

CLERK OF COURT

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

BY: _____

2015 MAY 18 PM 3: 38

JESUS NICARDO M. FALCIS III,

Petitioner,

G.R. No. 217910

- versus -

CIVIL REGISTRAR-GENERAL,

Respondent.

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SUPREME COURT
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PETITION FOR CERTIORARI AND PROHIBITION

PETITIONER, through undersigned counsel, unto this Honorable Supreme Court, most respectfully states that:

PREFATORY STATEMENTS

"The Family Code provides that the "nature, consequences, and incidents [of marriage] are governed by law and not subject to stipulation," but this does not go as far as reaching into the choices of intimacy inherent in human relations. These choices form part of autonomy, protected by the liberty and human dignity clauses. Human dignity includes our choices of association, and we are as free to associate and identify as we are free not to associate or identify."¹

- Justice Marvic Leonen

¹ Mallilin vs. Jamesolamin, Dissenting Opinion, G.R. No. 192718, February 18, 2015.

“We do not doubt that a number of our citizens may believe that homosexual conduct is distasteful, offensive, or even defiant. They are entitled to hold and express that view. On the other hand, LGBTs and their supporters, in all likelihood, believe with equal fervor that relationships between individuals of the same sex are morally equivalent to heterosexual relationships. They, too, are entitled to hold and express that view. However, as far as this Court is concerned, our democracy precludes using the religious or moral views of one part of the community to exclude from consideration the values of other members of the community.”²

- Justice Mariano del Castillo

I.

NATURE OF PETITION

1. This is a Petition for CERTIORARI and PROHIBITION under Rule 65 of the 1997 Rules of Civil Procedure to:

1.1 NULLIFY the portions of Articles 1 and 2, which defines and limits marriage as between man and woman, of Executive Order 209, otherwise known as “The Family Code of the Philippines” (hereafter referred to as the “Family Code”) for violating Section 1 Article III and Section 3(1) Article XV of the 1987 Philippine Constitution; and

1.2 NULLIFY portions of Articles 46(4) and 55(6), which mentions lesbianism or homosexuality as grounds for annulment and legal separation, of the Family Code as a consequence of the unconstitutionality of Articles 1 and 2; and

1.3 PROHIBIT the Civil Registrar-General (hereafter referred to as “Respondent”) from enforcing the aforementioned portions of Articles 1 and 2 of the Family Code in processing applications for and in issuing marriage licenses against homosexual couples.

² Ang Ladlad LGBT Party vs. Commission on Elections, G.R. No.190582, April 8, 2010.

II.

THE PARTIES

2. PETITIONER is a taxpayer, a resident of Quezon City, and a citizen of the Republic of the Philippines. He, as an open and self-identified homosexual, is interested in the unconstitutionality of the provisions of the Family Code disallowing same-sex marriage. He may be served with summons and other processes of the Honorable Supreme Court through undersigned counsel.

3. The Respondent CIVIL REGISTRAR-GENERAL is a public officer tasked to carry out and administer the provisions of Commonwealth Act No. 3753, otherwise known as the "Civil Registry Law", and authorized to give orders and instructions to the local civil registrars with reference to the performance of their duties in processing applications for and in issuing marriage licenses. The CIVIL REGISTRAR-GENERAL may be served with summons at 3rd Floor, NSO-CVEA Building, East Avenue, Diliman, Quezon City.

III.

ANTECEDENT FACTS

4. On June 18, 1949, then President approved Republic Act No. 386, otherwise known as the "Civil Code of the Philippines" (the "Civil Code").

