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PROMESA and Puerto Rico's Political Future.

Two important events have occurred in Puerto Rico in the last couple months that should be noted. First, on May 3, 2017 the Oversight and Management Board created by the federal legislation PROMESA, filed in Federal District Court of Puerto Rico under its Title III provisions for the protection of the Commonwealth of Puerto Rico from its bondholders and creditors.

This bankruptcy-like proceeding under Judge Laura Taylor Swain promises to be a hard and complex litigation for all parties involved. Second, on June 11, 2017 a plebiscite on the various status options for Puerto Rico was held in which statehood was overwhelmingly favored by a third of able voters, notwithstanding the incoherent call for abstention by the opposing political parties and the bloated voting lists.

Although at first glance apparently unrelated, both events need to be seen as interrelated pieces on the ongoing puzzle that is Puerto Rico's political status question and fiscal and economic spiraling downturn.

As we know, political and legal processes and economic conditions affect one another, at times in unforeseen ways. In July 2016, Congress legislated PROMESA to create an Oversight and Management Board, expressly based on the authority provided by Article IV, Section 3, of the United States Constitution.

Together with the Supreme Court's opinion *Commonwealth of Puerto Rico v. Sanchez Valle* rejecting Puerto Rico's claim of sovereignty for purposes of avoiding the application of the constitutional protection against double jeopardy in criminal cases, this legislation finally put to bed the midsummer's nightmare of those that for decades have argued for the oxymoronic status of "Estado Libre Asociado".

Today, there is no doubt that legally Puerto Rico has been a territory under the plenary powers of Congress since 1898. In this regard, the long held historic fallacy argued by the pro-territory Popular Democratic Party that Puerto Rico had achieved some sort of political autonomy in 1952 not subject to Congress has finally been put to rest.

The underlying causes for the political and fiscal/economic crisis of Puerto Rico can be summarized as a reliance by a top heavy public sector dependent on debt financing and federal transfers and tax exemptions as a strategy for economic development for the last fifty years; a weak private sector dependent on government contracts and patronage; an incompetent and/or corrupt public administration looking out for short term political advantages and private enrichment at the expense of long-term stability and development; a political culture in Washington, D.C. indifferent to the inherent limitations of territorial status, and populist grandstanding by many leading Puerto Rico politicians.

It is a wonder that it took so long for the bubble to burst. It should be noted as a matter of historical record that our fiscal predicament is partly due to the triple exemption tax advantages Puerto Rico bonds had in the municipal bond market for the benefit of all parties, while the going was good. That

is, it is the territorial status that has allowed for a beneficial taxation treatment by Congress and the Treasury Department for investors – bondholders as well as “foreign” corporations using Puerto Rico as a tax haven. We should not ignore the fact that the responsibility for our current woes is shared by many.

There are those — including former New York Gov. George Pataki — that argue now acting as a spokesperson for certain bondholders – that Puerto Rico needs to attend its economic and fiscal problems before addressing the political question of our status. Although there is something to be said to the fact that a change in Puerto Rico’s political status under current conditions may seem politically untimely, it is also evident that no headway in our economic development can be achieved unless we address the issue of long-term political stability.

It is a chicken and egg question. As the Bush (2007) and Obama (2011) White House Reports on Puerto Rico made abundantly clear, our political lack of definition has been holding back our economic development. A petition for a change in Puerto Rico’s political status will always be untimely for somebody, somewhere.

In this context, the June 11, 2017 plebiscite ratifying the 2012 plebiscite favoring statehood, should be understood as a petition by the people of Puerto Rico that our current territorial status and its lack of economic development needs to be addressed by Congress, the sooner the better for all concerned.

THE HILL

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