No. 19-387

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

BRIEF IN OPPOSITION

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(For Continuation of Caption See Inside Cover)

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QUESTIONS PRESENTED

1. Does 48 U.S.C. § 2165—which prohibits a court overseeing a municipal restructuring under Title III of the Puerto Rico Oversight Management, and Economic Stability Act ("PROMESA") from interfering with the political powers of a debtor or its property or revenues—preclude the specific relief sought by the Petitioner below?

2. In determining whether 48 U.S.C. § 2165 precluded the relief Petitioner sought below, did the court below correctly hold based on its decision in *Assured Guaranty Corp. v. Financial Oversight & Management Board for Puerto Rico (In re Financial Oversight & Management Board for Puerto Rico)*, 919 F.3d 121 (1st Cir. 2019), that Bankruptcy Code § 922(d) by its plain terms neither creates an exception to the automatic stay to allow a creditor to bring a debt enforcement action nor compels a turnover of revenues?

RULE 29.6 STATEMENT

Respondents are not nongovernmental corporations and are therefore not required to submit a statement under Supreme Court Rule 29.6.

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BRIEF IN OPPOSITION

Respondents respectfully submit that the petition for a writ of certiorari should be denied.

STATEMENT OF THE CASE

Petitioner Ambac Assurance Corp. ("Ambac") asked the district court below for declaratory and injunctive relief requiring Respondent Puerto Rico Highways and Transportation Authority ("HTA") to turn over revenues[1] to pay debt service on bonds Ambac guarantees and/or insures. Although HTA is a debtor in a restructuring case under Title III of PROMESA—which is similar to a Chapter 9 bankruptcy case—and thus protected by the automatic stay of creditor remedies, Ambac contended Bankruptcy Code §§ 922(d) and 928 require the Title III court to compel the turnover. In support of its complaint, Ambac alleged it had a lien against certain HTA revenues and HTA's failure to remit such revenues constituted a violation of the Takings, Due Process, and Contract Clauses.

The court below correctly held that the district court was prohibited from granting Ambac's

[1] Historically, HTA's sources of revenue included: (1) revenue from highway tolls generated by HTA itself, and (2) certain taxes and fees collected by the Commonwealth and appropriated to HTA (the "Allocable Revenues"). To address Puerto Rico's fiscal emergency, HTA is using its tolls to maintain its transportation system while the Commonwealth is using the Allocable Revenues to provide services to its people.

requested relief by § 305 of PROMESA (48 U.S.C. § 2165), which expressly bars a Title III court from interfering with a debtor's governmental powers, property, or revenues. That ruling is in accord with a long line of precedent interpreting Bankruptcy Code § 904, which contains language nearly identical to PROMESA § 305.[2] In response to Ambac's argument that PROMESA § 305 is a general statute overridden by Bankruptcy Code § 922(d)'s specific authorization of turnover actions, the court below explained that § 922(d) does not authorize such actions in the first place, as its plain meaning corroborates. The court then instructed Ambac that if it believes any lien on HTA revenues is inadequately protected during the pendency of the Title III case, it can move to lift the automatic stay. If the Title III court agrees there is no adequate protection, it may grant stay relief to allow Ambac to enforce its rights to the revenues in a territorial court unconstrained by § 305. Rather than heed the First Circuit's advice and seek stay relief, however, Ambac brought this petition.

In the petition, Ambac argues PROMESA § 305 does not bar a court from enforcing a Bankruptcy Code provision applicable to Title III cases, and therefore its claim for relief under § 922(d) should have survived application of § 305. The problem with that argument, aside from the plain meaning of § 305, is § 922(d) by its terms does not provide Ambac *any* relief. Although virtually all judicial and non-judicial acts to collect claims are stayed by Bankruptcy Code

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[2] The court also held that aspects of Ambac's requested relief were barred by 48 U.S.C. § 2126(e). That portion of the decision is not challenged in the petition.

§ 362(a), § 922(d) excludes from the stay's coverage the "application of pledged special revenues." Thus, as the court below explained, if an indenture trustee for bondholders is holding pledged special revenues, § 922(d) allows the trustee to apply those revenues to the bond debt without violating the automatic stay. Pet. App. 15a. However, § 922(d) nowhere creates a cause of action for turnover of revenues or anything similar. Ambac's second Question Presented asks the Court to take as a given that § 922(d) authorizes an "exception to the automatic stay of debt enforcement actions." Pet. i. However, nothing in § 922(d) authorizes any debt enforcement action as an exception to the automatic stay.

Meanwhile, Ambac's first Question Presented was never decided by the court below. Ambac mischaracterizes the decision below as holding that PROMESA § 305 prohibits a Title III court from enforcing applicable Bankruptcy Code and PROMESA provisions. However, the court below did not answer that question because it did not find any conflict between PROMESA § 305 and another provision. Rather, the court reasoned that PROMESA § 305 was not in conflict with § 922(d) because § 922(d) does not create a cause of action for turnover of revenues.

Ambac's arguments in support of certiorari depend on its mischaracterization of the decision below. For instance, Ambac contends the decision below departs from other courts, which have held that § 305's Bankruptcy Code analog (11 U.S.C. § 904) does not preclude a bankruptcy court from enforcing Chapter 9 provisions. However, the decision below did not hold § 305 precludes a court from enforcing

applicable Bankruptcy Code and PROMESA provisions, and thus Ambac's claimed conflict is illusory.

Ambac further misses the mark when it argues the court below misapplied Bankruptcy Code § 922(d). According to Ambac, § 922(d) "creates an exception to the automatic stay of debt enforcement actions during the pendency of bankruptcy proceedings for the 'application of pledged special revenues.'" Pet. i. However, § 922(d) says nothing about debt enforcement actions. It merely provides that the "application" of pledged special revenues to debt does not violate the automatic stay. It does not require a debtor to pay pledged special revenues during the pendency of a restructuring case or grant stay relief to allow commencement of any action whatsoever.

Ambac's rhetoric that the sky has fallen in response to the decision below is hyperbolic and unsupported. According to Ambac, the decision below "wreaks havoc" on the municipal bond market. Pet. 33. But Ambac can identify only a few isolated instances of bond downgrades by ratings agencies following a different decision—*Assured Guaranty Corp. v. Financial Oversight & Management Board for Puerto Rico (In re Financial Oversight & Management Board for Puerto Rico)* ("*Assured*"), 919 F.3d 121 (1st Cir. 2019).[3] Further, at least one ratings agency (Standard & Poor's) has expressed its agreement with the decision in *Assured*, and another agency (Kroll)

[3] Assured's petition for certiorari is currently pending before the Court in case no. 19-391.

upgraded a municipal bond as a result of that decision. That hardly constitutes "havoc."