5. Articles 52,³ 53,⁴ and 54⁵ of the Civil Code did not define and limit marriage as between man and woman.

³ Article 52 of the New Civil Code states: "Marriage is not a mere contract but an inviolable social institution. Its nature, consequences and incidents are governed by law and not subject to stipulation, except that the marriage settlements may to a certain extent fix the property relations during the marriage"

⁴ Article 53 of the New Civil Code states: "No marriage shall be solemnized unless all these requisites are complied with:

- (1) Legal capacity of the contracting parties;
- (2) Their consent, freely given;
- (3) Authority of the person performing the marriage; and
- (4) A marriage license, except in a marriage of exceptional character"

⁵ Article 54 of the New Civil Code states: "Any male of the age of sixteen years or upwards, and any female of the age of fourteen years or upwards, not under any of the impediments mentioned in articles 80 to 84, may contract marriage"

6. On July 6, 1987, then President Corazon C. Aquino issued, under her legislative powers, Executive Order No. 209, otherwise known as the Family Code. The Family Code took effect on August 3, 1988.

7. Articles 1 and 2 of the Family Code repealed Articles 52, 53, and 54 of the Civil Code, thus changing and limiting the definition of marriage as between man and woman.

IV.

PROCEDURAL ISSUES

A. Jurisdiction

8. Petitioner submits that Article 1 and 2 of the Family Code violate the petitioner's constitutionally protected right to due process and equal protection, right to decisional privacy, and right to found a family in accordance with religious convictions.

9. Petitioner submits that this petition is cognizable by the Supreme Court under its power of traditional and expanded power of judicial review as conferred by Section 1 Article VIII of the Constitution and under its original jurisdiction as conferred by Section 5(1) Article VIII of the Constitution.

B. Propriety of Rule 65

10. Petitioner submits that using the procedural device of Rule 65 to assail the constitutionality of a statute is proper and appropriate given the absence of a specific remedial vehicle. This is supported by this Court's pronouncement in the case of *Magallona vs. Executive Secretary* where it said:

*"When this Court exercises its constitutional power of judicial review, however, we have, by tradition, viewed the writs of certiorari and prohibition as proper remedial vehicles to test the constitutionality of statutes."*⁶

11. This Honorable Court reiterated such rule recently in *Araullo vs. Executive Secretary* stating:

⁶ Prof. *Magallona vs. Executive Secretary Ermita*, G.R. No.187167, August 16, 2011.

“With respect to the Court, however, the remedies of certiorari and prohibition are necessarily broader in scope and reach, and the writ of certiorari or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1, supra.

Thus, petitions for certiorari and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.”⁷

12. Justice Brion, in his Separate Opinion, further said:

“That Rule 65 of the Rules of Court has been expressly cited, to my mind, is not a hindrance to our present review as the allegations of the petitions and the remedies sought, not their titles, determine our jurisdiction in the exercise of the power of judicial review.”⁸

13. Petitioner respectfully submits that until this Honorable Court crafts a specific remedial vehicle under its constitutional rule-making powers, availing of Rule 65 to assail the constitutionality of statutes is proper and appropriate.

C. Requisites of Judicial Review

14. Petitioner submits that the requisites for this Court’s exercise of the power of judicial review exist, whether under the traditional or expanded concept.

15. In Justice Brion’s Separate Opinion in the case of Araullo vs. Executive Secretary, he offered a “fresh” approach to this Court’s judicial power. He said:

“This Honorable Court under the 1987 Constitution possesses three powers:

⁷ Araullo vs. Aquino, G.R. No. 209287, July 1, 2014.

⁸ Ibid., Separate Opinion of Justice Brion.

(1) the traditional justiciable cases involving actual disputes and controversies based purely on demandable and enforceable rights;

(2) the traditional justiciable cases as understood in (1), but additionally involving jurisdictional and constitutional issues;

(3) pure constitutional disputes attended by grave abuse of discretion in the process involved or in their result/s.”⁹

16. Petitioner submits that the instant petition falls under the third (3rd) classification pointed out by Justice Brion.

