Nos. 15-233, 15-255

IN THE

Supreme Court of the United States

THE 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 WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR FIRST CIRCUIT

BRIEF OF COLEGIO DE ABOGADOS Y ABOGADAS DE PUERTO RICO AND THE PUERTO RICAN BAR ASSOCIATION, INC. AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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BRIEF OF COLEGIO DE ABOGADOS Y ABOGADAS DE PUERTO RICO AND THE PUERTO RICAN BAR ASSOCIATION, INC. AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

INTRODUCTION AND INTEREST OF THE *AMICI CURIAE*[1]

The Colegio de Abogados y Abogadas de Puerto Rico and the Puerto Rico Bar Association, Inc. are deeply interested in the outcome of the current case as it concerns the historical problems regarding the nature of the political and juridical relationship between Puerto Rico and the United States. It has long been concerned that for more than 3.5 million Puerto Ricans, who were granted United States citizenship in 1917 through the Jones Act[2], only portions of our Constitution apply. Specifically "[t]he equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. That duty was originally assumed by the States; and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guarantees but no more. The power of the National Government is limited to the enforcement of

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[1] Pursuant to Rule 37.6, *amici* whole or in part and that no person other than *amici* and its counsel made a monetary contribution to its preparation or submission. Counsel of record for the petitioners and the respondents have both filed blanket consents to the filing of *amici curiae* briefs with the Clerk of this Court.

[2] *See* Jones Shafroth Act, Pub. L. No. 63-368.

this guaranty." the power of Congress under the Fourteenth Amendment. *United States v. Cruikshank*, 92 U. S. 542, 555 (1875)

The Colegio de Abogados y Abogadas de Puerto Rico (also known as the Puerto Rico Bar Association) (the "Colegio"), founded in 1840, is the oldest professional organization in Puerto Rico and the Caribbean. The Colegio represents approximately 5,000 active attorneys in Puerto Rico.

Since its founding, the Colegio has advocated for the civil and political rights of Puerto Ricans. It has frequently grappled with difficult questions regarding the relationship between Puerto Rico and the federal government, and has adopted a series of resolutions asserting the right of Puerto Ricans to control their own status and political destiny through a constitutional process of self-determination and a Constitutional Assembly for Solving the Political Status.[3] A series of the Colegio's presidents, including current president Mark Anthony Bimbela, have testified be-

[3] See Resol. No. 4, Asamblea General, Colegio de Abogados de Puerto Rico, Sept. 9, 2006; Resol. No. 5, Junta de Gobierno, Colegio de Abogados de Puerto Rico, Oct. 28, 2006; Resol. No. 12, Junta de Gobierno, Colegio de Abogados de Puerto Rico, Oct. 6, 2001; Resol. No. 13, Junta de Gobierno, Colegio de Abogados de Puerto Rico, Feb. 27, 2010; Resol. No. 14, Junta de Gobierno, Colegio de Abogados de Puerto Rico, July 20, 1985; Resol. No. 14, Junta de Gobierno, Colegio de Abogados de Puerto Rico, Oct. 20, 2007; Resol. No. 16, Asamblea General, Colegio de Abogados de Puerto Rico, Sept. 16, 1986; Resol. No. 29, Junta de Gobierno, Colegio de Abogados de Puerto Rico, Jan. 19, 2008; Resol. No. 37, Junta de Gobierno, Colegio de Abogados de Puerto Rico, Aug. 23, 2008; Resol. No. 38, Junta de Gobierno, Colegio de Abogados de Puerto Rico, Jan. 28, 2006; Resol. No. 55, Junta de Gobierno, Colegio de Abogados de Puerto Rico, Aug. 19, 2006.

fore the United Nations on the need for decolonialization of Puerto Rico.[4]

The Puerto Rican Bar Association, Inc. ("PRBA") was founded at a time of rapid political and social change for Puerto Ricans living in Puerto Rico and elsewhere. Puerto Rican nationalism was suppressed by the Gag Law of 1948, P.R. Law No. 53 (1948), which criminalized expressive acts such as the possession of Puerto Rican flag. Efforts to invalidate the Gag Law under the First Amendment were unsuccessful, and the law remained in effect until it was repealed in 1957. That same year, a group of Puerto Rican and Latino attorneys in New York began gathering socially to offer each other personal and professional support in an era when it was difficult for attorneys of color to be accepted as members in established bar associations.

