATEMENT

A. Statutory Background

1. Municipal Bankruptcy Law

Chapter 9 of the Federal Bankruptcy Code provides the exclusive mechanism for restructuring municipal debt. As this Court explained three years ago, "[t]he Federal Bankruptcy Code pre-empts state bankruptcy laws that enable insolvent municipalities to restructure their debts over the objections of creditors and instead requires municipalities to restructure such debts under Chapter 9 of the Code." *Puerto Rico* v. *Franklin California Tax-Free Tr.*, 136 S. Ct. 1938, 1942 (2016).

Because the restructuring of municipal debt often raises Tenth Amendment concerns, "Congress has tailored the federal municipal bankruptcy laws" to reflect the "appropriate balance of federal and state power." *Id.* at 1944. Most notably, the Bankruptcy Code provides that a municipality may not be subjected to the provisions of Chapter 9 unless both the State and the municipality have consented. 11 U.S.C. § 109(c)(2). Moreover, the Code requires that plans of adjustment comply with state law. *Id.* § 943(b)(4), (6). And—most pertinent here—Congress provided in Section 904 of the Bankruptcy Code that "unless the debtor consents or the plan [of adjustment] so provides, the court may not * * * interfere with (1) any of the political or governmental powers of the debtor; (2) any of the property or revenues of the debtor; or (3) the debtor's use or enjoyment of any income-producing property." *Id.* § 904.

Congress has periodically made additional changes to Chapter 9 to further protect the sovereign powers of States and their municipalities. One set of changes occurred in 1988, in response to a threat to municipal financing that arose after Congress incorporated several provisions of corporate bankruptcy law into Chapter 9. *See* S. Rep. No. 100-506, at 1-5 (1988) ("Senate Report"). Among other things, those newly-incorporated provisions imposed an "automatic stay" on the enforcement of any debt payment obligations during the pendency of bankruptcy proceedings, *see* 11 U.S.C. § 362(a), and expanded the stay by making it applicable to enforcement actions against representatives of the municipality as well, *id.* § 922(a).

The automatic stay posed a problem for municipal revenue bonds, which are among the leading sources of municipal financing for major public works. Revenue bonds are typically sold in connection with a particular project or system and secured by a lien on the revenues generated by the specific project or system they are funding. Senate Report at 4-5. For example, a city might fund a new road by selling revenue bonds backed by a pledge of the eventual toll income from that road. *Id.* To make these bonds more attractive, they are often fortified by statutory and contractual provisions mandating that the local government must apply designated revenues to bond debt repayment in the first instance. *Id.* at 5. The newly incorporated automatic bankruptcy stay seemed to override those debt repayment protections in the case of municipalities that enter bankruptcy, leaving those municipalities free to stop applying designated revenue streams to bond debt repayment. *Id.* at 11. That inevitably made revenue bonds less attractive to investors, thereby making it more difficult and expensive for municipalities to raise funds through such bonds.

Congress enacted the Municipal Bankruptcy Amendments of 1988, Pub. L. No. 100-597, 102 Stat. 3028, to resolve this and other problems related to the treatment of revenue bonds in municipal bankruptcies. As relevant here, that new law added a specific exemption for special revenues from Sections 362(a) and 922(a), the provisions implementing the automatic stay of debt enforcement during a bankruptcy case. That exemption states:

> Notwithstanding section 362 of this title and subsection (a) of this section, a petition filed under this chapter does not operate as a stay of application of pledged special revenues in a manner consistent with section 92[8][2] of this title to payment of indebtedness secured by such revenues.

11 U.S.C. § 922(d). Section 928, in turn, provides that "special revenues acquired by the debtor after" it enters bankruptcy "shall remain subject to any lien resulting from any security agreement entered into" before bankruptcy was declared, except to the extent that the revenues are needed to fund the "necessary operating expenses of" the relevant "project or system." *Id.* § 928(a)-(b).

As the statute's drafters explained, Section 922(d) makes the automatic stay "inapplicable to the payment of principal and interest on municipal bonds paid from pledged revenues." Senate Report at 13;

[2] The text says "927," but that is universally regarded as a scrivener's error. *See Assured I*, 919 F.3d at 130 n.10.

see H.R. Rep. No. 100-1011, at 7 (1988) ("House Report") ("[N]ew subsection (d) to section 922 states that the automatic stay of Bankruptcy Code section 362 does not operate to stay paying pledged revenues * * * to the revenue bondholders holding liens on such revenues."). It thus "insure[s] that revenue bondholders receive the benefit of their bargain with the municipal issuer, namely, they will have unimpaired rights to the project revenues pledged to them." *Id.* at 12; *see* House Report at 4 (provision ensures that special revenues are not diverted "into the general treasury for distribution to all creditors" instead of being "used to repay holders of revenue bonds").

2. The Puerto Rico Oversight, Management, and Economic Stability Act

Chapter 9 has governed municipal bankruptcies for almost a century. But Puerto Rico and its instrumentalities do not qualify as municipalities under Chapter 9, and therefore cannot directly avail themselves of the Chapter 9 process. *See* 11 U.S.C. §§ 101(40), 109(c). Furthermore, this Court held in *Franklin California Tax-Free Trust* that the Commonwealth may not lawfully enact a restructuring process outside of the federal Bankruptcy Code. 136 S. Ct. at 1942. Accordingly, in 2016, Congress enacted PROMESA to provide a statutory means for the Commonwealth to restructure its debts and restore its standing in the capital markets.

PROMESA consists of three pertinent Titles. Titles I and II contain provisions tailored to Puerto Rico's unique status as a territory of the United States: They establish a Financial Oversight and Management Board, *see* 48 U.S.C. § 2121, and charge the Board both with developing "fiscal plans" for the Commonwealth and its agencies, and with overseeing the development of compliant budgets and legislation, *id.* §§ 2141-2152. Title III, in turn, sets out a process for the "Adjustment of Debts." PROMESA tit. III. Its provisions duplicate or directly incorporate many of the provisions of Chapter 9, subject to several modifications reflective of the Commonwealth's unique circumstances and its status as a territory rather than a State protected by the Tenth Amendment.

