

April 11, 2007

Permanent Joint Commission for the Revision and Reform of the Civil Code of Puerto Rico

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**Re: Draft of the Book *Family Institutions***

Honorable legislators:

Good morning to the honorable members of this Permanent Joint Commission for the Revision and Reform of the Civil Code of Puerto Rico. I am Pedro Julio Serrano, Communications Coordinator for the National Gay and Lesbian Task Force, the oldest U.S. organization that builds the political power of the lesbian, gay, bisexual and transgender community from the ground up. I'm also the president of Puerto Rico Para Tod@s, the organization that advocates for the inclusion of the lesbian, gay, bisexual and transgender community on our island, as well as fighting for social justice for all human beings. I am also the co-chair of Unid@s, the National Latina/o LGBT Human Rights Organization.

In a democracy such as ours, the legislators have the constitutional obligation of upholding every citizen's equality under the law. This includes discussing and approving laws that guarantee this equality, as well as recognizing human and civil rights, whether for only one person or four million people, without exclusion. Actually, in the legislative process, this Assembly has to recognize the rights of the minorities, even if this recognition might be unpopular, because our democracy is based on the protection of minority groups from possible abuse by the majority. More so, our Constitution recognizes the inviolability of the dignity of every human being. These maxims of our Magna Carta cannot survive as mere theory; they have to be put into practice. Everyone means everyone. The inviolability does not permit exception.

According to this inevitable constitutional obligation, we recognize the statements made by the honorable members of this Commission. We recognize Rep. Albita Rivera, who almost a decade ago submitted a bill to resolve what this draft presents today, providing justice for lesbian and gay couples. We recognize as well, Rep. Charlie Hernández for leading the fight to create hate crimes legislation in this country. We recognize Sen. María de Lourdes Santiago's uncompromising stand on justice and equality. Sen. Eudaldo Báez Galib efforts to provide Puerto Rico with an up to date penal code updated to our times and his uncompromising position in favor of equality has earned him our people's respect. The co-chair of this commission, Rep. Liza Fernández, has courageously

said that she favors rights for the couples that would benefit from civil unions and has defended their inclusion in this draft.

We recognize in a very special way the bill submitted by Senate President Kenneth McClintock, by petition of Puerto Rico Para Tod@s to prohibit discrimination on the basis of sexual orientation and gender identity. We also recognize the statements in favor of justice that have been made by Sens. Ríos, Martínez and González, as well as by Reps. García, Cintrón and González. Lastly, but not less important, we recognize the statements made by the co-chair of this commission, Sen. Jorge de Castro Font, who said on the floor of the Senate that he will submit to the consideration of the Legislature a civil code that will be constitutional. This statement is in tune with what we have always demanded: justice for lesbian, gay, bisexual and transgender people, and equal rights under the guarantees put forth by our constitution. It would be a futile and unconstitutional exercise to submit to this Legislature a civil code that discriminates on the basis of sexual orientation and gender identity.

The proposed draft of the Family Book of the Civil Code constitutes a step in the right direction for all Puerto Rican society. The draft of this Book clarifies and expands the rights and responsibilities of the members of the basic unit of society and recognizes new realities that technology has brought to bear. The proposed Book *Family Institutions* recognizes precisely that there are many ways of forming families, taking into consideration the ties of affection that bind us. For example, two friends that live together without a sentimental bond form a family; a heterosexual couple that live without getting married are a family; a lesbian couple united by love form a family; grandparents raising a grandchild are a family. The concept of family as a man and a woman with kids is today a minority on our island, as more than 50 percent of married couples end up in divorce. In other words, the majority of our families live without the rights and protections that a minority enjoys. Our laws must recognize the reality in which our population lives and grant equal rights to all families.

The proposed civil code recognizes an individual's autonomy by protecting his or her personality; this personality cannot be conceived excluding the sexual and gender identity of the individual. In the variations of sex and gender, it's necessary to highlight that sexual orientation and gender identity manifest themselves as immutable traits, not as preferences, because no one would choose to be lesbian, gay, bisexual or transgender just to be discriminated against. By the way, to continue this discussion we have to set aside the sexual aspects of our relationships and recognize the way that every one of us relates to our partners. All of us together, including gay and lesbian couples, are together out of love, by mutual consent and by commitment.

