No. 22-96

In the Supreme Court of the United States

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, PETITIONER

v.

CENTRO DE PERIODISMO INVESTIGATIVO, INC.

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

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING VACATUR

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QUESTION PRESENTED

Section 106(a) of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), Pub. L. No. 114-187, 130 Stat. 562 (48 U.S.C. 2126(a)), provides that, with two exceptions not relevant here, any action against the Financial Oversight and Management Board for Puerto Rico and any action otherwise arising out of PROMESA "shall be brought in a United States district court." The question presented is whether Section 106(a) abrogates the sovereign immunity of the Board with respect to all federal and territorial claims.

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INTEREST OF THE UNITED STATES

This case concerns whether the Financial Oversight and Management Board for Puerto Rico is immune from suit, or whether the Puerto Rico Oversight, Management, and Economic Security Act (PROMESA or the Act), Pub. L. No. 114-187, 130 Stat. 549 (48 U.S.C. 2101 *et seq.*), abrogates the sovereign immunity of the Board. The case implicates important questions regarding the existence and extent of Puerto Rico's sovereign immunity and may affect federal legislation and policies related to Puerto Rico. It also implicates more general principles concerning the abrogation of sovereign immunity. Accordingly, the United States has a substantial interest in this case.

STATEMENT

A. Background

1. In 1898, Puerto Rico became a territory of the United States, when Spain ceded it to the United States at the conclusion of the Spanish-American War. See Treaty of Paris, U.S.-Spain, art. II, Dec. 10, 1898, 30 Stat. 1755 (proclaimed Apr. 11, 1899). After a brief period of military government, Congress established a civilian government for Puerto Rico. Organic Act of 1900 (Foraker Act), ch. 191, §§ 17-26, 31 Stat. 81-82. That government was composed of a governor and an executive council appointed by the President with the advice and consent of the Senate, a popularly elected house of delegates, and a judiciary with a supreme court whose members were appointed by the President with the advice and consent of the Senate, §§ 17-35, 31 Stat. 81-85. The Foraker Act also established a U.S. District Court for Puerto Rico. § 34, 31 Stat. 84-85. Congress applied all federal laws (except internal revenue laws) "not locally inapplicable" to Puerto Rico, § 14, 31 Stat. 80, and granted the legislature broad authority over internal affairs, §§ 15, 32, 31 Stat. 80, 83-84. See *Puerto Rico* v. *Sanchez Valle*, 579 U.S. 59, 63 (2016).

In 1917, Congress provided a bill of rights for Puerto Rico and granted the people of Puerto Rico U.S. citizenship. See Organic Act of 1917 (Jones Act), ch. 145, §§ 2-5, 39 Stat. 951-953. The Jones Act also reorganized Puerto Rico's government by establishing executive departments and authorizing a popularly elected senate to replace the executive council. §§ 13, 26, 39 Stat. 955-956, 958-959. In 1947, Congress provided for a popularly elected governor, who would appoint the heads of most executive departments. See Act of Aug. 5, 1947,

ch. 490, §§ 1-3, 61 Stat. 770-771. *Sanchez Valle*, 579 U.S. at 63-64.

In 1950, Congress authorized the people of Puerto Rico to "organize a government pursuant to a constitution of their own adoption." Act of July 3, 1950 (Public Law 600), ch. 446, § 1, 64 Stat. 319. Congress provided that the constitution must "provide a republican form of government" and "include a bill of rights" and that it must be approved by Congress to take effect. §§ 2-3, 64 Stat. 319.

The people of Puerto Rico voted in a referendum to call a constitutional convention to draft a constitution. See Act of July 3, 1952 (1952 Act), ch. 567, 66 Stat. 327; *Documents on the Constitutional Relationship of Puerto Rico and the United States* 178 (Marcos Ramírez Lavandero ed., 3d ed. 1988) (*Documents*). The constitution was approved by referendum. *Documents* 178-179. Congress made several changes to the constitution, then approved it. See 1952 Act, 66 Stat. 327. The revised constitution was approved by the constitutional convention and another referendum, and it became law upon proclamation of the governor. Proclamation by the Governor of Puerto Rico (July 25, 1952), *reprinted in Documents* 224; Resolution 34 of Constitutional Convention of Puerto Rico (July 10, 1952), *reprinted in Documents* 222-223. "The Puerto Rico Constitution created a new political entity, the Commonwealth of Puerto Rico." *Sanchez Valle*, 579 U.S. at 65. When the constitution became effective, the provisions of federal law through which Congress and the President had directly supervised the government of Puerto Rico were "deemed repealed" but other provisions were left intact. See Public Law 600, §§ 4-5, 64 Stat. 319-320 (provisions left intact renamed Puerto Rican Federal Relations

Act). Since 1952, Puerto Rico has enjoyed "a measure of autonomy comparable to that possessed by the States." *Examining Bd. of Eng'rs, Architects & Surveyors* v. *Flores de Otero*, 426 U.S. 572, 597 (1976).

2. In the summer of 2016, Puerto Rico faced the most debilitating fiscal emergency in its history. The Commonwealth and its instrumentalities carried approximately $71.5 billion in outstanding debt, more than the entire annual output of the island's economy. See Gov't Dev. Bank for Puerto Rico, *Commonwealth of Puerto Rico: Financial Information and Operating Data Report* 52 (Dec. 18, 2016). The Commonwealth's credit ratings had been downgraded to junk, leaving it and its instrumentalities unable to borrow money on the bond markets. *Id.* at 67-68. Nor could they get debt relief through the federal bankruptcy code. See *Puerto Rico* v. *Franklin Cal. Tax-Free Trust*, 579 U.S. 115, 125 (2016).

In response, Congress enacted the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA or the Act), 48 U.S.C. 2101 *et seq*., which creates a structure for exercising federal oversight over the fiscal affairs of territories. A section captioned "Constitutional basis" states that Congress enacted PROMESA "pursuant to article IV, section 3 of the Constitution," 48 U.S.C. 2121(b)(2) (emphasis omitted), which empowers Congress "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States," U.S. Const. Art. IV, § 3, Cl. 2.

