(Official Translation)

IN THE SUPREME COURT OF PUERTO RICO

Arturo Guzmán Vargas,

Plaintiff

v. No. CT-2003-002 Certification

Hon. Sila M. Calderón *et al.*,

Defendants

San Juan, Puerto Rico, March 23, 2005

PER CURIAM: By way of a request for interjurisdictional certification, the United States District Court for the District of Puerto Rico has asked us to determine whether the just cause requirement for removal by the Governor of a member of the Board of Directors of the Puerto Rico Public Broadcasting Corporation (established in said corporation's organic act)[1] infringes on the Governor's constitutional powers to remove public officers appointed by him or her. In resolving this case, we also have an opportunity to delimit the new scope of interjurisdictional certification under the Judiciary Act of 2003, Act No. 201 of August 22, 2003.

I

The essential facts are not at issue. In 2001, the Hon. Sila M. Calderón, then Governor of the Commonwealth of Puerto Rico ("Governor of Puerto Rico") issued Executive Order No. OE-2001-03, which required that all appointments and/or contracts executed by any government agency be first authorized in writing by the Hon. César Miranda, the Governor's Chief of Staff at the time ("Chief of Staff").[2] This order, which sought to stabilize the government's fiscal situation, would be applicable to all government agencies, boards, bodies, committees, examining boards, divisions, and public corporations, with the express exclusion of the University of Puerto Rico.

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[1] See sec. 3 of Act No. 216 of September 12, 1996 (27 L.P.R.A. § 501 *et seq.*).

[2] This order was issued under the purview of Art. VI, Sec. [6] of the Constitution of the Commonwealth of Puerto Rico, L.P.R.A., vol. 1, which, in pertinent part, provides:

> "If at the end of any fiscal year the appropriations necessary for the ordinary operating expenses of the government and for the payment of interest on and amortization of the public debt for the ensuing fiscal year shall not have been made, the several sums appropriated in the last appropriation acts for the objects and purposes therein specified, so far as the same may be applicable, shall continue in effect item by item, and the Governor shall authorize the payments necessary for such purposes until corresponding appropriations are made."

When he received the Executive Order, Arturo Guzmán Vargas, then President of the Board of Directors of the Puerto Rico Public Broadcasting Corporation, called a press conference to announce to the country that the corporation over which he presided did not have to comply with that order and that, therefore, all pending contracts would be signed without the mentioned authorization. When the Governor of Puerto Rico learned of the situation, she removed Guzmán Vargas from his position as a member of the Board of Directors of the Puerto Rico Public Broadcasting Corporation for his insubordination.

Guzmán Vargas eventually filed a civil rights action in the United States District Court for the District of Puerto Rico against several persons—among them the Governor of Puerto Rico. Insofar as it is pertinent here, he claimed that his removal lacked just cause and, therefore, contravened the provisions of sec. 3 of Act No. 216 of September 12, 1996 (27 L.P.R.A. § 501 *et seq.*), better known as the Puerto Rico Public Broadcasting Corporation Act (Act No. 216).[3] Defendants timely moved for dismissal, alleging that sec. 3 of Act No. 216 contravened the principle of separation of powers and infringed on the Governor's constitutional powers to appoint and remove government officers for the purpose of assuring strict compliance with the laws he or she is called upon to enforce.

With the issue thus joined, and under the provisions of sec. 3.002 (f) of the Judiciary Act of 2003, Act No. 201 of August 22, 2003 (4 L.P.R.A §§ 24-25(r), and of Rule 25 (a) of the Rules of the Supreme Court, 4 L.P.R.A. App. XXI-A, the United States District Court for the District of Puerto Rico, through the Hon. Judge Carmen Consuelo Vargas de Cerezo, requested a writ of certification for the sole purpose of determining the constitutionality of sec. 3 of Act No. 216. We agreed to issue the requested writ of certification. The parties timely filed their respective briefs. The Solicitor General of Puerto Rico appeared before this Court as *amicus curiae* and reiterated defendants' allegations regarding the restriction imposed by sec. 3 of Act No. 216 on the Governor's constitutional powers. With the benefit of all the parties' briefs, we decide.

II

We deem it useful, first of all, to expound the essential aspects of the certification procedure in order to consider whether the certified question meets certification requirements so as to allow us to acquire jurisdiction over this case to answer the question.

