IN THE
SUPREME COURT OF THE UNITED STATES

No. 20-1735

ÁNGEL MARTINEZ ORTIZ-DÍAZ, ET AL.,
Petitioners,
v.

UNITED STATES, ET AL.
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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BRIEF OF THE SENATE OF PUERTO RICO AS AMICUS CURIE IN SUPPORT OF PETITIONERS

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i. QUESTION PRESENTED

This amicus brief will address the following question:

Whether Congress has power under the Commerce Clause to criminalize cockfighting on the islands of Puerto Rico.

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INTEREST OF AMICI CURIAE[1]

Amici curiae are the Senate of the Commonwealth of Puerto Rico, whose Members are elected officials pursuant to the mandates of the Commonwealth's constitution, and its President, the Honorable José Luis Dalmau-Santiago, who has the constitutional and regulatory authority to represent said legislative body on any judicial proceedings. The purpose of this brief is twofold. First, to reiterate the limits of Congressional action pursuant to the Commerce Clause of the Constitution of the United States in prohibiting matters that are local, domestic and that occur on a purely intrastate manner in accordance to State, Territorial or Commonwealth of Puerto Rico laws. In addition, this brief's purpose is to affirm the legitimacy and authority of the Senate and the Legislative Assembly of Puerto Rico to legislate over intrastate, local, and internal affairs in Puerto Rico within the authority recognized by the terms of the current legal, juridical, and political relationship between Puerto Rico and the federal government of the United States.

Amici, thus, have a substantial interest in the proper resolution of the question presented. The scope of authority of the Legislative Assembly of Puerto Rico; the Commonwealth's internal authority over matters not regulated by the Constitution of the United States; and the limits of Congressional action over Puerto Rico's local law by way of the Commerce Clause of the Constitution are at the core of the controversy presented in this case.

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[1] Both the petitioners and the respondent have provided— via email—the express written consent to the foregoing filing. *Amicus* hereby further certifies, as per this Honorable Court's Rule 37.6 no party or counsel for a party has authored any part of the foregoing brief nor has any of the parties and/or their attor- neys made a monetary contribution to fund the filing of this brief. No person other than the *amicus* or his counsel have made a mon- etary contribution to its preparation or submission.

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STATEMENT OF THE CASE AND SUMMARY OF THE ARGUMENT

Cockfighting is a cultural practice and tradition that predates the arrival of the United States, and its Constitution, to the islands of Puerto Rico on July 25, 1898.Through its local laws, Puerto Rico has strictly and increasingly regulated this practice and tradition, which continues strong to this day. Currently, cockfighting in Puerto Rico is comprehensively overseen by the "Puerto Rico Gamecocks of the New Millennium Act", *Act No. 98 of July 31, 2007, 15 Laws of P.R. Ann. §301 et seq.*

The Commerce Clause of the Constitution of the United States has the clear, specific, and sole purpose of regulating the commerce between the States, including the Territories and the Commonwealth of Puerto Rico. However, it is not a carte blanche to permit Congress to impose its policies or views on strictly intrastate practices, dutifully regulated by lawfully elected local authorities, which do not affect in any substantial way the interstate commerce within the United States. That is precisely what Section 12616 of *the Agriculture Improvement Act of 2018, Pub. L. No. 115-334, §12616, 132 Stat. 4490, 5015-16 (2018)*, tries to unconstitutionally accomplish.

As it effectively prohibits all cockfighting activities within the Commonwealth of Puerto Rico, Section 12616 usurps Puerto Rico's authority to regulate and authorize a purely intrastate activity within its legitimate boundaries. That is an overbroad exercise of the Congressional authority established and recognized through the Commerce Clause.

Furthermore, the imposition of Section 12616 on Puerto Rico's intrastate practice and tradition of cockfighting goes against the local and internal self-

