Nos. 15-233 & 15-255

In the Supreme Court of the United States

COMMONWEALTH OF PUERTO RICO, ET AL.,
Petitioners,

v.

FRANKLIN CALIFORNIA TAX-FREE TRUST, ET AL.,
Respondents.

MELBA ACOSTA-FEBO, ET AL.,
Petitioners,

v.

FRANKLIN CALIFORNIA TAX-FREE TRUST, ET AL.,
Respondents.

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

BRIEF FOR THE PUERTO RICO ELECTRIC POWER AUTHORITY AS *AMICUS CURIAE* SUPPORTING PETITIONERS

Lewis J. Liman
Counsel of Record
Lawrence B. Friedman
Richard J. Cooper
Sean A. O'Neal
CLEARY GOTTLIEB STEEN & HAMILTON LLP
One Liberty Plaza
New York, New York 10006
(212) 225-2000
lliman@cgsh.com
Counsel for Amicus Curiae

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES (cont'd)

Page(s)

Statutes

Other Authorities

TABLE OF AUTHORITIES (cont'd)

Page(s)

TABLE OF AUTHORITIES (cont'd)

Page(s)

INTEREST OF *AMICUS CURIAE* [1]

The Puerto Rico Electric Power Authority (PREPA) is a public corporation and government instrumentality of the Commonwealth, organized under Puerto Rico law pursuant to the Puerto Rico Electric Power Authority Act in 1941, as amended, reenacted and supplemented (the "PREPA Act"). PREPA was created for the purpose of conserving, developing and utilizing Puerto Rico's energy resources to promote the general welfare of the Commonwealth's residents, and to increase commerce and prosperity.

PREPA performs an indispensable public function. It produces and delivers virtually all of the electric power consumed in the Commonwealth, including by residences, businesses and government offices, public agencies and other providers of essential services, such as schools and hospitals. Without PREPA, the lights would literally go out in Puerto Rico. There would be no power for police to preserve public safety, for firefighters to fight fires, for doctors and hospitals to protect public health and welfare – and not even for traffic lights at intersections.

---

[1] All parties have consented to this filing. No counsel for a party has authored this brief in whole or in part, and no person other than *amicus*, its members, and its counsel has made a monetary contribution to the preparation or submission of this brief.

From its birth, PREPA has relied heavily on debt financing for the performance of its public functions. PREPA first issued bonds in 1945 (when it was named the Puerto Rico Water Resources Authority) and has periodically raised debt since that time to advance its mission. PREPA currently has 25 series of bonds outstanding, totaling over $8.1 billion. In addition, PREPA has entered into revolving lines of credit in the amount of $700 million to purchase fuel and pay for other operating expenses.

The raising of that debt has been facilitated by, and has occurred against a backdrop of, laws, explicit agreements and a common understanding that if PREPA were unable to pay its debt as that debt came due, there would be a mechanism for the orderly and equitable treatment of all of its creditors without the proverbial "race to the courthouse." The relevant laws in place at the time were the U.S. Constitution and the Bankruptcy Code. Nothing in the Bankruptcy Clause of the Constitution prevents Puerto Rico from adopting a law allowing its public corporations to adjust their debts, nor had the Bankruptcy Code been interpreted to prevent Puerto Rico from treating its public corporations in the same way that the 50 States can treat their similarly situated entities. Likewise, the Trust Agreement governing the bonds recognizes that the Commonwealth could enact a restructuring law.

The significance of that background understanding has become manifest now, both in

terms of PREPA's current ability to provide services and in terms of its future ability to raise additional debt financing so that it may continue to provide services in the future. PREPA cannot now repay its current debts in full. It currently owes $700 million under its fuel lines of credit and will owe approximately $428 million in principal and interest under bonds that mature in July of this year. That is more than twice the cash PREPA has on hand, and PREPA cannot make up the difference with revenue from operations before that date. Nor can PREPA obtain additional financing to repay amounts now coming due. Recent credit downgrades and PREPA's severe financial condition have deprived PREPA of access to new capital. That in turn has prevented PREPA from making the significant investments necessary to modernize its outdated, inefficient infrastructure, and PREPA's continued reliance on that infrastructure only compounds its difficulties.