In general terms, interjurisdictional certification is an adequate procedural instrument that allows a court to submit to a court of a different jurisdiction, for a definitive answer, questions about doubtful matters of the law of that jurisdiction. The answers to those questions are binding upon the parties in all further judicial proceedings between them under the doctrine of res judicata:

> Certification is the most direct, speedy and inexpensive way for a federal court to obtain an authoritative interpretation of state law. By virtue

[3] Section 3 of Act No. 216 of September 12, 1966 (27 L.P.R.A. § 503), provides, in pertinent part, that non-*ex officio* members of the Board of Directors of the Puerto Rico Public Broadcasting Corporation "shall only be removed for just cause."

> of this procedure, doubtful or unresolved questions of state law are transferred directly to the highest state court by the federal court, which certifies specific questions for a definitive answer that is binding on the parties. Otherwise, if the federal court were to abstain, the litigants would have to begin a new action before the state courts, following the whole judicial procedure, [which] is usually slow and expensive, until they obtained a final and unappealable interpretation of the state law.

Pan Ame. Comp. Corp. v. Data Gen. Corp., 112 D.P.R. 780, 784-785 [12 P.R. Offic. Trans. 983, 989-990] (1982).

Before the Judiciary Act of 2003 was passed, interjurisdictional certification in Puerto Rico was only expressly acknowledged in Civil Procedure Rule 53.1 (32 L.P.R.A. App. III) and in Rule 25 of the Rules of this Court, 4 L.P.R.A. App. XXI-A. Under the purview of these rules, we held that the power of this Court to take cognizance of matters certified to it by a federal court is discretionary, not mandatory. *Pan Ame. Comp. Corp. v. Data Gen. Corp.,* 112 D.P.R. 780 [12 P.R. Offic. Trans. 983] (1982); *Dapena Thompson v. Colberg Ramírez*, 115 D.P.R. 650 [15 P.R. Offic. Trans. 851] (1984).

Under these two rules, certification was in order only if: (1) the issue involved questions of Puerto Rican law; (2) said questions had to determine or define the outcome of the case; (3) there were no clear-cut precedents in our Court's caselaw; and (4) an account of all the facts relevant to said questions was included to show clearly the nature of the controversy that gave rise to the questions. The parties could also submit briefs and request a hearing for oral argument. *Pan Ame. Comp. Corp. v. Data Gen. Corp.,* 112 D.P.R. at 788 [12 P.R. Offic. Trans. at 993].

The above legal provisions, however, restricted considerably our intervention in the issues to be certified when: 1) the question raised was a mixed question that involved aspects of federal law and/or state law of the petitioner court, and aspects of local Puerto Rican law, in which case the question had to be resolved by the petitioner court; or 2) the question raised in the certification procedure referred to the validity of a Puerto Rico statute challenged under the Constitution of the Commonwealth of Puerto Rico, in which case certification was in order only if the local constitutional provision had no equivalent in the federal constitution.

These limitations were overcome with the passage of the new Judiciary Act of 2003. Its sec. 3.002 substantially broadened the power of this Court to accept requests for certification made by United States courts. Insofar as it is pertinent here, the act provided:

> Through a writ of certification, [the Supreme Court] may take cognizance of any matter certified to it by the United States Supreme Court, a United States Circuit Court of Appeals, a United States District Court, or the highest court of appeals of any state of the United States, when thus requested by any of said courts, if there is any legal issue raised before the petitioner court involving questions of Puerto Rican law that may determine the outcome of the case, and with regard to which, in the opinion of the petitioner court, there are no clear-cut precedents in the caselaw of this Court.

Thus, once the requirements that precluded this Court from accepting certain requests for interjurisdictional certification were left aside, the standards that had governed this procedure became more flexible and made it easier for federal courts to submit to this Court, for a definitive answer, questions about doubtful matters related to Puerto Rican law. Besides, certification *truly* preserves and respects "the pristine function of state courts of [construing] and formulating [their respective] state law," thus contributing to relieve the tensions inherent in the federalist system. *Pan Ame. Comp. Corp. v. Data Gen. Corp.,* 112 D.P.R. at 783-785 [12 P.R. Offic. Trans. at 988-990].

