(Official Translation)

IN THE SUPREME COURT OF PUERTO RICO

Teachers' Association, its union, Teachers' Association of Puerto Rico-Union Local, on its own behalf and on behalf of its members,

Respondents

v. CT-2018-0006

Department of Education, the Honorable Julia Keleher, in her official capacity as Secretary of the Department of Education of the Commonwealth of Puerto Rico,

Petitioners

JUDGMENT

(Rule 50)

San Juan, Puerto Rico, August 9, 2018

Having examined the petition for intrajurisdictional certification and the briefs submitted by respondents and by the intervenors, we hereby *reverse the Judgment rendered by the Court of First Instance that declared unconstitutional sections 13.05(a)(4), (5), (6), (7), (8), and (9) of the Puerto Rico Education Reform Act, Act No. 85 of 2018, regarding the Partnership School Program, and section 14.02(c) of the School Choice Program. Consequently, the action is dismissed.*

To be notified forthwith.

It was so agreed by the Court and certified by the Clerk of the Supreme Court. Justices Martínez Torres and Kolthoff Caraballo filed concurring opinions. Justice Rivera García filed a concurring opinion in which Justices Pabón Charneco, Kolthoff Caraballo, and Estrella Martínez joined. Justice Estrella Martínez filed a concurring opinion in which Justice Rivera García joined. Justice Rodríguez Rodríguez filed a dissenting opinion in which Chief Justice Oronoz Rodríguez and Justice Colón Pérez joined. Justice Colón Pérez filed a dissenting opinion. Justice Feliberti Cintrón disqualified himself.

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(Sgd.)

Juan Ernesto Dávila Rivera
Clerk of the Supreme Court

MSP

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JUSTICE MARTÍNEZ TORRES, concurring.

San Juan, Puerto Rico, August 9, 2018

Since the Teachers' Association has failed to establish its standing to sue on its own behalf or on behalf of its members, I concur with the reversal of the decision of the Court of First Instance without delving into the merits of the case. However, I believe that we also should have reversed our opinion in *Asoc. Maestros P.R. v. Srio. Educación*, 137 DPR 528 [37 P.R. Offic. Trans. ___] (1994). That opinion, which was used by the trial court to recognize the Teachers' Association standing to bring this action, has several defects and is inconsistent with this Court's caselaw on standing.

I

Standing to sue is one of the requirements of the principle of justiciability that courts must take into consideration before deciding a case on the merits. See *Asoc. Fotoperiodistas v. Rivera Schatz*, 180 DPR 920 [80 P.R. Offic. Trans. ___] (2011). To establish standing, a plaintiff must prove: 1) that he or she has suffered clear and palpable injury; 2) that the injury is immediate and distinct, not abstract or hypothetical; 3) that there is a causal connection between the injury and the action being prosecuted; and 4) that the cause of action arises under the Constitution or under a law. *Hernández Torres v. Hernández Colón et al.*, 131 DPR 593, 599 [31 P.R. Offic. Trans. ___, ___] (1992). All plaintiffs must show not only that they have standing to sue, but also that they have a legitimate interest in the case. *Col. Ópticos de P.R. v. Vani Visual Center*, 124 DPR 559, 564 [24 P.R. Offic. Trans. 383, 388] (1989). When a party filing a claim in court fails to meet these requirements, the claim is not justiciable and must be dismissed. See *Lozada Sánchez et al. v. JCA*, 184 DPR 898 [84 P.R. Offic. Trans. ___] (2012); *Fund. Surfrider y otros v. A.R.Pe.*, 178 DPR 563 [78 P.R. Offic. Trans. ___] (2010).

These requirements are more stringent when a plaintiff intends to claim the rights of third persons. *Hernández Torres v. Gobernador*, 129 DPR 824, 836 [29 P.R. Offic. Trans. ___, ___] (1992). This fact is predicated on the principle that a litigant cannot challenge the constitutional validity of a statute alleging that it violates the constitutional rights of non-party third persons. *Id.*

Therefore, for a group to claim the rights of its members, it must show: (1) that the members have standing to sue in their own right; (2) that the interests it seeks to protect are germane to the group's purpose; and (3) that neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Col. Ópticos de P.R. v. Vani Visual Center*, 124 DPR at 565-566 [24 P.R. Offic. Trans. at 389]. In turn, if the group wishes to sue to vindicate its own interests, it must establish that the injury suffered by its members is clear, palpable, real, immediate, and distinct, not abstract or hypothetical. *Fund. Surfrider y otros v. A.R.Pe.*, 178 DPR at 572-573 [78 P.R. Offic. Trans. at ___].

Our Resolution in *Alvarado Pacheco y otros v. ELA*, 188 DPR 594, 619-620 [88 P.R. Offic. Trans. ___, ___] (2013) summarizes this rule quite well:

> [T]he concept "access to justice" does not mean that anybody can raise any issue in court whenever he or she may please. There must be a justiciable case and controversy. *Lozada Sánchez et al. v. JCA*, 184 DPR 898 [84 P.R. Offic. Trans. ___] (2012) (Martínez Torres, J.); *Acevedo Vilá v. Meléndez*, 164 DPR 875 [64 P.R. Offic. Trans. ___] (2005) (Hernández Denton, C.J.); *Commonwealth v. Aguayo*, 80 P.R.R. 534, 563-564 (1958) (Serrano Geyls, J.). For that reason, the case cannot be moot or untimely. *Asoc. Fotoperiodistas v. Rivera Schatz*, 180 DPR 920, 933 [80 P.R. Offic. Trans. ___, ___] (2011) (Martínez Torres, J.); *San Gerónimo Caribe Project v. A.R.Pe.*, 174 DPR 640, 652 [74 P.R. Offic. Trans. ___, ___] (2008) (Hernández Denton, C.J.). To file an action in the General Court of Justice of Puerto Rico, a litigant must have standing to sue. *Lozada Sánchez et al. v. JCA*; *Fund. Surfrider y otros v. A.R.Pe.*, 178 DPR 563 [78 P.R. Offic. Trans. ___] (2010) (Martínez Torres, J.); *Romero Barceló v. E.L.A.*, 169 DPR 460, 506 [69 P.R. Offic. Trans. ___, ___] (2006) (Rodríguez Rodríguez, J., dissenting); *Acevedo Vilá v. Meléndez*; *Hernández Torres v. Hernández Colón et al.*, 131 DPR 593 [31 P.R. Offic. Trans. ___] (1992) (Hernández Denton, J.); *Hernández Torres v. Gobernador*, 129 DPR 824 [29 P.R. Offic. Trans. ___] (1992) (Hernández Denton, J.). To establish standing to sue, a party must show that he or she "has suffered clear and palpable injury; that the injury is real, immediate, and distinct, not abstract or hypothetical; that there is a causal connection between the injury and the action being prosecuted; and that the cause of action arises under the Constitution or under a law." *Mun. Fajardo v. Srio. Justicia et al.*, 187 DPR 245, 255 [85 P.R. Offic. Trans. ___, ___] (2012) (Martínez Torres, J.). See also: *Lozada Tirado et al. v. Testigos Jehová*, 177 DPR 893, 924 [77 P.R. Offic. Trans. ___, ___] 2010 (Hernández Denton, C.J.); *Col. Peritos Elec. v. A.E.E.*, 150 DPR 327, 331 [50 P.R. Offic. Trans. ___, ___] (2000) (Hernández Denton, J.); *Asoc. Maestros P.R. v. Srio. Educación*, 137 DPR 528, 535 [37 P.R. Offic. Trans. ___, ___] (1994) (Hernández Denton, J.).

Consequently, the liberal manner in which standing requirements have been occasionally construed "does not imply that the door is wide open for the consideration of

any case which any citizen wishes to file in alleged protection of a public policy." *Salas Soler v. Srio. de Agricultura*, 102 DPR 716, 723-724 [2 P.R. Offic. Trans. 925, 934] (1974). We reiterated this pronouncement in *Fund. Surfrider y otros v. A.R.Pe.*, 178 DPR at 585 [78 P.R. Offic. Trans. at ___]:

> Of course, we have acknowledged that standing requirements must be flexibly and liberally construed, particularly when addressing claims made against government agencies and officials. *García v. Junta de Planificación*, 140 D.P.R. 649 [40 P.R. Offic. Trans. ___] (1996). However, this does not imply that we have abandoned "the requirement that every litigant must show that he or she has suffered real and palpable injury so that the courts may consider his or her claim on the merits." *Romero Barceló v. E.L.A.*, 169 D.P.R. 460, 511 [69 P.R. Offic. Trans. ___, ___] (2006) (Rodríguez Rodríguez, J., dissenting).

For that reason, we have clearly held that we will not hear cases in which the injuries are alleged in the abstract or by way of hypothetical controversies. See *Lozada Sánchez et al. v. JCA*.

The pleadings in the complaint clearly show that the Teachers' Association (Association) lacks standing to sue. In the Motion for Declaratory Judgment of April 3, 2018, which gave rise to this action, it alleged that its claim intends to protect the interests of the Association and its members, who "are seriously injured as a result of defendants' acts and omissions." *Id.* at 2, Appendix to the Urgent Petition for Writ of Intrajurisdictional Certification, Exhibit II, at 58. The Association based its claims on the constitutional clause that bans the use of public funds for the support of private schools. P.R. Const. art. II, § 5, LPRA, vol. 1. However, it failed to specify the injury to which the Association and its members would allegedly be exposed.

The Association also alleged that the statute whose validity is challenged affects "constitutional rights as applied to the field of labor law." Motion for Declaratory Judgment, at 2 (April 2, 2018), Appendix to the Urgent Petition for Writ of Intrajurisdictional Certification, Exhibit II, at 58. Although the Association correctly alleged that it is empowered as a labor union to represent the members of the Appropriate Teachers Unit before the Department of Education, its pleadings do not grant it standing to sue because they fail to specify how the teachers' terms and conditions of employment would be affected. None of the Association's pleadings establishes the existence of clear and palpable injury—not abstract or hypothetical—or the causal connection between the alleged injury and the action being prosecuted.

When the Government moved for dismissal for lack of standing, among other grounds, the Association answered the motion alleging that the creation of the Partnership School Program and the School Choice Program would injure the Association and its members because part of the budget assigned to the Department of Education would then be shared with the Partnership Schools, thus reducing the funds allocated to the schools where the teachers work. The Association also alleged that it would be affected as a labor

union organization because it would be barred from negotiating the terms and conditions of employment of the teachers who would work at those new schools, inasmuch as they would not be Department of Education employees.

I agree with the Solicitor General that under those theories, all government employees who work in government agencies would have to be recognized as having standing to challenge the laws, regulations or programs that allow for the contracting of nonprofit private entities to render services to the public merely because the employees who work for them are not public employees. Urgent Petition for Writ of Intrajurisdictional Certification, at 20 (July 11, 2018). Moreover, the injury alleged is hypothetical and speculative, since the statute itself provides that the transfer of teaching personnel from the Department of Education to Partnership Schools would be voluntary. Therefore, it cannot be concluded from a facial examination of the statute that the teachers are exposed to clear and palpable injury. Whether the statute could cause such injury when applied is another matter that is not under our consideration here. What was challenged in this case was the unconstitutionality of the statute on its face; however, the Association has failed to establish its standing to do so by itself or on behalf of its members.

II

In his concurring opinion, Justice Rivera García argued that the Association had standing to sue because the teachers, as taxpayers, can file claims alleging a violation of the support clause and, for that reason, the Association can represent them in that respect. I respectfully disagree with this argument.

In *Flast v. Cohen*, 392 US 83 (1968), the United States Supreme Court held that there is no absolute bar in the United States Constitution to suits by federal taxpayers challenging allegedly unconstitutional federal taxing and spending programs. The crucial factor, for standing purposes, is whether the party has "'a personal stake in the outcome of the controversy,' . . . and whether the dispute touches upon 'the legal relations of parties having adverse legal interests.'" *Id.* at 101.[1] (Citations omitted.) Thus, being a taxpayer does not automatically confer standing to sue. In other words, "[a] taxpayer may or may not have the requisite personal stake in the outcome, depending upon the circumstances of the particular case." *Id.*[2]

The *Flast v. Cohen* analysis for determining compliance with the cited requirements has two aspects to it: "First, the taxpayer must establish a logical link between that status and the type of legislative enactment attacked . . . . Secondly, the taxpayer must establish a nexus between that status and the precise nature of the constitutional infringement alleged." *Id.* at 102.[3] The federal Supreme Court deemed that plaintiffs in that case had met the requirements because "[t]heir constitutional challenge is made to an exercise by

[1] [Translator's note: This footnote quotes the original English citation.]

[2] [Translator's note: This footnote quotes the original English citation.]

[3] [Translator's note: This footnote quotes the original English citation.]

Congress of its power under Art. I, § 8 . . . and the challenged program involves a substantial expenditure of federal tax funds." *Id.* at 103.[4] At that time (1965), almost one billion dollars had been appropriated. *Id.* at 103 n.23. "In addition, appellants have alleged that the challenged expenditures violate the Establishment and Free Exercise Clauses of the First Amendment." *Id.* at 103.[5] According to the Court, one of the specific evils feared by the drafters of the Establishment Clause was that Congress would use its taxing and spending power to favor one religion over another or to support religion in general.

Although the opinion expressly states that this rule may extend to other constitutional provisions, it has been restrictively construed. See *Arizona Christian School Tuition Organization v. Winn*, 563 US 125 (2011). In his concurring opinion in *Flast v. Cohen*, Justice Fortas had precisely advocated a restrictive interpretation of the Establishment Clause. "[T]here is enough in the constitutional history of the Establishment Clause to support the thesis that this Clause includes a specific prohibition upon the use of the power to tax to support an establishment of religion. There is no reason to suggest . . . that there may be other types of congressional expenditures which may be attacked by a litigant solely on the basis of his status as a taxpayer." *Flast v. Cohen*, 392 US at 115 (Fortas, J., concurring).[6]

In 1994, we stated that "[t]he argument of the United States Supreme Court and Justice Fortas in *Flast* . . . is persuasive." *Asoc. Maestros P.R. v. Srio. Educación*, 137 DPR at 539 [37 P.R. Offic. Trans. at ___]. Thus, we adopted that rule in cases involving an alleged violation of Art. II, Sec. 3 of our Constitution regarding the separation of Church and State. We also decided to extend it to claims brought under Art. II, Sec. 5 of our Constitution, which prohibits state support for private schools, and explained that one of the aims of this constitutional provision was to avoid the use of public funds to support private schools run by different religious entities and thus protect the separation of Church and State. *Asoc. Maestros P.R. v. Srio. Educación*, 137 DPR at 539-540 [37 P.R. Offic. Trans. at ___].

Our expressions in most of that opinion seemed to indicate that we were adopting a restrictive version of the *Flast v. Cohen* rule that was limited to the protection of the separation of Church and State. "The claim of the Association is based on the establishment clause of the First Amendment to the United States Constitution, and on the separation and support clauses of our Constitution. As we discussed earlier, the constitutional principles of separation of Church and State allow, as an exception, that any taxpayer have standing to sue to raise a violation [of] one of the provisions mentioned above." *Asoc. Maestros P.R. v. Srio. Educación*, 137 DPR at 543 [37 P.R. Offic. Trans. at ___].

Later on, however, based on no further grounds, we pointed out that the support clause "also include[s] nonsectarian private schools within its scope" and that "[i]ts aim

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[4] [Translator's note: This footnote quotes the original English citation.]

[5] [Translator's note: This footnote quotes the original English citation.]

[6] [Translator's note: This footnote quotes the original English citation.]

goes beyond the separation of Church and State, and seeks to protect and strengthen as fully as possible our public education system *vis- à-vis* any other private education institution." *Asoc. Maestros P.R. v. Srio. Educación*, 137 DPR at 547 [37 P.R. Offic. Trans. at ___]. This defect in that opinion is incurable. The taxpayer exception in claims under the support clause could not be severed from the subject of the separation of Church and State, since it was precisely the separation of Church and State that gave rise to the extension of the *Flast v. Cohen* rule to the support clause.

This was questioned by Justice Negrón García in his dissenting opinion: "It seems like an illogical decision to grant standing to sue to the *Association* under a strict taxpayer doctrine—almost discarded—*grounded solely* on the Establishment Clause, to then later completely secularize the analysis on the merits, totally abandoning the Establishment Clause notwithstanding the 'close link' of the same to standing to sue issues." *Asoc. Maestros P.R. v. Srio. Educación*, 137 DPR at 588 [37 P.R. Offic. Trans. at ___] (Negrón García, J., dissenting). "Seemingly out of nowhere, there appears suddenly the *phantom* figure of the Support Clause with a 'content . . . independent from and additional to that of the establishment clause of the First Amendment to the federal Constitution.'" *Id.* at 587 [37 P.R. Offic. Trans. at ___].

On the other hand, section 3 of the Actions against the Commonwealth Act, Act No. 2 of February 25, 1946 (32 LPRA § 3075), deprives Puerto Rico courts of jurisdiction to pass on actions that challenge the validity or constitutionality of any law or of any act of a public official authorized by law when the plaintiff alleges no other interest in such action or proceeding. In *Asoc. Maestros P.R. v. Srio. Educación*, we stated that the cited provision does not preclude the Court from adopting the *Flast v. Cohen* rule. Justice Negrón García also criticized such course of action because it "uses a restrictive and declining doctrine to create an exception to a law whose clear and unequivocal text bars taxpayer suits, without exception, *and whose constitutionality has not been challenged.*" *Asoc. Maestros P.R. v. Srio. Educación*, 137 DPR at 586 [37 P.R. Offic. Trans. at ___] (Negrón García, J., dissenting).

III

> On the other hand, we constantly stress the value of the precedent in our legal system. However, our decisions are not dogmas set in stone. For that reason, "we are not compelled to follow a past decision when its rationale no longer withstands careful analysis." *Fraguada Bonilla v. Hosp. Auxilio Mutuo*, 186 DPR at 391 [86 P.R. Offic. Trans. at ___]. "[T]he purpose which inspired the doctrine of *stare decisis* is to preserve stability and certainty in the law, and never to perpetuate errors." *Am. Railroad Co. v. Industrial Commission*, 61 P.R.R. 303, 315 (1943). Nonetheless, precedents may be overruled only "(1) if the previous decision was demonstrably erroneous; (2) if its effect on the legal system is adverse; and (3) if it generated limited public reliance." *Pueblo v. Camacho Delgado*, 175 DPR 1, 20 [75 P.R. Offic. Trans. 1, ___] n.4 (2008). See also *González v. Merck*, 166 DPR 659, 688 [66 P.R. Offic. Trans. ___, ___] (2006).
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> *Rivera Ruiz et al. v. Mun. de Ponce et al.*, 196 DPR 410, 429 [96 P.R. Offic. Trans. ___, ___] (2016).

Recognizing the validity and effectiveness of the opinion in *Asoc. Maestros P.R. v. Srio. Educación* and construing it as if it gave the Teachers' Association a master key to the courts so that it may protest certain public policies it dislikes "perpetuates an erroneous interpretation of the Law." *Rivera Ruiz et al. v. Mun. de Ponce et al.*, 196 DPR at 430 [96 P.R. Offic. Trans. at ___] (Rodríguez Rodríguez, J., concurring). It also contravenes the very tenets of judicial self-restraint and separation of powers. "The principle of justiciability is perhaps the most important limitation on the exercise of the Judicial Power." *Romero Barceló v. E.L.A.*, 169 DPR 460, 508-509 [69 P.R. Offic. Trans. ___, ___] (2006) (Rodríguez Rodríguez, J., dissenting).

We must examine the consequences of recognizing—as the other members of this Court do—the Association's standing to bring this suit. We are opening a dangerous door that appeared to have been closed. Such a course of action is dangerous and corrosive because it seeks to handcuff the execution of public policy through the filing of mere general claims in court. Even if those claims are untenable on the merits, declaring those cases justiciable hinders the agility claimed by the people in the execution of public policy. After all, no case is decided in one day. This case is the best example of that. Despite the promptness with which we addressed this matter, the uncertainty created pending our decision has lasted up to the start of the school year.

What is more, our decision raises serious questions about the role of courts in our society. We fulfill our duty and earn the people's trust when we protect individuals against the violation of rights guaranteed by the Constitution and by the laws; but if we allow the filing of non-justiciable actions just to express ourselves on trending topics, do we become procedural obstacles to the implementation of measures that seek to help those same individuals and that do not violate the Constitution?

We also fulfill our constitutional function and earn the people's trust when, absent a violation of those rights, we respect the separation of powers and allow officials elected by the people to exercise the powers vested in them by the Constitution to design the public policy. We should not forget that the people can eventually endorse or reject that public policy by voting for or against those incumbent officials. However, our decisions are not subject to the will of voters. If we now discard the limitations imposed on our reviewing power and, in turn, declare claims such as the one addressed today justiciable, will we have a government by injunction? Will the people be left to depend on whether a majority of this Court agrees with the measure under attack? In other words, will we respect the separation of constitutional powers or will we become a public nuisance?

We must remember our pronouncements in *Hernández Torres v. Gobernador*, 129 DPR at 848-849 [29 P.R. Offic. Trans. at ___]:

> [W]e cannot succumb to the temptation of overlooking the standing principles set forth above to pass on the merits of this appeal . . . . "Public interest" should be no reason to forget that throughout the history of judicial review in the United States and Puerto Rico, courts have "established very

> valuable standards of [judicial] self-restraint to govern its conduct in situations requiring the exercise of its 'grave and delicate function' of passing upon the constitutional validity of legislative measures . . . . The determinant factors of these norms are the fallibility of the human judgment, the negative condition of the judicial power which has not the direct authority inherent in the other two branches because they are elected by the people, and the conviction that the Court would lose its influence and prestige and, ultimately, its authority if it should every day *and outside the strict limits of a genuine judicial proceeding*, pass judgment on the constitutional validity of legislative and executive actions." *Commonwealth v. Aguayo*, 80 P.R.R. at 576-578. (Footnote omitted and emphasis added.)
>
> If we discard this historic principle of judicial prudence, we would undermine the constitutional doctrine of separation of powers, disrespect the people's sovereignty, and assume the function that Plato ascribed to the philosopher kings in his monumental work *The Republic*. Accepting this function would violate the governing principles of our democratic system that we swore to defend when we took office.

I am concerned that the other members of this Court have shown "a will—close to an uncoordinated quixotic stunt—to open the courts" to a discussion of the merits of a non-justiciable case. *Asoc. Maestros P.R. v. Srio. Educación*, 137 DPR at 588 [37 P.R. Offic. Trans. at ___] (Negrón García, J., dissenting). Depending on the color of the glass through which one looks at the programs at issue here, some intervene to proclaim their constitutional validity while others denounce just the opposite. Along this course of action, we have missed an opportunity to afford coherence to our standing doctrine. The consequences of such an erratic course of action will be seen very soon: the reiterated filing in our courts of actions that seek to have public policy reviewed and controlled by order of the court.

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(Official Translation)

IN THE SUPREME COURT OF PUERTO RICO

Teachers' Association, its union, Teachers' Association of Puerto Rico-Union Local, on its own behalf and on behalf of its members,

Respondents

v. CT-2018-0006 Interjurisdictional Certification

Department of Education, the Honorable Julia Keleher, in her official capacity as Secretary of the Department of Education of the Commonwealth of Puerto Rico,

Petitioners

JUSTICE RIVERA GARCÍA, with whom Justices Pabón Charneco, Kolthoff Caraballo, and Estrella Martínez join, concurring.

San Juan, Puerto Rico, August 9, 2018

This case has committed to us the transcendental task of examining some provisions of Act No. 85 of 2018, known as the Puerto Rico Education Reform Act. Specifically, we have had to determine whether sec. 13.05 of the act, which concerns the Partnership School Program, and sec. 14.02, which concerns the School Choice Program, violate the support clause of the Constitution of Puerto Rico. In other words, we had to determine whether those sections are constitutional insofar as they allow the establishment of schools that will be operated and administered by a certified entity authorized by the Secretary and, on the other hand, allow the grant of certificates [vouchers] to parents of students so that they may choose the school they would prefer their children to attend.

In undertaking this arduous task, it is vitally important to reaffirm our obligation to strive to achieve an interpretation consistent with the upholding of the constitutionality of a statute based on the deference deserved—as we have always stated—by the other branches of government. Having examined the standards adopted in *Asoc. Maestros P.R. v. Srio. Educación*, 137 DPR 528 [37 P.R. Offic. Trans. ___] (1994), with respect to our interpretation of the support clause in the context of another legislative model, and on the grounds set forth below, I concur with the decision to reverse the Judgment of the Court of First Instance and to dismiss this action.[1]

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[1] It is utterly alarming how some members of this Court distort the reasoning employed in this concurring opinion and lead the citizenry to misinterpret our pronouncements here. Among other things, they confuse and distort the reasoning we employ in passing on the issues under our consideration regarding the Partnership School and School Choice Programs. Moreover, they contend that in order to reach this conclusion, we have amended our Constitution and replaced the word "support" with "replacement" even though, as we will see, these were the concepts that, as

I

On April 3, 2018, the Teachers' Association of Puerto Rico and its union (Association) filed a Motion for Declaratory Judgment in the Court of First Instance,[2] alleging that the Partnership School and School Choice Programs established under Act No. 85 of 2018, known as the Puerto Rico Education Reform Act (Act No. 85), were unconstitutional. The Association argued that insofar as the State allocates public funds and property to the support and sustainment of private or religious educational entities, it violates Art. II, Sec. 5 of the Constitution of Puerto Rico, LPRA, vol. 1, which bans the use of public funds to support schools other than those of the State.[3]

On the other hand, on May 31, 2018, a group of mothers (intervenors)[4] filed a Motion to Intervene, alleging that their children attend public schools and have an individual, personal, and tangible interest in benefitting from the programs. They stated that if Act No. 85 is declared unconstitutional, their children would be deprived of the benefits granted by the act. Therefore, they moved to appear as intervenors.

After numerous procedural events and an oral argument hearing held on June 13, 2018, the Court of First Instance issued a Judgment holding that the Association had standing to bring this suit because as the exclusive representative of teachers in the public education system, it aims to defend the public education system and vindicate the rights and objectives of the organization. The court further stated that the implementation of the programs will affect its members by reducing the funds that will be appropriated to public schools and to teachers so that they may fulfill their duties. Likewise, the court determined that the terms and conditions of employment of public system teachers could be altered if they are transferred to a Partnership School, and that the Association had standing to sue under the decision in *Asoc. Maestros v. Srio. Educación*, which allowed a taxpayer to challenge state statutes or actions that violate the establishment clause and the support

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established by the Constitutional Convention, would govern the support clause. Likewise—as is their custom—they resort to unrelenting attacks, insults, derision, and baseless offenses in an effort to support what clearly are legally groundless assertions. History will eventually judge those who interpret the rule of law at their convenience in order to advance their cause.

[2] Appendix to the Urgent Petition for Writ of Intrajurisdictional Certification, Exhibit II, at 57-69.

[3] *Id.* at 60.

[4] Jennifer González Muñoz is the mother of two children aged two and six. Although she and her husband work, their financial resources are scarce to support their family. Their oldest child has a speech disorder and, as a result, has been bullied in school. Both are concerned about the violent environment that prevails at the school and state that students are disrespectful to teachers and are not disciplined. They further allege that classes are often cancelled without prior notice, thereby affecting her children's academic progress. In turn, Danitza González Carrión, a mother of three children who attend a school located in the ward in which they live, stated that she has a 7-year-old daughter who has a 4.0 grade average. She pointed out that the girl is passionate about learning English; however, the school provides few or no courses in English. Finally, Jessica Ñeco has a gifted 14-year-old daughter and the school she attends—despite being one of the most prestigious public schools—does not satisfy her daughter's needs. She pointed out that she shares some of her daughter's frustrations and that the girl is such an outstanding student that she often gets bored in class. She believes that her daughter would benefit from the program if she could attend a school with a broader curriculum and a more competitive student environment.

clause of the Puerto Rico Constitution. The court also granted the motion to intervene after concluding that the mothers had shown that they had a legitimate interest.

