Judicial and Legislative Responses to Puerto Rico's Struggle to Allocate Scarce Financial Resources Between Bond Debt and Governmental Services

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U.S. Bankruptcy Judge (D. Mass.); Boston

Hon. Mildred Caban
U.S. Bankruptcy Court (D. P.R.); San Juan

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Legislative Update

By Sonia Colón

ABI Exclusive: The Ins and Outs of the House-Passed PROMESA Bill

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Editor's Note: *This month's Legislative Update features a summary of the provisions found in the Puerto Rico Oversight, Management and Economic Stability Act (PROMESA), passed by the House on June 9 by a bipartisan vote of 297-127. The bill, which allows a seven-member board to oversee negotiations with creditors and file a restructuring plan in court to reduce Puerto Rico's debt, now heads to the Senate, which is expected to deliver its vote sometime this summer. Puerto Rico's representative in Congress, Pedro Pierluisi, supports the bill despite opposition from other lawmakers on the island.*

The urgency for PROMESA increased on June 13, when the U.S. Supreme Court rejected an effort to allow public utilities to restructure $20 billion in debt, under a local law passed in 2014. (Puerto Rico v. Franklin California Tax-Free Trust, *No. 15-233, and* Acosta-Febo v. Franklin California Tax-Free Trust, *No. 15-255). Justice Clarence Thomas, writing for the 5-2 majority, said that the law was at odds with the Bankruptcy Code, which bars states and lower units of government from enacting their own versions of bankruptcy law. Puerto Rico argued that it needed to restructure at least some of its $70 billion in public debts. Since it is excluded from chapter 9, the island tried to enact its own version of a bankruptcy law. That attempt, called the Recovery Act, was challenged by utility creditors. They argued that the Bankruptcy Code pre-empted it. The justices agreed. The federal law, Justice Thomas wrote, "bars Puerto Rico from enacting its own municipal bankruptcy scheme to restructure the debt of its insolvent public utilities." Chief Justice John Roberts and Justices Anthony Kennedy, Stephen Breyer and Elena Kagan joined him. Justice Thomas wrote that the decision was compelled by a straightforward reading of the federal law.*

In dissent, Justice Sonia Sotomayor, joined by Justice Ruth Bader Ginsburg, said that the majority's approach was too mechanical and failed to take into account the purpose of the bankruptcy law and the impact of its decision. The Recovery Act, she wrote, "is the only existing legal option for Puerto Rico to restructure debts."

Thanks go to ***Sonia Colón****, chair of the Bankruptcy and Creditors' Rights Department of Ferraiuoli, LLC, for the content of this chart. For more news and analysis, visit ABI's "Puerto Rico in Distress" webpage at abi.org/PR-crisis.*

Provisions of H.R. 5278: The Puerto Rico Oversight, Management and Stability Act (as passed)

Supremacy (§ 4)	• The provisions of the Act shall prevail over any Commonwealth law or regulation that is inconsistent with it.
Purpose (§ 101)	• The purpose of the Act is to provide a method for the Commonwealth to achieve fiscal responsibility and access to the capital markets.
Oversight (§ 101(d))	• The Oversight Board (hereinafter "the board") may require the governor to submit budgets and monthly reports regarding its instrumentalities. The board may require, in its sole discretion, the governor to include an instrumentality in the territory fiscal plan.
101(e): Board Composition	• The board shall consist of seven members appointed by the President. The board will be composed of two members selected from the list submitted by the Speaker of the House of Representatives; two members selected from the list submitted by the Senate Majority Leader; one member selected from the list submitted by the Minority Leader of the House of Representatives; and one member selected from the list submitted by the Senate Minority Leader. • In designating these members, the Act has divided them into categories of members appointed by the President, namely A, B, C, D, E and F. The categories relate to who proposed them — *e.g.*, Speaker of the House (Categories A and B), Senate Majority Leader (Category C), House Minority Leader (Category D), Senate Minority Leader (Category E) and the President's sole discretion (Category F). - Note that the **Category A** member shall maintain a primary residence in the territory *or* have a primary place of business in the territory. - For **Categories A-E**, the appointments shall be by and with the *Senate's advice and consent*, unless the President appoints an individual from a list, as provided in this subsection, in which case no Senate confirmation is required. - In the *event of vacancy*, the corresponding congressional leader shall submit a list within a timely manner of the board member's resignation or removal being effective. • The Act provides that the governor shall be an *ex officio* member of the board without voting rights. • Each member shall be appointed for three-year terms, but may be reappointed. The president may remove a member for cause. • The members of the board shall serve without pay and the board shall have an office in the Commonwealth and an additional one as it deems necessary (§ 101 (g)).
101(f): Eligibility for Appointments	• **The Act excludes officers, elected officials or employees** of the Commonwealth's government, **a candidate for elected office** of the territorial government or a former elected official of the territorial government. *A board member cannot be an officer, former elected official or candidate for elected office or employee of Puerto Rico's government. Basically, the member cannot be a public employee of the government of Puerto Rico prior to the appointment.*
101(h): Bylaws for Conducting Business of Oversight Board	• As soon as practicable after the appointment of all members and appointment of the chair, the board shall adopt bylaws, rules and procedures governing its activities under this Act, including procedures for hiring experts and consultants. • Under the bylaws which will be adopted, the board may conduct its operations under such procedures as it considers appropriate, except that an affirmative vote of a majority of the members of the board's full appointed membership shall be required in order for the board to approve a fiscal plan, approve a budget, cause a legislative act not to be enforced, or designate an infrastructure project as a critical project.

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Provisions of H.R. 5278: The Puerto Rico Oversight, Management and Stability Act (as passed) (continued)

103: Executive Director and Staff of Oversight Board	The Act provides for the appointment of a revitalization coordinator. Personnel may include private citizens, employees of the federal government or employees of the territorial government. The executive director and staff of the board may be appointed and paid without regard to any provision of the laws of the Commonwealth or the federal government governing appointments and salaries, or procurement laws.
104: Powers of the Board	• The board may hold hearings, take testimony and receive evidence as it considers appropriate. It may also obtain official data from the federal government and the Commonwealth's government. • The board may request from and make publicly available to any other creditor participating in voluntary negotiation, the name and address of the creditor or of each member of an organized group of creditors, and the nature and aggregate amount of claims or other economic interests held in relation to the issuer as of the later of (1) the date that the creditor acquired the claims or other economic interests or, in the case of an organized group of creditors, the date the group was formed; or (2) the date that the board was formed. • The Act also grants the board subpoena power. The board has jurisdiction to compel the attendance of witnesses and the production of materials. If a person refuses to obey a subpoena, the board may apply to the Commonwealth's court of first instance. Failure to obey the court order may be punished by the court in accordance with civil contempt laws of the Commonwealth. The subpoena shall be served in the manner provided by the Commonwealth's Rules of Civil Procedure. • The board shall issue a *voluntary agreement certification* if it determines, in its sole discretion, that the territory or territorial instrumentality has successfully reached a voluntary agreement with holders of its bond claims to restructure such bond claims. • The Act provides that any voluntary agreements that the Commonwealth or any of its instrumentality has executed with holders of its debts to restructure such debts prior to the Act's enactment date shall be deemed to be in conformance with the requirements of this subsection, to the extent that the requirements of paragraph (2) have been satisfied, which requires that the board issues a voluntary agreement certification, and that (1) the agreement of a majority in amount of the bond claims that is to be affected by such agreement; or (2) confirmation of an adjustment plan pursuant to § 314 of this Act or the entry of an order approving a qualifying modification pursuant to § 601(m). • The board may certify an adjustment plan only if it determines, in its sole discretion, that it is consistent with the applicable certified fiscal plan. • The board may, in consultation with the governor, ensure the prompt and efficient payment and administration of taxes through the adoption of electronic reporting, payment and auditing technologies. • Upon the board's request, the administrator of General Services shall promptly provide to the board, on a reimbursable or non-reimbursable basis, the administrative support services necessary for the board to carry out its responsibilities under this Act. • The board may investigate the disclosure and selling practices related to the purchase of bonds issued by the Commonwealth for or on behalf of any investor.
107: Budget and Funding for Board Operation	• The board shall use its powers with respect to the territory budget of the covered territory to ensure that sufficient funds are available to cover all board expenses. Within 30 days after the date of enactment of this Act, the Commonwealth's government shall designate a dedicated funding source, not subject to subsequent legislative appropriations, sufficient to support the annual expenses of the board as determined in the board's sole and exclusive discretion.
108: Autonomy of Oversight Board	• Neither the Governor nor the legislature shall have the power to enact, implement or enforce any statute, resolution, policy or rule that would impair or defeat the purposes of this Act.
108: Legal Representation	• In any action brought by or on behalf of the board, the board shall be represented by such counsel as it may hire or retain so long as no conflict of interest exists.
109: Ethics	• Members and staff of the board shall be subject to the federal conflict-of-interest requirements described in § 208 of title 18, U.S. Code. • Members and staff of the board shall be subject to disclosure of their financial interests, the contents of which shall conform to the same requirements set forth in § 102 of the Ethics in Government Act of 1978 (5 U.S.C. app.).
201: Approval of Fiscal Plans	• As soon as practicable after all of the members and the chair have been appointed, the board shall deliver a notice to the governor providing a schedule for the process of development, submission, approval and certification of fiscal plans. A fiscal plan developed shall endeavor to provide a method to achieve fiscal responsibility and access to the capital markets, and provide for estimates of revenues and expenditures in conformance with agreed-upon accounting standards, and be based on applicable laws or specific bills that require enactment in order to reasonably achieve the projections of the fiscal plan. • The board shall ensure that assets, funds or resources of a instrumentality are not loaned to, transferred to or otherwise used for the benefit of the Commonwealth or an instrumentality, unless permitted by the Constitution or agreed to by a certified voluntary agreement under § 104(i), an approved adjustment plan under title III, or a qualifying modification approved under title VI; and *respect the relative lawful priorities or lawful liens*, as may be applicable, in the *Constitution, other laws or agreements* in effect prior to the date of enactment of this Act.
202: Approval of Budgets	• The board shall deliver a notice to the governor and legislature providing a schedule for developing, submitting, approving and certifying budgets for a period of not less than one fiscal year following the fiscal year in which the notice is delivered. • If the governor develops an instrumentality budget that is a compliant budget by the day before the first day of the fiscal year for which the instrumentality budget is being developed, the Oversight Board shall issue a compliance certification to the governor for such budget.
203: Effect of Finding of Noncompliance with Budget	• Within 15 days from the last day of each quarter, the governor shall submit to the board a report with the actual cash revenues, cash expenditures and cash flows from the preceding quarter as compared with the projected revenues, expenditures and cash flows included in the certified budget for such preceding quarter. • If the board determines that such information is not consistent with the certified budget for such quarter, the board shall require the Commonwealth to provide additional information and (2) correct the inconsistency by taking remedial action. • If the board determines that the governor and legislature have failed to correct the inconsistencies identified by the board, the board shall (1) make appropriate reductions in nondebt expenditures to ensure that the actual quarterly revenues and expenditures are in compliance with the certified budget; (2) institute automatic hiring freezes; (3) prohibit the Commonwealth from entering into any contract or engaging in any financial or other transactions, unless the contract or transaction was previously approved by the board.
204: Review of Activities to Ensure Compliance with Fiscal Plan	The Act includes restrictions on budgetary adjustments. It specifically states that the legislature shall not adopt a reprogramming, and no officer or employee of the territorial government may carry out any reprogramming, until the Oversight Board has provided the legislature with an analysis that certifies that such reprogramming will not be inconsistent with the fiscal plan and Budget. Further, it provides that during the period prior to the appointment of all members and the chair of the Oversight Board, the Commonwealth shall not enact new laws that either permit the transfer of any funds or assets outside the ordinary course of business or that are inconsistent with the Constitution or laws of the territory as of the date of enactment of this Act, provided that any executive or legislative action authorizing the movement of funds or assets during this time period may be subject to review and reversal by the board upon appointment of the board's full membership.
205: Financial Stability and Management Responsibility	• The Oversight Board may, at any time, submit recommendations to the governor or legislature, including recommendations relating to modifications of the types of services that are delivered by entities other than the Commonwealth government under alternative service delivery mechanisms, and the privatization and commercialization of entities within the territorial government.
206: Oversight Board Duties Related to Restructuring	• Prior to issuing a restructuring certification regarding an entity, the Oversight Board shall determine, in its sole discretion, that (1) the entity has made good-faith efforts to reach a consensual restructuring with creditors; and (2) the entity has adopted procedures necessary to deliver timely audited financial statements, and made public draft financial statements and other information sufficient for any interested person to make an informed decision with respect to a restructuring. • The issuance of a restructuring certification under this section requires a vote of no fewer than five board members in the affirmative, which shall satisfy the requirement set forth in § 302(2) of this Act.
207: Debt Issuance	• During the operations of the board, the Commonwealth or its instrumentalities may not, without the board's approval, issue debt or guarantee, exchange, modify, repurchase, redeem or enter into similar transactions with respect to its debt.

