

No. 17-3283  
Adversary No.: 21-00026-LTS

---

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

---

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,  
As representative of,

THE COMMONWEALTH OF PUERTO RICO, ET AL.,

Debtor,

LA LIGA DE CIUDADES DE PUERTO RICO,

Plaintiff,

v.

THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,  
AUTORIDAD DE ASESORÍA FINANCIERA Y AGENCIA FISCAL (“AAFAF”); CENTRO  
DE RECAUDACIÓN DE INGRESOS MUNICIPALES (“CRIM”), ADMINISTRACIÓN DE  
SEGUROS DE SALUD DE PUERTO RICO (“ASES”), AND LUIS M. COLLAZO  
RODRÍGUEZ, IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR OF THE SISTEMAS  
DE RETIRO DE LOS EMPLEADOS DEL GOBIERNO Y LA JUDICATURA DEL ESTADO  
LIBRE ASOCIADO DE PUERTO RICO

Defendants.

---

**ON COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

---

**BRIEF *AMICI CURIAE* IN SUPPORT OF PLAINTIFF,  
LA LIGA DE CIUDADES DE PUERTO RICO**

---

**ECIJA SBGB**

Legal Counsel to Congresswoman Nydia  
M. Velázquez Serrano, Congresswoman  
Alexandria Ocasio Cortez, Congressman  
Raúl Grijalva, Congressman Jesús G.  
“Chuy” García, and Congressman Richie  
Torres  
P.O. Box 363068  
San Juan, P.R. 00936-3068  
Tel.: (787) 300-3200

Fax: (787) 300-3208

**s/Jaime L. Sanabria Montañez**  
Jaime L. Sanabria Montañez, Esq.  
USDC-PR No. 225307  
E-mail: jsanabria@sbgblaw.com

## TABLE OF CONTENTS

<b>TABLE OF CONTENTS</b>	i
<b>TABLE OF AUTHORITIES</b>	ii
<b>BRIEF AMICI CURIAE IN SUPPORT OF PLAINTIFF, LA LIGA DE CIUDADES DE PUERTO RICO</b>	1
<b>I. AMICI CURIAE</b>	2
<i>A. Congresswoman Nydia M. Velázquez Serrano</i>	2
<i>B. Congresswoman Alexandria Ocasio Cortez</i>	2
<i>C. Congressman Raúl Grijalva</i>	3
<i>D. Congressman Jesús G. “Chuy” García</i>	3
<i>E. Congressman Richie Torres</i>	4
<b>II. INTEREST OF AMICI CURIAE</b>	4
<b>III. ARGUMENTS</b>	7
<i>A. The Oversight Board is exceeding its use of power.</i>	7
<i>B. The Oversight Board poses a negative and even devastating financial         effect towards Municipalities and their communities.</i>	14
<b>IV. CONCLUSION</b>	16
<b>V. PRAY FOR RELIEF</b>	16
<b>VI. PROOF OF SERVICE</b>	16

## TABLE OF AUTHORITIES

### CASELAW

*Plaza Las Américas, Inc. v. Centro de Recaudación de Ingresos Municipales*, 173 DPR 230, 240 (2008) 7

### OTHER AUTHORITIES

Act No. 29 of May 17 of 2019, entitled “Ley para la Reducción de las Cargas Administrativas de los Municipios” 8, 9  
Note 5

Act No. 81 of August 30 of 1991, as amended, entitled “Ley de Municipios Autónomos de Puerto Rico”, PRS ST T. 21 §§ 4001 *et seq.*, 4303, 4354 (derogated by Act No. 107 of August 14 of 2020, entitled “Código Municipal de Puerto Rico”, PRS ST T. 21 § 7001 *et seq.*) 7-8, 11,  
Note 8

Act No. 83 of August 30 of 1991, as amended, entitled “Ley de Contribución Municipal sobre la Propiedad de 1991” 7

Book VII of the Puerto Rico Municipal Code, Act No. 107 of August 14 of 2020, as amended, entitled “Código Municipal de Puerto Rico”, PRS ST T. 21 § 7001 *et seq.* 6, Note 7

En Ruta al Encuentro, “De la Resiliencia al Cambio Sistémico”: El Impacto del Plan Fiscal, Available at: <https://www.youtube.com/watch?v=d7xk7-bFnQs&t=2018s>; Accessed: 8-25-21 Note 9

Financial Oversight & Management Board for Puerto Rico, “Debt”, Available at: <https://oversightboard.pr.gov/debt/>; Accessed: 11-1-21 Note 10

Financial Oversight & Management Board for Puerto Rico, “Planes Fiscales Certificados”, Available at: <https://juntasupervision.pr.gov/fiscal-plans/>; Accessed: 11-1-21 Note 11

OECD (2018) Subnational governments in OECD countries: Key data (brochure), OECD, Paris, Available at: [www.oecd.org/regional/regional-policy/](http://www.oecd.org/regional/regional-policy/); Accessed: 8-25-2021 Note 6

Radiografía Municipal 2020. Available from: Radiografía Municipal 2020 (yumpu.com); Accessed: 8-25-21. 7, Note 4

Rule X, clause 1, Committees and their legislative jurisdictions included in *Rules of the House of Representatives*, 8 (117<sup>th</sup> Congress) 2, Note 1

