

UNITED STATES DISTRICT COURT OF PUERTO RICO

ADA MERCEDES CONDE VIDAL
IVONNE ALVAREZ VELEZ
Plaintiffs,

v.

ANA RIUS ARMENDARIZ, in her official
capacity as Secretary of the Health
Department of the Commonwealth of
Puerto Rico

WANDA LLOVET DIAZ, in her official capacity
as Director of the Commonwealth of
Puerto Rico Registrar of Vital Records

CASE NO.:

DECLARATORY JUDGMENT
INJUNCTIVE RELIEF
DEPRIVATION OF CIVIL
CIVIL RIGHTS

C O M P L A I N T

TO THE HONORABLE COURT:

COMES NOW the Plaintiffs by themselves and very respectfully **ALLEGE**,
STATE and **PRAY** the following:

INTRODUCTION

1. We, the Plaintiffs are a married committed same sex couple seeking a declaration that our exclusion from the institution of civil marriage violates the Fourteenth Amendment of the Constitution of the United States because we are a couple legally married in another jurisdiction, being unconstitutional for the Defendants to deny recognition of our marriage validly entered in other jurisdictions for same sex couples.

2. The Supreme Court of the United Sates has stated that the "freedom to marry has long been recognized as one of the vital personal rights essential to the orderly

pursuit of happiness by free men.” *Loving v. Virginia*, 388 U.S. 1, 12 (1967). Consistently marriage has been reaffirmed that is “the most important relation in life,” *Zablocki v. Rehal*, 434 U.S. 374, 384 (1978), and that the right to marry is “one of the liberties protected by the Due Process Clause”. *Cleveland Bd. of Educ. V. LaFleur*, 414 U.S. 632, 639 (1974). The result has been that the “[c]hoices about marriage” are “sheltered by the Fourteenth Amendment against the State’s unwarranted usurpation disregard or disrespect.” *M. L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996) (internal quotations marks omitted). “Our obligation is to define the liberty of all, not to mandate our own moral code.” *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 850 (1992).

3. Even though the “fundamental importance” of marriage “for all individuals”, *Zablocki*, 434 U.S. at 384, the Commonwealth of Puerto Rico imposes restrictions that prevent gay and lesbian individual not only from marrying but also denies all recognition to any valid legally marriage of other jurisdictions of the United States of America as is the Plaintiffs 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”. Article 68, Civil Code of Puerto Rico, 31 L.P.R.A. §221. This unequal treatment of gay and lesbian individuals

denies them the due process and equal protections rights guaranteed by the Fourteenth Amendment of the United States Constitution.

4. For these reasons, Plaintiffs ask this Honorable Court to enjoin, preliminarily and permanently, enforcement of all statutes and constitutional provisions that exclude gay and lesbian individuals from access to civil marriage and that treat lawful same sex marriages from other states as null and void in Puerto Rico. Plaintiffs also ask that this Court declare Article 68 of the Civil Code of Puerto Rico, 31 L.P.R.A. §221 to be unconstitutional.

JURISDICTION AND VENUE

5. This case raises questions under the Constitution of the United States and 42 U.S.C. §1983, and thus, this Court has jurisdiction over all claims for relief pursuant to 28 U.S.C. §1331.

6. Venue is proper in this Court pursuant 28 U.S.C. §1391(b) because all Defendants reside in the District of Puerto Rico. Venue is also proper in this Court because the events giving rise to Plaintiff's claims occurred in this district.

NATURE OF DISPUTE

7. This action, brought pursuant to 42 U.S.C. §1983, seeks (1) a declaration that Article 68 of the Civil Code of Puerto Rico, 31 L.P.R.A. §221 that is the provision that expressly deny gay and lesbian individuals the opportunity to marry civilly and enter into the same officially-sanctioned family relationship with their loved ones as heterosexual individuals,, are unconstitutional under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution; and (2) a preliminary

and permanent injunction preventing Defendants from enforcing these provisions against Plaintiffs.

8. We, the Plaintiffs Conde and Alvarez are lesbian individuals in a committed relationship that has lasted nearly 14 years. We were legally and lawfully married in The Commonwealth of Massachusetts on August 2, 2004 and we seek to have our marriage recognized by the Commonwealth of Puerto Rico. We wish to enjoy the same social privileges and contractual rights that are conferred by the Commonwealth on individuals in opposite-sex marriages and not to be treated as we are being treated as second class citizens differentiated, alienated and discriminated in comparison to other United States citizens. Puerto Rico law precluding recognition of lawful same-sex marriages deny us those rights in violation of the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the United States Constitution.