1. Puerto Rico is in the midst of what Congress has deemed a "fiscal emergency." 48 U.S.C. § 2194(m)(1). In June 2016, Congress enacted PROMESA to address that emergency. *Id.* §§ 2101–2241. Among other things, PROMESA created the Financial Oversight and Management Board for Puerto Rico (the "Board") and authorized it to certify long-term fiscal plans and annual budgets for the Commonwealth and its instrumentalities. *Id.* §§ 2161–2162.

When the Board began its work in 2016, the Commonwealth had $74 billion of debt, $49 billion of pension liabilities, and insufficient resources to satisfy those obligations. Hurricanes Maria and Irma exacerbated the crisis in the fall of 2017 by devastating the Commonwealth's infrastructure.

Unlike municipalities on the mainland, the Commonwealth and its instrumentalities are not permitted to file for bankruptcy under Chapter 9 of the Bankruptcy Code. *See Puerto Rico v. Franklin Cal. Tax-Free Trust*, 136 S. Ct. 1938, 1942 (2016). Title III of PROMESA thus establishes a procedure that the Commonwealth and its instrumentalities can employ to restructure their debts. 48 U.S.C. § 2161–2177. The Board is authorized to commence a Title III case on behalf of the Commonwealth or any of its eligible instrumentalities when certain conditions are met. *Id.* § 2164(a). To date, the Board has filed six Title III cases on behalf of the Commonwealth and its instrumentalities, including HTA.

PROMESA incorporates dozens of Bankruptcy Code provisions—including §§ 922 and 928—into a Title III case. *Id.* § 2161(a).

2. HTA is one of the Commonwealth instrumentalities in dire fiscal condition. HTA is responsible for developing, operating, and maintaining the Commonwealth's highways and transportation system. Pet. App. 5a. Historically, HTA financed its operations through revenue bonds, federal grants, certain tax revenues, vehicle fees, tolls, and other collected revenues. *Id.*

HTA is authorized to raise capital by issuing bonds. *See* 9 L.P.R.A. § 2001–2035 (the "Enabling Act"). HTA adopted resolutions in 1968 and 1998 authorizing bond issuances (the "Resolutions"). Under the terms of the Resolutions, HTA was required to deposit revenues it generated into a series of accounts. Those accounts included reserve accounts (the "Reserve Accounts"), which are "subject to a lien and charge in favor of the holders of the bonds." Pet. App. 72a. Money in the Reserve Accounts would be applied to debt service.

HTA owes approximately $4.1 billion in outstanding principal on the bonds issued under the Resolutions. Ambac alleges it owns approximately $16 million of that debt and insures another $494 million. *Id.* at 26a.

3. As the fiscal crisis in the Commonwealth intensified, the Puerto Rico legislature enacted the 2016 Emergency Moratorium and Financial Rehabilitation Act (P.R. Act No. 21-2016)—later superseded by the Financial Emergency and Fiscal Responsibility Act (P.R. Act No. 5-2017)—which

authorized the Governor to prioritize the provision of services over debt payments. Pet. App. 27a–29a. Pursuant to that legislation, the Governor issued a series of executive orders declaring a fiscal emergency at HTA, suspending the flow of HTA's revenues to the Reserve Accounts, and temporarily staying creditor remedies (the "Executive Orders"). *Id.* On March 13, 2017, the Board certified a fiscal plan for the Commonwealth authorizing the Commonwealth to retain the Allocable Revenues.

4. In 2017, Ambac filed an adversary proceeding in the Title III court challenging the emergency legislation, the Executive Orders, the Board's certification of the Commonwealth's fiscal plan, and legislation implementing the certified fiscal plan (collectively, the "Challenged Actions"). Pet. App. 8a.

Ambac's amended complaint asserted seven claims for relief. The first five alleged that all or some of the Challenged Actions: (1) violate the Contract Clause; (2) take funds in which Ambac allegedly holds a property interest without just compensation in violation of the Takings and Due Process Clauses; (3) deprive Ambac of access to Article III courts; (4) are preempted by PROMESA § 303, 48 U.S.C. § 2163; and (5) violate PROMESA § 407, 48 U.S.C. § 2195. *Id.* at 47a–68a. The sixth count alleged that HTA's toll revenues and the Allocable Revenues are "pledged special revenues," which must be used for the repayment of the HTA bonds under Bankruptcy

Code §§ 922(d) and 928.[4] *Id.* at 68a–71a. The seventh count sought a declaration that moneys in the Reserve Accounts are bondholder property. *Id.* at 71a–75a.

The complaint demanded far-reaching relief, including an order enjoining HTA and the Commonwealth "from taking any action that would impair, or continue the impairment of, the free flow of" the pledged revenues to the Reserve Accounts; dismissal of HTA's Title III case; an order decertifying the Commonwealth's fiscal plan; and declarations voiding the Challenged Actions. *Id.* at 9a–10a.

5. The district court granted the Board's motion to dismiss Ambac's adversary complaint in its entirety. *Id.* at 24a–76a.

The court first held Ambac's claim under the Takings Clause was not ripe because, until there is a plan of adjustment, there will be no final decision concerning the disposition of HTA's revenues and the amount of compensation paid to Ambac. *Id.* at 37a–42a. Ambac's due process claim, which depended on the same allegations as its takings claim, was also dismissed as unripe. *Id.* at 42a.

The court next held that PROMESA § 106(e) divested it of jurisdiction to consider the portions of the complaint challenging the Board's certification of the Commonwealth's fiscal plan. Pet. App. 43a–44a.

The court dismissed the remainder of the complaint on the merits. The court dismissed the

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[4] "Pledged special revenues" are revenues derived from various municipal projects, fees, tolls, or taxes pledged by a debtor municipality to the repayment of debts. *See* 11 U.S.C. § 902(2).

Contract Clause claim because Ambac failed to allege that the fiscal plan is a state law within the meaning of the Contract Clause or that the Challenged Actions were unreasonable and unnecessary to effectuate an important governmental purpose. *Id.* at 47a–57a.