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ARGUMENT

I. SECTION 12616 OF THE AIA OF 2018 SURPASSES THE LIMITS OF CONGRESSIONAL AUTHORITY THROUGH THE COMMERCE CLAUSE

The federal government established by the Constitution is one of enumerated powers, which are "few and defined"; on the other hand, those retained by the States (and in an analogous manner, the Territories, and the Commonwealth of Puerto Rico) are "numerous and indefinite". *United States v. Lopez, 514 U.S. 549, 552 (1995), quoting James Madison, The Federalist, No. 45, pp. 292-293 (C. Rossiter Ed. 1961).* Congress does have the constitutional authority "[to] regulate Commerce with Foreign Nations, and among the several States, and with the Indian Tribes." *U.S. Const., Art. I, §8, cl. 3.* It also has that authority, but subject to the same limitations with regards to the Territories and the Commonwealth of Puerto Rico. This Court affirmed the definition of "commerce" previously stated in *Gibbons v. Ogden, 9 Wheat. 1, 189-190 (1824)*, expressing that commerce is the "commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse." *See Lopez, 514 U.S. at p. 553.* Moreover, it went to cite Gibbons to the effect that "[i]t is not intended to say that these words comprehend that commerce, which is completely internal, which is carried on between men and men in a state, or between different parts of the same State, and which does not extend to other States." *Id., quoting Gibbons, at 194-195.*

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This is fundamental in understanding Congressional overreach with Section 12616. Cockfighting in Puerto Rico is an internal practice and tradition, carried between persons of the Commonwealth (which is recognized as a State for purposes of the Commerce Clause and the AWA of 2018) or persons between different parts of the same State (or Commonwealth), and which does not extend to other States.

In *González v. Raich, 545 U.S. 1 (2005)*, this Court set forth the general regulatory categories by which Congress has the power to engage under the Commerce Clause. These are the following: (1) Congress can regulate the channels of interstate commerce; (2) Congress can regulate and protect the instrumentalities of interstate commerce and persons or things in interstate commerce; and (3) Congress has the power to regulate activities that substantially affect interstate commerce. *Id., at 16.*

This Court, citing its opinion in *Wickard v. Filburn, 317 U.S. 111, 125 (1942)*, stated that, even if a person's activity is purely local and may not be regarded as commerce, it may still be regulated by Congress if it exerts a substantial effect on interstate commerce. *González, 545 U.S. at 17.* Moreover, this Court asserted that Congress could regulate intrastate activity that is not fundamentally for commerce, if it concludes that failure to regulate that class of activity would undercut the regulation of the interstate market in that commodity. *Id.* The Court concluded that this type of regulation falls within Congress' power under the Commerce Clause only if the production of the commodity meant for home consumption has a substantial effect on supply and demand in the national market for that commodity. *Id., at 19.*

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To put it succinctly, none of these situations occur, nor are these criteria applicable concerning the practice and tradition of cockfighting within the Commonwealth of Puerto Rico. It is strictly an intrastate activity, between persons and in places located within Puerto Rico and with no substantial (if any) effect on the supply and demand of the interstate or national market of any commodity. As of today, no other State permits the lawful exercise of this practice. Thus, there is no burden on interstate commerce.

Congress enacted an amendment in 1976 to the Animal Welfare Act (AWA) that outlawed sponsoring or exhibiting an animal in any "animal fighting venture" in those instances where the animal had been "moved in interstate or foreign commerce." *Animal Welfare Act Amendments of 1976, Pub. L. No. 94-279, §17, 90 Stat. 417, 421-22 (1976) (codified as 7 U.S.C. §2156(a))*.

Within that same Act, "interstate commerce" was defined as "movement between any place in a State to any place in another State," and Puerto Rico was included in the statutory definition of "State[s]." *Id.* (*codified as 7 U.S.C. §2156(d)*). Finally, the AWA of 1976 enacted a ban on animal fights "involving live birds" only if "the fight is to take place in a State where it would be in violation of the laws thereof." *Id. (codified as 7 U.S.C. §2156(d)*). With that Congressional recognition and deference to State and Commonwealth law, Puerto Rico continued to allow and regulate cockfighting through its local statute.

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In adopting Section 12616, Congress claimed the Commerce Clause, and did not even mention the Territories Clause, as the source of its authority for said enactment. Nothing in the statute or the Congressional record of the consideration of this legislation serves to establish that there was a rational basis to believe that the practice and tradition of cockfighting in Puerto Rico has a substantial (or, for that matter, any) effect in interstate commerce. Therefore, as it fails to follow this Court's interpretation of said constitutional clause, Section 12616 is an invalid and overbroad exercise of the powers vested on Congress by the Commerce Clause, whose only purpose is banning a purely intrastate practice adequately regulated by local Puerto Rico law. As such it cannot constitutionally stand.

