

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

<p>LEX CLAIMS, LLC, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>ALEJANDRO GARCÍA PADILLA, et al.,</p> <p style="text-align: center;">Defendants.</p>
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Case No. 3:16-cv-02374 (FAB)

INTERVENOR-DEFENDANTS COFINA SENIOR BONDHOLDERS’ MOTION FOR CERTIFICATION OF QUESTIONS OF PUERTO RICO LAW TO THE SUPREME COURT OF PUERTO RICO AND INCORPORATED MEMORANDUM OF LAW

Intervenor-Defendants, the COFINA Senior Bondholders,¹ respectfully request that three novel and unsettled questions of Puerto Rico law be certified to the Supreme Court of Puerto Rico:²

1. Whether the equitable doctrine of laches under Puerto Rico law bars a challenge to the legislative transfer of sales and use tax (the “Dedicated Sales Tax”) to the Puerto Rico Sales

¹ The COFINA Senior Bondholders are Jose F. Rodriguez, and the following entities, either as beneficial holders or on behalf of managed funds and accounts: Cyrus Capital Partners, L.P.; Decagon Holdings 1, L.L.C.; Decagon Holdings 2, L.L.C.; Decagon Holdings 3, L.L.C.; Decagon Holdings 4, L.L.C.; Decagon Holdings 5, L.L.C.; Decagon Holdings 6, L.L.C.; Decagon Holdings 7, L.L.C.; Decagon Holdings 8, L.L.C.; Decagon Holdings 9, L.L.C.; Decagon Holdings 10, L.L.C.; GoldenTree Asset Management LP; Merced Capital, L.P.; Old Bellows Partners LP; Scoggin Management LP; Taconic Master Fund 1.5 L.P.; Taconic Opportunity Master Fund L.P.; Tilden Park Capital Management LP; Värde Credit Partners Master, L.P.; Värde Investment Partners, L.P.; Värde Investment Partners (Offshore) Master, L.P.; The Värde Skyway Master Fund, L.P.; and Whitebox Advisors LLC.

² Simultaneously herewith, the COFINA Senior Bondholders have filed a motion under Federal Rule of Civil Procedure 12(c) for judgment on Counts 2 and 12 (to the extent related to COFINA) of Plaintiffs’ Second Amended Complaint (“SAC”) (the “Motion for Judgment”). With respect to those Plaintiffs asserting claims based upon their purported ownership of 2014 general obligation bonds of the Commonwealth of Puerto Rico (“2014 GO Bonds”), the Motion for Judgment seeks to dismiss Plaintiffs’ claims under New York law, the governing law for the 2014 GO Bonds. With respect to Plaintiffs asserting claims based upon their purported ownership of general obligation bonds of the Commonwealth other than the 2014 Bonds (the “Pre-2014 GO Bonds,” and together with the 2014 GO Bonds, the “GO Bonds”), the Motion for Judgment seeks to dismiss Plaintiffs’ claims under Puerto Rico law, the governing law for all Pre-2014 GO Bonds.

Tax Financing Corporation (“COFINA”), when the challenge was first raised nearly 10 years after the enactment of legislation establishing COFINA, during which time billions of dollars of COFINA bonds were issued and sold into the market?

2. Whether the equitable doctrine of “actos propios” under Puerto Rico law bars a challenge to the legislative transfer of the Dedicated Sales Tax to COFINA, when the bond resolutions and offering documents pursuant to which Plaintiffs purchased their bonds expressly stated that Plaintiffs would have no claim on the Dedicated Sales Tax?

3. Whether the Legislative Assembly, in the exercise of its constitutional power to impose taxes, to determine how the revenues derived from those taxes shall be used and allocated, and to issue debt, validly transferred the Dedicated Sales Tax to COFINA and determined that it is not an “available resource” under Sections 2 and 8 of Article VI of the Puerto Rico Constitution?

BACKGROUND

The facts related to the creation of COFINA and the Plaintiffs’ opportunistic challenge to the COFINA structure are set forth in more detail in the Motion for Judgment. Dkt. No. 219.

