No. _____

In The
Supreme Court of the United States

RAFAEL HERNÁNDEZ-MONTAÑEZ,

Petitioner,

v.

THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

On June 30, 2016, in response to a severe financial crisis that rendered the Commonwealth of Puerto Rico insolvent after the territory declared its insolvency and inability to pay bonds issued in the municipal market, Congress enacted the Puerto Rico Oversight, Management and Financial Stability Act, 48 U.S.C. § 2101, et seq. (hereinafter referred to as "PROMESA"). Titles I and II of PROMESA created a territorial entity named "The Financial Oversight and Management Board" (hereinafter referred to as "FOMB" or "the Board") and vested it with authority to enact non-reviewable fiscal plans as well as to significantly influence the drafting and implementation of the budget. Title III of the legislation creates a special reorganization proceeding for "covered territorial entities"[1] that adopts a wide array of provisions from the Bankruptcy Code.

The instant petition presents the question of whether an action to enforce the provisions of Titles I and II of PROMESA may be brought before the judge appointed by the Chief Justice to preside only over cases "under" or "arising in" or "related to" Title III of said statute.

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[1] Section 101(d)(1)(A) of PROMESA, 48 U.S.C. § 2121(d)(1)(A), provides that "[a]n Oversight Board, in its sole discretion at such time as the Oversight Board determines to be appropriate, may designate any territorial instrumentality as a covered instrumentality that is subject to the requirements of this Act."

PARTIES TO THE PROCEEDING

Petitioner, Hon. Rafael Hernández-Montañez, is the Speaker of the Puerto Rico House of Representatives, who was granted intervention in an adversary proceeding originally filed against the Governor of Puerto Rico, Hon. Pedro Pierluisi-Urrutia.

Respondent is the Financial Oversight and Management Board for Puerto Rico.

RELATED CASES

Fin. Oversight & Mgmt. Bd. v. Hernández-Montañez (In re Fin. Oversight & Mgmt. Bd.), Adv. Proc. No. 22-00063 in Civil Case No. 17-3283, U.S. District Court for the District of Puerto Rico. Judgment entered on May 1, 2023.

Fin. Oversight & Mgmt. Bd. v. Hernández-Montañez (In re Fin. Oversight & Mgmt. Bd.), Case No. 23-1267; consolidated with 23-1268, U.S. Court of Appeals for the First Circuit. Judgment entered on August 10, 2023.

Fin. Oversight & Mgmt. Bd. v. Hernández-Montañez (In re Fin. Oversight & Mgmt. Bd.), Case No. 23-1267; consolidated with 23-1268, U.S. Court of Appeals for the First Circuit. Petition for Rehearing en Banc denied with concurring opinion by order issued on September 21, 2023.

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The First Circuit's decision affirming the District Court's judgment (App. 6-38) is published at 77 F.4th 49, with the order denying rehearing en banc (App. 103-112) published at 82 F.4th 57. The District Court's relevant ruling (App. 39-89) is published at 650 B.R. 334.

JURISDICTION

The First Circuit denied the petition for rehearing en banc on September 21, 2023. (App. 103-112). This Honorable Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

The statutory provisions that are most relevant to the foregoing petition are 48 U.S.C. § 2126(a) (reproduced at App. 113-114) and 48 U.S.C. § 2166(a) (reproduced at App. 114-118).

INTRODUCTION

As noted by this Honorable Court pursuant to the Puerto Rico Oversight, Management and Financial Stability Act, 48 U.S.C. § 2101, et seq. (hereinafter referred to as "PROMESA"), the Financial Oversight, Management and Financial Stability Act for Puerto

Rico (hereinafter referred to as "FOMB" or "the Board"), is a *sui generis* territorial entity vested with significant authority in matters pertaining to "the oversight of Puerto Rico's finances and fiscal reform efforts" (for which the Court cited Titles I and II of PROMESA) and "the representation of Puerto Rico in debt restructuring proceedings" (for which the Court cited Title III of PROMESA). *Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC*, 140 S. Ct. 1649, 1670 (2020). The statute challenged in this case (Puerto Rico Act 41-2022), is not at all related to the servicing or issuance of new public debt or the stabilization of the Commonwealth finances,[2] as its scope is expressly limited to restoring certain benefits to *private sector* employees in Puerto Rico.

