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A Voluntary Organization Composed of Persons Interested in the
Improvement of the Bankruptcy Code and Its Administration

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Honorable Pedro R. Pierluisi (Puerto Rico)
1213 Longworth House Office Building
Washington, D.C. 20515-5401

Re: Proposed Amendment to Chapter 9 of the Bankruptcy Code relating to
Puerto Rico Municipalities

Dear Congressman Pierluisi:

The National Bankruptcy Conference is pleased to submit this Statement in response to the request from Mr. Jed Bullock of your office for its views on the legal and policy issues raised by the legislation that would make Puerto Rico municipalities eligible for chapter 9 of the Bankruptcy Code. The Conference is a voluntary, non-profit, non-partisan, self-supporting organization of approximately 60 lawyers, law professors and bankruptcy judges who are leading scholars and practitioners in the field of bankruptcy law. Its primary purpose is to advise Congress on the operation of bankruptcy and related laws about any proposed changes to those laws. Attached to this Statement is a Fact Sheet about the Conference, including a list of Conferees.

We have reviewed the draft bill that was attached to your July 11, 2014 email to me. The bill would amend section 101(52) of the Bankruptcy Code to make a Puerto Rico municipality (as defined in 11 U.S.C. § 101(40)) eligible for chapter 9 of the Bankruptcy Code if Puerto Rico specifically authorized its municipalities (or a specified municipality) to be a debtor under chapter 9. The Conference supports the Bill. The Statement is divided into three parts, addressing policy considerations, the language of the bill, and two related constitutional issues.

Policy Considerations. Chapter 9 serves a useful purpose, providing the insolvent municipalities of States who choose to make it available with a vehicle for adjusting their obligations while continuing to provide governmental services to their residents and other constituents (such as the patients of public hospitals that fit the Bankruptcy Code definition of municipality). While the chapter 9 case law is not as fully developed as the precedents in chapter 11, nevertheless there is a body of law that provides guidance to courts administering and parties in chapter 9 cases. The Conference sees no bankruptcy policy reason why Puerto Rico's municipalities should not have the same access as municipalities in the States to chapter 9.

The Bill. The Conference believes that the language of the bill achieves its intended purpose to permit Puerto Rico to authorize its municipalities to use chapter 9, subject to the eligibility and other requirements currently imposed by the Bankruptcy Code on the States.

Potential Constitutional Issues. The Conference does not see any impediment in the U.S. Constitution to giving Puerto Rico the same right as States to authorize its municipalities to file for chapter 9 relief. However, questions may arise about the intersection between the bill and the Public Corporation Debt Enforcement and Recovery Act enacted by Puerto Rico in June 2014 (the “Commonwealth’s Act”). The issues are complex both because of the unclear federal law treatment of Puerto Rico (*e.g.*, when the Commonwealth is and is not treated like a State) and due to uncertainty about the vitality of a U.S. Supreme Court decision upholding New Jersey’s municipal restructuring statute in *Faitoute Iron & Steel Co. v. City of Asbury Park, N.J.*, 316 U.S. 502 (1942). The Bankruptcy Code contains a provision that Congress intended to invalidate state laws that purport to bind a non-consenting creditor to a composition of indebtedness. 11 U.S.C. § 903. Congress intended to overrule *Faitoute* with the predecessor provision to section 903, but it is far from certain that section 903 achieves that objective. The doctrinal scope of the invalidation is fuzzy as well. Compare *City of Pontiac Retired Employees v. Schimmel*, 751 F.3d 427, 430-31 (6th Cir 2014) (stating in a per curiam opinion that the plain language proscription in section 903 is not limited to application in bankruptcy cases) with *id.* at 433 (concurring opinion) (stating that “[t]he exception appears to reflect congressional intent that where chapter 9 is invoked, it does operate to limit or impair State power in relation to the specific type of State law described in subsection (1).”); *Ropico, Inc. v. City of New York*, 425 F. Supp. 970 (S.D.N.Y. 1976) (reviewing history of enactment of predecessor to section 903 and distinguishing between state law compositions and extensions of indebtedness). Enactment of the Bill, allowing Puerto Rico to authorize its municipalities to file for chapter 9 relief, would ensure immediate access to debt adjustment for Puerto Rico on a less constitutionally-contested basis than the Commonwealth’s Act.

Because a court might determine that the amendment is unconstitutional if applied retroactively and therefore decline to apply it to existing secured debt (*see U.S. v. Security Industrial Bank*, 459 U.S. 70 (1982); *Holt v. Henley*, 232 U.S. 637 (1914)), we recommend that the bill be amended to provide expressly for retroactive application and to include a severability clause.

* * * * *

Due to the short time for response to the request, we have provided our assessment in summary fashion. We would be pleased to address issues in more detail should your office so desire, and the Conference remains available to answer any questions your office may have.

Very truly yours,

s/ Richard Levin

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¹ The views expressed in this letter are those of the Conference, on whose behalf this letter is being written, and do not necessarily reflect either my personal views or those of my law firm, Cravath, Swaine & Moore LLP.

NATIONAL BANKRUPTCY CONFERENCE

A non-profit, non-partisan, self-supporting organization of approximately sixty lawyers, law professors and bankruptcy judges who are leading scholars and practitioners in the field of bankruptcy law. Its primary purpose is to advise Congress on the operation of bankruptcy and related laws and any proposed changes to those laws.

History. The National Bankruptcy Conference (NBC) was formed from a nucleus of the nation's leading bankruptcy scholars and practitioners, who gathered informally in the 1930's at the request of Congress to assist in the drafting of major Depression-era bankruptcy law amendments, ultimately resulting in the Chandler Act of 1938. The NBC was formalized in the 1940's and has been a resource to Congress on every significant piece of bankruptcy legislation since that time. Members of the NBC formed the core of the Commission on the Bankruptcy Laws of the United States, which in 1973 proposed the overhaul of our bankruptcy laws that led to enactment of the Bankruptcy Code in 1978, and were heavily involved in the work of the National Bankruptcy Review Commission (NBRC), whose 1997 report initiated the process that led to significant amendments to the Bankruptcy Code in 2005.

Current Members. Membership in the NBC is by invitation only. Among the NBC's 60 active members are leading bankruptcy scholars at major law schools, as well as current and former judges from eleven different judicial districts and practitioners from leading law firms throughout the country who have been involved in most of the major corporate reorganization cases of the last three decades. The NBC includes leading consumer bankruptcy experts and experts on commercial, employment, pension, mass tort and tax related bankruptcy issues. It also includes former members of the congressional staff who participated in drafting the Bankruptcy Code as originally passed in 1978 and former members and staff of the NBRC. The current members of the NBC and their affiliations are set forth on the second page of this fact sheet.

Policy Positions. The Conference regularly takes substantive positions on issues implicating bankruptcy law and policy. It does not, however, take positions on behalf of any organization or interest group. Instead, the NBC seeks to reach a consensus of its members - who represent a broad spectrum of political and economic perspectives - based on their knowledge and experience as practitioners, judges and scholars. The Conference's positions are considered in light of the stated goals of our bankruptcy system: debtor rehabilitation, equal treatment of similarly situated creditors, preservation of jobs, prevention of fraud and abuse, and economical insolvency administration. Conferees are always mindful of their mutual pledge to "leave their clients at the door" when they participate in the deliberations of the Conference.

Technical and Advisory Services to Congress. To facilitate the work of Congress, the NBC offers members of Congress, Congressional Committees and their staffs the services of its Conferees as non-partisan technical advisors. These services are offered without regard to any substantive positions the NBC may take on matters of bankruptcy law and policy.

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Testimony of Kenneth N. Klee¹ Before the Subcommittee on Regulatory Reform,
Commercial and Antitrust Law, House Committee on the Judiciary, Regarding H.R. 870,
the *Puerto Rico Chapter 9 Uniformity Act of 2015*

February 26, 2015

Chairman Marino, Ranking Member Johnson, and Members of the Subcommittee, thank you for the opportunity to testify about H.R. 870, the *Puerto Rico Chapter 9 Uniformity Act of 2015*. Forty years ago I had the privilege of serving as associate counsel to the House Judiciary Committee working on Chapter IX bankruptcy reform, and later on the 1978 Bankruptcy Code, including the codification of its chapter 9, Adjustment of Debts of a Municipality. I have welcomed the opportunity to testify before Judiciary subcommittees on many occasions, sometimes in an official capacity. This current testimony is not made in any official or representative capacity, but as the personal views of a private citizen.

H.R. 870 is urgently needed to enable municipalities located in the territory of Puerto Rico to gain access to chapter 9, should the Puerto Rican legislature specifically so authorize. By amending the Bankruptcy Code to make Puerto Rico a “State” for purposes of chapter 9, Congress will give Puerto Rico the same power and responsibility that the 50 states have to determine whether and when to grant some or all of their municipalities access to chapter 9. Although it might have been a reasonable policy choice in 1984² to reserve this decision to Congress in the exercise of its power to govern territories under Article IV of the Constitution, it is impractical for Congress to consider and determine whether to specifically authorize a particular Puerto Rican municipality to seek chapter 9 relief. Rather, the decision should be delegated to the Puerto Rican government, which has local knowledge of the political and financial issues and, therefore, is in a better position than Congress to address the specific needs of Puerto Rico's municipalities.

¹ Kenneth N. Klee is a Professor of Law Emeritus at the UCLA School of Law and a founding partner of Klee, Tuchin, Bogdanoff & Stern LLP. The views set forth herein are personal and should not be attributed to the UCLA School of Law or Klee, Tuchin, Bogdanoff & Stern LLP or any of its clients, or to any organization of which Professor Klee is a member.

² Section 421(j) of the Bankruptcy Amendments and Federal Judgeship Act of 1984 enacted 11 U.S.C. § 101(44) to clarify that the term "State" includes Puerto Rico and the District of Columbia except for the purpose of defining who may be a debtor under chapter 9. This definition was redesignated § 101(46) by section 251 of The Bankruptcy Act of 1986 and § 101(48) by Pub. L. No. 101-311 (June 25, 1990). On November 29, 1990, Pub. L. No. 101-467 redesignated the definition to its current location in § 101(52) of title 11. There is no legislative history explaining the purpose or rationale of the initial 1984 amendment.

H.R. 870 accomplishes its objective elegantly by amending the definition of "State" in section 101(52) of the Bankruptcy Code to override the chapter 9 exception in the 1984 amendment with respect to Puerto Rico. See H.R. 870, § 2.³ Therefore, Congress retains power to decide whether a municipality in the District of Columbia (and presumably other territories such as Guam, the Virgin Islands, and the Northern Marianas) may file for chapter 9 relief; but will have delegate to the government of Puerto Rico the decision whether to specifically authorize any or all of its municipalities to be eligible to file a petition under chapter 9 of the Bankruptcy Code.

Section 3 of H.R. 870 wisely makes the amendment effective in cases filed on or after the date of enactment of the Act, but applicable to debts, claims, and liens created before, on, or after the date of enactment. H.R. 870 would do little good if it did not apply expansively to debts, claims, and liens created before, on, or after the date of enactment. Existing municipalities would not be able to have meaningful plans of adjustment if existing debts or liens were excluded.

Critics might question the constitutionality of retroactive relief. The arguments should fail for many reasons. First, at least since the 1978 Bankruptcy Code enacted chapter 9, Congress has had the power to authorize the filing of a chapter 9 petition for Puerto Rican municipalities. All debts, claims, and liens created on or after October 1, 1979 have always been subject to modification in such event. All H.R. 870 does is change the body politic that authorizes the municipality to file, not the substance of the applicable bankruptcy law. Second, ever since the Supreme Court decided the *Bekins* case⁴ in 1938, there has been no constitutional impediment to the modification of unsecured debts or other contractual rights in chapter 9. The Contracts Clause of the United States Constitution⁵ binds only the States, not Congress, and the Supreme Court has made clear that a State's authorization of its municipalities to file chapter 9 does not transgress the Contracts Clause.⁶ Third, retroactive application of chapter 9 does not violate the Fifth Amendment as a matter of either due process or takings.⁷ Chapter 9 provides sufficient safeguards for a secured creditor's rights, both in the form of the fair

³ Section 2 of H.R. 870 provides: "(52) The term 'State' includes Puerto Rico and, except for the purpose of defining who may be a debtor under chapter 9 of this title, includes the District of Columbia."

⁴ *United States v. Bekins*, 304 U.S. 27 (1938).

⁵ U.S. Const., art. I, § 10.

⁶ See *Bekins*, note 4 *supra*, 304 U.S. at 54 (noting that the municipal bankruptcy act "invites the intervention of the bankruptcy power to save its [municipality] which the State itself is powerless to rescue").

⁷ See *id.* ("As the bankruptcy power may be exerted to give effect to a plan for the composition of debts of an insolvent debtor, we find no merit in . . . objections under the Fifth Amendment." (citations omitted)). See also Kenneth N. Klee & Whitman L. Holt, *BANKRUPTCY AND THE SUPREME COURT: 1801-2014* at 114-15 & 348 (West Academic 2015) (discussing holding and significance of *Bekins* opinion).

and equitable test⁸ and the general best interests of creditors test.⁹ To the extent there is any taking, it is justly compensated by giving the secured creditor deferred payments of a present value at least equal to the value of its collateral;¹⁰ there is no constitutional claim of the secured creditor to more than that.¹¹ As the Court has so aptly observed, "Property rights do not gain any absolute inviolability in the bankruptcy court because created and protected by state law. Most property rights are so created and protected. But if Congress is acting within its bankruptcy power, it may authorize the bankruptcy court to affect these property rights, provided the limits of the due process clause are observed."¹²

In the event a court nevertheless finds retroactive application of H.R. 870 to be unconstitutional as applied to a particular debt, which it should not, Section 4 of H.R. 870 contains a severability clause. This clause should preserve the balance of the legislation to be applied to the greatest extent permitted by the Constitution.

In conclusion, H.R. 870 is thoughtful legislation, carefully drafted to accomplish a limited but important purpose. It is in the best interests of the United States and the Territory of Puerto Rico that it be enacted into law as soon as is practicable.

I welcome the opportunity to answer and questions you or your staff may have, and I regret that my teaching obligations at the UCLA School of Law did not permit me to testify in person before you.

⁸ See 11 U.S.C. §§ 901, 943(b)(1), & 1129(b)(1), (2)(A) & (B).

⁹ See 11 U.S.C. § 943(b)(7).

¹⁰ See *id.* § 1129(b)(2)(A)(i)-(iii).

¹¹ See *Wright v. Union Central Life Ins. Co.*, 311 U.S. 273, 278 (1940).

¹² See *Wright v. Union Central Life Ins. Co.*, 304 U.S. 502, 518 (1938). See also Kenneth N. Klee & Whitman L. Holt, *BANKRUPTCY AND THE SUPREME COURT: 1801-2014* at 101-06 (West Academic 2015) (discussing Supreme Court's Takings Clause jurisprudence as applied in the bankruptcy context).

James E. Spiotto

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February 24, 2015

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Re: HR 870, Puerto Rico
Chapter 9 Uniformity Act of 2015 (the "Bill")

Dear Chairman Goodlatte, Ranking Member Conyers, Chairman Marino and Ranking Member Johnson:

It is a privilege to submit the following letter to the Committee in support of the Bill and provide comments on the legislative history that led to the existing law and the effect the Bill is likely to have on the ability of Puerto Rico's municipalities to obtain access to financing at an acceptable cost. I¹ previously testified before the Committee with respect to the Municipal Bankruptcy Amendments of 1988² that corrected some of the inconsistencies between then existing bankruptcy law and municipal law and financing practices.³ I also testified before the

¹ As of January 1, 2014, I retired as a Partner of Chapman and Cutler LLP. I currently am a Managing Director of Chapman Strategic Advisors LLC, a consultancy providing educational and strategic insights to market participants concerning municipal finance topics of interest. I also am co-owner and co-publisher of MuniNetGuide.com, an online resource specializing in municipal research, including public finance. The opinions expressed in this letter are solely those of the author and do not reflect the position of Chapman and Cutler LLP or Chapman Strategic Advisors LLC.