Plaintiffs (the “GO Bondholders”) seek to change their bargain with the Commonwealth of Puerto Rico, and dismantle the decade-old COFINA structure created by a near-unanimous vote of the Legislative Assembly. Based upon the authority granted to it under its enabling legislation and during a period of acute fiscal crisis in Puerto Rico, COFINA raised more than \$16 billion of low-cost financing for Puerto Rico and its citizens through the issuance of bonds purchased by both on-Island and mainland investors. While pled as a violation of federal law, the underpinning of the GO Bondholders’ challenge is that the legislative enactment of COFINA a decade ago violated the Puerto Rico Constitution. The Court acknowledged as much, stating that “counts two and three certainly implicate the lawfulness of the Commonwealth’s assignment of IVU revenues to COFINA.” Opinion and Order, Dkt. No. 184, at 16. For certain of the bonds—specifically the

2014 GO Bonds—New York law governs, the Court may resolve the legal issues without reference to the laws of Puerto Rico, and claims by holders of those bonds can be dismissed without the need for certification. Mot. for Judgment at Section II.A and III. For the remaining GO Bonds, the law of Puerto Rico applies, including the questions the COFINA Senior Bondholders respectfully seek this court to certify to the Supreme Court of Puerto Rico (“SCOPR”).

The GO Bondholders’ challenge to COFINA turns on a novel and important question of Puerto Rico constitutional law: whether the Legislative Assembly validly transferred the Dedicated Sales Tax to COFINA, making it the property of COFINA and excluding it from the definition of “available resources” under the Puerto Rico Constitution. In short, the Puerto Rico Constitution gives the Legislative Assembly broad power both to impose taxes, and to determine how to use those taxes. A review of the history of the Puerto Rico Constitution shows that the drafters understood and intended that the Puerto Rico Constitution would allow the Legislative Assembly to impose taxes and set them outside of the reach of the Treasury, and outside of the definition of “available resources.” This question—which has never been addressed by the courts of Puerto Rico—is at the heart of the GO Bondholders’ claims, is a matter of utmost local policy importance, and should be certified to the SCOPR for resolution. In fact, the Legislative Assembly explicitly recognized the need for review by Puerto Rico’s highest court when it provided that SCOPR “shall issue a write of certification by petition to immediately bring before it and resolve any matter . . . when the issue is the validity of constitutionality” COFINA’s statutory framework. Act 7 of 2009 at § 69.

The Court need not resolve this constitutional issue to dispose of this litigation because the GO Bondholders’ challenge is barred by equitable doctrines under Puerto Rico law (or New York law with respect to the 2014 GO Bonds). Although the Puerto Rico courts have not addressed a

tardy constitutional challenge to a legislatively-created public financing measure, Puerto Rico law recognizes that the doctrine of laches will bar such constitutional challenges when a party's delay in bringing the challenge would cause prejudice and harm to defendants or third parties. Here, the delay in challenging this decade-old structure would unquestionably result in market chaos and harm to COFINA bondholders who lent billions of dollars to the government of Puerto Rico based upon the government's pledge of a dedicated revenue stream.

Similarly, Puerto Rico's doctrine of "actos propios" applies to bar a claim when the plaintiff has created a "situation contrary to reality" that may affect the behavior of others and another party has acted to its detriment in response to the plaintiff's conduct. Here, Plaintiffs purchased GO Bonds pursuant to contracts and offering materials that explicitly stated that neither those bonds nor their owners had any recourse to the Dedicated Sales Tax, and they negotiated financial and legal terms consistent with the agreement that the Dedicated Sales Tax was not an available resource, including advantageous financial terms. Now the GO Bondholders have decided they want to revisit that bargain by seeking to expand the "available resources" for payment on their bonds to *all* resources. But Puerto Rico's doctrine of "actos propios" bars such a change of course.