Provisions of H.R. 5278: The Puerto Rico Oversight, Management and Stability Act (as passed) (continued)

208: Required Reports	• The board shall submit to the President, Congress, the governor and the legislature, a report no later than 30 days after the end of the fiscal year, describing (1) the progress made in meeting objectives, (2) the assistance given by the board and (3) recommendations to the President and Congress on changes to the Act or other federal laws, that may assist the Commonwealth in complying with the certified fiscal plan. • The board shall report, when feasible, on the amount of cash flow available for the payment of debt service. • Within six months of the board's establishmenthe governor shall report to the board on all discretionary tax abatement or similar tax agreement to which the Commonwealth is a party of.
209: Termination of Oversight Board	• The board shall terminate upon certification that the Commonwealth has adequate access to short- and long-term markets at reasonable rates; and (1) for at least four years, the Commonwealth has developed its budget in accordance with modified accrual standards; and (2) that the expenditures made did not exceed the revenues.
210: No Full Faith and Credit of U.S.	• The full faith and credit of the U.S. is not pledged for the payment of any principal of or interest on any bond, note or other obligation issued by the Commonwealth or its instrumentalities.
211: Analysis of Pensions	• If the Oversight Board determines, in its sole discretion, that a pension system of the territorial government is materially underfunded, the board shall conduct an analysis prepared by an independent actuary of such pension system to assist the Oversight Board in evaluating the fiscal and economic impact of the pension cash flows. • An analysis conducted under subsection (a) shall include an actuarial study of the pension liabilities and funding strategy that includes a forward-looking projection of payments of at least 30 years of benefit payments and funding strategy to cover such payments; sources of funding to cover such payments; a review of the existing benefits and their sustainability; and a review of the system's legal structure and operational arrangements, and any other studies of the pension system that the board shall deem necessary. • In any case, the analysis conducted under subsection (a) shall include information regarding the fair-market value and liabilities using an appropriate discount rate as determined by the Oversight Board.
212: Intervention in Litigation	• The board may intervene in any litigation filed against the Commonwealth or its instrumentalities. • If the board intervenes in a litigation, the board may seek injunctive relief, including a stay of litigation.
301: Applicability of Other Laws	• The section includes new definitions for holder of a claim or interest, insured bond and "trustee" (which, when used in a section of title 11, U.S. Code, means the board).
302: Who May Be a Debtor	• Puerto Rico entities are considered debtors if (1) a territory that has requested the establishment of an Oversight Board or has had a board established for it by the U.S. Congress; (2) a covered territorial instrumentality of a territory; (3) the Oversight Board has issued a restructuring certification under § 206(b) for such entity; and (4) the entity desires to effect a plan to adjust its debts. • Issuance of Restructuring Certificate: Puerto Rico completed the process set forth in Title VI; the entity has adopted procedures necessary to deliver audited financial statements; the entity has adopted or is subject to a certified fiscal plan; the entity is insolvent; and appropriate consideration is given to the relative priority of claims as established by law so that no one group or class of creditors gain an advantage that did not exist prior to the Oversight Board's determination. • At least five of the seven members of the Oversight Board approve.
303: Reservation of Territorial Power to Control Territory and Territorial Instrumentalities	The Act provides that it does not limit or impair the power of a covered territory to control, by legislation or otherwise, the territory or any of its instrumentalities in the exercise of its political or governmental powers, including expenditures for such exercise, whether or not a case has been or can be commenced under this title, but (1) a territory law prescribing a method of composition of indebtedness or a moratorium law, may not bind any creditor of the Commonwealth or instrumentality that does not consent to the composition or moratorium; (2) a judgment entered under any law described in the previous paragraph may not bind a creditor that does not consent to the composition; and (3) unlawful executive orders that alter, amend or modify rights of holders of any debt of the territory or territorial instrumentality, or that divert funds from one territorial instrumentality to another or to the territory, shall be pre-empted by this Act.
304: Petition and Proceedings Relating to Petition	• The board, on behalf of debtors, may file petitions or submit or modify adjustment plans jointly if the debtors are affiliates, provided, however, that nothing in this title shall be construed as authorizing substantive consolidation of the cases of affiliated debtors. • If the board, on behalf of a debtor and one or more affiliates, has filed separate cases and the board, on behalf of the debtor or one of the affiliates, files a motion to administer the cases jointly, the court may order a joint administration of the cases. • The Act provides that it may not be construed to permit the discharge of obligations arising under federal police or regulatory laws, including laws relating to the environment, public health or safety or territorial laws implementing such federal legal provisions. This includes compliance obligations, requirements under consent decrees or judicial orders, and obligations to pay associated administrative, civil or other penalties. • The Act specifically states that nothing in this section shall prevent the holder of a claim from voting on or consenting to a proposed modification of such claim.
306 and 307: Jurisdiction and Venue	• The district courts shall have original and exclusive jurisdiction of all cases under this title; except in those cases where an Act of Congress confers exclusive jurisdiction on a court or courts other than the district courts. • The district court, in which a case under this title is commenced or is pending, shall have exclusive jurisdiction of all property, wherever located, of the debtor as of the commencement of the case. • The district court in which a case under this title is pending shall have personal jurisdiction over any person or entity. • A party may remove any claim or cause of action in a civil action, other than a proceeding before the U.S. tax court or a civil action by a governmental unit to enforce the police or regulatory power of the governmental unit, to the district court for the district in which the civil action is pending, if the district court has jurisdiction of the claim or cause of action under this section. • The district court to which the claim or cause of action is removed may remand the claim or cause of action on any equitable ground. • A district court shall transfer any civil proceeding arising under this title, or arising in or related to a case under this title, to the district in which the case under this title is pending. • An appeal shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district court. • The court of appeals for the circuit in which a case under this title has venue pursuant to § 307 of this title shall have jurisdiction of appeals from all final decisions, judgments, orders and decrees entered under this title by the district court. • If the Oversight Board determines, in its sole discretion, that venue shall be proper in the district court for the jurisdiction in which the board maintains an office located outside of Puerto Rico.
308: Selection of a Presiding Judge	• For cases in which the debtor is the Commonwealth, the Chief Justice of the United States shall designate a district court judge to sit by designation to conduct the case. • For cases in which the debtor is not the Commonwealth, and no motion for joint administration of the debtor's case with the case of the Commonwealth has been filed, the chief judge of the court of appeals for the circuit shall designate a district court judge to conduct the case.
309: Abstention	• Nothing in this title prevents a district court in the interests of justice from abstaining from hearing a particular proceeding arising in or related to a case under this title.
310: Applicable Rules of Procedure	• The Federal Rules of Court Procedure shall apply to a case under the title and to all civil proceedings arising in or related to cases. • The Oversight Board may take any action necessary on behalf of the debtor to prosecute the case of the debtor. • The Oversight Board is the only one that can, after the issuance of a certificate pursuant to § 104(j) of this Act, file an adjustment plan of the debts of the debtor. • If the Oversight Board does not file an adjustment plan with the petition, the board shall file an adjustment plan at the time set by the court.
311: Leases	• The Act provides that a lease to the Commonwealth or its instrumentalities shall not be treated as an executory contract or unexpired lease for purposes of § 365 or 502(b)(6) of the Bankruptcy Code, solely because the lease is subject to termination in the event that the Commonwealth fails to appropriate rent.
312: Filing an Adjustment Plan	• The board is the only entity that may file an adjustment plan of debts. • If it does not file the plan with the petition, the board shall file the same at the time set by court.
313: Modification	• The Board may modify the plan at any time before confirmation.
314: Confirmation	• For confirmation purposes, the plan shall be feasible and in the best interests of creditors, which shall require the court to consider whether available remedies under the nonbankruptcy laws and constitution of the Commonwealth would result in a greater recovery for the creditors than is provided by such plan; and be consistent with the applicable fiscal plan. • Although the Act incorporates the requirements of § 1129(a) of the Bankruptcy Code, it states that if a case includes only one class of impaired claims that has not accepted the plan, the court may confirm the same notwithstanding the requirements of such § 1129(a)(8) if the plan is fair and equitable and does not discriminate unfairly with respect to such impaired class.

