

In the Supreme Court of the United States

---

Roman Catholic Archdiocese of San Juan, Puerto Rico, and the Roman Catholic  
Dioceses of Ponce, Arecibo, Caguas, Mayaguez and Fajardo-Humacao, Puerto Rico  
*Petitioners,*

v.

Yalí Acevedo Feliciano, Sonia Arroyo Velázquez, Elsie Alvarado Rivera, et al.,  
*Respondents*

---

**RESPONSE OF RESPONDENT CATHOLIC EMPLOYEES PENSION TRUST  
IN SUPPORT OF APPLICATION**

---

Directed to the Honorable Stephen Breyer,  
Justice of the Supreme Court of the United States and  
Circuit Justice for the United States Court of Appeals for the First Circuit

---

FRANK ZORRILLA  
FRANK ZORRILLA LAW OFFICE  
P. O. Box 191783  
San Juan, Puerto Rico 00919-1783  
Tel (787) 250-1510  
Fax (787) 754-4951  
E-mail: fzorrilla@fzmlaw.com

JESÚS R. RABELL-MÉNDEZ  
Counsel of Record  
RABELL MÉNDEZ, C.S.P.  
P.O. Box 195580  
San Juan P. R. 00919-5580  
Tel. (787) 764-1212  
Fax (787) 754-6872  
Email: [jesusrabell@gmail.com](mailto:jesusrabell@gmail.com)

*Counsel for Catholic School Employees Pension Trust*

June 20, 2018

---

---

TABLE OF CONTENTS

	Page
INTRODUCTION.....	1
PROCEDURAL HISTORY .....	3
DISCUSSION.....	6
CERTIFICATE OF SERVICE .....	12

## TABLE OF AUTHORITIES

	Page
<b>Cases</b>	
<i>Academia San Jorge v. Junta de Relaciones del Trabajo</i> , 110 D. P. R. 193 (1980) .....	7
<i>Agostini Pascual v. Iglesia Católica</i> , 109 D. P. R. 172 (1979) .....	7
<i>Camacho v. Iglesia Católica, Apostólica y Romana, Diócesis de Ponce</i> , 72 D. P. R. 353 (1951) .....	7
<i>Connecticut v. Doebr</i> , 501 U.S. 1 (1991) .....	2
<i>Diócesis de Arecibo v. Secretario de Justicia</i> , 191 D. P. R. 292 (2014) .....	7
<i>Diócesis de Mayagüez de la Iglesia Católica, Apostólica y Romana v. Junta de Planificación de Puerto Rico</i> , 147 D.P.R. 471 (1999) .....	7
<i>I.D.S. v. Junta de Planificación</i> , 185 D. P. R. 1048 (2012) .....	7
<i>Iglesia Católica v. Puig</i> , 55 D. P. R. 773 (1934) .....	7
<i>Iglesia Católica v. Registrador</i> , 96 D. P. R. 511 (1968) .....	7
<i>Lemon v. Kurtzman</i> , 403 U.S. 602 (1971) .....	9
<i>McCarthy v Fuller</i> , 714 F3d 971 (7th Cir. 2013) .....	8
<i>Municipality of Ponce v Catholic Church in Porto Rico</i> , 210 U.S. 296 (1908) .....	2, 7
<i>Surinach v Pesquera</i> , 604 F2d 73 (1979) .....	9
<i>Vélez Colón v. Iglesia Católica</i> , 105 D. P. R. 123 (1976) .....	7
<i>Waltz v Tax Commission</i> , 397 U.S. 667 (1970) .....	10

## INTRODUCTION

This case squarely presents the question of whether a court can ignore the organization of a religion in violation of the First Amendment of the Constitution of the United States. At the outset it is important to emphasize that the Constitution of the Commonwealth of Puerto Rico expressly orders a “complete separation of Church and State”. A majority of the Puerto Rico Supreme Court in a completely wrong and biased decision against the Catholic Church, determined, contrary to previous precedents, that there is only one entity of the Catholic Church with legal capacity on the island, thereby disavowing the existence of the Archdiocese and five dioceses in addition to the parishes, parochial schools, schools of religious orders and religious orders, all of them with legal capacity recognized by said court until its June 11, 2018 decision. The court has acted with reckless disregard of the Constitution of the United States.