The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), 48 USCA § 2121, *et seq.* 2-7, 11-13, 15-16  
Note 2

U.S. Congress, House Committee on Natural Resources, Puerto Rico Oversight, Management, and Economic Stability Act, 114th Cong., 2nd sess., June 3, 2016, H.Rept. 114-602 (Washington: GPO, 2016) 4, Note 3

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

**In re:**

**THE FINANCIAL OVERSIGHT  
AND MANAGEMENT BOARD  
FOR PUERTO RICO,**

*as representative of*

**THE COMMONWEALTH OF  
PUERTO RICO, *ET AL.***

*Debtor*

**LA LIGA DE CIUDADES  
DE PUERTORICO**

*Plaintiff*

*v.*

**THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO  
RICO, AUTORIDAD DE ASESORÍA  
FINANCIERA Y AGENCIA FISCAL  
("AAFAF"); CENTRO DE RECAUDACIÓN DE  
INGRESOS MUNICIPALES ("CRIM"),  
ADMINISTRACIÓN DE SEGUROS DE SALUD  
DE PUERTO RICO ("ASES"), AND LUIS M.  
COLLAZO RODRÍGUEZ, IN HIS OFFICIAL  
CAPACITY AS ADMINISTRATOR OF THE  
SISTEMAS DE RETIRO DE LOS  
EMPLEADOS DEL GOBIERNO Y LA  
JUDICATURA DEL ESTADO LIBRE  
ASOCIADO DE PUERTO RICO**

*Defendants*

PROMESA

Title III

No. 17-BK-3283-LTS

DECLARATORY AND INJUNCTIVE  
RELIEF

Adversary No.: 21-00026-LTS

---

**BRIEF *AMICI CURIAE* IN SUPPORT OF PLAINTIFF,  
LA LIGA DE CIUDADES DE PUERTO RICO**

**COME NOW**, Congresswoman Nydia M. Velázquez Serrano (hereinafter, "Rep. Velázquez"), Congresswoman Alexandria Ocasio Cortez, (hereinafter, "Rep. Ocasio Cortez"),

Congressman Raúl Grijalva (hereinafter, “Rep. Grijalva”), Congressman Jesús G. “Chuy” García (hereinafter, “Rep. García”), and Congressman Richie Torres (hereinafter, “Rep. Torres”) (collectively, “*amici curiae*” or “*amici*”), all represented by the undersigned attorney, and respectfully move this Court for leave to participate as *amici curiae* and to file a brief in support of Plaintiff La Liga de Ciudades de Puerto Rico’s “Complaint for Declaratory and Injunctive Relief”. (Docket Entry No. 1 in Civil Case No. 17-BK-3283-LTS). In support thereof, *amici curiae* **STATE** and **ALLEGE** as follow:

## **I. AMICI CURIAE**

### **A. Congresswoman Nydia M. Velázquez Serrano**

1. As the first Puerto Rican Congresswoman, Rep. Velázquez has been a tireless advocate of Puerto Rico in all areas pertaining to its equitable and just development, including those particularly focused on its economic development, and the strengthening of its fiscal reality to be able to guarantee the services required to the residents of the island, many of whom have migrated to her District. Rep. Velázquez has also been a fervent proponent of initiatives focused on increasing the economic opportunity for the working class and poor, and continually encourages economic development initiatives for the most disenfranchised and disengaged communities.

2. In the 117<sup>th</sup> Congress, Rep. Velázquez is the Chairwoman of the House Small Business Committee, a senior member of the Financial Services Committee and a member of the House Committee on Natural Resources. The U.S. House Natural Resources Committee has jurisdiction over “[i]nsular areas of the United States,” which includes the Commonwealth of Puerto Rico.<sup>1</sup>

3. Rep. Velázquez participated in the drafting of and supported the enactment of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”).<sup>2</sup>

### **B. Congresswoman Alexandria Ocasio Cortez**

4. Also born into a Puerto Rican family, Rep. Ocasio-Cortez is the youngest woman ever to serve in the United States Congress and a Member of the U.S. House of Representatives from New York’s 14<sup>th</sup> district since January 3, 2019.

---

<sup>1</sup> Rule X, clause 1, Committees and their legislative jurisdictions included in *Rules of the House of Representatives*, 8 (117<sup>th</sup> Congress). Available from: <https://rules.house.gov/sites/democrats.rules.house.gov/files/117-House-Rules-Clerk.pdf>; Accessed: 6-7-21.

<sup>2</sup> The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), 48 USCA § 2121, *et seq.*

5. As the youngest member of the 116<sup>th</sup> Congress, Rep. Ocasio-Cortez submitted to the House her first piece of legislation, the Green New Deal, aiming to create jobs and boost the economy. This legislation lays out the foundation of economic mobilization looking to phase out fossil fuel use and restore the nation's infrastructure with the next 10 years.

6. In the 117<sup>th</sup> Congress, Rep. Ocasio-Cortez was assigned as member to the U.S. House Financial Services Subcommittee on National Security, International Development and Monetary Policy. This subcommittee's jurisdiction includes domestic monetary policy, and agencies which directly or indirectly affect international trade and finance. She was also assigned as member to the Subcommittee on Civil Rights and Civil Liberties within the U.S. House Committee on Oversight and Government Reform, which has oversight jurisdiction over issues related to civil rights and liberties, and the equal protection of laws.

