

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

MUNICIPALITY OF SAN SEBASTIAN

Plaintiff

V.

COMMONWEALTH OF PUERTO RICO;
ALEJANDRO GARCIA PADILLA, in his
official capacity as Governor of Puerto Rico;
VANCE THOMAS, in his official capacity as
Secretary of Labor of the Commonwealth of
Puerto Rico

Defendants

CIVIL NO. 14-1136

CIVIL RIGHTS
DECLARATORY JUDGMENT

COMPLAINT

TO THE HONORABLE COURT:

COMES NOW the plaintiff, through her undersigned attorneys and very respectfully states, alleges and prays:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, as Plaintiff's claims arise under the Fourteenth Amendments to the United States Constitution and are being brought pursuant to 42 U.S.C. § 1983. This Court also has supplemental jurisdiction over all claims arising under the laws and Constitution of Puerto Rico herein asserted pursuant to 28 U.S.C. § 1367.

2. Venue is proper in the District of Puerto Rico, pursuant to 28 U.S.C. §1391. All parties reside in Puerto Rico, and a substantial part of the acts, events and/or omissions giving rise to these claims occurred in Puerto Rico.

II. PARTIES

3. Plaintiff Municipality of San Sebastian (Municipality) is a municipality of Puerto Rico.

4. Defendant Commonwealth of Puerto Rico is a non-incorporated territory of the United States of America with self-government pursuant to Public Law 81-600 of July 3, 1950. At all times herein material, defendant Alejandro García Padilla has been the Governor of Puerto Rico.

5. The Department of Labor is a political subdivision of the Commonwealth of Puerto Rico. At all times herein material, Vance Thomas is its Secretary.

III. THE FACTS

6. The Municipality was created by law that precedes the Commonwealth of Puerto Rico's Constitution but it is subject to it. Moreover, all municipalities in Puerto Rico are subject and regulated by the Law of Autonomous Municipalities, 21 L.P.R.A. § 4001 et. seq. This section, in its statement of public policy, states as follows:

According to government structure, the public bodies and elected officials that are closest to our citizenry is the Municipal Government composed of the Mayor and the Municipal Legislators. Said entity is the basic unit for community administration. Its purpose is to provide the most immediate services required by the inhabitants of each municipality based on the available resources and its short, medium and long-range projections. . . Therefore, it is hereby declared as the public policy of the Commonwealth of Puerto Rico to grant to the municipalities the maximum degree possible of autonomy and provide them with the financial tools, as well as the powers and faculties needed to assume a central and fundamental role in their urban, social and economic development.

7. Moreover, these powers “shall be liberally construed in harmony with sound fiscal and administrative public policy practices” 21 L.P.R.A. § 4002. This has also been the interpretation of the P.R. Supreme Court, see, *ELA v. Crespo Torres*, 180 D.P.R. 776, 787-88

(2011) and *Ponce v. Caraballo Torres*, 166 D.P.R. 723, 731 (2006). Moreover, the P.R. Supreme Court has stopped calling municipalities “creatures of the state” and started calling them “juridical entities created by the Legislature”, see *First Bank de Puerto Rico v. Municipio de Aguadilla*, 153 D.P.R. 198, 204 (2001) and *Ortiz López v. Municipio de San Juan*, 167 D.P.R. 609 (2006). Moreover, the P.R. Supreme Court has allowed a Municipality to claim violation of due process, see, *Municipio de San Juan v. CRIM*, 178 D.P.R. 163 (2010.)

8. The Municipality has independent capacity, separate from the central government and its executive power is exercised by its mayor (21 L.P.R.A. § 4003), with their administrative autonomy recognized and rights protected (21 L.P.R.A. § 4004). The Municipality has several powers such as the power to sue and be sued, exercise the power of expropriation (eminent domain), take loans, provide the needed funds to pay salaries of its officials and employees (21 L.P.R.A. § 4051). It also has the power to establish cemeteries, market places, establish a police force, medical emergency corps, establish policies, strategies and plans to optimize its development, establish and operate a school transportation service, design, organize and develop general welfare and public service projects, programs and activities (21 L.P.R.A. § 4054). Also, the Municipality has the discretion to implement public law and order codes (21 L.P.R.A. § 4058) and to establish contracts with agencies of the Commonwealth of Puerto Rico (21 L.P.R.A. § 4652). In other words, the Municipality is much more than a mere creature of the legislature.

9. Law 52 of August 9, 1991 creates a fund to combat unemployment in Puerto Rico. For the past ten years, the Municipality has been assigned an average of \$300,000 to combat its unemployment, which is around 17.9%. The Secretary of Labor of Puerto Rico is entrusted by law and regulation to disburse these funds in a manner that promotes, jobs, *i.e.*, most funds to

be disbursed to those municipalities with the highest unemployment. As stated before, the Municipality has an unemployment rate of 17.9%.

