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TIMOTHY R. POWELL*

Puerto Rico v. Franklin California Tax-Free Trust: Congressional Intent Interpreted Through a Plain Reading of the Federal Bankruptcy Code

In *Puerto Rico v. Franklin California Tax-Free Trust* ("*Franklin III*"),[1] the Supreme Court analyzed whether the Commonwealth of Puerto Rico ("Puerto Rico") is a "State" for purposes of the pre-emption provision of 11 U.S.C. § 903.[2] The Court held that Puerto Rico is not a "State" for purposes of the gateway provision but is a "State" for purposes of the pre-emption provision, and therefore federal law pre-empts the Public Corporation Debt Enforcement and Recovery Act Recovery Act ("Recovery Act").[3] While the Supreme Court Majority correctly came to its holding by interpreting the plain text of the Bankruptcy Code,[4] First Circuit Judge Torruella[5] and the Dissenting Justices in *Franklin III* provide their own interesting interpretations of the issue at hand.[6]

I. THE CASE

In May of 1941, Puerto Rico enacted the Puerto Rico Electric Power Authority Act ("Authority Act") which created the Puerto Rico Electric Power Authority ("PREPA") and authorized PREPA to issue bonds.[7] The Authority Act explicitly

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1. 136 S. Ct. 1938 (2016).
2. *Id.* at 1942.
3. *Id.* at 1949.
4. *Id.* at 1946.
5. *See infra* Part IV.B.
6. *See infra* Part III.B.
7. Franklin Cal. Tax-Free Trust v. P.R. (*Franklin I*), 85 F. Supp. 3d 577, 583 (D.P.R. 2015), judgment entered, No. 14-1518 FAB, 2015 WL 574008 (D.P.R. Feb. 10, 2015), *and aff'd*, 805 F.3d 322 (1st Cir. 2015), *cert. granted*, 136 S. Ct. 582 (2015), *and cert. granted sub nom.* Acosta-Febo v. Franklin California Tax-Free Trust, 136 S. Ct. 582 (2015), *and aff'd*, 136 S. Ct. 1938 (2016) (citing P.R. LAWS ANN. tit. 22, §§ 191–239 (2012)).

guaranteed PREPA bondholders "that [Puerto Rico] will not limit or alter the rights or powers hereby vested in [PREPA] until all such bonds at any time issued, together with the interest thereon, are fully met and discharged"[8] and expressly gave PREPA bondholders the right to appoint a receiver if PREPA defaults on any of its bonds.[9]

On January 1, 1974, PREPA issued the bonds underlying the matters in this case pursuant to a trust agreement ("Trust Agreement")[10] with U.S. Bank National Association as Successor Trustee.[11] Amongst other obligations, the Trust Agreement contractually requires PREPA to pay principal and interest on bonds promptly and secures bondholders' bonds by a pledge of PREPA's present and future revenues.[12] Additionally, the Trust Agreement prohibits PREPA from creating a lien equal to or senior to bondholders' liens on these revenues.[13] Furthermore, in the event of a default, the Trust Agreement permits bondholders to accelerate payments, seek the appointment of a receiver as guaranteed in the Authority Act, and sue to enforce the terms of the Trust Agreement.[14] The Trust Agreement provides that an event of default may occur when PREPA institutes a proceeding "for the purpose of effecting a composition between [PREPA] and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or Commonwealth statute now or hereafter enacted."[15]

In June of 2014, the House of Representatives and the Senate of Puerto Rico approved, and the Governor of Puerto Rico signed into law, the Recovery Act to address the state of fiscal emergency concerning the potential insolvency of some of Puerto Rico's public corporations, including PREPA.[16] Puerto Rico modeled the

8. *Id.* (citing P.R. LAWS ANN. tit. 22, § 215).

9. *Id.* (citing P.R. LAWS ANN. tit. 22, § 207).

10. *Id.* The Trust Agreement was amended and supplemented through August 1, 2011. *Id.*

11. *Id.*

12. Franklin Cal. Tax-Free Trust v. P.R. (*Franklin I*), 85 F. Supp. 3d 577, 583 (D.P.R. 2015), judgment entered, No. 14-1518 FAB, 2015 WL 574008 (D.P.R. Feb. 10, 2015), *and aff'd*, 805 F.3d 322 (1st Cir. 2015), *cert. granted*, 136 S. Ct. 582 (2015), *and cert. granted sub nom.* Acosta-Febo v. Franklin California Tax-Free Trust, 136 S. Ct. 582 (2015), *and aff'd*, 136 S. Ct. 1938 (2016) (citing Trust Agreement § 701).

13. *Id.* (citing Trust Agreement § 712).

14. *Id.* (citing Trust Agreement §§ 802–804).

15. *Id.* (quoting Trust Agreement § 802(g)).

16. *Id.* at 583–84 (citing Recovery Act, Stmt. of Motives, § A). Puerto Rico enacted the Recovery Act to ameliorate the fiscal situations of several of its public corporations, including PREPA, the Puerto Rico Aqueduct and Sewer Authority ("PRASA"), and the Puerto Rico Highways and Transportation Authority ("PRHTA"), whose combined debt totaled twenty billion dollars. Franklin Cal. Tax-Free Trust v. P.R. (*Franklin II*), 805 F.3d 322, 331 (1st Cir.), *cert. granted*, 136 S. Ct. 582 (2015), *and cert. granted sub nom.* Acosta-Febo v. Franklin California Tax-Free Trust, 136 S. Ct. 582 (2015), *and aff'd*, 136 S. Ct. 1938 (2016) (citing Recovery Act, Stmt. of Motives, § A). Traditionally, the Government Development Bank for Puerto Rico ("GDB") provided financing to enable Puerto Rico's public utilities to continue operating without defaulting on their debt obligations, but the GDB was facing its own financial crisis at the time the Recovery Act was created. Puerto Rico v. Franklin California Tax-Free Trust (*Franklin III*), 136 S. Ct. 1938, 1942 (2016).

Recovery Act after Chapter 9 of the Federal Bankruptcy Code, which "governs the adjustments of debts of a municipality,"[17] because, as will be discussed in detail in Section III(A), Puerto Rico's municipalities are expressly prohibited from filing under Chapter 9.[18] Unless expressly prohibited from doing so, a U.S. municipality may adjust its debts under Chapter 9, but only with specific authorization from its state.[19] Additionally, the Title 11 definition of "municipality" in the Federal Bankruptcy Code includes a public agency or instrumentality of the state, like PREPA.[20]

The Recovery Act established two procedures for Puerto Rico's public corporations to restructure their debts[21] and created the Public Sector Debt Enforcement and Recovery Act Courtroom ("Special Court") to "preside over proceedings and cases brought pursuant to these two procedures."[22] The first restructuring procedure, as explained in Chapter 2 of the Recovery Act, provides that, with authorization from the Government Development Bank for Puerto Rico ("GDB"), an eligible public corporation may propose "amendments, modifications, waivers, and/or exchanges to or of a class of specified debt instruments" to seek debt relief from its creditors.[23] "If creditors representing at least fifty percent of the debt in a given class vote on whether to accept the changes, and at least seventy-five percent of participating voters approve, then the [S]pecial [C]ourt may issue an order approving the transaction and binding the entire class."[24] The second restructuring procedure, as set forth in Chapter 3 of the Recovery Act, provides that, again with authorization from the GDB, an eligible public corporation may submit a restructuring plan petition to the Special Court that lists the amounts and types of claims that will be affected as well as submits a proposed restructuring plan or proposed transfer of the public corporation's assets.[25] This procedure mirrors Chapter 9 of the Federal Bankruptcy Code in that it involves "a court-supervised restructuring process intended to offer the best solution for the broadest group of creditors."[26] If

17. *Franklin I*, 85 F. Supp. 3d at 584 (citing Recovery Act, Stmt. of Motives, § E; 11 U.S.C. §§ 901 *et seq.*).

18. *Id.* (citing 11 U.S.C. § 101(52)).

19. *Id.* (citing 11 U.S.C. § 109(c)(2)).

20. 11 U.S.C. § 101(40) (2012).

21. *Franklin I*, 85 F. Supp. 3d at 584 (citing Recovery Act, Stmt. of Motives, §§ A, E).

22. *Id.* (citing Recovery Act § 109(a)).

23. *Id.* (citing Recovery Act §§ 201(b), 202(a)). This relief included changing interest rates or the maturity date of bondholders' debts. Puerto Rico v. Franklin California Tax-Free Trust (*Franklin III*), 136 S. Ct. 1938, 1943 (2016) (citation omitted).

24. *Franklin I*, 85 F. Supp. 3d at 584 (citing Recovery Act §§ 115(b), 202(d), 204).

25. *Id.* (citing Recovery Act §§ 301(d), 310).

26. *Franklin III*, 136 S. Ct. at 1943 (citing 2014 P.R. Laws 371, 448–49).

the plan meets certain requirements,[27] the Special Court may confirm the plan, thereby binding all of the public corporation's creditors to the proposed restructuring.[28]

Following the passage of the Recovery Act, the Plaintiffs, two groups of bondholders collectively holding nearly two billion dollars of bonds issued by PREPA, filed suit in the United States District Court for the District of Puerto Rico against Puerto Rico ("District Court"), PREPA, agents of the GDB (in their official capacity), the Governor of Puerto Rico Alejandro Garcia-Padilla (in his official capacity), and the Attorney General/Secretary of Justice of Puerto Rico Cesar Miranda-Rodriguez (in his official capacity) to declare the Recovery Act unconstitutional and enjoin its implementation.[29] The first group of Plaintiffs, Franklin California Tax-Free Trust[30] and Oppenheimer Rochester[31] (collectively referred to as the "Franklin Plaintiffs"), filed their original complaint on June 28, 2014[32] and their second amended complaint[33] as well as their cross-motion for

27. Including the requirement that "at least one class of affected debt has voted to accept the plan by a majority of all votes cast in such class and two-thirds of the aggregate amount of affected debt in such class that is voted." *Franklin I*, 85 F. Supp. 3d at 584 (quoting Recovery Act § 315(e)).