² MUNICIPAL BANKRUPTCY AMENDMENTS, Pub. L. No. 100597 (1988) ("1988 Amendments").

³ The focus of the 1988 Amendments includes assurance that liens on "*special revenues*" not be extinguished, that prepetition payments on bonds and notes be free from the taint of possible preference

Committee in connection with the Bankruptcy Reform Act of 1994,⁴ which clarified the split that had developed in case decisions and provided that municipalities must be specifically authorized by the State in order to be eligible to file for bankruptcy.⁵ More recently, I testified in 2011 regarding the role of public employee pensions in contributing to State's insolvency and the possibility of a State bankruptcy chapter. Accordingly, I hope to provide some context as to the need for the Bill and its importance to Puerto Rico and its municipalities for favorable access to the municipal market.

EXISTING LAW GOVERNING MUNICIPAL BANKRUPTCY IN PUERTO RICO

Chapter 9 currently is not applicable to Puerto Rico. The term "*State*" is defined in the Bankruptcy Code as including "Puerto Rico, except for the purpose of defining who may be a debtor under Chapter 9 of this title."⁶ As a result, Puerto Rico attempted to construct its own law for dealing with its fiscal problems, the Puerto Rico Public Corporation Debt Enforcement and Recovery Act (the "*Recovery Act*")⁷ for use by the Puerto Rico Electric Power Authority ("*PREPA*") and a number of other public corporations. The stated purpose of the Recovery Act was to allow public corporations to adjust their debts in the interest of all creditors affected thereby. The Recovery Act was viewed very negatively by the United States municipal bond market.⁸ In particular, the Recovery Act was materially worse for public corporate revenue bondholders (such as PREPA) than Chapter 9 in that it did not incorporate the provisions of the 1988 Amendments to Chapter 9, especially the language assuring the preservation of the pledge and benefit of the bargain regarding "special revenues" for revenue bond financing.⁹ Further, the

attack, and that revenue bonds not be transformed into general obligation bonds. Further, the 1988 Amendments make a general failure to pay debts the criterion for municipal insolvency and eligibility for filing.

⁴ Publ. L. No. 103-394.

⁵ 1994 Bill at Section 402.

⁶ 11 U.S.C. §101 (52).

⁷ Puerto Rico Act No. 71 of June 28, 2014.

⁸ Reuters, "U.S. BOND FUNDS SUE PUERTO RICO, WORRIED ABOUT BANKRUPTCY THREAT," June 30, 2014, available at www.reuters.com/assets/USL2NOPBOLG20140630.

⁹ As you may recall, one of the reasons for the 1988 Amendments was to provide a means of financings for financially distressed municipalities when they need financing the most. This arose out of the problem of Cleveland in 1978. Cleveland's lack of cash revenues could not be addressed through revenue bond financings from a profitable municipal electric utility since the municipal market feared that any pledge of revenues would be voided in a subsequent bankruptcy proceeding, nullifying the pledged revenue source of

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Recovery Act authorized a restructuring of PREPA secured bonds which could be contrary to the terms of the bond documents. Bondholders sued alleging the Recovery Act was preempted by Section 903 of the Federal Bankruptcy Code and therefore void pursuant to the supremacy clause of the United States Constitution. The United States District Court for the District of Puerto Rico agreed and held the law unconstitutional, noting that it was “not a close case.”¹⁰ The court found that Section 903 of the United States Bankruptcy Code, which provides that a State may not enact a law that prescribes a method for dealing with a municipality’s indebtedness that binds non-consenting creditors, clearly evidenced an intent to preempt laws such as the Recovery Act. Unless the ruling on the Recovery Act is reversed on reconsideration or appeal, Puerto Rico will have no statutory basis under which to restructure the debt of public corporations or municipalities and to resolve its financial problems. This is a matter of great concern. Since the mid-1800’s, it has been recognized that the financial distress of a Territory or a State, including repudiation of its debt, can have an adverse effect on the municipal market generally and the cost of financing to state and local governments. Accordingly, the Puerto Rico problem is of importance to the Federal Government. (See Exhibit A).

THE BILL

The Bill is aimed at ameliorating this situation and providing a last resort remedy for municipalities in Puerto Rico, assuming Puerto Rico authorizes its municipalities to file for bankruptcy. The Bill is thus consistent with the original purpose of Chapter 9. Chapter 9 was the last resort for municipalities that were suffering severe financial distress and, for the most part, had exhausted other available, less drastic methods of resolution. The Bill amends Section 101(52) of the Bankruptcy Code so that it provides “The term “State” includes Puerto Rico and, except for the purpose of defining who may be a debtor under Chapter 9 of this title, includes the District of Columbia.” Thus, the Bill has a narrow, simple and straightforward purpose: to permit Puerto Rico, if it so chooses, to authorize its municipalities to file for Chapter 9. I would submit that this legislation conforms with the purposes of Chapter 9 of the Bankruptcy Code and federal policy regarding the treatment of municipal bond creditors.

payment. The 1988 Amendments created this “safety net” providing municipalities in financial distress with the ability to obtain financing. The concept of a pledge of “special revenues” that survived a Chapter 9 filing was codified in § 922(d) and § 928 of the Bankruptcy Code assuring the benefit of the bargain and terms of the contract could not be avoided in a Chapter 9 and must be unimpaired. *See* H.R. No. 100-1011, September 14, 1988, available at 1988 WL 169907 (“*House Report*”).

¹⁰

Franklin California Tax-Free Trust et al. v. Commonwealth of Puerto Rico et al., 2015 WL 522183 (D. Puerto Rico Feb. 6, 2015) (hereinafter “*Franklin Trust*”).

THE BILL IS CONSISTENT WITH THE PURPOSE OF CHAPTER 9 AND FEDERAL POLICY

During the period of 1929 through 1937, there were 4,700 defaults by U.S. governmental bodies in the payment of their obligations, which resulted in a plethora of continuous and unproductive litigation.¹¹ The response by Congress was the enactment of the Bankruptcy Act of 1934, which ultimately was superseded by the Bankruptcy Act of 1937.¹² This legislation reflected a recognition that municipalities required a mechanism that would stay the annihilating litigation arising from defaults and provide a fresh start through the allowance of municipal debt adjustment to what is sustainable and affordable. In this way, creditors of the distressed municipality could be paid as much as possible without crowding out essential governmental services.

The extension of the benefits of Chapter 9 to the public corporations and municipalities of Puerto Rico is consistent with the policy of Chapter 9 to permit troubled municipalities to remain in existence by allowing municipalities to adjust their debts to what is sustainable and affordable.¹³ Putting aside questions of the constitutionality of the Recovery Act, the Chapter 9 approach embodied in the Bill is far more desirable than the one-off legislation by Puerto Rico represented by the Recovery Act. The existing Chapter 9, especially since the enactment of the 1988 Amendments, results in a treatment of municipal bonds in bankruptcy that should be uniform throughout the United States and that is in accord with well established principles of municipal finance. Existing Chapter 9 has provided clarity to the \$3.7 trillion U.S. municipal market, and the expectations of the market have been further refined with the case law that has been developed interpreting the provisions of Chapter 9.¹⁴ Under Chapter 9, general obligation and special revenue bonds have relative rights and priorities that are understood by the market. Applying the familiar Chapter 9 provisions to Puerto Rico would provide more certitude in the market as to the expected treatment of bonds issued by the public corporations of Puerto Rico in the event of financial distress. The capital markets have difficulty dealing with unpredictability. The Recovery Act and any other efforts of Puerto Rico to provide a one-off, singular substitute

¹¹ See discussion at p. 3 in James E. Spiotto, PRIMER ON MUNICIPAL DEBT ADJUSTMENT, published by Chapman and Cutler LLP and available upon request from Chapman and Cutler LLP.

¹² *Id.* at p. 5. The 1937 Legislation was upheld by the Supreme Court in *United States v. Bekins*, 304 US 27 (1938).

¹³ See House Report and S. Rep. No. 100-506 (1988).

¹⁴ Revenue bond financing has been the major source of financing for the world-class infrastructure of the U.S. state and local governments and has been available in the municipal market to Puerto Rico. It will be necessary to protect and preserve that type of financing for the over \$3.6 trillion of improvements that are estimated to be needed over the next five years. Am. Soc’y of Civil Engineers, 2013 Report Card for America’s Infrastructure, <http://www.infrastructurereportcard.org/a/documents/2013-Report-Card.pdf>.

to Chapter 9 for its municipalities inevitably will lead to increased anxiety in the market over an untested and unique approach. Allowing Puerto Rico to authorize its municipalities to file for Chapter 9 will reduce, if not eliminate, the unhealthy cloud of uncertainty that can lead to restriction of access to the municipal market and an increased cost of borrowing. The reduction in legal uncertainty likely will be greeted positively by the municipal market.¹⁵

THE EXTENSION OF CHAPTER 9 TO PUERTO RICO DOES NOT REPRESENT A RETREAT FROM FEDERAL POLICY

Puerto Rico is a Territory of the United States, not a co-sovereign, but directly overseen by the United States federal government. As noted by the court in voiding the Recovery Act, in approving Puerto Rico's constitution in 1952, Congress did not provide Puerto Rico a power to enact its own municipal bankruptcy laws that Congress had explicitly denied to the states.¹⁶ Given the power of the federal government over its territories, the possibility that Chapter 9 could be extended to Puerto Rico is not unexpected. What the municipal market *did expect* in extending credit to Puerto Rican municipalities including public corporations was that the federal policies regarding municipal debt obligations embodied in the 1988 Amendments and Bankruptcy Reform Act of 1994 would be observed in Puerto Rico. The Bill will help ensure that outcome so there will be no conflict between the Puerto Rico legislation and the federal policy and protection provided in Chapter 9.

THE PASSAGE OF THE BILL DOES NOT RETROACTIVELY DEPRIVE ANY CONSTITUENT OF ITS RIGHTS AS A MUNICIPALITY, CREDITOR OR TAXPAYER

As noted, the purpose of Chapter 9 is to result in a sustainable municipal entity that can continue to provide needed governmental services to its citizens. In the context of a municipal utility, Chapter 9 is intended to preserve the continued operation of the utility and its services for the benefit of the municipality, its creditors and citizens. Without its continued operation and the adjustment of its debt, if needed, there would be no utility operating as a source of payment and services and all would lose. While a debt adjustment may be perceived as modifying the originally scheduled payments, it is the practical reality of the circumstances and the terms of the benefit of bargain are not violated but rather preserved to the extent possible. No municipality can pay more than what it actually receives in revenues and to attempt differently will not lead to a greater payment to creditors, but rather, to an unaffordable and unsustainable enterprise. While Chapter 9 protects net revenues (net of current operating and maintenance costs) of a utility to be paid to special revenue bondholders, it also assures that operation and maintenance costs for

¹⁵ See Fitch Ratings, "CHAPTER 9 EXTENSION WOULD BE A POSITIVE FOR PUERTO RICO," August 6, 2014.

¹⁶ *Franklin Trust* at p.16.

continued operations will be paid (See Sections 922(d) and 928). If the practical reality is that changes in rates charged to customers and debt service are required because net revenues, after any appropriate rate adjustments, are less than required to pay the original obligation as scheduled, then the revenue bondholders receive all that they practically can receive and the pledge continues until they are paid

THE PASSAGE OF THE BILL SHOULD NOT MEAN A FLOOD OF CHAPTER 9'S

Chapter 9 provides that a State must specifically authorize its municipalities to file for Chapter 9.¹⁷ The Bill merely modifies the existing law to include Puerto Rico within the definition of State for this purpose. If the Bill becomes law, it will be up to Puerto Rico to specifically authorize its municipalities, including public corporations, to file for Chapter 9. Traditionally, Chapter 9 has been viewed as a last resort, utilized primarily by small municipalities and special tax districts.¹⁸ Total Chapter 9 filings since 1937 have been 661, and only 316 Chapter 9 filings have been made during the last 60 years (1954) of which 189 (60%) have been municipal utilities and special districts. Moreover, only 12 States specifically authorize a municipal bankruptcy filing, another 12 States have conditional authorization, normally a “second look” by means of approval by a state elected official, agency or neutral evaluator, 3 States have limited authorization, 2 States generally prohibit a municipal filing and the remaining 21 States provide no authorization at this time.¹⁹

The passage of the Bill should not preclude Puerto Rico from taking the action other States have chosen short of a Chapter 9 filing to rescue their financially challenged municipalities.²⁰ These alternatives to Chapter 9 that certain States have provided to avoid the cost and stigma of Chapter 9 have been well-accepted and appreciated by the municipal market. For this reason, every State provides for some form of refinancing of municipal obligation and some States provide various forms of oversight, supervision and financial support to the distressed municipality. The ability to file Chapter 9 does not prevent as an alternative the

¹⁷ 11 U.S.C. § 109(c)(2).

¹⁸ See discussion at page 5 in *MUNICIPALITIES IN DISTRESS?* published by Chapman and Cutler LLP, which is available from Chapman and Cutler LLP or on Amazon.com (“*MUNICIPALITIES IN DISTRESS?*”).

¹⁹ *MUNICIPALITIES IN DISTRESS*, pp. 51 and 52 lists those States.

²⁰ These alternative debt resolution mechanisms consistent with Section 903 of the Bankruptcy Code are described in detail in Chapter IV of *Municipalities in Distress*. See also *James E. Spiotto, “The Role of the State in Supervising and Assisting Municipalities in Times of Financial Distress,”* 33 *MUNICIPAL FINANCE JOURNAL*, (2013); *The Pew Charitable Trusts, THE STATE ROLE IN LOCAL GOVERNMENT FINANCIAL DISTRESS*, July 2013.

oversight, supervision and refinancing of the debt of a financially challenged municipality as was done with New York City in 1975 and the formation by New York State legislation of a Municipal Assistance Corporation that helped supervise the financial recovery of the City and refinanced its debt or similar assistance by Ohio to Cleveland in 1978 or by Pennsylvania to Philadelphia in 1991 with the passage of the Pennsylvania Inter-Governmental Cooperation Act. Further, the passage of the Bill would not preclude the oversight and supervision of overseer, budget commission or receiver authorized by recent legislation in Rhode Island or the use of an emergency manager as permitted by legislation in Michigan and Indiana or financial control boards in New York State or Act 47 used in Pennsylvania.²¹

History has shown that municipalities in financial distress need a recovery plan that stimulates economic activity in the municipality and encourages business to locate or expand there. This business expansion typically creates new, good jobs that increase tax revenues that lead to the recovery and the solution of financial distress.

The passage of the Bill should not preclude either Federal or Commonwealth legislation that could increase business activity such as the equivalent of reinstatement of Section 936 of the IRS Code²² for favorable tax treatment of business income, resolve unfavorable treatment of imports under the Merchant Marine Act of 1920 that prohibits use of foreign ships when transporting goods between two points in the United States even if this is more affordable than using a U.S. vessel,²³ or any perceived unfair treatment of Puerto Rico by the Federal Government.

Creative financing techniques could be explored that are geared to lowering the borrowing cost of the distressed local government body while enhancing the market acceptance of the restructured debt such as credit enhancement, moral obligation pledges or the creation of the equivalent of Brady Bonds, collateralized by U.S. Treasury zero coupon bonds, used with Latin American countries and financially challenged governments to refinance or restructure debt at a lower cost with greater market acceptance. Also, the oversight and assistance that the Federal Government provided to the District of Columbia²⁴ still could be provided to Puerto Rico if the Bill is passed. Accordingly, all other options of the Federal Government and Puerto Rico are preserved with the passage of the Bill.

²¹ The Financially Distressed Municipalities Act, Pa. Act of 1987, P.L. 246, No. 47.

²² 26 U.S. Code §936.

²³ P.L. 66-261; *See Federal Reserve Bank of New York, REPORT ON THE COMPETITIVENESS OF PUERTO RICO'S ECONOMY*, June 29, 2012.

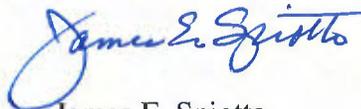
²⁴ The creation of the District of Columbia Financial Responsibility and Management Assistance Authority in 1995. Pub. L. No. 104-8.

