

III. *Puerto Rico and the Oversight Board's Authority*

A. Introduction

In the late 2000s, the Commonwealth of Puerto Rico experienced a severe economic decline.¹ At the same time, it issued a large amount of municipal bonds to pay for its health care, infrastructure, and various social programs.² Puerto Rico's government has operated at a deficit every year since 2002.³ Rather than reducing its deficit by cutting spending or raising taxes, Puerto Rico's government has issued debt to finance its operations.⁴ "The level of outstanding public debt expressed as a percentage of annual GNP rose from about sixty percent in 2000 to more than 100 percent in 2013."⁵ Debt ratios at this level are a significant impediment to economic growth.⁶ By comparison, the European Union Stability and Growth Pact states that all countries in the Eurozone should aim to keep their total public debt below sixty percent of Gross Domestic Product (GDP).⁷ If a country breaks the sixty percent level, it must take measures to reduce the

¹ U.S. DEP'T OF THE TREASURY, PUERTO RICO'S ECONOMIC AND FISCAL CRISIS, https://www.treasury.gov/connect/blog/Documents/Puerto_Ricos_fiscal_challenges.pdf [<http://perma.cc/5569-X3BZ>] ("[S]ince . . . 2006 [Puerto Rico's] economy has shrunk by more 10 percent and employment on the island has fallen by 14 percent.").

² U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-18-160, U.S. TERRITORIES PUBLIC DEBT OUTLOOK (2017) ("Between fiscal years 2005 and 2014 . . . Puerto Rico's total public debt outstanding (public debt) grew from \$39.2 billion to \$67.8 billion, reaching 66 percent of Gross Domestic Product.").

³ U.S. GOV'T ACCOUNTABILITY OFFICE., GAO-18-387, PUERTO RICO FACTORS CONTRIBUTING TO THE DEBT CRISIS AND POTENTIAL FEDERAL ACTIONS TO ADDRESS THEM (2018).

⁴ *Id.*

⁵ FED. RESERVE BANK OF N.Y., AN UPDATE ON THE COMPETITIVENESS OF PUERTO RICO'S ECONOMY (July 31, 2014), <https://www.newyorkfed.org/medialibrary/media/outreach-and-education/puerto-rico/2014/Puerto-Rico-Report-2014.pdf> [<https://perma.cc/9UQM-HURG>].

⁶ *See id.*

⁷ European Parliament Briefing, Stability and Growth Pact—An Overview of the Rules (Dec. 18, 2015), [http://www.europarl.europa.eu/RegData/etudes/note/join/2014/528745/IPOL-ECON_NT\(2014\)528745_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2014/528745/IPOL-ECON_NT(2014)528745_EN.pdf) [<http://perma.cc/4HAK-TQBK>] (reporting that for countries whose debt is higher than sixty percent of GDP, compliance with the debt reduction benchmark is part of the medium-term objective).

deficits or face fines up to 0.5% of GDP.⁸ A fiscal plan released by the Government of Puerto Rico listed total public debt outstanding at \$74.3 billion as of February 2017.⁹ Between August 2015 and May 2018, Puerto Rico defaulted on over \$1.5 billion in debt.¹⁰

I will first review in Section B Puerto Rico's response to the economic decline and the litigation that resulted. In this context I discuss Congress's enactment of the Puerto Rico Oversight, Management, and Economic Stability Act which created the Financial Oversight and Management Board. Further, I will discuss the disagreement between the Financial Oversight and Management Board and the Governor of Puerto Rico over the former's authority. In Section C I will examine how Puerto Rico's unique status as a U.S. Territory impacts the disagreement and how the uniformity requirement of the Bankruptcy Clause of the Constitution affects the litigation. Section D concludes with an examination of how Hurricane Maria, which significantly damaged Puerto Rico in 2017, might result in a more pragmatic approach going forward.

