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Whether Puerto Rico's Exclusion from Chapter 9 is Non-Uniform Within the Meaning of the Bankruptcy Clause of the United States Constitution

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Introduction

Amid the most serious fiscal crisis in its history, Puerto Rico's public utilities are currently insolvent or at risk of becoming insolvent.[1] In 2013, several distressed Puerto Rican public corporations had a combined deficit that totaled $800 million, and a combined debt reaching $20 billion.[2] One avenue for Puerto Rico's public utilities to restructure their debt, and perhaps the only avenue, is municipal bankruptcy relief.[3] Unlike States, Puerto Rico "may not authorize its municipalities to seek Chapter 9 municipal bankruptcy relief" under title 11 of the United States Code (the "Bankruptcy Code").[4] An amendment to the Bankruptcy Code in 1984 is responsible for Puerto Rico's exclusion from Chapter 9 municipal bankruptcy relief.[5] Prior to 1984, however, there was no language banning Puerto Rico from utilizing Chapter 9 because the

[1] *See* Franklin California Tax-Free Trust v. Commonwealth of Puerto Rico, 805 F.3d 322, 325 (1st Cir. 2015).
[2] *See id.* at 331.
[3] *See id.* at 325.
[4] *Id.* at 324.
[5] *See id.* at 325.

term "State" was not defined.[6] In fact, from 1938 until the modern Bankruptcy Code was introduced, Puerto Rico could authorize its municipalities to obtain federal bankruptcy relief under Chapter 9.[7] During that time, the recognized definition of "State" under federal bankruptcy law included territories and possessions.[8] However, the amendment in 1984 added Section 101(52), in which the definition of a "State" was changed to "include Puerto Rico, '*except*' for the purpose of defining who may be a debtor under Chapter 9."[9] Thus, in an attempt to avoid insolvency, the Commonwealth of Puerto Rico sought to allow its utilities to restructure their debt by enacting its own municipal bankruptcy law, the Puerto Rico Public Corporation Debt Enforcement and Recovery Act (the "Recovery Act").[10]

In *Franklin v. Puerto Rico*, the First Circuit held that Puerto Rico's effort to restructure the debt of its public utilities through the enactment of the Recovery Act was preempted by Section 903(1) of the Bankruptcy Code.[11] According to the court, Section 903(1), which applies to "States," did not suggest that Puerto Rico was outside of its reach even though Section 101(52) explicitly excluded Puerto Rico from the definition of a "State" when defining who may be a debtor under Chapter 9.[12] Thus, while Puerto Rico was excluded from the benefits of

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[6] Michael K. Piacentini, *Lights Out for Puerto Rico's Restructuring Law? Puerto Rico's Municipal Bankruptcy Dilemma*, 80 BROOK. L. REV. 1677, 1694 (2015); *Id.* n.140 ("In the prior iteration of the Bankruptcy Code, there was no definition of "State" as it appears in the current version which now bans Puerto Rico from filing municipal bankruptcies.").
[7] *See Franklin*, 805 F.3d at 329 (stating at least from 1938 until the modern Bankruptcy Code was introduced in 1978, Puerto Rico, like the states, could authorize its municipalities to obtain federal municipal bankruptcy relief.).
[8] *See id.* at n. 9.
[9] *Id.* at 325.
[10] *See id.*
[11] *Id.*
[12] *See id.* at 334.

Chapter 9 under Section 101(52), it also remained subject to the burdens of Chapter 9 under Section 903(1).[13]

The decision in *Franklin* exposed the non-uniform treatment of Puerto Rico under the Bankruptcy Code, which arguably violates the Bankruptcy Clause of the United States Constitution (the "Bankruptcy Clause").[14] This article discusses the applicability of the Bankruptcy Clause to Chapter 9 municipal bankruptcy and the requirement of uniformity in federal bankruptcy laws. Part I of this article summarizes the holding in *Franklin* and examines Sections 903(1) and 101(52) of the Bankruptcy Code. Part II discusses the requirement of uniformity in federal bankruptcy laws. In particular, Part II discusses the history of uniformity and what specifically makes a law uniform. Part III discusses landmark cases on the issue. In particular, Part III examines the application and interpretation of "uniform bankruptcy laws" by the courts. Finally, Part IV examines the implications of the *Franklin* decision and its future ramifications.

