

App. 1

APPENDIX A

**United States Court of Appeals
For the First Circuit**

No. 19-2243

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

Debtors.

App. 2

HERMANDAD DE EMPLEADOS DEL FONDO DEL
SEGURO DEL ESTADO, INC., a/k/a Unión de
Empleados de la Corporación del Fondo del Seguro
del Estado (UECFSE); UNIÓN DE MÉDICOS DE LA
CORPORACIÓN DEL FONDO DEL SEGURO DEL
ESTADO CORP. (UMCFSE); LIZBETH MERCADO
CORDERO; FRANCISCO J. REYES MÁRQUEZ,

Plaintiffs, Appellants,

ASOCIACIÓN DE EMPLEADOS GERENCIALES
DEL FONDO DEL SEGURO DEL ESTADO CORP.
(AEGFSE); EVA E. MELÉNDEZ FRAGUADA;
JOSÉ E. ORTIZ TORRES,

Plaintiffs,

v.

UNITED STATES; FINANCIAL OVERSIGHT
AND MANAGEMENT BOARD;
COMMONWEALTH OF PUERTO RICO,

Defendants, Appellees,

RICARDO ROSSELLÓ NEVARES, through the
Secretary of Justice; ROSA E. RODRÍGUEZ-VÉLEZ,

Defendants.

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

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

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

App. 3

Before

Thompson, Kayatta, and Barron, Circuit Judges.

Rolando Emmanuelli Jiménez, with whom Jessica E. Méndez Colberg and Bufete Emmanuelli, C.S.P. were on brief, for appellants.

Benjamin H. Torrance, Assistant United States Attorney, with whom Geoffrey S. Berman, United States Attorney, and David S. Jones, Assistant United States Attorney, were on brief, for appellee the United States.

Mark D. Harris, with whom Timothy W. Mungovan, John E. Roberts, Laura Stafford, Larry Alan Rapaport, Martin J. Bienenstock, Stephen L. Ratner, Jeffrey W. Levitan, Shiloh Rainwater, and Proskauer Rose LLP were on brief, for appellees the Financial Oversight and Management Board and the Commonwealth of Puerto Rico.

April 16, 2021

BARRON, Circuit Judge. Two unions representing public employees in Puerto Rico together with one of their individual members brought this suit against the United States, the Financial Oversight and Management Board (“FOMB”), and the Commonwealth raising a range of claims under federal constitutional and international law. The claims all concern

the legal status of Puerto Rico. The District Court dismissed them because it concluded that the plaintiffs lacked standing to bring them under Article III of the federal Constitution. We affirm.

I.

The plaintiffs are two unions, Hermandad de Empleados del Fondo del Seguro del Estado, Inc., and Unión de Médicos de la Corporación del Fondo del Seguro del Estado Corp., and one of their members, Lizabeth Mercado Cordero.¹ The unions have a combined membership of about two thousand employees, and they have each entered into collective bargaining agreements with CFSE, which is Puerto Rico's State Insurance Fund Corporation.

The plaintiffs brought their suit in May 2018 and filed their second amended complaint on October 5, 2018, against the United States, the FOMB, and the Commonwealth of Puerto Rico. The eighty-one-page complaint requests a declaration that the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA"), see 48 U.S.C. § 2101 et seq., and all of the FOMB's actions taken pursuant to it violate the First, Fifth, Thirteenth, Fourteenth, and Fifteenth Amendments of the U.S. Constitution; seeks to "enjoin[] and stay[]" the defendants "from pursuing this and any . . . cases" under PROMESA and from taking any other actions under that law; requests a

¹ Francisco J. Reyes Márquez was an additional individual plaintiff below, but has since passed away.

declaration “overruling the Insular Cases because they instituted an unconstitutional colonial regime”; and requests an order “declar[ing] the existence of an illegal colonial regime that is subject to the procedures enacted by international law to decolonize[] Puerto Rico, under the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by General Assembly resolution 1514 (XV) of December 14, 1960.”

On the defendants’ motions, the District Court dismissed the plaintiffs’ claims for declaratory relief for lack of subject matter jurisdiction. See Fed. R. Civ. P. 12(b)(1). It reasoned that the plaintiffs had failed to allege concrete and particularized injuries that their requested relief could redress. It concluded on this ground that the plaintiffs had “failed to demonstrate that they have standing to pursue their claims.”² The plaintiffs timely appealed.

II.

Article III limits the judicial power to actual cases and controversies. See U.S. Const. art. III, § 2, cl. 1. An actual case or controversy only exists if the plaintiff has demonstrated “such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues

² The District Court did not reach the defendants’ Rule 12(b)(6) arguments.

upon which the court so largely depends.” Baker v. Carr, 369 U.S. 186, 204 (1962).

“To satisfy the personal stake requirement, [the] plaintiff must establish each part of a familiar triad: injury, causation, and redressability.” Katz v. Pershing, LLC, 672 F.3d 64, 71 (1st Cir. 2012) (citing Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61 (1992)). The redressability element of constitutional standing requires that the plaintiff show “that a favorable resolution of [the] claim would likely redress the professed injury.” Id. at 72. That means “it cannot be merely speculative that, if a court grants the requested relief, the injury will be redressed.” Dantzler, Inc. v. Empresas Berríos Inventory & Operations, Inc., 958 F.3d 38, 47 (1st Cir. 2020) (citing Simon v. E. Ky. Welfare Rts. Org., 426 U.S. 26, 42-43 (1976)). And although the plaintiff “need not demonstrate that [the] entire injury will be redressed by a favorable judgment, [the plaintiff] must show that the court can fashion a remedy that will at least lessen [the] injury.” Id. at 49 (citing Antilles Cement Corp. v. Fortuño, 670 F.3d 310, 318 (1st Cir. 2012)). Our review of a ruling as to whether the requirements of Article III standing have been met is de novo. See Me. People’s All. v. Mallinckrodt, Inc., 471 F.3d 277, 283 (1st Cir. 2006).

The plaintiffs contend that the District Court erred in dismissing their suit on Article III grounds in part because their second amended complaint had alleged that “the enactment of laws by the Commonwealth that were incorporated to the Fiscal Plans certified by the FOMB” “inva[ded]” their “pecuniary

App. 7

interest, collective bargaining agreement and property (employment, salaries, bonuses, pensions and health plans).” The laws in question are Acts 66-2014, 3-2017, 8-2017, and 26-2017, each of which the plaintiffs allege “impair[s] . . . labor rights and benefits” that their collective bargaining agreements had previously secured. The fiscal plan in question is the Commonwealth’s Fiscal Plan of 2018, certified by the FOMB on June 29 of that year. That plan provides in relevant part that a payroll and hiring freeze for public employees as well as certain restrictions to their healthcare and to their sick and vacation days “must be continued.”

The problem with the plaintiffs’ contention is that none of the relief that they seek would prevent any of the laws that they contend caused them pecuniary harm from continuing to have full force and effect. For that reason, it is entirely speculative on this record that any of that relief would spare the plaintiffs the pecuniary harm that they trace back to those laws. And, because it is entirely speculative on this record that such relief would redress the claimed pecuniary harm, that claimed pecuniary harm provides no support for the plaintiffs’ argument that the District Court erred in dismissing their claims for lack of Article III standing. See Dantzler, 958 F.3d at 47, 49.

