Nos. 23-674 & 23-678

IN THE

Supreme Court of the United States

RAFAEL HERNÁNDEZ-MONTAÑEZ,

Petitioner,

v.

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,

Respondent.

PEDRO PIERLUISI, GOVERNOR OF PUERTO RICO, *et al.*,

Petitioners,

v.

FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

The Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA") requires the Governor of Puerto Rico to submit to the Financial Oversight and Management Board a "formal estimate" of the impact of any new law on expenditures and revenues in the Commonwealth. *See* 48 U.S.C. § 2144(a)(2)(A). In this case, the Governor did not provide the requisite estimate because he believed it would be "difficult" to determine the fiscal effects of a law known as Act 41 without performing a "comprehensive economic analysis." The courts below held that the Governor did not satisfy his obligation.

The Questions Presented are:

1. Was the case below properly assigned to the Article III district judge overseeing Puerto Rico's debt-restructuring cases, who confirmed the plan of adjustment that Act 41 would impair or defeat?

2. Did the Governor violate 48 U.S.C. § 2144(a)(2)(A) when he failed to submit a formal estimate of Act 41's impact on revenues and expenditures?

RULE 29.6 STATEMENT

Respondent the Financial Oversight and Management Board for Puerto Rico is not a nongovernmental corporation and is therefore not required to submit a statement under Supreme Court Rule 29.6.

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BRIEF IN OPPOSITION

Respondent respectfully submits that the petitions for a writ of certiorari should be denied.

INTRODUCTION

The Governor of Puerto Rico and the Speaker of the Puerto Rico House each seek certiorari on the ground that the wrong Article III judge was supposedly assigned to their case. That question does not meet any of the traditional criteria for certiorari, and there is no need for this Court to micromanage the judicial-assignment process. In all events, the case was properly assigned to the Honorable Laura Taylor Swain, the Article III judge appointed by the Chief Justice to preside over Puerto Rico's debt-restructuring case.

The Petitions center on 48 U.S.C. § 2166(a)(2), a rarely litigated sub-subsection of the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA"). Section 2166(a)(2) grants the district courts jurisdiction over any case "related to" a debt-restructuring case brought under PROMESA. If a case is related to the Commonwealth's restructuring case, it is filed as an adversary proceeding and assigned to Judge Swain.

Below, the Financial Oversight and Management Board for Puerto Rico (the "Board") sued the Governor for violating another PROMESA provision, 48 U.S.C. § 2144(a)(2)(A), which requires the Governor to submit a "formal estimate" of the fiscal impact of any new Commonwealth law. The lower courts held that the

Board's claim was related to the Commonwealth's restructuring case within the meaning of § 2166(a)(2) and was therefore properly assigned to Judge Swain. The Petitions challenge that application of the term "related to."

The narrow issue concerning the application of § 2166(a)(2) to the facts of this case is not remotely worthy of certiorari. For one thing, there is no Circuit split involving § 2166(a)(2), which is a seven-year-old provision that has rarely been litigated. The Governor argues that the decision below somehow creates a Circuit split over 28 U.S.C. § 1334(b), but that statute was not applied below. What's more, the decision below was correct because the Board's claim under PROMESA is clearly related to the PROMESA restructuring case. And the Governor's and Speaker's complaint about the district judge assigned to their case is ultimately irrelevant because they lost as a matter of law at the court of appeals.

The Governor recognizes that a factbound application of § 2166(a)(2) is not worthy of this Court's review. He therefore tries to make the case about something else: According to the Governor, this case presents important questions concerning bankruptcy jurisdiction. But the court of appeals expressly limited its holding to § 2166(a)(2) and PROMESA cases, not cases brought under the Bankruptcy Code. *See, e.g.*, Pet. App. 22a (noting the "sui generis nature of PROMESA" and holding that "what might be 'related to' a Title III case is distinct from what might be

'related to' a title 11 bankruptcy case").[1] The Governor's contention that this case has broader implications for bankruptcy jurisdiction simply ignores the holding below.

Separately, the Governor (but not the Speaker) asks the Court to review the merits of the decision below. But the holding that the Governor violated 48 U.S.C. § 2144(a)(2)(A) by failing to submit a formal estimate of the fiscal impact of a particular Puerto Rico statute is the epitome of a factbound ruling with no broader effect. Section 2144(a)(2)(A) is a rarely litigated provision of PROMESA with narrow application. And, in any event, the merits decision was correct for the reasons discussed below.

The Petitions do not present any question worthy of this Court's review. They should be denied.

STATEMENT OF THE CASE

1. Puerto Rico has been suffering through what Congress found to be a "fiscal emergency" resulting from "accumulated operating deficits, lack of financial transparency, management inefficiencies, and excessive borrowing." 48 U.S.C. § 2194(m)(1)–(2). In 2016, Congress enacted PROMESA to address that emergency. *Id.* §§ 2101–2241.

