

Nos. 18-1334, 18-1475, 18-1496, 18-1514, 18-1521

IN THE
Supreme Court of the United States

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, ET AL.,
Petitioners, Cross-Respondents,

v.

AURELIUS INVESTMENT, LLC, ET AL.,
Respondents, Cross-Petitioners.

AURELIUS INVESTMENT, LLC, ET AL.,
Petitioners,

v.

COMMONWEALTH OF PUERTO RICO, ET AL.

OFFICIAL COMMITTEE OF UNSECURED CREDITORS,
Petitioner,

v.

AURELIUS INVESTMENT, LLC, ET AL.

UNITED STATES,
Petitioner,

v.

AURELIUS INVESTMENT, LLC, ET AL.

UTIER,
Petitioner,

v.

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

**On Writs Of Certiorari To The United States
Court Of Appeals For The First Circuit**

**JOINT MOTION OF AURELIUS, ASSURED, AND UTIER FOR
ENLARGEMENT OF ARGUMENT TIME AND DIVIDED ARGUMENT**

Pursuant to Supreme Court Rules 21, 28.3, and 28.4, Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, and Lex Claims, LLC (collectively, “Aurelius”), Assured Guaranty Corp. and Assured Guaranty Municipal Corp. (collectively, “Assured”), and Unión de Trabajadores de la Industria Eléctrica y Riego (“UTIER”) jointly move to enlarge the total argument time and for divided argument time.

Aurelius, Assured, and UTIER respectfully request that the Court schedule one hour of argument for the Appointments Clause question presented by the petitions for certiorari filed by the Financial Oversight and Management Board for Puerto Rico, the United States, and the Official Committee of Unsecured Creditors (Nos. 18-1334, 18-1514, and 18-1496) (the “Appointments Clause petitioners”), and another hour of argument time for the *de facto* officer doctrine question presented by the separate petitions for certiorari filed by Aurelius, Assured, and UTIER (Nos. 18-1475 and 18-1521) (the “*de facto* officer doctrine petitioners”). Each hour of argument would proceed on the standard allocation of 30 minutes per side, with the respective petitioners for each question beginning each hour of argument, the respective respondents following, and the respective petitioners having the opportunity for rebuttal. This approach allows for adequate consideration of both questions presented in an orderly fashion and treats petitioners equally, rather than relegating the *de facto* officer doctrine petitioners to the status of pure respondents, as the Board and United States would prefer.

Additionally, the *de facto* officer doctrine petitioners respectfully move for divided argument, with counsel for Aurelius and Assured receiving 20 minutes of oral

argument time for each question, and counsel for UTIER receiving 10 minutes of oral argument time for each question.

In the event the Court rejects the proposed format of two, one-hour arguments and instead sets a consolidated argument, the *de facto* officer doctrine petitioners respectfully request an appropriate amount of time for sur-rebuttal and move for divided argument with counsel for UTIER receiving 10 minutes of the total allocated time and counsel for Aurelius and Assured receiving the remainder of the time. The *de facto* officer doctrine petitioners have conferred with counsel of record for the Appointments Clause petitioners, who oppose this motion.

1. Enlargement of argument time is necessary and appropriate because of the two distinct and important issues—which were raised in independently filed and granted petitions for certiorari—that these consolidated cases raise. The first question concerns whether a congressional statute, the Puerto Rico Oversight, Management, and Economic Stability Act, Pub. L. No. 114-187, 130 Stat. 549 (2016), 48 U.S.C. § 2101 *et seq.* (“PROMESA”), is constitutional under the Appointments Clause and the separation of powers. The second question involves an equally significant issue: what remedy is appropriate for a private party who prevails on the merits of a structural constitutional challenge. Each issue presents separate doctrinal and practical questions and merits its own argument time. The *de facto* officer doctrine petitioners therefore respectfully request a total of one hour of argument time for the Appointments Clause question and a total of one hour of argument time for the *de*

facto officer doctrine question, to ensure that the Court has adequate opportunity to explore both issues.

This Court has granted additional time where, as here, separately filed petitions presenting distinct claims are consolidated for argument, particularly when they raise constitutional questions of extraordinary importance. *See generally* Stephen M. Shapiro *et al.*, *Supreme Court Practice* 780 n.31, 790-91 (10th ed. 2013); *see, e.g., Obergefell v. Hodges*, 135 S. Ct. 1039 (2015) (mem.) (two-and-a-half hours); *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 1618 (2012) (mem.) (six hours); *League of United Latin Am. Citizens v. Perry*, 126 S. Ct. 827 (2005) (mem.) (two hours); *McConnell v. FEC*, 124 S. Ct. 16 (2003) (mem.) (four hours).

Additionally, when consolidated cases raise more than one important issue, this Court has given separate argument time for each issue. For example, in *National Federation of Independent Businesses*, the Court divided the argument according to the separate issues. The Court allotted 90 minutes to the Anti-Injunction Issue, and the Court-appointed *amicus* began and ended argument on that issue. 132 S. Ct. 1618. The Court allotted 120 minutes to the Minimum Coverage Provision issue, and the United States began and ended argument on that issue. *Ibid.* Finally, the Court allotted 90 minutes to the Severability issue and 60 minutes to the Medicaid issue, and for both of those arguments the challengers began and ended the arguments. *Ibid.*; *see also Obergefell*, 135 S. Ct. 1039 (allotting 90 minutes to the first question presented and 60 minutes to the second question presented); *McConnell*, 124 S. Ct.

16 (allotting 60 minutes for argument on Title I and Section 213 of the Bipartisan Campaign Reform Act of 2002, and 50 minutes to the other challenged provisions).

The *de facto* officer doctrine petitioners respectfully request that the Court order a similar argument format here. The Appointments Clause petitioners should be entitled to begin and end the first argument regarding the first question presented. In the same way, the *de facto* officer doctrine petitioners should be entitled to begin and end the second argument regarding the *de facto* officer doctrine. This argument format will not prejudice any party, because each side will be given the opportunity to present a rebuttal argument on the question on which they petitioned. Given that different parties are petitioners and respondents for the two questions, the argument format should reflect that distinction and allow each an appropriate rebuttal.

2. Additionally, divided argument is appropriate because of the varying and unique perspectives that the different *de facto* officer doctrine petitioners provide. *See Shapiro, supra*, at 777 (“Having more than one lawyer argue on a side is justifiable ... when they represent different parties with different interests or positions.”). Aurelius and Assured are jointly represented. They beneficially hold and insure general-obligation bonds issued or guaranteed by the Commonwealth and its instrumentalities. They will offer the perspective of bondholders and insurers whose interests are affected by the Financial Management and Oversight Board of Puerto Rico. UTIER, on the other hand, is a Puerto Rico labor union that represents the interests of Puerto Rican citizens also subject to the powers of the Board. *See UTIER*

Br. 12. The Appointments Clause issue therefore directly addresses UTIER’s members’ status under the Constitution. And the Board has taken actions—including the development of a new fiscal plan, which “impair[s] labor rights and benefits ... such as sick leave, vacation days and health insurance coverage,” *id.* at 3—that harm UTIER’s members in ways unrelated to Aurelius’s interests. Further, UTIER will provide local insights regarding territorial issues and democratic governance. Divided argument is therefore appropriate in these cases, regardless of how this Court formats the arguments.

Respectfully submitted.

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