

19-370
No. 19-

In The
Supreme Court of the United States

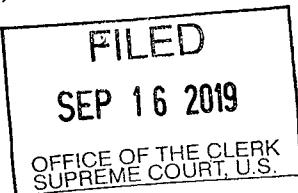
DR. SAMUEL DAVID SILVA-RAMIREZ,

Petitioner,

v.

HOSPITAL ESPANOL AUXILIO MUTUO DE
PUERTO RICO, INC., SOCIEDAD ESPANOLA DE
AUXILIO MUTUO DE PUERTO RICO, INC., ET AL.,

Respondents.



**On Petition For Writ Of Certiorari
To The Puerto Rico Court Of Appeals**

PETITION FOR WRIT OF CERTIORARI

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SEPTEMBER, 2019.

QUESTIONS PRESENTED

I – Is Puerto Rico and its people under the jurisdiction of The United States of America Constitution and under the Due Process Clause of the 14th Amendment, which prohibits state and local government from depriving persons of life, liberty or property without a fair procedure?

II – Does a practice that unduly burdens the practice of religion, without a compelling interest, even though it might be neutral on its face, would it be Unconstitutional?; and is the enumeration of certain Rights by the Constitution may allow or disparage others rights retained by the people?

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant-Interested Party
Samuel D Silva Ramirez

Respondents and Defendants-Appellees
Hospital Espanol Auxilio Mutuo De Puerto Rico, Inc.
Sociedad Espanola De Auxilio Mutuo Y
Beneficiencia De Puerto Rico, Inc.

Dr. José Isado Zardon and the conjugal partnership
comprised of him and Mrs. Diana Vigil Vigil

RELATED CASES

Skinner v Oklahoma, 316 U. S. 535 (1942), on persons
convicted of theft may be subject to surgical steriliza-
tion.

Poe v Ullman, 367 U. S. 497(1961), which focuses on the
right to privacy and with reference to the methods of
birth control.

Loving v Virginia, 388 U.S. 1 (1987), invalidating the
statute against interracial marriage. All these cases
resolved by violation of the privacy rights.

Aoude v Mobil Corp, 892 F. 2d 1115, 1118 (1st Cir.
1989)

Kornblum v Schneider, 609 So 2d 138, 139 (FLA 4th
DCA, 1992)

Outen v Baltimore County 177 F.R.D, 346, 348 (1998
DC. Md)

RELATED CASES – Continued

Pumphrey v K.W. Thompson Tool Co., 62 F.3d 1128, 1131 (9th Circuit, 1995)

Watkins v Mercy Medical Center, 520 F.2d 894 (9th Cir. 1975)

Marshalls Dubin Farms v. National Farmers Organization, Inc 446 F. 2d 353 (1971)

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OPINIONS BELOW

The unpublished memorandum opinion of the Puerto Rico Supreme Court is included herein as App. 43a-47a. They had a resolution in San Juan, Puerto Rico: Having tended to the Certiorari petition filed by the Petitioner, it is ruled denied due to gross non-compliance with the Rules of this Court. [May 10, 2019]

Decided by the Court and certified by the Clerk of the Supreme Court.

App. 2a Reconsideration to the Supreme Court of Puerto Rico, on June 21, 2019. Dispatch Courtroom comprised by Chief Justice Oronoz-Rodriguez, Associate Justice Mrs. Pabon-Charneco and Associate Justice Mr. Feliberti Cintron. The reconsideration filed by the petitioner denied. [June 21, 2019]

Agreed by the Court and certified by the Clerk of the Supreme Court.

JURISDICTION

The District Court had subject matter jurisdiction pursuant to 28 U.S.C. § 1258, “final judgements or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court by a writ of Certiorari”, where the validity of any federal Constitutional provision, treaty or statue has been drawn in question.

JUDGMENT OF THE CASE IN PUERTO RICO

The judgment handed down in the present case, KLCE 2017-01318 in San Juan de P.R. On February 13, 2019, to review a Judgment of the case [KPE 2011-0846, of the San Juan Court] and issued on July 28, 2016 and notified on August 2, 2016, in order to vacate a Judgement under the Puerto Rico code of Civil Procedures Rule 49.2 due to fraud or False representation which is equivalent to Federal Code of Civil Procedures Rule 60(b)(4).