28. *Id.* (citing Recovery Act §§ 315(e), 115(c)). It should also be noted that Chapter 2 of the Recovery Act permits a suspension period and that Chapter 3 permits an automatic stay, both of which prevent creditors from asserting claims or exercising contractual remedies against the public corporation debtor. *Id.* (citing Recovery Act §§ 205, 304).

29. *Id.* at 584–86, 586 n.3; Franklin Cal. Tax-Free Trust v. P.R. (*Franklin II*), 805 F.3d 322, 326 (1st Cir.), *cert. granted*, 136 S. Ct. 582 (2015), *and cert. granted sub nom.* Acosta-Febo v. Franklin California Tax-Free Trust, 136 S. Ct. 582 (2015), *and aff'd*, 136 S. Ct. 1938 (2016). Both groups of Plaintiffs sued Puerto Rico's Governor, Alejandro Garcia-Padilla, and agents of the GDB, but only the Franklin Plaintiffs sued Puerto Rico itself and PREPA itself, while only the BlueMountain Plaintiffs sued Puerto Rico's Secretary of Justice, Cesar Miranda-Rodriguez. *Franklin II*, 805 F.3d at 326 n.3.

30. Delaware corporations or trusts that collectively hold approximately $692,855,000 of PREPA bonds. *Franklin I*, 85 F. Supp. 3d at 584–85 (citing Civil No. 14-1518, Docket No. 85 at ¶ 3); *see id.* at 584 n.1 (referencing all of the parties encompassed by the Franklin California Tax-Free Trust plaintiffs).

31. Delaware statutory trusts that collectively hold approximately $866,165,000 of PREPA bonds. *Id.* at 585 (citing Civil No. 14-1518, Docket No. 85 at ¶ 4); *see id.* at 585 n.2 (referencing all of the parties encompassed by the Oppenheimer Rochester plaintiffs).

32. *Franklin II*, 805 F.3d at 325.

33. The Franklin Plaintiffs sought declaratory relief on multiple claims: (1) that the Recovery Act is preempted by 11 U.S.C. § 903 of the Federal Bankruptcy Code; (2) that the Recovery Act violates the Bankruptcy Clause of the United States Constitution; (3) that §§ 108, 115, 202, 312, 315, and 325 of the Recovery Act specifically "violate the Contract Clause of the United States Constitution by impairing the contractual obligations imposed by the Authority Act and the Trust Agreement;" (4) that the Recovery Act violates the Takings Clause of the United States Constitution by taking plaintiffs' contractual right to seek the appointment of a receiver without just compensation; (5) that § 304 of the Recovery Act "unconstitutionally authorizes a stay of federal court proceedings when a public corporation files for debt relief pursuant to the Recovery Act." Franklin Cal. Tax-Free Trust v. P.R. (*Franklin I*), 85 F. Supp. 3d 577, 585 (D.P.R. 2015), judgment entered, No. 14-1518 FAB, 2015 WL 574008 (D.P.R. Feb. 10, 2015), *and aff'd*, 805 F.3d 322 (1st Cir. 2015), *cert. granted*,

summary judgment[34] on August 11, 2014.[35] The second group of Plaintiffs, BlueMountain Capital Management, LLC ("BlueMountain Plaintiffs")[36] (collectively, the Franklin Plaintiffs and the BlueMountain Plaintiffs will be referred to as the "Plaintiffs"), filed their original complaint on July 22, 2014[37] and their amended complaint on August 12, 2014.[38] Both groups of Plaintiffs argued that the enactment of the Recovery Act impaired the contractual obligations between PREPA and PREPA's bondholders, as laid out in the Trust Agreement and the Authority Act, by annulling certain protections and rights that were promised.[39] These impaired protections and rights include: (1) that PREPA's rights would not be altered until all PREPA bonds were fully satisfied and discharged;[40] (2) that bondholders have the right to seek the appointment of a receiver if PREPA defaults;[41] (3) that PREPA will not create a lien equal to or senior to the bondholder's lien on PREPA's present or future revenues;[42] (4) that the bondholders have a right to accelerate payment if PREPA defaults;[43] and (5) that PREPA is deemed in default if it institutes a

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136 S. Ct. 582 (2015), *and cert. granted sub nom.* Acosta-Febo v. Franklin California Tax-Free Trust, 136 S. Ct. 582 (2015), *and aff'd*, 136 S. Ct. 1938 (2016) (citing Civil No. 14-1518, Docket No. 85 at ¶¶ 58–71).

34. The Franklin Plaintiffs' summary judgment motion was in regards to their pre-emption and stay of federal court proceedings claims. *Id.* at 585-86 (citing Civil No. 14-1518, Docket No. 78).

35. *Id.* at 585-86.

36. A Delaware company that holds more than $400,000,000 of PREPA bonds. *Id.* at 586 (citing Civil No. 14-1569, Docket No. 20 at ¶ 6).

37. Franklin Cal. Tax-Free Trust v. P.R. (*Franklin II*), 805 F.3d 322, 326 (1st Cir.), *cert. granted*, 136 S. Ct. 582 (2015), *and cert. granted sub nom.* Acosta-Febo v. Franklin California Tax-Free Trust, 136 S. Ct. 582 (2015), *and aff'd*, 136 S. Ct. 1938 (2016).

38. The BlueMountain Plaintiffs sought declaratory relief on multiple claims: (1) that the Recovery Act is pre-empted by the Federal Bankruptcy Code; (2) that the Recovery Act violates the Bankruptcy Clause of the United States Constitution; (3) "that the Recovery Act impairs the contractual obligations imposed by the Authority Act and the Trust Agreement and therefore violates the contract clauses of the United States and Puerto Rico constitutions;" (4) that §§ 205 and 304 of the Recovery Act "unconstitutionally authorize a stay of federal court proceedings when a public corporation files for debt relief pursuant to the Recovery Act." *Franklin I*, 85 F. Supp. 3d at 586 (citing Civil No. 14-1569, Docket No. 20).

39. *Franklin II*, 805 F.3d at 325.

40. *Franklin I*, 85 F. Supp. 3d at 590 (citing P.R. LAWS ANN. tit. 22, § 215). Plaintiffs allege that the Recovery Act altered PREPA's rights thereby eliminating Puerto Rico's express guarantee. *Id.*

41. *Id.* (citing P.R. LAWS ANN. tit. 22, § 207). *Cf.* Authority Act § 17 and Trust Agreement § 804 *with* Recovery Act § 108(b).

42. *Franklin I*, 85 F. Supp. 3d at 590 (citing Trust Agreement § 712). Plaintiffs allege that the Recovery Act permits PREPRA to obtain credit secured by a lien that is senior to the Plaintiffs' lien. *See id.* at 590, 590 n.8; Recovery Act §§ 129(d), 206(a), 322(c).

43. *Franklin I*, 85 F. Supp. 3d at 590 (citing Trust Agreement § 803). Plaintiffs allege the Recovery Act's suspension provision, stay provision, and post-plan approval provision eliminate Plaintiffs right to accelerate payments. *See id.* at 590 & 590 n.9; Recovery Act §§ 205, 304, 115(b)(2), 115(c)(3).

proceeding "for the purpose of effecting a composition between [PREPA] and its creditors or for the purpose of adjusting the claims of such creditors."[44]

Both groups of Plaintiffs "sought declaratory relief under 28 U.S.C. §§ 2201-02 that the Recovery Act is pre-empted by the federal Bankruptcy Code, violates the Contract[] Clause, violates the Bankruptcy Clause, and unconstitutionally authorizes a stay of federal court proceedings."[45] On August 20, 2014, the District Court consolidated the briefing schedules of both Plaintiffs' cases, Civil Case Nos. 14-1518 and 14-1569, but did not merge the suits into a single cause of action or change the rights of the parties because the individual cases had multiple, relevant distinctions.[46] On September 12, 2014, the Puerto Rican Defendants[47] filed a motion to dismiss the Franklin Plaintiffs' second amended complaint, opposed the Franklin Plaintiffs' cross-motion for summary judgment, and moved to dismiss the BlueMountain Plaintiffs' amended complaint, alleging that all of the Plaintiffs' claims are unripe and fail on the merits, as a matter of law.[48] PREPA joined the Puerto Rican Defendants' motion to dismiss the Franklin Plaintiffs' second amended complaint and opposition to the cross-motion for summary judgment.[49] Additionally, PREPA filed its own motion to dismiss arguing that the Franklin Plaintiffs lacked standing and that their claims were unripe.[50] On February 6, 2015, after the Franklin Plaintiffs and the BlueMountain Plaintiffs opposed the Puerto Rican Defendants' motions[51]

44. *Franklin I*, 85 F. Supp. 3d at 590-91 (citing Trust Agreement § 802(g)). Plaintiffs allege the Recovery Act expressly renders this Trust Agreement *ipso facto* clause unenforceable. *See id.* at 590-91 & 591 n.10; Recovery Act § 325(a). *See also* Recovery Act § 205(c).

