

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

TROPICAL CHILL CORP., et al.

Plaintiffs

V.S.

PEDRO R. PIERLUISI-URRUTIA, in his
official capacity as Governor of the
Commonwealth of Puerto Rico, et al.

Defendants

CASE NO. 21-1411 (RAM)

DECLARATORY JUDGMENT; INJUNCTIVE AND
OTHER EQUITABLE RELIEF

**URGENT MOTION TO REQUEST LEAVE TO FILE A BRIEF OF
AMICUS CURIAE ASOCIACIÓN DE ALCALDES DE PUERTO RICO IN
SUPPORT OF THE DEFENDANTS**

TO THE HONORABLE COURT:

COMES NOW proposed defendant-intervenor **Asociación de Alcaldes de Puerto Rico**, through the undersigned counsels and very respectfully **SETS FORTH** and **PRAY:**

I. INTRODUCTION

As expressed by world renowned astrophysicist, author and humanist, Dr. Neil deGrasse Tyson:

Scientific literacy is an intellectual vaccine against the claims of charlatans who would exploit ignorance¹.

In the instant action, an ice cream establishment and a group of business owners and private sector employees challenge the very reasonable vaccine mandate issued by the defendants, Governor Hon. Pedro Pierluisi-Urrutia, and Commonwealth Secretary

¹ <https://www.azquotes.com/quote/873110?ref=vaccines>.

of Health, the Hon. Carlos R. Mellado-López, for access to a variety of business venues, which applies all of the 78 municipalities, some of which have added their own restrictions aimed at protecting public health. The forgoing action therefore invokes sadly misapprehended notions of individual/religious freedom that engender the common good. As stated by the Director of the U.S. Centers for Disease Control, Dr. Rochelle Walensky stated on late July, COVID-19 is becoming a “pandemic of the unvaccinated”², yet plaintiffs in this case advocate the perversion of basic constitutional norms in favor of a *laissez-faire* cult to individual choice over the well-being of the society at large. With regards to the specific issue of balancing COVID restrictions and business activity, it would seem to us that live/healthy patrons are more profitable than the severely ill or the dead.

For the foregoing reasons, the Asociación de Alcaldes de Puerto Rico respectfully moves for leave to submit a brief of *amicus curiae* in support of reasonable vaccine mandates to protect the collective wellbeing of the People of Puerto Rico and the striking of a healthy balance between a vibrant economy and general public health considerations, as we refuse to believe that the Puerto Rico of the Twenty First Century be less advanced than the Fourteenth Century Venetian Republic, which requires all sailors to remain outside the City 40 days or a “*quarantena*”³ after arrival in port, in order to curtail the spread of the plague.

We are well aware that the instant case is understandably subject to an expedited briefing schedule and are therefore ready to submit our brief on very short notice if

² <https://www.cnn.com/2021/07/16/health/us-coronavirus-friday/index.html>

³ This is, of course, the origin of the word “quarantine”.

leave is granted.

II. DISCUSSION

ABOUT THE ASOCIACIÓN DE ALCALDES

The Asociación de Alcaldes de Puerto Rico (hereinafter referred to as “Asociación”) was chartered in the year 1949, in an initiative led by former San Juan Mayor, Hon. Felisa Rincón (a position then known as “Administrator of the Capital City”), as a vehicle to promote municipal autonomy and other local government interests. The entity is registered in the Puerto Rico Department of State as a non-profit corporation and has its main offices located at: 401 Avenida Constitución, San Juan, Puerto Rico 00901. Although the Asociación originally gathered members from all political persuasions in 1968, former Governor and at the time Mayor of San Juan, Hon. Carlos Romero-Barceló, chartered the Federación de Alcaldes de Puerto Rico (hereinafter referred to as “Federación”). Since then, mayors elected on behalf of the Popular Democratic Party (hereinafter referred to as “PDP”) have remained members of the Asociación and mayors elected on behalf of the New Progressive Party (hereinafter referred to as “NPP”). Notwithstanding political rivalries, both entities have a long history on working together on legislation and other policy goals. For instance, both organizations were instrumental in the passing of the 1991 municipal reform legislation that engendered the now repealed Autonomous Municipalities Act, 21 P.R. Laws Ann. § 4001, et seq. and the 2020 reform that led to the enactment of the current Municipal Code, 21 P.R. Laws Ann. § 7001, et seq. While not presuming to speak for the Federación, we can say that since the World Health Organization declared that COVID-

19 had reached the “pandemic” threshold, both organizations have always seen eye-to-eye on public health matters and have joined efforts against the spread of the virus, including the adoption of vaccine mandates.

