FEDERAL BAR ASSOCIATION

Puerto Rico Chapter

Good morning. My name is Veronica Ferraiuoli. I appear before you on behalf of the PUERTO RICO CHAPTER OF THE FEDERAL BAR ASSOCIATION (the "FBA").[1]

The FBA is a voluntary, non-partisan organization whose main objective is to serve as the representative of the Federal legal profession in Puerto Rico. Currently, our Chapter boasts about 800 members and it includes practitioners, judges and students from all political ideologies.

As a representative of the FBA, I am not here to advocate any particular status choice. However, I am here to urge you to protect the integrity and the jurisdiction of the United States District Court for the District of Puerto Rico as an integral part of the proceedings before this Subcommittee.

Since all of Puerto Rico's status proposals involve changes in federal law and policy, Puerto Ricans need to know federal positions on the proposed options so they can make an informed, meaningful, and fair choice.

The options under H.R. 900 are clear with respect to the jurisdiction of the federal court in Puerto Rico. If the status quo option is chosen by the people of Puerto Rico, the federal court in Puerto Rico will remain unchanged by this choice. If the people of Puerto Rico choose statehood as their option, Article III of the United States Constitution and federal law will determine the federal court's jurisdiction. If independence is the choice of the people of Puerto Rico, international law will prevail and will divest the federal judiciary of jurisdiction in Puerto Rico.

In contrast, the Constitutional Convention to be held under H.R. 1230 provides no safeguard or guarantee of the federal court's continued jurisdiction in Puerto Rico. Without such a guarantee- that the federal court's current jurisdiction will be respected as long as Puerto Ricans continue to be citizens of the United States-, the FBA cannot support this bill.

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[1] The position taken herein is that of the Puerto Rico Chapter of the Federal Bar Association only. The National Council of the Association has not taken any public position regarding these bills.

The History of Federal Jurisdiction in Puerto Rico

The U.S. District Court for the District of Puerto Rico has its genesis in the U.S. Provisional Court for the Department of Puerto Rico. It was established by Governor Davis on June 27, 1899 with judicial power extending to all cases that would otherwise fall within the jurisdiction of the United States circuit or district courts, over violations to the United States Constitution and all common law offenses.[2] The Provisional Court followed the same law and equity principles as the United States courts and, for its procedures, rules, and case management, it was to follow as closely as possible those of the federal courts. Three judges were appointed to the Provisional Court, who were vested the with the same powers as the judges of the other federal circuit or district courts. Spanish citizens still residing in the Island welcomed the Provisional Court; they saw the federal court as the only forum which would guarantee their property rights under the Treaty of Paris. The Provisional Court was, thus, the safe heaven of foreigners seeking protection from the perceived injustices of the local governing body.

Puerto Rico was under military rule from October 18, 1898 through April 30, 1900. On May 1, 1900, the Foraker Act came into effect.[3] This first Organic Act established that the Island was a territory belonging to the United States and contained no provisions for the Island's political development towards statehood or independence. Puerto Ricans were denied U.S. citizenship at that time; a political body was created under the name of the "People of Porto Rico" entitled to the protection of the United States, with no provisions for the implementation of the United States Constitution or the Bill of Rights.

With respect to the federal judiciary, Congress provided for the judicial District of Porto Rico, created pursuant to the Territorial Clause of the United States Constitution, to be the successor of the Provisional Court. Although, this court initially enjoyed the same ordinary jurisdiction on all matters that would come before the district courts or the circuit courts of the United States, Congress extended its jurisdiction to civil matters "where the parties or either of them, are citizens of the United States, or citizens or subjects of a foreign State or States, wherein the matter in dispute exceeds" $1,000.[4] Under this expanded diversity jurisdiction, United States citizens residing in Puerto Rico were granted the option

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2 General Order No. 88, San Juan, P.R. June 27, 1899, Brigadier General George W. Davis.

3 Foraker Act, Ch. 191, 31 Stat. 77, 48 U.S.C. § 731; Organic Act of 1099, April 12, 1900, Historical Documents, P.R. Statutes Annotated, Vol. I, 24-29 (1999).

4 An Act of Congress of March 2, 1901, P.R. Statutes Annotated, Historical Documents, Vol. I, 52-54.

of suing in the insular courts or in federal courts, a right not extended to Puerto Ricans.[5] The establishment of a federal forum where foreign and U.S. citizens could take their civil and constitutional claims proved to be a necessary tool to attract foreign capital since American investors felt wary of a language they did not understand and a legal system with unfamiliar procedures.[6]

It was not long after the Foraker Act came into effect when the deficiencies of the governmental structure established thereunder came to light and local voices started crying out for reform. The structure of the Puerto Rico district court was one of the matters that often came up during the debates to amend the Foraker Act. For example, the Olmstead Bill to amend the Foraker Act, introduced in March 1910, included a clause to limit the federal court's diversity jurisdiction to causes involving American citizens who were not domiciliaries of Puerto Rico.[7] The bill for a new organic act introduced in 1912 by Senator Jones also originally included a provision to limit diversity jurisdiction in the same manner provided for in the Olmstead Bill.[8]

