



PUERTO RICO FORWARD

Episode 21: The Boricua Awakening of 2019 and its Repercussions

Transcript

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If ever there was a time to be proud of being Boricua, it's now. In the last month a chain of events gave way to a fundamental shift in the way the people of Puerto Rico (hereinafter PR) see themselves. On July 9th of this year, two government officials, together with four government contractors, were indicted with 32 counts of wire fraud, money laundering and conspiracy to commit theft.¹

A few days later, a private chat between the Governor of PR, members of his cabinet and other non-government officials was leaked to the press. Said chat was laced with homophobic and misogynist comments that intermingled with a high-school level use of profanity and a heavy dose of insensitive comments that ranged from body-shaming to making light of Hurricane Maria's death toll.² Over all, this chat, apart from proving the extremely reprehensible character of the Executive Branch's leadership and serving as possible grounds for criminal charges,³ has effectively awoken the people of PR's desire to take control of their future. As a result, hundreds of thousands of people have taken to the streets and have engaged in continuous protests with one common goal: removing Governor Ricardo Rosselló-Nevarés from office.

Initially, Gov. Rosselló-Nevarés stated he would not step down and would continue on to complete his term.⁴ However, the pressure from the multiple marches and protests proved too

¹ United States of America v. Julia Beatrice Keleher, Criminal No. 19-431 (D.PR filed Jul. 9, 2019)

² Ray Sánchez, *These are Some of the Leaked Chat Messages at the Center of Puerto Rico's Political Crisis*, CNN <https://www.cnn.com/2019/07/16/us/puerto-rico-governor-rossello-private-chats/index.html> (last visited Aug. 6, 2019)

³ CBS/AP, *Puerto Rico Officials Tied to Online Chat Ordered to Surrender Cellphones*, CBS News <https://www.cbsnews.com/news/puerto-rico-protests-ricardo-rossello-government-officials-ordered-by-judge-to-surrender-cellphones-today-2019-07-23/> (last visited Aug. 6, 2019)

⁴ Daniel Politi, *Puerto Rico Governor Won't Seek Reelection, Steps Down as Party Chair but Refuses to Resign*, Slate

great, the highlight of which was a monumental march that boasted an assistance of over half a million Boricuas and paralyzed the archipelago. Finally, on July 24th of this year, Gov. Rosselló-Nevarés announced his resignation effective August 2nd at 5:00pm.⁵

There is no doubt that the events that have transpired, and continue to unfold, have drastically altered PR's future. Never before have we seen a movement that mobilizes so many people from so many different background. Only the fight to expel the US Navy from the island municipality of Vieques comes close.⁶ However, as I've stated many times before, I do not believe the *Boricua Awakening*⁷ is a result of the aforementioned events. Not by a long shot. The reality is that the origin of this great movement that seeks to oust any government official soiled by corruption or mismanagement can be traced far back and across generations.

Although main stream media (hereinafter MSM) seems to have taken a liking to recent developments taking place within the US's largest colony, the general narrative is one that has been characterized by being near-sighted in regards to what's fueling this change. This poses a serious risk to the longevity of the people's will to "drain the swamp". If one believes that the current outburst of protests is only in reaction to Gov. Rosselló-Nevarés' profane and vulgar messages, then his resignation would be the end of this movement, and that would not only be a serious mistake, but would also completely undermine the real objective: make clear that the people of Puerto Rico have a zero-tolerance policy against government corruption.

Of course, the above mentioned goal is not an easy one. For this reason, seizing this incredible moment in history is paramount in its attainment. Only through a large scale nonpartisan movement can such a goal be reached, and that is exactly what the Boricua Awakening is! A simple search of images and video pertaining to Gov. Rosselló-Nevarés' resignation is enough to conclude that this was not an issue that was being pushed by a certain political party, but rather was the result of different groups from all backgrounds coming together to reclaim their dignity and affirm the people's power to influence government. Of course, the influence of political parties cannot be completely disregarded. Given the fact that Gov. Rosselló-Nevarés presides the *Partido Nuevo Progresista*, which translates to *New Progressive Party*, other political parties have taken advantage of current

<https://slate.com/news-and-politics/2019/07/puerto-rico-governor-ricardo-rosello-refuses-resign-wont-see-reelection.html> (last visited Aug. 6, 2019)

⁵ Ana Campoy, *Insults from Their Own Governor Finally Pushed Puerto Ricans over the Edge*, Quartz <https://qz.com/1674364/puerto-rican-lawmakers-start-process-to-impeach-ricardo-rosello/> (last visited Aug. 6, 2019)

⁶ *Supra*, note ii

⁷ I have decided to use this term to identify the current climate of civil unrest and continuous protests that have taken place since early July of 2019 that have so far resulted in the Governor of PR's resignation.

events and have attempted to capitalize on it by positioning themselves as advocates for his resignation.