As relevant here, the Act allows for the creation of an oversight board to "provide a method for a covered territory to achieve fiscal responsibility and access to the capital markets." 48 U.S.C. 2121(a). The Act then

establishes such a board for Puerto Rico—the Financial Oversight and Management Board, petitioner here—to oversee its finances. 48 U.S.C. 2121(b)(1). The Act provides that the Board is an entity "within the territorial government" of Puerto Rico. 48 U.S.C. 2121(c)(1). It requires the Board to approve fiscal plans and budgets for the Commonwealth and its instrumentalities, 48 U.S.C. 2141, 2142; to enforce those plans and budgets, 48 U.S.C. 2143, 2144; and to supervise Puerto Rico's debts, 48 U.S.C. 2147. The Board also serves as Puerto Rico's sole representative in "Title III" cases—judicial proceedings, modeled in several ways on federal bankruptcy proceedings, for restructuring the debts owed by the Commonwealth and its instrumentalities. 48 U.S.C. 2172(a); see 48 U.S.C. 2161-2177. The Board has seven members, appointed by the President and supported by an executive director and staff. 48 U.S.C. 2121(e); *Financial Oversight & Mgmt. Bd. for P.R.* v. *Aurelius Inv., LLC*, 140 S. Ct. 1649, 1655 (2020).

This case concerns Section 106(a) of PROMESA, codified at 48 U.S.C. 2126(a), which provides in relevant part:

> Except as provided in section 2124(f)(2) of this title (relating to the issuance of an order enforcing a subpoena), and subchapter III (relating to adjustments of debts), any action against the Oversight Board, and any action otherwise arising out of this chapter, in whole or in part, shall be brought in a United States district court for the covered territory or, for any covered territory that does not have a district court, in the United States District Court for the District of Hawaii.

48 U.S.C. 2126(a). Subsection (c) further provides that "no order of any court granting declaratory or injunctive relief against the Oversight Board, including relief permitting or requiring the obligation, borrowing, or expenditure of funds," shall take effect during the pendency of trial or appellate proceedings, "[e]xcept with respect to any orders entered to remedy constitutional violations." 48 U.S.C. 2126(c).

After the enactment of PROMESA and the appointment of the Board's members, the Board commenced a series of Title III cases on behalf of the Commonwealth and its instrumentalities in the U.S. District Court in Puerto Rico. See *Aurelius*, 140 S. Ct. at 1655-1656.

B. The Present Controversy

1. Respondent Centro de Periodismo Investigativo is a non-profit media organization based in Puerto Rico. Pet. App. 1a. In 2017, respondent filed suit against the Board in the U.S. District Court for the District of Puerto Rico, seeking a declaratory judgment, injunctive relief, and a writ of mandamus ordering the Board to release various documents. Specifically, respondent sought financial documents provided to the Board by Puerto Rico's government, communications between the Board and federal and territorial government officials, and financial disclosure documents submitted by Board members to the United States Department of the Treasury. *Id.* at 111a-115a.

In support of its asserted entitlement to the records, respondent relied upon Article II, Section 4 of Puerto Rico's Constitution, which provides that "[n]o law shall be made 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 griev-

ances." See Pet. App. 117a-118a. The Puerto Rico Supreme Court has interpreted that provision to guarantee a right of access to public records (subject to various exceptions), which may be enforced through a writ of mandamus. See *Bhatia Gautier* v. *Roselló Nevares*, 199 D.P.R. 59 (P.R. 2017) (J.A. 72a-117a) (certified translation). Respondent alleged that the Board is subject to disclosure obligations under that constitutional provision because it is an entity within the Puerto Rico government. Pet. App. 117a-119a.

The Board filed a motion to dismiss for lack of subject-matter jurisdiction and for failure to state a claim. The Board argued that it is entitled to sovereign immunity under the Eleventh Amendment to the United States Constitution and that PROMESA preempts any disclosure obligation otherwise applicable under Puerto Rico law. Pet. App. 5a-6a.

2. The district court denied the Board's motion. Pet. App. 58a-101a. The court noted that under First Circuit precedent, Puerto Rico is entitled to Eleventh Amendment immunity, and the court assumed that the Board is an arm of the Commonwealth government—an issue that the parties did not brief. *Id.* at 70a. The court nonetheless determined that Congress had either waived or abrogated the Board's sovereign immunity because it is "evident from Section 106(a) [of PROMESA] that Congress meant to subject the Board to suits in federal court." *Id.* at 73a; see *id.* at 73a-80a. The court further held that PROMESA does not expressly or impliedly preempt Puerto Rico's constitutional right of access to the records at issue. *Id.* at 80a-98a. But the district court noted that respondent's access to the requested documents may still be limited by

various exemptions to disclosure obligations that the Puerto Rico Supreme Court has recognized. *Id.* at 100a.

Following that ruling, the Board began to produce some of the requested documents while withholding others based on various claims of privilege and exemption, which respondent disputed. Pet. App. 7a. The Board states that it has produced 18,419 documents totaling 67,704 pages, and has objected to producing approximately 20,000 additional documents. Pet. Br. 11.

In March 2021, the district court adopted a magistrate judge's report and recommendation concerning the disputed documents. Pet. App. 54a. The court denied respondent's request for certain documents and ordered the Board to produce a privilege log for the remaining documents so that the court could assess the legal bases for withholding them. *Id.* at 8a.

Before the district court adopted the magistrate's report and recommendation, respondent had filed a second suit seeking production of documents created on or after April 30, 2018, relating to communications between the Board and the federal and Puerto Rico governments. Pet. App. 140a. The Board filed a motion to dismiss the second suit, raising the same arguments as in its first motion. The district court consolidated the two cases and denied the Board's motion to dismiss "for the reasons stated" in its prior opinion and order. *Id.* at 56a. The Board filed an interlocutory appeal of the denial of the motion to dismiss and the order requiring the compilation of a privilege log.

3. The court of appeals affirmed in a divided decision. Pet. App. 1a-49a. The court held that it had jurisdiction over petitioner's appeal of the district court's order denying its motion to dismiss on sovereign immunity grounds, *id.* at 15a-17a, and affirmed that order, *id.*

at 35a. The court declined to exercise pendant jurisdiction over the district court's rulings that respondent's claims under the Puerto Rico constitution are not expressly or impliedly preempted by PROMESA. *Id.* at 17a-18a.

a. The panel majority noted that the First Circuit "has a long history of treating Puerto Rico as a state for Eleventh Amendment purposes," but had not previously resolved whether the Board in particular is entitled to that immunity. Pet. App. 23a. Because the parties did not dispute that the Board is an arm of Puerto Rico for sovereign immunity purposes, however, the court of appeals "assume[d] without deciding" that the Board is covered by the Commonwealth's sovereign immunity. *Id.* at 23a-24a.

