

HISPANIC BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA

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Via Electronic Mail (vgray@dccouncil.us, dccouncil@dccouncil.us)

Chairman Vincent Gray
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, D.C. 20004

Re: PR 18-861, "Sense of the Council Arizona Divestment Resolution of 2010".

Dear Chairman Gray:

On behalf of the Hispanic Bar Association of the District of Columbia ("HBA-DC"), we respectfully offer comments on PR 18-861, the "Sense of the Council Arizona Divestment Resolution of 2010." While we support the ultimate objective of public condemnation of Arizona's attempt to enforce federal immigration laws, we believe that the Resolution can be strengthened by addressing a number of questions that the current draft raises.

First, we note generally that parts of the text of Arizona's Senate Bill ("SB") 1070 have been modified by House Bill 2162. Therefore, to the extent that PR 18-861 concerns the original SB 1070 only, we recommend that the Council consider the latest version of the Arizona legislation and adjust the Resolution accordingly.

Second, it is incorrect to state, as the Resolution does, that SB 1070 will "specifically impact Arizona's Latino population only." PR 18-861, Sec. 2(e). Latino American citizens from any state who may be present in Arizona for any reason may in fact be subject to inquiry by the state's law enforcement officials. Although under SB 1070 visitors to Arizona, including District of Columbia residents, may be covered by the law's requirement that the civil rights, privileges, and immunities of all U.S. citizens be respected¹, in practice such respect may come after the fact of arrest in the form of a lawsuit against the state for harassment based primarily on race.

Third, the Resolution states that Arizona's Latino citizens will be negatively impacted without actually articulating the nature of that impact. PR 18-861, Sec. 2(d). We recognize, as the Council also should recognize, that SB 1070 appears to have built-in safeguards to prevent

¹ SB 1070, Sec. 2.K.

racial profiling. For example, the law limits the mandatory immigration inquiries to lawful stops pursuant to the enforcement of some *other* law² and racial considerations only “to the extent permitted by the United States *or* Arizona Constitution.”³ (emphasis added) While the U.S. Constitution may protect citizens against unlawful detention based on race, the Arizona Constitution explicitly protects against racial considerations in only one case – the right to vote⁴ – leaving racially based stops under state law arguably permissible. Thus, the negative impact on Arizona’s Latino citizens should be articulated as being disproportionately vulnerable to race-based law enforcement stops and arrests.

Fourth, the Resolution should emphasize that, through SB 1070, Arizona may be engaging in an unconstitutional usurpation of immigration enforcement, which is a federal government function. The current text of the Resolution does not reflect the likely unconstitutional nature of this law. PR 18-861, Sec. 2(b). Federal case supports the federal government’s control over immigration.⁵

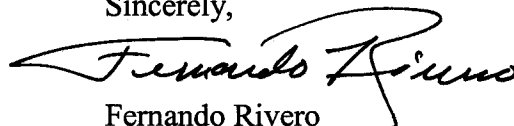
Fifth, and finally, we recommend that the Council investigate the actual extent of the District of Columbia’s investment in Arizona. This empirical data will not only inform the Council’s deliberations but also provide the necessary information for the District government, particularly the District’s Retirement Board, to undertake any required measures for divestment and alternative investment.

We appreciate that the Resolution makes a connection between the condemnation of SB 1070 and the Council’s earlier effort to censure Arizona for its refusal to recognize the Martin Luther King, Jr. holiday. PR 18-861, Sec. 2(f). The comparison helps to underscore that this law implicates a civil rights issue.

The HBA-DC exists in part to promote equal justice and opportunity for all Hispanics. While we recognize that states have a legitimate interest in responding to the impact of our dysfunctional national immigration system, the solution to the problems of immigration must remain a federal solution. We commend the Council for joining over fifteen cities across the United States who have passed or are considering passing resolutions to censure the Arizona law.

We respectfully request that this letter be made a part of the Council’s legislative record on the Resolution. Thank you for your consideration.

Sincerely,



Fernando Rivero
Vice President for Internal Affairs

CC: Councilmembers

² SB 1070, Sec. B.

³ Id.

⁴ Arizona Constitution, Article XX (http://www.azleg.gov/const/arizona_constitution.pdf).

⁵ See, e.g., *Plyler v. Doe*, 457 U.S. 202 (1982).