Reconsideration: filed in case on March 11, 2019 and notified on March 13, 2019. "Dismissed" This case is a collateral attack on the Judgment of the 2011-08 KPE case alleging fraud and falsification. in the representation of the Spanish Mutual Assistance Hospital, [HEAM], as a Catholic entity.

CONSTITUTIONAL PROVISIONS

The Fifth Amendment of the U.S. Constitution provides:

No person shall be deprived of life, liberty, or property, without due process of law.

Section 1 of the Fourteenth Amendment to the U.S. Constitution provides:

[N]or shall any State deprive any person of life, liberty, or property without due process of law.

Right of Privacy – The Ninth Amendment says that the enumeration in the Constitution of certain rights shall

not be construed to deny or disparage other rights retained by the people.

STATEMENT OF THE CASE

FACTS

Relationship of Facts and Procedural Procedure:

On December 15, 2015, we initiated this case in demand for preliminary Injunction under Rule 49.2 for fraud and falsification of the Court against Hospital Espanol de Auxilio Mutuo Inc. [HEAM, hereafter]. This Rule equivalent to Federal Rule of Civil procedure 60(b)(4), where they falsified its representation before the Courts of Puerto Rico.

They obtained Federal Loans from Hill-Burton and HUD [Housing and Urban development] and they are a contractual impediment against discrimination, under Federal laws. They received a letter in addition to the U.S. Department of Health. In America, on July 21, 1997, which indicates that they cannot discriminate in perpetuity, in reference to subpart G of the Hill-Burton Loans for the modernization of Hospitals. The present case is presented as a collateral attack on the Judgment of Case KPE-2011-0846.

On February 17, 2016, the Extraordinary Resources COURT of San Juan attended the situation of this lawsuit and issues Partial Judgment and Order, bringing this Resource to the Ordinary course and notified on February 29, 2016.

Amended demand is submitted on March 18, 2016 with evidence attached to support our cause of action to dismiss for collateral attack for intrinsic fraud. [alleged cause of false representation.]

On May 4, 2016, the appealed party issues an Appeal for Dismissal for lack of Jurisdiction under the Philosophy of "Res Judicata".

The Court of San Juan, Room 806, the Honorable Judge Juan A. Frau Escudero issues an order on May 11, 2016, granting [20] days to answer said Dismissal Appeal. We submitted our Opposition to the Request for Dismissal on May 27, 2016, detailed and with evidence and Affidavit attached so that said request for Dismissal would not become a Summary Judgment. We noted many controversies of Acts, previous and current and the evidence of Fraud to the Court for falsification, of the KPE case 2011-0846 that would inevitably lead to the dismissal of the KPE-2011-0846 Judgment by Intrinsic Fraud and Nullity.

On June 9, 2016, Motion was requested in request for discovery of evidence, Motion in requirement of Authenticity of documents and Request for Admissions of Facts, none of them answered.

On June 20, 2016 Informative Motion is submitted where the Appelled party submits the Judgment of the KPE case 2011-0846, whose judgment is requested to be revoked with this resource. The Appelled party requests the Payment of Costs before Room 908 of the Court of San Juan. A protective order in which the case was elucidated; under Rule 49.2 for Fraud and Request

for Dismissal for collateral attack of the Judgment of the KPE case 2011-0846.

The Appellant submits Motion in payment of Costs and Fees to the Secretary; of the Judgment that we request is revoked from the KPE case 2011-0846 and we request that the Certified check be consigned to the Appeals until the case of KPE cars 2015-3721 was discussed.

The Appelled party submits an Urgent Motion for the Revocation of the Discovery of Evidence until the resolution of the Motion for Dismissal for lack of Jurisdiction, on June 20, 2016. The Appellant opposed by an Urgent Motion on June 22, 2016 to allow the discovery of Evidence.

On June 23, 2016, the first Interrogation Statement and other requirements were filed in the Secretary of the Court of San Juan.

