



Congressman Pedro R. Pierluisi
Statement and Questions as Prepared for Delivery
Hearing on H.R. 870, the *Puerto Rico Chapter 9 Uniformity Act of 2015*
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
House Judiciary Committee
2237 Rayburn House Office Building
February 26, 2015

Thank you for yielding.

Mr. Mayer, I understand that your testimony was provided, not in your personal capacity, but rather as counsel to two investment firms.

That may explain why the position you have staked out on behalf of your clients is at odds with the position of the National Bankruptcy Conference—of which you are a member—and, indeed, with the position of virtually the entire community of bankruptcy scholars.

Let me address a few points you made.

First, you state that “use of Chapter 9 by any of Puerto Rico’s public corporations will cause more harm than good, for both millions of Americans who invested in Puerto Rico bonds and for the Commonwealth.”

Most bondholders and investment experts disagree with your claim that passage of this bill would be bad for holders of Puerto Rico's \$70 billion in public debt.

Your argument that this bill is bad for Puerto Rico is even more difficult to understand. The bill is supported by both parties in Puerto Rico, nine former GDB presidents, our private sector, virtually all bankruptcy experts (who don't have a financial stake here), and Fitch Ratings. You are basically saying that we are all well-intentioned but wrong, that we are not actually acting in Puerto Rico's best interest, *but that your clients are*.

Second, your clients successfully sued the Puerto Rico government when it enacted a local law that would have allowed certain public corporations to adjust their debts. But now your clients are going a dramatic step further, objecting even to Puerto Rico's inclusion in Chapter 9. Our public corporations, like our electric power authority and our highway authority, are subject to U.S. labor, environmental and others laws—as they should be because Puerto Rico is an integral part of this nation. How is it fair to argue that these same entities should not have access to the legal mechanism that Congress has put in place to authorize such entities, if they become insolvent, to adjust their debts in an orderly fashion? If there is principle behind this argument, I cannot identify it.

Third, much of your testimony is spent disparaging Chapter 9. But this is not a hearing on Chapter 9, which has been the law of the land for decades. Mr. Conyers has proposed changes to Chapter 9. My guess is that Mr. Goodlatte and Mr. Marino also think there are ways to improve

Chapter 9. The question is not whether Chapter 9 is perfect; it is whether there is a good reason Chapter 9 should not be extended to Puerto Rico. The answer is a resounding no.

Indeed, you write that “Franklin and Oppenheimer would not oppose the application of Chapter 9 to Puerto Rico if Congress made Chapter 9 a fairer statute, which would only take a few changes.” This is a critically-important admission. You are essentially saying: “We think the law Congress enacted for the 50 states isn’t perfect. If it is improved, then and only then would we support its extension to Puerto Rico.” This argument is neither principled nor persuasive.

Moreover, you state: “There are good reasons why states have access to Chapter 9 and Puerto Rico does not. Congress chose to give Puerto Rico bonds a nationwide tax exemption, enjoyed by no state—and Congress chose to exclude Puerto Rico from Chapter 9. The benefit and the restriction go together.”

This argument has some superficial logic, but falls apart upon closer examination. Congress provided this triple tax-exemption to Puerto Rico bonds in 1917, nearly 70 years before Congress enacted the 1984 law that expressly excluded Puerto Rico municipalities from Chapter 9. There is zero evidence, and you cite none, to support the argument that Congress excluded Puerto Rico from Chapter 9 because of the triple-tax exemption, or drew any link between these two actions. Congress has conferred triple-tax-exempt status on all U.S. territory bonds, and the likely reason is that the territories are treated unequally under a range of federal programs, and so Congress may have wanted to make it easier for territory governments to issue bonds to finance projects that, in the states, would be paid for with federal funds.

Finally, this hearing is not about political status, but I have to correct the record. In your written testimony, you say that “Puerto Rico’s citizens have repeatedly voted against statehood.” In 2012, in fact, the American citizens of Puerto Rico voted to reject their current status and more voters favored statehood than any other status option. I have a separate bill pending before Congress that would provide for Puerto Rico’s admission as a state. The two main political parties in Puerto Rico may disagree on the status issue, but we are united in support of this bill.

Mr. Donohue and Professor Pottow: is there anything you would like to add about Mr. Mayer’s testimony? And then I want to make sure I give Mr. Mayer a chance to respond.