In short, PREPA has neither the funds nor the means to obtain the funds sufficient to repay its debts in full. And, without those means or the ability to compel 100 percent of its creditors to agree to an equitable plan of reorganization, PREPA lacks the ability to reorganize its debt in a manner that would protect the interests of all creditors and the Commonwealth's citizens, businesses and government agencies who need electricity.

Therefore, PREPA requires a legislative solution that will permit it to achieve fair and

equitable resolutions with all of its creditors, while continuing reliably to provide power to the Commonwealth. The Debt Enforcement and Recovery Act (the "Recovery Act") that is the subject of this lawsuit provided such a legislative solution. In its absence, PREPA may literally be unable to provide the electricity that is the lifeblood of the Commonwealth.

PREPA's negotiations with its creditors to date have demonstrated the wisdom of and necessity for a law such as the Recovery Act. While PREPA has reached a restructuring support agreement (the "RSA") with an ad hoc group of bondholders, certain of the monoline insurers of certain PREPA bonds and its fuel line lenders, the agreement is fragile and subject to a number of uncertainties including – most notably – numerous termination events and holdout risks. To demonstrate the fragility of the RSA, one needs to look no further than a few days ago, when the RSA terminated because required legislation was not enacted into law.[2] PREPA is in discussions with creditors to revive the RSA, but even if those discussions are successful, any restructuring presents holdout and other risks: it will require agreement from additional bondholders holding approximately $2 billion in PREPA bonds who were never parties to

---

[2] *See* Mary Williams Walsh, *Failed Talks Raise Specter of Biggest Default in Puerto Rico Crisis*, N. Y. Times (Jan. 23, 2016).

the RSA.[3] Other highly uncertain "Conditions Precedent" would remain: (1) the Puerto Rico Energy Commission ("PREC") would need to approve a new rate structure; (2) the contemplated new securitization notes would need to receive an investment-grade rating, a significant challenge in light of the Commonwealth's financial crisis; (3) the Commonwealth would need to enact supporting legislation, including a transition surcharge to refinance PREPA's debt, in a form acceptable to creditors; and (4) a Puerto Rico court would need to validate the new securitization bonds.[4] If any of these conditions fails, or if they are not all satisfied by June 30, 2016, the RSA would fail.

In the event that a restructuring is not consummated, PREPA would run out of money and would be exposed to highly destructive disorganized action by its creditors.[5]

---

[3] *See* PREPA Public Disclosure, Amended and Restated Restructuring Support Agreement (Dec. 24, 2015), http://emma.msrb.org/ES745050-ES584091-ES979961.pdf).

[4] *See id.*

[5] Although Respondents have raised the possibility of the appointment of a receiver, PREPA's Trust Agreement provides that a receiver would have only the same powers that PREPA currently possesses, and would be subject to the same limitations that restrict PREPA's ability to address its debts and still provide its essential services. *See* P.R. Laws Ann. tit. 22, § 207(b) (2011). A receiver could not compel restructuring of debts, raise PREPA's rates, obtain emergency financing secured by liens or enforce any resolution that PREPA itself had been unable to accomplish through creditor

More specifically, $700 million would immediately become due under the matured fuel lines of credit, and PREPA will owe on July 1, 2016 an additional $428 million. That debt cannot be repaid, and creditors could then, among other things, accelerate (or demand) repayment in excess of $8.1 billion of PREPA debt. A "race to the courthouse" would ensue – as has already occurred with respect to the obligations of other Commonwealth entities – entailing perhaps hundreds of lawsuits, each imperiling PREPA's remaining assets and its ability to provide power. PREPA's suppliers – most notably its fuel suppliers – might stop extending credit, terminate contracts or otherwise require cash delivery or other terms that PREPA will be unable to meet, further imperiling PREPA's ability to provide electricity to the island. Among other measures, PREPA could be compelled to ration its fuel supply by employing rolling blackouts, and its ability to carry out core functions, such as meeting payroll and conducting critical maintenance on plants and distribution networks, would be gravely imperiled.