PROMESA established the Board and charged it with developing a method for Puerto Rico to "achieve fiscal responsibility and access to the capital markets." *Id.* § 2121(a). As part of a "comprehensive

[1] "Pet. App." refers to the Appendix to the Governor's Petition.

approach" to Puerto Rico's fiscal recovery, *id.* § 2194(m)(4), Title II of PROMESA grants the Board extensive authority over budgets and long-term fiscal plans in the Commonwealth, *id.* §§ 2141–2142, and Title III of the statute authorizes the Board to commence debt-restructuring cases on behalf of the Commonwealth and its instrumentalities, *id.* § 2164(a).

PROMESA also establishes a mandatory interactive process between the Governor and the Board concerning new legislation. Within seven days of enactment, the Governor must submit to the Board any new law, along with (*i*) a "formal estimate" of the law's impact on expenditures and revenues and (*ii*) a certification of whether the law is "significantly inconsistent" with the Commonwealth's certified fiscal plan. *Id.* § 2144(a)(1)–(2). If the Governor fails to provide the requisite estimate or certification, the Board can direct the Governor to supply them. *Id.* § 2144(a)(3), (4)(A). If the Governor fails to comply with the Board's directive, the Board can "take such actions as it considers necessary . . . to ensure that the enactment or enforcement of the law will not adversely affect the [Commonwealth's] compliance with the Fiscal Plan, including preventing the enforcement or application of the law." *Id.* § 2144(a)(5).

PROMESA further provides that neither the Governor nor the Puerto Rico Legislature may "enact, implement, or enforce any statute, resolution, policy, or rule that would impair or defeat the purposes of [PROMESA], as determined by the Oversight Board." 48 U.S.C. § 2128(a)(2).

2. In May 2017, the Board commenced a debt-restructuring case under Title III of PROMESA on behalf of the Commonwealth. A Title III restructuring case is not heard by an Article I bankruptcy court. Instead, the United States District Court for the District of Puerto Rico has exclusive jurisdiction over a Title III case, with the presiding district judge selected by the Chief Justice of the United States. *Id.* §§ 2166(a)(1), 2167, 2168(a). PROMESA also provides the district court with jurisdiction over any civil action "related to" a Title III case, *id.* § 2166(a)(2), and actions "arising out of" the statute, *id.* § 2126(a).

Chief Justice Roberts designated the Honorable Laura Taylor Swain of the United States District Court for the Southern District of New York to preside over the Commonwealth's restructuring case.[2] He also approved a request by the Chief Judge of the U.S. Court of Appeals for the First Circuit for Judge Swain to sit by designation to "perform judicial duties" within the District of Puerto Rico under 28 U.S.C. § 292(d).[3]

In January 2022, the district court confirmed a comprehensive plan of adjustment for the Commonwealth, which restructured tens of billions of dollars

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[2] Designation of Presiding District Judge Under Title 48 § 2168 of the United States Code (May 5, 2017), https://www.nysd.uscourts.gov/sites/default/files/pdf/Promesa/Order%20of%20Designation%20LTS.pdf.

[3] *See* Designation and Assignment of a Chief United States District Judge for Service in Another Circuit (May 1, 2023), https://promesa.prd.uscourts.gov/sites/default/files/Hon-Laura-Taylor-Swain-Designation-20230527-20231126.pdf.

in public debt. *See In re Fin. Oversight & Mgmt. Bd. for P.R.*, 636 B.R. 1 (D.P.R. 2022). The confirmation order prohibits the Puerto Rico Government from enacting or enforcing any law that creates any inconsistency with the fiscal plan in a way that would "impair or defeat the purposes of PROMESA," as determined by the Board. *Id.* at 17.

3. For the past several years, each Commonwealth fiscal plan certified by the Board has mandated labor reforms to address Puerto Rico's chronically low labor-force participation rate. *See, e.g.*, A3858–67.[4] Fiscal plans have also directed the Commonwealth to refrain from enacting new legislation that negatively impacts flexibility in the labor market, A3551, and have admonished the Commonwealth not to repeal the Labor Transformation Flexibility Act ("LTFA"), a 2017 statute that loosened certain regulations on private employers, *see, e.g.*, A4138–71.

Nevertheless, in March 2022, the Puerto Rico House of Representatives passed HB 1244 (the bill that would become Act 41) with the stated purpose of rolling back the LTFA's labor reforms and imposing new requirements on employers. Specifically, the bill would impose new requirements for sick and vacation leave, mandatory bonuses, employee probationary periods, and evidentiary burdens in employment actions. A2365–67; A2369; A2375–77. It would also mandate increased overtime pay for students as well

[4] Citations to "A__" refer to the Joint Appendix filed in the consolidated First Circuit appeal below, *Fin. Oversight & Mgmt. Bd. v. Hernández-Montañez (In re Fin. Oversight & Mgmt. Bd. for P.R.)*, Nos. 23-1267, 23-1268, & 23-1358 (1st Cir.).

as sick and vacation leave for part-time employees. A2365–66.

Acting under 48 U.S.C. § 2128(a)(2), the Board determined that HB 1244 would impair or defeat PROMESA's purposes and directed the Puerto Rico Senate not to approve it. A4181; *see also* A2424–26. When the Senate did so anyway, the Board advised the Governor that § 2128(a)(2) barred him from signing the bill. A4181–82. The Governor ignored the Board and signed Act 41 into law.