7. In this regard, Rep. Ocasio-Cortez has advocated for Puerto Rico in furtherance of its civil rights and, since 2018, urged federal government to increase investment in the country post-hurricanes Irma and María.

***C. Congressman Raúl Grijalva***

8. As a liberal and progressive activist, Congressman Rep. Grijalva has served as the U.S. Representative for Arizona's 7<sup>th</sup> Congressional District since 2003.

9. In 2018, Rep. Grijalva became Chair of the House Natural Resources Committee, which has jurisdiction over the Commonwealth of Puerto Rico.

10. Rep. Grijalva also serves on the Committee on Education and the Workforce and is the Chairman Emeritus of the Congressional Progressive Caucus, as well as a long-standing member of the Congressional Hispanic Caucus.

11. An advocate for those in need and a voice for the underrepresented constituents of his home community, as co-chair of the Congressional Progressive Caucus, Rep. Grijalva has been a leader in forming alternative budgets, like the "People's Budget" and "Budget for All", as well as proposing novel plans to tax the wealthy.

***D. Congressman Jesús G. "Chuy" García***

12. U.S. Rep. García proudly represents the 4<sup>th</sup> Congressional District of Illinois. He was sworn into office on January 3, 2019, during the 116<sup>th</sup> Congress.

13. Rep. García is Vice Chair of the House Committee on Natural Resources, with jurisdiction over Puerto Rico. He serves as a member of the influential Financial Services



Committee and the Transportation and Infrastructure Committee. He is also a member of the Congressional Hispanic Caucus, Congressional Progressive Caucus, where he acts as Vice Chair At Large, Congressional Equality Caucus, and New Americans Caucus.

14. As the first Mexican American Member of the Illinois Senate since 1992, Rep. García has been a progressive voice fighting to improve the lives of his working-class neighbors, many of whom are immigrants like him, and expanding access to economic opportunity.

***E. Congressman Richie Torres***

15. A member of the Democratic Party, Rep. Torres is the U.S. Representative for New York's 15<sup>th</sup> Congressional District.

16. As New York City's youngest elected official and the first openly LGBTQ person elected to office in the Bronx, Afro-Puerto Rican Rep. Torres has spent his entire life working for the community he calls home, helping struggling and low-income communities.

17. Rep. Torres currently serves as Vice Chair of the House Committee on Homeland Security, and Member of the House Committee on Financial Services. He is a member of the Congressional Hispanic Caucus, where he is Chair of the Task Force on Economic Recovery. Rep. Torres is also a member of the several other groups, including the Congressional Hispanic, LGBTQ+ Equality, and Progressive Caucuses.

**II. INTEREST OF AMICI CURIAE**

1. Before PROMESA was signed into a bill on June 30, 2016, by President Barrack Obama, and particularly important to this case, the U.S. House Natural Resources Committee marked up its proposed legislation (H.R. 5278) on May 25, 2016, to include technical corrections and extensions of certain studies on the Puerto Rico government and economy, among others.<sup>3</sup>

2. One of PROMESA's objectives was to create a structure for exercising federal oversight over the fiscal affairs of Puerto Rico. To accomplish this, PROMESA provided that an Oversight Board would be established to manage Puerto Rico's budget and finances. It was legislated that this Oversight Board would create procedures for managing debts accumulated by the Puerto Rico government and its instrumentalities. PROMESA also established that the Oversight Board would be responsible for submitting, approving, and certifying fiscal plans and budgets for Puerto Rico and its territorial instrumentalities. See, generally, 48 USCA § 2121, *et*

---

<sup>3</sup> U.S. Congress, House Committee on Natural Resources, Puerto Rico Oversight, Management, and Economic Stability Act, 114th Cong., 2nd sess., June 3, 2016, H.Rept. 114-602 (Washington: GPO, 2016).

*seq.* PROMESA also established that the Oversight Board’s Fiscal Plans must first secure funding for all essential services, before making any payments to cover the debt. See, 48 USCA § 2141(b)(1). In the case of Puerto Rico, essential services are offered, first and foremost by Municipalities, as such, they should be considered essential service providers and be freed from the unilateral austerity measures imposed by the Oversight Board, as these impede the provision of said essential services.

3. As demonstrated above, the *amici curiae* have a continued commitment to protecting Puerto Rican constituents, their families, and the wider communities whose economic health and safety depend in large part on the essential services provided by Municipalities in Puerto Rico. Further, they recognized that said entities are the first line of service and support to communities and constituents in Puerto Rico. The *amici curiae* have witnessed, from their Districts, the impoverishing effect the Financial Oversight and Management Board for Puerto Rico (“Oversight Board”) has had on Puerto Rican Municipalities and their communities.

4. The burden of the Oversight Board is especially great for *amici curiae* constituents who have migrated to their Districts because of the austerity measures imposed on their Municipalities of origin. Said Municipalities are suffering the brunt of the continuous unilateral austerity measures imposed on them. Said measures have resulted in the decimation of their finances and stability as well as massive migrations as evidenced by the US Census Numbers 2020. Municipalities continue to lose revenue and financial stability –and face even more financial burden and risk– contrary to the Oversight Board’s statutory purpose “to provide a method for a covered territory to achieve fiscal responsibility and access to the capital markets.” 48 USCA § 2121(a).