I. *Franklin v. Puerto Rico*

In an effort to restructure its municipal debt, Puerto Rico enacted the Recovery Act in June 2014.[15] Facing a fiscal crisis, the Recovery Act was necessary because Puerto Rico does not have the power to authorize its municipalities to seek Chapter 9 relief under Section 903(1) of the Bankruptcy Code.[16] Thus, the Recovery Act was Puerto Rico's attempt to "fill the gap" by providing relief to its municipalities on its own.[17]

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[13] *See id.*
[14] *See id.* at 355.
[15] *Id.* at 324.
[16] *Id.*
[17] *See id.* at 331.

The Recovery Act, however, expressly provided protections for creditors that were different than Chapter 9 protections.[18] It provided two methods for restructuring debt: Chapter 2 "Consensual Debt Relief," and Chapter 3 "Debt Enforcement."[19] Those in favor of the Recovery Act argued that because Puerto Rico may not authorize its municipalities to file for federal Chapter 9 relief under the Bankruptcy Code, its municipalities were nonetheless purportedly eligible by the Recovery Act to seek both Chapter 2 and Chapter 3 relief as a substitute.[20]

On the other hand, opponents argued "Chapter 2 and Chapter 3 relief under the Recovery Act provide less protection to creditors than the federal Chapter 9 counterpart."[21] Opponents of the Recovery Act were investors who held nearly two billion dollars of bonds issued by one of Puerto Rico's distressed public utilities.[22] The bondholders sued almost immediately following the Recovery Act's passage in order to prevent it from ever taking effect.[23] They challenged the law's validity and sought to enjoin its implementation, arguing, among other things, that the Bankruptcy Code preempted the Recovery Act.[24] The United States District Court for the District of Puerto Rico found in favor of the bondholders and permanently enjoined the Recovery Act's implementation.[25] On appeal, the primary legal issue was whether Section 903(1) of the Bankruptcy Code preempted the Recovery Act.[26]

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[18] *See id.* (noting both Chapter 2 and Chapter 3 relief under the Recovery Act "appear to provide less protection for creditors" than the federal Chapter 9 counterpart).
[19] *Id.*
[20] *See id.*
[21] *See id.; see also* L.S. McGowen, *Puerto Rico Adopts a Debt Recovery Act for Its Public Corporations*, 10 PRATT'S J. BANKR.L. 453, 460–62 (2014).
[22] *See Franklin,* 805 F.2d at 324.
[23] *Id.* at 325.
[24] *Id.* at 326.
[25] *Id.*
[26] *Id.*

According to the First Circuit, Section 903(1), which applies to "States," did not suggest that Puerto Rico was outside of its reach even though Section 101(52) excluded Puerto Rico from the definition of a "State" when defining who may be a debtor under Chapter 9.[27] For all other purposes under the Bankruptcy Code, however, Puerto Rico still falls within the definition of a "State."[28] Therefore, the court held that Section 903(1) applied to Puerto Rico.[29] Section 903(1) states in full: "a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition."[30] The purpose of Section 903(1) is to "ensure the uniformity of federal bankruptcy laws by prohibiting State municipal debt restructuring laws that bind creditors without their consent."[31] Thus, according to this reasoning, the Recovery Act was a "State" law.[32]

The Court explained that the answer to whether the Recovery Act was preempted by Section 903(1) was "largely driven by examining whether the amendment to the Bankruptcy Code in 1984 adding Section 101(52), altered Section 903(1)'s effect."[33] The Court held that it did not.[34] In short, Puerto Rico could not authorize its municipalities to seek relief under Chapter 9 of the Bankruptcy Code because Puerto Rico is excluded from the definition of a "State" when determining who may be a debtor under Chapter 9, and at the same time, Puerto Rico could not