During this period, the federal court came under strong opposition from local institutions. On March 9, 1915, the P.R. House of Delegates approved a resolution calling for the President and Congress to grant Puerto Rico a republican form of government; and further called for the "exclusive jurisdiction of the Puerto Rico Supreme Court. . . in all matters pertaining to the District and Circuit Courts of the United States."[9] In 1916, the Puerto Rico Bar Association publicly supported the abolition or limitation of the federal court's jurisdiction in Puerto Rico stressing the efficiency and integrity of the insular court judges and the problems caused by the use of the English language in the federal court on the Island, objected to the court's broad jurisdiction, and recommended that the Puerto Rico Supreme Court hear all cases involving federal questions.[10] On April 18, 1916, the House of Delegates again called for the suppression of the federal court in Puerto Rico and the transfer of its jurisdiction to the Puerto Rico Supreme Court based on the

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5 José Trias Monge, Historial Constitucional de Puerto Rico, Vol. I, (Ed. U.P.R. 1980), at 295.

6 Guillermo A. Baralt, History of the Federal Court in Puerto Rico: 1899-1999 (Publicaciones Puertorriqueñas 2004), at167-168.

7 The Olmstead Bill had various versions. The principal ones were H.R. 22554 and H.R. 23000, 61st Cong., 2nd Session.

8 H.R. 13818, 63rd Cong., 2nd Session.

9 Trias Monge, Historia Constitucional de Puerto Rico, Vol. II (Ed. U.P.R. 1981), at 61.

10 Baralt, op. cit., at 161.

later's "prestige".[11]

The Organic Act of 1917 came into effect on March 2, 1917.[12] The final, approved version of the Organic Act of 1917 ratified the presence of the federal court in Puerto Rico, even over the strenuous objections of the House of Delegates and of the Puerto Rico Bar Association and their requests for the elimination of the federal court. The federal court was granted jurisdiction over "all controversies [exceeding $3,000] where all of the parties on either side of the controversy are citizens or subjects of a foreign State or States, or citizens of a State, Territory, or District of the United States not domiciled in Puerto Rico" and "of all controversies in which there is a separable controversy involving such jurisdictional amount and in which all of the parties on either side of such separable controversy are citizens or subjects of the character aforesaid."[13] This notwithstanding, the United States Supreme Court did limit the federal court's jurisdiction soon thereafter. In late June 1920, the Supreme Court interpreted the Organic Act of 1917 to exclude from federal jurisdiction those cases involving aliens domiciled in Puerto Rico.[14] A year later, that court also found federal jurisdiction to have been denied to American citizens domiciled in Puerto Rico.[15]

The federal court's jurisdiction remained basically unchanged through the status proceedings related to Public Law 600 and the establishment in 1952 of the Commonwealth of Puerto Rico, except for one thing: Public Law 600 granted the federal court in Puerto Rico jurisdiction over diversity cases where neither of the parties were residents of Puerto Rico, even if they resided in the same state.[16] But the ink was not yet dry on Public Law 600 when the jurisdiction of the federal court was challenged. Less than ten years after its enactment, changes to the court's jurisdiction were prominently included in the amendments to Public Law 600 contained in the Fernos-Murray Bill; the applicable provisions provided for the federal court for the District of Puerto Rico to share the same jurisdiction as those of the other States. Federal jurisdiction was also challenged in court, where it was alleged that, as a result of the creation of the Commonwealth, Congress had

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11 Trias Monge, Historia Constitucional de Puerto Rico, Vol. II (Ed. U.P.R. 1981), at 61-62.

12 Organic Act of 1917, March 2, 1917, Ch. 145, 39 Stat. 951.

13 Organic Act of 1917, Sec. 41.

14 Agüeros v. Sanjurjo, 11 P.R. Fed. 574 (1920).

15 Alvarez v. Madera, 12 P.R. Fed. 278 (1921).

16 This special grant of jurisdiction, which was unique to Puerto Rico's district court, was repealed by Public Law 91-272 of June 2, 1970, 84 Stat. 294, § 13.

voluntarily and irrevocably granted Puerto Rico full and absolute responsibility over all internal affairs and, thus, abandoned federal jurisdiction over matters involving strictly Commonwealth law. None of these attempts prospered.

Not long after, though, the federal court in Puerto Rico underwent an important transformation. On September 12, 1966, Public Law 89-571 was signed, making judiciary appointments in the United States District Court for the District of Puerto Rico lifetime appointments under Article III of the United States Constitution. The Senate Report stated that

> Federal litigants in Puerto Rico should not be denied the benefit of judges made independent by life tenure from the pressures of those who might influence his chances of reappointment, which benefits the Constitution guarantees to the litigants in all other Federal courts.[17]

Another reason for lifetime appointment was the following:

> the court is now the only judicial agency on Puerto Rico which is independent of the Commonwealth government and it will aid the district judges to perform their functions impartially, particularly in those cases involving the Federal Government on one side and the Commonwealth government on the other if they have the full independence inherent in a lifetime tenure.[18]

At that time, the prototypical petitioners before the federal court also began to change. After the enactment of the 1964 Civil Rights Act, the number of cases seeking redress from Commonwealth action filed before the federal court increased substantially. In addition, the court has experienced an increase in the filing of constitutional challenges to both federal and Commonwealth law.