The request for certification in the instant case was made as ordered by the Hon. Carmen Consuelo Vargas de Cerezo, Judge of the United States District Court for the District of Puerto Rico. The request, in the first place, involves judicial matters related to questions of strictly Puerto Rican law, such as the power vested in the Governor of Puerto Rico, under the Constitution of the Commonwealth of Puerto Rico and under our laws and regulations, to remove public officers appointed by him or her, or by his or her predecessor, for a specific term or tenure; in the second place, there are no clear-cut precedents that may lead to a correct disposition of the matter; and, in the third place, the decision of this Court may affect the outcome of the litigation in the federal court. Based on these considerations, and given the great importance of this matter and the high public interest involved in the direct intervention of this Court in the interpretation of Puerto Rican law, we deem that certification is in order.

III

From the outset, we must acknowledge that the scope of the power of the Governor of Puerto Rico to remove public officers and the power of the Legislative Assembly to impose restrictions on said power are indeed novel issues in our jurisdiction. Although Art. IV, Sec. 4 of the Constitution of the Commonwealth of Puerto Rico lists, among the powers of the Governor, the power to "appoint, in the manner prescribed by this Constitution or by law, all officers whose appointment he is authorized to make," it provides nothing with respect to the Governor's power to remove them; much less does it provide about the power of the Legislative Branch to limit the power of the Executive Branch by creating executive departments and agencies. Neither was the scope of this constitutional provision amply discussed in the Constitutional Convention.

However, the *Diario de Sesiones de la Convención Constituyente de Puerto Rico* [Journal of Proceedings of the Constitutional Convention of Puerto Rico][4] contains ***clear and convincing*** expressions about the power of the Legislative Assembly to impose restrictions on the Governor's power to remove officers appointed by him or her. Although these expressions were made within the framework of the powers delegated to the Legislative Branch, we believe that said pronouncements are particularly relevant to

[4] See 3 *Diario de Sesiones de la Convención Constituyente de Puerto Rico* [Journal of Proceedings of the Constitutional Convention of Puerto Rico] 2269-2271, San Juan, Lexis-Nexis (2003).

the issue in this case, in which we must decide whether a restriction imposed by the Legislative Assembly on the power of the Executive Branch to appoint and remove public officers is valid.

Thus, it is worth mentioning that the history of the Constitutional Convention shows that this subject was extensively debated during the discussion of the scope of the powers delegated to the Legislative Branch. The expressions made by Delegate Víctor Gutiérrez Franqui when he proposed an amendment to what at the time was Sec. 10 of the Constitution of the Commonwealth of Puerto Rico (currently Art. III, Sec. 16 of our Constitution) are particularly important. That section, as proposed in the Report of the Legislative Branch Committee,[5] had been drafted as follows at the time it was being considered by the members of the Legislative Assembly:

> The Legislative Assembly shall have the power to create, consolidate or reorganize executive departments and to determine by law the powers, functions, duties, and term of office of government [secretaries, but n]o secretary shall hold office beyond the term of the Governor who appointed him.

4 *Diario de Sesiones de la Convención Constituyente de Puerto Rico* at 2581.

To put it in the words of Delegate Gutiérrez Franqui, "[u]pon a careful examination of this provision, we were assailed by a doubt: if, in fact, the Legislature was empowered, in a republican form of government where the Legislature has the power to enact laws over the Governor's veto, to vary at its whim the term of office of government [secretaries], or to vary at its whim the specification of their functions." 3 *Diario de Sesiones de la Convención Constituyente de Puerto Rico* at 2268. In other words, in light of his investigations, it seemed to him very unlikely that the Puerto Rico Legislative Assembly would impose any type of restriction on the Governor's appointing power in the case of confidential officers such as "government secretaries."

Thus, in order to delete from this section, among other things, the text that established that the Puerto Rico Legislative Assembly would have the power "to determine the powers, functions, duties, and term of office of government [secretaries]," and based on experience and on the study of the United States Constitution, of the constitutions of the States of the Union, and of those of countries in which democratic principles give rise to the development of public functions, Delegate Gutiérrez Franqui proposed the adoption of the interpretation made in this respect in the United States Constitution, along with its corresponding judicial interpretation. Gutiérrez Franqui stated:

> Mister President and fellow delegates: The purpose of the amendment I have the honor of proposing is merely that we adopt the manner in which the Constitution of the United States of America deals with this matter [along with its corresponding judicial interpretation].

[5] See 4 *Diario de Sesiones de la Convención Constituyente de Puerto Rico* at 2577-2590.