One of the most salient and controversial provisions in PROMESA is the one at Section 108(a)(2) thereof, 48 U.S.C. § 2128(a)(2), which states that neither the Governor nor the Legislature may "enact, implement, or enforce any statute, resolution, policy, or rule that would impair or defeat the purposes of this Act, *as determined by the Oversight Board*" (emphasis added). Because the Board needs to assess how new legislation may "impair or defeat" the purposes of PROMESA, Section 204(a) of the Act, 48 U.S.C. § 2144(a) requires that the Governor provide certain

[2] The FOMB's statutory mission is to "provide a method for a covered territory to achieve fiscal responsibility and access to the capital markets." 48 U.S.C. § 2121(a).

information concerning new bills within 7 days of their approval.

On more than one occasion, the FOMB has successfully challenged Puerto Rico statutes under Sections 108(a)(2) and 204(a) of PROMESA. *See, e.g.*, *Fin. Oversight & Mgmt. Bd. v. Vázquez Garced (In re Fin. Oversight & Mgmt. Bd.)*, 616 B.R. 238, 256-257 (D.P.R. 2020) (nullifying a statute modifying the obligations of municipal governments to pay into certain central government programs); *Pierluisi v. Fin. Oversight & Mgmt. Bd. for P.R. (In re Fin. Oversight & Mgmt. Bd. for P.R.)*, 37 F.4th 746, 765-767 (1st Cir. 2022) (affirming the annulment of four separate statutes while adopting an "arbitrary and capricious" standard of review for board determinations under § 108(a)(2) and observing that "Congress had to make difficult choices in writing PROMESA and responding to Puerto Rico's fiscal crisis," one of which was "giving the Board the authority to review and block the implementation of laws enacted by the Puerto Rico legislature if they 'impair or defeat the purposes of PROMESA,' " which promoted the Court to "recognize the Commonwealth's objections to this unique structure").

All the actions filed by the Board pursuant to Sections 108(a)(2) and 204(a) of PROMESA were litigated as adversary proceedings within the Title III reorganization case that was filed on behalf of the Commonwealth of Puerto Rico back in May of 2017. As such, every single one of these cases has been assigned to the Hon. Laura T. Swain, Chief Judge of the United States District Court for the U.S. Court of Appeals for the

Southern District of New York, assigned by Chief Justice Roberts, pursuant to 48 U.S.C. § 2168(a), to preside over cases in which the debtor is a territory.

Contrary to previous cases, filed at the earlier stages of the Commonwealth's Title III proceeding, the adversary proceeding in this case was instituted long after a reorganization plan had been confirmed.[3] Hence, it could not be argued that a challenge to the validity of Act 41-2022 was of consequence in the resolution of the bankruptcy case.

Both the District Court – whom we will refer to as the "Title III Court," in order to be consistent with the nomenclature that has been adopted in PROMESA litigation – and the Court of Appeals reasoned that the fact that the Board was arguing that Act 41-2022 was in violation of the fiscal plans approved under 48 U.S.C. § 2141, was somehow enough to bring the issue close enough to the Title III case so that it could be handled as an adversary proceeding thereunder. *Fin. Oversight & Mgmt. Bd. v. Pierluisi Urrutia (In re Fin. Oversight & Mgmt. Bd.)*, 650 B.R. 334, 351 (D.P.R. 2023); *Hernández-Montañez*, 77 F.4th at 62. As we will

[3] As noted by the First Circuit in its opinion, "[t]he Board commenced the Title III case on behalf of the Commonwealth on May 3, 2017, and the 'Title III court' – the name commonly used to refer to the court sitting pursuant to the Chief Justice's section 308(a) designation – confirmed the Commonwealth's plan of adjustment on January 18, 2022." *Fin. Oversight & Mgmt. Bd. v. Hernández-Montañez (In re Fin. Oversight & Mgmt. Bd.)*, 77 F.4th 49, 56 (1st Cir. 2023). The confirmation order is reported at *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 636 B.R. 1 (D.P.R. 2022).

more clearly articulate in our discussion of the merits, the obligation to adhere to certified fiscal plans stems from Title II of PROMESA and is independent from and not contingent to the existence of a Title III case. The First Circuit acknowledged this contention in a footnote[4] but declined to explain how its holding in this case does not create competing standards of judicial review, as a covered territorial entity, meaning that if the entity at issue filed for reorganization under Title III the matter is an adversary proceeding but, if no Title III relief has been sought, it is a matter for one of the judges in the District of Puerto Rico.