The Catholic Schools Employees Pension Trust (“Trust”) was established on November 26, 1979. The Pension Plan was originally intended to supplement the retirement income of the Catholic school employees in the Archdiocese of San Juan. Later it was amended to include employees of Catholic schools of other dioceses. The Catholic schools and Catholic entities that participated in the pension plan are “participating employers”. Unfortunately, after the closing of several schools by reason of a decline in the population and some dire financial situations that affected the capacity of the plan, the forty three participating employers decided to terminate the plan because it was not economically viable. It is important to stress that the

pension plan was funded only by the participating employers. This forced decision by the participating employers to terminate the plan served as an excuse to attack the Catholic Church as well as various church officers and entities.

The immediate effect of the majority opinion by the Supreme Court of Puerto Rico is to convert by the stroke of a pen all Catholic entities into “one single employer” that includes the six dioceses, more than 300 parishes and dozens of Catholic schools that were not participants of the pension plan. The Puerto Rico Supreme Court has created a de facto and a de jure chaos in the Catholic Church, contrary to the Free Exercise and Establishment Clauses of the Constitution of the United States, the Treaty of Paris of 1898 and a decision by this Court in the case of *Municipality of Ponce v Catholic Church in Porto Rico*, 210 U.S. 296 (1908) where the corporate existence of the Catholic Church and its organization was recognized.

The Application for Stay of the Puerto Rico Supreme Court decision is urgent because in essence said decision deletes in its entirety the deed creating the trust and the plan document binding all Catholic entities to the pension plan regardless of whether they were participating employers or not. Moreover the decision is a text book example of an entanglement in the internal affairs and finances of a religion without a compelling interest. It will affect all the dioceses that were not employers of the Catholic schools’ employees without even hearing their position, in addition to the many catholic schools that were not participants of the plan, in violation of *Connecticut v. Doeher*, 501 U.S. 1 (1991). Once the court mandate is final, the court Marshall is authorized to seize assets and moneys of the “Roman Catholic and

Apostolic Church” in the amount of \$4,700,000.00 and to take any and all necessary measures such as opening doors day or night, breaking locks and forcing entry into any Catholic entity anywhere in Puerto Rico without posting a bond. The Puerto Rico Supreme Court is moving backward in history by denying the corporate existence of the Catholic Church organization. The intervention of this Court is necessary to prevent an irreparable harm to the Catholic Church, its various entities, and this Respondent Trust.

### PROCEDURAL HISTORY

Shortly after the participating employers of the Catholic Schools Pension Trust decided to terminate the pension plan by reason of extreme financial hardship where the participating employers could not continue making the needed contributions to sustain the plan, plaintiffs filed the instant case claiming that if the trust cannot pay the pensions, the Church is responsible for such payments. A hearing was held in the Court of First Instance and only four plaintiffs testified. After an evaluation of the evidence presented said court denied the preliminary injunction requesting the continuation of the pension payments. Plaintiffs appealed to the Puerto Rico Court of Appeals and said court denied the Writ of Certiorari sought by plaintiffs. Subsequently plaintiffs file a Petition for Certiorari before the Puerto Rico Supreme Court and in a vague resolution, said court concluded that “As stated by the Court of First Instance judge, with the evidence presented so far, it has not been proven that the Church is responsible for continuing the to pay for the plan, since everything indicates that it is the participating employers – the various catholic schools – who

contribute to the plan” Appendix J-10. In said judgment the Supreme Court stated that the pension plan was a church plan, Appendix J-10 and that it remained to determine whether the parochial schools were commercial names of the Roman Catholic Apostolic Church. Appendix J-11. The main issue to be decided as per the decision of the Supreme Court was whether the participating employers’ responsibility extends beyond the Trust, Appendix J-9. Before such examination was made, the court ordered the continuation of the pension benefits either by the participating employers or the church. The Supreme Court ordered the Court of First Instance to determine the legal personality of the parties, Appendix J-11.

Defendants filed motions to reconsider to no avail. Finally the Court of First Instance held the hearings in which five dioceses and more than three hundred of parishes did not have the opportunity to be heard as to their legal capacity. Not even the Trust could participate because at the time it was in a Bankruptcy procedure. The Court of First Instance concluded that the Archdiocese of San Juan nor the defendant’s parochial schools do not have legal personality because they were part of the Roman Catholic and Apostolic Church in Puerto Rico, Appendix I-8.

The Court of First Instance issued an order to seize assets and moneys of the Roman Catholic Church in an amount to \$4,700,000.00 to secure the payments of plaintiffs pensions, the Court Marshall was authorized to break locks, force entry and take values, motor vehicles, works of art, equipment furniture etc., day or night, Appendix G-2 and 3.