However, despite unwanted party dealings, none can take credit for the Boricua Awakening. At no point did a party flag waive at any of the main events. In fact, among those marching were people that favored statehood but demanded Gov. Rosselló-Nevores' resignation. This time around it wasn't about party lines or status options. This was about vindicating the good name of the people of PR; and no party, not even one free of corruption, can do that. Of course, removing Gov. Rosselló-Nevores from office was a watershed moment for Puerto Rican politics. Never before has an elected governor been removed from office before the end of his or her term. This fact, although historic, is also the source of a new controversy. To understand why this is so, we must review PR's Constitution and Act. 7 of 1952, a law that had been overlooked for decades, until now. Let's begin.

Art. IV Sect. 7 of the PR Constitution states the following:

When a vacancy occurs in the office of [the] Governor, caused by death, resignation, removal, total and permanent incapacity, or any other absolute disability, said office shall devolve upon the Secretary of State, who shall hold it for the rest of the term and until a new Governor has been elected and qualifies. In the event that vacancies exist at the same time in both the office of Governor and that of Secretary of State, the law shall provide which of the Secretaries shall serve as Governor.⁸

The above cited text, commonly known as the Successions Clause, basically does two things: first, it identifies PR's Secretary of State as the official that would take the Governor's place as head of PR's executive branch in case of his or her death, resignation, removal, incapacity or disability; second, it delegates upon the legislative process the remaining succession levels in the event that neither the Governor or the Secretary of State are able to serve as the top executive official. As a result, beyond the Secretary of State succeeding the Governor, the archipelago's constitution provides no instruction as the next line of succession and instead points to the legislative branch to fill the void.

In reaction to this empty legal space, PR's Legislature enacted Act. 7⁹ on July 24th 1952 (hereinafter Act 7) with the very purpose of establishing a line of succession that would go beyond the Secretary of State. Art. 1 of Act 7 specifically states the following:

When a vacancy occurs in the office of Governor of the Commonwealth of Puerto Rico due to death, resignation, destitution, total or permanent disability, or any other absolute reason, said office shall be passed on to the Secretary of State,

⁸ P.R. Const. Art.IV §7

⁹ Ley para Proveer el Orden de Sucesión y Sustitución para el Cargo de Gobernador, Ley Núm. 7-1952

who shall discharge it for the remainder of the term and until a new Governor is elected and takes office. If the offices of Governor and Secretary of State are both vacant simultaneously, the order of succession shall be the following: **(1)** Secretary of Justice. **(2)** Secretary of the Treasury. **(3)** Secretary of Education. **(4)** Secretary of Labor and Human Resources. **(5)** Secretary of Transportation and Public Works. **(6)** Secretary of Economic Development and Commerce. **(7)** Secretary of Health. **(8)** Secretary of Agriculture. In order to permanently discharge the office of Governor, a Secretary shall officially hold his/her position, and his/her appointment must have been confirmed; **except in the case of the Secretary of State...**¹⁰ (*emphasis added*)

As we can observe, the aforementioned statute has two results: first, as I had mentioned earlier, it establishes a line of succession beyond the Secretary of State while at the same time establishes a general rule: a Secretary, no matter of what department, cannot become the Governor of PR if his or her appointment hasn't been confirmed by the relevant legislative body. However, the second result of Act 7 was the creation of an exception to said "general rule" by exempting the Secretary of State's appointment from having to be confirmed in order to fill the Governor's seat. The practical result is that a Secretary of State only needs to be nominated by the Governor in order to take his or her place in the event of the office's vacancy.

