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Jackson & Campbell, P.C.
2300 N Street, N.W.
Suite 300
Washington, D.C. 20037-1194
202.457.1600 (p)

SCOTUS Opinion: Court Upholds Puerto Rico's Financial Oversight and Management Board Against Appointments Clause Challenge

2 Jun 2020

After Puerto Rico suffered a fiscal crisis starting in 2006, Congress enacted the Puerto Rico Oversight, Management, and Economic Stability Act, creating a Financial Oversight and Management Board that would be able to file bankruptcy on behalf of Puerto Rico or its instrumentalities, among other things, to regain financial stability. The members of the Board were to be appointed by the President without Senate advice and consent. President Obama appointed the Board members, and the Board thereupon filed bankruptcy petitions on behalf of Puerto Rico. Several creditors moved to dismiss, arguing that the Board members violated the Constitution's Appointments Clause, and had to be subject to Senate review.

The First Circuit ruled for the creditors, and a unanimous Court, in *Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*, held that the Appointments Clause did not apply to the Board because the Board's members were local officers vested with local duties, and not federal officers vested with the full powers of the national government. Justice Breyer's opinion observed that the Board operated according to Puerto Rican law, not federal law, and it only represented the interests of Puerto Rico. Thus, as purely local officers, the Board's members did not have to be vetted by the Senate. Justice Thomas concurred in the judgment, arguing that the Board members were not subject to the Appointments Clause because the members were not "Officers of the United States" as the term was originally understood. Justice Sotomayor also concurred in the judgment, arguing that the history of Puerto Rico's home rule, and the agreements it forged with the United States, should have played a central role in the decision.

The opinion of the Court is here: https://www.supremecourt.gov/opinions/19pdf/18-1334_8m58.pdf

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TAGGED: scotus, Officers Of The United States, Appointments Clause, Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment LLC, FInancial Oversight and Management Board, Puerto Rico Oversight Management and Economic Stability Act, advice and consent