After the judgment issued by the Court of First Instance, the Archdiocese filed a Writ of Certiorari before the Court of Appeals. Said court reversed the Court of First Instance and correctly explained thoroughly the organization of the Catholic Church. Said judgment states in pertinent part as follows, Appendix F-31:

As can be seen, the canonical order recognizes the representative capacity of the Catholic faith on the Island for the dioceses and parishes, within their respective territorial limits, as a particular Church. Outside of these entities, especially the parish and the dioceses, including the Archdiocese, the hierarchical structure of the Catholic religion has no other authority with the capacity to represent the entire Catholic Church in Puerto Rico, other than the Bishop of Rome, as the universal head of the Roman Catholic and Apostolic Church.

Such is the hierarchical structure of said religion, pursuant to its dogmas of faith and the canonical law that governs it. Any action of the State, by way of any of its components, aimed at intervening or seeking to alter the way in which internally it or any other religion operates or is organized, infringes upon the clause of separation of Church and State of the Constitutions of the United States and Puerto Rico, as already transcribed.

The Decision issued by the CFI, and moreover, its Order for Seizure, to the extent in which it is aimed against a legally nonexistent entity in light of the internal organization of the Church, contravenes the aforesaid constitutional clause, wherefore it lacks validity and effectiveness, among other grounds that shall be set forth later on.

The Court of Appeals also interpreted the Pension Plan and the obligations of the participating employers and concluded that the only obligation of the participating employers was to contribute to the trust, not to pay pensions. Appendix F-39.

Note that, according to the Pension Plan, the schools individually and the Office of the Superintendent of Catholic Schools, as participating employers, agreed to contribute a fixed percentage of their payroll to common fund in the aforesaid Trust in order to finance said Plan, in conjunction with the capital



generated through their investment under the control of said entity. Hence, the appropriate pension benefit would be determined and structured for each teacher under the Plan. It is easy to observe that neither the schools individually, nor the Superintendence under the Archbishopric, contractually committed to granting or issuing a pension directly to their employees through a pension plan created by them. As indicated, they instead agreed to join in Pension Plan in question and to contribute to the common Trust fund jointly with a group of other schools, into which they would enter voluntarily, through that concept.

The exclusive contractual agreement of a School or the Archdiocese for the direct payment of a pension to its employees is neither legal, no conceptually the same thing, as the obligation to join a pension plan together with a group of participants and to contribute a certain amount to the common fund to then grant this benefit, through a Trust. This, of course financed, moreover, with the proceeds and capitol generated through the investments of that large fund constituted through the established Trust. From the legal-obligational point of view, and above all from the economic or financial perspective, there is a substantial difference between one and the other.

It is thus legally inadmissible to transfer directly to the colleges and to the Archdiocese individually the obligation to pay a pension that their employees were receiving, which was fixed based on actuarial criteria previously determined by the Trust.

The judgment rendered by the Court of Appeals was reversed by the PRSC in which the orders of the Court of first Instance and its conclusions were reinstated, including the order to pay \$4,700,000.00 in 24 hours.

## DISCUSSION

The Puerto Rico Supreme Court's blatant violations of constitutional and legal rights cannot be tolerated.

1. The Supreme Court of Puerto Rico insists on a specific organization of the Catholic Church contrary to the Code of Canon Law, the Treaty of Paris of 1898,

a decision by the Supreme Court of the United States in the case of *Municipality of Ponce v Catholic Church*, 210 U.S. 296 (1908) and their previous decisions recognizing the legal capacity of the different dioceses, parishes and parochial schools. *Diócesis de Arecibo v. Secretario de Justicia*, 191 D. P. R. 292 (2014); *Diócesis de Mayagüez de la Iglesia Católica, Apostólica y Romana v. Junta de Planificación de Puerto Rico*, 147 D.P.R. 471 (1999); *Iglesia Católica v. Registrador*, 96 D. P. R. 511 (1968); *Academia San Jorge v. Junta de Relaciones del Trabajo*, 110 D. P. R. 193 (1980), *Iglesia Católica v. Puig*, 55 D. P. R. 773 (1934), *Camacho v. Iglesia Católica, Apostólica y Romana, Diócesis de Ponce*, 72 D. P. R. 353 (1951); *Vélez Colón v. Iglesia Católica*, 105 D. P. R. 123 (1976); *Agostini Pascual v. Iglesia Católica*, 109 D. P. R. 172 (1979); *I.D.S. v. Junta de Planificación*, 185 D. P. R. 1048 (2012).