February 24, 2015

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If you have any questions regarding the matters set forth in this letter or if I can be of further assistance to your consideration of this please do not hesitate to contact me.

Very truly yours,



James E. Spiotto

EXHIBIT A

THE HISTORICAL PRICE OF REPUDIATION AND DEFAULT OF THE OBLIGATION TO PAY DEBTS TIMELY FOR STATES AND TERRITORIES

Between 1841 and 1843, eight states and one territory (now a state) repudiated their debt, and seven states between 1843 and 1848 resumed payment. While some attribute the repudiation to the aftermath of the Panic of 1837, the real reason lies in developing states borrowing money to pay for needed transportation improvements given the success of the Erie Canal or for needed banking services in the state. By 1844, nineteen states and two territories had borrowed money for needed economic growth. The inflationary boon of 1834-39 with the accompanying Panic of 1837 came to end by 1841, and there was a tightening of credit that put pressure on incomplete construction projects for transportation improvements in the North (Pennsylvania, Maryland, Indiana, Illinois and Michigan) and lack of credit for banks in the South (Arkansas, Louisiana, Mississippi and Florida Territory). All but the Florida Territory and Mississippi resumed payment by 1848. The reason was the cost of default including denial to the market of access or increase in cost of borrowing. Those that repudiated and had not yet resumed payment experienced borrowing yields to complete projects of 32% until they resumed payment and then paid 4% above market to borrow. Mississippi and Florida Territory lacked access to then public market for almost over a decade. Florida as a territory had its access to the market practically restricted until it became a state.*

*

See English, William B. UNDERSTANDING THE COSTS OF SOVEREIGN DEFAULT: AMERICAN STATE DEBT IN 1840'S. Electronic copy available at www.jstor.org/stable/2118266, 1996; Wallis, J., R. Sylla and A. Grinath. SOVEREIGN DEBT AND REPUDIATION: THE ENERGIZING MARKET DEBT CRISIS IN THE U.S., 1839-1843, NBER Working Paper Series (Working Paper 10753) (2004); Sturzenegger, F. and J. Zettelmeyer. DEBT DEFAULTS AND LESSONS FROM A DECADE OF CRISIS. Boston: MITPress (2007).

February 25, 2015

Writer's Direct Contact

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APrinci@mofocom

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The Honorable Henry C. "Hank" Johnson
Ranking Member
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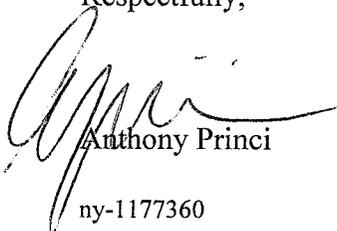
Re: H.R. 870 -- The Puerto Rico Chapter 9 Uniformity Act

Dear Chairmen Goodlatte and Marino and Ranking Members Conyers and Johnson:

We represent a group of 32 financial institutions (the "Ad Hoc Group") that collectively manage in excess of \$410 billion in assets and hold more than \$4.2 billion in Puerto Rico municipal debt.

At present, no legislative framework exists to protect U.S.-based municipal bondholders in the event Puerto Rico's agencies, instrumentalities or political subdivisions seek to financially restructure. The simple technical change proposed in H.R. 870 would extend to these entities the same established legal framework currently accessible by similar municipal entities in the mainland U.S., and in doing so provide confidence to the municipal markets. Accordingly, the Ad Hoc Group urges the House Judiciary Committee to support and promote the enactment of The Puerto Rico Chapter 9 Uniformity Act.

Respectfully,



Anthony Princi
ny-1177360



OFFICE OF FORMER GOVERNOR OF PUERTO RICO

Hon. Luis G. Fortuño

February 20, 2015

The Honorable Bob Goodlatte
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2138 Rayburn House Office Building
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The Honorable John Conyers, Jr.
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The Honorable Tom Marino
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The Honorable Henry C. "Hank" Johnson
Ranking Member
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House Committee on the Judiciary
B-351 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Goodlatte, Ranking Member Conyers, Chairman Marino and Ranking Member Johnson:

As Puerto Rico's former governor (2009-2012) and former Resident Commissioner in the U.S. Congress (2005-2008), I write in my personal capacity to express strong support for H.R. 870, the *Puerto Rico Chapter 9 Uniformity Act of 2015*, introduced by Resident Commissioner Pedro Pierluisi.¹ I understand the House Judiciary Committee's Subcommittee on Regulatory Reform, Commercial and Antitrust Law will hold a hearing on H.R. 870 on February 26th. It is my sincere hope that, following the hearing, the Committee will favorably report this legislation and that the full House will vote to approve it in an expeditious manner, because time is of the essence.

As a fiscal conservative, I would note that H.R. 870—if approved—would not require the federal government to spend a single additional dollar. The bill is not a "bailout" in any sense. If it

¹ I currently am a partner at Steptoe & Johnson LLP. The views set forth in this letter are personal and should not be attributed to Steptoe & Johnson LLP or any of its clients, or to any organization of which I am a member.

were, I would not support it. What this legislation does is offer Puerto Rico flexibility and opportunity to retake a path of self-sufficiency and fiscal responsibility.

Under current law, every state government is empowered to authorize a “municipality” within its borders—defined as a “political subdivision or public agency or instrumentality of a State”—to adjust its debts under Chapter 9 of the U.S. Bankruptcy Code, but the government of Puerto Rico has not been granted this discretionary power. From a bankruptcy policy perspective, I do not believe this exclusionary treatment ever made sense, and it certainly does not make sense now. Puerto Rico bonds are heavily traded in the U.S. municipal bond market, and so the legal rules should be the same in Puerto Rico as they are in the 50 states. Indeed, in every other chapter of the Bankruptcy Code, the rules *are* the same. Chapter 9 is the only exception.

Enacting H.R. 870 into law would be the fair and appropriate course of action for the U.S. territory of Puerto Rico and its 3.5 million American citizens. It would also be the fair and appropriate course of action for the territory’s creditors and the broader U.S. municipal bond market. It would provide predictability, order and structure—the very elements that are lacking in Puerto Rico right now.

H.R. 870 seeks equal treatment for Puerto Rico, not special or unique treatment. I thank the Committee for scheduling a hearing on the legislation, and I hope that the bill will progress quickly through the legislative process.

Sincerely,



Luis G. Fortuño



February 19, 2015

The Honorable Bob Goodlatte
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The Honorable Tom Marino
Chairman
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
House Committee on the Judiciary
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The Honorable Henry C. "Hank" Johnson
Ranking Member
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
House Committee on the Judiciary
B-351 Rayburn House Office Building
Washington, DC 20515

Chairman Goodlatte:

On behalf of the National Puerto Rican Coalition, Inc. (NPRC), the premier national Hispanic non-profit non-partisan organization that represents the interest of all Puerto Ricans on the mainland and the Island, I would like to express our support for H.R. 870 – The Puerto Rico Chapter 9 Uniformity Act of 2015. Since 1977, NPRC's mission is to enhance the social and economic well-being of all Puerto Ricans through policy development, research, advocacy, civic engagement, and education.

We believe that H.R. 870 will provide the Puerto Rico government a "tried-and-true legal" tool, currently enjoyed by other municipalities, which would allow insolvent government-owned corporations to restructure their debts as a last resort.

NPRC praises the leadership of Resident Commissioner Pedro Pierluisi for piloting this legislation. We hope we can also count on your leadership.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rafael A. Fantauzzi', written over a horizontal line.

Rafael A. Fantauzzi
President and CEO



SETON HALL UNIVERSITY SCHOOL OF LAW
NEWARK, NEW JERSEY

STEPHEN J. LUBBEN
WILEY CHAIR IN CORPORATE GOVERNANCE
& BUSINESS ETHICS

PHONE: 973 642 8857
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STEPHEN.LUBBEN@SHU.EDU

Monday, February 23, 2015

VIA Email

The Honorable Bob Goodlatte, Chairman
House Committee on the Judiciary
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The Honorable Tom Marino, Chairman
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House Committee on the Judiciary
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Washington, DC 20515

The Honorable Henry C. "Hank" Johnson, Ranking Member
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
House Committee on the Judiciary
B-351 Rayburn House Office Building
Washington, DC 20515

Re: HR 870

Dear Sirs:

I write to urge swift passage of HR 870, which would grant Puerto Rico the option to let its financially distressed municipalities restructure under chapter 9 of the Bankruptcy Code. This is the same option that all fifty states currently enjoy, and that the Commonwealth, as a self-governing entity under our Constitution, should also enjoy.

The reason for passing this bill is quite straightforward. As I wrote in a recent law review article:

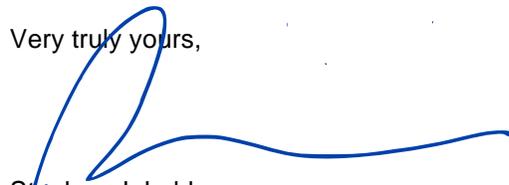
The logic behind excluding Puerto Rico from chapter 9, to the extent it ever did, no longer makes sense.

In particular, Puerto Rico presently faces an untenable situation with regard to its distressed public corporations. If the Commonwealth was fully sovereign, it could pass its own municipal bankruptcy law. On the other hand, if the Commonwealth was a state under our Constitution, it would have access to chapter 9. Instead, Puerto Rico is left in a kind of legal no man's land, seemingly unable to address the serious problems that its municipal entities face.

The Bankruptcy Code treats Puerto Rico as a state for all purposes save one. It is time to remove that singular exception, and allow the Commonwealth's municipalities to restructure their finances under a well-understood, long-standing system that bondholders throughout the country appreciate.

I hope the Committee and the House will advance this straightforward legislation. Please do not hesitate to contact me if I can be of further assistance.

Very truly yours,



Stephen J. Lubben
Harvey Washington Wiley Chair in Corporate Governance & Business Ethics

¹ Stephen J. Lubben, *Puerto Rico and the Bankruptcy Clause*, 88 Am. Bankr. L.J. 553, 578 (2014).



Memorandum of Agreement

H.R. 870

Puerto Rico Chapter 9 Uniformity Act of 2015

Resident Commissioner Pedro R. Pierluisi, in his capacity as Puerto Rico’s representative to the federal government, has introduced legislation, H.R. 870, the *Puerto Rico Chapter 9 Uniformity Act*, which would empower the government of Puerto Rico to authorize one or more of its government-owned corporations, if they were to become insolvent, to restructure their debts under Chapter 9 of the U.S. Bankruptcy Code, as the 50 state governments are empowered to do.

State governments themselves are not eligible to adjust their debts under Chapter 9, but a “political subdivision or public agency or instrumentality of a State”—called a “municipality” in the Code—can adjust its debts under Chapter 9. However, a provision in the Code provides that the term “State” includes Puerto Rico, “except for the purpose of defining who may be a debtor” under Chapter 9.

Thus, Congress has empowered each state government to authorize its public instrumentalities to adjust their debts under Chapter 9, but has not empowered the government of Puerto Rico to do the same for its instrumentalities. A state government may choose to authorize its public instrumentalities to file for Chapter 9 protection, or a state government may decline to do so. Under current law, the government of Puerto Rico does not even have that choice. This is paradoxical, since Puerto Rico businesses and residents are eligible to seek bankruptcy relief under all other sections of the Code.

In June 2014, the Government of Puerto Rico enacted Act 71-2014, the “Puerto Rico Public Corporation Debt Enforcement and Recovery Act,” which sought to authorize certain government-owned corporations to restructure their debts. Multiple investment firms that own bonds issued by public corporations that were subject to the provisions of Act 71 sued the Puerto Rico government in U.S. federal district court, arguing that the local law—which differs from Chapter 9 in numerous respects—violates the U.S. Constitution and the Puerto Rico Constitution.

On February 6, 2015, the U.S. District Court held that Act 71 is preempted by the U.S. Bankruptcy Code and is therefore invalid under the Supremacy Clause of the U.S. Constitution. In addition, the U.S. District Court declined to dismiss the investment firms' claims that Act 71 violates the Contract Clause and the Takings Clause of the U.S. Constitution.

In the wake of the U.S. District Court decision, and in light of the financial problems affecting certain Puerto Rico public corporations and the absence of a trusted mechanism to protect the public interest and creditors, Congress should act swiftly to enact H.R. 870. This will help ensure that vital public services, such as the delivery of electricity, gas and clean water, are not interrupted in the short-term, that the jobs of the thousands of hard-working U.S. citizens are sustained in the long-term, and that the collective interests of creditors are protected.

If Congress does not act, government-owned corporations in Puerto Rico will be left without any legal framework—at either the federal or territory level—to adjust their debts. H.R. 870 would enable the Puerto Rico government to authorize its government-owned corporations to utilize the tried-and-true Chapter 9 procedure if it becomes necessary as a last resort, under the supervision of an impartial federal bankruptcy judge in Puerto Rico, based on legal precedent established in Chapter 9 proceedings that have taken place throughout the nation.

The Congressional Budget Office has confirmed that the bill, if enacted, would not require any additional expenditures on the part of the federal government.

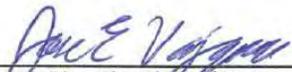
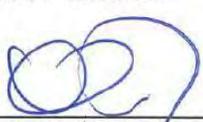
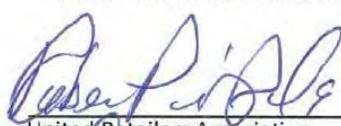
Furthermore, the Government of Puerto Rico has indicated that, while it would appeal the District Court's decision invalidating Act 71, it would also undertake all efforts to support enactment of H.R. 870.

The undersigned express their unanimous and unconditional support for H.R. 870.

[SIGNATURE PAGE TO FOLLOW]



Pedro R. Pierluisi
Member of Congress


Puerto Rico Chamber of Commerce
Puerto Rico Manufacturers Association
P.R. Pharmaceutical Industry Association
Puerto Rico Home Builders Association
Puerto Rico Restaurants Association
Puerto Rico Hospitals Association
P.R. Certified Public Accountants Association
MIDA of Puerto Rico
P.R. General Contractors Association
United Retailers Association
P.R. Mortgage Bankers Association
Renewable Energy Producers Association
Puerto Rico Hotels and Tourism Association
P.R. Association of Financial Professionals

Douglas G. Baird
Harry A. Bigelow Distinguished Service Professor of Law

February 23, 2015

The Honorable Bob Goodlatte
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The Honorable Henry C. "Hank" Johnson
Ranking Member
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Washington, DC 20515

Dear Chairman Goodlatte, Ranking Member Conyers, Chairman Marino, and Ranking Member Johnson:

I am writing to express my support for the enactment of H.R. 870 in my personal capacity as an academic whose work focuses on the administration of bankruptcy law. This letter expresses my own views, not those of any organization or third party.

I have taught at the University of Chicago Law School since 1980. I was Dean of the Law School between 1994 and 1999. I have also served as Vice Chair of the National Bankruptcy Conference and as Scholar in Residence of the American College of Bankruptcy. My one-volume monograph on bankruptcy, *Elements of Bankruptcy*, is now in its sixth edition. I have testified before your committee before, most recently in the wake of the automobile bailouts (again in my own capacity).

Under the existing law, a "state" has the power to authorized municipalities to seek relief under Chapter 9, but for these purposes Puerto Rico is excluded from the definition of "state." This is unfortunate. Congress might have the power to craft a separate insolvency regime for Puerto Rico (the jurisprudence here is complicated and contested), but it has not attempted to do so. As it is, Puerto Rico lacks access to any federal debt-restructuring mechanism. There is no obvious reason why federal restructuring tools available to municipalities throughout the United States should not also be available in Puerto Rico.

Uniformity is an important bankruptcy policy. It ensures a level playing field. The Constitution itself singles out the value of "uniform Laws on the subject of Bankruptcies." In the absence of some powerful, well-articulated reason, Puerto Rico should be treated the same as other jurisdictions.

Moreover, existing bankruptcy law is drafted in such a way that may limit the ability of Puerto Rico to craft its own municipal insolvency legislation. Puerto Rico may find itself currently in a statutory dead zone, without the ability to take advantage of federal municipal insolvency law and without the ability to craft its own. This unhappy state of affairs is not sensible.