Today, the PRBA is one of the largest and oldest ethnic bar associations in New York State, representing attorneys, judges, law professors and students who share a common interest in fostering professional development and addressing issues that are important to the Puerto Rican and other Latino communities. In keeping with its mission, on November 5, 2015, PRBA President, Betty Lugo, Esq. with approval of officers and board members[5] entered into

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[4] See, e.g., United Nations Gen. Assembly Special Comm. on Decolonization, *Crippling Trade Policies, Brain Drain, Sluggish Economy Constrain Puerto Rico's Progress, Petitioners Tell Decolonization Committee as Session Resumes*, June 22, 2015, http://www.un.org/press/en/2015/gacol3281.doc.htm.

[5] President-Elect: Carmen A. Pacheco, Esq.; Vice President: Marissa Soto, Esq.; Treasurer: Jim Montes, Esq.; Corresponding Secretary: Angelina Adam, Esq.; Recording Secretary: Myna Socorro, Esq.; Board Members: Hon. Luis A. Gonzalez (Ret.

an agreement to collaborate with CAPR on legal issues affecting the Puerto Rican and Latino communities.

This case is of particular importance to the *amici* because it implicates the political and legal relationship between Puerto Rico and the federal government. The case arises from the need for Puerto Rico to stand equal to the States under the U.S Bankruptcy laws.

Amici submit this brief in support of the Commonwealth and in support of Petitioners herein. Not doing so would represent a failure of the legal community towards those who directly suffer the consequences of the outcome of the case at hand, namely, Puerto Rican nationals, who happen to have acquired United States birth citizenship rights and who choose to live in the Commonwealth of Puerto Rico.

SUMMARY OF ARGUMENT

Amici will discuss the principal issues concerning the Constitutional question that arises from the interpretation of the Title 11 of the United States Code (hereinafter the "Bankruptcy Code") to preempt the Puerto Rico Recovery Act (hereinafter the "Recovery Act"). If the statutory construction adopted by the courts below is accepted, 11 U.S.C. §101 (52) of the Bankruptcy Code, as amended in 1984, presents a

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Presiding Justice, Appellate Division 1St Department); Luis R. Burgos, Jr., Esq. Elena Goldberg Velazquez, Esq.; Thomas Oliva, Esq.; Carlos Perez-Hall, Esq.; Wanda Sanchez-Day, Esq.; Raquel Miranda, Esq.; and Jessica Acosta, Esq. PRBA information also available at http://prbany.com.

Constitutional question under the Fourteenth Amendment and Article 1, Section 8 Clause 4 of the Constitution. Such interpretation is contrary to the well-respected and settled canons of avoiding unconstitutionality and constitutional avoidance. Further, even if such constitutional concerns are not accepted the propounded construction of the Bankruptcy Code to preempt Recovery Act, are flawed.

The Bankruptcy Code as interpreted below separates citizens of Puerto Rico and the District of Columbia resulting in disparate treatment by the federal government relative to the citizens of other states, while recognizing them for all other purposes in the Bankruptcy Code as equals.[6] Such targeted and baseless removal of Puerto Rico from the economic protections afforded to states would result in disparate impact, that under Supreme Court precedent, would have to be supported by "a rational basis." *Harris v. Rosario*, 446 U.S. 651, 651-652 (1980). Here no rational basis for such removal has been provided in commentary and none can be inferred given the explicit inclusion of Puerto Rico for all other purposes as within the definition of "State".[7] *See*

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[6] From inception the United States recognized cultural and economic uniqueness of Puerto Rico. *Downes v. Bidwell*, 182 U.S. 244, 287 (1901); *Balzac* v. *Porto Rico*, 258 U.S. 298 (1922). This has been feasible under the Constitution, since Puerto Rico was not incorporated into the United States like the states and most of the territories. *Igartúa v. United States*, 626 F.3d 592 (1st Cir. 2010).

[7] *Cf. Córdova & Simopietri Insurance Agency, Inc. v. Chase Manhattan Bank N.A.*, 649 F.2d 36, 39 (1st Cir. 1981) court considered whether the framers of the Sherman Act of 1890 would have intended Puerto Rico to be treated as a "state" or a

also, *Romeu, v. Cohen*, 265 F.3d 118, 124 (2d Cir. 2001) ("Given the deference owed to Congress [under the Territorial Clause], ... distinction between former residents of States now living outside the United States and former residents of States now living in the U.S. territories is not subject to strict scrutiny"). Moreover, the power of Congress under the Constitution, Article IV, Section 3, to rule over the territories allows it to implement the laws, rules and regulations, as it deems to be adequate.