The plaintiffs do separately contend that they have standing to seek the relief at issue because PROMESA’s constraints and the FOMB’s oversight powers dilute the power of their vote in elections in Puerto Rico due to the limits that PROMESA and the FOMB place on the powers of the Puerto Rico

government. But, the plaintiffs do not contend that any of these limits have diluted their voting power within Puerto Rico vis-à-vis others in Puerto Rico. Thus, the precedents on which they rely to show that the burden imposed on their right to vote suffices to secure their standing under Article III are readily distinguished. See, e.g., Baker, 369 U.S. at 207-08 (explaining that the statute in question inflicted an injury on the plaintiffs because it “disfavor[ed] the voters in the counties in which they reside, placing them in a position of constitutionally unjustifiable inequality vis-à-vis voters in irrationally favored counties”).

In the end, the plaintiffs are contending that the harm they have suffered results from the fact that PROMESA and the FOMB’s actions are preemptive of local law. The plaintiffs fail to explain, however, why this type of harm is not a generalized grievance of just the sort that cannot suffice the demands of Article III. See Gill v. Whitford, 138 S. Ct. 1916, 1923 (2018) (explaining that plaintiffs must show a concrete and particularized injury to demonstrate that they have a “‘personal stake in the outcome,’ distinct from a ‘generally available grievance about government’” (citation omitted) (first quoting Baker, 369 U.S. at 204; and then quoting Lance v. Coffman, 549 U.S. 437, 439 (2007))).

The plaintiffs do assert at one point in their briefing that “the fact that they do not have a right to vote for the federal officers who appointed and imposed PROMESA, aggravates their [voting rights] injury.” But, even assuming that this assertion is responsive to

the concern that the plaintiffs are seeking relief for what is merely a generalized grievance, none of the relief that they seek would redress their injury insofar as it inheres in restrictions in their ability to vote in federal elections. Thus, this argument, too, fails to show that the District Court erred in dismissing their claim on standing grounds.

III.

The issues that the plaintiffs' complaint raises concerning the legal status of Puerto Rico are weighty ones. But, to be fit for adjudication in federal court, they must be raised in a suit that satisfies the requirements of Article III. Because we agree with the District Court that the plaintiffs have not met their burden to satisfy those federal constitutional requirements, we affirm the order dismissing their claims for lack of standing.

App. 10

APPENDIX B

**United States Court of Appeals
For the First Circuit**

No. 19-2243

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

Debtors.

App. 11

HERMANDAD DE EMPLEADOS DEL FONDO DEL
SEGURO DEL ESTADO, INC., a/k/a Unión de
Empleados de la Corporación del Fondo del Seguro
del Estado (UECFSE); UNIÓN DE MÉDICOS DE LA
CORPORACIÓN DEL FONDO DEL SEGURO DEL
ESTADO CORP. (UMCFSE); LIZBETH MERCADO
CORDERO; FRANCISCO J. REYES MÁRQUEZ,

Plaintiffs, Appellants,

ASOCIACIÓN DE EMPLEADOS GERENCIALES
DEL FONDO DEL SEGURO DEL ESTADO CORP.
(AEGFSE); EVA E. MELÉNDEZ FRAGUADA;
JOSÉ E. ORTIZ TORRES,

Plaintiffs,

v.

UNITED STATES; FINANCIAL OVERSIGHT
AND MANAGEMENT BOARD;
COMMONWEALTH OF PUERTO RICO,

Defendants, Appellees,

RICARDO ROSSELLÓ NEVARES, through the
Secretary of Justice; ROSA E. RODRÍGUEZ-VÉLEZ,

Defendants.

JUDGMENT

Entered: April 16, 2021

This cause came on to be heard on appeal from the
United States District Court for the District of Puerto
Rico and was argued by counsel.

Upon consideration whereof, it is now here or-
dered, adjudged and decreed as follows: The district

App. 12

court's order of dismissal for lack of standing is affirmed.

By the Court:

Maria R. Hamilton, Clerk

cc: Rolando Emmanuelli-Jimenez, Jessica Esther Mendez-Colberg, Mariana E. Bauza Almonte, Benjamin H. Torrance, Hermann D. Bauer-Alvarez, Timothy W. Mungovan, Ubaldo M. Fernandez, Chantel L. Febus, Stephen L. Ratner, John E. Roberts, Mark David Harris, Martin J. Bienenstock, Laura E. Stafford, Daniel Jose Perez-Refojos, Lary Alan Rappaport, Jeffrey W. Levitan, Shiloh Rainwater, Wandymar Burgos-Vargas, Luis C. Marini-Biaggi, Peter M. Friedman, John J. Rapisardi, Carolina Velaz-Rivero, William J. Sushon, Rosa E. Rodriguez-Velez

APPENDIX C

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

-----X

In re:

THE FINANCIAL
OVERSIGHT AND
MANAGEMENT BOARD
FOR PUERTO RICO,

as representative of

THE COMMONWEALTH
OF PUERTO RICO, et al.,

Debtors.¹

PROMESA
Title III

Case No. 17-3283 (LTS)

(Jointly Administered)

(Filed Nov. 15, 2019)

-----X

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

HERMANDAD DE
EMPLEADOS DEL FONDO Adv. Proc. No.
DEL SEGURO DEL ESTADO, 18-00066-LTS in
INC., UNIÓN DE MÉDICOS Case No. 17-3283 (LTS)
DE LA CORPORACIÓN DEL
FONDO DEL SEGURO DEL
ESTADO CORP., FRANCISCO
J. REYES MÁRQUEZ, and
LIZBETH MERCADO
CORDERO,

Plaintiffs,

v.

GOVERNMENT OF THE
UNITED STATES OF
AMERICA, THE FINANCIAL
OVERSIGHT AND
MANAGEMENT BOARD
FOR PUERTO RICO, and
THE COMMONWEALTH
OF PUERTO RICO,

Defendants.

-----x

OPINION AND ORDER GRANTING
DEFENDANTS' MOTIONS TO DISMISS THE
SECOND AMENDED ADVERSARY COMPLAINT

APPEARANCES:

BUFETE	UNITED STATES
EMMANUELLI C.S.P.	ATTORNEY'S OFFICE
By: Rolando Emmanuelli	SOUTHERN DISTRICT
Jiménez	OF NEW YORK
Yasmín Colón Yasmin	By: Geoffrey S. Berman

App. 15

Jessica E. Méndez Colberg Wilbert López Moreno 472 Tito Castro Ave. Edificio Marvesa, Suite 106 Ponce, Puerto Rico 00716	David S. Jones Christopher Connolly 86 Chambers Street, Third Floor New York, New York 10007 <i>Attorneys for the United States of America</i>
<i>Attorneys for Plaintiffs Hermandad de Empleados del Fondo del Seguro del Estado, Inc., Unión de Médicos de la Corporación del Fondo del Seguro del Estado Corp., Francisco J. Reyes Márquez, and Lizbeth Mercado Cordero</i>	O'NEILL & BORGES LLC By: Hermann D. Bauer Ubaldo M. Fernández Daniel J. Perez-Refojos 250 Muñoz Rivera Ave., Suite 800 San Juan, Puerto Rico 00918-1813 PROSKAUER ROSE LLP By: Martin J. Bienenstock Stephen L. Ratner Timothy W. Mungovan Chantel L. Febus Eleven Times Square New York, New York 10036 <i>and</i> Larry Alan Rappaport 2049 Century Park East Suite 3200 Los Angeles, California 90067 <i>Attorneys for The Financial Oversight and Management Board for Puerto Rico for itself and as the representative of the Commonwealth of Puerto Rico</i>

App. 16

MARINI PIETRANTONI
MUÑIZ LLC

By: Luis C. Marini-Biaggi
Carolina Velaz-Rivero
MCS Plaza, Suite 500
255 Ponce de León Ave.
San Juan, Puerto Rico
00917

O'MELVENY & MYERS LLP

By: William J. Sushon
John J. Rapisardi
Peter Friedman
7 Times Square
New York, NY 10036

*Attorneys for the Puerto
Rico Fiscal Agency and
Financial Advisory Authority
as the representative of
the Commonwealth of
Puerto Rico*

LAURA TAYLOR SWAIN, United States District Judge

Before the Court are the *Motion to Dismiss Plaintiffs' Second Amended Adversary Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6)* (Docket Entry No. 46 in Adversary Proceeding No. 18-00066,² the “FOMB Motion”), filed by the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), for itself and as representative of the

² All docket entry references are to entries in Adversary Proceeding No. 18-00066 (the “Adversary Proceeding”), unless otherwise specified.

