Ohio Northern University Law Review

Volume 43 | Issue 1 Article 7

PUERTO RICO V. FRANKLIN CALIFORNIA TAX-FREE TRUST

Brittney E. Ciarlo
Ohio Northern University Pettit College of Law

Puerto Rico v. Franklin California Tax-Free Trust
136 S. Ct. 1938 (2016)

I. INTRODUCTION

Justice Scalia stated in the majority opinion in *Whitman v. American Trucking Associations, Inc.*[1] that "Congress. . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes."[2] This statement promotes the idea that if Congress intended to make a significant change to a statute and the implications of the statute, it would not do so in a way that is mysterious and unpronounced.[3] In *Puerto Rico v. Franklin California Tax-Free Trust*,[4] the Supreme Court of the United States had to determine congressional intent when Congress altered the definition of the word "state" for the purposes of Bankruptcy Code.[5] The provision that is the center of the question presented is Section 903(1) of the Bankruptcy Code, which states:

> 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 . . . 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 . . . .[6]

In his oral argument, Christopher Landau, the attorney for the petitioners, the Commonwealth of Puerto Rico and Melba Acosta-Febo, advanced the position that both views of the amended definition of "state" would create an "elephant-in-a-mousehole" situation.[7] The petitioners argued that Congress would not have left Puerto Rico without any recourse for adjusting their municipal debts without expressly saying so.[8] However, the respondents stated that Congress would not have provided Puerto Rico

1. 531 U.S. 457 (2001).
2. *Id* at 468.
3. Transcript of Oral Argument at 22, Puerto Rico v. Franklin California Tax-Free Trust, 136 S. Ct. 1938 (2016) (Nos. 15-233, 15-255).
4. 136 S. Ct. 1938 (2016) [hereinafter *Puerto Rico*].
5. *Id* at 1942.
6. 11 U.S.C.A. § 903(1) (West through P.L. 114-219); *see Puerto Rico*, 136 S. Ct. at 1942.
7. Transcript of Oral Argument at 23, Puerto Rico v. Franklin California Tax-Free Trust, 136 S. Ct. 1938 (2016) (Nos. 15-233, 15-255).
8. *See id* at 6-7.

with the right to enact their own bankruptcy debts, while denying that right to every other state.[9] Upon consideration of both of these arguments, the Supreme Court of the United States held in a 5-2 decision that Section 903(1) of the Bankruptcy Code applies to Puerto Rico within the definition of the word "state."[10] As such, the Court determined that Congress left Puerto Rico without any recourse for restructuring its debts.[11]

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

In 2014, Puerto Rico enacted the Puerto Rico Corporation Debt Enforcement and Recovery Act (Recovery Act).[12] This Act helps the Public Utilities of Puerto Rico implement a restructuring plan for their debts so they will not default.[13] The Commonwealth of Puerto Rico finds itself in the midst of climbing financial woes, as more than $20 billion of its debt can be attributed to three government-owned public utilities companies.[14] These companies are: the Puerto Rico Electric Power Authority; the Puerto Rico Aqueduct and Sewer Authority; and the Puerto Rico Highways and Transportation Authority.[15] Upon creating these government-owned public utilities, the relevant legislation allowed the companies to issue bonds to operate the companies.[16] By implementing the Puerto Rico Corporation Debt Enforcement and Recovery Act, the Commonwealth passed legislation replicating Chapter 9 of the Bankruptcy Code.[17] Specifically, Chapter 2 of the Recovery Act creates a procedure for "consensual" modification of debts where the public utilities can propose changes to the terms of their outstanding debt instruments.[18] Furthermore, in addition to proposing debt modification, the utility must propose a bank-approved recovery plan to regain financial stability.[19] This modification will be binding if those who hold at least 50% of the affected debt agree to the modifications.[20] After the Act was enacted into law, Franklin Templeton and Oppenheimer financial firms sued the Commonwealth of Puerto Rico, specific Commonwealth