Contrary to the court's conclusions, all of the Bishops in charge of the six dioceses in Puerto Rico have reiterated that the Catholic Church operates through the dioceses, which are all independent of each other and report only to the Holy See. The Bishops are the proper interpreters on how the Catholic Church in Puerto Rico is organized.

In the case of *Municipality of Ponce v Roman Catholic Church*, 210 U.S. 296 (1908) this Court upheld the canonical concept of the Church's legal and moral personality and recognized the corporate existence of the Catholic Church through its only diocese (at the time) and other entities with legal capacity as parishes, parochial schools and schools of religious orders. At the time, 1898, there were in Puerto Rico parishes, parochial schools and religious orders. If this Court permits

the reorganization of churches to conform them to specific averments made by laymen in different complaints, we will end up with unimaginable structures and organizations of churches contrary to the spirit and clear language of the constitutional clauses that prohibit actions that may inhibit or foster any particular religion.

As stated before, the principal issue posed in the case goes to the core of religious liberty and it impacts every church because it will open to judicial scrutiny any organization of a church. And on that issue, the decision of the Puerto Rico Supreme Court is contrary to precedent in other leading U.S. jurisdictions. For example, in the case of *McCarthy v Fuller*, 714 F3d 971 at 976 (7th Cir. 2013) and 810 F. 3d 456 at 458-459 (7<sup>th</sup> Cir. 2015) the court stated “Once the court has satisfied itself that the authorized religious body has resolved the religious issue, the court may not question the resolution”. All the dioceses of the Catholic Church in Puerto Rico have unequivocally explained its structure and organization. Three judges of the Court of Appeals and two Justices of the Puerto Rico Supreme Court recognized the internal organization of the Catholic Church and provided a remedy to Plaintiffs. The Stay Application filed by the Archdiocese and the Dioceses is not based on a vacuum. Quite the contrary, the judicial system in Puerto Rico has recognized this internal organization at least since 1908. Yet the Supreme Court of Puerto Rico has now dismantled a structure and organization that has survived centuries and revoked more than one hundred years of its own case law. In doing so, they rewrote the history of the Church and the Code of Canon Law.

2. The Catholic Church has always existed through the Dioceses, in the case of Puerto Rico, a Metropolitan Archdiocese of San Juan with an Archbishop and five Dioceses with their respective Bishops. That is, in Puerto Rico we have an archdiocese and five dioceses:

- a. Archdiocese of San Juan
- b. Diocese of Arecibo
- c. Diocese of Ponce
- d. Diocese of Mayagüez
- e. Diocese of Caguas
- f. Diocese of Fajardo-Humacao

Each one of these Dioceses has independent legal capacity of the other and all are governed by a Bishop, and in every diocese there are parishes, parochial schools, schools of religious orders and religious orders with legal capacity.

The juridical personality of the Catholic Church is not one, as the court concluded, there are six Dioceses; one Archdiocese and five Dioceses, each with a separate legal capacity governed by their Bishop, parishes and catholic schools all with juridical personality.

This organization was highlighted in the case of *Surinach v Pesquera*, 604 F2d 73 (1979). There some Superintendents of Roman Catholic Schools in a number of Puerto Rico dioceses jointly instituted an action to declare unconstitutional an action taken by the government to investigate the operating costs of the Catholic schools because they believed said action was interfering or entangling with the financial affairs of the church. The First Circuit Court, quoting *Lemon v. Kurtzman*, 403 U.S. 602 at 616 (1971), determined that the Catholic schools in question were an integral part of the Catholic Church and as such “involve substantial religious activity and

purpose". It is important to determine whether the "particular acts in question are intended to establish or interfere with religious beliefs and practices or have the effect of doing so" *Waltz v Tax Commission*, 397 U.S. 667 (1970).

3. In this case, the Puerto Rico Supreme Court has dismantled the Catholic Church organization and in doing so has deprived the Trust of its structure by turning the participating employers into a single employer. The current controversy is much worse than a simple investigation into the costs of education. Instead we are confronted with a vicious judicial attack against the Catholic Church.

