

March 2, 2020

Via Electronic Mail and U.S. Postal Service

Hon. Wanda Vázquez Garced, Esq.
Governor of the Commonwealth of Puerto Rico
P.O. Box 9020082
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Re: Amendments to the Civil Code of Puerto Rico in contravention of the permanent injunction issued by the U.S. District Court in *Arroyo González v. Rosselló Nevares*, Case No. 17-cv-01457-CCC (D.P.R.)

Dear Governor Vázquez Garced,

We write to express our deep concern about what appears to be a concerted, purposeful effort to violate the constitutional rights and liberty interests of transgender people born in Puerto Rico. At a time when the LGBTQ community in Puerto Rico mourns the hate-motivated, high-profile murder of a transgender woman, Alexa, it has come to light that the Puerto Rico Senate is intent on passing a new Civil Code for the Commonwealth that specifically restricts the rights of transgender Puerto Ricans. We must advise you that this course of action is not only wrong, it is also patently unlawful and would subject you and the Commonwealth to possible civil or criminal contempt of court, as well as sanctions.

As you are aware, we represent the plaintiffs in *Arroyo González v. Rosselló Nevares*, 305 F. Supp. 3d 327 (D.P.R. 2018), including Puerto Rico Para Tod@s—an organization advocating for the equality and dignity of LGBTQ people and their families in Puerto Rico that has members throughout the Commonwealth and works collaboratively to secure, protect, and defend the equal civil rights and welfare of LGBTQ people in the Commonwealth. In *Arroyo*, the United States District Court for the District of Puerto Rico held that the Commonwealth’s policy prohibiting corrections to the sex designation on birth certificates by transgender people, in a manner consistent with their gender identity, violated the Fourteenth Amendment to the United States Constitution. More specifically, the Court held “that the Commonwealth’s Birth Certificate Policy violate[d] transgender persons’ decisional privacy and informational privacy.” *Id.* at 333.

As a result, on April 20, 2018, the federal district court,

ORDERED, ADJUDGED and DECREED that the Demographic Registry of Puerto Rico shall allow forthwith that transgender individuals change the gender marker in their birth certificates, as delineated in 24 L.P.R.A. section 1136,

specifically, by issuing a new birth certificate with the applicant's true gender, without using a strike-out line or otherwise including any information that would disclose a person's transgender status on the face of the birth certificate, in compliance with the Opinion and Order.

Id. at 335.

Notwithstanding the above, the Commonwealth seems intent on violating the rights of transgender persons and the express terms of the judgment in *Arroyo*. The Commonwealth's House of Representatives has passed a new Civil Code (P.C. 1654) expressly prohibiting corrections to the sex designation on a person's birth certificate and only permitting a side annotation next to the inaccurate sex designation ascribed at birth following a transgender person's transition to their true sex, consistent with their gender identity. The Commonwealth's Senate has, to date, not introduced any amendments to these provisions and seems poised to pass the new Civil Code (P.C. 1654), with some unrelated amendments, next week.

The proposed new Civil Code's provisions relating to corrections of the sex designation on birth certificates directly conflict with the express terms of the permanent injunction issued by the court in *Arroyo*. Pursuant to *Arroyo*, the Commonwealth **cannot** prohibit transgender people born in Puerto Rico from correcting the sex designation on their birth certificates in manner consistent with their gender identity. Likewise, the Commonwealth **cannot** use a strike-out line or otherwise include any information that would disclose a person's transgender status on the face of the birth certificate when such corrections are made. As such, the institution of any policies or laws contrary to the court opinion's clear and unambiguous terms would violate the judgment of the court and subject defendants to contempt of court and sanctions.

The permanent injunction issued by the court in *Arroyo* is binding on you in your official capacity as governor, as then-Governor Rosselló Nevares was a named defendant in the case, in his official capacity. Additionally, you have personal knowledge of the court's judgment in *Arroyo*, because, as the then-Secretary of Justice, you were the one who defended the Commonwealth's policy.

"Federal courts are not reduced to issuing injunctions and hoping for compliance. Once issued, an injunction may be enforced." *Morales Feliciano v. Roselló González*, 124 F. Supp. 2d 774, 784 (D.P.R. 2000) (quoting *Hutto v. Finney*, 437 U.S. 678, 690 (1978)). As a result, federal courts have "awesome civil and criminal contempt powers." *Project B.A.S.I.C. v. Kemp*, 947 F.2d 11, 16 (1st Cir. 1991) (citation omitted).

Should a new Civil Code be enacted that in any way makes it harder for transgender people born in Puerto Rico to correct the sex designation on their birth certificates, in a manner consistent with their gender identity, or that in any way deviates from the clear and unambiguous terms of the judgment in *Arroyo*, **we will proceed swiftly to move for contempt of court as well as possible sanctions.**

Violating a federal court order, such as the permanent injunction in *Arroyo*, is a federal crime. *See* 18 U.S.C.A. § 401. Similarly, conspiring to oppress the free exercise or enjoyment of any person's right or privilege secured by the U.S. Constitution, such as transgender people's fundamental rights recognized by the court in *Arroyo*, is also a crime. *See* 18 U.S.C. § 241.

The proposed new Civil Code has many flaws. It undermines and threatens the rights of LGBTQ people as well as the reproductive rights of people in Commonwealth. While that alone should suffice for you to veto it, should it pass, the fact that it violates the express terms of the judgment in *Arroyo* should be reason enough for you to veto P.C. 1654, as currently drafted.

We have enclosed a copy of the federal district court's Opinion and Order in *Arroyo*. Should you have any questions or wish to discuss this matter, you may email me at ogonzalez-pagan@lambdalegal.org.

Thank you for your prompt attention to this matter.

Sincerely,



Omar Gonzalez-Pagan
Senior Attorney*
Lambda Legal

Counsel for Plaintiffs

* *Admitted only in New York and Massachusetts*

w/ encl.

cc: Hon. Thomas Rivera Schatz, President, Senate (trivera@senado.pr.gov)

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