9. To enforce the rights afforded by the United States Constitution, we the Plaintiffs bring this suit pursuant 42 U.S.C. §1983 for declaratory and injunctive relief barring enforcement of Article 68 of the Civil Code of Puerto Rico, *supra*. We the Plaintiffs also seek to recover all costs and expenses incurred in this action and any other relief that this Court may order and deem appropriate.

THE PARTIES

10. I, Ada Mercedes Conde Vidal and Plaintiff, reside in San Juan, Commonwealth of Puerto Rico.

11. I, Ivonne Alvarez Velez and Plaintiff, reside in San Juan, Commonwealth of Puerto Rico.

12. Defendant Ana Rius Armendariz ("Rius") is the Commonwealth of Puerto Rico Secretary of the Health Department and is sued in her official capacity as the person responsible of supervising and managing the Demographic Registry and the Commonwealth of Puerto Rico Registrar of Vital Records Ms. Wanda Llovet Diaz, also a Defendant pursuant the Commonwealth of Puerto Rico Demographic Registry Law of April 22, 1931 who is the responsible for ensuring compliance with the Commonwealth's laws relating to marriage in general.

13. Defendant Wanda Llovet Diaz ("Llovet") is sued in her official capacity as the Commonwealth of Puerto Rico Registrar of Vital Records and/or of (as also known) the Demographic Registry of the Commonwealth of Puerto Rico. Defendant Llovet is responsible for ensuring compliance with the Commonwealth's laws relating to marriage in general pursuant the Registry Law of 1931 (supra) and, more specifically, is responsible for enforcement of the specific provisions at issue in this Complaint, namely those laws that limit marriage to opposite sex couples and that refuse to honor the benefits of same sex marriages lawfully entered into in other states. Defendant Llovet's duties include, without limitation, directing and supervising the system of vital records in the Commonwealth of Puerto Rico. Defendant Llovet also serves as custodian of official records and directs, supervises and controls de actions of all persons relating to the operation of the Commonwealth system of maintaining vital records. Defendant Llovet's responsibilities also include providing forms for marriage licenses, marriage certificates and application for marriage licenses used in the Commonwealth of Puerto Rico, compiles, publishes and make available to the public in conjunction with her direct supervisor, Rius, also Defendant, aggregate data on the number of marriages, data that

includes the age, sex and race of married couples and other information. Defendant Llovet is also responsible in her official capacity for publishing and furnishing to all the Registry offices the marriage forms that require applicants to list a "Bride" and a "Groom". Defendant Llovet is a person under 42 U.S.C. §1983 and was acting under the color of state law at all times germane to this Complaint. On account of her responsibilities, Defendant Llovet has a "special relationship" to the laws that prevent gay and lesbian individuals from marrying and legally in the Commonwealth of Puerto Rico and the denial of recognition of marriages validly entered in other jurisdictions for same sex couples.

14. Defendants Rius and Llovet and those subject to their supervision, direction, and control, are responsible for the enforcement of Article 68 of the Civil Code of the Commonwealth of Puerto Rico (supra). The relief requested in this action is sought against each Defendant, as well as against each Defendant's officers, employees, agents and against all persons acting in cooperation with Defendant(s) under their supervision, at their direction, or under their control.

FACTS

15. It is a fact well known for which this Honorable Court can take judicial notice that Gay and Lesbian individuals have suffered a long and painful history of societal and government sponsored discrimination. Even though their sexual orientation bears no relation to their ability to contribute to society, homosexuals – men and woman alike – has been singled out for discriminatory treatment.

16. We as Plaintiffs thru our lives as lesbian as all other homosexuals have faced unconstitutional criminal penalties for private sexual conduct between consenting

adults, harassment, hate crimes, discrimination in employment and deprived for parenting as a couple as also being deprived of becoming a proud adoptive parent of a child and as in many other areas. We have even been the subject of laws stripping rights afforded to all other citizens as in this case of being marriage in our own territory.