9. *See id.* at 27-28.
10. *Puerto Rico*, 136 S. Ct. at 1942.
11. *Id.* at 1954.
12. *Id.* at 1943.
13. Appellate Brief of the Defendants-Appellants Melba Acosta-Febo at 7, Franklin California Tax-Free Trust v. Commonwealth of Puerto Rico, 805 F.3d 322 (1st Cir. 2015) (Nos. 15-1218, 15-1221, 15-1271, 15-1272).
14. *Id*.
15. *Puerto Rico*, 136 S. Ct. at 1942.
16. Appellate Brief of the Defendants-Appellants Melba Acosta-Febo at 11, Franklin California Tax-Free Trust v. Commonwealth of Puerto Rico, 805 F.3d 322 (1st Cir. 2015) (Nos. 15-1218, 15-1221, 15-1271, 15-1272).
17. *Id.* at 5.
18. *Puerto Rico*, 136 S. Ct. at 1943.
19. *Id*.
20. *Id*.

officials, and the Puerto Rico Electric Power Authority ("PREPA").[21] Subsequently, BlueMountain Capital Management, LLC sued the Commonwealth's governor and other officials.[22] Franklin Templeton and Oppenheimer sought a declaration that the Recovery Act was preempted by the Federal Bankruptcy Code.[23] BlueMountain alleged that "any prospective enforcement of" the Act would violate the Contract Clause of the Puerto Rico Constitution, go against the Bankruptcy and Contract Clauses of the federal Constitution, and be preempted by federal law.[24] The District Court then consolidated the cases and issued a decision.[25] In its decision, the United States District Court for the District of Puerto Rico held that the federal Bankruptcy Code preempts Puerto Rico's Recovery Act, and as such, is void pursuant to the Supremacy Clause of the United States Constitution.[26] The District Court permanently enjoined the Commonwealth from implementing the Recovery Act.[27] The decision of the District Court was appealed.[28] The United States Court of Appeals for the First Circuit upheld the District Court's decision.[29] The First Circuit Court of Appeals wrote, "The prohibition now codified at Section 903(1) has applied to Puerto Rico since the predecessor of that section's enactment in 1946. The statute does not currently read, nor does anything about the 1984 amendment suggest, that Puerto Rico is outside the reach of Section 903(1)'s prohibitions."[30] The Supreme Court of the United States granted certiorari and affirmed the decision of the Court of Appeals for the First Circuit.[31]

III. THE COURT'S DECISION AND RATIONALE

1. The Majority Opinion

Justice Thomas delivered the opinion of the Court, with whom Chief Justice Roberts, Justice Kennedy, Justice Breyer, and Justice Kagan

21. Appellate Brief of the Defendants-Appellants Melba Acosta-Febo at 5, Franklin California Tax-Free Trust v. Commonwealth of Puerto Rico, 805 F.3d 322 (1st Cir. 2015) (Nos. 15-1218, 15-1221, 15-1271, 15-1272).
22. *Id*.
23. *Id*.
24. *Id*.
25. Franklin California Tax-Free Trust v. Commonwealth of Puerto Rico, 85 F. Supp. 3d 577, 586 (D.P.R. 2015).
26. *Id*. at 613.
27. *Id*.
28. *Franklin California Tax-Free Trust*, 805 F.3d at 325.
29. *Id*.
30. *Id*.
31. *Puerto Rico*, 136 S. Ct. at 1941.