Given the refusal of the Appelled party to grant discovery of Evidence for the second occasion on July 11, 2016, we request the Appealing Motion of Sanctions to the Appelled party accordingly to refuse to discover.

On August 2, 2016, we received the Appellate Sentence of the Honorable Court, where our claim is declared denied without prejudice.

On Monday, August 15, 2016, we request the Reconsideration before the Honorable Court de San Juan, Room 806, the court of the case.

We file a complaint within the Office of the OAT [Court Administration] against the Honorable Judge J A Frau Escudero for **not allowing discovery of evidence**, in a case under Rule 49.2 of Civil Procedures.

On August 23, 2016, we lodged a Mandamus in the Court of Appeals, requesting that the Discovery of Evidence be authorized by a Court of greater hierarchy than the [TPI in Spanish] Court of San Juan. This Court of Appeals issued that it was necessary to resolve the Reconsideration on August 31, 2016, and resolution for the Reconsideration on September 14, 2016, [Apen page 1325, notified on October 3, 2016].

Since February 17, 2016, the case was found in the Chambers of Judge Frau-Escudero without granting order or resolution. Suddenly August 24, 2016, issues a Tracking order for September 26, 2016.

Our purpose of raising a Complaint at the OAT, is with the purpose of moving the Honorable Court in search of the Protection of a Fair Trial [Due Process], which entails the Discovery of Evidence. **The not providing Discovery of Evidence is a violation of amendments V and XIV of the Constitution of the United States of America and the Constitution of Puerto Rico.**

We respectfully request the inhibition of the Honorable [Hon.] Judge Frau-Escudero, Justice of San Juan Primary Court in present case, for the aforementioned or for any other cause that may reasonably cast doubt on the impartiality to adjudicate or that tends to undermine public confidence in the Justice System.

The Hon. Judge Pedro Polanco-Bezares, assigned Justice of San Juan Court to evaluate the complaint to Hon. Justice Frau-Escudero whom the Request for Inhibition was delivered, he finded "no cause" for the inhibition of the Honorable Judge Frau-Escudero. notified on September 14, 2016.

Honorable Judge Frau Escudero confirms his Judgment on June 29, 2017 with "a Dismissal" on June 29, 2017 and notified on July 5, 2017.

July 25, 2017; we request in the Court of Appeals a Certiorari that was taken as an Appeal. Case KLCE 2017-1318 whose Judgment is requested to review by the Honorable Supreme Court of Puerto Rico.

Subjected and accepted the Appeal on August 18, 2017 by the Court of Appeals of Puerto Rico.

The allegation of the Appeal is presented on August 24, 2017.

It is replied by the Appellant on August 28, 2017.

Submit on November 26, 2018, Motion get acknowledge; evidence of the case in the Supreme Court of the United States CV-18-186 Writ of Certiorari.

Motion is submitted in Request for a remedy filed by the Appellant on January 17, 2019.

Judgment of the KLCE case 2017-01318 of February 13, 2019, "Dismissed".

Resolution of Reconsideration and Reconsideration to the Judgment of the Court of Appeals of February 19, 2019.

REASONS FOR GRANTING THE PETITION

Hospital Espanol de Auxilio Mutuo [HEAM, hereafter] a private corporation organized under the laws of Puerto Rico on April 29, 1992; is non-profit hospital, not affiliated to Church and no religious purpose. [App. 50a]

The Hospital has a community of Catholic Sisters who give voluntary work, and no decisions inherent in the operation of HEAM.

The owner of the Hospital is la Sociedad Espanola de Auxilio Mutuo [SEAM, hereafter].

They have a secret religious protocol of sterilization, that advances discrimination since June 20, 1996, outside of the bylaws or any document that is presented before the Federal Regulation Entities. [App. 76a-78a].

Bylaws of 2008 allow sterilization.

This protocol, authorizes nuns, final decision; if patients are going to be sterilized or not, despite their will. These nuns follow a liturgical calendar to the decisions of women to be sterilized. This protocol discriminates with the community of Congregation Mita, who reside in the area of San Juan where the Hospital is. The Mita religion is a non-Catholic Christian church.

This protocol is only given to the Staff doctors members of the Obstetrics and Gynecology Department. The religious protocol violates the Right of Privacy to patients, protected by the U.S.A. Constitution.

