

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

Appeal No. 2014-2184

ADA M. CONDE-VIDAL; MARITZA LOPEZ-AVILES; IRIS DELIA RIVERA-RIVERA; JOSE
A. TORRUELLAS-IGLESIAS; THOMAS J. ROBINSON; ZULMA OLIVERAS-VEGA;
YOLANDA ARROYO-PIZARRO; JOHANNE VELEZ-GARCIA; FAVIOLA MELENDEZ-
RODRIGUEZ; PUERTO RICO PARA TOD@S; IVONNE ALVAREZ-VELEZ,
Plaintiffs/Appellants

v.

DR. ANA RIUS-ARMENDARIZ, Secretary of the Health Department of Puerto Rico;
WANDA LLOVET, Puerto Rico Registrar of Vital Records; ALEJANDRO J. GARCIA-
PADILLA, in his official capacity as Governor of the Commonwealth of Puerto
Rico; MELBA ACOSTA-FEBO, in her official capacity as Director of the Treasury in
Puerto Rico,
Defendant/Appellee

On Appeal of a Judgment of the United States District Court
District of Puerto Rico (Civil No. 14-1253 PG)

**CORRECTED BRIEF OF AMICI CURIAE PUERTO RICO LAW
PROFESSORS IN SUPPORT OF CONDE-VIDAL, ET AL. URGING
REVERSAL**

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Identity and Interest of the Amici Curiae and Authority to File

The amici curiae are law professors who teach in Puerto Rico universities. Esther Vicente is Professor of Law at the Inter American University of Puerto Rico since 2008. She teaches courses on, among other subjects, family law, property law, administrative law, constitutional law and the International Protection of Human Rights. She has been a full time member of the law faculty since 1999. She has taught at the University of Ottawa and in 2008 was a Fellow of the Orville H. Schell, Jr., Center for International Human Rights at Yale Law School. Professor Vicente has a B.A. and a J.D. from the University of Puerto Rico (both magna cum laude), a Masters Degree in Law from the London School of Economics, and a Ph.D. in Law from the University of London. She has co-authored the book *Abortion in Puerto Rico* and has published articles and works in professional reviews and chapters in several books on legal theory, reproductive rights, and human rights. She has also written on the history of family law in Puerto Rico, including the work cited in n.4 below.

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articles and chapters in several books on women's rights and constitutional matters.

As legal scholars who have dedicated substantial portions of their professional lives to the study and teaching of issues of constitutional law, family law or related subjects, including state regulation of marriage, the amici have extensive expertise and familiarity with the issues on appeal. All amici share an interest in the accurate construction of Puerto Rico law and in a correct understanding of the history of marriage formalities in the Commonwealth. Legal developments regarding marriage recognition laws will shape the law in these complex and interwoven areas of the law on which amici have focused their research, study and attention.

The amici file this brief solely as individuals, and not on behalf of or as representatives of any university or program with which they may be affiliated. The assertions in this brief are supported by their full scholarship, whether or not expressly cited. The amici have authority to file this brief pursuant to Fed. R. App. P. 29(a) insofar as all parties have consented to its filing.

Rule 29(c)(5) Statement

Pursuant to Fed. R. App. P. 29(c)(5), the amici curiae state:

- (A) No party's counsel in this case has authored this brief in whole or in part;

(B) No party and no party's counsel has contributed money that was intended to fund preparing or submitting the brief; and

(C) No person other than the amici curiae or their counsel contributed any money that was intended to fund preparing or submitting the brief.

Summary of the Argument

Article 68 of the Puerto Rico Civil Code (“Code”) defines marriage as “originating in a civil contract whereby a man and woman mutually agree to become husband and wife” and it refuses recognition of “[a]ny marriage between persons of the same sex or transsexuals contracted in other jurisdiction.” P.R. Laws Ann. tit. 31, § 221 amended 1999 to include the last quoted sentence. The district court (Pérez-Giménez, J.) upheld that prohibition, primarily relying on the presumed continued vitality of Baker v. Nelson, 409 U.S. 810 (1972). See Conde-Vidal v. Garcia-Padilla, -- F. Supp. 3d --, 2014 WL 5361987 (October 21, 2014) (“Conde-Vidal”). The amici understand that others will address this aspect of the lower court’s decision and they do not directly consider it here.¹

¹Our silence on this point should not be construed as in any manner endorsing the district court’s flawed analysis, which other courts have explicitly refused to follow. See Rosenbrahn v. Daugaard, -- F. Supp. 3d --, 2014 WL 6386903 (D.S.D. November 14, 2014) at *7-8. See also Latta v. Otter, 19 F. Supp. 3d 1054, 1066-67 (D. Idaho); *aff’d*, 771 F.3d 456 (2014); Kitchen v. Herbert, 961 F. Supp. 2d 1181, 1195 (D.Utah 2013), *aff’d*, 755 F.3d 1193, 1204-08 (10th Cir.), *cert. denied*, Bostic v. Rainey, 970 F. Supp. 2d 456, 469-70 (E.D. Va.), *aff’d, sub nom.*

Rather, this brief addresses certain collateral issues which the court below raised – issues which are, however, of critical importance to a correct understanding of Puerto Rico law. In its decision, the district court relied in part upon the history of marriage in Puerto Rico, and in particular the history of various revisions of the Code, to suggest that the prohibition against the marriage of same-sex couples embodied in the 1999 amendments to § 221 is in fact deeply embedded in Puerto Rico’s history, and in the history of the Spanish Civil Code from which Puerto Rico’s Code in part derives. See Conde-Vidal at *4. The court also asserted that “traditional marriage is ‘exclusively [an] opposite-sex institution . . . inextricably linked to procreation and biological kinship.’” Conde-Vidal at *10, quoting United States v. Windsor, -- U.S. --, 133 S. Ct. 2675, 2718 (2013) (Alito, J., dissenting) (bracketed material inserted by the Conde-Vidal court). The district court’s analysis misapprehends significant aspects of marriage law in Puerto Rico.²

In fact, Puerto Rico marriage law shows no particular solicitude for the role of procreation and marriage: it permits marriage between those who cannot

Bostic v. Schafer, 760 F.3d 352, 373-75 (4th Cir.), *cert. denied* 135 S. Ct. 265 (2014); 135 S. Ct. 286 (2014).

²It is doubtful that the district court’s belief would justify its holding even if its belief were well-founded. Under Romer v. Evan, 517 U.S. 620, 632 (1996), animus is a term of art that does not convey subjective dislike or hostility. Rather, it denotes an intent to exclude a particular group from legal protections without a rational basis for doing so. “Tradition per se . . . cannot be a lawful ground for discrimination – regardless of the age of the tradition.” Baskin v. Bogin, 766 F.3d 648, 666 (7th Cir.), *cert. denied*, 135 S. Ct. 316 (2014).

procreate, and does not recognize an inability to procreate as grounds for divorce. Recognition of same sex couples for purposes of protections against domestic violence is currently the law of the Commonwealth. In short, the very same evolution in social norms which has led to widespread recognition that cases such as Baker are no longer consonant with the law have occurred in Puerto Rico just as they have throughout the country.³ This brief discusses those developments.

Point One: Marriage In Puerto Rico Is An Evolving Institution That Has Undergone Significant Changes Over Time, And Puerto Rico Marriage Law Reflects This Evolution.

Marriage as a legal institution is inextricably linked to the conception of the family that permeates the social fabric of the given community. As a Spanish colony, Puerto Rico saw the Spanish Civil Code extended by royal decree in 1889, revised in 1902, and reorganized in 1930. See Gerardo J. Bosques-Hernández, *Marriage Formalities in Louisiana and Puerto Rico*, 43 Rev. Juridica U. Inter. P.R. 121, 121 (2008) (“Bosques-Hernández”) and sources cited at nn. 2 and 4.

The concept of “family” and the human groupings we denominate as such have undergone significant changes since the adoption of the Spanish Civil Code in 1889 and its later extension to Puerto Rico. As such, Puerto Rico’s history bears

³See, e.g. Marta Figueroa-Torres, “Recodification of Civil Law in Puerto Rico: Quixotic Pursuit of the Civil Code for the New Millenium,” 23 Tul. Eur. & Civ. L.F. 143, 162 (2008) (discussing how recodification efforts have “abandoned nineteenth century notions” by “recognizing the need to regulate more than one type of family”).

a distinct resemblance to that of Louisiana, which was for 30 years a Spanish colony. Bosques-Hernández at 122-123. Indeed, “Puerto Rico’s Civil Code has more than 100 articles that have their historical precedence in the Louisiana Civil Code and most of them were literal translations. For example, Puerto Rico’s Article 69 on Marriage Requirements proceeds from Louisiana’s Code Article 90 now Article 87.” *Id.* at 121.

Reflecting the society of which it was a part, the 1889 Spanish Code, the provisions regarding paternity were extremely conservative, including such categories as legitimate, illegitimate, and natural children. In some circumstances, it prohibited the investigation of paternity and in others the establishment of paternity did not include the right to inherit.⁴ Divorce was not allowed, since marriage was civilly indissoluble. Authority for divorce (like authority for marriage) lay solely with the religious orders, and in particular the Catholic church. Eileen J. Suárez Findlay, *Imposing Decency: The Politics of Sexuality and Race in Puerto Rico 1870-1920*, 113-116 (1999) (“Findlay”). Since the 1880’s, however, multiple social and cultural changes, including developments in international human rights and the social movements active in the hemisphere, have strongly impacted marriage law. These changes are related to the nature of the marriage

⁴For a thorough discussion of the history of family law in Puerto Rico, including this aspect of family law, see Esther Vicente, “Derecho De Las Familias en Puerto Rico,” in *El Derecho en Clave Histórica: Ensayos Sobre El Ordenamiento Jurídico en Puerto Rico* (2014).

institution, its elements and purpose, women's role within the marriage, and the paternity rights of children born out of wedlock among others.

At present, families in Puerto Rico are very different from the 19th century paradigm that formed the Spanish Civil Code. Some families follow the 'traditional' model of two different-sex partners, but more than a quarter of Puerto Rican families are constituted by single mothers raising their children alone. Still others include a father raising children or are constituted by same sex couples. As of 2010, there were 6,614 same-sex couples in Puerto Rico, of which at least 1,840 were raising children.⁵ There are also women and men who choose to have offspring using assisted reproductive technology. In Spain, the Civil Code has been transformed precisely to incorporate such social and cultural changes, and in 2005 was amended to recognize same sex marriage. See Spanish Civil Code, c. 20, Art. 44, *On the Requirements of Marriage* ("Men and women are entitled to marry in accordance with the provisions of this Code. Marriage shall have the

⁵According to the most recent census data, roughly 3,520,000 Puerto Ricans live in family households, but only 1,980,000 of these resided in married-coupled households. Some 355,000 Puerto Ricans reside in non-family households. See Pew Research Center, *A Demographic Portrait of Puerto Ricans, 2009* (June 13, 2011), at 4 (available at www.pewhispanic.org) (last visited January 28, 2015). The Pew report is based on U.S. Census data. For other helpful statistics on family composition, see Gary J. Gates & Abigail M. Cooke, *United States Census Snapshot: 2010* (Williams Inst. 2011), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot:PuertoRico1.pdf> (last visited January 28, 2015).

same requirements and effects when both prospective spouses are of the same or different genders”).⁶

The Spanish Civil Code of 1889 adopted a Roman Catholic conception of the family and marriage and the role of the pater familias. Thus, the husband in Puerto Rico (as in the U.S. generally) had power over the wife and offspring, had sole legal custody of the children, had the right to make all decisions pertaining to the family, and had the authority to legally represent the wife and children.

Findlay at 114-20; Vicente, *supra* note 3. See also Garozzi v. Destas, 204 U.S. 64, 78 (1907) (discussing husband’s control over property and its distribution).

