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U.S. Supreme Court Passes on New Opportunity to Address Insular Cases

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The Supreme Court of the United States on Monday passed on an opportunity to address the Insular Cases, which casts Americans living in U.S. territories as unequal to their mainland counterparts.

Writ of certiorari — a court process to seek judicial review of a decision of a lower court or government agency — was filed by the Frente Amplio en Defensa de la Educación Pública (“FADEP”), an organization of teachers that broadly defends public education in Puerto Rico.

The FADEP is a coalition that groups three bona fide associations: Federación de Maestros de Puerto Rico, Inc. (FMPR), Grupo Magisterial Educadores(as) por la Democracia, Unidad, Cambio, Militancia y Organización Sindical, Inc. (EDUCAMOS), and Unión Nacional de

Educadores y Trabajadores de la Educación, Inc. (UNETE).

Through its petition, the FADEP appealed from the First Circuit's decision, which confirmed the Commonwealth of Puerto Rico's Plan of Adjustment and annulled the retirement laws for teachers and judges. The petition for writ of certiorari raised constitutional arguments, regarding the preemption doctrine, and requested the repeal of the infamous Insular Cases. This petition was filed and signed by attorneys Jessica E. Méndez-Colberg, Esq., Rolando Emmanuelli- Jiménez, Esq., and Zoé C. Negrón-Comas Esq., of Bufete Emmanuelli CSP.

"While it is a disappointment, the FADEP neither gives up nor sells out," declared Mercedes Martínez-Padilla, president of the FMPR. "While other organizations decided to give away our rights to the Oversight Board on a silver platter, our organizations have continued to fight in the courts until the last consequences and will continue to do so in the streets."

"The Oversight Board wants to leave us without a dignified retirement and keep us working until our bodies give out. It has extended our retirement age, with all the physical and emotional toll that implies, while reducing our pensions to poverty levels," added Liza M. Fournier-Córdova, president of ÚNETE. "The Supreme Court of the United States did not wish to intervene. It will be up to the teachers now to go out and demand what they deserve. We will not stop fighting."

"We had hoped that the Supreme Court would take the case, because it contained many issues of first impression and widespread repercussions. By denying the petition, the Court allowed the Oversight Board to become the new legislative power, through the bankruptcy process," commented Attorney Emmanuelli-Jiménez. "Even when PROMESA itself did not grant the Board this power to legislate, the practical effect of that denial is to allow the Board to legislate, with all the nefarious consequences that may have on the future of our country."

On the other hand, the FADEP's petition requested for the Court to overrule the Insular Cases - a series of cases decided at the beginning of the 1900s that justify discriminatory treatment of territories in the federal courts. Attorney Méndez-Colberg pointed out that "we know that, in absence of the Insular Cases doctrine, these situations where the Board clearly exceeds its powers would not be happening". However, she stated that, "even though recent declarations by the Supreme Court justices say that the rotten and racist base of the Insular Cases must be eradicated, once again, the Court missed the opportunity to overrule them once and for all."

"We're also vigilant about the effect this may have on the Puerto Rico Electric Power Authority's restructuring process," added Attorney Negrón-Comas. "With the Supreme Court's decision in their back pocket, we foresee that the Board will become more aggressive in its tactic of displacing local legislation, which will be detrimental for attempts to prevent a catastrophic Plan of Adjustment for Puerto Rico, its people and its economy."

"This is a sad day for teachers and the people of Puerto Rico as a whole. It shows the inhumane and violent power that the federal government has over us, which they use to eliminate our rights at their whim, divide the profit of our sweat amongst themselves, and leave the teachers of this country in poverty," expressed Sonaly Berríos, Interim President of EDUCAMOS. "The teachers should know that we did everything in our power from the legal standpoint, but now it is time to continue the fight in other spaces."

Due to the substantial costs of these efforts, the FADEP has ongoing fundraising efforts for through GoFundMe and asked the People of Puerto Rico and its diaspora to support their fight to protect teachers' rights. The GoFundMe is available in <https://www.gofundme.com> searching for the page: Aporta a la lucha del magisterio puertorriqueño.