In no place of the bylaws, rule and/or regulations of HEAM prohibited sterilizations based on religious or moral beliefs. This written secret protocol requires a letter of approval from a pastor or priest; to be considered and this is more important than the patient's own decision. (App. 76a-78a).

Dr. Samuel D. Silva-Ramirez [Dr. Silva], American citizen and residing in Puerto Rico, a Gynecologist that had privileges in HEAM until year 2009, when his privileges were revoked, Dr. Silva sterilized a patient protecting her right to decision [Autonomy] versus a religious illegal protocol. This affront was notified to the NPDB [National Providers Data Bank], indicating non-compliance with the Institutional Protocols [Religious Protocol not included in the bylaws] (App. 51a-53a)

It's illegal having a discriminatory religious Protocol that violates Autonomy and the Right of Privacy of patients, patients couples and Doctors, not included in the bylaws.

HEAM and State Courts of Puerto Rico violated the Constitutional Due Process of law, making this matter unreportable, to the NPDB. The report to Dr. Silva is vague and violates the 45 C.F.R. § 60.11, because was not reported to the State Board to do an investigation and because the case is in dispute until this Writ of Certiorari is resolved. 45 C.F.R. § 60.6[b].

Based on Rule 49.2 of Civil Procedure of Puerto Rico, the HEAM was represented as a Catholic Institution before the Courts of Puerto Rico [falsification] equivalent to Federal Code of Civil Procedures Rule 60(b)(4).

HEAM in its Section of the bylaws of 2008 they try to regulate the Constitutional due process Section 11.5 Article XI of 2008 Bylaws [when action occurred]:

“11.5-1 Request for evidentiary Hearing

11.5-1[1] The applicant/practitioner must address his/her request for an Evidentiary Hearing to the Medical Director in person or, on the alternative must be sent by registered mail to the Medical Director with copy to the Medical Staff Office.

11.5-1[2] The applicant/practitioner written for request for Evidentiary Hearing must address each of the grounds set forth in the notice as the grounds set in the notice as the basis for the proposed adverse action. Each ground not expressly denied shall be deemed admitted shall not be subject to challenge by the applicant/practitioner at the Evidentiary Hearing.”

Thus, the celebration of the evidentiary hearing requires that the doctor challenged with sufficient specificity all charges against him that motivated the adverse recommendation. Dr. Silva requested the view, but he did not specify; he only required the view, so it was denied violating the due process clause of the Constitution of the U.S.A. Dr. Silva ask for the evidentiary

hearing without denying the grounds and the request was denied.

The Department of Health of the United States sent a letter to HEAM to Mrs. Marilina Sierra, head of finance indicating the character of perpetuity of non-discrimination. (App. 74a-75a)

The Court of Appeals of Puerto Rico [CA]; does not interpret or consider the facts well alleged, in the Motion in Opposition to Motion for Dismissal of Demand Amended for Lack of Jurisdiction on the matter and application of the Doctrine of Judged Thing.

The [CA] should have considered in the light most favorable to the appellant and resolve any doubt in favor of the appellant and assess whether the claim is a valid claim.

HEAM attested in a certification to the Department of Health and Human Services [D.H.H.S.] [CMS 855-A] Prov. Agreement through its division of Survey and Certification, that it is aware of, and abides by all applicable statutes, regulations and program instructions when signing this Provider's Agreement. (App. 54a-67a) according to the Rules of Evidence; Rule 901, Article IX, Authentication or Identifying Evidence § 901(b)(7)(B); "a purported public record or statement is from the office where items of this kind are kept." This Honorable Supreme Court can take knowledge. (example of signed parts of original of the year 2014 of PA.)

This fraudulent Certification of compliance and False Fraudulent Certification to the [DHHS] and Medicare/

Medicaid [M/M], making this religious discriminatory protocol illegal.

They fail to disclose and illegal discriminatory written protocol for sterilization that voids their contract with MEDICARE/MEDICAID [M/M] in the CMS 855-A [Providers Agreement] and CMS 2552-10 [Hospital Cost Report].