The courts of Puerto Rico have not faced a tardy challenge to a widely and long-used public financing measure, like COFINA, and there is no directly, controlling law from the SCOPR. While the case law strongly suggests that the SCOPR would apply these doctrines to bar the GO Bondholders' challenges to COFINA, the question of their ultimate applicability is one of local policy concern, and should be left to the SCOPR.

The merits of these arguments have been presented to this Court in the Motion for Judgment. Because these points raise novel and unsettled questions of Puerto Rico law, the

COFINA Senior Bondholders respectfully request that resolution of these questions be certified to the SCOPR.

ARGUMENT

The United States Supreme Court has recognized that federal courts should certify “novel or unsettled questions of state law” to state courts because doing so will result in an “authoritative answers by [the] State’s highest court.” *Arizonans for Official English v. Ariz.*, 520 U.S. 43, 77 (1997). By certifying unsettled questions of state law, a federal court “may save time, energy, and resources and help build a cooperative judicial federalism.” *Id.* In particular, certification should be granted where issues of local law raise concerns particularly suited for a state’s supreme court. *Easthampton Sav. Bank v. Springfield*, 736 F.3d 46, 48, 52 (1st Cir. 2013) (certifying a question to the state supreme court because it involved consideration of local statutes crafted to address the housing market crisis, a matter of significant public interest). “Through certification of novel or unsettled questions of [Puerto Rico] law for authoritative answers by [Puerto Rico’s] highest court, a federal court may save time, energy and resources and help build a cooperative judicial federalism.” *Romero v. Colegio de Abogados de Puerto Rico*, 204 F.3d 291, 306 (1st Cir. 2000) (reversing and remanding case to district court to certify a question of Puerto Rico law to the SCOPR). Further, “[a] rigid rule of deference to interpretations of Puerto Rico law by Puerto Rico courts is particularly appropriate given the unique culture and legal history of Puerto Rico.” *Posadas de Puerto Rico Assoc. v. Tourism Co. of Puerto Rico*, 478 U.S. 328, 339 n.6 (1986).

Certification is appropriate even if the Puerto Rico case law provides some guidance for the federal courts. For example, in *Carrasquillo-Ortiz v. Am. Airlines, Inc.*, the First Circuit certified to the SCOPR a question of the interpretation of Puerto Rico’s wrongful termination statute after the District Court had ruled on the matter by interpreting Puerto Rico case law. 812

F.3d 195, 199–200 (1st Cir. 2016). The First Circuit remarked that, although the applicable local case law suggested how the SCOPR might resolve the issue, “we read that precedent as less definitive on the particular issue confronted here than the District Court deemed it to be. . . .” *Id.* at 196. Refusing to “encroach on the prerogative of [the SCOPR] by resolving the question ourselves,” the First Circuit certified the question, “consistent with the plaintiffs’ suggestion in their briefing to us.” *Id.* at 200 (citations omitted).

Finally, certification is particularly appropriate when important matters of local policy are at stake. *Muniz-Olivari v. Stiefel Labs., Inc.*, 496 F.3d 29, 40 (1st Cir. 2007) (certifying questions of tort damages to SCOPR, and noting that “questions of local policy . . . are best addressed by the Supreme Court of Puerto Rico in the first instance.”); *González Cabán v. JR Seafood*, 132 F. Supp. 3d 274, 284 (D.P.R. 2015) (granting certification and noting that “[r]ather than boldly asserting itself as the ultimate authority of local law, a federal court should afford the local judiciary the opportunity to be the first to rule on the legality or constitutionality of local law.”); *Rivera-Muniz v. Horizon Lines, Inc.*, 737 F. Supp. 2d 57, 64 (D.P.R. 2010) (certifying question to Puerto Rico Supreme Court “which may have portentous ramifications for interstate commerce with Puerto Rico [and because] the territorial scope of [the Puerto Rico law] is a paramount matter of public policy for Puerto Rico”).