Turning to Section 106(a) of PROMESA, the court of appeals concluded that "Congress unequivocally stated its intention that the Board could be sued for 'any action . . . arising out of [PROMESA],' but only in federal court," and that Congress was "unmistakably clear that it had contemplated remedies for constitutional violations and that injunctive or declaratory relief against the Board may be granted." Pet. App. 29a (brackets in original). The court acknowledged that the language in Section 106(a) "may not be as precise" as in other cases in which this Court has recognized an abrogation of sovereign immunity. *Ibid.* Nevertheless, the court of appeals concluded that Congress is not required to use any particular "magic words." *Id.* at 30a (citation omitted).

The court of appeals further reasoned that Section 106(a) functions as a "claim-channeling provision which requires that claims against the Board that are otherwise cognizable in Commonwealth court must be

brought in federal court." Pet. App. 33a n.16. The court found "no reason to think that Congress intended this channeling to dictate the dismissal of such claims" once they are filed in federal court, which Congress could have done "expressly" under its authority over Commonwealth law. *Ibid.*

b. Judge Lynch dissented. Adhering to First Circuit precedent recognizing Puerto Rico's entitlement to immunity, she further concluded that the "Board is part of the Puerto Rico government." Pet. App. 36a. She viewed the majority as "violat[ing] the rule that abrogation of Eleventh Amendment immunity will only be found where Congress has unequivocally expressed its intent to abrogate that immunity." *Id.* at 37a-38a. In her view, "[a]bsolutely nothing in the text" of Section 106(a) "sets forth an intent to abrogate" the Board's immunity. *Id.* at 38a. Rather, "Section 106(a) is a limited jurisdiction-granting provision" that does not abrogate immunity. *Id.* at 40a-41a.

Judge Lynch also relied on *Pennhurst State School & Hospital* v. *Halderman*, 465 U.S. 89 (1984), in support of her conclusion. She explained that *Pennhurst* does not permit "suits brought against state officials for violations of state law" because doing so "'conflicts directly with the principles of federalism that underlie the Eleventh Amendment.'" Pet. App. 42a-43a (quoting *Pennhurst*, 465 U.S. at 106). According to Judge Lynch, the majority violated that rule by "ordering the Board to comply with Puerto Rico disclosure laws despite the Board's Eleventh Amendment immunity." *Id.* at 43a.

c. The Board sought rehearing en banc, which the court of appeals denied. Pet. App. 59a-60a.[1]

SUMMARY OF ARGUMENT

As a part of the Puerto Rico government, the Financial Oversight and Management Board for Puerto Rico generally is entitled to sovereign immunity. Section 106(a) of the Puerto Rico Oversight, Management, and Economic Stability Act does not contain a clear statement abrogating that immunity. The court of appeals erred in holding otherwise. But because the Commonwealth has the power to subject its government entities to suit and Section 106(a) permits territorial-law claims to be brought against the Board in federal district court, the Court should remand the case to allow the lower courts to determine whether the Board is subject to suit for claims brought under the Puerto Rico constitution for access to Board documents.

A. As a territory, Puerto Rico is not encompassed within the Eleventh Amendment, which speaks to the sovereign immunity of States. Nevertheless, this Court has long recognized that the government established in Puerto Rico is sovereign and entitled to sovereign immunity that prevents the territorial government from being sued without its consent. That immunity parallels the sovereign immunity of the United States, the States, and Indian Tribes—and like the immunities of those entities, it may be abrogated only by a clear statement by Congress.

Puerto Rico's territorial status affects the nature of its immunity in two respects. First, because Congress

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[1] The en banc panel comprised the same three judges who served on the panel. All other active judges on the court of appeals were recused. Pet. App. 52a-53a & n*.

may exercise plenary control over the territories, it may abrogate Puerto Rico's sovereign immunity as it determines appropriate. That abrogation is not limited to a valid exercise of congressional power under Section 5 of the Fourteenth Amendment, as it is for States. Second, the recognized limits on federal courts adjudicating state-law claims against state officials are inapplicable. Those limits are grounded in structural federalism concerns and perceived intrusions on state sovereignty that do not apply where, as here, the territory is subject to the authority of the federal government.

B. Because Congress expressed and effectuated an intent to create the Board as part of the territorial government, the Board partakes in Puerto Rico's sovereign immunity. PROMESA plainly states that the Board is "an entity within the territorial government" of Puerto Rico. 48 U.S.C. 2121(c)(1). And, as this Court recognized in holding that Board members are not Officers of the United States for purposes of the Appointments Clause, the Board's structure, duties, powers, and funding all confirm that the Board acts on behalf of the Commonwealth. See *Financial Oversight & Mgmt. Bd. for P.R.* v. *Aurelius Inv., Inc.*, 140 S. Ct. 1649, 1661 (2020).

Respondent's suggestions that the Board may not qualify as part of the territorial government for purposes of sovereign immunity are unfounded. Respondent relies on cases assessing whether locally operating government bodies, public corporations, or interstate-compact entities can be considered an arm of the state. Resort to such case law is unnecessary where, as here, Congress possesses the power to organize the territorial government and expressly exercised that power in creating the Board.

C. The court of appeals erred in concluding that Section 106(a) of PROMESA abrogates the Board's sovereign immunity.

This Court requires Congress to make its intent to abrogate sovereign immunity "unmistakably clear in the language of the statute." *Kimel* v. *Florida Bd. of Regents*, 528 U.S. 62, 73 (2000) (citation omitted). Section 106(a) cannot be read to abrogate the Board's immunity under that standard.

In providing that "any action against the Oversight Board * * * shall be brought in a United States district court for the covered territory," Section 106(a) simply channels any available claims against the Board to a particular forum. The court of appeals recognized the claim-channeling function, but assumed that it must be accompanied by a categorical abrogation of sovereign immunity to have effect. That is incorrect. Claims against the Board can be brought where the Board's sovereign immunity has been otherwise abrogated or waived. That may occur when parties bring cognizable rights of action seeking injunctive relief for claims arising under the Constitution and federal law; when the Board itself chooses to waive its immunity; when Commonwealth law that provides for suits against the Commonwealth validly applies to the Board; or when Congress clearly abrogates the Board's immunity.