In its initial determination, the Title III Court made the following finding, which was not overturned on appeal:

> Proceedings that "arise under" Title III are those in which *the cause of action is created by Title III*. *See In re Middlesex Power Equip. & Marine, Inc.*, 292 F.3d 61, 68 (1st Cir. 2002). Proceedings that "arise in" a Title III case *are those which have "no existence outside of the bankruptcy." Gupta v. Quincy Med. Ctr.*, 858 F.3d 657, 664-65 (1st Cir. 2017) (quoting *In re Wood*, 825 F.2d 90, 97 (5th Cir. 1987)). "Arising in" jurisdiction is not determined by reference to a "but for" test but, rather, "*the fundamental question is whether the proceeding by its nature, not its particular factual circumstance, could arise only in the context of a bankruptcy case.*" *Gupta*, 858 F.3d at 664-65

[4] 77 F.4th at 63 n. 5.

> (citing *In re Middlesex Power Equip. & Marine, Inc.*, 292 F.3d 61, 68 (1st Cir. 2002)). Prior to confirmation of a plan of adjustment, proceedings that are "related to" a Title III case are those which "potentially have some effect on the bankruptcy estate, such as altering debtor's rights, liabilities, options, or freedom of action, or otherwise have an impact upon the handling and administration of the bankrupt estate." *In re Middlesex Power Equip. & Marine, Inc.*, 292 F.3d 61, 68 (1st Cir. 2002) (quoting *Smith v. Commercial Banking Corp. (In re Smith)*, 866 F.2d 576, 580 (3d Cir. 1989)).

Pierluisi Urrutia, 650 B.R. at 348-349 (emphasis added)

In affirming the District Court's ruling, the Court of Appeals, while observing that its ruling "does not result in limitless 'related to' jurisdiction," the Court of Appeals pretty much adopted the theory that the enforcement of fiscal plan provisions is related to Title III without any explanation other than saying that said provisions were "enacted in the same piece of legislation and directed toward the same goal as Title III," which it took to mean that the "claim is thus 'related' – in a fundamental sense – to the Commonwealth's Title III case." *Hernández-Montañez*, 77 F.4th at 62-63. The fact that fiscal plan obligations and special bankruptcy proceedings arise under PROMESA is plainly insufficient to provide the requisite degree of relatedness. Covered territorial entities such as the Commonwealth must comply with fiscal plan provisions regardless of whether they ever undergo Title III

reorganization, as well as before and after such proceedings in cases where a bankruptcy proceeding has been initiated.

To the extent that the cause of action in the instant action was not created under Title III of PROMESA nor contingent upon the existence of a debt restructuring procedure, the instant case should have been assigned to one of the several Article III district judges sitting in the District of Puerto Rico, rather than to the out-of-district judge designated under federal law to perform a discrete function regarding the reorganization of a territory's debt, the express legislative intent that stems from the plain language in PROMESA is being openly disregarded. Actions arising under PROMESA are being handled in a way that dramatically differs from the legislative design, something that only this Honorable Court can change.

Adversary proceedings, by their very nature, are "essentially full civil lawsuits carried out *under the umbrella of the bankruptcy case*." *Bullard v. Blue Hills Bank*, 575 U.S. 496, 505 (2015) (emphasis added). Hence, for a matter to be resolved in an adversary proceeding it necessarily needs to potentially affect the underlying bankruptcy case in a meaningful way. Here, the *only* relationship between the challenge to Act 41-2022 and the Title III case is that the plaintiff is the debtor's exclusive representative of a debtor who has already had a reorganization plan confirmed. As the First Circuit observed in analogous post-confirmation Chapter 11 cases, a significant number of circuits have required a heightened degree of

connection between the adversary proceeding and the bankruptcy case but invoked PROMESA's unique nature and instead announced that the standard applicable here was whether the challenge to Act 41-2022 "is '*related to' the Commonwealth's Title III case*, in which the Title III court confirmed the Commonwealth's plan of adjustment five months prior to Act 41's enactment." *Hernández-Montañez*, 77 F.4th at 60-61 (emphasis added).

Certiorari should be granted to guarantee that PROMESA is implemented in the way that Congress meant it to and not in the way that the FOMB and others would *prefer* that said statute be enforced.

