



Hon. Thomas Rivera Schatz
President

Statement for the Record
Hon. Thomas Rivera Schatz, President of the Senate of Puerto Rico
United States House of Representative Committee on Natural Resources
Hearing on "The Status of the Puerto Rico Oversight, Management, and Economic Stability
Act (PROMESA): Lessons Learned Three Years Later"
May 2, 2019

Chairman Grijalva, Ranking Member Bishop, Members of the Committee, thank you for the opportunity to share with you the impact that the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) has had on the 3.1 million United States Citizens residing in Puerto Rico. We have been consistent in our opposition to PROMESA and the actions taken so far by the Financial Oversight and Management Board (FOMB). PROMESA and the FOMB have been instrumental in perpetuating Puerto Rico's undignified and unequal political status. Instead of helping Puerto Rico establish a path toward fiscal responsibility that would lead to access to the capital markets, the FOMB has exceeded its powers over the affairs of the Government of Puerto Rico with no tangible results. Furthermore, the FOMB has spent excessive amounts of funds in its operations, which could have been used to reduce the debt, improve our fiscal credibility and, in turn, facilitate access to the capital markets.

We should point out that PROMESA was enacted by Congress under the broad powers granted to it by the Territorial Clause. Art. IV § 3, Cl. 2 of the United States Constitution gives Congress the "Power to dispose of and make all needful Rules and Regulations respecting the Territory [...] belonging to the United States." See: U.S. Const. Art. IV § 3, Cl. 2; 48 U.S.C. § 2121(b)(2). Congress has no constitutional authority to impose oversight boards on the states of the Union, as they rely on "authority originally belonging to them before admission to the Union and preserved to them by the Tenth Amendment." See: Puerto Rico v. Sanchez Valle, 136 S. Ct. 1863, 1871, 195 L. Ed. 2d 179 (2016) (citing Heath v. Alabama, 474 U.S. 82, 88, 106 S.Ct. 433, 88 L.Ed.2d 387 (1985)). Therefore, the only reason why PROMESA is feasible today is because Puerto Rico is an unincorporated territory of the United States and not a state of the Union.

However, in 2012 and 2017 the absolute majority of Puerto Ricans rejected the current Commonwealth status and voted in favor of statehood. Had Congress acted on the results of those plebiscites, Puerto Rico would today be in the process of completing the transition to become a full-fledged member of the Union. Had that happened PROMESA would not have been necessary. Becoming a state would have given Puerto Rico political and economic stability that no law could provide. Today, seven years after their first vote in support of statehood, Puerto



Ricans would have had the right to vote for the President, have full representation in Congress, and access to resources in the same proportion as other states. There is no doubt that statehood would have strengthened Puerto Rico's economy in the same way it has done for all fifty states. A more stable and stronger economy would have attracted the investment necessary to generate the much-needed income for debt re-payment.

Instead, in 2016, Congress imposed on Puerto Rico an oversight board with such broad powers that it has effectively overridden the powers vested by the Puerto Rico's Constitution in its elected officials. PROMESA, as well as the oversight board it created, was imposed by Congress in detriment to the democratic principles that support a republican and democratic form of government. As recently stated by the United States Court of Appeals for the First Circuit:

[...] PROMESA authorizes the Board to adopt Fiscal Plans and Budgets incentivizing the Legislative Assembly to enact the Board's recommended policies and accounting for the Legislative Assembly's responses to those recommended policies. See *id.* §§ 2141-2151. Indeed, it is difficult to see how, without such powers, the Board could be effective in achieving Congress's "purpose" of "provid[ing] a method for [Puerto Rico] to achieve fiscal responsibility and access to the capital markets." *Id.* § 2121(a) (stating Board's purpose).

