IN THE
SUPREME COURT OF THE UNITED STATES

No. 18A483

ROMAN CATHOLIC ARCHDIOCESE OF SAN JUAN, PUERTO RICO, et al.,

Applicants,

v.

YALÍ ACEVEDO FELICIANO, SONIA ARROYO VELÁZQUEZ,
ELSIE ALVARADO RIVERA, et al.,

Respondents.

APPLICATION TO THE HON. STEPHEN BREYER FOR A FURTHER EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

Pursuant to Supreme Court Rule 13(5), the Roman Catholic Archdiocese of San Juan, Puerto Rico and the Roman Catholic Dioceses of Ponce, Caguas, Mayagüez, and Fajardo-Humacao, Puerto Rico hereby move for a further extension of time of 30 days, to and including January 14, 2019, for the filing of a petition for a writ of certiorari. Unless a further extension is granted, the deadline for filing the petition for certiorari will be December 15, 2018.

In support of this request, Applicant states as follows:

1. The Supreme Court of Puerto Rico rendered its decision on June 11, 2018 (Exhibit 1), and denied a timely petition for rehearing on August 17, 2018

(Exhibit 2).[1] This Court has jurisdiction under 28 U.S.C. §1258. On November 6, 2018, Justice Breyer granted an initial 30-day extension of time in which to file a petition for certiorari.

2. This case presents exceptionally important legal questions arising out of the First Amendment's Religion Clauses, which guarantee a "spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 US. 94, 116 (1952). The Court's resolution of issues presented here will have a far-reaching impact on core constitutional protections regarding religious autonomy and church governance.

3. Applicants' Counsel of Record, Paul D. Clement, was recently retained and did not represent Applicants in the proceedings below. Because counsel is new to the case, he requires additional time to research the factual record and complex legal issues presented in this case and related bankruptcy proceedings.

4. Between now and the current due date of the petition, counsel has substantial briefing obligations, including a response brief in *Rimini Street, Inc. v. Oracle USA, Inc.*, No. 17-1625 (U.S.), and a reply brief in *Knight v. United States*, No. 17-6370 (6th Cir.). In addition, Applicants must obtain certified translations of several motions and papers filed in the Supreme Court of Puerto Rico.

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[1] These documents were prepared and originally filed in Spanish. Exhibit 1 is a certified translation of the Supreme Court of Puerto Rico's decision; Exhibit 2 includes both the original version and an informal translation of the court's subsequent order denying rehearing.

5. Applicants' counsel thus requests an additional modest extension for counsel to prepare a petition that fully addresses the important issues raised by the decision below and frames those issues in a manner that will be most helpful to the Court.

WHEREFORE, for the foregoing reasons, Applicant requests that an extension of time to and including January 14, 2019, be granted within which Applicant may file a petition for a writ of certiorari.

Respectfully submitted,

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December 5, 2018

EXHIBIT 1

Certified Translation

IN THE SUPREME COURT OF PUERTO RICO

Yalí Acevedo Feliciano et al. Petitioners Roman Catholic and Apostolic Church et al Respondents	CC-2018-0475	Certiorari
Sonia Arroyo Velázquez et al. Petitioners v. Roman Catholic and Apostolic Church, et al. Respondents		
Elsie Alvarado Rivera et al. Petitioners v. Roman Catholic and Apostolic Church, et al.		

Associate Justice ESTRELLA MARTINEZ issued the Opinion of the Court

(Rule 50)

San Juan, Puerto Rico, on June 11, 2018.

I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

Today we have the obligation to address the claim of hundreds of teachers, employees, and ex-employees of various catholic schools and academies (petitioners), which have dedicated a large portion of their lives to the teaching, education, and formation of part of various generations in Puerto Rico. As such, this case demands analyzing and clarifying of various aspects of our law system as well as addressing various new disputes of great public interest. To that end, we must analyze the following: (1) if the Roman Catholic and Apostolic Church in Puerto Rico (Catholic Church) has legal personality; (2) if its divisions and components have their own and separate legal personalities (3) the appropriateness of a garnishment in assurance of judgment and a preliminary injunction without bond; (4) if there is any contractual link that has the effect of participating employers of a retirement plan being supplementary liable for it, and (5) the scope of Art. 9.08 of the General Corporations Act of Puerto Rico, infra.

With that in mind, we proceed to highlight the factual and procedural context in which the present dispute arises.

I.

On June 6, 2016, petitioners, of Academia Perpetuo Socorro filed their initial complaint in which they held they are beneficiaries of the Pension Plan for Employees of Catholic

Schools (Plan), administered by the Pension Plan for Employees of Catholic Schools Trust (Trust). [1]

They also argued that the Trust notified them of the termination of the plan and the elimination of their retirement benefits. In light of such, they argued they have acquired rights over the Plan, which cannot be retroactively eliminated. Also, they requested in the complaint, several provisional remedies, namely, a garnishment in assurance of judgment and a preliminary injunction. Afterwards, analogous complaints were filed by employees of Academia San José and Academia San Ignacio, requesting the same remedies, which were consolidated by the Court of First Instance.[2]

Having evaluated the request of petitioners, the lower court denied the provisional remedies. That decision was opportunely appealed before the Court of Appeals, which also denied granting the requested remedies. Not satisfied, the petitioners came before us. On that occasion, this Court accepted the petition filed and we issued a Judgment reversing the intermediate appellate court. See, Acevedo Feliciano, et al. v. Roman Catholic and Apostolic Church, et al., r. July 18, 2017, CC-

[1] The Pension Plan for Employees of Catholic Schools (Plan) that is the central axis of this dispute began operating in 1979. The Office of the Superintendent of Catholic Schools (Office of the Superintendent), that same year created the Pension Plan for Employees of Catholic Schools Trust (Trust) for it to operate the Plan and group the forty-two schools and academies that would participate in it.

[2]The complaints included the Catholic Church, the Archdioceses of San Juan, The Office of the Superintendent, Academia Perpetuo Socorro, Academia San José, Academia San Ignacio and the Trust as defendants.

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2016-1053. To that effect, we decided that the preliminary injunction remedy was appropriate. Also, we concluded that from the documents of the Plan, various clauses that address the liability of the participating employers of the Plan with its beneficiaries. Id. Pages 9-10. That is, we provided that between the Trust and the participating employers there is a subsidiary obligational link with the beneficiaries. Through this relationship, if the Trust did not have the necessary funds to meet its obligations, the participating employers would be obligated to pay.

In view of this conclusion, and as there was a dispute as to which defendants in the case had legal personalities, we ordered the lower court to hold a hearing to determine who would be responsible for continuing paying the pensions, pursuant to the preliminary injunction. That is, whether liability fell on the "appropriate Academies or the Church". Acevedo Feliciano, et al. v. Roman Catholic and Apostolic Church, et al., supra, page 12.

Upon the remanding of the case to the Court of First Instance, it held the ordered hearing. In its Order, that court determined that the only defendant with its own legal personality was the Catholic Church. This, given that neither Academia San José nor Academia San Ignacio had been duly incorporated. Also, it determined that the incorporation certificate of Academia Perpetuo Socorro had been revoked on May

4, 2014. After several procedural actions, the lower court granted the Catholic Church a term of twenty-four hours to deposit the sum of $4.7 million dollars and advised that if it failed to comply with its order it would order the garnishment of its bank accounts. Not satisfied with that action, on that same day, the Respondents appeared before the Court of Appeals by way of *certiorari and in Aid of Jurisdiction* which effectively ordered the stay of the proceedings before the Court of First Instance.

Therefore, after analyzing the arguments of the parties, the intermediate appellate court issued a Judgment which completely reversed the Order issued by the lower court. First, it determined that the Catholic Church is an inexistent entity in Puerto Rico. To that effect, it provided that the different components of the entities that compose the Catholic Church in Puerto Rico each have their own legal personality separate from one another. In that sense, it concluded that the garnishment Order and the order of preliminary injunction were invalid, as they are addressed to an inexistent entity.

On the other hand, the Court of Appeals determined that it was not appropriate to directly individually transfer to the employers the obligation to pay the pension that the employees received because that was strictly the Trust's responsibility.

Also, the intermediate appellate court concluded that the garnishment order and preliminary injunction were not appropriate because the petitioners had not paid the bond required by the Rules of Civil Procedure.

Lastly, it held that Academia Perpetuo Socorro had legal personality, given that it managed to renew its certificate of incorporation in 2017, despite the fact that it had been cancelled on April 16, 2014. In this way, it reasoned that it should be recognized legal personality retroactively to the actions taken during that time, as it acted within the term of three years provided in Art. 9.08 of the General Corporations Act of Puerto Rico. 14 LPRA sec. 3708.3.

Therefore, petitioners come before us assigning the aforementioned legal conclusions as errors. Having the benefit of the appearance of the parties, we dispose of the petition before us. [3] Let us see.

II.

A.

In order to adequately resolve the dispute before us, it is important to explain the legal and historical context in which the Catholic Church in Puerto Rico is recognized legal

[3] During the proceedings of this case, several intervention requests or to appear as amicus curiae were filed with the Clerk's Office of this Court. The petitioners were the Dioceses of Caguas, Arecibo, Mayaguez, Fajardo-Humacao and Ponce. However, we conclude that the interests of these institutions have been adequately represented by respondent. Therefore, we deny them.

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personality. The relationship between Spain, the Catholic Church, and Puerto Rico is *sui generis*, given the particularities of its development and historical context. It is known that for the time during which Puerto Rico was a Spanish colony, the Catholic Church was, *de facto* and *de jure*, part of the State. For that reason, the Catholic Church was very involved in the legal relationships that the State was involved in. Now, after the Hispano-American War, Puerto Rico was ceded to the United States, an act that was formalized with the signing of the Treaty of Paris. In that sense, and as this Court has stated:

> Puerto Rico became part of the constitutional order of the United States as the result of the Hispano-American War. Through the Treaty of Paris in 1898, the sovereignty of Puerto Rico was ceded to the United States-Art. II, Treaty of Paris, LPRA, Volume 1, and it was established that the rights of the inhabitants of the Island would be defined by the Congress. Id., Art. IV. Therefore, from the beginning of our relationship with the United States, the way in which the Federal Constitution would apply to Puerto Rico was the object of intense debates. Commonwealth v. Northwestern Selecta, 185 DPR 40, 61 (2012).[4]

Also, in view of the aforesaid Treaty, the legal personality that the Catholic Church had prior to ceding Puerto Rico to the United States was acknowledged. In other words, the Treaty of

[4] For an update of the different positions in this debate, see G.A. Gelpi, The Constitutional Evolution of Puerto Rico and other U.S. Territories (1898-Present), 1st ed., Colombia, Ed. Nomos S.A., 2017.

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Paris, maintained the legal personality of the Church". J.J. Monge Gómez, La permisibilidad de lo "impermisible": La Iglesia sobre el Estado ["The Permissibility of the 'Impermissible': The Church over the State"], 41 Rev. Jur. U. Inter. PR 629, 633-634 (2007). The foregoing is evident from Art. 8 of the Treaty, which states as follows:

> It is therefore declared that this relinquishment or cession, as the case may be, referenced in the preceding paragraph, cannot reduce at all the property, or the appropriate rights, pursuant to the laws, to the peaceful possessor of properties of all kinds in the provinces, municipalities, public or private establishments, civil or ecclesiastic corporations or of any other collectivities that have legal personalities to acquire and possess properties in the mentioned relinquished or transferred territories and of individual persons, whatever their nationality. Treaty of Peace between the United States of America and the Spanish Kingdom (Treaty of Paris), art. 8, December 10, 1898, USA-Spain, 30 Stat. 1754 (1898). S.C. 343.

Note, that there is no direct reference to the Catholic Church, but rather allusion is made to ecclesiastic corporations. That said, the Supreme Court of the United States established that the word "ecclesiastic" in the aforementioned article strictly referred to the Catholic Church because it was the only ecclesiastic organization existing in Puerto Rico at the time of the signing the Treaty of Paris. Specifically, in

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its analysis, the federal Supreme Court determined the following:

> The Roman Catholic Church has been recognized as possessing legal personality by the treaty of Paris, and its property rights solemnly safeguarded. In so doing, the treaty has merely followed the recognized rule of international law which would have protected the property of the church in Porto [sic] Rico subsequent to the cession. This juristic personality and the church's ownership of property had been recognized in the most formal way by the concordats between Spain and the papacy, and by the Spanish laws from the beginning of the settlements in the Indies. Such recognition has also been accorded the church by all systems of European law from the fourth century of the Christian era. Ponce v. Roman Catholic Apostolic Church, 210 U.S. 296, 323-324 (1908).

Despite this, the intermediate appellate court understood that each division of the Catholic Church in Puerto Rico equals the creation of a different and separate legal entity and did not recognize that legal personality of the Catholic Church. That, based on a substitution of the local law for Canon Law, the scope of which, in the dispute before us, is limited to regulating the relationships and the internal procedures of the Catholic Church. See, Marianne Perciaccante, The Courts and Canon Law, 6 Cornell J.L. & Pub. Pol' y 171 (1996).

Consequently, the Court of Appeals mistakenly analyzed the arguments of the Respondents regarding a constitutional clause

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that establishes the separation of Church and State. This because, according to the Respondents, the internal determinations of the Catholic Church, as to how to administer its institutions must be respected. Given the contractual nature of the dispute before us, they are not correct.

Interpreting the referenced constitutional clause, the Supreme Court of the United States established the following:

> The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religions, beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religions organizations or groups and vice versa. Everson v. Bd. Of Ed. Of Ewing Twp., 330 U.S. 1, 15-16 (1947). Also see, Academia San Jorge v. J.R.T., 110 DPR 193 (1980).

Also, based on that same provision the highest federal court has invalidated state court actions that result in an inappropriate interference on the part of those courts regarding matters of organization or internal disputes (intra-church

dispute) or "matters of doctrine and faith" of the church. See, Jones v. Wolf, 443 U.S. 595 (1979); Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich, 426 U.S. 696 (1976). Therefore, the federal Supreme Court has approved what was named as the "neutral principles of law approach". Jones v. Wolf, supra, pages 602-603. Under that analysis the courts can resolve certain disputes of the Church, as for example, property law, as long as the adjudications do not take into consideration or inquire about matters of doctrine and faith. Id. Pages 602-603. That, without contravening the constitutional clause of separation of Church and State. As corollary of the foregoing, that court has stated that "[t]he First Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. This principle applies with equal force to church disputes over church polity and church administration". Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich, supra, page 710.

Note that in this case, we find ourselves before civil obligations voluntarily contracted, not imposed by the State. In that sense, as this Court stated in Mercado, Quilichini v. U.C.P.R., 143 DPR 610 (1997):

> [I]t must be clear that [,] even though one of the parties in this litigation is an educational institution that demands the

> non-intervention of the courts as there are claims involved that could lead to resolving matters of a religious nature, we can and must distinguish the different arguments before our consideration. Specifically, in this part of the discussion, we only examine the argument of breach of contract. In that sense, there is no doubt as to the authority that a civil court has to intervene in the interpretation of a contract "freely negotiated and agreed" between two private entities. Díaz v. Colegio Nuestra Sra. Del Pilar, 123 DPR 765 (1989). The intervention of the court attempts to enforce the will of the parties and vindicate their contractual interests. In Díaz v. Colegio Nuestra Sra. Del Pilar, supra, we clarified that the participation of the State through the Courts in contractual disputes is not penetrating and incisive in the operation of a catholic educational institution to the point of being a substantial load on the free exercise of cult nor promote the establishment of any religion, as prohibited by the First Amendment of the Constitution of the United States and Art. II, Sec. 3 of the Constitution of the Commonwealth, L.P.R.A., Volume 1. Therefore, as long as the resolving of the contractual dispute does not require passing judgment on matters of doctrine, faith or internal ecclesiastic organization, the civil courts may exercise jurisdiction.

Pursuant to that set forth, it is imperative to conclude that this Court is in the same position in this case. Note, firstly, that it is clear that in this case there is no dispute with regard to "matters of doctrine and faith" of the Catholic Church. Far from facing an intra-church dispute, certainly the dispute before us is framed in external matters of the Catholic Church in its role as employer versus the petitioner employees

in a purely contractual dispute. When the courts face secular disputes such as this one, we cannot award complete deference to its internal decisions, as it is not an internal organization dispute or matter of doctrine and faith. Perciaccante, supra, pages, 171-172 and 178. Moreover, when acting that way would itself be a violation to the constitutional clause that establishes the separation of Church and State. Id, page 172; Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich, supra, pages 708-710.

Also there is no space to impute a violation to the guarantee of the First Amendment of the Federal Constitution from which every person has the right to freely exercise their religion without being impeded, restricted or prevented by government, which applies to the states pursuant to the Fourteenth Amendment of the Federal Constitution. Everson v. Board of Education, supra. As explained, we are not facing a regulation or interference of the Government which seeks to impose a substantial load to certain religion. We explain.