17. Assuming arguendo that the instant petition does not fall under the expanded power of judicial review, Petitioner submits that the requisites for judicial review still exists even under the traditional power of judicial review.

i. Expanded power of Judicial Review

18. The third (3rd) classification of the “fresh” approach requires two essential requisites:

“[F]irst, they must demonstrate a prima facie showing of grave abuse of discretion on the part of the governmental body’s actions; and second, they must prove that they relate to matters of transcendental importance to the nation.”¹⁰

1. Prima facie case of Grave Abuse of Discretion

19. Prima facie evidence is defined as:

“Evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party’s claim or defense, and which if not rebutted or contradicted, will remain sufficient. Evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence.”¹¹

⁹ Ibid.

¹⁰ Ibid.

¹¹ Wa-Acon vs. People of the Philippines, G.R. No. 164575, December 6, 2006.

20. Petitioner submits that a prima facie case of grave abuse of discretion exists in the passage of Articles 1 and 2 of the Family Code. Limiting the definition of marriage as between man and woman is, on its face, a grave abuse of discretion because of the following facts:

20.1 The 1987 Philippine Constitution does not define marriage solely as between man and woman.¹²

20.2 The Family Code does not require married individuals to procreate or have the ability to procreate.¹³ The law allows impotency, which refers to the inability to copulate or have sexual intercourse, as a ground for annulment¹⁴ of marriage but not sterility, which refers to the inability to procreate. Old men and women who are sterile are allowed to marry and are not allowed to annul their marriage on the ground of sterility.

20.3 Homosexuals ordinarily are not impotent. While same-sex couples cannot biologically procreate together, they are ordinarily not sterile. Even if assuming homosexuals can be classified as a group as sterile, they are not prohibited by Philippine law on domestic adoption¹⁵ and inter-country adoption¹⁶ from individually adopting children.

20.4 Heterosexuals are no better parents than homosexuals. Stated otherwise, homosexuals aren't necessarily worse parents than heterosexuals. Homosexuals can raise children well in the same manner that heterosexuals can. While there is no assurance that gays will not be bad or incompetent parents, there is also no assurance that heterosexuals will not be bad or incompetent parents. This Honorable Court itself has stated that:

*"Sexual preference or moral laxity alone does not prove parental neglect or incompetence."*¹⁷

20.5 Homosexual men and women are ordinarily attracted to the same-sex in the same way that heterosexual men and women are ordinarily attracted to the opposite-sex. Gay

¹² Section 2 Article XV.

¹³ Articles 2 and 3 of the Family Code.

¹⁴ Article 45(5) of the Family Code.

¹⁵ Republic Act No. 8552 or the Domestic Adoption Act of 1998.

¹⁶ Republic Act No. 8043 or the Inter Adoption Act of 1995.

¹⁷ Gualberto vs. Gualberto V, G.R. No. 154994, June 28, 2005.

individuals are human beings who can love another person just like straight individuals.

20.6 Heterosexuals who enter marriage after committing to or to commit to a long-term monogamous relationship are no different from homosexuals, who can enter into long-term monogamous relationships as well. Both straight and gay couples have the same chances of breaking up or falling out of love.

2. Transcendental Importance

21. Petitioner submits that the instant petition raises issues of transcendental importance.

22. Lesbian and gay Filipinos, who are citizens just as much as straight Filipinos, are relegated to 2nd-class citizens. The United Nations Development Programme and the United States Agency for International Development identified the effects of the unequal treatment of lesbian, gay, bisexual, and transgender (hereafter referred to as “LGBT”) Filipinos in our marital laws and said:

“Without the right to marry, LGBT Filipinos are treated unequally in a whole host of ways in comparison to heterosexual married couples. There remain no clear rights for either spouse in same-sex and transgender-heterosexual partnerships regarding hospital and prison visitations, making medical and burial decisions, transfer of joint properties, custody of children, insurance benefits, and other privileges accorded to married and unmarried opposite-sex couples. Similarly, government-managed social security and health insurance are not awarded to the surviving spouse of a deceased same-sex partner.”¹⁸

23. Petitioner further submits that homosexuals are deprived of their right to due process and equal protection, the right to decisional and marital privacy, and the right to found a family in accordance with their religious or irreligious convictions.