45. Franklin Cal. Tax-Free Trust v. P.R. (*Franklin II*), 805 F.3d 322, 326 (1st Cir.), *cert. granted*, 136 S. Ct. 582 (2015), *and cert. granted sub nom.* Acosta-Febo v. Franklin California Tax-Free Trust, 136 S. Ct. 582 (2015), *and aff'd*, 136 S. Ct. 1938 (2016). The Franklin Plaintiffs also brought a Takings Claim under the Fifth and Fourteenth Amendments while the BlueMountain Plaintiffs brought an additional Contract Clause Claim under the Puerto Rican Constitution. *Id.*

46. *Franklin I*, 85 F. Supp. 3d at 586 (citing Civil No. 14-1518, Docket No. 92; Civil No. 14-1569, Docket No. 26). The cases were not merged because: (1) the Franklin Plaintiffs brought suit against Puerto Rico and PREPA while the BlueMountain Plaintiffs only brought suit against Puerto Rico; (2) only the Franklin Plaintiffs brought a Takings Clause Claim; (3) only the BlueMountain Plaintiffs brought a Puerto Rico Constitution Contract Clause Claim. *Id.*

47. The Puerto Rican defendants include: Puerto Rico, the Governor of Puerto Rico (Alejandro Garcia-Padilla), the Attorney General/Secretary of Justice of Puerto Rico (Cesar R. Miranda Rodriguez), and the GDB agents (Melba Acosta and John Doe). *Id.* at 586 n.3.

48. *Id.* at 586-87 (citing Civil No. 14-1518, Docket No. 95, mem. at Docket No. 95-1; Civil No. 14-1569, Docket No. 29, mem. at Docket No. 29-1).

49. *Id.* at 587 (citing Civil No. 14-1518, Docket No. 97 at p. 1).

50. *Id.* (citing Civil No. 14-1518, Docket No. 97).

51. *Franklin I*, 85 F. Supp. 3d at 587 (citing Civil No. 14-1518, Docket No. 102; Civil No. 14-1569, Docket No. 41).

and the Puerto Rican Defendants and PREPA replied,[52] the District Court issued an order and opinion in both cases.[53]

In analyzing the claims and motions before it, the District Court looked at the text, history, purpose, and context of the clauses, especially the pre-emption clause of 11 U.S.C. § 903(1), and ultimately held that the Recovery Act was pre-empted by federal law and permanently enjoined its enforcement.[54] The District Court also denied the motion to dismiss the Contract Clause claim, denied the motion to dismiss one of the Franklin Plaintiffs' Takings Clause claims, dismissed without prejudice all claims asserted against PREPA for lack of standing, and dismissed without prejudice the remaining claims for lack of ripeness.[55] Subsequently, the Puerto Rican Defendants appealed to the United States Court of Appeals for the First Circuit "from the permanent injunction, the grant of summary judgment to the Franklin plaintiffs,[56] and further argue[d] that the District Court erred by reaching the Contract[] Clause and Takings Claims in its February 6 order."[57]

The First Circuit reasoned that the primary legal issue on appeal in this case was whether 11 U.S.C. § 903(1) pre-empted the Recovery Act and further stated that this issue turns on whether the amended definition of "State"[58] in the Federal Bankruptcy Code renders 11 U.S.C. § 903(1)'s pre-emptive effect inapplicable to Puerto Rico.[59] Ultimately, the First Circuit concluded, based on a lack of legislative history to read the Federal Bankruptcy Code otherwise, that the amendment did not remove Puerto Rico from the scope of the pre-emption provision and affirmed the District Court's holding that the pre-emption provision barred the Recovery Act.[60] Furthermore, the First Circuit opined that only Congress had the authority to decide whether Puerto Rico's municipalities could seek Chapter 9 bankruptcy relief.[61] The Supreme Court of the United States granted the Defendants' petitions for writs of certiorari.[62]

52. *Id.* (citing Civil No. 14-1518, Docket No. 108-09; Civil No. 14-1569, Docket No. 44).

53. Franklin Cal. Tax-Free Trust v. P.R. (*Franklin II*), 805 F.3d 322, 326 (1st Cir.), *cert. granted*, 136 S. Ct. 582 (2015), *and cert. granted sub nom.* Acosta-Febo v. Franklin California Tax-Free Trust, 136 S. Ct. 582 (2015), *and aff'd*, 136 S. Ct. 1938 (2016).

54. *Id.*

55. *Id.* at 326, 326 n.4.

56. *Id.* at 327. The grant of summary judgment was only in regards to the pre-emption claim of the Franklin Plaintiffs. *Franklin I*, 85 F. Supp. 3d at 614.

57. *Franklin II*, 805 F.3d at 327.

58. *See* Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 421(j)(6), 101(44), 98 Stat. 333, 338-39 (codified as amended at 11 U.S.C. § 101(52)). "The post-1984 definition of 'State' includes Puerto Rico, '*except*' for the purposes of 'defining' a municipal debtor under § 109(c)." *Franklin II*, 805 F.3d at 325 (citing 11 U.S.C. §§ 101(52), 109(c)) (emphasis added).

59. *Franklin II*, 805 F.3d at 325.

60. *Id.* at 336-37.

61. *Id.* at 337 & 345.

62. Puerto Rico v. Franklin California Tax-Free Trust (*Franklin III*), 136 S. Ct. 1938, 1943 (2016).

II. LEGAL BACKGROUND

The United States bankruptcy system has evolved since its initial enactment. As the necessity for newer and better bankruptcy laws developed throughout the years, Congress used its constitutional authority to establish and amend these laws.[63] To understand why Puerto Rico enacted the Recovery Act and whether it was constitutional, it is necessary to look at the text and history of the Federal Bankruptcy Code, specifically three provisions: the 11 U.S.C. § 109(c) gateway provision, the 11 U.S.C. § 903(1) pre-emption provision, and the 11 U.S.C. § 101(52) definition of "State."[64]

A. The Early History of the Federal Bankruptcy Code, the Development of the Federal Municipal Bankruptcy Scheme, and the Origin of the 11 U.S.C. § 109(c) Gateway Provision

The Constitution authorizes Congress to establish uniform Laws on Bankruptcy throughout the United States.[65] In 1800, Congress first exercised this power by enacting a series of temporary bankruptcy Acts which led to a permanent bankruptcy scheme in 1898.[66] Initially, it was presumed that "constitutional limitations precluded either level of government, state or federal, from enacting a municipal bankruptcy regime."[67] This is so because municipalities are government entities, and thus the methods for addressing their insolvency are more limited than the procedures for addressing corporate or individual insolvency.[68] In the beginning, states couldn't enact a municipal bankruptcy regime without allegedly violating the Contract Clause, and the federal government couldn't do so without violating the states' rights to control their own municipalities under the Tenth Amendment.[69] However, in 1933 and out of necessity due to the Great Depression, Congress began developing a municipal bankruptcy scheme by enacting what came to be the precursor to Chapter

63. U.S. CONST. art. I, § 8, cl. 4.

64. Puerto Rico v. Franklin California Tax-Free Trust, 136 S. Ct. 1938, 1944 (2016).

65. *Id.* (citing U.S. CONST. art. I, § 8, cl. 4).

66. *Id.* (citing An Act to Establish a Uniform System of Bankruptcy Throughout the United States, ch. 541, 30 Stat. 544; Hanover Nat. Bank v. Moyses, 186 U.S. 181, 184 (1902)).

67. Franklin Cal. Tax-Free Trust v. P.R. (*Franklin II*), 805 F.3d 322, 327 (1st Cir.), *cert. granted*, 136 S. Ct. 582 (2015), *and cert. granted sub nom.* Acosta-Febo v. Franklin California Tax-Free Trust, 136 S. Ct. 582 (2015), *and aff'd*, 136 S. Ct. 1938 (2016) (citing M.W. McConnell & R.C. Picker, *When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy*, 60 U. CHI. L. REV. 425, 427–28 (1993)).

68. *Id.* (citing M.W. McConnell & R.C. Picker, *When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy*, 60 U. CHI. L. REV. 425, 426–50 (1993)); *see also id.* at 327 n.5.

69. *Id.* at 327–28 (citing M.W. McConnell & R.C. Picker, *When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy*, 60 U. CHI. L. REV. 425, 426-28 (1993)); *see also id.* at 327 n.6.

9 of the Federal Bankruptcy Code which gave the states "a mechanism for addressing municipal insolvency that they could not create themselves."[70]

Since the inception of these federal municipal bankruptcy laws, Congress has tried to preserve the States' powers over their municipalities.[71] In *Ashton v. Cameron County Water Improvement Dist. No. One*,[72] the Supreme Court struck down Congress' first attempt to enable the states' municipalities to file for federal bankruptcy relief by concluding that the statute infringed the States' powers "to manage their own affairs"[73] and thereby violated the Tenth Amendment.[74] In 1937, Congress amended its 1933 statute to avoid this Tenth Amendment problem by

> *requiring a state's consent in the federal municipal bankruptcy regime before permitting municipalities of the state to seek relief under it, and in part by emphasizing that the statute did not effect "any restriction on the powers of the States or their arms of government in the exercise of their sovereign rights and duties."*[75]

The Supreme Court upheld the 1937 amended statute in *United States v. Bekins*[76] because it believed the amended statute appropriately balanced federal and state power by requiring that the state first authorize its instrumentality to seek relief under the federal bankruptcy laws.[77] The *Bekins* ruling is the origin of the 11 U.S.C. § 109(c) state-authorization requirement, also known as the "gateway provision," which requires a state to "authorize [its] municipalities to seek relief under Chapter 9 before the municipalities may file a Chapter 9 petition."[78] Title 11 U.S.C. § 109(c) provides:

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70. *Id.* at 328 (citing McConnell & Picker, *When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy*, 60 U. CHI. L. REV. 425, 427-29, 450–54 (1993)).