B. The Recovery Act and PROMESA

In 2014, Puerto Rico enacted the Puerto Rico Public Corporation Debt Enforcement and Recovery Act (Recovery Act).¹¹ This allowed financially distressed Puerto Rican public corporations to restructure their debt obligations.¹² The Recovery Act's purpose was to balance the interest of creditors and stakeholders with the interest of Puerto Rico in protecting its citizens by continuing to provide essential government services.¹³ Significantly, the Recovery Act did not stabilize the capital markets.¹⁴ In response, rating agencies downgraded

⁸ *Id.* at 5 (identifying the possible sanctions that govern the excessive deficit procedure).

⁹ U.S. GOV'T ACCOUNTABILITY OFFICE., *supra* note 2, at 13 (stating total public debt outstanding of \$74.3 billion as of February 2017).

¹⁰ U.S. GOV'T ACCOUNTABILITY OFFICE., *supra* note 3.

¹¹ 2014 P.R. Laws Act No. 71. *See* Restructuring Alert from Orrick, Herrington & Sutcliffe LLP, Lorraine McGowen et al., Summary of Puerto Rico Public Corporation Debt Enforcement & Recovery Act (July 2014).

¹² Restructuring Alert, *supra* note 11, at 1.

¹³ *Id.*

¹⁴ *Id.* at 10 ("If the goal . . . was to stabilize the capital market and insulate the Commonwealth of Puerto Rico's general obligation and COFINA bonds from the financial distress of the Commonwealth's other public corporations, that goal has failed.").

securities issued by Puerto Rico because the Recovery Act made restructuring or default more likely.¹⁵ However, in 2015 a United States District Court struck down the Recovery Act as being preempted by the U.S. Bankruptcy Code.¹⁶ The court ruled that section 903(1) of the U.S. Bankruptcy Code preempted the Recovery Act.¹⁷ This was later affirmed by the Supreme Court.¹⁸

As a result of these cases, in June 2016 Congress enacted the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA).¹⁹ Title I of PROMESA established a Financial Oversight and Management Board (Oversight Board),²⁰ the purpose of which is to provide a method for a covered territory to achieve fiscal responsibility and access to the capital markets.²¹ The Oversight Board consists of seven voting members appointed by the President, as well as the Governor of Puerto Rico or the Governor's designee, as a non-voting member.²² PROMESA gives the Oversight Board broad powers to hold hearings, take testimony, and receive evidence, accept, use, and dispose of gifts, bequests, or devises of services or property, both real and person, for aiding or facilitating the work of the Oversight Board, issue subpoenas, enter into contracts, and investigate disclosure and selling practices of bonds.²³ Further, neither the Governor nor the

¹⁵ *Id.*

¹⁶ *Franklin Cal. Tax-Free Tr. v. Puerto Rico*, 85 F. Supp. 3d 577, 583 (2015) (“Because the Recovery Act is preempted by the federal Bankruptcy Code, it is void pursuant to the Supremacy Clause of the United States Constitution.”).

¹⁷ *See* 11 U.S.C. § 903(1) (2012) (reserving State power to control municipalities); 11 U.S.C. § 101(52) (2012) (excluding Puerto Rico as a debtor under Chapter 9); 85 F. Supp. 3d. at 601 (“Section 903(1)’s text and legislative history provide direct evidence of Congress’s clear and manifest purpose to preempt state laws that prescribe a method of composition of municipal indebtedness that binds nonconsenting creditors . . . and to include Puerto Rico laws in this preempted arena . . .”).

¹⁸ *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 136 S. Ct. 1938, 1949 (2016) (holding federal law preempts the Recovery Act).

¹⁹ Pub. L. No. 114-187, 130 Stat. 549 (2016) (to be codified at 48 U.S.C. §§ 2101–2241).

²⁰ *Id.* § 101, 130 Stat. at 553 (“A Financial Oversight and Management Board is hereby established for Puerto Rico.”).

²¹ *Id.* (identifying the purpose of the Oversight Board as providing a method for a territory to fiscal responsibility and access to the capital markets).

²² *Id.* § 101, 130 Stat. at 554–56 (“The Oversight Board shall consist of seven members.”).

²³ *Id.* (listing the powers of the Oversight Board).