Finally, the court found that Partnership Schools are a private school model financed by the State whose operation contravenes our Constitution's support clause. Consequently, it declared sec. 13.05(a)(5)-(9) of Act No. 85—which authorizes the establishment of Partnership Schools as part of our public education system—and sec. 13.05(a)(4)—which establishes the concept of Partnership Schools in institutions other than those of the State—partially unconstitutional.[5] It also declared sec. 14.02(c)—which created the School Choice Program—unconstitutional upon reasoning that it violates the support clause.

Aggrieved, on July 11, 2018, the State filed an Appeal in the Court of Appeals[6] assigning the following errors:

> (1) The Court of First Instance erred in recognizing the plaintiff association as having standing to bring the above-captioned action.
>
> (2) The Court of First Instance erred in concluding that the provisions of Act No. 85 of 2018 that establish the Partnership School Program violate the Support Clause contained in Art. II, Sec. 5 of the Constitution of Puerto Rico.
>
> (3) The Court of First Instance erred in concluding that the provisions of Act No. 85 of 2018 that establish the School Choice Program violate the Support Clause contained in Art. II, Sec. 5 of the Constitution of Puerto Rico.

Id. at 17-18.

That same day, the State filed in this Court an Urgent Petition for Writ of Intrajurisdictional Certification and an Urgent Motion in Aid of Jurisdiction. In the latter motion, the State contended that the issue is of the highest public interest because "the effect of the trial court's decision upsets the legislative mandate aimed at the integral implementation of the Education Reform Act, which is one of the most transcendental statutes in our recent history."[7] Furthermore, the State contended that the "erroneous decision of the Court of First Instance places our education system and the students, parents, and teachers that constitute it in a state of complete uncertainty in light of the imminent start of the next school year, which will occur in less than one (1) month." (Emphasis suppressed.)[8] In this respect, the State alleged that it had taken countless steps to implement the program, and that if the controversy is not settled, it would be impossible to enforce the

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[5] These sections were declared partially unconstitutional insofar as "the prohibition does not extend to those Partnership Schools managed by municipalities, municipal consortiums, or the public university, inasmuch as these entities are an extension of the State and are under its supervision and, above all, [under its] control." Judgment, at 35, Appendix to the Urgent Petition for Writ of Intrajurisdictional Certification, Exhibit XVIII, at 35.

[6] Appendix to the Urgent Petition for Writ of Intrajurisdictional Certification, Exhibit I, at I-282.

[7] Urgent Motion in Aid of Jurisdiction at 3.

[8] *Id.*

legislative mandate. Moreover, it argued that the state of legal uncertainty caused by the decision of the Court of First Instance would continue and [would disrupt] the preparations for the start of the next school year. Consequently, the State asked this Court to expedite the proceedings in this case given its importance and the prompt attention this conflict requires.

Regarding the merits of the controversy, the State essentially stated that the Partnership School Program is a concept of public school created by legislative authorization that operates with some degree of administrative, curricular, and operational autonomy. The State believed that the federal court had upheld the constitutionality of that program as long as the education provided is free, nonsectarian, and non-discriminatory. As for the School Choice Program, the State asserted that it is a financial aid granted to families, not to private educational institutions. In that sense, it pointed out that the statute is neutral and does not grant particular privileges to private schools over public schools. Lastly, the State argued that the Association lacks standing to bring suit because it had failed to establish how the creation of the programs at issue here causes real, palpable, and distinct injury to it, in its individual capacity, and to its members. The State further stated that the Association also failed to establish a connection between the injury alleged and the provisions of Act No. 85.

By Resolution issued on July 13, 2018, we issued the writ of intrajurisdictional certification, stayed the effects of the decision of the Court of First Instance, and gave the parties five days to state their respective positions on the errors assigned by the State.

The intervenors appeared and essentially argued that we must reexamine and reverse our decision in *Asoc. Maestros P.R. v. Srio. Educación*, mainly because the significant changes that have occurred in the realm of the law have rendered it obsolete. The intervenors essentially contended that their children have been affected by the current crisis in the Puerto Rican education system and, therefore, they believed that all aspects of the programs are designed to afford them, as parents, the opportunity to choose an adequate school for their children, and to grant their children access to quality education. The intervenors stated that if the validity of the statute is not upheld, we would be limiting the opportunity of all low-income families to address their individual academic needs.

In turn, the Association, invoking this Court's decision in *Asoc. Maestros P.R. v. Srio. Educación*, alleged that it has standing to challenge the statute under the support clause because this Court had extended the exception established in *Flast v. Cohen*, 392 US 83 (1968), for taxpayer suits brought under the establishment clause. On that occasion, we acknowledged that since both clauses were related, the *Flast* exception applies to taxpayer challenges under the establishment clause and the support clause.

The Association pointed out that as an entity, it is dedicated to the "promotion and defense of the labor rights of all its members, the promotion of optimal conditions for the provision of free public education, and the promotion of the unionized intellectual and professional development of education workers."[9] It further reasoned that as an organization, it has a long and proven history of claiming the vindication of the organization's rights and protecting interests related to educational tasks, public education, and teachers' rights. It

[9] Respondents' brief at 5.

stated that the use of public funds from the Department of Education's budget to administer private entities and to grant vouchers that aim to pay for education in private institutions affects teachers and public education, inasmuch as the improvement and operation of schools within the public education system will be affected once a portion of the Department's budget is taken away. It further expressed that the terms and conditions of employment of teachers transferred to a Partnership School could be affected.

Regarding the merits of the controversy, the Association clarified that its contentions are based only on the support clause, not on the establishment clause, and pointed out that the support clause is violated because public funds would be transferred to a private entity by way of the Partnership Schools in order to promote public education. It argued that these schools will be administered by private entities that will take operational and administrative decisions, and that if any of these entities "is religion-based, it will include religious education, which will then be paid for with public funds."[10] It also contended that if Partnership Schools were to operate in state facilities without paying rent for such use, this would constitute a transfer of public property to private entities, and that the role of the State would be limited "to supervis[ing] certain aspects of private schools, but their operation, administration, organization, finances, workforce, and philosophy are private . . . ."[11]

With regard to the School Choice Program, the Association only questioned the constitutional validity of those modalities of the Program (sec. 14.02(c) and (e) of Act No. 85) that authorize the use of vouchers to pay for private education with public funds; it did not challenge the validity of the other modalities. In that respect, it alleged that this practice violates the Puerto Rico Constitution, inasmuch as the ultimate purpose of the program is to support and defray the cost of private education, which constitutes a transfer of public money to private third persons. In light of this situation, it stated that the State intends to make viable a scholarship system that would replace the public education system and place it under the control of private entities. Therefore, the Association concluded that both programs are unconstitutional on their face because the support clause provides that public education services must be only under state control, and none of the two programs has that purpose.

Having examined both parties' arguments, we are ready to decide.

II

A. *Standing*

It is well settled that "courts exist exclusively for the purpose of settling genuine controversies between adverse parties having real interest in seeking some relief which will affect their juridical relations."[12] For that reason, "there must be a genuine and live

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[10] *Id.* at 11.

[11] *Id.* at 12.

[12] *Commonwealth v. Aguayo*, 80 P.R.R. 534, 539-540 (1958). See also: *Fund. Surfrider y otros v. A.R.Pe.*, 178 DPR 563, 572 [78 P.R. Offic. Trans. ___, ___] (2010); *Asoc. Alcaldes v. Contralor*, 176 DPR 150, 157 [76 P.R. Offic. Trans. ___, ___] (2009); *Hernández Torres v. Gobernador*, 129 DPR 824 [29 P.R. Offic. Trans. ___] (1992).

controversy involving adverse interests and which, upon adjudication, affects the juridical relations of the parties."[13] This guarantees that the party who brought the action will have an interest "'of such nature that he [or she] would probably pursue his [or her] cause of action vigorously and bring the question in controversy before the attention of the court.'"[14]

Ever since we adopted through caselaw the "case or controversy" requirement, the exercise of the judicial function has been subject to the existence of a justiciable controversy.[15] This doctrine of *justiciability* consists, in turn, of a set of doctrines that will guide us in our function of determining whether we must address the statutory or constitutional validity of a particular issue; that is, whether there are "underlying currents that motivate, in real life, judicial abstention or intervention in a given situation."[16] Among those principles is the standing of those who resort to court to vindicate their rights.[17]

Consequently, to establish standing—in the absence of a statute that may confer it—a plaintiff must meet the following requirements: 1) he or she must have suffered clear and palpable injury; 2) the injury must be real, immediate, and distinct, not abstract or hypothetical; 3) there must be a causal connection between the injury and the action being prosecuted; and 4) the claim must arise under the Constitution or under a law.[18]

In general terms, the *principle of standing* consists in determining who may resort to the court to vindicate a right.[19] As a rule, we have established that the parties "'have standing to invoke only their own rights against the government's allegedly illegal acts.'"[20] However, several exceptions to this rule have been recognized through caselaw. Such is the case of associations.

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[13] *Commonwealth v. Aguayo*, 80 P.R.R. at 565.

[14] *Noriega v. Hernández Colón*, 135 DPR 406, 427 [35 P.R. Offic. Trans. ___, ___] (1994) (citing *Hernández Agosto v. Romero Barceló*, 112 DPR 407, 413 [12 P.R. Offic. Trans. 508, 517] (1982)).

[15] *Fund. Arqueológica v. Depto. de la Vivienda*, 109 DPR 387, 391 [9 P.R. Offic. Trans. 509, 514-515] (1980). See also: *Asoc. Fotoperiodistas v. Rivera Schatz*, 180 DPR 920, 942 [80 P.R. Offic. Trans. ___, ___] (2011); *Col. Ópticos de P.R. v. Vani Visual Center*, 124 DPR 559 [24 P.R. Offic. Trans. 383] (1989).

[16] *E.L.A. v. P.R. Tel. Co.*, 114 DPR 394, 399 [14 P.R. Offic. Trans. 505, 512] (1983). See *Hernández Agosto v. Romero Barceló*, 112 DPR at 413 [12 P.R. Offic. Trans. at 517].

[17] *Col. Ópticos de P.R. v. Vani Visual Center*, 124 DPR at 563 [24 P.R. Offic. Trans. at 389].

[18] *Asoc. Fotoperiodistas v. Rivera Schatz*, 180 DPR at 943 [80 P.R. Offic. Trans. at ___]. See also *Romero Barceló v. E.L.A.*, 169 DPR 460, 470-471 [69 P.R. Offic. Trans. ___, ___] (2006); *Col. Peritos Elec. v. A.E.E.*, 150 DPR 327, 341 [50 P.R. Offic. Trans. ___, ___] (2000); *P.P.D. v. Gobernador I*, 139 DPR 643 [39 P.R. Offic. Trans. ___] (1995); *Hernández Torres v. Gobernador*; *Hernández Agosto v. Romero Barceló*.

[19] *Asoc. Fotoperiodistas v. Rivera Schatz*, 180 DPR at 942 [80 P.R. Offic. Trans. at ___]; *Col. Ópticos de P.R. v. Vani Visual Center*, 124 DPR at 563 [24 P.R. Offic. Trans. at 389].

[20] *Asoc. Fotoperiodistas v. Rivera Schatz*, 180 DPR at 943 [80 P.R. Offic. Trans. at ___]. See also: *C.E.S. U.P.R. v. Gobernador*, 137 DPR 83, 106 [37 P.R. Offic. Trans. ___, ___] (1994); *E.L.A. v. P.R. Tel. Co.*, 114 DPR at 396 [14 P.R. Offic. Trans. at 509].

1) *Associations*

Associations have been recognized as having standing to bring suit in two manners: on their own behalf or on behalf of their members. In other words, an association may seek court intervention for the injury suffered by the group or to defend the entity's rights.[21] In that respect, we have held that when the action is filed by "an association, it has standing to bring a judicial action for the injuries suffered by the association and to vindicate its rights. When an organization is suing in defense of its collective interests, it must allege clear and precise injuries to its activity."[22] In other words, it must show that the injury suffered by the group is clear, palpable, real, immediate, and distinct, not abstract or hypothetical.[23]

In turn, when an association sues on behalf of its members, it need not show that it has suffered injury in its individual capacity.[24] In these circumstances, it will have standing to sue if it meets three requirements: (1) its members must have standing to sue in their own right; (2) the interests it seeks to protect must be germane to the organization's purposes; and (3) neither the claim asserted nor the relief requested may require the participation of individual members in the lawsuit.[25]

Under *Commonwealth v. Aguayo*, 80 P.R.R. 534 (1958), when deciding a case under our consideration, we must display our constitutional power to review laws in keeping with the constitutional principles that require that such power be exercised only within the confines of a real and substantial controversy between adverse interests that may allow for judicial relief. Therefore, we must examine whether the plaintiffs have standing to bring suit under the parameters established for actions filed by associations, whether on their own behalf or on behalf of their members.

It bears pointing out that in *Asoc. Maestros P.R. v. Srio. Educación* we adopted the *Flast* exception for taxpayer claims challenging the constitutionality of a statute or a government action under the establishment clause. In *Flast*, the United States Supreme Court held that under the establishment clause, a taxpayer is injured when his or her tax money is extracted and used to support a religion.[26] Then, in *Asoc. Maestros P.R. v. Srio. Educación*, we stated that "given the close link between this section and that which bars

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[21] *Col. Peritos Elec. v. A.E.E.*, 150 DPR at 341 [50 P.R. Offic. Trans. at ___].

[22] *Col. Ópticos de P.R. v. Vani Visual Center*, 124 DPR at 565 [24 P.R. Offic. Trans. at 389].

[23] *Id.*; *Col. Peritos Elec. v. A.E.E.*; *Noriega v. Hernández Colón*.

[24] *Col. Ópticos de P.R. v. Vani Visual Center*. See also: *Muns. Aguada y Aguadilla v. JCA*, 190 DPR 122, 133 [90 P.R. Offic. Trans. ___, ___] (2014); *Col. Peritos Elec. v. A.E.E.*, 150 DPR at 342 [50 P.R. Offic. Trans. at ___]; *García Oyola v. J.C.A.*, 142 DPR 532 [42 P.R. Offic. Trans. ___] (1997); *Salas Soler v. Srio de Agricultura*, 102 DPR 716 [2 P.R. Offic. Trans. 925] (1974).

[25] *Col. Peritos Elec. v. A.E.E.*

[26] "The taxpayer's allegation in such cases would be that his [or her] tax money is being extracted and spent in violation of specific constitutional protections against such abuses of legislative power.'" *Arizona Christian School Tuition Organization v. Winn*, 563 US 125, 140 (2011). See *Flast v. Cohen*, 392 US 83, 106 (1968).

support of private schools by the State, we [should] adopt the [*Flast v. Cohen*] rule [under the establishment clause] for . . . claims" filed under Art. II, Sec. 5 of our Constitution.[27] The reasoning employed at that time was that this was "consonant with our *constitutional history* and, especially, with the concern of our Constitutional Convention to protect the separation of Church and State." (Emphasis added.)[28] In those circumstances, we recognized that the *members* of the Association had standing to bring a taxpayer action under the support clause.

In examining whether the Association complies with the other requirements that must be met to file a taxpayer claim on behalf of its members, we notice that the interests pursued by the Association as an organization are, among others, the defense of the labor rights of all its members, ensuring the provision of free public education, and the promotion of the intellectual and professional development of teachers within the public education system. The Association argues that Act No. 85 earmarks and allocates a portion of the public funds of the Department of Education to private schools, and that this practice would affect their work conditions and the operation of schools. In this sense, the interests sought to be protected in connection with the teachers' rights are related to the objectives that the Association seeks to protect.

Finally, the Association established that the claim and the relief sought do not require the individual participation of its members in the litigation, inasmuch as the controversy it involves is strictly of law and, therefore, we must only examine whether some provisions of Act No. 85, *on their face*, violate our Constitution's support clause. Consequently, the Association has the necessary standing to bring this action on behalf of the teachers of the Puerto Rico public education system.

Having decided this matter, we must determine whether Act No. 85 establishes mechanisms for the support of private schools in contravention of the Puerto Rico Constitution through the creation of the School Choice Program for some participating students and the establishment of Partnership Schools.

III

A. *Constitutional validity of a statute*

It has been firmly established that a law is presumed constitutional until held otherwise. A statute may be declared unconstitutional on its face or as applied.[29] Under the first doctrine, the analysis is limited to determining whether the defect that renders it unconstitutional arises from the text of the statute. [30] Under the second doctrine, we must

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[27] *Asoc. Maestros P.R. v. Srio. Educación*, 137 DPR 528, 539 [37 P.R. Offic. Trans. ___, ___] (1994).

[28] *Id.*

[29] *Asoc. Ctrl. Acc. C. Maracaibo v. Cardona*, 144 DPR 1, 22 [44 P.R. Offic. Trans. 1, ___] (1997).

[30] *Id.*

analyze the context in which the statute has been applied to determine whether its application has the effect of violating some constitutional provision.[31]

To such ends, we must harmonize, among other things, the legislative history and the intent of the Legislature in enacting the statute with the provisions in controversy.[32] With this in mind, we must find a way to reconcile [the statute], insofar as it is possible, [with] the purpose intended in order to arrive at a logical and reasonable result.[33] Against this doctrinal backdrop, we will examine the provisions of Act No. 85 that have been challenged by respondents to determine whether there is any facial indication of unconstitutionality under the support claim.

B. *The support clause*

From the outset, it must be pointed out that the rule laid down by this Court in *Asoc. Maestros P.R. v. Srio. Educación* and the interpretation of the support clause made in that case are clearly erroneous,[34] regardless of the model of education-related laws under review, specifically because of the interpretation made of the support clause and the legal provisions set forth in that respect.

To determine whether Act No. 85 violates that constitutional provision, we must adequately delimit the meaning of the [Spanish] term *sostenimiento* [support]. First of all, the *Diccionario de la lengua española* defines this concept as the "[a]ct and effect of supporting [something, someone or oneself]"[35] or as *[m]antenimiento* [maintenance] or *sustento* [sustenance]."[36] The word *sostener* [to support] is defined as "to lend support, to provide relief or aid" or "to provide as necessary for the maintenance of somebody."[37] According to the cited dictionaries, the term *sostenimiento* [support] is equivalent to providing the necessary means of subsistence. To such ends, it is implied that insofar as

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[31] *Id.* at 23 [44 P.R. Offic. Trans. at ___].

[32] *Pérez v. Mun. de Lares*, 155 DPR 697, 706 [55 P.R. Offic. Trans. ___, ___] (2001). See also *Irizarry v. J & J Cons. Prods. Co., Inc.*, 150 DPR 155 [50 P.R. Offic. Trans. ___] (2000); *Dorante v. Wrangler of P.R.*, 145 DPR 408 [45 P.R. Offic. Trans. ___] (1998); *Vázquez v. A.R.P.E.*, 128 DPR 513 [028 P.R. Offic. Trans. ___] (1991).

[33] *Id.*

[34] There are three circumstances that, as an exception, justify overruling a precedent: "'(1) if the previous decision was clearly mistaken; (2) if its effects on the rest of the legal system are adverse; and (3) if the number of persons who have relied on it is limited." *Pueblo v. Sánchez Valle et al.*, 192 DPR 594, 645-646 [92 P.R. Offic. Trans. ___, ___] (2015) (citing *Pueblo v. Camacho Delgado*, 175 DPR 1, 20 [75 P.R. Offic. Trans. 1, ___] n.4 (2008)). See also: *Fraguada Bonilla v. Hosp. Aux. Mutuo*, 186 DPR 365, 391 [86 P.R. Offic. Trans. ___, ___] (2012); *E.L.A. v. Crespo Torres*, 180 DPR 776, 796-797 [80 P.R. Offic. Trans. ___, ___] (2011); *Pueblo v. Díaz de León*, 176 DPR 913, 920 [76 P.R. Offic. Trans. ___, ___] (2009); *San Miguel, etc. & Co. v. Guevara*, 64 PRR 917, 926 (1945).

[35] *Diccionario de la lengua española* 1178, Madrid (16th ed. 1939). See also Julio Casares, *Diccionario ideológico de la lengua española* 783, Barcelona, Ed. Gustavo Gili, S.A. (2d ed. 1959). The term *sostenimiento* [support] has kept the same meaning to this date. See 2 *Diccionario de la lengua española* 2043, México, Espasa Libros (23d ed. 2014).

[36] 2 *Diccionario de la lengua española, supra*, at 2042 (2014).

[37] *Id.*

someone is afforded the necessary means of subsistence—that is, of maintenance, permanence or preservation—that person is being supported.

In the realm of the law, the term originates in federal caselaw, which *considers support as a form of establishment.*[38] In other words, federal legal precedents have construed the establishment clause as a means of supporting religious entities. This premise is grounded on the motives that the Framers of the federal Constitution had to fight against actions imposed by some states that forced their citizens to provide financial support for some religious groups.[39]

Article II, Sec. 5 of the Constitution of Puerto Rico provides:

> There shall be a system of free and wholly non-sectarian public education. Instruction in the elementary and secondary schools shall be free and shall be compulsory in the elementary schools to the extent permitted by the facilities of the state. Compulsory attendance at elementary public schools to the extent permitted by the facilities of the Commonwealth, as herein provided, shall not be construed as applicable to those who receive elementary education in schools established under nongovernmental auspices. No public property or public funds shall be used for *the support of schools or educational institutions other than those of the state.* Nothing contained in this provision shall prevent the state from furnishing to any child non-educational services established by law for the protection or welfare of children. [Emphasis added.][40]

The origins of this constitutional provision are rooted in sec. 2 of the Organic Act of 1917, known as the Jones Act, which provided that "no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof,"[41] and that "no public money or property shall ever be appropriated, applied, donated, used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or association, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such."[42]

Thus, when drafting our Bill of Rights during the forty-first day of session, the delegates to the Constitutional Convention addressed a proposed amendment submitted

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[38] See, for instance, *Everson v. Board of Education*, 330 US 1 (1947). See also: 3 Mariano Morales Lebrón, *Diccionario jurídico según la jurisprudencia del Tribunal Supremo de Puerto Rico: palabras, frases y doctrinas: A-Z 1989-2000*, at 454-455, San Juan, Eds. SITUM (2008); Ignacio Rivera García, *Diccionario de términos jurídicos* 267, Lexis Publishing (rev.3d ed. 2000).

[39] *Everson v. Board of Education*. See also James Madison, *Memorial and Remonstrance against Religious Assessment*, Bill of Rights Institute, http://billofrightsinstitute.org/wp-content/uploads/2011/12/MemorialofRemonstrance.pdf (last visited August 9, 2018).

[40] P.R. Const. art. II, § 5, LPRA, vol. 1, at 277 (2016 ed.)

[41] Jones Act, 39 Stat. 951, § 2, Historical Documents, LPRA, vol. 1, at 56-57 (2016 ed.). See also 2 Raúl Serrano Geyls, *Derecho constitucional de Estados Unidos y Puerto Rico* 1611, 1613, San Juan, Ed. C. Abo. PR (1988).

[42] Jones Act, *supra*. It bears pointing out that sec. 34 of the cited statute provides that the "general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments, interest on the public debt, and for public schools."

by Delegate José Trías Monge to replace the words "*education in*" with the phrase "*the support of.*" (Emphasis added.)[43] As a result, the sentence would read: "No public property or public funds shall be used for *the support of* schools or educational institutions other than those of the state." (Emphasis added.)[44]

Delegate Virgilio Brunet proposed the inclusion of the phrase "*or benefit.*" (Emphasis added.)[45] However, Delegate Celestino Iriarte was concerned that the term "benefit" would cause confusion. Delegate José Trías Monge added that his intention in proposing that amendment was to clarify the "distinction between the obligation of the State to address the support or benefit of schools, only of schools under the exclusive control of the State . . . ."[46]

Trías Monge subsequently stated that he accepted the amendment because "[t]he intention then is rather to insert education and children between schools or . . . institutions, thereby duly protecting the right of children to receive the aid offered by the State."[47] He also deemed that it was an amendment in terms of style that "*[did] not broaden the concept indicated* . . . ." (Emphasis added.)[48] For him, the important thing was to clarify "the obligation of the State to address the support or benefit of schools, only of schools under the exclusive control of the State."[49] In other words, public funds must not be used for the support or benefit of schools that are not under the exclusive control of the State.

However, Delegate Iriarte opposed the amendment because he believed that in the future, there could be "opposition to having institutions other than those of the State benefit indirectly"[50]; that is, that the text could be misconstrued as a prohibition against any benefit derived by "institutions other than those of the government of Puerto Rico or . . . of the United States, [or by] private institutions administered or directed by religious sects . . . ."[51] He was specifically concerned that it could be "construed that those institutions were indirectly receiving benefits merely because students enrolled in those religious institutions were awarded scholarships"; this fact could "lead to discrimination," and that was not the meaning intended.[52]

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[43] 2 *Diario de Sesiones de la Convención Constituyente* [Journal of Proceedings of the Constitutional Convention] 1476 (1952).

[44] *Id.*

[45] *Id.* at 1477.

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.* at 1478.

[51] *Id.*

[52] *Id.*

The reason underlying this debate was that some years earlier, the federal Supreme Court had ruled that a statute that allowed the reimbursement by the State of transportation expenses incurred by parents who sent their children to religious and non-religious schools was not constitutionally flawed. Reference was specifically made in the debate to *Everson v. Board of Education*, 330 US 1 (1947). In that case, the plaintiff filed a taxpayer action against the State of New Jersey to challenge the constitutional validity of a statute that authorized local school boards to reimburse transportation costs to and from both public and private schools, alleging that this indirect aid violated both the Constitution of the State of New Jersey and the First Amendment.[53] Ninety-six percent of the schools that benefitted from that statute were private Catholic schools. In the opinion delivered by Justice Black, the federal Supreme Court held that the State *was supporting no specific school* but was aiding the parents to defray these expenses regardless of their religion. Thus, the Court stated:

> The State contributes no money to the schools. *It does not support them.* Its legislation, as applied, does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools. [Emphasis added.] [54]

Thus, Delegate Iriarte voted against the inclusion of the cited term in order to prevent discrimination rather than confusion. Finally, after an exchange of views—which we will discuss later on—the phrase "or benefit" was excluded from the provision that makes reference to the support clause in order to avoid limiting the aspects that were debated.[55]

The debate then centered on whether the Government of Puerto Rico could pay the enrollment fees of Puerto Rican children in private schools by way of some statute or funds. Delegate Jaime Benítez subsequently answered that his position was that "[t]he government of Puerto Rico cannot establish a scholarship system *that replaces the public education system*, which the State has the obligation to establish, and which must be completely nonsectarian." (Emphasis added.)[56] It bears noting that as one of the main objectives of the clause, it was provided that the State could not replace the education system with one that was not public or nonsectarian.

The idea behind Trías Monge's proposal was "to make the separation of Church and State clearer" without affecting the non-educational services rendered by the State to children. His purpose was to preserve the constitutional principles of separation of Church and State and freedom of religion established by the federal Constitution without barring

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[53] *Everson v. Board of Education*, 330 US at 18.

[54] *Id.*

[55] *Diario de Sesiones de la Convención Constituyente*, *supra*, at 1482.

[56] *Id.* at 1483.

the State from rendering to any child the non-educational services established by law for the protection or welfare of children.[57]

Before the amendment under debate was approved, Trías Monge concluded his statements as follows:

> Those are the two great principles established in this action and, naturally, on many occasions it will not be possible to foresee the exact impact on certain areas, on certain problems that could arise; but, of course, we have the decisions of the United States Supreme Court, and its decisions on such an important area of human rights will rule and govern in Puerto Rico in this respect.[58]

At the end of the debate, the amendment suggested by Trías Monge was approved and the support clause, as we know it today, was established.