24. The right of individuals, homosexual or heterosexual, to choose the person he or she wants to have a relationship with and consequently have that relationship legally recognized with all concomitant the rights and obligations is a private decision for individuals to make, not the State. This Honorable Court itself recognized the right to marital privacy when it said:

¹⁸ UNDP, USAID (2014). Being LGBT in Asia: The Philippines Country Report. Bangkok.

“Motives for entering into a marriage are varied and complex. The State does not and cannot dictate on the kind of life that a couple chooses to lead. Any attempt to regulate their lifestyle would go into the realm of their right to privacy and would raise serious constitutional questions. The right to marital privacy allows married couples to structure their marriages in almost any way they see fit, to live together or live apart, to have children or no children, to love one another or not, and so on.”¹⁹

25. Lastly, Petitioner submits that the instant petition raises an issue of transcendental importance to the nation because of the millions of LGBT Filipinos all over the country who are deprived from marrying the one they want or the one they love. They are discouraged and stigmatized from pursuing same-sex relationships to begin with. Those who pursue same-sex relationships despite the stigma are deprived of the bundle of rights that flow from a legal recognition of a couple’s relationship – visitation and custody rights, property and successional rights, and other privileges accorded to opposite-sex relationships.

ii. Traditional power of Judicial Review

26. Assuming arguendo that the instant petition does not invoke this Honorable Court’s expanded power of judicial review, Petitioner submits that the requisites for the exercise of the traditional power of judicial review exist.

27. The requisites for the exercise of the traditional power of judicial review are:

“1) there must be an actual case or controversy calling for the exercise of judicial power;

(2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;

(3) the question of constitutionality must be raised at the earliest opportunity; and

¹⁹ Republic of the Philippines vs. Albios, G.R. No. 198780, October 16, 2013.

(4) the issue of constitutionality must be the very lis mota of the case.”²⁰

28. Petitioner submits that there is an actual case calling for the exercise of judicial power. Citing the case of *Pimentel vs. Aguirre*, this Honorable Court reiterated that:

“When an act of the legislative department is seriously alleged to have infringed the Constitution, settling the controversy becomes the duty of this Court. By the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act.”²¹

29. Petitioner submits that he has standing to question the Family Code. This Honorable Court explained that:

“The question on legal standing is whether such parties have alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.”²²

30. Petitioner has a personal stake in the outcome of this case. Petitioner is an open and self-identified homosexual. Petitioner has sustained direct injury as a result of the prohibition against same-sex marriages. Petitioner has grown up in a society where same-sex relationships are frowned upon because of the law’s normative impact. Petitioner’s ability to find and enter into long-term monogamous same-sex relationships is impaired because of the absence of a legal incentive for gay individuals to seek such relationship.

31. Petitioner has currently no plans to settle down in any other country except the Philippines, where he exercises his profession. The prohibition against the right to marry the same-sex injures Petitioner’s plans to settle down and have a companion for life in his beloved country. A favorable or unfavorable outcome of this case will heavily influence Petitioner’s decision to stay or migrate to a more LGBT friendly country.

²⁰ *Biraogo vs. Philippine Truth Commission*, G.R. Nos. 192935, December 7, 2010.

²¹ *La Bugal-B’laan Tribal Association, Inc. vs. Ramos*, G.R. No. 127882, December 1, 2004.

²² *Araullo vs. Aquino*, G.R. No. 209287, July 1, 2014.

32. Petitioner submits that the question of constitutionality has been raised at the earliest opportunity. This Honorable Court explained that raising a constitutional issue at the earliest opportunity:

“[E]ntails the interposition of the issue in the pleadings before a competent court, such that, if the issue is not raised in the pleadings before that competent court, it cannot be considered at the trial and, if not considered in the trial, it cannot be considered on appeal.”²³

33. Petitioner submits that he has raised the issue of constitutionality in this pleading before a competent court. Direct recourse to this Honorable Court is justified by the transcendental importance of the issues raised and the absence of necessity for trial to obtain facts required to decide the issues raised.