This reading of Section 106(a) gives full effect to the statutory text and does not render other provisions superfluous. Section 106(c)'s contemplation of "orders entered to remedy constitutional violations" and "declaratory or injunctive relief against the Oversight Board" are relevant, for example, to constitutional claims, federal claims under Title VII, and claims under territorial

law for which suits may be brought against the Commonwealth and which validly apply to the Board. And PROMESA's separate provision stating that the Board and its members and employees "shall not be liable for any obligation of or claim" against the Board "resulting from actions taken to carry out" the Act apparently serves to foreclose damage claims, such as those involving the Board's Title III duties or other functions. 48 U.S.C. 2125. There is thus no need to infer an abrogation of the Board's sovereign immunity for all federal and territorial-law claims to effectuate the statutory language.

D. That Section 106(a) does not abrogate the Board's sovereign immunity does not fully resolve this suit. Because the Board is an entity within the territorial government, the Commonwealth may subject the Board to generally applicable laws that allow for suit, so long as doing so will not "impair or defeat the purposes of" PROMESA, 48 U.S.C. 2128(a)(2), or otherwise conflict with that Act. Puerto Rico law appears to recognize an implied right of action against government entities to enforce the constitutional right of access to public records. On remand, the parties should be permitted to brief whether, and if so to what extent, that right of action can be asserted against the Board, consistent with PROMESA.

ARGUMENT

SECTION 106(a) OF PROMESA DOES NOT ABROGATE THE BOARD'S SOVEREIGN IMMUNITY

A. The Government Of Puerto Rico Is Entitled To Sovereign Immunity

The court of appeals concluded, based on longstanding First Circuit precedent, that Puerto Rico is entitled

to immunity under the Eleventh Amendment. See Pet. App. 22a (collecting cases); see, *e.g.*, *Ezratty* v. *Puerto Rico*, 648 F.2d 770, 776 n.7 (1st Cir. 1981). This Court has "express[ed] no view" on the validity of that First Circuit precedent. *Puerto Rico Aqueduct & Sewer Auth.* v. *Metcalf & Eddy, Inc.*, 506 U.S. 139, 141 n.1 (1993). As the United States has previously explained, First Circuit precedent is incorrect in applying the Eleventh Amendment to Puerto Rico. But this Court has repeatedly recognized that Puerto Rico is entitled to sovereign immunity by virtue of its governmental status, which prevents suit against the territory unless either Congress abrogates immunity or the territorial government waives it.[2]

1. As a territory, Puerto Rico is not encompassed by the Eleventh Amendment's text, history, or purpose. See U.S. Br. in Opp. at 6-7, *University of P.R.* v. *Toledo*, No. 06-779 (Feb. 5, 2007). The text of the amendment refers only to suits "against one of the United States," U.S. Const. Amend. XI, which encompasses States of the Union, not territories. In addition, the Eleventh Amendment was enacted in response to this Court's decision in *Chisholm* v. *Georgia*, 2 U.S. (2 Dall.) 419 (1793),

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[2] The Board has asserted that this Court may assume without deciding that the Commonwealth enjoys sovereign immunity and that the Board is likewise entitled to immunity. Cert. Reply Br. 2, 4. But the Court has taken that approach only in cases in which resolving the question presented did not hinge on the existence of sovereign immunity. See, *e.g.*, *Port Auth. Trans-Hudson Corp.* v. *Feeney*, 495 U.S. 299, 305 (1990) (concluding that any existing immunity had been waived); *Puerto Rico Aqueduct & Sewer Auth.*, 506 U.S. at 141 n.1 (determining appealability of order denying sovereign-immunity defense). To conclude that PROMESA does not abrogate the Board's immunity, the Court must determine that such immunity exists.

which permitted a citizen of South Carolina to sue the State of Georgia. See *Hans* v. *Louisiana*, 134 U.S. 1, 11 (1890). There was no territory involved. And this Court's Eleventh Amendment jurisprudence has relied heavily on considerations of federalism. See, *e.g.*, *Hutto* v. *Finney*, 437 U.S. 678, 691 (1978); *Pennhurst State Sch. & Hosp.* v. *Halderman*, 465 U.S. 89, 99-100 (1984). Such concerns of federalism are inapplicable to territories, for which Congress may "legislate directly," with "full and complete legislative authority." *National Bank* v. *County of Yankton*, 101 U.S. 129, 133 (1880).

2. Despite the inapplicability of the Eleventh Amendment, for more than a century this Court has recognized that the government established for Puerto Rico "is of such nature as to come within the general rule exempting a government sovereign in its attributes from being sued without its consent." *Porto Rico* v. *Rosaly*, 227 U.S. 270, 273 (1913); see *Bonet* v. *Yabucoa Sugar Co.*, 306 U.S. 505 (1939). In *Rosaly*, the Court considered the "terms of the [Foraker] [A]ct" and concluded that "the purpose of Congress in adopting it was to follow the plan applied from the beginning to the organized Territories by creating a government conforming to the American system." 227 U.S. at 276-277. In doing so, the Court explained, the Foraker Act provided for "local self-government, conferring an autonomy similar to that of the States." *Id.* at 274 (quoting *Gromer* v. *Standard Dredging Co.*, 224 U.S. 362, 370 (1912)). The Court had "no doubt that immunity from suit without its consent is necessarily inferable from a mere consideration of the nature of the Porto Rican government." *Ibid.* Congress thus had established a government in Puerto Rico that was "sovereign in its attributes," *Rosaly*, 227 U.S. at 273, and as the Framers

understood, "[i]t is inherent in the nature of sovereignty, not to be amenable to the suit of an individual without its consent," *The Federalist No. 81*, at 548 (Alexander Hamilton) (Jacob E. Cooke ed., 1961) (emphasis omitted).

In the years since *Rosaly*, the Court has repeatedly recognized that Puerto Rico's sovereign status and autonomy have since been enhanced. Following the enactment of the Jones Act, the Court emphasized that the "effect" of the Foraker Act and the Jones Act "was to confer upon the territory many of the attributes of quasi-sovereignty possessed by the states—as, for example, immunity from suit without their consent." *Puerto Rico* v. *The Shell Co. (P. R.), Ltd.*, 302 U.S. 253, 262 (1937) (emphasis omitted). And with Public Law 600 and the 1952 Act, this Court recognized that Congress "relinquished its control over the organization of the local affairs" of the Commonwealth and "granted Puerto Rico a measure of autonomy comparable to that possessed by the States." *Examining Bd. of Eng'rs, Architects & Surveyors* v. *Flores de Otero*, 426 U.S. 572, 597 (1976). There is no reason to doubt that Puerto Rico's new Commonwealth status retained the government's sovereign immunity to suit.