An examination of the statements made in the debate leads us to conclude that the reason for not including the phrase "or benefit" was that had it been included, some situation in the future could bar institutions other than those of the State from receiving indirect benefits. According to the delegates, and in light of federal judicial precedents, this could "lead to discrimination" against the religious sector. Moreover, it could be interpreted as a prohibition that barred students from receiving state financial aid, which they could very well use for their education and which was not banned by our Constitution.

It is important to stress the historical context in which this debate took place. After the change of sovereignty, Puerto Rico passed from Spanish control to the hands of the United States government. Since the Catholic Church was in charge of the education system under Spanish rule, religious education constituted a large percentage of the school curriculum. On the other hand, under United States rule, the foundations of the public education system were laid, and public schools became totally independent from ecclesiastical control under the principles of separation of Church and State.[59]

Certainly *Everson v. Board of Education* was a landmark decision that represented a detour from the manner in which the establishment clause and its scope had been construed so far in terms of what is constitutionally permissible. Thus, the federal Supreme Court found that although this clause requires the State to remain neutral in matters of religion, the State was only implementing a general financial aid program that did not intent to support any specific school, but to provide a service to the community and particularly to the students' parents.

Clearly the controversy in the instant case is solely and exclusively centered on the support clause. However, for illustrative purposes, and in deference to the analysis involved in the cited cases, we will examine some caselaw in which the United States Supreme Court

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[57] *Id.* at 1483-1484.

[58] *Id.* at 1484.

[59] Ana Helvia Quintero, *Historia de la educación en Puerto Rico*, Fundación Puertorriqueña de las Humanidades, at https://enciclopediapr.org/encyclopedia/historia-de-la-educacion-en-puerto-rico/#1464907140943-f49dd52a-a507 (last visited August 9, 2018).

analyzed the constitutional validity of several state-financed educational programs that provided financial benefits to parents whose children attended private religious schools.

C. *Support of private schools in the federal sphere*

As mentioned before, the federal Supreme Court held in *Everson* that the State was not supporting any particular school, but helping parents defray school transportation costs. Thus, it held that the State was in no manner supporting these schools; what the law allowed was the establishment of a general program to help parents get their children safely and expeditiously to and from accredited schools.[60]

In a later case, *Lemon v. Kurtzman*, 403 US 602 (1971), the United States Supreme Court addressed a controversy in which several citizens and taxpayers challenged the constitutionality of Rhode Island and Pennsylvania statutes that provided a salary supplement to private school teachers and allowed the reimbursement of expenses incurred in educational material purchased from private schools.[61] The Court held that the establishment clause is violated when the State promotes or intends to give preferential accommodation to a specific religion.[62] The Supreme Court's analysis was that in the absence of precisely stated constitutional prohibitions, protective lines had to be drawn against "three . . . evils": sponsorship, financial *support*, and active state involvement in religious activity.[63] Therefore, it was indispensable to examine, among other things, the nature of the institutions as well as the nature of the benefit these would receive.

In earlier similar cases related to the establishment clause and the use of public funds by the State, the United States Supreme Court held valid several statutes that afforded some benefits to religious entities.[64] In a later case, *Zelman v. Simmons-Harris*,

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[60] *Everson v. Board of Education*, 330 US at 18.

[61] In the case of Pennsylvania, the funds for the program were derived from the imposition of taxes on products or services.

[62] The federal Supreme Court adopted a standard of adjudication under which a government action violates the establishment clause if (1) its purpose is not secular, but religious; (2) its effect is one that advances or inhibits religion; (3) it involves an excessive government entanglement with religion.

[63] "In the absence of precisely stated constitutional prohibitions, we must draw lines with reference to the three main evils against which the Establishment Clause was intended to afford protection: 'sponsorship, financial support, and active involvement of the sovereign in religious activity.'" *Lemon v. Kurtzman*, 403 US 602, 612 (1971).

[64] By that time, the federal Supreme Court had already decided several cases, among which were *Everson v. Board of Education* and *McCollum v. Board of Education*, 333 US 203 (1948). See also: *Board of Education v. Allen*, 392 US 236 (1968); *Walz v. Tax Commission*, 397 US 664 (1970); *Mueller v. Allen*, 463 US 388 (1983); and *Good News Club v. Milford Central School*, 533 US 98 (2001).

In addition to *Everson v. Board of Education*, in *Board of Education v. Allen*, the Court addressed a controversy in which a citizen challenged the validity of a New York statute that allowed public schools to lend secular books to *private school* students. The United States Supreme Court held that the statute expressly provided that its objective was the "furtherance of the educational opportunities available to the young," and that the financial benefit was to parents and children, not to schools; therefore, the Court held the statute constitutional. *Board of Education v. Allen*, 463 US at 243.

536 US 639 (2002), the State of Ohio enacted a pilot program that afforded low-income families an opportunity to have their children receive free education at a private or public school of their choice by way of state-paid vouchers. The program provided tutorial aid for students who chose to remain enrolled in public schools. Any public, private, religious or secular school could participate in the program. Several taxpayers challenged the enacted program on the ground that it violated the establishment clause.

The United States Supreme Court held that the voucher program was constitutionally valid insofar as it was *neutral* toward all religions, provided assistance *directly to parents*, who, in turn, freely selected a school of their choice for their children, pursued a secular purpose and did not advance any religion, reached a broad class of beneficiaries, and permitted participation of religious and non-religious schools.

Most of the actions brought in Puerto Rico under the establishment clause have been related to contractual labor disputes.[65] In the context of education, our caselaw addresses the effect of several statutes on freedom of religion.[66] However, our Constitution—unlike the federal Constitution—is broader and more encompassing. We have an autochthonous provision: the support clause, which we have construed only once in *Asoc. Maestros P.R. v. Srio. Educación*, where we addressed a controversy similar to the one under our consideration here. In that case, Act No. 71 of 1993 was challenged as allegedly violative of the establishment and support clauses, and we held that the support clause bars "the State from showing preference, or granting particular privileges, to private schools over those schools in the public education system".[67] We further stated: "What is prohibited is that the private school be *singled out* for some special benefit. The

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In a later case, *Mueller v. Allen*, the Court had to determine whether it was constitutionally valid for taxpayers to deduct certain expenses incurred in the provision of private education by religious schools. The federal Supreme Court held that such practice was valid because it involved no direct payment to the school, did not advance religion, and did not require an excessive entanglement with the religious content being taught. On the other hand, no statute or government action may discriminate against the religious beliefs of some institutions; therefore, the treatment in both cases must be equal or neutral.

In *Good News Club v. Milford Central School*, a public school (Milford Central School) denied the request of a private religious organization to use its facilities after school on the ground that a New York statute listed the purposes for which citizens were allowed to use the school facilities. The organization filed an action challenging the constitutionality of the statute as violative of free speech and free exercise rights. The United States Supreme Court held that the school's denial of the organization's request to use its facilities violated free speech rights and constituted content-based discrimination. Moreover, the Court stated that allowing the organization to use the school premises would not have violated the establishment clause because the club's activities were open to the general public and, therefore, no specific religion was being sponsored.

[65] See, among other cases, *Acevedo et al. v. Igl. Católica et al.*, 2018 TSPR 106, 200 DPR 458 [100 P.R. Offic. Trans. ___] (2018); *Mercado, Quilichini v. U.C.P.R.*, 143 DPR 610 [43 P.R. Offic. Trans. ___] (1997); *Díaz v. Colegio Nuestra Sra. del Pilar*, 123 DPR 765 [23 P.R. Offic. Trans. 666] (1989); *Academia San Jorge v. J.R.T.*, 110 DPR 193 [10 P.R. Offic. Trans. 247] (1980).

[66] See, for instance, *Asoc. Academias y Col. Cristianos v. E.L.A.*, 135 DPR 150 [35 P.R. Offic. Trans. ___] (1994); *Agostini Pascual v. Iglesia Católica*, 109 DPR 172 [9 P.R. Offic. Trans. 223] (1979).

[67] *Asoc. Maestros P.R. v. Srio. Educación*, 137 DPR at 548 [37 P.R. Offic. Trans. at ___].

State cannot, through its actions, *unduly favor* the private school, *giving it impermissible support*. (Emphasis added.)[68]

With regard to the scholarships, we concluded that Act No. 71 of 1993 allowed the use of "'[p]ublic funds . . . to directly pay parochial and nonsectarian private schools for the educational services furnished to public school students who now attend the private schools of their choice.'"[69] Consequently, we held that insofar as those funds are used for education *in support and for the benefit of private schools, not of state schools*, such practice is expressly barred by Art. II, Sec. 5 of the Puerto Rico Constitution.

As mentioned above, that was the only occasion on which this Court had the opportunity to examine the support clause. At that time, we acknowledged the undeniable bond that exists between the establishment clause and the support clause, which we must consider when examining the provisions of a statute that is allegedly violative of the latter clause. It is also true that the main objective of the establishment clause was to establish the separation between Church and State as mandated by the First Amendment to the United States Constitution; thus, both clauses had specific purposes. Therefore, the establishment clause mainly focuses on religion, and the financial aspect is relevant in some instances. In turn, the focal point of the support clause is strictly economic and involves the use of public funds for the support of schools other than those of the State, regardless of whether it pursues a secular purpose.

IV

A. *The Puerto Rico Education Reform Act*

The Constitution of Puerto Rico enshrines the right of all persons to an education directed to the full development of their personality and to the strengthening of respect for human rights and fundamental freedoms.[70] As we have held, the State has a compelling interest in pursuing a level of excellence in public and private education.[71]

Act No. 85 reformed the country's education system so that students may receive quality education that allows them to fully develop their skills and become successful citizens who contribute to the welfare of Puerto Rico. This statute implemented an education system composed of existing public schools and newly created schools operated by entities authorized by the Secretary of Education that will participate in the administration of schools in order to strengthen and enrich the curriculum and the students' learning experiences.[72] In keeping with the above, Act No. 85 set forth as a

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[68] *Id.*

[69] *Id.* at 549 [37 P.R. Offic. Trans. at ___].

[70] P.R. Const. art. II, § 5, LPRA, vol. 1, at 277.

[71] *Asoc. Academias y Col. Cristianos v. E.L.A.*

[72] Statement of Motives of the Puerto Rico Education Reform Act, Act No. 85 of 2018 (Act No. 85).

principle the establishment of educational communities that promote learning innovation by addressing the need of graduates to join the workforce and be productive individuals.[73]

B. *The School Choice Program*

Section 14.01 of Act No. 85 creates the School Choice Program to promote equal access to quality education for the most vulnerable sectors of our society and to provide parents, guardians or custodians an alternative to select a public or private school of their choice. It must be stressed that the program will be established gradually and on an experimental basis after considering, among other things, the use of resources.[74] To such ends, the provision establishes that the Secretary of the Department of Education will create an office in charge of implementing and managing this program. To participate, students must meet several eligibility and academic achievement requirements.[75] It is provided that *up to three percent (3%)* of the total number of students enrolled in the system each school year will be eligible for said program.[76] The program's budget will be not be more than three percent of the budget allocated by the Department of Education according to the per-student allocation formula for each fiscal year; that is, seventy percent intended for direct student services.[77]

Qualifying students will be given a voucher with which they may choose one of the following modalities:

> (a) Public school choice for public school students;
>
> (b) Public school choice for private school students;
>
> (c) *Private school choice for public school students*;
>
> (d) Advance placement for gifted and talented students who take college-level courses and earn credits toward both a university degree and a high school program; or
>
> (e) *Private school choice to provide reasonable accommodation to a special education student to whom the Department has failed to provide the means necessary to achieve his academic goals as provided in the applicable state and federal laws.* [Emphasis added.][78]

C. *Constitutional validity of the School Choice Program and access of public school students to private schools*

The delegates to the Constitutional Convention debated about the support clause. As mentioned earlier, the subject of scholarships was raised in the discussion; this led Delegate José M. Dávila Monsanto to inquire whether the grant of scholarships constituted a benefit for the student or for the school. Delegate Iriarte immediately answered that

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[73] *Id.*

[74] Act No. 85, sec. 14.05.

[75] Act No. 85, sec. 14.03.

[76] Act No. 85, sec. 14.02.

[77] Act No. 85, sec. 14.05.

[78] Act No. 85, sec. 14.02.

these "benefit[ted] the scholarship recipient."[79] However, he argued that the inclusion of the word "benefit" could lead some to construe that the institution would be indirectly benefitted. In this respect, Delegate Brunet stated that the State, among other things, could award scholarships because these constitute "*a financial aid for the student, which the student naturally uses for his [or her] education . . . .*" (Emphasis added.)[80]

Along that line, he added that "[t]he money given by the People of Puerto Rico to Puerto Rican youths so that they may study *is a benefit for the student*, not for a particular institution." (Emphasis added.)[81] He further remarked: "What the People of Puerto Rico do is grant, lend financial assistance to that student. And nothing in the Constitution prohibits that."[82] He clarified that should the financial aid consist in books, for instance, they could be given "as long as . . . they are given to the student . . . ."[83] He made a distinction between that situation and a situation in which the State would give the books directly to the school:

> Now, it would be different if the State gave the books to the school for the school to use them because that would benefit the school. Now, if the State, with regard to certain children, poor children, if the State provides that children who meet such and such conditions of poverty, of [financial] capacity [should be given the books because] they deserve to be given some textbooks, *what does it matter if these children attend a public school or a private school? They must receive the books.* Now[,] what the State cannot do is give money to the private school for it to purchase whatever textbooks the private school wants [. . . instead of] giving them to the children. That is a different matter altogether. [Emphasis added and brackets in the original.][84]

As we established at the beginning, the amendment submitted for the purpose of expressly including the phrase "or benefit" was defeated because it involved a matter of style and the term *benefit* was included in the word *support*. Later on, a debate arose over the replacement of the phrase "education in" by the phrase "the support of." Delegate Ramiro Colón wanted to know if—depending on how the amendment would be finally drafted in the Constitution—the Government of Puerto Rico, in addition to the scholarships, could pay *the enrollment fees* of private school students by way of some statute or some funds. It is particularly important to highlight this debate between Delegates Benítez and Colón about whether the State can or cannot pay enrollment fees in private schools:

> Mr. RAMIRO COLÓN: You have not answered me. The question was the following: According to this constitution, once it is amended as

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[79] *Diario de Sesiones de la Convención Constituyente*, *supra*, at 1478.

[80] *Id.* at 1479.

[81] *Id.* at 1480.

[82] *Id.*

[83] *Id.*

[84] *Id.*

> proposed, can the government of Puerto Rico, by way of some statute or *some funds*, pay the enrollment fees of Puerto Rican children—not award them a scholarship, but *pay their enrollment fees—in private schools in Puerto Rico*?
>
> Mr. BENÍTEZ: That *will depend*, that will depend on the fact situation in that specific case. That is, under these provisions, the government of Puerto Rico could not use the scholarship system, or the scholarship system mechanism, to support private schools; neither could the Government provide a scholarship system to offer religious education to its students. Neither could it use the scholarship system to carry out an education program that would violate the fundamental meaning of the provision that governs the entire paragraph: "There shall be a system of free and wholly nonsectarian public education." [Emphasis added.][85]

Delegate Colón then remarked:

> It has been said here that when a student is awarded a scholarship, which is equivalent to paying his [or her] enrollment costs, *it is the student who benefits, not the school he [or she] will attend*; and it seems to me, if that is the meaning, that *nothing in this constitution can bar the government of Puerto Rico from paying the enrollment fees of children in Puerto Rico when they attend private schools*. [Emphasis added.][86]

Thus Delegate Benítez recognized the three circumstances in which the payment of enrollment fees in private school is prohibited: when paying such fees is equivalent to supporting these schools; when a religion is established through this payment; and when the payment of enrollment fees reaches such an extent that it replaces the public education system in Puerto Rico. It was stated that what the government of Puerto Rico could not do was to use the scholarship system to *support* private schools or *to replace* the public education system.[87]

The Association challenges the constitutional validity of the provisions that authorize the use of public funds to pay for private education. It specifically contends that such practice violates Art. II, Sec. 2 of the Puerto Rico Constitution because the ultimate goal of the School Choice Program is to use public money to defray the cost of private education. The Association also alleged that the State intends to make viable a scholarship system that would replace the public education system with a private system, and that such action contravenes the intent of the framers of the Constitution.

In turn, the State alleges that the vouchers constitute a financial aid that will be delivered directly to families, not to schools, so that parents and students may freely select the school of their choice. The State believes that the analysis employed to determine the constitutional validity of a state action must be the same for both the establishment clause and the support clause.

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[85] *Id.* at 1482-1483.

[86] *Id.* at 1483.

[87] *Id.*

As stated earlier, an examination of the history of the debates that took place during the Constitutional Convention shows that the intent of the Framers in approving Art. II, Sec. 5 of the Puerto Rico Constitution was to prevent the State from promoting a particular religion through the support of schools and from replacing the public education system with a private system; for that reason, it was established that the education system had to be public, free, and nonsectarian. The Framers made it clear that many erroneous interpretations could arise in the future if the word "benefit" was included in the support clause. The truth is that it would prevent the State from providing financial aid to parents of students who would use that aid for their education—an act that was not barred by any constitutional prohibition. It was established in the debate that what the State could not do was use the scholarship system to support private schools or replace the public education system with a private system. That is not the purpose of Act No. 85; on the contrary, what it intends is to provide financial aid to parents so that their children may receive education in an institution of their choice.

On the other hand, the very text of the statute shows that the number of vouchers granted will depend on the availability of funds. This amount may not exceed 80% of the total per-student budget allocation. Moreover, only three percent of the children enrolled in the Puerto Rico public education system will be eligible for participation in the program; this amount is not significant when compared to the number of students enrolled in the public education system.

As for the aid sought to be provided to special education students so that they may have access to private schools, we fail to see how our delegates—who were utterly concerned about the subject of education—could have intended to restrict the access of this class to private schools so that the State may provide assistance when the Department cannot do so and offer the reasonable accommodation they need.

In this sense, in *Zobrest v. Catalina Foothills School Dist.*, 509 US 1 (1993), the federal Supreme Court held that if the State provides services neutrally as part of a general program that benefits qualifying special education students without regard to the sectarian-nonsectarian, or public-nonpublic nature of the schools the children attend, this does not mean that the State intends to finance those institutions. The Court reasoned that the extension of aid to these children does not amount to an impermissible subsidy because special education children are ultimately the primary beneficiaries, and the school receives only an incidental benefit.

Therefore, we cannot conclude that this constitutes state-supported private education, inasmuch as the budget allocation to be used is not substantial when compared to the budget of the Department of Education. Neither can we conclude that the public education system is to be replaced by a private system, since the amount of resources that may be allocated to such purposes is three percent or less of the per-student budget allocation for each fiscal year to implement the pilot program and two percent of the funds assigned by the Department to cover administrative expenses.

There is no doubt that any support entails the existence of a benefit; that is, the existence of support must always entail a benefit for a private school. Now, the scope that the Framers intended to give to the term "benefit" when they deemed that it was included in the word "support" sought to establish that the benefit must be of such magnitude that it *supports* private schools or, what is more, that it *replaces* the public education system. Thus, it is not a merely a benefit: it must reach the point of supporting the private entity. For purposes of the support clause, as defined by our Framers, we fail to see how the School Choice Program may constitute a benefit that entails the support of private schools in contravention of our Constitution.

V

A. *Partnership Schools*

Act No. 85 made fundamental changes to the education policy of Puerto Rico. By turning students into the standard bearers of the Department of Education for the purpose of giving priority to their rights, the statute refocused all administrative, academic, and human resource-related matters.[88] Moreover, in order to offer high-performance schools and increase the availability of human resources of the highest quality, it considered the need to implement an accountability system, to keep ongoing communication with the general citizenry, and to follow up on the implementation of different changes at all levels of the system.[89] Thus, the act, as its Statement of Motives points out, promoted actions to guarantee a quality education and learning process, responsibility, and creativity to address the educational needs of our children and youths. In sum, in response to the current educational crisis, Act No. 85 was premised on the acknowledgment of the fact that the Department of Education has the duty and the obligation to foster excellence in the education provided in every school of the Public Education System of Puerto Rico.

Among the actions promoted, Act No. 85 established as one of its pillars the establishment of learning centers composed, among other things, of "traditional and model schools" and "partnership schools."[90] The Legislature considered that "[t]he creation of [Partnership S]chools shall afford parents and communities an opportunity to integrate into and take control of their children's education, learning about their unique needs and those of the community."[91] Likewise, it stated that Partnership Schools will result in broader educational offerings and opportunities for students.[92]

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[88] Statement of Motives of Act No. 85.

[89] *Id.*

[90] *Id.* As provided in sec. 13.10 of Act No. 85, "the number of Partnership Schools shall not exceed ten percent (10%) using as a basis the total number of public schools that are operating as of August 15, 2018. The Secretary shall further the implementation of this project for fiscal year 2018-2019."

[91] Statement of Motives of Act No. 85.

[92] *Id.*

As stated in the act, the intent was that "Partnership Schools as well as the Certified Educational Entities in charge of their administration [would] be subject to the same evaluation and accountability standards of the Department to which all other public schools of Puerto Rico are subject."[93] In fact, the spirit of the statute was to have "the Department . . . supervise these schools through the Secretary to ensure strict compliance with this Act, state and federal laws, and the Charter."[94] Thus, the ultimate goal of the reform implemented by the statute is, in sum, to provide a new approach to the public education system and "do away with the existing bureaucracy in the Department of Education and make students our priority by providing them with the tools needed to succeed in the future and to become agents of positive change for Puerto Rico."[95]

Section 13.01 of Act No. 85 specifically defines the nature of a Partnership School as "a newly created *public* elementary *school* and/or high school that is operated and administrated by a Certified Educational Entity authorized by the Secretary . . . ." (Emphasis added.) It further provides that a Partnership School is "an existing *public* elementary *school* and/or high school whose operation and administration is transferred to a Certified Educational Entity authorized by the Secretary, pursuant to the granting of a Charter." (Emphasis added.)[96] In fact, Act No. 85 defines Partnership School as "*a nonprofit nonsectarian public school that shall operate under the supervision of the Secretary.*" (Emphasis added.)[97]

In this sense, as stated above, the statute expressly provides that these schools must meet and will be subject, among other things, to "the evaluation and accountability requirements which shall be uniform for all of the schools of the Public Education System, including the Partnership Schools."[98] Likewise, sec. 13.03 of the statute provides that these schools must be considered, for purposes of all state and federal statutes and regulations, as *components of the Public Education System.*

B. Criteria for determining whether the charter school model is classified as a public school

As we examine the nature of Partnership Schools, let us take a look at the treatment given in other states to similar school models when determining whether they are public.

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[93] *Id.* See Act No. 85, sec. 13.02.

[94] Statement of Motives of Act No. 85.

[95] *Id.*

[96] Act No. 85, sec. 1301. Section 13.08(a) provides: "Teaching and non-teaching staff working in a school administered by the Department that becomes a Partnership School may participate in interviews and evaluations in order to receive a job offer from the Certified Educational Entity that shall operate and administer the school. The employees of the Department who receive and willingly accept a job offer from the Certified Educational Entity shall become employees thereof."

[97] Act No. 85, sec. 13.02(a).

[98] Act No. 85, sec. 13.02(g).

In *Council of Organizations and Others for Educ. About Parochiaid, Inc. v. Governor*, 455 Mich. 557 (1997), the Michigan Supreme Court had to determine whether the statute that established the charter school model in that state was constitutional.[99] The Court held that their Constitution did not require that the Legislature have exclusive control of public schools, but only that it maintain a system of public education. The Court further stated that charter schools must be considered public schools because *they were under the control of the state and its agents.*[100] To arrive at this conclusion, the Court determined that the authorizing body could revoke a charter at any time if it believed that there were grounds for doing so.[101] It also reasoned that the state exercised control over charter schools through the process it conducted before granting authorization.[102] Moreover, it stated that it was the state who controlled the money.[103]

The constitutional validity of a provision related to charter schools was examined in *Wilson v. State Bd. of Educ.*, 75 Cal. App. 4th 1125 (1999). There, the appellants specifically contended that the state had abdicated its control over its educational functions, such as curriculum, textbooks, teaching methods, and operations of charter schools.

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[99] Insofar as it is pertinent here, Art. 8, Sec. 2 of the Constitution of the State of Michigan provided:

> "The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.
>
> "No public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state directly or indirectly to aid or maintain any private, denominational or other nonpublic, pre-elementary, elementary, or secondary school. No payment, credit, tax benefit, exemption or deductions, tuition voucher, subsidy, grant or loan of public monies or property shall be provided, directly or indirectly, to support the attendance of any student or the employment of any person at any such nonpublic school or at any location or institution where instruction is offered in whole or in part to such nonpublic school students. The legislature may provide for the transportation of students to and from any school."

[100] *Council of Orgs. And Others for Educ. About Parochiaid, Inc. v. Governor*, 455 Mich. 557, 573 (1997). ("Michigan's public school academies meet this requirement because they are under the ultimate and immediate control of the state and its agents.")

[101] *Id.* ("First, a charter may be revoked any time the authorizing body has a reasonable belief that grounds for revocation exist, such as either the academy's failure to abide by the terms of its charter or its failure to comply with all applicable law.") See also Robert J. Martin, *Charting the Court Challenges to Charter Schools*, 109 Penn St. L. Rev. 43, 68 (2004) ("[T]he Michigan Supreme Court determined that the charter school enabling act, as amended, provided sufficient public accountability by means of its extensive implementation process of charter approval and monitoring.")

[102] *Council of Orgs. And Others for Educ. About Parochiaid, Inc. v. Governor*, 455 Mich. at 573. ("Second, because authorizing bodies are public institutions, the state exercises control over public school academies through the application-approval process. During this process, the authorizing body can reject any application with which it is not completely satisfied in any detail, and through the authorizing body's right to revoke the charter of any public school academy that does not comply with its charter.")

[103] *Id.* ("Third, the state controls the money. The act provides for the funding of public school academies in the manner of other public schools, § 507, and public school academies may not charge tuition.")

In disposing of the issue, the California Court of Appeals established a difference between the delegation of certain educational functions and the transfer of the public education system.[104] The Appeals Court pointed out that the public school system which the Constitution required the Legislature to provide was one that would provide kindergarten, elementary, secondary, and technical schools, as well as state colleges,[105] but the operation of the schools and the educational approach were details left to the Legislature's discretion.[106] It further stated that the establishment of charter schools constituted a valid exercise of the Legislature to advance the purposes of education, that charter schools were strictly creatures of statute, and that the Legislature had planned how they would come into being, who would attend, who would teach, how they would be governed and structured, how they would be funded, how accountability would be implemented, and how they would be evaluated.[107]

Accordingly, there is literature in that respect that points out the following:

> To avoid potential legal problems relating to issues of control, drafters of charter legislation need to make charter schools part of the public education system, both in the language of the legislation and in the substance of the statutory scheme. Drafters must also make it clear in the legislation, by express language and in substance, *that charter schools fall under the supervision and general control of the state board of education (or other constitutionally mandated body vested with the authority to supervise and control public education).* To ensure the legislation's constitutionality, the careful drafter should include procedures which ensure the charter schools' accountability to the state board of education. [Emphasis added.][108]

Likewise, in his article *Charter Schools, Vouchers, and the Public Good*, Professor Derek W. Black outlined the key aspects of public schools. First, he believes that it must be verified if the statute labels the school public, although he acknowledged that this does not make a school public.[109] He states that one of the most important aspects of being

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[104] *Wilson v. State Bd. of Educ.*, 75 Cal. App. 4th 1125, 1135 (1999). ("Appellants confuse the delegation of certain educational functions with the delegation of the public education system itself.")