Here, moreover, the Trust and the pensioners it was created to serve would be much better situated under the Court of Appeals' decision, rather than under the decision of the Puerto Rico Supreme Court. The Court of Appeals' decision directed the specific Catholic schools at issue in this case to continue making their usual contributions to a special fund not to the Trust to pay pensions until the case is finally resolved. The Archdiocese has indicated its willingness to comply with the Court of Appeals' decision. The Court of Appeals' decision thus sets up a framework by which the participating employers will assume responsibility of making their contributions to the Pension Plan for a special created by the Court and from that fund the pensions will be paid until the case is decided, Appendix F-53-54. This court remedy is a least restrictive means to provide a temporary remedy.

By contrast, the Puerto Rico Supreme Court's decision essentially attempts to impose joint and several liability on *every* Catholic entity for the alleged pension obligations of *every* parish with an affiliated school. For institutions that depend

upon a steady stream of voluntary contributions from their members, that approach will likely be disastrous. Potential donors who believe their contributions may be seized or transferred to meet financial obligations are unrelated to any prior obligation or benefit received by their local parishes are likely to reduce or abandon their contributions. And that, in turn, will mean less money available to meet the needs of all Catholic institutions in the Commonwealth—including the Trust.

For that reason as well, the Trust has a powerful interest in seeing that the stay requested by the Applicants here is granted.

WHEREFORE we respectfully request from this Court to Stay the mandate of the Puerto Rico Supreme Court pending the filing and disposition of the petition for certiorari.

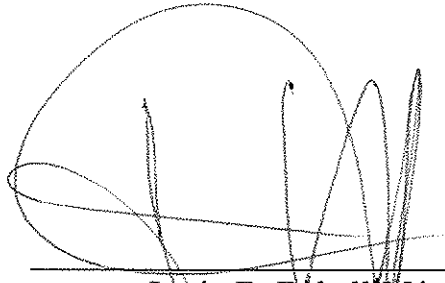
FRANK ZORRILLA  
P. O. Box 191783  
San Juan, Puerto Rico 00919-1783  
Tel (787) 250-1510  
Fax (787) 754-4951  
E-mail: [fzorrilla@fzmlaw.com](mailto:fzorrilla@fzmlaw.com)

  
Respectfully Submitted,

JESUS R. RABELL-MÉNDEZ  
Counsel of Record  
RABELL MÉNDEZ, C.S.P.  
P.O. Box 195580  
San Juan P. R. 00919-5580  
Tel. (787) 764-1212  
Fax (787) 754-6872  
Email: [jesusrabell@gmail.com](mailto:jesusrabell@gmail.com)

*Counsel for Catholic School Employees Pension Trust*

June 20, 2018

A handwritten signature in black ink, consisting of a large, loopy initial 'J' followed by several vertical strokes and a final flourish.

---

Jesús R. Rabell Méndez  
*Counsel for Catholic School Employees  
Pension Trust*

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2018, I sent a copy by United States mail as well as an electronic copy of the foregoing to the following counsel of record:

JOSÉ R. RIVERA-MORALES  
JIMÉNEZ, GRAFFAM & LAUSELL  
PO Box 366104  
San Juan, Puerto Rico 00936-6104  
rrivera@jgl.com

San Juan, PR 00908  
antonio.bauza@bioslawpr.com  
german.brau@bioslawpr.com  
gsilva@bioslawpr.com

GENE C. SCHAERR  
MICHAEL T. WORLEY  
SCHAERR | DUNCAN LLP  
1717 K Street NW, Suite 900  
Washington, DC 20006  
(202) 787-1060  
gschaerr@schaerr-duncan.com

CARLOS A. PADILLA-VÉLEZ  
PO Box 194109  
San Juan, Puerto Rico 00919-4109

JESÚS M. JIMÉNEZ GONZÁLEZ-RUBIO  
Apartado 3025  
Guayama, Puerto Rico 00785  
jimesensei@yahoo.com

PEDRO A. BUSÓ-GARCÍA  
SCHUSTER AGUILÓ LLC  
221 Ponce de León Avenue  
15th Floor  
San Juan, PR 00917

CÉSAR ROSARIO VEGA  
ADSUAR MUÑIZ GOYCO SEDA & PEREZ-  
OCHOA, P.S.C.  
208 Ponce de León Ave., Suite 1600  
San Juan, PR 00918  
rosario@amgprlaw.com

ANTONIO BAUZA  
GERMAN BRAU  
GUILLERMO SILVA  
PO Box 13369  
Santurce Station