However, the Code Napoleon clearly established civil legal jurisdiction over marriage rather than church jurisdiction, and therefore defined marriage as a civil contract. See Bosques-Hernández at 123-24. Puerto Rico’s current Civil Code likewise defines marriage as a civil institution, originating in a civil contract whereby a man and a woman mutually agree to become husband and wife, and to discharge toward each other the duties imposed by law. P.R. Laws Ann. tit. 31, § 221.

⁶English translation provided by the Spanish Ministry of Justice at [http://www.mjusticia.gob.es/cs/Satellite/Portal/1292427177941?blobheader=application%2Fpdf&blobheadername1=Content-Disposition&blobheadervalue1=attachment%3B+filename%3DSpanish_Civil_Code_\(Codigo_Civil\).PDF](http://www.mjusticia.gob.es/cs/Satellite/Portal/1292427177941?blobheader=application%2Fpdf&blobheadername1=Content-Disposition&blobheadervalue1=attachment%3B+filename%3DSpanish_Civil_Code_(Codigo_Civil).PDF). (Last visited January 26, 2015.).

The first significant changes in the provisions of the Spanish Code regarding family and marriage occurred as a result of the United States' entrance into the Puerto Rico political arena in 1898, when Spain ceded Puerto Rico to the United States as part of the arrangements undertaken at the end of the Spanish American war. See Treaty of Paris, Dec. 10, 1898, U.S. - Spain, Art. II, 30 Stat. 1755, T. S. No. 343. From the first Congressional act adopted to deal with the Island of Puerto Rico, the Foraker Act of 1900, the United States initiated important changes in legal norms pertaining to family and marriage. See 31 Stat. 77 1900 [repealed]. Section 40 of the Foraker Act ordered the creation of the Commission which formulated the Code that ruled legal affairs in the Island. 31 Stat. 77 § 40. In 1902, the Legislative Assembly of Puerto Rico, likewise created by the Foraker Act, enacted the proposed Civil Code of Puerto Rico.

Section 8 of the Foraker Act established divorce as a legal remedy to adultery, and recognized civil marriages performed in non-religious ceremonies. See 31 Stat. 77 § 8 (codified at 48 U.S.C. 731). The United States government also recognized civil marriage and authorized civil divorces. Findlay at 120-123. Since ecclesiastical divorces had been essentially impossible to obtain, even for physical abuse, the result was significant increase in divorce petitions. Id. at 123-129.

The practical effect of these changes was to facilitate access to marriage to the many families established through extra-marital, consensual unions existing on

the Island. Henry Carroll, an Episcopal priest commissioned by President McKinley to study the social, political and cultural conditions in Puerto Rico conducted extensive research that indicated that such consensual unions were prevalent throughout the country. H. K. Carroll, *Report on the Island on Porto Rico*, 690 (1899).⁷ See also Findlay at 112, 123, 124. Today, the civil nature of modern marriage in Puerto Rico, fully separated from its ecclesiastical status under the Spanish Code, has been frequently recognized by its courts. E.g. Cosme v. Marchand, 121 D.P.R. 225, 21 P.R. Offic. Trans. 215, 222 (1988) (“Marriage, as an institution, is founded on the voluntary consent on the contracting parties, expressed in a solemn act according to the requisites and formalities prescribed by law.”); Salva Santiago v. Torres Padro, 171 D.P.R. 332, 353 (2007).

The status of children has changed over time as well. Equality among children and the prohibition of discrimination based on birth status were incorporated first into the Commonwealth’s family law in 1942 and later into its Constitution in 1952. See P.R. Laws Ann. tit. 31, § 502, enacted May 12, 1942 P.R. Const. Art. II, § 1, effective July 25, 1952; Patrick v. Rivera-Lopez, 708 F.3d 15, 22 (1st Cir. 2013) (“Puerto Rico has abolished discrimination against children based upon the circumstances of their birth”). Thus, all offspring in Puerto Rico,

⁷ The complete text of Carrol’s report is available in the Internet Archive at <http://archive.org/stream/reportonislandof00unit/reportonislandofOOunit/djvu.txt> (last visited January 26, 2015).

whether born within marriage or not have the right to support and to inheritance from their parents. Ocasio v. Diaz, 88 D.P.R. 658, 661 (1963); Vega ex rel. Morales v. Bowen, 664 F. Supp. 659, 662 (D.P.R. 1987). All children have the same rights as ‘legitimate’ children of the parents with respect to inheritance the parents and to the estate they leave. P.R. Laws Ann. tit. 31, § 441; P.R. Const. Art. II, § 1. Such rights of inheritance include, but are certainly not limited to, the right to inherit from their father any insurance benefits under the Social Security Act under their parent’s wage record. Torres v. Gardner, 270 F. Supp. 1, 4-5 (D.P.R. 1967). Puerto Rico law has also largely shaken off gender-based stereotypes about the relative abilities and entitlements of men and women. See Ocasio v. Diaz, 88 P.R.R. 658, 661 (1963); Vega ex rel. Morales v. Bowen, 664 F. Supp. 659, 662 (D.P.R. 1987). See infra Part I(D).

In 1952, Constitution of Puerto Rico, continued the evolution of Puerto Rico law. The Constitution incorporated advanced human rights principles being developed at the time in the international and regional arenas, including the principle of strict nondiscrimination on the basis of birth. Today, Puerto Rico recognizes a cause of action for sexual harassment in the workplace between persons of the same sex. Afanador Irizarry v. Roger Electric Co., Inc., 156 P.R. Dec. 651, 662-63 (2002); P.R. Laws Ann. tit. 29, §§ 155 et seq. Puerto Rico currently protects same-sex couples from domestic violence. See Laws P.R. Ann.

tit. 8, § 602(d), amended by Law 23 (May 29, 2013) (currently available in Spanish only).

In short, the district court’s attempt to depict marriage as a static institution is belied by the historical record. Marriage in Puerto Rico has been a vibrant institution that has changed in response to social and political forces.

As we discuss immediately below, the result of those changes is that the law of marriage, divorce, and child-rearing (including parentage and adoption) have likewise evolved. Marriage serves multiple purposes, enabling spouses to protect and foster their personal, intimate, mutually dependent relationship to each other. Nothing about the gender or the sexuality of the individuals involved in the relationship can bear any rational connection to any legitimate state interest, and no legitimate state interest justifies forbidding same-sex marriages.

Point Two: The District Court’s Asserted Justifications for Upholding Puerto Rico’s Marriage Ban Are Not in Accordance With Puerto Rico Law and Do Not Pass Constitutional Muster in Any Event.

While the district court relied primarily upon Baker in upholding Puerto’s Rico marriage ban, the court also asserted that there are “some principles of logic and law that cannot be forgotten.” Conde-Vidal at *10. Those presumed ‘principles’ included the proposition that what it termed “traditional marriage” was “inextricably linked to procreation and biological kinship.” Id., quoting Windsor,

133 S. Ct. at 2718 (Alito, J., dissenting).⁸ For the reasons discussed below, the court’s conclusory declaration does not accurately reflect Puerto Rico law or history, and even if it did would not provide a Constitutionally sufficient basis to deny same-sex couples the right to marry.

A. Puerto Rico Law Does Not Meaningfully Restrict Individuals in Their Choice of Spouse, Except for Same-Sex Couples.

Apart from the 1999 marriage restrictions here at issue, Puerto Rico does not meaningfully restrict individuals in their choice of spouse. There are essentially three primary requirements for marriage in Puerto Rico. See P.R. Laws Ann. tit. 31, § 231 (requiring the parties to have the legal capacity to wed, their consent, and the authorization to do so by law). As the law has developed over time, these requirements have been broadly applied to render an inclusive interpretation to who can marry. First, under Art. 70(2) of the Civil Code, the individual must be of sound mind. P.R. Laws Ann. tit. 31, § 232(2). This requirement is not strictly construed, and persons who may be deeply impaired from a psychological point of

⁸ The similarity between the district court’s rationale for its holding and the rationale once cited by the state of Virginia for its former unwillingness to recognize marriages between persons of different races should not escape notice. Virginia formerly defended its anti-miscegenation law based on its consistency “with established tradition and culture” and upon the state’s judgment that the exclusion met “the physical, moral and spiritual well-being of its citizens.” Naim v. Naim, 87 S.E.2d 749, 756 (Va. 1955), *vacated*, 350 U.S. 891 (1955). Eventually, a unanimous Supreme Court rejected similar arguments and swept away centuries of discrimination contained in that definition of marriage in Loving v. Virginia, 388 U.S. 1 (1967), *reversing* Loving v. Commonwealth, 147 S.E.2d 78 (Va. 1966).

view may marry if they have the capacity to understand the marriage vows. See Rivera v. Suc. Diaz Luzunaris, 70 P.R. Dec. 181 (1949); P.R. Laws Ann. tit. 31, § 232(3). Puerto Rico also establishes minimum ages for the individuals, and prohibits marriage within certain degrees consanguinity. See P.R. Laws Ann. tit. 31, § 232 (minimum age); P.R. Laws Ann. tit. 31, §§ 233-34 (consanguinity). Bigamous or adulterous marriages are likewise forbidden. P.R. Laws Ann. tit. 31, §§ 232-33. Those, however, are the only other legislative restrictions of significance.

The Puerto Rico Constitution is largely silent about marriage. Section 8 of the Bill of Rights refers to family relations as an essential institution, and provides that “Every person has the right to the protection of law against the abusive attacks on his honor, reputation and private or family life.” P.R. Const. Art. II § 8. Section 20, excepted from the approval of the Constitution by Joint Resolution of Congress on July 3, 1952, 66 Stat. 327, establishes that the Commonwealth recognizes certain human rights, including the “well-being of [a person] and his family,” including access to food, clothing, housing and medical care and necessary social services. P.R. Const. Art. II § 20. Apart from those references, there are no particularized Constitutional protections for, or restrictions on, marriage in the Constitution. See Cosme v. Marchand, 121 D.P.R. 225, 21 P.R. Offic. Trans. 215 (1988), discussed infra at 20-2; Bosques-Hernández at 126, n. 28.

In short, far from being an institution which the state has traditionally comprehensively regulated, marriage in Puerto Rico (except for the provision under consideration here) has been recognized as primarily a private decision among consenting adults, and the Commonwealth's interest has been generally restricted to ensuring the presence of adulthood, consent, and capacity to enter into marriage. Far from representing one aspect of a comprehensive state scheme to regulate marriage, the same-sex marriage ban therefore represents a sharp historical departure.

B. Puerto Rico Law Recognizes That the Nature and Purpose of Marriage Is Not Procreation.

The district court's conclusory generalization that marriage in Puerto Rico is "inextricably linked" to procreation is erroneous. Article 68 of the Civil Code states that marriage is a civil institution that proceeds from a civil contract. P.R. Laws Ann. tit. 31, § 221 (1999). Articles 88 to 93 of the Civil Code establish the rights and duties between married persons, and collectively these provisions articulate the purpose of marriage. P.R. Laws Ann. tit. 31, §§ 281-286. The duties of married persons according to these provisions are cohabitation, fidelity and mutual assistance, to support each other and to decide by mutual agreement where to establish their domicile and residence. *Id.* Reproduction is not one of the purposes or finalities of marriage, and is not included as part of the rights or duties emanating from it.