5. Even though the *amici curiae* recognize that the Oversight Board offers administrative and financial knowledge and can take enforcement action to protect Puerto Rican constituents from financial and safety risks, the Board’s jurisdiction should be limited to the central government and its government instrumentalities. Thus, the financial threat the Board poses to the Municipalities should not be allowed to continue.

6. The *amici curiae* have a profound interest in ensuring adequate legal protections and safeguards for Puerto Rico residents. In particular, the Oversight Board’s financial and fiscal management is affecting the Municipalities’ sustainability. This in turn, may be endangering the community’s safety and livelihood who depend on Municipalities as main responders in health

and environmental crises, like the ones currently, or recently, affecting Puerto Rico, and which include hurricanes, storms, flooding, earthquakes, and now COVID-19 with all its variants.

7. The *amici curiae* submit this brief to inform the Court that issuing emergency declaratory and injunctive relief under state law does not impair federal protections and indeed complements federal statute as the Board acts with urgency to help Puerto Rico achieve financial strength and participation in the capital market.

8. Finally, while the threat of municipality financial instability spreads, the negative effects are disproportionately borne by the most vulnerable: low-income, young, and elderly Puerto Rican constituents, and low-income and illiterate communities that already lack access to this Court-provided justice. While larger Municipalities may be able to weather the economic consequences of the Board's strict fiscal management longer, smaller Municipalities will face unavoidable bankruptcy and ruin if the Oversight Board's financial unilateral constraints are allowed to continue.

9. For all these reasons, the *amici curiae* seek to ensure that a full range of legal remedies are brought to bear fight against the Oversight Board's illegal restriction of municipality-owned monies, including immediate declaratory and injunctive relief like the one requested by the Plaintiff in the present case.

10. The *amici curiae* clearly state that the U.S. Congress enacted PROMESA and created the Oversight Board to protect, preserve, and strengthen Puerto Rico's central government, and related instrumentalities', financial livelihood. In the absence of a specific legal disposition allowing the Oversight Board to oversee the Municipalities as legal covered entities, legal safeguards are necessary to protect Puerto Rican constituents from the hazardous and perilous consequences the Oversight Board will evoke in their Municipalities.

11. In this case, the Oversight Board's actions present an imminent danger to the Municipalities' fiscal health and, thus, of the Puerto Rican constituent public. Therefore, this Court has a responsibility to use its equitable authority to protect the Puerto Rican community. The *amici curiae*, therefore, urge this Court to grant a declaratory and preliminary injunction to protect the Plaintiff's rights to be free from the preventable spread of financial decay the Oversight Board insists upon the Municipalities that represent the best interests of the Puerto Rican communities.

12. The *amici curiae* submit this request based on two well founded legal arguments: (1) that the Oversight Board is exceeding its power, and (2) that the Oversight Board's actions pose a negative and even devastating financial effect to the Municipalities and their communities.

### III. ARGUMENTS

#### *A. The Oversight Board is exceeding its use of power.*

1. Congress enacted PROMESA and created the Oversight Board to protect, preserve, and strengthen Puerto Rico's central government, and related instrumentalities', financial livelihood. In the absence of a specific legal disposition allowing the Oversight Board to oversee the Municipalities as legal covered entities, legal safeguards are necessary to protect Puerto Rican constituents from the hazardous and perilous consequences the Oversight Board will evoke in their Municipalities.

2. The Fiscal Plan for Puerto Rico of 2017, prepared by then Governor Ricardo Rosselló and approved by the Oversight Board for Fiscal Year 2017-2018 included the staggered elimination of the *Equalization Fund*. Said fund was established as a subsidy in favor of individuals and companies that do not pay municipal taxes on their properties (Law 83, 1991). The *Equalization Fund* is the largest source of income for Municipalities in Puerto Rico, and its elimination could make 43 of them unviable.

3. Aware of these effects, as part of the Fiscal Plan for Puerto Rico of 2017, a substitute mechanism was presented to counteract the impact of the elimination of the Equalization Fund by creating a new source of income in favor of the Municipalities. Even though the Oversight Board approved this Fiscal Plan for Puerto Rico in its entirety, it only encouraged the elimination of the Equalization Fund without considering or requiring the implementation of the substitute revenue mechanism that was promised to the Municipalities as part of the process. This is an example of how the Oversight Board enforces unilaterally which measures contained in the fiscal plan must be complied with. As such, the Oversight Board is selective in its enforcement, as evidenced by this instance, when those measures that are beneficial and equitable for municipal finances are not enforced or complied with, while those that are detrimental are fully met.

4. A *Municipal Radiography*<sup>4</sup> completed by the Plaintiff compared the budgets of FY 2017-2018 with the budgetary projections for fiscal year 2022 - 2023, when the *Equalization Fund*

---

<sup>4</sup> See Radiografía Municipal 2020. Available from: Radiografía Municipal 2020 (yumpu.com); Accessed: 8-25-21.

will be fully eliminated, and transfers are set at zero. The analysis completed by the Plaintiff evidenced that only 26 Municipalities will manage to maintain 90 to 100% of their budgets, while 9 will manage to keep from 80 to 89% of their budgets, which is a drastic reduction of their already frail economic resources. The rest of the Municipalities, in total 43 of them, would retain less than 79% of their budgets, of which 9 would retain less than 49%.