First, the civil dispute before us deals with agreements that the respondent made voluntarily with the plaintiff teachers. Secondly, these agreements are upheld in rules of Civil and Corporate Law of general application. Third, the respondent did not show that these laws were a substantial burden in the exercise of its religion. See, Holt v. Hobbs, 135

S. Ct. 853, 857-859 (2015); Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751, 2769-2762 (2014). It would be very different for the Government of Puerto Rico to interfere with the internal norms of recruitment of ministries or priests of any or of all churches because as the federal Supreme Court decided that such would constitute an undue interference with the internal norms of the churches See, Hosana-Tabor Evangelical Lutheran Church and School v. EEOC, 565 U.S. 171 (2012). On the contrary, we are before a purely contractual dispute regulated by local law among private parties. That is, the legal personality that we recognize to be the Catholic Church does not affect the aforementioned constitutional guarantee because that determination in no way substantially interfered with its internal organization or any "matter of doctrine and faith." With our decision, we merely clarify the legal personality of the Catholic Church of Puerto Rico with its civil responsibilities in relation to persons outside of it.

Secondly, the dispute in this case, contrary to how it was perceived by the Court of Appeals, does not require that we evaluate or qualify the internal decisions or "internal ecclesiastic organization" of the Catholic Church as correct or incorrect, regardless how it may choose to do so, but rather whether such organization is capable of granting or denying, by

itself, independent legal personality to one or various of the internal structures. Let us see.

Contrary to what was concluded by the intermediate appellate court, it is undeniable **that each entity created that operates separately and with a certain degree of autonomy from the Catholic Church is in reality a fragment of only one entity that possesses legal personality.** J. Gelpi Barrios, Personalidad Jurídica de la Iglesia en Puerto Rico ["Legal Personality of the Church in Puerto Rico"], 95 Rev. Esp. Der Canónico 395, 403 and 410 (1977); A. Colon Rosado, Relation Between Church and State in Puerto Rico, 46 Rev. Jur. Col .Ab. 51, 54-57 (1985). In other words, the entities created as a result of any internal configuration of the Catholic Church are not automatically equivalent to the formation of entities with different and separate legal personalities in the field of Civil Law. That because they are merely indivisible fragments of the legal personality that the Catholic Church has.

The contention that the Catholic Church is authorized to forego the local Corporate Law and can establish entities with legal personality by decree or papal bull from Rome, is--for all practical effects--the recognition of an official or privileged religion in Puerto Rico. That is prohibited by the First Amendment of the Constitution of the United States and Art. II,

Sec. 3 of the Constitution of Puerto Rico. See, Everson v. Board of Education, supra; Academia San Jorge v. J.R.T., supra.

In view of the foregoing, it is unquestionable that the Catholic Church has and enjoys its own legal personality in Puerto Rico. Therefore, different from other religious institutions, it is not required to carry out a formal act of incorporation to have legal personality. As a matter of fact, that reality is stated in the Registry of Corporations of the State Department of Puerto Rico. [5] Therefore, inasmuch as the entities created by the Catholic Church serve as alter egos or its entities *doing business as*, without independently submitting to an ordinary incorporation process (as Academia Perpetuo Socorro did at a time) they are mere indivisible fragmentations of the Catholic Church with no legal personality of their own. In view of these facts, the Court of Appeals erred in substituting the current law stated with non-binding rules.

B.

As it is known, one of the medullar characteristics of the corporations is that they have their own legal personality, separate and different from that of their incorporators and shareholders. See, C.E. Díaz Olivo, Corporaciones: Tratado Sobre Derecho Corporativo ["Corporations: Treatise on Corporate Law"], Colombia, [S. Ed], 2016, pages 2 and 45; M. Muñoz Rivera, Ley de

[5] Certificate of the State Department, Appendix of Certiorari, pages 787-789.

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Corporaciones de Puerto Rico: Análisis y Comentarios ["Puerto Rico Corporations Act: Analysis and Commentaries"], 1st ed., San Juan, Ed. Situm, 2015, page 7. That legal personality is lasting until the corporation is dissolved or expires. Miramar Marine, et al., v. Citi Walk et al., 198 DPR 684, 691 (2017). Relevant to the dispute before us, Art. 9.08 of the General Corporations Act of Puerto Rico, supra, provides certain instances in which, despite the dissolution or extinction of a corporation, it will have legal personality for certain purposes.

The article cited above adopts in Puerto Rico what is known as the survival statutes. Miramar Marine et al, v. Citi Walk, et al, supra, page 693. It has the purpose of adequately and completely finishing the process of liquidation of a corporation. Id. Therefore, as the text of the referenced article provides, legal personality is provided to terminated corporations with the purpose of them being able to continue with their pending litigations and address those judicial claims filed within the three years that follow their dissolution or extinction. However, the same article clarifies that "[t]he legal personality may not continue with the purpose of continuing the business for which such corporation was created." General Corporations Act of Puerto Rico, supra. See, also, 16A Fletcher Cyc. Corp., secs. 8112.3 and 8117 (2012). That is, the legal personality of a liquidated or terminated corporation is

limited, because it will not be recognized to continue with its business as if it had never been liquidated or terminated. However, the foregoing is not equivalent to being able to file suit against a liquidated or terminated corporation within the three years following its termination for actions carried out within that same term. An interpretation of that article shows that the cause of action exercised had to have appeared during the existence of the corporation that is intended to be sued. In this way, the referenced article provides a term for an affected party to file suit against the corporation despite it having ceased to exist.

In view of the foregoing, we decide that the intermediate appellate court erred in recognizing the legal personality of Academia Perpetuo Socorro. As stated, Art. 9.08 of the General Corporations Act of Puerto Rico, supra, provides a term of three (3) years after the extinction of a corporation to exercise causes of action and rights that appeared during its effectiveness. In light of the stated facts, it is evident that the cause of action in question appeared in 2016, with the announcement by the Trust with regard to the end of the Plan and the lack of payment of the pensions. Therefore, it was not appropriate to recognize the legal personality of Academia Perpetuo Socorro, as the actions that are claimed occurred after the reversal of its certificate of incorporation.

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III.

As stated, the petitioners state that the appealed judgment erroneously determined that there was no obligational source between them and their employer regarding the payment of the pensions. That, as the only obligational link present in the dispute was strictly between the pensioners and the Trust. That conclusion is contrary to our mandate in Acevedo Feliciano, et al v. Roman Catholic and Apostolic Church, et al, supra. In that occasion we established with clarity the obligational relationship between the parties and its legal effect. Therefore, the action of the Court of Appeals is erroneous, as it is incongruent with our previous mandate. See, Colon, et al. v. Frito Lays, 186 DPR 135, 151 (2012).

On that occasion, this Court determined that in the Plan there were several clauses that held the employers liable for the obligations of the Trust. Id., pages 9-10. Therefore, we ordered the Court of First Instance to hold a hearing, to determine which employers had independent legal personality and would be liable to pay. In that sense, we stated the following:

> At the same time, and regardless of the legality of the termination of the plan, from the Pension Plan there are several clauses that deal with the responsibility of the participating employers with the beneficiaries, namely: 1) Article 2(B), where the employers **guarantee** their contribution of the necessary funds for the operation of the plan, 2) Articles 4 (B) and

> 8 (B.1) where a guarantee of payment is emphasized for at least sixty (60) months, 3) Article7(E) where it is established that the employers that end their participation in the Plan are liable for amortizing the non-financed liability accrued, and 4) Article 15 (b), where it is emphasized that the employer that retires from the Plan is responsible of the **acquired benefits** of its employees while it participate. All this requires examining the responsibility to which the employers had when agreeing the Pensions Plan, and if it extends beyond the figure of the trust that they established. Acevedo Feliciano, et al. v. Roman Catholic and Apostolic Church, et al., supra, pages 9-11 (scholium omitted.)

For that reason, and on the grounds stated in our previous Judgment, which became firm and final, we conclude that the intermediate appellate court erred when acting against our order. That is because in that occasion this Court had concluded that the obligational link between the parties was existent as it was evident from various parts of the Plan. For that reason, the lower court acted correctly when abiding by what was provided by this Court in Acevedo Feliciano, et al. v. Roman Catholic and Apostolic Church, et al., supra, by holding a hearing to determine which party had legal personality in order to comply with the obligation that this court already deemed existent.

IV.

A.

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The garnishment remedy in assurance of judgment seeks to ensure the effectiveness of a judgment that is entered in due time. Ramos, et al. v. Colon, et al., 153 DPR 534 (2001). Therefore, the Rules of Civil Procedure, compel the courts to demand the payment of a bond to grant that remedy. 32 LPRA Ap. V, R. 56.4. However, there are various exceptions to the payment of that bond. In relevant part to this dispute, one of the exceptions provides that "[a] provisional remedy without payment of the bond may be granted in any of the following cases: (a) if it is in public or private documents, as defined by law and signed before a person authorized to administer oath, that the obligation is legally binding..." 32 LPRA AP. V, R. 56.3. The definition of what constitutes a public or private document must be interpreted broadly and expansively. J.A. Cuevas Segarra, Tratado de Derecho Procesal Civil ["Treatise on Civil Procedural Law"], 2nd ed., San Juan, Pubs. JTS, 2011 T. V, page 1607. For that reason, the range of admissible documents to excuse a party from having to pay bond is vastly broad. To that effect, in the case file there is abundant documental evidence that shows that the obligation in question was payable, namely: Informative Manual for Participating Employees, Appendix to Certiorari, pages 564-566; Informative Manual for Employees, id., pages, 567-569; Deed of Trust, id. Pages 545-563; Pension Plan of the Catholic Schools of the Archdioceses of San Juan, id., pages

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516-538; Minutes of the Meeting of the Trust on April 26, 2010, Id page 680, and Minutes of the Meeting of the Trust on September 13, 2010, id. Page 690.

B.

On the other hand, the preliminary injunction has the objective of "maintaining the status quo while the case is being resolved". Mun. Fajardo v. Sec. Justice, 187 DPR 245, 255 (2012). To grant that remedy the petitioner must, in addition to complying with the criteria established in Rule 57.3 of the Rules of Civil Procedure, 32 LPRA Ap. V, R. 57.3, pay a bond, as a general rule. According to Doctor Cuevas Segarra, "the imposition of a previous bond constitutes an essential requirement that must not yield to anything, **except extraordinary circumstances where requiring such payment would lead to a failure of justice**". (Emphasis provided). Cuevas Segarra, op. cit., page 1726. Professor Echevarría Vargas thinks the same, J.A. Echevarría Vargas, Procedimiento Civil Puertorriqueño ["Puerto Rican Civil Procedure"], San Juan [Author ed], 2012, page 393. In view of the foregoing, we find ourselves facing exceptional circumstances which make it necessary to recognize such an exception in our legal system. Therefore, we cannot ratify the reasoning of the Court of Appeals, which would result in the granting of an injunction remedy not being available for a petitioner to avoid a failure

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of justice if he/she does not have the force of money. That logic would weaken the effectiveness of the Law in a democratic society and would close the courts' doors for purely financial reasons to those who precisely need an urgent financial remedy.

To that effect, it is clear that demanding the payment of a bond in this case would entail a failure of justice. Let us explain ourselves. Here petitioner demands the payment of a pension that is not disputed that has stopped being paid. As a consequence of this breach, the petitioners suffer a damage, in view of the lack of flow of income and the clear and palpable harms that threaten their health, safety, and wellbeing in a retirement stage. We recognized and stated such in the Judgment of Acevedo Feliciano et al v. Roman Catholic and Apostolic Church et al, supra, pages, 8-9. In view of the reality that the petitioners stated concrete and particular situations of how the non-payment of the pension has had a significant impact in their lives, it would be a contradiction to demand the payment of a significant bond for defendants to continue the payment of the pension that petitioners demand.

V.

Based on the foregoing grounds, the certiorari petition is issued and the judgment of the Court of Appeals is reversed with regard to the matters stated in this Opinion. Consequently, we hold and maintain in complete effect the decision in the Order

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issued by the Court of First Instance on March 16, 2018, and all the measures adopted by the lower court and therefore the case is remanded to that court for subsequent procedures to resume, in accordance with what is stated in this Opinion.

[signature]
Luis F. Estrella Martínez
Associate Justice

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Certified Translation

IN THE SUPREME COURT OF PUERTO RICO

Yalí Acevedo Feliciano et al. Petitioners Roman Catholic and Apostolic Church et al Respondents	CC-2018-0475	Certiorari
Sonia Arroyo Velázquez et al. Petitioners v. Roman Catholic and Apostolic Church, et al. Respondents		
Elsie Alvarado Rivera et al. Petitioners v. Roman Catholic and Apostolic Church, et al.		

JUDGMENT
(Rule 50)

San Juan, Puerto Rico, on June 11, 2018.

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Based on the foregoing grounds, the certiorari petition is issued and the judgment of the Court of Appeals is reversed with regard to the matters stated in this Opinion. Consequently, we hold and maintain in complete effect the decision in the Order issued by the Court of First Instance on March 16, 2018, and all the measures adopted by the lower court and therefore the case is remanded to that court for subsequent procedures to resume, in accordance with what is stated in this Opinion.

Notify **immediately** by telephone and by e-mail.

So pronounced and ordered by the Court and certified by the Clerk of the Supreme Court. The Interim Chief Justice Rodríguez Rodríguez and Associate Justice Colón Pérez dissent with written opinions. Chief Justice Oronoz Rodríguez did not intervene.

[signature]
Juan Ernesto Dávila Rivera
Clerk of the Supreme Court

[seal:] *COMMONWEALTH OF PUERTO RICO; GENERAL COURT OF JUSTICE; SUPREME COURT*

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IN THE SUPREME COURT OF PUERTO RICO

Yalí Acevedo Feliciano et al. Petitioners Roman Catholic and Apostolic Church et al Respondents	No. CC-2018-0475
Sonia Arroyo Velázquez et al. Petitioners v. Roman Catholic and Apostolic Church, et al. Respondents	
Elsie Alvarado Rivera et al. Petitioners v. Roman Catholic and Apostolic Church, et al.	

Dissenting opinion issued by Associate Justice Rodriguez Rodriguez.

In San Juan, Puerto Rico, on June 11, 2018.

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Once again, "it's the church, Sancho."[1]

Due to understanding that the course of action adopted by a majority of the members of this Court violates the Constitutional Principle on Separation of Church and State, embodied in both the Constitution of the Commonwealth of Puerto Rico and the Constitution of the United States of America, by *de facto* and *de jure* reconfiguring the internal and hierarchical ecclesiastical organization of the Roman Catholic and Apostolic Church, I **forcefully dissent.**

I.

The core dispute before our consideration had its origin after a *Judgment* issued by this Court, on July 18, 2017. See *Acevedo Feliciano, et al. v. Roman Catholic and Apostolic Church, et al.*, R. July 18, 2017, CC-2016-1053. The Judgment that we issued at that time reviewed a *Decision and Order* of the Court of First Instance that, in turn, denied plaintiffs' request for a preliminary injunction to secure the judgment. The primary court had concluded, as a matter of law, that the damages alleged in the lawsuit were financial and therefore reparable, so the

[1] *Diocese of Arecibo v. Sec. Justice*, 191 D.P.R. 292, 329 (2014) (Rodriguez Rodriguez, J., Dissenting Op.) (citing M. de Cervantes Saavedra, *Don Quixote de la Mancha*, (Ed. IV Centenario) Madrid, Ed. Alfaguara, 2004, at p. 60.

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requested injunction was denied. The intermediate appellate court refused to review said decision.

When that dispute was brought to our consideration, we issued the writ of certiorari and revoked. We concluded that the beneficiaries of a Pension Plan had suffered irreparable damage when they were "deprived of their needed source of income." In view of such, the request for preliminary injunction filed by Yali Acevedo Feliciano and the other plaintiff teachers (collectively, petitioners) was granted. By virtue of said decision, this Court ordered the continuation of the payments of the pensions claimed by the plaintiffs. Likewise, the primary court was ordered to hold an evidentiary hearing to determine if the defendant entities had legal personality and, consequently, were liable for the payment of the pensions in question while the merits of the case were solved. *See Acevedo Feliciano, et al. v. Roman Catholic and Apostolic Church, et al.*, R. July 18, 2017, CC-2016-1053, at p. 13.