With respect to the claim under PROMESA § 303, the court held none of the Challenged Actions constitutes a law prescribing a method of composition of indebtedness, a moratorium law, or an "unlawful" executive order as proscribed by that section. *Id.* at 57a–65a.

The district court also dismissed Ambac's sixth count because Bankruptcy Code §§ 922(d) and 928 by their terms neither require HTA to turn its revenues over to the bondholders nor grant Ambac relief from the automatic stay to prosecute an action for their turnover. *Id.* at 68a–71a (citation omitted).[5]

6. Ambac appealed the portions of the district court's order dismissing its claims under the Contract, Takings, and Due Process Clauses, PROMESA § 303, and Bankruptcy Code §§ 922(d) and 928. *Id.* at 5a–17a.

A unanimous panel affirmed. *Id.* at 2a–18a. In so ruling, the court below focused on the relief Ambac sought in its complaint. *First*, the court observed Ambac was seeking relief invalidating the Board's certification of the Commonwealth's fiscal plan. *Id.* at

[5] Ambac did not appeal the dismissal of the remaining counts; the district court's rationale for dismissing those counts is thus not discussed herein.

9a. The court held that relief was precluded by PROMESA § 106(e), 48 U.S.C. § 2126(e). Pet. App. 9a.

Second, the court observed that the remainder of Ambac's complaint sought declaratory and injunctive relief requiring the Commonwealth to remit the Allocable Revenues to HTA and then to the Reserve Accounts for payment to the bondholders. *Id.* at 10a. The court held that such relief was precluded by PROMESA § 305, which bars a court from ordering relief that interferes with a debtor's governmental powers, property, or revenues. Pet. App. 9a–10a (citing 48 U.S.C. § 2165). In so ruling, the court noted that its conclusion was consistent with cases interpreting Bankruptcy Code § 904, which contains analogous language precluding a court from interfering with a Chapter 9 debtor's powers, property, and revenues. Pet. App. 11a (citing cases).

In its briefing below, Ambac argued the court could order the turnover of pledged special revenues under Bankruptcy Code §§ 922(d) and 928 despite PROMESA § 305's language barring interference with the debtor's revenues. In Ambac's view, §§ 922 and 928 require a debtor to turn over its pledged special revenues during its restructuring case, and, if a court is precluded by § 305 from ordering a turnover, a creditor could never enforce §§ 922 and 928. Pet. App. 14a. The court below rejected that argument, relying on its ruling in *Assured* that §§ 922 and 928 by their terms do *not* require a debtor to turn over its revenues. Pet. App. 14a–16a (citing *Assured*, 919 F.3d at 127–32). The court had no concern that application of § 305 would preclude relief authorized by §§ 922 and 928 because those provisions do not grant Ambac any right to relief. *Id.* The court below also advised

that nothing in its holding "suggests that Ambac cannot seek traditional stay relief" because § 305 "only bar[s] the Title III court itself from directly interfering with the debtor's powers or property. It does not, however, impose any such restraint on another court." Pet. App. 17a.

Ambac did not seek rehearing. This petition followed.

REASONS FOR DENYING THE PETITION

I. AMBAC MISCHARACTERIZES THE DECISION BELOW.

In arguing for certiorari on its first Question Presented, Ambac erroneously asserts that question was determined below. It was not. According to Ambac, the court below held PROMESA § 305 precludes a Title III court from enforcing applicable Bankruptcy Code and PROMESA provisions. Pet. 20. On the basis of that mischaracterization, Ambac argues the decision below was incorrectly decided and creates a split with the Sixth Circuit. In reality, however, the court below never decided whether § 305 prohibits a court from enforcing other Bankruptcy Code and PROMESA provisions because it had already held in *Assured* that §§ 922 and 928 were not in conflict with § 305. The petition is thus built on a false premise. With the premise dispelled, Ambac's arguments for certiorari collapse.

A. The Court Below Did Not Hold that § 305 Precludes Relief Sought Under Applicable Bankruptcy and PROMESA Provisions.

Ambac's argument for certiorari is predicated on two incorrect premises: that Bankruptcy Code § 922(d) requires HTA to turn over its pledged special revenues to creditors during its restructuring case, and that the court below held that PROMESA § 305 overrides § 922(d) and other bankruptcy provisions. However, the court below did not hold that § 305 can prohibit a court from enforcing a Bankruptcy Code or PROMESA provision governing a Title III case. Instead, the court concluded that there was no need to reconcile any conflict between § 305 on the one hand and § 922 on the other hand because in *Assured* the court had already rejected the argument that Bankruptcy Code § 922(d) requires HTA to turn over any pledged special revenues. Pet. App. 10a–17a. As the court explained, § 922(d) does not require a debtor to turn over its revenues and thus does not support *any* relief whatsoever. *Id.* at 14a–16a (citing *Assured*, 919 F.3d at 127–29). Accordingly, the relief Ambac seeks is *not* required by § 922. Therefore, in considering whether PROMESA § 305 barred the relief that Ambac seeks because it would interfere with the debtor's governmental powers, the court below had no occasion to consider whether § 305 would operate to bar relief required by a Bankruptcy Code provision.

The court below dispelled any possibility it was ruling on whether § 305 would bow to § 922 if they were in conflict by hypothesizing how such a conflict

might be resolved. The court expressly observed that the outcome "might" turn on a canon of statutory interpretation, but "[e]ven then" the word "notwithstanding" in § 305 "might" render the canon inapplicable. Pet. App. 14a. Nowhere did the court actually rule. It was dealing with a hypothetical question.

Ambac tries to extrapolate a much broader holding from the decision below. According to Ambac, the court below held as a general matter that § 305 precludes a court from ordering a debtor to comply with applicable Bankruptcy Code and PROMESA provisions. Pet. 20. But there is no such ruling in the decision below.

Ambac contends that since it brought claims under PROMESA § 303 and Bankruptcy Code §§ 922 and 928 in addition to its constitutional claims—and since the court below relied on PROMESA § 305 to dismiss the entire complaint—the court implicitly held § 305 bars a court from enforcing applicable Bankruptcy Code and PROMESA provisions. But that simply ignores the court's reasoning below.

Based on its decision in *Assured*, the court below rejected Ambac's argument that the relief it sought under §§ 922 and 928 should survive dismissal because those provisions do not create a turnover obligation in the first place. Pet. App. 14a–16a. The court did not hold § 305 bars a court from granting relief that otherwise would be available under §§ 922 and 928 because it did not need to answer that question to resolve the case.