[27] *See id.* at 334.
[28] *See* 11 U.S.C. §101(52).
[29] *See Franklin*, 805 F.3d at 325.
[30] *Franklin*, 805 F.3d at 334.
[31] *Id.* at 324–25; *see also* 11 U.S.C. § 903(1) (2012) (prohibiting all states from enacting municipal debt restructuring laws that bind creditors without their consent).
[32] *Id.*
[33] *Id.* at 333.
[34] *See id.*

pass its own municipal bankruptcy law because it *is* considered a "State" under federal bankruptcy law.[35]

A. Majority Opinion

In the majority opinion, Judge Sandra L. Lynch indicated that "if Congress had wanted to alter the applicability of Section 903(1) to Puerto Rico, 'it easily could have written Section 101(52) to exclude Puerto Rico from the prohibition of Section 903(1) . . . .'"[36] The majority also relied on the lack of legislative history as to the reason for the exception set forth in the 1984 amendment that added Section 101(52).[37] For this reason, Chief Judge Jeffrey R. Howard and Judge Lynch agreed that Section 903(1) preempted the Recovery Act because Puerto Rico has historically been treated as a "State" under the Bankruptcy Code.[38] Unlike the concurring opinion discussed below, the majority refused to question the validity of the 1984 amendment that added Section 101(52) to the Bankruptcy Code.[39] Instead, it upheld Congress's differential treatment of Puerto Rico.[40] In denying Puerto Rico the power to authorize its municipalities to file for Chapter 9 relief, Congress retained for itself the authority to decide which solution is best for Puerto Rico.[41] Judge Lynch concluded by stating: "we must respect Congress's decision to retain this authority."[42]

B. Concurring Opinion

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[35] *See* 11 U.S.C. §903(1); *see also* 11 U.S.C. §101(52).
[36] *Franklin,* 805 F.2d at 337.
[37] *See id.*
[38] *See id.* at 343 ("The terms of [Section] 101(52) do not exclude Puerto Rico municipalities from federal relief; rather, they deny to Puerto Rico the authority to decide when they might access it. On this reading, absent further congressional action, [Section] 903(1) still applies.).
[39] *See id.* at 345.
[40] *See id.*
[41] *Id.*
[42] *Id.*

In his concurring opinion, Judge Juan R. Torruella raised the possibility that "the non-uniform treatment of Puerto Rico under the [Bankruptcy Code] violated the Bankruptcy Clause" of the United States Constitution.[43] While Judge Torruella agreed with the majority that the Recovery Act "contravene[d] Section 903(1) . . . and [was] thus, invalid," he concluded that "Puerto Rico should be free to authorize its municipalities to file for bankruptcy protection under the existing Chapter 9 of the Bankruptcy Code" because, he argued, "the 1984 amendment adding Section 101(52) is equally invalid."[44] A holding that the 1984 amendment is unconstitutional would put Puerto Rico on the same footing as the States and other territories and promote uniformity by ensuring that Puerto Rico obtained the same authority to seek Chapter 9 relief as it had before the 1984 amendment was enacted.[45]

II. Uniformity in Bankruptcy

When Judge Torruella raised the possibility that "the non-uniform treatment of Puerto Rico . . . violated the Bankruptcy Clause," he explained that "the uniformity requirement . . . prohibits Congress from enacting a bankruptcy law that . . . applies only to one regional debtor."[46] The plain language of the Bankruptcy Clause, according to Judge Torruella, unequivocally states: "bankruptcy laws must be uniform throughout the United States or else [they] are invalid."[47] However, to understand uniformity under the Bankruptcy Clause, one must first understand its origins.