In compliance with the order of this Court, the Court of First Instance held the corresponding hearing and, after considering the evidence presented, the writings submitted by the parties and the current law, ruled that "the churches-schools sued, as well as the Archdiocese of San Juan and the Office of the Superintendent of Catholic Schools of San Juan, do not have their own legal personality because they are part of

the Roman Catholic and Apostolic Church, an entity with its own legal personality, recognized by our current state of law." *Decision of the Court of First Instance* (Civil No. SJ-2016-CV-0131), March 16, 2018, at p. 8. To arrive at this conclusion, the primary court analyzed, in essence, Article 8, paragraph 2 of the Treaty of Paris of December 10, 1898 and the statements of the Supreme Court of the United States in *Municipality of Ponce v. Catholic Church in Porto Rico*, 210 U.S. 296 (1908).

According to the interpretation of the primary court - affirmed today by a majority of this Court - the Supreme Court of the United States ruled that said article of the Treaty allegedly recognized the Roman Catholic and Apostolic Church (Catholic Church) in Puerto Rico its own and independent legal personality. For the reasons explained later in this dissent, this interpretation of the decision issued by the federal Supreme Court lacks legal and historical basis and is completely incompatible with the modern constitutional doctrine about separation of Church and State and the Code of Canon Law.

In light of said analysis regarding the legal personality of the Catholic Church, the Court of First Instance ordered the continuation of the "payments to the plaintiffs pursuant to the Pension Plan, while this action is resolved." *Decision of the Court of First Instance* (Civil No. SJ-2016-CV-0131). Upon the Catholic Church's non-compliance, on March 27, 2018, the primary

court ordered it to deposit, in twenty-four (24) hours, the amount of $ 4,700,000 as a measure to ensure payment of the plaintiffs' pensions. Similarly, the primary court warned that the Catholic Church's non-compliance would result in a seizure of its bank accounts.

Dissatisfied, that same day, the Catholic Church filed a petition for a writ of *certiorari* and a motion in aid of jurisdiction before the Court of Appeals. In response to the latter, the intermediate appellate court preventively ordered the stay of the proceedings before the primary court. After receiving the respective arguments of the parties, on April 30, 2018, the Court of Appeals issued a judgment in which it fully revoked the Court of First Instance's decision.

Regarding the dispute over the legal personality of the Catholic Church, said court reasoned that, according to Canon Law and the current rule of law on principles of separation of Church and State, "there is no structure on the Island that groups together all the dioceses, under a single authority, to which their bishops are subordinate." *Judgment of the Court of Appeals*, KLCE-2018-00413, April 30, 2018, at p. 29. In interpreting sections 368 and 369 of the Code of Canon Law, the intermediate appellate court emphasized that a diocese is a portion of the people of God, whose care is entrusted to the Bishop and which, with the cooperation of the presbytery,

"constitutes a Particular church, in which the Church of Christ is truly present and acts as a holy, catholic and apostolic one." *Id.* at p. 30. That is, in accordance with the canon law, "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 himself, as the universal head of the Roman Catholic and Apostolic Church". *Id.* at p. 31.

Consistent with this pronouncement, the Court of Appeals held that the decision of the Supreme Court of the United States in *Municipality of Ponce* should be interpreted taking into consideration the reality and the historical context of the time when this case was decided. For the intermediate appellate court, at the time when the opinion in question was issued, in Puerto Rico there was only "one diocese (the Diocese of Puerto Rico), so, in practice, the same identity or conceptualization existed between the Catholic Church and the diocese." *Id.* at p. 36. Lastly, the Court of Appeals ruled that the federal Supreme Court did no more than recognize the law in force prior to the cession of the territory of Puerto Rico to the United States and, in no way, this should be interpreted as the recognition of a Catholic Church's own legal personality in Puerto Rico; otherwise, it would be a way of "intervening in the internal

structure of the Church [and] in its operation and organization." *Id.* at p. 37.

Thus, the Court of Appeals concluded that the seizure order and preliminary injunction were improper, since they were addressed to a non-existent entity. On the other hand, the intermediate appellate court ruled that: (1) the employers participating in the retirement plan were not obligated to pay individually the pension received by their employees; (2) the attachment order and the preliminary injunction did not proceed since the petitioner had not provided the corresponding bond, and (3) Academia Perpetuo Socorro had its own legal personality due to having renewed its incorporation certificate in 2017 and, therefore, it should be recognized retroactively.[2]

Dissatisfied, on May 14, 2018, the Catholic Church filed before this Court a *Motion in Aid of Jurisdiction and/or Expedited Transmittal* and a request for *certiorari* through which, in summary, it requested to stay the proceedings and the reversal of the judgment issued by the Court of Appeals. Even without having these resources available, on May 21, 2018, the legal representation of the Catholic Schools Employee Pension Plan Trust (Trust) filed an *Informative Motion* before this Court

[2] I must mention that Justice Rivera Colón issued a dissenting vote in which he expressed his agreement with the determination of the majority of the members of the Panel that the Catholic Church had no independent legal personality. However, he dissented from the opinion because he understood, correctly under my perspective, that the majority judgment improperly entertained matters regarding the merits of the present case that were not before their consideration and, therefore, exceeded its revisory power.

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informing that Academia Perpetuo Socorro, on May 18, 2018, had opportunely filed a motion for reconsideration before the intermediate appellate court. Thus, a majority of the members of this Court ordered all the parties in this lawsuit to set forth their position regarding said informative motion; particularly, regarding whether the request before our consideration was premature. In the afternoon of May 24, 2018, in compliance with our order, the parties appeared and presented their arguments.

On the same day, and late at night, a majority of the members of this Court considered the briefs presented and ruled that the petitioner was not notified of the filing of the motion for reconsideration before the Court of Appeals pursuant to law. In this way, without further ado, this Court denied the motions to dismiss filed and, afterwards, the proceedings before the lower courts were stayed. This had the effect of ordering the Catholic Church to continue issuing the payments in accordance with the Pension Plan and comply with the provisions of the Decisions and orders of the court of first instance, issued on March 16 and 26, 2018, respectively. Finally, a short period of ten (10) days was granted to the Catholic Church and other respondents to show cause as to why the judgment of the intermediate appellate court should not be revoked.

On June 1, 2018, the petitioners filed an *Urgent Motion of Contempt and Other Matters* through which they requested that the

Catholic Church be found in contempt, that its allegations be eliminated and to authorize the execution of court of first instance's seizure order. Even without a ruling on said motion, on June 4, 2018, the respondents filed their respective motions in compliance with the order.

Thus, today a majority of the members of this Court issues an opinion, under the expedited procedure of Rule 50 of our Rules through which it unexpectedly reorganizes the internal structure of the Catholic Church in Puerto Rico. In doing so, it overturns the constitutional protections of the absolute separation of Church and State contained in the Constitution of the Commonwealth of Puerto Rico and in the Constitution of the United States, as established in its interpretative jurisprudence, respectively. Given that this Court took jurisdiction to address the present case, I have an inescapable duty to express myself regarding the merits of the main dispute raised and how wrong the opinion issued today is.

II.

As a threshold matter, I must make it very clear that my position in this Dissenting Opinion does not in any way imply that I am passing judgment, or compromising my judgment, on the merits of the present case and the validity of the claim of the teachers of Catholic schools regarding the legality of the termination of the Retirement Plan. At all times, the

determinations of this Court and the lower courts have arisen in the exclusive context of an action of preliminary injunction and seizure to secure judgment. I have no doubt, as a majority of the members of this Court held in the *Judgment from July 18, 2017*, that at this **early stage** of the proceedings "the balance of interests is tilted towards the petitioners." *Acevedo Feliciano, et al. v. Roman Catholic and Apostolic Church, et al.*, Res. July 18, 2017, CC-2016-1053, at p. 12. Certainly, as this Court has already resolved and we pointed out earlier, during the course of this action, the teachers "stripped of their much-needed source of income [] have suffered irreparable damage." *Id.* at pages. 11-12. Now, the dispute that is before the consideration of this Court, and that arises from our previous decision, is **whom** it is against and **who** will be liable for the millions in monetary claims that the petitioners request. In the answer to this question lies, precisely, my **irreconcilable difference** with the Majority.

Taking this as a spearhead, I will proceed to delineate the reasons why I believe that the majority opinion inappropriately interferes with the operation of the Catholic Church by imposing on it a legal personality that it does not hold in the field of private law. Likewise, I believe that the decision issued by a majority today, in practice, could lead to the unenforceability

of the judgment which, in due time, could end the petitioners' claim; a claim that today is subjected to a deplorable suspense.

A.

Section 3 of Article II of the Constitution of the Commonwealth of Puerto Rico, L.P.R.A., Volume 1, ***11** establishes that, "no law shall be approved relating to the establishment of any religion, nor shall the free exercise of religious worship be prohibited. There shall be complete separation of the church and the state." On the other hand, the Constitution of the United States clearly states that, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise of the consequences, or abridging the freedom of speech, or of the press, or the right of the people peacefully to assemble, and to petition the Government for a redress of grievances." U.S. Const. Amend I.

From the outset, it is necessary to emphasize that our constitutional clause - as opposed to its federal counterpart - expressly orders "complete separation of Church and State." At the federal level, this separation--which aspiration and inspiration of the religious clauses--has been formulated through a recognition of the existence of two separate spheres of action that go back to the secular thought of Thomas

Jefferson and James Madison.[3] The other two clauses related to the recognition of the freedom of religion and the prohibition to the establishment of a religion contained in both constitutions, prevent State actions that may tend to: (1) promote a particular religion or (2) limit its exercise. Hence, in the past this Court has recognized that, both at the federal level and at the state level, there is a tension between both clauses that has resulted in a broad jurisprudence that seeks to harmonize them. *See Mercado, Quilichini v. U.C.P.R.*, 143 D.P.R. 610, 635 (1997); *Diocese of Arecibo v. Srio. Justice*, 191 D.P.R. 292, 308 (2014) (judgment) (citing *School Dist. Of Abington Tp., Pa. V. Schempp*, 374 U.S. 203 (1963)).

As to the clause on separation of Church and State of our Constitution, we have affirmed that it requires recognition of a jurisdiction for the Church distinct and separate from that of the State. This, in order for the actions of both entities to not interfere with one another. *See Mercado, Quilichini*, 143 D.P.R. at p. 634. Consistent with this, we have determined that the constitutional mandate of separation of Church and State prevents civil courts from rendering judgment "on matters of doctrine, discipline, faith or internal ecclesiastical

[3] *See* Laurence Tribe, *American Constitutional Law*, at p. 819 (Foundation Press 1979). See also, John Ragosta, "Federal Control: Jefferson's Vision in Our Times," in *Religious Freedom: Jefferson's Legacy, America's Creed* (Charlottesville: University of Virginia Press, 2013), at pgs. 185-86,188; *Watson v. Jones*, 80 U.S. 679 (1871).

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organization." *Amador v. Conc. Igl. Univ. De Jesus Christ*, 150 D.P.R. 571, 579-80 (2000) (emphasis supplied).

Over the years, the so-called "religious clauses," both in the federal sphere and in the Puerto Rican legal system, have formed the basis for the development of rules and adjudicative standards that, in turn, have served as a guide to face issues revolving around the interrelation between the State, religion, and the church. In this case, it is clear that the dispute does not entail a possible violation of the freedom of worship, nor does it suppose the favoring of a religion on the part of the State. Rather, this Court's ruling directly affects the principles that inform the organization, function, hierarchy, and structure of the Catholic Church in Puerto Rico.

The majority opinion, in addressing this issue, focuses on the nature of plaintiffs' claim, warning that "we find ourselves before civil obligations voluntarily contracted and not imposed by the State."[4] *Opinion*, at p. 10. Thus, it indicates that the ruling in *Mercado, Quilichini* is dispositive, as to the authority of the civil courts to elucidate contractual disputes

[4] It is appropriate to distinguish, then, between the substantive nature of the dispute before our consideration and the effects of the opinion that today is signed by a majority to resolve it. While it is true that we are before a claim of contractual nature, the determination as to who is answerable for said claim, which for the majority would be the Catholic Church, results in a clear violation of the separation clause of Church and State. In other words, we are not dealing with a case in which the dispute requires evaluating whether a state action violates any of the religious clauses. Interestingly, in this case the state action, concretely, occurred **in the stage of the resolution of the dispute** by this Court by attributing - by judicial means - legal personality to the Catholic Church in the field of Private Law. This, in contravention of the different provisions of the Code of Canon Law that govern the structure and the organization of that universal religious entity.

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that "do not require rendering judgment on matters of doctrine of faith or of internal ecclesiastical organization." *Id.* (Citing *Mercado, Quilichini v. U.C.P.R.*, 143 D.P.R. at page 635 (1997)). After indicating that this Court is in the same position as in *Mercado, Quilichini* and by means of a clearly disconnected analysis, the Majority concludes that the other entities sued in the present case are in fact a fragmentation of a single entity with legal personality: the Catholic Church. *Opinion*, at pages. 10-11.

In the particular context of the constitutional prohibition of the establishment of a religion, in the case of *Lemon v. Kurtzman*, 403 U.S. 602 (1977), the federal Supreme Court established a tripartite scheme of analysis to determine whether a state law or practice constitutes an improper establishment of religion. That scheme - commonly known as the *Lemon Test* - requires the courts to examine: (1) whether the legislation or action pursues a secular purpose, (2) if in some way it promotes or inhibits religion, or (3) if it constitutes an excessive interference by the State in religious matters. *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971); *Asoc. Academies and Col. Cristianos v. E.L.A.*, 135 D.P.R. 150 (1994) (adopting and applying the scheme); *see also Dioceses of Arecibo v. Sec. Justice*, 191 D.P.R. 292, 310 (2014) (judgment).

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Professor Efren Rivera Ramos, in discussing this scheme and its adoption and application by this Court, echoes the expressions of former federal Supreme Court justice Sandra Day O'Connor and explains that, "the principle is that the Government action must not endorse Religion, neither in its purpose nor in its effect." Efren Rivera Ramos, *Estado, Religión y Derecho: Marco Juridico* ["State, Religion, and Law: Legal Framework"], 84 Rev. Jur. ***15** U.P.R. 537, 541 (2015). For practical purposes, it concludes that the general principle set forth in *Lemon* and its progeny includes the following requirements:

> (1) That the State should not favor any religion, nor should it privilege Religion in general; (2) **that the State should not interfere in the internal affairs of the Religion,** and (3) that the State should not allow Religion to interfere in the affairs of government, or entrust government matters to any religion. *Id.* (Emphasis supplied).

The second requirement has its origin in decisions of the Federal Supreme Court through which it recognized a modality of the violation to the constitutional prohibition to the establishment of a religion through **improper actions** on the part of the civil courts of justice. This has been called in American federal and state jurisprudence the "church autonomy doctrine"

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which is, for all effects, a corollary of the separation of Church and State embodied in the First Federal Amendment.[5]

As it was advanced, although in the past we have acknowledged elements of this doctrine when interpreting the religious clauses of our Constitution, particularly the mandate to separate Church and State, we have been cautious in its application and have avoided adopting it bluntly. *See Amador v. Conc. Igl. Univ. Of* ***16** *Jesus Christ*, 150 D.P.R. 571, 579-80 (2000); *Mercado, Quilichini v. U.C.P.R.*, 143 D.P.R. 610, 635 (1997); *Diaz v. Colegio Nuestra Sra. Del Pilar*, 123 D.P.R. 765 (1989); *Agostini Pascual v. Catholic Church*, 109 D.P.R. 172 (1979).

However, the Supreme Court of the United States decided a series of cases in the fifties, sixties, and seventies that delimit the contours of the "church autonomy doctrine" and, to a certain extent, have served as a guide for this Court when resolving disputes in which there is an undue interference by the State in matters of church. *See Jones v. Wolf*, 443 U.S. 595 (1979); *Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 708 (1976) ("The fatal fallacy to the judgment of the [state supreme court] is that it rests upon

[5] For a detailed examination of this doctrine, see *Construction and Application of Church Autonomy Doctrine*, 123 A.L.R. 5th 385 (2004). See also Michael A. Helfand, *Religion's Footnote Four: Church Autonomy As Arbitration*, 97 Minn. L. Rev. 1891 (2013), for a discussion on said doctrine, its evolution and its relationship with the other adjudication standards for the so-called "religious clauses."

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an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry into church polity and Decisions based thereon those disputes."); *Maryland & Virginia Eldership of the Churches of God v. Church of God of Sharpsburg, Inc.*, 396 US 367.369 (1970) (Brennan, J., Concurrent Op.) ("To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law, places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine."); *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church,* ***17** 393 U.S. 440 (1969); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952) ("[A] spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.")