The only other claim in the appeal below based on a Bankruptcy Code or PROMESA provision was

Ambac's claim under PROMESA § 303. But, Ambac never argued its claim for relief under PROMESA § 303 was immune from § 305, which is why the court did not address it.

Accordingly, Ambac seeks certiorari on an issue not addressed by the court below, which is reason alone to deny the petition. Ambac's arguments for certiorari fail because they are based on the false premise that the court below held that § 305 bars a court from enforcing a Bankruptcy Code or PROMESA provision governing a Title III case.

B. There Is No Circuit Split.

Because the First Circuit did not actually decide Ambac's first Question Presented, Ambac's claimed circuit conflict is illusory. Pet. 16–19 (citing *Lyda v. City of Detroit (In re City of Detroit)* ("*Detroit*"), 841 F.3d 684 (6th Cir. 2016)). In fact, the court below reached the same conclusion about § 305 that the Sixth Circuit reached concerning § 305's Bankruptcy Code analog, 11 U.S.C. § 904. Ambac's argument to the contrary relies on mischaracterizations of both cases.

1. The First and Sixth Circuits Read § 305 Consistently.

In the decision below, the First Circuit held PROMESA § 305 barred the district court overseeing the Title III case from ordering the requested relief, which would have interfered with HTA's and the Commonwealth's governmental powers and revenues. Pet. App. 2a–18a. The Sixth Circuit reached a similar

conclusion in *Detroit*, holding that Bankruptcy Code § 904—which contains nearly the same language as PROMESA § 305—barred the bankruptcy court from ordering the relief sought there. 841 F.3d at 696.[6] Specifically, the Sixth Circuit held that § 904 prohibited a court from ordering Detroit's water department to restore service to the city's residents because such an order would "necessarily 'interfere with' the city's 'governmental powers,' its 'property [and] revenues,' as well as its 'use [and] enjoyment of income . . . producing property.'" *Id.* (quoting 11 U.S.C. § 904).

There is thus no daylight between the decision below and the Sixth Circuit's decision in *Detroit*. Both cases interpreted PROMESA § 305 / Bankruptcy Code § 904 to bar the relief sought against the debtors in the respective cases because the relief would interfere with the debtor's governmental powers and property. Indeed, the court below noted that its decision accords with *Detroit*. Pet. App. 11a. Needless to say, two cases applying a statute in a consistent manner do not create a circuit split.

2. Ambac's Attempt to Manufacture a Circuit Split Fails.

In an effort to gin up a circuit split, Ambac argues the court below and the Sixth Circuit disagree on whether PROMESA § 305 / Bankruptcy Code § 904

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[6] Because PROMESA § 305 is nearly identical to Bankruptcy Code § 904, the two statutes should be interpreted consistently. *See Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 302 (2006).

can preclude a court from enforcing a statutory provision governing a restructuring case. Pet. 18–20. According to Ambac, the Sixth Circuit in *Detroit* held that § 904 does not prohibit a court from enforcing a Bankruptcy Code provision, while the decision below held that § 305 can block a court from enforcing applicable Bankruptcy Code and PROMESA provisions. *Id.*

The problem with Ambac's argument is *neither case* decided the issue it identifies. As explained, the court below did not decide whether § 305 bars a court from enforcing applicable Bankruptcy Code and PROMESA provisions. *See* Point I.A, *supra*. And *Detroit* did not involve any claim that the debtor violated a Bankruptcy Code provision, so the Sixth Circuit had no occasion to consider the application of § 904 to such a claim.

The *Detroit* appeal involved *constitutional* claims—not claims seeking relief under the Bankruptcy Code. 841 F.3d at 696–97. Accordingly, the Sixth Circuit did not decide whether § 904 prohibits a court from enforcing a Bankruptcy Code provision. Instead, the Sixth Circuit merely held that § 904 prohibited certain relief designed to remedy an alleged constitutional violation. *Id.* at 696. Ambac's characterization of the Sixth Circuit as holding that "plaintiffs' claims were barred by Section 904 only because plaintiffs were *not* seeking relief based on the provisions of Chapter 9 itself" is made out of whole cloth because that issue was not before the court. Pet. 19.

In arguing otherwise, Ambac relies on the Sixth Circuit's recitation of the procedural history, not its

legal analysis. *Id.* at 18 (citing *Detroit*, 841 F.3d at 690). In discussing the procedural history, the Sixth Circuit noted the plaintiffs had argued below that § 904 did not bar the court from compelling the debtor to assume an executory contract under Bankruptcy Code § 365. *Detroit*, 841 F.3d at 690 (citing *In re City of Detroit*, No. 14-04732, 2014 WL 6474081, at *3 (Bankr. E.D. Mich. Nov. 19, 2014)). The bankruptcy court rejected the § 365 claim because the relationship between the water department and its customers was not an executory contract subject to § 365. *Detroit*, 2014 WL 6474081, at *3. On appeal, plaintiffs did "not contest [] the bankruptcy court's dismissal of their executory contract claim." *Detroit*, 841 F.3d at 690. The Sixth Circuit therefore said nothing about it in its analysis. Ambac's position is that because the Sixth Circuit did not *sua sponte* address an issue that was not raised in the appeal, it implicitly endorsed the position taken by the plaintiffs below. Pet. 18. That makes no sense. The Sixth Circuit took no position on whether § 904 can preclude a court from enforcing a Chapter 9 provision because that issue was not on appeal.