4. The Governor submitted a copy of Act 41 to the Board as required by 48 U.S.C. § 2144(a)(1). But he did not include a "formal estimate" of Act 41's impact on expenditures and revenues as required by § 2144(a)(2)(A). Instead, he submitted a document prepared by the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF"),[5] which asserted only that Act 41's "ultimate economic impact . . . will need to be evaluated" by designing "Puerto Rico-specific empirical studies." A4197.

The Governor also did not certify whether Act 41 is significantly inconsistent with the Commonwealth's fiscal plan, as required by § 2144(a)(2)(B). Rather, he merely asserted that "one *may* conclude" there is no significant inconsistency with the fiscal plan, although he conceded that (contrary to the fiscal plan) Act 41 repealed parts of the LTFA, undermined labor-

[5] AAFAF acts as fiscal agent, financial advisor, and reporting agent of the Commonwealth. For ease of exposition, this brief refers to the Governor and AAFAF collectively as "the Governor."

market flexibility, and increased labor costs. *See* A4195–99 (emphasis added); A206–12.

Attached to the Governor's submission were documents prepared by the Puerto Rico Office of Management and Budget ("OMB"), Department of Labor and Human Resources ("DOL"), and Department of the Treasury. The OMB and Treasury documents said nothing about Act 41's impact on revenues, and they concluded—without any analysis or supporting data—that Act 41 would have no impact on expenditures in the 2022 fiscal year. A2382; A2386. The DOL document similarly did not describe Act 41's impact on the Commonwealth's revenues or expenditures but merely estimated that the law would cost the DOL about $3,000 to print new notices. A2383–84.

The Board notified the Governor pursuant to § 2144(a)(3) that he failed to provide the requisite formal estimate and certification, and it directed him to provide the documents pursuant to § 2144(a)(4). A4215–16. The Governor flatly refused, claiming that providing a formal estimate and certification would require an "ambitious and expansive undertaking." A4226–27. The Governor repeated the same rationale in refusing to comply with successive directives by the Board to submit the requisite formal estimate and certification. A4268–72; A4304–08; A4276.

5. In September 2022, the Board brought an adversary proceeding against the Governor, seeking to enjoin Act 41 on the grounds that: (*i*) the Governor failed to provide the formal estimate and certification required by 48 U.S.C. § 2144(a); and (*ii*) Act 41 impairs or defeats PROMESA's purposes under

48 U.S.C. § 2128(a)(2). The Speaker of the Puerto Rico House intervened as defendant. Because the Board's complaint was brought as an adversary proceeding within the Commonwealth's Title III case, the case was assigned to Judge Swain.

The Governor moved for judgment on the pleadings, arguing that the district court lacked subject-matter jurisdiction because the Board's claim was not related to the Commonwealth's restructuring case under 48 U.S.C. § 2166(a)(2). The Board moved for summary judgment the same day.

The district court denied the Governor's motion and granted the Board's motion in part. Pet. App. 34a–82a. The court held that it had subject-matter jurisdiction under 28 U.S.C. § 1331 and 48 U.S.C. § 2126(a) because the action arose under the federal PROMESA statute. Pet. App. 54a–55a. The court observed that although the Governor framed his argument as "jurisdictional," his real complaint was that the case should have been filed as a regular civil action rather than an adversary proceeding—in which case it might have been assigned to a different district judge. Pet. App. 55a–56a. The court rejected that argument, holding that the Board's claim was related to the Commonwealth's restructuring case under 48 U.S.C. § 2166(a) and was thus properly brought as an adversary proceeding. Pet. App. 63a–64a; Pet. App. 64a–65a n.15.

Turning to the merits, the district court held that the Governor violated § 2144(a) by failing to submit a formal estimate or certification for Act 41. Pet. App. 71a–80a. As the court explained, the Governor

had no legal justification for repeatedly failing to comply with the Board's directives to provide the documents required by PROMESA. Pet. App. 74a–80a. The court further held that Act 41 is "plainly" inconsistent with the fiscal plan's directive to refrain from repealing the LTFA or enacting legislation that hinders labor-market flexibility. Pet. App. 80a. The court thus held that the Board was entitled to summary judgment on its § 2144(a) claim and enjoined enforcement of Act 41. Pet. App. 80a. The court subsequently dismissed the Board's § 2128(a)(2) claim as moot.

6. A unanimous panel of the court of appeals affirmed. Pet. App. 1a–33a. The court first held that the district court had subject-matter jurisdiction under 28 U.S.C. § 1331 because the case raises federal questions under PROMESA. Pet. App. 17a. It further rejected the argument that the case should not have been assigned to Judge Swain, finding that the case is "related to" the Commonwealth's restructuring case under 48 U.S.C. § 2166(a)(2). Pet. App. 18a–27a. The court recognized that, in the bankruptcy context, some Circuits apply a "close nexus" test when deciding whether a post-confirmation action falls within a bankruptcy court's "related to" jurisdiction under 28 U.S.C. § 1334(b). Pet. App. 20a–22a (citing cases). Given the "sui generis nature of PROMESA," however, the court held that the bankruptcy standard does not necessarily apply in this context. Pet. App. 22a. In the court's words, "what might be 'related to' a Title III case is distinct from what might be 'related to' a title 11 bankruptcy case." *Id.*