[105] *Id.*

[106] *Id.*

[107] *Id.* ("The Charter Schools Act represents a valid exercise of legislative discretion aimed at furthering the purposes of education. Indeed, it bears underscoring that charter schools are strictly creatures of statute. From how charter schools come into being, to who attends and who can teach, to how they are governed and structured, to funding, accountability and evaluation—the Legislature has plotted all aspects of their existence. Having created the charter school approach, the Legislature can refine it and expand, reduce or abolish charter schools altogether . . . . In the meantime the Legislature retains ultimate responsibility for all aspects of education, including charter schools. [2b] '"Where the Legislature delegates the local functioning of the school system to local boards, districts or municipalities, it does so, always, with its constitutional power and responsibility for ultimate control for the common welfare in reserve."'" (Emphasis suppressed.)

[108] Jennifer T. Wall, *The Establishment of Charter Schools: A Guide to Legal Issues for Legislatures*, 1998 BYU Educ. & L. J. 69, 76 (1998).

[109] Derek W. Black, *Charter Schools, Vouchers, and the Public Good*, 48 Wake Forest L. Rev. 445, 477 (2013). ("As an initial matter, the act of statutorily affixing the label 'public' to a school does not automatically make a school 'public' in any real, substantive sense.")

public is the provision of educational services *free of charge*.[110] Another fundamental characteristic is that equal access to school must be guaranteed, inasmuch as the mission of any public school is to *serve the community* and all its students without making any distinction among them.[111] Furthermore, he believes that one of the missions of public schools is to foster values such as democracy, equality, and tolerance. Therefore, public schools have a constitutional and democratic obligation.[112]

We believe that the reasoning adopted in these cases and the criteria developed by the cited scholars are persuasive and constitute the correct course to be followed when determining whether Partnership Schools are public and, therefore, consistent with our Constitution.

C. *Analysis in light of the purposes of the statute, the powers delegated to the Secretary, the caselaw, and the public nature of Partnership Schools*

Although the fact that the Legislature established Partnership Schools as "public schools" is certainly an extremely important factor that must be taken into consideration, such designation *does not suffice* to conclude that those schools are in fact public. There are other indispensable factors that must be considered in answering this query. However, a cautious, well-pondered, and careful analysis of the characteristics that will govern Partnership Schools and of the powers vested in the Department of Education by way of its Secretary leads us to conclude that educational institutions of this type are public schools; that is, they are part of our free, gratuitous, and completely nonsectarian public education system, as mandated by our Constitution.

First, it must be pointed out that Act No. 85 expressly provides that Partnership Schools will be part of the Public Education System. Moreover, the statute stresses that these schools must be considered components of the Public Education System for purposes of all state and federal laws and regulations. This imposes on them the obligation to provide, among other things, the same guarantees as traditional public schools. In fact, the act defines them repeatedly as "*nonprofit nonsectarian public school[s]* that shall operate under the supervision of the Secretary . . . ." (Emphasis added.)[113]

The creation of these schools resulted from the acknowledgement that the Department of Education has the duty and the obligation to foster excellence in the education provided in every school of the Public Education System. The statute also provided that

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[110] *Id.*

[111] *Id.* at 478. ("The mission of a public school is to serve its community and all of the students within it without making distinctions of any sort between them.")

[112] *Id.* at 479. ("Public schools' mission also extends to fostering the earlier discussed values once students are enrolled, including democracy, equality, and tolerance. Public schools pursue these ends not only because they are public values but also because the Constitution mandates as much. This is no small distinction. As state actors, public schools are bound to treat students (and teachers) fairly, which entails, among other things, equality, rationality, and viewpoint neutrality.") (Footnote omitted.)

[113] Act No. 85, sec. 13.02(a).

these schools would be subject to the same evaluation and accountability standards of the Department to which all other traditional public schools of Puerto Rico are subject.[114] Likewise, it was provided that the Secretary of the Department *will supervise* these schools to ensure strict compliance with state and federal laws, and with its Charter.

The legislative design of Act No. 85 vested the Secretary of the Department with several duties and powers regarding the establishment of Partnership Schools that must perforce be considered when evaluating their nature, such as, among others: (1) to establish such rules or regulations as are necessary to achieve the purposes and implement the provisions of the act, including the evaluation and certification of Certified Educational Entities; (2) to establish the standards and procedures for the revocation or nonrenewal of Charters, as well as for the administration of those schools whose Charter has been revoked or not renewed; (3) to establish the rules or regulations for determining which Intervention Model is more suitable for each of the Certified Educational Entities that may be subject to intervention in accordance with the terms of the Charter; (4) to establish the rules or regulations for applying for Charters and for evaluating proposals for Charters submitted by Certified Educational Entities in accordance with the requirements established in the act and in the applicable federal legislation; (5) to grant a Charter to the Certified Educational Entity that submitted the best qualified proposal in accordance with the corresponding evaluation; (6) to grant Charters to Certified Educational Entities for the operation and administration of multiple campuses under a single authorization; (7) *to hold and exercise direct and exclusive responsibility over the schools to which a Charter is granted*; (8) to establish the rules and regulations for the *annual monitoring of the academic, financial, and operational performance of the Certified Educational Entities that have been granted a Charter, and make a rigorous evaluation of such performance* at least every two years; [115] (9) to establish the rules and "regulations to designate evaluation officials or establish evaluating committees to measure the performance of Certified Educational Entities." [116] The act also provides that the Secretary is *responsible for reviewing, authorizing, or denying, in whole or in part, the application submitted by a Certified Educational Entity to be granted a Charter for the operation and administration of a Partnership School.*[117]

The Association contends that the Partnership School Program model is similar to that of private schools and that the support clause has been violated because even if Partnership Schools are regulated by the State, their operation, administration, organization,

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[114] Act No. 85, sec. 1302(g).

[115] See sec. 13.07(c) of Act No. 85. ("The Secretary shall continue monitoring every Partnership School's performance and compliance with the law, including the collection and analysis of data to support ongoing evaluation, in accordance with the Charter. The Secretary shall be empowered to conduct oversight activities that allow him to fulfill his responsibilities in accordance with this Act, including any request for information or investigation, insofar as they are consistent with the terms and conditions of the Charter.")

[116] Act No. 85, sec. 13.04(b)(8).

[117] Act No. 85, sec. 13.04(d).

finances, staff, and philosophy of these schools will be in the hands of private entities. In this sense, it argues that public funds will be transferred to a private entity to promote public education and that, if any of these entities "is religion-based, it will include religious education, which will then be paid for with public funds."[118] The Association also contends that if those schools operate in state facilities and pay no rent for such use, this would constitute a transfer of public property to private entities.

In turn, the State alleges that Partnership Schools constitute an education model within the scope of the Public Education System of the Department of Education and are constitutionally valid under federal jurisdiction as long as the education they provide is free, nonsectarian, and non-discriminatory. The State deems that these schools comply with these characteristics under Act No. 85 and with all the provisions established in the Charter, and points out that they will be subject to the same requirements as the public schools of Puerto Rico. Finally, the State alleges that the Legislature unequivocally intended to make these schools an integral part of the Department of Education within a coherent system fully controlled by the Department.

Regarding these allegations, we reaffirm that sec. 13.01 of Act No. 85 clearly establishes that Partnership Schools are public, nonsectarian, and nonprofit public schools that will be operated and administered by a Certified Educational Entity authorized by the Secretary pursuant to the grant of a Charter. To such ends, the Department of Education has the duty and the obligation to promulgate the necessary rules and regulations to ensure compliance with the standards and procedures under which certified educational entities must operate just like all other traditional public schools.[119] We must also stress that the establishment of Partnership Schools is subject not only to the supervision and evaluation, but also to the control of the Department of Education and its Secretary. Therefore, there is no doubt that the Secretary will have direct and exclusive responsibility over these entities and will constantly monitor their academic, financial, and operational performance. Moreover, the Secretary has the power to grant the necessary authorization for the establishment of these schools after the pertinent procedures are carried out by the Department, as well as the unequivocal power to revoke the permit or authorization at any time if the Secretary believes that there are grounds for doing so. The delegation of certain educational functions is not the same as the transfer of the Public Education System. Consequently, we believe that this is not the situation in the case of Partnership Schools.

In that sense, we reaffirm that the control exercised by the Department of Education stems, first and foremost, from the control that will be exercised by the Secretary by way of the process of selecting the entities that meet the characteristics and requirements

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[118] Respondents' brief at 11.

[119] Even the dissenting opinion of Justice Rodríguez Rodríguez recognizes that the evaluation and accountability standards established by the statute bear a striking resemblance to the licensing process needed to operate a "traditional" public school. Rodríguez Rodríguez, J., dissenting, at 82.

needed to provide an excellent quality of education through the grant of a Charter. Such control is also present in the level of accountability to the Department of Education that is imposed on these schools and in the Secretary's absolute power to revoke the Charter at any time if the corresponding requirements are not met.

Finally, it must be pointed out as a determining factor that the purpose of these advanced schools is to serve the community and all their students free of charge regardless of their abilities or academic needs and without making any distinction between them.[120] These schools are instituted to address the particular educational needs of our children and young students. Furthermore, these schools, as part of the Puerto Rican education system, will share the educational philosophy of traditional public schools; therefore, the philosophical and educational framework will be anchored in the students' full and comprehensive development under the constitutional and democratic responsibility of a traditional public school.

As stated earlier, our Constitution did not require the State to retain exclusive administration of public schools. What was in fact intended was that schools be under the rule and control of the State and that that the public education system be "a system of free and wholly non-sectarian public education."[121] Our Constitution also required that state-provided elementary and high school education be free of charge. In that sense, we must perforce conclude that Partnership Schools, as established by Act No. 85, are public schools of the Public Education System of Puerto Rico. Therefore, the provisions of Act No. 85 that concern the institution of Partnership Schools are constitutional.

VI

The Court of First Instance found that Partnership Schools "seem to be a private school model" that "will have administrative and academic autonomy."[122] It also deemed that this school model "is closer to a private education system" than to the public schools we know.[123] Although the court recognized that the Department of Education will establish the conditions that must govern these schools, it stated that this fact "does not suffice to abstain from classifying these schools as private."[124] As for the School Choice Program, the court pointed out that it has the same constitutional flaws insofar as its language denotes a preferential character that favors the admission of public school students to private schools. The court reasoned that "it would seem that the School Choice Program is available to all students, but when applied, it makes it difficult for

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[120] See Act No. 85, sec. 13.11. ("Partnership Schools shall be free of charge and shall be open to every child, regardless of their academic abilities or needs.")

[121] P.R. Const. art. II, § 5, LPRA, vol. 1, at 277.

[122] Appendix to the Urgent Petition for Writ of Intrajurisdictional Certification, Exhibit XVIII, at 276.

[123] *Id.* at 277.

[124] *Id.*

private school students to obtain the vouchers."[125] Finally, the court deemed that it was "irrelevant that the aid is granted to parents because in the end, the private institution would end up receiving the benefit or the support."

After weighing all the factors and circumstances that surround the approval of Act No. 85, we conclude that the provisions related to the Partnership School Program are constitutionally valid because according to the very text of the act, the State, through the agency, exercises control and ample powers over the implementation and administration of these free, gratuitous, nonsectarian schools, which are open to the community in general. We also hold that the School Choice Program is constitutional on its face insofar as it allows parents to directly receive financial aid so that their children may attend the school of their choice. Although the schools will receive a benefit, given the manner in which this scholarship program was designed in Act No. 85, we cannot even remotely conclude that it tends to replace the public education system of Puerto Rico and, consequently, that this benefit is of such magnitude that it entails a support of private schools in contravention of our Constitution. For the foregoing reasons, we hold that the Court of First Instance erred in declaring unconstitutional secs. 13.05(a)(4), (5), (6), (7), (8), and (9) of Act No. 85 regarding the Partnership School Program, and sec. 14.02(c) of the School Choice Program.

VII

On the grounds set forth above, I concur with the decision to reverse the Judgment of the Court of First Instance in all respects and to dismiss this action.

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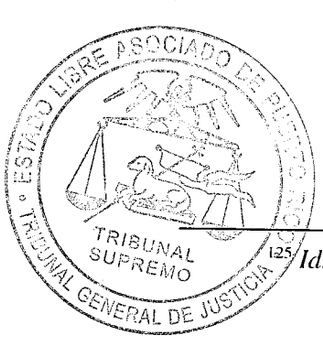

[125] *Id.* at 280.

(Official Translation)

IN THE SUPREME COURT OF PUERTO RICO

Teachers' Association, its union, Teachers' Association of Puerto Rico-Union Local, on its own behalf and on behalf of its members,

Respondents

v. CT-2018-0006

Department of Education, the Honorable Julia Keleher, in her official capacity as Secretary of the Department of Education of the Commonwealth of Puerto Rico,

Petitioners

JUSTICE KOLTHOFF CARABALLO, concurring.

San Juan, Puerto Rico, August 9, 2018

> *The support clause bars the State from providing benefits, aid or support to a private school . . . . For example, the State could not allot public funds for the construction of private schools.*[1]

When the head of a family receives the pay earned for work performed, we cannot correctly assert that *the source of such pay* constitutes the *sostén* or *sostenimiento* [support] of his or her family. That family is "supported" by that parent, who works very hard to "support" it.

Of course, to the members of that close circle we call "family," who receive the economic benefit afforded as a result of the daily work of that parent, the fruits of those efforts clearly constitute their "support" because they receive it *gratuitously* on no other condition than being members of that family circle. However, to the parents who work every day to bring home the daily bread, the money they receive constitutes no *sostén* or *sostenimiento* [support], but a fair compensation for the work they have performed.

The issue raised in this case is whether the so-called Support Clause established in Art. II, Sec. 5 of our Constitution, LPRA, vol. 1, allows for the appropriation of public funds to the Partnership School Program and the School Choice Program established under Act No. 85 of 2018, known as the Puerto Rico Education Reform Act (Act No. 85).[2] The Judgment of this Court correctly states that the School Choice Program is constitutional

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[1] *Asoc. Maestros P.R. v. Srio. Educación*, 137 DPR 528, 547-548 [37 P.R. Offic. Trans.] (1994). (Emphasis added.)

[2] See http://www2.pr.gov/ogp/BVirtual/LeyesOrganicas/pdf/85-2018.pdf.

essentially because the financial aid will be received by the parents so that their children may attend the schools of their choice and, therefore, the State will not "support" any private entity, since it will provide such aid directly to parents. On the other hand, the Judgment of this Court concludes—again correctly—that the Partnership School Program is constitutional essentially because the schools involved are public schools as described by the law and, therefore, no support will be provided to any private entity, since this is banned by the Support Clause of our Constitution.

In principle, I agree with both conclusions; therefore, I concur with the Judgment of this Court. However, I have decided to express myself separately, in the first place, to provide an additional reason for which I believe that Act No. 85 is constitutional in the context of the issue under the consideration of this Court, and also to state my concern about the text of that statute.

In advance of my conclusions, I believe that this controversy is simplified by the fact that the [Spanish] word *sostenimiento* [support], as used in Art. II, Sec. 5 of our Constitution, does not include the financial relationship authorized by Act No. 85 with respect to the Partnership School Program and the School Choice Program. As I will explain later, the concept *sostenimiento* [support], in light of its lexicological meaning and given the historical context in which it was used when the cited clause was drafted, implies *"giving"* or *"providing sustenance" gratuitously or for free*. Thus, what our so-called Support Clause actually prohibits is the approval by the State of *gratuitous financial appropriations* to private educational entities. However, if such appropriations were not a gift, assistance or gratuitous legislative allocation, but a payment for services rendered by contracted private educational entities, then we would not be "supporting" those entities. The fact that a father or mother—or both—is paid for work performed does not mean that the entity that makes such payments is "supporting" their family; such is the situation depicted in the instant case. In other words, a person who performs some work for a price agreed upon simply receives the accorded payment upon the conclusion of such work; no gratuitous aid or payment is involved in that transaction. That is simply what the situation depicted in this case is about.

I

A. *Lexicological meaning of the [Spanish] word sostenimiento [support]*

Article II, Sec. 5 of our Constitution governs all aspects of public education in our country. Insofar as it is pertinent here, our Bill of Rights provides:

> No public property or public funds shall be used for the *support* of schools or educational institutions other than those of the state. Nothing contained in this provision shall prevent the state from furnishing to any child non-educational services established by law for the protection or welfare of children.[3]

As I pointed out above, an additional reason for upholding the constitutional validity of the act in question has to do with the actual meaning of the word *sostenimiento*

[3] P.R. Const. art. II, § 5, LPRA, vol. 1, at 277 (2016 ed.). (Emphasis added.)

[support] used in Art. II, Sec. 5 of our Constitution. Words are to be understood in their ordinary, everyday meanings unless the context indicates that they bear a technical sense.[4] As pointed out in the first quarter of the 19th century by the legendary United States Supreme Court Justice John Marshall (whose remarks are applicable with equal exactness to the Framers of our Constitution):

> [T]he enlightened patriots who framed our constitution, and the people who adopted it, must be understood to have employed words *in their natural sense, and to have intended what they have said.*[5]

Likewise, the pronouncements of United States Supreme Court Justice Joseph Story are as true today as when they were made in 1833:

> [E]very word employed in the constitution is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it. Constitutions are not designed for metaphysical or logical subtleties, for niceties of expression, for critical propriety, for elaborate shades of meaning, or for the exercise of philosophical acuteness, or judicial research. They are instruments of a practical nature, founded on the common business of human life, adapted to common wants, designed for common use, and fitted for common understandings.[6]

Against this doctrinal backdrop, let us examine the expression under our consideration. The [Spanish] word *sostenimiento* [support], as a linguistic unit, means *mantenimiento* [maintenance] or *sustento* [sustenance][7]; that is, the act and effect of "supporting" in the sense of "maintaining," or "sustaining" someone or something. In its most pertinent meaning, the word *mantener* [to maintain] means to "*costear* [cover] the economic needs of somebody"; for instance, to "*costear* [cover] the costs of another's studies. *Costear* [cover] the costs of an expedition."[8] Regarding the word *sustento* [sustenance], in its most pertinent meaning, the, verb *sostener* means "to lend support, to provide relief or aid," or "to provide as necessary for the maintenance of somebody."[9] It must be noted, then, that all the meanings provided by the dictionary in connection with the word *sostenimiento* [support] refer to something done or performed *gratuitously, rather as a form of assistance.* In fact, that is the context in which that word is commonly used in our island, and that is how it was used by the time the Delegates to the Constitutional

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[4] Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (2012).

[5] *Gibbons v. Ogden*, 22 US 1, 188 (1824). (Emphasis added.)

[6] Joseph Story, *Commentaries on the Constitution of the United States* 157 (1833).

[7] *Sostenimiento*, 2 *Diccionario de la lengua española* 2096, Madrid, Ed. Espasa Calpe (22d ed. 2001).

[8] *Mantener*, *id.*, at 1444; *costear*, 1 *Diccionario de la lengua española* 673.

[9] *Sostener*, *id.*, at 2115.

Convention drafted the clause in question. Thus, for instance, the [Spanish] verb *mantener* gives rise to a negatively connoted expression that has been used for decades in Puerto Rico: "he is a *mantenido* [a kept man]," meaning that the person referred to is financially assisted by another. Likewise, the phrase *sustento de un menor* [child support] is deemed to be duty of parents to gratuitously provide for their children's needs.

B. *Meaning of the word sostenimiento [support] in its historical and legal context*

As the Judgment of this Court correctly points out, in the legal field, the word *sostenimiento* used in Art. II, Sec. 5 of our Constitution derives directly from late-1950's federal caselaw that questioned state action in support of religious entities in alleged contravention of the Establishment Clause of the First Amendment to the federal Constitution. In that context, the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .[10]

In turn, Art. II, Sec. 3 of the Bill of Rights of the Puerto Rico Constitution, LPRA, vol. 1, provides:

> No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof. There shall be complete separation of church and state.[11]

It bears mentioning that Art. II, Sec. 3 of our Constitution has three components. Two of its clauses are an express translation of the First Amendment to the United States Constitution: one bans the establishment of an official religion, and the other concerns freedom of religion. The third provision, which derives from federal caselaw, reflects the theory that the ideal relationship between Church and State requires the recognition of two separate fields of action.[12]

The debates about the separation of Church and State that took place between the Delegates to the Constitutional Convention are framed within the context of Puerto Rican history before and after 1898. Specifically under Spanish sovereignty, Catholicism was the state religion in Puerto Rico. In 1898, Protestant churches that arrived in the country sought—based on a strict separation of Church and State—to protect themselves from the power of the once-official Church.[13]

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[10] U.S. Const. amend. I, LPRA, vol. 1, at 171 (2016 ed.).

[11] P.R. Const. art. II, § 3, LPRA, vol. 1, at 266 (2016 ed.).

[12] *Agostini Pascual v. Iglesia Católica*, 109 DPR 172, 175 [9 P.R. Offic. Trans. 223, 226-227] (1979).

[13] Héctor L. Acevedo, *La convocatoria de una semilla* 126, Ponce, Pontifical Catholic University of Puerto Rico (2015). See also 3 José Trías Monge, *Historia constitucional de Puerto Rico* 176-181, San Juan, Ed. U.P.R. (1982).

Regarding the power struggles waged between the Catholic Church and Protestant churches, former Puerto Rico Supreme Court Chief Justice José Trías Monge remarked:

> The Catholic Church conducted an intense campaign before and during the Constitutional Convention to have the new Constitution reject the restrictive language of the Organic Act [Jones Act] and copy only the provisions of the First Amendment to the United States Constitution. Protestant churches advocated with similar vehemence a more rigorous assertion of the church-state separation principle in a manner comparable to the provisions of the Organic Act.[14]

With respect to the evident relationship between our Support Clause and the Establishment Clause of the First Amendment to the United States Constitution, the late-1950's United States Supreme Court caselaw—which challenged state action in support of religious entities—was fundamental. Particularly important were cases such as *Everson v. Board of Education*, 330 US 1 (1947) and *McCollum v. Board of Education*, 333 US 203 (1948), decided a few years before our Constitutional Convention was held. In *Everson*, the federal Supreme Court examined, in light of the Establishment Clause, the constitutional validity of a New Jersey statute that *granted a subsidy* to parents who had to pay for the transportation of their children to public and private schools, including religious schools. The federal Supreme Court, through Justice Hugo Black, held that the contribution made by the State of New Jersey to parents who had decided to send their children to private religious schools did not violate the Establishment Clause. This case became highly important throughout the United States and its territories for two reasons: first, because the federal Supreme Court held that the Establishment Clause of the First Amendment applies to states[15]; second, because the federal Supreme Court opinion "constitutionalizes" or makes

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[14] Trías Monge, *supra*, at 176. Insofar as it is pertinent here, paragraphs 18 and 19 of the Organic Act of 1917 (Jones Act) provided:

> "That no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship without discrimination of preference shall forever be allowed, and that no political or religious test other than an oath to support the Constitution of the United States and the laws of Puerto Rico shall be required as a qualification to any office or public trust under the Government of Puerto Rico.
>
> "That no public money or property shall ever be appropriated, applied, donated, used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or association, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or any other religious teacher or dignitary as such . . . ."

Organic Act of 1917, sec. 2, 39 Stat. 951, LPRA, vol. 1, at 56-57 (2016 ed.).

[15] The issue of incorporating the Establishment Clause "could (and probably should) have been thoroughly considered, debated, and evaluated. The text's awkward phrase 'respecting an establishment' could have been interpreted in a jurisdictional manner. So viewed, 'respecting' would have indicated that the national government lacked jurisdiction over religious establishments and therefore could not make its own establishment *or interfere with state authority over religious establishments*. This interpretation would have recognized federalism as a central tenet of the Establishment Clause." Vincent P. Muñoz, *Religious Liberty and the American Supreme Court: The Essential Cases and Documents* 3 (Kindle ed. 2013). (Emphasis added.) However, in *Everson*

part of the constitutional text a remark made in a letter written on October 7, 1801, by President Thomas Jefferson in the sense that the Establishment Clause was intended to erect "'a wall of separation between Church and State.'" Slightly over ten months after *Everson*, the federal Supreme Court—once again through Justice Black—decided *McCollum v. Board of Education*. In *McCollum*, the directors of a public school in Champaign County, Illinois, had designed a program whereby parents voluntarily requested and authorized in writing that their children be allowed to attend 45-minute classes in religious instruction in a school classroom once a week in lieu of an elective class. The classes were taught in three separate groups by a Catholic priest, a Jewish rabbi, and an Evangelical teacher, based on the choice made by the students' parents. Students not authorized by their parents to take the religious instruction were taught another elective, secular class. Mrs. McCollum, mother of one of the school students, claimed that the school directors' intent to teach religion on public school grounds as part of the regular school schedule violated the Establishment Clause. The federal Supreme Court declared the school's program unconstitutional and held that it violated the First Amendment's Establishment Clause because the State was barred from using the state's *tax-supported* public buildings and public school machinery for the dissemination of religious doctrines. Moreover, Justice Black, citing *Everson*, again stated that the text of the First Amendment had erected a wall of separation between Church and State.

In the historical context of Puerto Rico, *Everson* and *McCollum* were landmark decisions. It is for that reason that although the notorious phrase "complete separation of church and state" is absent from the text of the First Amendment to the United States Constitution, it is present in the text of our own Constitution because our Delegates to the Constitutional Convention adopted it three years after *Everson* and *McCollum* were decided. Certainly our Framers had both cases in mind when they adopted the Free Exercise Clause and established the language of the Support Clause. In fact, below is an excerpt from the Journal of Proceedings, which contains a discussion of *Everson* by Delegate Fernando J. Géigel Sabat in the context of Art. II, Sec. 5 of our Constitution:

> But the case, gentlemen, is that this contention was resolved by the highest court of the nation. The case is *Everson v. Board of Education*, 330 U.S. Reports, at 1. This case involved a benefit granted to parents regarding the transportation they paid to send their children to a school belonging to a religious (Catholic) institution.
>
> In his opinion, the Honorable Justice Black—I am not citing his exact words, but rather the consensus of his opinion—stated the following: that since the assistance is given to the individual, that individual, as a human being, is entitled to the same benefits received by other human beings who attend public schools, thereby declaring that although the reimbursement paid indirectly helps the religious institution to which that

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v. Board of Education, 330 US 1 (1947), Justice Hugo Black bypassed the issue when he "simply said that the Fourteenth Amendment had already made the First Amendment applicable to the states. For authority he cited *Murdock v. Pennsylvania* [319 US 105 (1943)]. *Id. Murdock*, however, was not an Establishment Clause case, but a Free Exercise Clause case. "In this way, [Justice] Black quietly and efficiently managed to eliminate the possible federalism component of the Establishment Clause without making a substantive legal argument." *Id.*

Convention. That discussion clearly shows the evident relationship that exists between our Support Clause and the Establishment Clause of the First Amendment to the United States Constitution and reveals how well informed were the Delegates to the Constitutional Convention about the federal Supreme Court caselaw. The expressions cited below were made by Delegate José Trías Monge, former Chief Justice of this Court:

> Mr. TRÍAS MONGE: Exactly. I only wish to add, if the Chairman pleases, that as the Commission Chairman has exactly pointed out, *the idea is simply to make the separation of Church and State clearer and more conclusive—naturally, without affecting, on the other hand, the principle that non-educational services rendered to children may continue to be rendered.*
>
> In other words, here *we have two basic principles established in this section. The first one is the separation of Church and State as established in the federal Constitution, which will continue to evolve normally by way of the interpretations of the United States Supreme Court.*
>
> Naturally, [in] different situations that we could imagine at this time, it would be difficult to come up with a precise answer to these situations [in] many [cases] because *we are plugged into the North American constitutional system in this specific phase. In other words, the freedom of religion guarantees established in the United States Constitution are also ours. We are likewise becoming a part of that constitutional system.* Insofar as it concerns freedom of religion and other such aspects, that is the first principle. [Brackets in original and emphasis added.][19]

Regarding the intention of the Delegates to the Constitutional Convention in studying, evaluating, and approving the provisions of Art. II, Sec. 5 of our Constitution, former Secretary of Justice Rafael Hernández Colón stated the following in 1966:

> It comes forth from the above, on the one hand, that the Constitutional Convention intended to have the wording of article II, section 5 of our Constitution understood as a draft of the principle of separation of Church and State as established in the Federal Constitution and as construed by United States Supreme Court . . . .[20]

Having thoroughly examined the lexicological meaning of the word *sostenimiento* [support] and studied the legal and historical context in which the Support Clause was drafted, I must conclude that the term "support" used in the cited constitutional clause refers only to the *gratuitous allocation of public funds*; that is, to a gratuitous assignment of funds drawn from the public treasury.[21] I have no doubt that the use of the word *sostenimiento* [support] arose from the concern of those Delegates to the Constitutional Convention for retaining the principle of separation of Church and State. The cardinal objective they particularly sought was to avoid donations that would benefit religious

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[19] *Diario de Sesiones de la Convención Constituyente, supra*, at 1483-1484.