However, after 118 years of territorial and colonial domination over Puerto Rico, a continued prolong extension of domination is contrary to human rights and international laws. Therefore, the Recovery Act, constitutes a self-motivated initiative of the Puerto Rican government, to regulate and in an orderly manner re-structure the debt crisis of Puerto Rico.

"territory" in light of the subsequent enactment of the Federal Relations Act, and the promulgation of the Puerto Rico Constitution in 1952. "[I]t was not necessary for the Congress to alter specifically all outstanding statutes thereto previously applicable in order to continue their effectiveness in Puerto Rico after it became a commonwealth in 1952." *United States of America v. Mario Lebrón-Caceresu*, 2016 WL 204447 (D.P.R. 2016). This was so due to the general savings clause of the Federal Relations Act (48 U.S.C. § 734), to the effect that the statutory laws of the United States not locally inapplicable (as was the statute at issue), shall have the same force and effect in Puerto Rico as in the United States. *Id.* For that reason, the statute continued applying in Puerto Rico.

ARGUMENT

A. The Bankruptcy Code Should Be Interpreted To Avoid Constitutional Questions.

1. There is No Rational Basis to Treat Municipalities of Puerto Rico Differently.

This Court has held the equal protection guarantee applicable to Puerto Rico. *Examining Board v. Flores de Otero*, 426 U.S. 572, 599-601 (1976). A deviation from the application of such fundamental rights to Puerto Rico has been held by this Court to require a rational basis. *Harris v. Rosario*, 446 U.S. 651, 651-52 (1980). While claiming a purpose and intent of maintaining a uniform bankruptcy system, Congress has patently and expressly discriminated against the municipalities of Puerto Rico.

In doing so Congress failed to provide an explanation or a valid argument as to why in enacting federal bankruptcy law preferential treatment was afforded to just the States for purposes of Chapter 9. It is for this reason that the Puerto Rico government acted within its powers under Public Law 81-600 of 1950[8] when enacting Recovery Act. Furthermore, the *Estado Libre Asociado* [the Commonwealth] of

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[8] In 1950, Puerto Rico was authorized by the Federal government to draft a local constitution with the proviso that the new document would not alter the Puerto Rico status as a territory. The Puerto Rico constitution would grant it autonomy over its local affairs. *See* Puerto Rico Constitution, Hearings before the Committee on Public Lands [of the] House of Representatives, Eighty-First Congress, on H.R. 7674 and S. 3336 — To provide for the Organization of Constitutional Government by the People of Puerto Rico, page 63.

Puerto Rico confers to it the ability to empower itself with promulgating Recovery Act in order to structure, in an orderly way, the debt crisis of its municipalities.

Historically Puerto Rico and the States enjoyed privileges under the bankruptcy laws. In 1898, the year the United States took control over Puerto Rico after its war with Spain, the United States promulgated its bankruptcy law.[9] The Bankruptcy Act of 1898, in the definitions portion noted that anytime the word "states" was mentioned, it shall include, *inter alia,* "Porto Rico". In 1934, Congress passed the Municipal Bankruptcy Act, although found to be unconstitutional; Porto Rico was present to receive protection. The Bankruptcy Act of 1937, granted protection to Puerto Rico and the District of Columbia by the fact that they were included in the definition of "state".

However, the Bankruptcy Act of 1978, through an amendment defined "state" to include the Commonwealth of Puerto Rico except for the purposes of a Chapter 9 debtor. Such language continued through the Bankruptcy Amendments and Federal Judgeship Act of 1984. There is no legislative history explaining the rationale for the exclusionary language.[10] Such removal is not supported by logical national security and financial rationales. Rationales that are easily discernable from the line of cases in which such disparate treatment and deviation, from

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[9] *See* 30 Stat. 544-566. *See also,* Alan J. Feld, Note, *The Limits Of Bankruptcy Code Preemption: Debt Discharge and Voidable Preference Reconsidered In Light of Sherwood Partners*, 28:3 CARDOZO L. REV., 1447, 1455 (2006).