> In other words, that we merely establish the Governor's power to appoint government secretaries. Let us also establish, elsewhere in the Constitution, that government secretaries shall assist the Governor in the discharge and exercise of the executive power. And, with regard to government departments, let us merely establish the power of the Legislative Assembly to create, consolidate, reorganize, and determine the functions of those departments. And let us not pronounce ourselves on the power to determine the functions and the term of office of the secretaries as such, thus adopting the United States constitutional doctrine . . . .

3 *Diario de Sesiones de la Convención Constituyente* de Puerto Rico at 2270.

After the pertinent exposition, the proposed amendment—which sought to delete from the text of Sec. 10 the part that established that the Legislative Assembly of Puerto Rico would have the power "to determine the powers, duties, and term of office of government [secretaries]"—received 54 votes from the Constitutional Convention delegates and was therefore approved.

As a consequence of this amendment, the section was finally approved as follows:

> The Legislative Assembly shall have the power to create, consolidate or reorganize executive departments and to define their functions.

Id. at 2268.

The adoption of this amendment showed that it was the intention of the constitutional delegates to incorporate into our jurisdiction standards similar to those adopted in the federal jurisdiction with respect to the scope of the Legislative Assembly's power to intervene—as in the instant case—in the powers delegated to the Executive Branch.

Having clarified the above, let us review the statutory and caselaw principles that govern this matter in the federal jurisdiction.

IV

A.

As is well known, Art. II, Secs. 1, 2, and 3 of the Constitution of the United States of America vest its President with the power to appoint, with the advice and consent of the Senate, ambassadors, public ministers and consuls, Supreme Court Justices, and all other officers of the United States whose offices are established by law, and whose appointment is not otherwise provided for by the Constitution. All of them have the duty to assist him in the discharge of his most important function: to see that the laws are faithfully executed.[6]

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[6] Insofar as it is pertinent here, Art. II, Secs. 1, 2, and 3 of the Constitution of the United States of America provide:

> **Section 1.**
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> "The executive Power shall be vested in the President of the United States of America . . ."
>
> **Section 2.**
>
> "He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; **and he shall**

However, as in our Constitution, Art. II of the United States Constitution does not expressly establish the power—if any—of the President to remove public officers appointed by him. Impeachment, the only method established in the Constitution for removing public officers, is only applicable to the President, the Vice President, and all civil officers of the United States.[7] Thus, the United States Supreme Court caselaw has attempted to fill this gap in the law. One of the first cases that dealt with this complex matter was *Myers v. United States,* 272 U.S. 52 (1926). See 1 Laurence H. Tribe, *American Constitutional Law* 703-717 (3d ed. 2000).

In *Myers*, the Court held that Congress could not deprive the President of the United States of his power to remove executive officers.[8] The Court concluded that the power of removal of executive officers was incident to the power of appointment vested in the President by the Constitution of the United States of America and, therefore, the President had the exclusive and absolute power of removing executive officers appointed by him regardless of whether—as in this case—the act that created the office fixed a term of office or established the grounds for removal. The Court believed that this ample power emphasized the President's responsibility to ensure that the laws be faithfully executed; as we previously mentioned, this duty is imposed by Art. II, Sec. 3 of the Constitution of the United States of America.

> **nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper in the President alone, in the Courts of Law, or in the Heads of Departments."** [Emphasis added.]
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> **Section 3.**
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> "He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; **he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States."** [Emphasis added.]

L.P.R.A., vol. 1.

[7] With regard to the impeachment procedure, Art. II, Sec. 4 of the United States Constitution provides:

> The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Id.

[8] In this case, the President of the United States removed a postmaster from office before the expiration of his four-year term of office. The act that created said position provided that postmasters may only be removed by the President of the United States by and with the advice and consent of the Senate. The latter requirement was declared invalid.

Almost a decade later, *Humphrey's Executor v. United States*, 295 U.S. 602 (1935),[9] drastically narrowed the application of the *Myers* rule. **There, the Court construed that the President's power to remove officers appointed by him may be restricted in the case of officers who had quasi-legislative or quasi-judicial powers.** The Court deemed that these officer required a certain degree of independence from executive control to efficiently discharge the functions assigned to them. The Court essentially stated:

> We think it plain under the Constitution that illimitable power of removal is not possessed by the President in respect of officers of the character of those just named. **The authority of Congress, in creating quasi-legislative or quasi-judicial agencies, to require them to act in discharge of their duties independently of executive control cannot well be doubted, and that authority includes, as an appropriate incident, power to fix the period during which they shall continue in office, and to forbid their removal except for cause in the meantime.** For it is quite evident that one who holds his office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter's will.