Commonwealth of Puerto Rico (the “Commonwealth”), and the *Motion of the United States of America to Dismiss the Second Amended Complaint as Against the United States* (Docket Entry No. 48, the “U.S. Motion” and, together with the FOMB Motion, the “Motions”), filed by the United States of America (the “United States” and, collectively with the Oversight Board and the Commonwealth, the “Defendants”). Defendants seek dismissal of the *Second Amended Adversary Complaint* (Docket Entry No. 37, the “Second Amended Complaint” or “SAC”), filed by Hermandad de Empleados del Fondo del Seguro del Estado, Inc., also known as Unión de Empleados de la Corporación del Fondo del Seguro del Estado (“UECFSE”), Unión de Médicos de la Corporación del Fondo del Seguro del Estado Corp. (“UMCFSE”), Francisco J. Reyes Márquez, and Lizbeth Mercado Cordero (collectively, the “Plaintiffs”).

On May 30, 2018, the Asociación de Empleados Gerenciales del Fondo del Seguro del Estado Corp. (“AEGFSE”), UECFSE, and UMCFSE filed the *Adversary Complaint* (Docket Entry No. 1, the “Complaint”). The Complaint sought orders declaring that the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”³) violates the Thirteenth and Fifteenth Amendments of the Constitution of the United States, that the Oversight Board’s acts and determinations violate the Thirteenth and Fifteenth

³ PROMESA is codified at 48 U.S.C. § 2101 *et seq.* References to “PROMESA” section numbers in the remainder of this opinion and order are to the uncodified version of the legislation.

Amendments of the Constitution of the United States, and that PROMESA infringes on multiple conventions and international agreements on human rights, as well as an order enjoining the Defendants from pursuing any Title III cases. The *First Amended Adversary Complaint* (Docket Entry No. 26, the “First Amended Complaint”) was filed by AEGFSE, UECFSE, UMGFSE, Francisco J. Reyes Márquez, Lizbeth Mercado Cordero, José E. Ortiz Torres, and Eva E. Meléndez Fraguada. The First Amended Complaint included eight prayers for relief: six prayers for relief that were substantially similar to the relief sought in the Complaint, and two additional prayers for relief seeking an order overruling the Insular Cases⁴ and an order directing Congress to decolonize Puerto Rico.

Plaintiffs filed the Second Amended Complaint on October 5, 2018. In the Second Amended Complaint, Plaintiffs assert in essence that the governance of Puerto Rico by the United States has, over time, been contrary to democratic norms, that measures taken in response to Puerto Rico’s fiscal crisis were enacted without sufficient democratic input from the inhabitants of Puerto Rico, and that the resulting “colonial regime” violates five constitutional amendments and international law. Many of Plaintiffs’ assertions relate

⁴ The term “Insular Cases” is commonly used to refer to the Supreme Court decisions in De Lima v. Bidwell, 182 U.S. 1 (1901), Goetze v. United States, 182 U.S. 221 (1901), Dooley v. United States, 182 U.S. 222 (1901), Armstrong v. United States, 182 U.S. 243 (1901), Downes v. Bidwell, 182 U.S. 244 (1901), Huus v. New York & Porto Rico S. S. Co., 182 U.S. 392 (1901), and Dorr v. United States, 195 U.S. 138 (1904).

to the manner in which PROMESA was enacted, as well as the resulting creation of the Oversight Board. Plaintiffs complain that, although they are citizens of the United States, they did not have the opportunity to cast a vote to select or appoint the federal officers and representatives who enacted PROMESA. Because PROMESA created the Oversight Board, whose members are unelected, and empowered the Oversight Board to overrule certain determinations made by the Commonwealth's elected representatives, Plaintiffs assert that PROMESA disenfranchises inhabitants of the Commonwealth in violation of their rights under the congressionally-approved Constitution of the Commonwealth of Puerto Rico. Plaintiffs trace the alleged harms described in the Second Amended Complaint to long-term disenfranchisement of the people of Puerto Rico since the late 1800s, and perpetuation of this disenfranchisement by PROMESA.

Plaintiffs claim that PROMESA, the Oversight Board and its exercise of power pursuant to PROMESA, and the general historical relationship between the United States and Puerto Rico violate the First, Fifth, Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution of the United States of America (the "Constitution"). Specifically, Plaintiffs assert that (i) the restriction of their voting rights and the subsequent abridgment of their freedom of speech violate the First Amendment to the Constitution, (ii) the unelected Oversight Board's ability to, inter alia, adopt fiscal plans and reject budgets in contravention of determinations made by the Commonwealth's

elected representatives violates Plaintiffs' due process and equal protection rights under the Fifth and Fourteenth Amendments, (iii) the inability of Commonwealth inhabitants to vote in certain federal elections violates the broad conceptual bundle of civil rights related to human dignity that is protected by the Thirteenth Amendment's prohibition of badges or incidents of slavery, and (iv) the inability of Commonwealth inhabitants to vote on matters affecting the Commonwealth because of their status as inhabitants of an entity Plaintiffs characterize as a colony violates the Fifteenth Amendment. In addition, Plaintiffs assert that the Oversight Board has included in its certified fiscal plan for the Commonwealth certain Commonwealth legislation aimed at undermining Plaintiffs' rights under their collective bargaining agreements.

In the Second Amended Complaint, Plaintiffs seek declarations validating their legal theories related to the asserted violations of the First, Fifth, Thirteenth, Fourteenth, and Fifteenth Amendments, a declaration that all of the Oversight Board's acts and determinations are unconstitutional and null, an order enjoining Defendants from pursuing any Title III cases or exercising any power or authority provided by PROMESA, an order overruling the Insular Cases, and an order declaring the existence of an illegal colonial regime in Puerto Rico. Plaintiffs assert that the Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1331 and 48 U.S.C. § 2126(a).

The Court has considered carefully all of the arguments and submissions made in connection with the

Motions.⁵ For the following reasons, Defendants’ Motions are granted, and Plaintiffs’ Second Amended Complaint is dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction.

I.

BACKGROUND

The following recitation of facts is drawn from Plaintiffs’ Second Amended Complaint, except where otherwise noted.

UECFSE and UMCFSSE (the “Union Plaintiffs”) are labor unions with the “exclusive and unlimited prerogative to represent all of [their] members in matters related to their rights and wellbeing.” (SAC ¶¶ 22, 23.) Francisco J. Reyes Márquez and Lizbeth Mercado Cordero (the “Individual Plaintiffs”) are employees of the State Insurance Fund Corporation (referred to by the parties as the “CFSE,” its Spanish acronym) and members of the UECFSE. (*Id.* ¶¶ 24, 25.)