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Provisions of H.R. 5278: The Puerto Rico Oversight, Management and Stability Act (as passed) (continued)

315: Role and Capacity of the Board	• The board may take any action necessary to prosecute the case including (1) filing the petition, (2) submitting or modifying an adjustment plan and (3) submitting filings in relation to the case with the court. The board is the representative of the debtor.
316: Compensation of Professionals	• After notice to the parties in interest and the U.S. Trustee and a hearing, the court may award to a professional person employed by the debtor (in the debtor's sole discretion), the Oversight Board (in the board's sole discretion), a committee under § 1103 of title 11, U.S. Code, or a trustee appointed by the court under § 926 of title 11, U.S. Code — 1. reasonable compensation for actual, necessary services rendered by the professional person, or attorney and by any paraprofessional person employed by any such person; and 2. reimbursement for actual, necessary expenses. • The court may, on its own motion or on the motion of the U.S. Trustee or any other party-in-interest, award compensation that is less than the amount of compensation that is requested.
317: Interim Compensation	• A debtor's attorney, or any professional person employed by the debtor (in the debtor's sole discretion), the Oversight Board (in the board's sole discretion), a committee under § 1103 of title 11, U.S. Code, or a trustee appointed by the court under § 926 of title 11, U.S. Code, may apply to the court not more than once every 120 days after an order for relief in a case under this chapter, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under § 316.
401: Rules of Construction	Nothing in the Act is intended or may be construed (1) to limit Congress's authority to exercise legislative authority over the territories pursuant to Article IV, § 3 of the U.S. Constitution; or (2) to authorize the application of § 104(e) of this Act (relating to issuance of subpoenas) to judicial officers or employees of territory courts.
402: Right to Determine Future Political Status	• The Act does not restrict the Commonwealth's right to determine its future political status, including conducting a plebiscite.
403: First Minimum Wage in Puerto Rico	• Section 6(g) of the Fair Labor Standards Act of 1938 (29 U.S.C. § 206(g)) is amended to allow the governor of Puerto Rico, subject to the approval of the board, to designate a time period not to exceed four years during which employers in Puerto Rico may pay employees who are initially employed after the date of enactment of such Act a subminimum wage, which is not less than $4.25 an hour. • The Act allows employers to pay said subminimum wage for 90 days for employees under the age of 25.
404: Application of Regulation to Puerto Rico	• The Act excepts the Commonwealth from any regulations proposed by the Secretary of Labor relating to exemptions regarding the rates of pay for executive, administrative, professional, outside sales and computer employees, and published in a notice in the *Federal Register* on July 6, 2015, and any final regulations issued related to such notice.
405: Automatic Stay upon Enactment	• The Act provides that the automatic stay is not operable with respect to the commencement or continuation of an action or proceeding by a governmental unit to enforce a governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment. • The Act provides for an automatic stay until the later of (1) Feb. 15, 2017, or (2) six months after the establishment of an Oversight Board for the Commonwealth. • The Act provides for 75-day extension if the Oversight Board delivers a certification to the governor that, in the board's sole discretion, an additional 75 days is needed to seek to complete a voluntary process under title VI of this Act with respect to the Commonwealth or its instrumentalities. • The automatic stay can also be extended for 60 days if the district court to which an application has been submitted under subparagraph 601(l)(1)(D) determines, in the exercise of the court's equitable powers, that the additional period is needed to complete a voluntary process. • The Act provides for the ability to seek relief from stay. In that case, the U.S. District Court for the District of Puerto Rico shall have original and exclusive jurisdiction of any civil actions arising under or related to this section. On motion of or action filed by a party-in-interest and after notice and a hearing, the U.S. district court shall grant relief from the stay if cause is shown. • Further, the stay is terminated 45 days after relief is requested unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of a final hearing. • The Act provides that any order, judgment or decree entered in violation of this section and any act taken in violation of the automatic stay is void, and shall have no force or effect, effect and any person found to violate this section may be liable for damages, costs and attorneys' fees incurred in defending any action taken in violation of this section, and the Oversight Board or government of Puerto Rico may seek an order from the court enforcing the provisions of this section. • As long as the automatic stay is in effect, a counterparty to a contract for the provision of goods and services shall continue to perform all obligations under, and comply with the terms of, such contract provided that the Commonwealth is not in default under such contract other than as a result of a condition of insolvency. • To the extent that the Oversight Board, in its sole discretion, determines that it is feasible, the government of Puerto Rico shall make interest payments on outstanding indebtedness when such payments become due during the length of the stay. • It is important to note that in subsection (m), Congress makes various findings for the imposition of an automatic stay, including a combination of severe economic decline accumulated operating deficits, lack of financial transparency, management inefficiencies and excessive borrowing, which have created a fiscal emergency in Puerto Rico. As such, an immediate — but temporary — stay is essential to stabilize the region for the purposes of resolving the crisis.
406: Purchases by Territory Governments	• Amends the text of § 1469e of title 48, U.S. Code, to allow the Commonwealth to make purchases through the General Services Administration.
407: Protection from Interdebtor Transfers	• The Act provides new protection of creditors. In particular, it provides that if any property of the Commonwealth is transferred in violation of applicable law under which any creditor has a valid pledge of, security interest in or lien on such property, or which deprives any such territorial instrumentality of property in violation of applicable law assuring the transfer of such property to such territorial instrumentality for the benefit of its creditors, then the transferee shall be liable for the value of such property. • In such case, a creditor may enforce its rights under this section by bringing an action in the U.S. District Court for the District of Puerto Rico after the expiration or lifting of the automatic stay.
408: GAO Report on Small Business Administration Programs in Puerto Rico	• Section 15 of the Small Business Act (15 U.S.C. § 644) is amended by providing that not later than 180 days after the date of enactment of this subsection, the U.S. comptroller general shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate, a report on the application and utilization of contracting activities of the administration (including contracting activities relating to HUBZone small-business concerns) in Puerto Rico. The report shall also identify any provisions of federal law that may create an obstacle to the efficient implementation of such contracting activities.
409: Congressional Task Force on Economic Growth in Puerto Rico	• The Act provides for the establishment within the legislative branch a congressional task force on economic growth in Puerto Rico. The task force shall be composed of eight members, two of which will be members of the House of Representatives, appointed by the Speaker of the House; two members of the House, appointed by the House Minority Leader; two members of the Senate, appointed by the Senate Majority Leader; and two members of the Senate, appointed by the Senate Minority Leader. • All appointments to the task force shall be made not later than 30 days after the date of enactment of this Act. • Not later than Dec. 31, 2016, the task force shall issue a report of its findings to the House and Senate regarding 1. Impediments in current federal law and programs to economic growth in Puerto Rico; 2. Recommended changes to federal law and programs that, if adopted, would serve to spur sustainable long-term economic growth, job creation and attract investment in Puerto Rico; and 3. Additional information that the task force deems appropriate. • In carrying out its duties, the task force shall consult with the Puerto Rico Legislative Assembly, the Puerto Rico Department of Economic Development and Commerce, and the private sector of Puerto Rico. • The task force shall terminate upon issuing the report required.