M/M forms in the Certification Statement. 42 U.S.C. § 708(a)(2)-Nondiscrimination provisions, and the Civil Rights Act of 1964, and related nondiscrimination statutes to ensure nondiscrimination in all programs and activities of a recipient, whether those programs and activities are federally funded or not, and 45 C.F.R. § 80.3.

Defendants falsely/or fraudulently made the certification to D.H.H.S. when it discriminated in a protocol of sterilization due to religion. (App. 76a-78a).

HEAM are in violation of 42 U.S.C. § 1320(a)(2) and 42 U.S.C. § 1320a-7b(a)(3) when it is used form CMS-2552-10, and CMS-855A. [Certification]. All these previous violations to 42 U.S.C. §1320a-7b(a)(3) were material fact or condition of payment to M/M under the Hospital Cost Reports and the Providers Agreement.

The Centers for Medicare & Medicaid Services (CMS) is authorized to collect the information requested on this form by sections 1124(a)(1), 1124A(a)(3), 1128, 1814, 1815, 1833(e), and 1842(r) of the Social Security Act, 42 U.S.C. §§ 1320a-3(a)(1), 1320a-7, 1395f, 1395g, 1395(1)(e), and 1395u(r) and section 31001(1) of the Debt Collection Improvement Act, 31 U.S.C. § 7701(c).

"The Provider Agreement, drafted by CMS requires that hospitals and physicians acknowledge that they understand that the payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with Medicare's laws regulations and program instructions." It also requires that the Hospital representative sign a statement certifying they are familiar with the laws and regulations regarding the provisions of health care services and that the services identified in this cost report were provided in compliance with such laws and regulations. [App. 54a-67a]

Federal Guarantee Loans. The HEAM took Federal Guarantee Loans that prevent prohibited from discriminating by Creed

HEAM acquired two types of hospital modernization loans:

A. Loan from the Hospital Survey and Construction Act [Hill-Burton], in the years 1960, id. number 720025; 42 C.F.R. § 53.112, U.S. v. Blackstone Medical, Inc., 647 F.3d 377 (2011); 24 C.F.R. § 242.54; 42 U.S.C. § 300-6; U.S. v. Anderson, 605 F.3d 404 (2010); 45 C.F.R. § 87.1, non discrimination account of creed . . .

B. HEAM closed a loan from HUD in May 1983 financed or guaranteed by the U.S.A. Department of Housing of Urban Development [HUD]. Amount \$3,175,000.00. The number was 056-13005 and was for Modernization and construction of the Hospital [HEAM]. It

had outstanding balance years 1992, 1993 and 1994 of \$2,500,000.00. This is a violation of the Church amendment, 42 U.S.C. § 300(a)(7).

An assurance is requested under 42 C.F.R. § 53.112, U.S. Ex rel v. Unadilla Health Care Center, Inc., 2010 WL 146877, page 5.

42 C.F.R § 53.112 is a condition of payment exists to not discriminate by Creed, when statute requires an assurance . . .

According to the Rules of Evidence; Rule 901, Article IX, Authentication or Identifying Evidence § 901(b)(7)(B) supra; This Honorable Supreme Court can take knowledge of a letter from U.S. D.H.H.S. Dated July 21, 1997 addressed to Marilina Sierra, Financial Department Director of Auxilio Mutuo Hospital, making reference to Hill-Burton ID # 720025. Third paragraph, second sentence says:

“However, please be advised your facility’s Community Service obligation, as specified in Subpart G of the regulations, remains in effect in perpetuity.” (This part speaks about creed discrimination among others.) [Hill-Burton Act]. (App. 74a-75a).

As an example HEAM’s facilities, a patient name E.M. requested to be sterilized and consent. She gave a letter from the Mita Church. She has history of various medical conditions. In the written decision of HEAM protocol Ethics Committee to deny the request on a written letter by Sor Claribel Camacho HEAM nun (not a Doctor or nurse) wrote; to get her cesarean

at HEAM and sterilization at another hospital. (App. 71a-73a).