The court held that the Board's claims in this case are related to the Commonwealth's Title III case "in a fundamental sense" because they are based on "the same piece of legislation and directed toward the same goal as Title III," *i.e.*, Puerto Rico's fiscal recovery. Pet. App. 23a–24a. The case was thus properly filed as an adversary proceeding assigned to Judge Swain. *Id.*

On the merits, the court of appeals affirmed the district court's holding that the Governor violated 48 U.S.C. § 2144(a) because he "made no attempt" to submit a formal estimate of Act 41's impact on Commonwealth revenues and expenditures. Pet. App. 28a. The court rejected the Governor's argument that § 2144(a) exempts him from providing the requisite estimate when analysis of a law's fiscal impact would be "difficult to perform." Pet. App. 28a–29a.

7. The Speaker petitioned for rehearing, which was denied without dissent. Pet. App. 83a–92a. Judge Gelpí wrote separately concurring in the denial of the rehearing petition. Pet. App. 87a–92a. He agreed that the case was properly before Judge Swain and that the Board could properly invalidate Act 41. Pet. App. 87a. He went on to reject the Speaker's contention that the panel's decision diminishes Puerto Rico's autonomy. Pet. App. 87a–92a. To the extent the Speaker believed that actions taken by the Board under PROMESA infringe on Puerto Rico's democratically elected government, Judge Gelpí explained that "it is to Congress, and not this Court, that the Speaker should address his consent of the governed grievance." Pet. App. 92a.

8. The Speaker and the Governor filed separate petitions for certiorari. Both ask the Court to review the ruling below that the case was properly assigned to Judge Swain. Speaker Pet. 16–19; Gov. Pet. 18–25. The Governor additionally asks the Court to review the ruling that he violated 48 U.S.C. § 2144(a)(2)(A). Gov. Pet. 26–30.

REASONS FOR DENYING THE PETITION

I. The Assignment of the Case to U.S. District Judge Laura Taylor Swain Does Not Warrant this Court's Review.

The Governor misleadingly frames the first question presented as involving "bankruptcy jurisdiction." *E.g.*, Gov. Pet. 18. Under PROMESA, the United States District Court for the District of Puerto Rico (not a bankruptcy court) presides over Puerto Rico's restructuring cases and all other issues under PROMESA. *See* 48 U.S.C. §§ 2126(a), 2166(a), 2167. Accordingly, the case below was assigned to, and resolved by, an Article III judge sitting in an Article III district court. *See* Pet. App. 34a–82a. As the court of appeals observed, the district court plainly had federal-question jurisdiction over this dispute because it arises under a federal statute—PROMESA. *See* Pet. App. 17a (citing 28 U.S.C. § 1331).

The actual question presented is whether, under 48 U.S.C. § 2166(a), this case is "related to" the Commonwealth's restructuring case and thus properly assigned to U.S. District Judge Swain instead of a different Article III judge in Puerto Rico. The Speaker recognizes this point, identifying the Question

Presented as whether the case below was properly assigned to Judge Swain. Speaker Pet. i. The First Circuit likewise correctly characterized the Question Presented as involving judicial assignment under § 2166(a), not bankruptcy jurisdiction. Pet. App. 18a; *see also* Pet. App. 25a ("So this case is about whether the Board's claims should be heard by one judge or another within the District of Puerto Rico . . . .").

That question of judicial assignment is not remotely worthy of certiorari. There is no Circuit split involving § 2166(a), which was enacted only a few years ago and has rarely been litigated. *See* Point I.A, *infra*. The issue is narrow and has no implications outside a limited set of cases like this one, *see* Point I.B, *infra*, and was correctly decided in any event, *see* Point I.C, *infra*. Moreover, the assignment of the district judge ultimately had no effect on the outcome of the case. *See* Point I.D, *infra*.

A. There Is No Circuit Split on the Question Presented.

The Governor's attempt to manufacture a Circuit split compares apples and oranges. He argues that other Circuits considering a bankruptcy court's jurisdiction under 28 U.S.C. § 1334(b) apply a "close nexus" test to determine whether a suit brought after confirmation of a plan of adjustment is "related to" a bankruptcy case. Gov. Pet. 21–22 (citing cases). He contends that the First Circuit created a "split" by applying a different test to decide whether the case

below was related to the Commonwealth's restructuring case for purposes of 48 U.S.C. § 2166(b). *Id.* at 22–24.

The obvious flaw in the Governor's position is that the out-of-Circuit cases interpret *a different statute* and address a *different question* from this case. The out-of-Circuit cases address "related to" bankruptcy jurisdiction under 28 U.S.C. § 1334(b). This case arises under PROMESA, however, and the question is whether it should have been assigned to Judge Swain as an adversary proceeding under 48 U.S.C. § 2166(b) or treated as an ordinary civil action assigned at random to the general pool of Article III judges in Puerto Rico. *See* Pet. App. 25a. Decisions interpreting 28 U.S.C. § 1334(b) in the bankruptcy context do not govern 48 U.S.C. § 2166(b).