⁵ In addition to the Motions, the Court has received and reviewed the *Omnibus Opposition to Defendants’ Motions to Dismiss* (Docket Entry No. 59, the “Opposition”), the *Reply Memorandum in Support of Motion of the United States of America to Dismiss the Second Amended Complaint as Against the United States* (Docket Entry No. 64), and the *Reply in Support of Motion of the Financial Oversight and Management Board for Puerto Rico and the Commonwealth of Puerto Rico to Dismiss Second Amended Adversary Complaint* (Docket Entry No. 65).

The CFSE was created by the “Workmen Compensation Insurance Act,” Law No. 45 of April 18, 1935, and is the exclusive provider of insurance coverage for work related accidents, deaths, and illnesses suffered by workers in Puerto Rico. (*Id.* §§ 37, 40.) The purpose of the CFSE is “to guarantee the constitutional right of every worker to be protected against risks to their health in employment,” and its main objective is “to promote the welfare of the working class by providing excellent medical services, prevention, rehabilitation and financial compensation in cases of work-related injuries, illness or death.” (*Id.* §§ 41-42.) The CFSE is one of the public corporations covered by the fiscal plan for the Commonwealth that was certified by the Oversight Board on June 29, 2018 (the “Fiscal Plan”), and Plaintiffs allege that the CFSE is an essential service that the Oversight Board should “ensure” according to Section 201(b)(1)(B) of PROMESA. (*Id.* §§ 49-50.)

The UECFSE was founded in 1963. (*Id.* § 51.) Its members are “responsible for the general operation of the services the CFSE provides,” and include actuaries, buyers, system analysts, dieticians, physical and occupational therapists, pharmacists, pharmacy technicians, carpenters, electricians, and nurses. (*Id.*) The UECFSE’s duty is to “protect and defend CFSE’s workers’ rights and wellbeing, as well as negotiate collective bargaining agreements on their behalf.” (*Id.* § 52.) The most recent collective bargaining agreement negotiated by UECFSE on behalf of its members (the “UECFSE CBA”) provides for an effective period of July 2011 through June 2015. (*Id.*) Plaintiffs maintain

that the UECFSE CBA, which has not been renegotiated, remains “in force” under a provision “establish[ing] that [the UECFSE CBA] will continue dictating the labor relations between the CFSE and the UECFSE until a new collective bargaining agreement is negotiated and in effect.” (Id.)

The UMCFSE was founded in 1996, and its members are responsible for providing medical services to the injured workers served at the CFSE. (Id. ¶ 53.) The duty of the UMCFSE is to protect and defend the rights and well-being of the CFSE’s medical doctors, and to negotiate collective bargaining agreements on behalf of its members. (Id. ¶ 54.) The most recent collective bargaining agreement (the “UMCFSE CBA”) negotiated by UMCFSE on behalf of its members provides for an effective period of July 2002 through June 2006. (Id.) Plaintiffs maintain that the UMCFSE CBA, which has not been renegotiated, remains “in force” under a provision “establish[ing] that [the UMCFSE CBA] will continue dictating the labor relations between the CFSE and the [UMCFSE] until a new collective bargaining agreement is negotiated and in effect.” (Id.)

On June 30, 2016, in order to address the ongoing fiscal emergency in Puerto Rico that was created in part by a “combination of severe economic decline, and, at times, accumulated operating deficits, lack of financial transparency, management inefficiencies, and excessive borrowing,” the United States Congress enacted PROMESA. 48 U.S.C.A. § 2194(m)(1) (West 2017). Plaintiffs allege that PROMESA empowers the

Oversight Board to “surpass and disregard the will of Puerto Rico’s elected representatives” in violation of the Declaration of Independence and the Constitution of the United States.⁶ (SAC ¶ 128.) Plaintiffs contend that the collective bargaining agreements, labor rights and benefits, and constitutional rights of both the Individual Plaintiffs and of the Union Plaintiffs’ other members have been “severely impaired and are in imminent risk of being further impaired by the actions of the Defendants.” (*Id.* ¶¶ 26, 27.)

Plaintiffs identify four pieces of legislation (the “Challenged Legislation”⁷) that they characterize as

⁶ Plaintiffs also “urge” the Court to consider the following sources of “international obligations for the United States” in sustaining Plaintiffs’ allegations that the colony-like status of Puerto Rico is contrary to the contemporary political standards of civil and human rights under international law: the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Charter of the Organization of American States, the American Convention on Human Rights, the Inter-American Democratic Charter, and the United Nations Charter. (SAC ¶ 175; *see also* SAC ¶¶ 176-224.)

⁷ First, Plaintiffs allege that the “Government of the Commonwealth of Puerto Rico Special Fiscal and Operational Sustainability Act,” Act No. 66 of June 17, 2014, “substantially alters the CBA[s] by establishing a limit to the amount of vacation and illness days a member could accumulate and receive a monetary compensation for and eliminating numerous important economic and non-economic provisions of the CBA[s].” (*Id.* ¶ 58 n.41.) Second, Plaintiffs cite the “Act to Attend to the Economic, Fiscal, and Budget Crisis and to Guarantee the Functioning of the Government of Puerto Rico,” Act No. 3 of January 23, 2017, which “suspended all collective bargaining agreement provisions that were contrary to its clauses, suspended all non-economic clauses that had any economic impact, whether it be direct or indirect, on the

“directed at undermining and impairing [Plaintiffs’] labor rights and benefits,” which were incorporated by Defendants in the Fiscal Plan. (Id. ¶ 58.) Plaintiffs allege that the Fiscal Plan, which incorporates the Challenged Legislation and assumes that the cuts imposed by the Challenged Legislation will be enforced, impairs Plaintiffs’ labor rights and benefits by, inter alia, instituting a pay freeze, standardizing healthcare for government employees, imposing a hiring freeze, limiting paid holidays, eliminating the Christmas bonus, prohibiting carryover of sick or vacation days between fiscal years, and prohibiting the liquidation of sick and vacation days in the future. (Id. ¶ 59.) The efficiency measures included in the Fiscal Plan would impose a \$315.7 million cost reduction on the CFSE over a five-year period and will, Plaintiffs assert, “imminently impair” Plaintiffs’ labor rights and benefits. (Id. ¶ 61.) Plaintiffs further allege that the impairment

corporation budget, eliminated monetary compensations, and imposed on public corporations the creation of a plan so employees would exhaust all excess vacation and sick leave balance.” (Id.) Third, Plaintiffs allege that the “Administration and Transformation of the Human Resources of the Government of Puerto Rico Act,” Act No. 8 of February 4, 2017, made the Commonwealth government the “sole employer of all public employees, allowing it to consolidate services, eliminate those which it understands are no longer needed, create a unified system of job classifications, have a specific merit system applicable for all agencies and corporations, and facilitate the transfer or movement of employees between agencies.” (Id.) Finally, Plaintiffs allege that the “Fiscal Plan Compliance Act,” Act No. 26 of April 29, 2017, “impaired multiple important fringe benefits of employees,” including the elimination of monetary compensation for excess vacation and illness days and the reduction of the number of vacation or illness days that an employee may accrue. (Id.)

of Plaintiffs' labor rights and benefits will negatively affect the public workforce and labor productivity, which Plaintiffs characterize as an essential service that "should be ensured [] as provided by § 201 of PROMESA." (*Id.* ¶ 62.)

Plaintiffs commenced the Adversary Proceeding on May 30, 2018, and filed the Second Amended Complaint on October 5, 2018. The Second Amended Complaint includes ten prayers for relief.