We partially support the proposal to create civil unions for heterosexual couples, as well as for gay and lesbian couples. For remedying partially and immediately some inequities faced by couples that cannot or do not want to marry, we support this legislative initiative. This bill would guarantee that thousands of couples that live without rights and protections, could start accessing health services, and life insurance and inheritance benefits, as well as making medical decisions and coming closer to the full equality deserved by all families. Let's be clear: civil unions are not equal to marriage. Marriage, according to this draft and to our actual state of law, is the union between a man and a woman.

To equate civil unions with marriage is false, misleading and a tactic to try to confuse this country and deny us any type of rights. They are not the same. Civil unions do not give full equality to gay and lesbian couples. If they were the same, we wouldn't be advocating for the inclusion of gay and lesbian couples in the institution of marriage, because even if civil unions are a step in the right direction, they fall short of our deserved right to full marriage equality. It is precisely for these reasons that while this draft of the Family Book contains steps in the right direction, we cannot support the pretense of keeping gay and lesbian couples in a second-class status regarding the principal institution of the Family Book: marriage.

Our constitution guarantees one indivisible equality. It does not permit levels or exceptions. The Legislative Assembly is morally and legally obligated to exercise the constitutional mandates of equality. The refusal of the right to marry to gay and lesbian couples is contrary to such obligation and it doesn't survive the strict scrutiny required by the Constitution. There is no valid reason for the State to deny the right to free association to a same-sex couple that decides to join in a relationship based on love, mutual consent and commitment. This Legislative Assembly cannot ignore the constitutional right to intimacy, which operates *ex proprio vigore*. It also can't ignore the protections granted by the right to free association, expression, and liberty, equal protection under the law and nondiscrimination.

For decades, the lesbian, gay, bisexual and transgender community have demanded the government live up to these inherent truths of our democratic system. Consequently, in the past few months, we have seen constitutional lawyers support, from this very room, our demands for equal rights. Attorney Celina Romany said it clearly when she expressed before this commission that the institution over which she presides, the Puerto Rican Bar Association, "has been consistent in the defense of equality as an instrument for the promotion of social peace," passing resolutions that call for "the end of all forms of discrimination and inequities based on sex, gender, sexual orientation and identity that persist in Puerto Rico." To eradicate these inequities, Romany said that this Commission should have given an "integral vision" to this proposed civil

code, by granting gay and lesbian couples the right to marry.

At the same time, in his ministerial duties as the defender of the constitutionality of our laws Attorney General Roberto Sánchez Ramos said that “maintaining an exclusion to deny same-sex couples the recognition of their right to marry could lead to the intervention of the courts on the basis of equal protection under the law and the right to intimacy, as well as on the basis of other rights recognized by the Constitutions of the Commonwealth of Puerto Rico and of the United States of America.” More so, the Attorney General recommended that “the best way to immunize this code against declarations of unconstitutionality is by extending the right to marry to same-sex couples.”

Faced with the inevitability of equality, we ask how it is possible that here in Puerto Rico, where the right to intimacy has constitutional status and operates without the need of further legislation, there’s an attempt to use false morals to ignore the situation of inequity faced by sexual minorities. The complete separation of church and state guaranteed by our Constitution and the rights of freedom and privacy recognized by the United States Supreme Court obligate us to recognize that Puerto Rican law should be a loyal reflection of the values of inclusion in our society, a society that prides itself on its aspirations to treat all human beings equally.

Morality is not based in religious concepts, morality is non-sectarian; morality is based in the dignity of a human being and how that dignity is respected by fellow citizens, so much so that the inviolability of that dignity is protected by our constitution. And now that we are speaking about morality, let’s define it. Discrimination is immoral. Domestic violence is immoral. Attacking the dignity of a human being is immoral. Stealing funds destined for people living with HIV/AIDS is immoral. On the contrary, respecting diversity is moral. Guaranteeing equality is moral. Loving a person is moral. Deciding to share your life with your loved one is one of the most noble and moral acts that exists.

Those who are opposed to equality for gay and lesbian couples allude to the biblical tradition. But depending on the book of the Bible that is cited, the biblical standard for marriage accepts polygamy, prohibits divorce, permits surrogate maternity, prohibits interfaith unions, values women as property and penalizes adultery with death. If a biblical concept is accepted as a basis to deny the right to marry to gay and lesbian couples, this Legislative Assembly will have to penalize divorce, fornication, adultery, premarital sex, oral sex, the use of birth control methods and other conduct that violates religious dogmas.