Legislature may exercise any control or supervision over the Oversight Board or enact any statute, policy, or rule that would impair the purposes of PROMESA, as determined by the Oversight Board.²⁴

Title III of PROMESA consists of a court-supervised debt restructuring procedure.²⁵ For cases in which the debtor is a territory, the Chief Justice of the United States Supreme Court designates “a district court judge to sit by designation to conduct the case.”²⁶ On May 2, 2017, Governor Nevares sent a letter to the chairman of the Oversight Board stating the government of Puerto Rico’s desire to make a plan to readjust its debt under Title III of PROMESA.²⁷ Governor Nevares stated that the good-faith effort Puerto Rico made to reach a restructuring agreement with its creditors was not sufficient to achieve the Fiscal Plan as set forth by the Oversight Board earlier that year.²⁸ Therefore, the next best step for Puerto Rico was to enter into Title III to adjust its debt to a workable level.²⁹ As of May 3, 2017, Puerto Rico’s debt equaled approximately \$74 billion of bond debt and \$49 billion of unfunded pension liabilities.³⁰ Chief Justice Roberts then picked federal court Judge Laura Taylor Swain to preside over the case seeking bankruptcy-like relief under Title III.³¹

²⁴ *Id.* § 108, 130 Stat. at 563 (stating that neither the Governor nor the Legislature may exercise control or supervision over the Oversight Board or enact or enforce any statute, resolution, or policy that would impair the purposes of PROMESA).

²⁵ *Id.* § 301, 130 Stat. at 577 (setting forth the adjustment of debts subchapter).

²⁶ *Id.* § 308, 130 Stat. at 582 (“For cases in which the debtor is a territory, the Chief Justice of the United States shall designate a district court judge to sit by designation to conduct the case.”).

²⁷ Letter from Governor Ricardo Rosselló Nevares, P.R., to José Carrión, Chairman, Fin. Oversight & Mgmt. Bd. (May 2, 2017) (“I am hereby making this submission to the Financial Oversight and Management Board for Puerto Rico . . . as appointed under [PROMESA] . . . representing that as of the date hereof the Government of Puerto Rico . . . desires to effect a plan to adjust its debt under Title III of PROMESA.”).

²⁸ *See id.*

²⁹ *See id.*

³⁰ KOBRE & KIM LLP, THE FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO SPECIAL INVESTIGATION COMMITTEE INDEPENDENT INVESTIGATOR’S FINAL INVESTIGATIVE REPORT 2 (2018).

³¹ Matthew Goldstein, *Judge in Puerto Rico’s Debt Lawsuit Handled Major Financial Cases*, N.Y. Times (May 5, 2017), <https://www.nytimes.com/2017/05/05/business/dealbook/judge-puerto-rico-case.html>.

In April 2018, the Oversight Board issued its New Fiscal Plan for Puerto Rico (New Fiscal Plan).³² The New Fiscal Plan outlined several policy and structural initiatives.³³ However, Governor Nevares rejected the Oversight Board's plan for cutting pension benefits as well as several other initiatives he viewed as public policy issues.³⁴ As a result, the Oversight Board issued a notice of violation under PROMESA section 202(c)(1)(B)(i) to Governor Nevares.³⁵ After a period of negotiations, the Oversight Board and Governor Nevares went to court to determine whether the challenged initiatives were non-binding recommendations by the Oversight Board or rather mandatory provisions that can be enforced.³⁶

The Oversight Board argued that PROMESA section 108(a) prohibits the Commonwealth government from taking any act contrary to those purposes, "as determined by the Oversight Board."³⁷ The Oversight Board also argued that PROMESA section 4 preempts any Commonwealth law "inconsistent" with it.³⁸ Governor Nevares argued that because section 205 of PROMESA authorizes the Oversight Board to make recommendations to ensure compliance with the Fiscal Plan and to improve Commonwealth governance, the Commonwealth is free to reject or treat as optional anything Plaintiffs describe as a "recommendation" or "policy initiative."³⁹ Specifically, Governor Nevares identified five Oversight Board measures included in the New Fiscal Plan that he had rejected: (i) private-sector human-capital and labor reforms; (ii) pension reforms; (iii) government agency consolidations; (iv) compensation related initiatives; and (v) reductions in appropriations to the University of Puerto Rico.⁴⁰ The Governor argued that the Oversight Board lacked the power to impose these

³² See generally FIN. OVERSIGHT & MGMT. BD. FOR P.R., NEW FISCAL PLAN FOR PUERTO RICO: RESTORING GROWTH AND PROSPERITY (2018).