71. *Franklin III*, 136 S. Ct. at 1944.

72. Ashton v. Cameron Cty. Water Improvement Dist. No. One, 298 U.S. 513 (1936).

73. *Franklin III*, 136 S. Ct. at 1944 (citing *Ashton*, 298 U.S. at 531).

74. *Franklin II*, 805 F.3d at 328.

75. *Id.* (citing United States v. Bekins, 304 U.S. 27, 49–54 (1938) (citation omitted)).

76. United States v. Bekins, 304 U.S. 27, 49–54 (1938).

77. *Franklin III*, 136 S. Ct. at 1944 (citing *Bekins*, 304 U.S. at 47–49, 53–54). The requirement that states give their municipalities consent to seek relief under the federal bankruptcy laws both creates a cooperative state-federal Chapter 9 scheme and "promotes sovereignty by preventing municipalities from strategically seeking (or threatening to seek) federal municipal relief to 'reduce the conditions that states place on a proposed bailout.'" *Franklin II*, 805 F.3d at 329 (quoting C.P. Gillette, *Fiscal Federalism, Political Will, and Strategic Use of Municipal Bankruptcy*, 79 U. CHI. L. REV. 281, 285–86 (2012)).

78. *Franklin III*, 136 S. Ct. at 1944.

11 U.S.C. § 109. Who may be a debtor

* * * *

(c) An entity may be a debtor under chapter 9 of this title if and only if such entity—
(1) is a municipality;
(2) is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter. . .[79]

* * * *

B. The Evolution of the Federal Municipal Bankruptcy Scheme, How it Applies to the States, and the Congressional Enactment of the 11 U.S.C. § 903(1) Pre-emption Provision

In 1946, the federal bankruptcy laws evolved again to bar states from enacting their own municipal bankruptcy schemes.[80] In 1942, the Supreme Court ruled in *Faitoute Iron & Steel Co. v. Asbury Park*[81] that "federal bankruptcy laws did not pre-empt New Jersey's municipal bankruptcy scheme, which required municipalities to seek relief under state law before resorting to the federal municipal bankruptcy scheme."[82] In response to *Faitoute*, Congress enacted Section 83(i) in 1946 which overturned *Faitoute* and expressly pre-empted state municipal bankruptcy laws.[83] Congress sought to preserve Section 83(i) when it re-codified it, with some changes, in 1978

79. 11 U.S.C. § 109 (2012).

80. *Franklin III*, 136 S. Ct. at 1944–45.

81. Faitoute Iron & Steel Co. v. Asbury Park, 316 U.S. 502 (1942).

82. *Franklin III*, 136 S. Ct. at 1945 (citing Faitoute Iron & Steel Co. v. Asbury Park, 316 U.S. 502, 507-09 (1942)).

83. Franklin Cal. Tax-Free Trust v. P.R. (*Franklin II*), 805 F.3d 322, 334–35 (1st Cir.), *cert. granted*, 136 S. Ct. 582 (2015), *and cert. granted sub nom.* Acosta-Febo v. Franklin California Tax-Free Trust, 136 S. Ct. 582 (2015), *and aff'd*, 136 S. Ct. 1938 (2016) (citing Act of July 1, 1946, Pub.L. No. 481, Ch. 532, sec. 83(i), 60 Stat. 409, 415). Section 83(i), as enacted in 1946, read as follows:

> Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State . . . Provided, however, That no State law prescribing a method of composition of indebtedness of such agencies shall be binding upon any creditor who does not consent to such composition, and no judgment shall be entered under such State law which would bind a creditor to such composition without his consent.

Act of July 1, 1946, Pub.L. No. 481, ch. 532, sec. 83(i), 60 Stat. 409, 415.

as 11 U.S.C. § 903(1), also known today as the "pre-emption provision."[84] The modern pre-emption provision reads as follows:

> 11 U.S.C. § 903. Reservation of State Power to Control Municipalities
> This chapter does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise, but—
> (1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition; and
> (2) a judgment entered under such a law may not bind a creditor that does not consent to such composition.[85]

C. The History of the Definition of "State" in the Federal Bankruptcy Code.

The third provision of the Federal Bankruptcy Code at issue in this case is the definition of "State," which has included territories in its definition since the first Federal Bankruptcy Act was enacted in 1898, the same year Puerto Rico became a territory of the United States.[86] However, "when Congress re-codified the bankruptcy laws to form the Federal Bankruptcy Code in 1978, the definition of 'State'" was left out of the definitions section.[87] In response to this omission, which was not the primary purpose of the Act,[88] Congress amended the Federal Bankruptcy Code in 1984 to reincorporate the definition of "State," as codified in 11 U.S.C. § 101(52).[89] "The amended definition includes Puerto Rico as a State for purposes of the Code with one exception:"[90]

84. *Franklin II*, 805 F.3d at 335 (citing S. REP. NO. 95-989 at 110). Congress felt this re-codification was necessary "to maintain the uniformity of the bankruptcy laws be preventing states from 'enact[ing] their own versions of Chapter [9].'" *Id.* (quoting L.P. King, *Municipal Insolvency: Chapter IX, Old and New; Chapter IX Rules*, 50 AM. BANKR. L.J. 55, 65 (1976)).

85. 11 U.S.C. § 903.

86. *Franklin III*, 136 S. Ct. at 1945 (citing 30 Stat. 545). The 1898 Federal Bankruptcy Act definition of "State" also included "the Indian Territory, Alaska, and the District of Columbia." *Id.* (citing 30 Stat. 545).

87. *Id.* (citing Bankruptcy Reform Act, 92 Stat. 2549–2554).

88. *Franklin II*, 805 F.3d at 330 n.11.

89. *Franklin III*, 136 S. Ct. at 1945 (citing § 421, 98 Stat. 368–69).

90. *Id.*

> 11 U.S.C. § 101. Definitions
> In this title the following definitions shall apply:
>
> * * * *
>
> (52) The term "State" includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title.[91]
>
> * * * *

This exception, which was not in previous versions of the definition of "State," "deprived Puerto Rico of the power to grant its municipalities the authorization required by § 109(c)(2) to file for Chapter 9 relief."[92] *Franklin III*, as will be discussed later, centers around "whether this change was also meant to transform the preemption provision of § 903(1) without Congress expressly saying so."[93]

D. Puerto Rico and Its Relationship to the Federal Municipal Bankruptcy Scheme

Puerto Rico has been able to issue bonds, and authorize its municipalities to issue bonds, since 1917.[94] However, if Puerto Rico's municipalities can't meet their bond obligations, they, like state municipalities, are excluded from bankruptcy relief under the other chapters of the Bankruptcy Code.[95] Additionally, "from 1938 until the modern Bankruptcy Code was introduced in 1978, Puerto Rico, like the states, could authorize its municipalities to obtain federal municipal bankruptcy relief."[96] While the definition of "State" was left out of the Code from 1978 to 1984, most scholars agree that this did not affect Puerto Rico's right to authorize its municipalities to seek bankruptcy relief.[97] However, when Congress re-introduced the definition of "State"

91. 11 U.S.C § 101(52).

92. *Franklin II*, 805 F.3d at 331. *See* 11 U.S.C. § 109(c)(2).

93. *Franklin II*, 805 F.3d at 331.

94. *Id.* at 329 (citing Act of Mar. 2, 1917, ch. 145, § 3, 39 Stat. 951, 953 (codified as amended at 48 U.S.C. § 741)).

95. *Id.* (citing 11 U.S.C. § 109).

96. *Id.* at 329-30 (citing 11 U.S.C. §§ 1(29), 403(e)(6) (1938); 48 U.S.C. § 734 (1934); *Bekins*, 304 U.S. at 49, *accord* 11 U.S.C. §§ 1(29), 404 (1976); 48 U.S.C. § 734 (1976); *see also* S.J. Lubben, *Puerto Rico and the Bankruptcy Clause*, 88 AM. BANKR. L.J. 553, 572 (2014)). Puerto Rico's power to provide state authorization, which was required for plan confirmation, was derived from (1) the Bankruptcy Act's definition of "State," in effect from 1938–1978, which defined "State" to include territories and (2) the extension of United States laws to Puerto Rico. *Franklin II*, 806 F.3d at 329 n.9.