I would be pleased to provide additional information or answer any questions you might have.

Sincerely,

Dan G. B. J.

February 23rd, 2015

The Honorable Robert W. Goodlatte
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The Honorable Henry C. "Hank" Johnson
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House Committee on the Judiciary
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Washington, DC 20515

Re: H.R. 870 (*The Puerto Rico Chapter 9
Uniformity Act of 2015*)

Dear Chairman Goodlatte, Ranking Member Conyers, Chairman Marino and Ranking Member Johnson:

We are writing in support of H.R. 870, the *Puerto Rico Chapter 9 Uniformity Act of 2015*. FCO Advisors LP is an alternative investment firm primarily focused on the municipal market and is a current investor in Puerto Rico. Together with our affiliate, Fundamental Advisors LP, we are the leading alternative investment platform exclusively dedicated to the municipal market, with over \$1.8 billion in assets under management.

Additionally, we have discussed H.R. 870 with numerous knowledgeable municipal market participants, including financial institutions, investment advisory firms, mutual funds, hedge funds and others, including many "household names" and some of the world's largest asset managers. Each of these investors brings different perspectives to the difficult issues confronting Puerto Rico and all recognize that many different approaches could be taken by the Commonwealth and its various political instrumentalities.

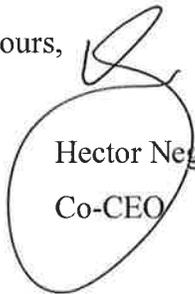
Nonetheless, there is consensus that the particular approach adopted by H.R. 870 is valid and merits consideration. Specifically, we have surveyed approximately two dozen of these municipal market investors and there is nearly unanimous agreement that application of the Chapter 9 regime to Puerto Rico's agencies, instrumentalities and political subdivisions is a reasonable approach and would not impair the normal functioning of the marketplace.

We welcome the opportunity to discuss the topic further.



Laurence Gottlieb
Co-CEO

Sincerely yours,



Hector Negroni
Co-CEO



February 20, 2015

The Honorable Robert W. Goodlatte
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
House Committee on the Judiciary
B-351 Rayburn House Office Building
Washington, DC 20515

The Honorable Tom Marino
Chairman
Subcommittee on Regulatory Reform,
Commercial and Antitrust Law
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Hank Johnson
Ranking Member
Subcommittee on Regulatory Reform,
Commercial and Antitrust Law
House Committee on the Judiciary
B-351 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Goodlatte, Ranking Member Conyers, Chairman Marino, and Ranking Member Johnson,

I am writing in support of H.R. 870, the *Puerto Rico Chapter 9 Uniformity Act of 2015*, introduced by Congressman Pierluisi. As you know, the bill would allow municipalities in Puerto Rico to adjust their debt under Chapter 9 of the U.S. Bankruptcy Code. While bankruptcy is never a desired outcome for a public agency, it is a far better option than the Puerto Rico Public Corporation Debt Enforcement and Recovery Act (Recovery Act), which was recently passed by Puerto Rico to address the potential default by some of its public agencies.

Saft and other U.S. corporations have been working in Puerto Rico over the past 4 years to develop renewable energy projects that would reduce energy costs and improve the reliability of the island's electric grid and power supply. Financing of these projects has been difficult, but a few lenders have expressed interest in doing so. Following the passage of the Recovery Act, the lenders has paused or dramatically increased their interest rates, halting all projects due to the uncertainty created by the Recovery Act. The recent decision by the U.S. District Court in Puerto Rico to strike down the Recovery Act has increased the difficulty in securing financing for energy projects in Puerto Rico.

As you know, the Chapter 9 Bankruptcy process is well defined and well known by financial institutions. Should Puerto Rico be given the authority to allow its public agencies to reorganize under Chapter 9, we believe the lending institutions would re-enter the marketplace, allowing critical renewable energy and energy reliability projects to move forward.

I strongly encourage the Committee to quickly move forward with passage of H.R. 870, as this legislation will calm the financial lending market in Puerto Rico and enable businesses to continue to work with Puerto Rico on the development of critical renewable energy projects.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Thomas J Alcide'.

Thomas J Alcide
President
Saft America

Cc: Congressman Pedro R Pierluisi



February 24, 2015

The Honorable Bob Goodlatte
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
House Committee on the Judiciary
B-351 Rayburn House Office Building
Washington, DC 20515

The Honorable Tom Marino
Chairman
Subcommittee on Regulatory Reform,
Commercial and Antitrust Law
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Henry C. "Hank" Johnson
Ranking Member
Subcommittee on Regulatory Reform,
Commercial and Antitrust Law
House Committee on the Judiciary
B-351 Rayburn House Office Building
Washington, DC 20515

Re: H.R. 870, the *Puerto Rico Chapter 9 Uniformity Act of 2015*

Dear Chairman Goodlatte, Ranking Member Conyers, Chairman Marino, and
Ranking Member Johnson:

I appreciate the Subcommittee's decision to hold a hearing on H.R. 870, the Puerto Rico Chapter 9 Uniformity Act of 2015, on February 26, 2015. Although I am unable to attend the hearing in person, this letter expresses my support for this important legislation.

H.R. 870 has one clear purpose: to allow Puerto Rico to authorize its municipalities to initiate cases under chapter 9 of the Bankruptcy Code. When Congress empowered states to authorize their municipalities to adjust debts in chapter 9, it reserved for itself the ability to make bankruptcy relief available to municipalities of Puerto Rico when the need arises. As witnesses at the hearing no doubt will address, the need has arisen. H.R. 870 is well-drafted and addresses the issue directly, making it one of the shortest and cleanest bills in bankruptcy history.

Enactment of H.R. 870, by itself, would not signify the inevitable initiation of a chapter 9 by a Puerto Rico municipality or the nonconsensual adjustment of any debts. The Puerto Rico government would have to specifically authorize any chapter 9 filing and any Puerto Rico municipality that initiated a chapter 9 case would have to satisfy the Bankruptcy Code's stringent eligibility test. Furthermore, even after a

municipality has been found to be eligible, it cannot adjust debts without significant creditor support and without satisfying multiple statutory standards. Chapter 9 is widely and correctly perceived by experts as a last resort. The extremely low rate of chapter 9 filing is a testament to that view. The possibility of bankruptcy, however, forms a useful backdrop to foster consensual negotiations. Without the potential for bankruptcy access, a single well-funded creditor can impede a debtor and the majority of its creditors from reaching a reasonable and fair restructuring deal even when financial exigencies make that compromise the best option. As seen in the sovereign debt context, the leverage of holdout creditors in the absence of a bankruptcy system can distort negotiations, lead to extensive litigation in multiple courts, and impose significant costs not only on the debtor, but other creditors, stakeholders, residents, and the court system. Indeed, Puerto Rico's effort to develop its own restructuring law, the Public Corporation Debt Enforcement and Recovery Act, due to its exclusion from chapter 9, has already generated significant conflict and litigation, and is sure to continue to do so.

Please do not hesitate to contact me if I can provide any further assistance in your consideration of this issue or legislation.

Very Truly Yours,

A handwritten signature in cursive script, appearing to read "Melissa B. Jacoby".

Melissa B. Jacoby
Graham Kenan Professor
University of North Carolina
School of Law

CARLOS J. CUEVAS, ESQ.

1250 CENTRAL PARK AVENUE

YONKERS, NY 10704

EMAIL: ccuevas576@aol.com

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TELEPHONE: (914) 964-7060

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February 24, 2015

VIA E-MAIL

The Honorable Bob Goodlatte
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
House Committee on the Judiciary
B-351 Rayburn House Office Building
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The Honorable Tom Marino
Chairman
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
House Committee on the Judiciary
2138 Rayburn House Office Building
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The Honorable Henry C. "Hank" Johnson
Ranking Member
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
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B-351 Rayburn House Office Building
Washington, DC 20515

The Honorable Bob Goodlatte
The Honorable John Conyers, Jr.
The Honorable Tom Marino
The Honorable Henry C. "Hank" Johnson

Page 2

February 24, 2015

Re: H.R. 870

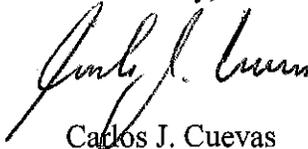
Dear Congressmen:

I am a former Associate Professor at New York Law School, and have taught bankruptcy law for over seventeen years. I have published bankruptcy articles in the American Bankruptcy Institute Law Review, American Bankruptcy Law Journal, and Bankruptcy Developments Journal.

I strongly support H.R. 870 as a means of efficiently and rationally dealing with Puerto Rico's public debt. Only California and New York have greater public debt than Puerto Rico. The uncertainty of Puerto Rico's public debt could have a negative impact on the municipal debt market. Including Puerto Rico as an entity that is eligible for Chapter 9 will remove uncertainty as to what will happen with Puerto Rico's public debt. Moreover, it will enable the Commonwealth of Puerto Rico to implement strategies to pay its public debt in an efficient and orderly manner. Over 3,600,000 Puerto Ricans depend upon essential services provided by the Puerto Rican government and its authorities. Consequently, the welfare of the Puerto Rican people is at stake. The implementation of Chapter 9 will benefit not only the Puerto Rican people, but also their creditors. I urge you to enact H.R. 870

Thank you for your consideration.

Yours truly,

A handwritten signature in black ink, appearing to read "Carlos J. Cuevas", written in a cursive style.

Carlos J. Cuevas



RICHARD L. CARRIÓN
Chairman and CEO

February 26, 2015

The Honorable Bob Goodlatte
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
House Committee on the Judiciary
B-351 Rayburn House Office Building
Washington, DC 20515

The Honorable Tom Marino
Chairman
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Henry C. Johnson
Ranking Member
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
House Committee on the Judiciary
B-351 Rayburn House Office Building
Washington, DC 20515

Re: H.R. 870 – Puerto Rico Chapter 9 Uniformity Act

Dear Congressmen:

I write on behalf of Banco Popular de Puerto Rico ("Banco Popular"), the largest bank headquartered in Puerto Rico.

Please be advised that Banco Popular fully supports - - and respectfully requests that the House Committee on the Judiciary (and all its members and other members of Congress) advance and support enactment of - - H.R. 870, the proposed Puerto Rico Chapter 9 Uniformity Act, sponsored by Resident Commissioner Pedro Pierluisi. As you may know, this initiative has

February 26, 2015

Page 2

bi-partisan support from Puerto Rico's two main political parties and the backing of Governor Alejandro García Padilla.

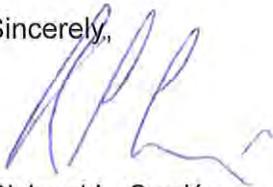
While as a creditor we have an interest in having our public sector debtors in Puerto Rico comply with their obligations and recognize that the enactment of the Act could, in certain circumstances, make it more difficult to enforce our contractual rights, nevertheless Banco Popular supports enactment of H.R. 870 because of (i) the difficult, well-known financial circumstances confronting Puerto Rico municipal debtors, (ii) the great uncertainties and legal vacuum posed by the recent decision of the United States District Court for the District of Puerto Rico (that held the Puerto Rico Public Corporation Debt Enforcement and Recovery Act unconstitutional) and (iii) the paramount importance of orderly, successful restructurings to creditors of municipal debtors, and to Puerto Rico's economy and public generally.

Enactment of H.R. 870 will allow Puerto Rico municipal debtors to avail themselves (and their creditors) of the same orderly bankruptcy process rights and protections of Chapter 9 of the United States Bankruptcy Code as are afforded in all the fifty States.

Moreover, it appears that enactment of H.R. 870 can be accomplished in a timely and straightforward manner.

Again, Banco Popular respectfully requests that the House Committee on the Judiciary advance and support enactment of H.R. 870.

Sincerely,



Richard L. Carrión
Chairman and CEO

G. Carlo-Altieri Law Offices, LLC
PO Box 9021470
San Juan, Puerto Rico 00902-1470
Tel: 787-429-4201
gaclegal@gmail.com

February 25th, 2015

Hon. Bob Goodlate R (Va)
Chair
House Judiciary Sub-Committee
House of Representatives
2138 Rayburn Building
Washington, DC 20515

RE: HR 870 PR Bankruptcy Bill

Dear Congressman Goodlatte:

This is in regard to the Bill of reference dealing with the current exclusion of Puerto Rico under the U.S. Bankruptcy Code, Chapter 9 HR 870.

As the former chief judge of the U.S. Bankruptcy Court for the District of Puerto Rico (1994-2009) and a member of the Bankruptcy Appellate Panel in First Circuit Court of Appeals in Boston, MA, from 1996 – 2009, I would like to express my position on the bill presently set for hearings on the 26th of this month before the committee of the Judiciary and have this letter included on the record.

My position is that there is no valid reason to exclude Puerto Rico from chapter 9 of the Code. It has been said that leaving Puerto Rico out of the coverage was merely an inadvertence by Congress, if this is the case, the remedy is very simply to amend the Code to provide for inclusion of Puerto Rico immediately. However if this is not done, and Congress again refuses to act, it may be interpreted by some to mean, that the way the Code treats Puerto Rico would be considered as a form of territorial discrimination being applied by Congress to the poorest part of the Nation.

The recent decision by the U.S, District Court of Puerto Rico invalidating the P.R. law for reorganizing municipalities and public corporations leaves the territory as the only part of the Nation, aside from DC, without any form of effective relief in terms of insolvency reorganization possibilities.

There is no reason to treat Puerto Rico differently at the same time that Detroit, Jefferson County in Alabama and California municipalities have been able to reorganize under Chapter 9. Either Congress decides to bail out the territory or the U.S. Bankruptcy Code needs to be amended immediately.

Finally I want to say that there are over 3.5 million U.S citizens living in Puerto Rico that can be affected by the decision this committee takes and another 1 million Unites States citizens of Puerto Rico ancestry that live in the continental United States that are pending the act of Congress. So this is not an insignificant matter by any means.

If I can be of any help in clarifying the above or any of the testimony that is presented before the Committee please feel free to call me.

Sincerely yours,

S/S Gerardo A. Carlo Altieri



February 26, 2015

The Honorable Bob Goodlatte
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
House Committee on the Judiciary
B-351 Rayburn House Office Building
Washington, DC 20515

The Honorable Tom Marino
Chairman
Subcommittee on Regulatory Reform,
Commercial and Antitrust Law
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Henry C. “Hank” Johnson
Ranking Member
Subcommittee on Regulatory Reform,
Commercial and Antitrust Law
House Committee on the Judiciary
B-351 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Goodlatte, Ranking Member Conyers, Chairman Marino and Ranking Member Johnson:

On behalf of the members of the Puerto Rico Manufacturers Association (PRMA)—a private, voluntary, non-profit organization established in 1928 as the voice of manufacturing in Puerto Rico—we write to express our strong support for H.R. 870, the *Puerto Rico Chapter 9 Uniformity Act of 2015*, introduced by Resident Commissioner Pedro Pierluisi.

We believe that swift passage of H.R. 870 is in the best interest of PRMA’s member companies, as well as in the best interest of the Puerto Rico government, the Puerto Rico people, and Puerto Rico’s creditors. The business community values stability, predictability and the rule of law and, at present, there is no overarching legal framework in place in Puerto Rico with respect to the adjustment of debts of a public corporation or other “municipality.” Accordingly, we believe it makes sense for

Congress to empower the government of Puerto Rico to authorize its insolvent public corporations to utilize the Chapter 9 legal mechanism if it becomes necessary.

Sincerely,



Jaime L. García
Executive Director
PRMA



Carlos Rivera Vélez, PhD, PE
Chairman
PRMA



National Grocers Association

February 25, 2015

Chairman Bob Goodlatte
House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

Ranking Member Conyers
House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

Chairman Tom Marino
House Judiciary Subcommittee on Regulatory
Reform, Commercial and Antitrust Law
2138 Rayburn House Office Building
Washington, DC 20515

Ranking Member Hank Johnson
House Judiciary Subcommittee on Regulatory
Reform, Commercial and Antitrust Law
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Goodlatte, Chairman Marino, Ranking Member Conyers and Ranking Member Johnson:

I am writing today on behalf of the independent supermarket industry in the United States and Puerto Rico in support of HR 870, the Puerto Rico Chapter 9 Uniformity Act of 2015.