First, like Chapter 9, Title III provides that it is the exclusive means through which the Commonwealth may adjust its debts without the consent of its creditors. 48 U.S.C. § 2163. Second, also like Chapter 9, a debtor may enter Title III debt adjustment proceedings only through the filing of a "voluntary" petition to invoke the authority of the Title III court, except that unlike with a municipal debtor the Oversight Board must agree to file such a petition. *Id.* § 2164. Third, Section 305 of PROMESA incorporates almost verbatim the requirements of Section 904 of the Bankruptcy Code, stating that "unless the Oversight Board consents or the plan so provides, the court may not, by any stay, order, or decree, in the case or otherwise, interfere with (1) any of the political or governmental powers of the debtor; (2) any of the property or revenues of the debtor; or (3) the use or enjoyment by the debtor of any income-producing property." *Id.* § 2165.

Finally, PROMESA provides for the wholesale incorporation of the special revenue provisions of Chapter 9 of the Bankruptcy Code. Section 301 of PROMESA provides that 11 U.S.C. §§ 922(d) and 928 are among the Bankruptcy Code "[s]ections applicable to cases under this subchapter." 48 U.S.C. § 2161(a). Thus, an automatic stay entered upon the filing of a bankruptcy petition "does not operate as a stay of application of pledged special revenues * * * to payment of indebtedness secured by such revenues" on the part of the Commonwealth and its instrumentalities. 11 U.S.C. § 922(d).

Indeed, PROMESA goes further than Chapter 9 in ensuring that revenue bond debt is protected. For example, Congress specifically preempted any unilateral attempts on the part of the Commonwealth to adjust its debts, specifically forbidding state "moratorium law[s]" and "unlawful executive orders that alter, amend, or modify rights of holders of any debt of the territory or territorial instrumentality, or that divert funds from one territorial instrumentality to another." 48 U.S.C. § 2163. These additions were included as the Commonwealth was in the midst of issuing a series of moratorium laws and executive orders that purported to halt payments on bond debt and redirect revenues to other uses. *See, e.g.*, Puerto Rico Emergency Moratorium and Financial Rehabilitation Act, P.R. Laws Ann. tit. 3, §§ 9282-9288 (repealed 2016). Further, in detailing the requirements for fiscal plans, PROMESA dictates that the plans must "respect the relative lawful priorities *or lawful liens*" found in the Commonwealth's "constitution, other laws, or agreements." 48 U.S.C. § 2141(b)(1)(N) (emphasis added).

It is unsurprising that Congress included so many protections to ensure that the Commonwealth's revenue bond debt is repaid. Puerto Rico has frequently availed itself of revenue bond fundraising, and for decades those bonds have been a critical source of financing for the Commonwealth and its instrumentalities.

B. Factual and Procedural Background

1. This case arises from the Commonwealth's cessation of debt payments on revenue bonds issued by one of its instrumentalities. In 1965, the Commonwealth established the Puerto Rico Highways and Transportation Authority (PRHTA), a public corporation that oversees roads and other transportation systems for the Commonwealth. Commonwealth Act No. 74-1965 (the "Enabling Act"). The Enabling Act provided that the PRHTA may raise money by issuing municipal bonds secured by revenues from PRHTA projects and from certain dedicated excise taxes. P.R. Laws Ann. tit. 9, § 2012.

Pursuant to this authority, PRHTA has issued bonds under general bond resolutions adopted in 1968 and 1998. Pet. App. 5a. The Commonwealth's and PRHTA's statutes and bond resolutions provide protections for bondholders: They establish liens on certain excise taxes and toll revenues and ensure that those revenues will be applied to bond repayment. *Id.* at 5a-6a. They also offer protection for the Commonwealth by mandating that bondholders have no entitlement to repayment from the general treasury.

In response to Puerto Rico's fiscal crisis in late 2015 and 2016, Puerto Rico's Governor and legislature issued a series of new executive orders and laws that purported to divert all of the excise tax and toll revenues that were required to be applied to PRHTA bond debt repayment under the governing statutes and bond resolutions. *Id.* at 6a-7a & n.2. Specifically, in April 2016, the Commonwealth's legislature enacted the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act, which purported to grant the Governor the power to prohibit payment of Puerto Rico's debt obligations through the issuance of a series of "Moratorium Orders." *Id.* In May 2016, the Governor issued such a Moratorium Order that purported to stop the flow of revenues to PRHTA for bond repayment and stay all litigation arising from the non-repayment of covered obligations. *Id.* Additional orders and laws to the same effect followed. *See, e.g.*, Puerto Rico Financial Emergency and Fiscal Responsibility Act of 2017, P.R. Laws Ann. tit. 3, §§ 9431-9437; Pet. App. 6a-7a & n.2.

In March 2017, following the enactment of PROMESA, the Oversight Board certified a fiscal plan dictating that the revenues securing PRHTA's bonds would no longer be applied to the repayment of bond debt and would instead be "diverted and subsumed into the general revenues of Puerto Rico." *Assured I*, 919 F.3d at 125; *see* Pet. App. 7a. Two months later, PRHTA formally entered Title III debt adjustment proceedings under PROMESA. Pet. App. 7a.

2. Petitioner is both a holder and an insurer of PRHTA bonds issued under the Enabling Act and the 1968 and 1998 bond resolutions. *Id.* at 8a. It instituted an adversary proceeding against respondents—the PRHTA, the Board, and others—in the Title III court, asserting that the failure to continue to make bond payments and the diversion of the pledged special revenues violates Sections 922(d) and 928. Petitioner also asserted that the moratorium laws and executive orders are expressly preempted

by PROMESA Section 303. And it raised additional statutory and constitutional claims under the Contracts, Due Process, and Takings Clauses.