A. The Origins of Uniformity and the Bankruptcy Clause

[43] *See id.* at 346 (Torruella, J., concurring).
[44] *Id.*
[45] *See id.*
[46] *Id.* at 347.
[47] *Id.*

The requirement of "uniform" laws on bankruptcy in the United States dates back to the drafting of the Constitution.[48] "The framers of the United States Constitution . . . included the power to enact 'uniform laws on the subject of bankruptcies' in the Article I powers of the legislative branch."[49] James Madison described the purpose of the Bankruptcy Clause, stating: "The power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie or be removed into different States that the expediency of it seems not likely to be drawn into question."[50] In simpler terms, the framers did not want nonresident creditors to be treated differently in each State or be discriminated against by local state laws.[51]

After the signing of the Constitution, however, the Bankruptcy Clause remained largely unexercised by Congress for over a century.[52] During this period, it was left to the states to fill the void and pass their own bankruptcy legislation.[53] This historical point is relevant because it is similar to what has happened in Puerto Rico. Currently, Chapter 9 is being applied non-uniformly to Puerto Rico.[54] Congress chose one defined "State" to exclude from the definition of who may be a debtor under Chapter 9.[55] Moreover, based on the majority's refusal to erode the past bankruptcy practice–where the definition of a "State" included territories and possessions–it is likely that other territories could authorize their municipalities to seek Chapter 9 relief because they, unlike Puerto Rico, have not been excluded from the definition of who may be a debtor

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[48] *See* Charles Jordan Tabb, *The History of the Bankruptcy Laws in the United States*, 3 AM. BANKR. INST. L. REV. 5, 6 (1995).
[49] *Id.*
[50] *Id.* at 13.
[51] *See id.* at 43.
[52] *Id.* at 13.
[53] *See id.*
[54] *Franklin*, 805 F.3d at 325.
[55] *See* 11 U.S.C. §101(52).

under Chapter 9.[56] This demonstrates non-uniformity among the "States," as defined in the Bankruptcy Code, and also among the territories.[57]

Therefore, to "fill the gap" Puerto Rico did what States have always done and created its own bankruptcy law.[58] Under Section 903(1), however, Puerto Rico was barred from enacting a municipal bankruptcy law that bound creditors without their consent.[59] In addition, because of the decision in *Franklin*, Puerto Rico could not authorize its municipalities to seek Chapter 9 relief or "fill the gap" with its own version of Chapter 9.[60] Thus, Puerto Rico, unlike the States, lacks access to any legal mechanism to restructure the debts of its public utilities.[61]

B. What Makes a Law Uniform?

A bankruptcy law is "uniform" when "(i) the substantive law applied in a bankruptcy case conforms to those applied outside of bankruptcy under State law; (ii) the same law is applied to all debtors within a State and to their creditors; and (iii) Congress uniformly delegates to the States the power to fix those laws."[62] The third element is relevant here.

Congress created Chapter 9 to provide a mechanism for States to address municipal insolvency.[63] It did so by requiring a State's consent in the federal municipal bankruptcy regime before permitting municipalities of that State to seek relief under it.[64] Puerto Rico, however, has

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[56] *See Franklin*, 805 F.3d at 334.
[57] *See id.* at 355.
[58] *See id.*
[59] *Id.* at 334 (holding Section 903(1), by its plain language, bars a State law like the Recovery Act).
[60] *Id.* at 345.
[61] *See id.* 354–355 (Torruella, J., concurring) (noting when Puerto Rico is effectively excluded from the political process in Congress, this is asking it to play with a deck of cards stacked against it).
[62] Tabb, 3 AM. BANKR. INST. L. REV. at 47.
[63] *See Franklin*, 805 F.3d at 328.
[64] *See id.*

been excluded from this process completely.[65] Thus, Congress has not uniformly delegated the power to seek Chapter 9 relief throughout the country.

This exclusion was not a blanket or across the board exclusion on all States and territories like the federal bankruptcy laws governing all banks or all insurance companies. Instead, it singled out Puerto Rico and Washington D.C.[66] Unlike State bankruptcy laws governing banks and insurance companies, which are not preempted by the federal Code in light of congressional language which directly and expressly excludes them from the Code, "the exclusion of Puerto Rico municipalities is not direct and is of a different sort."[67] Rather, "Puerto Rico is precluded from granting its municipalities the required authorization, and so its municipalities fail to qualify for the municipal bankruptcy protection that is available."[68]