From the range of federal jurisprudence mentioned above it is important to emphasize the decision of *Presbyterian Church in U.S.*, by which it was resolved that:

> First Amendment values are **plainly jeopardized** when church property litigation is made to turn on the

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> Decision by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, **the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern.** Because of these hazards, the First Amendment enjoins the employment of organs of government for religious purposes, the amendment then commands civil courts to decide church property disputes **without resolving underlying controversies over religious doctrine.** Hence, States, religious organizations, and individuals must structure relationships involving church property **so as not to require the civil courts to resolve ecclesiastical questions.** *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969) (citations omitted) (emphasis supplied).[6]

In addition to the decisions of the Federal Supreme Court, the "church autonomy doctrine" has been endorsed and applied by the various federal and state courts. *See, e.g. Se. Pennsylvania Synod of the Evangelical Lutheran Church in Am. v. Meena*, 19 A.3d 1191, 1196 (Pa. Commw. Ct. 2011) ("If the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination

[6] Although this decision, and the others cited above, arise in the particular context of the ability of a religious institution to acquire private property, the methodology adopted by the Federal Supreme Court informs what we understand should dispose of the dispute in this case. And the fact of the matter is that, in the decision that the Majority takes today, it is determined who the Church is regardless of what the Church itself maintains. In fact, and as discussed below, the practical effect of what is decided by the majority opinion creates an undue interference, not only in the organization of the Church, but also in the purchasing power and ownership over real property of different entities that have been stripped of their own legal personality by this Court and that appear as co-defendants in this lawsuit.

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may, and must, be examined into minuteness and care, for they would become, in almost every case, the criteria by which the validity of the ecclesiastical decree would be determined in the civil court."); *McKelvey v. Pierce*, 173 N.J. 26, 800 A.2d 840 (2002); *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648 (10th Cir., 2002).

I consider that according to the discussion above, it is mandatory to conclude that the opinion of the majority violates the principle of separation of Church and State by interfering in the very definition of who the Catholic Church is in order to determine its legal personality. The Majority replaces the Church's criterion on this matter, with its own. This, in my opinion, is in clear contravention of the mandate of our Constitution and that of the United States.

Rather, and in order to supplement the very meager and disconnected analysis contained in the Majority Opinion on the separation of Church and State clause, I consider it prudent and intellectually sound to address the aspects of the internal and hierarchical ecclesiastical organization of the Catholic Church that are adversely affected by the majority's decision. For this, it is essential to examine those precepts of the Code of Canon Law, the Treaty of Paris, and the Concordats of 1851 and 1859 that explain the hierarchy and *modus operandi* of the Catholic Church and, moreover, reveal the historical and legal

background of that religious institution in Puerto Rico. Let us see.

III.

A.

Canon Law is conceived as the legal structure of the Catholic Church and constitutes the system of legal relations that unite the faithful and place them within the social body of the Catholic Church. See in general Daniel Cenalmor and Jorge Miras, *El Derecho de la Iglesia: Curso básico de Derecho canónico* ["Church Law: Basic Course in Canon Law"] (1st ed., Pamplona, Ed. Eunasa, 2004). In this sense, as the Court of Appeals correctly pointed out, its immediate purpose is "to establish and guarantee the just social order in the Church, ordering and leading its subjects, through said order, to the attainment of the common good." *Judgment of the Court of Appeals*, KLCE-2018-00413, April 30, 2018, at p. 15 (citing A. ***20** Bernández Cantón et al., *Derecho Canónico* ["Canon Law"]. 2d ed. Pamplona, Ed. Eunasa, 1975, at pags. 75-79.)

For purposes of this case, it is imperative to point out that, according to the Code of Canon Law (CCL), "[t]he Catholic Church and the Apostolic See are moral persons by the same divine ordination." CCL 113, sec. 1. Pursuant to this, in the canonical order "besides physical persons, there are also

juridic persons, that is, subjects in canon law of obligations and rights which correspond to their nature." *Id.* at sec. 2. This responds to the practical fact that "the corporations and foundations constituted by competent ecclesiastical authority . . . within the limits that are indicated to them, fulfill in the name of the Church . . ." CCL 116, sec. 1.

These general rules make more sense when we analyze the provisions contained in Book II of the People of God regarding particular churches and their gatherings. Note that "the concept of a particular Church **is not canonical but theological.**" Javier Hervada, *Elementos de Derecho Constitucional Canónico* ["Elements of Constitutional Canon Law"] (Madrid 2014) at p. 274. This section of the CCL states that the particular churches "in which, and from which the one and only Catholic Church exists, are first of all dioceses." CCL 368. In attention to this, as the Court of Appeals correctly pointed out, this legal scheme provides that:

> A diocese is a portion of the people of God which is entrusted to a bishop for him to shepherd with the cooperation of the presbyterium, so that, adhering to its pastor and gathered by him in the Holy Spirit through the gospel and the Eucharist, it constitutes a particular church in which the **one, holy, catholic, and apostolic** Church of Christ is truly present and operative. CCL 369 (emphasis added).

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This principle is carried out in its most practical sense because that portion of the people of God that "constitutes a diocese or another particular Church must be circumscribed within a given territory, so that it includes all the faithful who inhabit it." CCL 373 [sic]. Thus, the erection of particular churches "corresponds only to the supreme authority . . . [and] **those legitimately erected possess juridic personality by the law itself.**" CCL 373. Dioceses are the organs of local government whose jurisdiction is defined by virtue of their territorial demarcation. Fernando Della Rocca, *Canon Law*, section 88, on page 198. See also CCL 515 sec.3

("The parish legitimately erected has legal personality under the law itself".); Jorge de Otaduy, *The civil personality of the organizational entities of the Church* (Particular reference to the parish), IUS CANONICUM, XXIX, n. 58 (1989) at pages. 503-526.

Experts in matters of Canon Law explain the organization of the Catholic Church and its particular churches, affirming that the latter, "in themselves are Churches, because, even though they are particular in them, **the Universal Church is present** with all its essential elements." Cenalmor and Miras, *supra*, at p. 271 (emphasis supplied). This mysterious reciprocal implication between both is illustrated in the following statement: "the whole is nothing but the sum of the parts, **nor**

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the parts a partial unit, simple result of the division of the whole, but the **whole is at once, operates and exists in each of the parts**" *Id.* (Citations omitted) (emphasis supplied).

This analysis becomes relevant if it is understood that the Catholic Church has the capacity to acquire, retain, administer and dispose of temporal goods. The academics comment that: "[t]here is no single ecclesiastical patrimony under the direct ownership of the Universal Church, but a multitude of patrimonies with different titles and purposes." *Id.* at page 503. However, for its administration "general principles govern that tend to unify in a certain way, all the ecclesiastical goods, ordering them to serve the same purposes, **under the supreme authority of the Roman Pontiff** and with a common legal regime." *Id.* (Emphasis added).

For purposes of the dispute before our consideration, this means that the Catholic Church, as a juridical entity in itself, does not properly exist under the protection of the Canonical Law, except only under the understanding of the Universal Church, which is the People of God, whose supreme authority on earth is the Bishop of Rome. When we talk of the Catholic Church in Puerto Rico, it is not more than a colloquial way of referring to the Universal Church that exists in each of the other jurisdictions of the world. At the same time, the Archdiocese of San Juan and the other dioceses and parochial

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churches in Puerto Rico are not "the sum of the parties, nor the parties a partial unit" but they are everything that "at the same time, operates and exists in each of the parts." Cenalmor and Miras, supra, at p. 271. The definition of what the Church **is and what it is not** is the responsibility in purity of said institution, and not of the civil courts. It cannot be any other way; the opposite would be to render judgment on the internal ecclesiastical organization and the hierarchy of the Catholic Church, in clear contravention of the total separation between Church and State. *See Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969). Unfortunately, the Majority Opinion obviates or ignores these issues.

This conclusion is even more forceful when it is considered under the magnitude of the so-called "special situation" of juridical personality of the Catholic Church in Puerto Rico, under the Treaty of Paris, the Concordats of 1851 and 1859, the federal case of *Municipality of Ponce* and the studies of the academics who have approached the subject related to the personality of the Church. Let us see.

B.

The historical and legal background of the Catholic Church on the Island goes back to the times of the rule of the Spanish

Empire.[7] For the purposes of this dispute, the agreement that illustrates the relationship between the Catholic Church, Spain, and Puerto Rico at the time of the invasion and eventual transfer of Puerto Rican territory to the United States is the Concordat of 1851 (Concordat) between Queen Isabella II and the Holy See, represented by the Supreme Pontiff, Pius IX.

In 1851, after arduous negotiations, the Kingdom of Spain and the Holy See signed the Concordat to systematize their relations, as well as to regulate the administrative organization of the Catholic Church throughout the Kingdom of Spain. This was necessary in light of the deterioration suffered between the relationship of the Catholic Church and the Spanish State during the first decades of the nineteenth century and the frank administrative disorganization of the Church. During that first part of the century, the Spanish State had deprived the Catholic Church, "in the person of its secular clergy and its religious communities of men and women, of all ecclesiastical property," either to convert them into national goods or to enter the amount of the sale of these to the vault of the Spanish government. Juan R. Gelpí Barrios, *Personalidad jurídica*

[7] As historical data, through the *Bull Romanus Pontifex* of 1511, promulgated by Pope Julius II, the first three dioceses were erected in the New World. These were: Santo Domingo, Concepcion de la Vega, both in Hispaniola, and San Juan Bautista, which later became the Diocese of Puerto Rico. It was not until 1924 when the second one was erected, the Diocese of Ponce. In the second part of the 20th century, three dioceses were erected: Arecibo in 1960, Caguas in 1964 and Mayaguez in 1976. The last was erected in 2008, the Diocese of Humacao. See, Samuel Silva Gotay, *La Iglesia Católica de Puerto Rico, en el Proceso Político de Americanización, 1898-1930* (Publicaciones Gaviota 2012); Gerardo Alberto Hernández-Aponte, *La Iglesia Católica en Puerto Rico ante la invasión de Estados Unidos de América. Lucha, sobrevivencia y estabilización: (1898-1921)* (Rio Piedras 2013).

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de la Iglesia en Puerto Rico: Vigencia del Concordato español de 1851 a través del tratado *25 *de París* ["Legal Personality of the Church in Puerto Rico: Validity of the Spanish Concordat of 1851 through the Treaty of Paris"], 95 Rev. Esp. Der. Canónico 395, 408 (1977); Federico Suárez, *Genesis del Concordato de 1851* ["Genesis of the Concordat of 1851"], http://dadun.unav.edu/handle/10171/13928. See also, Francisco Tomas y Valiente, *Manual de Historia del Derecho Español* ["Manual of the History of Spanish Law"], (Madrid 2012) at pages 411-414, 613-619. This reality generated innumerable litigation and claims that tried to reverse the actions of the State. The Concordat sought to settle this situation.

Of the aforementioned Concordat, and as it pertains to the dispute before our consideration, articles 40 and 41 are of particular relevance. In the first of these articles, it is recognized that the goods and income alienated from the Church, and enumerated in previous articles, "belong in property to the Church, and in their name shall be enjoyed and administered by the clergy." See http://www.uv.es/correa/troncal/concordato1851 This article states "conclusively the legal personality of the Church that empowers it to claim all the property that was in dispute at the time of the agreement, since the State recognizes them as their owner, clarifying that all usufruct and

administration must be understood on behalf of the Church." Gelpi, supra, on p. 409.

On the other hand, Article 41 stated the following:

> In addition, the Church shall have the right to acquire for any legitimate title, and her property in all that she now possesses or acquires shall be solemnly respected. Therefore, as for the old and new ecclesiastical foundations, no suppression or union could be made without the intervention of the authority of the Holy See, except the powers that belong to the bishops, according to the Holy Council of Trent.

See https://www.uv.es/correa/troncal/concordato1851

Professor Gelpi Barrios, analyzing this article, rightly indicates that this was very important given that the Catholic Church had "in an independent manner in all Spanish domains, a civilian personality recognized and guaranteed by the State itself, to acquire, for any legitimate title and to possess at all times, all kinds of temporal goods." Gelpi, supra.

In fact, in accordance with the provisions of the aforementioned article, article 38 of the Spanish Civil Code of 1889, in force in Puerto Rico, was drafted up to the date of sovereignty in 1898. That article provided that:

> Legal persons can acquire and possess goods of all kinds, as well as contract obligations and exercise civil or criminal actions, according to the laws and rules of their constitution.
>
> **The church will be governed at this point by the agreement between both powers;** and the educational and

> charitable establishments according to the special laws. Id. (Emphasis supplied.)

By incorporating in the Civil Code the principle of legal personality of the Church recognized in the Concordat, the Spanish State "converted the Concordats between the Church and the Crown of Spain, in civil law, for the purposes of acquiring and possessing property of all kinds, contract obligations and exercise civil and criminal actions". *Id.*[8]

After the Concordat of 1851, the national Courts approved the Law of November 4, 1859 through which the Crown was sanctioned, authorizing the Government to conclude an agreement with the Holy See. This resulted in the Concordat of 1859 that, along with the 1851 Concordat, resulted in that "the Church's legal entity be totally consolidated with its property right over the assets that it acquired or that were restituted." Gelpí Berrios, *supra* at page 410.

The legal framework detailed in the preceding paragraphs was in effect at the time of the Spanish American War that ended with the Paris Treaty of December 10, 1898 ("Treaty") and the cession of Puerto Rico to the United States. In other words,

[8] I must mention, as a curious fact, that the explanatory memorandum accompanying the Concordat of 1851 said that the reorganization of the ecclesiastical entities that are part of the Concordat text does not include "the Churches of America, either because the disorganization introduced in the Churches of The Peninsula has barely reached there, and also because everything that affects [those] distant countries **must be treated in a special way**." Juan Perez Alhama, La *Iglesia y el Estado español: Estudio histórico-jurídico a través del Concordato de 1851*, (Instituto de Estudios Políticos, Madrid 1967), Appendix, at p. 526 (emphasis added).

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both the Concordats of 1851 and 1859 and the amendments to the Spanish Civil Code were in effect during the remaining period of Spanish sovereignty on the Island. That said, the Treaty incorporated and recognized certain aspects of Spanish Law in effect at the time of the change in sovereignty. As relevant to the dispute before us, the Treaty declared that:

> Nevertheless, it is declared that this renouncement or cession, as the case may be, referred to in the previous paragraph, in no way lessens the property or rights which belong by custom or law to the peaceful possessor of goods of all kinds in the provinces and cities, public or private establishments, **civil or ecclesiastical corporations or whatever bodies have judicial personality to acquire and possess goods in the above-mentioned, renounced or ceded territories, and those of private individuals, whatever be their nationality.** Peace Treaty between the United States of American and the Queen of Spain, Art. 8, December 10, 1989, USA-Spain, 30 Stat.. 1754 (1989), T.S. 343 (emphasis added).

As mentioned, the United States Supreme Court interpreted this article of the Treaty in Municipality of Ponce v. Catholic Church in Porto Rico, 210 U.S. 296 (1908). Given the importance of this decision, I deem it necessary to reproduce in its totality certain sections of said opinion to proceed with a complete analysis of the reach. Just after citing article 8 of the Treaty, the federal court reasoned that:

> This clause is manifestly intended to guard the property of the church against interference with, or spoliation by, the new master, either directly or through his local governmental agents. There can be **no question that the ecclesiastical body referred to, so far as Porto Rico was concerned, could only be the Roman Catholic Church in that island, for no other ecclesiastical body there existed.** Id. at page 311.

Similarly, the United States Supreme Court Interpreted the 1851 and 1859 Concordats and the "corporate recognition" by the United States Government of the Catholic Church, including its Supreme Pontiff,[9] and ruled that:

> The Roman Catholic Church has been recognized as possessing legal personality by the treaty of Paris, and its property rights solemnly safeguarded. In so doing the treaty has **merely followed** the recognized **rule of international law** which would have protected the property of the church in Porto Rico subsequent to the cession. **This juristic personality** and the church's ownership of property **had been recognized** in the most formal way by the concordats between Spain and the papacy, and **by the Spanish laws** from the beginning of settlements in the Indies. Such recognition has also been accorded the church **by all systems of European law** from the fourth century of the Christian era. *Id.* at pages 323-24

To begin with, we cannot lose perspective that all of the federal court's analysis occurs in the context of International Public Law. Its expressions making reference to the "corporate existence" of the Catholic Church come up specifically in relation to the recognition of the Supreme Pontiff and the Holy See. In other words, these expressions cannot be interpreted as

[9] "The **corporate existence** of the Roman Catholic Church, as well as the position occupied by the **papacy**, have always been recognized by the government of the United States... The **Holy See still occupies a recognized position in international law**, of which the courts must take judicial notice." *Id.* on pg. 312 (emphasis provided).

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"special recognition" of legal personality in itself because it is the Catholic Church in Puerto Rico, but rather as recognition of its peculiarity and how it was not an a properly incorporated entity pursuant to the laws of Corporate Law in effect in the United States at that time.

The explicit mention of International Public Law, the laws of the Spanish Monarchy and all other legal systems in Europe to validate the "juridical personality" of recognized by the government of the United States . . . . The **Holy See still occupies a recognized position in international law,** of which the courts must take judicial notice." *Id.* a page. 318 (emphasis added).