17. Ironically, even though the Constitution of the Commonwealth of Puerto Rico prohibits discrimination because of sex¹ and recognizes that all “men are equal under the Law”, that was approved in 1952, since 1930 pursuant Article 68 of the Civil Code of the Commonwealth of Puerto Rico as amended by Law 94, of March 19, 1999, same-sex couples are deprived of being married defining marriage as a civil contract whereby “a man and a woman” agree to become husband and wife, being denied marriage licenses on account of their sex and its modality of sexual orientation and gender and since 1999 marriages being denied recognition of marriages validly entered in other jurisdictions for same sex couples. This definition and the denial of recognition of marriages validly entered in other States of the United States of America by the Commonwealth of Puerto Rico “places same-sex couples in an unstable position,” “demeans” same-sex couples, “humiliates tens of thousands of children now being raised by same-sex couples,” and “instructs all [State] officials and indeed all persons with whom same-sex interact, including their own children, that their [relationship] is less worthy than the [relationships] of others.” *United States v. Windsor*, 133 S.Ct, 2675, 2694-96 (2013).

18. The Commonwealth of Puerto Rico statutory provision has created a legal system in which civil marriage is restricted solely and exclusively to opposite-sex

¹ Section II, Article 1

couples, and in which gay and lesbian individuals are denied the right to enter into a civil marriage.

19. The Commonwealth of Puerto Rico statutory provision also deprive same sex couples of federal marital privileges and benefits that, upon information and belief are available to same sex couples who marry under state laws authorizing such benefits but that are not available to Plaintiffs and other same sex couples in Puerto Rico such as (a) marital, disability and survivor's benefits under the federal social security system; (b) federal Medicaid benefits as many others.

20. The Commonwealth of Puerto Rico also fails to honor the laws and determinations of seventeen (17) other states and the District of Columbia that allow same-sex marriage, by providing that lawful marriages from those jurisdictions – as Plaintiff's Massachusetts marriage – “shall not be valid or given juridical recognition in Puerto Rico”. By refusing to acknowledge lawful same sex marriages from other states, Puerto Rico “ensures that... those unions will be treated as second-class marriages for purposes of [the Commonwealth of Puerto Rico] law.” *Windsor*, 133 S.Ct. at 2693-94.

21. The Commonwealth of Puerto Rico law thereby “undermine[] both the public and private significance of state-sanctioned same-sex marriages’ for it tells those couples, and all the world, that their otherwise valid marriages are unworthy of [the Commonwealth of Puerto Rico’s] recognition.”. *Id.* At 2694. They “impose a disadvantage, a separate status, and so a stigma upon “same sex couples whose legal marriages are disregarded by the State and “humiliate[] thens of thousands of children now being raised by same sex couples.”. *Id.* At 2693-94.

22. The unmistakable purpose and effect of the Commonwealth of Puerto Rico's far reaching restrictions is to enshrine in the Civil Code that gay men and lesbians are "unequal to everyone else," *Romer v. Evans*, 517 U.S. 620, 635 (1996), that their committed relationships are ineligible for the designation "marriage," and that they are unworthy of being treated with "dignity and integrity." *Windsor*, 133 S.Ct. at 2694.

23. We the Plaintiffs have lived all our lives in the Commonwealth of Puerto Rico since we were born and have been a couple since 2000. I, Ada Mercedes Conde Vidal, am an attorney at law admitted in the Puerto Rico State Bar and proudly in this United States District Court of Puerto Rico as main practice the Bankruptcy Law. I, Ivonne Alvarez Velez, am an accountant and finance advisor, that during my lifetime I have occupied high ranking managing position in known corporations.

23. I, Plaintiff Conde, am the mother of a daughter that when my committed relationship with Plaintiff Ivonne started my daughter was 13 years old. My daughter is a cardiac patient that since when 8 years old had her first open heart surgery. Being with my wife Alvarez, my daughter had to have a second open heart surgery and because of the lack of recognition of my relationship, I could not delegate to Ms. Alvarez the taking even though simple decisions or determinations regarding her health. This also included simple decisions and/or determinations regarding her education.

24. Even though we the Plaintiffs are married in a same sex couple marriage validly entered in Massachusetts we had to spend money to execute living wills in order to provide for our health care in case of medical emergency for each other that otherwise is not necessary for heterosexual couples in the Commonwealth of Puerto Rico .