Provisions of H.R. 5278: The Puerto Rico Oversight, Management and Stability Act (as passed) (continued)

501: Definitions	• The Act defines a new term, specifically "project sponsor," which means a Puerto Rico Agency or private party proposing the development of an existing, ongoing or new infrastructure project or energy project.
502: Position of the Revitalization Coordinator	• The Act provides for the appointment of a revitalization coordinator from the nominees submitted by the Oversight Board within 60 days of the appointment. • The coordinator shall have substantial knowledge and expertise in the planning, predevelopment, financing and development, operations, engineering or market participation of infrastructure projects, provided that stronger consideration shall be given to candidates who have experience with energy projects and the laws and regulations of Puerto Rico whose implementation could be affected by an expedited permitting process. • The position shall terminate upon the termination of the board.
503(a): Critical Projects	• The Act includes additional considerations such as, the cost of the project and amount of Puerto Rico government funds (if any) that are necessary to complete and maintain the project; the environmental and economic benefits provided by the project, including the number of jobs to be created that will be held by residents of Puerto Rico and the expected economic impact, including the impact on ratepayers, if applicable; and the status of the project (if it is existing or ongoing). • The Act also provides that critical projects shall be prioritized to the maximum extent possible in each Puerto Rico agency regardless of any agreements transferring or delegating permitting authority to any other territorial instrumentality or municipality.
503(b): Critical Project Report	• The Act includes additional provisions, such as if the governor fails to provide a recommendation during the development of the critical project report, the failure shall constitute a concurrence with the revitalization coordinator's recommendation. • In the case of a project that may affect the implementation of land-use plans (as defined by Puerto Rico Act 550-2004), a determination by the planning board will be required within the 60-day time frame. If the planning board determines that such a project will be inconsistent with relevant land-use plans, then the project will be deemed ineligible for critical project designation. • In the case of an energy project that will connect with the Puerto Rico Electric Power Authority's transmission or distribution facilities, a recommendation by the Energy Commission of Puerto Rico if the Energy Commission determines that such an energy project will affect an approved integrated resource plan, as defined under Puerto Rico Act 54-2014. If the Energy Commission determines the energy project will adversely affect an approved integrated resource plan, then the Energy Commission shall provide the reasons for such a determination and the energy project shall be ineligible for critical project designation, provided that such determination must be made during the 60-day time frame for the development of the critical project. • A recommendation by the revitalization coordinator on whether the project should be considered a critical project. • Public involvement: Immediately following the completion of the critical project report, the revitalization coordinator shall make such critical project report public and allow a period of 30 days for the submission of comments by residents of Puerto Rico. The revitalization coordinator shall respond to the comments within 30 days of closing the coming period and make the responses publicly available.
504: Miscellaneous Provisions	• With respect to a Puerto Rico agency's activities related only to a critical project, such Puerto Rico agency shall operate as if the governor has declared an emergency pursuant to § 2 of Act 76 (3 L.P.R.A. 1932). • Furthermore, any transactions, processes, projects, works or programs essential to the completion of a critical project shall continue to be processed and completed under such expedited permitting process, regardless of the termination of the Oversight Board under § 209. • Upon receipt of a law, the Oversight Board shall promptly review whether the expedited permitting process, and, upon such a finding, the Oversight Board may deem such law to be significantly inconsistent with the applicable fiscal plan.
601(a): Creditor Collective Action	• The Act does not make substantial changes from its previous version, but includes new definitions, such as "insured bond," "issuer," "secured pool," "senior claims" and "territory government issuer." *Note: The term "administrative supervisor" refers to the board.*
601(d): Determination of Pools for Voting	• The Act provides that the administrative supervisor, in consultation with each issuer, shall establish pools according to the following principles: 1. Not less than one pool shall be established for each issuer; 2. A pool that contains one or more bonds that are secured by a lien on property shall be a secured pool; 3. For each issuer that has issued multiple bonds that are distinguished by specific provisions governing priority or security arrangements, including bonds that have been issued as general obligations of the Commonwealth to which the Commonwealth pledged the full or good faith, credit and taxing power of the Commonwealth, separate pools shall be established corresponding to the relative priority or security arrangements of each holder of bonds against each issuer. • Notwithstanding the foregoing, a pre-existing voluntary agreement may classify insured bonds and uninsured bonds in different pools and provide different treatment thereof so long as the pre-existing voluntary agreement has been agreed to by (1) holders of a majority in amount of all uninsured bonds outstanding in the modified pool; and (2) holders (including insurers with power to vote) of a majority in amount of all insured bonds.
601(f): Information Delivery Requirement	• Before solicitation of acceptance or rejection of a modification, the issuer shall provide information, including the fiscal plan, if one has been certified with respect to such issuer, or such other information as may be required under applicable securities laws.
601(g): Qualified Modification	• A modification is a qualifying modification if — 1. The issuer proposing the modification has consulted with holders of bonds in each pool of such issuer prior to soliciting a vote on such modification; or 2. The modification is certified by the administrative supervisor as being consistent with the requirements set forth in § 104(i)(1) and is in the best interests of the creditors and is feasible.
601(h): Solicitation	Upon receipt of a certification from the administrative supervisor under the subsection, the information agent shall submit to the holders of any outstanding bonds of the relevant issuer information in order to solicit the vote of such holders to approve or reject the qualifying modification.
601(i): Who May Propose a Modification	For each issuer, a modification may be proposed to the administrative supervisor by the issuer by one or more holders of the right to vote on the issuer's outstanding bonds. To the extent that a modification proposed by one or more holders of the right to vote outstanding bonds, the administrative supervisor may accept such modification on behalf of the issuer.
601(j): Voting	• Requires two-thirds majority of the outstanding principal amount of the bonds in each pool. • Note: In the case of those outstanding bonds that are insured bonds, the monoline insurer insuring such insured bond shall have the right to vote.
601(n): Judicial Review	• The U.S. District Court for the District of Puerto Rico shall have original and exclusive jurisdiction over civil actions arising under this section. • The district court shall nullify a modification and any effects on the rights of the holders of bonds resulting from such modification if and only if the district court determines that such modification is *manifestly inconsistent* with this section.
601(m): Binding Effect	• A qualifying modification will be conclusive and binding on all holders of all series of bonds whether or not they have given such consent if — 1. the holders of the right to vote the outstanding bonds in each pool of the issuer have consented to or approved the qualifying modification; and 2. the administrative supervisor certifies that — A. the voting requirements of this section have been satisfied (that is, the modification obtained two-thirds of the votes); B. the qualifying modification complies with the requirements set forth in § 104(i)(1); and C. except for such conditions that have been identified in the qualifying modification as being non-waivable, any conditions on the effectiveness of the qualifying modification have been satisfied or, in the administrative supervisor's sole discretion, satisfaction of such conditions has been waived with respect to a bond claim that is secured by a lien on property and with respect to which the holder of such bond claim has rejected or not consented to the qualifying modification, the holder of such bond — i. retains the lien securing such bond claims; or ii. receives on account of such bond claim, through deferred cash payments, substitute collateral, or otherwise, at least the equivalent value of the lesser of the amount of the bond claim or of the collateral securing such bond claim.
602: Applicable Law	In any judicial proceeding regarding this title, federal, state or territorial laws of the U.S., as applicable, shall govern and be applied without regard or reference to any law of any international or foreign jurisdiction. abi

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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

COMMONWEALTH OF PUERTO RICO ET AL. *v.* FRANKLIN CALIFORNIA TAX-FREE TRUST ET AL.

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

No. 15–233. Argued March 22, 2016—Decided June 13, 2016*

In response to an ongoing fiscal crisis, petitioner Puerto Rico enacted the Puerto Rico Public Corporation Debt Enforcement and Recovery Act. Portions of the Recovery Act mirror Chapters 9 and 11 of the Federal Bankruptcy Code and enable Puerto Rico's public utility corporations to restructure their climbing debt. Respondents, a group of investment funds and utility bondholders, sought to enjoin the Act. They contended, among other things, that a Bankruptcy Code provision explicitly pre-empts the Recovery Act, see 11 U. S. C. §903(1). The District Court enjoined the Act's enforcement, and the First Circuit affirmed, concluding that the Bankruptcy Code's definition of "State" to include Puerto Rico, except for purposes of defining who may be a debtor under Chapter 9, §101(52), did not remove Puerto Rico from the scope of the pre-emption provision.

Held: Section 903(1) of the Bankruptcy Code pre-empts Puerto Rico's Recovery Act. Pp. 5–15.

(a) Three federal municipal bankruptcy provisions are relevant here. First, the "gateway" provision, §109(c), requires a Chapter 9 debtor to be an insolvent municipality that is "specifically authorized" by a State "to be a debtor." Second, the pre-emption provision, §903(1), expressly bars States from enacting municipal bankruptcy laws. Third, the definition of "State," §101(52), as amended in 1984, "includes . . . Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9." Pp. 5–8.

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*Together with No. 15–255, *Acosta-Febo et al.* v. *Franklin California Tax-Free Trust et al.*, also on certiorari to the same court.

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(b) If petitioners are correct that the amended definition of "State" excludes Puerto Rico altogether from Chapter 9, then the pre-emption provision does not apply. But if respondents' narrower reading is correct and the definition only precludes Puerto Rico from authorizing its municipalities to seek Chapter 9 relief, then Puerto Rico is barred from implementing its Recovery Act. Pp. 8–14.

(1) The Bankruptcy Code's plain text supports respondents' reading. The unambiguous language of the pre-emption provision "contains an express pre-emption clause," the plain wording of which "necessarily contains the best evidence of Congress' pre-emptive intent." *Chamber of Commerce of United States of America* v. *Whiting*, 563 U. S. 582, 594. The definition provision excludes Puerto Rico for the single purpose of defining who may be a Chapter 9 debtor, an unmistakable reference to the §109 gateway provision. This conclusion is reinforced by the definition's use of the phrase "defining who may be a debtor under chapter 9," §101(52), which is tantamount to barring Puerto Rico from "specifically authorizing" which municipalities may file Chapter 9 petitions under the gateway provision, §903(1). The text of the exclusion thus extends no further. Had Congress intended to exclude Puerto Rico from Chapter 9 altogether, including Chapter 9's pre-emption provision, Congress would have said so. Pp. 9–11.