"Catholic Church" reasonably can only imply that this refers to one single religious entity at the global level: the Universal Church of God's people. Precisely, Professor José Julián Alvarez in his legal constitutional treatise points out that one of the consequences of the federal Supreme Court's Opinion is that "the Catholic Church never has the need to incorporate itself, as other religious entities had to." José Julián Alvarez González, Puerto Rican Constitutional Law (2009) at page 1192.

The investigations carried out by Gelpí Barrios, which have been cited extensively, support this explanation and are distant from the **accommodating interpretation** made in the majority

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Opinion that **does not even directly cite** this work, which, curiously, served as the principal foundation for its erroneous conclusion regarding such an important dispute. After analyzing the historical, legal, and social background that led to the Concordats of 1851 and 1859 and the Paris Treaty, professor Gelpí Barrios explains that:

> At the time of the cession, there was in Puerto Rico **only one diocese. At present, there are five:** the San Juan diocese and the dioceses of Ponce, Arecibo, Caguas and Mayaguez. Each diocese is a fragmentation of one only possessing entity of juridical personality. Each one of them enjoys of the **same legal status corresponding to the original diocese of Puerto Rico,** in other words, the Roman Catholic Church of Puerto Rico.
>
> None of the them has been born thanks to the act of incorporation just as it is required by the Law of Puerto Rico, but rather, **by the action of the Holy See,** that has legal civil effects from the moment in which the erection document of the new territorial jurisdiction is executed by the competent authority. Gelpí Barrios, supra, on p. 410 (emphasis supplied).

It is worth recognizing that these expressions of the Professor are a translation into Spanish of an article published by the late Bishop of Ponce, Fremiot Torres Oliver, on May 28, 1976, entitled *Juridical Personality of the Roman Catholic Church in Puerto Rico,* 15 Rev.Der. P.R. 307 (1975) ("Each diocese is a fragmentation of the entity possessing juristic personality, and each enjoys the same legal status as the original Diocese of Puerto Rico, referred to in the opinion

quoted opinion as "The Roman Catholic Church in Puerto Rico") *See also* Aníbal Colón Rosado, *Relations Between Church and State in Puerto Rico*, 23 Rev. Der. P.R. 53 (1983). If anything can be concluded from these statements, which are more than a non-binding interpretation of an academic and Bishop on the *Municipality of Ponce* case and the history of our old Spanish colonial past, it is that the internal and hierarchical organization of the Catholic Church has changed in Puerto Rico since this Caribbean island came to belong to the United States. Also, it is worth noting that in 1903 "the Diocese of Puerto Rico [separated] from the Ecclesiastical Province of Santiago de Cuba, and [became] a diocese directly subject to the Holy See, which gave Puerto Rico, within the ecclesiastical law, full ecclesiastical independence, like any other Latin American country." Samuel Silva Gotay, *The Catholic Church of Puerto Rico, in the Political Process of Americanization, 1898-1930*, (Publicaciones Gaviota 2012) pgs. 184-185. This placed the Puerto Rican Catholic Church "on an equal footing with the churches of North, Central, and South America." *Id.* at p. 185.

The so-called "fragmentation" of the Diocese of Puerto Rico cannot be interpreted as a breach of the legal personality of the Universal Church of the people of God, as the Majority seems to hold. More than anything, what is involved is the founding of new dioceses as a vehicle that makes "more efficient pastoral

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work" possible. *Id.* at p. 282. That is, to carry out the work of evangelization. Again, the contrary conclusion of the majority opinion is clearly erroneous.

The Catholic Church "operates and exists" in the Archdiocese of San Juan and the remaining five (5) dioceses. Cenalmor and Miras, *supra*, at p. 271. Whereupon, each of these entities are by themselves the Catholic Church and not the parts of a partial unit that form a single entity as the majority concludes. Each diocesan community has attributed the "mystery wealth" of the Catholic Church. *Id.* The Decision as proposed by the Majority, once again, would violate the separation between Church and State because this Court would interfere in the definition and conceptualization of said religion. Most of us are deciding "who" the Apostolic and Roman Catholic Church is, a determination that, as we have seen, only concerns the Catholic Church itself and not the State through this Court. See, *Maryland & Virginia from Eldership of the Churches of God*, *supra*, at p. 369. The truth is that the institutions within the Catholic Church in Puerto Rico that have legal personality are the Archdiocese of San Juan and the five (5) dioceses. In addition, as regards the claim in the present lawsuit, one cannot lose sight of the fact that some of the defendant employers, such as Academia del Perpetuo Socorro, have their own and independent legal personality under Private Law as they have

been incorporated according to the requirements of Corporate Law and the Department of State.[10]

IV.

Despite understanding that the foregoing analysis is sufficient to clear up any doubt regarding the error of the majority opinion, I consider it necessary to briefly examine the practical implications of the determination of the majority and the consequences of imposing on a religious entity a legal personality that it does not hold and that, for purposes of its internal organization, is non-existent.

In the first place, it is worth drawing attention to the fact that the majority opinion tacitly revokes years of jurisprudence established by this Court, through which the Archdiocese of San Juan and five (5) other dioceses have appeared as parties in different litigation. If we consider one of the first decisions of this Court in which the Diocese of Puerto Rico was a part, it follows that, until today, the personality and legal status of that institution has been recognized by this Court. In *Roman Catholic Apostolic Church v.*

[10]The opinion of the majority does not address this issue, by merely indicating that the certificate of incorporation of that institution had been revoked in 2014. Confusingly, later in the Opinion, -making specific reference to Academia del Perpetuo Socorro- the possibility that some entities submit to an ordinary process of incorporation is contemplated. In this regard, it is important to note that the Department of State reinstated the incorporation of Academia del Perpetuo Socorro and, consequently, its legal personality was rolled back to the date of its original incorporation. See *Carlos Díaz Olivo, Corporaciones* (Publicaciones Puertorriqueñas, 1999) at p. 43. In addition to this oversight by the majority, some of the educational institutions mentioned in the Opinion are not even listed as part of this complaint. Specifically, throughout the Opinion alludes to the "Colegio San Ignacio", when defendant is the "Academia San Ignacio", a completely different educational institution.

The People, 11 D.P.R. 485 (1906), this Court heard a request in which the Catholic Church requested that the Government of the Island return property of the Religious Communities of Dominicans and Franciscans that had been suppressed and seized in 1838. In the lawsuit, the Government of Puerto Rico questioned the power of the Catholic Church to acquire property. In this context, this Court addressed the issue of the legal personality of the Bishop to initiate the claim in question and, its relevant part, stated that:

> The same is to be said about [the] personality of the Catholic Bishop of Puerto Rico to carry the representation of the Catholic Church in the present litigation. **The bishops carry the representation of the church in their respective dioceses according to the canons of the Catholic Church** and this representation was [especially] recognized by the concordats in everything that referred [to] the delivery of the goods [to] the Bishops and [to] their permutation in the manner agreed between both powers. *Roman Catholic Apostolic Church*, 11 D.P.R. at p. (emphasis supplied).

Certainly, these expressions are consistent with the interpretation of the case *Municipality of Ponce* and the analysis set forth in sections II and III of this opinion. After this decision, on several occasions, this Court has entertained disputes through which it has recognized the juridical personality of the Archdiocese of San Juan and the five (5) other Dioceses. This, demonstrating an understanding about the

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internal and hierarchical ecclesiastical organization of the Universal Church of the People of Christ. See *Diocese of Arecibo and. Sec. Of Justice*, 191 D.P.R. 292 (2014); Diocese of Mayagüez and. Planning Board, 147 D.P.R. 471 (1999); *Diaz and. School Nuestra Sra. Del Pilar*, 123 D.P.R. 765 (1989); *San Jorge Academy v. Labor Relations Board*, 110 D.P.R. 193 (1980); *Agostini Pascual v. Catholic Church, Diocese of Ponce*, 109 D.P.R. 172 (1979); *Vélez Colón v. Roman Catholic Apostolic Church, Diocese of Arecibo*, 105 D.P.R. 123 (1976); *Camacho v. Roman Catholic Apostolic Church, Diocese of San Juan v. Registrar*, 95 D.P.R. 511 (1968); *Roman Catholic Apostolic Church, Diocese of Ponce*, 72 D.P.R. 353 (1951). As anticipated, endorsement of the majority opinion leads one to consider these decisions as if they were never written.

Furthermore, the practical effects of the decision issued by a majority today show the lightness and simplicity of the analysis used and are seen as an additional obstacle in the final Decision of the present case and, consequently, to the collection of the amounts claimed by plaintiffs. In essence, the opinion subscribed, by improperly assigning legal personality to the Catholic Church, strips the other defendant entities of independent legal personality and, consequently, relieves them of compliance with the obligations assumed towards the plaintiffs that are the object of this case. For these purposes,

note that the order of attachment decreed, as contained in the Decision that today a majority "maintains and maintains in all vigor" provides the following:

> Accordingly, the sheriff of this Court is ordered to proceed to seize assets and moneys of the Holy Apostolic and Roman Catholic Church in an amount of $ 4,700,000 to respond for the payment of the plaintiffs' pensions, including bonds, securities, motor vehicles, works of art, equipment, furniture, accounts, real estate and any other property belonging to the Holy Apostolic and Roman Catholic Church, and any of its dependencies, which is located in Puerto Rico.

It is untenable to conceive that said order is, in fact, enforceable. How should the assets to be seized be identified? Does its ownership matter? Is there any order of priority among so much generality? What happens with the other defendant entities? Do they lack legal personality despite being incorporated? Does the dismissal of the causes of action brought against them proceed? What will happen to the assets of the dioceses that have requested intervention in this case and as of today are not part of the case? Will they be stripped of these without due process of law? Are all the assets of other religious entities seized, such as aged care centers and other educational institutions?

The questions are many and the lack of answers shows that the opinion signed by a majority of the members of this Court

lacks the depth, seriousness and intellectual rigor that a dispute of such high public interest deserves. For all of which, I would render the attachment decreed without effect because it is unenforceable and directed to an entity that lacks its own legal personality and, for all purposes, does not exist in law.

[signature]
Anabelle Rodríguez Rodríguez
Interim Chief Justice

I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

Certified Translation

IN THE SUPREME COURT OF PUERTO RICO

Yalí Acevedo Feliciano et al. Petitioners Roman Catholic and Apostolic Church et al Respondents	CC-2018-0475	Certiorari
Sonia Arroyo Velázquez et al. Petitioners v. Roman Catholic and Apostolic Church, et al. Respondents		
Elsie Alvarado Rivera et al. Petitioners v. Roman Catholic and Apostolic Church, et al.		

Dissenting opinion issued by Associate Justice COLÓN PÉREZ.

In San Juan, Puerto Rico, on June 11, 2018.

I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

Omnes viae Roman ducunt.

There are some who say that "*all roads lead to Rome*"; an historical expression attributable to the efficient system of Roman roads that existed at the time of the emperors and that guaranteed, to the one who followed its route, access to the capital of one of the greatest empires the world has ever known: Rome. And it is precisely there, in Rome, the seat of the *Roman Catholic and Apostolic Church*, where a majority of this Court -- **through an opinion that, at a minimum, will be very difficult to execute** -- has sent a group of teachers from various Catholic schools of this country to claim their right to a dignified retirement, of which they appear to be worthy. Because I do not agree with this regrettable manner of proceeding, which validates a misguided litigation, and that --at the end of the day-- will leave the class of teachers that knock on our door today without any remedy, we forcefully dissent.

In that direction, we will not validate with our vote an extremely superficial opinion, lacking an in-depth analysis of the various dimensions of the disputes before our consideration, in which a majority of this Court, leaving aside all the legal precedents that address similar issues to the one that concerns us today, chooses to recognize legal personality to an abstract concept of universal character as is the term *Roman Catholic and Apostolic Church*. In doing so, our fellow Justices who are part

of the majority obviate in their analysis that the *Roman Catholic and Apostolic Church*, due to its function, purpose, and idiosyncrasy requires being present in all corners of the globe. Its mission, like that of every church, is to expand in all the places in the world that allow it. From there stems the complexity that results from attempting to determine who, in controversies like those that occupy us today, and that occur in our jurisdiction, are the ones called to respond.

Therefore, in the present case -- before issuing any type of a determination -- it was necessary to study in detail the organizational structure of the Catholic Church, in such a way that it could be determined, with particular precision, which of its entities truly have legal personality and, consequently, who are those parties truly called to respond to the group of teachers who initiated the captioned case. Given that a majority of this Court did not perform the aforementioned study -- **and was much as we are facing a litigation that has all the necessary elements to be reviewed by the Court Supreme Court of the United States** -- through this Dissenting Opinion, we proceed to do so. It is now up to the Federal Judicial High Court, if requested by the parties herein affected, to rectify the error committed by this Court, inasmuch as it is a matter of particular importance regarding the separation of Church and State. Let us see.

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I.

The core events are not in dispute. On June 6, 2016, sixty-six (66) teachers from Academia Perpetuo Socorro (hereinafter, "plaintiff teachers") filed a preliminary and permanent injunction, for declaratory judgment, breach of contract, and torts against the *Roman Catholic and Apostolic Church* of Puerto Rico, the Archdiocese of San Juan, the Office of the Superintendent of Catholic Schools of San Juan, Academia Perpetuo Socorro, and the Trust for the Pension Plan for Employees of Catholic Schools of San Juan (hereinafter, "Trust"). This, because the aforementioned Trust announced the cessation of the pension plan of which they have benefited for years.

Later, another group of teachers from Academia San José and Academia San Ignacio de Loyola presented similar complaints. Along with the complaint, the mentioned employees also requested a preliminary injunction and a seizure to secure the judgment. In particular, they claimed that the stoppage of payments caused them irreparable damage to their acquired rights and requested that the Court to order the continuation of the provision of the pension and the seizure of assets of the *Roman Catholic and Apostolic Church* up to the sum of $4,444,419.95, in order to secure the judgment that, in due time, could be issued by the primary court. As per its *Decision* on July 15, 2016, the Court

of First Instance consolidated this case with the one originally filed by Academia Perpetuo Socorro.

Thus, having examined the parties' positions, the Court of First Instance denied the preliminary injunction requested. This determination was confirmed by the Court of Appeals, which motivated that the aforementioned dispute comes now before our consideration. On that occasion, by way of a Judgment of July 18, 2017, this Court ruled that the request for preliminary injunction filed by the requesting teachers should be granted. Thus, we ordered the Court of First Instance to hold a hearing to determine who was obligated to continue paying the pensions that are the subject of this litigation. For this, the primary court should clarify who from the defendants had legal personality.

Under the order issued by this Court, the parties submitted several briefs before the Court of First Instance. The plaintiff-teachers claimed that Academia Perpetuo Socorro, Academia San José, and Academia San Ignacio de Loyola lacked legal personality because they were dependencies of the Archdiocese of San Juan, which also lacked legal personality. The latter is because the Archdiocese of San Juan is a subdivision of the *Roman Catholic and Apostolic Church*, which is the only institution with legal personality.

For its part, Academia Perpetuo Socorro stated that it had

legal personality because it was registered as a non-profit corporation.[1] The Trust, the Archdiocese of San Juan and the Office of the Superintendent of Catholic Schools of San Juan, although they filed several documents with the Court, at that stage of the proceedings, did not express any position concerning legal personality.

In its motion, the Trust informed that it had filed a petition for bankruptcy before the Bankruptcy Court for the District of Puerto Rico. The Archdiocese of San Juan and the Superintendent of Catholic Schools of San Juan, on the other hand, informed the primary court on the filing of a notice of removal to the United States District Court for the District of Puerto Rico. This, for considering that the claim subject of the present litigation was related to the bankruptcy petition presented by the Trust.

Thus, having examined the documents filed by the parties, the Court of First Instance issued a *Partial Judgment*. In it, in view of the bankruptcy petition filed before the Bankruptcy Court for the District of Puerto Rico, it ordered the stay of the proceedings in this case and the administrative closure of the case without prejudice. However, the Bankruptcy Court for the District of Puerto Rico later dismissed the petition for

[1] In addition, it stated that the Department of State had revoked its certificate of incorporation on May 4, 2014. However, it reinstalled its incorporation and reinstated its legal capacity to its original incorporation date, February 2, 1968.

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bankruptcy.

Having learned of this, on March 16, 2018, the Archdiocese of San Juan and the Office of the Superintendent of Catholic Schools of San Juan presented before the District Court of the United States for the District of Puerto Rico a notice of withdrawal of its request for removal and, consequently, they requested that the case be remanded to the state court. This document was notified to all parties in the lawsuit.