Consistent with the rationale of the federal courts, the SCOPR has enabled inter-jurisdictional certification of questions of Puerto Rico law through Rule 25 of the Supreme Court Rules of Procedure, which provides for certification from the federal courts “if there is any legal issue raised before the petitioner court involving questions of Puerto Rican law that may determine the outcome of the case, and with regard to which, in the opinion of the petitioner court, there are no clear-cut precedents in the case law of this Court.” P.R. Laws Ann. T. 4 App. XXI-B R. 25

(2016).³ The SCOPR has stated that the objective of certification is to establish a collaboration between federal and state courts and to preserve and respect the function of the courts of Puerto Rico to interpret and formulate the law of Puerto Rico when issues of Puerto Rico law are raised in the federal courts. *Watchtower Bible v. Mun. Dorado I*, 192 D.P.R. 73, 80 (2014). This greatly lessens the tension inherent to a federalist system. *Martinez Marrero v. Gonzalez Droz*, 180 D.P.R. 579, 585 (2011); *see also Gonzalez Caban*, 132 F. Supp. 3d at 283–84 (“The certification mechanism is widely applauded as increasing the likelihood of a federal court answering the substantive question correctly and demonstrating a federal court's respect for the state court.”).

The legal questions posed by Intervenor-Defendants should be certified because, as Rule 25 provides, there are no controlling, applicable precedents and the questions are dispositive to the Plaintiffs’ claims in a matter of extreme importance to the local public policies of Puerto Rico.

A. The Application of Laches to These Facts Raises Novel and Unsettled Issues of Puerto Rico Law and Should Be Certified to the SCOPR

As set out in more detail in Section II.B of the Motion for Judgment, the doctrine of laches is available under Puerto Rico law to bar equitable claims where plaintiffs, like the GO Bondholders, have acted inequitably. Article 7 of the Puerto Rico Civil Code (31 L.P.R.A. § 7) permits the application of equitable remedies when no statute is on point. *See Int’l Gen. Elec. v. Concrete Builders*, 104 D.P.R. 871, 878 (1976) (“When there is no statute applicable to the case at issue, the court shall decide in accordance with equity, which means that natural justice . . . shall be taken into consideration.” (quotation marks omitted) (quoting 31 L.P.R.A. § 7)).

Under Puerto Rico law, the purpose of laches is to prevent a plaintiff from asserting an 11th hour claim that would cause unfair disruption. For example, in *PIP v. Commonwealth*, the

³ The Puerto Rico Rules of Civil Procedure of 2009 and the Judiciary Act of 2003 also enable the procedure on similar terms. 32 L.P.R.A. Ap. V, § 52.2, 4 L.P.R.A. § 24s.

plaintiff challenged a legislative referendum to amend the Puerto Rico Constitution. 186 D.P.R. 1, 13-16 (2012) (considering laches defense to constitutional challenge to legislative referendum). Although the SCOPR declined to dismiss the claim on the basis of laches, it did so because, unlike here, the court concluded that the amendment was still in its initial stages and thus there was still time to resolve the constitutional controversy without causing chaos. *Id.* at 16.

While the SCOPR's discussion of the rationale and importance of the doctrine, even in addressing constitutional questions, strongly suggests that the SCOPR would apply laches to bar the GO Bondholders' challenges to COFINA (*see* Mot. for Judgment Sec. II.B), the SCOPR has not yet addressed a tardy challenge to a widely and long-used public financing measure. The application of equitable doctrines is an important matter of local policy, in particular as they apply to issues related to the Constitution and public finance, and thus should be resolved by the local court. *Muniz-Olivari*, 496 F.3d at 40 (“[Q]uestions of local policy . . . are best addressed by the Supreme Court of Puerto Rico in the first instance.”); *González Cabán*, 132 F. Supp. 3d at 284 (“Rather than boldly asserting itself as the ultimate authority of local law, a federal court should afford the local judiciary the opportunity to be the first to rule on the legality or constitutionality of local law.”).

Because the application of Puerto Rico's doctrine of laches would dispose of the GO Bondholders' litigation in its entirety, and because the application of this doctrine to any similar set of facts is novel and unsettled, this Court should certify Question 1 to the SCOPR. *See Carrasquillo-Ortiz*, 812 F.3d at 199-200 (certifying question of Puerto Rico law to SCOPR where only authority on point applied law to different factual scenario).