C. Ambac's Remaining § 305 Arguments Fail.

Unable to manufacture a circuit split, Ambac argues the decision below strays from the "[e]stablished [u]nderstanding" that PROMESA § 305 / Bankruptcy Code § 904 permits a court to enforce the provisions of Chapter 9 against a municipal debtor. Pet. 17. But the decision below did not hold otherwise; instead, it concluded that the Chapter 9 provisions on which Ambac relied did not entitle it to the relief sought. The decision below is

entirely consistent with the cases cited by Ambac, which simply recognize that § 305 / § 904 proscribes a wide range of relief that would interfere with the debtor. *See, e.g.*, *In re City of Stockton*, 478 B.R. 8, 20–21 (Bankr. E.D. Cal. 2012) (court cannot order city to pay retiree health benefits during Chapter 9 case); *see also In re N.Y.C. Off-Track Betting Corp.*, 434 B.R. 131, 142–43 (Bankr. S.D.N.Y. 2010) (section 904 prohibits court from ordering certain payments); *In re Richmond Unified Sch. Dist.*, 133 B.R. 221, 225 (Bankr. N.D. Cal. 1991) (section 904 prevents court from interfering with how debtor spends money); *In re Sanitary & Improvement Dist. No. 7*, 96 B.R. 967, 970 (Bankr. D. Neb. 1989) (section 904 bars suit to prevent debtor from paying operating expenses). The decision below thus comports with the "established understanding" of § 305 / § 904, which is that § 904 "provides an absolute limitation on the power of the court" overseeing a municipal restructuring case to issue an order interfering with a debtor's powers or revenues. Collier on Bankruptcy ¶ 904.01 (Richard Levin & Henry J. Sommer eds. 16th ed. 2018) ("Collier").

Ambac also argues that bankruptcy and district courts have held that when a debtor files a Chapter 9 petition, it consents to court orders mandating compliance with Chapter 9, notwithstanding § 904. Pet. 20–23. As explained, the decision below does not hold otherwise. *See* Point I.A, *supra*. Further, for Tenth Amendment purposes, courts have held that when a state consents to its municipality's use of Chapter 9, it consents to the federal court's power to discharge and restructure the municipality's obligations. *See United States v. Bekins*, 304 U.S. 27,

51–52 (1938). But it would be nonsensical to hold that by filing a petition under Chapter 9 or Title III, the municipality waives the protections of §§ 904 or 305. As explained by the court below, that would "render § 305 a nullity" because it applies only in Title III cases. Pet. App. 16a.

Ambac is also wrong when it argues the court below misconstrued § 305. Pet. 21–25. Ambac's argument in that regard is based on the same flawed premise that the court held that § 305 bars a court from enforcing applicable Bankruptcy Code and PROMESA provisions. *Id.* As explained, the court below reached no such holding. *See* Point I.A, *supra*.

II. THE COURT BELOW CORRECTLY CONSTRUED § 922(d) OF THE BANKRUPTCY CODE.

Ambac next argues the petition should be granted because the court below allegedly misinterpreted § 922(d) of the Bankruptcy Code. Pet. 21–25, 29–33. In presenting the issue to the Court, Ambac mischaracterizes § 922(d) as "creat[ing] an exception to the automatic stay of debt enforcement actions." Pet. i. That is misleading and incorrect. As the court below correctly recognized, § 922(d) says nothing about debt enforcement actions. By its plain terms, § 922(d) merely exempts the "application of pledged special revenues" from the automatic stay.

A. The Court Below Correctly Held § 922(d) by Its Terms Does Not Require a Debtor to Turn Over Revenues to Its Creditors.

Section 922(d) by its plain terms permits an entity (debtor or creditor) holding the debtor's funds constituting pledged special revenues to pay those revenues to creditors without violating the automatic stay. 11 U.S.C. § 922(d). It does not require a debtor to turn its revenues over to its creditors, however, and does not provide stay relief to allow creditors to commence an action against the debtor to compel turnover of special revenues. Accordingly, the court below was correct when it relied on its holding in *Assured* that § 922(d) does not obligate HTA to use its revenues to pay debt service during the pendency of the Title III case. Pet. App. 14a.

Section 922(d) provides:

> Notwithstanding section 362 of [the Bankruptcy Code] 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][7] . . . to payment of indebtedness secured by such revenues.

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[7] Although § 922(d) references Bankruptcy Code § 927, it is universally accepted (including by Ambac) that this is a scrivener's error and the reference should be to § 928. *See* Pet. 6 n.2.

11 U.S.C. § 922(d). In other words, the "application of pledged special revenues" to debt service is not subject to the stay imposed by 11 U.S.C. §§ 362 and 922(a). If the debtor or an indenture trustee holding the debtor's pledged special revenues chooses to apply the revenues to debt service, it is permitted to do so without violating the stay. However, nothing in the text of § 922(d) remotely suggests a debtor is *required* to pay its pledged special revenues to creditors or that creditors are not stayed from commencing actions to collect them. To the contrary, the language of § 922(d) is permissive, not mandatory. *See* Collier ¶ 922.05 (explaining § 922(d) "does not suggest that its language compels payment of special revenues in the possession of the municipality").

Ambac's contrary "plain language" argument relies on words not in the statute. For instance, Ambac argues § 922(d) "requir[es] a debtor to 'appl[y] . . . pledged special revenues . . . to payment of indebtedness." Pet. 25 (all alterations and ellipses in original except for initial emendation). However, § 922(d) does not contain any form of the word "require" or any mandatory turnover language. By its plain terms, § 922(d) merely provides that the "application" of certain revenues to debt service does not run afoul of the automatic stay. It does not require, or dictate the timing of, turnover.

Congress knows how to command performance, turnover, or payment in a bankruptcy case, and it does so expressly. *See, e.g.*, 11 U.S.C. § 365(d)(5) ("The trustee shall timely perform all of the obligations of the debtor . . . ."); *id.* § 542(a) ("[A]n entity . . . shall deliver to the trustee . . ."); *id.* § 542(b) ("[A]n entity . . . shall pay such debt to . . . the trustee . . . ."). By

contrast, § 922(d) contains no language requiring the debtor to do anything. As Ambac recognizes, Congress says what it means in the text of its statutes. Pet. 30 (citing *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 794 (2014)). If Congress had intended to require a debtor to make debt payments during the course of its restructuring case, it would have said so in § 922(d) or elsewhere. But it did not.

It is further telling that § 922(d) does not authorize bondholders to commence an action to force a turnover of pledged special revenues. As this Court has explained, "[i]f the statute itself does not display an intent to create a private remedy, then a cause of action does not exist and courts may not create one." *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1856 (2017) (quotation marks and emendations omitted). If Congress had intended to authorize a creditor to enforce a right to payment under § 922(d), it presumably would have created a cause of action under § 922(d). After all, Congress expressly created causes of action to enforce other provisions of the Bankruptcy Code and PROMESA. *See, e.g.*, 11 U.S.C. § 362(k)(1); 48 U.S.C. §§ 2195(b), 2231(n)(2). Congress's failure to create a cause of action to enforce § 922(d) is a further indication that § 922(d) does not give creditors any rights to enforce.