[...] Under PROMESA's preemption provision, the grants of authority to the Board at §§ 201 and 202 to approve Fiscal Plans and Budgets "prevail over any general or specific provisions of territory law," including provisions of Puerto Rico's Constitution that are "inconsistent with [PROMESA]." *Id.* § 2103; see also *Maldonado-Burgos*, 844 F.3d at 346. PROMESA does generally reserve "the power of [Puerto Rico] to control, by legislation or otherwise, the territory." 48 U.S.C. § 2163. But this reservation of power is expressly "[s]ubject to the limitations set forth in [Titles] I and II of [PROMESA]," where §§ 201 and 202 appear. *Id.* When the Board certified the 2019 Fiscal Plan and Budget, then, it exercised authority granted to it under PROMESA *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 916 F.3d 98 (1st Cir. 2019) (Emphasis)

Section 108 of PROMESA states that the elected Governor and Legislature cannot "exercise any control, supervision, oversight, or review over the [FOMB] or its activities." As a result, the FOMB acts without review, in terms of its expenditures. While the FOMB imposes cuts in pension obligations, salaries, and fringe benefits, and promulgates the elimination of governmental services and entities; it spends more than \$64 million annually in its operation, including salaries



for some of its officers, many of which exceed those of the Vice-President of the United States and the Speaker of the House of Representatives. In fact, the annual salary of the FOMB's Executive Director is \$625,000.00, in contrast with the \$400,000.00 annual salary of the President of the United States. Moreover, while the Government of Puerto Rico is under a stay of debt payment to bondholders and other creditors, the process to restructure the debt under Title III of PROMESA is costing over \$256 million a year in legal fees.

Three years after the enactment of PROMESA and the appointment of the seven members of FOMB, Puerto Rico continues in bankruptcy, buried under billions of dollars in debt and in an enduring state of fiscal and economic uncertainty. In fact, not a single initiative has been developed by the FOMB to strengthen Puerto Rico's economic development, to allow the Government access to capital markets, or to afford much needed resources for the United States citizens residing in Puerto Rico. Three years after the enactment of PROMESA, the benefits it has brought to the island do not justify the extraordinary curtailment of the self-governing rights encompassed in Puerto Rico's Constitution.

According to the FOMB's own admissions, during the process to approve a Fiscal Plan and Budget for Fiscal Year 2018-2019, one of its initiatives was to "improve" Puerto Rico's economic development through the repeal of local Act No. 80; a statute that provides protections for over 800,000 employees and employers *in the private sector*. On April 26, 2018, the FOMB sent a proposed bill to the Puerto Rico Legislature that, if approved, would have repealed Act No. 80. Nonetheless, the FOMB was never able to prove to the majority of the members of the Senate of Puerto Rico how Act No. 80 was having a negative impact on the economy, nor was it able to show how repealing it would result in any economic benefit. The Senate of Puerto Rico reached a compromise, and instead of fully repealing Act No.80, approved a prospective repeal that only affected newly appointed employees while preserving the rights of existing employees. Following the Senate rejection of the FOMB proposal to repeal Act No. 80, the FOMB approved a new Fiscal Plan in which it rejected the budget already approved by the Legislature as non-compliant. The budget approved by the Legislature, and signed by the Governor, was a balanced budget that complied with the Fiscal Plan that was in place during the budget discussions. In reprisal for the Senate's voting against the Act No.80 repeal, the FOMB threw away the budget drafted by the Legislature and substituted it with its own budget. The FOMB budget reduced the operating funds of the Legislature in over \$19 million dollars, among other budget cuts.

PROMESA doesn't need to be amended – it needs to be repealed. In its place, a new law to implement the mandate admitting Puerto Rico as a state of the Union should be enacted, with all the benefits and responsibilities granted to citizens of the other fifty states of the Union. Such



a law should provide a transition period during which Puerto Rico could transform from a debt-ridden territory to a self-sustaining state of the Union. This will help sustain a true sovereign and democratic government for the people of Puerto Rico.

The time has come for the United States Congress to grant equal treatment to the people of Puerto Rico through statehood and end the condition of indignity, inequality, and abuse to which its 3.1 million citizens are subjected to under an outdated colonial regime. This is the only viable path to achieve political stability and economic development that would allow Puerto Rico to recover from the financial crisis that the status has led it into.

Cordially,



Thomas Rivera Schatz