Then, on March 19, 2018, the plaintiff-teachers filed an informative motion with the Court of First Instance in which they notified said court that the Archdiocese of San Juan and the Office of the Superintendent of Catholic Schools of San Juan had filed before the aforementioned federal entity a notice of withdrawal of the notice of removal. On the same day, the Court of First Instance issued an Order through the which it lifted the stay of the lawsuit because of the bankruptcy petition.

Subsequently, in compliance with the order issued by this Court, the Court of First Instance held an evidentiary hearing to determine if the *Roman Catholic and Apostolic Church*, the Archdiocese of San Juan, the Office of the Superintendent of Catholic Schools of San Juan, Academia Perpetuo Socorro, Academia San José, and Academia San Ignacio de Loyola had legal personality. Once the aforementioned evidentiary hearing was held, the primary court issued a *Decision* by way of which it

determined that the Archdiocese of San Juan, the Office of the Superintendent of Catholic Schools of San Juan and the aforementioned Schools lacked legal personality. This, given that they are dependencies of the *Roman Catholic and Apostolic Church*, which has legal personality under the Treaty of Paris. Therefore, it ordered the *Roman Catholic and Apostolic Church* to pay the pension to the plaintiff-employees, according to the Pension Plan, while the present litigation is decided.

Unsatisfied with the aforementioned determination, the Archdiocese of San Juan and the Office of the Superintendent of Catholic Schools of San Juan presented, before the primary court, a *Motion regarding Nullity of the Decision and requesting adjudication of motion of dismissal for lack of jurisdiction*. In the same, it argued that the aforesaid *Decision* was issued without jurisdiction, since the United States District Court for the District of Puerto Rico had not issued an order remanding the case to the Court of First Instance. The primary court denied the referenced motion for dismissal.

Still unsatisfied, the Archdiocese of San Juan and the Office of the Superintendent of Catholic Schools of San Juan filed a motion for reconsideration and a motion to set the bond in accordance with the provisions of the Rule 56.3 of Civil Procedure, 32 LPRA App. V. R. 56.3. In opposition, plaintiff-teachers alleged that, by their actions, and by submitting a

dispositive motion on February 13, 2018, the *Roman Catholic and Apostolic Church* voluntarily waived its notice of removal. They also requested that the *Roman Catholic and Apostolic Church*, Academia Perpetuo Socorro, Academia San José, and Academia San Ignacio de Loyola be prohibited from appearing separately by virtue of their being dependencies of the *Roman Catholic and Apostolic Church*. Finally, they requested the deposit of the Trust's remaining funds.

In view of the aforementioned documents, the Court of First Instance issued a Decision in which it ordered the *Roman Catholic and Apostolic Church* to deposit with the Court, in a term of twenty-four (24) hours, the sum of $ 4,700,000. In addition, it warned the *Roman Catholic and Apostolic Church* that if it failed to comply with the aforementioned order, it would proceed to seize its bank accounts.

In a timely manner, and in disagreement with the aforementioned Decisions issued by the primary court, the Archdiocese of San Juan appeared before the Court of Appeals through a *Motion aid of jurisdiction* and *Petition for Certiorari Review*. In its writ, the Archdiocese of San Juan alleged that the Court of First Instance erred: (1) in issuing a *Decision* when it lacked the jurisdiction to do so because, at that time, a notice of removal was pending to the United States District Court for the District of Puerto Rico; (2) by not dismissing the

claim under the *Foreign Sovereign Immunities Act* for lack of jurisdiction over the matter; (3) by not dismissing the claim for lack of jurisdiction over the person of the *Roman Catholic and Apostolic Church*; (4) having issued a preliminary injunction without imposing a bond pursuant to Rule 57.4 of Civil Procedure, 32 LPRA App. V, R. 57.4; (5) when adjudicating that the Archdiocese of San Juan had no legal personality independently from the *Roman Catholic and Apostolic Church*; (6) by determining that Academia Perpetuo Socorro had legal personality; and, (7) in ordering the deposit of 4.7 million dollars, which amounts to a permanent injunction, without the holding of a hearing and/or the presentation of evidence of such amounts.

Having studied the briefs from all of the parties, the Court of Appeals issued a Judgment. In so doing, it ruled, firstly, that although a motion for removal to the United States District Court for the District of Puerto Rico, which was subsequently dismissed, at the time when the Court of First Instance issued the Decision under review, the conduct deployed by the Archdiocese of San Juan and the Office of the Superintendent of the Catholic Schools of San Juan, who had requested the removal, reflect that they waived the remedy of removal to the federal court. Therefore, in the judgment of the Court of Appeal, the primary court did not lack the jurisdiction

to issue the Decision in dispute.

Regarding the claim of lack of subject matter jurisdiction, the intermediate appellate court determined that it was not applicable, since it was evident that the claim filed by the plaintiff-teachers was addressed to the *Roman Catholic and Apostolic Church* for actions allegedly incurred by it in Puerto Rico.

In view of the above, under the Treaty of Paris and the Code of Canon Law, the Court of Appeals determined that the *Roman Catholic Apostolic Church* lacked legal personality. However, said court held that within the organizational structure of the Church, dioceses, parishes, religious orders, among other organizations, did have legal personality. The Court of Appeals ruled that this, in part, was due to the fact that in Puerto Rico there was no greater structure grouping all the dioceses under a single authority. Each diocese represented, autonomously, the *Roman Catholic Apostolic Church* in their respective circumscription.

Furthermore, the Court of Appeals decided that the Archdiocese of San Juan, like all dioceses in Puerto Rico, had legal personality. This, because the level of authority of an Archdiocese is the same as that of any diocese. The difference lies, as the intermediate appellate court illustrates, that an

Archdiocese is denominated in such way for being a diocese of greater size and population.

As for Academia del Perpetuo Socorro, the Court of Appeals reasoned that it was a [parochial] school attached to the Parish of Nuestra Señora del Perpetuo Socorro; thus, it was covered by the legal personality of the Parish. This was so, notwithstanding the fact that Academia del Perpetuo Socorro was registered as a non-profit corporation, under Art. 9.08 of the Corporations Act, 14 LPRA sec. 3708.

Likewise, the intermediate appellate court ruled that Academia San José, being a parochial school, was attached to the San José Parish, for which reason it was covered under the legal personality of the aforementioned Parish.

Now, in regard to Academia San Ignacio de Loyola, the Court of Appeals determined that it was a school attached to the Orden de la Compañía de Jesús en Puerto Rico, Inc. [Society of Jesus Order in Puerto Rico, Inc.], better known as the Jesuit Order. The latter had legal personality in accordance with the provisions of the Treaty of Paris, thus, in the judgment of the Court of Appeals, the aforementioned school was covered by the legal personality of the Orden de la Compañía de Jesús en Puerto Rico, Inc.

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Furthermore, with regard to the remedy granted under Rule 57.4 of Civil Procedure, supra, the preliminary injunction and the law on obligations and contracts, the intermediate appellate court reasoned that the obligation of employers - meaning the Archdiocese of San Juan, the Office of the Superintendent of Catholic Schools of San Juan, Academia del Perpetuo Socorro, Academia San José, and Academia San Ignacio de Loyola - was implemented under the figure of the Trust. This being so, pension payment directly to the plaintiffs cannot be ascribed to them through the provisional remedy of the preliminary injunction. The remedy was only appropriate against those to whom the law assigned that obligation. Thus, the Court of Appeals determined that what was required was to order the participating employers to continue making the contributions to which they were committed by virtue of the Pension Plan agreement. In the opinion of the intermediate appellate court, said sums of money must be deposited in the court due to the state of insolvency of the Trust. From this fund, plaintiff teachers could continue to receive their retirement pension payments. [2]

[2] In the particular instance of Academia San Ignacio de Loyola and Academia San José, as they do not have individual legal personality, but through their parishes, they cannot be forced to comply with the provisional remedy. Said obligation would lie on the San José Parish and the Orden de la Compañía de Jesús en Puerto Rico, Inc., but these have not been brought to litigation. These are indispensable parties without which a remedy cannot be issued for claimants.

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Lastly, with regard to the imposition of a bond in accordance with the provisions of Rule 56.3 of Civil Procedure, supra, the Court of Appeals determined that the Court of First Instance incorrectly applied the aforementioned Rule. The intermediate appellate court reasoned that the exception provided by subsection (c) of Rule 56.3 of Civil Procedure, supra, is applicable when granting a remedy to secure judgment, not when granting a preliminary injunction, and it only proceeded once a final judgment was issued. As the aforementioned Decision is considered an interlocutory decision, in words of the intermediate appellate court, the authorization of the extraordinary remedy without bond was incorrect.

Unsatisfied with the determination of the Court of Appeals, on May 14, 2018 the plaintiff teachers, beneficiaries of the Pension Plan, appealed to us by way of a *Motion in aid of jurisdiction and/or petition to expedite proceedings and petition for writ of certiorari*. In those briefs, in essence, they argued that the intermediate appellate court erred in revoking the decision of the Court of First Instance. In particular, they argued that the Court of Appeals erred by ruling that the *Roman Catholic Apostolic Church* had no legal personality; by modifying the provisional remedy in assurance of

judgment; and by setting aside the granting of the remedy without posting a bond.

However, on May 22, 2018 the Trust appeared before us through an informative motion in which it indicated that Academia del Perpetuo Socorro had opportunely submitted a motion for reconsideration before the Court of Appeals on May 18, 2018, read as four (4) days after the filing of the *Motion in aid of jurisdiction and / or petition to expedite procedure* before this Court, which deprived this Court of jurisdiction to hear the above-captioned case. Having examined said brief, this Court granted all parties in litigation one (1) day to express themselves on the aforementioned informative motion, specifically on whether or not to dismiss the appeal before our consideration because it was premature.

Having received the appearances of all parties, a majority of this Court determined that the notification of the aforementioned motion of reconsideration to the beneficiaries of the Pension Plan was incorrect because it had been sent to an email address of the plaintiff teachers' attorneys, different from the one provided in the Attorney Registry of the Supreme Court, for which reason it was deemed as not submitted. Thus, *the Motion in aid of jurisdiction and / or petition to expedite proceedings and petition for writ of certiorari was granted*, and

respondents were granted a term of ten (10) days to show cause for which this Court should not revoke the judgment issued by the Court of Appeals.[3]

Complying with what was ordered, all parties appeared before us. With the benefit of the aforementioned appearances, a majority of this Court -- in an erroneous and hasty manner-- reversed the judgment issued by the intermediate appellate court and rules that the *Roman Catholic Apostolic Church* has legal personality and, therefore, is the one liable to the teachers that today come before us. From that regrettable proceeding, as we mentioned earlier, we dissent. We will explain.

II.

A. Jurisdiction

As is well known, jurisdiction is the authority that a court has to adjudicate cases and disputes before its consideration.

[3] We dissent from this course of action and consign the following expressions:

> Associate Justice Colón Pérez dissents from the course of action followed by a majority of this Court in this case, and reiterates that, as a matter of law, the above-captioned case should be dismissed without further ado. This, given that he is of the opinion that, analogously to the decision of this Court in Municipality of *Rincón v. Velázquez Muñiz*, 192 DPR 989 (2015), we must afford deference to the intermediate appellate court to examine and rule on the motion for reconsideration that it currently has before its consideration, which was opportunely filed by Academia Perpetuo Socorro Inc., one of the parties in the lawsuit. **This includes, among other things, determining whether the aforementioned motion for reconsideration was submitted and notified appropriately to all parties involved in the present case.**
>
> In his opinion, the mere filing of a motion in aid of jurisdiction before this Court, **which has not been addressed**, does not deprive the Court of Appeals of jurisdiction to address a motion for reconsideration that has been opportunely filed, and, consequently, to render judgment on the correctness of such, as well as its previous opinion. As a matter of fact, on May 22, 2018 the intermediate appellate court -- meaning on the motion for reconsideration in question -- ordered the parties to express themselves about it.

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See, Rule 3.1 of Civil Procedure, 32 LPRA Ap. V., R. 3.1. It is a repeated standard that the courts must be zealous guardians of the exercise of our jurisdiction and that, in order to validly exercise this, we must have jurisdiction over the subject matter and over the persons involved in the litigation. *Office of Monopolistic Affairs of the Department of Justice v. Jiménez Galarza*, 2017 TSPR 194, DPR (2017); *Medina Garay v. Medina Garay*, 161 DPR 806, 817 (2004); *Shuler v. Schuler*, 157 DPR 707, 718 (2002). **A ruling without jurisdiction over the person or the subject matter is null and void.** *Constructora Estelar, S.E. v. Pub. Bldg. Auth.*, 183 DPR 1, 22-23 (2011); *Vázquez v. López*, 160 DPR 714 (2003); *Bco. Santander PR v. Fajardo Farms Corp.*, 141 DPR 237, 244 (1996); *Vázquez v. ARPE*, 128 DPR 513, 537 (1991).

Thus, when its jurisdiction is questioned, it is the duty of every court to examine and rigorously evaluate the statement, since it directly affects the power to adjudicate a dispute. With regard to such, it should be remembered here that courts have no discretion to assume jurisdiction where there is none. See *Virella v. Proc. Esp. Rel. Fam.*, 154 DPR 742, 759 (2001); *Maldonado v. Pichardo*, 104 DPR 778, 782 (1976); *Martínez v. Planning Board*, 109 DPR 839, 842 (1980).

In this regard, we have repeatedly stated that, as a general rule, a court has jurisdiction over any person who is domiciled within the geographical limits of Puerto Rico. 32 LPRA App. V,

R. 3.1 However, we have recognized, as an exception to the aforementioned rule, that courts may have jurisdiction over persons absent within territorial limits if they voluntarily submit to their jurisdiction through a substantial act that integrates them into the litigation or if they have minimal contacts with the court. *Shuler v. Schuler*, supra, p. 719; *Qume Caribe, Inc. v. Sec. of Treasury*, 153 DPR 700, 711 (2001); *Márquez v. Barreto*, 143 DPR 137, 143 (1997).

As is known, the mechanism to acquire jurisdiction over the defendant is the summons. This mechanism, provided by Rule 4 of Civil Procedure, 32 LPRA Ap. V, R. 4, is the procedural means through which the Court acquires jurisdiction over the person, because through it the defendant is notified of the intention to start a legal action against them. *Torres Zayas v. Montano Gómez*, 2017 TSPR 202, ___ DPR ___, (2017); *Rivera Báez v. Jaume*, 157 DPR 562, 575 (2002); *Medina Garay v. Medina Garay*, supra, p. 818. Failure to complete the service process, in accordance with the provisions of Rule 4 of Civil Procedure, supra, - either personally or by edict - deprives the Court of jurisdiction over the defendant. Rivera *Hernández v. Comtec. Comm.*, 171 DPR 695, 714 (2007); *Medina Garay v. Medina Garay*, supra, p. 818. p. 818. Hence the need to strictly comply with all the requirements for the summons provided by the aforementioned Rule, because it is in this manner, and only in

this manner, that the Court may acquire jurisdiction over the parties in the lawsuit. *Quiñones Román v. CIA ABC*, 152 DPR 367, 374 (2000); *Chase Manhattan Bank v. Polanco Martínez*, 131 DPR 530, 535 (1992); *Medina Garay v. Medina Garay*, supra, p. 819.

B. The parties

As we have stated on previous occasions, the concept of party is linked to jurisdiction over the person. Consistent with this, we have ruled that the plaintiff submits voluntarily to the jurisdiction of the court with the filing of the complaint and the defendant is brought to the court by a proper summons. *Sánchez Rivera v. Malavé Rivera*, 192 DPR 854, 872-873 (2015); *Acosta v. ABC, Inc.*, 142 DPR 927 (1997); *Rivera v. Jaume*, supra, p. 575.

Now, in addition to the foregoing, in order for a lawsuit to be properly processed, both the plaintiff and the defendant must have legal personality. This concept includes the **capacity to act** and **legal personality**. See, R. Hernández Colón, Práctica Jurídica de Puerto Rico: Derecho Procesal Civil, 6ta ed., San Juan, LexisNexis de Puerto Rico, 2007, sec. 1101, p. 144.

The capacity to act is the power of a person to govern their own rights and obligations. *Alvareztorre Muñiz v. Sorani Jiménez*, 175 DPR 398, 418 (2009); *Asoc. de Res. Est. Cidra v. Future Dev.*, 152 DPR 54, 67 (2000); *Laureano Pérez v. Soto*, 141

DPR 77, 89 (1996). Thus, a person who lacks the capacity to act does not have the capacity to appear in a trial. *Id.*

Furthermore, legal personality is the capacity of being a subject of rights and obligations. *Alvareztorre Muñiz v. Sorani Jiménez, supra*, p. 418; *Asoc. de Res. Est. Cidra v. Future Dev.*, supra, p. 66; *Laureano Pérez v. Soto*, supra, p. 89. In this regard, in the past we have ruled that the capacity to be part of a lawsuit is a manifestation of legal personality. *Alvareztorre Muñiz v. Sorani Jiménez, supra*, p. 418; *Asoc. de Res. Est. Cidra v. Future Dev.*, supra, p. 66; *Laureano Pérez v. Soto*, supra, p. 89.