SUMMARY OF ARGUMENT

The severity of the harm that threatens PREPA in the absence of the Recovery Act underscores three critical legal points in this case.

---

consent. Nor would a receivership impose a stay on pending lawsuits.

I. The Recovery Act is an exercise of the Commonwealth's police power. The Recovery Act is designed, among other things, to safeguard the operation of PREPA and ensure the delivery of electricity to the island's homes, businesses and public services. The Recovery Act is also designed to restore PREPA's ability to raise debt in order to perform its functions, by restoring to creditors the assurance that there will be a mechanism for the fair and orderly distribution of assets in the event of insolvency.[6] Legislation so fundamental to public health, safety and welfare is, as this Court has long held, an exercise of police power. As such, it is entitled to a strong presumption against preemption, a presumption that Respondents have not rebutted.

II. Interpreting the Bankruptcy Code to prohibit the Recovery Act is contrary to Congress's objective in enacting Chapter 9. Congress enacted municipal bankruptcy laws specifically to provide for a fair and equitable recovery by creditors and to overcome the holdout problem that had plagued consensual municipal restructuring. Interpreting Chapter 9 to prohibit Puerto Rico's municipalities from invoking any compulsory restructuring mechanism would lead to the precise holdout problem and destructive creditor action that Congress legislated to avoid. The Court should not

---

[6] Recovery Act, Statement of Motives §§ A, D, Pet. App. 161a, 169a-170a

read Chapter 9 to defeat the intentions of its drafters in this way.

III. Due to PREPA's importance to the health, safety and welfare of the Commonwealth's citizens, PREPA's creditors understood, based on the law as it had been interpreted and was understood to provide at the time of their investments – and indeed they expressly acknowledged when they contracted with PREPA – that the Commonwealth could legislate to adjust PREPA's debts in the event of crisis. The Court should not upset this understanding.

ARGUMENT

I. THE RECOVERY ACT IS AN EXERCISE OF THE COMMONWEALTH'S POLICE POWER AND IS ENTITLED TO A STRONG PRESUMPTION AGAINST PREEMPTION.[7]

The First Circuit erred in concluding that any presumption against preemption of the Recovery Act was "weak, if present at all." Appendix to the Petition ("Pet. App.") 38a. To the contrary, because the Recovery Act is an exercise of Puerto Rico's police powers, it is entitled to a strong presumption against preemption.

---

[7] PREPA also fully joins in Petitioners' arguments regarding the presumption against preemption to which the Recovery Act is entitled, Brief of Petitioners Melba Acosta-Febo et al. ("Acosta-Febo Br.") at 19-25; Brief of Petitioners Commonwealth of Puerto Rico et al. ("Commonwealth Br.") at 29-38, and offers the instant Point I as a complement thereto.

Preemption analysis starts with the assumption that "the historic police powers of the States [a]re not to be superseded . . . unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.,* 331 U.S. 218, 230 (1947). "It follows that when the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily accept the reading that disfavors pre-emption." *CTS Corp. v. Waldburger*, 134 S. Ct. 2175, 2189 (2014) (internal quotation marks omitted). This presumption against preemption applies to the laws of Puerto Rico just as it does to the laws of the 50 States. *Puerto Rico Dep't of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495, 499 (1988).