The National Grocers Association (NGA) believes that giving the government of Puerto Rico the authority to authorize its government-owned corporations, if they were to become insolvent, the legal ability to restructure their debts under Chapter 9 of the Federal Bankruptcy Code would avoid additional painful economic consequences on the independent business community of Puerto Rico.

NGA's member in Puerto Rico, CAMARA DE MERCADEO, INDUSTRIA Y DISTRIBUCION DE ALIMENTOS, or MIDA, represents the local, independent food distribution industry in Puerto Rico and is concerned about the impact on its members of the collapse of the Commonwealth's government owned corporations. The economic situation in Puerto Rico, after a decade of deep recession, would only worsen if this were allowed to happen, endangering the financial stability of these businesses and the continuation of the jobs they provide to the island's population.

There is no reason why Puerto Rico shouldn't have the same authority as the fifty states to authorize its financially distressed government entities to restructure under Chapter 9 of the U.S. Bankruptcy Code. It is a common sense solution that is in the best interest of the Commonwealth's government owned corporations, their creditors and the citizens of Puerto Rico.

Sincerely,

Greg Ferrara
Vice President Public Affairs
National Grocers Association (NGA)

February 26, 2015

The Honorable Robert W. Goodlatte
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
House Committee on the Judiciary
B-351 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Goodlatte and Ranking Member Conyers:

In our capacity as former presidents of the Government Development Bank for Puerto Rico (GDB), we write to express our strong support for H.R. 870, the *Puerto Rico Chapter 9 Uniformity Act of 2015*, introduced by Puerto Rico Resident Commissioner Pedro Pierluisi. We hope the House Judiciary Committee will act swiftly to approve this time-sensitive legislation, which we believe is in the best interest of the U.S. citizens of Puerto Rico, the Government of Puerto Rico and its public corporations, and the numerous holders of Puerto Rico bonds in Puerto Rico and the U.S.

As you know, H.R. 870 would simply empower the Government of Puerto Rico to authorize one or more of its government-owned corporations, if they were to become insolvent, to restructure their debts under Chapter 9 of the U.S. Bankruptcy Code, just as all 50 state governments are already empowered to do for municipal entities which issue debt in the U.S. municipal bond market. Puerto Rico is the third largest issuer of municipal debt in the three trillion dollar municipal bond market.

In light of the financial problems affecting certain government-owned corporations in Puerto Rico and the absence of a stable legal framework to protect the public interest and creditors, it is clear that approval of H.R. 870 would ensure that vital public services such as electricity, clean water and sewage and transportation, among others, are not interrupted in the short-term, jobs of thousands of U.S. citizens sustained in the long-term and creditors protected.

Governor Alejandro García Padilla and the Puerto Rico Legislature have indicated that they support enactment of H.R. 870 and have made efforts to that effect at the Federal level.

GDB is a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico created by law in 1948. GDB is the central figure in the issuance of public debt and acts as financial advisor and fiscal agent for the Government of Puerto Rico and its instrumentalities, public corporations and municipalities. GDB also provides interim and long-term financing to the Government of Puerto Rico, its instrumentalities, public corporations and municipalities, and to private parties for economic development.

Sincerely,

[SIGNATURE PAGE FOLLOWS]

/s/ Juan Agosto Alicea

Juan Agosto Alicea
President (2001-2002)
Government Development Bank for Puerto Rico

/s/ Mariano Mier

Mariano Mier
President (1977-1978)
Government Development Bank for Puerto Rico

/s/ Juan Carlos Batlle

Juan Carlos Batlle
President (2011-2012)
Government Development Bank for Puerto Rico

/s/ Marcos Rodríguez-Ema

Marcos Rodríguez-Ema
President (1993-1998)
Government Development Bank for Puerto Rico

/s/ Antonio Faría

Antonio Faría
President (2003-2004)
Government Development Bank for Puerto Rico

/s/ Lourdes Rovira

Lourdes Rovira
President (1998-2000)
Government Development Bank for Puerto Rico

/s/ Javier D. Ferrer

Javier D. Ferrer
President (2013)
Government Development Bank for Puerto Rico

/s/ Alfredo Salazar

Alfredo Salazar
President (1975-1976, 2005-2007)
Government Development Bank for Puerto Rico

/s/ Carlos M. García

Carlos M. García
President (2009-2011)
Government Development Bank for Puerto Rico



JAIME R. PERELLÓ-BORRÁS
SPEAKER

February 25, 2015

The Honorable Bob Goodlatte
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
House Committee on the Judiciary
B-351 Rayburn House Office Building
Washington, DC 20515

The Honorable Tom Marino
Chairman
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Henry C. "Hank" Johnson
Ranking Member
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
House Committee on the Judiciary
B-351 Rayburn House Office Building
Washington, DC 20515

RE: HR 870

Dear Chairman Goodlatte, Ranking member Conyers, Chairman Marino and Ranking Member Johnson,

During the past two years, Puerto Rico has faced many challenges to overcome our difficult economic and fiscal situation. As a result of a consistent increase in our public debt, over many years, the Puerto Rico House of Representatives had the responsibility of analyzing, proposing and approving many initiatives to stabilize our fiscal situation. In many cases the

actions were unpopular, but we believe they were necessary and imminent to provide creative and responsible solutions under the realities of our available means.

Notwithstanding these efforts, the magnitude of the accumulated deficits of many public corporations requires additional tools to counteract. Only between the Puerto Rico Electric Power Authority, the Puerto Rico Aqueduct and Sewer Authority and the Puerto Rico Highways and Transportation Authority, in Fiscal Year 2012-2013 the aggregated deficit was an approximate of \$800 million, with a combined debt amount of more than \$20,000 million. A default by any of these and/or other public corporations would leave creditors and constituents without a proper and orderly process to attend such complex and dissimilar interests, and would definitely provoke a foreseen and unwanted crisis.

H.R. 870, presented by the Puerto Rico Resident Commissioner Honorable Pedro Pierluisi, would provide an additional instrument to properly address an insolvency situation in an orderly and timely manner, and balancing all conflicting interests. The Puerto Rico House of Representatives bipartisan approved Concurrent Resolution of the Senate 41, supporting H.R. 870 and petitioning from the United States Congress and the President of the United States its approval (Attachment 1).

I strongly support and urge you to approve the amendment to Section 101(52) of Title 11 of the United States Code to include Puerto Rico for purposes of Chapter 9 of such title, relating to the adjustment of debts of municipalities.

The Puerto Rico House of Representatives stands ready to join you all in this effort, as I am sure are our constituents in the Island and the more than 4 million Puerto Ricans residing in the United States.

I am convinced that by working together we can address this urgent issue. Thank you for your attention to my concerns.

Sincerely,



Jaime R. Perelló-Borrás

Cc: Members of the House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law.
Honorable Pedro Pierluisi, Resident Commissioner



February 26, 2015

The Honorable Bob Goodlatte
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
House Committee on the Judiciary
B-351 Rayburn House Office Building
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The Honorable Tom Marino
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Subcommittee on Regulatory Reform,
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House Committee on the Judiciary
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Washington, DC 20515

The Honorable Henry C. "Hank" Johnson
Ranking Member
Subcommittee on Regulatory Reform,
Commercial and Antitrust Law
House Committee on the Judiciary
B-351 Rayburn House Office Building
Washington, DC 20515

Re: H.R. 870

Dear Chairman Goodlatte, Ranking Member Conyers, Chairman Marino and Ranking Member Johnson:

I am writing on behalf of the Center for a New Economy, Puerto Rico's only non-partisan, not-for-profit, independent think tank, to express our strong support for amending the U.S. Bankruptcy Code (the "Code") to empower the government of Puerto Rico to authorize its municipalities, as that term is defined in the Code, to adjust their debts under Chapter 9 of the Code.

The Bill under consideration simply empowers the government of Puerto Rico to authorize one or more of its public corporations to avail themselves of a tried-and-true legal mechanism to adjust their debts, under the supervision of an impartial federal bankruptcy judge, based on substantive and procedural law established in prior Chapter 9 proceedings that have taken place throughout the United States. In sum, it will provide a logical, coherent process for Puerto Rico and certain of its creditors to settle disputes in an orderly and organized manner, should the need arise.

Cordially,

Sergio M. Marxuach
Policy Director
Center for a New Economy

SOUTH FLORIDA PUERTO RICAN CHAMBER OF COMMERCE

3550 Biscayne Blvd. Suite 306
Miami, FL 33137

Phone (305) 571-8006 Fax (305) 571-8007
www.puertoricanchamber.com

February 20, 2015

The Honorable Bob Goodlatte
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Goodlatte:

On behalf of the leadership and membership of the South Florida Puerto Rican Chamber of Commerce, and the Summit on Puerto Rican Affairs, I wish to express my support of H. R. 870, the Puerto Rico Chapter 9 Uniformity Act of 2015, introduced by Puerto Rico's Resident Commissioner Pedro Pierluisi on February 11, 2015.

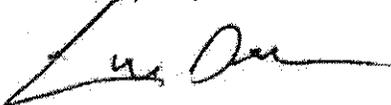
This Act will empower the government of the Commonwealth of Puerto Rico to authorize a government-owned corporation, should it become insolvent, to restructure their debts under Chapter 9 of the Federal Bankruptcy Code. Currently, all state governments are empowered to do so under federal law.

This act has received broad based bi-partisan political support on the Island, as well as support from Puerto Rico's business and banking communities. Furthermore, the bill is supported by the vast majority of Puerto Rico's creditors and other stakeholders within the investment community. It is important to note that this bill will have no cost impact to the federal government.

H. R. 870 has the support, as well, of Puerto Rican organizations and Chambers of Commerce located on the mainland USA. These organizations – like our Chamber of Commerce – care deeply about the economic situation on the Island of Puerto Rico and work daily to promote increased business and trade between the markets of the United States and Puerto Rico. We look to you – our elected representatives – to support and assist us in this task.

Thank you for the privilege of submitting this letter in support of this bill. I can be contacted at the Chamber office (305) 571-8006 during the workweek.

Sincerely yours,



Luis De Rosa
President

BloombergView

NATIONAL

Helping Puerto Rico Prosper

FEB 25, 2015 8:00 AM EST

By The Editors

a A

In an ideal world, Puerto Rico would be bankrupt. Instead, it is sliding toward something far more dangerous and uncertain -- and President Barack Obama and Congress need to intervene.

On Thursday, the House Judiciary Committee is taking up a long-shot bill to allow the island's public-sector corporations to declare bankruptcy. Providing these protections isn't any kind of a bailout. It will just help Puerto Rico's government begin to ease a debt-servicing burden that consumes 16 percent of its budget. It will also ensure that not just the biggest or loudest creditors get paid.

This crisis has been a long time brewing. Since 2006, Puerto Rico's economy has contracted every year but one. Its unemployment rate of 13.7 percent is double that of the U.S. mainland; its poverty rate is twice that of Mississippi. Meanwhile, Puerto Rico's population and tax base have aged and shrunk. Since 2000, public debt has risen from 60 percent of gross domestic product to more than 100 percent. Much of that has been racked up by the island's inefficient public-sector corporations.

Earlier this month, however, a U.S. federal court struck down a Puerto Rican law that would let its ailing power, water and highway authorities restructure their debts. Then Standard & Poor's downgraded the commonwealth's debt deeper into junk status. Both actions will make it more expensive for Puerto Rico to keep selling bonds to finance its \$73 billion in public borrowing -- well over double the \$29 billion owed by New York, the most indebted U.S. state, which has five times Puerto Rico's population. Moody's Investor Service now puts a high probability on a Puerto Rican default in the next two years.

The tax-free status of Puerto Rico's securities has long appealed to investors in municipal bond funds. Offering progressively higher yields, the government has used bonds to bridge budget deficits and to keep the lights on and the water flowing. Now, in a form of tax peonage, it's

securing high-yield bond sales to hedge funds and buyers of distressed debt with the promise of dedicated future revenues from new taxes.

As neither a U.S. state nor a nation, Puerto Rico is "one of the few places in the world where finances are not regularly surveyed by a public agency," the New York Federal Reserve Bank observed last year. Yet being a commonwealth is no inoculation from Stein's Law: "If something cannot go on forever, it will stop." Shrinking Puerto Rico's debt will require running a budget surplus for years and an economy that grows at a nominal rate consistently higher than the interest rate on Puerto Rico's debt. Neither is likely.

That leaves debt restructuring, and there's the rub: Because Puerto Rico isn't a state, it can't avail itself of the provisions in federal bankruptcy law that enabled Detroit to restructure its debt in an orderly fashion.

That's what the bill in Congress would do. The Obama administration can help by working with Congress to deliver the island from the crushing burden of laws and regulations ill-suited to its circumstances. The federal minimum wage, for instance, puts Puerto Rico at a competitive disadvantage to its Caribbean neighbors, while the antiquated Jones Act forces Puerto Rico to use expensive U.S. ships for the transport of goods to and from the mainland.

Such regulatory and legal oddities are the product of the island's century-plus status limbo. So, in some ways, is Puerto Rico's debt crisis. Sooner or later, Puerto Rico's inhabitants will have to decide their island's future destiny. They should be allowed to do so standing up, not on their knees begging for fiscal mercy.

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The Washington Post

The Post's View

Congress can help ease Puerto Rico's debt crisis

By Editorial Board February 26

THE BIG story in the Caribbean these days is Cuba, where the Obama administration's easing of U.S. economic sanctions has investors buzzing about the prospects for making money, someday, in a possible revival of that economic basket case. How ironic that far less attention is being lavished on a neighboring island that also is in deep financial distress and needs U.S. help, yet, unlike Cuba, is a long-standing friend of the United States — indeed, an integral part of it.

We refer to Puerto Rico, which is laboring under a \$72.6 billion debt burden, sluggish growth and a recent downgrading of its credit ratings to junk level. There is broad consensus in financial circles that the island could descend into even worse fiscal chaos and poverty unless it gets relief soon.

Last June, Puerto Rico adopted a law that would have permitted government entities, such as the nearly insolvent electric utility, to restructure about \$24 billion in debt — over the objections of holdout creditors — or to go through a bankruptcy-like process akin to those adopted in Detroit and other U.S. cities. The measure would have greatly enhanced the island's negotiating power with creditors, who include U.S. individuals and institutions drawn to Puerto Rican bonds by their tax-free interest. But on Feb. 6, a federal judge in San Juan struck down the law, ruling, in effect, that only Congress, not the island's legislature, could authorize Puerto Rican quasi-governmental entities to enter bankruptcy.

Now Puerto Rican leaders are asking Congress to enact a new remedy, the need for which stems from the island's anomalous political status: neither fully sovereign, and therefore capable of enacting its own bankruptcy law, nor a state, in which case it would be covered by existing law that lets municipalities and other subdivisions of states file for bankruptcy. The legislation, proposed by Pedro Pierluisi (D), Puerto Rico's nonvoting representative on Capitol Hill, would treat Puerto Rico like the states, allowing its entities and municipalities to declare bankruptcy; it was discussed Thursday at a hearing before a House judiciary subcommittee.

There are two main objections to the bill: that it amounts to changing the rules under which investors agreed to buy Puerto Rico's debt and that the island could scrape together the cash to pay its creditors if it were to reform the entities in question, especially the notoriously inefficient electric utility, which is owed hundreds of millions of dollars by the island government. Both points are valid, to an extent — just as it's valid to point out that investors in Puerto Rican debt heretofore enjoyed an especially sweet deal because it paid tax-free interest.

Puerto Rico must indeed reform its public sector, but the structural crisis affecting its economy is such that even dramatic new efficiencies probably wouldn't produce enough growth to pay its debts as currently structured. For the sake of its economic future, the United States' best friend in the Caribbean needs the power to negotiate a new, more sustainable deal with its creditors, and Congress should grant it.