Having no textual support for its position that § 922(d) requires a debtor to use pledged special revenues to make debt payments during the restructuring case, Ambac relies heavily on the "notwithstanding" preamble. Pet. 30. That preamble provides that § 922(d) applies "notwithstanding" the stay imposed by Bankruptcy Code §§ 362 and 922(a)—that is to say, § 922(d) is an exception to the stay.

According to Ambac, the stay applies only to "enforcement actions against the debtor," and therefore if § 922(d) is an exception to the stay, it must permit a creditor to bring an enforcement action against the debtor. Pet. 30.

Ambac's argument is built on the flawed premise that the automatic stay applies only to enforcement actions against the debtor. As the court below explained, the automatic stay is far broader than that. Pet. App. 15a. In addition to creditor enforcement actions, the stay bars an array of conduct not involving prosecution of judicial actions, including a secured creditor's application of collateral in its possession to the debtor's outstanding debt. Collier ¶ 362.03 ("[I]nnocent conduct such as the cashing of checks received from account debtors of accounts assigned as security may be a technical violation [of the automatic stay]."); *id.* ("[T]he stay applies to secured creditors in possession of collateral and to collateral in possession of a custodian.")[8]; *see also Thompson v. Gen. Motors Corp.*, 566 F.3d 699, 703 (7th Cir. 2009) (secured creditor's passive retention of collateral following filing of bankruptcy petition violates stay); *Metromedia Fiber Network Servs. v. Lexent, Inc. (In re Metromedia Fiber Network, Inc.)*, 290 B.R. 487, 493 (Bankr. S.D.N.Y. 2003) (secured

[8] Ambac argues without any support that the Collier provisions discuss the operation of the automatic stay in "private bankruptcies" only. Pet. 31. However, nothing in Collier suggests its description of the automatic stay does not apply equally in municipal bankruptcies. PROMESA § 301(a) incorporates Bankruptcy Code §362(a), which is the same automatic stay applicable in Chapter 7, 9, 11, 12, 13, and 15 cases. *See* 48 U.S.C. § 2161(a).

creditor's failure to remit collateral to debtor constitutes exercise of control over debtor's property, which would violate stay); *In re Reed*, 102 B.R. 243, 245 (Bankr. E.D. Okla. 1989) (secured creditor's sale of collateral in its possession violates automatic stay).[9] As the court below explained, § 922(d) carves out an exception to allow debtors or bond trustees to apply pledged special revenues to pay secured debt voluntarily without violating the automatic stay. Pet. App. 15a–16a. The court's reading of § 922(d) is thus consistent with the "notwithstanding" preamble because the court reads § 922(d) to permit conduct that otherwise would violate the automatic stay. Ambac's contrary contention that the decision below reads § 922(d) to do "virtually nothing" is simply false. Pet. 33.

Ambac's reliance on § 922(d)'s cross-reference to § 928 is also misguided. Pet. 32–33. Section 928(a) merely provides that post-petition pledged special revenues remain subject to liens created by prepetition security agreements. The provision does not permit a creditor to enforce its lien on a debtor's pledged special revenues during the restructuring case, however. Section 928(b) provides that any lien against pledged special revenues "shall be subject to the necessary operating expenses" of the project or system generating them. Section 928(b) thus limits the scope of a lien; it says nothing about authorizing a creditor to enforce its lien. Section 922(d)'s cross-reference to § 928 thus serves to protect a debtor's

[9] Ambac's cases discussing a stay of enforcement actions do not purport to describe the entire scope of the automatic stay. *See* Pet. 30–31 (citing cases).

interest in creditor-or-trustee-held pledged special revenues necessary for operating expenses.

Ambac's interpretation of § 922(d), on the other hand, is inconsistent with § 928(b). By attaching a revenue bondholder's security interest to the difference between the underlying project's gross revenues and its expenses, Congress recognized that payments would not always be made because expenses may exceed revenues. Any argument that Congress intended to force such payments to the creditor is at odds with Congress's recognition that the payments could—and, in the event of bankruptcy, likely would—amount to nothing.

Moreover, Ambac's interpretation makes mincemeat of the restructuring provisions in Title III. Section 301(a) of Title III incorporates Bankruptcy Code §§ 502, 506, and most of § 1129. These provisions disallow the running of interest on undersecured claims, require a collateral valuation to determine the extent of a secured claim, and provide the debtor multiple methods of paying a restructured claim pursuant to a plan of adjustment. If the debtor had to turn over pledged special revenues during the case, the method of restructuring and repaying the claim would be implemented before the court even confirms a plan of adjustment. There is no indication in Title III or §§ 922(d) and 928 that they were intended to override the debtor's right to restructure claims in a plan of adjustment, but rather must start paying the claims months or years prior.

B. The Decision Below Does Not "Depart from the Established Understanding" of § 922(d).

Assured and the decision below were the first to address whether § 922(d) requires a debtor to turn over pledged special revenues during its restructuring case. Prior to those decisions, the foremost treatise on bankruptcy law adopted the same reading of § 922(d) as the court below. *See* Collier ¶ 922.05(2) ("[S]ection 922(d) does not by its direct language require a municipality to make postpetition payments to a secured creditor of special revenues that are subject to a continued perfected lien, but which are in the possession and control of the municipality."). Ambac exposes itself by trying to dismiss the Collier treatise as "discredited." Pet. 27. In fact, this Court has lauded Collier as a "respected bankruptcy authority" and "a leading treatise on bankruptcy law." *Lamie v. United States Tr.*, 540 U.S. 526, 540 (2004); *Dewsnup v. Timm*, 502 U.S. 410, 418 n.4 (1992). Indeed, this Court has cited Collier favorably on more than 150 occasions.