Respondents moved to dismiss for lack of subject matter jurisdiction and failure to state a claim, and the Title III court granted that motion. *Id.* at 24a-25a. The Title III court dismissed the special revenues claim under Sections 922 and 928 because it held that neither provision requires a debtor to pay pledged special revenues to the PRHTA bondholders. *Id.* at 68a-71a. And, according to the Title III court, the moratorium laws and executive orders are not preempted by Section 303's bar on territorial "moratorium laws" because they "only authorize temporary extensions of Plaintiff's [debt] obligations" and do not permanently "bind creditors to any reduction of the outstanding obligations." *Id*. at 57a-65a. The Title III court also held that petitioner had not stated a claim for relief under the Contracts Clause, and that its other constitutional and statutory challenges were premature. *Id*. at 37a-57a.[3]

The First Circuit affirmed the dismissal of all of the claims on a different ground. *Id.* at 4a. It held that PROMESA Section 305 bars a Title III court from issuing *any* relief that might affect the Com-

[3] The Title III court also believed that Petitioner sought to challenge the "Board's certification of the Fiscal Plan or [to] claim that PROMESA Fiscal Plan certification predicates have not been met." Pet. App. 45a. And it rejected Petitioner's ability to do so, holding that Section 106(e) makes the Board's certification decision unreviewable. *Id.* at 42a-45a. The First Circuit affirmed, holding that Section 106(e) would bar "injunctive relief invalidating the Oversight Board's certification of the Fiscal Plan." *Id.* at 8a-9a.

monwealth's treatment of PRHTA revenues during the pendency of the bankruptcy proceedings. *Id.* at 9a-12a.

The panel began by explaining that Section 305 "mimics, in all pertinent respects, the analogous section 904 of the municipal-bankruptcy code." *Id.* at 9a. It then posited that Section 305 prevents the issuance of any injunctive or declaratory relief that might "interfere" with the "political or governmental powers" and "property or revenues" of the debtor, even if the debtor is acting in a manner that is "unconstitutional, preempted under Section 303 of PROMESA" or in "violation of sections 922(d) and 928(a) of the municipal bankruptcy code." *Id.* at 9a-11a.

It further suggested that its reading of Section 305 was in accord with "how courts have interpreted" Section 904, and that it was reinforced by the "context in which Congress passed section 904." *Id.* at 11a-12a. In particular, the panel noted that the context suggests that "Congress intended to give the bankruptcy courts 'only enough jurisdiction to provide meaningful assistance to municipalities that require it, not to address the policy matters that such municipalities control.' " *Id.* at 12a (quoting *In re City of Detroit* ("*Lyda*"), 841 F.3d 684, 695 (6th Cir. 2016)).

The First Circuit then rejected petitioner's argument that because "sections 922(d) and 928(a) control the treatment and disposition of pledged special revenues," Section 305 cannot constrain "the Title III court's ability to grant its requested relief" for the unlawful diversion of those revenues. *Id.* at 12a-13a. According to the First Circuit, there was "no real conflict" between its understanding of Section 305 and Sections 922(d) and 928 because Sections 922(d) and 928 "address the relationship between the automatic stay and the application of pledged special revenues to a debt," while Section 305 merely addresses "whether the Title III court itself has the power to require a debtor to turn over certain revenues to a creditor." *Id.* at 14a.

The panel then brushed aside the concern that the Title III court's inability to enforce Sections 922 and 928 would "effectively wipe [them] out," holding that Sections 922 and 928 do not permit enforcement of the Commonwealth's special revenue debt obligations. *Id.* Rather, they merely allow a creditor to apply any "collateral in its possession to the debtor's outstanding debt." *Id.* at 15a. For this proposition, the First Circuit relied on its "recent decision" in *Assured*, where it had offered a lengthier account of why, in its view, the special revenue protections in Sections 922(d) and 928 do not protect the PRHTA bondholders' ability to receive special revenues. *Id.* at 14a-15a (citing *Assured I*, 919 F.3d at 127-132).

The panel was equally unmoved by petitioner's argument that the Oversight Board consented to allow PRHTA to undergo debt adjustment proceedings governed by Title III and therefore consented to the enforcement of Title III provisions against PRHTA. *Id.* at 16a. While Section 305 specifically permits the Title III court to "interfere" with a debtor's use of its property where the "Oversight Board consents," 48 U.S.C. § 2165, the panel posited that interpreting the filing of a petition as consent "would be to 'render section 305 a nullity.'" Pet. App. 16a (quoting *In re Fin. Oversight & Mgmt. Bd. for*

Puerto Rico ("*PREPA*"), 899 F.3d 13, 19 (1st Cir. 2018)).

Finally, the panel rejected the notion that the Title III court could at least issue a declaration that the Commonwealth's actions violate PROMESA and the Constitution, holding that even declaratory relief "impermissibly interfere[s] with the governmental affairs or property of HTA and the Commonwealth." *Id.*

Shortly after the decision below was issued, the First Circuit denied en banc relief in *Assured*, the case in which the First Circuit had initially interpreted Sections 922 and 928. *See In re Fin. Oversight & Mgmt. Bd. for Puerto Rico* ("*Assured II*"), 931 F.3d 111 (1st Cir. July 31, 2019). The judges in the decision below joined the judges that had sat on the *Assured* panel in issuing a concurrence in denial of en banc defending their view of Sections 922 and 928. *Id.* at 111-119 (statement of Kayatta, J., joined by Howard, C.J., and Torruella and Thompson, JJ., on denial of rehearing en banc).

Judge Lynch dissented from denial in an opinion that emphasized the errors in the panel's reading of the special revenues provisions, and then specifically rejected the understanding of Section 305 advanced by the panel in this case. Like the panel, Judge Lynch recognized that "Section 305 is intended to be 'respectful and protective of the status of the Commonwealth and its instrumentalities, much like Section 904 of the municipal bankruptcy code.'" *Id.* at 129 (Lynch, J., dissenting from denial of rehearing en banc). But for Judge Lynch, that observation led her to view an order vindicating the requirements of Section 922(d) as fully consistent with Section 305.