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II. PUERTO RICO'S LOCAL LAWS ARE, LIKE STATES' LAWS, SOVEREIGN OVER MATTERS NOT REGULATED BY THE FEDERAL CONSTITUTION

Fifty-two years after United States obtained military possession of Puerto Rico during the Spanish-American War of 1898, Congress enacted Public Law 600. See *Pub. L. No. 81-600, 64 Stat. 319 (1950)*. That statute, "[f]ully recognizing the principle of government by consent," offered the people of Puerto Rico a prospective relationship with the federal government that was to be "in the nature of a compact." It also recognized Puerto Rico the authority to "organize a government pursuant to a constitution of their own adoption." *48 U.S.C. § 731b*. Upon popular acceptance of the offer included in the statute by the qualified voters of Puerto Rico, the legislature convened a constitutional convention to draft a constitution for Puerto Rico. *48 U.S.C. § 731c*.

The people of Puerto Rico, through various exercises of electoral suffrage accepted that offer for a compact and adopted their own Constitution. Congress ratified that compact by approving the Puerto Rico Constitution with some conditions. *See Pub. L. No. 82-447, 66 Stat. 327 (1952)*, which were accepted by Puerto Rico. On July 25, 1952, the Governor formally proclaimed the establishment of the Commonwealth of Puerto Rico. See Proclamation: Establishing the Commonwealth of Puerto Rico, *P.R. Laws Ann. Hist. (Hist. L.P.R.A.) § 10*.

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to make a distinction between local laws adopted by the States and those adopted by the Territories. "In our dual system of government, the position of the state as sovereign over matters not ruled by the Constitution requires a deference to state legislative action beyond that required for the laws of a territory." *Stainback v. Mo Hock Ke Lok Po, 336 U.S. 368 (1949)*. The First Circuit Court of Appeals had likewise ruled in 1919 as to Puerto Rico. Benedicto v. West India & Panama Tel. Co., 256 F. 417, 419 (1st Cir. 1919).

However, this issue became moot regarding the laws enacted by the Commonwealth of Puerto Rico after 1952. In 1982, this Court explicitly concluded, "Puerto Rico, like a state, is an autonomous political entity, 'sovereign over matters not ruled by the [federal] Constitution.'" *Rodriguez v. Popular Democratic Party, 457 U.S. 1, 8 (1982)*.

Not that long ago, this Supreme Court also referred to the process of the adoption of the local constitution as "Puerto Rico's transformative constitutional moment." *Puerto Rico v. Sanchez Valle, 136 S.Ct. 1863, 1875 (2016)*. "Those constitutional developments were of great significance—and, indeed, made Puerto Rico 'sovereign' in one commonly understood sense of that term." Id.

In June 2016, Congress enacted *Pub. L. No. 114-187, the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), 48 U.S.C. § 2101 et seq.*, structuring a process to manage and correct Puerto Rico's "fiscal emergency" and to help mitigate the Island's "severe economic decline." *See 48 U.S.C. § 2194(m)(1)*. When adopting that law, Congress explicitly identified the Territory Clause, U.S.

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Const. art. IV, § 3, cl. 2, as the source of its authority for enactment. *See 48 U.S.C. § 2121(b) (2)*. This constitutional justification is significantly to the used for the Congressional enactment of Section 12616 of the AIA of 2018, which clearly states the Commerce Clause of the Constitution as the source of Congressional authority to enact said legislation.

While interpreting the scope of PROMESA, Justice Sotomayor wrote, "Puerto Rico's compact with the Federal Government and its republican form of government may not alter its status as a Territory. But territorial status should not be wielded as a talismanic opt out of prior congressional commitments or constitutional constraints." *Financial Oversight and Management Bd. For Puerto Rico v. Aurelius Investment, LLC; Sotomayor, J., concurring, 140 S. Ct. 1649.*

In her concurrence with the opinion of this Court, Justice Sotomayor went to say the following, "With the passage of Public Law 600 and the adoption and recognition of the Puerto Rico Constitution, 'the United States and Puerto Rico . . . forged a unique political relationship, built on the island's evolution into a constitutional democracy exercising local self-rule.' *Id., (slip op., at 2); cf. Calero-Toledo, 416 U. S., at 672 (noting with approval the view that, after Public Law 600, Puerto Rico became 'a political entity created by the act and with the consent of the people of Puerto Rico and joined in union with the United States of America under the terms of the compact' (quoting Mora v. Mejias, 206 F. 2d 377, 387 (CA1 1953)))*. Of critical import here, the Federal Government 'relinquished its control over [Puerto Rico's] local affairs [,] grant[ing] Puerto Rico a measure of autonomy comparable to