It is ironic that a committed couple that loves each other is denied equality based on biblical

arguments, but the rest of the biblical implications for marriage are conveniently ignored. Nonetheless, the Bible makes a supreme call for love, integrity and justice for all relationships, precisely what gay and lesbian couples affirm: loving each other against all adversity. Even with the lack of acceptance of some sectors of society, even with the lack of equal rights, even with the discrimination that permeates our lives, gay and lesbian couples continue to love one another, forming families and contributing to society.

The most beautiful proof of this love is the wonderful love story of Emilio Reynes and Efraín Cano, who have been together for more than 35 years. Even with the lack of acceptance of Efraín's family, as unfortunately continues to happen in many Puerto Rican families, they decided to form a home. A year ago, they had to go out of their country to find the equality that is denied to them here. They got married legally in Canada, more for the social recognition than for the rights that are still not recognized in Puerto Rico. Because their legal marriage is still not valid on our island, they decided to make their wills and their declarations of executors to protect what they have constructed for the past 35 years together.

With lots of sacrifices, Emilio and Efraín have protected their lives and properties as best as they have been able to, but not all same-sex couples can make these costly legal arrangements. This makes it urgent and necessary that these couples can protect themselves through the legal rights that come with the right to marry. I know that one day; Emilio and Efraín, this country will recognize your union as it should, with all the rights under the law. One day, this country will restore your dignity, which has been negated for the past 35 years. I hope it is not too late.

The love in gay and lesbian couples is so solid that it not only tolerates the wounds of discrimination, but it continues to eliminate from our path the hate infused by detractors of equality, following the example set by the Rev. Martin Luther King, Jr., when he invited us to continue to love those opposed to our equality: "To our enemies, we tell them: We will match your capacity to inflict suffering with our capacity to overcome suffering. We will match your physical force with our moral force. We cannot in all good conscience obey your unjust laws, because noncooperation with evil is as much a moral obligation as is cooperation with good. But be ye assured that we will wear you down by our capacity to suffer. One day we shall win freedom, but not only for ourselves. We shall so appeal to your heart and conscience that we shall win *you* in the process, and our victory will be a double victory."

This victory for the freedom of everyone is near, including the existence of many churches in the denominations Episcopal, Mennonite, Methodist, Anglican, Lutheran, Presbyterian, Baptist, Universalist Unitarian, Metropolitan Community and Eucharistic Catholic, which bless same-sex unions. Moreover, in recent statements to the press, the Catholic archbishop of San Juan,

Monsignor Roberto González, recognized the inequities faced by lesbian, gay, bisexual and transgender people and stated that “the Church does not favor discrimination against anyone” and went even further by advocating for our human and civil rights by stating that “the rights of everyone should be recognized.” This demonstrates clearly that while the state cannot obligate any church to go against its dogma, no particular church can pretend to obligate the state to go against the equality under the law for every human being.

Doesn't the Christian dogma recognize rendering unto Caesar what is Caesar's and unto God what is God's? Doesn't the modern church recognize the complete separation of church and state? What one fundamentalist group is soliciting today goes against our state of law and our constitutional scheme, against our freedoms and our indispensable separation of church and state? If it is permitted for a fundamentalist group to impose its dogma today, what will impede another group from trying to impose its dogma on other groups tomorrow? By challenging the separation of church and state, these fundamentalist groups go against themselves, their own autonomy and their freedom of religion. The freedom of religion is nothing more than a manifestation of the right to liberty and personal autonomy, in other words the right to intimacy. Being that this is the Legislature, this should not be a necessary reminder. Nonetheless, the reminders are not unmerited.

Honorable legislators, legislate without fear. Don't fear any political cost for upholding the constitutional mandate of equality under the law. Our people tell you, “Don't be afraid; if you uphold equality, we will support you.” A perfect example of this truth is that candidates who were endorsed by the fundamentalist sectors were defeated in the last elections and those who were not endorsed are now working side by side with you in both chambers of the Legislature.