That is because Section 922(d) creates an exception to the *federal* law that automatically stays debt obligations established under state and local laws and bond resolutions. *Id.*

Moreover, Judge Lynch observed that "some 'interference'" by a bankruptcy court "is plainly necessary" to vindicate the commands of Sections 922(d) and 928. *Id.* at 130. And, in any event, if the Title III court cannot itself enforce these provisions of the Bankruptcy Code, it can at least stand aside to allow petitioner to pursue the remedies in another court as specified under the applicable Commonwealth laws and bond resolutions. *Id.* at 130-131.

The creditors in *Assured* filed a petition for certiorari on September 20, 2019. That petition is currently pending.

REASONS FOR GRANTING THE PETITION

I. THE FIRST CIRCUIT'S INTERPRETATION OF SECTION 904 OF THE BANKRUPTCY CODE AND SECTION 305 OF PROMESA CREATES A CONFLICT IN THE LOWER COURTS AND UNDERMINES THE BANKRUPTCY LAWS.

Courts have long agreed that while Section 904 of the Bankruptcy Code restricts a bankruptcy court's authority over a municipal debtor, it does not go so far as to prevent the court from enforcing the provisions of the Bankruptcy Code itself. The First Circuit rebuffed that settled view. It held that Section 904 of the Bankruptcy Code and Section 305 of PROMESA prevent a court overseeing debt adjustment proceedings from taking the actions necessary to ensure the debtor's compliance with the federal law governing those proceedings.

That holding is as wrong as it sounds. Section 904 of the Bankruptcy Code and Section 305 of PROMESA only prevent a court from "interfer[ing]" with governmental property and powers where there has been no "consent[ ]." 11 U.S.C. § 904; 48 U.S.C. § 2165. Petitioning a federal court to undergo bankruptcy proceedings governed by federal bankruptcy laws necessarily constitutes consent to have those laws enforced against the debtor. And even if it did not, the more specific provisions of the Bankruptcy Code governing particular conduct by the debtor would undoubtedly trump the general bar on judicial "interfere[nce]."

A. The Panel's Interpretation of Sections 904 and 305 Conflicts with the Established Understanding of their Text.

1. Courts have repeatedly held that in barring bankruptcy courts from taking actions that will "interfere with" the debtor's "political or governmental powers" and "property" without the debtor's consent, 11 U.S.C. § 904, Congress intended to prohibit a bankruptcy court from going beyond the authorities enumerated in the Bankruptcy Code. Courts have never understood Section 904's prohibition to extend to actions necessary to vindicate the Bankruptcy Code provisions themselves.

Thus, in the only prior circuit court decision to squarely address the issue, the Sixth Circuit held that Section 904 barred the court presiding over the City of Detroit's bankruptcy from granting the plaintiff-citizens' request for "preliminary and permanent injunctive relief stopping water shut offs and restor[ing] service." *Lyda*, 841 F.3d at 688. The Court explained that such an order would obviously "interfere[ ]" with Detroit's sovereign powers and property, and was therefore barred by Section 904 "[w]hether grounded in state law or federal constitutional law." *Id.* But the Sixth Circuit did not cast any doubt on the bankruptcy court's additional determination that it *was* within that court's "core jurisdiction" to adjudicate plaintiffs' claim that the City's actions ran afoul of Section 365 of the Bankruptcy Code, which governs the treatment of executory contracts. *Id.* at 690. The bankruptcy court had found it obvious that "despite § 904, the Court retains the complete authority that § 365 gives it." *In re City of Detroit*, No. 14-04732, 2014 WL 6474081, at *3 (Bankr. E.D. Mich. Nov. 19, 2014). It had simply concluded that the citizens did not have an "executory contract" with the City, and that—in any event—the injunctive relief they sought was "outside of the scope of § 365." *Id.* at *1. The Sixth Circuit quoted this holding, but nowhere suggested that the bankruptcy court had erred in its understanding of its ability to enforce § 365.

To the contrary, the Sixth Circuit held that Section 904 should be read to "preclude recovery on [plaintiffs'] common-law and constitutional claims" because Congress had carefully crafted the provisions of Chapter 9 "to preserve the niceties of the state-federal relationship." *Lyda*, 841 F.3d at 697 (internal quotation marks omitted). Permitting plaintiffs to obtain relief for claims outside of those provisions would undermine Congress's scheme. *Id.* And that was all the more true because Congress had elected *not* to incorporate in Chapter 9 a provision of the corporate Bankruptcy Code that would have allowed plaintiffs to press claims similar to the constitutional claims they were attempting to raise. *Id.* at 698. In other words, plaintiffs' claims were barred by Section 904 only because plaintiffs were *not* seeking relief based on the provisions of Chapter 9 itself, but were instead attempting to challenge government actions outside the Chapter 9 framework entirely.

Moreover, in interpreting Section 904, the Sixth Circuit repeatedly cited and relied on the decision of the bankruptcy court in *In re City of Stockton*, 478 B.R. 8 (Bankr. E.D. Cal. 2012). In that case, the court flatly held that through the "voluntary act of filing a chapter 9 case," a "municipality consents, within the meaning of § 904, to interference by a federal court as to the Bankruptcy Code provisions that apply in chapter 9 cases." *Id.* at 22. And it reached that conclusion after a long and thorough examination of the history of Section 904 and its role within Chapter 9. *Id.* at 17-20. That in-depth analysis led the *Stockton* court to conclude that, in Chapter 9, "Congress has been careful to observe the delicacies of the state-federal relationship." *Id.* at 23. Accordingly, bankruptcy courts may enforce the provisions of the Code without entrenching on state sovereignty, but—as Section 904 makes clear—they may not attempt to evoke their powers to go *beyond* what the Code contemplates. *Id.*

Other courts have agreed. In *In re County of Orange*, the bankruptcy court issued an injunction against the City pursuant to Section 365 of the Code, explicitly rejecting the proposition that Sections 903 and 904 required the court to stay its hand. *See* 179 B.R. 177, 181-183 (Bankr. C.D. Cal. 1995). And in a later decision, the same court held that while a State may choose whether to authorize its municipality to enter bankruptcy, it may not object to the enforcement of the provisions of Chapter 9 once it has done so. *In re County of Orange*, 191 B.R. 1005, 1021 (Bankr. C.D. Cal. 1996) ("By authorizing the use of chapter 9 by its municipalities, California must accept chapter 9 in its totality; * * * [t]he right to discharge is not a benefit without burdens.").