Puerto Rico does prohibit marriage to those suffering from physical impotence, but even that restriction is narrowly construed and does not solely or even primarily derive from a concern for procreation. See P.R. Laws Ann. tit. 31 § 232(6) (establishing “physical impotency for the purpose of generation” as constituting incapacity to contract marriage); Just v. Just, 31 D.P.R. 248 (1923). Thus, a woman who was prostrated in bed due to her physical condition but who was capable of realizing the “acts of marriage” by sustaining a sexual relationship was not impotent. Pujals v. Carlo, 7 D.P.R. 491 (1904). Critically, the impotency required to dissolve a marriage by annulment or divorce refers to the inability to sustain sexual relations, not to infertility or an inability to procreate.⁹ See I Serrano Geys, *Derecho de Familia de Puerto Rico y Legislación Comparada* 164 (1997). Article 96 of the Civil Code establishes 12 causes for divorce; paragraph 6 of that article specifically establishes that only “absolute, perpetual, and incurable impotency occurring after marriage” is a cause for divorce. P.R. Laws Ann. tit. 31, § 321(6). In Cosme v. Marchand, 121 D.P.R. 225 (1988), 21 P.R. Offic. Trans. 215 (1988), the Supreme Court of Puerto Rico discussed the cohabitation duty

⁹Indeed, among the more significant practical effects of a failure to recognize same-sex marriage is the difficulties that committed same-sex couples sometimes encounter when they attempt to end those relationships and develop appropriate post-separation child raising agreements. See “Brief of Virginia Chapter of the American Academy of Matrimonial Lawyers as Amicus Curiae in Support of Plaintiffs-Appellees and Affirmance,” April 18, 2014, Bostic v. Schaefer, 2014 WL 1511209.

imposed by the Civil Code upon married couples. There, the husband sued for divorce under Article 96, which requires the spouses to be separated for an uninterrupted two-year period. See 21 P.R. Offic. Trans. at 224-227; P.R. Laws Ann. tit. 31, § 321(9). The couple had been living together in the same residence, but had been sleeping in separate rooms and had not had sexual relations for more than two years. See 21 P.R. Offic. Trans. at 220.

The Cosme court concluded that the marriage was a legal union for the purpose of establishing a community of existence between the spouses, and divorce was not available despite the absence of sexual relations. Id. at 227-28. The community of marriage, the court held, includes such elements as sharing company, support, friendship, and cohabitation. Id. at 227. The mere absence of a sexual relationship, could not be invoked as the sole basis for divorce, provided the parties continued to live together. Id. at 227-28. As the court observed, “a marriage can be justified between people who are past their reproductive age . . . but who, through marriage, wish to achieve other purposes in life”. Id. at 224 (internal quotation and citation omitted). If the absence of sexual relations is not sufficient to dissolve a marriage, it follows the procreation (which is indeed only one element of sexual relations) is not a fundamental element of marriage, but simply one among others and not the central, irreducible element that the district court believed. In this regard, the experience of Puerto Rico in recognizing the

multiple functions of marriage mirrors the experience of the nation as a whole. Nancy F. Cott, *Public Vows: A History of Marriage and the Nation*, 2, 11-12, 52-53, 190-94, 221-24 (2000); Lawrence v. Texas, 539 U.S. 558, 566 (2003) (“[I]t would demean a married couple were it to be said that marriage is simply about the right to have sexual intercourse”). The recognized purposes of marriage are as diverse as fostering social order, increasing economic welfare and minimizing support of the vulnerable, facilitating the ownership and transmission of property, and creating a stable body politic. Cosme at 227. These purposes are self-evidently served by the marriage itself, regardless of whether or not biological children are present.

Puerto Rico law in this respect is therefore consistent with the broader and more general recognition that procreation is not a central condition of marriage, and the state cannot reasonably require it as a basis for the marriage relationship. See Turner v. Safley, 482 U.S. 78, 97-99 (1987) (striking down state bar to prisoner marriages and finding illegitimate a state policy allowing inmate marriages only in cases of procreation and child rearing). See also Lawrence, 539 U.S. at 605 (Scalia, J., dissenting) (“[W]hat justification could there possibly be for denying the benefits of marriage to homosexual couples . . .? Surely not the encouragement of procreation, since the sterile and the elderly are allowed to marry.”). Because the choice to engage in procreative sexual activity is itself

constitutionally protected from state intervention, it would be Constitutionally impermissible to condition marriage on such an ability or desire in the first place. See e.g., Griswold v. Connecticut, 381 U.S. 479, 485-86 (1965). See also, Bishop v. U.S. ex rel. Holder, 962 F. Supp. 2d 1252, 1291 (N.D. Okla. 2014) (“Permitting same-sex couples to receive a marriage license does not harm, erode, or somehow water-down the ‘procreative’ origins of the marriage institution, any more than marriages of couples who cannot ‘naturally procreate’ or ‘do not ever wish to’ naturally procreate.”). Marriage is incentivized for naturally procreative couples to precisely to the same extent regardless of whether same-sex couples (or other non-procreative couples) are included. DeLeon v. Perry, 975 F. Supp. 2d 632, 653 (W.D. Texas 2014) (collecting many authorities for the propositions that gay parents “are as capable as other couples of raising well-adjusted children” and that the “denial of recognition and withholding of marital benefits to same-sex couples does nothing to support opposite-sex parents, but rather merely serves to endanger children of same-sex parents”) (internal quotation and citation omitted).¹⁰

In summary, the attempt to rank procreation or child rearing as the core of marriage in Puerto Rico defies the complexity of the historical record. Cf. Turner, 482 U.S. at 95-96 (listing purposes of marriage unrelated to procreation, including

¹⁰ It perhaps goes without saying that Puerto Rico and Federal law each provide important protections and responsibilities unrelated to child bearing, including health care decisions, property ownership, inheritance, taxation, and governmental benefits.

“expressions of emotional support and public commitment,” “exercise of religious faith,” and an “expression of personal dedication”). To the contrary, marriage in Puerto Rico, as elsewhere, has focused on enabling spouses to protect and foster their personal and mutually dependent relations with each other and their children.

C. Puerto Rico Law Has Largely Abandoned Outmoded Stereotypes in Family Matters.

Implied but unstated in the district court’s analysis is the view that dual-sex marriages are the preferable mechanism for socializing children into appropriate gender roles for their biological sex. The district court also plainly believed that Puerto Rico law expressed a similar prejudice for ‘traditional’ child-rearing models. In fact, changes in marriage described in Part I above were mirrored by changes in the paternity regime.

Today, with no significant exceptions, marriage under Puerto Rico law is free of state-mandated sex or gender-based distinctions in spousal roles or the incidents of marriage. Puerto Rico’s child custody law treats a parent’s sex or gender as illegally irrelevant. Article 152 of the Civil Code establishes that “patria potestas,” or the rights and duties of the parents over the unemancipated minor child, vests equally in both parents. See P.R. Laws Ann. tit. 31, § 591; Rodriguez Mejias v. Commonwealth, 122 D.P.R. 832, 22 P.R. Offic. Trans. 790, 797-98 (1988) (discussing patria potestas). The father and mother both have the same responsibilities in their children. See P.R. Laws Ann. tit. 31, § 601. See also id at

§§ 612-615 (rights and obligations regarding child's patrimony). Gender based distinctions based upon divorce or death are largely non-existent. The causes for divorce are the same for each spouse. See P.R. Laws Ann. tit. 31, § 321. Puerto Rico law requires the court to divide the community property without regard to gender. P.R. Laws Ann. tit. 31, § 381.

Any attempt by Puerto Rico to create gender-based spousal support rules would itself constitute unconstitutional discrimination. See e.g., Orr v. Orr, 440 U.S. 268, 282-283 (1979). Puerto Rico has implemented Orr's holding that spousal support must be based upon need and not gender and has abjured the “erroneous, traditional, and stereotyped subjective assumptions which stem from a masculine view which – consciously or unconsciously – has its raison d’etre in the conception and characterization of women as ‘the weaker sex’”. Milán Rodríguez v. Muñoz, 110 D.P.R. 610, 10 P.R. Offic. Trans. 790, 796 (1981) (internal quotation and citation omitted). See also Art. 109 of the Civil Code, amended after Milán Rodríguez, P.R. Laws Ann. tit. 31, § 385. In this regard, Puerto Rico law is consistent with constitutional dictates. The Supreme Court has repeatedly held that it is impermissible to premise laws, including family laws, on outmoded sex-based stereotypes. See, e.g., Califano v. Goldfarb, 430 U.S. 199, 205, 207 (1977) (holding unconstitutional Social Security Act provisions that were premised on the “archaic and overbroad” generalizations that “wives in our society frequently are

dependent upon their husbands, while husbands rarely are dependent upon their wives”); Winberger v. Wiesenfeld, 420 U.S. 636 (1975) (social security benefits); Frontiero v. Richardson, 411 U.S. 677 (1973) (military benefits); Orr, 440 U.S. at 283 (holding unconstitutional a state law imposing support obligations on husbands but not wives); Kirchberg v. Feenstra, 450 U.S. 455 (1981) (striking down state law that gave husbands the unilateral right to dispose of jointly owned community property without his spouse’s consent); Nev. Dep’t of Human Res. v. Hibbs, 538 U.S. 721, 736 (2003) (approving Congress’s effort to combat “[s]tereotypes about women’s domestic roles [and] parallel stereotypes presuming a lack of domestic responsibilities for men”). Thus, any rationale for the marriage ban resting upon a belief that Puerto Rico law expresses a preference for ‘gender-differentiated parenting’ is simply erroneous. To the contrary, Puerto Rico has sought to eliminate family law rules based on sex or gender stereotypes.

D. Puerto Rico Law Does Not Reflect the District Court’s Apparent Belief That the Purpose of Marriage is to Place Children in ‘Ideal’ Different-Sex Child-Rearing Environments.

Although the District Court did not in terms state that the marriage ban encouraged the rearing of children in traditional parenting arrangements, the concern is expressed in some of the sources that the District Court relied upon, and implicitly reflected in its observation that marriage is “inextricably linked to . . . biological kinship.” Conde-Vidal at *10. But Puerto Rico’s adoption regime and

its laws governing the recognition and support of children distinctly contradict this position.¹¹

Under Puerto Rico law, gay couples are not permitted to adopt children, but the adoption regime contains no requirement that children be placed in the ‘ideal’ setting of an opposite-sex marriage. The Civil Code provides that no one may be adopted by more than one person, “except when the adopters are married to each other, in which case they shall adopt jointly.” P.R. Laws Ann. tit. 31, § 534. This provision effectively authorizes single-parent adoptions, and implicitly permits adoptions by gay parents – provided they do not attempt to adopt jointly. The adopter must meet only minimal requirements, such as, legal capacity and being at least 14 years older than the minor adoptee. P.R. Laws Ann. tit. 31, § 531. Persons declared incompetent by judicial decree cannot adopt for the duration of incompetence, and persons sentenced to a term of imprisonment may not adopt for the duration of the term. P.R. Laws Ann. tit. 31, § 532. “Once the adoption has been decreed, the adoptee shall be deemed for all legal purposes as the child of the adopter, with all the rights, duties and obligations corresponding to it, by law.” P.R. Laws Ann. tit. 31, § 538. If being raised by married biological parents were

¹¹Puerto Rico does not discriminate in favor of children born to married parents. See P.R. Laws Ann. tit. 31, § 461. If the purpose of marriage is to encourage and channel procreation between the lawfully wedded only, according ‘legitimacy’ to all children would seem to be precisely the wrong way to accomplish that goal.

the only appropriate environment for raising children, these provisions would make no sense whatsoever.