The First Prayer for Relief does not itself request any specific relief but, rather, asserts that the "Universal Freedoms of the right to vote and to have full political participation are integrated in the international law, treaties and covenants in which the [United States] is a signatory and also are also fully or partially embodied in the 1st, 5th, 13th, 14th and 15th Amendments of the [United States] Constitution, [and] therefore, are directly applicable to Plaintiffs and warrant[] the remedies sought in this adversary proceeding." (*Id.* ¶ 227.) In the Second, Third, Fourth, Fifth, and Sixth Prayers for Relief, Plaintiffs seek declarations that PROMESA is unconstitutional because it violates the First, Fifth, Thirteenth, Fourteenth, and Fifteenth Amendments of the United States Constitution, respectively. (*Id.* ¶¶ 230, 233, 236, 239, and 242.) In the Seventh Prayer for Relief, Plaintiffs seek a declaration that all of the "Oversight Board's acts and determinations taken from the time of enactment of PROMESA to present are unconstitutional and null due to the fact that they are in open violation" of the First, Fifth, Thirteenth, Fourteenth, or Fifteenth Amendments of the

United States Constitution. (*Id.* ¶ 244.) The Eighth Prayer for Relief seeks a declaration enjoining and staying Defendants from “pursuing . . . any Title III cases, holding hearings or sessions, obtaining official data or creditor information, issuing subpoenas, entering into contracts, enforcing any laws of the covered territory, recurring to judicial civil actions to enforce powers, conducting investigations or any other power or authority provided by PROMESA.” (*Id.* ¶ 246.) In the Ninth Prayer for Relief, Plaintiffs seek an “order overruling the Insular Cases because they instituted an unconstitutional colonial regime based on badges and incidents of slavery in the United States that are forbidden” by the First, Fifth, Thirteenth, Fourteenth, or Fifteenth Amendments of the United States Constitution. (*Id.* ¶ 249.) Finally, Plaintiffs assert in the Tenth Prayer for Relief that, “[s]ince the colonial regime imposed by the Insular Cases upon Plaintiffs is unconstitutional, the only way to redress grievances is to declare the existence of an illegal colonial regime that is subject to the procedures enacted by international law to decolonized Puerto Rico, under the *Declaration on the Granting of Independence to Colonial Countries and Peoples*, adopted by General Assembly [R]esolution 1514 (XV) of December 14, 1960.” (*Id.* ¶ 252.)

II.

DISCUSSION

Defendants move pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6)⁸ to dismiss the Second Amended Complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted. A court presented with motions to dismiss under both Rules 12(b)(1) and 12(b)(6) should ordinarily decide jurisdictional questions before addressing the merits. Deniz v. Municipality of Guaynabo, 285 F.3d 142, 149 (1st Cir. 2002). The party invoking the jurisdiction of a federal court carries the burden of proving the existence of proper grounds for the exercise of jurisdiction. Johansen v. United States, 506 F.3d 65, 68 (1st Cir. 2007). The Court also has an independent duty to assess whether it has subject matter jurisdiction of an action. See Fed. R. Civ. P. 12(h)(3); FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 231 (1990).

Article III, Section 2 of the Constitution of the United States limits the exercise of federal judicial power to actual cases and controversies. U.S. Const. art. III, § 2; Aetna Life Ins. Co. of Hartford, Conn. v. Haworth, 300 U.S. 227, 239-41 (1937). The authority conferred on federal courts by the Declaratory Judgment Act, 28 U.S.C. § 2201, is likewise limited to controversies that are within the constitutionally-constrained scope of federal jurisdiction. Aetna, 300

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

U.S. at 240. To be justiciable, a controversy must be “a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.” Aetna, 300 U.S. at 241.

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

Defendants move to dismiss the Second Amended Complaint pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction, arguing that Plaintiffs have failed to demonstrate that they have standing to pursue the claims asserted in the Second Amended Complaint. In resolving a Rule 12(b)(1) motion to dismiss an action for lack of standing, the Court must “credit the plaintiff’s well-pled factual allegations and draw all reasonable inferences in the plaintiff’s favor.” Sanchez ex rel. D.R.-S. v. United States, 671 F.3d 86, 92 (1st Cir. 2012) (internal quotations omitted). To demonstrate constitutional standing, a plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1547 (2016). Plaintiffs, as “[t]he part[ies] invoking federal jurisdiction[,] bear[] the burden of establishing these elements.” Lujan v. Defs. of Wildlife, 504 U.S. 555, 561 (1992).

A plaintiff must identify “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical,” in order to establish injury in fact. Id. (internal quotations and citations omitted). For an injury in fact to be “particularized,” it must be one that “affect[s] the plaintiff in a personal and individual way.” Spokeo, Inc., 136 S. Ct. at 1548 (quoting Lujan, 504 U.S. at 560 n.1). A plaintiff seeking relief in federal court must therefore demonstrate that he has a “personal stake in the outcome . . . distinct from a generally available grievance about government.” Gill v. Whitford, 138 S. Ct. 1916, 1923 (2018) (internal quotations and citations omitted). This threshold standing requirement ensures that the court does not “engage in policymaking properly left to elected representatives.” Id. (citing Hollingsworth v. Perry, 570 U.S. 693, 700 (2013)). A “generalized grievance . . . plainly undifferentiated and common to all members of the public” is not a particularized injury for purposes of a standing analysis. United States v. Richardson, 418 U.S. 166, 176-77 (1974) (internal citations omitted). “[A] plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen’s interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy.” Lance v. Coffman, 549 U.S. 437, 439 (2007) (citing Lujan, 504 U.S. at 573-74).

In addition to meeting the requirement that a plaintiff demonstrate a particularized injury, a plaintiff must demonstrate that the remedy requested is “tailored to redress the plaintiff’s particular injury” in order to establish that the plaintiff has standing. Gill, 138 S. Ct. at 1934 (citing DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 353 (2006)). The requirement that plaintiffs demonstrate an “actual injury redressable by the court” in order to establish standing “serves several of the implicit policies embodied in Article III” and “tends to assure that the legal questions presented to the court will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action.” Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 472 (1982) (internal citations omitted). The redressability component of the court’s standing analysis examines the “causal connection between the alleged injury and the judicial relief requested.” American Postal Workers Union v. Frank, 968 F.2d 1373, 1375 (1st Cir. 1992) (internal citations omitted). When establishing redressability requires speculating that the relief sought by the plaintiff will actually benefit the plaintiff, such speculative relief is not sufficient to support standing. Cuno, 547 U.S. at 344.

The United States asserts that Plaintiffs lack standing to pursue their claims against the United States because Plaintiffs “have failed to allege any concrete and particularized injuries that are redressable

and/or are fairly traceable to the United States.” (U.S. Mot. at 14.) The United States characterizes some of Plaintiffs’ alleged injuries, such as Plaintiffs’ inability to vote for Congressional representatives and the President, as “overly generalized and nonredressable since the electoral process for those federal offices is imposed by the Constitution itself,” and other of Plaintiffs’ alleged injuries as “not ‘fairly traceable’ to the United States because [the alleged injuries] flow, if at all, from the Commonwealth’s government, including but not limited to the Oversight Board.” (*Id.* at 14-15.)

The Oversight Board and the Commonwealth also seek dismissal of the Second Amended Complaint in its entirety pursuant to Rule 12(b)(1), asserting that Plaintiffs lack standing to pursue their claims because they have not articulated an injury “concrete, particularized, and actual or imminent,” or “fairly traceable to the challenged action and redressable by a favorable ruling.” (FOMB Mot. at 8 (citing Clapper v. Amnesty Int’l USA, 568 U.S. 398, 409 (2013)).) The Oversight Board and the Commonwealth argue that, although Plaintiffs generally and conclusorily include allegations of harm in the Second Amended Complaint based on the purported impairment of their labor rights and benefits by certain legislation incorporated into the Fiscal Plan, the Second Amended Complaint actually focuses on “nebulous harms unrelated to the Title III case or PROMESA not redressable by this adversary proceeding.” (*Id.* at 9.) The Oversight Board and the Commonwealth further argue that Plaintiffs have failed to demonstrate that any of the relief sought in

the Second Amended Complaint would redress Plaintiffs' alleged harms. (Id.)