5. A map included in the Radiography illustrates that the 43 Municipalities that could become insolvent are concentrated on the most disenfranchised regions of Puerto Rico, the central mountainous region, the southeastern region and the western region. These 43 Municipalities provide services to a third of the population of Puerto Rico who, absent a unit of local government close to their communities, will be deprived of the primary care provided by these entities. The demographics of the constituents that will be impacted by this nefarious situation should be a cause for alarm to all, and include the following: one in five will be children 17 years of age or younger, more than half will be women, 51% are below the poverty level, versus 43.5% at the island level, four out of five do not have a high school diploma, 16% have some type of functional diversity, only two out of every five inhabitants (40%) operate within the labor force, and the average annual salary is less than \$18,000.00.

23. To contain the negative consequences and the impact of the elimination of the Equalization Fund, as well as the existing imposition by the Central Government against the Municipalities to contribute a large part of their municipal resources to: (1) solve the deficit caused by the State Government on the Retirement System and (2) cover part of the expenses related to the State Health System (ASES), the Puerto Rico Legislature enacted Act No. 29-2019<sup>5</sup>. Its purpose was to alleviate the financial burden laid upon the municipal expenses that would have “to assume responsibilities of the central government, without being accompanied with the corresponding allocation of funds.” Explanatory Preamble, Act No. 29-2019. This act, aptly titled “Law for the Reduction of Administrative Burdens of Municipalities”, reduced said administrative burden and the funds they paid into the government’s health plan and the “Pay as you Go” system. As such, those funds would belong, and therefore be dispersed, to the Municipalities and their communities.

24. It should be noted that Act 29 of 2019 was a rescue for the Central Government, which failed to comply with provisions included in the Fiscal Plan 2017 for Fiscal Year 2017–

---

<sup>5</sup> Act No. 29 of May 17 of 2019, entitled “Ley para la Reducción de las Cargas Administrativas de los Municipios”.

2018, which would have allowed raising up to \$426 million to cover the loss of \$350 million projected by the Municipalities because of the staggered elimination of the Equalization Fund. As stated before, while this fund was included in the Fiscal Plan approved by the Board, they never required the Central Government comply with its creation, vis-à-vis their continued focus of complying with the elimination of the *Equalization Fund*.

25. On April 15, 2020, this Court declared Law 29 unenforceable and of no effect and enjoined its enforcement by way of Opinion and Order (No. 19-393). However, the Court delayed the implementation of its decision until May 6, 2020. Therefore, Act No. 29-2019 was valid up until this date. As such, the actions of Municipalities during the period in which Law 29 was in force are valid, which is why the Municipalities did not reserve resources to cover the expenses of the government's health plan and the "Pay as you Go" system in their operational budget for the 2019-2020 fiscal year. The Municipalities should not have any debt obligations for funds that the Central Government itself had instructed them not to budget pursuant to Act 29.

26. Since then, without any fundamental legal basis or reasoning, the Oversight Board has required the retroactive payment of the funds that were exempted with Act 29. This has exacerbated the existing municipal fiscal decay and further burdened the Municipalities' financial resources that otherwise belong to them and would be used in support of their governments, their communities, and their constituents.

27. The Plaintiff in this lawsuit, La Liga de Ciudades de Puerto Rico, is a not-for-profit and non-partisan corporation organized and existing pursuant to the Laws of the Commonwealth of Puerto Rico, whose members are the mayors of Municipalities of Puerto Rico and whose financial viability have been affected by the Oversight Board's unilateral fiscal management decisions.

28. Plaintiff has identified key issues in the Oversight Board's way of conducting its fiscal management that are decimating –and not strengthening– municipal finances, including implementing unlawful, unjustified, and unbased strict unilateral austerity measures. Further, the Plaintiff is convinced that the Oversight Board has not understood that the Municipalities in Puerto Rico, in the United States and the rest of the world, are not financed exclusively with the fiscal

powers that are delegated to them instead, 48.3% of their budgets are transferred from other levels of government.<sup>6</sup>

29. Unlawfully, the Oversight Board is appropriating money from the Municipalities through the illegal withholding and diversion of municipal funds by Defendant Centro de Recaudación de Ingresos Municipales (“CRIM”) to off-set inexistent debts.

30. This, notwithstanding that CRIM’s delegated power by the legislature through enactment of Law 107-2020, as amended, is the administration –and not the appropriation– of property taxes on behalf of the Municipalities.<sup>7</sup> Specifically, the monies collected, received, managed, and disbursed by CRIM belong to the Municipalities and their communities.

31. As correctly stated by Plaintiff, “CRIM has a non-delegable fiduciary duty towards the Municipalities regarding the collection, management, and distribution of the Municipal funds under its care and control.” (Docket Entry No. 23 at 2-3).