The district court's position also contradicts deeply-rooted constitutional principles. No other couples are denied the right to marry based on a belief that they will not provide an optimal setting for the raising of children. See, e.g., DeBoer v. Snyder, 973 F. Supp. 2d 757, 771 (E. D. Mich.), *rev.'d on other grounds*, 772 F.3d 388 (6th Cir. 2014), *cert. granted*, Bourke v. Beshear, 83 U.S.L.W. 3315 (January 16, 2015) (“[T]he optimal child-rearing justification . . . is belied by the state’s own marriage requirement. The prerequisites for obtaining a marriage license under Michigan law do not include the ability to have children, a requirement to raise them in any particular family structure, or the prospect of achieving certain ‘outcomes’ for the children.”). Whether the individuals seeking to marry would be good parents, or whether they can even support children, are not permissible basis on which to deny them the right to marry in any case. See, e.g., Zablocki v. Redhail, 434 U.S. 374, 388-89 (1978) (conditioning marriage on a person’s parenting conduct was an unconstitutional infringement on the right to marry; state could not condition ability to marry on timely payment on court-ordered child support); Varnum v. Brien, 763 N.W.2d 862, 900 (Iowa 2009) (state did “not exclude from marriage other groups or parents – such as child abusers, sexual predators, parents neglecting to provide child support, and violent felons –

that are undeniably less than optimal parents.”). Any preference in favor of so-called ‘traditional’ arrangements would be irrational as a matter of law. As courts and clinicians have recognized, a preference for same-sex partners “implies no impairment in judgment, stability, reliability or general social or vocational capabilities.” Jantz v. Muci, 759 F. Supp. 1543, 1548 (D. Kan. 1991) (quoting Resolution of the American Psychological Association (Jan. 1985)), *rev’d on other grounds*, 976 F.2d 623 (1992); Am. Psychiatric Ass’n, *Position Statement on Homosexuality and Civil Rights*, 131 Am. J. Psychiatry 436, 497 (1974).

No study has found any empirical differences in children’s performance or adjustment based on the sexual orientation of their parents. See generally Carlos A. Ball, *Social Science Studies and the Children of Lesbians and Gay Men: The Rational Basis Perspective*, 21 Wm. & Mary Bill Rts. J. 691, 715-16 (2013).

Nothing in Puerto Rico law and culture, and certainly no empirical data of which we are aware, suggests a different conclusion in the Commonwealth.

Equally important, it is clear beyond doubt that the children who are now being raised by same-sex couples will suffer real and immediate harm from the stigma which inevitably flows from denying recognition and legitimacy to their family.¹² The same precedent that the district court elsewhere acknowledged has

¹²Although statistics are not immediately available to the amici from Puerto Rico, it is well known that as of 2010 more than 100,000 lesbian and gay couples are now legally married elsewhere in the country, and 31% of them are raising

decided as much. The Supreme Court rejected federal marriage discrimination in Windsor (among other reasons) precisely because it “humiliates” the children “now being raised by same-sex couples.” 133 S. Ct. at 2694. As in Windsor, the discriminatory regime here “makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives.” Id. Thus, any claim that the marriage ban can be justified by a presumed need to promote ‘optimal child rearing’ conditions would be inconsistent both with Puerto Rico law and with basic Constitutional principles.

children within their marital households. See Pew Report, supra n. 5. The number has necessarily grown substantially since then.

Conclusion

For each of the foregoing reasons, the district court's holding is erroneous. The evolution in social norms that has occurred throughout the nation has occurred in Puerto Rico as well. There is no valid basis to deny persons who love each other the right to marry.

Respectfully submitted,

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Certificate of Compliance with Rule 32(a)

I, Edward Foye, herewith certify:

A. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 7,454 words, excluding the parts of the brief excluded by Fed. R. App. P. 32(a)(7)(B)(iii).

B. This brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in 14 point Times New Roman type.

Date: February 11, 2015

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Certificate of Service

I hereby certify that I filed Brief of Amici Curiae Puerto Rico Law Professors in Support of Conde-Vidal, et al. Urging Reversal with the Clerk of the United States Court of Appeals for the First Circuit via the CM/ECF system this 11th day of February, 2015 to be served on the following counsel of record via ECF:

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ADDENDUM I

(Cited provisions of the Puerto Rico Constitution Annotated)

Laws of Puerto Rico Annotated Currentness
The Constitution of the Commonwealth of Puerto Rico
Article II. Bill of Rights

Puerto Rico Const. Art. II, § 8

§ 8 [Protection against attacks on honor, reputation, and private life]

Every person has the right to the protection of law against abusive attacks on his honor, reputation and private or family life.

Annotations

1. Freedom of speech. Plaintiff employee's discrimination claims based on political affiliation under § 146 of Title 29, art. II, §§ 1, 4, 6, 7, 8, 16 of the PR Constitution, and §§ 5141, 5142 of Title 31, against defendant officials of state agency employer, failed because the same claims went to the jury under federal law, and the jury rejected the employee's claim of retaliation. *Figueroa v. Alejandro*, 597 F.3d 423 (2010).

Person holding position as district chairman with jurisdiction and close relation with residents' councils of several public housing units, regardless of how well known, is not a 'public figure'. *People v. Olivero Rodriguez*, 112 D.P.R. 369 (1982).

For the purpose of evaluating constitutional right to free speech vis a vis libel action, concept of 'public figure' is closely related— due to official position, power of involvement in public affairs—to acquisition of high standing, prominence, fame or special or general notoriety in the community, resulting in easy access to communication media in order to express, promote or debate viewpoints before the public opinion, and also in the risk of becoming more exposed to scrutiny, attention and public interest than any private citizen. *People v. Olivero Rodriguez*, 112 D.P.R. 369 (1982).

A public figure in Puerto Rico— the Archbishop of the Roman Catholic Apostolic Church— is not entitled to obtain an injunction prohibiting the publication of a certain report-letter on deficiencies in the religious organization which he presides, on the basis that, if published, it would violate his privacy. *Aponte Martinez v. Lugo*, 100 P.R.R. 281 (1971).

The right of freedom of speech or communication to promote in good faith the legitimate interests in labor disputes entails the obligation to abstain from publishing or communicating falsehoods, lies and slander. *People v. Rodriguez Hernandez*, 86 P.R.R. 625 (1962).

2. Enforcement. Video game owner's claims under 42 U.S.C.S. § 1983 and various constitutional provisions asserting that the Secretary of the Treasury of Puerto Rico violated its rights by depriving it of its property as a result of cancelling its licenses and seizing some video entertainment machines at several of its establishments failed to survive the Secretary's motion to dismiss for failure to state a cause of action, because a claim against the Secretary was, in essence, a claim against the State barred by the Eleventh Amendment, which is applicable to the Commonwealth of Puerto Rico. *Replay, Inc. v. SEC'y of the Treasury*, — F. Supp. 2d — (Apr. 19, 2011).

Claims for violations to dignity and privacy protections pursuant to Puerto Rico Constitution Art. II, §§ 1 and 8, brought by federal police officers who claimed that their rights were violated by surreptitious video surveillance of their locker-break room, could only be asserted against the United States under the Federal Tort Claims Act, 28 U.S.C.S. §§ 2671 to 2680. *Rosario v. United States*, — F. Supp. 2d — (Mar. 19, 2008).

While the Constitution of the Commonwealth of Puerto Rico did include a specific protection for reputation in this section, the Puerto Rican courts had not afforded greater protections to reputation than stateside jurisdictions, and damage to one's reputation alone did not trigger the protections of the federal Due Process Clause. *Ramirez-de Leon et al. v. Mujica-Cotto et al.*, 345 F. Supp. 2d 174 (2004).

The Supreme Court of Puerto Rico recognizes cause in sexual harassment between persons of the same sex. *S.L.G. Afanador v. Roger Electric Co. Inc.*, 156 D.P.R. 651 (2002).

Section 1 of art. II of Constitution of Commonwealth— dignity of human being— has received recognition comparable to that received by this section. *Figuroa Ferrer v. Commonwealth*, 107 D.P.R. 250 (1978).

Sections 1 and 8 of art. II of our Constitution operate without need of any implementing statutes. *Figuroa Ferrer v. Commonwealth*, 107 D.P.R. 250 (1978).

This section is exact copy of article V of American Declaration of Human Rights and Duties and ties in directly with article 12 of Universal Declaration of Human Rights. *Figuroa Ferrer v. Commonwealth*, 107 D.P.R. 250 (1978).

This section operates *ex proprio vigore*— without legislation being necessary to implement it. *Commonwealth v. Hermandad de Empleados*, 104 D.P.R. 436 (1975).

All constitutional provisions creating rights are self-exercisable, that is, the courts have the duty to give effect thereto even where there is no statute defining such rights. *Alberio Quinones v. Commonwealth*, 90 P.R.R. 791 (1964).

When in a constitution, a general rule is established— art. II, § 8 of the Constitution of Puerto Rico— legislation is not necessary to implement it. *Gonzalez v. Ramirez Cuerda*, 88 P.R.R. 121 (1963).

3. Abortion. Rights of personal privacy as set out in decisions of the Supreme Court on abortion are fully applicable to the Commonwealth. *Montalvo v. Colon*, 377 F. Supp. 1332 (1974).

4. Squatters. Physical destruction, without judicial authorization, of homes of squatters who had established a community in part of lands owned by the Commonwealth of Puerto Rico, by officials and employees of the Commonwealth, is in violation of squatters' constitutional right to privacy. *Amezquita v. Colon*, 378 F. Supp. 737 (1974), reversed by *Amezquita v. Hernandez-Colon*, 518 F.2d 8, cert. denied by *Amezquita v. Colon*, 424 U.S. 916 (1976).

5. Libel and slander. Employer and supervisor were improperly granted summary judgment *sua sponte* as to a former employee's defamation claim because there was no prior warning to the parties, the issue had not been briefed, and neither party had presented evidence. *Baltodano v. Merck, Sharp & Dohme (i.A.) Corp.* 637 F.3d 38 (2011).

The Constitution of Puerto Rico approved in 1952 is the main source of protection against libel, not the Libel and Slander Act of 1902, §§ 3141-3149 of Title 32. Said Act survives only insofar as it is compatible with the Constitution. *Cortes Portalatin v. Hau Colon*, 103 D.P.R. 734 (1975).

6. Pickets. The right to privacy of a public officer, under the circumstances of the case at bar, prevails over the freedoms of speech, of the petition for redress, and of assembly of a labor organization formed by public employees of the department managed by the public officer and deprives said organization of the right of organizing a residential picket line in front of said officer's home. *Commonwealth v. Hermandad de Empleados*, 104 D.P.R. 436 (1975).

The issue of an injunction is justified in order to take care of the violations of law allegedly committed by demonstrators participating in a residential picket line in front of the public officer's home, there being no need to resort to other types of criminal or civil sanctions. *Commonwealth v. Hermandad de Empleados*, 104 D.P.R. 436 (1975).

7. Inviolability of dwelling. Public servants have no less right to the tranquility of their home than private citizens. *Commonwealth v. Hermandad de Empleados*, 104 D.P.R. 436 (1975).

8. Right to privacy. Summary judgment was proper as to a former employee's invasion of privacy claim because there was no evidence controverting that the employee consented to the search. *Ros-Pi/Tneiro v. United States*, — F.3d — (1st Cir. Apr. 15, 2013).

Claims for violations to dignity and privacy protections pursuant to Puerto Rico Constitution Art. II, §§ 1 and 8, brought by federal police officers who claimed that their rights were violated by surreptitious video surveillance of their locker-break room, could only be asserted against the United States under the Federal Tort Claims Act, 28 U.S.C.S. §§ 2671 to 2680. *Rosario v. United States*, — F. Supp. 2d — (Mar. 19, 2008).

In an employee's interview during an investigation of a potential conflict of interest between the employee and an auditor, there were no demeaning comments made towards her, no foul language was used, and nothing happened that could have been considered an 'insult or humiliation' or a violation of the employee's constitutional rights of privacy. *Rivera-Rosa v. Citibank, N.A.* 567 F. Supp. 2d 289 (2008).

A wife waives her right to privacy when she enters into an agreement with her husband in a divorce case; therefore, the wife does not have the right to return of a videotape that the husband recorded with the wife's consent, in which showed nude images of the wife. *Lopez v. Maldonado*, 168 D.P.R. — ; 2006 TSPR 143 (2006).

A Special Commission of the Senate demanded that the Secretary of the Treasury hand over the tax information of the taxpayers, but the taxpayers have a right to privacy and the Legislative Branch has the responsibility of formally notifying the taxpayers of the investigation. *Rullan v. Fas Alzamora*, 166 D.P.R. — ; 2006 TSPR 143 (2006).