This Court has unwaveringly construed "police power" legislation broadly to include all legislation whose purpose and effect are to "protect[] the lives, limbs, health, comfort, and quiet of all persons." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996) (quoting *Metro. Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985) (quoting *Slaughter-House Cases*, 83 U.S. 36, 62 (1872))). The police power:

> is and must be from its very nature, incapable of any very exact definition or limitation. Upon it depends the security of social order, the life and health of the citizen, the comfort of an existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property.

Slaughter-House Cases, 83 U.S. at 62; *see also Mayor, Aldermen & Commonalty of New York v. Miln*, 36 U.S. 102, 103 (1837) ("It is not only the right, but the bounden and solemn duty of a state, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation which it may deem to be conducive to these ends, where the power over the particular subject, or the manner of its exercise, are not surrendered, or restrained by the constitution of the United States."). Accordingly, the police power includes all "field[s] which the States have traditionally occupied," and yields to federal legislation only when preemption is the "clear and manifest purpose of Congress." *Rice*, 331. U.S. at 230.

As Petitioners explain, bankruptcy laws have historically been within the purview of the States and are exercises of police power. Acosta-Febo Br. 21-22; Commonwealth Br. 15-16. In this case, however, the Recovery Act is even more obviously an act of traditional police power for at least three reasons. First, the Recovery Act provides stability to Puerto Rico's municipal corporations, and therefore to Puerto Rico itself, by providing assurance to the corporations' existing and prospective creditors that insolvency will be met with an orderly response designed to maximize recoveries for all, rather than with chaos. *See, e.g.*, *Faitoute Iron & Steel Co. v. Asbury Park*, 316 U.S. 502, 512 (1942) (concluding that binding reorganization plan was the "only proven way for

assuring payment" of municipal debt); *see also* David A. Skeel, Jr., *States of Bankruptcy*, 79 U. Chi. L. Rev. 677, 717 (2012) ("Indeed, a bankruptcy option [for States] could decrease volatility rather than increase it, because it would provide an orderly alternative to the possibility of catastrophic default.").

Second, as demonstrated by PREPA's current circumstances, if insolvency looms, the Recovery Act promises to save Puerto Rico's public corporations – and their creditors – immense time, expense and risk by facilitating private, consensual restructuring *without ever invoking the Act's provisions*. "[T]he presence of a bankruptcy system does not mandate its use whenever there is a common pool problem," rather it "stipulates a minimum set of entitlements for claimants" that "permits them to 'bargain in the shadow of the law,'" and avoid the significant costs of formal bankruptcy proceedings. Thomas H. Jackson, *The Logic and Limits of Bankruptcy Law* 10-11 (1986); *see* Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 Yale L. J. 950 (1979) (coining phrase, and describing virtues of, permitting parties to bargain "in the shadow of the law"). It is no accident that PREPA first achieved significant consensual arrangements with creditors in the days after passage of the Recovery Act: "Even without its invocation, the mere passage of the Recovery Act . . . was sufficient to immediately motivate consensual negotiation and temporary forbearance

of debt repayment." *Puerto Rico Public Corporation Debt Enforcement & Recovery Act: Puerto Rico Passes New Municipal Reorganization Act*, 128 Harv. L. Rev. 1320, 1327 (2015).[8]

Finally, if all else fails, the Recovery Act alone can save Puerto Rico's public corporations, ensure their continued operation and prevent a "humanitarian crisis."[9] The Recovery Act itself explicitly addresses a "fiscal emergency" that constitutes a "real and palpable threat to the government's ability to protect and promote the general welfare of the people of Puerto Rico." Recovery Act, Statement of Motives § A, Pet. App. 164a. The Act recognizes that debt and a lack of access to capital threaten the ability of the Commonwealth's public corporations to provide essential services now and in the future, and that PREPA is "the most dramatic example." *Id.* at 160a.

PREPA provides a dramatic example of the Recovery Act's status as a core exercise of the Commonwealth's police power. As noted, PREPA's

---

[8] Notably, PREPA's monoline bond insurers did not join the RSA until the Court granted the petitions for a writ of certiorari in this case. *See* RSA at 1 (dated December 23, 2015, and including as new parties National Public Finance Guarantee Corporation and Assured Guaranty Corporation).