joined.[32] Justice Alito took no part in the consideration of the case.[33] The majority opinion began by discussing the relevant bankruptcy provisions, focusing on three main provisions: the "who may be a debtor" provision in Section 109(c), the pre-emption provision in Section 903(1), and the definition of "state" in Section 101(52).[34] Justice Thomas began by looking at the text and history of these provisions, first by citing the Constitution, which empowers Congress to establish "uniform Laws on the subject of Bankruptcies throughout the United States."[35] Further, Justice Thomas stated that Congress entered into the field of municipal bankruptcy in 1933.[36] The Supreme Court struck down Congress' first attempt at creating municipal bankruptcy law, the Court stated that Congress infringed on the States' power to, "manage their own affairs."[37] Justice Thomas asserted that it is critical to the constitutionality of municipal bankruptcy laws that the State has the first say in authorizing the entity to seek relief.[38] However, the states do not enjoy unlimited power; in a 1946 amendment, Congress made it so that federal bankruptcy laws preempt state municipal bankruptcy laws.[39] Finally, discussing the provision defining a "state," in 1984 Congress amended the definition of the word "state" to say 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."[40] It is uncontested that, before 1984, Puerto Rico was a "state" for the purpose of Chapter 9's preemption provision; accordingly, before 1984, the Bankruptcy Code would have preempted the Recovery Act, because it was a state law that would restructure debts that would bind non-consenting creditors.[41] The majority held that the respondents had a better interpretation of § 903(1).[42] Justice Thomas stated quite simply that the text of the Bankruptcy Code is both the beginning and end of the analysis.[43] He went on to state that, "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.' That exception unmistakably refers to the gateway provision

32. *Id*.
33. *Id*.
34. *Puerto Rico*, 136 S. Ct. at 1944.
35. *Id.* (citing US CONST. art. 1, § 8, cl. 4).
36. *Id*.
37. *Id.* (citing Ashton v. Cameron County Water Improvement Dist. No. One, 298 U.S. 513, 531 (1936)).
38. *Id*.
39. *Puerto Rico*, 136 S. Ct. at 1945.
40. *Id.* at 1943 (citing 11 U.S.C.A. § 101(52) (West through P.L. 114-254)).
41. *Id.* at 1945.
42. *Id.*
43. *Id.* at 1946.

in § 109, titled 'who may be a debtor.'"[44] However, while Puerto Rico is not a state for defining who may be a debtor; that does not mean that Puerto Rico is excluded from all Chapter 9 provisions.[45] The exclusion from defining debtors is simply that—an exclusion—but it does not bar Puerto Rico from any other provisions contained in the Bankruptcy Code.[46] Justice Thomas argued that "The text of the definition extends no further."[47] Next, the majority opinion discussed the arguments made in the dissenting opinion.[48] The first of these arguments is that if Puerto Rico is excluded from the gateway provision, this is the gateway into Chapter 9, and if Puerto Rico is excluded from the gateway provision, it follows that the Commonwealth is excluded from Chapter 9 in its entirety.[49] However, this argument was not well taken by the majority. Specifically, Justice Thomas argued:

> 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. 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 provision is excluded from Chapter 9 entirely. But the same cannot be said about the *State* in which that municipality is located.[50]

Further, the majority held that the gateway provision only provides for which states can authorize municipalities to file for bankruptcy; it is not a requirement to enter into Chapter 9 as a whole.[51] The court stated, "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."[52]

---

44. *Puerto Rico*, 136 S. Ct. at 1946.
45. *Id*. at 1947.
46. *Id*.
47. *Id*.
48. *Id*.
49. *Puerto Rico*, 136 S. Ct. at 1947.
50. *Id.*
51. *Id.*
52. *Id.* at 1948.

2. Dissenting Opinion

Justice Sotomayor, who was joined by Justice Ginsburg, issued the dissenting opinion.[53] The dissent began by stating, "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."[54] The dissent took note of the financial crisis in Puerto Rico, noting the importance of bankruptcy law for debtors to get a "fresh start."[55] Specifically, Justice Sotomayor noted that a business corporation can try to use bankruptcy as a means of reorganization, but if the reorganization were to fail, the corporation could default and go out of business.[56] However, this is not a possibility for public utilities, as they provide water, electricity, and transportation to the public.[57] If they were to default and shut down, it would leave the public to have to find these necessities for themselves.[58] The dissent then discussed the structure of the Bankruptcy Code, noting that it is to be read in its entirety starting with Chapter 1.[59] Chapter 1 lays out how to read the Code by stating definitions and rules of construction.[60] Specifically, the Court noted that § 109, the "who may be a debtor" provision, details for each type of debtor which chapter they should follow for filing for bankruptcy, therefore gaining the title of the "gateway" provision.[61] Following this logic, because a municipality in Puerto Rico cannot be authorized to file for municipal bankruptcy, the dissent argued that it followed that Puerto Rico would not access Chapter 9 because Chapter 1 states which chapter a debtor is to use, and Puerto Rico cannot use Chapter 9.[62] Further, the dissent articulated:

> 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.[63]

---

53. *Puerto Rico*, 136 S. Ct. at 1941.
54. *Id.* at 1949.
55. *Id.* at 1950.
56. *Id*.
57. *Id*.
58. *Puerto Rico*, 136 S. Ct. at 1950.
59. *Id.* at 1951.
60. *Id*.
61. *Id*.
62. *Id*.
63. *Puerto Rico*, 136 S. Ct. at 1952.

Additionally, the dissent argued that Section 903 is to be read in context, in order to see why it does not preempt the Recovery Act.[64] As mentioned above, Section 903 provides for a reservation of powers for the States; however, the states are limited in their power, as "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."[65] The dissent stated that this provision does not apply to Puerto Rico under the gateway provision.[66] Specifically, "This understanding of § 903 is fundamentally confirmed by the careful gateway structure the Code sets out for understanding how its chapters work together."[67] The dissent placed significant importance upon the need to read the statutes in the context of the overall statutory scheme.[68] Finally, the dissent addressed the majority's argument that if Congress had intended to exclude Puerto Rico from Chapter 9 altogether, it would have said so.[69] Notably, the dissent proffered a sticking point for this argument:

> [T]he 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. Under either interpretation the scheme has been fundamentally altered by Congress.[70]

IV. ANALYSIS

A. Introduction

In *Puerto Rico v. Franklin Tax-Free Trust*, the Supreme Court of the United States was presented with the issue of whether Puerto Rico could implement its own municipal bankruptcy laws, or if it was limited to seeking relief from Congress.[71] The Court focused solely on the text of the Bankruptcy Code in making its decision.[72] Notably, there is no legislative history to be offered for the relevant provisions, and as such, the Court was

64. *Id*. at 1951.
65. 11 U.S.C.A. § 903(1).
66. *Puerto Rico*, 136 S. Ct. at 1953.
67. *Id*.
68. *Id*.
69. *Id*.
70. *Id*.
71. *Puerto Rico*, 136 S. Ct. at 1944.
72. *Id.* at 1946.

limited to its reading of the text alone.[73] During oral arguments, Justice Kagan stated that each side had a story as to what Congress intended to do in section 903(1).[74] She indicated, "Both of you [counsel for respondents and petitioners] have stories about this, and it's not—just not clear which of you is right. And I guess what I most want to think about is this text."[75] As demonstrated by the majority and dissenting opinions, the reading of the text could result in varying outcomes.[76] The reading of the text called for a careful balance of congressional intent in addition to a consideration of federalism. Ultimately, the majority found that Congress would not have intended to give Puerto Rico a right that the states did not have, but rather Congress would have intended to put more of a limit on the Commonwealth and maintain control over the fiscal problems it faced.[77]

The precedent set by this case may have some significance in future statutory interpretation cases as the majority rejected the statutory scheme argument and focused solely on the relevant provisions in isolation. Furthermore, beyond the notable precedential possibilities, the decision in *Puerto Rico v. Franklin Tax-Free Trust* could raise important federalism questions. The decision also has a significant impact on what happens next in Puerto Rico.[78]

B. Analysis

1. Two Conflicting Views of Statutory Interpretation

Both the majority and the dissent in this case focused on the text of the relevant statutory provisions.[79] However, they each came to different conclusions regarding whether Puerto Rico was bound by the preemption provision in § 903(1).[80] The majority adopted a narrow view of the definition of the definition of "state."[81] The majority cited *Chamber of Commerce of United States of America v. Whiting*, where the Court stated, "When a federal law contains an express preemption clause, we 'focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' preemptive intent.'"[82] Based upon the narrow

73. *Id.* at 1953-54.