97. *Franklin II*, 806 F.3d at 330 (citing Cohen v. de la Cruz, 523 U.S. 213, 221-22 (1998); *In re* Segarra, 14 B.R. 870, 872–73 (D.P.R. 1981)); *see also Franklin* II, 806 F.3d at 330 n.10.

in 1984, it defined "State" to include Puerto Rico as it had before 1978, but it also added the phrase, "except for the purpose of defining who may be a debtor under chapter 9 of [the Bankruptcy Code]."[98] As a result, Puerto Rico was expressly, though indirectly, deprived of the right to authorize its municipalities to file for Chapter 9 bankruptcy relief as required by 11 U.S.C. § 109(c).[99] Put differently, Puerto Rico could not file for Chapter 9 without first obtaining congressional approval.[100] Without the ability to authorize its municipalities to seek Chapter 9 relief, and facing an imminent fiscal crisis, Puerto Rico took matters into its own hands and enacted its own municipal bankruptcy laws, the Recovery Act, "to cover the purported gap created by the 1984 amendment."[101] The Recovery Act permitted Puerto Rico's municipalities, who were not authorized for federal Chapter 9 relief, "to seek Chapter 2 and Chapter 3 relief, either simultaneously or sequentially, with approval from the GDB."[102] The Supreme Court granted certiorari to determine the constitutionality of the Recovery Act based on the aforementioned Bankruptcy Code provisions.[103]

III. THE COURT'S REASONING

In *Franklin III*, the Supreme Court affirmed the judgment of the United States Court of Appeals for the First Circuit by holding that federal law pre-empts the Recovery Act.[104] In delivering the opinion of the Court, Justice Thomas supported his holding by analyzing the plain text of the Bankruptcy Code.[105] Justice Sotomayor, with whom Justice Ginsburg joined, dissented.[106]

A. The Majority Argues that the Plain Wording of the Bankruptcy Code Provides for Congress' Intent

The Majority began its review by discussing the facts and procedural history of the case.[107] In particular, the Majority focused on the text and history of three provisions of the Bankruptcy Code that are necessary to decide whether Puerto Rico is a "State"

98. *Franklin II*, 805 F.3d at 330-31 (citing 11 U.S.C. § 101(52); *compare id.*, *with* Act of June 22, 1938, Pub. L. No. 696, ch. 575, § 1(29), 52 Stat. 840, 842).

99. *Id.* at 331. "Puerto Rico now lacks the power it once had been granted by Congress to authorize its municipalities to file for Chapter 9 relief." *Id.* at 325.

100. *Id.* at 331.

101. *Id.* at 331–32.

102. *Id.* at 332. (citing Recovery Act, §§ 112, 201(b), 301(a)).

103. Puerto Rico v. Franklin California Tax-Free Trust (*Franklin III*), 136 S. Ct. 1938, 1943 (2016)

104. *Id.* at 1949.

105. *Id.* at 1946.

106. *Id.* at 1949.

107. *Id.* at 1942–43.

for purposes of the pre-emption provision.[108] These three provisions include: (1) the 11 U.S.C. § 109(c) "gateway provision," (2) the 11 U.S.C. § 903 "pre-emption provision," and (3) the 11 U.S.C. § 101(52) definition of "State."[109] The Majority identified the issues in this case as

> *whether, in light of the amended definition [of "State"], Puerto Rico is no longer a "State" only for purposes of the gateway provision, which requires States to authorize their municipalities to seek Chapter 9 relief, or whether Puerto Rico is also no longer a "State" for purposes of the pre-emption provision.*[110]

The Majority noted and both parties agreed that, prior to the 1984 amendment, Puerto Rico was considered a "State" for purposes of the Chapter 9 pre-emption provision.[111] Therefore, it is clear that, prior to 1984, federal law would have pre-empted the Recovery Act because the Recovery Act would have violated 11 U.S.C. § 903(1).[112] However, in this case, the parties have conflicting interpretations of how the 1984 amendment to the definition of "State" altered, if at all, the pre-emption provision.[113] Petitioners ("Puerto Rican Defendants") interpret the amended definition of "State" to entirely exclude Puerto Rico from all of Chapter 9 of the Bankruptcy Code.[114] Respondents ("Plaintiffs") interpret the amended definition of "State" to preclude Puerto Rico from authorizing its municipalities to seek Chapter 9 relief through the 11 U.S.C. § 109(c) gateway provision but nonetheless to include Puerto Rico for purposes of the pre-emption provision.[115] The Majority ultimately holds that it agrees with Respondents' interpretation of how the amended definition of "State" affects Puerto Rico in Chapter 9 bankruptcy.[116]

Principally, the Majority opined that the plain text of the Bankruptcy Code should begin and end its analysis.[117] 11 U.S.C. § 903 contains an express pre-emption clause

108. *Id.* at 1944.

109. Puerto Rico v. Franklin California Tax-Free Trust (*Franklin III*), 136 S. Ct. 1938, 1944 (2016)

110. *Id.* at 1945.

111. *Id.*

112. *Id.* "[F]ederal law would have pre-empted the Recovery Act because it is a 'State law prescribing a method of composition of indebtedness' for Puerto Rico's instrumentalities that would bind nonconsenting creditors." *Id.*

113. *Id.* at 1945–46.

114. Puerto Rico v. Franklin California Tax-Free Trust (*Franklin III*), 136 S. Ct. 1938, 1946 (2016). If Petitioners' interpretation is correct, the pre-emption provision would not apply to Puerto Rico which would allow them to "enact their own municipal bankruptcy scheme without running afoul of the code." *Id.*

115. *Id.* If Respondents' interpretation is correct, then the pre-emption provision applies to Puerto Rico and "bars it from enacting the Recovery Act." *Id.*

116. *Id.*

117. *Id.*

and therefore provides Congress' pre-emptive intent.[118] The amended definition of "State" in 11 U.S.C. § 101(52) provides a singular exception which unmistakably refers only to the 11 U.S.C. § 109 gateway provision.[119] The Majority interprets "Congress' use of the 'who may be a debtor' language in the amended definition of 'State' to mean that Congress intended to exclude Puerto Rico from the gateway provision delineating who may be a debtor under Chapter 9."[120] Therefore, the Majority determines that Puerto Rico is not a "State" for purposes of the gateway provision, and as a result, Puerto Rico's "municipalities cannot satisfy the requirements of Chapter 9's gateway provision until Congress intervenes."[121] However, Puerto Rico is no less a state for purposes of the pre-emption provision than it was before the amended definition was enacted in 1984 because the Code has prohibited "States" from enacting their own municipal bankruptcy schemes for seventy years.[122] "Had Congress intended to 'alter th[is] fundamental detai[l]' of municipal bankruptcy, [the Supreme Court] would expect the text of the amended definition to say so."[123]

Additionally, the Majority weighed in on each of the Dissent's arguments, noting that the Dissent adopted many of the Petitioners' arguments.[124] First, the Dissent argued that "the exclusion of Puerto Rico as a 'State' for purposes of the gateway provision effectively removed Puerto Rico from all of Chapter 9."[125] The Majority disagrees with this argument by providing that if Congress had intended to exclude Puerto Rico entirely from Chapter 9, it would have specifically articulated that fact rather than merely excluding it from only the gateway provision of 11 U.S.C. § 109(c).[126] Second, the Dissent argues that the pre-emption provision cannot apply to Puerto Rico because it is a part of Chapter 9.[127] The Majority again disagrees with this argument because it relies on the fact that Puerto Rico is excluded entirely from Chapter 9, which it is not.[128] Separately, the GDB also raises an argument that neither the Majority nor the Dissent adopt because it would nullify the pre-emption provision

118. Puerto Rico v. Franklin California Tax-Free Trust (*Franklin III*), 136 S. Ct. 1938, 1946 (2016) (quoting Chamber of Commerce of United States of America v. Whiting, 563 U.S. 582, 594 (2011)).

119. *Id.*

120. *Id.* at 1946 (citing Sullivan v. Stroop, 496 U.S. 478, 484 (1990); Northcross v. Board of Ed. of Memphis City Schools, 412 U.S. 427, 428 (1973)).

121. *Id.*

122. *Id.* at 1947 (citing 60 Stat. 415 (overturning *Faitoute*, 316 U.S. at 507–09)).

123. *Id.* (quoting Whitman v. American Trucking Assns., Inc., 531 U.S. 457, 468 (2001)).

124. Puerto Rico v. Franklin California Tax-Free Trust (*Franklin III*), 136 S. Ct. 1938, 1947 (2016).

125. *Id.* at 1947 (citation omitted).

126. *Id.* at 1947–48.

127. *Id.* at 1948. "Because Puerto Rico's municipalities are ineligible for Chapter 9 relief, Chapter 9 cannot 'affec[t] Puerto Rico's control over its municipalities,' according to the Dissent." *Id.* (citation omitted).

128. *Id.* at 1948–49.

altogether.[129] However, the Court ultimately held that Puerto Rico is a "State" for purposes of the pre-emption provision and therefore the Recovery Act is pre-empted, affirming the lower court rulings.[130]

B. The Dissent Argues that "[t]he structure of the Code and the language and purpose of [11 U.S.C.] § 903 demonstrate that Puerto Rico's municipal debt restructuring law should not be read to be prohibited by Chapter 9"

First, the Dissent disagrees with the Majority's holding and instead align themselves with the Petitioner's reading of the amended definition of "State" which would entirely exclude Puerto Rico from Chapter 9.[131] The Dissent begins by opining that the crippling debt of Puerto Rico's three main public utilities, including PREPA, will soon lead to the failure of vital public services.[132] Correcting this type of situation is precisely what the bankruptcy system is intended for, and since Congress excluded Puerto Rico's municipalities from the federal municipal bankruptcy scheme in Chapter 9 of the Bankruptcy Code, Puerto Rico was merely employing a remedy available to it.[133] The Dissent argues that Puerto Rico enacted the Recovery Act, which resembled Chapter 9 of the Bankruptcy Code, to allow Puerto Rico's utilities to restructure their debts while continuing to provide these vital public services.[134]

Second, the Dissent went into detail on how the structure of the Bankruptcy Code supports its position.[135] The Dissent argues that while bankruptcy is not a one-size-fits-all process, the Bankruptcy Code is a governing body of law for different types of entities that seek its protection.[136] All entities have to initially pass through the gateway provisions of 11 U.S.C. § 109 to then be subject to a relevant chapter of the Code.[137] Once governed by a specific chapter, the interested parties are only governed by that chapter and the Bankruptcy Code chapters that apply to all cases.[138] The Majority ignores this reading and argues that since the amended definition in 11

129. Puerto Rico v. Franklin California Tax-Free Trust (*Franklin III*), 136 S. Ct. 1938, 1948–49 (2016).

130. *Id.* at 1949.