Similarly, in *In re City of Vallejo*, a district court explained that Sections 903 and 904 work together to "empower states to act as gatekeepers to their municipalities' access to Chapter 9," but once a State has authorized a city to enter bankruptcy proceedings, courts may enforce *all* of the provisions of Chapter 9. 432 B.R. 262, 267-268 (E.D. Cal. 2010). It is not permissible for a State (or by extension, a municipality) to "cherry pick what it likes while disregarding the rest." *Id.* (quoting *In re County of Orange*, 191 B.R. at 1021).

2. In the decision below, the First Circuit departed from this broad consensus. It held that Section 305 of PROMESA—which duplicates Section 904 in all material respects—bars *any* action by the Title III court that might affect the property of the Commonwealth, even if the action is necessary to vindicate the provisions of Title III itself. Pet. App. 9a-12a. And it expressly "rejected the argument" that "the mere filing of a Title III petition might constitute" the "consent" necessary for the bankruptcy court to act. *Id.* at 16a.

In reaching that holding, the First Circuit fully embraced the proposition that Sections 305 and 904 must be interpreted identically because Section 305 "mimics" Section 904 "in all pertinent respects." *Id.*

at 9a. Indeed, the First Circuit supported its holding by citing the portions of *Lyda* and *Stockton* that discuss why Section 904 bars claims that do *not* sound in Chapter 9. *Id.* at 11a. But the court simply ignored those portions of both opinions that make clear that Section 904, and therefore Section 305, imposes no bar to the enforcement of Chapter 9 or Title III.

This Court's intervention is warranted to resolve the direct conflict between the view of the First Circuit and those of the Sixth Circuit and multiple lower courts before it. And given the relative rarity of Chapter 9 bankruptcy proceedings, the Court should not wait for the split to deepen any further than it already has. *See* Petition for a Writ of Certiorari at 19 n.5, *Assured Guar. Corp.* v. *Fin. Oversight & Mgmt. Bd. for Puerto Rico*, No. 19-___ (filed Sept. 20, 2019) ("*Assured* Pet.").

B. The First Circuit's Understanding of Sections 904 and 305 Is Wrong.

Certiorari is also warranted because the First Circuit has the worse of the argument. The plain text of Sections 904 and 305, the structure of the Bankruptcy Code as a whole, and the language of Sections 922 and 303 make clear that Congress did not bar bankruptcy courts from enforcing provisions of the Bankruptcy Code against a municipal debtor.

First, the plain text of Sections 904 and 305 limits the actions of a debt adjustment court only in the absence of "consent" from either the debtor (in Section 904) or the Oversight Board (in Section 305). Since the advent of the municipal provisions of the Bankruptcy Code, this Court has recognized that when a State authorizes a local government to petition a federal court for relief under the Bankruptcy Code, it "invites the intervention of the bankruptcy power." *Bekins*, 304 U.S. at 54. And when the local government makes a "voluntary application" for relief, it too "consent[s]" to the exercise of the bankruptcy court's powers under the Code. *Id.* at 49, 53-54. Accordingly, courts have never doubted that, by filing a petition for bankruptcy, a debtor "consents" to have the provisions of Chapter 9 applied against it.

The First Circuit did not explain why that reasoning does not dictate that the Oversight Board's authorization of Title III proceedings represents its "consent" to have the provisions of Title III—including Sections 922 and 303—enforced against the debtor. Instead, the First Circuit refused to hold that the Oversight Board had consented through its authorization of the Title III proceedings because the panel worried that this reading would "render section 305 a nullity." Pet. App. 16a (quoting *PREPA*, 899 F.3d at 19). But the Section 904 decisions that the First Circuit cited elsewhere in its analysis show why that is not so: The "consent" provided by filing a petition or authorizing that filing represents consent for the bankruptcy court to take the steps necessary to enforce the Bankruptcy Code. It does not represent consent to allow the bankruptcy court to go further by enforcing mandates of state—or even constitutional—law that Congress elected to leave out of the Code.[4] *Lyda*, 841 F.3d at 698. It is those further exercises of authority that Section 904 bars.

[4] Petitioner in this case pressed constitutional claims, but the requested relief coincides with the relief authorized by the

Second, even if the Oversight Board's authorization of Title III proceedings could not qualify as "consent" under Section 305, the Title III court would still be permitted to enforce the specific provisions of Sections 922(d) and 303 against the debtor. While Section 305 generally bars "interfere[nce]" with a government's powers or property, Section 922(d) dictates the specific way in which special revenues should be treated during the pendency of bankruptcy proceedings and Section 303 preempts a specific form of Commonwealth regulation—"moratorium laws" and related executive orders. As Judge Lynch observed in her en banc dissent in *Assured*, a Title III court must adhere to "the ancient interpretative principle that the specific governs the general." 931 F.3d at 130 (Lynch, J., dissenting from denial of rehearing en banc) (quoting *Nitro-Lift Techs., L.L.C.* v. *Howard*, 568 U.S. 17, 21 (2012)).

Indeed, accepting the First Circuit's interpretation of Section 305 would effectively nullify the portions of the Bankruptcy Code and PROMESA that govern a debtor's conduct during the pendency of a bankruptcy. This case is illustrative. If the Title III court cannot enforce the exception to the automatic stay in 922(d), then it is as if there is no exception at all. And if the court cannot issue an order declaring that the territory's moratorium laws and executive orders are preempted by Section 303, then Congress's

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Bankruptcy Code: continued payment of special revenue obligations. Accordingly, unlike the plaintiffs in *Lyda* and other similar cases, petitioner has not asked the Title III court to go beyond what Congress expressly contemplated in PROMESA.

decision to add a bar on "moratorium laws" and their related "unlawful executive orders" will be rendered nugatory.