74. Transcript of Oral Argument at 43, Puerto Rico v. Franklin California Tax-Free Trust, 136 S. Ct. 1938 (2016) (Nos. 15-233, 15-255).

75. *Id*.

76. *See generally Puerto Rico*, 136 S. Ct. at 1938.

77. *Id.* at 1949.

78. *Id.* at 1954.

79. *See id.* at 1946, 1951.

80. *See id.* at 1949, 1954.

81. *Puerto Rico*, 136 S. Ct. at 1946.

82. Chamber of Commerce of United States of America v. Whiting, 131 S. Ct. 1968, 1977 (2011) (quoting CSX Transp., Inc. v. Easterwood, 507 U.S. 658, 664 (1993)).

reading of the text of the definition of "state" in § 101(52), the Court concluded that the definition only excludes Puerto Rico from defining who may be a debtor, but does not exclude Puerto Rico from the preemption provision.[83] The majority did not give much weight to reading the Bankruptcy Code as a statutory scheme, and in fact, stated that while, "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."[84] During oral arguments, Christopher Landau, the attorney for the petitioners, described the statutory scheme of the Bankruptcy Code as a "decision tree."[85] Mr. Landau explained that § 903(1) should not be read in isolation, but rather is better understood with the "decision tree" explanation.[86] This explanation of how to read the Bankruptcy code begins with reading the definition provided in § 101(52).[87] After reading that definition, it sends the reader to § 109(c)(2), known as the gateway provision, which states that Puerto Rico is not a "state" in terms of authorizing municipalities to enter into Chapter 9.[88] At this point, applying the suggested reasoning, the reader would determine that the "gateway"' is closed to Puerto Rico.[89] Then, when the reader would move on to § 903, it would be understood that it does not apply to Puerto Rico, because Puerto Rico was barred from passing through the "gateway" to Chapter 9.[90] By adopting the decision tree explanation, it requires both a reading of the text and a consideration of what Congress intended when they amended the definition of "state" in 1984. The dissent's reading of the statutory text adopted the "decision tree" explanation.[91] Specifically, the dissent considered the purpose of bankruptcy law.[92] "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."[93] Additionally, the dissent took into account the impact this decision would have on the Commonwealth's future.[94] By finding that Congress intended to subject Puerto Rico to the preemption provision, the

83. *Puerto Rico*, 136 S. Ct. at 1947.
84. *Id*.
85. Transcript of Oral Argument at 13, Puerto Rico v. Franklin California Tax-Free Trust, 136 S. Ct. 1938 (2016) (Nos. 15-233, 15-255).
86. *Id*.
87. *Id*.
88. *Id*.
89. *Id*.
90. Transcript of Oral Argument at 13, Puerto Rico v. Franklin California Tax-Free Trust, 136 S. Ct. 1938 (2016) (Nos. 15-233, 15-255).
91. *Puerto Rico*, 136 S. Ct. at 1949.
92. *Id.* at 1950.
93. *Id.*
94. *Id.* at 1954.

Commonwealth is left with no choice as to how to restructure their debt, except for waiting for the aid to come from Congress.[95] As stated:

> 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.'[96]

This difference in statutory construction is a display of the distinction between textualist and purposivist ideologies. Notably, this decision raises questions as to whether the court would employ a textualist approach in the event that there were more harsh results. However, while the future implications of the Court's decision are not easily identifiable, it is important to acknowledge the Court's choice to employ a strict textualist approach to the reading of the Bankruptcy Code.