To be sure, both 28 U.S.C. § 1334(b) and 48 U.S.C. § 2166(b) contain the words "related to." But as the court below correctly held, it does not follow that the two provisions should be construed identically. *See* Pet App. 22a (holding that that, due to the "sui generis nature of PROMESA," "what might be 'related to' a Title III case is distinct from what might be 'related to' a title 11 bankruptcy case"). The court below thus expressly limited its holding to PROMESA cases under § 2166(b). *See, e.g.*, Pet App. 22a. The decision has no bearing on bankruptcy jurisdiction under 28 U.S.C. § 1334(b).[6]

[6] The Governor misleadingly asserts that the First Circuit applied a "conceivable effect" test—presumably to create a contrast

Any "Circuit split" is thus an illusion. The court below did not reject the "close nexus" test employed by other Circuits to determine a bankruptcy court's jurisdiction under 28 U.S.C. § 1334(b). It simply decided that "close nexus" is not the standard in PROMESA cases under 48 U.S.C. § 2166(b). Pet. App. 22a. Whether the First Circuit ultimately agrees with its sister Circuits and adopts a "close nexus" test for "related to" jurisdiction under 28 U.S.C. § 1334(b) in bankruptcy cases remains to be seen.[7]

On the actual Question Presented—whether the Board's claim is related to the Commonwealth's restructuring case under 48 U.S.C. § 2166(a) and thus properly assigned to Judge Swain—there is no Circuit split, and the Governor does not argue otherwise. Indeed, no other Circuit has had occasion to construe § 2166(a), which makes a Circuit split impossible.[8]

B. The Question Presented Is Not Exceptionally Important.

The holding that the Board's claim under 48 U.S.C. § 2144(a) is related to the Commonwealth's

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with the "close nexus" test. Gov. Pet. 24. But the court of appeals never used the term "conceivable effect" or any similar locution.

[7] The First Circuit's refusal to apply a "close nexus" test nineteen years ago based on the facts in a Chapter 11 case is not a reason to grant certiorari in this case. *See* Gov. Pet. 22–23 (citing *Bos. Reg'l Med. Ctr., Inc. v. Reynolds (In re Bos. Reg'l Med. Ctr., Inc.)*, 410 F.3d 100 (1st Cir. 2005)).

[8] The decision below is consistent with *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995), which holds that "related to" "suggests a grant of some breadth."

restructuring case within the meaning of 48 U.S.C. § 2166(a) is exceedingly narrow and has no application beyond a narrow set of cases like this one. Section 2144(a) claims are rare: They arise only in the context of PROMESA-related disputes between the Board and the Governor of Puerto Rico, and litigation over § 2144(a) is infrequent. *See* Point II.B, *infra*. Any impact of the decision below is therefore minimal. Nor will the resolution of the issue here necessarily produce clear answers in other litigated PROMESA matters.

The Governor exaggerates the importance of the decision below when he argues that it "opens the door to the unwarranted expansion of bankruptcy jurisdiction." Gov. Pet. 22. As explained above, the court below expressly limited its holding to cases under PROMESA. *See, e.g.*, Pet. App. 22a. There is thus no concern that the decision below will allow parties "to circumvent Congress's statutory limits on bankruptcy jurisdiction." Gov. Pet. 23–24. The decision below will have no impact on bankruptcy cases whatsoever.

The Governor's related contention that the decision below "contravenes bankruptcy policy" is wrong and is not a reason to grant certiorari. Gov. Pet. 24–25. The policy Congress implemented here is to allow one court in charge of governmental restructurings to resolve issues that impacting those restructurings. The Governor asserts that the decision below will somehow hinder Puerto Rico from having a fresh start. *Id.* In fact, it is Judge Swain who prevented the government from implementing new legislation that would undermine the Commonwealth's restructuring and fresh start. The Governor never explains why

assigning the case to Judge Swain rather than a different Article III judge possibly impeded the Commonwealth's fresh start. Either way, the Board's claim would be litigated in a federal district court, and the result—the enjoinment of Act 41—would be the same. Even if the decision below causes more PROMESA-related cases to be assigned to Judge Swain, it still would not hamper the Commonwealth's fresh start.

The Governor's contention that the decision below "would perpetuate an unprecedented incursion on the powers of Puerto Rico's Government" is similarly conclusory and unsupported. Gov. Pet. 25. The Governor makes no effort to explain how the lower courts' construction of "related to" in 48 U.S.C. § 2166(a) has anything to do with Puerto Rico's right to self-government. As Judge Gelpí explained below in rejecting a similar argument by the Speaker, any complaints about Puerto Rico's autonomy should be directed to Congress because they have nothing to do with this case. *See* Pet. App. 87a–92a.