The First Circuit attempted to avoid that conclusion by arguing that petitioner could still ask the Title III court to lift the automatic stay, and then bring "its constitutional and statutory arguments in a separate action." Pet. App. 17a. But it strains credulity to assert that Congress intended the provisions of Chapter 9 and PROMESA to be enforced only by courts other than the ones overseeing debt adjustment proceedings. And, in any event, the First Circuit greatly overstated the ease of lifting the bankruptcy stay. The Commonwealth's creditors have repeatedly sought such relief in Title III proceedings, only to find themselves enmeshed in protracted and burdensome proceedings regarding the propriety of a lift stay order. *See e.g.*, *Altair Glob. Credit Opportunities Fund (A) L.L.C.* v. *Garcia Padilla*, No. 3:16-cv-02696-FAB (D.P.R.), Dkt. 1; *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, No. 17-03566-LTS (D.P.R.), Dkts. 26, 289 (lift stay motions pending for three years).

Finally, the language of Sections 922 and 303 themselves makes clear that Section 305 does not prohibit enforcement of these provisions. As Judge Lynch also noted, it makes little sense to hold that an order vindicating the command of Section 922(d) constitutes unlawful federal "interference" with the Commonwealth's property since Section 922(d) simply limits the scope of the *federal* bankruptcy stay. *Assured II*, 931 F.3d at 129-130 (Lynch, J., dissenting from denial of rehearing en banc). At a bare minimum, Section 305 should not be interpreted to prevent the Title III court from stepping aside to permit a creditor to vindicate its entitlement to special revenues in accordance with valid state and local laws. *Id.* at 130-131.

II. THE FIRST CIRCUIT ERRONEOUSLY REJECTED THE ESTABLISHED MEANING OF SECTION 922(d).

Perhaps recognizing the flaws in its understanding of Section 305, the First Circuit sought to bolster its decision by holding that Section 922(d) does not actually authorize any relief: Rather than requiring a debtor to "appl[y] * * * pledged special revenues * * * to payment of indebtedness," 11 U.S.C. § 922(d), the court held that this provision merely allows a creditor to *keep* special revenues already in its possession. As detailed in the *Assured* petition, that holding is squarely contrary to the long-established consensus that, by exempting special revenues from the automatic stay on debt enforcement established by Sections 362(a) and 922(a), Section 922(d) guarantees that special revenue bondholders will continue to be able to enforce payment obligations against the debtor during the pendency of bankruptcy proceedings. *Assured* Pet. 16-18. The First Circuit's newly-minted interpretation of the provision cannot be squared with the plain text of Section 922(d), its context, or its history.

A. The First Circuit's Opinion Departs from the Established Understanding of Section 922(d).

1. As the First Circuit acknowledged, Section 922(d) provides an "exception" to the automatic stay established in Sections 362(a) and 922(a). That

automatic stay "give[s] the debtor a breathing spell from his creditors" while bankruptcy proceedings are pending by temporarily halting "all collection efforts, all harassment, and all foreclosure actions." *Houck* v. *Substitute Tr. Servs.*, *Inc.*, 791 F.3d 473, 480-481 (4th Cir. 2015) (quoting S. Rep. No. 95-989, at 54 (1978)). Because Section 922(d) enacts an exception to this "breathing spell" for special revenues, it has long been understood that special revenue debts may continue to be collected and enforced as usual during the pendency of bankruptcy proceedings. *Assured* Pet. 16-18.

Thus, since its inception, experts have recognized that Section 922(d) "makes the automatic stay provision generally inapplicable to the payment of pledged special revenues," thereby ensuring that courts "retain[] the power to enjoin application of the revenues" if the debtor attempts to unlawfully divert them to purposes other than debt repayment. Robert S. Amdursky, *The 1988 Municipal Bankruptcy Amendments: History, Purposes, and Effects*, 22 Urb. Law. 1, 12-13 (1990). Or, as a recent article put it, "Section 922(d) requires municipalities to keep making post-petition payments in the exact manner" they were compelled to before bankruptcy was declared. Alexander D. Flachsbart, *Municipal Bonds in Bankruptcy: § 902(2) and the Proper Scope of "Special Revenues" in Chapter 9*, 72 Wash. & Lee L. Rev. 955, 990-991 (2015); *see Assured* Pet. 16-18 (citing other articles to the same effect).

Moreover, while judicial opinions are hard to come by in this area, *see Assured* Pet. 19 n.5, the only other court that has weighed in on Section 922(d) firmly embraced the expert consensus that Section

922(d) ensures the continued payment of special revenues during the pendency of a bankruptcy case. *Id.* at 19-21; *see In re Jefferson County*, 474 B.R. 228, 270-274 (Bankr. N.D. Ala. 2012) (holding that Section 922(d) "excludes continued payment of * * * 'pledged special revenues' * * * from being stayed under 11 U.S.C. § 362(a) or 11 U.S.C. § 922(a)" and dictates that special revenues "are *not protected* from further actions by [the creditors' representative] to acquire them from the County" (emphasis added)).

This view of Section 922(d) is not quite universal. Collier's treatise on bankruptcy argues that Section 922(d) is permissive—that is, that a debtor may, but need not, continue to make special revenue payments during the pendency of Chapter 9 proceedings. 6 Collier on Bankruptcy § 922.05 (16th ed. 2019 update). This, however, is decidedly the minority view, and was forcefully rejected by the bankruptcy court on the only documented occasion in which a debtor attempted to rely on it. *See Assured* Pet. 19.

2. In the decision below, the First Circuit broke with the consensus. Relying almost exclusively on its recent opinion in *Assured* and the discredited opinion of Collier's, the court held that Section 922(d) does not "mandate the debtor's continued payment of special revenues" or "except[] from the automatic stay a creditor's action seeking to enforce that mandate." Pet. App. 14a-16a.

