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PROMESA - PUERTO RICO

Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC

**Supreme Court of the United States - June 1, 2020 - S.Ct. - 2020 WL 2814298 - 20 Cal.
Daily Op. Serv. 4745**

Financial Oversight and Management Board for Puerto Rico filed a petition under Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) in debt adjustment proceedings for the Commonwealth of Puerto Rico.

Creditors filed motion to dismiss, asserting that Board members were not appointed in accordance with Appointments Clause.

The United States District Court for the District of Puerto Rico denied the motion. Creditors appealed. The United States Court of Appeals affirmed in part and reversed in part. Certiorari petitions filed by the Board, the United States, and creditors were granted.

The Supreme Court held that:

- The Appointments Clause applies to Officers of the United States who carry out their powers and duties in or in relation to Puerto Rico; but
- Local officers that Congress vests with primarily local duties in Puerto Rico are not Officers of the United States; and
- Board members were not Officers of the United States.

When Congress creates local offices using its unique constitutional power to legislate for the District of Columbia or the Territories, the officers exercise the power of the local government, not the federal government.

While the Appointments Clause restricts the appointment of Officers of the United States with duties in or related to the District of Columbia or the Territories, it does not restrict the appointment of local officers that Congress vests with primarily local duties.

Board members of Financial Oversight and Management Board for Puerto Rico, who were appointed pursuant to Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), which provided that the President could appoint Board's seven members without the advice and consent of the Senate, were not "Officers of the United States," within meaning of Appointments Clause; Board's statutory responsibilities consisted of primarily local duties, namely, representing Puerto Rico in bankruptcy proceedings and supervising aspects of Puerto Rico's fiscal and budgetary policies.