Humphrey's Executor v. United States, 295 U.S. at 629.

The validity of the *Humphrey's* doctrine, as discussed above, was upheld years later in *Wiener v. United States*, 357 U.S. 349 (1958).[10] The Court summarized what would constitute the ruling principle in cases of this type as follows:

> **Thus, the most reliable factor for drawing an inference regarding the President's power of removal in our case is the nature of the function that Congress vested in the War Claims Commission.** What were the duties that Congress confided to this Commission? And can the inference fairly be drawn from the failure of Congress to provide for removal that these Commissioners were to remain in office at the will of the President?

Wiener v. United States, 357 U.S. at 353-354. (Emphasis added.)

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[9] In *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), the President of the United States removed from office a member of the Federal Trade Commission (an agency charged with quasi-legislative and quasi-judicial powers), alleging that he needed the Commission to be constituted by people in whom he had full confidence. In the act that created the Commission, Congress had provided that its members would be appointed for a fixed term and that commissioners may only be removed for inefficiency, neglect of duty, or malfeasance in office.

[10] In *Wiener v. United States*, 357 U.S. 349 (1958), the President of the United States, in order to recruit personnel of his own selection, removed a member of the War Claims Commission. The Commission was created to receive and adjudicate claims for compensation filed by individuals or organizations that suffered personal injury or property damage during World War II. The act that created the Commission provided that the commissioners' terms were to expire with the life of the Commission. The act, however, was silent on the removal of Commissioners.

The scope of the President's power of removal was again considered by the United States Supreme Court in *Morrison v. Olson*, 487 U.S. 654 (1988).[11] Just like in *Humphrey's* and in the subsequent cases that cite it, the *Morrison* court stated that the analysis made by the courts in deciding whether the President had the power to remove an officer appointed by him cannot be limited to the type of function—purely executive, quasi-legislative or quasi-judicial—performed by said officer. ***Although this analysis is in itself essential at the moment of deciding whether the President has the power to remove the officer in question, it is also imperative to examine whether the removal restrictions impede the President's ability to discharge his obligation to ensure the faithful execution of the laws.*** It is thus indispensable to examine the degree of independence from the Executive Branch required by the officer in question to efficiently perform the functions delegated to him or her. Insofar as it is pertinent here, the Court held:

> We undoubtedly did rely on the terms "quasi-legislative" and "quasi-judicial" to distinguish the officials involved in *Humphrey's Executor* and *Wiener* from those in *Myers*, but our present considered view is that the determination of whether the Constitution allows Congress to impose a "good cause"-type restriction on the President's power to remove an official cannot be made to turn on whether or not that official is classified as "purely executive." **The analysis contained in our removal cases is designed not to define rigid categories of those officials who may or may not be removed at will by the President, but to ensure that Congress does not interfere with the President's exercise of the "executive power" and his constitutionally appointed duty to "take care that the laws be faithfully executed" under Article II** . . . .
>
> [. . .]
>
> **But the real question is whether the removal restrictions are of such a nature that they impede the President's ability to perform his constitutional duty, and the functions of the officials in question must be analyzed in that light.**

Id. at 689-691. (Footnotes omitted and emphasis added.)

B.

By virtue of the above, and in keeping with the mandate to adopt the federal interpretation of this matter given to us by the members of the Constitutional Convention when they debated the scope of the Governor's removal power, we must conclude, as a starting point for our analysis, that any determination on the constitutionality of a statutory restriction on the Governor's appointment or removal power requires a case-by-case analysis in which it is imperative to identify whether the officer performed functions that were "purely executive" in nature, or whether he or she exercised quasi-legislative or quasi-judicial powers. If the officer has "purely executive" powers, the power of the Legislative Branch to impose requirements for the removal of said officer is minimal,

[11] *Morrison v. Olson*, 487 U.S. 654 (1988), questioned the limitation imposed by an act on the President's power of removal when said power was granted to the Attorney General.

because in most cases these officers are directly involved in the implementation of public policy and in the performance of functions assigned by the Constitution to the Executive Branch.