Only a couple of years ago, this Legislature reaffirmed the separation of church and state when it overturned our sodomy law, and the University of Puerto Rico became the first employer of the state to grant benefits and rights to the partners of its lesbian, gay and bisexual employees. We should ask ourselves, if the state has decided to recognize gay and lesbian couples, why it doesn't it allow for a legal structure to permit the stable development of those couples and their children? What we deserve are the rights, responsibilities and legal protections that the state offers two persons that decide to unite, love and commit to each other.

The reasons to permit equality for gay and lesbian couples range from basic considerations of justice to practical things such as the reduction in the public cost when couples receive joint medical coverage. Also, this would protect thousands of families led by gay and lesbian couples; according to the 2000 Census, more than 40 percent of these couples are raising children under

the age of 18, without having protections and rights.

More so, the denial of equality to gay and lesbian couples forbids the rights of marriage to not only these couples, but also their children. These children are being raised adequately, even if they have been left out of the protections of the institution of marriage until now. We want to know, what argument can the state bring forth to deny these children the right to inheritance, security, life and health insurance protection, Social Security and alimony, among others?

The state must eradicate discrimination against gay and lesbian couples. It won't be able to do this by creating something new, different or of a lesser range, nor by taking our island on the path of separation and inequity. Gay and lesbian couples deserve the same rules, the same responsibilities, the same respect, the same dignity. Only marriage offers incomparable and irreplaceable protections and responsibilities under state, federal and international laws that cannot be reproduced by any other contract, statute or new invention by the state.

The network of marriage protections affects every area of life, from birth until death, including taxes. Even when the remedy proposed by this draft offers some protections and rights that the state guarantees, the reality is that no separate status — no civil union — offers full economic justice to gay and lesbian couples. To have to go to a lawyer to protect our families in a time of crisis is not just and it is not equal. There's only one system that protects families no matter where they were married, live or travel: marriage. Civil unions do not offer the more than 1,138 protections that marriage offers, including Social Security and the security that the legal relationship between two committed people who love each other will be respected outside of the place of origin.

In Puerto Rico, institutions like the Justice Department, the Family Department, the Women's Advocate, the Bar Association, the Civil Rights Commission, the Psychological Association, the Social Workers Association, the majority of Puerto Rico's law schools, as well as health professionals, religious leaders, celebrities, straight people, our families and friends, among other people and institutions, have expressed support for the changes proposed to the civil code and for recognition of the diversity of families on our island. Around the world it is known what equality means. Spain, Canada, the Netherlands, Belgium and South Africa, as well as the state of Massachusetts, have marriage equality for gay and lesbian couples..

Also, countries as diverse as Andorra, Colombia, Croatia, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Israel, Luxembourg, New Zealand, Norway, Portugal, Slovenia, Sweden, Switzerland and Great Britain, as well as parts of Argentina, Brazil, Italy,

Mexico, Australia and, in the United States, places like California, Connecticut, Hawaii, Maine, New Jersey, Vermont and Washington, D.C., have recognized civil unions.

We must not forget that Spain progressed from the dictatorship under Franco, supported by the Catholic Church, to marriage equality in less than 30 years. South Africa progressed from the horrors of apartheid and racial segregation to marriage equality in less than 16 years. If these incipient democracies have made great strides to guarantee equality under the law for every human being, what is the Puerto Rican democracy — which has one of the most advanced constitutions in the world — waiting for to join our times, to follow our best aspirations of justice and equality and to truly represent who we are?

Justice and equality have eluded one community most forgotten by our state of law and our society: transgender people, who use strictly legal methods to live ordinary lives. They have been victims of so much discrimination, intolerance, hate and violence that they have learned to see other human beings for who they are, human beings. They do not care for labels, they appreciate human diversity and in an effort to reclaim their identity, they demand to be treated with dignity. Every moment they have to remind themselves and the world that they are human beings, because there are people that try to dehumanize them. Precisely because of the pain they have had to endure, because of their inequality under the law, because of the violence that haunts them, because of the intolerance that marginalizes them, because of the hate that hurts them, they have embraced their humanity to a level that we all should strive for. If we learn from transgender people, we will treat each other with respect and validate the dignity of every human being. At the same time, we will create a more just, unified and human society.

It is for these reasons that we support the partial justice, contained in this draft, of permitting the change in the gender designation on the birth certificates of people who live in genders that were not assigned to them at birth. But we equally demand full justice to amend this disposition so that it does not require people to go through doctors to make this legal change.