Plaintiffs assert that the Union Plaintiffs' members and the Individual Plaintiffs have standing to bring this adversary proceeding as creditors and parties in interest in the above-captioned Title III case. (Opp. at 13.) Specifically, Plaintiffs argue that, as members of the CFSE, which is covered by the Fiscal Plan, and as participants in the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, which is subject to the pension reform measures included in the Fiscal Plan, Plaintiffs have standing pursuant to Section 301 of PROMESA and Section 1109 of the Bankruptcy Code to pursue their claims. (Id.) Plaintiffs also contend that the Union Plaintiffs have "the exclusive and unlimited prerogative to represent all [their] members in matters related to their rights and wellbeing, as pursued in SAC, thus they also have organizational and prudential standing." (Id.) Plaintiffs assert that their allegations of voting-related disenfranchisement and the impairment of their collective bargaining agreements are "concrete and particularized, actual or imminent, not conjectural or hypothetical, and fairly traceable to the challenged conduct of [D]efendants and likely to be redressed by a favorable judicial decision." (Id. at 13-14.)

For the reasons that follow, the Court concludes that Plaintiffs lack standing to pursue the claims they have pleaded. The Motions are granted insofar as Defendants seek dismissal of the Second Amended

Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1).

1. Plaintiffs' Political and Social Claims

The Second Amended Complaint protests the current and historic relationship between Puerto Rico and the United States, focusing on the alleged disenfranchisement of the Commonwealth's inhabitants. Plaintiffs mount two specific challenges to PROMESA. First, Plaintiffs assert that their inability to participate in the elections of the members of Congress who enacted PROMESA and created the Oversight Board is violative of Plaintiffs' asserted right to self-determination. Second, Plaintiffs assert that this injury is compounded by the breadth of powers that PROMESA confers on the Oversight Board, including the Oversight Board's ability to override or nullify certain acts of the Commonwealth's elected government. Plaintiffs characterize Puerto Rico's current political status as colonial and challenge it as inconsistent with Plaintiffs' reading of both domestic and international law.

The constitutional injuries claimed by Plaintiffs in the First, Second, Third, Fourth, Fifth, and Sixth Prayers for Relief comprise broad grievances related to the United States' treatment of the Commonwealth as a territory. Plaintiffs' allegations that the federal government's relationship with the Commonwealth has, for many years, deprived the people of Puerto Rico of their rights under the Constitution of the United States and various international laws, treaties, and

covenants do not meet Plaintiffs' burden of pleading particularized injuries because such allegations are "generalized grievance[s] . . . plainly undifferentiated and common to all" residents of the Commonwealth and do not demonstrate that Plaintiffs are seeking to vindicate distinct injuries that they suffer as individuals. Richardson, 418 U.S. at 177 (internal citations omitted). Similarly, Plaintiffs' challenges to the Oversight Board's power are not based on particularized injuries. The Seventh and Eighth Prayers for Relief seek declarations nullifying the Oversight Board's actions and preventing Defendants from exercising any power pursuant to PROMESA. The injurious conduct underlying this requested relief is not particular to Plaintiffs and their claimed injuries are not individual ones. Finally, the harms alleged in the Second Amended Complaint related to the judicial underpinnings of the relationship between the Commonwealth and the United States, and the related relief sought in the Ninth and Tenth Prayers for Relief, are also generalized grievances about the government that are common to all residents of the Commonwealth. Plaintiffs do not explain how the rulings sought in any of their prayers for relief would directly and tangibly benefit Plaintiffs more than the Puerto Rican public at large, and therefore their claims based on Puerto Rico's political status and the enactment of legislation and policies without their consent fail to frame a case or controversy that is within this Court's jurisdiction under Article III of the Constitution of the United States. "The presence of a disagreement, however sharp and acrimonious it may be, is insufficient by itself to meet

[Article] III's requirements." Hollingsworth, 570 U.S. at 704 (internal citation omitted).

For these reasons and because, as show in the discussion below of Plaintiffs' claims regarding collectively bargained rights, the relief Plaintiffs seek would not redress their claimed injuries, and the Court thus lacks subject matter jurisdiction to consider each such claim as pleaded in the Second Amended Complaint. The Motions are therefore granted pursuant to Rule 12(b)(1) as to all such claims.⁹

2. Plaintiffs' Asserted Violations of Collective Bargaining Agreements

In the Second Amended Complaint, Plaintiffs also allege that their collective bargaining agreements have been substantially altered by certain Commonwealth legislation incorporated into the Fiscal Plan certified by the Oversight Board. Plaintiffs assert that the powers "bestowed upon the [Oversight Board] by Congress, as exercised and as can be continued to be exercised by the [Oversight Board], have deprived the liberty, life . . . , and property rights of the Plaintiffs" to the extent that the Oversight Board "impacts through the laws, public policies, fiscal plans, and/or budgets approved, the rights under collective bargaining

⁹ In light of the Court's determination that the claims are not sufficiently related to particularized injuries to support the standing of any of the Plaintiffs to assert them, the Court declines to address the Union Plaintiffs' argument that they have been delegated authority to pursue claims generally related to their members' "rights and wellbeing." (SAC ¶¶ 22-23.)

agreements, labor legislation, and civil and constitutional rights under the Constitution of Puerto Rico, in addition over essential government services they are entitled to, and that the [Oversight Board] and the government of Puerto Rico have failed to define pursuant to [PROMESA].” (SAC ¶ 126.) Plaintiffs further allege that Congress’s creation of an Oversight Board with the ability to affect Union Plaintiffs’ members and Individual Plaintiffs’ rights under their collective bargaining agreements, and the Oversight Board’s exercise of that authority, violate the Fifth and Fourteenth Amendments. (See *Id.* ¶¶ 129, 131.)

Assuming, without deciding, for purposes of this analysis that Plaintiffs’ claims of diminished compensation and benefits are sufficiently particularized to them as individuals and/or representative organizations, Plaintiffs have still failed to demonstrate that they have standing to pursue these claims because they have not shown that their alleged injuries are redressable by the relief they seek. Plaintiffs’ Prayers for Relief, to the extent that they incorporate allegations related to the impairment of Plaintiffs’ collective bargaining agreements, do not seek relief that would redress such injuries. The First Prayer for Relief does not actually allege any injurious conduct or seek any particular judicial determination. The Second, Third, Fourth, Fifth, and Sixth Prayers for Relief simply seek orders declaring that PROMESA is unconstitutional because it violates the First, Fifth, Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, respectively. Plaintiffs do not assert, much less

demonstrate, that the issuance by this Court of a declaration, or declarations, that PROMESA is unconstitutional will result in the repeal of the Challenged Legislation and the subsequent restoration of the terms of their collective bargaining agreements. The harms alleged in the Second Amended Complaint are therefore not redressable by the relief sought in the Second, Third, Fourth, Fifth, and Sixth Prayers for Relief. Relatedly, Plaintiffs' Seventh Prayer for Relief, which requests an order declaring all of the Oversight Board's acts and determinations from its inception through the present unconstitutional and null, lacks any connection to the alleged impairment of Plaintiffs' collective bargaining agreements. Plaintiffs do not allege facts demonstrating that the invalidation of the Oversight Board's work pursuant to PROMESA would redress the alleged impairment of Plaintiffs' contracts by legislation enacted by the Commonwealth Legislature.