131. *Id.* at 1949 (Sotomayor, J., dissenting).

132. *Id.* at 1949–50. These vital public services include utilities' abilities to provide electricity, safe drinking water, road maintenance, and public transportation. *Id.* at 1950.

133. *Id.* at 1950 (citing 11 U.S.C. §§ 101(52), 109(c)).

134. Puerto Rico v. Franklin California Tax-Free Trust (*Franklin III*), 136 S. Ct. 1938, 1950 (2016) (Sotomayor, J., dissenting).

135. *Id.* at 1950–53.

136. *Id.* at 1950.

137. *Id.* at 1951. "Once an entity meets the eligibility requirements for a specific "gateway" set out in § 109 and elects to pass through that gateway, it becomes subject to the relevant chapter of the Code – 7, 9, 11, 12, or 13." *Id.*

138. *Id.* (citing 1 RICHARD LEVIN & HENRY J. SOMMER, COLLIER PAMPHLET EDITION, BANKRUPTCY CODE 59 (Collier Pamphlet ed. 2015) ("[A]s a general rule, the provisions of the particular chapter apply only in that chapter.")).

U.S.C. § 101(52) prevents Puerto Rico from authorizing its municipalities to file for Chapter 9, these municipalities are therefore prevented from satisfying the requirements of the 11 U.S.C. § 109 gateway provision and ultimately filing for Chapter 9 relief without congressional intervention.[139] However, the Dissent believes that since Puerto Rico cannot pass through the gateway of 11 U.S.C. § 109, the pre-emption provision of 11 U.S.C. § 903(1) should also not apply to them.[140]

Third, the Dissent focuses on the context of the statutory provision of 11 U.S.C. § 903.[141] The Dissent reasoned that "Section 903 delineates the balance of power between the States that can authorize their municipalities to access Chapter 9 protection and the bankruptcy court that would preside over any municipal bankruptcy commenced under Chapter 9."[142] However, since Puerto Rico cannot pass through the 11 U.S.C. § 109(c) gateway to Chapter 9, the Dissent argues that this distribution between the State and the bankruptcy court is irrelevant and none of Chapter 9 should then apply to Puerto Rico, including the pre-emption provision in 11 U.S.C. § 903(1).[143] Because of the structure of the code,[144] the amendment to 11 U.S.C. § 101(52) excludes Puerto Rico and its municipalities from 11 U.S.C. § 109(c)'s gateway, ultimately excluding Puerto Rico and its municipalities from Chapter 9 for all purposes.[145] Ultimately, the Dissent believes that 11 U.S.C. § 903 is directed at states that can approve their municipalities for Chapter 9 bankruptcy and therefore it should not pre-empt Puerto Rico's Recovery Act.[146]

IV. ANALYSIS

In *Franklin III*, the Supreme Court affirmed the District Court and First Circuit by holding that Puerto Rico is not a "State" for purposes of the gateway provision but is a "State" for purposes of the pre-emption provision, and therefore federal law pre-empts the Recovery Act.[147] The Majority reached its holding by focusing on the plain

139. Puerto Rico v. Franklin California Tax-Free Trust (*Franklin III*), 136 S. Ct. 1938, 1951 (2016) (Sotomayor, J., dissenting).

140. *Id.* at 1952. "Section 903 by its terms presupposes that Chapter 9 applies only to States who have the power to authorize their municipalities to invoke its protection." *Id.*

141. *Id.*

142. *Id.*

143. *Id.* (citing United States v. Morrow, 266 U.S. 531, 534–35 (1925)).

144. Puerto Rico v. Franklin California Tax-Free Trust (*Franklin III*), 136 S. Ct. 1938, 1952–53 (2016) (Sotomayor, J., dissenting). "[W]ords of a statute must be read in their context and with a view of their place in the overall statutory scheme." FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133 (2000) (citation omitted).

145. *Franklin III*, 136 S. Ct. at 1953 (Sotomayor, J., dissenting).

146. *Id.* at 1953–54.

147. *Id.* at 1949.

language of the Bankruptcy Code,[148] while the Dissent provided a policy argument focusing on the entire structure of the Code and the implications such a holding would have on the citizens of Puerto Rico.[149] Additionally, First Circuit Judge Juan Torruella provided a unique view that comes to the same conclusion as the Majority through his claims that the 1984 Amendments are invalid all-together.[150] However, where there are no uncertainties or ambiguities in the statutory language of the Bankruptcy Code, the Court must hold in favor of such language and disregard arguments contrary to the plain interpretation of federal statutes and inquiries into congressional intent in drafting such statutes.[151]

A. The Majority's Plain, Textual Reading of the Bankruptcy Code Begins and Ends the Analysis

In *Franklin III*, the Supreme Court correctly held that Puerto Rico's Recovery Act is pre-empted by federal law.[152] Justice Thomas, writing for the Majority, appropriately provided that the "plain text of the Bankruptcy Code begins and ends [the] analysis."[153] In doing so, the Court cited three cases, two of which involve federal pre-emption, supporting their finding that the plain meaning of a statute or clause provides the best evidence of Congress' intent:[154] (1) *United States v. Ron Pair Enterprises, Inc.*;[155] (2) *Chamber of Commerce of United States of America v. Whiting*;[156] and (3) *Gobeille v. Liberty Mut. Ins. Co*.[157]

i. United States v. Ron Pair Enterprises, Inc.

In *United States v. Ron Pair Enterprises, Inc.*, the Supreme Court had to resolve whether 11 U.S.C. § 506(b) of the Bankruptcy Code "entitles a creditor to receive postpetition interest on a nonconsensual oversecured claim allowed in a bankruptcy proceeding."[158] There are two types of secured claims: (1) voluntary secured claims,

148. *Id.* at 1946.

149. *Id.* at 1954 (Sotomayor, J., dissenting).

150. Franklin Cal. Tax-Free Trust v. P.R. (*Franklin II*), 805 F.3d 322, 346 (1st Cir.), *cert. granted*, 136 S. Ct. 582 (2015), *and cert. granted sub nom.* Acosta-Febo v. Franklin California Tax-Free Trust, 136 S. Ct. 582 (2015), *and aff'd*, 136 S. Ct. 1938 (2016) (Torruella, J., concurring).

151. United States v. Ron Pair Enters., Inc., 489 U.S. 235, 241–42 (1989) (citations omitted).

152. *Franklin III*, 136 S. Ct. at 1949.

153. *Id.* at 1946. "Resolving whether Puerto Rico is a 'State' or purposes of the pre-emption provision begins 'with the language of the statute itself,' and that 'is also where the inquiry should end,' for 'the statute's language is plain.'" *Id.* (quoting *Ron Pair Enters., Inc.*, 489 U.S. at 241).

154. *Id.*

155. United States v. Ron Pair Enters., Inc., 489 U.S. 235 (1989).

156. Chamber of Commerce of U.S. v. Whiting, 563 U.S. 582 (2011).

157. Gobeille v. Liberty Mut. Ins. Co., 136 S. Ct. 936 (2016).

158. *Ron Pair Enters., Inc.*, 489 U.S. at 237.

which are created by agreement between the creditor and debtor and which are called "security interests" by the Bankruptcy Code;[159] and (2) involuntary secured claims, such as judicial or statutory liens, which are fixed by operation of law and which do not require a debtor's consent.[160] Because some courts of appeals had drawn a distinction between these two types of secured claims for purposes of determining postpetition interest, the Court had to answer "whether Congress intended that all oversecured claims be treated the same way for purposes of postpetition interest."[161] To do so, the Court merely looked at the language of the statute itself.[162]

Precedent holds that resolving a dispute over the meaning of a statute begins with the language of the statute itself,[163] and in some cases, as in *Ron Pair Enterprises*, the meaning of the language of the statute itself is where the inquiry should end.[164] The only time the plain meaning of the statute itself is not conclusive is in "rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters."[165] In such rare cases, the intention of the drafters controls.[166] Because allowing postpetition interest on nonconsensual oversecured liens does not contravene the Bankruptcy Code drafters' intent, does not conflict with any other section of the Bankruptcy Code, does not conflict with any important state or federal interest, and does not have a contrary view suggested by its legislative history,[167] the Court, after carefully reviewing the syntax and grammar of 11 U.S.C. § 506(b), concluded that "[t]he language before us expresses Congress' intent—that postpetition interest be available—with sufficient precision so that reference to legislative history and to pre-Code practice is hardly necessary."[168]

ii. Chamber of Commerce of U.S. v. Whiting

In *Chamber of Commerce of U.S. v. Whiting*, the Supreme Court had to determine whether federal immigration law pre-empts certain provisions of a recently enacted Arizona statute.[169] The Court provided that federal immigration law, the Immigration Reform and Control Act ("IRCA"), expressly pre-empts "any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws)