What began as a court for the foreigners and the wealthy, has become the court of choice for persons seeking redress or protection from Commonwealth action. However, even in the face of the growing popularity and prestige of the Puerto Rico federal court in the minds of the general population, limitations to its jurisdiction continue to be advanced. For example, in the 1998 plebiscite on status, the Popular Democratic Party proposed a new Commonwealth providing that, while Puerto Ricans will continue to be citizens of the United States by birth, the federal court's jurisdiction will be limited to matters arising from the United States

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17 1966 U.S. Cong. and Adm. News 2787.

18 Id., at 2788.

Constitution and whichever federal laws apply in Puerto Rico and not in violation with the laws of the Commonwealth of Puerto Rico.[19] It would appear that- under this proposal- the federal court in Puerto Rico would be divested of diversity jurisdiction. In addition, it appears that- under this proposal- the federal court would lack jurisdiction over statutory challenges to Commonwealth law, such as actions under the 1964 Civil Rights Act. Further, under this proposal, any laws that the Commonwealth might enact in the future would strip the federal court of its jurisdiction under the Constitution and federal laws of the United States.

Despite a history of constant attempts to limit the jurisdiction of the federal court in Puerto Rico, it currently holds a privileged place among the federal district courts in the United States' territories or commonwealth in affiliated unions with the United States. The territory of American Samoa has no federal district court. On the other hand, while the territories of the Commonwealth of the Northern Mariana Islands, Guam and the U.S. Virgin Islands do have federal district courts, they are territorial courts in every sense of the word. Although they enjoy the same jurisdiction as all other United States district courts, they are also courts of general jurisdiction for all causes which jurisdiction is not otherwise vested in the local courts and their judges are appointed to ten-year terms.[20] In contrast, the District Court for the District of Puerto Rico is an Article III court, with all the benefits and limitations appurtenant thereto.

The very differences which have been used in support of the integration of federal jurisdiction to the local court system, have placed the federal forum in a privileged place within the life of the citizens of Puerto Rico. The federal right to a jury trial in civil cases- unavailable in local court- has made the federal court the forum of choice for plaintiffs in diversity cases, in light of the inadequate damage determinations made by local courts. This notwithstanding, the federal court continues to be the preferred forum for American and foreign corporations, whose language and practice are usually more familiar than that in local courts. Moreover, the fact that Commonwealth judges are appointed for terms- as opposed to lifetime tenure- has led to a perception of politization of the local judiciary since they depend on the favor of the Executive to be reappointed and of the Legislative Assembly to be confirmed.

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19 Governor Acevedo Vilá, the proponent of H.R. 1230, has recently stated that the new "Commonwealth status" he proposes is that adopted by his party's governing board on October 18, 1998, and included in his party's platforms of 2000 and 2004. The President's Task Force and the Department of Justice called this proposal's constitutionality into question because, among other reasons, it would empower Puerto Rico to limit the jurisdiction of federal courts and nullify the application of federal laws in many areas.

20 48 U.S.C. § 1821 et seq. (District for the Northern Mariana Islands); 48 U.S.C. § 1612 et seq. (District for the Virgin Islands); 48 U.S.C. § 1424 (District of Guam).

Conclusion

Puerto Rico remains subject to federal powers under the Territory Clause of the United States according to the Supreme Court, Justice and State Departments, Congressional Research Service, Government Accountability Office, and successive presidents. The government initially established pursuant the Foraker Act, and continued by the Puerto Rican Federal Relations Act, left many questions unanswered regarding the relationship between Puerto Rico and the United States. Professor Guillermo A. Baralt summarizes some of these questions as follows:

> Does the Constitution of the United States follow the flag? What is the nature and scope of Congress in governing Puerto Rico? Do constitutional amendments apply to the territory of Puerto Rico? What is the constitutionality of this new territorial status, or of the limitations on the rights of the citizens of Puerto Rico?[21]

More than 100 years later and substantial changes to the law, we are still grappling with these questions.

However, we do know what role that the federal court plays in this relationship. The federal system interacts and coexists with local law. It has become the preferred forum for the people of Puerto Rico to obtain relief for their grievances. It has become an integral part of the system of justice of Puerto Rico- despite all attempts at limiting or abolishing it. More than in any State, it has come to represent the liberties guaranteed by the United States Constitution and the federal laws.

For this reason, the FBA cannot support H.R. 1230. We cannot support a bill which, unlike H.R. 900, fails to guarantees the continued existence of a federal court system in Puerto Rico with jurisdiction consistent with that of all States so long as Puerto Ricans continue to be United States citizens.

I thank you for your time.

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[21] Baralt, op. cit., at 125-126.