This exception to a widely understood general rule is at the center of the most recent controversy that has befallen the Boricua Awakening. You see, while the people of PR were on the streets fighting for Rosselló-Nevarés' removal from office, the question of who would be his successor became a very important point of contention. Why? Well, when the Governor's chats were leaked, one of the people affected was Luis Rivera Marín, who at the time was the Secretary of State. As a result of the scandal, he resigned. This vacancy in the highest office of PR's Department of State activated Act 7's chain of succession, resulting in the Secretary of Justice being the next government official to fill the Governor's seat if vacant. This news, in general, was not well received. Current Secretary of Justice, Wanda Vázquez Garced, has been at the center of many legal and ethics investigations,¹¹ some of which has even led to her temporary suspension as Secretary of Justice.¹² As a matter of fact, Secretary

¹⁰ *Id.* at Art. 1

¹¹ Lauren Frias, *Wanda Vázquez, Declined the Puerto Rico Governorship. She Faced Heat Before Ever Taking the Office. Here's Why*, New Haven Register <https://www.nhregister.com/technology/businessinsider/article/Wanda-V-zquez-who-is-poised-become-Puerto-Rico-14173594.php> (last visited Aug. 6, 2019)

¹² José A. Del Real and Frances Robles, *Who Is Wanda Vázquez, Who is in Line to Become Puerto Rico's Next Governor?*, The New York Times <https://www.nytimes.com/2019/07/24/us/puerto-rico-wanda-vasquez-governor.html> (last visited Aug. 6, 2019)

Vázquez herself has stated that she has no interest in filling the Governor's office, but has begrudgingly accepted it as part of her duties.

As this tense situation was unfolding, it was at the time uncertain whether or not Ricardo Rosselló-Nevarés would use what little time he had left as Governor to name a Secretary of State, thus effectively selecting his successor. As we've already pointed out, Rosselló-Nevarés announced his resignation on July 24th of the current year but with an effective date of August 2nd at 5:00pm. This meant that, in the time before August 2nd, he could legally appoint a new Secretary of State. Without question, then Governor Rosselló-Nevarés was within his constitutional rights to make his selection while still in office, and that he did. On July 31st of this year, Rosselló-Nevarés appointed Pedro Pierluisi Urrutia as Secretary of State, effectively placing him next in the line of succession. However, this is when legal clarity becomes hazy.

Article IV Section 5 of PR's Constitution states the following:

For the purpose of exercising executive power, the Governor shall be assisted by Secretaries whom he shall appoint with the advice and consent of the Senate. **The appointment of the Secretary of State shall in addition require the advice and consent of the House of Representatives**, and the person appointed shall fulfill the requirements established in Section 3 of this article. The Secretaries shall collectively constitute the Governor's advisory council, which shall be designated as the Council of Secretaries.¹³ (*emphasis added*)

As we can see, in the specific case of the Secretary of State, the nominee's confirmation requires both PR's Senate and House of Representatives' approval in order for it to take full effect. However, as usual in matters concerning the PR issue, things aren't so simple.

Like in the case of the President of the United States (hereinafter US), the Governor of PR has the power to make **RECESS APPOINTMENTS**. Merriam-Webster defines a recess appointment as "...a presidential appointment made under the executive's power to fill vacancies when the Senate is not in session subject to later confirmation by the Senate."¹⁴ Of course, this definition relies on the constitutional powers of the US President; but the basics are the same in the case of PR's governor: the head of the executive branch has the power to name someone to a vacant government position even though the legislative bodies are not in session and therefore cannot give their constitutionally mandated approval. That said, once the required legislative body is in session, the governor's appointment can be considered and thus approved or rejected.

¹³ P.R. Const. Art.IV §5

¹⁴ Merriam-Webster <https://www.merriam-webster.com/legal/recess%20appointment>
(last visited Aug. 6, 2019)

If rejected, the office in question becomes vacant and the person appointed cannot fill the position. On the other hand, if approved, the governor's appointee is considered to be occupying the position "in tenure", which is defined as "...the act, right, manner, or term of holding something (such as a landed property, a position, or an office)."¹⁵ It's important to point out that in the time that elapses between the governor's appointment and the required legislative body's next session, the governor's recess-appointee has all the rights and obligations that belong to the charge, regardless of the fact he or she hasn't been confirmed.