STATEMENT OF THE CASE

I. Legal Background

Titles I and II of PROMESA unambiguously establish how the elected government of Puerto Rico must react to the new burdens on elected democracy levied by the statute.

Sections 108(a)(2) and 204(a) of PROMESA are part of Titles I and II of the statute. With regards to the enforcement of such provisions, Section 106(a) of the statute, 48 U.S.C. § 2126(a), provides that "[e]xcept as provided in section 104(f)(2) [48 USCS § 2124(f)(2)] (relating to the issuance of an order enforcing a subpoena), and title III [48 USCS §§ 2161 et seq.] (relating to adjustments of debts), any action against the

Oversight Board, *and any action otherwise arising out of this Act, 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) (emphasis added).[5] The express statutory language is to the effect that *all* actions arising under PROMESA shall be filed before the district court for that jurisdiction. On the flip side of this jurisdictional provision, Section 306(a) of PROMESA, 48 U.S.C. § 2166(a), vests the Title III Court with original (albeit not exclusive) jurisdiction over matters arising *under Title III of PROMESA*. Clearly one statute contains an express reference to Title III while the other makes a sweeping inclusion of any action arising under PROMESA. It is a basic rule of statutory construction that where Congress includes certain language in a section of a statute but omits that same language in another section, this is presumed to have been both intentional and purposeful. *Salinas v. United States Railroad Retirement Board*, 141 S. Ct. 691, 698 (2021). This case only requires the most basic of the principles of statutory interpretation, namely, the one that provides that where Congress

[5] It bears noting that Congress not only delegated general controversies arising under PROMESA to the federal judicial system but it also provided that "[i]t shall be the duty of the applicable United States District Court, the applicable United States Court of Appeals, and, as applicable, the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under this Act." 48 U.S.C. § 2126(d).

makes its intent clear and unambiguous, courts "must apply the statute according to its terms." *Carcieri v. Salazar*, 555 U.S. 379, 387 (2009). Here, the legislation could not be any clearer, controversies related to the PROMESA special bankruptcy proceedings goes to the Title III Court while any other controversy arising under said legislation must be decided by the district court as an ordinary civil action.

To be sure, the Court of Appeals is correct that the distinguished jurist appointed by the Chief Justice to the limited charge of deciding matters arising under Title III of PROMESA is a bona fide, Senate-confirmed U.S. District Judge.[6] This however does not mean that by misusing the procedural device of the adversary proceeding, the FOMB somehow complies with Section 106(a) by having the issue being adjudicated by the district court of the covered territory. For one, the Title III judge is not a member of that court but rather a special assignee with a very narrow mandate. Most importantly, dressing claims brought pursuant to Titles I and II of PROMESA as adversary proceedings means that the FOMB always gets the judge that it wants. Judge shopping remains an inappropriate litigation tactic. As recently observed by Prof. Adam J. Levitin:

> Judge shopping is fundamentally contrary to any notion of judicial impartiality. At the very

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[6] *Hernández-Montañez*, 77 F.4th at 59. The appearing party has never argued that this case is in any way akin to a general bankruptcy case in which having a matter decided by an Article I bankruptcy judge may deprive a party from having his case decided by an Article III district judge.

> least, it creates an appearance of impropriety, and, at worst, it results in a biased adjudication. For this very reason, courts generally engage in random assignment of judges to cases.

Levtin A.J., *Judge Shopping in Chapter 11 Bankruptcy*, 2023 U. Ill. L. Rev. 351, 352-353 (2023).

The appearing parties are not required to show that the Title III court is prejudiced against its position or is otherwise incapable of ruling in an impartial manner. As the First Circuit itself has long recognized, "[t]he system adopted for normal allocation of judicial work is an excellent one: the individual calendar," in which "Judges take cases *by random assignment* and they have full responsibility for their own docket, from beginning to end." *United States v. Fay*, 505 F.2d 1037, 1040 (1st Cir. 1974) (emphasis added). It is therefore the departure from the District of Puerto Rico's Civil Local Rule 3A(a)(1)[7] that needs to be justified by the party seeking that its case be channeled to a particular judge. Furthermore, adherence to the Congressional mandate that, as per Section 306(a) of PROMESA, all Title III controversies go to one particular judge and that, as per Section 106(a), *everything else* be handled by the district court generally, is not contingent to a showing of prejudice.

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[7] This rule provides that "[t]he clerk shall assign cases to judges by lot, using the computerized case assignment system, in such manner that each judge shall be assigned an equal number of cases by category."