(2) The amended definition of "State" does not exclude Puerto Rico from all of Chapter 9's provisions. First, Puerto Rico's exclusion as a "State" for purposes of the gateway provision does not also remove Puerto Rico from Chapter 9's separate pre-emption provision. A State that chooses under the gateway provision not to authorize a municipality to file is still bound by the pre-emption provision. Likewise, Puerto Rico is bound by the pre-emption provision, even though Congress has removed its authority under the gateway provision to authorize its municipalities to seek Chapter 9 relief. Second, because Puerto Rico was not "by definition" excluded from Chapter 9, both §903's introductory clause and its proviso, the pre-emption provision, continue to apply in Puerto Rico. Finally, the argument that the Recovery Act is not a "State law" that can be pre-empted is based on technical amendments to the terms "creditor" and "debtor" that are too "subtle" to support such a "[f]undamental chang[e] in the scope" of Chapter 9's pre-emption provision. *Kellogg Brown & Root Services, Inc.* v. *United States ex rel. Carter*, 575 U. S. ___, ___. Pp. 11–14.

805 F. 3d 322, affirmed.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, BREYER, and KAGAN, JJ., joined. SOTOMAYOR, J.,

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filed a dissenting opinion, in which GINSBURG, J., joined. ALITO, J., took no part in the consideration or decision of these cases.

SUPREME COURT OF THE UNITED STATES

Nos. 15–233 and 15–255

COMMONWEALTH OF PUERTO RICO, ET AL., PETITIONERS
15–233 *v.*
FRANKLIN CALIFORNIA TAX-FREE TRUST, ET AL.

MELBA ACOSTA-FEBO, ET AL., PETITIONERS
15–255 *v.*
FRANKLIN CALIFORNIA TAX-FREE TRUST, ET AL.

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

[June 13, 2016]

JUSTICE THOMAS delivered the opinion of the Court.

The Federal Bankruptcy Code pre-empts state bankruptcy laws that enable insolvent municipalities to restructure their debts over the objections of creditors and instead requires municipalities to restructure such debts under Chapter 9 of the Code. 11 U. S. C. §903(1). We must decide whether Puerto Rico is a "State" for purposes of this pre-emption provision. We hold that it is.

The Bankruptcy Code has long included Puerto Rico as a "State," but in 1984 Congress amended the definition of "State" to exclude Puerto Rico "for the purpose of defining who may be a debtor under chapter 9." Bankruptcy Amendments and Federal Judgeship Act, §421(j)(6), 98 Stat. 368, now codified at 11 U. S. C. §101(52). Puerto Rico interprets this amended definition to mean that

Chapter 9 no longer applies to it, so it is no longer a "State" for purposes of Chapter 9's pre-emption provision. We hold that Congress' exclusion of Puerto Rico from the definition of a "State" in the amended definition does not sweep so broadly. By excluding Puerto Rico "for the purpose of *defining who may be a debtor under chapter 9*," §101(52) (emphasis added), the Code prevents Puerto Rico from authorizing its municipalities to seek Chapter 9 relief. Without that authorization, Puerto Rico's municipalities cannot qualify as Chapter 9 debtors. §109(c)(2). But Puerto Rico remains a "State" for other purposes related to Chapter 9, including that chapter's pre-emption provision. That provision bars Puerto Rico from enacting its own municipal bankruptcy scheme to restructure the debt of its insolvent public utilities companies.

I

A

Puerto Rico and its instrumentalities are in the midst of a fiscal crisis. More than $20 billion of Puerto Rico's climbing debt is shared by three government-owned public utilities companies: the Puerto Rico Electric Power Authority, the Puerto Rico Aqueduct and Sewer Authority, and the Puerto Rico Highways and Transportation Authority. For the fiscal year ending in 2013, the three public utilities operated with a combined deficit of $800 million. The Government Development Bank for Puerto Rico (Bank)—the Commonwealth's government-owned bank and fiscal agent—has previously provided financing to enable the utilities to continue operating without defaulting on their debt obligations. But the Bank now faces a fiscal crisis of its own. As of fiscal year 2013, it had loaned nearly half of its assets to Puerto Rico and its public utilities. Puerto Rico's access to capital markets has also been severely compromised since ratings agencies downgraded Puerto Rican bonds, including the utilities', to

noninvestment grade in 2014.

Puerto Rico responded to the fiscal crisis by enacting the Puerto Rico Corporation Debt Enforcement and Recovery Act (Recovery Act) in 2014, which enables the Commonwealth's public utilities to implement a recovery or restructuring plan for their debt. 2014 Laws P. R. p. 371. See generally McGowen, Puerto Rico Adopts A Debt Recovery Act For Its Public Corporations, 10 Pratt's J. Bkrtcy. Law 453 (2014). Chapter 2 of the Recovery Act creates a "consensual" debt modification procedure that permits the public utilities to propose changes to the terms of the outstanding debt instruments, for example, changing the interest rate or the maturity date of the debt. 2014 Laws P. R., at 428–429. In conjunction with the debt modification, the public utility must also propose a Bank-approved recovery plan to bring it back to financial self-sufficiency. *Ibid.* The debt modification binds all creditors so long as those holding at least 50% of affected debt participate in (or consent to) a vote regarding the modifications, and the participating creditors holding at least 75% of affected debt approve the modifications. *Id.,* at 430. Chapter 3 of the Recovery Act, on the other hand, mirrors Chapters 9 and 11 of the Federal Bankruptcy Code by creating a court-supervised restructuring process intended to offer the best solution for the broadest group of creditors. See *id.,* at 448–449. Creditors holding two-thirds of an affected class of debt must participate in the vote to approve the restructuring plan, and half of those participants must agree to the plan. *Id.,* at 449.

B

A group of investment funds, including the Franklin California Tax-Free Trust, and BlueMountain Capital Management, LLC, brought separate suits against Puerto Rico and various government officials, including agents of the Bank, to enjoin the enforcement of the Recovery Act.

Collectively, the plaintiffs hold nearly $2 billion in bonds issued by the Electric Power Authority, one of the distressed utilities. The complaints alleged, among other claims, that the Federal Bankruptcy Code prohibited Puerto Rico from implementing its own municipal bankruptcy scheme.

The District Court consolidated the suits and ruled in the plaintiffs' favor on their pre-emption claim. 85 F. Supp. 3d 577 (PR 2015). The court concluded that the pre-emption provision in Chapter 9 of the Federal Bankruptcy Code, 11 U. S. C. §903(1), precluded Puerto Rico from implementing the Recovery Act and enjoined its enforcement. 85 F. Supp. 3d, at 601, 614.

The First Circuit affirmed. 805 F. 3d 322 (2015). The court examined the 1984 amendment to the definition of "State" in the Federal Bankruptcy Code, which includes Puerto Rico as a "State" for purposes of the Code "'*except* for the purpose of defining who may be a debtor under chapter 9.'" *Id.,* at 330–331 (quoting §101(52); emphasis added). The court concluded that the amendment did not remove Puerto Rico from the scope of the pre-emption provision and held that the pre-emption provision barred the Recovery Act. *Id.,* at 336–337. The court opined that it was up to Congress, not Puerto Rico, to decide when the government-owned companies could seek bankruptcy relief. *Id.,* at 345.

We granted the Commonwealth's petitions for writs of certiorari. 577 U. S. ___ (2015).*

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*After the parties briefed and argued these cases, Members of Congress introduced a bill in the House of Representatives to establish an oversight board to assist Puerto Rico and its instrumentalities. See H. 5278, 114th Cong., 2d Sess. (2016). The bill does not amend the Federal Bankruptcy Code; it instead proposes adding a chapter to Title 48, governing the Territories. *Id.,* §6.

II

These cases require us to parse three provisions of the Bankruptcy Code: the "who may be a debtor" provision requiring States to authorize municipalities to seek Chapter 9 relief, §109(c), the pre-emption provision barring States from enacting their own municipal bankruptcy schemes, §903(1), and the definition of "State," §101(52). We first explain the text and history of these provisions. We then conclude that Puerto Rico is still a "State" for purposes of the pre-emption provision and hold that this provision pre-empts the Recovery Act.

A

The Constitution empowers Congress to establish "uniform Laws on the subject of Bankruptcies throughout the United States." Art. I, §8, cl. 4. Congress first exercised that power by enacting a series of temporary bankruptcy Acts beginning in 1800, which gave way to a permanent federal bankruptcy scheme in 1898. See An Act To Establish a Uniform System of Bankruptcy Throughout the United States, 30 Stat. 544; *Hanover Nat. Bank* v. *Moyses*, 186 U. S. 181, 184 (1902). But Congress did not enter the field of municipal bankruptcy until 1933 when it enacted the precursor to Chapter 9, a chapter of the Code enabling an insolvent "municipality," meaning a "political subdivision or public agency or instrumentality of a State," 11 U. S. C. §101(40), to restructure municipal debts. See McConnell & Picker, When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy, 60 U. Chi. L. Rev. 425, 427, 450–451 (1993).

Congress has tailored the federal municipal bankruptcy laws to preserve the States' reserved powers over their municipalities. This Court struck down Congress' first attempt to enable the States' political subdivisions to file for federal bankruptcy relief after concluding that it infringed the States' powers "to manage their own affairs."

Ashton v. *Cameron County Water Improvement Dist. No. One*, 298 U. S. 513, 531 (1936). Congress tried anew in 1937, and the Court upheld the amended statute as an appropriate balance of federal and state power. See *United States* v. *Bekins*, 304 U. S. 27, 49–53 (1938). Critical to the Court's constitutional analysis was that the State had first authorized its instrumentality to seek relief under the federal bankruptcy laws. See *id.,* at 47–49, 53–54.

Still today, the provision of the Bankruptcy Code defining who may be a debtor under Chapter 9, which we refer to here as the "gateway" provision, requires the States to authorize their municipalities to seek relief under Chapter 9 before the municipalities may file a Chapter 9 petition:

> "§109. Who may be a debtor
>
> . . . . .
>
> "(c) An entity may be a debtor under chapter 9 of this title if and only if such entity —
>
> "(1) is a municipality;
>
> "(2) is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter . . . ."