25. As per Puerto Rico inheritance law, if a person dies without descendants and ascendants, the spouse inherits. Plaintiff Ivonne Alvarez does not have descendants and ascendants and due to the deprivation of the Commonwealth of Puerto Rico of recognizing the same sex couple marriage validly entered in Massachusetts with her wife Ada Mercedes Conde Vidal, her state will be transferred to the Commonwealth of Puerto Rico. The only way that Plaintiff Alvarez can transfer the estate at the time of her death to Plaintiff Conde is to execute a will that is very costly when heterosexual couples do not have to execute.

26. Also we the Plaintiffs cannot file Commonwealth of Puerto Rico income tax returns as a married couple. This has cost us thousands of dollars in additional taxes during the time we have been together as same sex couple marriage validly entered in Massachusetts and because also we are unable to marry lawfully in Puerto Rico.

27. Our inability to marry or to have our relationship recognized by the Commonwealth of Puerto Rico with the dignity and respect accorded to married opposite sex couples has caused us significant hardship, including, but not limited to, the deprivation of rights guaranteed by the Fourteenth Amendment of the United States Constitution and severe humiliation, emotional distress, pain, suffering, psychological harm and stigma. Each day that we as Plaintiffs are denied the freedom to marry, or have our Massachusetts marriage recognized in the Commonwealth of Puerto Rico, we have suffered irreparable harm as a direct result of Defendants' violation of our constitutional rights.

28. If the Court does not enjoin Article 68 of the Civil Code of Puerto Rico, Defendants will continue to enforce this unconstitutional law against Plaintiffs, thereby

depriving them of their constitutional rights under the Fourteenth Amendment to the United States Constitution. The declaratory and injunctive relief sought by Plaintiffs, on the other hand, will require the Commonwealth of Puerto Rico to revise official state law and procedures governing marriage and will require Defendants to recognize us the Plaintiffs Conde and Alvarez as a lawfully married couple within the Commonwealth of Puerto Rico.

CLAIMS FOR RELIEF

COUNT ONE: DUE PROCESS

29. Plaintiffs incorporate here by reference paragraphs 1 through 29, supra, as if fully set forth herein.

30. The Article 68 of the Civil Code of Puerto Rico, 31 L.P.R.A. 221 violates fundamental liberties that are protected by the Due Process Clause of the Fourteenth Amendment, both on their face and as applied to Plaintiffs.

31. This law impinges on fundamental liberties by denying gay and lesbian individuals the opportunity to marry civilly and enter into the same officially sanctioned family relationship with their loved ones as opposite-sex individuals. By denying those individuals the same "marriage" designation afforded to opposite-sex couples, and by refusing to recognize their lawful marriages from other States, the Commonwealth of Puerto Rico is stigmatizing gay men and lesbians, as well as their children and families, and denying them the same dignity, respect, and stature afforded officially recognized opposite-sex family relationships.

32. Puerto Rico's statutory and constitutional laws thus deprive Plaintiffs of their liberty without due process of law in violation of the Fourteenth Amendment to the

United States Constitution.

COUNT TWO: EQUAL PROTECTION

33. Plaintiffs incorporate here by reference paragraphs 1 through 32, *supra*, as if fully set forth herein.

34. Article 68 of the Civil Code of the Commonwealth of Puerto Rico, 31 L.P.R.A. 221 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, both on their face and as applied to Plaintiffs.

35. This law restricts civil marriage to individuals of the opposite sex; gay and lesbian individuals are unable to marry. Thus, Puerto Rico law treats similarly-situated people differently by providing civil marriage to opposite-sex couples, but not to same-sex couples. Moreover, opposite-sex couples who marry in other States and live in Puerto Rico enjoy all of the legal benefits of marriage, whereas same-sex couples, such as Plaintiffs Conde and Alvarez, who marry lawfully in other jurisdiction are expressly precluded from enjoying the panoply of rights associated with marriage. Gay men and lesbians are, therefore, unequal in the eyes of Commonwealth of Puerto Rico law, and their families are denied the same respect as officially sanctioned families of opposite-sex individuals.

36. By purposefully denying civil marriage to gay and lesbian individuals, Puerto Rico's ban on same-sex marriage discriminates on the basis of sex, sexual orientation and gender. Gay and lesbian individuals are unable to enter into marriages available through the Commonwealth of Puerto Rico to opposite-sex couples solely because of their sexual orientation, sex and/or gender.