While the First Circuit acknowledged that Section 922(d) "does provide an exception to the automatic stay," it hypothesized that the exception merely "eliminated any possibility that the stay would prevent" a creditor's "application of pledged special revenues" in its possession to "payment of indebtedness." *Id.* at 15a-16a. The panel offered little explanation as to why Congress would enact a provision clarifying that the automatic stay on debt enforcement does not prevent a creditor from keeping funds it already has. But in the *Assured* decision on which the panel relied, the First Circuit speculated that before Section 922(d) was enacted, "there was ample reason to believe that Section 362(a) stayed a creditor from accepting voluntary payments from a debtor or stayed a creditor from applying debtor funds already in the creditor's possession." *Assured I*, 919 F.3d at 132. The *Assured* court therefore concluded that Section 922(d) "only makes clear that the automatic stay is not an impediment to continued payment * * * of indebtedness secured by such revenues." *Id.* Accordingly, as the panel below emphasized, the First Circuit construed Section 922(d) not to permit any of the debt enforcement "actions to which the automatic stay applies, most obviously and notably suits to compel payment." Pet. App. 16a.

In holding that Section 922(d) does *not* except special revenues from the stay on debt enforcement actions, the First Circuit sharply split from the position of the *Jefferson County* court—and the expert consensus—that Section 922(d) means that special revenues "are *not protected* from further actions by [the creditors' representative] to acquire them from" a debtor. 474 B.R. at 272 (emphasis added).

Moreover, there is no chance that the First Circuit will correct its own error. The members of the panel in this case joined with the judges on the *Assured* panel to issue a statement respecting denial of en banc relief. *See Assured II*, 931 F.3d at 111-119 (statement of Kayatta, J., joined by Howard, C.J., and Torruella and Thompson, JJ., on denial of rehearing en banc). In that concurrence, four judges reiterated the view that Section 922(d) cannot "reasonably" be read to "compel[ ] the debtor to continue making [special revenue] payments in accordance with the bondholder resolutions" or to permit "the instigation of an enforcement action against the debtor" if the debtor ceases to apply the special revenues to the payment of indebtedness. *Id.* at 114-115. This Court's intervention is urgently warranted to resolve the confusion engendered by the First Circuit's recent wrong turn about the meaning of Section 922(d) and the automatic stay provisions in general.

B. The First Circuit's Interpretation of Section 922(d) Is Wrong.

The First Circuit's interpretation of Section 922(d) is also manifestly incorrect. Its understanding of that provision cannot be squared with the statute's plain text, context, and history.

Start with the text. Section 922(d) mandates that the filing of a bankruptcy petition "does not operate as a stay of application of pledged special revenues * * * to payment of indebtedness secured by such revenues." The text nowhere limits that mandate to special revenues already in the possession of the creditor, as the First Circuit held. To the contrary, Section 922(d) establishes a flat rule that the automatic stay should *not* be read to halt the "application of pledged special revenues * * * to payment of indebtedness," whether the revenues are held by the debtor, the creditor, or any other entity. That alone is enough to foreclose the First Circuit's interpretation. " 'Congress wrote the statute it wrote' " and courts have "no roving license, in even ordinary cases of statutory interpretation, to disregard clear language simply on the view that * * * Congress 'must have intended' something" different. *Michigan* v. *Bay Mills Indian Cmty.*, 572 U.S. 782, 794 (2014).

But there is more: The First Circuit's understanding is also incompatible with the broad "notwithstanding" clause that introduces Section 922(d). As this Court has explained, the use of "a 'notwithstanding' clause clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other section." *Cisneros* v. *Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993). Section 922(d) begins by stating that its rule applies "[n]otwithstanding Section 362 of this title and subsection (a) of this section"—that is, the rule applies notwithstanding the stay of all enforcement actions against the debtor and its officers established in those provisions. But according to the First Circuit, Section 922(d) would not "override" the automatic stay of debt enforcement at all, because it would not permit any enforcement actions otherwise barred by that stay.

The First Circuit's only way around this problem was to read the automatic stay as prohibiting a creditor's use of property already in its possession. But that runs contrary to the repeated holdings of this Court and the courts of appeals that the automatic stay bars "collection and enforcement proceedings *against* the debtor and his property." *Pennsylvania Dep't of Pub. Welfare* v. *Davenport*, 495 U.S. 552, 560 (1990) (emphasis added); *see also, e.g.*, *Czyzewski* v. *Jevic Holding Corp.*, 137 S. Ct. 973, 979

(2017) (declaring that bankruptcy initiates "an 'automatic stay' of all collection proceedings against the debtor"); *Aiello* v. *Providian Fin. Corp.*, 239 F.3d 876, 878 (7th Cir. 2001) ("The 'automatic stay' is a statutory injunction against efforts outside of bankruptcy to collect debts from a debtor who is under the protection of the bankruptcy court."). It does not impede the creditor's use of funds in its own possession.

Other than its own decision in *Assured*, the only authorities the First Circuit cited to support its alternative reading of the breadth of the automatic stay were the discredited views of Collier, a snippet of legislative history, and two district court opinions concerning *private* bankruptcies. Unsurprisingly, none of these sources moves the needle: Collier's assertion that the automatic stay might bar a creditor's "innocent conduct, such as the cashing of checks received from account debtors" comes in a discussion of private bankruptcies, in which numerous provisions restrict the debtor's ability to make voluntary payments during the course of a bankruptcy. 3 Collier on Bankruptcy § 362.03[8] (16th ed. 2019 update). But those provisions do not apply to municipal debtors. The same problem mars the panel's attempt to rely on the two district court decisions regarding corporate bankruptcies.

Even the snippet of the Senate Report suggesting that Congress believed the automatic stay might inhibit the "application of the debtor's funds held by a secured lender to secure indebtedness" offers the First Circuit no support. Senate Report at 11. It in no way suggests that Congress intended to limit Section 922(d)'s reach in the way the First Circuit claims. To the contrary, the Report states that Congress intended to "insure that revenue bondholders receive the benefit of their bargain with the municipal insurer, namely, *they will have unimpaired rights to the project revenue pledged to them*." *Id.* at 12 (emphasis added). Creditors' rights would hardly be "unimpaired" if they could access special revenues only if they were already in their hands.