The States' powers are not unlimited, however. The federal bankruptcy laws changed again in 1946 to bar the States from enacting their own municipal bankruptcy schemes. The amendment overturned this Court's holding in *Faitoute Iron & Steel Co.* v. *Asbury Park*, 316 U. S. 502, 507–509 (1942) (rejecting contention that Congress occupied the field of municipal bankruptcy law). In *Faitoute*, the Court held that federal bankruptcy laws did not preempt New Jersey's municipal bankruptcy scheme, which required municipalities to seek relief under state law before resorting to the federal municipal bankruptcy scheme. *Ibid.* To override *Faitoute*, Congress enacted a

provision expressly pre-empting state municipal bankruptcy laws. Act of July 1, 1946, 60 Stat. 415.

The express pre-emption provision, central to these cases, is now codified with some stylistic changes in §903(1):

> "§903. Reservation of State power to control municipalities
>
> "This chapter does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise, but—
>
> "(1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition; and
>
> "(2) a judgment entered under such a law may not bind a creditor that does not consent to such composition."

The third provision of the Bankruptcy Code at issue is the definition of "State," which has included Puerto Rico since it became a Territory of the United States in 1898. The first Federal Bankruptcy Act, also enacted in 1898, defined "States" to include "the Territories, the Indian Territory, Alaska, and the District of Columbia." 30 Stat. 545. When Congress recodified the bankruptcy laws to form the Federal Bankruptcy Code in 1978, the definition of "State" dropped out of the definitional section. See generally Bankruptcy Reform Act, 92 Stat. 2549–2554. Congress then amended the Code to reincorporate the definition of "State" in 1984. §421, 98 Stat. 368–369, now codified at §101(52). The amended definition includes Puerto Rico as a State for purposes of the Code with one exception:

> "§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."

B

It is our task to determine the effect of the amended definition of "State" on the Code's other provisions governing Chapter 9 proceedings. We must decide whether, in light of the amended definition, Puerto Rico is no longer a "State" only for purposes of the gateway provision, which requires States to authorize their municipalities to seek Chapter 9 relief, or whether Puerto Rico is also no longer a "State" for purposes of the pre-emption provision.

The parties do not dispute that, before 1984, Puerto Rico was a "State" for purposes of Chapter 9's pre-emption provision. Accordingly, before 1984, federal law would have pre-empted the Recovery Act because it is a "State law prescribing a method of composition of indebtedness" for Puerto Rico's instrumentalities that would bind non-consenting creditors, §903(1).

The parties part ways, however, in deciphering how the 1984 amendment to the definition of "State" affected the pre-emption provision. Petitioners interpret the amended definition of "State" to exclude Puerto Rico altogether from Chapter 9. If petitioners are correct, then the pre-emption provision does not apply to them. Puerto Rico, in other words, may enact its own municipal bankruptcy scheme without running afoul of the Code. Respondents, on the other hand, read the amended definition narrowly. They contend that the definition precludes Puerto Rico from "specifically authoriz[ing]" its municipalities to seek relief, as required by the gateway provision, §109(c)(2), but that Puerto Rico is no less a "State" for purposes of the pre-emption provision than the other "State[s]," as that term

is defined in the Code. If respondents are correct, then the pre-emption provision applies to Puerto Rico and bars it from enacting the Recovery Act.

Respondents have the better reading. We hold that Puerto Rico is still a "State" for purposes of the pre-emption provision. The 1984 amendment precludes Puerto Rico from authorizing its municipalities to seek relief under Chapter 9, but it does not remove Puerto Rico from the reach of Chapter 9's pre-emption provision.

1

The plain text of the Bankruptcy Code begins and ends our analysis. Resolving whether Puerto Rico is a "State" for purposes of the pre-emption provision begins "with the language of the statute itself," and that "is also where the inquiry should end," for "the statute's language is plain." *United States* v. *Ron Pair Enterprises, Inc.*, 489 U. S. 235, 241 (1989). And because the statute "contains an express pre-emption clause," we do not invoke any presumption against pre-emption but instead "focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent." *Chamber of Commerce of United States of America* v. *Whiting*, 563 U. S. 582, 594 (2011) (internal quotation marks omitted); see also *Gobeille* v. *Liberty Mut. Ins. Co.*, 577 U. S. ___, ___ (2016) (slip op., at 12).

The amended definition of "State" excludes Puerto Rico for the single "purpose of defining *who may be a debtor* under chapter 9 of this title." §101(52) (emphasis added). That exception unmistakably refers to the gateway provision in §109, titled "who may be a debtor." Section 109(c) begins, "An entity may be a debtor under chapter 9 of this title if and only if . . . ." §109(c). We interpret Congress' use of the "who may be a debtor" language in the amended definition of "State" to mean that Congress intended to exclude Puerto Rico from this gateway provision delineat-

ing who may be a debtor under Chapter 9. See, *e.g., Sullivan* v. *Stroop*, 496 U. S. 478, 484 (1990) (reading same term used in different parts of the same Act to have the same meaning); see also *Northcross* v. *Board of Ed. of Memphis City Schools*, 412 U. S. 427, 428 (1973) (*per curiam*) ("[S]imilarity of language . . . is . . . a strong indication that the two statutes should be interpreted *pari passu*"). Puerto Rico, therefore, is not a "State" for purposes of the gateway provision, so it cannot perform the single function of the "State[s]" under that provision: to "specifically authoriz[e]" municipalities to seek Chapter 9 relief. §109(c). As a result, Puerto Rico's municipalities cannot satisfy the requirements of Chapter 9's gateway provision until Congress intervenes.

The amended definition's use of the term "defining" also confirms our conclusion that the amended definition excludes Puerto Rico as a "State" for purposes of the gateway provision. The definition specifies that Puerto Rico is not a "'State . . . for the purpose of *defining* who may be a debtor under Chapter 9." §101(52) (emphasis added). To "define" is "to decide upon," 4 Oxford English Dictionary 383 (2d ed. 1989), or "to settle" or "to establish or prescribe authoritatively," Black's Law Dictionary 380 (5th ed. 1979). As discussed, a State's role under the gateway provision is to do just that: The State must define (or "decide upon") which entities may seek Chapter 9 relief. Barring Puerto Rico from "*defining* who may be a debtor under chapter 9" is tantamount to barring Puerto Rico from "specifically authorizing" which municipalities may file Chapter 9 petitions under the gateway provision. The amended definition of "State" unequivocally excludes Puerto Rico as a "State" for purposes of the gateway provision.

The text of the definition extends no further. The exception excludes Puerto Rico *only* for purposes of the gateway provision. Puerto Rico is no less a "State" for purposes of

the pre-emption provision than it was before Congress amended the definition. The Code's pre-emption provision has prohibited States and Territories defined as "States" from enacting their own municipal bankruptcy schemes for 70 years. See 60 Stat. 415 (overturning *Faitoute*, 316 U. S., at 507–509). Had Congress intended to "alter th[is] fundamental detai[l]" of municipal bankruptcy, we would expect the text of the amended definition to say so. *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 468 (2001). Congress "does not, one might say, hide elephants in mouseholes." *Ibid.*

2

The dissent, adopting many of petitioners' arguments, reads the amended definition to say what it does not—that "for the purpose of . . . chapter 9," Puerto Rico is not a State. The arguments in support of that capacious reading are unavailing.

First, the dissent agrees with petitioners' view that the exclusion of Puerto Rico as a "State" for purposes of the gateway provision effectively removed Puerto Rico from all of Chapter 9. See *post*, at 7–8 (opinion of SOTOMAYOR, J.). To be sure, §109(c) and the surrounding subsections serve an important gatekeeping role. Those provisions "specify who qualifies—and who does not qualify—as a debtor under the various chapters of the Code." *Toibb* v. *Radloff*, 501 U. S. 157, 161 (1991). For instance, a railroad must file under Chapter 11, not Chapter 7, §§109(b)(1), (d), whereas only "family farmer[s] or family fisherm[e]n" may file under Chapter 12. The provision delineating who may be a debtor under Chapter 9 is no exception. Only municipalities may file under Chapter 9, and only if the State has "specifically authorized" the municipality to do so. §§109(c)(1)–(2); see also McConnell & Picker, 60 Chi. L. Rev., at 455–461 (discussing the gatekeeping requirements for Chapter 9).

That Puerto Rico is not a "State" for purposes of the gateway provision, however, says nothing about whether Puerto Rico is a "State" for the other provisions of Chapter 9 involving the States. The States do not "pass through" the gateway provision. *Post,* at 8. The gateway provision is instead directed at the debtors themselves—the municipalities, in the case of Chapter 9 bankruptcy. A *municipality* that cannot secure state authorization to file a Chapter 9 petition is excluded from Chapter 9 entirely. But the same cannot be said about the *State* in which that municipality is located. A State's only role under the gateway provision is to provide that "authoriz[ation]" to file. §109(c)(2). The pre-emption provision then imposes an additional requirement: The States may not enact their own municipal bankruptcy schemes. A State that chooses not to authorize its municipalities to seek Chapter 9 relief under the gateway provision is no less bound by that pre-emption provision. Here too, Puerto Rico is no less bound by the pre-emption provision even though Congress has removed its authority to provide authorization for its municipalities to file Chapter 9 petitions. Again, if it were Congress' intent to also exclude Puerto Rico as a "State" for purposes of that pre-emption provision, it would have said so.