Such a government inherently possesses immunity from suit as an attribute of sovereignty, unless waived or validly abrogated, and that immunity applies to suits in federal court as well as suits in the sovereign's own court. Indeed, this Court drew on background principles of immunity in concluding that citizens of a State may not sue that State in federal court. See *Hans*, 134 U.S. at 12-16. Although such suits do not fall within the text of the Eleventh Amendment, the Court recognized that "[t]he suability of a State without its consent was a

thing unknown to the law," and that such actions were "not contemplated by the Constitution when establishing the judicial power of the United States." *Id.* at 15-16. See Stephen E. Sachs, *Constitutional Backdrops*, 80 Geo. Wash. L. Rev. 1813, 1871 (2012) (explaining that Article III "left alone" the "common law's rules" on sovereign immunity, and "of their own force they prevented suits against states" in federal court).

This Court reached a similar conclusion in the analogous context of tribal sovereign immunity. In *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49 (1978), a member of the Santa Clara Pueblo brought suit in federal court challenging the enforcement of a tribal ordinance that allegedly violated federal law. The Court rejected the suit as barred by the tribe's sovereign immunity. The Court noted that "Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers." *Id.* at 58. The Court recognized that "Congress has plenary authority" over the tribes and could therefore exercise that "superior and plenary control" to abrogate the tribes' immunity. *Id.* at 56, 58. But "without congressional authorization," which must be "unequivocally expressed," the tribes remained exempt from suit in federal court. *Id.* at 58 (citations omitted). Similarly, in *Michigan* v. *Bay Mills Indian Cmty.*, 572 U.S. 782 (2014), the Court reaffirmed that sovereign immunity is a "necessary corollary to Indian sovereignty and self-governance," and that to abrogate such immunity "Congress must 'unequivocally' express that purpose." *Id.* at 788, 790 (citations omitted).

To be sure, in a dissenting opinion, Justice Brennan advanced the view that the immunity of a territorial government is limited to territorial courts. *Ngiraingas*

v. *Sanchez*, 495 U.S. 182, 205 (1990). But that view rested on a flawed analogy between territories and municipalities. See *ibid.* (citing *Owen* v. *City of Independence*, 445 U.S. 622, 646-647 & n.30 (1980)). This Court has recognized the "dual nature" of a municipal corporation that exists both as a "corporate body" and as an "arm of the State" in certain governmental capacities. *Owen*, 445 U.S. at 644-645. Because of that nature, the Court explained that such a municipal corporation may be sued for its corporate acts and that the State, by delegating governmental duties to the municipality, "impliedly withdraw[s]" municipal immunity for nonperformance or misperformance of those duties. *Id.* at 646-647. The Government of Puerto Rico, and territorial governments generally, do not have that dual nature. And while Congress may abrogate the sovereign immunity of a territory, this Court has recognized that Congress instead provided Puerto Rico with autonomy similar to that of a State in setting up its territorial government. *Rosaly*, 227 U.S. at 274. Puerto Rico therefore is entitled to a parallel immunity from suit. See *Kawananakoa* v. *Polyblank*, 205 U.S. 349, 352-354 (1907) (distinguishing territorial immunity from immunity for municipal corporations).

3. The source of Puerto Rico's immunity in its territorial status, rather than as a State entitled to immunity under the Eleventh Amendment or background assumptions of state immunity, affects the analysis in two respects relevant to this case.

First, because Puerto Rico is a territory subject to Congress's plenary control, Congress is not limited in its ability to abrogate Puerto Rico's sovereign immunity. When abrogating a State's sovereign immunity, this Court has recognized that Congress may act only

pursuant to Section 5 of the Fourteenth Amendment, because that provision represented a "diminution of state sovereignty," thereby subjecting state immunity to congressional limits. See *Fitzpatrick* v. *Bitzer*, 427 U.S. 445, 452-455 (1976); *Seminole Tribe of Fla.* v. *Florida*, 517 U.S. 44, 59-66 (1996).[3] Where territories are concerned, however, the Constitution provides that "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." U.S. Const. Art. IV, § 3, Cl. 2. As this Court has explained, "Congress may not only abrogate laws of the territorial legislatures, but it may itself legislate directly for the local government. It may make a void act of the territorial legislature valid, and a valid act void. In other words, it has full and complete legislative authority over the people of the Territories and all the departments of the territorial governments." *National Bank*, 101 U.S. at 133. Included within that power is the authority to abrogate the territory's sovereign immunity when Congress determines it is appropriate to do so.

Second, the structural federalism concerns that would arise if a federal court adjudicated state-law claims against state officials do not apply to territorial-law claims against territorial officials or entities. In *Pennhurst*, the Court explained that "it is difficult to

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[3] Aside from abrogation, "States may be sued if they agreed their sovereignty would yield as part of the 'plan of the Convention.'" *Torres* v. *Texas Dep't of Pub. Safety*, 142 S. Ct. 2455, 2462 (2022) (citation omitted). This Court has found such a "structural waiver" of state sovereign immunity as to "suits between States," "suits by the United States against a State," suits "pursuant to federal bankruptcy laws," suits pursuant to Congress's "eminent domain power," and suits pursuant to Congress's power to "'raise and support Armies.'" *Id.* at 2462-2463 (citation omitted).

think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law." 465 U.S. at 106.[4] The concerns raised from such an intrusion are not present with the same force when a territory is involved, however, as Congress maintains plenary power over territorial laws, territorial courts, and the jurisdiction of federal district courts in the territories. Indeed, from 1915 through 1961, decisions of the Puerto Rico Supreme Court were subject to appellate review in the Court of Appeals for the First Circuit. See Act of Jan. 28, 1915, ch. 22, § 2, 38 Stat. 803-804; Act of Aug. 30, 1961, Pub. L. No. 87-189, § 3, 75 Stat. 417. And the First Circuit could overturn the Puerto Rico Supreme Court's interpretation of Puerto Rico law if it found the interpretation "patently erroneous." *Bonet* v. *Texas Co. (P. R.), Inc.*, 308 U.S. 463, 471 (1940).