Notwithstanding Collier and glossing over its inability to point to any language in § 922(d) establishing the cause of action it urges, Ambac cites a law review article and a law-student note to argue the decision below departs from an "[e]stablished [u]nderstanding" of § 922(d). Pet. 25–26. But Ambac's own cherry-picked sources concede there is no such "established understanding." *See, e.g.*, Robert S. Amdursky, *The 1988 Municipal Bankruptcy Amendments: History, Purposes, and Effects*, 22 Urb. L. 1, 13 (1990) (cited in Pet. 26) (conceding "some

bankruptcy experts" read § 922(d) the same way as the decision below). And Ambac conveniently fails to cite any of the myriad sources arguing in favor of the construction of § 922(d) adopted by the court below. *See, e.g.*, Nat'l Ass'n of Bond Lawyers, *Municipal Bankruptcy: A Guide for Public Finance Attorneys* 53–54 (2011); Francisco Vazquez, *Examining Chapter 9 Municipal Bankruptcy Cases*, Aspatore (Oct. 2011), *available at* 2011 WL 5053640, at *15; 2 Gelfand, State and Local Government Debt Financing § 14:13 (2d ed.); *see also* David L. Dubrow, *Chapter 9 of the Bankruptcy Code: A Viable Option for Municipalities in Fiscal Crisis?*, 24 Urb. L. 539, 572–73 (1992) (explaining the different ways experts have proposed construing § 922(d)).[10]

The "expert consensus" touted by Ambac (Pet. 26) is thus pure fiction. The reading of § 922(d) adopted by the court below comports with the plain words of the statute and the view of Collier and many other experts in the field. That reading has also been endorsed by all but one of the active judges on the First Circuit not recused from *Assured*. *See* 931 F.3d at 114–15.

Ambac further misses the mark when it contends the decision below conflicts with a 2012 decision by a bankruptcy court in Alabama. Pet. 27–28 (citing *In re Jefferson Cty.*, 474 B.R. 228 (Bankr. N.D. Ala. 2012)). The issue of whether § 922(d) requires a debtor to turn over pledged special revenues to its creditors was not

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[10] Ambac incorporates by reference articles cited in the *Assured* petition for certiorari. Pet. 26. The Board addresses those articles in its opposition to the *Assured* petition.

decided in *Jefferson County*. To the contrary, the debtor there *agreed* to turn over post-petition revenues if the court determined they were covered by the creditor's lien. 474 B.R. at 274. The only issue for the court to decide was the scope of the creditor's lien. *Id.* The *Jefferson County* court did not decide the relevant issue here, which is whether § 922(d) compels turnover.[11]

C. Ambac Cannot Prevail Even Under Its Own Reading.

Ambac asks the Court to grant the petition and rule that § 922(d) creates an exception to the automatic stay for debt enforcement actions. Pet. i. However, even if the Court were to so hold, Ambac would still need to bring a debt enforcement action in another court before it could get paid anything. Even under Ambac's proposed reading, there is no cause of action under § 922(d), and the Title III court is potentially barred by § 305 from granting a turnover under any other cause of action. Therefore, resolution of the issue presented will not result in Ambac obtaining any relief. *See also* Point IV, *infra* (discussing other vehicle issues).

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[11] Further, in *Jefferson County*, it was undisputed that the creditors, who held a security interest against revenues prior to their deposit with a trustee, had an enforceable lien. 474 B.R. at 251–52. By contrast, Ambac's claimed collateral is limited to moneys already deposited with the fiscal agent, Ambac failed to allege an unavoidable lien, and the Board contests Ambac's lien claims. *See* pages 34–36, *infra*.

III. THE PETITION DOES NOT IMPLICATE A QUESTION OF EXCEPTIONAL IMPORTANCE.

Ambac further errs when it argues the decision below raises exceptionally important issues that warrant this Court's review despite the absence of any circuit split. Pet. 33–36. According to Ambac, the Court's intervention is required because the decision below supposedly "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." *Id.* at 33–34. Amicus Securities Industry and Financial Markets Association ("SIFMA") likewise argues the decision below "undermined market confidence." Amicus Br. 17. In reality, however, the municipal bond market hardly blinked in response to the decision.[12]

Ambac and SIFMA fail to cite any evidence suggesting that the decision below has destabilized the municipal bond market or made it more difficult for municipalities to raise capital. Instead, they identify only a few isolated instances where a bond was slightly downgraded by a ratings agency following a decision in a *different case*—the *Assured* appeal. *See* Pet. 34 (citing *Assured* petition at 23–25). Those downgrades were not attributed to the decision below, and they thus provide no basis for granting certiorari in this case. Moreover, efficient markets are supposed to react to information. That some

[12] Ambac's "importance" argument largely incorporates by reference arguments made in the *Assured* petition. Pet. 34. The Board directs the Court to its opposition to that petition, in which it dispels those arguments and those made by SIFMA.

securities tick up and some down in response to a decision is the desired result, not an emergency beacon.

What's more, Ambac and SIFMA greatly exaggerate the impact of the decision in *Assured*. Although Ambac argues "multiple rating agencies downgraded their assessment of municipal revenue bonds throughout the country" following the *Assured* decision (Pet. 34), that is false. Ambac cites to the *Assured* petition in support, but that petition merely shows that certain agencies are *reviewing* certain municipal bond ratings. Assured Pet. 23–25. Ambac and SIFMA can muster only a few instances in which a rating agency has actually downgraded a municipal bond following the *Assured* decision.

Moreover, the Kroll Bond Rating Agency *upgraded* a municipal bond as a result of the *Assured* decision. *See* Keeley Webster, *Why the Troubled Los Angeles Schools Got an Upgrade to Triple-A,* The Bond Buyer, Vol. 391, No. F527 (Aug. 9, 2019). And as Standard & Poor's observed in its own market analysis, the *Assured* decision is "consistent with" its view of the law and does not require any changes to municipal bond ratings. Robin L. Prunty, *Credit FAQ*: *Has S&P Global Ratings' View On Special Revenue Debt Changed Following The First Circuit Decision?*, S&P Global (May 1, 2019).[13]

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[13] https://www.spglobal.com/en/research-insights/articles/u-s-public-finance-midyear-outlook-will-the-sizzle-fizzle (last visited Nov. 10, 2019).

Ambac's other "importance" arguments likewise fail. For instance, Ambac's contention that the decision below "compounds the severe problems already caused by the *Assured* decision" (Pet. 35) relies on the same fallacy that sinks its § 305 argument. According to Ambac, the decision below holds PROMESA § 305 prevents courts from enforcing applicable Bankruptcy Code and PROMESA provisions and thus makes it harder for creditors to vindicate their rights. Pet. 35. But that is not what the court below held. As explained, the court merely held § 305 bars the Title III court from ordering the specific relief sought by Ambac when no other Bankruptcy Code provision required that relief. *See* Point I.A, *supra*. The court left for another day what it would do if other statutory provisions had required that relief. Pet. App. 14a.