The flaws in the First Circuit's analysis do not end there. The panel's decision was premised in part on the court's belief that Section 922(d) needed to be given a narrow compass to prevent a conflict with Section 305. *See* Pet. App. 12a-14a. But the panel's understanding of Section 305 was erroneous, and so provided no basis to impose an atextual limit on Section 922(d) in order to avoid a nonexistent "conflict between the sections pertaining to pledged special revenues and section 305." *Id.* at 14a.

The panel also erred by ignoring Section 928, another provision of Chapter 9 that Section 922(d) cross-references. Section 922(d) states that the continued "application of pledged special revenues" to debt repayment must be "in a manner consistent with section 92[8] of this title." 11 U.S.C. § 922(d). Section 928, in turn, mandates that "special revenues *acquired by the debtor*" after the initiation of bankruptcy proceedings remain subject to a lien except to the extent that they are needed to pay the "necessary operating expenses" of the relevant project. *Id.* § 928(a)-(b). Read as whole, then, Sections 922(d) and 928 dictate that after a declaration of bankruptcy, the lien on special revenues endures, and a debtor must continue to apply the special revenues it acquires to the payment of indebtedness, *except* that the debtor may retain the amounts required for "necessary operating expenses." *Id.* §§ 922(d), 928(b).

The panel's interpretation cannot account for Section 922(d)'s cross-reference to Section 928. If Section 922(d) only applies to special revenues already in the creditor's possession, why does Section 928 focus on the treatment of revenues "acquired by the debtor"? And why would it even be necessary to specify that the debtor can retain "necessary operating expenses"? According to the panel's interpretation, the debtor may retain *any* and *all* funds that it chooses.

The upshot is that the panel opinion ignores key portions of the statute while simultaneously reading Section 922(d) so narrowly as to render it a virtual nullity. Under the panel's interpretation, it simply permits creditors to retain revenues they already possess, but cuts off creditors' access to all other pledged special revenues. "When Congress acts to amend a statute," it presumably "intends its amendment to have real and substantial effect." *United States* v. *Quality Stores, Inc.*, 572 U.S. 141, 148 (2014) (internal quotation marks omitted). It is implausible, to say the least, that Congress would have amended Chapter 9 in 1988 to add a provision that achieves virtually nothing.

III. THIS COURT'S INTERVENTION IS URGENTLY NEEDED.

This Court's intervention is urgently warranted. The First Circuit's opinion badly misinterprets key portions of PROMESA and the Bankruptcy Code, wreaks havoc on the settled expectations of bondholders in Puerto Rico and beyond, and threatens the ability of local governments to raise money through revenue bonds. It is vital for the Court to intervene now, rather than postponing review for a later case or holding this petition until the Court decides the constitutionality of an entirely distinct aspect of PROMESA. *See Fin. Oversight and Mgmt. Bd. for Puerto Rico* v. *Aurelius Inv., LLC* ("*Aurelius*"), No. 18-1334. Any delay will increase harm to municipalities, prolong the confusion in the municipal bond markets, and inflict many millions of dollars in damages on petitioners and similarly situated bondholders.

The First Circuit's erroneous interpretation of Chapter 9 and PROMESA has already deeply unsettled the bond market. As described in detail in the *Assured* petition, immediately after the First Circuit announced its understanding of Section 922(d) in *Assured*, multiple ratings agencies downgraded their assessment of municipal revenue bonds throughout the country. *See Assured* Pet. 23-25 (describing downgrades by Moody's, Kroll, and Fitch issued in direct response to the decision in *Assured*). That trend has only deepened since the First Circuit doubled down on its erroneous holding in the decision below: For instance, in late July, Moody's downgraded Cleveland, Ohio's water revenue bonds, explaining that it was doing so in response to the First Circuit's decision affirming that Puerto Rico "is not required to pay debt service on 'special revenue' bonds." *Rating Action: Moody's Downgrades Cleveland, OH's Senior Lien Water Revenue Bonds to Aa2; Outlook Stable*, Moody's Investors Service (July 29, 2019), https://www.moodys.com/research/Moodys-downgrades-Cleveland-OHs-senior-lien-water-revenue-bonds-to--PR_905922284.

Indeed, the decision below compounds the severe problems already caused by the *Assured* decision. It interposes yet another barrier in the way of municipal bondholders enforcing their rights, by construing incorrectly not just Section 922(d) but also Sections 904 and 305. And, in so doing, it prevents municipal bondholders from enforcing *other* provisions of the Bankruptcy Code and PROMESA specifically designed for their protection. It is not only bondholders and their insurers who will be hurt; municipalities will suffer too, as the reduction in creditworthiness makes it harder and more expensive for them to raise money to pay for important public works and needed repairs. It is of paramount importance for the Court to intercede now.

That urgency is particularly pressing with respect to petitioner and similarly situated holders of Commonwealth bonds. As long as the First Circuit decision stands, PRHTA and other agencies are free to divert and spend hundreds of millions of dollars that should be paid to bondholders. Bondholders have no certainty that they will *ever* be able to recover these lost funds. That is bad for the bondholders, but it is also bad for the Commonwealth, whose ability to raise money in the future will be harmed if its bond offerings are not effectively secured.

There is no need for this Court to hold the petition until it issues a decision in *Aurelius*, No. 18-1334. That case poses an entirely distinct question, which the First Circuit itself did not believe would affect this case, given that it issued both *Assured* and the decision below after it had already held the Board unconstitutional. And because the questions presented affect *all* municipal bankruptcies, not just cases involving the Commonwealth, the precedent set by the decision below will have consequences far beyond Puerto Rico. *See Assured* Pet. 15, 37.

This Court should grant certiorari in this case in addition to and in coordination with *Assured*. This case squarely presents the question of the meaning of Section 305 of PROMESA, and therefore affords the Court an opportunity to elucidate how the limitation on debtor "interfere[nce]" in Chapter 9 cases and the protection of "special revenues" are mutually reinforcing. Hearing the cases together will ensure that these complementary provisions are interpreted consistently and in accord with their plain text.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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