The actions of certain public officers in controlling access, without specific guides, to a public residence with road blocks violated §§ 7, 8 and 10 of Art. II of the Constitution, as it unreasonably interfered with the right of privacy of the residents, and by not providing the minimum guarantees required by due process. *Nieves v. AM Contractors*, 166 D.P.R. 399 (2005).

In applying the standard of minimum rationality, § 533 of Title 31 is constitutional because it has a legitimate end. *Lopez v. E.L.A.*, 165 D.P.R. — ; 2005 TSPR 102 (2005).

Section 591a of Title 31 is constitutional, but in applying it to cases of grandparents, judges are obliged to follow the directives established by the Supreme Court of the United States; and the courts must consider certain criteria and desires of the parents. *Rexach v. Ramirez*, 162 D.P.R. 130 (2004).

A store's practice of checking the sales receipt when a customer is about to leave, with the only intent of verifying that the purchase had just been made, is legitimate in order to safeguard the store's merchandise from theft, and

the Supreme Court resolves that the customer's privacy was not infringed. *Castro v. Tiendas Pitusa*, 159 D.P.R. 650 (2003).

The security system established by a telecommunications enterprise, using video cameras in the area where the employee-plaintiffs work, is not unconstitutional per se; the system is justified by the paramount interests of security and optimal functionality of the telecommunications system. *Vega et al. v. Telefonica*, 156 D.P.R. 584 (2002).

The taking and publication of a photograph of a person's house does not constitute a violation of the right to privacy when the photograph is taken from a public roadway and the person does not know of the presence of the photographer. *Mojica Escobar v. Roca*, 926 F. Supp. 30 (1996).

The investigation of a subject does not constitute a violation of the right to privacy under the Puerto Rico Constitution while said investigation is conducted in a form that is non-ostensible and not unreasonably intrusive. *Mojica Escobar v. Roca*, 926 F. Supp. 30 (1996).

The infringement upon the right of the press to be present during judicial proceedings, except during the showing of video recordings, is minimal when compared with the damage that the defendants would suffer by the public showing of such videos, and the requirement to show that the proposed method is the least burdensome alternative available to protect the right of privacy is satisfied. *Fulana de Tal v. Demandado A*, 138 D.P.R. 610 (1995).

It is insufficient to allege that the right of privacy has been damaged; it is necessary to analyze the seriousness of the alleged damage, and after submitting it to strict scrutiny, determine which of the competing rights should one have to prevail. *Fulana de Tal v. Demandado A*, 138 D.P.R. 610 (1995).

In principal, the use of cameras to photograph those who evade paying tolls and the use of those photographs as corroborative evidence in a judicial proceeding is legally valid. 1989 Op. Sec. Jus. No. 40.

Drivers who pay the tolls are exempt from absolutely being photographed by any camera or mechanism installed. 1989 Op. Sec. Jus. No. 18.

To require a urine sample for the detection of controlled substances between officials and employees of the Department of Sports and Recreation and the Recreational Development Company constitutes a reasonable search. 1987 Op. Sec. Jus. No. 50.

The process of taking fingerprints and photographs of inmates does not invade the right to privacy. 1987 Op. Sec. Jus. No. 50.

The purposes of the Corrections Administration justify the limitation of the right to privacy of inmates and those subject to probation and parole. 1987 Op. Sec. Jus. No. 44.

The right to privacy is not absolute, and gives way to the right of individuals of the same hierarchy or to compelling interests of the state. 1987 Op. Sec. Jus. No. 44.

The right to privacy recognized in Puerto Rico is more extensive than that recognized in the federal system. 1987 Op. Sec. Jus. No. 44; 1987 Op. Sec. Jus. No. 29.

The information contained in the clinical record of a patient is protected by this section. 1987 Op. Sec. Jus. No. 31.

The right to privacy of persons whose names appear in the files of the Intelligence Office of the Puerto Rico Police should be taken into account and be given serious consideration at the moment of determining whether to divulge such information. 1987 Op. Sec. Jus. No. 29.

The right to privacy gives way, in certain circumstances, to the compelling interests of the state in eradicating the harms that the F.U.R.A. program proposes to combat. 1987 Op. Sec. Jus. No. 21.

Personal data gathered by the state falls outside the ambit of inspection when it constitutes a clear and unreasonable invasion of the person's privacy; but the inspection of a personal or medical record does not always constitute a violation of a citizen's privacy. 1987 Op. Sec. Jus. No. 4.

The State can successfully raise a claim of confidentiality in a limited number of circumstances only, such as: (1) a law authorizes the claim; (2) the information is protected by an evidentiary privilege; (3) to reveal the information would violate fundamental rights of third persons; (4) the identity of an informant is involved, and (5) the information is official information according to this rule. *Santiago v. Bobby El Mundo*, 117 D.P.R. 153 (1986).

An employer's rule which calls for the suspension or dismissal of an employee who refuses to take a polygraph test is an unconstitutional violation of the right to privacy. It is equally unconstitutional to require an employee to take such a test as a condition of employment. *Arroyo v. Rattan Specialties*, 117 D.P.R. 35 (1986).

A worker in search of employment should not have to waive right to privacy by permitting employer to invade his mind and extract thoughts. Both the right to work and right to privacy are consubstantial with human dignity. *Arroyo v. Rattan Specialties*, 117 D.P.R. 35 (1986).

When a person seeking employment consents to submit to a polygraph examination required by an employer, it should not be inferred that the job-seeker has voluntarily waived his right to privacy when said consent is required to retain or obtain a job. The risk of losing or not obtaining a job and the disadvantageous position which the worker occupies vis a vis the employer are impediments to a truly free and voluntary waiver. *Arroyo v. Rattan Specialties*, 117 D.P.R. 35 (1986).

The waiver of the constitutional right to privacy must be clear, specific and unequivocal. Unless it has been waived, the right to privacy is inviolable, be it by the State, a private entity or any citizen. *Arroyo v. Rattan Specialties*, 117 D.P.R. 35 (1986).

The right to privacy operates *ex proprio vigore* and can be invoked even among private parties. The same is true of the inviolability of human dignity and the right of every worker to protection against risk to personal integrity at work. *Arroyo v. Rattan Specialties*, 117 D.P.R. 35 (1986).

There is a right to be compensated for injuries caused by interference of a private citizen with rights to privacy. An action for damages does not prevent an action for injunctive relief to protect these rights. *Arroyo v. Rattan Specialties*, 117 D.P.R. 35 (1986).

In Puerto Rico, right to intimacy and protection against illegal searches and seizures can extend beyond the borders of federal doctrine, including United States Supreme Court decisions. *People v. Falu Martinez*, 116 D.P.R. 828 (1986).

Constitutional protection against abusive attacks against intimacy must be construed under light of circumstances of time and place. While a search of a family home without a warrant may be deemed abusive, the search, without a warrant, of a convict cell as a precautionary measure to preserve order in the correctional institution cannot be deemed so. *People v. Falu Martinez*, 116 D.P.R. 828 (1986).

This section does not shield citizen's activities from investigations carried out by the F.B.I. as alleged invasion of privacy, *Lopez Pacheco v. United States*, 627 F. Supp. 1224 (1986), confirmed without opinion, 815 F.2d 691 (1986).

In the United States, the right to privacy is based on the concept of personal liberty protected by Fifth and Fourteenth Amendments to the US Constitution, and is applicable to Puerto Rico. 1986 Op. Sec. Jus. No. 38.

The Department of Health lacks the power to provide family planning and contraception methods to minors without parental consent, except if said services were defrayed by funds coming from federal legislation. 1986 Op. Sec. Jus. No. 38.

Even though the right to privacy is fundamental, it is not absolute, and special circumstances that configure compelling state interests can tip the balance in favor of interference with this right. 1986 Op. Sec. Jus. No. 38.

Retention by State of photographs taken of arrested person later acquitted without any justification therefor constituted violation of right to privacy consecrated in this section. *People v. Torres Albertorio*, 115 D.P.R. 128 (1984).

Where investigative powers of agency conflict with constitutional right to privacy, judicial discretion should be exercised carefully, taking into consideration that the main point is whether the individual has reasonable proprietary right to expect that his privacy be respected anywhere within the circumstances of the particular case. *Commonwealth v. P.R. Tel. Co.*, 114 D.P.R. 394 (1983).

Right to privacy—and its derivative, right against wiretapping—can be waived like any other constitutional right. *P.R. Tel. Co. v. Martinez*, 114 D.P.R. 328 (1983).

Any person making a call to a phone tapped under court order after subscriber waiver does not waive his own right to privacy in the absence of any warning from said subscriber thereabout. Failure to fulfill the obligation to inform any bona fide caller regarding wiretapping could result in civil or penal liabilities, or both. *P.R. Tel. Co. v. Martinez*, 114 D.P.R. 328 (1983).

Injunctions are adequate remedies for violations of right to privacy. *P.R. Tel. Co. v. Martinez*, 114 D.P.R. 328 (1983).

In certain cases—as it does in case at bar—right to privacy outranks right to free speech. *P.R. Tel. Co. v. Martinez*, 114 D.P.R. 328 (1983).

Constitutional right to privacy—barring any interference in private life person or family thereof—operates *ex proprio vigore* not requiring any State action, and may be exercised by private parties. *P.R. Tel. Co. v. Martinez*, 114 D.P.R. 328 (1983); *Colon v. Romero-Barcelo*, 112 D.P.R. 573 (1982).

Violation of rights guaranteed by this section may be remedied by means of an injunction. *People v. Luzon*, 113 D.P.R. 315 (1982); *Colon v. Romero Barcelo*, 112 D.P.R. 573 (1982).

Only in clearly specified, extraordinary circumstances warrantless search of citizen's home may be justified. *People v. Turner Goodman*, 110 D.P.R. 734 (1981).

Fulfillment by State Police of duty to relay information to the media in order to keep citizenry well informed should neither violate right to intimacy nor unnecessarily encroach upon privacy or sully honor of the people. *People v. Turner Goodman*, 110 D.P.R. 734 (1981).

Fact that Constitution of Commonwealth of Puerto Rico expressly recognizes two values, intimacy of human being and its innate dignity - this section and § 1 of this art. II - visibly enlarges scope in our Constitution of the equivalent one in the Fourth Amendment to the Federal Constitution. *People v. Lebron*, 108 D.P.R. 324 (1979).

§ 8 [Protection against attacks on honor, reputation, and..., Puerto Rico Const. Art....

Constitutional right to intimacy has different history in Puerto Rico and in United States. *Figueroa Ferrer v. Commonwealth*, 107 D.P.R. 250 (1978); *Commonwealth v. Hermandad de Empleados*, 104 D.P.R. 436 (1975).

Matters in which courts have extended constitutional right to intimacy are stated in opinion. *Figueroa Ferrer v. Commonwealth*, 107 D.P.R. 250 (1978).

Right to intimacy and protection of dignity of human being not expressly protected by U.S. Constitution are consecrated in clear text of Commonwealth Constitution. *Figueroa Ferrer v. Commonwealth*, 107 D.P.R. 250 (1978).

The right to enjoy peace at home is consecrated in the Constitution of Puerto Rico. *People v. Figueroa Navarro*, 104 D.P.R. 721 (1976).

The right to the protection of privacy and intimacy in the home is one of the key rights guaranteed by the Constitution of Puerto Rico. *People v. Figueroa Navarro*, 104 D.P.R. 721 (1976).

The citizen whose behavior disrupts the peace and quiet of a person's house subjecting its dwellers to an investigation which palpably attempts against their privacy and hurts their feelings grieving the person under investigation and his family, violates Art. 368 of the former Penal Code. *People v. Figueroa Navarro*, 104 D.P.R. 721 (1976).

Public peace is that sense of security and tranquility, so necessary to one's comfort, which every person feels under the protection of the law, and a breach of the peace is an invasion of the protection which the law thus affords. *People v. Figueroa Navarro*, 104 D.P.R. 721 (1976).