Second, both petitioners and the dissent place great weight on the introductory clause of §903. *Post,* at 6–7. The pre-emption provision cannot apply to Puerto Rico, so goes the argument, because it is a proviso to §903's introductory clause, which they posit is inapplicable to Puerto Rico. The introductory clause affirms that Chapter 9 "does not limit or impair the power of a State to control" its "municipalit[ies]." §903. The dissent surmises that this clause "is irrelevant" and "meaningless" in Puerto Rico. *Post,* at 7. Because Puerto Rico's municipalities are ineligible for Chapter 9 relief, Chapter 9 cannot "affec[t] Puerto Rico's control over its municipalities," according to

the dissent. *Ibid.* In other words, "there is no power" for the introductory clause to "reserve" for Puerto Rico's use. *Ibid.* Petitioners likewise contend that "it would be nonsensical for Congress to provide Puerto Rico with a shield against intrusion by a Chapter that, by definition, can have no effect on Puerto Rico." Brief for Petitioner Commonwealth of Puerto Rico et al. in No. 15–233, p. 25. So "it follows" that the pre-emption provision, the proviso to that clause, cannot apply either. *Ibid.*

This reading rests on the faulty assumption that Puerto Rico is, "by definition," excluded from Chapter 9. *Ibid.* For all of the reasons already explained, see Part II–B–1, *supra*, it is not. The amended definition of "State" precludes Puerto Rico from authorizing its municipalities to seek Chapter 9 relief. But Puerto Rico is no less a "State" for purposes of §903's introductory clause and its proviso. Both continue to apply in Puerto Rico. They are neither "irrelevant" nor "meaningless." *Post,* at 7. If, for example, Congress created a path for the Puerto Rican municipalities to restructure their debts under Chapter 9, then §903 would assure Puerto Rico, no less a "State" for purposes of this section, of its continued power to "control, by legislation or otherwise, [its] municipalit[ies] . . . in the exercise of the political or governmental powers of such municipalit[ies]."

Third, the Government Development Bank contends that the Recovery Act does not run afoul of the pre-emption provision because the Recovery Act does not bind nonconsenting "creditors," as the Bankruptcy Code now defines that term. In 1978, Congress redefined "creditor" to mean an "entity that has a claim against the *debtor* . . . ." 92 Stat. 2550, now codified at §101(10) (emphasis added). A "debtor," in turn, is a "person or municipality concerning which a case under this title has been *commenced*." *Id.,* at 2551, now codified at §101(13) (emphasis added). In light of these definitions, the Bank contends

that the Puerto Rican municipalities are not "debtor[s]" as the Code defines the term because they cannot "commenc[e]" an action under Chapter 9 without authorization from Puerto Rico. Brief for Petitioner Acosta-Febo et al. 31–33. And because respondents cannot be "creditors" of a nonexistent "debtor," the Recovery Act is not a "State law" that binds "any creditor." §903(1). *Id.,* at 31–33.

Tellingly, the dissent does not adopt this reading. The Bank's interpretation would nullify the pre-emption provision. Applying the Bank's logic, a municipality that fails to meet any one of the requirements of Chapter 9's gatekeeping provision is not a "debtor" and would have no "creditors." So a State could refuse to "specifically authoriz[e]" its municipalities to seek relief under Chapter 9, §109(c)(2), required to commence a case under that chapter. That State would be free to enact its own municipal bankruptcy scheme because its municipalities would have no "creditors" under federal law. The technical amendments to the definitions of "creditor" and "debtor" are too "subtle a move" to support such a "[f]undamental chang[e] in the scope" of Chapter 9's pre-emption provision. *Kellogg Brown & Root Services, Inc.* v. *United States ex rel. Carter*, 575 U. S. ___, ___ (2015) (slip op., at 9).

* * *

The dissent concludes that "the government and people of Puerto Rico should not have to wait for possible congressional action to avert the consequences" of the Commonwealth's fiscal crisis. *Post,* at 9. But our constitutional structure does not permit this Court to "rewrite the statute that Congress has enacted." *Dodd* v. *United States*, 545 U. S. 353, 359 (2005); see also *Electric Storage Battery Co.* v. *Shimadzu*, 307 U. S. 5, 14 (1939). That statute precludes Puerto Rico from authorizing its municipalities to seek relief under Chapter 9. But it does not remove Puerto Rico from the scope of Chapter 9's pre-

emption provision. Federal law, therefore, pre-empts the Recovery Act. The judgment of the Court of Appeals for the First Circuit is affirmed.

It is so ordered.

JUSTICE ALITO took no part in the consideration or decision of these cases.

SUPREME COURT OF THE UNITED STATES

Nos. 15–233 and 15–255

COMMONWEALTH OF PUERTO RICO, ET AL., PETITIONERS
15–233 *v.*
FRANKLIN CALIFORNIA TAX-FREE TRUST, ET AL.

MELBA ACOSTA-FEBO, ET AL., PETITIONERS
15–255 *v.*
FRANKLIN CALIFORNIA TAX-FREE TRUST, ET AL.

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

[June 13, 2016]

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting.

Chapter 9 of the Federal Bankruptcy Code allows States' "municipalities"—cities, utilities, levee boards, and the like—to file for federal bankruptcy with their State's authorization. But the Code excludes Puerto Rican municipalities from accessing federal bankruptcy. 11 U. S. C. §§101(52), 109(c)(2). Because of this bar, Puerto Rico enacted its own law in 2014—the Recovery Act—to allow its utilities to restructure their significant debts outside the federal bankruptcy process.

The Court today holds that Puerto Rico's Recovery Act is barred by §903(1) of Chapter 9 of the Bankruptcy Code, which prohibits States from creating their own bankruptcy processes for their insolvent municipalities. §903(1). Because Puerto Rican municipalities cannot access Chapter 9's federal bankruptcy process, however, a nonfederal bankruptcy solution is not merely a parallel option; it is

the only existing legal option for Puerto Rico to restructure debts that could cripple its citizens. The structure of the Code and the language and purpose of §903 demonstrate that Puerto Rico's municipal debt restructuring law should not be read to be prohibited by Chapter 9.

I respectfully dissent.

I

The Commonwealth of Puerto Rico and its municipalities are in the middle of a fiscal crisis. *Ante,* at 2. The combined debt of Puerto Rico's three main public utilities exceeds $20 billion. These utilities provide power, water, sewer, and transportation to residents of the island. With rising interest rates and limited access to capital markets, their debts are proving unserviceable. Soon, Puerto Rico and the utilities contend, they will be unable to pay for things like fuel to generate electricity, which will lead to rolling blackouts. Other vital public services will be imperiled, including the utilities' ability to provide safe drinking water, maintain roads, and operate public transportation.

When debtors face untenable debt loads, bankruptcy is the primary tool the law uses to forge workable long-term solutions. By requiring a debtor and creditors to negotiate together and forcing both sides to make concessions within the limits set by law, bankruptcy gives the debtor a "fresh start," discourages creditors from racing each other to sue the debtor, prohibits a small number of holdout creditors from blocking a compromise, protects important creditor rights such as the prioritization of debts, and allows all parties to find equitable and efficient solutions to fiscal problems. See *Marrama* v. *Citizens Bank of Mass.*, 549 U. S. 365, 367 (2007); *Young* v. *Higbee Co.*, 324 U. S. 204, 210 (1945).

These concerns are starkly presented in the context of municipal entities like public utilities. While a business

corporation can use bankruptcy to reorganize, and, if that fails, fold up shop and liquidate all of its assets, governments cannot shut down power plants, water, hospitals, sewers, and trains and leave citizens to fend for themselves. A "fresh start" can help not only the unfortunate individual debtor but also—and perhaps especially—the unfortunate municipality and its people. See *United States* v. *Bekins*, 304 U. S. 27, 53–54 (1938).

Congress has excluded the municipalities of Puerto Rico and the District of Columbia from the federal municipal bankruptcy scheme in Chapter 9 of the Bankruptcy Code. See 11 U. S. C. §§101(52), 109(c). So, in 2014, the Puerto Rican Government enacted the Puerto Rico Public Corporation Debt Enforcement and Recovery Act (Recovery Act or Act). 2014 Laws P. R. p. 371. The Act authorizes Puerto Rico's public utilities to restructure their debts while continuing to provide essential public services like electricity and water. Portions of the Act mirror Chapter 9 of the Bankruptcy Code and allow Puerto Rico's utilities to renegotiate their debts with their creditors. See *ante,* at 3. Like a restructuring plan filed under Chapter 9, a restructuring plan under the Recovery Act that is approved by at least a majority of creditors and a court would be binding on all creditors, including objecting holdouts.

After the Recovery Act was signed into law, mutual funds and hedge funds holding bonds of the Puerto Rico Electric Power Authority filed two lawsuits seeking to enjoin Puerto Rico's enforcement of the Act. The District Court held that the Recovery Act could not be enforced because, *inter alia*, it was prohibited by §903(1) of the Bankruptcy Code. The First Circuit agreed that §903(1) pre-empted the Act, and did not address whether some provisions of the Act might be unlawful for other reasons. This Court now affirms.

II

Bankruptcy is not a one-size-fits-all process. The Federal Bankruptcy Code sets out specific procedures and governing law for each type of entity that seeks bankruptcy protection. To see how this approach works, consider the structure of the Code in more depth.

Chapter 1 is the starting point. It sets out how to read the Code. See 11 U. S. C. §101 *et seq.* For example, §101 sets out general definitions, and §102 provides rules of construction. Now skip ahead to §109, titled, "Who may be a debtor." That section tells would-be debtors and the interested parties in their bankruptcy which specific bankruptcy laws apply to them. For example, §109 tells an ordinary person seeking to restructure her debts to do so using the rules outlined in Chapter 7, §109(b), or those enumerated in Chapter 13, §109(e). It tells a family farm or fisherman to use the rules outlined in Chapter 12. §109(f). Certain corporations can use Chapter 7, §109(b), or Chapter 11, §109(d). And a municipality's bankruptcy is governed by the rules in Chapter 9. §109(c)(1).