[10] *In Re Segarra*,14 B.R. 870, 873 (Bankr. D.P.R. 1981)

the otherwise assumed grant of fundamental rights, were approved. *Diaz Morales v. Commonwealth of Puerto Rico*, 2015 WL 4742512 *9 (D.P.R. 2015).

The Bankruptcy Code affords persons in Puerto Rico with bankruptcy protections and has the federal infrastructure of United States Bankruptcy Courts within the commonwealth to accommodate the exercise of such rights. Here the extension of such protections to municipalities of Puerto Rico presents no greater risk to the United States ability to govern. Such ability would be within the confines of the Bankruptcy Code itself as dictated and limited by the same laws and judges selected by the United States government. Congress should be held to have discriminated against the Puerto Rico without a rational basis for their actions.

The District Court relied on the doctrine that "Congress, of course, has the power to treat Puerto Rico differently than it treats the fifty states." See 48 U.S.C. § 734 (*providing that federal laws 'shall have the same force and effect in Puerto Rico as in the United States' 'except as . . . otherwise provided'*). *Antilles Cement Corp. v. Fortuño*, 670 F.3d 310, 323 (2012)". *Id.* (emphasis added). While ignoring the constitutional limitations on such power recognized and enforced by this Court. *Harris v. Rosario*, 446 U.S. 651, 651-52 (1980) ("Congress, . . . may treat Puerto Rico differently from States *so long as there is a rational basis for its actions*.' (emphasis added) (per curiam). However, exclusion of Puerto Rico municipalities from the protection and relief provided by the U.S. Bankruptcy Code by United States Bankruptcy Courts located in Puerto Rico has no rational basis unlike other actions that limit the applicability of certain benefits to Puerto Rico. *See Califano v.*

Torres, 435 U.S. 1, 5 (1978) (limiting the provision of a federal benefit administered and managed by states rather than directly by the federal government). Puerto Rico is in a particularly vulnerable situation that requires the attention and equal protection of Congress, affording the same tools as the qualifying States to better protect against imminent insolvency. However, the Puerto Rico government within its constitutional framework[11], can organize legislation to seek protection against financial creditors, and in particular against those who are willing to take legal action to protect its assets and legal responsibilities with the people of Puerto Rico.[12]

Here, Puerto Rico is being denied remedies under a state insolvency law and under federal bankruptcy law; the situation serves to push the territory further into a spiral turbulent economic abyss. Such economic disruption and its impact will not be isolated to Puerto Rico. It will be felt across all of the United States when pension funds and other institutional investors experience the economic loss that would accompany the default.

To declare Recovery Act a legal tool for the government of Puerto Rico, will permit it to regulate in

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[11] *Puerto Rico Power Authority Restructuring Plan To Aim At Consensus-Donahue*, Reuters (Sept. 17, 2014), *available at* http://www.reuters.com/article/usa-puertorico-prepa-donahue-idUSL1N0RJ03N20140918.

[12] Currently, Puerto Rico's government has been sued by at least five different trust funds or hedge funds, in order to gain legal sentences declaring illegal all actions taken by the government to protect itself from creditors. *See,* Michelle Kaske, *Which Puerto Rico Bond Defaults Next? 42% Yields Provide a Clue*, Bloomberg Business, December 28, 2015.

an orderly fashion its finances. Thus the arbitrary and capricious method which Congress handled the 1984 reforms of the Bankruptcy Act, deprived Puerto Rico and the District of Columbia, legal remedies and tools to handle its municipal creditors. Consequently, Puerto Rico is forced to take legal action in order to protect its patrimony and its people.[13]

2. The Supremacy Clause And The Chapter 9 Bankruptcy Code Exemption For Puerto Rico.

The Supremacy Clause of the United States Constitution establishes that, "[t]his Constitution, and the Laws of the United States which shall be made in pursuance thereof… shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." U.S. Constitution, Article VI, cl.2. In its application, the Supremacy Clause renders any state law that contravenes a federal law as null and void, and as so it has been held that Congress can preempt such law. *Franklin California Tax-Free Trust v. Puerto Rico*, 85 F. Supp. 3d 577, 595 (2015). Congress can preempt a state law in three specific ways: 1) express preemption; 2) conflict preemption; and 3) field preemption. For reasons of judicial economy, we will only discuss the express and conflict preemption options. To be able to identify if Puerto Rico was preempted in any way by Congress, it is necessary to establish if it could be considered a state under the statutory pro-

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[13] See *Update 2 -Puerto Rico's PREPA Gets Help From Lenders As Debt Deal At Risk,-Davies*, Reuters, January 24, 2016, *available at* http://www.reuters.com/article/usa-puertorico-restructuring-idUSL2N1580GB.

visions prescribed by Chapter 9 relief in the Bankruptcy Code.