In order to HEAM not discriminate with a religious protocol it needs an affiliation with the Catholic Church and the religious affiliation be stated within the bylaws of the Medical Staff of HEAM. See Watkins v. Mercy Medical Hospital, 520 F.2d 894 (9th Cir. 1975), 11 Empl. Prac. Dec. P. 10, 671.

45 C.F.R. § 87.1(e) Discretionary Grants states:

“An organization that participates in programs funded by direct financial assistance from the Department shall not in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion . . . ”

When a government contract is tainted with a violation of a statute or regulation, courts are generally bound to strike down the illegal contract by declaring it “Void AB INITIO.”

It was a material fact because a condition of payment was within the Hospital Cost Reports and Providers Agreement [MEDICARE/MEDICAID CONTRACT – CMS 855-A]. Thompson v. Columbia/HCA Healthcare Corp., 125 F.3d 899, 902 (5th Cir. 1997).

The defendants had knowledge, knew, acted knowing or knowingly, it is formally alleged that defendants had actual knowledge of the information, acted in deliberate ignorance of the truth or falsity of the information or acted in reckless disregard of the truth or

falsity of the information, and require no proof of specific intent to defraud.

The Courts of Puerto Rico did not consider the fraud, in the misrepresentation of the HEAM before the State and Federal agencies [Rule 49.2 of the Code of Civil Procedures] The APPELLATE COURT OF P.R.; I also did not consider the new evidence that was obtained by the Freedom of Information Act [FOIA], because **no discovery was authorized, shared or permitted by HEAM.**

The State Courts in Puerto Rico failed by not considering that the HEAM Religious Protocol violates the Constitutional Right of patient to privacy. This right to privacy prohibits people in their civil character from interfering with or intruding the private areas of life of other people. It also involves the right not to interfere on intimate personal activities. It involves the right of marital, sexual, and matter of REPRODUCTION choice. This right involves the first Amendment, the Fourth Amendment and restrictions of the Constitution of the United States of America, in certain areas called penumbras. The right of people to decide whether they have children or not; the spacing between each child and the right to avoid them is a right of each individual and each couple. The religious protocol of HEAM violated the right to privacy. It places in the hands of third parties the intimate decision of whether they are sterilized or not and this solemn decision is protected by the Constitution.

Within the reproductive right are the cases of **Skinner v Oklahoma, 316 U. S. 535 (1942)**, on persons convicted of theft may be subject to surgical sterilization. In **Poe v Ullman, 367 U. S. 497(1961)**, which focuses on the right to privacy and with reference to the methods of birth control. In the case of **Loving v Virginia, 388 U. S. 1 (1967)**, invalidating the statute against interracial marriage. All these cases resolved by violation of the privacy rights.

CONCLUSION

“Whether as substantive due process or as Privacy, ‘fundamentality’ needs elaboration, especially with respect to the weight particular rights are to enjoy in the balance against public good. Justices Stone and Cardozo suggested that the freedom of speech, press and religion require extraordinary judicial protection against invasion even for the public good, because of their place at the foundations of democracy and because of the unreliability of the political process in regard to them.”

Louis Henkin, Privacy and Autonomy, 74 Colum. L. Rev. 1410, 1428-29 (1974).

Right of Privacy

“Over himself, over his own body and mind the individual is sovereign.”

John Stuart Mill.

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people. The law of privacy is permeated with conflicts, sometimes these conflicts pit privacy claims against other protected liberties. The greatest test of the Constitution commitment to privacy, arises in the context of governmental protection of Health and safety of people. The most serious threat to the individual's autonomy is the possibility that someone may penetrate the inner zone and learn his ultimate secrets, either by physical or by psychological means.

“Privacy is a special kind of independence, which can be understood as an attempt to secure autonomy in at least a few personal and spiritual concerns, if necessary in defiance of all pressures of modern society.”

Clinton Rossiter.

Most of all: in the legal theories HEAM and the State Courts of Puerto Rico authorities they try to demonstrate, they have failed to a basic principle of freedom in democracy with the decision not to grant Discovery violating the clause of “Due Process” protected by the Constitution of U.S.A.

For the above and foregoing reasons, Petitioner requests the granting of this Petition for Writ of Certiorari to the Supreme Court of Puerto Rico.

Respectfully submitted,

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