With respect to Plaintiffs' Eighth Prayer for Relief, which requests an order enjoining and staying Defendants from pursuing any Title III cases, holding hearings or sessions, obtaining official data or creditor information, issuing subpoenas, entering into contracts, enforcing any Commonwealth laws, recurring to judicial civil actions to enforce powers, conducting investigations, or exercising any authority provided by PROMESA, Plaintiffs have not alleged or demonstrated that such an order would restore their rights and benefits under the relevant collective bargaining agreements to the pre-PROMESA status quo. None of

the relief sought in the First through Eighth Prayers for Relief is “tailored” in any respect to the harms alleged by Plaintiffs in the Second Amended Complaint. *Gill*, 138 S. Ct. at 1934. Similarly, Plaintiffs have not pled a causal connection between the relief sought by Plaintiffs in the Ninth and Tenth Prayers for Relief (i.e., declarations overruling the Insular Cases and proclaiming the existence of an illegal colonial regime in Puerto Rico, respectively) and the alleged alterations to their financial position effected by the enactment and enforcement of the Challenged Legislation, nor that the declarations would affect the Challenged Legislation at all. Plaintiffs, in essence, ask the Court to speculate that the relief requested in the Second Amended Complaint would benefit Plaintiffs by restoring the terms of their collective bargaining agreements. The Challenged Legislation, which Plaintiffs characterize as “Government enacted legislation directed at undermining and impairing [Plaintiffs’] labor rights and benefits,” was enacted by the elected Commonwealth Legislature, and Plaintiffs do not assert that the relief sought would itself result in the repeal of the Challenged Legislation.¹⁰ (SAC ¶ 58 (emphasis added).)

As the Supreme Court cautioned in *Gill*, “‘standing is not dispensed in gross’: A plaintiff’s remedy

¹⁰ The Court recognizes that the Eighth Prayer for Relief requests broad injunctive relief prohibiting, among other things, “enforce[ment of] any laws of the covered territory.” (SAC ¶ 246.) Plaintiffs do not even attempt to explain how non-enforcement of all Commonwealth law would restore their pre-PROMESA compensation and benefits.

must be tailored to redress the plaintiff's particular injury." Gill, 138 S.Ct. at 1934 (citation omitted).

Having credited Plaintiffs' well-pleaded factual allegations and drawn all reasonable inferences in Plaintiffs' favor, the Court concludes that Plaintiffs have failed to meet the redressability element of the standing requirement, and therefore have failed to demonstrate that they have standing to pursue their claims premised on the alleged impairment of their collective bargaining agreements.

III.

CONCLUSION

For the foregoing reasons, Defendants' motions to dismiss the Second Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) are granted. The Clerk of Court is directed to enter judgment accordingly and close this adversary proceeding.

This Opinion and Order resolves Docket Entry Nos. 46 and 48 in Adversary Proceeding No. 18-00066.

SO ORDERED.

Dated: November 15, 2019

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

APPENDIX D

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

-----X
In re:

THE FINANCIAL
OVERSIGHT AND
MANAGEMENT BOARD
FOR PUERTO RICO,

as representative of

THE COMMONWEALTH
OF PUERTO RICO, et al.,

Debtors.

PROMESA
Title III

Case No. 17-3283 (LTS)

(Jointly Administered)

(Filed Nov. 15, 2019)

-----X
HERMANDAD DE
EMPLEADOS DEL FONDO
DEL SEGURO DEL ESTADO,
INC., UNIÓN DE MÉDICOS
DE LA CORPORACIÓN DEL
FONDO DEL SEGURO DEL
ESTADO CORP., FRANCISCO
J. REYES MÁRQUEZ, and
LIZBETH MERCADO
CORDERO,

Plaintiffs,

v.

Adv. Proc. No.
18-00066-LTS in
Case No. 17-3283 (LTS)

GOVERNMENT OF THE
UNITED STATES OF
AMERICA, THE FINANCIAL
OVERSIGHT AND
MANAGEMENT BOARD
FOR PUERTO RICO, and
THE COMMONWEALTH
OF PUERTO RICO,

Defendants.

-----x

JUDGMENT

Pursuant to the “OPINION AND ORDER GRANTING DEFENDANTS’ MOTIONS TO DISMISS THE SECOND AMENDED ADVERSARY COMPLAINT”, filed on November 15, 2019 (Docket Entry # 66), the adversary proceeding (Case No. 18-AP-066) is now closed.

SO ORDERED.

Dated: November 15, 2019

Maria Antongiorgi-Jordan, Esq.
Clerk of Court

/s/ Marian B. Ramirez-Rivera
Marian B. Ramirez-Rivera
Deputy Clerk

APPENDIX E

**United States Court of Appeals
For the First Circuit**

No. 19-2243

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

Debtors.

App. 44

HERMANDAD DE EMPLEADOS DEL FONDO DEL
SEGURO DEL ESTADO, INC., a/k/a Unión de
Empleados de la Corporación del Fondo del Seguro
del Estado (UECFSE); UNIÓN DE MÉDICOS DE LA
CORPORACIÓN DEL FONDO DEL SEGURO DEL
ESTADO CORP. (UMCFSE); FRANCISCO J. REYES
MÁRQUEZ; LIZBETH MERCADO CORDERO,

Plaintiffs - Appellants,

ASOCIACIÓN DE EMPLEADOS GERENCIALES
DEL FONDO DEL SEGURO DEL ESTADO CORP.
(AEGFSE); EVA E. MELÉNDEZ FRAGUADA;
JOSÉ E. ORTIZ TORRES,

Plaintiffs,

v.

UNITED STATES; FINANCIAL OVERSIGHT
AND MANAGEMENT BOARD;
COMMONWEALTH OF PUERTO RICO,

Defendants - Appellees,

RICARDO ROSSELLÓ NEVARES, through the
Secretary of Justice; ROSA E. RODRÍGUEZ-VÉLEZ,

Defendants.

Before

Howard, Chief Judge,
Lynch, Thompson, Kayatta and Barron,
Circuit Judges.

ORDER OF COURT

Entered: June 15, 2021

The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be denied.

By the Court:

Maria R. Hamilton, Clerk

cc:

Rolando Emmanuelli-Jimenez
Jessica Esther Mendez-Colberg
Mariana E. Bauza Almonte
Benjamin H. Torrance
Hermann D. Bauer-Alvarez
Timothy W. Mungovan
Ubaldo M. Fernandez
Chantel L. Febus
Stephen L. Ratner
John E. Roberts
Mark David Harris
Martin J. Bienenstock
Laura E. Stafford
Daniel Jose Perez-Refojos
Lary Alan Rappaport
Jeffrey W. Levitan
Shiloh Rainwater
Wandymar Burgos-Vargas
Luis C. Marini-Biaggi
Peter M. Friedman

App. 46

John J. Rapisardi
Carolina Velaz-Rivero
William J. Sushon
Rosa E. Rodriguez-Velez

APPENDIX F

I. Constitutional Provisions of the U.S. Constitution

Territories Clause of the Constitution of the United States

U.S. Const., Art. IV, §3, cl. 2

“The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claim of the United States, or of any particular state.” U.S. Const., Art. IV, §3, cl. 2

First Amendment of the U.S. Constitution

U.S. Const. amend. I

“Congress shall make no law respecting an establishment of religion, or prohibition the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.” U.S. Const. amend. I.