The house of everyone is to him as his castle and fortress, as well as for his defense against injury and violence as for his repose. *People v. Figueroa Navarro*, 104 D.P.R. 721 (1976).

9. Public interest. Anyone invoking the right to limit the access of public and press to court proceedings of a civil nature, will have to prove that there is no other less burdensome alternative available to protect such right. *Fulana de Tal v. Demandado A*, 138 D.P.R. 610 (1995).

If it is true that public interest in having access to court proceedings is served by the presence of public and press during the witness's testimony stage, that interest must cease when showing a video recording taken of petitioner having sexual relations with the defendant; at this moment the petitioner's right to protect his private life against abusive attacks on his honor takes greater precedence over the right of access to court proceedings. *Fulana de Tal v. Demandado A*, 138 D.P.R. 610 (1995).

Pursuant to Constitution of Commonwealth of Puerto Rico, State cannot invade zone of personal intimacy except to protect pressing public interests. *Figueroa Ferrer v. Commonwealth*, 107 D.P.R. 250 (1978).

10. Divorce by mutual consent. In this jurisdiction - pursuant to rights to intimacy and protection of human dignity guaranteed by Commonwealth Constitution - (a) mutual decision of spouses to get a divorce (mutual consent), and (b) irreparable breach of marriage bonds are grounds for divorce. *Figueroa Ferrer v. Commonwealth*, 107 D.P.R. 250 (1978).

In divorce for mutual consent proceedings and until legislature opts, within present constitutional system, to issue different norms to guarantee that decision of spouses to get divorce is not product of lack of reflection, courts should not accept waivers of term to request review, provided that petition for divorce could be withdrawn at any time before decree becomes final. Legislature is empowered to establish other reasonable safeguards to protect family stability adequately - provided rights pursuant to §§ 1 and 9 of art. II of our Constitution are not violated - by means of mechanism for conciliation, minimum terms of duration of marriage before action may be filed in

§ 8 [Protection against attacks on honor, reputation, and...], Puerto Rico Const. Art....

certain cases, as well as other measures based on pressing interests of State. *Figueroa Ferrer v. Commonwealth*, 107 D.P.R. 250 (1978).

11. Arrest without a warrant. Arrest without warrant of people peacefully assembled anywhere by Police in order to take them to headquarters with the sole purpose of photographing them with investigative motives violated the following clauses of the Commonwealth of Puerto Rico Constitution: (1) one which prohibits deprivation of liberty without due process (art. II, § 7); (2) one recognizing right to protection against abusive attacks to honor, reputation and privacy as well as family life of persons (this section); (3) one prohibiting arrests, searches and seizures except by warrant issued by judicial authority and only upon determination of probable cause supported by oath or affirmation (art. II, § 10); and (4) one pertaining to inviolability of human being (art. II, § 1). *People v. Rey Marrero*, 109 D.P.R. 739 (1980).

12. Employment. Plaintiff alleged sufficient facts that could plausibly satisfy his constitutional claims for violation of his rights to dignity and intimacy under art. II, §§ 1, 8, as plaintiff alleged that defendant retailer's district manager and human resources specialist had knowledge of plaintiff's military status and training, that defendant's operations director put pressure on him to dissuade him from attending military training, that he was denied promotions and was transferred repeatedly because of the same discriminatory reasons, and that his employer reduced his 'Profit Bonus' in an amount equivalent to the two months he was on military leave. *Rivera-Cartagena v. Wal-mart P.R., Inc.* 767 F. Supp. 2d 310 (2011).

Summary judgment was properly granted to a former employer in a cause of action alleging employment discrimination based on a failure to rehire due to a mental condition because the conduct complained of did not rise to the level of actionable conduct as a matter of law. *Velez v. Janssen Ortho Llc*, 389 F. Supp. 2d 253 (2005).

13. Arbitration. When a retailer sued a distributor for defamation, negligence, personal damages, and unlawful termination of the parties' contract, arbitration was required because: (1) the parties' contract contained an arbitration provision; (2) the contract also contained a provision for electronic acceptance of the contract, and (3) the distributor proved the retailer electronically accepted the contract. *Caguas Satellite Corp. v. Echostar Satellite Llc*, 824 F. Supp. 2d 309 (2011).

Puerto Rico Const. Art. II, § 8, PR CONST Art. II, § 8

The statutes and Constitution are current through December 2011, except for Act No. 136 of the 2010 Regular Session.

§ 20 [Human rights recognized; duty of people and government], Puerto Rico Const. Art....

Laws of Puerto Rico Annotated Currentness
The Constitution of the Commonwealth of Puerto Rico
Article II. Bill of Rights

Puerto Rico Const. Art. II, § 20

§ 20 [Human rights recognized; duty of people and government]

The Commonwealth also recognizes the existence of the following human rights:

The right of every person to receive free elementary and secondary education.

The right of every person to obtain work.

The right of every person to a standard of living adequate for the health and well-being of himself and of his family, and especially to food, clothing, housing and medical care and necessary social services.

The right of every person to social protection in the event of unemployment, sickness, old age or disability.

The right of motherhood and childhood to special care and assistance.

The rights set forth in this section are closely connected with the progressive development of the economy of the Commonwealth and require, for their full effectiveness, sufficient resources and an agricultural and industrial development not yet attained by the Puerto Rican community.

In the light of their duty to achieve the full liberty of the citizen, the people and the government of Puerto Rico shall do everything in their power to promote the greatest possible expansion of the system of production, to assure the fairest distribution of economic output, and to obtain the maximum understanding between individual initiative and collective cooperation. The executive and judicial branches shall bear in mind this duty and shall construe the laws that tend to fulfill it in the most favorable manner possible.

History

Special provisions.

This section was excepted from the approval of the Constitution by Joint Resolution of Congress of July 3, 1952, c. 567, 66 Stat. 327.

Annotations

- 1. Generally. The court refused to recognize a private cause of action for sex discrimination under the Puerto Rico Constitution as such issue should be determined by the Supreme Court of Puerto Rico, rather than a federal district court. *Miranda v. BBII Acquisition Corp.*, 120 F. Supp. 2d 157 (2000).**

The unborn infant is not a person and therefore not entitled to constitutional rights. *Ruiz Romero v. Gonzalez Carabello*, 681 F. Supp. 123 (1988).

§ 20 [Human rights recognized; duty of people and government], Puerto Rico Const. Art...

The Speaker of the House of the Commonwealth enjoys legislative immunity against claims from journalist alleging violation of his civil rights because he was not allowed to work as press legislative official. *Agromayor v. Colberg*, 738 F.2d 55 (1984), cert. denied, 105 S. Ct. 515 (1984).

Puerto Rico Const. Art. II, § 20, PR CONST Art. II, § 20

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ADDENDUM II

(Cited Provisions of Puerto Rico Statutes)

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PR ST T. 29 § 155
29 L.P.R.A. § 155

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LAWS OF PUERTO RICO ANNOTATED
TITLE TWENTY-NINE. Labor
PART I. LABOR PROVISIONS GENERALLY
CHAPTER 7. Protection of Employees' Rights
§ 155 Sexual harassment in employment-- Declaration of public policy

This Legislature resolves and declares as the public policy of the Commonwealth of Puerto Rico that sexual harassment in employment is a type of sexual discrimination and, as such, constitutes an illegal and undesirable practice that goes against the established constitutional principle that the dignity of a human being is inviolable. It is the intention of this Legislature to prohibit sexual harassment in employment, to impose responsibilities and fix penalties.

-- Apr. 22, 1988, No. 17, p. 76, § 1, eff. 60 days after Apr. 22, 1988.

29 L.P.R.A. § 155, PR ST T. 29 § 155

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PR ST T. 31 § 221
31 L.P.R.A. § 221

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LAWS OF PUERTO RICO ANNOTATED
TITLE THIRTY-ONE. Civil Code
Subtitle 1. Persons
PART III. MARRIAGE
CHAPTER 29. Nature of Marriage
§ 221 Definition, validity, and dissolution of marriage

Marriage is a civil institution, originating in a civil contract whereby a man and a woman mutually agree to become husband and wife and to discharge toward each other the duties imposed by law. It is valid only when contracted and solemnized in accordance with the provisions of law, and it may be dissolved before the death of either spouse only in the cases expressly provided for in this title. Any marriage between persons of the same sex or transsexuals contracted in other jurisdictions shall not be valid or given juridical recognition in Puerto Rico.

-- Civil Code, 1930, § 68; Mar. 19, 1999, No. 94, § 1.

31 L.P.R.A. § 221, PR ST T. 31 § 221

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PR ST T. 31 § 231
31 L.P.R.A. § 231

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LAWS OF PUERTO RICO ANNOTATED
TITLE THIRTY-ONE. Civil Code
Subtitle 1. Persons
PART III. MARRIAGE
CHAPTER 31. Requisites Necessary to Contract Marriage
§ 231 Requisites for validity

The requisites for the validity of a marriage are:

1. The legal capacity of the contracting parties.
2. Their consent.
3. Authorization and celebration of a matrimonial contract according to the forms and solemnities prescribed by law.

-- Civil Code, 1930, § 69.

31 L.P.R.A. § 231, PR ST T. 31 § 231

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PR ST T. 31 § 232
31 L.P.R.A. § 232

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LAWS OF PUERTO RICO ANNOTATED
TITLE THIRTY-ONE. Civil Code
Subtitle 1. Persons
PART III. MARRIAGE
CHAPTER 31. Requisites Necessary to Contract Marriage
§ 232 Capacity-- Incapacity to contract marriage

The following persons are incapacitated to contract marriage:

- (1) One who is already legally married.
- (2) One who is not of sound mind.
- (3) Those who suffer mental retardation and/or some developmental deficiency, when such condition impedes them from giving consent.
- (4) A person of the male sex under eighteen (18) years of age, and a person of the female sex under sixteen (16) years of age. Marriage contracted by persons under the said age of puberty shall, nevertheless, be valid ipso facto and without an express declaration, if one day after having arrived at the legal age of puberty the parties shall have lived together without the representatives of either of them having brought suit against its validity, or if the woman shall have conceived before the legal age of puberty or before having established such suit; and Provided, That every woman over fourteen (14) and under sixteen (16) years of age who has been seduced may contract marriage with the previous consent of her parents or tutor and if these refuse it, with the consent of the part of the Court of First Instance of the place where the seduced woman resides; and every man over sixteen (16) and under eighteen (18) years of age who is under an accusation of having seduced a woman over fourteen (14) and under sixteen (16) years of age, may also contract marriage with the previous consent of his parents or tutor, and if these refuse it, with the consent of the part of the Court of First Instance of the place where the seduced woman resides; and such marriage shall be considered sufficient to bar all prosecution, in the same form as in the other cases referred to in § 262 of the Penal Code, § 968 of Title 33.
- (5) A minor who has not secured the consent required by law.
- (6) A person suffering from physical impotency for the purpose of generation.
- (7) A tutor and his descendants with his ward until the accounts of the guardianship shall have been definitely approved and the tutorship has ceased.

PR ST T. 31 § 232
31 L.P.R.A. § 232

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-- Civil Code, 1930, § 70; Mar. 29, 1937, No. 12, p. 133; June 2, 1976, No. 108, p. 308, §§ 1, 3; Dec. 14, 1997, No. 141, § 1.

31 L.P.R.A. § 232, PR ST T. 31 § 232

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CHAPTER 31. Requisites Necessary to Contract Marriage
§ 233 Capacity-- Impediments to contract

Nor can the following contract marriage with each other:

- (1) Ascendants or descendants by consanguinity or affinity.
- (2) Collaterals by consanguinity within the fourth degree.
- (3) The adoptive father or mother and the person adopted; the latter with the surviving husband or wife of the adopter; and the adopter with the surviving husband or wife of the adopted.
- (4) The legitimate descendants of the adopter with the adopted person during the time the adoption exists.
- (5) The parties to an adultery who have been convicted by a final judgment for five years after such judgment.
- (6) Those who have been condemned as principals or as principal and accomplice responsible for the death of the husband or wife or either of them.