[20] Op. Sec. Just. 32 (1966).

[21] See meaning of *gracioso* in 1 *Diccionario de la lengua española, supra*, at 1149.[*]

[*] Translator's note: See the meaning of "gratuitous" in *Merriam Webster's Collegiate Dictionary* 508 (10th ed. 2002).

> school belongs, this does not violate the first amendment to the United States Constitution, that is, [the] separation of Church and State; the case was decided in accordance with that opinion.
>
> In another paragraph of his opinion, the Honorable Justice Black (who, by the way, was Chief Justice of the United States Supreme Court) stated (as copied from the English [original]): "On the other hand . . . ."[16]

Now, how relevant are the above pronouncements to the meaning of the word *sostenimiento* [support] as it appears in Art. II, Sec. 5 of our Constitution? Those pronouncements show, first of all, that by including the word *sostenimiento* [support] as used in the Support Clause, those federal cases were the frame of reference employed by the members of the Constitutional Convention; second, that the problem sought to be solved within that frame of reference was to prevent the State from using public property or funds that may constitute a *gratuitous* donation, aid or appropriation by the State to any religion. It must be noted that the "support" mentioned in *Everson* and *McCollum* referred to gratuitous state aid or contributions: in one case, the reimbursement made to parents who had paid for their children's transportation to sectarian schools; in the other case, the use of public property by religious denominations that were not paying therefor, as a result of which the expenses of such use were being defrayed by the State.

In fact, the First Amendment's Establishment Clause and the nature of the controversies surrounding this matter arose in the United States as a result of its refusal, during the 17th and 18th centuries, of the intent of early colonist leaders to keep supporting the Anglican Church through the collection of taxes from the people. The official religion of the English government at that time was represented by the Anglican Church; this meant that the English Crown financially supported the Anglican Church and that its citizens, regardless of their beliefs (or lack thereof), had to contribute to the support of that church through the payment of taxes. That was the reality that surrounded the religion brought from England by the first inhabitants of the thirteen colonies; and that was the context in which, to a greater or lesser degree, the citizens born in those colonies (called natives) lived for over 170 years before attaining their independence.[17] As we can see, the history behind the Establishment Clause involves the concept of a government that *promotes and subsidizes* a church. In fact, that reality prevailed in the United States, to a greater or lesser extent, for more than 50 years, even after the thirteen original colonies attained their independence and even after the adoption of the First Amendment.[18]

As we learned from the aforecited words of Delegate Géigel Sabat, this is perfectly consistent with the discussion of the text in question that arose during the Constitutional

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[16] 2 *Diario de Sesiones de la Convención Constituyente* [Journal of Proceedings of the Constitutional Convention] 1496 (1952).

[17] James H. Hutson, *Church and State in America: The First Two Centuries* (Cambridge Essential Histories) (Kindle ed. 2008).

[18] *Id.*

institutions.[22] The question remaining to be answered then is what type of public funding is authorized by Act No. 85 and if such type of funding falls within the prohibitions of the Support Clause.

C. *Nature of the financial relationship established in Act No. 85 of 2018 with regard to the Partnership School Program*

Act No. 85 establishes the new public policy of the Government of Puerto Rico in the field of education. This public policy seeks to implement mechanisms that make viable the scope of the fundamental right to education.[23]

In other words, Act No. 85 seeks to afford students an opportunity to obtain an education that contributes to the development of their personality and to their welfare, as well as to the welfare of their families and of Puerto Rico.[24] Thus, the Education Reform aims to protect students so that they may receive an education that will allow them to fully develop their skills and, as a corollary to this, to contribute to all aspects of our society.[25] Thus, the development of a modern, efficient, humanistic, and excellent public education

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[22] In its brief, respondent Teachers' Association argues that "[t]he purpose of the support clause is to keep public education services only in the hands of the State; this does not happen under any of these programs [the Partnership School Program and the School Choice Program]." Respondents' brief at 20. First, I already established the clear purpose of the Support Clause, which has nothing to do with the claim made by the Association. Certainly our Constitution guarantees the existence of a public education system, but not by way of that clause. Second, what the constitutional guarantee of a *public education* system actually implies is that the State will have the obligation to provide *free education* to all citizens. However, nothing in the constitutional text bars such *public education* from being administered by private entities as long as the State supervises and retains final control of such education.

Thus, if the State, in the exercise of its power as *parens patriae* and in the pursuit of alternatives that improve the quality of education of our children, determines that the implementation of the public policy of Act No. 85 of 2018, known as the Puerto Rico Education Reform Act (Act No. 85), constitutes a first step toward the attainment of an excellent level of *free education* for our children, nothing in the constitutional text seems to proscribe that determination as long as such public policy does not constitute an excessive delegation or a waiver of the State's constitutional obligations.

[23] The fundamental right to education is consecrated in the Constitution of Puerto Rico as follows:

> "Every person has a right to an education which shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. There shall be a system of free and wholly non-sectarian public education. Instruction in the elementary and secondary schools shall be free and shall be compulsory in the elementary schools to the extent permitted by the facilities of the state. Compulsory attendance at elementary public schools to the extent permitted by the facilities of the Commonwealth, as herein provided, shall not be construed as applicable to those who receive elementary education in schools established under nongovernmental auspices. No public property or public funds shall be used for the support of schools or educational institutions other than those of the state. Nothing contained in this provision shall prevent the state from furnishing to any child non-educational services established by law for the protection or welfare of children."

P.R. Const. art. II, § 5, LPRA, vol. 1, at 277 (2016 ed.).

[24] Act No. 85, sec. 1.02 (c).

[25] Statement of Motives of Act No. 85.

system is "critical for the Island to achieve sustainable development and, in turn, maximize the resources available today without compromising the progress of future generations."[26]

Among the mechanisms provided by the Education Reform Act to further the welfare of students and the full exercise of their fundamental right to education is the Partnership School Program model:

> A Partnership School is: (i) a newly created public elementary school and/or high school that is operated and administrated by a Certified Educational Entity authorized by the Secretary; or (ii) an existing public elementary school and/or high school whose operation and administration is transferred to a Certified Educational Entity authorized by the Secretary, pursuant to the granting of a Charter.[27]

Regarding the operation of Partnership Schools, Act No. 85 provides that these schools will be public, nonsectarian, and nonprofit. Moreover, these schools will provide free education and will operate under the supervision of the Secretary of Education and as established in the Charters.[28]

Act No. 85, in turn, establishes the type of institution that will qualify as a Certified Educational Entity.[29] Among the eligibility requirements that must be met by institutions to qualify as Certified Educational Entities, they must have: a managerial team to administer,

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[26] *Id.*

[27] Act No. 85, sec. 13.01.

[28] Act No. 85, sec. 13.02. In turn, sec. 1.03 (6) of Act No. 85 defines "Charter" as follows:

> "Means a formal and binding agreement entered into between the Secretary and an entity, whereby the latter is certified as a Certified Educational Entity and authorized to operate and administer a Partnership School under the terms specified therein."

[29] Section 13.05 of Act No. 85 provides:

> "a. Certified Educational Entity Qualifications. According to the procedures and criteria established by this Act and the Authorizer, the following entities may qualify as Certified Educational Entities to be granted a Charter:
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> "1. A municipality of Puerto Rico.
>
> "2. Municipal consortia.
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> "3. Partnerships between municipalities or municipal consortia and other public educational entities or other educational nonprofit nongovernmental organizations. These partnerships may be established according to the different types of legal entities.
>
> "4. Public or nonprofit postsecondary education institutions.
>
> "5. Nonprofit institutions for elementary, middle, and high school education.
>
> "6. Educational nongovernmental organizations or other nonprofit organizations.
>
> "7. Nonprofit organizations created by parents or teachers.
>
> "8. Teacher organizations, teacher labor unions, or any teacher group duly organized and certified by the Department of Labor and Human Resources pursuant to the provisions of Act No. 45-1998, as amended.
>
> "9. Duly organized education cooperatives."

operate, and direct the school; an academic achievement plan; a staff having the pertinent certifications and licenses required by the Department of Education; a system in which parents and the school community can actively participate in their children's education; evaluation mechanisms; and a project that would address the needs of students with disabilities.[30]

Regarding the relationship between the Department of Education and the Certified Educational Entities, Act No. 85 provides that *the Charters set forth the terms and conditions that must be met by the Certified Educational Entity*. The Charters must be signed by both contracting parties; that is, by the Secretary of Education (Authorizer) and the Certified Educational Entity. All Charters are required to establish that bilingual (Spanish-English) education will be promoted and that subjects such as science, technology, engineering, mathematics, and arts will be prioritized. The Charters must also include an academic improvement plan and an intervention model. Likewise, it must be stipulated that the Certified Educational Entity and the authorized schools "shall be subject to the evaluation process and the audits prescribed by the Secretary or required by law in order to guarantee that the terms and conditions of the Charter and the applicable legal requirements are fulfilled."[31] Charters may be renewed for five-year periods as long as the Secretary evidences the performance, demonstrated capacities, and particular circumstances of each Partnership School. However, the Charter may be revoked or not renewed if the Secretary determines that the Partnership School failed to meet the requirements established in it.[32]

In view of the above, it must be noted that the relationship between Partnership Schools and Certified Educational Entities *is established through a contract set forth in the Charters*. By way of the Charters, Partnership Schools will receive administration services from the Certified Educational Entities. The contracting of administration services is not based on mere liberality.

D. *Receipt of public funds by private educational institutions in the context of the School Choice Program under Act No. 85 of 2018*

Section 14.01 of Act No. 85 provides that the purpose of the School Choice Program is to allow parents, guardians or custodians who participate in the Program to select the public or private school of their choice.[33] Among other modalities, and insofar as it is pertinent here, the School Choice Program allows qualifying students to enter a private school with the full subsidy of the State.[34] Certainly it could not be argued—unlike in the case of the Partnership School Program—that the financial relationship established by Act

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[30] Act No. 85, sec. 13.05.

[31] Act No. 85, sec. 13.07.

[32] *Id.*

[33] Act No. 85, sec. 14.01.

[34] Act No. 85, sec. 14.02.

No. 85 with respect to the School Choice Program is contractual in nature, inasmuch as the statute provides that it is the parents who will receive the aid or subsidy and who will contract with the private school of their choice. Thus, there certainly is no direct contractual relationship between the State and the private school that will ultimately receive the subsidy granted by the State. This, however, does not imply, for purposes of the prohibition established by our Support Clause, that the private educational entities that end up indirectly receiving the funds drawn from the public treasury actually receive financial assistance. School choice programs in the United States have been on the rise during the last few years to such an extent that they currently exist in 28 states and the District of Columbia. As the Court of First Instance correctly acknowledged in its Judgment, the Support Clause of Art. II, Sec. 5 of our Constitution originates in the so-called Blaine Amendments, named after a failed federal constitutional amendment proposed by Congressman James G. Blaine in 1875. Predominantly passed in the late 1800s, Blaine Amendments seek to prevent the state from appropriating public funds to aid sectarian schools.

During the last few years, however, several jurisdictions have ruled in favor of school choice programs under the main argument that this type of assistance does not constitute public aid to private schools, *inasmuch as these institutions simply receive payment in exchange for services rendered.* Families, not religious schools, are receiving the public "aid."[35] This and other arguments have convinced courts from other jurisdictions that Blaine Amendments do not apply to school choice programs.[36] They have also given more state governments the confidence to enact such programs.[37]

E. *The decision in Trinity Lutheran Church of Columbia, Inc. v. Comer*

In *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 US ___, 137 S. Ct. 2012 (2017), the United States Supreme Court recently held that the exclusion of churches from a neutral and secular assistance program of the Missouri Department of Natural Resources violated the constitutional guarantees of the First Amendment's Free Exercise Clause. The Trinity Lutheran Church of Columbia, Inc. (Trinity) ran a preschool and daycare center that was originally established as a nonprofit organization, but later merged with Trinity. The religion-based daycare center had an open admission policy; that is, it admitted students of any religion.

On the other hand, the Missouri Department of Natural Resources (Department) offered grants to help qualifying nonprofit organizations purchase rubber playground surfaces made from recycled tires. The funds would be awarded to those applicants scoring highest based on the evaluation of several criteria, such as the poverty level of the

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[35] Erica Smith, *Blaine Amendments and the Unconstitutionality of Excluding Religious Options From School Choice Programs*, 18 Fed. Soc. Rev. 48 (2017). Available at https://fedsoc.org/commentary/publications/blaine-amendments-and-the-unconstitutionality-of-excluding-religious-options-from-school-choice-programs (last visited August 7, 2018).

[36] *Id.*

[37] *Id.*

population in the surrounding area and the applicant's plan to promote recycling. The Department, however, had a strict policy of denying grants to any applicant owned or controlled by a church, sect, or other religious institution.

Trinity applied for the grant and ranked fifth among the 44 applicant entities, but its application was rejected because under Art. I, Sec. 7 of the Missouri Constitution, no public funds may be provided as financial assistance directly or indirectly to a religious entity.[38] As a result, Trinity filed suit, essentially alleging that the rejection of its application violated the Equal Protection Clause and the First Amendment's freedom of religion and expression provisions.

In view of these contentions, the federal Supreme Court held that the exclusion of churches from a secular aid program violates the federal Constitution's First Amendment guarantees of free exercise of religion. The Court further held that since the First Amendment's Free Exercise Clause protects the free exercise of religion and also protects religious observers against unequal treatment based on their status, it subjects to a *strict scrutiny* laws that impose a burden on religious exercise.[39]

As we saw in *Everson*, the United States Supreme Court has held that laws that deny benefits based only on a person's religious status are unconstitutional. However, that Court has clarified that there are neutral laws that may be valid even if they obstruct religious practice. The distinction in those cases is established by determining whether the law in question discriminates against some or all religious beliefs. In that respect, the federal Supreme Court held in *Lyng v. Northwest Indian Cemetery Prot. Assn.*, 485 US 439 (1988), that the Free Exercise Clause did not bar the government from timber-harvesting or road-building activities in a specific area of federal land despite the fact that those government activities would obstruct the religious practice of several Native American tribes that considered some of those sites sacred. Although the Court acknowledged that the building of a road or the harvesting of timber would interfere significantly with the ability of some persons to pursue spiritual fulfillment according to their own religious beliefs, it found that the Free Exercise Clause had not been violated because the affected individuals were not coerced by the Government's action into violating their religious beliefs.[40] The federal Supreme Court further stated that neither

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[38] Article I, Sec. 7 of the Missouri Constitution provides:

> "That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship."

Mo. Const. art. I, § 7, available at http://www.moga.mo.gov/mostatutes/Consthtml/A10071.html.

[39] *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 US ___, 137 S. Ct. 2012 (2017); *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 US 520, 533, 542 (1993).

[40] *Lyng v. Northwest Indian Cemetery Prot. Assn.*, 485 US 439, 449 (1988).

had the governmental action penalized religious activity by denying any person an equal share of the rights, benefits, and privileges enjoyed by other citizens.[41]

Likewise, in *Employment Div., Ore. Dept. of Human Res. v. Smith*, 494 US 872 (1990), the United States Supreme Court denied a free exercise claim brought by two members of a Native American church who were denied unemployment benefits because they had violated Oregon's controlled substance laws by ingesting peyote for sacramental purposes. Based on its decision in *Lyng*, the federal Supreme Court held that the Free Exercise Clause did not entitle church members to a special exemption from obedience to general criminal laws because of their religion. The Court also reiterated that the Free Exercise Clause afforded protection against governmental imposition of special disabilities on the basis of religious views or religious status.[42]

However, in light of the cited doctrine, the United States Supreme Court held in *Trinity Lutheran Church of Columbia, Inc.* that the Department's policy of denying grants to religious organizations violated the Free Exercise Clause of the First Amendment to the federal Constitution by expressly discriminating against otherwise eligible recipients solely because of their religious character.[43] In other words, the law need not bar the religious organization from practicing its religion; it suffices that the law refuses to allow a religious organization the same opportunity to compete for an otherwise generally available benefit on the same terms as all secular organizations.

As I examined the provisions of Act No. 85 regarding the Partnership Schools in light of the federal caselaw, I became concerned specifically about the text of sec. 13.02 of the act, which defines a Partnership School as "a nonprofit *nonsectarian* public school that shall operate under the supervision of the Secretary and in accordance with the Charter and the code of laws in effect." (Emphasis added.) My concern is that the act limits Partnership Schools to non-religious institutions. In other words, any nonprofit religious entity that meets all standards required by the Department of Education and wishes to contract with the Government for the operation of a Partnership School will be immediately rejected for the sole reason that it is religion-based.

This situation evidently contravenes the recent decision of the federal Supreme Court in *Trinity Lutheran Church of Columbia, Inc.*, which clarified that discriminating against any entity solely because of its religious character constitutes a violation of the First Amendment to the United States Constitution. Such a practice would violate the freedom of religion rights of discriminated organizations because, as explained in *Trinity*, for a religious entity to be at least considered for an opportunity to contract with the State for the administration of a Partnership School, it would have to abandon its religious practices. Therefore, I believe that this section of the act does not survive strict scrutiny

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[41] *Id.*

[42] *Employment Div., Ore. Dept. of Human Res. v. Smith*, 494 US 872, 877 (1990).

[43] *Trinity Lutheran Church of Columbia, Inc. v. Comer.*

and its validity cannot be upheld: if a statute was declared unconstitutional by the Supreme Court in *Trinity* because it discriminated against a religious entity by denying assistance or grants conditioned on the fulfillment of certain requirements, with greater reason would Act No. 85 follow the same path, inasmuch as in this case, the religious entity would not be applying for gratuitous assistance or benefits, but for the right to compete on equal terms as all others for a contract for services.

III

As I previously stated, I have no doubts that both the lexicological meaning of the word *sostenimiento* [support] and the historical and legal evidence in that respect show that what the Delegates to the Constitutional Convention sought to prohibit when drafting the Support Clause was gratuitous state contributions or appropriations to private institutions; in other words, the word *sostenimiento* [support] literally means aid or maintenance provided gratuitously to somebody or something. On the other hand, with respect to the Partnership Schools, it is also clear that the financial relationship that allows for the appropriation of public funds is authorized on the basis of a contract for services, not as a gratuitous contribution or aid. The question that arises is: was that contractual relationship foreseen in the mind or the intention of the Framers of our Constitution when they drafted the prohibition established in the Support Clause? Did they intend to preclude the Government from contracting with a private educational institution? If that was the case, *why did they not expressly establish such intent?* As a matter of fact, the Delegates did not expressly establish a prohibition against contracting in circumstances such as the one depicted in the instant case, even though such legal relationship was expressly mentioned in another part of the Constitution: Art. VI, Sec. 10, LPRA, vol. 1.[44] Thus, the terms "contractor" and "contract" are not alien to the language of the Constitution.

Now, could we conclude that the term *contratación* [contracting] (or an equivalent term) was contained in the term *sostenimiento* [support] even if it was not expressly used in the clause in question? I believe that this would clearly be a very forced and erroneous interpretation in view of the clear lexicological meaning of the word *sostenimiento* [support] and of the historical and legal evidence related to the drafting of the clause. Contrariwise, I believe that the express inclusion of the word *sostenimiento* [support] as a synonym for assistance, maintenance or sustenance, clearly excludes the term *contratación* [contracting]. As we know, the specific mention of one thing generally implies the exclusion of others (*expressio unius est exclusio alterius*). The main purpose of

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[44] Article VI, Section 10 of our Constitution provides:

> "No law shall give extra compensation to any public officer, employee, agent or contractor after services shall have been rendered or contract made. No law shall extend the term of any public officer or diminish his salary or emoluments after his selection or appointment. No person shall draw a salary for more than one office or position in the government of Puerto Rico."

P.R. Const. art. VI, § 10, LPRA, vol. 1, at 411 (2016 ed.).

this rule of legal hermeneutics is to determine the lawmaker's intent.[45] This rule is inapplicable when the legislative intent arises otherwise; when its application runs counter to the lawmaker's reasoning, and when its application could lead to incompatible or unfair results.[46] After examining the discussions recorded in the Journal of Proceedings of the Constitutional Convention, I do not find even the slightest expression of anything that may lead me to think that the intent of the Delegates was to prohibit the State from contracting with a private educational institution. Neither does the conception of such a contractual relationship seem to run counter to the reasoning of any of the Delegates. Finally, it is quite evident that the hermeneutical interpretation made here of the term in question in no manner leads to incompatible or unfair results. On the contrary, it becomes quite clear that the decision reached today gives a constitutional endorsement to a policy implemented by sister constitutional branches that seek to advance the constitutional mandate concerning the fundamental right of our children and our youth to education through the contracting of a new model that is presumed to be better, such as the Partnership Schools. Moreover, that interpretation allows Act No. 85, by way of the School Choice Program, to provide assistance to vulnerable sectors—such as students with special needs, gifted students, or students with disciplinary issues—whose right to education has been abridged because of the precarious financial situation faced by our country. There is no doubt that in light of the correct application of the principle *expressio unius est exclusio alterius*, the term *sostenimiento* [support] necessarily excludes *contratación* [contracting].

IV

I have no doubt that the intent of Act No. 85, by way of its Partnership School and School Choice Programs, is the direct and indirect contracting for educational services. Regardless of whether—as the Judgment of this Court concludes—the public funds are used to contract with entities that are in fact public (Partnership Schools) or with private schools that will ultimately receive the money granted to parents (School Choice), the truth is that the entity that ultimately receives the public funds has the obligation to render services. This is actually what this case is all about: *a law that allows for the appropriation of public funds not as a gratuitous donation, aid or contribution to the recipient educational entities, but in (direct or indirect) payment of services rendered.* Thus, regardless of the manner in which the entity that will render the services is ultimately defined, the fact is that the resulting contractual relationship is outside the scope of the language of our Support Clause.

As we held in *Asoc. Maestros P.R. v. Srio. Educación*, 137 DPR 528, 547 [37 P.R. Offic. Trans. ___, ___] (1994), "[t]he support clause bars the State from providing *benefits, aid* or *support* to a private school." (Emphasis added.) Thus, on that occasion,

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[45] R. Elfrén Bernier and José A. Cuevas Segarra, *Aprobación e interpretación de las leyes en Puerto Rico* 345, San Juan, Pubs. JTS (1987).

[46] *Virella v. Proc. Esp. Rel. Fam.*, 154 DPR 742 [54 P.R. Offic. Trans. ___] (2001).

making express reference to the prohibition against gratuitous assignments of public funds, we pointed out that "the State could not allot public funds *for the construction of private schools.*" (Emphasis added.)[47] At no time did we hold that the private educational institution was barred from entering into a contract with the State for the rendering of administrative and educational services.

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[47] *Asoc. Maestros P.R. v. Srio. Educación*, 137 DPR 528, 548 [37 P.R. Offic. Trans. ___, ___] (1994).

(Official Translation)

IN THE SUPREME COURT OF PUERTO RICO

Teachers' Association, its union, Teachers' Association of Puerto Rico-Union Local, on its own behalf and on behalf of its members,

Respondents

v. CT-2018-0006 Interjurisdictional Certification

Department of Education, the Honorable Julia Keleher, in her official capacity as Secretary of the Department of Education of the Commonwealth of Puerto Rico,

Petitioners

JUSTICE ESTRELLA MARTÍNEZ, with whom JUSTICE RIVERA GARCÍA joins, concurring.

San Juan, Puerto Rico, August 9, 2018

Until we get equality in education, we won't have an equal society.

The Hon. Sonia Sotomayor[1]

This case, which is vested with great public interest, requires that we examine a fundamental right and a state restriction contained in the same section of the Constitution of Puerto Rico. This exercise, in turn, requires that we incorporate other essential guarantees such as equality. Consequently, I choose to attribute greater importance to the fundamental right of every child in Puerto Rico to education, and to provide them with equal educational opportunities. I choose to not keep special education children, athletes, the poor, or gifted students subjected to an education system that has proved for decades its inability to fully satisfy their fundamental right to education. Denying these children the opportunity to maximize their fundamental right to education would be tantamount to supporting some sort of "educational apartheid." Today, equality of opportunity and the right to education have greater importance than other considerations that—though they may not be discarded lightly—cannot constitute an impediment that would reduce those constitutional guarantees to simple words cast in stone as an epitaph to inaction in the search for a better education in Puerto Rico.

Our Constitution clearly provides: "Every person has a right to an education which shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms." P.R. Const., art. II, § 5, LPRA,

[1] Message delivered by the Hon. Sonia Sotomayor when presented with the 2011 Philadelphia Bar Association Diversity Award.

vol. 1, at 277 (2016 ed.). This premise conclusively recognizes that *every person* has the right to receive an excellent education. That same section provides further below:

> There shall be a system of free and wholly non-sectarian public education. Instruction in the elementary and secondary schools shall be free and shall be compulsory in the elementary schools to the extent permitted by the facilities of the state. Compulsory attendance at elementary public schools to the extent permitted by the facilities of the Commonwealth, as herein provided, shall not be construed as applicable to those who receive elementary education in schools established under nongovernmental auspices. *No public property or public funds shall be used for the support of schools or educational institutions other than those of the state.* Nothing contained in this provision shall prevent the state from furnishing to any child non-educational services established by law for the protection or welfare of children.

Id. (Emphasis added.)

Accordingly, the issue raised here is whether the programs established in the Puerto Rico Education Reform Act, Act No. 85 of 2018, violate that constitutional provision. Mainly, we must determine whether the models created by that statute are unconstitutional because they use public funds to support private entities. As I advanced when this Court certified the above-captioned case, I certainly conclude that there is no such violation. The public policy laid down in Act No. 85 of 2018, which establishes the new Partnership School and School Choice models, aims to equalize the differences among vulnerable sectors that have not fully attained the right to education. In other words, it aims to provide concrete life and efficacy to the constitutional guarantee under which all persons are entitled to an education that encourages the full development of their personality and the strengthening of respect for human rights and fundamental freedoms. Thus, by implementing those educational models, the State addresses the problems found in the public education system by establishing new strategies in our jurisdiction.

In examining the statute in light of the Constitution and the Constitutional Convention, it is clear that what our Charter actually sought to prohibit was direct government aid to private schools. The debates also show "that the grant of scholarships by the State to private school students is not prohibited and does not constitute support as long as these scholarships do not purport to replace the public education system." Milton J. Figueroa Morales, *La constitucionalidad de los nuevos vales educativos*, 35 Rev. Der. Pur. 171, 196 (1996).

In that respect, I echo the following remarks:

> Our Constitution may not be construed as categorically prohibiting the provision of aid to private educational institutions. Our Constitution does *NOT* prohibit it; rather, it regulates it and allows it as long as such aid does not become support. The act of merely helping an institution to fulfill its educational mission should not be classified as support. This is a much broader concept, since support implies a dependence on aid in order to subsist.
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> . . . .

> We believe that in order to define what it really means to support private educational institutions with public funds, we must analyze the implications of such state action and examine its possible consequences not from an idealistic standpoint, but from a pragmatic perspective and without legal hyperboles . . . .
>
> It is evident that turning a private school into a creature of the State would violate our Constitution. But the provision of aid (which could be potentially substantial, but which may never be of such magnitude as to make participating private schools depend on it to exist as independent educational entities) cannot be defined, in sound legal practice, as support.