The foundation of Puerto Rico's sovereign immunity outside the Eleventh Amendment does not, however, alter the applicability of the established rule requiring a clear statement of intent to abrogate or waive sovereign immunity. In every case involving abrogation or waiver, this Court has required an unequivocal expression of intent to alter immunity, regardless of the source of the immunity and whether it is allegedly waived by the sovereign government itself or abrogated by another government. See *Lane* v. *Pena*, 518 U.S. 187, 192 (1996) (applying clear-statement rule to federal waiver of federal sovereign immunity); *Green* v. *Mansour*, 474 U.S. 64, 68 (1985) (applying clear-statement rule to federal abrogation of state sovereign immunity); *Murray*

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[4] The precise circumstances of *Pennhurst* are not squarely presented in this case, because respondent has sued only the Board and not its individual members in their official capacity.

v. *Wilson Distilling Co.*, 213 U.S. 151, 170-171 (1909) (applying clear-statement rule to state waiver of state sovereign immunity); *Bay Mills*, 572 U.S. at 790 (applying clear-statement rule to federal abrogation of tribal sovereign immunity). The clear-statement rule thus rests not on federalism concerns unique to the sovereign immunity of the States, but on a presumption of respect for an inherent attribute of sovereignty possessed by the various governments within our constitutional structure. There is no reason to depart from that clear-statement rule here.

B. The Board Is A Territorial Entity Entitled To Sovereign Immunity

The court of appeals "assume[d] without deciding" that the Board is an arm of the government of Puerto Rico entitled to assert sovereign immunity. Pet. App. 24a. The court noted that respondent did not dispute the issue, and both parties "repeatedly referred to the Board as 'an entity within the territorial government' of Puerto Rico." *Id.* at 23a-24a (quoting 48 U.S.C. 2121(c)). In any event, Congress has clearly expressed and effectuated its intent to make the Board part of the territorial government. That conclusively resolves the Board's status for sovereign immunity purposes.

PROMSEA expressly states that the Board is "an entity within the territorial government." 48 U.S.C. 2121(c). As this Court has already recognized in concluding that Board members are not Officers of the United States for purposes of the Appointments Clause, "Congress did not simply state" its intention that the Board be part of the Puerto Rico government; "[r]ather, Congress also gave the Board a structure, a set of duties, and related powers all of which are consistent with this statement." *Financial Oversight & Mgmt. Bd. for*

P.R. v. *Aurelius Inv., Inc.*, 140 S. Ct. 1649, 1661 (2020). Under PROMESA, the Board receives its funding entirely from the government of Puerto Rico, 48 U.S.C. 2127(b), and its primary functions—reforming the Commonwealth's budget and restructuring the Commonwealth's debt—are all territorial. *Aurelius*, 140 S. Ct. at 1661-1662. Its investigatory powers, including the ability to "administer oaths, issue subpoenas, take evidence and demand data from governments and creditors * * * are backed by Puerto Rican * * * law." *Id.* at 1662. And in conducting its activities, the Board acts "on behalf of, and in the interests of, Puerto Rico." *Ibid.*

Respondent contends (Br. in Opp. 14) that "it is unclear" whether the Court's assessment of the Board's nature in *Aurelius* suffices for purposes of the Board's entitlement to immunity, because the "test for identifying arms of the State is murky." But the Court need not resort to tests assessing locally operating government bodies, public corporations, or interstate-compact entities. See *Hess* v. *Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 42 (1994); *Mt. Healthy City Sch. Dist. Bd. of Educ.* v. *Doyle*, 429 U.S. 274, 280 (1977). Those cases assessed either whether States intended entities to operate as local, statewide, or corporate bodies, or whether agencies created by several States in a compact approved by Congress are entitled to sovereign immunity. Here, Congress expressly exercised its power to organize the territorial government. U.S. Const. Art. IV, § 3, Cl. 2; 48 U.S.C. 2121(b), (c). Cf. *Lebron* v. *National R.R. Passenger Corp.*, 513 U.S. 374, 392 (1995) (explaining that a federal statute's statement regarding an entity's governmental status "is assuredly dispositive of [an entity's] status as a Government entity for

purposes of matters that are within Congress's control," including "sovereign immunity from suit").[5]

Respondent's invocation (Br. in Opp. 15) of this Court's case law addressing interstate-compact entities ignores the significance of Congress's action. Respondent asserts that, in those cases, the Court concluded that the entities were not "arms of the State" because they "owe their existence to state and federal sovereigns acting cooperatively." *Ibid.* (quoting *Hess*, 513 U.S. at 42). According to respondent, the fact that Congress created the Board thus makes it "dubious that the Board is an 'arm' of the Commonwealth." *Ibid.* But Congress has the power to organize all of Puerto Rico's government, and its exercise of that authority does not nullify the sovereign status of the Commonwealth's government. Indeed, all of Puerto Rico's early government was organized under congressional statute. See pp. 2-3, *supra*. Yet, this Court continued to recognize that government's entitlement to sovereign immunity. See *Bonet*, 306 U.S. at 506, 509.

In light of Congress's plenary authority to organize Puerto Rico's government, its express exercise of that authority to create the Board as part of the territorial

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[5] Even if this Court were to apply its arm-of-the-state precedents from other contexts, the result would be the same. Those cases focus on the "'nature of the entity created by state law' and whether the State 'structured' the entity to enjoy its immunity from suit." *Puerto Rico Ports Auth.* v. *Federal Mar. Comm'n*, 531 F.3d 868, 873 (D.C. Cir. 2008) (Kavanaugh, J.) (citations omitted), cert. denied, 555 U.S. 1170 (2009). Congress expressly provided that the Board is part of the territorial government, and it structured the Board to fulfill territorial functions, on behalf of the territory's interests, with funding exclusively from the territory. Each of those facts supports treating the Board as an arm of the Commonwealth.

government, and its actions consistent with that declaration, the Board's status as an arm of the Commonwealth is firmly established. And given this Court's recognition of Puerto Rico's sovereign immunity from suit—which was carried forward upon the establishment of the Commonwealth—Congress's creation of the Board within the Commonwealth's government when it enacted PROMESA necessarily carries with it the Commonwealth's immunity from suit.

C. Section 106(a) Does Not Contain The Requisite Clear Statement Abrogating The Board's Sovereign Immunity

The court of appeals erred in concluding that Section 106(a) demonstrates an "unmistakably clear" intent to abrogate the Board's sovereign immunity. Pet. App. 29a. Section 106(a) is best read as a jurisdiction-granting provision that channels all claims against the Board to federal district court. That channeling of exclusive jurisdiction applies to claims under both federal and territorial law, and such claims may be adjudicated when the Board's immunity is otherwise abrogated or waived. That reading gives effect to Section 106(a) and the remainder of PROMESA's provisions. There is no basis to infer a categorical abrogation of the Board's sovereign immunity in Section 106(a) itself.