Under the protections guaranteed by freedom of expression, the right to intimacy and nondiscrimination, equal protection under the law, the inviolability of the dignity of the human being, and the ample right to freedom, this change must be permitted to every person who decides to live their life according to their gender identity, without being obligated to undergo a costly, dangerous and painful reassignment surgery process. To claim that the lack of this medical requisite could cause capricious changes in the registry is to ignore the suffering and effort that people undergo in trying to make their official gender designation correspond to their gender identity.

This Legislative Assembly must amend the unfortunate ruling our Supreme Court made when it was inconsistent and decided differently in identical cases. Seven years ago, the Supreme Court recognized the right of a transsexual woman to change the gender designation on her birth certificate, but only two years ago, it denied that right to an equally transsexual woman who has only tried to live an ordinary life by strictly legal methods. It is for this reason that Alexandra is not here with us today: our highest court relegated her to a third class citizenship, obligating her to live with the stigma of discrimination every day, violating her dignity.

This Legislative Assembly must protect Alexandra's dignity so that the day this civil code is effective she will be able to change her birth certificate and no longer be obligated to explain herself and suffer humiliations because her gender identity, how she is seen by the world — a woman — is different from what that legal document states. What is demanded of this Legislative Assembly is a small change in the life document of a person, but a just change to guarantee the dignity and the equality of every human being who turns to strictly legal methods to live the ordinary life that we all have the inalienable right to live.

Actually, this Legislative Assembly has to look to the past, not to the present or the future. It has to look to the past and do precisely what was done in the decade of the 1970s when, in the court of the Honorable Judge Mariano Acosta in Carolina, it was decided to change the gender designation on the birth certificate of Bárbara (Soraya) Santiago Solla. With this historic decision, our courts validated the dignity of a transsexual woman who had made her transition through legal methods.

If the state has permitted a person to fully exercise their freedom, including living according to his or her gender identity, how will it not permit the change in his or her legal documents and identifications to document his or her new reality? In our state of law, there cannot be different decision for identical cases. This Legislative Assembly has to correct this injustice and give Alexandra the equality that Soraya has. To do the contrary would be unconstitutional and an affront to the inviolability of a human being's dignity, freedom of expression and right to intimacy.

What if it was the reverse? What if the majority were lesbian, gay, bisexual and transgender people? What if marriage was only legal for gay and lesbian couples? What if we wouldn't permit changing the last name on a birth certificate to document a new reality? What if we permitted discrimination against heterosexual people? The majority cannot impose its way of thinking on minorities. Actually, that's why we have a democracy, to guarantee equal rights to each and every one of the citizens, whether it's only one person or four million persons. If we went by the reality

of the majority, a married man and woman with children would have no rights, interracial marriage would not be legal and women would still be property of men. If it was up to the majority, this legislature would have favored one legislative chamber, women would still be without rights, divorce would be prohibited and black people would still be slaves. What was previously law because it was mandated by the majority has inevitably had to convert into the recognition of rights for everyone and equality under the law.

It is an obligation of the state to eradicate every form of discrimination and not perpetuate inequality against lesbian, gay, bisexual and transgender people, conveniently forgetting the famous phrase of Eugenio María de Hostos, “If equal are the responsibilities, equal must be the rights.” We pay taxes and have all the responsibilities, so it is unjust, unconstitutional and immoral that we are denied equal rights.

We are part of this country. We are your sons and daughters, your fathers and mothers, your brothers and sisters, your cousins. We are your grandparents, your uncles and aunts, your neighbors. We are your colleagues, your assistants, your campaign people, your friends. We are you. We deserve the same rights and protections that our heterosexual brothers and sisters have, just as Toñi Mújica, my dad, and Alicia Burgos, my mom, state: “We demand for our only gay son the same rights that our three heterosexual children have. None of our sons is better than the others; all are equal and in equal terms they should be treated.” Justice is a blind mother who treats equally every son and daughter.