Because §109 tells different kinds of debtors which bodies of bankruptcy law apply to them, the Court has described that section as a "'gateway'" provision. *Ante,* at 6. Once an entity meets the eligibility requirements for a specific "gateway" set out in §109 and elects to pass through that gateway, it becomes subject to the relevant chapter of the Code—7, 9, 11, 12, or 13. The debtor, its creditors, and any other interested parties are governed only by that chapter and the chapters of the Bankruptcy Code—like Chapter 1—that apply to all cases. See §103; 1 Collier Pamphlet Edition, Bankruptcy Code 2015, p. 59 ("[A]s a general rule, the provisions of the particular chapter apply only in that chapter").

Interpreting statutory provisions in the context of the operative chapters in the Bankruptcy Code in which they appear is not unusual—it is how the Code is designed to

work. For example, both Chapter 9 and Chapter 13 require the debtor to "file a plan" proposing how the court should reorganize its debts. Compare §§941–946 ("The Plan" under Chapter 9) with §§1321–1330 ("The Plan" under Chapter 13). But no bankruptcy court or practitioner would suggest that a Chapter 9 "plan" also has to satisfy the requirements of Chapter 13. The Code is read in context.

These cases concern §109's "gateway" for municipalities. That provision says that a municipality may file for bankruptcy under Chapter 9 if and only if it meets five eligibility criteria. The debtor must (1) be "a municipality," §109(c)(1); (2) be "specifically authorized . . . by State law" to seek bankruptcy restructuring, §109(c)(2); (3) be "insolvent," §109(c)(3); (4) have a "desir[e] to effect a plan to adjust" its debts, §109(c)(4); and (5) have attempted to negotiate with its creditors, with some exceptions, §109(c)(5).

The second eligibility requirement is relevant here. Only a municipality "authorized . . . by *State* law" may pass through the "gateway" and file for bankruptcy under Chapter 9's provisions. But Chapter 1's definitional provision, which applies throughout the Code, provides that 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." §101(52). It is undisputed that the "except for the purpose of defining who may be a debtor under chapter 9" clause is referring to the second eligibility prerequisite in §109's gateway provision. *Ante,* at 8. So, in short, Puerto Rico cannot "specifically authoriz[e]" any of its municipalities to apply for Chapter 9 bankruptcy. No Puerto Rican municipality will thus satisfy the state authorization requirement of §109's gateway for municipalities, and so no Puerto Rican munic-

ipality can access Chapter 9.[1]

The question in these cases is whether §903(1), a pre-emption provision in Chapter 9, still applies to Puerto Rico even though its municipalities are not eligible to pass through the "gateway" into Chapter 9. It should not. Section 903 by its terms presupposes that Chapter 9 applies only to States who have the power to authorize their municipalities to invoke its protection.

Section 903 delineates the balance of power between the States that can authorize their municipalities to access Chapter 9 protection and the bankruptcy court that would preside over any municipal bankruptcy commenced under Chapter 9. To understand that interplay, and why §903(1) does not pre-empt the Recovery Act, it is important to consider that statutory provision in context.

Section 903, titled "Reservation of State power to control municipalities," reads in full:

> "This chapter [Chapter 9] does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise, but—
>
> "(1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition; and
>
> "(2) a judgment entered under such a law may not bind a creditor that does not consent to such composition."

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[1] Puerto Rico was initially included in the scope of Chapter 9. §1(29), 52 Stat. 842. But in 1984, Congress amended the Bankruptcy Code, without comment, to bar Puerto Rico and the District of Columbia from authorizing their municipalities to access Chapter 9. §421(j)(6), 98 Stat. 368, codified at 11 U. S. C. §101(52).

This "reservation" of power to the States was added to the Code in response to this Court's earlier recognition that States possess plenary control over their municipalities, particularly in fiscal matters. *Faitoute Iron & Steel Co.* v. *Asbury Park*, 316 U. S. 502, 509 (1942), overruled in part by Act of July 1, 1946, 60 Stat. 415. Section 903 says that States continue to possess those powers not implicated by the bankruptcy itself by noting that "[t]his chapter," *i.e.,* Chapter 9, "does not limit or impair the power of a State to control" its municipalities. §903. For example, even if a municipality is in Chapter 9 bankruptcy, a State could still revoke its charter.

Section 903, however, also subjects that broad reservation to an exception articulated in the pre-emption provision that the Court now says bars Puerto Rico's Recovery Act. States may control their municipalities, but they may not "prescrib[e] a method of composition of indebtedness of [a] municipality" that "bind[s] any creditor that does not consent to such composition." §903(1).

But this distribution of power between the State and the bankruptcy court is irrelevant to Puerto Rico. Because Puerto Rico's municipalities cannot pass through the §109(c) gateway to Chapter 9, nothing in the operation of a Chapter 9 case affects Puerto Rico's control over its municipalities. The "reservation" preamble is therefore meaningless to Puerto Rico—there is no power to reserve from Chapter 9's operation. And if this preamble does not and cannot apply to Puerto Rico, it follows that §903(1)'s proviso qualifying that reservation of power to the States does not apply to Puerto Rico either. See, *e.g., United States* v. *Morrow*, 266 U. S. 531, 534–535 (1925).

This understanding of §903 is fundamentally confirmed by the careful gateway structure the Code sets out for understanding how its chapters work together. See *Utility Air Regulatory Group* v. *EPA*, 573 U. S. ___, ___ (2014) (slip op., at 15) ("'"[W]ords of a statute must be read in

their context and with a view to their place in the overall statutory scheme"'" (quoting *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 133 (2000))). Chapter 1's definitions section prevents Puerto Rico from defining "who may be a debtor under chapter 9" under §109(c)'s gateway. Because of the structure of the Code, that change to Chapter 1's definition has ripple effects. By amending the definition of State to exclude Puerto Rico, the District of Columbia, and their municipalities from §109(c)'s gateway, Congress excluded Puerto Rico from Chapter 9 for all purposes—it shut the gate and barred it tight. And because Chapter 9's process and rules by their terms can only affect municipalities and States eligible to pass through the gateway in §109(c), that must mean that none of Chapter 9's provisions—including §903's pre-emption provision—apply to Puerto Rico and its municipalities.

III

The Court rejects contextual analysis in favor of a syllogism. According to the Court, §903(1) pre-empts all "State" composition laws like Puerto Rico's that bind nonconsenting municipal creditors. "State" includes Puerto Rico, "except for the purpose of defining who may be a debtor under chapter 9 of this title," §101(52), which is a reference to §109(c). Thus, according to the Court, while the definition of "State" prevents Puerto Rico from authorizing its municipalities to seek Chapter 9 protection under §109(c), it has no effect on the pre-emption clause in §903(1).

The majority's plain meaning syllogism is not without force. But it ignores this Court's repeated exhortations to read statutes in context of the overall statutory scheme. *Utility Air*, 573 U. S., at ___ (slip op., at 15). In context, for the reasons discussed, §903 is directed to States that can approve their municipalities for Chapter 9 bankruptcy.

Moreover, in an attempt to buttress its syllogism, the majority's analysis makes an additional critical misstep.

The majority argues that, in light of the longstanding nature of the §903(1)'s pre-emption provision to preclude state municipal bankruptcy laws, "[h]ad Congress intended to 'alter this fundamental detail' of municipal bankruptcy" to not apply to Puerto Rico, "we would expect the text of the amended definition to say so. Congress 'does not, one might say, hide elephants in mouseholes.'" *Ante,* at 10–11 (quoting *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 468 (2001); citation and brackets omitted). But the Court ignores that Congress already altered the fundamental details of municipal bankruptcy when it amended the definition of "State" to exclude Puerto Rico from authorizing its municipalities to take advantage of Chapter 9. Nobody has presented a compelling reason for why Congress would have done so, and the legislative history of the amendment is unhelpful.[2] Under either interpretation the scheme has been fundamentally altered by Congress. And, in context, the proper understanding of that alteration is that Puerto Rico and its municipalities have been removed entirely from Chapter 9—both from the benefits it provides and from the burden of the pre-emption clause in §903(1).

Pre-emption cases may seem like abstract discussions of the appropriate balance between state and federal power. But they have real-world consequences. Finding pre-emption here means that a government is left powerless and with no legal process to help its 3.5 million citizens.

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[2] The only comment on excluding Puerto Rico from Chapter 9 came from Professor Frank Kennedy, former Executive Director of the Commission on Bankruptcy Laws, who said: "I do not understand why the municipal corporations of Puerto Rico are denied by the proposed definition of 'State' of the right to seek relief under Chapter 9." Bankruptcy Improvements Act, Hearing on S. 333 et al. before the Senate Committee on the Judiciary, 98th Cong., 1st Sess., 326 (1983).

Congress could step in to resolve Puerto Rico's crisis. But, in the interim, the government and people of Puerto Rico should not have to wait for possible congressional action to avert the consequences of unreliable electricity, transportation, and safe water—consequences that members of the Executive and Legislature have described as a looming "humanitarian crisis." The White House, Addressing Puerto Rico's Economic and Fiscal Crisis and Creating a Path to Recovery, p. 1 (Oct. 26, 2015) (italics deleted); Letter from Sen. Richard Blumenthal et al. to Charles Grassley, Chair, Senate Committee on the Judiciary (Sept. 30, 2015). Statutes should not easily be read as removing the power of a government to protect its citizens.

* * *

For the foregoing reasons, I would hold that §903(1) of the Bankruptcy Code does not pre-empt Puerto Rico's Recovery Act. I respectfully dissent.