B. The Application of “Actos Propios” to These Facts Raises Novel and Unsettled Issues of Puerto Rico Law and Should Be Certified to the SCOPR

The SCOPR has held that the doctrine of “actos propios”—or “one’s own acts”—is a “general principle of law” “with universal validity.” *Int’l Gen. Elec.*, 104 D.P.R. at 878. It applies to bar a claim when the plaintiff has created a “situation contrary to reality” that may affect the behavior of others and another party has acted to its detriment in response to the plaintiff’s conduct. *Id.* The doctrine’s purpose is to maintain the relationship between the parties as it was created. *O.C.S. v. Universal*, 187 D.P.R. 164, 171-74 (2012).

As set out in the Motion for Judgment, the GO Bondholders’ claims should be dismissed under Puerto Rico’s law of “actos propios.” Mot. for Judgment at Section II.B. *See, e.g., Crossroads Dev. Corp. v. E.L.A.*, 103 D.P.R. 789 (1975) (barring plaintiff from disavowing government planning board approval when it was “not convenient to its interests” because it would be “contrary to equity” to allow it to take a conflicting position when convenient). The governing documents for each and every issuance of GO Bonds since COFINA was created explicitly disclosed that the COFINA’s Dedicated Sales Tax was transferred by statute to COFINA, was not an “available resource” under the Constitution of Puerto Rico and, therefore, was not available to satisfy the debt service of GO Bonds. Mot. for Judgment at 11-13. In accordance with Puerto Rico’s application of “actos propios,” the GO Bondholders should not be permitted to “disavow” their prior deal when convenient.

The SCOPR has never faced such a decision, however, and there is no controlling authority. *Carrasquillo-Ortiz*, 812 F.3d at 199-200. Like laches, the application of the doctrine of “actos propios” is a matter of local policy concern and should be entrusted to the SCOPR, especially given the roots of the doctrine in the civil law tradition. *Posadas de Puerto Rico Assoc.*, 478 U.S. at 339 n.6 (“[A] rigid rule of deference to interpretations of Puerto Rico law by Puerto Rico courts

is particularly appropriate given the unique culture and legal history of Puerto Rico.”). If the SCOPR concluded that the doctrine was applicable to the GO Bondholders’ challenges to COFINA, it would dispose of the heart of their claims, and resolve an issue of critical local importance. *Muniz-Olivari.*, 496 F.3d at 39-40; *González Cabán*, 132 F. Supp. 3d at 284.

C. The “Available Resources” Question Raises Novel and Unsettled Issues of Puerto Rico Law Critical to Puerto Rico Public Policy and Should Be Certified to the SCOPR

At bottom, the GO Bondholders’ claims are premised on constitutional challenges to the Legislative Assembly’s power to transfer a portion of Dedicated Sales Tax to COFINA and to decide which resources are “available.” This question is fundamentally an issue of Puerto Rico’s constitutional law, and goes to the heart of Puerto Rico’s system of government and constitutional balance of powers. Mot. for Judgment at Section V. While this issue has not yet been put to the SCOPR, the language and purpose of the Puerto Rico Constitution, the history of the Constitution and the intent of its drafters, and the interpretation of the SCOPR all indicate that the legislative transfer to COFINA was valid and effective. The issue of whether COFINA’s property was effectively set outside of the definition of “available resources” is of critical importance to resolving the cloud of uncertainty that has been falsely cast on the COFINA structure by this lawsuit, and by the Plaintiffs’ campaign of disparagement. The question is one of the most pressing issues of local public policy facing Puerto Rico, and it should be resolved by the SCOPR, which is the ultimate authority on the meaning of the Puerto Rico Constitution, and the powers of the Legislative Assembly. The Legislative Assembly recognized as much in a 2009 amendment to the COFINA statute, in which the Legislative Assembly stated that any constitutional challenges to the legislation enacted to address Puerto Rico’s ongoing financial crisis—including the COFINA statute—should be certified and decided by the SCOPR on an expedited basis. *See Act 7 of 2009 at § 69* (“The Supreme Court of the Commonwealth of Puerto Rico shall issue a writ of