C. The Decision Below Was Correct.

Certiorari should be denied for the additional reason that the decision below is correct. As the court of appeals explained, the Board's claim under 48 U.S.C. § 2144(a) is "related to" the Commonwealth's restructuring case "in a fundamental sense" because both arise under the same statute (PROMESA) and both are critical components of Congress's comprehensive approach to resolving Puerto Rico's fiscal crisis. Pet. App. 23a–24a. Reducing the Commonwealth's debts to a level its revenues can sustain is undermined if the Commonwealth can implement new laws deterring

business and the governmental revenues it produces. That inherent connection makes the Board's claim more related to the Commonwealth's restructuring case than most claims that are found to satisfy the related-to test in bankruptcy. *Id.*

The Board's § 2144(a) claim is further related to the Commonwealth's restructuring case because the claim is intended to ensure the success of the Commonwealth's plan of adjustment. The plan of adjustment can succeed only if the Commonwealth complies with its fiscal plan. *See* 48 U.S.C. § 2174(b)(7) (requiring consistency between plan of adjustment and certified fiscal plan). And the purpose of a § 2144(a) claim is to ensure that Puerto Rico complies with its fiscal plan. *See* 48 U.S.C. § 2144 (titled "Review of activities to ensure compliance with fiscal plan"). By bringing a claim under § 2144(a), the Board is enforcing Puerto Rico's fiscal plan, which, in turn, will ensure that the Commonwealth has sufficient resources to fulfill its obligations under its plan of adjustment. That close relationship between the Board's § 2144(a) claim and the success of the Commonwealth's restructuring case is more than sufficient to satisfy 48 U.S.C. § 2166(a)(2).

D. Any Error Would Be Harmless.

Even if the decision below were somehow incorrect, this Court's intervention would still be unwarranted because any error would be harmless. The court of appeals held that, based on the undisputed facts, the Governor violated PROMESA by failing to submit a formal estimate of Act 41's fiscal impact and the Board is therefore entitled to summary judgment.

Pet. App. 27a–33a. That decision by the court of appeals would not change even if this Court were to vacate and remand for the assignment of a different district judge. Granting certiorari on the first Question Presented would be an exercise in futility.

The Governor and the Speaker have a second harmless-error problem, too, because their case was assigned to, and resolved by, an Article III district judge. Accordingly, their only "harm" is that they wish they were assigned a *different* Article III district judge. But absent an extraordinary showing of bias or something similar (which has not been alleged, much less shown here), an error affecting the assignment of a judge to a case is harmless. *See United States v. Pearson*, 203 F.3d 1243, 1262–63 (10th Cir. 2000) (error that allowed prosecutor to manipulate judicial assignment was harmless); *Whittier v. Emmet*, 281 F.2d 24, 31 (D.C. Cir. 1960) ("[T]he erroneous determination of the venue amounts to harmless error."); *cf. In re Nat'l Presto Indus., Inc.*, 347 F.3d 662, 663 (7th Cir. 2003) (Posner, J.) (party denied motion to transfer "would not be able to show [on appeal] that it would have won the case had it been tried in a [different] forum").

II. The Lower Courts' Application of PROMESA's "Formal Estimate" Requirement Does Not Warrant Certiorari.

The Governor (but not the Speaker) also asks the Court to grant certiorari to review the ruling that the Governor violated 48 U.S.C. § 2144(a)(2)(A) when he failed to submit a formal estimate of Act 41's impact on expenditures and revenues. Gov. Pet. 26–32. The

lower courts' application of § 2144(a)(2)(A) to the facts of this case does not satisfy any of the traditional criteria for certiorari, however. Notably, the Governor does not argue that the decision below creates a Circuit split or that it conflicts with this Court's authority. And the question of what constitutes a "formal estimate" under § 2144(a)(2)(A) is rarely litigated and has no broad implications.

The Governor argues that certiorari should be granted because the courts below supposedly misapplied "bedrock canons of statutory interpretation." Gov. Pet. 26 (capitalization omitted). Even if that were true, it would not be a reason to grant certiorari. And it is not true: The courts below correctly interpreted the text of § 2144(a)(2)(A), which by its plain terms requires the Governor to provide a formal estimate of the fiscal impact of *all* new legislation. The Governor refused to submit a formal estimate for Act 41, and he therefore violated the statute. *See* Point II.A, *infra*. And the Governor nowhere explains why he thinks this Court should rule that he was justified in implementing new legislation affecting all employment without first analyzing its impact on revenue and expense. One would think the Governor would demand to know the likely impact of legislation he signs.

The Governor's claim that the lower courts' application of § 2144(a)(2)(A) has "profound implications" for Puerto Rico is overblown. Gov. Pet. 31 (capitalization omitted). This case concerns the application of a single provision of PROMESA to a single Puerto Rico statute. The Governor's contention that the decision below represents an incursion into Puerto Rico's

autonomy makes little sense. And his claim that the Court's intervention is necessary to "quell ongoing litigation between the Board and Puerto Rico's elected officials" (Gov. Pet. 32) is belied by the fact that there has hardly been any litigation over § 2144(a). *See* Point II.B, *infra*.

