



March 3, 2020

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cc. Senators

**Re: House Bill 1654 – Comments by the Hispanic Federation on the proposed Civil Code and request for public hearings**

Hispanic Federation<sup>1</sup> is a non-profit organization founded in 1990 in the State of New York, United States, with the goal of supporting and empowering Hispanic communities and institutions through initiatives in the areas of education, health, immigration, public engagement, economic development, the environment, and civil rights. For years, the organization has advocated for the rights of Puerto Ricans and other Hispanic communities at the federal, state, and local levels. Today, Hispanic Federation has offices in five states and Washington D.C., and has established permanent operations in Puerto Rico after Hurricane María. To date, the organization has committed over \$30 million dollars to 116 local initiatives and non-profit groups across the island, with a focus on recovery, housing, agriculture, mental health, and energy.

House Bill 1654 proposes the adoption of a new Civil Code of Puerto Rico. The bill was introduced on June 18, 2018, and the Judicial Commission of the Puerto Rico House of Representatives conducted public hearings on it that same year. However, significant changes continue to be made to the bill. So much so, that the electronic draft by the Senate of Puerto Rico<sup>2</sup> that was published in November, 2019 was extremely different from the draft currently published on the Senate webpage.<sup>3</sup> For example, in the November, 2019 version, the recognition of legal

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<sup>1</sup>Hispanic Federation, [https://hispanicfederation.org/about/mission\\_and\\_history/](https://hispanicfederation.org/about/mission_and_history/)

<sup>2</sup> Noticel, November 14, 2019, “Senado por fin publica enmiendas recomendadas al Código Civil”, <https://www.noticel.com/ahora/legislatura/senado-por-fin-publica-enmiendas-recomendadas-al-codigo-civil/1142327502>

<sup>3</sup> Electronic draft of House Bill 1654 published on February 28, 2020, in the Senate of Puerto Rico webpage.

personality of the unborn child (*nasciturus*) was eliminated and, in the current version, it has been reinserted, against the constitutional rights of pregnant women to make decisions about their bodies and their pregnancies.

This is why on November 12, 2019 the Hispanic Federation, in conjunction with other groups, requested that public hearings be held in order to democratically evaluate the proposed amendments to the bill. We confirm receipt of the letter sent by House President Carlos “Johnny” Méndez Nuñez on November 18, 2020, and hope that we have clarified the reason why new public hearings are needed. This being said, Hispanic Federation presents its comments to the bill as published on Friday, February 28, 2020 on the Senate of Puerto Rico webpage.

### **Suggested Amendments**

- **Article 69 - Legal Personality and Capacity**

Article 69 recognizes the personality of the unborn child (*nasciturus*) in any aspect that may be advantageous to it, provided it is born alive. This language is ambiguous and opens the door to interpretations that may restrict the constitutional rights of women. What does the phrase “in any aspect that may be advantageous to it” mean? Does it include a right to be born? Although the bill's Preliminary Recitals state that the rights of the *nasciturus* “do not in way diminish the constitutional rights of pregnant women to make decisions about their pregnancy,” said rights are not expressly protected by the legislation. **For this reason, we recommend the elimination of the recognition of personality to the unborn child (*nasciturus*), which may threaten a woman's right to decide whether to end her pregnancy.**

- **Article 74 - Enjoyment of Essential Rights**

Article 74 should add as an essential right that “no person shall be discriminated against because of their race, color, sex, birth, origin, or social status, political or religious ideas, **sexual orientation, or gender identity.**” In this manner, existing discrimination against the LGBTTIQ community in Puerto Rico is clearly and responsibly prohibited. In addition, equality is expressly protected in the context of our historical reality, where women continue to be discriminated against by men in couple relationships as well as at work and in other social settings.

In 2013, a law for establishing public policy in the Government Puerto Rico against discrimination based on sexual orientation and gender identity in public and private sector workplaces was adopted (Act No. 22-2013). Although this type of special legislation exists, the Civil Code should adopt a full prohibition of all types of discrimination to ensure the protection of all vulnerable communities, such as women and the LGBTTIQ community.

- **Articles 82-85 - Name of the Legal Person**

These articles discuss a person's right to a name and the process of registering the name in the Demographic Registry. Our recommendation is to include, as part of these articles, mechanisms that will allow persons to change the sex that was first recorded, when their gender identity requires it and without having to reflect the original sex or the change made in their birth certificate. Please see Arroyo González v. Roselló Nevares, 305 F. Supp. 3d 327 (D.P.R. 2018), where it was determined that forcing a person to report their transgender status violates their constitutional right to privacy.

- **Article 376 – Constitution of Marriage**

Article 376 stipulates that marriage is a civil institution derived from a civil contract under which two legal persons mutually agree to be spouses. The phrase “two legal persons” does not prohibit marriage between persons of the same sex, but neither does it close the door to interpretations that may limit such marriages. In accordance with the U.S. Supreme Court decision in the case of Obergefell v. Hodges, 576 U.S. \_\_\_\_ (2015), the right to marry is a fundamental right and intrinsic to every human being's freedom. Thus, we recommend adding the following clarification to Article 376: “...two legal persons, **without regard to their sex....**”

### **Amendments We Support**

- **Article 217 – Who is a Legal Person**

As proposed, Article 217 eliminates the intention of recognizing a particular legal personality to churches. We support the elimination of such recognition, since the constitutional separation of church and state is not intended to exempt churches from respecting the constitutional and legal rights and liberties of all persons. Similarly, we support the elimination of such recognition in **Articles 219, 222, and 223**.

- **Article 241 – Common Things**

Article 241 defines common things as **those that are not the property of anyone in particular and of which all persons have free use, in keeping with their nature**, such as: air, running water, the sea, and its shores. We support maintaining the concept of common things in the Civil Code. Not doing so would pose a risk to the lives of people and of our ecosystems. We should protect the common or public nature of air, running water, the sea and all the common things that sustain life in this country.

- **Article 788 – Usucapion of Real Estate**

Article 788 Reduces the period of time for usucapion of a piece of real estate without clear title or good faith to twenty (20) years. According to the Preliminary Recitals, this change “seeks to reduce the problems posed by abandoned homes and hopes to protect those who devote their efforts and money to rehabilitating these properties in order to provide shelter for their families.”



We support this change. Abandoned structures should be rescued for the benefit of the communities in which they are located.

- **Article 963 – Right-of-Way for Solar and Wind Energy**

Article 963 recognizes a farm owner’s right to use the solar and wind energy that regularly occurs in their property. Recognition of this right is compatible with the Puerto Rico Energy Public Policy Act, as amended (Act 17-2019), which requires that we attain at least 40% integration of renewable energy into our electric power grid by 2025; 60% by 2040; and 100% by 2050. It also promotes people’s access to clean, resilient, and sustainable energy.

### **Conclusion**

After nearly ninety years of the current civil code, there is an urgency to recognize the rights that will guarantee equality, justice, respect, and tolerance in our country—rights that will promote true quality of life for all human beings on the island and ensure that they live in peace. Such rights cannot be determined by a limited group of persons, scholars, professionals and/or politicians, since they should not respond to the truth of only a few, but to the truth, diversity, and current social reality of Puerto Rico. Everyone has the right to effectively participate in the process of recognizing and defining their rights related to family relationships and any legal relationships that may impact the short- and long-term development of Puerto Rican society.

**In view of all of the foregoing, Hispanic Federation reiterates its request that public hearings be held to democratically evaluate the amendments proposed to House Bill 1654, and hopes that the comments included herein are taken into consideration by both legislative bodies.**

Sincerely,

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