certification by petition to immediately bring before it and resolve any matter pending before the Court of First Instance or before the Court of Appeals when the issue is the validity or constitutionality of this special Act or any challenge thereof on any grounds.”); *see also Dominguez Castro v. ELA*, 178 D.P.R. 1 (2010) (Puerto Rico Supreme Court upholding the constitutionality of Act 7 of 2009 from various challenges under both the U.S. and Puerto Rico Constitutions brought by public employees who were laid off from their employment pursuant to a fiscal stabilization plan that the Commonwealth implemented pursuant to Act 7).

In short, because resolution of this question will turn on four issues of first impression particular to the Puerto Rico Constitution, the SCOPR should be the one to decide them.

First, the Court will need to address the inherent powers of the Legislative Assembly. As set out in the Motion for Judgment, the GO Bondholders’ contention that “available resources” means “*all* resources” ignores that the Legislative Assembly is empowered to decide which resources are “available.” This power arises from its authority to impose taxes and issue debt, which, under the Puerto Rico Constitution, “shall never be suspended or surrendered.” *See* P.R. Const., art. VI, § 2.⁴ The taxing power encompasses the prerogative to create a tax and decide how its revenue will be used, provided it is for a “public purpose.” *Interior Developers v. Mun. de San Juan*, 177 D.P.R. 693, 703 (2009). The scope and deference granted to the Legislative Assembly in the exercise of this prerogative was exemplified in *P.R. Tel. Co. v. Tribunal de Contribuciones*, where the SCOPR declined to second guess the Legislative Assembly’s determination that a tax scheme had a “public purpose.” 81 D.P.R. 982, 996 (1960). Thus, as a threshold matter of Puerto Rico constitutional law, the Legislative Assembly’s decision to transfer the Dedicated Sales Tax

⁴ Although the official translation of the term is “available *revenues*,” the more widely-accepted translation, including by the GO Bondholders, is “available resources.” Either way, the operative word is “available.”

to COFINA is subject to significant deference with judicial interference only if it is a clear deviation from any reasonably conceivable public purpose or a display of arbitrary power. Mot. for Judgment at Section V.A.

Second, the Court will need to address the language of the Puerto Rico Constitution itself. The GO Bondholders contend that the term “available resources” in the Puerto Rico Constitution means that the Legislative Assembly must commit *all* resources in service of the Commonwealth’s general obligations. Although the Puerto Rico Constitution does not expressly define the term “available resources” in Sections 2 and 8 of Article VI, there is contextual evidence of its meaning. There is no dispute, for example, that the resources held by the Puerto Rico Treasury are “available resources” supporting the Commonwealth’s pledge of good faith and credit. *See* P.R. Const., art. VI, § 2 (“The Secretary of the Treasury may be required to apply the available resources . . . to the payment of interest on the public debt . . .”). The Treasury, however, is not the repository of all Commonwealth revenues. When setting the debt limit, for example, Section 2 bases the formula on the “revenues” that are specifically deposited (“covered”) into the Puerto Rico Treasury. This presumes that there are “revenues” that are not deposited into the Treasury or “available.” As not all revenues are deposited with the Treasury under the Puerto Rico Constitution, it must be that the Legislative Assembly, vested with the power to impose taxes (and thus to generate revenue), also has the authority to direct which revenues will be deposited with the Treasury and be made “available.” Mot. for Judgment at Section V.B.