The main test to determine the validity of the statute consists in that the legislative restriction on the removal power of the Governor of Puerto Rico cannot impermissibly and unreasonably infringe on his or her constitutional power to execute the laws and cause them to be executed and to formulate and implement public policy. An examination of the statute requires that the legislative restriction on said power should not impermissibly limit the powers of the Executive Branch or injure the balance of powers that must exist between government branches.

The case of officers who perform quasi-legislative or quasi-judicial functions is quite different. The Legislative Assembly can delegate to these officers a greater degree of independence, allowing them to perform their functions free from intrusion by other government branches. Therefore, in that case, any reasonable restriction on the Governor's power of removal would be valid—unless, of course, it impedes the Governor's power to perform his or her constitutional duties.

Since the case under our consideration involves a type of restriction on the Governor's power of removal, it is precisely in light of this juridical framework that we must address the controversies raised here.

V

A.

Insofar as it is pertinent to the issue before us, the organic act of the Puerto Rico Public Broadcasting Corporation provides that the corporation's Board of Directors shall be composed by the Secretary of Education, the President of the University of Puerto Rico, the Executive Director of the Institute of Puerto Rican Culture, and eight citizens from the private sector representing the public interest, who shall be appointed by the Governor with the advice and consent of the Senate, and of whom at least three shall be persons with known interest, knowledge, and experience in education, culture, arts, sciences, or radio and television communications. 27 L.P.R.A. § 503. The members of the Board shall be appointed for the following terms: two members for six years; two members for five years; two members for four years; and two members for three years, and until their successors are appointed and take office. Once each term concludes, it shall be fixed at six years. **As provided in said act, non-*ex officio* members of the Board of Directors may only be removed for just cause.** *Id.*

It is precisely the just cause requirement for removal by the Governor of a member of the Board of Directors of the Puerto Rico Public Broadcasting Corporation what is at issue here. Both the Governor and the Solicitor General believe that such a requirement impedes the constitutional powers and faculties vested in the Governor to appoint, in the manner prescribed by the Constitution or by law, all officers whose appointments he or she is authorized to make. We do not agree. Let us see why.

As we mentioned before, the first stage of the analysis adopted by the Constitutional Convention requires that we examine the nature of the functions performed by the members of the Board of Directors of the Puerto Rico Public Broadcasting Corporation.

Thus, a reading of the Puerto Rico Public Broadcasting Corporation enabling act, and specifically of sec. 3 of said act, shows that our lawmaker *expressly* delegated to the members of the corporation's Board of Directors, in addition to administrative duties, the quasi-legislative power to ***"approve, amend, and repeal whichever regulations it deems are necessary and convenient to carry out its ends, purposes and activities."*** 27 L.P.R.A. § 503. In keeping with the provisions of sec. 4 of the act, such regulations would be approved "*pursuant to the provisions of §§ 2101 et seq. of Title 3, known as the 'Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico.'*" 27 L.P.R.A. § 504. Said powers are so exclusively vested in the Board of Directors that sec. 3 of the Public [Broadcasting] Corporation Organic Act provides that the Board of Directors "may delegate [to] the President [of the Puerto Rico Public Broadcasting Corporation] or any of its officials, employees or agents, those powers and duties he/she deems pertinent, ***with the exception of the power to approve, amend and repeal regulations."*** *Id.*

In keeping with the powers conferred by law, the members of the Board of Directors of the Puerto Rico Public Broadcasting Corporation have adopted regulations of public interest such as: *Reglamento de Compras de la Corporación de Puerto Rico para la Difusión Pública* [Purchasing Regulations of the Puerto Rico Public Broadcasting Corporation];[12] *Reglamento para la Administración, Operación y Funcionamiento del Proyecto de Comunicación* [Regulations for the Administration, Operation, and Functioning of the Communication Project];[13] and *Reglamento para la Administración, Operación y Funcionamiento del Programa de Producción de Telenovelas, Miniseries y Unitarios de Televisión de la Corporación de Puerto Rico para la Difusión Pública* [Regulations for the Administration, Operation, and Functioning of the Drama Series, Miniseries, and Made-for-TV Movie Production Program of the Puerto Rico Public Broadcasting Corporation].[14] We have been able to thoroughly examine each of these regulations, and we have no doubt that even though they govern the operations of the television broadcasting station, they likewise affect the life and interests of the citizenry in general—artists, producers, directors, advertisers—who are interested in participating in, and/or are part of the television programming offered to our country by said station. Consequently, given the quasi-legislative functions performed by this type of officer, the Legislative Assembly may delegate to him or her a higher degree of independence; therefore, the imposition of a reasonable restriction on the Governor's power of removal would be in order.