One explanation for the need for uniformity under Chapter 9 is to prevent "a race to the bottom."[69] In this case: a race to Puerto Rico. The strongest case for uniform federal laws arises from the problem of "spillovers."[70] That means when inconsistent laws exist, there sometimes results a "race to the bottom," in which everyone becomes worse off as a result of their competition for resources.[71] For the majority of the country, this has worked because States cannot enact their own inconsistent Chapter 9 to attract investors.[72] However, creditors may take advantage of Puerto Rico because they know it is excluded from federal Chapter 9 relief and will

[65] *See id.* Instead, Puerto Rico must seek relief directly from Congress. *See id.*
[66] *See* 11 U.S.C. §101(52).
[67] *Franklin*, 805 F.3d at 343.
[68] *Id.*
[69] *See* Eric A. Posner, *The Political Economy of the Bankruptcy Reform Act of 1978*, 96 MICH. L. REV. 47, 97 (1997).
[70] *Id.*
[71] *Id.* at 97–98.
[72] *See* 11 U.S.C. § 903(1) (2012).

have to seek relief directly from Congress.[73] This process will not only take longer, it will be much more difficult to accomplish.[74]

III. Uniformity in Bankruptcy Cases

The following cases, while not Chapter 9 cases, shed light on the applicability of uniformity under the Bankruptcy Clause in past bankruptcy cases.[75]

A. Ry. Labor Executives' Ass'n v. Gibbons

In *Gibbons,* the United States Supreme Court struck down a private bankruptcy law that affected only the employees of a single company.[76] The Court concluded: "the uniformity requirement, prohibits Congress from enacting a bankruptcy law that, by definition, applies only to one regional debtor."[77] To survive scrutiny under the Bankruptcy Clause, a law must at least apply uniformly to a defined class of debtors.[78]

In 1979, a Chicago railroad company ceased operations and the trustee of its estate "petitioned for reorganization under the Bankruptcy Act of 1898."[79] The United States District Court for the Northern District of Illinois concluded that reorganization was not possible.[80] However, three days before the court's order, Congress enacted the "Rock Island Railroad Transition and Employee Assistance Act" ("RITA").[81] Under the statute, it stated "appellee must pay benefits of up to $75 million to those Rock Island employees who are not hired by other

[73] *Franklin*, 805 F.3d at 325.
[74] *See id.* at 346, 355.
[75] This is due to the lack of Chapter 9 cases addressing the issue of uniformity.
[76] Ry. Labor Executives' Ass'n v. Gibbons, 455 U.S. 457, 473 (1982).
[77] *See id.*
[78] *See id.* at 473.
[79] *See id.* at 457.
[80] *See id.*
[81] *Id.*

carriers, and the United States guarantees Rock Island's employee protection obligations."[82] The statute also required that "such obligations must be considered administrative expenses of the Rock Island estate for purposes of determining the priority of the employees' claims to the estate's assets."[83] On June 5, 1980, a complaint was filed in the reorganization court challenging the constitutionality of RITA and seeking injunctive relief.[84]

In its opinion, the Court noted that RITA applied to only one regional bankrupt railroad.[85] The only people affected by RITA were Rock Island creditors and employees. The Court also made reference to the Constitutional convention, stating: "although the debate in the Constitutional Convention regarding the Bankruptcy Clause was meager, we think it lends some support to our conclusion that the uniformity requirement of the Clause prohibits Congress from enacting bankruptcy laws that specifically apply to the affairs of only one named debtor."[86]

B. Richardson v. Schafer (In re Schafer)

In *In re Schafer* the Court of Appeals for the Sixth Circuit held that the requirement of uniform bankruptcy laws applied to the federal government but not to the states themselves.[87] The court agreed with the argument that "the interpretation given to the phrase 'uniform Laws' by the Supreme Court . . . permits states to act in the arena of bankruptcy exemptions even if they do so by making certain exemptions available only to debtors in bankruptcy, and that such

[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] *See id.* at 473.
[86] *Id*. at 471.
[87] *See* Richardson v. Schafer (*In re* Schafer), 689 F.3d 601, 603 (6th Cir. 2012).

exemptions schemes are not invalidated by the Supremacy Clause."[88] Thus, the Sixth Circuit held the uniformity requirement applied only to federal enactments.[89]

In Re Schafer involves Chapter 7, where trustees objected to bankruptcy-specific State law exemptions claimed by debtors on the theory that State law bankruptcy-specific exemptions were unconstitutional under the Bankruptcy and Supremacy Clause.[90] However, the facts of *In re Schafer* are not as relevant as its discussion on uniformity.