10. Once the administration of Governor García Padilla came into power and made his first budget, the Department of Labor and its Secretary, Vance C. Thomas, assigned the Municipality only \$69,981 of the funds of the Fund created by Law 52 for the fiscal year 2013-2014. On the other hand, the Department of Labor, and its Secretary Vance Thomas assigned the Municipality of Rincón \$176,998, although it has a lower unemployment rate of 15.7% and lower population of 15,200 versus 17.9 % and population of 42,430 in the Municipality. The difference is that Rincón has a mayor who is a member of the ruling PPD party whereas the people of San Sebastian elected a PNP mayor. This political discrimination is across the board in the program. Municipalities lead by a PNP mayor receive much fewer funds from Law 52 Programs even if they have larger populations and higher unemployment. Moreover, these differences in fund assignment have no relation to the purposes of the law, to wit, the lowering of unemployment. The following table shows the discriminatory assignment of Law 52 funds to the different municipalities.

MUNICIPALITY (PNP MUNICIPALITIES HAVE AN ASTERISK)	LAW 52 FUNDS ASSIGNED
ADJUNTAS*	\$88,897
AGUADA	\$176,958
AGUADILLA*	\$48,714
AGUAS BUENAS	\$169,654
AIBONITO*	\$54,787
AÑASCO	\$169,011
ARROYO	\$176,457

BARCELONETA	\$176,485
BARRANQUITAS*	\$73,826
BAYAMON*	\$59,965
CABO ROJO	\$176,802
CAGUAS	-
CAMUY*	\$77,618
CANOVANAS*	\$89,856
CAROLINA	-
CATAÑO	\$169,333
CAYEY	\$168,107
CEIBA*	\$59,586
CIALES	\$176,853
CIDRA*	\$84,952
COAMO	\$169,777
COMERIO	\$199,824
COROZAL	\$176,976
CULEBRA	\$176,850
DORADO	\$164,616
FAJARDO*	\$79,097
FLORIDA*	\$89,705
GUANICA*	\$87,603
GUAYAMA	-
GUYANILLA	\$176,880

GUAYNABO*	-
GURABO*	\$84,952
HATILLO	\$188,690
HORMIGUEROS	\$169,996
HUMACAO	\$176,881
ISABELLA	\$169,217
JAYUYA	\$199,715
JUANA DIAZ	\$169,983
JUNCOS	\$176,620
LAJAS	\$199,614
LARES*	\$83,709
LAS MARIAS	\$194,992
LAS PIEDRAS*	\$73,633
LOIZA*	\$74,807
LUQUILLO	\$174,709
MAUNABO	\$199,984
MAYAGÜEZ	\$168,391
MOCA*	\$82,861
NAGUABO*	-
NARANJITO*	\$66,502
OROCOVIS*	\$70,964
PATILLAS	\$177,000
PEÑUELAS	\$177,830

PONCE*	\$59,412
QUEBRADILLAS	\$199,648
RINCON	\$176,998
RIO GRANDE	\$176,927
SABANA GRANDE	\$176,266
SALINAS	\$176,729
SAN GERMAN	\$176,944
SAN JUAN	\$167,785
SAN LORENZO	\$199,263
SAN SEBASTIAN	\$69,981
SANTA ISABEL*	-
TOA ALTA	\$177,000
TOA BAJA*	-
TRUJILLO ALTO	\$169,996
UTUADO	\$176,385
VEGA ALTA*	\$89,407
VEGA BAJA	\$176,624
VIEQUES	\$176,990
VILLALBA	\$184,590
YABUCOA	\$176,682
YAUCO*	\$61,000

11. The Governor of Puerto Rico Alejandro García Padilla is the person who has the ultimate decision on what proportion of Law 52 funds are assigned to the different municipalities. Hence, even if the Secretary of Labor determines what will be assigned to each Municipality, as the highest elected official, he either agreed with the Secretary of Labor's discriminatory actions or himself insisted that this discriminatory practice be put into effect. Hence, he is responsible for the discriminatory practices described in this complaint.

12. The aforementioned actions by the Commonwealth of Puerto Rico, its Governor Alejandro García Padilla, the Puerto Rico Department of Labor and its Secretary, Vance Thomas, are politically motivated, have no relation to the purposes of Law 52 and were made under color of state law. The Municipality was and is legally entitled to a greater share of these funds that it has been allocated.

IV. THE CAUSES OF ACTION

A. Defendants' Actions Violate the Due Process Clause of the U.S. Constitution

13. Plaintiff realleges and adopts by reference paragraphs 1-11 of this complaint.

14. Defendants actions have deprived the Municipality of funds to which it has a right to. As stated before, it has been assigned much less of Law 52 funds for the simple reason that its mayor is a member of the PNP party and not of the PPD party. This discrimination has negatively affected the Municipality's ability to provide goods and services to its citizens. Moreover, neither Law 52 nor its regulations provide for a process to object or appeal from the aforesaid illegal and discriminatory allocation of funds and even if they did, they are not adequate to vindicate its rights

15. Moreover, no hearing was provided to the Municipality even though its rights were violated. A state may withhold, grant or withdraw some powers and privileges from a

municipality but when it does this pursuant to interests that have nothing to do with substantive matters of a state's internal political organization, the state must comply with due process clause. The aforementioned actions were and are a clear violation of the due process clause of the U.S. Constitution. All of defendants actions were made under color of state law in violation of 42 U.S.C. § 1983.