A recess-appointment is really nothing new. Many times in the past, various governors have made recess-appointments that were later confirmed or rejected. However, one of Ricardo Rosselló-Nevarés' last acts as governor was a recess-appointment that has caused a full blown constitutional crisis on the archipelago.

On July 31st 2019, just two days before his resignation became effective, then Governor Ricardo Rosselló-Nevarés appointed Pedro Pierluisi Urrutia as Secretary of State, swearing him in later that same day. This recess-appointment became the object of a lot of criticism due to Pierluisi's political background.

For those of you that don't know who he is, a search in the US House of Representatives' website yields the following short biography:

Pedro R. Pierluisi [Urrutia] was born in San Juan, Puerto Rico, on April 26, 1959, one of five children of Jorge Pierluisi, a former Puerto Rican housing secretary and a prominent member of the statehood movement, and Doris Urrutia, a stay-at-home mom. [...] In 2008, Pierluisi was nominated for the Office of the Resident Commissioner after the incumbent, Republican Luis G. Fortuño, decided to run for governor of Puerto Rico. As a member of the [...] New Progressive Party [or PNP] [...] Pierluisi campaigned behind calls for statehood and full participation in federal aid programs. Though neither of Puerto Rico's two major political parties have official affiliations on the mainland, members of the PNP traditionally caucused with Republicans on the Hill. But because the island relied on federal funding and because mainland progressives tended to support Puerto Rico's calls for statehood, Pierluisi was more ideologically aligned with the Democratic Caucus than the Republican Conference.

Pierluisi won re-election in 2012 against Robert Cox Alomar of the PPD with 48.4 percent of the vote. When Pierluisi entered the House at the start of the 111th Congress, he quickly pushed for a legislative start on status. [...] In 2013, as the island continued to struggle, Pierluisi made explicit the effect status had on Puerto Rico's economy [...]. [...] The unemployment rate rose, and more than a

¹⁵ Merriam-Webster <https://www.merriam-webster.com/dictionary/tenure> (last visited Aug. 6, 2019)

million people lived below the poverty line. Those who had the means left for the mainland. Borrowing and the sale of municipal bonds continued until 2016 when officials in San Juan acknowledged the government had no way to pay back more than \$70 billion it owed largely to Wall Street. [...] Facing a situation on the island that the press described as “a brewing humanitarian crisis,” the House passed the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) in June 2016. The bill allowed Puerto Rico to “restructure” its debt in exchange for agreeing to a seven-member advisory board appointed by the President to oversee the island’s finances. With a potentially catastrophic default back home Pierluisi supported PROMESA [...]. [...]

After two terms in the House (for a total of eight years), Pierluisi did not run for re-election in 2016, opting instead to return home to campaign for governor of Puerto Rico. In a heated and at times rancorous PNP primary—in which Pierluisi had to dodge conflict of interest claims because his wife’s consulting company stood to profit from helping Wall Street navigate the island’s debt restructuring—the Resident Commissioner lost by a mere 2 percent of the vote to Ricardo Rosselló, the son of a former governor. [...] Pierluisi currently works for a law firm in San Juan, Puerto Rico.¹⁶ (*citations omitted*)

As we can see, Pierluisi is no stranger to politics. But for all his experience in Congress and as a political candidate for his party, it’s his time in the private sector that has been the source of controversy.

As the cited biography states, after loosing to Ricardo Rosselló-Nevares in the most recent electoral bid, Mr. Pierluisi went back to the private sector to work in a Puerto Rican law firm called O’Neill & Borges. During his time there, Mr. Pierluisi worked with many clients, but his work with one client in particular seems to be the greatest obstacle in fostering trust in his proposed governorship. The client in question is none other than the **FINANCIAL OVERSIGHT AND MANAGEMENT BOARD** (hereinafter FOMB).

In an article published on august 5th, 2019 though truthout.org, author Abner Dennis states the following:

Pierluisi has worked for the firm [O’Neill & Borges] for more than twelve years [...]. He was in the firm for ten years (1997-2007) until he launched his candidacy to be Puerto Rico’s resident commissioner in Washington. He was commissioner for two terms (2008-2016) until he ran for governor, but was defeated in the PNP primary by Rosselló. He returned to the firm in January 2017, where he was an

¹⁶ United States House of Representatives, [https://history.house.gov/People/Listing/P/PIERLUISI,-Pedro-\(P000596\)/](https://history.house.gov/People/Listing/P/PIERLUISI,-Pedro-(P000596)/) (last visited Aug. 6, 2019)

attorney until days before Rosselló appointed him as secretary of state and to replace him as governor.