The court stated: "the Bankruptcy Clause shall act as 'no limitation upon congress as to the classification of persons who are to be affected by such laws, provided only the laws shall have uniform operation throughout the United States.'"[91] The court explained the statute at issue actually furthered, rather than frustrated, national bankruptcy policy.[92] As the Supreme Court has repeatedly noted, "the goal of the Bankruptcy Code is to provide debtors in bankruptcy with a fresh start."[93] This opinion implies that States can create their own bankruptcy laws that are not uniform but, on the other hand, the federal government must pass bankruptcy laws that are uniform.[94]

The court noted that "although only Congress has the power to establish a uniform system of bankruptcy, once Congress passes one uniform act, if that system has differing effects on citizens of different States based on a particular State's laws, that result is acceptable."[95] The court cited *Schultz v. United States*, in which the Sixth Circuit similarly held that the Bankruptcy Clause allows different effects in various states due to dissimilarities in state law, so long as

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[88] *Id.* at 603.
[89] *Id.* at 609.
[90] *Id.*
[91] *Id.* at 611 (quoting Leidigh Carriage Co. v. Stengel, 95 F. 637, 646 (6th Cir.1899)).
[92] *Id.* at 616.
[93] *Id.*
[94] *See id.* at 610.
[95] *Id.*

federal law applies uniformly among classes of debtors.[96] In short, the court noted that "[t]o survive scrutiny under the Bankruptcy Clause, a law must at least apply uniformly to a defined class of debtors."[97] The court in *Schultz* concluded, "Congress is not authorized merely to pass laws, the operation of which shall be uniform, but instead to establish uniform laws on the subject throughout the United States."[98]

IV. Implications of *Franklin*

Uniformity is problematic in the bankruptcy context because: "(i) most laws governing the substance of relationships between debtor and creditors are state laws; (ii) these state laws are incorporated into and applied in the federal Bankruptcy Code; and (iii) these state laws are not necessarily uniform."[99] Courts have concluded time and time again that State bankruptcy laws do not need to be uniform but federal bankruptcy laws must be uniform.[100]

The decision in *Franklin* has exposed a lack of uniformity within federal bankruptcy laws. Unfortunately, there is no legislative record on which to rely for determining Congress' reasoning behind the addition of 101(52) exempting Puerto Rico from Chapter 9 relief.[101] Chapter 9 is supposed to be a 'cooperative' state-federal scheme, but the addition of Section 101(52) and the interpretation of Section 903(1) as applied to Puerto Rico appear to be anything but cooperative.[102]

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[96] Schultz v. United States, 529 F.3d 343, 351 (6th Cir. 2008).
[97] *Id.* (quoting Ry. Labor Executives' Ass'n v. Gibbons, 455 U.S. 457, 473 (1982)).
[98] *Schultz*, 529 F.3d at 350 (quoting Sturges v. Crowinshield, 17 U.S. 122, 193–94 (1819)).
[99] *See* Charles Jordan Tabb, *The History of the Bankruptcy Laws in the United States*, 3 AM. BANKR. INST. L. REV. 5, 46 (1995).
[100] *See* Ry. Labor Executives' Ass'n v. Gibbons, 455 U.S. 457, 473 (1982); *see also* Richardson v. Schafer (*In re Schafer*), 689 F.3d 601, 603 (6th Cir. 2012).
[101] *Franklin*, 805 F.3d at 337.
[102] *See id.* at 329.