The Supreme Court of the United States was faced with a question of statutory construction in *Utility Air Regulatory Group v. Environmental Protection Agency*.[97] In that case, the Court was to determine whether the general term of "air pollutant" maintained its general definition throughout the operative sections of the statute, or whether a narrower definition applied in different sections of the statute.[98] The Court held that it was reasonable for the EPA to adopt a narrower definition of the term in different sections of the statute.[99] The Court stated, "As we reiterated the same day we decided *Massachusetts v. EPA*, the presumption of consistent usage, 'readily yields' to context, and a statutory term—even one defined in the statute—'may take on distinct characters from association with distinct statutory objects calling for different implementation strategies.'"[100] In this case, the Court considered a similar question, as to whether the exclusion of Puerto Rico from Chapter 9 as per the definition of "state" wholly excludes it from Chapter 9, or whether Puerto Rico is subject to the preemption provision.[101] While the cases are not analogous, the questions of statutory construction are quite similar. However, the Court's decision in *Puerto Rico v. Franklin California Tax-Free Trust* differs from the decision in *Utility Air Regulatory Group* in that the majority looked to the provision in

95. *Id.*
96. *Puerto Rico*, 136 S. Ct. at 1954.
97. 134 S. Ct. 2427, 2441 (2014).
98. *See id.* at 2439-40.
99. *Id.* at 2442.
100. *Id.* at 2441.
101. *Puerto Rico*, 136 S. Ct. at 1942.

question in an isolated manner and applied the definition, but did not find that a narrower definition may apply.[102] While the choice to take a textualist or purposivist approach is purely ideological, as evidenced by the difference in results between the two aforementioned cases, the different results can be quite apparent, without much explanation for the differences.

2. Is the Supreme Court Still Concerned with Federalism Surrounding Chapter 9?

"From the earliest days of the Republic, the Supreme Court has recognized that the Bankruptcy Clause does *not* prevent States and Territories from enacting their own laws governing the restructuring of debts."[103] Congress first enacted legislation in 1934 to govern debts of municipalities.[104] However, the Supreme Court of the United States struck down the initial legislation.[105] "In light of the background principles of federalism reflected in the Tenth Amendment, the Supreme Court struck down the law on the ground that Congress' constitutional power over bankruptcy did not extend to this context."[106] The Supreme Court was concerned with preserving states' rights when it came to municipal bankruptcy.[107] In 1934, Congress implemented a bankruptcy law that was upheld by the Supreme Court.[108] In *United States v. Bekins*, the Supreme Court of the United States considered the new 1934 bankruptcy law.[109] Specifically, the Court stated, "The statute is carefully drawn so as not to impinge upon the sovereignty of the State. The State retains control of its fiscal affairs. . .It is of the essence of sovereignty to be able to make contracts and give consents bearing upon the exertion of governmental power."[110] Notably, the Supreme Court was concerned with preserving sovereignty and was not in favor of a wide sweeping preemption, meaning that the Court did not want federal bankruptcy law to always preempt state laws.[111] In *Faitoute Iron Steel Co. v. Asbury Park, N.J.*,[112] the Court explained that the municipal bankruptcy laws were not to be so wide

---

102. *Id.* at 1946.

103. Appellate Brief of Appellants at 1, Franklin California Tax-Free Trust v. Commonwealth of Puerto Rico, 805 F.3d 322 (1st Cir. 2015) (Nos. 15-1221, 15-1218).

104. *Id*.

105. *See Ashton*, 298 U.S. at 530.

106. Appellate Brief of Appellants at 1, Franklin California Tax-Free Trust v. Commonwealth of Puerto Rico, 805 F.3d 322 (1st Cir. 2015) (citing *Ashton*, 298 U.S. at 529-32).

107. *See, e.g.*, *Ashton*, 298 U.S. at 530.

108. United States v. Bekins, 304 U.S. 27, 51-52 (1938).

109. *Id*.

110. *Id*.

111. Appellate Brief of Appellants at 21, Franklin California Tax-Free Trust v. Commonwealth of Puerto Rico, 805 F.3d 322 (1st Cir. 2015) (Nos. 15-1221, 15-1218).