[9] White House Report, Addressing Puerto Rico's Economic and Fiscal Crisis and Creating a Path to Recovery: A Roadmap for Congressional Action, at 1 (Oct. 26, 2015), https://www.whitehouse.gov/sites/default/files/roadmap_for_congressional_action___puerto_rico_final.pdf.

basic purpose is to conserve, develop and utilize Puerto Rico's energy resources to promote the general welfare of the Commonwealth's residents, and its fundamental mission is to produce and distribute electric power to the Commonwealth. PREPA relies on its access to credit to fund its operations, including to purchase fuel to convert to electricity. If PREPA's creditors are permitted to launch a "race to the courthouse" without the protections afforded to PREPA and to creditors collectively by the Recovery Act or similar legislation, the result would be to cut the flow of the island's lifeblood. Power could not be supplied to homes, to shops, to hospitals, to the police, to the fire department or to any of the other agencies or offices responsible for preserving the public peace and welfare. The risks posed by such stoppages go beyond "comfort[] and quiet" and go straight to "protection of [] lives." *Medtronic*, 518 U.S. at 475. Ensuring the stable functioning of the power plants and the distribution of electrical power on an island in the middle of the sea is quite plainly an act of the island government's police power.

The First Circuit identified no "clear and manifest" purpose in Congress to preempt such an exercise of the Commonwealth's police power, and none exists. In particular, the First Circuit's speculation that Congress may have intentionally excluded Puerto Rico from access to Chapter 9 (after 50 years of inclusion[10]) to reserve Congress's

[10] As the First Circuit recognized, Puerto Rico's municipalities were entitled to invoke the federal bankruptcy

power to create something "better," Pet. App. 30a, falls far short of "clear and manifest" evidence of a Congressional preemptive purpose. To the contrary, it is "pure fiction," *id.* at 56a-57a (Torruella, J., concurring), supported by no legislative history and belied by the subsequent 30-year period during which Congress neither considered nor enacted anything, much less anything better, for Puerto Rico.[11]

Accordingly, the strong presumption against preemption of the Recovery Act has not been overcome.

---

remedy from 1938 to 1984. *See* Pet. App. 12a-17a (citing *inter alia* S.J. Lubben, *Puerto Rico and the Bankruptcy Clause*, 88 Am. Bankr. L.J. 553, 572-575 (2014)).

[11] In addition, the mere fact that the Bankruptcy Code operates in the same sphere as the Recovery Act – *i.e.*, municipal bankruptcy – does not create a conflict justifying preemption. If regulating the arrival of foreign passengers at New York ports and requiring surety for the maintenance of the poor was a valid exercise of police power notwithstanding the Commerce Clause, *see Miln*, 36 U.S. at 102, and if enactment of a mandated-benefit law to safeguard workers' mental health is an "unexceptional exercise" of police power notwithstanding its interaction with federal labor law, *see Metro. Life Ins. Co.*, 471 U.S. at 756, then the passage of the Recovery Act, which covers only entities that are ineligible to seek relief under Chapter 9, to avert a humanitarian crisis (and to prevent future crises) is undeniably a valid exercise of police power, notwithstanding the existence of federal bankruptcy law, which, as is undisputed, does not afford relief to PREPA.

II. INTERPRETING THE BANKRUPTCY CODE TO PROHIBIT THE RECOVERY ACT WOULD FOSTER THE VERY HARMS CONGRESS DRAFTED THE BANKRUPTCY CODE TO PREVENT.