Third, the Court will need to parse the history of the Puerto Rico Constitution, and the drafting and amendment of the portions related to public finance. The current form of the credit limit formula was adopted by an amendment to Section 2 in 1961. Prior to the amendment’s adoption, a Special Commission had been formed to issue recommendations. In discussing the

1961 amendment, the Special Commission explained that under the new formula, *“the Legislative Assembly would have a more absolute control over the credit margin.”* Legislative Diary, Vol. XIV No. 27, 1961, p. 221, 248. (emphasis added). Since the purpose of the 1961 Amendment was to confer upon the Legislative Assembly the power to better control the credit limit, that power must include the determination of what revenues are deposited into the Puerto Rico Treasury. Therefore, the Legislative Assembly, in the exercise of its constitutionally delegated taxing and debt powers, could validly create and impose a tax, direct that its revenues not be deposited in the Treasury and, as such, remove them from the resources that are “available” to pay full faith and credit debt. Mot. for Judgment at Section V.B.

Finally, the Court will need to determine critical aspects of the balance of powers under Puerto Rico constitutional law, including the authority and limits to the powers of the Legislative Assembly. There is no doubt that the Legislative Assembly intended to give COFINA property rights in the Dedicated Sales Tax, and set the Dedicated Sales Tax outside of the “available resources” of the Treasury and GO bond debt service. Rather than challenge the meaning of the law, the GO Bondholders have charged the Legislative Assembly with exceeding its authority by creating the COFINA structure, and bestowing property rights in the Dedicated Sales Tax. If this legislation was within the Legislative Assembly’s authority, the GO Bondholders’ claims fail. Mot. for Judgment at Section V.C. Such a question of constitutional authority is the very prototype of a question that should be decided by the courts of Puerto Rico.

The GO Bondholders’ claim to the Dedicated Sales Tax, therefore, turns on interpretations of the language, intent, and history of the Puerto Rico Constitution and the power and authority of the Legislative Assembly. These issues should be addressed by the SCOPR in the first instance. *Thompson v. Ramirez*, 597 F. Supp. 727, 729 (D.P.R. 1984) (holding that because plaintiff’s

federal declaratory judgment claim “turn[ed] on questions of Puerto Rico law,” the court would certify the question to the SCOPR). The resolution of this critical question of Puerto Rico law, which involves an examination of the “unique cultural and legal history of Puerto Rico,” and is of paramount importance to the people of Puerto Rico, is the precise situation that the Supreme Court of the United States has found requires “[a] rigid rule of deference to interpretations of Puerto Rico law by Puerto Rico courts.” *Posadas de Puerto Rico Assocs.*, 478 U.S. at 339 n.6. Question 3 should thus be certified to the SCOPR for resolution. *Muniz-Olivari*, 496 F.3d at 39-40 (“[Q]uestions of local policy . . . are best addressed by the Supreme Court of Puerto Rico in the first instance. . . .”); *González Cabán*, 132 F. Supp. 3d at 284 (“Rather than boldly asserting itself as the ultimate authority of local law, a federal court should afford the local judiciary the opportunity to be the first to rule on the legality or constitutionality of local law.”).

CONCLUSION

Because the resolution of any of these three questions could dispose of this litigation, and because each of the questions raises issues that are novel and unsettled under Puerto Rico law, the Intervenors-Defendants respectfully request that this Honorable Court grant this motion and, in consequence, certify the following questions to the SCOPR:

1. Whether the equitable doctrine of laches under Puerto Rico law bars a challenge to the legislative transfer of Dedicated Sales Tax to COFINA, when the challenge was first raised nearly 10 years after the enactment of legislation establishing COFINA, during which time billions of dollars of COFINA bonds were issued and sold into the market?
2. Whether the equitable doctrine of “actos propios” under Puerto Rico law bars a challenge to the legislative transfer of the Dedicated Sales Tax to COFINA, when the bond resolutions and offering documents pursuant to which Plaintiffs purchased their bonds expressly stated that Plaintiffs would have no claim on the Dedicated Sales Tax?
3. Whether the Legislative Assembly, in the exercise of its constitutional power to impose taxes, to determine how the revenues derived from those taxes shall be used and allocated, and to issue debt, validly transferred the Dedicated Sales Tax to COFINA and determined that it is not an “available resource” under Sections 2 and 8 of Article VI of the Puerto Rico Constitution?

DATED: March 18, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel for the parties of record.

/s/ Daniel Salinas
USDC-PR 224006