Figueroa Morales, *supra*, at 196-197. [2]

As I stated from the outset of this case, I consider the School Choice Program model valid in its entirety. The grounds set forth by the Government of Puerto Rico in light of the decisions of the United States Supreme Court and of the historical context of Puerto Rico's education crisis warrant its validity. See *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 US ___, 137 S. Ct. 2012 (2017); *Zelman v. Simmons Harris*, 536 US 639 (2001). This program offers an additional alternative under which vulnerable sectors will have real equal access opportunities to education by receiving subsidies through scholarships.

Contrary to respondents' contentions, Act No. 85 of 2018 does not support private schools by way of its School Choice Program; neither does it prohibit students from enrolling in public schools. It must be noted that the financial aid certificates will be granted directly to parents, who may use it in public and private schools and even in universities. Based on their right to decide how they raise their children, the parents will choose the educational institution in which they will use the money granted by the program.[3] Thus the State made sure that it would not unduly or directly favor private schools. Moreover, the aid provided by the program is not so substantial as to actually support the schools.

The Partnership School Program, in turn, will be operated by nonprofit organizations that will be certified, supervised, and overseen by the Department of Education. In addition, the act clearly provides that those schools will be part of a free, public, and nonsectarian education system. Therefore, as the very statute provides, I see no impediment that may bar a nonprofit organization from contributing its structure and human workforce to establish a partnership with the Department of Education. After all, this model does not stray that much from the traditional manner in which this agency contracts with numerous educational service providers; thus, it seeks to promote equal educational opportunities, as the School Choice Program model also does.

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[2] For a comprehensive and adequate discussion of the history of the Constitutional Convention, see the opinion issued by Justice Rivera García.

[3] In this case, as well as in the recent controversy involving the closing of schools, the right of parents to raise and bring up their children is also present. See the dissenting opinion issued by Justice Estrella Martínez in *Meléndez de León et al. v. Keleher et al.*, 200 DPR 740,784 [100 P.R. Offic. Trans. ___] (2018). Consequently, I have recognized the presence of this right and, in the instant case, I acknowledge that the State observes and implements it through mechanisms that promote equal educational opportunities, while in the school closing process, that right was not taken into account; on the contrary, no appropriate participation was allowed for the purpose of exercising it adequately.

I must stress, however, that the second component of the Partnership School Program (under which the operation and administration of an existing public elementary or high school are transferred to a Certified Educational Entity) must keep the public nature of the school. Thus, as the statute provides, the public employees of those "inherited" schools cannot be automatically forced to lose their property interest in their public employment and become private employees of the entity. According to sec. 13.08 of Act No. 85 of 2018, that transition must be voluntary for all employees. For the above reasons, and after a careful analysis of the statute, I conclude that we are merely dealing with an administration contract under which the new entity may integrate its workforce, resources, and capital. If we take into account the current operational reality of the system, these administration contracts are actually necessary to equalize the differences among vulnerable sectors.

As I stated when this case was certified, by validating the models established in the act, we accord preeminence to the principle of equality and give greater content to that guarantee, thereby providing gifted students, outstanding athletes, and economically disadvantaged students, among others, a real opportunity to assert to the fullest their fundamental right to education. Likewise, in view of the imminent closing and consolidation of schools validated in *Meléndez de León et al. v. Keleher et al.*, 200 DPR 740 [100 P.R. Offic. Trans. ___] (2018), I believe that these programs included in the act are alternatives that may be employed to mitigate the barriers that hinder the right to education.

In view of this situation, I concur with the decision reached in this case because by upholding the validity of Act No. 85 of 2018, we provide substantive content to the right to education and acknowledge the existence of guarantees for the different components of the school community. Unlike the administrative standards applied in the closing of schools by the Department of Education (which, in my opinion, provided no substantive and procedural guarantees to the different components of the school community),[4] Act No. 85 of 2018 expressly provides guarantees that seek to preserve the vested rights of the system's teachers, inasmuch as the statute itself provides that the rights of teachers of existing public schools to be certified as Partnership Schools may not be affected. The balance of interests thus requires it. For the foregoing reasons, I concur with the decision of this Court to reverse the decision of the Court of First Instance. I believe that Act No. 85 of 2018 is valid on its face, but if it violates the guarantees afforded to the components of the school community when applied, the doors of the Judicial Branch will be open to address such claims. We hope that this will not happen. However, regardless of the outcome of the controversy between the Department of Education as employer and the teachers as employees, the students that seek to benefit from new and better educational opportunities cannot be held hostages of this situation.

PGI/msp

[4] See the dissenting opinion issued by Justice Estrella Martínez in *Meléndez de León et al. v. Keleher et al.*

(Official Translation)

IN THE SUPREME COURT OF PUERTO RICO

Teachers' Association *et al.*,

Respondents

v. CT-2018-0006

Department of Education *et al.*,

Petitioners

JUSTICE RODRÍGUEZ RODRÍGUEZ, with whom CHIEF JUSTICE ORONOZ RODRÍGUEZ and JUSTICE COLÓN PÉREZ join, dissenting.

San Juan, Puerto Rico, August 9, 2018

> The Constitutional Convention did not disturb the delicate framework of these recommendations. On the contrary, it clarified even more its determination to *bar by all possible means the use of public funds for the support or benefit of private schools*, whether religious or non-sectarian, or of any sectarian institution, except insofar as they could profit indirectly from *non-educational* services rendered for the protection or welfare of children. (Emphasis added.)[1]

The judgment and the concurring opinions issued today determine that the grant of certificates to students within the education system so that they may enroll in private schools does not constitute a disbursement of public funds for the purpose of defraying the cost of private education. It is also determined that the support clause of our Constitution allows the establishment of schools operated and administered by entities unrelated to the Department of Education. This course of action, which is the result of an unfortunate exercise in historical revisionism, disrupts the foundations of that delicate framework established by our Framers and, in the end, lifts the ban against the use of public funds in order to—ironically enough—privatize our education system.

The legislative provisions at issue here and the procedural background of this case are included in their entirety in the concurring opinions. However, the majority's unfortunate interpretation of the support clause of our Constitution, and its thoughtless reversal of a judicial precedent of this Court as a stratagem devised to reach the intended result, compel me to set forth in detail the substantive grounds for my dissent.

The majority's conceptual errors and legal blunders not only evince an improper tendency to embrace the general criterion adopted by the political branches, but also reflect an excessive desire to figure out the meanings and interpretation that best adapt to

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[1] 3 José Trías Monge, *Historia constitucional de Puerto Rico* 179, San Juan, Ed. UPR (1982).

the conclusion they intend to advance. In this rhetorical, even tautological exercise, the majority criterion compares the terms "support" and "replacement" to conclude that since the establishment of schools that will *operate as nonprofit organizations and will not be administered* by the Department of Education does not seek to replace public schools, the support clause of our Constitution is not violated.

Likewise, as part of a vague semantic discourse, the majority seems to regard the terms "benefit" and "support" as equal, and states that "any support entails the existence of a benefit" and that the Framers deemed that "the term 'benefit' . . . was included in the word 'support . . . .'" Rivera García, J., concurring, at 30. However, although the majority initially regarded those terms as synonyms, it deems that the benefit afforded by the vouchers in terms of the free choice of private schools does not constitute the type of support proscribed by our Constitution. In this respect, the majority supports the conclusion that for a violation of the support clause to occur, the benefit "must reach the point of supporting the private entity." *Id.* Moreover, it is confusedly stresses that "the benefit must be of such magnitude that it *supports* . . . or, what is more, that it *replaces* . . . . ." *Id.* Thus, even though the vouchers constitute a contribution or economic assistance provided to private schools, the majority seems to believe that as long as the totality of the students of those schools are not subsidized by the vouchers, what is provided is not support, but merely a simple benefit. In other words, if only 499 students of a private school in which 500 students are enrolled receive "aid certificates," it would not be correct to say that the State supports that private school in contravention of the constitutional provision, given that one student does not receive that aid. Such is the nonsensical and inconsistent character of the "majority reasoning."

Finally, even though the majority characterizes the support clause as autochthonous and clarifies that its focal point, unlike that of the establishment clause, is "strictly economic," it confusedly cites federal caselaw that construes that religious clause to explain that "[i]n the realm of the law, the term originates in federal caselaw, which considers support as a form of establishment." *Id.* at 19. (Footnote omitted and emphasis suppressed.)[2] Thus, some members of this Court resort to federal caselaw that endorsed the use of vouchers on the ground that these were neutral toward all religions. Clearly that caselaw is absolutely inapplicable to the issue under our consideration because there is no provision in the federal Constitution similar to our support clause and, evidently, the focal point of the establishment cause is strictly religious. Such mix-up of both clauses—as that incurred, in practice, by the majority—reveals a patent confusion of spirit.

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[2] As will be discussed later, the word "support" is an adequate translation of the [Spanish] word *sostenimiento*. It is for that very reason that one of the meanings included in the Royal Spanish Academy's definition of the [Spanish] verb *sostener*, as cited by the majority, is "to lend support." However, the use of the word "support" by the majority in its reasoning is inconsistent with its final definition of *sostenimiento* for purposes of the clause under analysis. As explained throughout this dissent, the semantic inconsistencies incurred by the majority in construing the scope of the [Spanish] word *sostenimiento* reveal an adjudicative methodology that seems to echo an infamous political—not judicial—expression: "the end justifies the means."

The gradual privatization of our public education system, which is made viable by the statute whose validity is upheld today, is grounded on the violation of a constitutional provision that clearly mandates that "[n]o public property or public funds shall be used for the support of schools or educational institutions other than those of the state." P.R. Const. art. II, § 5, LPRA, vol. 1, at 277 (2016 ed.). (P.R. Const.). Thus, through a contrived interpretation, the majority emasculates the constitutional text and adopts the privatization thesis that underlies the so-called Education Reform Act—a thesis based on the premise that we must "socialize the losses and raffle off the profits." Raúl M. Núñez Negrón, *La tiza y la pizarra*, El Nuevo Día (April 21, 2018), available at https://www.elnuevodia.com/opinion/columnas/ latizaylapizarra-columna-2416358/ (last visited August 9, 2018).

I

As a prelude to a substantive discussion of the majority position, and bearing in mind the legal grounds and the adjudicative methodology employed by some members of the majority to dispose of this case, I am forced to discuss, albeit briefly, some *basic doctrines of federalism* that prove the incompatibility of the majority reasoning with the result reached. Once again, a majority resorts to the irreflexive practice of applying federal precedents with no true methodological rigor to examine a controversy involving an autochthonous constitutional clause.

It is quite unusual that the majority, in addressing a case that requires the Court to construe the scope of an inherently Puerto Rican clause, should deem it proper to refer to countless United States Supreme Court decisions that construe *a different constitutional provision* for allegedly "illustrative purposes." Rivera García, J., concurring, at 22.

Regarding the interaction of state and federal courts, former United States Supreme Court Justice William J. Brennan, Jr., in a celebrated article published in the 1970's, urged state courts in the United States to construe their own constitutions *independently* from the federal Constitution in order to broaden the protection of individual rights. See William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489 (1977). The main thesis of the article laid the groundwork for the movement known as the new judicial federalism or state constitutionalism movement, which sought, among other things, to propose interpretative theories to examine situations in which state courts address rights recognized in both state and federal laws or construe a right that has no counterpart in the federal Constitution. See, in general, Robert F. Williams, *In the Glare of the Supreme Court: Continuing Methodology and Legitimacy Problems in Independent State Constitutional Rights Adjudication*, 72 Notre Dame L. Rev. 1015 (1997).

Proponents of this movement have correctly pointed out that "an underappreciation of state constitutional law has hurt state and federal law and has undermined the appropriate balance between state and federal courts in protecting individual liberty". Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* 6, Oxford U. Press (2018). (Emphasis suppressed.) In line with this vision, it has been stated that "the irreducible minimum" is that state courts instill their own contents into their respective

constitutions, thus showing respect for their particular constitutional backgrounds and for the legal traditions that inspired them. *Id.* at 189.

According to this approach to the distribution of sovereignties between state and federal government, when the clause to be construed has no counterpart in the federal Constitution—as in the case of the support clause examined in the instant case—there is a consensus that an interpretation of clauses of this type will entail a thorough analysis of the exact scope of the right they recognize or the prohibition they impose on the government *without reference to federal jurisprudence*. See Ann M. Lousin, *Justice Brennan's Call to Arms–What Has Happened Since 1977?* 77 Ohio St. L.J. 387, 395-399 (2016).

In the specific context of the Commonwealth of Puerto Rico, this discussion has been framed within the recognition that our Constitution—particularly its Bill of Rights—has a "broader scope" than the federal Constitution. See Ernesto L. Chiesa, *Los derechos de los acusados y la factura más ancha*, 65 Rev. Jur. UPR 83 (1996). Throughout our history, this interpretation has resulted in the recognition of rights that do not necessarily exist in the federal sphere and, as a result, has provided broader individual protections to our citizens. See Tatiana Vallescorbo Cuevas, *Interpretando la factura más ancha*, 46 Rev. Jur. UIPR 303 (2012). Unfortunately, in the last few years, a majority of this Court has substantially reduced the scope of the individual protections and rights afforded by our Constitution. The analysis endorsed by the majority today is an example of this.

In *Pueblo v. Díaz, Bonano*, 176 DPR 601 [76 P.R. Offic. Trans. ___] (2009), a majority of the members of this Court adopted in dictum a methodology to decide similar issues based on judicial reductionism. Former Chief Justice Hernández Denton, in turn, criticized the adoption of that methodology and denounced that it "fails to consider the historical tradition of federalism and the dynamic interaction of federal and state constitutionalism, which has allowed democracy in the United States to survive and thrive for more than two centuries." *Pueblo v. Díaz, Bonano*, 176 DPR at 656 [76 P.R. Offic. Trans. at ___] (Hernández Denton, C.J., dissenting). With the judgment certified today, the majority once again forgets that the federal Constitution affords "state supreme courts significant margin to construe more broadly the guarantees of their respective Constitutions ahead of the principles set forth in some of the decisions of the United States Supreme Court. *That is the virtue of United States federalism, which is so cherished by its citizens.*" *Id.*

One of the members of the majority points out that "our Constitution—unlike the federal Constitution—is broader and more encompassing. We have an autochthonous provision: the support clause . . . ." (Rivera García, J., concurring, at 24.) However, his analysis and interpretation of our constitutional text digresses between instilling its own contents into that autochthonous clause and emulating the federal caselaw, which construes a different clause: the establishment clause of the federal Constitution. In the end, the Justices who endorse the majority position ignore their unavoidable duty, as interpreters of our Constitution, to broaden and extend the scope of the rights that protect our citizens.

What is at stake in this case is the right of all children in our country to "an education which shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms." P.R. Const., art. II, § 5. Our Constitution, unlike the federal Constitution, guarantees the existence of "a system of free and wholly non-sectarian public education." *Id.* The majority, however, seems to believe that the right at stake here is the access to private education at institutions that are completely detached from the State. The validation of the programs at issue here on the ground that they broaden educational opportunities and improve our education system is merely a subterfuge to advance a neoliberal and libertarian agenda at the expense of our Constitution and of the social and democratic values it embodies.

II

The conclusion reached by a majority of the members of this Court is grounded on an interpretation of the Constitutional Convention debates on the prohibition contained in the cited establishment clause. Those debates had already been examined by this Court—in the context of a controversy similar to the one raised in this case—in *Asoc. Maestros P.R. v. Srio. Educación*, 137 DPR 528 [37 P.R. Offic. Trans. ___] (1994). There, the Teachers' Association (respondent in the instant case) challenged the constitutionality of the provisions of the Special Scholarship and Free Selection of Schools Program Act, Act No. 71 of September 3, 1993 (18 LPRA § 911 *et seq.*). That act intended, among other things, to provide economic incentives to parents of public school students so that they could transfer their children to private schools.[3]

When passing on the constitutionality of that scholarship or financial incentive program in *Asoc. Maestros P.R.*, this Court examined the compatibility of the legal provision that established those benefits with the prohibition contained in the support clause of our Constitution. This Court instilled contents into that autochthonous constitutional provision and delimited the scope of the word "support." Thus, the Court exercised its duty to construe the constitutional text and concluded that the economic incentives program established by the legislature and the executive branch created a scheme banned by the support clause because it led to the use of public funds to benefit private academic institutions that, as such, were exempt from government control and administration. The Court specifically pointed out:

> First, we must bear in mind that the word "support" is not qualified in the constitutional text. *All support is barred.* Of course, the problem consists in defining just what relation between private schools and the State is

[3] The scholarship program examined in *Asoc. Maestros P.R. v. Srio. Educación*, 137 DPR 528 [37 P.R. Offic. Trans. ___] (1994), which was virtually identical to the school choice provisions validated today, had four school selection types: (1) the transfer of public school students to any other public school of their choice; (2) the transfer of private school students to any public school; (3) the grant of monetary incentives to enable the transfer of public school students to private schools; and (4) the grant of permits and incentives to talented students so that they may take university courses.

> permissible and what aid is not permissible because it would constitute the constitutionally-barred support.

Asoc. Maestros P.R. v. Srio. Educación, 137 DPR at 544 [37 P.R. Offic. Trans. at ___].

Since the term "support" was not qualified, this Court, deeming that the prohibition contained in the text appeared to be absolute, delimited the scope of the prohibition and analyzed the debates that took place during the Constitutional Convention to determine the circumstances in which interaction between the State and private educational institutions may be permitted without violating the constitutional prohibition against support. After examining this aspect, the Court concluded:

> An analysis of the history of the Constitutional Convention debates on the support clause gives weight to a broad interpretation of the scope of the prohibition.
>
> . . . .
>
> Clearly Art. II, Sec. 5 of our Constitution does not allow [s]tate support of any private educational institution, religious or otherwise. Its aim goes beyond the separation of Church and State, and seeks to protect and strengthen as fully as possible our public school system *vis-à-vis* any other private education institution.

Asoc. Maestros P.R. v. Srio. Educación, 137 DPR at 544-545 and 547 [37 P.R. Offic. Trans. at ___ and ___].

In line with this interpretation, the Court held invalid the legislative provisions that allowed the grant of economic incentives to parents of public school students so that the latter may attend private schools. Its decision was based on the following grounds:

> The support clause bars the State from providing benefits, aid or support to a private school. This, of course, does not mean that a private school cannot benefit indirectly or incidentally from those services that the State provides for all its citizens; as are, for instance, the police and fire department services. But the State is indeed barred from providing services or aid to a private school that, by directly contributing to the institution's educational purpose, constitute the constitutionally-barred support. For example, the State could not allot public funds for the construction of private schools.

Asoc. Maestros P.R. v. Srio. Educación, 137 DPR at 547-548 [37 P.R. Offic. Trans. at ___].

The judgment certified today sets aside the precedent established in *Asoc. Maestros P.R.*[4] despite the fact that the constitutional text construed here has not been

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[4] As already stated, the majority correctly upheld the determination on respondents' standing. I concur with that determination. However, as former Justice Fuster Berlingeri stated in his concurring opinion in *Asoc. Maestros P.R.*, I believe that the Association's standing in this case is based on the conventional standards established for associations in our caselaw. For that reason, I believe that it is not necessary to invoke the analysis made in *Flast v. Cohen*, 392 U.S. 83, 99-100 (1965), on standing in taxpayer suits under the federal establishment clause, especially when the resolution of the case under our consideration is based on an interpretation of the support clause of our Constitution. See *Asoc. Maestros P.R. v. Srio. Educación*, 137 DPR at 572 [37 P.R. Offic. Trans. at ___] (Fuster Berlingeri, J., concurring).

amended by the Legislative Branch.[5] Such course of action constitutes an unusual and substantial—not to say absolute—reduction of the scope and contents given to an autochthonous constitutional clause designed to promote and strengthen that "system of free and wholly non-sectarian public education" and display the firm commitment of our Framers to the right of all children in our country to receive free education, as enshrined in our Constitution. P.R. Const., art. II, § 5.

The majority decision also proves to be yet another manifestation of its shrewd insistence in failing to respect our judicial precedents when these are not in agreement with or fail to adjust to the public policy formulated by kindred governments.[6] This stubborn attitude, which is utterly incompatible with our function as Justices of this Court, casts doubts on judicial independence and on the legitimacy of an institution that cannot be subject to the whims of those who constitute it. The predictability, uniformity, and certainty of the Rule of Law that derive from the adoption of the doctrine of *stare decisis* in our jurisdiction vanish irreversibly every time the majority forgets that the robes we don are imperturbably and immutably black.[7]

The majority's accommodating interpretation of the discussion that arose during the Constitutional Convention not only is the absolute opposite of this Court's interpretation in *Asoc. Maestros P.R. v. Srio. Educación*, but also distorts and decontextualizes the statements made by the delegates in order to justify its erroneous conclusion and to remove the contents of the constitutional clause that explicitly prohibits the use of public funds to support private educational institutions.

III

As a threshold matter, it is convenient to examine the univocal definition of the word "support" adopted by a majority. Instead of engaging in a linguistic or etymological study of that concept and explaining how it was employed by the Framers during the Convention debates, the majority resorts to the Royal Spanish Academy's dictionary to assign it a meaning that, as Justice Rivera García's concurring opinion shows, is inconsistent with the discussion held during the Convention with respect to the scope of the word "support."

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[5] In discussing with approval the decision of the Court in *Asoc. Maestros P.R.*, Professor José Julián Álvarez González correctly remarked that in situations involving any "government action aimed at providing a special benefit for the private education system," the government may resort to the constitutional amendment process. José J. Álvarez González and Ana I. García Saúl, *Derecho constitucional*, 65 Rev. Jur. UPR 799, 843 (1996).

[6] See: *Pueblo v. Sánchez Valle et al.*, 192 DPR 594 [92 P.R. Offic. Trans. ___] (2015); *Rivera Schatz v. ELA y C. Abo. PR II*, 191 DPR 791 [91 P.R. Offic. Trans. ___] (2014); *E.L.A. v. Crespo Torres*, 180 DPR 776 [80 P.R. Offic. Trans. ___] (2011).

[7] It must be noted that after providing three circumstances in which judicial precedents may be overruled as an exception, the majority limits its analysis to stating, with no further explanation, that "the rule laid down by this Court in *Asoc. Maestros P.R. v. Srio. Educación* and the interpretation of the support clause made in that case are clearly erroneous." (Rivera García, J., concurring, at 18). This pronouncement is followed in that opinion by the essentially *verbatim* insertion and repetition of the analysis made by former Justice Rebollo López in his dissent in that case and of the arguments raised in the briefs filed by the State and by the intervenors in the case under our consideration.

The delimitation of the scope of the constitutional mandate against the support of schools or educational institutions other than those of the State requires a thorough and well-pondered study of the Framers' statements and of the development of the text that eventually became Art. II, Sec. 5 of our Constitution. Therefore, the comments and statements made by the delegates should not be cited separately: when determining their true intent, the correct course of action is to examine the debate as a whole.

Originally, what became the support clause did not even include the word with which it was denominated, and by which it is currently known. In that respect, the clause read as follows: "No public property or funds shall be used for *education* in schools or educational institutions other than those of the State." *Diario de Sesiones de la Convención Constituyente* [Journal of Proceedings of the Constitutional Convention] 1765, at http://www.oslpr.org/v2/PDFS/DiarioConvencionConstituyente.pdf (*Diario de Sesiones*). (Emphasis added.) Delegate Trías Monge proposed that the word "education" be stricken and replaced by the word "support." *Id.* at 1791. After the amendment proposed was seconded, Delegate Brunet proposed the insertion of the word "benefit" so that the clause, as cited by Trías Monge, would read as follows: "No public property or funds shall be used for the support or benefit of schools or educational institutions other than those of the State." *Id.* Delegate José Trías Monge explained the two amendments proposed as follows:

> It would then read: "No public property or funds shall be used for the support or benefit of schools or educational institutions. . . ." It is accepted on grounds that the language being proposed is now basically or rather exactly that of the Constitution of Hawaii, as it was finally approved: also, it is basically similar to that of the Constitution of Illinois, which, in my opinion, has served as basis for this provision and upholds more clearly than the word education the principle of appropriate separation of Church and State while not affecting the final provision, in the same section, that nothing in this provision shall prevent the State from rendering non-educational services to children. The intention then is rather to insert education and children between schools or institutions, thereby duly protecting the right of children to receive the aid offered by the State.

Id. at 1792.

In other words, Delegate Trías Monge expressly acknowledged that the language proposed was exactly the same as that of the Constitution of Hawaii in force at that time, and that it sought to broaden the scope of the establishment clause through an additional prohibition. *Id.*[8] Thus, by replacing "education" with "support," the Framers sought to

[8] The case of Hawaii is particularly relevant to the interpretation made today of our constitutional clause and to the result reached on the basis thereof. By the time our Constitutional Convention was held, the support clause of the Hawaii Constitution provided: "[N]or shall public funds be appropriated for the support or benefit of any sectarian or . . . private educational institution." Haw. Const. art. X, § 1, at https://law.justia.com/constitution/hawaii/conart10.html. When the Supreme Court of Hawaii construed that clause in *Spears v. Honda*, 449 P.2d 130 (Haw. 1968), it concluded that the framers had unequivocally closed the door to the disbursement of public funds to subsidize any aspect of private education. After the United States Supreme Court validated the implementation of school vouchers in the State of Ohio in *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), the government of Hawaii requested legal advice from its Attorney General

establish a more categorical prohibition and make it extensive not only to education, but also to support in general and to any other benefit that the government could provide to private educational institutions through the use of public property or funds.

The foregoing discussion evidently clashes against the limited scope attributed by the majority to the word "support" in the constitutional text. Based on the definitions provided by the Royal Spanish Academy—to which reference is made in Justice Rivera García's concurring opinion—the majority concludes that "the term *sostenimiento* [support] is equivalent to providing the necessary means of subsistence." Rivera García, J., concurring, at 18. The opinion surreptitiously explains that "insofar as someone is afforded the necessary means of subsistence—that is, of maintenance, permanence or preservation—that person is being supported." *Id.* at 18-19. This is stated despite the fact that one of the cited definitions provided by the Royal Spanish Academy for the word *sostener* ["to support"] is "to lend support, to provide relief or aid." *Id.* at 18. As mentioned above, in line with this definition, a member of the majority, in referring to the presumed origin of that term in federal caselaw, confusedly employs the word "support" as a translation of *sostenimiento*, even though he had rejected the adoption of that word in his original analysis.

This semantic dichotomy endorsed by the majority in construing the word *sostenimiento* and the successive absurd premises that result from it reaches its highest point with the following statement:

> Art[icle] II, Sec. 5 of the Puerto Rico Constitution [sought] to prevent the State from promoting a particular religion through the support of schools and from replacing the public education system with a private system . . . . It was established in the debate that what the State could not do was use the scholarship system to support private schools or replace the public education system with a private system.

Rivera García, J., concurring, at 29.

Thus, for all purposes, the majority decision judicially amends the constitutional text so that it may read: "No public property or funds shall be used for the *replacement* of schools or educational institutions of the State by private institutions." As a result, what the Framers foresaw as a general and encompassing prohibition against the support of private educational institutions is reduced to a simple prohibition against the replacement of one system by another. Thus, the word *sostener* ["to support"] no longer means to lend

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asking whether that decision would be applicable under the support clause and whether the implementation of school vouchers would violate that clause. In response, the Attorney General issued an opinion in which he concluded that the support clause of the Constitution barred the implementation of a school voucher program similar to the one validated by the federal Supreme Court in *Zelman*. He essentially reasoned that the decision in that case was based on the establishment clause, and that the Hawaii Constitution had an additional clause not included in the federal constitution that prohibited the appropriation of public funds to private educational institutions. The Attorney General correctly stated in that respect that "the Hawaii State Constitution . . . is more restrictive than its federal counterpart." State of Hawaii, Department of the Attorney General, Op. No. 03-01, at http://ag.hawaii.gov/wp-content/uploads/2013/01/03-01.pdf. Based on the Opinion of the Attorney General, the State of Hawaii amended its Constitution to allow the implementation of a school voucher program.