112. 316 U.S. 502 (1942).

reaching as to supersede state laws regarding restructuring municipal debt.[113] The Court stated:

> Can it be that a power that was not recognized until 1938, and when so recognized, was carefully circumscribed to reserve full freedom to the states, has now been completely absorbed by the federal government—that a state which. . .has. . ..devised elaborate machinery for the autonomous regulation of problems as peculiarly local as the fiscal management of its own household, is powerless in this field? We think not.[114]

It is the purpose of the Tenth Amendment of the United States Constitution to establish a division in power between the federal government and state governments.[115] In analyzing the Tenth Amendment in relation to municipal bankruptcy, the Supreme Court has tended to err on the side of the states' rights as mentioned above.[116] However, this most recent Supreme Court decision raises a question as to whether maintaining federalism and reinforcing state sovereignty is still of importance to the Supreme Court in relation to municipal bankruptcy.

The role of federalism was discussed in the arguments of both the respondents and the petitioners.[117] However, throughout the Court's opinion, these issues of federalism were not addressed; additionally, the Court decided to restrict Puerto Rico's rights and provide no means of restructuring its debt with the exception of waiting on congressional action.[118] Justice Sotomayor raised an interesting question to Matthew McGill, the attorney for the respondent, when she asked, "It's like the Tenth Amendment right of States to deal with their municipalities consistent with the Constitution. Where does that leave—you can make uniform-bankruptcy laws, but nothing about that permits you to impair the rights of States so drastically?"[119] This question is an important one, questioning why Congress can now impinge so greatly upon the rights of Puerto Rico without stating an intent to do so, and this decision is against the interest of

---

113. Appellate Brief of Appellants at 21, Franklin California Tax-Free Trust v. Commonwealth of Puerto Rico, 805 F.3d 322 (1st Cir. 2015) (Nos. 15-1221, 15-1218).

114. Faitoute Iron & Steel Co. v. Asbury Park, N.J., 316 U.S. 502, 508-09 (1942).

115. *See* U.S. CONST. amend. X.

116. *See, e.g.*, *Ashton*, 298 U.S. at 530; *see also Faitoute*, 316 U.S. at 508-09.

117. *See* Appellate Brief of Appellants at 16, Franklin California Tax-Free Trust v. Commonwealth of Puerto Rico, 805 F.3d 322 (1st Cir. 2015) (Nos. 15-1221, 15-1218); *see also* Transcript of Oral Argument at 35, Puerto Rico v. Franklin California Tax-Free Trust, 136 S. Ct. 1938 (2016) (Nos. 15-233, 15-255).

118. *See Puerto Rico*, 136 S. Ct. at 1954.

119. *See* Transcript of Oral Argument at 49, Puerto Rico v. Franklin California Tax-Free Trust, 136 S. Ct. 1938 (2016) (Nos. 15-233, 15-255).

federalism as previously stated by the Court as mentioned above.[120] Based on the Court's decision, it raises a question as to the state of Puerto Rico's sovereignty.

3. Puerto Rico's Future

The Supreme Court handed down the decision in *Puerto Rico v. Franklin California Tax-Free Trust* just days after handing down another opinion that had a significant impact on the Commonwealth.[121] Days earlier, the Supreme Court issued its opinion in *Puerto Rico v. Sanchez Valle*,[122] in which it held that the double jeopardy clause bars Puerto Rico and the United States from both prosecuting a single person for the same conduct under equivalent criminal laws.[123] The Court's decision "appears to diminish the constitutional stature that the Puerto Rican government thought it has had for nearly seven decades."[124] The issue before the Court was whether under the dual-sovereignty doctrine, Puerto Rico could successively prosecute crimes in violation of Puerto Rico law.[125] The question does not turn on the ordinary understanding of sovereignty, "[r]ather the issue is only whether the prosecutorial powers of the two jurisdictions have independent origins—or, said conversely, whether those powers derive from the same independent origins."[126] The Court determined that Puerto Rico and the United States cannot successively prosecute a single defendant for the same crime, because "the oldest roots of Puerto Rico's power to prosecute lie in federal soil."[127] These recent Court decisions have made it abundantly clear what the Court believes the role of United States territories to be.[128] "It is now clear, in the wake of the Court's actions in these cases, that the only way for Puerto Rico to gain an equal stature within the U.S. governmental structure is to seek statehood—a highly controversial issue among Puerto Ricans."[129] In *Puerto Rico v. Sanchez Valle*, the Court stated that it was not diminishing the self-

120. *See, e.g.*, *Ashton*, 298 U.S. at 530; *see also Faitoute*, 316 U.S. at 508-09.