32. The Puerto Rico Supreme Court has determined that CRIM acts as a trustee and not proprietor of the funds, with the only role of managing these public funds. *See Plaza Las Américas, Inc. v. Centro de Recaudación de Ingresos Municipales*, 173 DPR 230, 240 (2008). Thus, CRIM is obliged to disperse to the Municipalities the public funds that rightfully belong to them.

33. Moreover, in ordering unlawfully that CRIM retain or divert public funds belonging to another entity and their communities, the Oversight Board is overreaching in its use of power in a harmful, capricious, and arbitrary manner, by ignoring the public policy and laws of the Government of Puerto Rico, as well as the legal fiduciary role of CRIM

34. The Plaintiff correctly asserts that CRIM cannot, and should not, follow the Oversight Board’s orders because it is not their money to withhold. CRIM should and must have dispersed to the Municipalities the monies collected up until May 6 of 2020, when Act No. 29-2019 would no longer be enforceable.

35. Besides the adverse impact that the Oversight Board accommodative interpretation is causing Municipalities, further damage will be caused if they insist on having Municipalities

---

<sup>6</sup> OECD (2018) Subnational governments in OECD countries: Key data (brochure), OECD, Paris, Available at: [www.oecd.org/regional/regional-policy](http://www.oecd.org/regional/regional-policy); Accessed: 8-25-2021.

<sup>7</sup> Book VII of the Puerto Rico Municipal Code, Act No. 107 of August 14 of 2020, as amended, entitled “Código Municipal de Puerto Rico”, PRS ST T. 21 § 7001 *et seq.*



pay an inexistent debt. Article 7.003 of Act No. 81-1991<sup>8</sup> strictly provides that Municipalities must develop budgets estimating all its revenues, expenditures, and statutory financial obligations for every fiscal year. Further, said budgets must be approved by each Municipal Legislature. 21 LPRA § 4303. According to said Law, Municipalities may not use the monies to pay for expenses not included in this approved budget. To do otherwise would be in violation of Act No. 81-1991. 21 LPRA § 4354. It is therefore, the democratically elected leaders, Mayors and Municipal Legislatures, and not the Oversight Board, the ones that design and approve the budgets for each Municipality, and the ones that must abide by the law.

36. If the Oversight Board forces CRIM to pay on behalf of the Municipalities any obligation not originally contemplated, and approved, in the fiscal budget, pursuant to Act No. 81-1991, CRIM would be forcing Municipalities to be in violation of said law, by making payments not originally budgeted and approved by the Municipal Legislature. Again, according to Law, CRIM's management of municipality public funds may only be used to pay their statutory financial obligations for any corresponding fiscal year.

37. The Autonomous Municipalities Act creates an independent authority from the central government, providing that Municipalities have fiscal and political autonomy. It must be clearly stated that the Board is obviating the role of Mayors and Municipal Legislatures, democratically elected, by stripping them of their functions, without any fundamental legal basis or reasoning. If the Board is allowed to continue to overtake the role of Mayors and Municipal Legislators this would mean a direct attack of the democratic process in Puerto Rico, as those that have been elected to lead Municipalities could not do so. In that sense, the Oversight Board is operating more as a Control Board, and not as an Oversight Board.

38. The Oversight Board fiscal measures must be aligned with the applicable laws, not violate them. See, 48 USCA § 2141(b)(1). Only inconsistent laws with PROMESA may be circumvented if it's really necessary. In any case, fiscal plans must comply with all applicable laws. This Court has cautioned that, notwithstanding PROMESA's "seemingly broad preemption clause", to determine if a previously existing Puerto Rico law is inconsistent with PROMESA,

---

<sup>8</sup> Act No. 81 of August 30 of 1991, as amended, entitled "Ley de Municipios Autónomos de Puerto Rico", PRS ST T. 21 §§ 4001 *et seq.*, 4303, 4354 (repealed by Act No. 107 of August 14 of 2020, entitled "Código Municipal de Puerto Rico", PRS ST T. 21 § 7001 *et seq.*).



“context is required”. *Centro de Periodismo Investigativo v. Financial Oversight and Management Board for Puerto Rico*, 2018 WL 2094375 at 9-10 (DPR 2018).

39. It would be truly undemocratic to allow the Oversight Board to ascertain control and authority over municipality public funds, whose mayors, and municipal legislators, were democratically elected by their constituents to establish and approve their fiscal budget, among many other roles and responsibilities.

40. Likewise, the Oversight Board has no legitimate claim over the rightful control of municipal public funds since they do not belong to nor can be utilized in favor of alleviating the Central Government’s fiscal debt.

41. Further, the Oversight Board’s intervention with municipal monies is not justified since Municipalities are not responsible for the debt accumulated by Puerto Rico’s Central Government.

42. It must be clearly stated that the Oversight Board’s decisions are affecting municipal finances when these entities are not even responsible for the Central Government’s debt. It should be noted that Municipalities pay their debts one year in advance. The *Radiography* completed by the Plaintiff found that, in a period of five (5) years, without any debt restructuring, and while providing essential services even with budget cuts, Municipalities will reduce their debts by 54%.