"support" or to provide "aid" to the private sector, but rather to create a scheme for the purpose of "providing [it with] the necessary means of subsistence" and to make it easier for private schools to occupy the place of state schools. Rivera García, concurring, at 18.

On the other hand, as additional evidence of the broad scope that the Framers sought to instill into the word *sostenimiento* [support], the amendment proposed by Delegate Brunet stirred a discussion on the need to insert the word *beneficio* [benefit] along with *sostenimiento*. The following debate arose among the delegates about the convenience and adequacy of adding the term *beneficio*:

> Mr. IRIARTE: I would like an explanation. I would like an explanation of the scope of this provision as it is drafted: "No public property or funds shall be used for the support or benefit"—as it reads now, according to the amendment proposed by fellow Delegate Brunet—"of schools or educational institutions other than those of the State." How would that phrase, "or benefit," be interpreted? What would be the scope of that provision? I believe that fellow Delegate Trías was explaining the scope of the amendment. Our fellow Delegate Brunet should explain the scope of that amendment because I understand "support", but I believe that "benefit" is so broad that it may complicate things that, in my opinion, should not be complicated. I would like an explanation before being able to argue against the amendment.
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> Mr. TRÍAS: In my opinion, the amendment is basically in terms of style and does not broaden the concept indicated in line 10. As stated earlier, it basically follows the language set forth in the Constitution of Hawaii, which, in turn, is modeled after other state constitutions that establish a distinction between the obligation of the State to address the support or benefit of schools, only of schools *under the exclusive control of the State*, and we all recognize that the principle of separation of Church and State entails that basic distinction; in other words, that the State, that public funds may not be used to support or benefit [other schools]; in my opinion, that was the meaning intended in "education in schools that are not under the exclusive control of the State."
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> Mr. IRIARTE: I am against the amendment, Mr. Chairman, fellow delegates. I believe that the amendment by addition made by our fellow Delegate Brunet to the amendment proposed by our fellow Delegate Trías completely changes the purpose of the amendment. The support of public schools or educational institutions other than those of the State is not the same as the support or benefit of schools or educational institutions other than those of the State. This could be given the same interpretation already given in the United States to similar provisions that have been subject to so many public debates and about which abundant information was provided to the Bill of Rights Committee for an entire day by the persons who appeared here.
>
> It could be understood as an opposition against the receipt of indirect benefit by institutions other than those of the State. If scholarships were granted to specific students so that they may study abroad, in the United States, at institutions other than those of the government of Puerto Rico or of the United States government, that were, shall we say, private institutions administered or directed by religious sects, it could be construed that these institutions were indirectly receiving benefits merely because of the grant of scholarships to the students enrolled in those religious institutions. The addition of that phrase, "or benefit," may lead to such an interpretation. I believe that it would suffice to restrict that limitation to our territorial boundaries and to what would be implied by the previous

> phrase, the amendment [proposed by] our fellow Delegate Trías Monge, but without adding the phrase "or benefit." If "benefit" is included, it may be construed in the manner mentioned above, and then it could lead to discrimination—which, I believe, is not the purpose of the assembly, inasmuch as such discriminations are being condemned and have been condemned in what we have read so far in the bill of rights.

Diario de Sesiones, *supra*, at 1792-93.

It must be noted that Delegate Iriarte's concern was that the term "benefit" would be construed to prohibit the grant of scholarships to students who would complete their studies at private educational institutions or abroad. He stated that the grant of those scholarships could be construed as an indirect benefit for those institutions. Several statements made by Delegate Trías Monge, which are also cited by the majority, dispel all doubts about the scope of the prohibition against the support of private educational institutions. For instance, it may be concluded from the debate cited above that Delegate Trías Monge stressed how the State's obligation to address the support or benefit of schools extends only to those that are *under the exclusive control of the State*. Likewise, he believed that the addition of the word "benefit" was rather a matter of style that did not broaden what was already provided through the use of the word "support."

Delegate Trías Monge's clarification did not end the concern about the nature of the scholarships and about whether they may be considered benefits provided to educational institutions or to students. The following issue was specifically discussed:

> Mr. DÁVILA MONSANTO: May I ask a question?
>
> Mr. IRIARTE: Yes, sir.
>
> Mr. DÁVILA MONSANTO: Who benefits from those scholarships to which our fellow delegate refers? Is it a private school or the scholarship recipient?
>
> Mr. IRIARTE: They benefit the scholarship recipient, but it has already been construed in several cases that were cited before the Bill of Rights, the Bill of Rights Committee, in several states of the Union, that they benefitted the institutions where those recipients received their education. Therefore, to prevent the forced imposition of those interpretations, it would be convenient not to add that phrase "or benefit," but rather that no public funds in Puerto Rico shall be invested in the support of schools other than those of the State. I agree with that. However, if "or benefit" is included, it could be understood to mean that a scholarship granted to a student [is] a benefit granted indirectly to that institution in which the student receives education. That is why I believe that the phrase "or benefit" should not be included.
>
> . . . .
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> Mr. BENÍTEZ: With the Chairman's leave, yes, the Government of Puerto Rico and the University of Puerto Rico currently grant such scholarships for private religious schools to youths who will study, for instance, medicine in the United States. There is currently a number of young Puerto Ricans studying at Catholic and Protestant medical schools in the United States.

Diario de Sesiones, *supra*, at 1793-94.

In view of the confusion that may be caused by the inclusion of the word "benefit" in connection with the grant of scholarships to students—and as one of the members of the majority points out—Delegate Iriarte asked Delegate Brunet to withdraw his amendment. However, the majority fails to quote Delegate Brunet's answer to that request:

> Mr. BRUNET: My fellow delegate, here, as well as at the public hearings, we are making a tempest in a teacup. Under the provisions of clause 19, as it is drafted, Puerto Rico is paying [the studies of] students who pursue careers in Catholic and Protestant universities. Despite the fact that it says: directly or indirectly, this is being done with the consent of everyone.

Diario de Sesiones, *supra*, at 1794.

Thus, Delegate Brunet clarified that the scholarships that gave rise to Delegate Iriarte's objection to the proposed amendment were for university students and not for students of elementary or high schools, which were the educational institutions to which Sec. 5 of the Constitution referred.[9] Furthermore, when discussing what could be considered as a benefit, Delegate Brunet made reference to a sentence in Sec. 5 of Article II that finally provided: "Nothing contained in this provision shall prevent the state from furnishing to any child non-educational services established by law for the protection or welfare of children.". P.R. Const. art. II, § 5, LPRA, vol. 1, at 277. With respect to this provision, Delegate Brunet stated:

> The last provision refers to those services that the State provides to its own schools and could not provide in private schools, such as school lunchrooms, milk stations, dental services. Why would children who attend private schools be denied services of this type? [Such services] should not be denied. This constitution, as it is drafted, allows that to be done.

Diario de Sesiones, *supra*, at 1796.

In examining this clause on non-educational services, the delegates proposed an amendment to the section by adding at the end the phrase "whether they attend public schools or private schools." *Diario de Sesiones*, *supra*, at 1816. This amendment was defeated after the delegates amply discussed the difference between educational and non-educational services and understood that the reference made to the phrase "any child" covered that aspect. It was in that context, not in the context of the prohibition contained in the support clause—as a member of the majority incorrectly states—that the Framers discussed the decision of the federal Supreme Court in *Everson v. Board of Education*, 330 US 1 (1947). Delegate Géigel, who proposed the amendment, specifically explained that his intention was to clarify which private school students could also benefit from

[9] We endorse the majority statement that "[i]t is important to stress the historical context in which this debate took place." Rivera García, J., concurring, at 22. In line with this expression, it must be pointed out that Puerto Rico did not have an accredited school of medicine until 1954; therefore, the scholarships granted by the government to university students—and to which reference was made at the Convention—were extraordinary in character and were justified by the lack of a state institution that would provide such educational services.

non-educational benefits. Invoking *Everson*, he explained that those benefits included "transportation or lunch expenses, etc., to attend school . . . books, shoes, etc." *Diario de Sesiones*, *supra*, at 1817.[10]

Contrary to the majority reasoning, these statements never referred to the grant of purely educational benefits such as a private school education voucher. Even—as stated earlier—the discussion about how the scholarships did not necessarily imply a violation of the support clause was circumscribed to scholarships granted to university students. Delegate Iriarte acknowledged during the debate that some state jurisdictions had construed that the grant of those scholarships constituted a direct benefit to the educational institution. This statement, in turn, led Delegate Brunet to clarify that nothing in the Constitution prohibited the grant of scholarships to adults. ("They are young people, but nothing in the constitution, my fellow delegate, prohibits the grant of scholarships to adults. Where is it?" *Diario de Sesiones*, *supra*, at 1796.

The debate on the inclusion of the word "benefit" continued and, as Justice Rivera García's concurring opinion points out, the delegates ultimately defeated the amendment proposed. As erroneously explained in that concurring opinion, "the phrase 'or benefit' was excluded from the provision that makes reference to the support clause in order to avoid limiting the aspects that were debated." Rivera García, J., concurring, at 21. However, the delegates' own statements show why the word "benefit" was finally excluded from the constitutional text:

> Mr. BENÍTEZ: Mr. Chairman, I would like to say a few words to explain this. My only reason for requesting the exclusion of "benefit" is that, in my opinion, everything is covered by the word "support," and I believe that it is most convenient to employ the least amount of wording possible in this provision; and it is on those grounds that I have requested the deletion of "or benefit."

Diario de Sesiones, *supra*, at 1797.

Likewise, Delegate Trías Monge, who was present and participated actively in the debate, remarked later on in his book *Historia constitucional de Puerto Rico* that "[t]he amendment was not adopted, but only because it was construed, according to the statements made by the president of the Bill of Rights Committee, that 'everything is covered by the word "support."'" 3 José Trías Monge, *Historia constitucional de Puerto Rico* 180, San Juan, Ed UPR (1982). The wit and inventiveness of the majority position stand out when it concludes that the amendment did not prevail because the Framers did not want to limit the grant of the non-educational benefits that were under discussion. This conclusion overlooks the clear wording of the sentence that follows the support clause and, moreover, provides a false account of the statements made by our Framers.

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[10] The majority places the type of benefit at issue in *Everson v. Board of Education*, 330 US 1 (1947), on the same level as the scholarships that were also discussed at the Constitutional Convention. See Rivera García, J., concurring, at 21. However, a cursory reading of the debate held on this issue clearly shows that the delegates perfectly understood the difference between both benefits.

In this respect, the majority statements are also contradictory. Although it is stated that the word "benefit" was excluded because of the delegates' concern about what exactly constituted a benefit, some statements subsequently made in the concurring opinion are in line with the explanation provided by Delegates Benítez and Trías Monge. As said opinion states, "[a]n examination of the statements made in the debate leads us to conclude that the reason for not including the phrase 'or benefit' was that had it been included, some situation in the future could bar institutions other than those of the State from receiving indirect benefits." Rivera García, J., concurring, at 22. Contrariwise, in the section of Justice Rivera García's concurring opinion in which the Law is applied to the facts, the majority states: "As we established at the beginning, the amendment submitted for the purpose of expressly including the phrase 'or benefit' was defeated because it involved a matter of style and the term *benefit* was included in the word *support*." *Id.* at 27.

The majority's irreconcilable ambivalence about the true reason for excluding the word *beneficio* [benefit] becomes even more evident when it is affirmed that "any support entails the existence of a benefit." Rivera García, J., concurring, at 30. The ambiguity of this analysis and the obvious contradictions that result from it make it impossible to accurately grasp the majority reasoning, much less the meaning and scope it finally assigns to the word *sostenimiento* [support].

Another example of the manner in which the majority decontextualizes and distorts the discussions held during the convention is the interpretation it gives to the expressions related to the payment by the government of the enrollment costs of students in private schools. Since the majority deliberately avoids citing in full the statements made by the delegates who took part in the debate, and in order to contextualize those expressions, we must cite in its entirety the discussion that arose as a result of the question posed by Delegate Ramiro Colón:

> Mr. RAMIRO COLÓN: I simply want to be enlightened about the purpose of changing the word "education" to "support". In order to understand, I would like to make a brief question to . . . I will make it now to our fellow Delegate Benítez instead of fellow Delegate Brunet, since his amendment was defeated. However, before making the question for enlightening purposes, so that he may answer it in the best possible way, given the state of confusion I am in at this time, I would like to say that according to the statements made here, if this amendment is approved as it currently is, then scholarships could be awarded to Puerto Rican students so they may attend private or sectarian schools or universities without affecting the text of the constitution. If that is the case, I now ask fellow Delegate Benítez, could the Government also decide to pay the enrollment fees of Puerto Rican children in private schools in Puerto Rico without violating the text of the constitution?
>
> Mr. BENÍTEZ: This issue of scholarships to which you refer is an aspect circumscribed to a very reduced number of situations in which the State provides study facilities outside its classrooms in circumstances in which . . . *in exceptional cases,* it cannot provide those services in its own classrooms.
>
> . . . .

> Mr. RAMIRO COLÓN: You have not answered me. The question was the following: According to this constitution, once it is amended as proposed, can the government of Puerto Rico, by way of some statute or some funds, pay the enrollment fees of Puerto Rican children—not award them a scholarship, but pay their enrollment fees—in private schools in Puerto Rico?
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> Mr. BENÍTEZ: That will depend, that will depend on the fact situation in that specific case. That is, under these provisions, the government of Puerto Rico could not use the scholarship system, or the scholarship system mechanism, to support private schools; neither could the Government provide a scholarship system to offer religious education to its students. Neither could it use the scholarship system to carry out an education program that would violate the fundamental meaning of the provision that governs the entire paragraph: "There shall be a system of free and wholly nonsectarian public education."

Diario de Sesiones, *supra*, at 1799. (Emphasis added.)

The majority conveniently limits itself to stressing that Delegate Benítez's position "was that '[t]he government of Puerto Rico cannot establish a scholarship system that replaces the public education system, which the State has the obligation to establish, and which must be completely nonsectarian.'" Rivera García, J., concurring, at 21. (Emphasis suppressed.) Evidently, the majority selected the only statement that supports the contention about the constitutional validity of the government's use of public funds to pay private school enrollment costs. It must be pointed out that Delegate Benítez's true position is, in the first place, that only in *exceptional cases and in a very reduced number of situations* may the government grant scholarships so that students may receive educational services *that cannot be provided by the Department of Education*. On the other hand, Delegate Benítez also stated that the support clause enjoined the government from supporting private schools by way of the "scholarship system mechanism." *Diario de Sesiones*, *supra*, at 1799.

The majority chooses to ignore the importance of these expressions, including that in which Delegate Benítez stated that the scholarship system could not be used by the State to violate "the fundamental meaning of the provision that governs the entire paragraph: 'There shall be a system of free and wholly nonsectarian public education.'" *Diario de Sesiones*, *supra*, at 1799. The majority also decontextualizes Delegate Ramiro Colón's expressions regarding his confusion about the scholarships. A thorough reading of these expressions shows that the interpretation proposed is clearly erroneous.

In the specific context of this debate, we must stress that Delegate Ramiro Colón's confusion concerns the amendment initially proposed by Delegate Trías Monge, which would replace the word "education" with "support." In other words, he reasoned that after the amendment that proposed the inclusion of "benefit" was defeated because that concept was deemed to be already included in the word "support," such a replacement could imply that the government would be allowed to pay for the education of students outside public school classrooms. Thus, after Delegate Benítez clarified that—save for

very few exceptions—the government was enjoined from subsidizing enrollment costs in private schools, Delegate Ramiro Colón insisted in his confusion and stated:

> Mr. RAMIRO COLÓN: May my fellow delegate allow me to explain my confusion now, what I intend to do is, merely, [to clarify] this issue so that I can vote with full knowledge of the matter.
>
> It has been said here that when a student is awarded a scholarship, which is equivalent to paying his [or her] enrollment costs, it is the student who benefits, not the school he [or she] will attend; and it seems to me, if that is the meaning, that nothing in this constitution can bar the government of Puerto Rico from paying the enrollment fees of children in Puerto Rico when they attend private schools. And I want you to tell me whether that could be true, so that I can then know how I should vote.

Diario de Sesiones, *supra*, at 1799-1800.

It must be noted, in the first place, that Delegate Ramiro Colón is stating the reasons why the amendment is confusing. In second place, his statements are conditioned by what, in his opinion, was the subject discussed in the debate ("if that is the meaning"). Thus, what the delegate is saying is that insofar as scholarships are not considered benefits granted directly to private academic institutions, the constitutional text would not bar the State from paying enrollment costs as a direct benefit for the students, not for the institutions. However, since these expressions are conditioned by the views of the Framers, they are not conclusive or definitive, as the majority interprets them to be.

It also must be stressed that Delegate Benítez, in addressing Delegate Ramiro Colón's confusion, reiterated that "[t]he government of Puerto Rico cannot establish a scholarship system that replaces the public education system, which the State has the obligation to establish . . . ." *Diario de Sesiones*, *supra*, at 1800. The accommodating interpretation of this clarification does not take into account the context in which the discussion took place and Delegate Ramiro Colón's confusion about the propriety of the academic scholarships and whether these were benefits banned by the constitutional text. Likewise, the majority overlooks the fact that Delegate Ramiro Colón's expressions are conditioned by his understanding of a discussion that he himself recognizes as a source of "confusion."

In light of the preceding analysis, and as discussed below, the effects of the statutory provisions whose constitutional validity is upheld today were essentially contemplated and rejected by the delegates to the Constitutional Convention and are an affront to our public education system. There is no doubt that the use of public funds to subsidize the enrollment of public school students in private educational institutions violates the support clause and, consequently, is unconstitutional on its face. Likewise, the creation and subsidization by the State of educational institutions that would not be administered and operated by the Department of Education is also unconstitutional. Consequently, as remarked by Delegate Trías Monge during the Constitutional Convention, those institutions will not be "*under the exclusive control of the State.*" *Diario de Sesiones*, *supra*, at 1792. (Emphasis added.)

III
A

The judgment issued today by a majority of the members of this Court reverses the precedent established in Asoc. Maestros P.R. v. Srio. Educación and authorizes the disbursement of public funds to private schools by way of certificates that are equivalent to the educational vouchers that were invalidated at that time. Since I believe that any modality of a scheme that allows for the use of Department of Education funds to pay the enrollment costs of students in private institutions provides financial benefit and support to those entities, I would declare unconstitutional the School Choice Program validated by the majority today.

The Statement of Motives of the Education Reform Act, at http://www2.pr.gov/ogp/BVirtual/LeyesOrganicas/pdf/85-2018.pdf,[11] expressly recognizes, as we have already discussed, that a similar—not to say identical—program was declared unconstitutional by this Court in *Asoc. Maestros P.R. v. Srio. Educación*. The Statement of Motives states that the legal reality within which that case was decided has allegedly "undergone major changes." *Id.* Thus, the text states that "[t]he interpretation of the Establishment Clause of the Constitution of the United States has evolved over time in accordance with the demands of the 21st century." *Id.* The Statement of Motives subsequently lists a number of federal decisions (some of which were cited in the concurring opinions of several members of this Court) to conclude that this matter "should be revisited upon careful evaluation of all the legal basis and local historical developments as well as recent case law at the federal level." *Id.*

Although it is true that the United States Supreme Court has issued different decisions on the constitutional validity of several educational programs that are similar to the School Choice Program, all those decisions, without exception, are grounded on the federal establishment clause on the separation of Church and State or on equivalent state constitutional clauses. These federal caselaw developments are completely irrelevant when construing the support clause of our Constitution, whose focal point—as Justice Rivera García correctly acknowledges—is strictly economic, not religious. Rivera García, J., concurring, at 25. In other words, the implementation of an educational voucher program in our jurisdiction must be examined only in light of the prohibitions contained in our Constitution. The course of action followed by the majority in ratifying the legislative measure at issue here contravenes an express constitutional mandate that prohibits in our jurisdiction the use of public funds to support private education.

When passing on the School Choice Program and comparing it to the one established in the Special Scholarship and Free Selection of Schools Act of 1993—which

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[11] For a panoramic, analytical, and historical view of education in Puerto Rico (from the time of the Spanish rule to present) that may provide contents to the Statement of Motives of the act, see Juan José Osuna, *A History of Education in Puerto Rico*, San Juan, Ed. UPR (1949); Mayra Huergo Cardoso, *La educación en Puerto Rico*, in *Puerto Rico y su gobierno: estructura, retos y dinámicas*, Cataño, Eds. SM (Héctor L. Acevedo ed., 2016).

this Court invalidated—it is inferred that the "new" scheme of financial aid is actually a failed attempt to reproduce the previous program.[12] However, a majority of this Court deems that the educational vouchers are constitutional insofar as they do not "support" the private institutions that benefit from them. They reason that the degree of support needed to violate the constitutional prohibition must reach the point of replacing the public system. The majority also believes that the educational vouchers are comparable to those scholarships mentioned at the Constitutional Convention, which allowed university students to complete their studies at private institutions. I am baffled by the thought of the majority being unable to distinguish the difference between both programs.

In the first place, the scholarships to which the delegates referred were financial aid to help university students (not elementary or high school students) pursue studies in fields for which the country had no resources or specialized institutions. Even, as discussed earlier, when the delegates contemplated the possibility of having the State subsidize elementary studies in private schools through the grant of similar scholarships or through the direct payment of enrollment expenses, Delegate Benítez emphatically clarified that such course of action would be justified only in extraordinary circumstances in which the State could not provide the necessary services to the students. Delegate Benítez clearly and specifically stated that only in *exceptional circumstances* could the State grant scholarships so that a student may receive educational services that *cannot be provided* by the Department of Education.

In second place, nothing in the Statement of Motives or in the act that creates the School Choice Program justifies the grant of certificates on grounds that our country's public education system lacks the means or resources to offer services to students who could benefit from the Program. In fact, the Program itself implies that the financial resources are available, since these will be transferred from the Department of Education's budget to the private educational institutions through the payment of the corresponding enrollment fees. The majority also remains silent about the practical public-policy considerations or the reasons that justify such disbursement of public funds to private schools. Except for its incorrect interpretation of the term *sostenimiento* [support] and the "adaptability" attributed to the Framers' statements, none of the majority's arguments defeats the evident unconstitutionality of the School Choice Program.

Regarding the majority argument about the debate that arose during the Constitutional Convention with respect to who would receive academic scholarships, Professor José Julián Álvarez González, in criticizing similar arguments contained in former Justice Rebollo López's dissent in *Asoc. Maestros P.R. v. Srio. Educación*, correctly pointed out that the distinction between *who* receives the economic aid—the parents or the private educational entity—is "*artificial and impossible to apply rationally*," since the

[12] The elements of the language of both statutes are identical. For example, both Act No. 71 of 1993 and Act No. 85 of 2018: (1) are to be implemented on an experimental basis; (2) delegate similar functions and duties to the administrative offices of the program; and (3) provide basically the same financial aid modalities, among other matters.

effect of financing private institutions with public funds would still be the same. José J. Álvarez González and Ana I. García Saúl, *Derecho Constitucional*, 65 Rev. Jur. UPR 799, 842 n.191 (1996). (Emphasis added.)

One need not be a financial expert to infer that the payment by the Department of Education of enrollment costs in private schools (whether through certificates given to the parents or through checks drafted directly to the schools) constitutes a monetary disbursement that benefits and supports the educational entity that ultimately receives it. This scheme is in keeping with the definition of the word *sostenimiento* that the majority discards and that includes rendering financial "assistance" or "aid" to a private school. In light of the above, it is inconceivable that a majority would believe that the support clause is not violated—more so when the funds will be directly withdrawn from the budget assigned to the Department of Education and, therefore, will not be available for the purpose of covering expenses that would benefit public school students. As Professor Álvarez González correctly remarked when he examined the majority reasoning in *Asoc. Maestros P.R. v. Srio. Educación*, "[t]he determining factor is that the State pays for *educational services that are similar* to the ones offered by its own public education system." Álvarez González and García Saúl, *supra*, at 842-843. (Emphasis added.)

On the other hand, the majority states that the public funds allocated to the School Choice Program for administrative purposes and for the assignment of per-student resources are not substantial when compared to the total budget of the Department of Education. See sec. 14.07 of the Puerto Rico Education Reform Act, which provides that 3% or less will be allocated from the budget according to the per-student allocation for each fiscal year to implement the Program, as well as 2% of the funds allocated by the Department to defray administrative expenses. The majority's belief that this amount is minimal reinforces its conclusion that the Program does not violate the support clause.

As I anticipated, this reasoning is premised on a conceptual error: it considers the word "support" as an equivalent of the verb "replace". By stripping our support clause of its contents, the majority believes that educational programs that entail the disbursement of public funds to private educational institutions may be invalidated only if they replace our public education system. As I also mentioned in section III, the majority of the members of this Court—which on many occasions has criticized judicial activism—is, for all practical purposes, *rewriting* a support clause intended to be broad in scope (in order to guarantee the permanence and stability of the public education system) to the point of limiting such scope to very few exceptions.

According to the majority position, we must ask ourselves: What social and economic interests does this constitutional clause protect? What type of government program would contravene it? How much of the Department of Education's budget would have to be allocated to this Program for such allocation to constitute an act of prohibited support? What would constitute a "substantial" budget allocation? Is it 5%, 15%, 30%, or 50%? All these questions reflect the absurdness of the majority reasoning

and how its decision makes the support clause inoperative. The prohibition against the use of public funds to support private schools *is not a matter of gradation*, but of *absolutes*.[13] We cannot validate a violation of the constitutional text just because we consider it *de minimis*.

I have no doubt that just like the educational vouchers proposed by the government in 1993, the certificates validated today by a majority, which allow for the transfer of students from public schools to private schools, clearly contravene the support clause.[14] As previously discussed, the issuance of those certificates will require the State to finance the enrollment expenses of the students who receive them and, consequently, to transfer public funds to those private institutions, which will undoubtedly derive economic benefits from the transaction.

Just as it occurred in Hawaii, it would be incumbent upon the legislature, before implementing a certificate program for the payment of enrollment costs in private schools, to amend our Constitution by deleting the support clause or by qualifying the prohibition in order to allow for the allocation of public funds to private educational institutions, which is currently prohibited by our Constitution. It appears, however, that a majority prefers to relieve the Legislature from its constitutional role in order to speed up the implementation of a public policy at all costs and on the fringes of the text of the Constitution.

Given the scope of the support clause established by our Framers and correctly construed in *Asoc. Maestros P.R. v. Srio. Educación*, the Court should have affirmed the decision of the Court of First Instance and declare unconstitutional the School Choice Program, which allows for the transfer of public school students to private schools through the use of public funds by the Government for the payment of enrollment costs.

B

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[13] Precisely, as previously stated, our constitutional delegates chose to not qualify the word "support" so as not to limit its scope.

[14] The other types of certificates established in the Education Reform Act—which facilitate the transfer of students to schools within the public education system or from private schools to public schools—do not violate the support clause insofar as these do not require the disbursement of public funds to entities foreign to the Department of Education. In that respect, I agree with the position adopted by Professor Álvarez González, who stated:

> "The educational vouchers granted to public school students who wish to transfer to another [public school] and to private school students who wish to transfer to a public school . . . *are strictly accounting operations* within the budget of the Department of Education. Their effect is to increase the funds received by the chosen public schools from that department's budget. The special scholarships are a completely different story: *they transfer funds from that department's budget to private schools that receive students who come from the public system.*"

Álvarez González and Ana Isabel García Saúl, *supra*, at 840 n.188 (1996). (Citation omitted and emphasis added.)

In this respect, it strikes me as curious how the act provides that "[t]he funds of the Program shall be allocated among the five (5) modalities thereof in accordance with the demands for each of them." Act No. 85, sec. 14.07.