In the case of corporations established in our country, it should be remembered here that our legal system recognizes legal personality under the provisions of the General Corporations Act of Puerto Rico, 14 LPRA sec. 3501 *et seq.* In this regard, Article 29 of the Civil Code establishes that "the civil capacity of corporations, companies and associations shall be regulated by the laws that have recognized or created them." 31 LPRA, sec. 103. This recognition of legal personality allows these entities to "acquire and possess assets of all kinds, as well as contract obligations and exercise civil or criminal actions, in accordance with the laws and rules of their constitution." 31 LPRA sec. 104.

Finally, and in relation to corporations or non-profit organizations, it should be noted that once they are recognized as such, by issuing a certificate of incorporation, they also enjoy legal personality and, among other things, they can sue and be sued. 14 LPRA sec. 3505. Once the non-profit organization is incorporated, the partners or shareholders do not respond in their personal capacity for its actions.

C. Indispensable Parties

Having established the above, it is necessary to add to our analysis the expressions of this Court that, by virtue of the constitutional protection that prevents any person from being deprived of their property or their freedom without due process of law, it is required of any plaintiff, when filing any judicial claim, to include in it all the parties that could be affected by the holding that, eventually, could be issued by the judicial court. *Bonilla Ramos v. Dávila Medina,* 185 DPR 667 (2012); *Sánchez v. Sánchez,* 154 DPR 645 (2001); *Cepeda Torres v. García Ortiz,* 132 DPR 698 (1993).

Related to the foregoing, Rule 16.1 of Civil Procedure requires that "persons that have a common interest without whose presence the dispute may not be adjudicated, are [made] parties and are [joined] as plaintiffs or defendants, as it corresponds. When a person that should be joined as a plaintiff refuses to do so, it may be joined as a defendant." 32 LPRA Ap. V., R. 16.1.

In this sense, as we have indicated, a party is considered indispensable whenever it cannot be left out, because the adjudication without its presence entails that the issues in litigation cannot be decided correctly, as its rights would be affected. *López García v. López García*, 2018 TSPR 57, ___ DPR ____ (2018); *Deliz et als. v. Igartúa et als.*, 158 DPR 403, 432 (2003); *Cepeda Torres v. García Ortiz*, 132 DPR 698, 704 (1993). That is, "the absent third party [has] an interest in the case that converts its presence into an indispensable requirement to impart complete justice or of such order that it prevents the making of a decree without affecting it." *Hernández Colón, op. cit.*, p. 166. This interest is not any interest in the case, but it has to be one that is real and immediate, of such a nature that, without its presence, it prevents the design of an adequate remedy. *López García v. López García, supra; Romero v. S.L.G.*, 164 DPR 721, 733 (2005); *Pérez v. Morales Rosado* 172 DPR 216, 223 (2007); *See also*, J.A. Cuevas Segarra, *Tratado de Derecho Procesal Civil* ["Treatise on Civil Procedural Law"], San Juan, J.T.S. Pubs., 2001, T. II, p. 691; Hernández Colón, *op. cit.*, p. 166.

Notwithstanding, the determination of whether the joining of an indispensable party is proper depends on the particular circumstances that are presented in each case. *Romero v. S.L.G., supra*, pg. 732. Therefore, the court must perform a

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careful analysis of several factors such as the time, place, manner, the allegations, evidence, type of rights, interests in dispute, result, and formality. Cuevas Segarra, *op. cit.*, p. 695.

Finally, it should be noted that, the lack of an indispensable party constitutes a renounceable defense that may be presented at any time during the process. Even the appellate fora may and should raise *motu proprio*, the lack of an indispensable party in a case since this affects the jurisdiction of the court. *García Colón v. Sucn. González*, 178 DPR 527 (2010); *López García v. López García, supra; Romero v. S.L.G., supra.* **For this reason, the judgment that is issued in absence of an indispensable party is null and void.** *López García v. López García, supra; García Colón v. Sucn. González, supra; Unisys Puerto Rico, Inc. V. Ramallo Bros. Printing, Inc.*, 128 DPR 842, 859 (1991).

Having said this, we must examine whether the *Roman Catholic and Apostolic Church* is a legal entity and, therefore, if it is a party in this case or not. We proceed to do so.

D. The Roman Catholic and Apostolic Church

1.

As it is known, the *Roman Catholic and Apostolic Church* is catholic because it is universal, it extends throughout the

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world and it is apostolic because it is missionary, "announces the Gospel to all men and all women." *See* Pope Francis, General Assembly of Wednesday, September 17, 2014.[4] "The Church does not close, it is sent to the whole world, to all humanity." *Id.* By virtue of its universality, it has been spread to all corners of the globe, including Puerto Rico.

In our case, the *Roman Catholic and Apostolic Church*, Puerto Rico Diocese, was created back in 1511, through the *Romanus Pontifex* Bull, in which the founding of three dioceses were authorized for the Spanish colonies at the time, including Puerto Rico. E.D. Dussel, *General History of the Church in Latin America*, CEHILA Ed., 1995, T. IV., p. 43. According to history, and as a consequence of the population increase at the end of the century, by the XVIII Century the Diocese of Puerto Rico had undergone several changes. José Manuel García Leduc, *¡La Pesada Carga! Iglesia, Clero y Sociedad en Puerto Rico (S. XIX) Aspectos de su Historia* ["The Heavy Burden! Church, Clergy, and Society in Puerto Rico (19th C.) Aspects of their History"], Ed. Puerto, 2009. These changes had significant effects over the configuration of the Church, but they did not require a new diocese to be erected. The changes were limited to the creation of new parishes. *Id.*, p. 28.

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[4] Pope Francis, General Assembly of September 17, 2014, https://w2.vatican.va/content/francesco/es/audiences/2014/documents/papa-francesco_20140917_udienza-generale.html (last visit, June 6, 2018).

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Years later, as a result of the Spanish-American War, the treatment of the *Roman Catholic and Apostolic Church* substantially changed. This, then, with the transfer of Puerto Rico to the United States, the United States constitutional doctrines of separation of Church and State and religious liberty were instituted, which had the effect that, since that time, the Diocese of Puerto Rico did not have the protection of the civil authorities as it had under the Spanish crown. *See* Aníbal Colón Rosado, *Relations Between Church and Puerto Rico*, 42 Rev. C. Abo. PR 51, 51-52 (1985); J. Gelpí Barrios, *Personalidad Jurídica de la Iglesia Católica en Puerto Rico*, 95 Rev. Esp. Der. Canónico 395, 411 (1977).

The above caused, eventually, a dispute to be presented to the United States Supreme Court regarding the capacity of the Diocese of Puerto Rico to possess property. Upon evaluating the dispute, in *Municipality of Ponce v. Roman Catholic Apostolic Church in Porto Rico*, 210 US 296 (1908), the High Federal Judicial Court, under the Treaty of Paris of December 10, 1898, recognized legal personality to the *Roman Catholic and Apostolic Church*, Diocese of Puerto Rico, to perform certain actions. In order to support its decision, the United States Supreme Court made reference to Art. 8 of the Treaty of Paris which, in essence, provides the following:

> [I]t is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the properly of all kinds, of provinces, municipalities, public or private establishments, **ecclesiastical or civic bodies, or any other associations having legal personality to acquire and possess property in the aforesaid territories renounced or ceded,** or of private individuals, of whatever nationality such individuals may be. Treaty of Paris, Art. 8, par. 2 (1898).

Thus, the High Federal Judicial Court interpreted that the ecclesiastical body to which the Treaty of Paris referred could only be the *Roman Catholic and Apostolic Church*, that is, the Diocese of Puerto Rico.[5] *Id.* P. 31; José Johel Monge Gómez, *La*

[5] Similarly, in that case the High Court of the United States recognized that what the Treaty of Paris did was to follow the rule regarding the recognition of legal capacity to the *Roman Catholic and Apostolic Church* in International Law, by virtue of the Concordat of March 16, 1851. In this regard, the United States Supreme Court indicated that:

> The Roman Catholic Church has been recognized as possessing legal personality by the treaty of Paris, and its property rights solemnly safeguarded. **In so doing the treaty has merely followed the recognized rule of international law which would have protected the property of the church in Porto Rico subsequent to the cession.** This juristic personality and the church's ownership of property had been recognized in the most formal way by the *concordats* between Spain and the papacy, and by the Spanish laws from the beginning of settlements in the Indies. Such recognition has also been accorded the church by all systems of European law from the fourth century of the Christian era. *Ponce v. Roman Catholic Apostolic Church, supra,* 323-24.

Notwithstanding, regarding the legal personality of the *Roman Catholic and Apostolic Church*, the Concordat of 1851 established that:

> [T]he Church would have the right to acquire, through any legitimate title, and its property in all that it possesses now or acquires in the future, to be solemnly respected. Therefore, regarding the old and new ecclesiastical foundations, there shall be no suppression or union without the intervention of the Holy See, except for the faculties that are reserved for the bishops, as set forth in the holy council of Trent. Concordat of March 16, 1851, Art. 41.

In addition, Art. 43 of the Concordat of 1851 established that "[e]verything else that belongs to ecclesiastical people or things, over which the articles above provide, will be directed and administered according to the Church's discipline that is canonically in effect," that is, the Canon Law Code.

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Permisibilidad de los " Impermisible"; La Iglesia Sobre El Estado, 41 Rev. Jur. U.I.P.R. 629, 633-43 (2007).

Notwithstanding, the truth is that, since then, the organizational structure of the *Roman Catholic and Apostolic Church* in the Country has changed. The Diocese of Puerto Rico, from being only one, converted into six (6) Dioceses, namely: the Archdiocese of San Juan, the Diocese of Arecibo, the Diocese of Ponce, the Diocese of Mayagüez, the Diocese of Fajardo-Humacao and the Diocese of Caguas. In this respect, the Bishop of Ponce in 1973, Fremiot Torres Oliver, explained:

> **At the time of the cession only one diocese existed in Puerto Rico. At present there are five: the archdiocese of San Juan and the dioceses of Ponce, Arecibo, Caguas and Mayaguez. Each diocese is a fragmentation of some entity possessing juristic personality and each enjoys the same legal status as the original Diocese of Puerto Rico, referred to in [Municipality of Ponce v. Catholic Church in Puerto Rico] opinion as ((The Roman Catholic Church in Puerto Rico)).** Rev. F. Torres Oliver, *Juridical Personality of the Church in Puerto Rico*, 15 Rev. Der. P.R. 307, 308 (1975).[6]

Stated another way, the Diocese of Puerto Rico - - which in *Municipality of Ponce v. Catholic Church of Puerto Rico*, *supra*, is referred to as the *Roman Catholic and Apostolic Church* and, as such, was recognized legal personality - - has ceased to exist. It has been divided into one archdiocese and five (5)

[6] At the time that the cited article was drafted for the Law Review, the Diocese of Fajardo-Humacao which we include in our analysis did not yet exist.

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different dioceses, for a total of six (6), and to each corresponds a part of what was the original Diocese of Puerto Rico. Therefore, each Diocese and the Archdiocese have their own legal personality, as was recognized to the original Diocese.[7]

2.

In accordance with this interpretation, the Code of Canon Law -- which establishes the internal structure of the *Roman Catholic and Apostolic Church* -- provides that each Separate Church, that is, the archdioceses, the dioceses, and the parishes, are the entities that, within the organizational scheme of the Church, truly have legal personality.

Thus, the Code of Canon Law states that, " The Catholic Church and the Apostolic See have the character of a moral person by divine ordinance itself." Code of Canon Law, Canon 113 sec. 1. However, although the Church **is a moral entity**, that is abstract and intangible, in said Code it clearly states that "[i]n the Church, besides physical persons, there are also juridic persons, that is, subjects in canon law of obligations and rights which correspond to their nature." Code of Canon Law,

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[7] This is clearly stated in the article *Personalidad Jurídica de la Iglesia Católica en Puerto Rico,* by Juan Gelpí Barrios. Specifically, Mr. Gelpí Barrios expresses in his article as follows:

> Each diocese is a fragment of one entity which possesses legal personality. Each one of them enjoys the same legal status corresponding to the original diocese of Puerto Rico, that is, the Roman Catholic Church of Puerto Rico. Gelpí Barrios, *supra*, p. 410.

This last fact is omitted in the Opinion issued today by the Court.

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Canon 113 sec. 2. *That is, the Roman Catholic Apostolic Church, as a whole, is not a legal person, but within it there exist legal personalities.*

On this subject, Canon 116 of the Code of Canon Law, in its section 1, establishes that:

> Public juridic persons are aggregates of persons or of things which are constituted by competent ecclesiastical authority so that, within the purposes set out for them, they fulfill in the name of the Church, according to the norm of the prescripts of the law, the proper function entrusted to them in view of the public good; other juridic persons are private. Code of Canon Law, Canon 116, sec. 1.

In this sense, it is through the Particular Churches that are mainly dioceses and parishes that the Catholic Church exists. Code of Canon Law, Canon 368. "A diocese is a portion of the people of God which is entrusted to a bishop for him to shepherd with the cooperation of the presbyterium, so that, adhering to its pastor and gathered by him in the Holy Spirit through the gospel and the Eucharist, it constitutes a particular church ... ". *Id.* Canon 369. That "portion of the people of God" which constitutes a dioceses is circumscribed within a specific territory. *id.* Canon 369. The Diocesan Bishop is the one who governs the Particular Church and is the one who represents the diocese in all its legal business. Code of Canon Law, Canon 393. The foregoing also includes the Archdiocese,

which is so called because it is the diocese with the largest population within certain geographic limits.

That said, the archdioceses do not have a higher rank than the other dioceses. As we already mentioned, an archdiocese is a diocese circumscribed to a territory with a larger population. Thus, the Archbishop is the Bishop of the Archdiocese. He has no greater authority than a Diocesan Bishop. See, Code of Canon Law, Canon 435-438.

On the other hand, it is worth mentioning here that, **if necessary, "...particular churches distinguished by the rite of the faithful or some other similar reason can be erected in the same territory.**" Code of Canon Law, Canon 372. " It is only for the supreme authority to erect particular churches; those legitimately erected possess juridic personality by the law itself." Canon 373. **That is, within the territory of the dioceses they can set up other Particular Churches, that is, parishes, and these will also enjoy legal personality.** Canon 513 [sic] of the Code of Canon Law so expressly states: "the parish legitimately erected has legal personality under the law itself."

In turn, religious orders may also be erected **and other organizations**, which the Code of Canon Law names as religious institutes. "Institutes, provinces and houses, as juridical persons that in their own right, have the capacity to **acquire**,

possess, administer and dispose of temporal goods, unless this capacity is excluded or limited by their constitutions". Code of Canon Law, Canon 634 sec. 1. Among these Religious institutes are those whose purpose is education, that is, Catholic schools. " is understood as one which a competent ecclesiastical authority or a public ecclesiastical juridic person directs . . . ". Code of Canon Law, Canon 803 sec. 1.

On the other hand, it is necessary to clarify that, as a general rule, in Europe, as in the United States, there is legislation that facilitates the freedom of worship and that simultaneously recognizes legal personality to religious entities according to their internal structure. *See Facilitating Freedom of Religion or Belief: A Deskbook* (T. Lindholm et al., Ed.), New York, 2004. In particular, regarding the Catholic, Apostolic and Roman Church, as a general proposition, one can adopt one of two postures: (1) recognize the legal personality by virtue of Civil Law through legislation or (2) recognize civil effectiveness to the ecclesiastical juridical persons under the auspices of canonical legislation. Lourdes Ruano Espina, *The legal juridical personality of the canonical foundations in Spain*, 15 Ius Canonicum 155, 157 (2015). As to the latter, the recognition of civil effectiveness of juridic persons formulated by the Roman Catholic Apostolic Church is, in our opinion, more in accordance with and respectful of the

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freedom of worship. *Id.* That is why we understand that, when speaking of legal personality, one must follow the guidelines set forth in the Code of Canon Law. To interpret otherwise, is an undue intervention into how the Roman Catholic Apostolic Church is structured, and on how it is organized for decision making.

