

April 24, 2014

Honorable Alejandro J. García Padilla  
Governor of the Commonwealth of Puerto Rico  
La Fortaleza  
P.O. Box 9020082  
San Juan, PR 00902-0082

Dear Governor García Padilla:

With the retirement of Chief Justice Federico Hernández Denton and the subsequent nomination of current Associate Justice Liana Fiol Matta as Chief Justice of the Puerto Rico Supreme Court, you have the opportunity to nominate a new Associate Justice to the court. As the nation's largest and oldest national legal organization committed to achieving the full recognition of the civil rights of lesbian, gay, bisexual and transgender ("LGBT") people and those living with HIV, Lambda Legal is particularly aware of the importance of access to justice for all people, including the necessity that the judges chosen to decide cases that will come before them are prepared to do so without bias and based solely on evidence and precedent. We would like to share with you our thoughts about considerations we believe need to be taken into account in selecting future judges and respectfully suggest that you consider the following information when making these important decisions.

In your early actions as Governor, you specifically included LGBT Puerto Ricans in your vision for the Island of Enchantment. Your signing of Laws No. 22 (prohibiting workplace discrimination on the basis of sexual orientation or gender identity) and 23 (extending domestic violence protections to people in same-sex relationships) in 2013 as well as the issuance of Executive Order No. 2013-010 (extending health benefits to cohabitants of government employees regardless of gender or marital status) are an inspiring indication of your efforts to promote a more inclusive environment for all Puerto Ricans, regardless of their sexual orientation, gender identity or HIV status. We urge you to continue on this path as you consider potential candidates for the state judiciary.

Over the past several years, Puerto Rico's courts have issued decisions with significant impact for people who are LGBT – both as individuals and as families. For example, in *Puerto Rico v. Ruiz Martínez*, 159 D.P.R. 194 (2003), the Commonwealth's Supreme Court held that Puerto Rico's domestic violence laws, despite being gender neutral, should be interpreted to exclude individuals in same-sex relationships from that law's vital protections. In *Ex parte Delgado Hernández*, 165 D.P.R. 170 (2005), the Court interpreted Puerto Rico's Domestic Registry Law, 24 L.P.R.A. §§ 1041 *et seq.*, restrictively, to prevent amendment of the birth certificates of transgender individuals to reflect their true identities. And just last year in *Ex parte A.A.R.*, 187 D.P.R. 835 (2013), the Court, in what Chief Justice Hernández Denton described as defiance of a growing international trend to protect the human rights of people that

are discriminated against based on their sexual orientation, refused to recognize the concept of second-parent adoptions and – even more alarmingly – narrowly interpreted the prohibition against sex discrimination in the Puerto Rico Constitution to exclude claims based on sexual orientation despite the Constitution’s mandate that the “enumeration of rights shall not be construed restrictively nor does it contemplate the exclusion of other rights not specifically mentioned which belong to the people in a democracy.” P.R. CONST. Art. II, § 19.

When people who enter the courthouse have their fundamental rights hanging in the balance, it is crucial that the judges in whom their rights have been entrusted will treat them fairly. Those whose rights are being decided should be assured that their arguments will be seriously considered and understood, and their claims will be resolved without bias against them, or favor for their opponents. Ensuring that Puerto Rico’s judges are fair-minded and will approach the decisions they make without prejudice is of utmost importance both for the legal system and for the rights of those more vulnerable people whom the legal system has the highest obligation to protect. When selecting individuals for the bench, we respectfully ask that you take the following considerations into account.

The first and foremost consideration, of course, should be to ensure that the judicial philosophy of the judges includes a commitment to render decisions impartially and in accordance with Constitutions and laws of the United States and of Puerto Rico. Specifically, whomever you appoint should have a demonstrated commitment to rule fairly and impartially, including in cases involving LGBT and HIV-positive litigants. For example, they should confirm that they will follow the legal precedents established in decisions like *Romer v. Evans*, 517 U.S. 620 (1996); *Lawrence v. Texas*, 539 U.S. 558 (2003); and *United States v. Windsor*, 570 U.S. 12 (2013). It is of the utmost importance that any nominee to the Puerto Rico Supreme Court be prepared to apply *Lawrence*’s holding that the United States Constitution’s protection of liberty affords lesbians, gay men and bisexuals the same autonomy as heterosexuals in making personal decisions relating to marriage, reproductive choice, family relationships and the raising and education of children. Any nominee to Puerto Rico’s judiciary should also acknowledge *Windsor*’s mandate that the personhood and dignity of all citizens should not be disparaged or injured by the State.


Second, in order to seek the highest level of judicial integrity, we also urge you and your staff to seek potential judicial candidates who not only are qualified and thoughtful jurists, but also are reflective of the full range of Puerto Rico’s rich diversity. It is critical that the judiciary be composed of judges who truly represent and understand the issues faced by all of its citizens. We respectfully urge you to include qualified LGBT judges, as well as other underrepresented minorities and those with public defender and public interest legal backgrounds, among those you nominate to the bench.

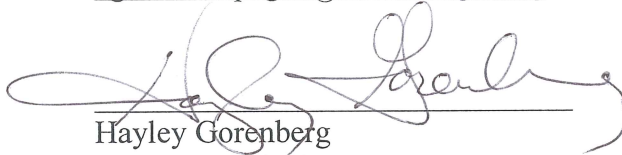
Days before retiring Chief Justice Hernández Denton reflected on his years of service and concluded that one of the decisions he most regrets is his vote in *Ex parte Delgado Hernández*. As he outlined on his dissent in *Ex Parte A.A.R.*, being a judge is about having sensitivity to the real problems people face and complying with the constitutional obligation to defend and protect


the dignity and equality of all human beings. We urge you, and those you select to assist you, to scrutinize every judicial candidate's record closely and ask pertinent and comprehensive questions to best assess each one's ability to be a fair and impartial jurist.

Again, we thank you for the commitment you have shown to the LGBT community in the early stages of your administration, and look forward to working closely with your administration over the coming years.

Very truly yours,

  
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