Setting aside the absence of a basis on which to find preemption, construing Section 903(1) of the Bankruptcy Code to preempt the Recovery Act is not only inconsistent with the express language of Section 903(1), but also would produce a result that Congress never could have intended. It would deny Puerto Rico any municipal debt restructuring regime – and in a highly indirect, roundabout way – despite the absence of any relevant distinction between Puerto Rico's municipalities and States' municipalities, and without any plausible explanation as to why Congress would have intended to disadvantage Puerto Rico, its municipalities, their creditors and the island's 3.5 million U.S. citizens in this manner.

Here, Petitioners have demonstrated in their respective briefs that construing Section 903(1) of the Bankruptcy Code to preempt the Recovery Act is inconsistent with that provision's express terms. Acosta-Febo Br. 26-31; Commonwealth Br. 22-27. In addition, construing Section 903(1) to prohibit the Recovery Act would be flatly contrary to Congress's intentions. It has long been recognized that "one of the prime purposes of the bankruptcy laws has been to bring about a ratable distribution among creditors of a bankrupt's assets" and to "protect the creditors from one another." *Young v. Higbee Co.*, 324 U.S. 204, 210 (1945). With respect

to municipal bankruptcies, Congress was particularly cognizant that, in the absence of legislation permitting compulsory debt adjustment, creditors might in fact receive *no* distribution. H.R. Rep. No. 94-686, at 4 (1976), reprinted in 1976 U.S.C.C.A.N. 539, 542 ("For an embarrassed debtor without the remedy afforded by this bill, the only effective recourse is repeal of its charter by the State legislature, in which event creditors are generally left without any remedy."). Alternative remedies had little success and holdouts could frustrate deals that enjoyed near-unanimous creditor support. *See* Michael W. McConnell & Randall C. Picker, *When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy*, 60 U. Chi. L. Rev. 425, 429-50 (1993).

From the outset, therefore, Congress approached municipal bankruptcy with the goal of improving outcomes for all parties, and thus preserving the ability of municipalities to raise financing, by ensuring that, in the event of insolvency, creditors would have an orderly means of recovering from the estate without a "race to the courthouse." As explained by the principal sponsor of the first municipal bankruptcy statute:

> In every instance where a governmental unit finds itself in financial difficulty and is able to make some satisfactory agreement of adjustment with the majority of its creditors, there is always a small minority who hold out and demand preferential treatment. These minority creditors are prompted in

> this action by the thought that someone will buy them out rather than have the whole plan collapse. The difficulty, of course, is that if one creditor by holding out can gain preferential treatment the others withdraw and nothing comes of the efforts at settlement or adjustment. It is to remove this difficulty that the bill has been drawn and introduced. If this bill is enacted, the minority creditors will be forced to accept the terms of adjustment which have been agreed upon by the officials of the political subdivision and the vast majority of creditors and approved by the court as being fair and equitable.

Hearings on HR 1670, HR 3083, HR 4311, HR 5009, and HR 5267 before the H. Comm. on the Judiciary, 73d Cong. 22, 1st Sess. (March 30, 1933) (statement of Rep. J. Mark Wilcox) [hereinafter 1933 Hearings].

In other words, Congress enacted Chapter 9 (and its antecedents) to create a federal mechanism for municipal debtors to restructure their debts in an orderly way and without holdout risk. Reading Section 903(1) to prohibit Puerto Rico from adopting legislation to permit orderly debt restructurings, free from holdouts, for its own municipalities is squarely at odds with that purpose. In fact, invalidating the Recovery Act leaves PREPA in exactly the position, and exposes it to the precise dangers, that prompted Congress to *enact* municipal bankruptcy laws: PREPA's only

restructuring option at present (assuming that the RSA is revived) can be scuttled by any holder of nearly $2 billion in outstanding bonds. "It is to remove this difficulty that the [federal municipal bankruptcy law was] drawn and introduced." 1933 Hearings at 22.

Because Congress sought to provide equal protections for all municipal corporations and their creditors and carried forth that purpose for a half century, it would be anomalous to treat the 1984 amendments that excluded Puerto Rico's municipal corporations from protection under Chapter 9 as also reflecting Congress's intention to treat Puerto Rico's municipal corporations differently from (and crushingly worse than) those of the States. Puerto Rico's municipalities are as entitled to an organized restructuring pursuant to clear legislative rules as are the municipalities of the States.