³³ *Id.*

³⁴ Michelle Kaske et al., *Puerto Rico Board Backs Fiscal Plan amid Clash with Governor*, BLOOMBERG (Apr. 19, 2018, 5:12 PM), <https://www.bloomberg.com/news/articles/2018-04-19/puerto-rico-board-passes-fiscal-plan-amid-clash-with-governor>.

³⁵ *Nevares v. Fin. Oversight & Mgmt. Bd.* (*In re* Fin. Oversight & Mgmt. Bd.), 330 F. Supp. 3d 685 (D.P.R. 2018).

³⁶ *Id.* at 693.

³⁷ *Id.* at 700.

³⁸ *Id.*

³⁹ *Id.* at 690.

⁴⁰ *Id.* at 691–93 (outlining the five measures in the Oversight Board's Fiscal Plan that the Governor had rejected).

measure on the Government of Puerto Rico.⁴¹ The case ultimately determined whether the Oversight Board could, through fiscal plans and budgets, mandate actions implementing policies that have specifically been rejected by the Governor, and whether the Oversight Board's budget can modify or override pre-PROMESA Puerto Rico law.⁴²

The two controversial sections of PROMESA were 205 and 201.⁴³ Section 205 of PROMESA authorizes the Oversight Board to "submit recommendations" to the Governor or the Legislature of Puerto Rico at any time "on actions the territorial government may take to ensure compliance with the Fiscal Plan, or to otherwise promote the financial stability, economic growth, management responsibility, and service delivery efficiency of" the Government.⁴⁴ If the Government of Puerto Rico declines to adopt a recommendation, the Governor or Legislature must include in the statement "explanations for the rejection of the recommendations," and the statement must be submitted to the President and Congress of the United States as well as to the Oversight Board.⁴⁵ Section 205 does not further address what happens to rejected recommendations.⁴⁶ Section 201(b)(1)(K) provides that a fiscal plan shall "adopt appropriate recommendations submitted by the Oversight Board under Section 205."⁴⁷ Section 201(d)(2) states that "if the Governor fails to submit to the Oversight Board a Fiscal Plan that the Oversight Board determines in its sole discretion satisfies the requirement set forth in subsection (b) by the time specified . . . the Oversight Board shall develop and submit to the Governor and the Legislature a Fiscal Plan that satisfies the requirements set forth in subsection (b)."⁴⁸ Further, section 201(e)(2) states "if the Oversight

⁴¹ *Id.* at 690 ("The Governor asserted that the Oversight Board lacks power to impose these measures on the Government.").

⁴² *Id.* at 698.

⁴³ *Id.* ("At the core of this dispute are questions of statutory interpretation regarding the interplay of Sections 205 and 201(b)(1)(K) of PROMESA . . .").

⁴⁴ Puerto Rico Oversight, Management, and Economic Stability Act, Pub. L. No. 114-187, § 205, 130 Stat. 573 (2016).

⁴⁵ *Id.* § 205, 130 Stat. at 574.

⁴⁶ *Id.* § 205, 130 Stat. at 573.

⁴⁷ *Id.* § 210, 130 Stat. at 564. *See also In re Fin. Oversight & Mgmt. Bd.*, 330 F. Supp. 3d at 699 ("Section 201(b)(1)(K) expressly provides that a fiscal plan shall 'adopt appropriate recommendations submitted by the Oversight Board under Section 205(a).'").

⁴⁸ Pub. L. No. 114-187, § 201, 130 Stat. at 565.