-- Civil Code, 1930, § 71.

31 L.P.R.A. § 233, PR ST T. 31 § 233

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CHAPTER 31. Requisites Necessary to Contract Marriage
§ 234 Capacity-- Waiver of consanguinity

On petition of interested party, the Court of First Instance, for just cause, may waive the fourth degree of consanguinity. The party concerned shall file sworn petition with the Court together with the necessary documentary evidence.

The Court shall judge and resolve the petition on its merits without holding a hearing, or it shall at its discretion fix a date therefor; Provided, That when cousins germane have lived in concubinage, and as a result of this union there are children or one of them may be in imminent danger of death, any minister, priest or judge, required to do so, may celebrate the marriage without dispensation, and he shall notify the corresponding part of the Court of First Instance, by affidavit, of the facts in the case, to the end that it may be entered in the minutes of the court, as if the latter had granted such dispensation.

-- Civil Code, 1930, § 72; Apr. 22, 1942, No. 42, p. 452; Apr. 7, 1945, No. 15, p. 42; July 24, 1952, No. 11, p. 30; July 23, 1974, No. 205, Part 2, p. 106, eff. July 23, 1974.

31 L.P.R.A. § 234, PR ST T. 31 § 234

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CHAPTER 31. Requisites Necessary to Contract Marriage

§ 235 Persons who suffer from diseases or developmental deficiencies-- Marriage prohibited; annulment

It is hereby prohibited for any persons suffering from insanity, mental retardation, or developmental deficiency when said condition is an impediment to give their consent, or from syphilis or any sexually transmitted disease, to contract marriage while the disease, mental condition, or deficiency subsists; and if such marriage is contracted, it may be annulled by the Superior Part of the Court of First Instance of the residence of either contracting party, by petition of the prosecuting attorney of the Superior Part of the Court of First Instance, or an interested party, with the intervention of the prosecuting attorney of the Superior Part of the Court of First Instance in which the suit is filed; provided, that the action to annul shall not be exercised if the cause for nullity has disappeared at the time the suit is initiated. For purposes of this section, Puerto Rico male and female nonresidents who get married in Puerto Rico may not request the aforesaid action to annul when a medical certificate attests to such person's compliance with all the tests required for marriage in their state or country of residence.

-- May 14, 1937, No. 133, p. 290, § 1; Apr. 13, 1938, No. 22, p. 132, § 1; May 12, 1967, No. 36, p. 221; Dec. 14, 1997, No. 141, § 2; Dec. 13, 2007, No. 193, § 1; Aug. 11, 2010, No. 127, § 1.

31 L.P.R.A. § 235, PR ST T. 31 § 235

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PART III. MARRIAGE
CHAPTER 33. Rights and Duties Between Married Persons
§ 281 Cohabitation, fidelity, and assistance

The husband and wife shall live together, and owe to each other mutual fidelity and assistance.

-- Civil Code, 1930, § 88.

31 L.P.R.A. § 281, PR ST T. 31 § 281

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CHAPTER 33. Rights and Duties Between Married Persons
§ 282 Duties of spouses-- Protection

The spouses shall protect themselves and satisfy their needs in proportion to their conditions and fortune.

-- Civil Code, 1930, § 89; June 2, 1976, No. 109, p. 310, eff. June 2, 1976.

31 L.P.R.A. § 282, PR ST T. 31 § 282

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CHAPTER 33. Rights and Duties Between Married Persons
§ 283 Duties of spouses-- Domicile

The spouses shall decide by mutual agreement where to establish their domicile and residence for the attainment of the best interest of the family.

-- Civil Code, 1930, § 90; June 2, 1976, No. 111, p. 311, eff. June 2, 1976.

31 L.P.R.A. § 283, PR ST T. 31 § 283

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CHAPTER 33. Rights and Duties Between Married Persons
§ 284 Administrator of community property; alienation of property

Both spouses shall be administrators of the community property, except when otherwise stipulated, in which case one of the spouses shall grant a mandate to the other to act as administrator of the community property.

Purchases made by either of the spouses out of said property shall be valid when they comprise things or articles for personal or family use in accordance with the social and economic standing of the family. Provided, that either of the spouses may make said purchases in cash or on credit.

The real property of the conjugal community may not be alienated or encumbered, under penalty of nullity, except with the written consent of both spouses. Nothing above provided shall be construed as to limit the liberty of the future spouses to execute articles of marriage.

-- Civil Code, 1930, § 91; May 21, 1976, No. 51, p. 134, § 1, eff. May 21, 1976.

31 L.P.R.A. § 284, PR ST T. 31 § 284

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CHAPTER 33. Rights and Duties Between Married Persons
§ 285 Separate estates

The husband and wife shall have the right to manage and freely dispose of their respective separate estates.

-- Civil Code, 1930, § 92.

31 L.P.R.A. § 285, PR ST T. 31 § 285

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CHAPTER 33. Rights and Duties Between Married Persons
§ 286 Representative of conjugal community

Save as provided in § 284 of this title, either of the spouses may legally represent the conjugal community. Any unilateral administration act of one of the spouses shall bind the community property and shall be presumed valid to all legal effects.

-- Civil Code, 1930, § 93; May 21, 1976, No. 51, p. 134, § 1, eff. May 21, 1976.

31 L.P.R.A. § 286, PR ST T. 31 § 286

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PART IV. DIVORCE
CHAPTER 39. Causes for Divorce
§ 321 Causes for divorce

The causes for divorce are:

- (1) Adultery on the part of either of the parties to the marriage.
- (2) Punishment by imprisonment of one of the spouses for a felony, except when said spouse receives the benefit of a suspended sentence.
- (3) Habitual drunkenness or the continued and excessive use of opium, morphine, or any other narcotic.
- (4) Cruel treatment or grave injury.
- (5) Abandonment of the wife by the husband or of the husband by the wife, for a longer period of time than one year.
- (6) Absolute, perpetual, and incurable impotency occurred [occurring] after marriage.
- (7) Attempt of the husband or wife to corrupt their sons or to prostitute their daughters and connivance in their corruption or prostitution.
- (8) Proposal of the husband to prostitute his wife.
- (9) Separation of both spouses for an uninterrupted period of more than two (2) years. After the separation for the expressed period of time of more than two (2) years has been satisfactorily proven, neither of the spouses shall be considered to be guilty nor innocent when the judgment is rendered.
- (10) Incurable insanity of either of the parties to the marriage, supervening after the marriage, for a period of more than seven (7) years, when it seriously prevents the spouses living together spiritually, if such insanity is satisfactorily established at the trial by the opinion of two (2) medical experts; Provided, That in such cases the court shall appoint legal counsel to represent the insane spouse at the trial. The plaintiff spouse shall be under obligation to protect and to satisfy the needs of the insane spouse in proportion to his or her condition and fortune, as long as it is necessary for his

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or her support; Provided, further, That this obligation shall in no case be less than two-fifths (2/5) of the gross income which the plaintiff spouse may have from salaries, wages, or any other receipts.

-- Civil Code, 1930, § 96; May 9, 1933, No. 46, p. 304; Mar. 29, 1937, No. 11, p. 132; May 6, 1938, No. 78, p. 191; Apr. 29, 1942, No. 62, p. 582; Apr. 2, 1971, No. 11, p. 19; May 30, 1976, No. 93, p. 275; June 2, 1976, No. 101, p. 299; July 26, 1979, No. 183, p. 504; Aug. 22, 1990, No. 49, p. 201; Dec. 8, 1990, No. 25, § 2.

31 L.P.R.A. § 321, PR ST T. 31 § 321

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PART IV. DIVORCE
CHAPTER 47. Effects of Divorce
§ 381 Dissolution of marriage and division of property

A divorce carries with it a complete dissolution of all matrimonial ties, and the division of all property and effects between the parties to the marriage.

-- Civil Code, 1930, § 105.

31 L.P.R.A. § 381, PR ST T. 31 § 381

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PART VI. PATERNITY AND FILIATION
CHAPTER 57. Children Generally
§ 441 Equality of rights of children

All children have, with respect to their parents and to the estate left by the latter, the same rights that correspond to legitimate children.

-- Aug. 20, 1952, No. 17, p. 200, § 1, retroactive to June 25, 1952.

31 L.P.R.A. § 441, PR ST T. 31 § 441

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PART VI. PATERNITY AND FILIATION
CHAPTER 59. Legitimate Children
§ 461 Presumption of paternity and maternity

A man is presumed to be the father when he and the mother of the children are married to each other and the children are born during the marriage, and when the children are born within three hundred days (300) after the marriage is terminated.

Voluntary acknowledgment creates a presumption of paternity in favor of the recognizer.

Child delivery determines maternity.

-- Civil Code, 1930, § 113; Dec. 29, 2009, No. 215, § 1, eff. 30 days after Dec. 29, 2009.

31 L.P.R.A. § 461, PR ST T. 31 § 461

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PART VI. PATERNITY AND FILIATION
CHAPTER 63. Illegitimate Children
§ 502 Natural child-- Born prior to 1942; recognition

Children born out of wedlock prior to the date this Act takes effect, and who lack the qualifications of natural children according to previous legislation, may be recognized for all legal purposes by the voluntary action of their parents, and in their default, by that of the persons having the right to inherit therefrom. These children will be legitimized by the subsequent marriage of the parents, to each other.

In the event that the children to whom this section refers were not recognized by the voluntary action of their parents or by those with a right to their inheritance, said children shall be considered natural children only for purpose of using the surname of said parents. The legal action for said recognition shall be carried out in accordance with the procedure established in this title for recognition of natural children notwithstanding fact that said recognition shall only be for the purposes herein expressed.

-- May 12, 1942, No. 229, p. 1296, § 2; May 12, 1945, No. 243, p. 814, § 2, eff. May 12, 1945.

31 L.P.R.A. § 502, PR ST T. 31 § 502

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CHAPTER 65. Adoption
§ 531 Qualifications of the adopter

The adopter shall meet the following requirements as of the date the petition of adoption has been filed:

- (1) Have resided uninterruptedly in Puerto Rico for at least six (6) months prior to the date on which the petition for adoption is filed.
- (2) Be of legal age, except in the case in which two persons united by marriage adopt jointly, in which case it shall be sufficient for one of them to be of legal age, allowing for the other adopter to be a minor, but never being less than eighteen (18) years of age.
- (3) Have legal capacity to act.
- (4) Be at least fourteen (14) years older than the minor adoptee.

In those cases in which a spouse wishes to adopt the child of the other spouse, it shall be sufficient that upon the date the petition for adoption is filed, the adopter has been married to the father or mother of the adoptee for at least two (2) years, or that the adopting spouse is at least fourteen (14) years older than the minor adoptee.

-- Civil Code, 1930, added as § 130 on Jan. 19, 1995, No. 8, § 1.

31 L.P.R.A. § 531, PR ST T. 31 § 531

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CHAPTER 65. Adoption
§ 532 Who may not adopt

(1) Persons declared incompetent by judicial decree shall not be able to adopt for the duration of the incompetence. In the case of a person sentenced to a term of imprisonment, that person shall not be able to adopt for the duration thereof.

-- Civil Code, 1930, added as § 131 on Jan. 19, 1995, No. 8, § 1.