43. Furthermore, the Oversight Board made fiscal determinations and confiscated money from Municipalities without first performing a financial analysis and ensuring that the appropriated funds deduct any prior contributions made by the Municipalities. This, as stated by Plaintiff, contrary to section 201 of PROMESA that establishes that the Oversight Board must develop a fiscal plan that provides estimates of revenues and expenditures in accordance with, and not in violation of, agreed accounting standards and applicable laws. (Docket Entry No. 22 at 10).

44. Hence, this Court can, *and should*, exercise its equitable relief authority to determine that CRIM’s violation of fiduciary duties, and the Oversight Board’s unlawful control of public funds is not within the powers delegated by the US Congress under PROMESA.

45. Moreover, the Oversight Board’s actions are inconsistent with PROMESA because Puerto Rico Municipalities should not be “covered entities”. The Municipalities were not meant to be included within the scope of the Oversight Board’s “covered territorial entities” and, therefore, the Oversight Board does not have the authority to unlawfully appropriate money from

the Municipalities and their communities. PROMESA does not grant the Oversight Board specific powers over Mayors, who are elected officials, with powers separate from the central government, nor to go above Municipal Legislatures who are also democratically elected with roles defined by law. Municipalities have not defaulted their bonds; therefore, no assistance is needed to gain access to financial markets, which is one of the main purposes of PROMESA. See, 48 USCA § 2121 (a). And in a practical approach, the Oversight Board was not designed to create, implant, and monitor 78 fiscal plans, to properly oversee all the Municipalities finances, which would be a herculean task.

46. It should be noted that initially the Oversight Board had only tried to oversee 10 Municipalities as part of a pilot plan to develop fiscal policies and fiscal plans for each.

47. However, the Oversight Board has abandoned this so-called pilot plan and no report has been made public regarding its results. Furthermore, the Fiscal Plan of 2021 only mentions in passing, and without any reasoning or justification, the elimination of said pilot plan. It should be noted that it would be highly unrealistic for the Oversight Board to complete, successfully, accurately and with the required specificity, 78 municipal fiscal plans.

48. The pilot plan failed and was abandoned irresponsibly by the Oversight Board, leaving the 10 Municipalities to deal with the effects of the fiscal policies imposed, the fiscal plans created, and with no support or action plan.

49. The Oversight Board should not, and cannot, intervene in the financial statements of Municipalities that were not even under this pilot plan to begin with.

50. Since the Oversight Board is exercising arbitrary power without performing a proper financial analysis, it is unknown what adverse effect taking money away from the municipalities will have over Puerto Rican citizens and the community. However, we can attest, based on everything presented above, that it will be nefarious for Municipalities and their constituents.

51. Furthermore, municipal governments have their own municipal bonds and, thus, have not defaulted on the central government bonds. Hence, there is no breach of financial obligations by the Municipalities to justify the intervention of the Oversight Board. As such, the Oversight Board's need for fiscal management intervention does not apply to the Municipalities.

52. The *amici* reaffirm that there is simply no justification for the Oversight Board to intervene with the Municipalities' finances since neither the intention nor purpose for the creation of the Board is fulfilled.

***B. The Oversight Board poses a negative and even devastating financial effect towards Municipalities and their communities.***

53. Currently, even though it is unknown the precise negative economic impact the Oversight Board's fiscal management intervention will have over Puerto Rican Municipalities and their communities, certainly, the impact is presumed to be negative and even devastating for some Municipalities. As stated above, the elimination of the Equalization Fund could make 43 Municipalities administrations unviable, with anticipated devastating effects for the communities that depend on the essential services provided by these units of local government.

54. It is also unclear what effect the Oversight Board's measures will have on the Municipalities after the recovery funds assigned to Puerto Rico through the emergency declarations for hurricanes Irma and Maria, the earthquakes and now COVID-19 run out. But whatever the negative effect may be, Municipalities and their communities cannot, and will not, endure, and in some cases survive, the economic impact of the Oversight Board's overreach.

55. Although the Oversight Board claims to not want to eliminate Municipalities, its actions are indirectly achieving this since only economically stronger or more solvent Municipalities will survive, thus eliminating those that could not weather the impact of the imposition of the unilateral fiscal measures of the Oversight Board. It should also be noted that the fact that there could be, at least, 43 municipal administrations fiscally insolvent as the result of the imposition of fiscal measures from the Oversight Board does not eliminate the needs of the constituents that depend on the essential services provided by said unities of local government. Further, these constituents represent the most disenfranchised, disengaged and at need communities.

56. The *amici* firmly believe that Municipalities are of great importance to Puerto Rican communities as they function as "first responders". This was made evident after the impact of hurricanes Irma and María in 2017, the earthquakes that started in 2019 and that continue to this day, and now the COVID-19 pandemic. In each and every one of these disasters it has been Municipalities, with direct federal emergency funding, and not the central government, the ones that have provided emergency and essential services to the most in need communities. From rescue

to recovery efforts of natural disasters, to municipal tracking to reduce or try to contain the pandemic, Municipalities have been at the forefront of the services provided.

57. The Oversight Board is exercising undue power to the detriment of the citizenry because the Municipalities are a source of primary relief as first responders and, because of the unilateral austerity measures imposed by said entity, they do not have the adequate funding to respond. This, as mentioned in the prior section, without the Oversight Board first making a proper financial analysis nor having any base of legal authority. It is important to add that while the required funds are not available Municipalities have made do and have continued, to the detriment of their already frail finances, providing the much-needed essential services to their communities and constituents.