III. PREPA'S CREDITORS, INCLUDING RESPONDENTS, UNDERSTOOD AND ACKNOWLEDGED THAT THE COMMONWEALTH COULD, AND IN EVENT OF CRISIS WOULD, LEGISLATE TO RESTRUCTURE PREPA'S DEBTS.

Finally, given the importance of PREPA to the health, safety and welfare of the Commonwealth's citizens, none of PREPA's creditors, including in particular Respondents, could have any rational expectancy that the Commonwealth, if confronted with an insolvency and liquidity crisis, would be barred from enacting legislation designed to ensure

that all creditors are treated equitably and PREPA is able to provide its essential services.

"[T]he laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms." *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 429-30 (1934). Here, the laws subsisting at the time and place of the bond issuances were the Constitution and the Bankruptcy Code. Nothing in the Bankruptcy Clause of the Constitution limits Puerto Rico's ability to adopt a law permitting its corporations to adjust their debts, and no interpretation of the Bankruptcy Code then stood for the proposition that Chapter 9 makes Puerto Rico's municipalities outcasts from the society of municipalities entitled to debt adjustment.

Indeed, the Trust Agreement governing the bonds recognizes that the Commonwealth could enact a restructuring law, because the commencement of a proceeding under such a law would constitute an event of default.[12] In addition, when the 2013A bonds held by Respondents were issued, observers were already noting that Puerto

---

[12] *See* Trust Agreement § 802(g), JA622 (defining "event of default" to include, among other things, PREPA's institution of a proceeding "for the purpose of effecting a composition between [PREPA] and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or Commonwealth statute now or hereafter enacted.").

Rico might restructure its debt in light of its fiscal challenges.[13] Puerto Rico and its municipal bond purchasers transacted on the understanding that the bonds could be subject to restructuring under Puerto Rico law. The Court should not lightly upset this contractual understanding, *see Blaisdell*, 290 U.S. at 429-30, much less on the basis of an untenable reading of the Bankruptcy Code.

---

[13] *See, e.g.*, Mary Williams Walsh, *Facing Debt Crisis, Puerto Rico May Seek Unprecedented Lifeline from U.S.*, International Herald Tribune (Oct. 9, 2013); Andrew Bary, *Troubling Winds*, Barron's (Aug. 26, 2013). And Respondents themselves acknowledged that Puerto Rico might restructure its debt. *See* Franklin Templeton Investments, Franklin New York Tax-Free Income Fund: Prospectus Supplement, at 3 (Oct. 1, 2013), https://www.franklintempleton.com/content-literature/prospectus/115/2013/115_P_1013.pdf; OppenheimerFunds, The Puerto Rico Story: Hard Facts v. Speculation, Rochester Communique (July 3, 2014) (attached as Exhibit 7 to Decl. of Lawrence B. Friedman in Supp. of PREPA's Mem. of Law in Supp. of the Mot. to Dismiss the Second Am. Compl. and Opp'n to Pls.' Cross-Mot. for Partial Summ. J., *Franklin California Tax-Free Trust v. The Commonwealth of Puerto Rico*, No. 14-1518 (D.P.R. Feb. 6, 2015) (ECF No. 97-10)).

CONCLUSION

For the foregoing reasons, PREPA urges the Court to reverse the judgment of the Circuit Court.

Respectfully submitted,

Lewis J. Liman
Counsel of Record
Lawrence B. Friedman
Richard J. Cooper
Sean A. O'Neal
CLEARY GOTTLIEB STEEN &
HAMILTON LLP
One Liberty Plaza
New York, New York
10006
(212) 225-2000
lliman@cgsh.com

Counsel for Amicus Curiae

January 26, 2016