Once a territory or a territorial entity is decreed by the FOMB to be a "covered entity" pursuant to PROMESA, the obligation arises to provide a plan to achieve "fiscal responsibility." 48 U.S.C. § 2141(b). In any event, Congress unambiguously provided that, any deviation from this less-than-clear standard is a matter for the judges sitting in the U.S. District Court in which the entity is located, which in our case clearly means the District of Puerto Rico. The only known exception to this cogent jurisdictional rule is found at 48 U.S.C. § 2166(a), to the effect that the Title III Court shall have "original and exclusive jurisdiction of all cases under this title [48 USCS §§ 2161 et seq.]" and "original but not exclusive jurisdiction of all civil proceedings arising under this title [48 USCS §§ 2161 et seq.], or arising in or related to cases under this title [48 USCS §§ 2161 et seq.]." This case concerns the hyperextension of the "related to" component of the above jurisdictional statute.

Again, to the extent that the Commonwealth was bound by the certified fiscal plan because PROMESA so explicitly provides and not because there was a debt restructuring proceeding or because of the content of the confirmed plan, Section 306(a) of PROMESA cannot be reasonably implicated, even under the simply "related to" analysis adopted by the Court of Appeals. The mechanism created by Section 106(a) was Congress' chosen vehicle for adjudicating all other controversies arising under PROMESA. It is axiomatic that "courts are required to give effect to Congress' express inclusions and exclusions, not disregard them." *Nat'l*

Ass'n of Mfrs. v. DOD, 583 U.S. 109, 126 (2018); *Ozawa v. United States*, 260 U.S. 178, 194 (1922) ("It is the duty of this Court to give effect to the intent of Congress"). The underdeveloped allusion to the obligation to adhere to the fiscal plan that both courts below used to ram this case as an adversary proceeding amenable to § 306(a) resolution clearly does not hold any water.

Whatever reason respondent may have to prefer having its actions to enforce Titles I and II of PROMESA heard by the Title III judge, such actions are simply not viable adversary proceedings at the post-confirmation stage, merely because they may involve *statutory* obligations – such as those related to the adherence to fiscal plans – that are also mentioned in the plan. There are several "covered territorial entities" besides the Commonwealth of Puerto Rico that have not sought Title III protection but are nonetheless bound by Titles I and II of PROMESA. There cannot be a competing or parallel enforcement mechanism for cases in which respondent understands that it must vindicate Sections 108(a)(2) and/or 204(a) of the statute, as was the case here.

Given how the Court of Appeals resolved this matter, only this Honorable Court may preserve the clear congressional intent of having most controversies arising under PROMESA resolved as ordinary federal civil actions, while preserving the limited and unique role of the out-of-district judge appointed under Section 308(a) of the statute.

II. Factual Background and Procedural History

Puerto Rico has traditionally offered its private-sector employees more comprehensive benefits when compared to what is available to non-union workers in other United States jurisdictions. Since the early and mid-twentieth century, Puerto Rico has provided state-operated robust workmen's compensation and paid sick and vacation leave among other rights. The protections introduced by the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., were available to the Puerto Rican workforce since 1959. *See* 29 P.R. Laws Ann. § 146, et seq. "At will employment," which is the general rule in most states, does not apply in Puerto Rico, where unjustified terminations, even in the absence of a discriminatory motive, entails the imposition of severance pay. 29 P.R. Laws Ann. § 185a.

There have always been competing schools of thought regarding the desirability of expanded employee rights, namely, one that posits that expanded rights increase costs and lower productivity while the detractors of that theory believe that the economy benefits from a happier workforce that earns a living wage.

Since its inception in 2016, the FOMB has made it abundantly clear that it believes that workers in Puerto Rico have too many rights, making it riskier and more expensive to do business in that jurisdiction. Accordingly, when a new Legislative Assembly took office in January of 2017, the Board pushed to impose at will employment and, when that failed, it managed to

successfully lobby the enactment of Puerto Rico Act 4-2017, which rolled back many benefits that private sector employees had enjoyed for years. The promised payoff for this rollback was the influx of new private investment. This never materialized. Quite to the contrary, Puerto Rico underwent a severe understaffing of service industry positions.

Because the reduction in worker benefits did not result in the promised arrival of new investment, in 2020, local politicians campaigned on the restoration of some of the benefits that were reduced in 2017. This is the backdrop against which Act 41-2022 came to be.