1. In assessing whether a federal statute abrogates a sovereign's entitlement to immunity, this Court has long required Congress to "mak[e] its intention unmistakably clear in the language of the statute." *Kimel* v. *Florida Bd. of Regents*, 528 U.S. 62, 73 (2000) (citation omitted). Although this Court has "never required that Congress use magic words," the abrogation of immunity must "be clearly discernable from the statutory text in light of traditional interpretive tools." *FAA* v. *Cooper*,

566 U.S. 284, 290-291 (2012). "[W]here a statute is susceptible of multiple plausible interpretations, including one preserving immunity," the Court will favor the immunity-preserving interpretation. *Sossamon* v. *Texas*, 563 U.S. 277, 287 (2011); accord *Cooper*, 566 U.S. at 291; *United States* v. *Nordic Vill. Inc.*, 503 U.S. 30, 37 (1992).

Applying that rule, this Court has determined that sovereign immunity is abrogated when, for example, a statute provided that "[a]ny State . . . shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court." *Florida Prepaid Postsecondary Educ. Expense Bd.* v. *College Sav. Bank*, 527 U.S. 627, 635 (1999) (quoting 35 U.S.C. 296(a)). When Congress does not expressly refer to sovereign immunity, the Court has deemed provisions sufficiently clear if they expressly create a private cause of action against the government entity and grant federal courts jurisdiction to hear the authorized claims. See *Seminole Tribe of Fla.*, 517 U.S. at 49-50; *Kimel*, 528 U.S. at 73.

In *Seminole Tribe of Florida*, for example, the Court held that Congress plainly intended to abrogate state sovereign immunity in the Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.*, when it granted district courts "jurisdiction over * * * any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe." 517 U.S. at 49 (quoting 25 U.S.C. 2710(d)(7)(A)(i)). In those circumstances, a contrary reading would have rendered the subjection of the government entity to a private cause of action entirely ineffectual. Where a statute includes only a grant of jurisdiction without an

accompanying cause of action that is specific to a government entity, however, the Court has declined to infer an abrogation of immunity. See *Blatchford* v. *Native Vill. of Noatak*, 501 U.S. 775, 786 n.4 (1991); *Atascadero State Hosp.* v. *Scanlon*, 473 U.S. 234, 246 (1985).

2. Under those precedents, Section 106(a) cannot be read to abrogate the Board's sovereign immunity. Section 106(a) states that, subject to certain exceptions, "any action against the Oversight Board, and any action otherwise arising out of this chapter, in whole or in part, shall be brought in a United States district court for the covered territory." 48 U.S.C. 2126(a). The text of the provision makes no reference to immunity or any abrogation thereof. And while it refers to jurisdiction over suits against the Board, PROMESA itself provides no broad and general cause of action against the Board that would be rendered ineffectual in the absence of a categorical abrogation of the Board's sovereign immunity. See Pet. App. 42a. Thus, unlike in *Seminole Tribe*, reading Section 106(a) to abrogate immunity is not required to give full effect to PROMESA's provisions. Abrogation of the Board's sovereign immunity is not clearly expressed in the text or required by the statutory context.

Section 106(a) is instead best read as a jurisdictional grant and claim-channeling provision. The provision specifies that "any action against the Oversight Board"—in particular, any action against the Board that is otherwise authorized or for which the Board's immunity is elsewhere abrogated or waived—must be brought in the U.S. District Court for the District of Puerto Rico. The court of appeals correctly recognized that Section 106(a) serves a channeling purpose, but in-

correctly assumed that the channeling had to be accompanied by abrogation of the Board's sovereign immunity for all claims because otherwise the claims would be channeled to the district court only to be dismissed. Pet. App. 33a n.16. Contrary to the court of appeals' assumption, even without an implied abrogation in Section 106(a), dismissal would not be the necessary result.

To begin, as the Board itself recognizes (Br. 25, 36-37 & n.10), it is subject to suits seeking injunctive and declaratory relief for certain claims, including constitutional violations.[6] Congress also may abrogate the Board's immunity in other federal legislation. Pet. Br. 25. For example, Title VII of the Civil Rights Act of 1964 applies to "governments" and "governmental agencies," and thereby reaches the Board. See 42 U.S.C. 2000e(a)-(b); *Fitzpatrick*, 427 U.S. at 447-448 (recognizing that Title VII abrogates State immunity); *Espinal-Dominguez* v. *Commonwealth of P.R.*, 352 F.3d 490, 494 (1st Cir. 2003) (applying *Fitzpatrick* to Puerto Rico). In addition, the Board presumably can

[6] The Board cites a suit alleging that the Board's actions exceeded its authority under PROMESA. (Pet. Br. 25, 36 (citing *Vázquez-Garced* v. *Financial Oversight & Mgmt. Bd. for P.R. (In re Financial Oversight & Mgmt. Bd. for P.R.)*, 945 F.3d 3, 5 (1st Cir. 2019), cert. denied, 141 S. Ct. 241 (2020)). Such claims generally have been brought in adversary proceedings within the Title III proceedings. See, *e.g.*, *In re Financial Oversight & Mgmt. Bd. for P.R.*, 330 F. Supp. 3d 685, 688 (D.P.R. 2018), aff'd and remanded, 945 F.3d 3 (1st Cir. 2019), cert. denied, 141 S. Ct. 241 (2020). The permissibility of such suits in that forum is not at issue in this case. Nor does this case concern whether other suits alleging violations of PROMESA by the Board may be brought outside of a Title III proceeding, or the availability of an injunctive action against Board members in their official capacities, akin to a suit under *Ex parte Young*, 209 U.S. 123 (1908).

waive its immunity. Cf. *Blatchford*, 501 U.S. at 784 n.4. And because the Board is an entity of the Commonwealth, Section 106(a) would allow the exercise of jurisdiction over a suit against the Board based on violations of a territorial law that provides for suit against the Commonwealth if such a suit or the underlying territorial law would not "impair or defeat the purposes of" PROMESA, 48 U.S.C. 2128(a)(2), or otherwise conflict with PROMESA.