Read more about this topic:

The Post's View: Puerto Rico's sinking economy needs help

Mark Plotkin: A good deal for the District and Puerto Rico

Letter: Puerto Rico's problems stem from its territorial status

Fitch Ratings

Fitch: Chapter 9 Extension Would Be a Positive for Puerto Rico

Fitch Ratings-New York-06 August 2014: The extension of Chapter 9 provisions governing the adjustment of municipal debt in Puerto Rico would be a positive and important development for Puerto Rico and holders of debt of its public utilities and public instrumentalities, according to Fitch Ratings.

On July 31, 2014, Puerto Rico's Resident Commissioner and Congressional representative introduced a proposed amendment to the US Bankruptcy Code. The 'Puerto Rico Chapter 9 Uniformity Act of 2014' would amend the US bankruptcy code and extend to Puerto Rico the power to use Chapter 9 proceedings in federal bankruptcy court to adjust debts of its municipalities and public instrumentalities. Corporations in Puerto Rico have access to US Bankruptcy proceedings under Chapters 7 and 11.

From a bankruptcy standpoint, the amendment would place Puerto Rico on an equal footing with the 50 States, who can currently use Chapter 9 to achieve debt adjustment for their municipalities. The amendment, which will be considered by the House judiciary committee, is supported by the National Bankruptcy Conference. Fitch notes the Conference recommends that the amendment be modified to include retroactive application.

The combination of fiscal challenge, weak economic performance and limited market access has led the Commonwealth government to a point where increasingly difficult choices are required. In June the Commonwealth government enacted the Recovery Act. Given the economic and fiscal pressures facing the Commonwealth itself and its need to provide proper service levels for its citizens, its ability to continue to provide meaningful ongoing financial support to its public corporations going forward would be challenging, in Fitch's view.

The Recovery Act is an effort to fill the void resulting from the absence of a federal bankruptcy alternative. The Commonwealth has attempted to forge its own framework for orderly debt restructuring applicable to its public corporations, including the Puerto Rico Electric Power Authority (PREPA; rated 'CC' and on Rating Watch Negative by Fitch) and Puerto Rico Aqueduct and Sewer Authority (PRASA; rated

'B+' and on Rating Watch Negative). While the Recovery Act is intended to restore solvency over the long-term, it entails debt restructuring that would trigger suspension of debt payments and preclude the timely payment of principal and interest during the pendency of the proceedings.

The Recovery Act specifically excluded the Commonwealth's general obligation debt and certain instrumentalities of the Commonwealth, including the Puerto Rico Sales Tax Financing Corporation (COFINA). However, the adoption of the Recovery Act and the absence of any preemptive federal bankruptcy alternative, in Fitch's view suggest a degree of legal uncertainty regarding how the Commonwealth might act at a time of more severe financial stress to extend the same or a similar act to debt obligations of COFINA. This led Fitch to eliminate any distinction between its rating of COFINA debt and the general obligation debt of the Commonwealth ('BB-', Negative Rating Outlook).

The enactment of the Recovery Act signaled a further level of fiscal stress within the Commonwealth and resulted in Fitch rating action on debt obligations of PREPA, PRASA, and COFINA. The adoption of the Recovery Act also spawned litigation and market volatility, potentially increasing the challenge to market access for the Commonwealth and its public corporations. The litigation challenging the Recovery Act will likely be costly to the Commonwealth, a distraction from more important governance activity and will continuously shroud the outcome of any proceedings or agreements entered into under the terms of the Recovery Act with uncertainty.

The Recovery Act has provisions that mimic to a degree those in Chapter 9, but are also different in important ways. The extension of Chapter 9 of the US Code would not of course alleviate the immediate financial stress which PREPA currently faces. However, clarifying the rules for restructuring and aligning them to a federal standard with understandable precedent, albeit limited, and providing a federal forum for the proceeding would benefit bondholders. It would also protect the Commonwealth from claims it is acting unjustly or arbitrarily and contrary to accepted norms.

The range of options available to the Commonwealth and its municipalities and public instrumentalities would be the same as those available in other states. Additionally, the administration of the proceedings and the outcomes would have the same underpinning as the outcomes for other Chapter 9 cases such as Jefferson County in Alabama and Detroit in Michigan, for example. The Recovery Act itself would likely become unnecessary, its provisions for debt restructuring in a Commonwealth court rendered ineffective by the provisions of Chapter 9. Section 903 of the US Code makes any outcome of a composition proceeding like that outlined in the Recovery Act nonbinding on non-consenting creditors and prevents judicial enforcement of the

outcome of such proceedings against such creditors. Fitch would expect the Recovery Act to be withdrawn once Chapter 9 becomes available.

Fitch's recent action aligning the rating on obligations of COFINA to the Commonwealth general obligation debt reflects the more uncertain legal environment that exists in Puerto Rico as long as Chapter 9 of the US Code is inapplicable in Puerto Rico. The passage of the Recovery Act substantially increased Fitch's assessment of the risk that the Commonwealth could take steps to the detriment of COFINA bondholders if the Commonwealth considered that a fiscal emergency and its need to provide essential services required legislative action to allow adjustment of the debt of COFINA to provide breathing space for the Commonwealth.

Fitch believes that the extension of Chapter 9 of the US Code to Puerto Rico would reduce the risk of future actions harmful to COFINA debt holders. As a separately constituted, independent instrumentality of the Commonwealth, COFINA would constitute a 'municipality' under the US Code for purposes of Chapter 9. No alternative proceeding under Commonwealth laws as noted above could be effective to bind bondholders, thus removing the incentive and the option for the Commonwealth to adopt special legislation to adjust the debt of COFINA.

As a municipality COFINA could file under Chapter 9 only if authorized by the Commonwealth and only if it could show that it is "insolvent" and had made a good faith effort to negotiate with its creditors or that such negotiation was not practical. General fiscal distress in the Commonwealth would not support a filing by COFINA. That the conditions for filing have been met independently by COFINA would need to be demonstrated in a neutral federal forum in a US Bankruptcy Court, and not before a Commonwealth tribunal.

The consequent reduction of the legal risk and uncertainty surrounding the Commonwealth's ability to adopt and apply a similar restructuring act to COFINA debt in the event of Commonwealth fiscal distress, and the limited ability of COFINA to file under Chapter 9 would necessarily be factored into Fitch's ratings of COFINA debt obligations. In Fitch's view, the extension of Chapter 9 to the Commonwealth could support ratings of COFINA debt at levels above the Commonwealth general obligation debt. Fitch would need to review COFINA ratings at the time Chapter 9 was amended and the rating outcome would depend upon the credit specifics at that time, including the general health of the Puerto Rican economy.

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February 25, 2015

The Honorable Bob Goodlatte, Chairman
House Committee on the Judiciary
The Honorable Tom Marino, Chairman
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers, Jr., Ranking Member
House Committee on the Judiciary
The Honorable Henry C. "Hank" Johnson, Ranking Member
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
B-351 Rayburn House Office Building
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Dear Members of Congress:

This is a written submission in opposition to the bill (H.R. 870) which would amend Title 11 of the United States Code to define Puerto Rico as a "State" for purposes of Chapter 9 of such title, enabling the Commonwealth to restructure the indebtedness of its municipalities, namely, its political subdivisions and public agencies and instrumentalities [as per 11 U.S.C. 101(40)].

In my expert opinion, this bill is damaging to what little investor confidence is left in Puerto Rico's ability and willingness to service its debt obligations. The bill is also unnecessary to deal with the financial problems of state-owned entities in the island. And finally, the bill represents a misallocation of congressional effort, which would be better spent establishing a Financial Control Board capable of addressing the root causes of Puerto Rico's urgent economic, financial, and leadership problems.

1) H.R. 870 is yet another confidence-destroying change in the "rules of the game" applicable to investors.

One year ago this month, the debt obligations of the Commonwealth of Puerto Rico and its agencies and instrumentalities lost their coveted "investment grade." This action included the Commonwealth's general-obligation (GO) bonds, which are a full-faith and credit

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obligation benefiting from a constitutional first-claim on the Commonwealth's revenues. Fitch Ratings, Moody's Investors Service, and Standard & Poor's all agreed that debt previously rated BBB-, Baa3, and BBB-, respectively, had been degraded and was now more properly assessed one or two notches lower as BB, Ba2, and BB+ obligations, respectively. In their explanations for why Puerto Rico's government debt was no longer suitable for conservative investors, the three agencies pointed to a loss of confidence in Puerto Rico among mainstream investors starting in mid-2013, as well as to a deterioration in economic and fiscal fundamentals over a period of many years, one which could not easily be reversed.¹

To put the significance of Puerto Rico's pre-downgrade, BBB rating in its proper context, and to highlight the extraordinary nature of its subsequent slide into "junk" territory, consider that as of mid-September 2014, of the more than 4,000 U.S. local-government credits rated by Standard & Poor's, the average credit rating was AA-, and that a mere three percent of the total universe was rated BBB or lower.² Furthermore, in the past decade, not a single one of the 50 U.S. states have been assigned a rating lower than A-. Therefore, Puerto Rico's loss of creditworthiness is a stunning aberration – and a painful one for U.S. investors, given that the rated universe of Commonwealth bonds exceeds \$70 billion, of which about \$45 billion are tax-supported obligations, a figure exceeded only by the tax-supported debt issued by the states of California (about \$90 billion) and New York (\$52 billion).³

Investor and rating-agency confidence in Puerto Rico were further damaged in the summer of 2014. On June 25, Governor Alejandro García Padilla proposed the "Puerto Rico Public Corporation Debt Enforcement and Recovery Act (the "Recovery Act"), which was hastily approved by the legislature within a couple of days. Its stated purpose was "to establish a debt enforcement, recovery, and restructuring regime for the public corporations and other instrumentalities of the Commonwealth of Puerto Rico during an economic emergency" such as the one that the island is experiencing.⁴ It was justified by the alleged fact that "there is no Commonwealth statute providing an orderly recovery regime for public corporations that may become insolvent," and also because "the provisions of the federal laws applicable

¹ Typical of the three agencies, Moody's wrote: "The two-notch downgrade was not prompted by a single action or trigger, but rather by a review of the Commonwealth's recent and projected financial performance, in the context of big-picture fundamental elements. . . . Long-term credit spreads on [Puerto Rico's] outstanding bonds have widened sharply, and we believe the current market for its debt is limited largely to hedge funds and other non-traditional investors." Moody's Investors Service, "Key Drivers: Commonwealth of Puerto Rico Downgrade," February 13, 2004.

² Standard & Poor's, "U.S. Local Government Rating Review Shows Varied Economic Conditions Being Met with Sound Financial Underpinnings," December 10, 2014. The universe includes the District of Columbia, cities, counties, towns, villages, townships, and boroughs, but not U.S. states or territories.

³ Standard & Poor's, "2014 U.S. State Debt Review: New Issuance Remains a Lower Priority," October 13, 2014.

⁴ English version of the Puerto Rico Public Corporation Debt Enforcement and Recovery Act, http://www.gdbpr.com/investors_resources/documents/ley-71-28-Jun-2014.pdf, p. 75.

to corporations in state of insolvency are inapplicable to the Commonwealth's public corporations.”⁵

The Recovery Act gave state-owned companies two ways to obtain debt forgiveness. First, they could negotiate new terms that are binding on all parties, upon court approval, if creditors representing at least 50 percent of the debt in a given class vote on the plan, and if at least 75 percent of participating voters approve it. Therefore, as few as 38 percent of creditors could impose losses on the remainder. Second, a court in Puerto Rico could force creditors to grant debt forgiveness subject to the vote of a qualified majority of just one class of creditors. The law could be used to reject or modify collective-bargaining agreements, but pension and retiree health benefits cannot be affected, and workers' wages and related benefits must be honored.⁶

The immediate reaction of investors and the rating agencies to the passage of the Recovery Act was quite negative. As bond prices plunged, especially on debt issued by state-owned companies, the average yield-to-maturity of the S&P Municipal Bond Puerto Rico Index jumped from less than 7 percent in the several weeks before Governor García Padilla's announcement to about 8¼ percent by early July.

On June 26, 2014, even before the legislature had finished voting on the Recovery Act, Fitch Ratings downgraded the credit of the Puerto Rico Electric Power Authority (PREPA) a whopping nine notches, to CC from BB, because the company had been plagued by weak financial performance and “bondholders now face a probable financial restructuring or default by [PREPA] in light of newly proposed legislation in Puerto Rico.”⁷ Fitch went on to downgrade other Puerto Rico bond categories in early July.

On June 27, 2014, even before the Recovery Act was signed into law, Standard & Poor's lowered its rating on PREPA bonds two notches, to BB from BBB-, to reflect their view “of the risk to bondholders posed by the law passed by the legislature of Puerto Rico.”⁸ In the following couple of weeks, the agency went on to downgrade PREPA bonds a further four notches to B-; the obligations of the Puerto Rico Highways and Transportation Authority (PRHTA) four notches, to B from BB+; and the Commonwealth's GO rating one notch, to BB from BB+. On July 31, PREPA bonds were downgraded a further two notches by S&P, to CCC from B-.

For its part, on July 1, 2014, Moody's announced that it had decided to cut the Commonwealth of Puerto Rico's rating three notches, to B2 from Ba2, and the rating of PREPA five notches, to Caa2 from Ba3, while PRHTA and the Puerto Rico Aqueduct and

⁵ Ibid. p. 80.

⁶ Ibid. pp. 84-134.

⁷ Fitch Ratings, “Fitch Downgrades Puerto Rico Electric Power Authority's Revenue Bonds; Maintains Watch Negative,” June 27, 2014.

⁸ Standard & Poor's, “Puerto Rico Electric Power Authority Revenue Bonds Downgraded to ‘BB’ on Legislative Passage of Debt Law,” June 27, 2014.

Sewer Authority (PRASA) were downgraded four notches, to Caa1 from Ba3. As Moody's explained, "by providing for defaults by certain issuers that the central government has long supported, Puerto Rico's new law marks the end of the commonwealth's long history of taking actions needed to support its debt. It signals a depleted capacity for revenue increases and austerity measures, and a new preference for shifting fiscal pressures to creditors, which, in our view, has implications for all of Puerto Rico's debt, including that of the central government."⁹

In sum, Governor García Padilla's attempt last year "to establish a debt enforcement, recovery, and restructuring regime for the public corporations and other instrumentalities of the Commonwealth of Puerto Rico" managed to undermine what little investor confidence there was as of mid-2014, and it prompted the credit-rating agencies to take an even dimmer view of the ability and willingness of the island's government to meet its lawful obligations.

To make matters worse, the Governor's destructive initiative was for naught. Once the legality of the Recovery Act was challenged by major institutional investors in the federal courts, it was declared unconstitutional on February 6 of this year. Judge Francisco Besosa of the U.S. District Court for the District of Puerto Rico ruled that such a debt enforcement, recovery, and restructuring regime is expressly preempted by Section 903 of the U.S. Bankruptcy Code.¹⁰

And it is this ruling that has now motivated the authorities in Puerto Rico, acting through Resident Commissioner Pedro Pierluisi, to introduce H.R. 870 on February 11 – an undesirable alternative solution to empower them to inflict losses on bondholders, this time under the cover of Chapter 9 of the federal Bankruptcy Code.

As was the case last summer, this latest attempt to change, with retroactive effect, the "rules of the game" under which investors have bought the Commonwealth's debt is already doing more harm than good. The immediate market reaction to Judge Besosa's ruling should have been a major relief rally in the bonds of Puerto Rico, but yields on Commonwealth bonds actually climbed to record heights on the first trading day after his ruling. For example, GOs maturing in July 2035 traded with average yields above 10 percent, the highest since they were issued in March 2014.¹¹

Likewise, the credit-rating agencies should have welcomed Judge Besosa's decision, but they too turned their thumbs down once the García Padilla Administration said it would appeal and once the Chapter 9 alternative of H.R. 870 was floated. On February 12, Puerto Rico's

⁹ Moody's Investors Service, "Moody's Downgrades Puerto Rico GOs to B2 from Ba2, Outlook Negative," July 1, 2014. Moody's downgraded PREPA's rating further to Caa3 on September 17, 2014.