Board develops a Fiscal Plan under subsection (d)(2), such Fiscal Plan shall be deemed approved by the Governor.”⁴⁹ Judge Swain held that the Oversight Board has the power to make binding policy choices, stating that “the power bestowed on the Oversight Board by § 201(b)(1)(K) of PROMESA allows the Oversight Board to make binding policy choices for the Commonwealth, notwithstanding the Governor’s rejection of section 205 recommendations.”⁵⁰ Judge Swain noted that the Oversight Board’s power is consistent with PROMESA’s framework in light of the Oversight Board’s mandate, sole discretion to certify fiscal plans and put budgets of its own into effect, and PROMESA’s preemption of laws inconsistent with its provisions.⁵¹ Additionally, Judge Swain noted commentary in the legislative history of PROMESA was generally consistent with the view that certified fiscal plans would be able to adopt recommendations even absent approval by the Government.⁵²

C. Puerto Rico and the Uniformity Requirement of the Bankruptcy Clause

The issues surrounding the Oversight Board, Governor Nevares, and PROMESA are largely a result of the uncertainty of Puerto Rico’s legal status. As a U.S. territory, Puerto Rico is neither a sovereign government nor a municipality.⁵³ Congress might treat Puerto Rico in ways that would otherwise be prohibited if it were a state.⁵⁴ As it relates to bankruptcy, Puerto Rico issues debt as a municipality, yet has historically lacked recourse to municipal bankruptcy

⁴⁹ *Id.*

⁵⁰ 330 F. Supp. 3d at 700.

⁵¹ *Id.*

⁵² *Id.* at 702 (recounting a statement of Senator Menendez indicating that the Oversight Board can incorporate or adopt their recommendations, even those not adopted by the Governor or Legislature).

⁵³ Stephen Kim Park & Tim R. Samples, *Puerto Rico’s Debt Dilemma and Pathways Toward Sovereign Solvency*, 54 AM. BUS. L.J. 9, 10 (2017) (“Puerto Rico is neither a sovereign government nor a municipality.”).

⁵⁴ See *Harris v. Rosario*, 446 U.S. 651, 651–62 (1980) (stating that Congress “may treat Puerto Rico differently from States so long as there is a rational basis for its actions”); Stephen J. Lubben, *Puerto Rico and the Bankruptcy Clause*, 88 AM. BANKR. L.J. 553, 556 (describing Puerto Rico as “in a kind of constitutional limbo.”).

under Chapter 9 of the U.S. Bankruptcy Code.⁵⁵ Puerto Rico was prohibited from restructuring debts through bankruptcy prior to PROMESA as Puerto Rico is specifically excluded from Chapter 9 of the U.S. Bankruptcy Code.⁵⁶ This has led to a variety of proposals to alleviate the debt problems: statehood for Puerto Rico, contractual negotiations, and allowing Puerto Rico's debt to be subject to Chapter 9 procedures have all been debated.⁵⁷ Further, the legal uncertainty of Puerto Rico persists in PROMESA's balance between the Oversight Board and the Government.⁵⁸

The Constitution gives Congress the power to establish uniform laws on the subject of bankruptcy throughout the United States.⁵⁹ In his concurring opinion finding the Recovery Act preempted, Judge Torruella wrote that attempts to establish bankruptcy legislation that is not uniform with regards to the rest of the United States violates the uniformity requirement of the Bankruptcy Clause of the Constitution.⁶⁰ That is, prohibiting Puerto Rico from authorizing its municipalities to request Chapter 9 relief, while allowing all the states to benefit from such power, is not consistent with the uniformity requirement.⁶¹ The Supreme Court has noted that the uniformity

⁵⁵ Park & Samples, *supra* note 53, at 10 (“Puerto Rico issues debt as a municipality yet has historically lacked recourse to municipal bankruptcy under Chapter 9 of the U.S. Bankruptcy Code.”).

⁵⁶ 11 U.S.C. § 101(52) (2012) (excluding Puerto Rico as a debtor under Chapter 9); Park & Sample, *supra* note 53, at 29.