A. The Courts Below Correctly Construed § 2144(a)(2)(A).

The Governor asks the Court to grant certiorari to correct what he perceives to be an error in the lower courts' construction of § 2144(a)(2)(A). Gov. Pet. 26–30. But this Court is not "a court of error correction." *City & Cnty. of S.F. v. Sheehan*, 575 U.S. 600, 621 (2015) (Scalia, J., concurring in part). An alleged error in statutory interpretation is simply not a compelling basis for granting review. *See Barnes v. Ahlman*, 140 S. Ct. 2620, 2622 (2020) (Sotomayor, J., dissenting from grant of stay) ("[E]rror correction is outside the mainstream of the Court's functions and not among the compelling reasons that govern the grant of certiorari." (punctuation omitted)).

In all events, the courts below correctly construed § 2144(a)(2)(A). That provision requires the Governor to submit to the Board all new legislation enacted by

the Commonwealth. 48 U.S.C. § 2144(a)(1). And it also requires the submission of a "formal estimate":

> The Governor shall include with each law submitted to the Oversight Board under paragraph (1) the following:
>
> (A) A formal estimate prepared by an appropriate entity of the territorial government with expertise in budgets and financial management of the impact, if any, that the law will have on expenditures and revenues.
>
> . . . .

Id. § 2144(a)(2). By its plain terms, the "formal estimate" requirement is mandatory and comprehensive: The Governor "shall" submit an estimate for "each" new law. *See Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 171 (2016) (explaining that "shall" typically denotes a mandatory requirement).

The Governor violated § 2144(a)(2)(A) because he did not submit to the Board a formal estimate of Act 41's impact on revenues and expenditures. His failure is made starker by his concession that Act 41 could "affect employment in the Commonwealth (thereby potentially affecting the tax base and revenues)." Pet. App. 28a. The Governor claimed that developing a formal estimate of Act 41's fiscal impact allegedly would be too "difficult." Gov. Pet. 27. That excuse would not work for a middle-school homework assignment, and it does not work for a statutory obligation. As the First Circuit held, exempting the

Governor from his federal statutory obligation whenever developing an estimate is difficult would be inconsistent with § 2144(a)'s text and purpose. Pet. App. 28a–29a.

The Governor offers two "textual" defenses of his position, but neither holds water. *First*, he observes that § 2144(a)(2)(A) requires the submission of a formal estimate of a law's fiscal impact, "if any." According to the Governor, the words "if any" mean that no estimate is required if a law will have no foreseeable fiscal effects. Gov. Pet. 28. That is not a plausible reading of the words of the provision. If there are no fiscal effects, then the estimate should say the fiscal impact is zero. It is not an excuse for failing to furnish the estimate altogether.

In any event, the Governor never contended that Act 41's fiscal effects are unforeseeable. *See* Pet. App. 29a–30a (concluding that "the Governor has failed to demonstrate that the effects of Act 41 are entirely unforeseeable or immeasurable through economic modeling"). Rather, he conceded that Act 41 *could* have an impact on the Commonwealth's revenues. Pet. App. 28a. So that argument does not start.

Second, the Governor contends that a formal estimate need only state the fiscal impact that a new law "will have"—and therefore an estimate is not required unless a law's impact can be calculated with certainty. Gov. Pet. 26–28 (quoting 48 U.S.C. § 2144(a)(2)(A)). But, as the court below explained, that position ignores the meaning of the word "estimate." Pet. App. 30a. By definition, an estimate involves a level of uncertainty. *See* Estimate, Merriam-Webster

Dictionary (2024) ("a rough or approximate calculation"). By requiring the Governor to submit an "estimate" of a law's impact on revenues and expenditures, Congress expected the Governor to assess fiscal impacts that may not be calculated exactly. *See* Pet. App. 30a. Indeed, few laws have a fiscal impact that can be predicted with precision.

The Governor complains that the lower courts' construction of § 2144(a)(2)(A) requires him to conduct a more stringent analysis than the Congressional Budget Office (CBO) performs for federal legislation. Gov. Pet. 29–30. But, as the court of appeals explained, "what the CBO is required to do sheds little light on what PROMESA mandates." Pet. App. 31a. The Governor is required to prepare formal estimates only for enacted laws, while the CBO must analyze every bill reported out of committee. *See* 2 U.S.C. § 602. It would thus make sense for the CBO's analysis to be more circumscribed. Moreover, § 2144(a)(2)(A) is only "a temporary measure addressing an acute need for detailed financial estimates," while CBO estimates are part of "Congress's ongoing ordinary course of business." Pet. App. 31a.

B. The Lower Courts' Application of § 2144(a)(2)(A) Does Not Have "Profound Implications."

The Governor vastly overstates the importance of this case. The dispute is limited to one sub-subsection of PROMESA, and any decision by this Court would

not affect cases arising under any other statute or provision.

The Governor contends that this Court's intervention is necessary because he and the Board are supposedly constantly at loggerheads over § 2144(a)(2)(A). Gov. Pet. 31–32. But contrary to the picture painted by the Governor, there has been little litigation between him and the Board over § 2144(a)(2)(A). In fact, since PROMESA was enacted in 2016, there has been a grand total of *six* lawsuits involving that provision.[9] There is no tide of litigation over § 2144(a)(2)(A) demanding this Court's intervention, only a trickle. Given that the Board will be in existence for only a limited time, *see* 48 U.S.C. § 2149, a decision by the Court in this case will have little shelf life.