As a lawyer and lobbyist at the law firm O'Neill & Borges since 2017, Pierluisi served as counsel to the federal oversight board in Puerto Rico's bankruptcy process. An examination of the invoices submitted by the firm in the federal court shows that Pierluisi had access to and reviewed crucial documents around fiscal plans and debt restructuring. [...]

Pierluisi also reviewed litigation strategies in the case of bankruptcy of the central government and its fiscal plans. In the same way, he examined the agreement of COFINA, which eventually served as the basis for the debt adjustment plan approved by Judge Swain last February and that binds the government of Puerto Rico to paying the debt for the next forty years with the collections of the sales and use tax, the highest of any territory in the US.¹⁷

As we can observe, Pierluisi has had a direct role in the FOMB's strategies and decisions, none of which respond to the archipelago's best interests. As a result, many people have pointed out that Pierluisi is unfit to govern since it is not clear whose interests he would put first; that of his former clients or that of the people of PR. However, even if we put aside the considerations of political soundness, Pierluisi's rise to power might not have even been legal. I'll explain.

At the time of this writing, Pedro Pierluisi has been the governor of PR since he was sworn into office on August 2nd, 2019; a move that by many accounts was unconstitutional. You see, earlier on the same day Pierluisi was sworn in, PR's House of Representatives had approved his recess nomination as Secretary of State. However, as we've already pointed out, a nominee for Secretary of State also needs to be confirmed by PR's Senate in order to be in tenure. Despite this, Pierluisi used Act 7 to justify his decision to be sworn into the governor's office even though he was a mere recess-nominee.

In other words, despite the fact that Pierluisi's recess appointment as Secretary of State had not been confirmed by both bodies of the legislature, as required by PR's Constitution in order for the position to be held in tenure, Act 7's plain text seems to have opened up a new and exceptional avenue specifically carved out to allow him to lawfully be next in the line of succession. But despite the law being valid and legally enacted, many if not most legal theorists believe Act 7 to be unconstitutional.

¹⁷ Abner Dennis, *Puerto Rico's New Governor Helped Plunge the Island Into Crisis*, Truthout
<https://truthout.org/articles/puerto-ricos-new-governor-helped-plunge-the-island-into-crisis/> (last visited Aug. 6, 2019)

As a matter of fact, Act 7's constitutionality is at the center of a lawsuit¹⁸ filed on August 4th, of this year, only two days after Pierluisi was sworn in as governor. Filed by Thomas Rivera Schatz, President of the Senate of Puerto Rico, against Pierluisi and the government of PR, the central issue at hand is whether or not Act 7 lies on constitutionally sound ground. The archipelago's Supreme Court (hereinafter the Court) was quick to react and issued a deadline of 12pm on August 6th, 2019 for all parties involved to formally submit their arguments to the Court. The very next day, PR's highest court decided that Act 7's clause regarding the above mentioned exception regarding the Secretary of State's requirement of confirmation is unconstitutional. The court also stated that its decision will be in effect from 5pm onward on that that same day. This means that at that time Pierluisi would no longer be governor and therefore, the practical result is that Wanda Vazquez, the highly criticized Secretary of Justice, would be the next in the line of succession for PR's governorship. At the time of this episode's production, it is still unclear whether or not Secretary Vázquez has decided to occupy the governor's office for the remainder of the current term, so stay tuned.

¹⁸ Senado de Puerto Rico, representado por su Presidente, Hon. Thomas Rivera Schatz v. Gobierno de Puerto Rico, por conducto de su Secretaria de Justicia, Hon. Wanda Vázquez Garced; Hon. Pedro R. Pierluisi Urrutia, en su Capacidad Oficial como Gobernador de Puerto Rico Juramentado, (P.R. Court of First Instance, filed Aug. 4, 2019)
https://www.scribd.com/document/420765273/Demanda-Senado-Puerto-Rico#from_embed