159. *Id.* at 240 (citing 11 U.S.C. § 101(45) (1982 ed., Supp.IV)).
160. *Id.* (citing 11 U.S.C. §§ 101(32) and (47) (1982 ed., Supp.IV)).
161. *Id.*
162. *Id.* at 241.
163. *Id.* (citing Landreth Timber Co. v. Landreth, 471 U.S. 681, 685 (1985)).
164. *Ron Pair Enters., Inc.*, 489 U.S. at 241 (citing Caminetti v. United States, 242 U.S. 470, 485 (1917) ("[T]he sole function of the courts is to enforce [a statute] according to its terms.")).
165. *Id.* at 242 (quoting Griffin v. Oceanic Contractors, Inc., 485 U.S. 564, 571 (1982)).
166. *Id.*
167. *Id.* at 242–43.
168. *Id.* at 241–42.
169. Chamber of Commerce of U.S. v. Whiting, 563 U.S. 582, 587 (2011).

upon those who employ. . .unauthorized aliens."[170] Additionally, the Court provided that Arizona's statute, the Legal Arizona Workers Act, stated that (1) the licenses of state employers who knowingly employ unauthorized aliens may be suspended or revoked, and (2) Arizona employers must use a federal electronic verification system to confirm that their employees are legally authorized workers.[171] To address the question before them, the Court began by looking at the plain wording of the federal clause.[172]

After laying out the facts and procedural history, the Court first analyzed the Petitioner's argument that IRCA expressly pre-empts Arizona's statute.[173] When federal law contains an express pre-emption clause, the Court "focus[es] on the plain wording of the clause, which necessarily contains the best evidence of Congress' preemptive intent."[174] The Court found that while IRCA expressly pre-empts some state powers when dealing with the employment of unauthorized aliens, it also expressly preserves other rights to which Arizona's licensing law falls within the confines.[175] Because the Court found that Arizona's law fell within the plain text of IRCA, the Court did not feel the need to address, in depth, the Petitioner's argument that the legislative history of IRCA supports Petitioner's interpretation.[176] Second, the Court looked at whether Arizona's law was impliedly pre-empted by federal law.[177] The Court was not swayed by either of Petitioner's arguments regarding the existence of implied pre-emption in this case, and ultimately held that Arizona's law is not pre-empted by federal law.[178] Supreme Court precedents "establish that a high threshold must be met if a state law is to be preempted for conflicting with the purposes of a federal Act."[179]

iii. Gobeille v. Liberty Mut. Ins. Co.

In *Gobeille v. Liberty Mut. Ins. Co.*, the Supreme Court had to determine whether federal law pre-empted a Vermont statute aimed at requiring employers to disclose payments relating to health care claims and other information relating to health care services.[180] The Court noted that the pre-emption clause of the federal law at issue,

170. *Id.* (quoting 8 U.S.C. § 1324(a)(h)(2)).
171. *Id.*
172. *Id.* at 594.
173. *Id.* at 587–600.
174. *Id.* at 594 (quoting CSX Transp., Inc. v. Easterwood, 507 U.S. 658, 664 (1993)).
175. Chamber of Commerce of U.S. v. Whiting, 563 U.S. 582, 600 (2011).
176. *Id.* at 599 (quoting Exxon Mobil Corp. v. Allapattah Services, Inc., 545 U.S. 546, 568 (2005) (Congress's "authoritative statement is the statutory text, not the legislative history.")).
177. *Id.* at 600–11.
178. *Id.* at 611.
179. *Id.* at 607 (quoting Gade v. National Solid Wastes Management Assn., 505 U.S. 88, 111 (1992)).
180. 136 S. Ct. 936, 940 (2016).

the Employee Retirement Income Security Act of 1974 ("ERISA"), had been addressed by the Court before, and the text of ERISA's express pre-emption clause was the essential starting point.[181] Precedent held that ERISA pre-empts two categories of state laws: (1) "[w]here a State's law acts immediately and exclusively upon ERISA plans. . .or where the existence of ERISA plans is essential to the law's operation. . ., that 'reference' will result in pre-emption;"[182] and (2) "ERISA pre-empts a state law that has an impermissible 'connection with' ERISA plans, meaning a state law that 'governs. . .a central matter of plan administration' or 'interferes with nationally uniform plan administration.'"[183] Because Vermont's law imposed duties that were "inconsistent with the central design of ERISA, which is to provide a single uniform national scheme for the administration of ERISA plans without interference from laws of the several States even when those law, to a large extent, impose parallel requirements," the Court held that ERISA pre-empted and invalidated Vermont's reporting statute as applied to ERISA plans.[184]

In its analysis, the Court provided that "[P]re-emption claims turn on Congress's intent."[185] The Court further noted that a state law is only relevant regarding the "scope of the state law that Congress understood would survive"[186] or "the nature of the effect of a state law on ERISA plans."[187] The Court was not swayed by any of the arguments of Respondent, Liberty Mutual Insurance Company, and ultimately held that Vermont's law, as it applied to ERISA plan, was pre-empted by federal law because "[a]ny presumption against pre-emption, whatever its force in other instances, cannot validate a state law that enters a fundamental area of [federal] regulation and thereby counters the federal purposes in the way [the Vermont] state law does."[188]

iv. Puerto Rico v. Franklin California Tax-Free Trust (Franklin III)

In *Franklin III*, as in *Chambers* and *Gobeille*, the Court concluded that the statute contained an express pre-emption clause and therefore they did not need to invoke any presumption against pre-emption.[189] Where a statute contains an express pre-emption clause, courts must "focus on the plain wording of the clause, which

181. *Id.* at 943.

182. *Id.* (quoting California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., Inc., 519 U.S. 316, 325 (1997)).

183. *Id.* (quoting Egelhoff v. Egelhoff, 532 U.S. 141, 148 (2001)).

184. *Id.* at 947.

185. *Id.* at 946 (quoting New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645, 650 (1995)).

186. Gobeille v. Liberty Mut. Ins. Co., 136 S. Ct. 936, 946 (2016) (quoting *Travelers*, 514 U.S. at 655).

187. *Id.* (quoting *Dillingham*, 519 U.S. at 325).

188. *Id.*

189. Puerto Rico v. Franklin California Tax-Free Trust (*Franklin III*), 136 S. Ct. 1938, 1946 (2016).

necessarily contains the best evidence of Congress' pre-emptive intent."[190] Here, the amended definition of "State" clearly only excludes Puerto Rico for the "purpose of defining who may be a debtor under chapter 9 of this title."[191] As the Majority notes, that exception clearly refers to the gateway provision in 11 U.S.C. § 109, which is titled "who may be a debtor."[192] Because Congress used the specific language "who may be a debtor" in the amended definition of "State," and 11 U.S.C. § 109 is titled "who may be a debtor," the Majority appropriately interpreted Congress' intent so as to only exclude Puerto Rico from the gateway provision.[193] "Similarity of language . . . is . . . a strong indication that the two statutes should be interpreted *pari passu*."[194] Additionally, this is not one of those rare cases, as mentioned in *Ron Pair*, where the plain meaning of the statute itself is inconclusive, and therefore the drafters intent controls.[195] "There is no reason to suspect that Congress did not mean what the language of the statute says."[196] Furthermore, the legislative history regarding the 1984 amendment does not reveal any helpful alternative interpretations.[197] Regardless, "reliance on legislative history is unnecessary in light of the statute's unambiguous language."[198] Therefore, the Supreme Court was correct in holding that Puerto Rico was pre-empted from enacting the Recovery Act because Puerto Rico is not considered a "State" for purposes of the gateway provision (i.e. Puerto Rico cannot authorize its municipalities to seek Chapter 9 relief).[199]

While the Dissent provided a few textual and policy arguments in favor of the Recovery Act, the Majority's reading of the Bankruptcy Code is the correct interpretation.[200] The Dissent argued that, when read in context of the entire Bankruptcy Code, "Section 903 by its terms presupposes that Chapter 9 applies only to States who have the power to authorize their municipalities to invoke is protection" and "[b]ecause Puerto Rico's municipalities cannot pass through the § 109(c) gateway to Chapter 9, nothing in the operation of a Chapter 9 case affects Puerto

190. Chamber of Commerce of U.S. v. Whiting, 563, 594 U.S. 582 (2011) (internal quotation marks omitted).

191. 11 U.S.C. § 101(52) (2012).

192. *Franklin III*, 136 S. Ct. at 1946.

193. *Id.*

194. Northcross v. Board of Ed. of Memphis City Schools, 412 U.S. 427, 428 (1973) (*per curiam*).

195. United States v. Ron Pair Enters., Inc., 489 U.S. 235, 242 (1989).

196. *Id.* at 246.

197. Franklin Cal. Tax-Free Trust v. P.R. (*Franklin II*), 805 F.3d 322, 337 (1st Cir.), *cert. granted*, 136 S. Ct. 582 (2015), *and cert. granted sub nom.* Acosta-Febo v. Franklin California Tax-Free Trust, 136 S. Ct. 582 (2015), *and aff'd*, 136 S. Ct. 1938 (2016); *see also Franklin III*, 136 S. Ct. at 1953 (Sotomayor, J., dissenting).

198. Mohamad v. Palestinian Auth., 132 S. Ct. 1702, 1709 (2012) (quotations omitted); *see also* Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 119 (2001) ("[W]e do not resort to legislative history to cloud a statutory text that is clear.").

199. *Franklin III*, 136 S. Ct. at 1946.

200. *Id.* at 1949–54 (Sotomayor, J., dissenting).