We support the Petitioners' position that clarification made by Congress in the definition of State, in fact makes any section in Chapter 9 inapplicable to Puerto Rico. In the Bankruptcy Code, "[t]he term State includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under Chapter 9 of this title". *See* 11 U.S.C.A. § 101(52). Section 903 of Title 11 in turn, expands and delineates certain conditions for the States which qualify, as follows:

> "This chapter does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise, but —
>
> **(1)** a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition; and
>
> **(2)** a judgment entered under such a law may not bind a creditor that does not consent to such composition."

11 U.S.C. § 903. According to the express language of this section, a State is not limited in its traditional police powers and financial restructuring of its municipalities. This is so provided that entities by which are proscribed under Chapter 9 of the Bankruptcy Code do not violate section 903 paragraphs 1 and 2. This raises the basic questions as to how Puerto Rico can be both totally excluded from the application of the provisions of Chapter 9 and then limited by an

actual provision found in a subsection therein? It is understandable that section 903 is prescribed for and applicable to all States that qualify to be debtors under this chapter. However, Puerto Rico is not a State when it comes to an important qualifying definition as to whom is a debtor under Chapter 9. It is for this the reason that this Court should reverse both the United State District Court for the District of Puerto Rico and the United States Court of Appeals for the First Circuit holdings.

Both Courts held that the express preemption brought about by section 903 prohibits Puerto Rico from promulgating Recovery Act. The Courts reasoned that for an express preemption to exist, Congress must have been explicit, in its wording of a federal law and expressed a distinct intent to preempt a state law. *Franklin California Tax-Free Trust v. Puerto Rico*, 85 F. Supp. 3d 577, 595 (2015) In this regard, both Federal Courts have held Congress was explicit in preempting Puerto Rico and that, the only exception made, was that of establishing that Puerto Rico cannot be a debtor under Chapter 9. The Courts agree and qualify this as a single exception and not a broad general one. *Id.* We agree that Congress' explicit prohibition in section 903 bars qualifying states from enacting laws that prescribe methods of composition of indebtedness that could bind non-consenting creditors. But if Puerto Rico is not qualified as a State in that Chapter, then the preemption should not be held to be sufficiently explicit to forbid the enactment of local insolvency laws. Congress was only express in specifically leaving Puerto Rico out of the reach and provisions it set forth under Chapter 9. The restriction does not apply to Puerto Rico, and in consequence to Recovery Act enacted by the local legislature. Congress has ex-

pressly forbidden Puerto Rico from being considered as a State for qualifying as a debtor under chapter 9, and yet the Respondents have attempted to apply its prohibitions on the Commonwealth. According to the Opinion and Order of both Federal Courts, two opposing notions are trying to co-exist under the same statute; one that excludes application and the other that is applied in its entirety as section 903. Congress did not expressly preempt Puerto Rico from enacting its Recovery Law, it expressly excluded the application of this type of relief in its entirety. Both the District and the First Circuit Courts erred.

Should Respondents prevail, Puerto Rico would be left without the ability to re-structure its debts. As a result, Puerto Rico would be at the mercy of powerful financial institutions that have the ability to fracture the Puerto Rico economy. Would that be fair to Puerto Rico? No.[14]

The contradiction of the Bankruptcy Act, is that it pretends to govern over non-governable matters affecting Puerto Rico. For the island of Puerto Rico and District of Columbia, the Congressional lack of precision and contradiction in section 903 of the Bank-

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[14] *Cf.* Bailout Tracker: Bailout Recipients (Detailed View), Propublica, *http://projects.propublica.org/bailout/list/simple (last visited Apr. 28, 2015*) (During 2008 financial crisis, United States government spent approximately $613 billion dollars to bailout nearly 1 million corporations); *but see* Associated Press, "Business, Labor Groups Say PREPA Bill Will Hurt The Economy." San Juan, Puerto Rico, January 10, 2016, *available at http://news.yahoo.com/business-labor-groups-prepa-bill-hurt-economy-213625332.html?*.