Currently 41 of the 78 Puerto Rico mayors (52.6%) belong to the Asociación. The remaining mayors are members of the Federación. Needless to say, the Asociación would not object any application by the Federación to participate in this case, were it so inclined. We respectfully posit that the voices of the Asociación’s members should be heard on a case that challenges the legality of public health measures that they have themselves taken in their cities.

REPRESENTATIVE STANDING

The fact that the Asociación is not seeking to become a party to this litigation pretty much obviates the need to delve into Article III standing considerations, we nonetheless wish to briefly address the matter, if only to show that the Asociación may validly speak on behalf of its members.

Ever since the Supreme Court’s landmark decision in Warth v. Seldin, 422 U.S. 490, 511 (1975). It has been the law of the land that associations enjoy Article III standing to seek relief on behalf of its members for wrongs that affect such members. Such standing is assessed on a very simple two-pronged analysis, to wit: the association must establish that “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of

individual members in the lawsuit”. Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333, 343 (1977). The Asociación complies with the Hunt test in spades.

The Asociación is more than adequately equipped to put forth an official statement on behalf of its members in formal litigation such as the instant case.

AMICUS PARTICIPATION

While the figure of the *amicus curiae* is inherently a creature germane to the world of appellate litigation, nothing restricts a District Court’s authority to hear from non-parties who have an interest in the litigation and can contribute valuable input that favors a more informed decision. This District has a long tradition of receiving the collaboration of *amici* in cases involving matters of public concern. For example, in the landmark case of United States v. Vaello- Madero, 356 F. Supp.3d 208 (D.P.R. 2019), our current Chief Judge (who is pending confirmation as an Associate Judge to the U.S. Court of Appeals for the First Circuit), allowed the appearance of multiple *amici* in a case in which it was determined that the statutory exclusion of Puerto Rico residents from the Supplemental Social Security Program violated the Equal Protection Clause, a decision which was affirmed by United States v. Vaello-Madero, 912 F.3d 12 (1st Cir. 2020), which is currently scheduled for a November 8, 2021 oral argument before the United States Supreme Court as Case No. 20-303.

Asociación is no stranger to the filing of *amicus* memoranda in cases pending before this Honorable Court. For instance, the Asociación appeared as *amicus* on behalf

of the plaintiffs in the case of Club Gallístico de P.R., Inc. v. United States, 414 F. Supp.3d 191 (D.P.R. 2019), again on appeal in Hernández-Gotay v. United States, 985 F.3d 71 (1st Cir. 2021) and will once again support the Puerto Rico cock fighting industry before the U.S. Supreme Court if a writ of certiorari is issued in the pending Case No. 20-1735. The Asociación appeared along with a group of elected public officials in an *amici* brief before the Highest Court in the land in the landmark case of Financial Oversight & Management Board for Puerto Rico v. Aurelius Investment, LLC, 140 S. Ct. 1649 (2020) (regarding the constitutionality of the appointments scheme devised under the Puerto Rico Oversight, Management and Financial Stability Act). Most recently, the Asociación successfully challenged the constitutionality of a policy letter adopted by the Puerto Rico Elections Comptroller. See Puerto Rico Association of Mayors v. Vélez-Martínez, 482 F. Supp.3d 1 (D.P.R. 2020).

If allowed to participate as *amicus*, the Asociación will act pursuant to its longstanding history as a serious participant in Puerto Rico's

WHEREFORE it is very respectfully requested from this Honorable Court that the Asociación de Alcaldes de Puerto Rico be hereby allowed to appear as *amicus curiae* in support of the defendant.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that the instant document has been filed with the Court's CM/ECF System, which will simultaneously serve notice on all counsels of record, to their registered e-mail addresses. Any non-registered attorneys and/or parties will be served via regular mail.

In San Juan, Puerto Rico this 22nd day of September, 2021.

RESPECTFULLY SUBMITTED,

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