B. Defendants Actions were and are in Violation of the Equal Protection Clause of the U.S. Constitution

16. Plaintiff realleges and adopts by reference paragraphs 1-14 of this complaint.

17. Defendants actions have deprived the Municipality of funds to which it has a right to. As stated before, it has been assigned much less of Law 52 funds for the simple reason that is mayor is a member of the PNP party and not of the PPD party. This discrimination has negatively affected the Municipality's ability to provide goods and services to its citizens. These actions were and are political discrimination of the kind prohibited by the Equal Protection clause of the United States Constitution.

18. Moreover, a state may withhold, grant or withdraw some powers and privileges from a municipality but when it does this pursuant to interests that have nothing to do with substantive matters of a state's internal political organization, the state must comply with due process clause. The aforementioned actions were and are a clear violation of the equal protection clause of the U.S. Constitution. All of defendants actions were made under color of state law in violation of 42 U.S.C. § 1983.

C. Defendants' Actions Violate the Due Process Clause of the Puerto Rico Constitution

19. Plaintiff realleges and adopts by reference paragraphs 1-18 of this complaint.

20. Defendants actions have deprived the Municipality of funds to which it has a right to. As stated before, it has been assigned much less of Law 52 funds for the simple reason that

its mayor is a member of the PNP party and not of the PPD party. This discrimination has negatively affected the Municipality's ability to provide goods and services to its citizens. Moreover, neither Law 52 nor its regulations provide for a process to object or appeal from the aforesaid illegal and discriminatory allocation of funds and even if they did, they are not adequate to vindicate the constitutional rights herein claimed. This violates Article II, Section 7 of the Puerto Rico Constitution.

21. Moreover, no hearing was provided to the Municipality even though its rights were violated. A state may withhold, grant or withdraw some powers and privileges from a municipality but when it does this pursuant to interests that have nothing to do with substantive matters of a state's internal political organization, the state must comply with due process clause. The aforementioned actions were and are a clear violation of the due process clause of the P.R. Constitution. All of defendants actions were made under color of state law in violation of 42 U.S.C. § 1983.

D. Defendants Actions were and are in Violation of the Equal Protection Clause of the P.R. Constitution.

22. Plaintiff realleges and adopts by reference paragraphs 1-20 of this complaint.

23. Defendants actions have deprived the Municipality of funds to which it has a right to. As stated before, it has been assigned much less of Law 52 funds for the simple reason that is mayor is a member of the PNP party and not of the PPD party. This discrimination has negatively affected the Municipality's ability to provide goods and services to its citizens. These actions were and are political discrimination of the kind prohibited by the Equal Protection clause of the P.R. Constitution, Article II, Section 7.

24. Moreover, a state may withhold, grant or withdraw some powers and privileges from a municipality but when it does this pursuant to interests that have nothing to do with

substantive matters of a state's internal political organization, the state must comply with due process clause. The aforementioned actions were and are a clear violation of the equal protection clause of the PR Constitution. All of defendants actions were made under color of state law in violation of 42 U.S.C. § 1983.

V. REMEDIES

25. Plaintiff realleges and adopts by reference paragraphs 1-17 of this complaint.

26. As stated before, defendants discriminated against the Municipality of San Sebastian due to his mayor being a PNP. It deprived it of its fair share of the fund created by Law 52 and allocated it to Municipalities whose mayors are members of the PPD. This discrimination must stop.

27. Plaintiff requests from the Honorable Court that it determine that the Municipality has been discriminated for political reasons as described in the instant complaint and that the Constitution requires that the funds of Law 52 be allocated to the Municipality in a non-discriminatory fashion as it has been done in the previous 10 years.

28. Plaintiff requests that defendants be ordered to provide it with the same amount of monies as it has received in the last 10 years, to wit, \$300,000 instead of the \$70,000 it received. In addition, defendants must be ordered not to discriminate against the Municipality in the future.

29. Moreover, plaintiff requests that a permanent injunction be issued ordering defendants to provide the Municipality with the same amount of monies as it has received in the past 10 years, to wit, \$300,000, instead of the \$70,000 it received. In addition, the injunction should also order defendants not to discriminate against the Municipality in the future.

30. Also, plaintiff requests reasonable attorneys fees pursuant to 42 U.S.C. § 1988.

31. Any other equitable relief the Court may deem proper.

WHEREFORE: Plaintiff respectfully requests from the Honorable Court that it enter judgment against defendants in the fashion specified in paragraphs 19-24 of this complaint, plus interest and attorneys fees.

Respectfully submitted on this 19th day of February, 2014.

/s/ John E. Mudd
John E. Mudd
Bar Number: 201102
Attorney for Plaintiffs
LAW OFFICES JOHN E. MUDD
P. O. BOX 194134
SAN JUAN, P.R. 00919
(787)413-1673
Fax. (787)753-2202
jemudd@yahoo.com