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ruptcy Act, allows both territories to legislate their own solution to the problem of financial risk exposure.

Also alleged is that the Recovery Act violates the Conflict Preemption. This type of preemption occurs when a state law interferes or serves as an obstacle to the fulfillment of congressional purpose. Congress has a specific purpose of creating a uniform federal bankruptcy laws as espoused by its plenary powers. The fact is that certain markets and specific industries may suffer insolvencies and require the authority to reorganize their finances are not bound by the federal bankruptcy laws. For example, federal bankruptcy laws does not apply to regulate the insurance industry or the financial market agencies. States can regulate concurrently that field without interference with federal laws and raising no issues of preemption in such industries. State statutes which provide bankruptcy like remedies which apply to insurance companies and banks have been upheld, since these are not protected under the Federal Bankruptcy Act. *See* Federal Bankruptcy Act, 11 U.S.C. § 109(b)(2).

In *Neblett v. Carpenter*, this Honorable Court evaluated a rehabilitation proposed under a state statute for insurance companies and affirmed the order approving the plan. 305 U.S. 297 (1939). In *Doty v. Love*, the state statute provided for reorganization of banks, and this Honorable Court did not find it to be unconstitutional. 295 U.S. 64 (1935).

Furthermore, if Congress intended to create a uniform federal bankruptcy law, it failed to do so because it left Puerto Rico without relief under Chapter 9. *Id.* How can uniformity be created by discrimination and unequal treatment? Recovery Act does not interfere with Congress' purpose in enacting the

Bankruptcy Code. It seeks to provide a remedy for insolvency made necessary by express and ever discriminatory exclusion. If Congress has purposely denied the protection and application of its bankruptcy relief statute to Puerto Rico's municipalities and entities, then such exclusion is in itself void for lack of uniformity. Both Courts could be right about conflict preemption if Congress had in fact created a uniform Bankruptcy System, but the rights and privileges are not equally distributed, there is no conflict preemption.

The government of Puerto Rico is correct, when it takes the initiative to legislate over a vacuum of legal and political power. The lack of desire by the United States Congress to keep Puerto Rico under the 1946 protection of the Bankruptcy Act, does not mean that Puerto Rico has to stand on the sidelines until Congress acts. Special focus on the different historical contexts between the *Faitoute Iron & Steel Co. v. City of Asbury Park*, _316 U.S. 502 (1942), the 1946 legislation, the 1984 amendment to the law, and the Constitution of the Commonwealth of Puerto Rico is essential. Moreover, the political contradictions of the Territorial Clause of the United States Constitution and the unlimited powers granted to Congress is manifested through the present conflict in the legal case under review by this Court.

It is clear that Puerto Rico lacks of real political power and Puerto Rico and its nationals are under the arbitrary and capricious mercy of Congress. The complexity of the Puerto Rico financial crisis, its dire strait financial crisis, and the absence of a Congressional legal framework would result in a tsunami of economic disaster to Puerto Rico. The government of

Puerto Rico acted within its powers when it legislated Recovery Act.

CONCLUSION

The foregoing discussion reiterates our position, along with that of the Petitioners that the express exclusion from seeking remedies under Chapter 9 of the Bankruptcy Code warrants the enactment of insolvency relief. The direct exclusion permits the Recovery Act as it is not affected by section 903 of the Bankruptcy Code.

The enactment of the Recovery Act should not be pre-exempted by Congress since it is not in conflict with its purpose or intent of maintaining a uniform bankruptcy system. When Congress excluded Puerto Rico from Chapter 9 bankruptcy protection, it no longer maintained a uniform system as for Puerto Rico. In contrast the Bankruptcy Code bestows uniformity among the 50 states of the United States of America while excluding Puerto Rico and the District of Columbia. As such, Puerto Rico should be allowed to enact its own legislation that permits the same bankruptcy protection afforded municipalities to reorganize its financial affairs.

There is a lack of explanation and a rational basis for the discrimination and express exclusion against Puerto Rico which deprives it of the right to seek federal bankruptcy municipality relief. As such, the rational consequence is for Puerto Rico to be permitted to promulgate legislation to restructure its debts.

For the foregoing reasons, Amici respectfully request that the Court reverse the decision of the United States Court of Appeals for the First Circuit and enforce Puerto Rico's Recovery Act.

Respectfully submitted.

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