PROMESA itself indicates that legislation like Title VII and certain territorial laws will apply to the Board. Section 7 of the Act clarifies that "nothing in th[e] Act shall be construed as impairing or in any manner relieving a territorial government * * * from compliance with Federal laws or requirements or territorial laws and requirements implementing a federally authorized or federally delegated program protecting the health, safety, and environment of persons in such territory." 48 U.S.C. 2106; see 48 U.S.C. 2121(c) (defining the Board as "an entity within the territorial government").

3. The Board and respondent offer two different interpretations of Section 106(a). According to the Board, although Section 106(a) is a jurisdiction-channeling provision, it cannot be read to allow any territorial-law claims filed in the district court to go forward. By contrast, according to respondent, Section 106(a) must be read as a categorical abrogation of sovereign immunity to avoid rendering other provisions superfluous or eliminating a forum for territorial-law claims. Both interpretations are incorrect.

a. The Board recognizes (Br. 25, 36) that certain suits raising claims based on federal law may be brought against the Board under Section 106(a). But the Board disputes (Br. 43-44) that Section 106(a) could

allow any territorial-law claims to proceed. The text of Section 106(a), however, plainly applies to "*any* action against the Oversight Board" (emphasis added), not simply those based on federal law.

The Board contends (Br. 43-44) that *Pennhurst* prohibits such a reading. As already noted, however, see pp. 20-21, *supra*, *Pennhurst*'s limitation on federal courts imposing injunctive relief on state officials for violations of state law does not apply to territorial officials or governmental entities over which the federal government has plenary control. *Pennhurst* thus provides no reason to limit Section 106(a)'s plain language encompassing "any action" against the Board.

b. Contrary to respondent's contention (Br. in Opp. 20-21), it is not necessary to read Section 106(a) to categorically abrogate the Board's immunity to give effect to the remainder of PROMESA's provisions.

Respondent cites (Br. in Opp. 20) Section 106(c)'s contemplation of "orders entered to remedy constitutional violations" and a stay of "declaratory and injunctive relief" against the Board during an appeal. But that provision will apply to cases in which the Board is otherwise subject to suit.

Respondent's reliance (Br. in Opp. 20-21) on Section 105 fares no better. That provision provides that the Board and its members "shall not be liable for any obligation of or claim against the Oversight Board" or others "resulting from actions taken to carry out" PROMESA. 48 U.S.C. 2125. Respondent contends that Section 105's grant of immunity from liability would be "superfluous" if the Board were "categorically immunized" from suit. Resp. Br. in Opp. 21. But the Board is not categorically immunized. It remains liable for both

federal and territorial claims when there is a valid abrogation or waiver of immunity. Thus, Section 105 functions to eliminate the Board's liability for certain claims, including those brought in the course of Title III adversary proceedings.[7] See, *e.g.*, *In re Financial Oversight & Mgmt. Bd. for P.R.*, Adv. Proc. No. 18-91, 2019 WL 13214961, at *6 (D.P.R. Sept. 27, 2019) (invoking Section 105 to dismiss claims against the Board challenging fiscal plan and budgets seeking, *inter alia*, compensatory and punitive damages). Section 105 may also bar monetary liability of the Board and its members and employees for actions taken under PROMESA.

D. This Court Should Remand To Allow The Lower Courts To Determine Whether The Board Is Immune From This Suit Under Puerto Rico Law

Because Puerto Rico has the power to subject its government entities to suit, a conclusion that Section 106(a) itself does not abrogate the Board's sovereign immunity would not fully resolve whether the Board is amenable to suit here. The parties have not briefed whether Puerto Rico law should be interpreted to subject the Board to suit on respondents' claims based on Puerto Rico's constitution, as both parties appeared to assume that Section 106(a) was the only provision of law relevant to the sovereign immunity issue in this case. Should this Court conclude that Section 106(a) itself does not abrogate sovereign immunity, the Court should vacate the decision of the court of appeals and remand to permit the parties to brief and the lower courts to determine whether any generally applicable

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[7] PROMESA incorporates the Bankruptcy Act's abrogation of sovereign immunity for purposes of the Title III proceedings. See 48 U.S.C. 2161(a); 11 U.S.C. 106.

Puerto Rico law allows the suit to go forward and whether any such suit would conflict with PROMESA.[8]

The Puerto Rico Supreme Court has long recognized a constitutional right of citizens to have access to public records, subject to various exemptions. See *Bhatia Gautier* v. *Rosselló Nevares*, 199 D.P.R. 59 (P.R. 2017) (J.A. 72a-117a) (certified translation). Puerto Rico's Code of Civil Procedure likewise acknowledges the right of every citizen to inspect and copy any public document of Puerto Rico, P.R. Laws Ann. tit. 32 § 1781 (2017). Suits seeking to enforce that right are frequently filed as petitions for a writ of mandamus. See *Bhatia Gautier*, 199 D.P.R. at 64 (J.A. 75a); see P.R. Laws Ann. tit. 32 § 3421 (2017). And in 2019, the Puerto Rico legislature enacted a statutory scheme providing a streamlined process for petitioning the government and the territorial court for access to public records. P.R. Laws Ann. tit. 3, § 9919 (Supp. 2020-2021). That legislation made clear that the streamlined procedure does not "entail the exclusion of other rights and procedures pertaining to persons requesting public records * * * such as the traditional writ of mandamus." *Id.* § 9922. Implicitly or otherwise, Puerto Rico thus appears to have waived its sovereign immunity for such suits, or otherwise rendered immunity inapplicable.

Of course, this Court has long held that a waiver of sovereign immunity in a sovereign's own court does not necessarily suffice to waive sovereign immunity in the court of another sovereign. See *Great N. Life Ins. Co.* v. *Reed*, 322 U.S. 47, 54 (1944). And the extent of the territorial government's ability to waive the Board's

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[8] As noted above, the court of appeals declined to exercise pendant jurisdiction over, and thus to resolve, the Board's preemption arguments. See p. 9, *supra*.

sovereign immunity and to impose obligations on the Board is subject to PROMESA's limits, which prevent the Commonwealth's governor or legislature from "exercis[ing] any control, supervision, oversight, or review over the Oversight Board or its activities," or from "enact[ing], implement[ing], or enforc[ing] any statute, resolution, policy, or rule that would impair or defeat the purposes of [the Act]." 48 U.S.C. 2128. These issues, and related issues regarding the Board's arguments concerning special needs for confidentiality in carrying out its responsibilities under PROMESA, can be addressed by the parties and courts in further proceedings below.

CONCLUSION

The judgment of the court of appeals should be vacated, and the case should be remanded for further proceedings.

Respectfully submitted.

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