

Attorneys React To High Court's Puerto Rico Debt Ruling

By **Edrienne Su**

Law360, New York (June 13, 2016, 7:24 PM ET) -- The U.S. Supreme Court ruled Monday that a Chapter 9 Bankruptcy Code provision preempts the restructuring law that Puerto Rico, which is facing a \$70 billion debt crisis, had enacted in 2014. Here, attorneys tell Law360 why the decision is significant.

David Dubrow, Arent Fox LLP

"The Supreme Court's decision holding that Puerto Rico may not pass its own bankruptcy law for its instrumentalities places greater significance on whether the Senate will pass the recent PROMESA bill passed by the House. Only congressional action will allow the commonwealth and its instrumentalities to legally restructure their debt in a manner that binds all creditors and allows for a long-term solution to the commonwealth's severe fiscal crisis. Absent congressional action, a prolonged period of defaults and litigation is virtually inevitable."

Kristin Going, Drinker Biddle & Reath LLP

"The Supreme Court's decision today in *Puerto Rico v. Franklin California Tax-Free Trust* reaffirms authority of Congress (and the Bankruptcy Code) as the sole bankruptcy scheme for sovereign entities. Taking *Franklin* together with last week's decision in *Puerto Rico v. Sanchez Valle*, the Supreme Court has made clear that Puerto Rico is not its own sovereign body. In the restructuring context, this means that Chapter 9 remains off-limits to Puerto Rico unless and until Congress decides otherwise, and it has been given the opportunity to make that decision with PROMESA, so presumably we will have our answer soon."

William Peterson, Morgan Lewis & Bockius LLP

"The case presents the familiar tension between text and purpose in statutory interpretation. The Bankruptcy Code defines 'state' to include Puerto Rico 'except for the purpose of defining who may be a debtor under Chapter 9.' Justice [Clarence] Thomas, writing for the court, holds that Puerto Rico remains subject to a provision of Chapter 9 preempting state municipal bankruptcy legislation. In dissent, Justice [Sonia] Sotomayor argues that under the broader statutory context (and noting the real-world consequences), 'Congress excluded Puerto Rico from Chapter 9 for all purposes.' The practical consequences for Puerto Rico are significant, but the legal analysis involves routine statutory interpretation."

Mark D. Silverschotz, Anderson Kill PC

“Today’s decision confirms what most bankruptcy professional have already known: The 1984 Bankruptcy Code Amendments excluding Puerto Rico and D.C. from the definition of 'state' for purposes of authorizing Chapter 9 filings by a 'municipality' was devoid of meaningful legislative history, foolish in its enactment, and unequivocally clear in its expression. Justice Thomas’s well-reasoned 'structuralist' analysis puts the issue squarely back with Congress. Justice Sotomayor’s dissent states that 'the majority’s plain meaning syllogism is not without force. But it ignores this court’s repeated exhortations to read statutes in context of the overall statutory scheme,' but her argument — given the unequivocal language at issue — could not even convince Justices [Elena] Kagan and [Stephen] Breyer.”

Suzanne Uhland, O’Melveny & Myers LLP

“It's not completely unexpected that the court applied a plain reading of the statute and found preemption. Why Congress excluded Puerto Rico from Chapter 9 eligibility in the 1984 Amendments to the Bankruptcy Code remains a mystery — there is simply no guidance from the legislative history. But with PROMESA through the House, and last week's sovereign immunity ruling likely to blunt many challenges, Puerto Rico should soon have a restructuring regime, albeit with more federal oversight than politically popular.”

Carolyn Walsh, Steptoe & Johnson LLP

“Two important decisions regarding Congress’ powers over Puerto Rico have been issued by the Supreme Court in less than a week. Last week in a case involving the Double Jeopardy Clause, the court held that Congress is the 'ultimate source of power' over Puerto Rico. In today’s decision, the court ruled that federal law preempts Puerto Rico from enacting its own municipal bankruptcy schemes. Puerto Rico’s debt may only be restructured through consensual agreements among the parties or an act of Congress. PROMESA, overwhelmingly approved in the House last Thursday, grants such authority combined with an independent oversight board. PROMESA is now under consideration in the Senate.”

--Editing by Edrienne Su.