121. Lyle Denniston, *Opinion Analysis: Puerto Rico's Debt Woes Left to Congress*, SCOTUSBLOG (June 13, 2016, 2:03 PM), http://www.scotusblog.com/2016/06/opinion-analysis-puerto-ricos-debt-woes-left-to-congress/ [hereinafter Denniston, *Puerto Rico's Debt Woes*].

122. 136 S. Ct. 1863 (2016).

123. *Id.* at 1867-68.

124. Lyle Denniston, *Opinion Analysis: Setback for Puerto Rico's Independent Powers*, SCOTUSBLOG (June 9, 2016, 2:27 PM), http://www.scotusblog.com/2016/06/opinion-analysis-setback-for-puerto-ricos-independent-powers/.

125. *See* Puerto Rico v. Sanchez Valle, 136 S. Ct. 1863, 1867-68 (2016).

126. *Id*.

127. *Id*.

128. *See* Denniston, *Puerto Rico's Debt Woes*, *supra* note 121.

129. *Id*.

governing powers of the Commonwealth.[130] The Court in *Sanchez-Valle* described Puerto Rico's establishment, and drafting of their Constitution, noting that the "constitutional developments were of great significance."[131] However, the implications of the Court's decision in that case are in fact limiting to the Commonwealth, just as the decision in *Puerto Rico v. Franklin California Tax-Free Trust*. The Supreme Court's decision to exclude Puerto Rico from the Bankruptcy Code for purposes of Chapter 9 leaves Puerto Rico with little to do for itself in order to solve its financial crisis.[132] As indicated by Justice Sotomayor's dissenting opinion, without access to a debt restructuring process, Puerto Rico is left to wait on congressional action.[133] More specifically, the dissenting opinion stated, "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."[134] Based on the Court's recent decisions regarding Puerto Rico, the future of the Commonwealth is uncertain. What is certain is that the public utility companies are in need of restructuring their debts, because without adjusting their debts, the Commonwealth will be left without necessities for everyday life.

V. CONCLUSION

As quoted earlier, Justice Scalia said, "Congress. . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes."[135] However, it appears that Congress did alter the fundamental details of municipal bankruptcy for Puerto Rico, in a provision that they provided little explanation for.[136] As a result, the Court was faced with the issue of determining which reading of the statutory scheme Congress intended.[137] The Supreme Court of the United States' decision in *Puerto Rico v. Franklin California Tax-Free Trust* has a significant impact on the future of the public utility companies in the Commonwealth of Puerto Rico.[138] The Court determined that while Puerto Rico is excluded from Chapter 9 and cannot authorize its municipalities to file for bankruptcy, the

130. *Sanchez Valle*, 136 S. Ct. at 1874.
131. *Id*.
132. *See Puerto Rico*, 136 S. Ct. at 1954.
133. *Id.*
134. *Id*.
135. *Whitman*, 531 U.S. at 468.
136. *See Puerto Rico*, 136 S. Ct. at 1953.
137. *Id.* at 1945.
138. *Id.* at 1954.

Commonwealth is also preempted from creating its own bankruptcy laws in order for the municipalities to restructure their debts.[139] The Court found that the amended definition of "state" to exclude Puerto Rico from defining who may be a debtor was not so broad as to exclude Puerto Rico from the preemption provision.[140] As a result of the Court's decision, the Commonwealth is now limited to waiting on congressional action for relief from its debts.[141]

BRITTNEY E. CIARLO

139. *Id.* at 1942.
140. *Id*.
141. *Puerto Rico*, 136 S. Ct. at 1954.