[12] Regulation No. 5748 of October 23, 1997.

[13] Regulation No. 6686 of October 3, 2003.

[14] Regulation No. 6554 of January 2, 2003.

B.

Having determined the above, and given that the officers here do not perform "purely executive" functions, we have yet to determine whether the restrictions imposed on the Governor's power of removal under sec. 3 of the Puerto Rico Public Broadcasting Corporation Organic Act infringe on the Governor's power to execute the laws and cause them to be executed.

To do so, it suffices to point out that since the officers involved in this case are members of a public corporation with *perpetual existence* and an *independent juridical personality* (27 L.P.R.A. § 501), whose resources and facilities shall be used for educational and cultural purposes, and to provide services to the people in general, and not for particular purposes, or for political-partisan or sectarian propaganda (27 L.P.R.A. § 502), the imposition of a "just cause" requirement is a useful mechanism that, far from impeding the Governor's exercise of his or her constitutional prerogatives, helps guarantee the independence and impartiality of the Puerto Rico Public Broadcasting Corporation. This is so because this requirement prevents a particular government administration from suddenly replacing the Board of Directors of a public corporation for political partisan reasons without complying with the requirements established in its organic act, thus defeating the purpose for which the corporation was created.

Evidently, sec. 3 of the Puerto Rico Public Broadcasting Corporation Organic Act, which requires "just cause" for the removal of non-*ex officio* members of the Board of Directors, does not impermissibly impede the Governor's constitutional duty to execute the laws and cause them to be executed. *Much to the contrary, the Governor retains the authority to remove those officers who, instead of complying with the purpose of the law, have used their position to advance other interests or have breached their duties and obligations.*

VI

For the foregoing reasons, we must conclude that the just cause requirement for removal by the Governor of a member of the Board of Directors of the Puerto Rico Public Broadcasting Corporation (established in said corporation's organic act) does not infringe on the Governor's constitutional powers to remove public officers.

Judgment will be rendered accordingly.

Justice Rivera Pérez issued a concurring opinion in which Justices Rebollo López and Corrada del Río joined. Justice Fiol Matta concurred with the position of this Court in Part II of the *Per Curiam* Opinion and dissented without a written opinion from its position in Parts III, IV (A) and (B), and V (A) and (B). Justice Rodríguez Rodríguez disqualified herself.

IMPORTANT NOTICE:
Given the urgent nature of the request for translation in this case, the Bureau of Translations of this Court has completed the translation of the *Per Curiam* opinion; however, the concurring opinion issued by Justice Rivera Pérez, which is part of this opinion, has not been completed and, therefore, has not been included here.

San Juan, Puerto Rico, this 9 day of April, 2005.

Aida Ileana Oquendo Graulau
Clerk of the Supreme Court of Puerto Rico

(Official Translation)

IN THE SUPREME COURT OF PUERTO RICO

Arturo Guzmán Vargas,

Plaintiff

v. No. CT-2003-002 Certification

Hon. Sila M. Calderón *et al.*,

Defendants

JUDGMENT

San Juan, Puerto Rico, March 23, 2005

For the reasons stated in the foregoing *Per Curiam* Opinion, which is made an integral part of these presents, we certify that the just cause requirement for removal by the Governor of a member of the Board of Directors of the Puerto Rico Public Broadcasting Corporation (established in said corporation's organic act) does not infringe on the Governor's constitutional powers to remove public officers.

It was so decreed and ordered by the Court and certified by the Clerk of the Supreme Court. Justice Rivera Pérez issued a concurring opinion in which Justices Rebollo López and Corrada del Río joined. Justice Fiol Matta concurs with the position of this Court in Part II of the *Per Curiam* Opinion and dissents without a written opinion from its position in Parts III, IV (A) and (B), and V (A) and (B). Justice Rodríguez Rodríguez disqualified herself.

(Sgd.)
Aida Ileana Oquendo Graulau
Clerk of the Supreme Court

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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 APR 04 2005

LCDA. AIDA ILEANA OQUENDO GRAULAU
Clerk of the Supreme Court