The Governor misses badly when he argues that PROMESA's expedition provision shows that all questions arising under PROMESA are exceptionally important. Gov. Pet. 31–32 (citing 48 U.S.C. § 2126(d)). Congress included the expedition provision to ensure that disputes under PROMESA are finally resolved quickly, not because it believed that every issue arising under PROMESA is worthy of certiorari. This Court has repeatedly rejected petitions brought under PROMESA, including one concerning the same statutory provision at issue here, which belies any notion that questions arising under PROMESA are *per se*

[9] One of those cases settled almost immediately after it was filed. *See* ECF No. 6 in Adv. Pro. No. 21-00119 (D.P.R.). The Board prevailed in the other five, which were resolved by the district court, and only two cases (including this one) were appealed.

important.[10] Although the Court has occasionally granted certiorari to answer questions concerning "fiscal or political" issues in the territories (Gov. Pet. 32), that does not mean that every such case is certworthy. *See, e.g.*, *Assured Guar. Corp. v. Fin. Oversight & Mgmt. Bd. for P.R. (In re Fin. Oversight & Mgmt. Bd. for P.R.)*, 919 F.3d 121 (1st Cir. 2019), *cert. denied*, 140 S. Ct. 855 (2020) (denying certiorari in a case with significant fiscal impact on Puerto Rico's restructuring).

Finally, the Governor's contention that the decision below somehow undermines Puerto Rico's right to self-rule is baseless. *See* Gov. Pet. 31. The decision was narrow and turned on the Governor's failure to submit a formal estimate of Act 41's fiscal impact as required by § 2144(a)(2)(A). No broader rule was handed down. As Judge Gelpí explained when concurring in the denial of the Speaker's petition for rehearing, any incursion into Puerto Rico's autonomy is the result of the Commonwealth's territorial status and Congress enacting PROMESA pursuant to the Territories Clause of the United States Constitution, not anything to do with the decision below. *See* Pet. App. 87a–92a.

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[10] *See, e.g.*, *Pierluisi v. Fin. Oversight & Mgmt. Bd. for P.R. (In re Fin. Oversight & Mgmt. Bd. for P.R.)*, 37 F.4th 746 (1st Cir. 2022), *cert. denied*, 143 S. Ct. 1070 (2023); *Fin. Oversight & Mgmt. Bd. For P.R. v. Federacion de Maestros de P.R., Inc. (In re Fin. Oversight & Mgmt. Bd. for P.R.)*, 32 F.4th 67 (1st Cir. 2022), *cert. denied*, 143 S. Ct. 445 (2022); *Pinto-Lugo v. Fin. Oversight & Mgmt. Bd. for P.R. (In re Fin. Oversight & Mgmt. Bd. for P.R.)*, 987 F.3d 173 (1st Cir. 2021), *cert. denied*, 142 S. Ct. 74 (2021).

C. This Case Is a Poor Vehicle for Resolving the Meaning of § 2144(a)(2)(A).

Even if the Court were interested in addressing the meaning or application of 48 U.S.C. § 2144(a)(2)(A), this case is a poor vehicle for at least two reasons.

First, the facts of this case are too one-sided to permit meaningful line-drawing. As explained above, the Governor did not submit *any* formal estimate for Act 41. Thus, the only question presented is whether the Governor was excused from his statutory duty to submit a formal estimate *at all*. This case does not provide the Court with an opportunity to define the contours of the "formal estimate" requirement of § 2144(a)(2)(A) because there is no estimate to consider. *See, e.g.*, *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1057 (1991) (case was a "poor vehicle for defining with precision the outer limits under the Constitution of a court's ability to regulate an attorney's statements about ongoing adjudicative proceedings" because the speech at issue was "so innocuous"). To the extent the Court wants to explicate § 2144(a)(2)(A)'s "formal estimate" requirement, it should await a case where the Governor at least submits some estimate.

Second, the Court's intervention would not affect the outcome of this case because there are independent reasons why the Board would prevail, separate and apart from the Governor's § 2144(a)(2)(A) violation. In addition to challenging the Governor's failure to submit a formal estimate for Act 41, the Board also

sought to nullify Act 41 under 48 U.S.C. § 2128(a)(2), which provides that the Governor and Legislature may not enact laws that "impair or defeat the purposes of [PROMESA], as determined by the [Board]." The Board made a formal determination that Act 41 impairs and defeats the purposes of PROMESA. A4181; *see also* A2424–26. Accordingly, the Board could block Act 41's enforcement under § 2128(a)(2) regardless of the outcome of the dispute over § 2144(a)(2)(A). [11]

CONCLUSION

For the foregoing reasons, the Petitions for a writ of certiorari should be denied.

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Respectfully submitted,

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[11] The amicus brief filed by the President of the Puerto Rico Senate is untimely and irrelevant. It does not argue in favor of granting certiorari on the questions presented by the Speaker or the Governor but instead seeks to inject a new issue —concerning whether relief should be prospective or retrospective—which no party raises. *See United Parcel Serv., Inc. v. Mitchell*, 451 U.S. 56, 60 n.2 (1981) ("declin[ing] to consider [an amicus party's] argument since it was not raised by either of the parties").

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