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April 11, 2016

The Honorable Robert William Bishop  
Chairman  
U.S. House of Representatives  
Committee on Natural Resources  
1324 Longworth House Office Building  
Washington, DC 20515

Dear Mr. Chairman:

This correspondence responds to your April 8, 2016, letter on behalf of the Committee on Natural Resources inviting me to appear on Wednesday, April 13, 2016, regarding the "*Puerto Rico Oversight, Management, and Economic Stability Act*."

Due in part to the short notice of your invitation, particularly considering my residence outside the metropolitan Washington, D.C. area, I will not be in attendance or able to submit formal written testimony; nor did my organization, the Center for Individual Freedom (hereinafter "CFIF"), have sufficient time to submit written testimony to meet the Committee's 10:00 a.m. filing deadline today.

Nonetheless, CFIF cares deeply about the subject matter of the hearing and is working to educate and engage the public on this important issue - the essence of the freedoms of speech and petition explicitly protected by the First Amendment to the U.S. Constitution. CFIF respectfully proffers the following comments regarding its opposition to the "*Puerto Rico Oversight, Management, and Economic Stability Act*," which are buttressed by similar and additional concerns raised by many, including Members of Congress, Governors and policy analysts.<sup>1</sup>

CFIF is an organization with 250,000 supporters and activists across America, founded in 1998 for the purpose of defending the rule of law, property rights and freedoms enshrined in the Constitution. It is on the basis of that mission that we oppose the draft legislation.

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<sup>1</sup> These comments are also intended to address a statement recently brought to our attention by Colin Wilhelm of *Politico*: "An aide from the committee is quoted as saying, 'We would like to hear from Timothy in a public forum about his deceitful ads.'" As explained below, our position on this issue is highly principled and supported by the facts.

We would like to highlight as an initial matter that we are joined in our opposition to the draft legislation by the Republican Study Committee (RSC). Indeed, RSC Chairman Bill Flores (R - Texas) has expressed in no uncertain terms that the bill as currently drafted contravenes the RSC's principles:

"The discussion draft legislation regarding Puerto Rico's fiscal situation includes provisions that essentially provide for a federally forced restructuring of the island's debt. This approach is inconsistent with the Republican Study Committee's (RSC) position on this issue. The RSC has taken a clear position that unilaterally changing the rules to address Puerto Rico's fiscal irresponsibility is the wrong approach."

In addition to the RSC, we would also highlight that CFIF's concerns over "Super Chapter 9" have been expressed by conservative Governors Douglas Ducey of Arizona, Paul LePage of Maine, Pete Ricketts of Nebraska, Susana Martinez of New Mexico and Dennis Daugaard of South Dakota. In their letter dated February 24, 2016, to Speaker of the House Paul Ryan and Senate Majority Leader Mitch McConnell, the governors address "Super Chapter 9" concerns expressed by CFIF, particularly the financial threat to U.S. taxpayers:

"Significantly, the proposed policy measures create a moral hazard for states and territories. It disincentivizes states from guarding against the risks and consequences of profligate spending. Of most concern to us as governors, granting Puerto Rico such unprecedented bankruptcy authority would likely raise the borrowing costs of our states, reducing our ability to invest in vital services and eroding investor confidence in the whole notion of full faith and credit debt. Indeed, the National Governors Association has already warned against this in 2011, noting that states should not be given the right to declare bankruptcy themselves because the resultant market volatility would raise the cost of state bankruptcy precipitously."

Those concerns also are shared by conservative organizations such as The Heritage Foundation, the 60 Plus Association, the National Taxpayers Union and others.

As Ike Brannon, president of Capital Policy Analytics, summarized in a piece published in *The Weekly Standard* on April 8, 2016, the draft legislation by any other name currently amounts to "Super Chapter 9" in practice:

"[B]y enabling a federally-appointed 'Oversight Board' to, in essence, allow a Puerto Rico itself to declare bankruptcy and restructure all of its debts, including those backed by the 'full faith and credit' of the Commonwealth itself. This is, in effect, a 'super' Chapter 9 bankruptcy, and just because it's not called that does not change the substance of the proposed restructuring regime."



Mr. Brannon adds:

"So while the Committee may not call this bill Chapter 9 for the Commonwealth, the bankruptcy protections it does extend are nearly identical, and would be just as damaging to the broader municipal market and welfare of American bondholders. Worse, the legal stay in the legislation would serve to directly facilitate the payment of Puerto Rican government pensions and other non-bondholder creditors at the direct expense of Americans across Puerto Rico and the broader United States who hold Puerto Rico bonds."

Our opposition to the Committee's draft legislation is not arbitrary, but rather based on conservative principles and fidelity to the rule of law and property rights.

Although hardly an exhaustive recitation of bases for our opposition, examples include, but are not limited to, the fact that the bill as drafted would impose an unprecedented 18-month moratorium on bondholder legal action, which to our knowledge has never been imposed by the U.S. Congress on bondholders. Section 413 of the draft, entitled "Automatic Stay Upon Enactment," prohibits "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the Government of Puerto Rico that was or could have been commenced before the enactment of this Act, or to recover a Bond Claim against the Government of Puerto Rico that arose before the enactment of this Act." Not only does that eliminate one incentive for Puerto Rico to negotiate in good faith, it would encourage similar behavior and demands for the same favoritism from future state and local bond issuers.

Furthermore, as noted above, the draft legislation goes beyond even Chapter 9 of the U.S. Bankruptcy Code by relieving Puerto Rico of its obligation to negotiate in good faith with bondholders. Sections 202, 211, 212, 213 and 214 cumulatively amount to what we and others have justifiably labeled "Super Chapter 9" provisions. As others have noted, the bill also contains at least 85 provisions taken directly from Chapter 9 of the Bankruptcy Code, particularly within Title III. As one illustration, Section 308 reads that, "the Federal Rules of Bankruptcy Procedure shall be applicable in a case under this title. To the extent just and consistent with the provision of this title, the court shall apply the rules of the Federal Rules of Bankruptcy Procedure as if the case were a case under chapter 9 of title 11, U.S. Bankruptcy Code."

These examples merely sample the defects of the draft legislation to which we and so many other conservative organizations, policy experts and elected officials have objected.

To be clear, CFIF applauds some of the policies encouraged by the draft bill or suggested by leaders and commentators addressing this issue, including reforms

relating to Puerto Rico's minimum wage, public union strike provisions and Jones Act relief. We also stand willing to engage in ongoing and productive efforts to achieve legislation that addresses Puerto Rico's financial maladies while safeguarding the principles of property rights and rule of law. Unfortunately, the net negative balance of defects to benefits in the bill as currently drafted render it defective to anyone concerned about the negative precedent it would set, its impact on taxpayers and bondholders, as well as constitutional principles.

Accordingly, we join the RSC, conservative governors and other elected leaders across the nation, conservative policy experts and other conservative organizations in urging the Committee on Natural Resources – and indeed the entire Congress – to vote against any bailout of Puerto Rico that constitutes, in name or effect, provisions commonly referred to as “Super Chapter 9.”

Sincerely,

/s/

Timothy Lee  
Senior Vice President of  
Legal and Public Affairs

cc: Charles Park, Clerk, Subcommittee on Indian, Insular and Alaska Native Affairs