⁵⁷ Cory Howard, *Puerto Rico's Municipal Bond Dilemma: Is Statehood the Only Viable Option?* 83 REV. JUR. DIG. U.P.R. 15, 17 (2013); John A. E. Pottow, *What Bankruptcy Law Can and Cannot Do for Puerto Rico*, REV. JUR. U.P.R. 85, 689–704 (2016).

⁵⁸ *Nevares v. Fin. Oversight & Mgmt. Bd. (In re Fin. Oversight & Mgmt. Bd.)*, 330 F. Supp. 3d 685, 701 (D.P.R. 2018).

⁵⁹ U.S. CONST. art. I, § 8, cl. 4. (“The Congress shall have power . . . To establish . . . uniform laws on the subject of Bankruptcies throughout the United States . . .”).

⁶⁰ *Franklin Cal. Tax-Free Tr. v. Puerto Rico*, 805 F.3d 322, 346 (1st Cir. 2015) (Torruella, J., concurring) (remarking that attempts to establish bankruptcy legislation that is not uniform with regards to the rest of the United States violates the uniformity requirement of the Bankruptcy Clause of the Constitution).

⁶¹ *Id.* (“The term ‘uniform’ is unequivocal and unambiguous language, which is defined as ‘always the same, as in character or degree; unvarying,’ and as ‘[c]haracterized by a lack of variation; identical or consistent.’ Prohibiting Puerto Rico from authorizing its municipalities to request Chapter 9 relief,

requirement prohibits Congress from enacting bankruptcy laws that specifically apply to the affairs of only one named regional debtor.⁶² Therefore PROMESA is a bankruptcy law made for Puerto Rico alone.⁶³

Despite the apparent non-uniform bankruptcy treatment of Puerto Rico, PROMESA would likely survive a constitutional challenge on uniformity grounds. The uniformity provision does not prevent Congress from taking into account differences that exist between different parts of the country, and to create legislation to resolve geographically isolated problems.⁶⁴ The Supreme Court has rejected the interpretation that the uniformity required by the Constitution is geographic.⁶⁵ Instead, there is flexibility inherent in the constitutional provision, and the uniformity clause requires bankruptcy laws apply equally to all creditors and debtors.⁶⁶ As long as it can be said to operate uniformly upon the creditors and debtors, PROMESA and the Oversight Board are likely a constitutional effort of Congress to deal with a geographically isolated problem.⁶⁷ It is unclear how much flexibility Congress has in such instances.⁶⁸ The apparent flexibility may be significant however, as a federal law has only been declared unconstitutional by the Supreme Court on uniformity grounds one time.⁶⁹

D. Conclusion

On September 20, 2017, Hurricane Maria struck Puerto Rico, causing unprecedented damage.⁷⁰ Thousands of Puerto Rico citizens were left homeless and schools, hospitals, and businesses were

while allowing all the states to benefit from such power, is hardly in keeping with these definitions.”).

⁶² *Ry. Labor Execs.’ Ass’n v. Gibbons*, 455 U.S. 457, 473 (1982).

⁶³ Stephen J. Lubben, *PROMESA and the Bankruptcy Clause: A Reminder About Uniformity*, *BROOK. J. CORP. FIN. & COM. L.* (forthcoming) (manuscript at 22).

⁶⁴ *Reg’l Rail Reorganization Act Cases*, 419 U.S. 102, 159 (1974).

⁶⁵ *Id.* at 158.

⁶⁶ *See id.* at 158–60.