58. Municipalities are necessary to meet the needs of Puerto Rican citizens because time has proven that the central government is unable to do so. Given the deficiencies and gaps in the central government, municipal remedies play an important role, as evidenced by the Hurricane Irma and María crises. During this time, it was proven that Municipalities met the needs of their communities, as it has been proven now with the COVID-19 pandemic.

59. Although the federal and central governments have sponsored legislation to fill those gaps and ensure the health and financial well-being of Puerto Rican constituents and their families, these efforts took –and are taking– time to be supported, enacted, and implemented, all while Puerto Rico constituents and their municipal communities have faced –and continue facing– urgent financial and health risks.

60. Municipalities are still being forced to respond to their citizen’s needs, but without counting with the financial resources to be able to perform such monumental task.

61. The *amici* reinforce that Puerto Rican Municipalities provide key services that constituents need while Puerto Rico’s central government remains immersed in a sea of debt, still years after the Board was created. Recent estimates presented by renowned Puerto Rican economist, Heidi Calero, Esq., of H Calero Consulting Group, and presented during a forum of the Plaintiff on the Impact of the Fiscal Plan<sup>9</sup>, established that the debt restructuring has cost Puerto Rican constituents \$1.5841 billion dollars, and that the total cost between PROMESA and the restructuring is \$1.8219 billion dollars. Economist Mrs. Calero further stated that, contrary to the

---

<sup>9</sup> En Ruta al Encuentro, “De la Resiliencia al Cambio Sistémico”: El Impacto del Plan Fiscal, Available at: <https://www.youtube.com/watch?v=d7xk7-bFnQs&t=2018s>; Accessed: 8-25-21.

role of the Oversight Board, all the austerity measures and all that they have proposed in the three previous fiscal plans (2019, 2020, and 2021) takes Puerto Rico, and its constituents, to an even dire panorama than before the enactment of PROMESA. One of the primary roles of the Oversight Board is to reduce the deficit<sup>10</sup>, however, the most recent fiscal plans (2019, 2020, and 2021) project worse fiscal deficits –not the improvement of our current fiscal crisis.<sup>11</sup> Since PROMESA was enacted, and the Oversight Board was created, none of the fiscal plans have improved Puerto Rico’s economy. Not only has there been no improvement, the latest fiscal plan projects the contrary, it is also based on inaccurate population predictions and inviable metrics.

62. Municipalities face an elevated risk of serious financial crisis and even collapse. The Puerto Rican people who are indirectly being subject to mandatory Oversight Board financial management cannot escape being negatively affected if their Municipalities breakdown.

#### **IV. CONCLUSION**

To conclude, the Oversight Board’s illegal action of controlling municipal public funds, by way of their improper withholding and diversion, contrary to Puerto Rico state law, is hurting the Municipalities and their communities who have suffered –and continue suffering– substantial economic losses in an economy that is already in a deteriorated state. The Oversight Board is clearly abusing its power and posing a negative and devastating financial threat to the Municipalities and their communities. For these reasons, Congresswoman Velázquez respectfully requests that this Court take notice of all of the above and grant Plaintiff’s declaratory judgement and injunctive relief in a strong and swift manner, as Municipalities cannot bear the burden of the Oversight Board unilateral and ill-informed austerity measures one more day.

#### **V. PRAY FOR RELIEF**

**WHEREFORE**, and for all the foregoing reasons, Rep. Velázquez, Rep. Ocasio Cortez, Rep. Grijalva, Rep. García, and Rep. Torres respectfully request from this Honorable Court to move in favor of Plaintiff’s Complaint.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, dated: November 1, 2021.

#### **VI. PROOF OF SERVICE**

---

<sup>10</sup> Financial Oversight & Management Board for Puerto Rico, “Debt”, Available at: <https://oversightboard.pr.gov/debt/>; Accessed: 11-1-21.

<sup>11</sup> Financial Oversight & Management Board for Puerto Rico, “Planes Fiscales Certificados”, Available at: <https://juntasupervision.pr.gov/fiscal-plans/>; Accessed: 11-1-21.

**WE HEREBY CERTIFY** that, on this same date, we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties who have made an electronic appearance. Paper copies have also been mailed to:

- (i) Chambers of the Honorable Laura Taylor Swain (two copies shall be delivered to the chambers):  
United States District Court for the Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl St., Suite No. 3212  
New York, New York 10007-1312;
- (ii) Office of the United States Trustee for Region 21  
Edificio Ochoa, 500 Tanca Street, Suite 301  
San Juan, PR 00901-1922

**ECIJA SBGB**

Legal Counsel to Congresswoman Nydia M. Velázquez  
Serrano, Congresswoman Alexandria Ocasio Cortez,  
Congressman Raúl Grijalva, Congressman Jesús G. “Chuy”  
García, and Congressman Richie Torres  
P.O. Box 363068  
San Juan, P.R. 00936-3068  
Tel.: (787) 300-3200  
Fax: (787) 300-3208

**s/Jaime L. Sanabria Montañez**

Jaime L. Sanabria Montañez, Esq.  
USDC-PR No. 225307  
E-mail: jsanabria@sbgblaw.com