According to the Court in *Gibbons*, Congress overextended its authority by passing a private bankruptcy law that affected only the employees of the Rock Island Railroad."[103] This is somewhat similar to the municipalities in Puerto Rico that are not entitled to seek Chapter 9 relief while, under federal bankruptcy law, all other "State"[104] municipalities throughout the country are.[105] While Detroit can seek Chapter 9 relief simply by obtaining the approval from the state of Michigan, San Juan cannot seek Chapter 9 relief by obtaining the approval of Puerto Rico.[106] Instead, Puerto Rico and its municipalities must go directly to Congress.[107]

Moreover, in *Schultz,* the court held that "Congress is not authorized merely to pass laws, the operation of which shall be uniform, but instead to establish uniform laws on the subject throughout the United States."[108] On the subject of Chapter 9, Congress has not passed a law that is uniform throughout the United States, which is contrary to the requirement laid out in *Schultz.*[109] Since Puerto Rico is considered a State under federal bankruptcy law, the fact that it is being treated differently than others who fall under the same definition shows non-uniformity.[110]

Similarly in *In re Schafer,* the court noted that the goal of the Bankruptcy Code is to provide debtors in bankruptcy with a fresh start.[111] However, the holding in *Franklin* does the

[103] *See Gibbons*, 455 U.S. at 473.
[104] Puerto Rico is considered a state under federal bankruptcy policy for all purposes other than when defining who may be a debtor under Chapter 9. *See* 11 U.S.C. §101(52).
[105] *See id.*
[106] *See Franklin*, 805 F.3d at 328.
[107] *See id.* at 325.
[108] *Schultz*, 529 F.3d at 350 (quoting Sturges v. Crowinshield, 17 U.S. 122, 193–94 (1819)).
[109] *See id.*
[110] *See Franklin,* 805 F.3d at 355.
[111] *See* Richardson v. Schafer (*In re Schafer*), 689 F.3d 601, 616 (6th Cir. 2012).

opposite.[112] Instead, *Franklin* denies debtors a fresh start and forces debtors to seek bankruptcy relief in a way that is not uniform with the rest of the country.[113]

Conclusion

Puerto Rico is treated like a State in every chapter of the Bankruptcy Code except for Chapter 9.[114] According to Puerto Rico's Resident Commissioner in Congress, Pedro R. Pierluisi, Congress should enact the Puerto Rico Chapter 9 Uniformity Act because "[i]t is the right thing to do from a moral perspective and the prudent thing to do from a policy perspective."[115] Under the current federal law, Puerto Rico may not authorize its municipalities to seek Chapter 9 relief, and also cannot create its own version of Chapter 9. However, the current federal law is not uniform. Section 101(52) is thus unconstitutional because it violates the Bankruptcy Clause.

In August 2015, Puerto Rico petitioned for review of the decision in *Franklin* and the United State Supreme Court granted certiorari.[116] Oral arguments were heard on March 22, 2016.[117] Based on previous interpretations of the uniformity requirement, the Court should conclude that Puerto Rico is entitled to seek Chapter 9 relief like every other State under the federal bankruptcy laws. In the meantime, however, Puerto Rico continues to pursue other paths to restructure its debts. "Lobbying efforts seeking access to Chapter 9 for Puerto Rico's

[112] *See Franklin,* 805 F.3d at 325.
[113] *See id.*
[114] Pedro R. Pierluisi, *A Lifeline for Puerto Rico*, Am. Bankr. Inst. J., August 2015, at 8.
[115] *Id*. at 9.
[116] Puerto Rico v. Franklin California Tax-Free Trust, 136 S.Ct. 582 (2015).
[117] Oral Argument, *Puerto Rico v. Franklin California Tax-Free Trust*, 136 S.Ct. 582 (2015) (No. 15–00233).

municipalities are ongoing, although the fate of such efforts is less than clear."[118] Puerto Rico's last lifeline might very well be the Supreme Court.[119]

[118] Paul R. Hage & Patrick R. Mohan, *Puerto Rico's Muni Restructuring Law Ruled Unconstitutional*, AM. BANKR. INST. J., September 2015, at 66.

[119] On June 13, 2016, the United States Supreme Court affirmed the decision of the lower court. Justice Thomas delivered the opinion of the Court, in which Chief Justice Roberts, and Justices Kennedy, Breyer, and Kagan joined. Justice Sotomayor filed a dissenting opinion, in which Justice Ginsburg joined. Justice Alito took no part in the consideration or decision of this case.