Finally, Ambac's argument that the decision below permits HTA to divert Ambac's collateral unlawfully ignores the existence of stay relief. Pet. 35. If Ambac has a property interest not being adequately protected during the Title III case, the Title III court may give Ambac relief from the automatic stay to allow it to protect its rights. *See* 11 U.S.C. § 362(d) (incorporated into the Title III case by 48 U.S.C. § 2161(a)). Nothing in the decision below precludes Ambac from seeking stay relief to address a diminution of its collateral. To the contrary, the court below instructed Ambac that it may seek stay relief to enable it to request turnover of revenues in a territorial court. Pet. App. 17a. What Ambac cannot do, however, is seek injunctive and declaratory relief requiring the Title III court to interfere with HTA's

and the Commonwealth's property because Congress specifically barred such relief in PROMESA § 305.

IV. THIS CASE IS A POOR VEHICLE FOR REVIEW.

Even if the petition satisfied the Court's criteria for certiorari (and it emphatically does not), this case is a poor vehicle for addressing the Questions Presented. As the district court explained, each of the claims asserted in Ambac's complaint fails on the merits. Pet. App. 32a–76a. Accordingly, even if this Court were to grant the petition and reverse the ruling below that § 305 bars the requested relief, the ultimate outcome would not change because Ambac's claims are meritless.

Ambac's complaint asserted a salmagundi of claims under different constitutional and statutory theories, but each claim is deficient on its face. For example, the first count, alleging an unconstitutional impairment of contracts, fails because none of the Challenged Actions purports to eliminate Ambac's ability to sue for breach of contract, which is necessary to support a claim under the Contract Clause. *See Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 431 (1934). Moreover, given the undisputed "fiscal emergency" in Puerto Rico, 48 U.S.C. § 2194(m)(1), Ambac cannot establish the second element of a Contract Clause claim, either—namely, that the challenged action was neither reasonable nor necessary to serve an important public purpose. *See U.S. Trust of N.Y. v. New Jersey*, 431 U.S. 1, 15 (1977).

Ambac's second count, alleging an unconstitutional taking of property, is not ripe for adjudication because until the district court confirms a plan of adjustment, there will be no final decision concerning the extent of any alleged taking or compensation to be paid. If Ambac believes its property rights are being impaired during the pendency of the Title III case, its recourse is to move for stay relief under 11 U.S.C. § 362(d)—not to bring a premature takings claim.

Ambac's takings claim fails on the merits, too, because a prerequisite to a taking is a cognizable property interest. *See Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 552, 602 (1935). The court below previously ruled HTA bondholders are not secured by a statutory lien. *Peaje Invs. LLC v. Fin. Oversight & Mgmt. Bd. for P.R. (In re Fin. Oversight & Mgmt. Bd. for P.R.)*, 899 F.3d 1, 12 (1st Cir. 2018), *cert. denied*, 139 S. Ct. 1169 (2019). Even if Ambac held some form of a security interest, under the terms of the Resolutions that security interest would extend only to amounts already in the Reserve Accounts. *See* pages 34–36, *infra*. Ambac's takings claim concerns funds not in the Reserve Accounts, however, and Ambac has no property interest in those funds.

Ambac's third, fifth, and seventh counts are so lacking in merit that Ambac did not appeal their dismissal to the court below. Meanwhile, the fourth count, alleging the Challenged Actions violate PROMESA § 303, fails because none of the Challenged Actions is a moratorium law forbidden by § 303 except perhaps the stay of creditor remedies ordered by the Governor in 2016—but that stay

became moot once the Title III petitions were filed, which triggered the federal automatic stay of all creditor remedies against HTA.

Finally, Ambac's sixth count fails as a matter of law because, as explained, §§ 922 and 928 of the Bankruptcy Code do not require HTA to turn over its revenues to its creditors. *See* Point II, *supra*.

Accordingly, although the court below disposed of Ambac's complaint under § 305, there were several other routes it could have taken to reach the same result. The petition is therefore a fool's errand. Even if the Court were to grant the petition and reverse on § 305, Ambac could not secure the relief it seeks because each count in its complaint fails, as the district court determined. Pet. App. 32a–76a.

Moreover, even if (1) the petition were granted, (2) the decision below were reversed, and (3) Ambac on remand somehow prevailed on its claim that HTA must immediately turn over revenues subject to a security interest under §§ 922 and 928, such a ruling would still have a negligible effect.

First, a bondholder's lien on pledged special revenues is subject to the debtor's operating expenses. 11 U.S.C. § 928(b). In this case, HTA has been operating at a deficit for many years. Consequently, there are no revenues in excess of operating expenses. Thus, even if Ambac had a meritorious claim requiring the turnover of HTA's net revenues (it does not), there would be no net revenues to turn over.

Second, by their terms, §§ 922(d) and 928(a) apply only to the extent revenues are subject to an unavoidable lien. The parties are currently litigating in the Title III court the validity, scope, and perfection of any security interest in HTA revenues. *See* Case No. 19-ap-363 (D.P.R.). An adverse ruling by the Title III court concerning the existence and scope of the HTA bondholders' security interest would moot many of the issues raised in the petition because without an unavoidable security interest in pledged special revenues, §§ 922(d) and 928(a) do not come into play.

Third, under the terms of the Resolutions, any security interest would attach only to revenues already held in the Reserve Accounts—which constitutes a relatively small amount of money. Specifically, after establishing an interest fund and the Reserve Accounts, § 401 of the Resolutions provides:

> The *moneys in said Fund and Accounts* shall be held by the Fiscal Agent in trust and. . . *shall be subject to a lien* and charge in favor of the holders of the bonds issued and outstanding under this Resolution and for the further security of such holders . . . .

(emphases added). In other words, any lien would attach only to "moneys" already in the Reserve Accounts. It would not attach to future revenues HTA has not yet collected or deposited in the Reserve Accounts. Under no circumstance would Ambac be entitled to the order it seeks requiring HTA to turn

over revenues not already on deposit in the Reserve Accounts.

Accordingly, this case does not present a good vehicle to review the Questions Presented because Ambac is unlikely to succeed in securing the relief it seeks regardless of the outcome of the petition. If the Questions Presented are as important as Ambac suggests, the Court will have an opportunity to address them in a subsequent case that presents a more suitable vehicle for review.

CONCLUSION

The petition for a writ of certiorari should be denied.

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