In addition to the grant of certificates to pay enrollment fees in private educational institutions, the Education Reform Act also establishes a program to create what it calls "Partnership Schools." These schools are essentially private schools whose budget is partially supported by public funds, but which may be administered and operated by entities foreign to the State. Therefore, the implementation of Partnership Schools that operate under the control of private or nonprofit entities and are not under state control also contravenes the support clause of our Constitution. As will be discussed below, the operational and administrative structure that underlies the establishment of these schools implies the use of public funds to support private educational institutions.

A careful reading of the statutory provisions that govern this program leads me to conclude that those educational institutions are considerably similar to the United States charter school model.[15] The laws that enable these educational institutions in the United States—as would be the case of the Education Reform Act in Puerto Rico—show whether the model adopted by the jurisdiction in question has the characteristics of a *public school* or a *private school*. To reach this conclusion, it is necessary to pass judgment over the legal provisions on administration, governance, educational philosophy, and employment protection that govern the educational institutions in question. See Preston C. Green, III, Bruce D. Baker, and Joseph O. Oluwole, *The Legal Status of Charter Schools in State Statutory Law*, 10 U. Mass. L. Rev. 240 (2015).

If the details of the Partnership Schools are examined in light of these facts, I believe that the Legislature's thesis—which was endorsed by the majority—that these institutions are "public schools" cannot be upheld.[16]

Partnership Schools—save for those administered by public juridical entities—are actually *private* educational institutions. The private nature of these charter schools is established when we consider that they: (1) will be administered and operated mostly by certified educational entities *foreign* to the State; (2) will be governed by a private law contractual agreement, the so-called "Charter," which may be renewed or revoked at the discretion of the Department of Education; (3) will have full autonomy in terms of their decisions in matters of finances, student enrollment, academic curriculum, and teaching methods; (4) will operate with teaching and non-teaching staff, sometimes referred to as

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[15] See National Education Association, *Charter Schools 101*, at http://www.nea.org/home/60831.htm ("Charter schools are privately managed, taxpayer-funded schools exempted from some rules applicable to all other taxpayer-funded schools.") (last visited August 9, 2018). See also Derek W. Black, *Charter Schools, Vouchers, and the Public Good*, 48 Wake Forest L. Rev. 445 (2013).

[16] Part of the majority analysis that evaluated the public nature of Partnership Schools in Puerto Rico arises from an examination of Michigan and California state court decisions. The use of these non-binding state precedents leads to a decontextualized analysis because those United States jurisdictions do not have in their constitutions support clauses comparable to our clause. The so-called "Blaine Amendments," which led to the development of state clauses that prohibit the public funding of [religious] education, resulted from a historical, social, and religious reality that was different from that which gave rise to our support clause. See Section II and Matthew Sondergard, *Blaines Beware: Trinity Lutheran and the Changing Landscape of State No-Funding Provisions*, 66 U. Kan. L. Rev. 753, 754-60 (2018).

public employees and sometimes as private employees, who are totally exempt from the labor laws and regulations of the Department of Education; and (5) may receive, in addition to a sum of budgeted public money, additional funds—from donations, equipment, and materials—regardless of the juridical status of the provider. See, in general, Secs. 13.01, 13.02, 13.05, 13.06, 13.07, and 13.08 of the Education Reform Act.

These elements unequivocally show that the program sought to be implemented through the Education Reform Act creates private educational entities whose performance is measured by the efficiency of its operation, which is always built upon the financial logic of a cost-benefit analysis. A more detailed study of the elements of its administration, autonomy, and labor scheme reveals how mistaken the majority reasoning is and how the creation of these schools irremediably violates the support clause.

The administration of these educational institutions will be placed, by way of a contract, in the hands of *entities foreign* to the Department of Education. Specifically, these charter schools will be governed by "a board of directors or another governing body" of the educational entity authorized by the Department of Education. See sec. 13.02(f). This entire operational scheme will be also governed by the terms and conditions established in the Charter between the Department of Education and the corresponding certified entity. In this respect, the act accords the Department of Education considerable flexibility at the time of drafting these contracts.

The scope of these contracts raises serious concerns and questions. Contrary to what the concurring opinions state, those agreements are not "traditional" government contracts for the rendering of non-educational services. On the contrary, what is at stake there, and what constitutes the consideration of the contract, is the rendering of strictly educational services with state funds. As for the effective term of this contractual relationship, the Education Reform Act provides that "[t]he Charter may be revoked . . . at any time . . . ." Section 13.07(15)(f). This is clearly prejudicial to the students, parents, and teachers who choose to become part of these educational institutions and who will be subject to a continuous state of uncertainty about their stability and tenure.

The autonomy granted by the Education Reform Act to certified entities in charge of administering and operating these educational institutions suffices, by itself, to declare the act unconstitutional. In this respect, the act provides that a Partnership School "shall have autonomy over its decisions including, but not limited to, finances, personnel, schedule, curriculum, and instruction matters." Section 13.02(b). Likewise, the act requires that the Charter "guarantee the fiscal, operational, and administrative autonomy of schools . . . ." Section 13.07(10). Clearly, these schools will operate in a virtually independent manner in all matters related to the education that their students will receive. In this respect, the act also recognizes that these schools have power to: (1) negotiate and contract with other entities; (2) receive donations; (3) expel students; (4) adopt a code of ethics; (5) establish specific admission criteria; (6) fix a school mission of their own; (7) hire teachers who are not attached to the Department of Education, and who, therefore, do not become

government employees; and (8) operate as nonprofit entities, among others. See, in general, secs. 13.02, 13.03, and 13.06.

With regard to this degree of autonomy, the majority reasoning that frames its entire discussion about the constitutional validity of Partnership Schools from the standpoint of administrative gradation is totally untenable. According to the concurring opinions, the excessive amount of autonomy granted must yield to the fact that these educational institutions will be subject to the "direct and exclusive responsibility" of the Secretary of Education and to certain "evaluation and accountability standards." Rivera García, J., concurring, at 35. To a majority of the members of this Court, this suffices to classify these institutions as "public schools" and clear any doubt about their independence from the Department of Education. What is more, the majority position forgets that "the name does not make the thing" and concludes that these schools are "public" because they are expressly defined as such by the act. This analysis includes several absurd premises that distort the true private nature of these institutions.

The alleged "supervising" role and the degree of regulation by the State only entail a legal obligation already imposed on the Department of Education when it supervises any educational entity that operates in Puerto Rico by way of its accreditation and licensing procedures. This is evidenced by the regulations of the Department of Education that govern such procedures and that apply to "traditional" public schools and to private schools.[17] In fact, the "evaluation and accountability standards" invoked by the majority to highlight the "public" nature of Partnership Schools bear a striking resemblance to the licensing process needed to operate a private school. However, everything seems to indicate that the degree of control that the Department of Education will exercise *does not turn* charter schools into traditional public educational entities.[18]

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[17] For instance, the accreditation process established by the moribund—yet still in force—Puerto Rico Council on Education (CEPR [by its Spanish acronym]) is "voluntary" for basic *private* institutions, but "compulsory" for *public* schools. See sec. 7(3) of Regulation No. 8309 of the Department of Education (2012); sec. 7(2) of Regulation 8310 of the Department of Education (2012). To this date, the importance of being officially recognized by the CEPR lies in the fact that this guarantees that those institutions would be operating "at a level of performance, quality, and integrity that is higher than that required to hold a license." Regulation No. 8309 of 2012, secs. 7(3) and 11. The Partnership School Program provides nothing in this regard; this fact gives the impression that they will have no obligation to submit to that process. This is characteristic of private schools, not of public schools.

[18] The majority reasoning erroneously concludes that under the provisions of the Education Reform Act, "[t]he delegation of certain educational functions is not the same as the transfer of the Public Education System." Rivera García, J., concurring, at 36. This reasoning, however, is nothing more than a legal syllogism. The major premise would be that "the Department of Education has the obligation to ensure that all 'traditional' public schools comply with certain standards and procedures in order to be granted a license." In turn, the minor premise would be that "the Department of Education will have the obligation to ensure that 'Partnership Schools' comply with certain standards and procedures in order to be certified." When examining the relationship between both premises, Justice Rivera García seems to conclude that "Partnership Schools are, therefore, traditional public schools." The mistake is obvious because the major premise is false, since the Department of Education has the obligation to ensure that all schools—public or private—comply with certain standards and procedures in order to be certified.

I must make it clear that the situation would be different if Partnership Schools were administered by *public juridical entities* such as, for instance, a municipality, municipal consortiums, or the public university of the State. See sec. 1.03(19) of the Education Reform Act. A scheme that would delegate the operation and administration of schools to these entities, which are part of the Government of Puerto Rico and are under state control, would not violate the support clause precisely because these are public entities that are financed by public funds but that, in turn, may receive private funds to implement educational programs. In this sense, the course to be followed should be to have Partnership Schools administered by state entities and allowed under our Constitution.[19]

However, since the function of this Court, as the country's highest court, includes the protection—at all costs—of the Constitution of the Commonwealth of Puerto Rico, there is no place in our legal system for publicly funded private schools that are not subject to state control.

Likewise, I must stress that the insistence of the Legislature and of the majority on erroneously designating certified educational entities as "public schools" does not suffice to validate their public nature.[20] Stating that Partnership Schools are public because their "name" says so is tantamount to creating a linguistic fiction for the purpose of creating, in turn, a publicly funded private education system; this constitutes a clear violation of our Constitution.

Finally, as if the degree of autonomy and the operational powers granted to Partnership Schools were not enough, the private character of these schools becomes patently clear when we examine the policies and protections—or lack thereof—that govern their workforce. The act provides that the teaching and non-teaching staff of these

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[19] In fact, the Montessori public school model in Puerto Rico and the fundamental role played by the *Instituto Nueva Escuela* [New School Institute] (INE [by its Spanish acronym]) as they expanded throughout the country are successful examples of a pedagogical philosophy that operates mostly with public administrative and financing schemes and that respect our constitutional mandate. These schools are public and are supervised by an Assistant Secretariat of Montessori Education. See Keila López Alicea, *Preocupación en las escuelas Montessori por la reforma educativa*, El Nuevo Día, February 11, 2018, at https://www.elnuevodia.com/noticias/locales/ nota/preocupacionenlasescuelasmontessoriporlareformaeducativa-2397773/ (last visited August 9, 2018). Under the Education Reform Act, these institutions keep their public character, although there are more elements of shared governance now between the INE and the Department of Education. This points to the fact that a responsible solution to the presumed "educational apartheid" mentioned by Justice Estrella Martínez can be found, in part, in the strengthening of educational models (such as the Montessori method) whose nature is consistent with the advanced democratic principles of the Constitution of the Commonwealth of Puerto Rico.

[20] The definition given in the Regulations of the Department of Education to "private school" is, in fact, similar to the definition of a Partnership School, not to the definition of a "traditional" public school. Under these Regulations, a private educational institution "is controlled and administered by a non-governmental natural or artificial person (for instance, the Church, an enterprise, etc.), or if its Governing Board is mostly composed of members not appointed by a public agency or official." Regulation No. 8309 of 2012, sec. 7(40); Regulation No. 8310 of 2012, sec. 7(35). On the other hand, a public educational institution "is directly controlled and administered by a public education agency or authority or is directly controlled and administered by a government agency or by a Board, Council, [or] Committee whose members are mostly appointed by a public authority or elected by a public sector." Regulation No. 8309 of 2012, sec. 7(41); Regulation No. 8310 of 2012, sec. 7(36).

institutions will be composed of public employees, and the scheme designed for the transfer of teachers between institutions contains an element of voluntariness that is highly questionable (see sec. 13.08) because it would make the country's teachers face the difficult dilemma of choosing between the security of being government employees and the uncertainty of being private employees subject to the ups and downs of free enterprise.

The leaves without pay to be granted by the Department of Education, as well as the possible hiring of private employees to work at Partnership Schools whose physical facilities are new, give rise to two castes of teachers within the same system and exclude the teachers who choose to work at Partnership Schools from many regulations and requirements applicable to Department of Education employees. Irrespective of the fact that Partnership Schools currently constitute only a small percentage of the country's schools, the validation of this juridical structure would open the door to the total disappearance of our public education system.

In sum, there is no doubt that Partnership Schools will receive public funds through the Department of Education; this is clearly established in the very text of the Education Reform Act. See sec. 13.06. As I have stated throughout this dissent, our Constitution bars the State from providing financial assistance to private educational institutions. In light of this fact, I believe that the Partnership School Program violates the support clause. Just like the Court of First Instance reasoned in this case, I believe that as long as the administrators of these institutions are entities foreign to the State, the creation of Partnership Schools contravenes the Constitution.

However, as stated earlier, the prohibition established in our Bill of Rights does not extend to municipalities and public universities, since these are extensions of the Government of Puerto Rico. Holding otherwise would mean that the State could renounce its responsibility as guarantor of what is *public* and pursue paradigms of profitability and privatization to instill into the country's classrooms a mentality of commercialism that characterizes the private sector.

In view of the above, just like it occurred in the case of the Free Selection of Schools Program, the Court should have affirmed the decision of the Court of First Instance and declared the Partnership School Program unconstitutional in part.

IV

The precariousness and failures of our education system cannot be remedied through the implementation of programs that would tend to undermine its public nature and facilitate the submission of the constitutional right to free education to the risks of free competition and the interests of the private sector. The investment of public funds in the creation of schools that, for all practical effects, are private educational institutions, contravenes the prohibition contained in the support clause of our Constitution. The transfer of government funds to private schools by way of certificates that pay for enrollment costs in those institutions enhances the primacy of private education in our country to the detriment of our public education system. What is even worse, such

disbursements also constitute a gross violation of the constitutional mandate that no "public funds shall be used for the support of schools or educational institutions other than those of the state." P.R. Const., art. II, § 5.

The funds that will be invested in the strengthening of private educational institutions under the legislative scheme whose constitutional validity is upheld today should be used to improve our current public education system in order to provide the essential services needed to promote the improvement and progress of its students. Only thus can we safeguard for our children "the right to an education which shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms" enshrined in our Constitution. In an increasingly competitive society, allowing the State to abdicate its obligation to provide "a system of free and wholly non-sectarian public education" to its citizens is inacceptable and embarrassing. P.R. Const., art. II, § 5.

In modern-day Puerto Rico, it is more urgent than ever to join efforts in order to assume once again the position of the Bill of Rights Committee on the importance of Art. II, Sec. 5 of our Constitution:

> Public schools have been one of the greatest forces of democracy, collective unity, and open opportunity to talent in Puerto Rican life. In their classrooms, men and women of all social classes, religions, political groups, and races have received their education together. In public schools they have learned about equality, tolerance, and effort. Public schools must continue to expand this responsibility and broaden this course.

Report of the Bill of Rights Committee, Constitutional Convention of Puerto Rico, San Juan, The Capitol (1951), at 13.

Unfortunately, the majority, like the political branches, prefers to yield in the face of adversity and surrender to private hands an essential component of that vision of country that is becoming increasingly murkier. Since I refuse to believe that we are incapable of improving our education system through effective models administered and operated exclusively by the State, I dissent from the majority decision. True to the constitutional text and to the debates of those Puerto Ricans who laid the foundations of a democratic and equalitarian society premised on education as a universal value, I would declare unconstitutional the School Choice Program and the creation of Partnership Schools under the control of private entities alien to the State.

PGI/msp

(Official Translation)

Teachers' Association, its union, Teachers' Association of Puerto Rico – *et al.*,

Respondents

v. CT-2018-0006 Interjurisdictional Certification

Department of Education, the Honorable Julia Keleher, in her official capacity as Secretary of the Department of Education of the Commonwealth of Puerto Rico,

Petitioners

JUSTICE COLÓN PÉREZ, dissenting.

San Juan, Puerto Rico, August 9, 2018

It is with the same degree of seriousness, responsibility, and commitment to our country with which we validated, a few weeks ago, the closing of some public schools in Puerto Rico—since we believed that the case under our consideration at that time involved no deprivation of the constitutional right to elementary and secondary education and, therefore, did not warrant the intervention of the Judicial Power—that today we strongly dissent from the course of action followed in this case by a majority of this Court, which upheld the constitutional validity of several provisions of the so-called Puerto Rico Education Reform Act, Act No. 85 of 2018, submitted by the government in power and enacted by the Legislature.

The legal grounds for dissenting from such course of action are set forth quite accurately in the dissenting opinion issued by our fellow Justice Rodríguez Rodríguez; for that reason, I have decided to join her. As her dissent correctly states, it is quite evident that the most relevant provisions of the statute at issue here (the vouchers and the Partnership Schools or charter schools, as defined in this "Education Reform")[1] are unconstitutional because they violate Art. 2, Sec. 5 of the Constitution of the Commonwealth of Puerto Rico, LPRA, vol. 1, and specifically the well-known Support Clause.[2] This admits no other interpretation, and neither does the issue of the educational vouchers, which this Court had already settled, by way of former Chief Justice Hernández Denton, in *Asoc. Maestros P.R. v. Srio. Educación*, 137 DPR 528 [37 P.R. Offic. Trans. ___] (1994), in what constitutes a well-thought, well-studied, carefully elaborated precedent.

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[1] Our analysis excludes those schools that choose to be adopted by municipalities or by any other public agency, since we believe that such action does not contravene the provisions of the Support Clause of the Constitution of the Commonwealth of Puerto Rico. P.R. Const. art. II, § 5, LPRA, vol. 1.

[2] The Support Clause of the Constitution of the Commonwealth of Puerto Rico provides: "No public property or public funds shall be used for the support of schools or educational institutions other than those of the state." P.R. Const. art. II, § 5, LPRA, vol. 1, at 277 (2016 ed.).

The fact that there is already a precedent of this Court that largely disposes of the contentions brought to our consideration here—and that could have been easily invoked to dispose of the issue of the Partnership Schools or charter schools—moves us to stress once again the importance of the doctrine of *stare decisis* in all decision-making processes. As we know, this doctrine provides that a Court, *in order to provide stability and certainty to the legal system*, must follow its previous decisions. See: *Rivera Ruiz et al. v. Mun. de Ponce et al.*, 196 DPR 410 [96 P.R. Offic. Trans. ___] (2016); *González v. Merck*, 166 DPR 659, 687-689 [66 P.R. Offic. Trans. ___, ___] (2006). This element is essential for gaining the citizens' confidence in their justice system.

We certainly recognize, as some members of this Court point out, that there are exceptions to the cited doctrine and that courts should not follow it when the previous decision was demonstrably erroneous, when its effect on the legal system is adverse, or when it generated limited public reliance. *Pueblo v. Camacho Delgado*, 175 DPR 1, 20 [75 P.R. Offic. Trans. 1, ___] n.4 (2008); *Pueblo v. Díaz de León*, 176 DPR 913, 921-922 [76 P.R. Offic. Trans. ___, ___] (2009). However, contrary to what they point out, none of those circumstances are present in the precedent in question.

The precedent correctly established by this Court more than two decades ago in Asoc. Maestros P.R. v. Srio. Educación should not have been ignored (for reasons that are not exactly clear). The Constitution of the Commonwealth of Puerto Rico that was construed at that time is the very same Constitution being construed today. It has not changed.

In that sense, we are highly concerned about the manner in which a majority of this Court has recently decided to ignore on a regular basis the value of precedent in all legal systems[3]*; more so when this is done for the purpose of validating the use of public funds for private purposes. In those circumstances, the concern is doubled.*

Now, although I joined our fellow Justice Rodríguez Rodríguez's dissent—and since the law does not operate in a vacuum—[4]I deem it necessary to distance ourselves a bit from the complexities of technical-legal language so that our citizens may understand, from a different perspective, the result that will ultimately be reached by way of the statute validated today by a majority of this Court and the effect this will have in their environment.

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[3] The most recent occasion on which this Court reversed a precedent was one year ago in *Com. PNP v. CEE et al.*, 197 DPR 914 [97 P.R. Offic. Trans. ___] (2017).

[4] As Critical Legal Studies theorists remark:

> "[A] different perspective of legal reasoning is sought in which—although legal rules and principles are the backbone of the law—emphasis is also laid on the need to value other factors ranging from politics, economy, history, society, theory, and philosophy, to even psychology, in order to approach the confines of human vulnerability to which law-related workers are subject."

Jorge Robles Vázquez and Yvonne Georgina Tovar Silva, *Teoría jurídica crítica norteamericana: una introducción a los Critical Legal Studies* 28, Mexico, UNAM, Instituto de Investigaciones Jurídicas (2016).

In that line of thought, we have also adopted, *in extenso*, the expressions published a few months ago in the opinion column of a newspaper of general circulation by Dr. Raúl Manuel Núñez Negrón, a lawyer, doctor in Philosophy and Literature from Harvard University, a writer, and the winner of the 2016 *Nuevas Voces* [New Voices] Award of the *Festival de la Palabra de Puerto Rico* [Puerto Rico Word Festival], which is held every year in our country. In his column *La tiza y la pizarra*,[5] Dr. Núñez Negrón portrays the sad and harsh reality faced by our country's public-school students. In what we consider an excellent contribution to the field of Law and Literature,[6] he remarked the following about the provisions of the Education Reform at issue here:

> At this time of the year there are no dry branches in the trees of the central region, and these three youths gather along the road; a boy wearing a baseball cap and two teenage girls sit in waiting on a curve on [Road] PR 111. The sun has not risen entirely yet, and the pigeons sleep on the eaves. The mist decorates mountains and hills. The land still shows no cracks and the bamboos whisper a silky murmur. The flavors of the first mangos and the latest sapodillas are already announced in the palate along with morning sounds. It's six o' clock, the roosters are crowing, and far away, on the horizon, the bus appears.
>
> They are dressed in uniforms to respect the custom. They do not want to miss the trip; that is why they rose at five, while it was still dark. After receiving a blessing from their relatives—who go out on the balcony, with a smoking cup of coffee in their hands, to see them off—they walked some miles watching the animals that leaned down to graze and arrived at the meeting point, an abandoned lot in front of a church, while fending off the yawns.
>
> This is their daily ritual: carrying a fabric backpack with a pair of pencils and notebooks, tying their sneaker laces, practicing the multiplication tables and, sometimes, copying homework from a classmate. As soon as the

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[5] Raúl M. Núñez Negrón, *La tiza y la pizarra, El Nuevo Día* (April 21, 2018), available at https://www.elnuevodia.com/opinion/columnas/latizaylapizarra-columna-2416358/.

[6] With regard to the relationship between Law and literature, Professor Carmelo Delgado Cintrón remarks the following in his work *Tratado de derecho y literatura: visión literaria del Derecho*:

> "[T]he study of the relationship between Law and literature is not limited to a single country, period, or literary and legal topic. The development of the discipline of Law and Literature occurs in two stages. Thus, there are authors and literary creators who turn to the legal world, from which they draw topics—the work of attorneys, judges, courts, trials, legal matters, among others—which they transform into works of art. In other words, these are arguments and situations that occur in the world of the Law and that the narrator, novelist, poet, storyteller, or playwright transforms into a very personal literary work. It is obvious that the artist is not interested in producing a work of Law. That is what jurists are for. On the other hand, there are attorneys and Law professors who critically study those literary creations based on the Law, those literary works, to examine the aesthetical, literary, and juridical contents provided by the literary creators and to learn from them. Eventually, they develop a theory of *Law and Literature*.

I. Carmelo Delgado Cintrón, *Tratado de derecho y literatura: visión literaria del Derecho* 15, San Juan, Ed. DERECOOP (2012).

In our opinion, this is one of those cases.

> yellow bus appears, they join in their classmates' fun: "Yo homie, step on it, bro'!"
>
> Occasionally, overwhelmed by exhaustion, they will try to remain in bed, to skip the abacus and the grammar lessons. Immediately, the voice of the parents or grandparents will rumble in the bedroom, competing with the alarm clock: "Up you go, there's school today!" If the children study, if they become professionals, they will fare better in the future. That is the conviction held by most the island's households; any other sacrifice pales in comparison with it. The mission is to educate them against all odds to thus keep precariousness at bay and avert them from succumbing to an impoverished fate.
>
> It is a pity that the arguments that have taken over the public debate about this issue fail to address the difficult and complex reality faced by teachers and students at their schools. *Much to the contrary, they become a rerun of the same old script: the country is obsolete, and its educational centers lack a culture of competitiveness. The solution is to privatize everything; that is, to socialize the losses and raffle off the profits.*
>
> The Education Reform approved by the government does not aim to face the real problems of educational communities; it only seeks to guide knowledge toward the paradigm of profitability, a philosophy imported from the corporate sphere that brings to the classroom concepts that have nothing to do with the pursuit of knowledge: performance, efficacy, productivity! Or, as termed by its English version, which has greater lexical prestige: downsizing, attrition, resilience, maximization. It is tragic and symptomatic that the most basic notions of learning remain absent from the general discussion: literacy, critical thinking, creativity, imagination, empathy.
>
> Unfortunately, an additional chapter has been finished in this long, sinister saga that records the slow yet steady dismantling of state structures for the benefit of economic interests. Calling it by any other name would be an exercise in falsification and a colossal act of hypocrisy. The indiscriminate distribution of part of our heritage entails, among many disturbing risks, the possibility that the money will flow to the bank accounts of those who have discovered in education a source of easy wealth. The charter school regime—which has yielded very questionable results in the United States—could bring along a huge amount of financial speculation and not the desirable—and much needed—renovation of education.
>
> Meanwhile, on the mountain range and on the coast, thousands of students, unaware of the holocaust of funds that is taking place here, hide their smiles behind old notebooks and celebrate the lunch bell by licking candy. What would be dangerous and unforgivable is that the bell that announces the recreation period might also resound in the greedy ears of investors and foretell times of . . . squandering. [Emphasis added.]

This is not the time to "socialize the losses and raffle off the profits." This is the time to make sure that our children and youths will attend a school of excellence, receive the gift of education, and achieve their full development as worthy men and women, as enshrined in Art. II, Sec. 5 of the Constitution of the Commonwealth of Puerto Rico. The alternatives provided by the statute at issue here (educational vouchers and Partnership Schools or charter schools, as defined in this "Education Reform") clearly contravene our constitutional provisions and—since they clash against the Constitution—cannot, in my opinion, constitute a solution.

Once again, the Executive and Legislative Powers, as well as this Court, have lost a magnificent opportunity to do justice to our country's students, thereby forgetting, once again, that "without students, there are no schools, and without schools, there is no country." *Menéndez González et al. v. UPR*, 198 DPR 140, 147-148 [98 P.R. Offic. Trans. ___, ___] (2017) (Colón Pérez, J., dissenting).

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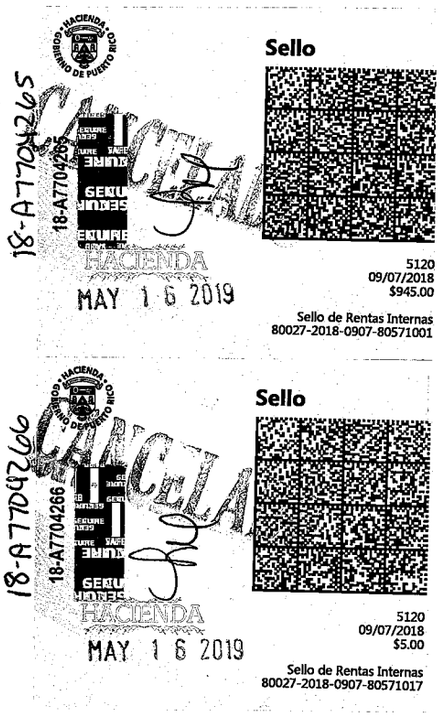

I CERTIFY that this is an Official Translation made by the Bureau of Translations of the Supreme Court of Puerto Rico.

In San Juan, Puerto Rico: MAY 16 2019

Sonnya Ramos Lind, Esq.
Chief Deputy
Clerk of the Supreme Court