We demand the recognition of full equality for lesbian, gay, bisexual and transgender people. Civil unions, even if they constitute a step in the right direction, fall short of full equality. Some ask us, “Why don’t you just visit a lawyer to protect your rights? Why don’t you live as transgender in the privacy of your home?” The answer is simple: because equality means one irreplaceable thing: equality. Puerto Rico cannot make the grave mistake of stopping the historic progress of civil rights by creating new categories of “separate but equal.” Actually, the Massachusetts Supreme Court said it best when it granted marriage equality to gay and lesbian couples in that state, declaring that “history shows us time and time again that separate is never equal.”

Unfortunately, Puerto Rico’s Supreme Court has not met its constitutional obligation of granting justice to those who resort to the courts as their last resource for equality. This was demonstrated by our Supreme Court in the dissident opinion of the case *Pueblo v. Ruiz Martínez*, 158 D.P.R. 35 (2003), when the now Chief Justice Federico Hernández Denton told his fellow justices that “Time will be on our side. There will come a time when we will guarantee the same equal rights that benefit the rest of society to the sexual minorities and we will rectify the injustice and the

discrimination.” Let’s have no doubt: the time is now.

Put in simple and human terms, this Legislative Assembly has the obligation of taking our Constitution out of its urn and making it live. It has to legislate to guarantee the equality under the law of lesbian, gay, bisexual and transgender people. It has the inevitable obligation to legislate for all its citizens. Honorable legislators, when you took your oath of office, you did it with your hand on the Bible, swearing to uphold the Constitution. You didn’t put your hand on the Constitution, swearing to uphold the Bible.

This Legislative Assembly has to assure our country that the unfortunate story of José Fernando Colón will not be repeated, a 53-year-old man who when his partner Quique got sick, couldn’t make any medical decisions for him, even though he was the only family he had known for the last 17 years of his life. Quique’s family, who in life never took care of him due to homophobia, didn’t afford José Fernando any rights when Quique died in his arms. Since José Fernando didn’t have any of the rights granted by the state, he had no choice but to abandon the hospital where he had taken care of Quique during his last 50 days on Earth, as he had done during all their lives together. To start again, with the unbearable pain of losing your loved one, is an unimaginable injustice for heterosexual couples. Nonetheless, this story repeats itself more than our consciences could bear in the lives of gay and lesbian couples.

This Legislative Assembly has to guarantee José Fernando that if he has to go to a hospital again this year, like he has had to go twice this year, Anselmo Fonseca, his partner for the past 12 years, would be able to make medical decisions for him. This Legislative Assembly has also to guarantee Alexandra that she won’t continue to live in a third-class citizenship, that her efforts to live a strictly legal life are not in vain and that the inviolability of her dignity and her equality under the law will be reaffirmed by those who are obligated to legislate it.

This Legislative Assembly has to legislate equality. It has the inevitable constitutional obligation of making it a reality. This Legislative Assembly has the opportunity to rise to the occasion, to make history and be guardians of our most precious values of equality and justice. This Legislative Assembly has the opportunity to demonstrate that Puerto Rico cannot be just for some, it has to be for everyone.

I know that one day I will hear some politician in Puerto Rico say similar words to those expressed by Spain’s president, José Luis Rodríguez Zapatero, when Spain legislated marriage equality for gay and lesbian couples: “Today, the Spanish society answers to a group of people who during many years have been humiliated, whose rights have been ignored, whose dignity has

been offended, their identity denied, and their liberty oppressed. Today the Spanish society grants them the respect they deserve, recognizes their rights, restores their dignity, affirms their identity, and restores their liberty. It is true that they are only a minority, but their triumph is everyone's triumph. It is also the triumph of those who oppose this law, even though they do not know this yet: because it is the triumph of Liberty. Their victory makes all of us (even those who oppose the law) better people; it makes our society better.”

Honorable legislators, today Soraya, Emilio and Efraín, José Fernando and Anselmo, my boyfriend Steven and I — lesbian, gay, bisexual and transgender people — tell you with one voice, restore our respect, recognize our rights, restore our dignity, affirm our identity, restore our freedom.

We are as human as you are. We are as dignified as you are. We are as much citizens as you are. We are as equal as you are. We are as Puerto Rican as you are.

Honorable legislators, do the just thing, do the right thing: guarantee the equality under the law of every human being. Everyone is everyone.

Honorable legislators, we are hopeful that you will do the just thing, because we know that at the end of the road, justice always prevails. It is inevitable that at the end of the road, Puerto Rico will be for everyone.

Equality is inevitable.