37. The disadvantage this law imposes upon gay men and lesbians is the result of disapproval or animus against a politically unpopular group. But the United States Constitution's guarantee of equality under the Fourteenth Amendment "must at the very least mean that a bare (legislative) desire to harm a politically unpopular group cannot justify disparate treatment of that group." *Windsor*, 133 S. Ct. at 2693. Accordingly, this law violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by casting gays and lesbians into disfavored legal status and categorizing them as "second-class citizens."

38. This law also violates the Equal Protection Clause because they discriminate on the basis of sex. Under these laws, a man who wishes to marry a man may not do so because he is a man, and a woman may not marry a woman because she is a woman. Thus, the laws limit civil marriage on the basis of sex.

39. Puerto Rico's statutory law directly and substantially interferes with Plaintiffs' fundamental right to marry. The right to marry is protected by the Fourteenth Amendment as a vital personal right that is integral to an individual's identity, autonomy, dignity, and intimate associations. Puerto Rico's law restricting civil marriage to opposite-sex couples impinges on the fundamental right of gay and lesbian individuals to marry without serving any legitimate governmental interest, let alone any important or compelling interest to which they are narrowly-tailored.

40. Whether under a strict or heightened scrutiny analysis, or under a more lenient rational-basis analysis, this provision of Puerto Rico law does not bear any relation to a legitimate governmental purpose and, thus, violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

COUNT THREE: VIOLATION OF 42 U.S.C. § 1983

41. Plaintiffs incorporate here by reference paragraphs 1 through 40, *supra*, as if fully set forth herein.

42. Insofar as they are enforcing the terms of Article 68 of the Civil Code of the Commonwealth of Puerto Rico, 31 L.P.R.A. §221. Defendants, acting under the color of state law are depriving, and will continue to deprive, Plaintiffs of numerous rights secured by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

IRREPARABLE INJURY

43. Plaintiffs incorporate here by reference paragraphs 1 through 42, *supra*, as if fully set forth herein.

44. Plaintiffs are severely and irreparably injured by the challenged Commonwealth of Puerto Rico law that violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment. By way of example only, Plaintiffs' injury as a result of this discriminatory law includes the deprivation of rights guaranteed by the Fourteenth Amendment and the severe humiliation, emotional distress, pain, suffering, psychological harm, and stigma caused by the inability to marry and have society accord their unions and their families the same respect and dignity enjoyed by opposite-sex unions and families.

45. Because Plaintiffs cannot marry under Puerto Rico law, nor have our out-of-Puerto Rico marriage recognized by the Commonwealth, we cannot, for example, currently receive social security benefits, naval disability benefits, Medicaid benefits, Veteran Administration benefits, immigration law benefits and favorable treatment on

income and estate taxes prescribed by Puerto Rico law. We also cannot currently claim benefits under various state and federal laws that apply only to married couples because they cannot marry under Puerto Rico law. Plaintiffs' injuries will be redressed only if this Court declares this provision unconstitutional and enjoins Defendants from enforcing it.

46. An actual and judicially cognizable controversy exists between Plaintiffs and Defendants regarding whether the law violates the Due Process and Equal Protection clauses of the Fourteenth Amendment. Defendants are presently enforcing these Puerto Rico law to the detriment of Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

1. Plaintiffs respectfully request that this Court, pursuant to 28 U.S.C. § 2201, construe Article 68 of the Civil Code of Puerto Rico, 31 L.P.R.A. §221 and enter a declaratory judgment stating that this provision and any other Puerto Rico law that bars same-sex marriage or prohibits Puerto Rico's recognition of otherwise-lawful same-sex marriages from other jurisdictions violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.
2. Plaintiffs respectfully request that this Court enter a preliminary and a permanent injunction enjoining enforcement or application of Article 68 of the Civil Code of the Commonwealth of Puerto Rico, 31 L.P.R.A. §221 and any other Puerto Rico law that bars same-sex marriage or prohibits Puerto Rico's recognition of otherwise-lawful same-sex marriages from other jurisdictions.

3. Plaintiffs respectfully request costs of suit under 42 U.S.C. § 1988, and all further relief to which they may be justly entitled.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 25th day of March, 2014.



Ada Mercedes Conde Vidal, ~~ESQ.~~ *ESQ.* - *USD PR 206 209*



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Plaintiffs

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