¹⁰ Edward Krudy, "U.S. Federal Judge Strikes Down Puerto Rico's Restructuring Law," *Reuters*, February 6, 2015.

¹¹ Michelle Kaske, "Puerto Rico Yields at Record High as Setbacks Mount," *Bloomberg News*, February 9, 2015. PREPA bonds did gain, reflecting the perception of a better fate for those bondholders after the judge's ruling.

credit rating was cut deeper into “junk” by Standard & Poor’s, with GO debt now set three notches lower at B rather than BB, and with a negative outlook. “We believe Puerto Rico’s current economic and financial trajectory is now more susceptible to adverse financial, economic, and market conditions that could ultimately impair the commonwealth’s ability to fund services and its debt commitments.”¹²

Not to be outdone, Moody’s, which has been more pessimistic on Puerto Rico all along, soon followed with its own additional downgrade: on February 19, it cut the Commonwealth’s GO bonds two notches to Caa1 from B2, as well as other obligors such as the Government Development Bank for Puerto Rico (GDB) to Caa1 from B3, and PRHTA’s senior bonds to Caa2 from Caa1.¹³

In conclusion, Puerto Rico’s vicious cycle downwards during the past twelve months strongly suggests that attempts to erode fundamental investor protections have backfired. Therefore, the U.S. Congress should refrain from making matters worse by passing H.R. 870.

2) H.R. 870 is unnecessary to deal with the financial problems of state-owned entities in Puerto Rico.

The flawed Recovery Act was put forth by Governor García Padilla because allegedly “there is no Commonwealth statute providing an orderly recovery regime for public corporations that may become insolvent,” as noted previously. And now H.R. 870 is being submitted for congressional deliberation to make available to Puerto Rico “the provisions of the federal laws applicable to [municipal] corporations in state of insolvency,” the absence of which the preamble to the Recovery Act lamented.¹⁴

However, the impression given is misleading, if not false, because the enabling acts of state-owned concerns like PREPA and PRASA, for example, contain provisions that contemplate the court appointment of a receiver should the entities find themselves facing liquidity or solvency problems. The receiver would then take over management of these entities and apply operating revenues in the manner ordered by the court with a view to curing any and all defaults.

As Judge Besosa observed in his ruling striking down the Recovery Act, in the case of PREPA, specifically, its founding Authority Act of May 1941 included such a provision, and its indebtedness under a Trust Agreement dated January 1974, as amended and supplemented through August 2011, made explicit reference to it. PREPA pledged its

¹² Standard & Poor’s, “Puerto Rico General Obligation Debt Rating Lowered to ‘B’ from ‘BB’ on Potential Inability to Meet Debt Commitments,” February 12, 2015.

¹³ Moody’s Investors Service, “Moody’s Downgrades Puerto Rico GO Bonds to Caa1 from B2, COFINA to B3/Caa1 from Ba3/B1,” February 19, 2015.

¹⁴ See footnote #5, *supra*.

present and future revenues, granting its creditors the right to accelerate payments in an event of default and to seek the appointment of a receiver as authorized by the Authority Act. More generally, in PREPA's founding charter, the Commonwealth expressly pledged to PREPA bondholders "that it 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."¹⁵

So why did Governor García Padilla claim that these provisions "are inadequate to address the complexities involved in a recovery process in the event of an insolvency"?¹⁶ He did so because he is beholden to the labor unions entrenched in Puerto Rico's state-owned companies, and thus he wanted to prioritize their jobs and pensions over the contractual rights of creditors – rights that include having the public utilities restructured by a receiver to enable them to meet their financial obligations.¹⁷ The Governor's pro-labor favoritism was obvious last year when a Chief Restructuring Officer (Ms. Lisa J. Donahue) was appointed "to develop, organize and manage a financial and operational restructuring of PREPA on terms to be approved by the Board [of Directors]."¹⁸ Governor García Padilla made it known (ahead of her appointment) that the CRO could recommend corrective measures but that rate hikes, changes to collective-bargaining agreements, and layoffs would not be approved by PREPA's Board.¹⁹ Unfortunately, these are precisely some of the critical areas that a sound restructuring plan should address, as the case of PREPA vividly illustrates.

PREPA is the monopoly provider of electricity on the island of Puerto Rico, and while its board of directors has had full authority to set electricity rates necessary to pay expenses and meet debt-service obligations, it has not done so in recent years. PREPA has kept its base rate of less than six cents per kilowatt-hour (kWh) frozen since 1989, although rates for residential customers have often been raised to reflect the (until recently) higher world oil prices, its key input.²⁰ Nevertheless, income has tended to fall short of expenses such that the utility has been operating at a loss since at least 2007, borrowing in the capital markets in order to stay afloat. Its long-term debt outstanding is on the order of \$9 billion. To meet its

¹⁵ Civ. Nos. 14-1518 and 14-1569 (ECF No. 119), pp. 2-3, available at <http://cases.justia.com/federal/district-courts/puerto-rico/prdce/3:2014cv01518/111423/119/0.pdf?ts=1423304308>

¹⁶ See footnote #5, *supra*, p. 80.

¹⁷ It should be recalled that in November 2012, Governor García Padilla narrowly defeated the incumbent, Gov. Luis Fortuño, thanks in part to support from labor unions angered when Fortuño laid off more than 20,000 government workers to help close the budget deficit. Danica Coto, "Puerto Rico Inaugurates Governor Alejandro Garcia Padilla, Marking Ideological Shift," *Huffington Post*, January 2, 2013.

¹⁸ The CRO's job description, issued on August 19, 2014, appears at <http://www.gdb-pur.com/documents/CRO-081914.pdf>

¹⁹ "Governor: PREPA CRO Can't Raise Rates," *Caribbean Business*, August 21, 2014.

²⁰ However, from December 2011 through October 2012, then Governor Fortuño, asked PREPA to refrain from raising rates, and this under-recovery of fuel costs reduced the company's net income and forced it to incur additional debt. Standard & Poor's, "Summary: Puerto Rico Electric Power Authority," June 21, 2013.

debt covenants, the company has relied on accounting measures such as capitalizing interest payments and using non-cash revenues and cost savings.²¹

The company is inefficient and overstaffed, with 9,550 employees, of whom more than 70 percent are unionized.²² For example, PREPA's 250-person Human Resources and Labor Relations Department is out of proportion to its peers, consuming 2.7 percent of total operating expenses versus the industry benchmark of 0.56 percent. Its Customer Service Department is likewise bloated and services provided are fewer when compared with relevant benchmarks: PREPA's customer-service expense per customer is more than double the median cost, and more than four times the customer-service cost of the best-performing utilities. A 2012 report commissioned by the Government Development Bank found that instituting a biometric system in which employees have to "punch in and punch out" of work could deliver savings from now careless timekeeping and excessive overtime, but staunch opposition to the move by organized labor has blocked its implementation. In addition, pension benefits are overly generous and PREPA's long-term pension liabilities are unfunded.²³

PREPA also has an excessively lenient collections-compliance policy, such that its accounts receivables have been increasing year after year and reached \$1.75 billion as of September 30, 2014. This was the equivalent of 36 percent of FY 2013 operating revenues and five times the amount of annual operating income.²⁴ Of the almost \$945 million owed by residential, commercial, and industrial energy users, approximately 57 percent represented bills aged 120 or more days. Receivables from municipalities, public corporations, government agencies, and federal agencies in Puerto Rico were nearly \$760 million. About 70 percent of receivables from state-owned corporations were more than 120 days old, but no enforcement actions are taken against them. Major drivers of abnormally large late payments include lack of collection efforts on accounts once they have been cut-off from service; failure to perform credit checks on new accounts or to report delinquent accounts to credit bureaus; minimal fees for late payments and for reconnections; and lack of contact with customers between when bills are due and a shutoff of service takes place.²⁵

²¹ Moody's Investors Service, "Moody's Downgrades PREPA's Ratings to Ba3 from Ba2," June 26, 2014. The recent collapse in world oil prices obviously provides PREPA with a great opportunity to raise cash by slowing down rate cuts to its residential customers, in compensation for what it was forced to do in 2012.

²² PREPA, http://www.prepa.com/aeees_eng.asp

²³ Bernard L. Weinstein, Nicholas Saliba, and Oleg Kareev, The Financial Outlook for the Puerto Rico Electric Power Authority: Challenges and Opportunities, Maguire Energy Institute, Cox School of Business, Southern Methodist University, November 2014, pp. 4-5.

²⁴ FY 2013 data from Ernst & Young, "[PREPA] Financial Statements, Required Supplementary Information, and Supplemental Schedules, Years Ended June 30, 2013 and 2012," January 16, 2014. As of the date of this submission, no financial statements are available for FY 2014.

²⁵ FTI Capital Advisors, "[PREPA] Accounts Receivable and CILT Report," November 14, 2014. This exhaustive report, which runs to 98 pages, focuses on actions and initiatives to enhance collections by PREPA.

In conclusion, the Commonwealth of Puerto Rico and its creditors already have the proper legal framework to deal with the financial problems of state-owned entities in Puerto Rico. Therefore, the U.S. Congress does not need to pass H.R. 870.

3) H.R. 870 represents a misallocation of congressional effort, which would be better spent establishing a Financial Control Board capable of addressing the root causes of Puerto Rico’s urgent economic, financial, and leadership problems.

With the benefit of hindsight, it is painfully clear that the Commonwealth of Puerto Rico took excessive advantage of its privilege to issue bonds paying tax-exempt interest in all fifty U.S. states. And it did so to the recent detriment of tens of millions of investors from throughout the country who have suffered major mark-to-market losses – and who may yet suffer permanent losses of principal and interest, especially under a Chapter 9 “solution.”

After incurring operating budget deficits for most of the past decade-and-a-half, equivalent to about 16 percent of revenues during 2008-2013, Puerto Rico’s debt burden is by now off-the-charts when compared with any of the 50 U.S. states. The Commonwealth’s net tax-supported debt represents nearly 90 percent of personal income in Puerto Rico, compared with a 2.6 percent median for U.S. states, excluding overlapping municipal and federal debt burdens. The debt is also equivalent to almost 95 percent of economic output in Puerto Rico, compared with a median 2.4 percent debt-to-GDP ratio among the 50 states.²⁶ These are highly relevant metrics of the depth of the fiscal problem, especially since H.R. 870 proposes to treat Puerto Rico as a “State” for the purposes of Chapter 9 of the U.S. Bankruptcy Code.

The seemingly irreversible loss of investor and rating-agency confidence in Puerto Rico’s ability and willingness to pay, especially given timid and misguided political leadership in the island, raises the question of whether the U.S. Congress should be focusing on establishing a federal oversight board to manage the Commonwealth’s grave fiscal situation – much like it did for the District of Columbia in the mid-1990s. Congress is certainly empowered to do it for Puerto Rico under Article IV, Section 3, Clause 2 of the Constitution.²⁷

State-appointed financial control boards and financial managers have offered a tried and tested approach to municipal insolvency. They have been created repeatedly to help troubled cities or other sub-state entities overcome their financial constraints, by overseeing their affairs for several years, making the unpopular revenue-raising and expenditure-cutting decisions that can balance budgets and pave the way for a restoration of access to funding.

²⁶ “Moody’s Downgrades Puerto Rico GO Bonds to Caa1 from B2, COFINA to B3/Caa1 from Ba3/B1,” see footnote #13, *supra*.

²⁷ “The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.”

Most states do not have clear criteria as to when a board should be established or a manager should be appointed, and the decision often depends on the political situation in both the state and the affected municipality or entity. Usually, states decide to intervene only after a borrower's credit rating falls below investment-grade, or when the municipal city or agency is no longer able to finance its operating expenses – at least not on sustainable terms.²⁸

In early 1995, when Congress started to consider the advisability of intervening in a District of Columbia that had deteriorated financially and otherwise, it drew inspiration from five financial control boards which had been imposed in the two decades since 1974 on the Chicago School District and the cities of Cleveland, New York, Philadelphia, and Yonkers.²⁹ In those prior cases, the precipitating event had been the loss of access to the municipal bond market occasioned by operating deficits and deteriorating economic fundamentals. And by 1995, the District of Columbia had lost its investment grade: its ratings had been slashed from A-/Baa/A- (Fitch/Moody's/S&P, respectively) to BB/Ba/B.³⁰ The broader context was an exodus of middle-class DC residents to Maryland and Virginia after becoming tired of mismanaged public finances, inadequate municipal services, underachieving public schools, high crime rates, and dropping property values.

By the time (April 1995) that President Bill Clinton signed the law passed by a Republican-controlled Congress creating the District of Columbia Financial Responsibility and Management Assistance Authority, the District had not been downgraded as close to the bottom of the credit-ratings scale as the Commonwealth of Puerto Rico, and particularly its main public utilities and agencies, have already been downgraded.³¹

In terms of the underlying fundamentals, the economy of Puerto Rico has been shriveling up for eight years running, such that the latest measure of the island's monthly real GDP as of December 2014 was 80.5 percent of its level in December 2006 – all the way down to a

²⁸ “Missed Opportunity: Urban Fiscal Crises and Financial Control Boards,” *Harvard Law Review*, Vol. 110, 1997, pp. 733-750; and James E. Spiotto, “The Role of the State in Supervising and Assisting Municipalities, Especially in Times of Financial Distress,” *Municipal Finance Journal*, Vol. 34, 2013, pp. 1-31.

²⁹ Nonna A. Noto and Lillian Rymarowicz, “CRS Report for Congress: Financial Control Boards for Cities in Distress,” in Actions Taken by Five Cities to Restore Their Financial Health, Hearing Before the Subcommittee on the District of Columbia of the House Committee on Government Reform and Oversight, 104th Congress, First Session, 1995, pp. 46-83.

³⁰ Office of the Chief Financial Officer, District of Columbia, “District of Columbia Surplus and Bond Rating History,” available at <http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/Surplus%20Bond%20Rating%20History%20Chart%20092914.pdf>

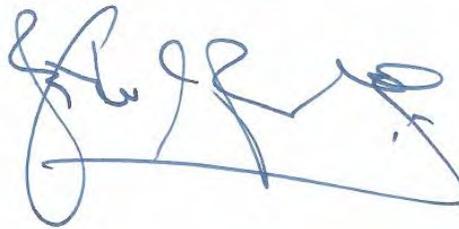
³¹ For additional background on federal intervention in the District of Columbia, see Stephen R. Cook, “Tough Love in the District: Management Reform Under the District of Columbia Financial Responsibility and Management Assistance Act,” *The American University Law Review*, Vol. 47, 1997-98, pp. 993-1028; and “The D.C. Revitalization Act: History, Provisions and Promises,” in Building the Best Capital City in the World: A Report by DC Appleaseed and Our Nation's Capital, Appendix One and Two, 2008, available at <http://www.brookings.edu/~media/Research/Files/Reports/2008/12/18%20dc%20revitalization%20garrison%20rivlin/appendix.PDF>

point not seen since 1994, two decades ago.³² The unemployment rate stood at 13.7 percent in December of last year and averaged 14 percent for all of 2014, up from 10.6 percent in 2006. The essential reason for the economic contraction has been a steady exodus of population and jobs: total employment in 2014 stood 26.5 percent below its 2006 average.³³ The exodus of inhabitants and jobs, in turn, has led to an erosion of the tax base and to growing political pressure to salvage government jobs and help vulnerable populations.

Behind every fiscal crisis there is a shortfall of political skill and forceful leadership, and the García Padilla Administration is looking increasingly inept relative to the huge challenge it inherited. The Governor's plan to balance the Commonwealth's budget by tinkering with revenue measures and curbing employee compensation, while avoiding layoffs and the restructuring with intent to privatize inefficient state-owned companies, is insufficiently aggressive. Seven months into the current fiscal year, the plan is already short of target. Given the current morass, the time is rapidly approaching when the U.S. Congress may well have to take matters in its own hands and establish a Financial Control Board to take the unpopular austerity and reform measures that the very bad circumstances warrant.

In conclusion, the economic, financial, and leadership deterioration witnessed in Puerto Rico is in many respects worse than that observed in the District of Columbia in the mid-1990s and in other troubled municipalities before and since then. Instead of approving H.R. 870, Congress should consider establishing a Financial Control Board capable of addressing the root causes of Puerto Rico's problems.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Arturo C. Porzecanski', written in a cursive style.