Fifth Amendment of the U.S. Constitution

U.S. Const. amend. V

“No person shall [. . .] be deprived of life, liberty, or property without a due process of law [. . .].” U.S. Const. amend. V.

Thirteenth Amendment of the U.S. Constitution
U.S. Const. amend XIII, §1

“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” U.S. Const. amend XIII, §1.

Fourteenth Amendment of the U.S. Constitution
U.S. Const. amend. XIV, §1

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, §1.

Fifteenth Amendment of the U.S. Constitution
U.S. Const. amend XV, §1

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.” U.S. Const. amend XV, §1.

II. Constitutional provisions of the Commonwealth of Puerto Rico's Constitution

Article I, § 1

“The Commonwealth of Puerto Rico is hereby constituted. Its political power emanates from the people and shall be exercised in accordance with their will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States of America.”

Article II, § 2

“The laws shall guarantee the expression of the will of the people by means of equal, direct and secret universal suffrage and shall protect the citizen against any coercion in the exercise of the electoral franchise.”

Article III, § 1

“The legislative power shall be vested in a Legislative Assembly, which shall consist of two houses, the Senate and the House of Representatives, whose members shall be elected by direct vote at each general election.”

Article III, § 19, cl. 1

“Every bill which is approved by a majority of the total number of members of which each house is composed shall be submitted to the Governor and shall become law if he signs it or if he does not return it, with his objections, to the house in which it originated within ten days (Sundays excepted) counted from the date on which he shall have received it.”

Article III, § 19, cl. 2

“When the Governor returns a bill the house that receives it shall enter his objections on its journal and both houses may reconsider it. If approved by two-thirds of the total number of members of which each house is composed, said bill shall become law.”

Article IV, §1

“The executive power shall be vested in a Governor, who shall be elected by direct vote in each general election.”

Article IV, § 4, cl. 1

“The Governor shall execute the laws and cause them to be executed.”

Art IV, § 4, cl. 9

“He shall present to the Legislative Assembly, at the beginning of each regular session, a message concerning the affairs of the Commonwealth and a report concerning the state of the Treasury of Puerto Rico and the proposed expenditures for the ensuing fiscal year. Said report shall contain the information necessary for the formulation of a program of legislation.”

**III. Puerto Rico Oversight, Management and
Economic Stability Act (PROMESA):**

48 U.S.C. §2194(m)(4):

“Congress finds the following: [. . .] A comprehensive approach to fiscal, management, and structural problems and adjustments that exempts no part of the Government of Puerto Rico is necessary, involving independent oversight and a Federal statutory authority for the Government of Puerto Rico to restructure debts in a fair and orderly process.”

48 U.S.C. §2121(b)(1):

“A Financial Oversight and Management Board is hereby established for Puerto Rico.”

48 U.S.C. §2128(a):

“(a)In general

Neither the Governor nor the Legislature may—

- (1) exercise any control, supervision, oversight, or review over the Oversight Board or its activities; or
- (2) enact, implement, or enforce any statute, resolution, policy, or rule that would impair or defeat the purposes of this chapter, as determined by the Oversight Board.”

48 U.S.C. §2141(d)(2):

“If the Governor fails to submit to the Oversight Board a Fiscal Plan that the Oversight Board determines in its sole discretion satisfies the requirements set forth in subsection (b) by the time specified in the notice delivered under subsection (a), the Oversight Board shall develop and submit to the Governor and the Legislature a Fiscal Plan that satisfies the requirements set forth in subsection (b).”

48 U.S.C. §2141(e)(2):

“If the Oversight Board develops a Fiscal Plan under subsection (d)(2), such Fiscal Plan shall be deemed approved by the Governor, and the Oversight Board shall issue a compliance certification for such Fiscal Plan to the Governor and the Legislature.”

48 U.S.C. §2142(e)(3):

“Deemed certification of Territory Budgets

If the Governor and the Legislature fail to develop and approve a Territory Budget that is a compliant budget by the day before the first day of the fiscal year for which the Territory Budget is being developed, the Oversight Board shall submit a Budget to the Governor and the Legislature (including any revision to the Territory Budget made by the Oversight Board pursuant to subsection (d)(2)) and such Budget shall be—

(A) deemed to be approved by the Governor and the Legislature;

(B)the subject of a compliance certification issued by the Oversight Board to the Governor and the Legislature; and

(C)in full force and effect beginning on the first day of the applicable fiscal year.”

48 U.S.C. §2142(e)(4):

“Deemed certification of Instrumentality Budgets

If the Governor fails to develop an Instrumentality Budget that is a compliant budget by the day before the first day of the fiscal year for which the Instrumentality Budget is being developed, the Oversight Board shall submit an Instrumentality Budget to the Governor (including any revision to the Instrumentality Budget made by the Oversight Board pursuant to subsection (c)(2)) and such Budget shall be—

(A)deemed to be approved by the Governor;

(B)the subject of a compliance certification issued by the Oversight Board to the Governor; and

(C)in full force and effect beginning on the first day of the applicable fiscal year.”

48 U.S.C. §2147:

“For so long as the Oversight Board remains in operation, no territorial government may, without the prior approval of the Oversight Board, issue debt or guarantee, exchange, modify, repurchase, redeem, or enter into similar transactions with respect to its debt.”

48 U.S.C. §2144(a)(1):

“Except to the extent that the Oversight Board may provide otherwise in its bylaws, rules, and procedures, not later than 7 business days after a territorial government duly enacts any law during any fiscal year in which the Oversight Board is in operation, the Governor shall submit the law to the Oversight Board.”

48 U.S.C. §2144(a)(5):

“If the territorial government fails to comply with a direction given by the Oversight Board under paragraph (4) with respect to a law, the Oversight Board may take such actions as it considers necessary, consistent with this chapter, to ensure that the enactment or enforcement of the law will not adversely affect the territorial government’s compliance with the Fiscal Plan, including preventing the enforcement or application of the law.”

48 U.S.C. §2144(c)(3)(B):

“Upon appointment of the Oversight Board’s full membership, the Oversight Board may review, and in its sole discretion, rescind, any law that—

(i) was enacted during the period between, with respect to Puerto Rico, May 4, 2016; or with respect to any other territory, 45 days prior to the establishment of the Oversight Board for such territory, and the date of appointment of all members and the Chair of the Oversight Board; and

(ii) alters pre-existing priorities of creditors in a manner outside the ordinary course of business or inconsistent with the territory's constitution or the laws of the territory as of, in the case of Puerto Rico, May 4, 2016, or with respect to any other territory, 45 days prior to the establishment of the Oversight Board for such territory;

but such rescission shall only be to the extent that the law alters such priorities.”

48 U.S.C. §2124(o):

“The Oversight Board may investigate the disclosure and selling practices in connection with the purchase of bonds issued by a covered territory for or on behalf of any retail investors including any underrepresentation of risk for such investors and any relationships or conflicts of interest maintained by such broker, dealer, or investment adviser is as provided in applicable laws and regulations.”

48 U.S.C. §2126(e):

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

48 U.S.C. §2127(b)(1):

“Within 30 days after June 30, 2016, the territorial government shall designate a dedicated funding

source, not subject to subsequent legislative appropriations, sufficient to support the annual expenses of the Oversight Board as determined in the Oversight Board's sole and exclusive discretion."

48 U.S.C. §2145(a):

"The Oversight Board may at any time submit recommendations to the Governor or the Legislature on actions the territorial government may take to ensure compliance with the Fiscal Plan, or to otherwise promote the financial stability, economic growth, management responsibility, and service delivery efficiency of the territorial government [. . .]."