E. The Establishment Clause and the Freedom of Worship

Recall that the First Amendment of the Constitution of the United States prohibits the establishment of religion by the State and guarantees freedom of worship. Am. I. USA Const., LPRA, Volume 1. Likewise, the Constitution of the Commonwealth of Puerto Rico establishes that "no law shall be passed relative to the establishment of any religion, nor shall the free exercise of the worship be prohibited, there shall be complete separation of Church and State." Art. II, Sec. 3, Const. ELA., LPRA, Volume 1. In accordance with the above, in our jurisdiction, the State is prohibited from engaging in activities that constitute the patronage of a religion, including providing financial support to a religious entity or intervening in its religious activities. *Díaz v. Colegio Nuestra Señora del Pilar*, 123 DPR 765, 780 (1989); *Board of Educ. Of Kiryas Joel v. Tax Comm'n of City of New York* 397 US 664, 673 (1970). For an intervention with the establishment clause to be considered valid, it must pass the following scrutiny: (1) that

the challenged conduct or law have a secular purpose; (2) that its primary effect is not to promote or inhibit religion; (3) that does not entail the possibility of provoking excessive government interference in religious affairs. *Colegio Nuestra Sra. Del Pilar, supra; Lemon v. Kurtzman*, 403 US 602 (1971). *See also Diocese of Arecibo v. Sec. Justice*, 191 DPR 292, 311 (2014).

Now, the right to freedom of worship is not an absolute right. Religious freedom is limited by the power of the State to protect the peace, morality, and public order. *Market, Quilichini v. UCPR*, 143 DPR 610, 636, (1997); *Suen de Victoria v. Pentecostal Church*, 102 DPR 20, 22 (1974). *See also Diocese of Arecibo v. Sec. Justice, supra*, p. 365. In those cases, in which the State, with its conduct, tends to limit the freedom of worship, the party that challenges the State's action has the obligation to demonstrate that it imposes a substantial burden on the exercise of the freedom of worship. *Christian Sch. And Acad. Assoc. v. Commonwealth*, 135 DPR 150, 161 (1994); *Díaz v. Colegio Nuestra Señora del Pilar*, supra, p. 779. *See also Diocese of Arecibo v. Sec. Justice, supra*, p. 309. This implies, among other things, demonstrating that the Government action is not general, because it is directed solely to the religious entity and its internal affairs. *See Díaz v. Colegio Nuestra Sra. Del Pilar, supra; Christian Sch. And Acad. Assoc. V.*

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Commonwealth, supra; Market, Quilichini v. U.C.P.R., supra. Once the party challenging the State's action proves that the conduct is not neutral, the court must examine whether it exceeds strict scrutiny. In that sense, the Court must determine whether (1) the State has an urgent interest; (2) the action of the State is aimed at that interest, and (3) there are no less onerous alternatives to achieve said interest. *Market, Quilichini v. U.C.P.R., supra. See also, Lozada Tirado v. Jehovah's Witnesses*, 177 DPR 893 (2010) *Diocese of Arecibo v. Sec. Justice, supra*, p. 310.

Consistent with the foregoing, in *Díaz v. Colegio Nuestra Señora del Pilar, supra*, we interpret that the courts cannot exercise their jurisdiction to resolve disputes over property rights related to a church when, in order to do so, they have to render judgment on matters of doctrine, of discipline, faith, or internal church organization. This, because it requires the interference by the State, through the courts, in matters relating to the nucleus of religion itself. That is, matters totally outside the jurisdiction of the courts. *Díaz v. Colegio Nuestra Sra. del Pilar, supra; Amador v. Conc. Igl. Unvi. De Jesucristo*, 150 DPR 571, 579-80 (2000). *See also, Agostini Pascual v. Catholic Church*, 109 DPR 172 (1979); *Jones v. Wolf*, 443 US 595, 604 (1979).

Therefore, in the exercise of our adjudicating faculty, and

at the time of rendering judgment on matters such as the ones that today occupy us, "we must be particularly cautious [...] to avoid spoiling the delicate equilibrium between the two conflicting absolute mandates: the one not to establish any one religion and the one of not prohibit the free exercise of the religious cult." *Díaz v. Colegio Nuestra Sra. del Pilar, supra, p. 776. See also Mercado, Quilichini v. U.C.P.R., supra,* p. 638.

It is, then, in light of the aforementioned norm, that we proceed to dispose of the disputes brought before our consideration.

III.

As we mentioned earlier, in the present case, a group of teachers of the Catholic schools of the country presented a preliminary and permanent injunction, declaratory judgment, breach of contract, tort action against the *Roman Catholic and Apostolic Church*, the Archdiocese of San Juan, the Office of the Superintendent of Catholic Schools of San Juan, Academia Perpetuo Socorro, Academia San José, and Academia San Ignacio de Loyola.

After several procedural steps, which at the beginning of this writing were narrated in detail, this Court determined that the preliminary injunction proceeded in favor of the plaintiff-teachers. However, the primary court should clarify who, of the defendants, had legal personality to respond to them.

In accordance with the order, the Court of First Instance ruled that the Archdiocese of San Juan, the dioceses, the schools, and the Office of the Superintendent of Catholic Schools of San Juan lacked legal personality to be part of the present litigation. This, since they were dependencies of the *Roman Catholic and Apostolic Church*, which, in its opinion, and by virtue of the Treaty of Paris, was the one that had legal personality to be sued. Thus, the primary court ordered that the *Roman Catholic and Apostolic Church*, make the pension payments to the plaintiffs, according to the Pension Plan, while the lawsuit remained pending.

Dissatisfied with the ruling of the Court of First Instance, the Archdiocese of San Juan and the Office of the Superintendent of Catholic Schools of San Juan filed a writ of certiorari before the Court of Appeals. Said court, in our opinion, correctly revoked the Court of First Instance and determined that, under the Treaty of Paris and the Code of Canon Law, the *Roman Catholic and Apostolic Church* lack legal personality. However, the Court of Appeal ruled that under the organizational structure of the Church the dioceses, parishes, and religious ordinances, among other organizations, did have legal personality.

With regard to the Archdiocese of San Juan, the intermediate appellate court clarified that it also had legal personality as

did all dioceses in Puerto Rico. As for Academia Perpetuo Socorro, it concluded that it also had a legal personality, since it is incorporated pursuant to the provisions of the Corporations Act, *supra*.

Now, with regard to the referenced Academia San José and Academia San Ignacio de Loyola, it maintained that they lacked legal personality. However, said court ruled that the first was covered by the legal personality of the San José Parish - who is not a party to this lawsuit, nor has it been brought to it - as a parochial school and the second was attached to the "Compañía de Jesús en Puerto Rico, Inc.," - who is not part of this lawsuit and it has not been brought to it either, so it was covered by the legal personality of this religious institution.

Lastly, about the provisional remedy requested by the plaintiffs-teachers, the Court of Appeals reasoned that only the Trust was called to respond directly to the beneficiaries of the Pension Plan with the assets that remained. However, the Archdiocese of San Juan, the Dioceses, parishes, and Catholic schools, which were employers, were only required to contribute to the Plan.

Regarding the imposition of the remedy without filing of a bond, as mentioned above, the intermediate appellate court ruled that it was contrary to what is required by Rule 56.3 of Civil Procedure, *supra*, so it left it without effect.

Dissatisfied with this determination, plaintiffs-employees appeared before us by means of a *Motion for aid of jurisdiction and/or Request for expedited processing*, and *Petition of Certiorari Review*. As such, after evaluating all of the parties' positions, a majority of this Court revokes the judgment issued by the intermediate appellate court and rules that the *Roman Catholic and Apostolic Church* has legal personality and, therefore, is the one called to respond to the group of teachers of the Catholic schools who presented the lawsuit that concerns us today. As we have already said, we strongly disagree with that course of action.

And the fact of the matter is that, as we advance in the introduction of this Dissenting Opinion, we will not validate with our vote a superficial opinion, lacking an in-depth analysis of the various dimensions of the controversies before our consideration, in which a majority of this Court, contrary to the aforementioned standard, chooses to recognize the legal personality of an abstract concept of universal character as is the term *Roman Catholic and Apostolic Church*.[8]

As has been clearly demonstrated, the *Roman Catholic and*

[8] It is necessary to point out that, to this Court, it is necessary to decide that the Archdiocese of San Juan, the Office of the Superintendent of Catholic Schools of San Juan, Academia Perpetuo Socorro, Academia San José, through the San José Parish, and Academia San Ignacio de Loyola (through the "Orden de la Compañía de Jesus, Inc.", better known as the Jesuit Order) lack legal personality in the present lawsuit, - and determine that only the *Roman Catholic and Apostolic Church* has such a personality --, **has left the captioned case without any party**, due to the fact that the *Roman Catholic and Apostolic Religious Church* really subsists through the archdiocese, the dioceses, the parishes erected within each of the dioceses and the orders.

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Apostolic Church has no legal personality. The legal personality that today a majority of this Court erroneously grants to the _Roman Catholic and Apostolic Church_ in our jurisdiction, truly is at the archdiocese and the five (5) dioceses established herein, namely: the Archdiocese of San Juan, the Diocese of Arecibo, the Diocese of Ponce, the Diocese of Fajardo-Humacao, the Diocese of Mayaguez, and the Diocese of Caguas. Similarly, the parishes erected within each of the dioceses and religious orders have legal personality.

This has been recognized by this Court on numerous occasions in which, in different lawsuits that have been presented before our consideration, we have recognized the legal personality of the dioceses of the *Roman Catholic and Apostolic Church* and their parishes. *See, Diocese of Arecibo v. Scty. of Justice, supra; Diocese of Mayaguez v. Planning Board*, 147 DPR 471 (1999); *Díaz v. Nuestra Señora del Pilar*, 123 DPR 765 (1989); *Academia San Jorge v. Labor Relations Board*, 110 DPR 193 (1980); *Agostini Pascual v. Catholic Church, Diocese of Ponce*, 109 DPR 172 (1979); *Vélez Colón v. Roman Catholic and Apostolic Church, Diocese of Arecibo*, 105 DPR 123 (1976); *Camacho v. Roman Catholic and Apostolic Church, Diocese of Ponce*, 72 DPR 353 (1951). However, the Majority of this Court seems to forget this.

There is no doubt that, in the present case, the

Archdiocese of San Juan, the Trust, and the Office of the Superintendent of Catholic Schools of San Juan were sued, who are parties to the lawsuit and have legal personality. In the same way, Academia Perpetuo Socorro, who as such, has legal personality, was correctly sued, and is part of this lawsuit.

Thus, to the extent that the Archdiocese and the aforementioned religious institutes or organizations that would be affected by the rulings issued by the Court of First Instance were correctly brought to the present lawsuit, they should have been considered parties to such, and, even more importantly, they should have had the opportunity, at this stage of the proceedings, to express themselves on the claim that plaintiffs-teachers make herein; as well as on the nature of the provisional remedy that is imposed until this complaint is finally decided. To the extent that this was not done --to the extent that the Archdiocese and the aforementioned institutes or religious organizations are parties in the captioned case express themselves, are heard and participate in the proceedings--, the **Decisions** and **Orders** issued by the Court of First Instance, which are subject to review in this case, **and which will clearly have an effect on the entities with legal personality mentioned above**, are null in their entirety. This is so, because they were issued in violation of the due process of law that assists the parties that could not be dispensed from

the present litigation, as indispensable parties. The above, on its own, and without a doubt, would be sufficient reason to have disposed of the captioned case.

However, it should also be pointed out that, with regard to Academia San José and Academia San Ignacio de Loyola, who were included by the plaintiffs-teachers in this case, as has been clearly demonstrated, they lack legal personality. Notwithstanding, in accordance with the above standard, Academia San José is covered by the legal personality of the San José Parish and Academia San Ignacio de Loyola is covered by the legal personality of the religious order, "Orden de la Compañía de Jesus en Puerto Rico, Inc." **Neither the San José Parish, nor the "Orden de la Compañía de Jesus en Puerto Rico, Inc.", have been brought to this lawsuit, nor are they part of it.**

That is, the present case also suffers from the absence of indispensable parties that allow adequately deciding the disputes before our consideration. Thus, the San José Parish, the "Orden de la Compañía de Jesus en Puerto Rico, Inc.", and all the dioceses that could today be called upon to answer for the payment of the pension, for retirement, that are today demanded by the plaintiffs-teachers. The foregoing was not done either.

Finally, in light of the clear and gross violations of the due process of law in the present lawsuit, as well as in the

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absence of indispensable parties for the correct adjudication of the same, it was not, nor is it, necessary -- as the Court of Appeals did-- to render judgment on the other assignments of error. What should have occurred, without delay, was to determine the Decisions and Orders issued by the Court of First Instance null in their entirety, which are subject to review in the captioned case, and, consequently, remand the case to said court so that -- having already determined those who truly have legal personality in the present case - it could hold a new hearing, in accordance with that previously ordered by this Court, to establish who is obligated to continue paying the pensions covered by this lawsuit while such is finally decided.

IV.

To conclude, it is necessary to remember that, at the time of issuing a judgment, the courts must ensure that the remedy that, in due time, is issued is effective and capable of being complied with by the obligated party. Therefore, the legal interpretations and provisional remedies provided under such should be able to be complied with. The ruling issued by this Court presents many related questions, namely: How are we going to enforce the judgment? Who are we going to demand compliance from, one or all of the dioceses? From now on, how are we going to acquire jurisdiction over the *Roman Catholic and Apostolic Church?* Will it be sufficient to serve process upon one of the

dioceses to have jurisdiction over the *Roman Catholic and Apostolic Church*, or must service of process be on all dioceses within our jurisdiction? Does this opinion extend to churches of other denominations, such as the Methodist Church, Baptist Church, Adventist Church, Episcopal Church, Pentecostal Church, Lutheran Church, among others? These are some of the problems presented by the opinion that is issued today.

V.

This being so, we dissent with the course of action followed by a Majority of this Court today. Consequently, we would have modified the Judgment of the Court of Appeals, and so modified, we would confirm the same.

[signature]
Ángel Colón Pérez
Associate Justice

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EXHIBIT 2

EN EL TRIBUNAL SUPREMO DE PUERTO RICO

Yalí Acevedo Feliciano, *et al.* Peticionarios v. Iglesia Católica, Apostólica y Romana, *et al.* Recurridos	CC-2018-0475	*Certiorari*
Sonia Arroyo Velázquez, *et al.* Peticionarios v. Iglesia Católica, Apostólica y Romana, *et al.* Recurridos		
Elsie Alvarado Rivera, *et al.* Peticionarios v. Iglesia Católica, Apostólica y Romana, *et al.* Recurridos		

RESOLUCIÓN

San Juan, Puerto Rico, a 17 de agosto de 2018.

Examinadas las segundas mociones de reconsideración presentadas por la Arquidiócesis de San Juan, la Superintendencia de Escuelas Católicas de la Arquidiócesis de San Juan, el Fideicomiso Plan de Pensión para Empleados de Escuelas Católicas y la Academia San José, así como la moción en oposición, se provee no ha lugar a las segundas mociones de reconsideración. Aténgase a lo resuelto en cuanto a las segundas mociones de reconsideración.

Se provee no ha lugar a la "Moción urgente sobre actos de represalia y solicitando remedios provisionales", ya que conforme a la parte dispositiva de la Opinión de este Tribunal, los procedimientos ulteriores corresponden al Tribunal de Primera Instancia.

Lo acordó el Tribunal y certifica el Secretario del Tribunal Supremo. El Juez Asociado señor Colón Pérez reconsideraría y vota conforme en proveer no ha lugar a la "Moción urgente sobre actos de represalia y solicitando remedios provisionales". La Jueza Presidenta Oronoz Rodríguez y la Juez Asociada señora Rodríguez Rodríguez no intervinieron.

Juan Ernesto Dávila Rivera
Secretario del Tribunal Supremo

AT THE SUPREME COURT OF PUERTO RICO

Yalí Acevedo Feliciano, et al. Petitioners v. Holy Catholic Apostolic Church, et al. Respondents	CC-2018-0475	*Certiorari*
Sonia Arroyo Velázquez, et al. Petitioners v. Holy Catholic Apostolic Church, et al. Respondents		
Elsie Alvarado Rivera, et al. Petitioners v. Holy Catholic Apostolic Church, et al. Respondents		

RESOLUTION

San Juan, Puerto Rico, on August 17, 2018.

Having examined the second reconsideration motions presented by the Archdiocese of San Juan, the Superintendence of Catholic Schools of the Archdiocese of San Juan, the Pension Plan Trust for Employees of Catholic Schools and the San José Academy, as well as the motion in opposition, the Court dismisses the second reconsideration motions. Adhere to what has been decided regarding the second reconsideration motions.

The "Urgent motion on reprisal acts and requesting provisional remedies" is dismissed, since according to the dispositive part of this Court Opinion, the subsequent proceedings appertain to the First Instance Court.

It was agreed by the Court and certified by the Clerk of the Supreme Court. Associate Judge, Mr. Colón Pérez, reconsidered and votes in to dismiss the "Urgent motion on reprisal acts and requesting provisional remedies." Chief Justice Oronoz Rodríguez and Associate Judge Mrs. Rodríguez Rodríguez did not intervene.

[Illegible signature]
Juan Ernesto Dávila Rivera
Clerk of the Supreme Court