Prof. Arturo C. Porzecanski, Ph.D.
Distinguished Economist in Residence and
Director, International Economic Relations Program
School of International Service
American University

³² The Economic Activity Index is from the Government Development Bank for Puerto Rico, available at <http://www.gdb-pur.com/economy/documents/16-EAI-2015-02-02.xls>

³³ The unemployment rate and employment levels, seasonally adjusted, are from the U.S. Bureau of Labor Statistics, available at <http://www.gdb-pur.com/economy/documents/01-LABOR-2015-02-02.xls>



Representante por Acumulación

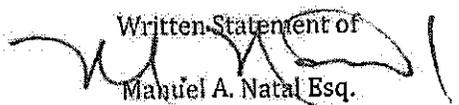
Manuel Natal Albelo
Presidente de la Comisión Desarrollo Integral de la
Juventud y para la Retención y Fomento del
Nuevo Talento Puertorriqueño

U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Regulatory Reform, Commercial and Antitrust Law

H.R. 870, The "Puerto Rico Chapter 9 Uniformity Act of 2015"

To amend title 11 of the United States Code to treat Puerto Rico as a State for purposes
of Chapter 9 of such title relating to the adjustment of debts of municipalities

February 26, 2015

Written Statement of

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COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND ANTITRUST LAW

H.R. 870, The "Puerto Rico Chapter 9 Uniformity Act of 2015"

Written Testimony of



Rep. Manuel Natal

February 26, 2015

Mr. Chairman, Ranking Member and all other members of the Committee and Subcommittee: My name is Manuel Natal, and I am a majority representative at-large in the Puerto Rico House of Representatives. Although I will not have the opportunity to serve as a witness in today's Committee Hearing, in lieu of my presence, I would like to share with the honorable Committee on the Judiciary and its Subcommittee on Regulatory Reform, Commercial and Antitrust Law a few written comments regarding the proposed legislation, H.R. 870, the "Puerto Rico Chapter 9 Uniformity Act of 2015," in the context of the current situation in Puerto Rico.

Puerto Rico's outstanding debt is unpayable. Our Department of Treasury, the Government Development Bank for Puerto Rico, and our largest public corporations lack the necessary cash to uphold their debt repayment schedules as they become due. As of mid-2014, every single, publicly traded financial instrument issued by the Government of Puerto Rico has been downgraded to speculative and highly speculative status, and our financial officers have taken it upon themselves to resort to predatory

lenders in an attempt to raise short-term cash destined exclusively towards historically expensive long-term refinancing deals. Just last week, a major credit rating company warned the municipal bond market that our central government's bonds, including those issued by the Government Development Bank (GDB) for Puerto Rico, carried substantial risk as the Puerto Rican economy continues to lag, and the impending tax reform will be a futile attempt at increasing government revenues to any meaningful degree in the near term.¹ None of this will change with the approval of H.R. 870.

In the testimony that follows, I will explain my opposition to H.R. 870, focusing primarily on the question of the bill's fiscal utility, and its democratic desirability.

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Is Chapter 9 bankruptcy sufficiently useful to the Puerto Rican fisc?

The Government of Puerto Rico has an aggregate \$72.3 billion in outstanding debt. Approximately \$4 billion of that debt is attributable to debt issued by the various cities of Puerto Rico, or roughly 5.5% of our aggregate debt. Another \$50 billion is attributable to debt issued by our government's public corporations, or approximately 69% of our aggregate. The remainder is directly attributable to the central government's issuance of general credit obligations.²

In order to determine whether any part of this debt may be restructured through Chapter 9 proceedings, the first question that must be addressed pertains to which part, if any, of our government's aggregate debt may be treated as debt of a municipality.

¹ "Moody's downgrades Puerto Rico GO bonds to Caa1 from B2, COFINA to B3/Caa1 from Ba3/B1," Moody's Investors Service, 19 February 2015, available at https://www.moodys.com/research/Moodys-downgrades-Puerto-Rico-GO-bonds-to-Caa1-from-B2--PR_318953

² See Appendix A.

Section 101(40) of the U.S. Bankruptcy Code defines municipality to mean "political subdivision or public agency or instrumentality of a State." States are expressly excluded from this definition. Section 109(a) and Section 109(c) jointly state that only an insolvent municipality may be a debtor under Chapter 9 of Title 11 of the U.S. Code. Therefore, states themselves are excluded from participating in Chapter 9 bankruptcy proceedings as debtors.

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Puerto Rico is not a state of the United States of America.³ Nevertheless, it has been granted state-like recognition by Congress and the U.S. federal courts on a case-by-case basis. If H.R. 870 is signed into law, and Puerto Rico is granted state-like recognition for bankruptcy proceedings, defining which public entities in Puerto Rico operate as municipalities of the state and which operate as alter egos to the state, is a gateway determination and a complex operation within the Puerto Rican legal framework.

The U.S. Bankruptcy Code does not define the terms "political subdivision," "public agency" or "instrumentality." The established principles of statutory interpretation dictate that the courts look to the "plain meaning" of these words to determine their definition, but "dictionary definitions are too indefinite to be useful."⁴ Because neither the plain language of the statute nor its legislative history answers the question with sufficient clarity, the next step is to examine the bankruptcy practice that existed prior to the addition of Section 101(40) to the Bankruptcy Code.⁵ According to prior bankruptcy law, Section 81(7) defined a "political subdivision" as "any county or parish

³ See Balzac v. People of Porto Rico, 258 U.S. 298 (1922).

⁴ See In re Northern Mariana Islands Retirement Fund, Case No. 12-00003 (R.JF) (D. N.M.I.), filed 13 June 2012, p. 3.

⁵ See In re County of Orange, 183 B.R. 594 (1995), p. 602.

or any city, town, village, borough, township, or other municipality..."⁶ The legislative history indicates that, at that time, "municipality" meant "political subdivision." 81 Cong. Rec. 6,318 (1937).⁷ The term "public agency" was defined by Section 81(6) as "incorporated authorities, commissions, or similar public agencies organized for the purpose of constructing, maintaining and operating revenue producing enterprises..."⁸ Finally, the term "instrumentality of a State" was described in Sections 81(1)-(5) as several kinds of instrumentalities including various types of local improvement districts "organized or created for the purpose of constructing, maintaining, and operating" the specified district and its facilities.⁹

mm However, not every "instrumentality of a State" is a "municipality" under Section 101(40) of the current Bankruptcy Code.¹⁰ The degree to which a state holds a significant ongoing influence over its instrumentality,¹¹ and the degree to which the state government would foot the bill for monetary claims against the instrumentality, could be weighted factors in deciding whether said instrumentality is merely an alter ego to the state, and unqualified as a municipality for the purposes of Chapter 9 bankruptcy.

In general, it seems the closer the instrumentality comes to fulfilling the standards for extension of a state's sovereign immunity, the further away it is gets from meeting the criteria of a municipality under the Bankruptcy Code. A standard test to determine whether an instrumentality of a state is privy to that state's sovereign immunity under

⁶ See *Id.*

⁷ See *Id.*, endnote [17].

⁸ See *Id.*, p. 602.

⁹ See *Id.*, p. 603.

¹⁰ See *In re Northern Mariana Islands Retirement Fund*, *supra*, p. 8.

¹¹ See *Id.*, pp 5-6.

the Eleventh Amendment, includes the following criteria: (1) the determination of the source of the funds to pay a judgment favorable to plaintiff; (2) whether the agency has the power to sue and be sued; (3) whether the agency is performing a governmental or proprietary [sic] function; (4) whether it has been separately incorporated; (5) the degree of autonomy it enjoys; and (5) whether its property is immune from state taxation.¹²

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Understanding how each of Puerto Rico's public agencies, political subdivisions and instrumentalities are unable to meet the necessary criteria we have discussed in order to meet the definition of a "municipality" under Title 11 of the U.S.C. would require a detailed explanation of how Puerto Rico's consolidated budget works, and this is not the medium for such a discussion. The degree to which every public instrumentality relies on appropriations or cash loans from the central government should be clear to this honorable Committee and Subcommittee from the GDB president's own testimony, as she states: "One critical component of the administration's commitment to fiscal sustainability is ensuring that Puerto Rico's public corporations can become self-sufficient and are no longer dependent on voluntary contributions by the GDB or the central government for their financing needs."¹³ The same applies to the various city and town governments in Puerto Rico, which would otherwise be a clear candidate for Chapter 9 bankruptcy as a qualified "municipality".

Appreciating how significant is the ongoing influence of the state in the corporate governance of these instrumentalities would be a considerably simpler task. One look at

¹² See *Ursulich v. Puerto Rico National Guard*, 384 F. Supp. 736, 738 (1974).

¹³ See "Statement of Melba Acosta-Febo on behalf of the Government Development Bank for Puerto Rico before the Subcommittee on Regulatory Reform, Commercial and Antitrust Law", 26 February 2015, p. 4.

the 2010-2011 probation reports by the Middle States Commission on Higher Education regarding corporate governance in the University of Puerto Rico, the longest-standing public corporation in Puerto Rico, should provide sufficient insight as to how these corporations are managed by the state.

A second gateway matter that must be addressed in a Puerto Rican public debt bankruptcy proceeding is the complex revenue structure for the repayment of special bonds issued by our public entities. Section 927 of the Bankruptcy Code clearly states that whatever debt is payable solely from special revenues of the debtor cannot be restructured through Chapter 9 bankruptcy.

2/11

Even if our government authorized, and a bankruptcy judge recognized, as Chapter 9 debtors some of our largest public corporations, an insurmountably large portion of our aggregate debt could not be redressed with the approval of H.R. 870. An ungodly amount of our debt has been secured by special revenues for decades, especially through the Highways and Transportation Authority (PRHTA) and 100% of COFINA's \$15.2 to \$15.9 billion in outstanding debt, and it seems the likely path to be taken by an important part of our cities and towns with their public debt.

In short, even with the approval of H.R. 870, the Government of Puerto Rico would still face imminent default and our economy will continue its downward spiral. "Congress did not intend that the Bankruptcy Code could solve all problems, least of all the

financial problems of governmental units.”¹⁴ Indeed, “Congress intended that the local government, rather than the federal court, should address such problems.”¹⁵

Is Chapter 9 bankruptcy a democratically desirable option?

Puerto Rico is not a free or sovereign country.¹⁶ Subject to the plenary powers of Congress under the Territorial Clause of the U.S. Constitution,¹⁷ the Government of Puerto Rico is, therefore, unable to pursue a great number of options that would allow a restructuring of its debt in a manner consistent with the democratic principles that should govern any nation.

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Puerto Rico is not a state of the United States of America. As such, its 3.5 million inhabitants have absolutely no representation in the Congressional process that dictates the policy enshrined in a U.S.C. Title 11 bankruptcy proceeding. No member of Congress will be held accountable by the People of Puerto Rico if Congress votes in favor of, or entirely ignores, H.R. 870 or any other bill regarding Puerto Rico. As a matter of course, the People of Puerto Rico also lack any representation in the Executive who nominates and the Senate who confirms the bankruptcy judges who would decide its collective fate.

Bondholders will protest that a debt restructuring in the hands of the Puerto Rican government, without any federal oversight, would be tantamount to anarchy. History

¹⁴ See *In re Northern Mariana Islands Retirement Fund*, *supra*, p. 9.

¹⁵ See *id.*

¹⁶ See *Treaty of Peace Between the United States and Spain, December 10, 1898*, Article II, available at http://avalon.law.yale.edu/19th_century/sp1898.asp#art2

¹⁷ See *Balzac*, *supra*.

states otherwise. The Government of Puerto Rico has consistently prioritized the owners of its public debt over the needs of its population, especially amid economic and fiscal crises. Whether this obeys to democratic or plutocratic principles, it is for our People to decide.

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In a twenty-year period, the Government of Puerto Rico has been unable to adapt its economic infrastructure as a response to the Congressional phase-out of Section 936 of the U.S. Internal Revenue Code (1996-2006). Following a weeks-long government shutdown in 2006, the Legislative Assembly and the Executive Branch of Puerto Rico's government have been improvising, for nearly a decade, a series of financial and corporate constructs designed to compensate for the shortfall in government revenues by leveraging every possible revenue stream available. A shocking majority of the proceeds have lined the pockets of our public debt creditors.

Over the past eight years, Puerto Rico's public debt has nearly doubled; the government's cost of market access has more than tripled; public employment has been slashed by a third; flat-rate consumption and income taxes have been levied and increased; public pensions have been morphed into 401Ks; public spending on education and transportation has been cut; valuable, income-generating public assets have been privatized; and the Government of Puerto Rico has been reduced to a mere debt collector for bondholders, much to the dismay of our constituency.

To use the words of Thomas Jefferson,

"A departure from principle in one instance becomes precedent for a second; that second for a third; and so on, till the bulk of the society is

reduced to be mere automatons of misery, and to have no sensibilities left but for sinning and suffering. Then begins, indeed, the *bellum omnium in omnia*, which some philosophers observing to be so general in this world, have mistaken it for the natural, instead of the abusive state of man. And the fore horse of this frightful team is public debt. Taxation follows that, and in its train wretchedness and oppression."¹⁸

Collective misery and government oppression are not aspirations proper to a democratic institution. U.S. creditors of Puerto Rico's government bonds would do well to mind their behavior does not further worsen the general state of things in our nation, and the U.S. federal institutions should curb any instincts to the contrary.

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Puerto Rico has been pushed into a corner, and I believe its only way out of that corner is to drive its creditors into a negotiation process for the composition of its government debt. In 2009 and 2014, the Government of Puerto Rico declared fiscal emergencies in order to bypass constitutional rights of certain government creditors (i.e. collective bargaining agreements, public pensions). I see no reason why other government creditors (i.e. bondholders) should be exempt from facing the consequences of the same fiscal emergency every Puerto Rican has been facing for the past six years.

To that effect, and to this date, the Puerto Rico House of Representatives has two bills, of my design, proposing mechanisms through which to declare a temporary moratorium on the repayment of a significant portion of our outstanding public debt, and an audit on all of our currently outstanding public debt, the result of which would be used in a

¹⁸ Yarbrough, J. M. (Ed.). (2006). *The Essential Jefferson*. Indianapolis, IN: Hackett, p. 243.

debt restructuring negotiation with our creditors. The Puerto Rico Senate has at least one bill, designed by a fellow majority senator at-large, which would provide for an independent public structure charged with negotiating a debt composition with our creditors.

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If Congress is to recognize any state-like powers to the Government of Puerto Rico, let it be through the continued application of the Eleventh Amendment in any suit brought by our bondholders before the federal court system, so that we may continue to design and debate an acceptable solution through our own democratic processes. The United States courts have historically held that "Puerto Rico, despite the lack of formal statehood, enjoys the shelter of the Eleventh Amendment in all respects."¹⁹ Should Congress stray from this long-standing position, the consequences will not bear a material difference to indentured servitude for the People of Puerto Rico.

When the Government of Puerto Rico defaults on its outstanding debt, voluntarily or involuntarily, I ask that you not be quick to remember Argentina, Ecuador, Greece or Russia. Instead, look to your own history and remember Georgia,²⁰ and the context that united your founding states on the matter of the Eleventh Amendment.

It is my unwavering position that the Government of Puerto Rico is legally authorized, pursuant to the established principles of law regarding the sovereign's immunity, and ethically obliged to renegotiate its debt as it best deems fit to address the public interest of its constituency. There is no statutory or constitutional impediment to the

¹⁹ See Ramírez v. Puerto Rico Fire Service, 715 F.2d 694 (1983).

²⁰ See Chisholm v. Georgia, 2 U.S. 419 (1793).

Government of Puerto Rico's ability to reorganize its outstanding debt in accordance with the policy criteria that we believe would best serve the interests of the People of Puerto Rico.

I would like to thank the Committee on the Judiciary and its Subcommittee on Regulatory Reform, Commercial and Antitrust Law for your time and for the opportunity to participate in this process.

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