Respondent vehemently opposed the bill since its inception but offered little explanation beyond philosophic divergence. Everything led to the filing of an adversary proceeding against the governor, in which the Speaker intervened as a defendant. The Board asserted two causes of action, namely: 1) that the governor did not properly discharge his duties under § 204(a) of PROMESA; and that 2) Act 41-2022 impaired or defeated the purposes of PROMESA, as per § 108(a)(2). Defendants' argument was also twofold as they both posited that: 1) this case is not under the purview of the Title III court's limited commission; and 2) there were unresolved issues of fact regarding the governor's assertion that he had provided the fullest possible extent of § 204(a) disclosures in the context of this action.

As has been the case in every single adversary proceeding in which respondent has challenged the

validity of a Puerto Rican legislative enactment under Titles I and II of PROMESA, no injunctive relief was sought to enjoin the implementation of the statute (and thus, no evidentiary hearings were held), no discovery was allowed (notwithstanding defendants' pleas to the contrary) and the matter was adjudicated in summary judgment. As previously intimated, in its initial summary judgment ruling, the Title III Court found that it could resolve the case under § 306(a) because the FOMB contended that the certified fiscal plan was disregarded and that the legislation was null and void because the governor did not comply with Section 204(a). App. 39-89. The Title III Court requested briefing on what to do with the other cause of action and ultimately and correctly rejected respondent's invitation for the issuance of an advisory opinion on how the annulled statute was supposedly inconsistent with the purposes of PROMESA. App. 93-100. This decision engendered the final judgment that was eventually appealed by both defendants.

The First Circuit affirmed the Title III Court's rulings in their entirety, without meaningfully expanding on the rationale employed by the trial court.

REASONS FOR GRANTING THE WRIT

This Honorable Court should exercise its considerable discretion to issue an extraordinary writ of

certiorari in the instant case because it presents a situation explicitly contemplated in Rule 10(a) of the Rules of the Supreme Court, namely that the lower courts have "decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power."

As observed by this Honorable Court decades ago, Puerto Rico has been granted significant self-governance prerogatives, akin to those enjoyed by the states. *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 671 (1974). The broad authority that Titles I and II of PROMESA vest on the FOMB has caused and will continue to cause clashes between the unelected Board and the elected officers. Because the views of a representative government elected to meet the needs of its constituents will often differ from that of an appointed Board with a very different goal, determinations regarding whether local legislation impairs or defeats the purposes of PROMESA will continue to land in Court. This judicial review process ought to be carried out in the way that Congress specifically prescribed and not as per a usage and custom that is inconsistent with the legislative design and results in all cases being herded before the same judge, in exclusion of the rest of the district upon which jurisdiction was explicitly vested. Without adequate and transparent judicial review that adheres to the statutory design, respondent's role as a facilitator of financial recovery may grow

into one of unelected policy maker with unrestricted veto power over legislation with which it disagrees.

This is a controversy that has palpable practical considerations, not just one that presents "an intellectually interesting and solid problem." *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955). We are talking about an incorrect construction of federal law that allows a judicial officer with a discrete and limited legal mandate to be cherrypicked by a party as its judge of choice for cases that fall outside of her mandate. As previously stated, judge-shopping mechanisms erode public confidence in the legal system. *See Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1908 (2018) ("In broad strokes, the public legitimacy of our justice system relies on procedures that are 'neutral, accurate, consistent, trustworthy, and fair,' and that 'provide opportunities for error correction.' ").

The recurring nature of this issue cannot be questioned. Indeed, a new bill containing elements from the annulled Act 41-2022 is currently pending before the Legislative Assembly and, unlike its predecessor, ample and detailed disclosures have been issued to the respondent by both the governor and the legislature. The Board has once again voiced its opposition and, unless this Honorable Court corrects the grave misapplication of the law, we have every reason to expect the filing of an adversary action in the Commonwealth's Title III case, which will be directed to the Title III judge, despite it having no bearing whatsoever on the reorganization proceedings.

The controversy in this case is small, discrete but of paramount importance to the administration of federal law and to the preservation of the public's confidence in the judicial system.

CONCLUSION

Certiorari should be granted and the First Circuit's overly expansive interpretation of the Title III Court's jurisdiction of action reversed.

Respectfully submitted,

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