⁶⁷ Lubben, *supra* note 63, at 7.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ FIN. OVERSIGHT & MGMT. BD. FOR P.R., *NEW FISCAL PLAN FOR PUERTO RICO: RESTORING GROWTH AND PROSPERITY* (2018).

destroyed.⁷¹ In response to this, the Oversight Board formally requested the Governor submit a revised fiscal plan.⁷² However, PROMESA and the Oversight Board were designed before Hurricane Maria.⁷³ This has resulted in calls for additional assistance for Puerto Rico.⁷⁴

In July 2018, Senator Elizabeth Warren introduced the United States Territorial Relief Act of 2018 (U.S. Territorial Relief Act).⁷⁵ The U.S. Territorial Relief Act is designed to provide additional debt relief to Puerto Rico considering both the economic problems and impact from Hurricane Maria.⁷⁶ The U.S. Territorial Relief Act has three components.⁷⁷ First, Puerto Rico is given the option to terminate its public unsecured debt if two of three criteria are met.⁷⁸ The three criteria are a population decrease of five percent over ten years, receipt of major federal disaster assistance, and per capita debt exceeding \$15,000.⁷⁹ Puerto Rico's Governor and each body of its legislature must approve the debt relief.⁸⁰ Second, a special compensation fund is designated to allocate \$7.5 billion to eligible Puerto Rican creditors and \$7.5 billion to eligible mainland creditors.⁸¹ Third, the U.S. Territorial Relief Act establishes a commission of experts from Puerto Rico is created to perform a comprehensive audit of the causes and sources of Puerto Rico's debt and issue periodic reports.⁸² The U.S. Territorial Relief Act has received support from several prominent law

⁷¹ *Id.* (describing how basic utilities were completely shut down and took months become operational).

⁷² *Id.*

⁷³ *See* Letter from Adam J. Levitin, Professor, Georgetown Univ. Law Ctr., to Senators Elizabeth Warren and Bernie Sanders (July 25, 2018).

⁷⁴ *See id.*

⁷⁵ United States Territorial Relief Act of 2018, S. 3262, 115th Cong. (2018) (introducing the bill which was referred to the committee on Energy and Natural Resources).

⁷⁶ *Id.*

⁷⁷ *See id.*

⁷⁸ *Id.* § 102.

⁷⁹ *Id.* at § 2.

⁸⁰ *Id.* § 307.

⁸¹ *Id.* § 205 (describing the Puerto Rico Debt Restructuring Compensation Fund).

⁸² *Id.* § 302–03.

professors.⁸³ After it was introduced to the Senate, the U.S. Territorial Relief Act was referred to the Committee on Energy and Natural Resources on July 25, 2018.⁸⁴ The bill has yet to progress out of the Committee.⁸⁵ However, a related bill sponsored by Representative Nydia Velazquez was introduced in the House on September 13, 2018.⁸⁶ On September 24, the related House bill was referred to the Natural Resources Subcommittee on Indian, Insular, and Alaska Native Affairs, where it remains.⁸⁷

Regardless of whether the U.S. Territorial Relief Act is embraced, the Oversight Board will likely need to reevaluate its approach toward achieving fiscal responsibility and access to the capital markets for Puerto Rico after Hurricane Maria. This will likely manifest in a more pragmatic approach as it relates to public policy issues that the Oversight Board and Governor Nevares have conflicted over previously. Even though several sections of PROMESA are adopted from the Bankruptcy code, there are substantial differences that present novel challenges for Puerto Rico. Ultimately, providing debt relief and helping Puerto Rico gain access to the capital markets after Hurricane Maria will require close collaboration between the Government of Puerto Rico and the Oversight Board.

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⁸³ See Letter from Adam J. Levitin, *supra* note 74; Letter from Laurence H. Tribe, Professor, Harvard Univ., to Senators Elizabeth Warren and Bernie Sanders (July 25, 2018).

⁸⁴ S.3262 - United States Territorial Relief Act of 2018, CONGRESS.GOV, <https://www.congress.gov/bill/115th-congress/senate-bill/3262/all-actions> [https://perma.cc/KJM8-XNB2].

⁸⁵ *Id.*

⁸⁶ United States Territorial Relief Act of 2018, H.R. 6827, 115th Cong. (2018); H.R.6827 - United States Territorial Relief Act of 2018, CONGRESS.GOV, <https://www.congress.gov/bill/115th-congress/house-bill/6827/all-actions> [https://perma.cc/7Y4X-RQC3]

⁸⁷ *Id.*

⁸⁸ Student, Boston University School of Law (J.D. 2020).