31 L.P.R.A. § 532, PR ST T. 31 § 532

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PART VI. PATERNITY AND FILIATION
CHAPTER 65. Adoption
§ 533 Who may and who may not be adopted

- (1) Non-emancipated minors and minors emancipated by judicial decree or with the consent of the father, mother or parents with patria potestas, may be adopted.
- (2) Who may not be adopted.-- Those persons who have reached legal age as of the date an adoption decree is granted, even though they are minors at the time the petition for adoption is filed, may not be adopted. However, an unmarried emancipated minor or a person of legal age may be adopted, provided it is under one of the following circumstances:
 - (a) When the adopter has resided in the home of the adopters prior to having attained the age of eighteen (18) and said situation has continued to the date the petition for adoption is filed.
 - (b) When the adoptee is an emancipated minor who has never been married.
- (3) Presently or formerly married persons, even though they may be minors.
- (4) An ascendant of the adopter with a relationship of consanguinity or affinity.
- (5) A guardian by his ward.
- (6) A ward by his guardian, until the final and binding approval by judicial decree of the general and final guardianship account.

An adoption decreed in contravention of the provisions of this section shall be null and void.

-- Civil Code, 1930, added as § 132 on Jan. 19, 1995, No. 8, § 1.

31 L.P.R.A. § 533, PR ST T. 31 § 533

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CHAPTER 65. Adoption

§ 534 Number of adopters, joint adoption or individual adoption in the case of marriage

No one may be adopted by more than one person, except when the adopters are married to each other, in which case they shall adopt jointly.

A spouse may adopt individually in any of the following cases:

- (1) When wishing to adopt the minor child of the other spouse.
- (2) When separated from his/her spouse for at least two (2) months prior to the date the petition is filed, in which case the other spouse shall be notified of the petition.

The subsequent reconciliation of the married couple shall not impair the right of the petitioner to adopt individually, except when, by mutual agreement, the married couple may adopt jointly if the court so decrees, always giving prime consideration to the welfare and comfort of the adoptee.

- (3) When the legal capacity of the spouse of the adopter has been restricted by judicial decree, and for the duration of said restriction, in which case, the other spouse shall be notified of the petition.

The court shall have discretion to resolve situations such as those provided in this section, always using as a guide its decision, the welfare and convenience of the minor.

-- Civil Code, 1930, added as § 133 on Jan. 19, 1995, No. 8, § 1.

31 L.P.R.A. § 534, PR ST T. 31 § 534

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8 L.P.R.A. § 602

LEYES DE PUERTO RICO ANOTADAS Currentness

TÍTULO 8. BIENESTAR PÚBLICO E INSTITUCIONES CARITATIVAS

CAPÍTULO 29. PREVENCIÓN E INTERVENCIÓN CON LA VIOLENCIA DOMÉSTICA

SUBCAPÍTULO I. DISPOSICIONES GENERALES

§ 602 Definiciones

8 L.P.R.A. § 602

A los efectos de este capítulo los siguientes términos tendrán el significado que se expresa a continuación:

(a) Agente del orden público.- Significa cualquier miembro u oficial del Cuerpo de la Policía de Puerto Rico o un policía municipal debidamente adiestrado y acreditado por el Departamento de la Policía Estatal.

(b) Albergue.- Significa cualquier institución cuya función principal sea brindar protección, seguridad, servicios de apoyo y alojamiento temporero a la víctima sobreviviente de violencia doméstica y a sus hijas e hijos. Esta definición no aplicará al término 'albergada', según se utiliza en el inciso (a) de la sec. 632 de este título. Para efectos de dicho inciso se entenderá el término de 'albergada' en su acepción común y ordinaria.

(c) Albergada.- Significa aquella persona víctima sobreviviente de violencia doméstica que reside de forma temporera en un albergue según definido en este capítulo.

(d) Cohabitar.- Significa sostener una relación consensual de pareja similar a la de los cónyuges en cuanto al aspecto de convivencia, independientemente del sexo, estado civil, **orientación sexual**, identidad de género o estatus migratorio de cualquiera de las personas involucradas en la relación de pareja.

(e) Empleado o Empleada.- Significa toda persona que brinde servicio a cualquier persona, sociedad o corporación que emplee a una o más personas bajo cualquier contrato de servicios expreso o implícito, oral o escrito, incluyéndose entre éstas expresamente o aquéllos o aquéllas cuya labor fuere de un carácter accidental.

(f) Grave daño emocional.- Significa y surge cuando, como resultado de la violencia doméstica, haya evidencia de que la persona manifiesta en forma recurrente una o varias de las características siguientes: miedo paralizador, sentimientos de desamparo o desesperanza, sentimientos de frustración y fracaso, sentimientos de inseguridad, desvalidez, aislamiento, autoestima debilitada u otra conducta similar, cuando sea producto de actos u omisiones reiteradas.

(g) Intimidación.- Significa toda acción o palabra que manifestada en forma recurrente tenga el efecto de ejercer una presión moral sobre el ánimo de una persona, la que por temor a sufrir algún daño físico o emocional en su persona, sus bienes o en la persona de otro, es obligada a llevar a cabo un acto contrario a su voluntad.

(h) Orden de protección.- Significa todo mandato expedido por escrito bajo el sello de un tribunal, en la cual se dictan las medidas a un agresor para que se abstenga de incurrir o llevar a cabo determinados actos o conducta constitutivos de violencia doméstica.

(i) Patrono.- Significa toda persona natural o jurídica que emplee uno o varios empleados o empleadas, obreros u obreras, trabajadores o trabajadoras; y al jefe o jefa, funcionario o funcionaria, gerente, oficial, gestor o gestora, administrador o administradora, superintendente, capataz, mayordomo o mayordoma, agente o representante de dicha persona natural o jurídica.

(j) Persecución.- Significa mantener a una persona bajo vigilancia constante o frecuente con su presencia en los lugares inmediatos o relativamente cercanos al hogar, residencia, escuela, trabajo o vehículo en el cual se encuentre la persona, para infundir temor o miedo en el ánimo de una persona prudente y razonable.

(k) Peticionado.- Significa toda persona contra la cual se solicita una orden de protección.

(l) Peticionario.- Significa toda persona que solicita de un tribunal que expida una orden de protección.

(m) Relación de pareja.- Significa la relación entre cónyuges, ex cónyuges, las personas que cohabitan o han cohabitado, las que sostienen o han sostenido una relación consensual y los que han procreado entre sí un hijo o una hija, independientemente del sexo, estado civil, **orientación sexual**, identidad de género o estatus migratorio de cualquiera de las personas involucradas en la relación.

(n) Relación sexual.- Significa toda penetración sexual, sea vaginal, anal, orogenital, digital o instrumental.

(o) Tribunal.- Significa el Tribunal de Primera Instancia del Tribunal General de Justicia y las oficinas de los jueces municipales.

(p) Violencia doméstica.- Significa un patrón de conducta constante de empleo de fuerza física o violencia psicológica, intimidación o persecución contra una persona por parte de su cónyuge, ex cónyuge, una persona con quien cohabita o haya cohabitado, con quien sostiene o haya sostenido una relación consensual o una persona con quien se haya procreado una hija o un hijo, independientemente del sexo, estado civil, **orientación sexual**, identidad de género o estatus migratorio de cualquiera de las personas involucradas en la relación, para causarle daño físico a su persona, sus bienes o a la persona de otro o para causarle grave daño emocional.

(q) Violencia psicológica.- Significa un patrón de conducta constante ejercitada en deshonra, descrédito o menosprecio al valor personal, limitación irrazonable al acceso y manejo de los bienes comunes, chantaje, vigilancia constante, aislamiento, privación de acceso a alimentación o descanso adecuado, amenazas de privar de la custodia de los hijos o hijas, o destrucción de objetos apreciados por la persona, excepto aquellos que pertenecen privativamente al ofensor.

-Agosto 15, 1989, Núm. 54, p. 221, art. 1.3; Enero 14, 1995, Núm. 1; Septiembre 23, 2004, Núm. 480, art. 1; Septiembre 29, 2004, Núm. 525, art. 1; Septiembre 30, 2004, Núm. 538, art. 1; Diciembre 28, 2005, Núm. 165, art. 1; Mayo 29, 2013, Núm. 23, art. 2,.

NOTAS, REFERENCIAS, Y ANOTACIONES

HISTORIAL

Codificación. La Ley de Septiembre 30, 2004, Núm. 538, propuso añadir nuevos incisos (c) y (e) sin tomar en cuenta que la Ley de Septiembre 29, 2004, ya había añadido nuevos incisos (b) y (c), por cual razón se designaron los nuevos (c) y (e) como (e) e (i), respectivamente. Enmiendas -2013. Inciso (d): La Ley de Mayo 29, 2013, Núm. 23 sustituyó, 'similar a la de los c #onyuges' con 'de pareja similar a la de los cónyuges en cuanto al aspecto de convivencia, independientemente del sexo, estado civil, **orientación sexual**, identidad de género o estatus migratorio de cualquiera de las personas involucradas en la relación de pareja'. Inciso (m): La Ley de Mayo 29, 2013, Núm. 23, añadió 'independientemente del sexo, estado civil, **orientación sexual**, identidad de género o estatus migratorio de cualquiera de las personas involucradas en la relación' al final de este inciso. Inciso (p): La Ley de Mayo 29, 2013, Núm. 23, añadió 'independientemente del sexo, estado civil, **orientación sexual**, identidad de género o estatus migratorio de cualquiera de las personas involucradas en la relación' después de 'una hija o un hijo'. -2005. Inciso (b): La ley de 2005 añadió una segunda oración a este inciso. -2004. La Ley de Septiembre 30, 2004, Núm. 538 añadió incisos (e) e (i) y redesignó los anteriores (e) a (g) y (h) a (o) como (f) a (h) y (j) a (q), respectivamente. La Ley de Septiembre 29, 2004, Núm. 525 añadió nuevos incisos (b) y (c) y redesignó

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los anteriores incisos (b) a (m) como (d) a (o), respectivamente. La Ley de Septiembre 23, 2004, Núm. 480 añadió un nuevo inciso (j) y redesignó los anteriores incisos (j) a (l) como (k) a (m), respectivamente. -1995.Inciso (a): La ley de 1995 añadió 'o un policía«#de la Policía Estatal'.

Vigencia. El art. 7 de la Ley de Septiembre 23, 2004, Núm. 480, dispone: 'Esta Ley [que enmendó esta sección] comenzará a regir cuando entre en vigor el Código Penal del Estado Libre Asociado de Puerto Rico de 2004 [Mayo 1, 2005].' Exposición de motivos.

Véase Leyes de Puerto Rico de: Enero 14, 1995, Núm. 1. Septiembre 23, 2004, Núm. 480. Septiembre 29, 2004, Núm. 525. Septiembre 30, 2004, Núm. 538. Diciembre 28, 2005, Núm. 165. Mayo 29, 2013, Núm. 23.

Salvedad. Véase la nota bajo la sec. 601 de este título.

Disposiciones especiales. Véanse las notas bajo la sec. 601 de este título.

ANOTACIONES 1.

En general.

[Para uso futuro.]

Cuando un juez incurrió en un patrón de conducta constante de agresiones físicas, abuso psicológico e intimidación y maltrato privado y público hacia su entonces esposa y lo anterior constituyó violencia doméstica, según definida por esta ley, el juez violó el Canon 1 de #tica Judicial al pretender estar por encima de la ley y no cumplir el llamado a respetarla y cumplirla, particularmente, al incurrir en conducta prohibida por esta ley. In re Concepción, 2013 PR Sup. LEXIS 95 (2013). TRIBUNAL SUPREMO DE PUERTO RICO 2.

Aplicabilidad.

La sec. 632 de este título no aplica a la alegación de maltrato entre una pareja homosexual, las disposiciones siendo aplicables únicamente a actos de violencia doméstica entre un hombre y una mujer. Pueblo v. Ruiz Martínez, 159 D.P.R. 194 (2003).

8 L.P.R.A. § 602, PRS ST T. 8 § 602

ESTA SECCION ESTA CORRIENTE PARA EL SUPLEMENTO DE 2013 (SESION DE LA ASAMBLEA LEGISLATIVA DE 2012) ANOTACIONES HASTA DICIEMBRE de 2012

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