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that possessed by the States.' *Examining Bd. of Engineers, Architects and Surveyors v. Flores de Otero, 426 U. S. 572, 597 (1976).* Indeed, the very 'purpose of Congress in the 1950 and 1952 legislation was to accord Puerto Rico the degree of autonomy and independence normally associated with States of the Union.' *Id., at 594*; *see also S. Rep. No. 1779, 81st Cong., 2d Sess., 2 (1950) (Public Law 600 was 'designed to complete the full measure of local self-government in' Puerto Rico); H. R. Rep. No. 2275, 81st Cong., 2d Sess., 6 (1950) (Public Law 600 was a 'reaffirmation by the Congress of the self-government principle').*"

Thus, it must be clear that the Puerto Rico Constitution, and the branches of government it creates and structures, all emanate from the popular will, or sovereignty, of the people of Puerto Rico. This Court has recognized the process that led to the proclamation of the Constitution of the Commonwealth as a transformative exercise, by which Puerto Rico established its own government and structured it capacity to enact its own laws in a manner similar to the States. In short, as that Constitution states, "...the will of the people (of Puerto Rico) is the source of public power." *P.R. Const. pmbl.*

In the exercise of that constitutional authority over intrastate, local, and internal affairs, the Legislative Assembly of Puerto Rico, of which the Puerto Rico Senate is part of, has strictly regulated cockfighting in Puerto Rico. *See P.R. Laws Ann. tit. 15, §§301 et seq.* The Legislative Assembly has enacted a very comprehensive statute to make sure that the local executive branch is "vested with all powers and faculties necessary to promote, direct, regulate, and control any and all activities

that possessed by the States.' *Examining Bd. of Engineers, Architects and Surveyors v. Flores de Otero, 426 U. S. 572, 597 (1976).* Indeed, the very 'purpose of Congress in the 1950 and 1952 legislation was to accord Puerto Rico the degree of autonomy and independence normally associated with States of the Union.' *Id., at 594*; *see also S. Rep. No. 1779, 81st Cong., 2d Sess., 2 (1950) (Public Law 600 was 'designed to complete the full measure of local self-government in' Puerto Rico); H. R. Rep. No. 2275, 81st Cong., 2d Sess., 6 (1950) (Public Law 600 was a 'reaffirmation by the Congress of the self-government principle')*."

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related to the sport of cockfighting." Among others, these regulations include "the construction of cockpits, the fixing of seasons for holding the sport, classification, and issuance of licenses for cockpits, the regulations of cockfights, [and] the holding of tournaments, jousts, classics, fairs, [and] exhibitions." *See P.R. Laws Ann. tit. 15, §301b.*

Puerto Rico's internal legislative authority is analogous to that of a State of the Union. This Court has concluded that already. Even PROMESA recognizes that authority. It states in its Section 7 that, except as otherwise provided, nothing in this chapter shall be construed as impairing or in any manner relieving a territorial government, or any territorial instrumentality thereof, from compliance with territorial laws and requirements. *See 48 USCS § 2106.* Thus, Congress did not enact PROMESA to exclude or repeal Puerto Rico law, but to acknowledge and work through it. In addition to that, the intrastate law, practice, and tradition of cockfighting in Puerto Rico does not raise any issue or burden that, for constitutional purposes, affects the commerce between the States.

In as much, as the intrastate and local law regulating the practice and tradition of cockfighting in Puerto Rico was enacted in compliance with the authority of the Legislative Assembly of Puerto Rico, as recognized by the Constitution of the Commonwealth, and in accordance with the compact agreed between Congress and Puerto Rico, and that said practice has no substantial effect upon the interstate commerce, there is no valid constitutional reason for the federal government to try to

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In as much, as the intrastate and local law regulating the practice and tradition of cockfighting in Puerto Rico was enacted in compliance with the authority of the Legislative Assembly of Puerto Rico, as recognized by the Constitution of the Commonwealth, and in accordance with the compact agreed between Congress and Puerto Rico, and that said practice has no substantial effect upon the interstate commerce, there is no valid constitutional reason for the federal government to try to

enforce Section 12616 of the Agriculture Improvement Act of 2018 on Puerto Rico. Therefore, this Court should declare it unconstitutional.

CONCLUSION

This Court should grant the petition and reverse the decision below.

RESPECTFULLY submitted,

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