Rico's control over its municipalities."[201] The Majority correctly shoots down this argument by providing that the finding that "Puerto Rico is not a 'State' for purposes of the gateway provision . . . says nothing about whether Puerto Rico is a 'State' for the other provisions of Chapter 9 involving the States."[202] The Majority points out that it is the debtors themselves and not the states who pass through the gateway provision.[203] Here, the debtors would be the municipalities.[204] "[I]f it were Congress' intent to [] exclude Puerto Rico as a 'State' for purposes of th[e] pre-emption provision, it would have said so."[205] Furthermore, the Dissent's argument that "the government and people of Puerto Rico should not have to wait for possible congressional action to avert the consequences of unreliable electricity, transportation, and safe water," is a policy argument that does not trump the plain wording of the Federal Bankruptcy Code.[206] However, Congress has already taken action, as will be discussed in Section IV.C, *infra*.

B. Judge Juan Torruella's Concurrence in the Judgment of Franklin II Provides a Unique Perspective into the Validity of the Recovery Act Based on the Validity of the 1984 Amendments Themselves

First Circuit Judge Juan Torruella filed an opinion concurring in the judgment in *Franklin II*, agreeing with the majority's conclusion that "the 1984 Amendments are the 'key to this case.'"[207] While he agreed that Puerto Rico's Recovery Act contravenes 11 U.S.C § 903(1) and thus is invalid, he went further to claim the 1984 Amendments themselves are equally invalid.[208] The amendments are invalid in that they establish bankruptcy legislation that "is not uniform with regard to the rest of the United States, thus violating the uniformity requirement of the Bankruptcy Clause of the Constitution,"[209] and that they also "contravene both the Supreme Court's and [the First Circuit's] jurisprudence in that there exists no rational basis or clear policy reasons for their enactment."[210]

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201. Andrés González Berdecía, *Puerto Rico Before the Supreme Court of the United States: Constitutional Colonialism in Action*, 7 COLUM. J. RACE & L. 80, 127 (2016) (quoting *Franklin III*, 136 S. Ct. at 1952 (Sotomayor, J., dissenting)).

202. *Franklin III*, 136 S. Ct. at 1947.

203. *Id.*

204. *Id.*

205. *Id.* at 1948.

206. *Id.* at 1954 (Sotomayor, J., dissenting).

207. Franklin Cal. Tax-Free Trust v. P.R. (*Franklin II*), 805 F.3d 322, 346 (1st Cir.), *cert. granted*, 136 S. Ct. 582 (2015), *and cert. granted sub nom.* Acosta-Febo v. Franklin California Tax-Free Trust, 136 S. Ct. 582 (2015), *and aff'd*, 136 S. Ct. 1938 (2016) (Torruella, J., concurring).

208. *Id.*

209. *Id.* (citing U.S. Const. art. I, § 8, cl. 4).

210. *Id.* (citations omitted).

Because Congress must establish uniform laws on the subject of bankruptcy, "[p]rohibiting Puerto Rico from authorizing its municipalities to request Chapter 9 relief, while allowing all the states to benefit from such power," is clearly an abuse of congressional authority.[211] As noted previously in the Supreme Court majority's opinion in *Franklin III*, the language in the Constitution means what it unequivocally states.[212] Therefore, the 1984 Amendments are invalid because they are not applied uniformly throughout the United States.[213]

Additionally, according to Judge Torruella, the 1984 Amendments are invalid because they fail the rational basis requirement which is warranted when considering the validity of a statute that treats Puerto Rico differently.[214] Rational basis review requires that "the action of removing Puerto Rico's power to authorize its municipalities to file under Chapter 9 must be allowed if there is any set of conceivable reasons rationally related to a legitimate interest of Congress."[215] Here, Judge Torruella believes there is no conceivable set of facts rationally related to a legitimate purpose of Congress.[216] First, there is no legislative record outlining Congress' reasons behind the 1984 Amendments.[217] Second, "[t]he 1984 Amendments deprived Puerto Rico of a fundamental and inherently managerial function over its municipalities that has no connection to any articulated or discernible Congressional interest."[218] Ultimately, in Judge Torruella's opinion, the 1984 Amendments are, again, invalid because there is no rational basis or clear congressional policy reason for their enactment. Judge Torruella's persuasive argument that the amendments are invalid all-together provides a unique perspective that ultimately leads to the same conclusion as that of the Majority's holding in *Franklin III*.

211. *Id.*

212. *Id.* at 347 (Torruella, J., concurring).

213. Franklin Cal. Tax-Free Trust v. P.R. (*Franklin II*), 805 F.3d 322, 347 (1st Cir.), *cert. granted*, 136 S. Ct. 582 (2015), *and cert. granted sub nom.* Acosta-Febo v. Franklin California Tax-Free Trust, 136 S. Ct. 582 (2015), *and aff'd*, 136 S. Ct. 1938 (2016) (Torruella, J., concurring) (citing Daniel A. Austin, *Bankruptcy and the Myth of "Uniform Laws,"* 42 SETON HALL L. REV. 1081, 1141-47 (2012)).

214. *Id.* at 348 (citing Harris v. Rosario, 446 U.S. 651, 651–52 (1980); Califano v. Torres, 435 U.S. 1, 5 (1978) (per curiam)); *see also Franklin II*, 805 F.3d at 348 n.43.

215. *Franklin II*, 805 F.3d at 348 (Torruella, J., concurring) (citations omitted).

216. *Id.*

217. *Id.* at 349-50.

218. *Id.* at 350–53 (citing Bennett v. City of Holyoke, 362 F.3d 1, 12 (1st Cir. 2004)).

C. Congress Passes the Puerto Rico Oversight, Management, and Economic Stability Act to Address Puerto Rico's Debt Crisis

On June 30, 2016, President Barrack Obama signed into law the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA")[219] to address Puerto Rico's current debt crisis.[220] The bill was passed in the House of Representatives on June 9, 2016[221] and passed in the Senate on June 29, 2016.[222]

PROMESA provides for the creation of a seven-member Oversight Board that has control over Puerto Rico's budget, laws, financial plans, and regulations.[223] The Oversight Board, which is not accountable to the Puerto Rican government, has the power to force the Puerto Rican government "to balance its budget and force a restructuring with bondholders and other creditors if an agreement is not reached."[224] PROMESA also permits the lowering of the federal minimum wage for Puerto Rican workers of twenty-four years of age and under.[225]

Under the Act, a territory, like Puerto Rico, "may qualify as a debtor if it requests the establishment of an Oversight Board [] or has one established for it by Congress, and the Oversight Board has issued a restructuring certification for that entity."[226] A voluntary bankruptcy case may then be commenced by the Oversight Board filing a petition that must comply with PROMESA and Chapter 11 provisions.[227] Additionally, an automatic stay went into effect upon the enactment of PROMESA to which courts may grant a relief from stay to prevent irreparable damage to the interest of the entity in property.[228]

While PROMESA is aimed at alleviating Puerto Rico's debt crisis, some of its provisions have been criticized as not being directly related to fiscal issues.[229] An example is that the Oversight Board is allowed to "designate energy and infrastructure projects as 'critical' and bypass[] public review or environmental

219. Puerto Rico Oversight, Management, and Economic Stability Act, Pub. L. No. 114-187, 130 Stat 549 (2016).

220. Patricia Guadalupe, *Here's How PROMESA Aims to Tackle Puerto Rico's Debt*, NBC NEWS (June 30, 2016), http://www.nbcnews.com/news/latino/here-s-how-promesa-aims-tackle-puerto-rico-s-debt-n601741 ("Obama said it will provide 'more stability, better services and greater prosperity over the long term for the people of Puerto Rico.'").

221. Donna Higgins, *Experts: Congress must step up after Puerto Rico debt law struck down*, Westlaw: Bankruptcy Daily Briefing, 2016 WL 3249406.

222. Stephen Nuno, *Congress Passes PROMESA Act for Puerto Rico Debt Crisis*, NBC NEWS (June 29, 2016), http://www.nbcnews.com/news/latino/congress-passes-promesa-act-puerto-rico-debt-crisis-n601291.

223. Guadalupe, *supra* note 220.

224. *Id.*

225. *Id.*

226. Bankruptcy Law Reports Letter No. 960, Bankr. L. Rep. P 4252625 (2016).

227. *Id.*

228. *Id.*

229. Guadalupe, *supra* note 220.

impact studies."[230] New Jersey Senator Robert Menéndez condemned the bill saying "PROMESA exacts a price far too high for relief that is far too uncertain."[231] New York Congresswoman Nydia Velázquez voted for the bill despite its shortfalls because "there [were] simply no other politically feasible options left on the table."[232] Furthermore, while many influential Puerto Ricans and additional U.S. Congressmen agree with the opposition's view of the bill, they also agree that the bill is necessary to provide a short legal stay so that the Oversight Board can retake Puerto Rico from the creditors.[233]

V. CONCLUSION

In *Franklin III*, the Supreme Court held that Puerto Rico's Recovery Act was pre-empted by federal law.[234] While the Majority's method of interpreting the plain language of the Bankruptcy Code was the correct course of action,[235] additional notable interpretations and policy arguments were raised in regards to the Bankruptcy Code itself as well as this holding's implications on the citizens of Puerto Rico.[236] However, while Puerto Rico and the Dissent may not have found solace through the judiciary's resolution of this matter, Congress' swift passing of PROMESA has provided Puerto Rico with an initial opportunity to address its current financial situation.[237]

230. *Id.*
231. *Id.*
232. *Id.*
233. *Id.*
234. *See supra* at note 3 and accompanying text.
235. *See supra* Part IV.A.
236. *See supra* Parts III.B, IV. B.
237. *See supra* Part IV. C.