

June 13, 2016

Legal Update

Supreme Court Annuls Puerto Rico's Recovery Act of 2014

Today, June 13, 2016, the Supreme Court of the United States annulled the Puerto Rico Public Corporation Debt Enforcement and Recovery Act of 2014 ("Recovery Act"), which would have allowed the Commonwealth's public corporations and other instrumentalities to implement a recovery or restructuring plan for their debt, under local laws and in local court.

In its opinion, delivered by Justice Clarence Thomas, the Supreme Court discussed three provisions of the Bankruptcy Code: (i) the "gateway" provision, which requires States to authorize municipalities (defined as a "political subdivision or public agency or instrumentality of a State") to seek Chapter 9 relief, establishing thus, "who may be a debtor"; (ii) the pre-emption provision, which bars States from enacting their own municipal bankruptcy laws; and (iii) the definition of "State", as amended in 1984.

The Court determined that the Bankruptcy Code has long included Puerto Rico as a "State", but in 1984 Congress amended such definition to establish:

"101. Definitions

...

(52) The 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.*"

As such, the Court concluded that: (i) Puerto Rico is not a "State" for the purpose of *defining* who may be a debtor under Chapter 9 and is therefore precluded from authorizing its municipalities to seek relief under Chapter 9; (ii) Puerto Rico is a "State" for purposes of the pre-emption provision, which pre-empts the Recovery Act; and (iii) the text of the definition is clear and excludes Puerto Rico *only* for purposes of the gateway provision.

Although this is strictly a statutory construction case, if one thing seems clear following today's decision and last week's ruling in *Commonwealth of PR v. Sánchez Valle* (declaring that the Commonwealth's authority to prosecute derives wholly from Congress, rather than its own people, and therefore, a defendant may not be tried in Puerto Rico after a federal trial for the same offense), is the following: Puerto Rico's financial future rests in Congress's hands.

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