34. Petitioner submits that the issue of constitutionality is the very *lis mota* of the instant petition. This Honorable Court explained that *lis mota* means:

“that the Court will not pass upon a question of unconstitutionality, although properly presented, if the case can be disposed of on some other ground, such as the application of the statute or the general law. The petitioner must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined.”²⁴

35. Petitioner submits that the instant petition cannot be disposed of on some other ground. There is no other way to determine whether the Petitioner should be prohibited from having the legal opportunity to pursue same-sex marriage except by resolving the constitutional anchor of Articles 1 and 2 of the Family Code.

D. Applicability of the rule on Facial Challenge

36. Petitioner submits that the Family Code is facially invalid and may be facially challenged. This Honorable Court has said that:

“The rule established in our jurisdiction is, only statutes on free speech, religious freedom, and other fundamental rights may be facially challenged.”²⁵

²³ Serrano vs. Gallant Maritime Services, Inc., G.R. No. 167614, March 24, 2009.

²⁴ Congressman Garcia vs. Executive Secretary, G.R. No. 157584, April 2, 2009.

²⁵ Romualdez vs. Commission on Elections, G.R. No. 167011, December 11, 2008.

37. In the case of Imbong vs. Ochoa, this Honorable Court reiterated the rule in Romualdez saying:

“In this jurisdiction, the application of doctrines originating from the U.S. has been generally maintained, albeit with some modifications. While this Court has withheld the application of facial challenges to strictly penal statutes, it has expanded its scope to cover statutes not only regulating free speech, but also those involving religious freedom, and other fundamental rights.”²⁶

38. Petitioner submits that Articles 1 and 2 of the Family Code regulates fundamental rights such as the right to due process and equal protection, right to decisional and marital privacy, and the right to found a family in accordance with religious convictions. Thus, Petitioner submits that a facial challenge is proper.

39. Petitioner submits that the violation of the right to privacy has been recognized by this Honorable Court as a right that triggers a facial challenge. In Ople vs. Torres, this Honorable Court said:

“A.O. No. 308 [...] cannot pass constitutional muster as an administrative legislation because facially it violates the right to privacy.”²⁷

²⁶ Imbong vs. Executive Secretary Ochoa, G.R. No. 204819, April 8, 2014.

²⁷ Ople vs. Torres, G.R. No. 127685, July 23, 1998.

V.

LEGAL ARGUMENTS

A.

THE FAMILY CODE, IN DEFINING AND LIMITING MARRIAGE AS BETWEEN MAN AND WOMAN, IS UNCONSTITUTIONAL BECAUSE IT DEPRIVES PETITIONER AND OTHER HOMOSEXUALS THE RIGHT TO LIBERTY WITHOUT SUBSTANTIVE DUE PROCESS OF LAW;

B.

THE FAMILY CODE, IN DEFINING AND LIMITING MARRIAGE AS BETWEEN MAN AND WOMAN, IS UNCONSTITUTIONAL BECAUSE IT DENIES PETITIONER AND OTHER HOMOSEXUALS THE EQUAL PROTECTION OF THE LAWS;

C.

THE FAMILY CODE, IN DEFINING AND LIMITING MARRIAGE AS BETWEEN MAN AND WOMAN, IS UNCONSTITUTIONAL BECAUSE IT VIOLATES SEC. 3(1) ART. XV OF THE 1987 PHILIPPINE CONSTITUTION.

VI.

DISCUSSION

A. THE FAMILY CODE, IN DEFINING AND LIMITING MARRIAGE AS BETWEEN A MAN AND A WOMAN, IS UNCONSTITUTIONAL BECAUSE IT DEPRIVES PETITIONER AND OTHER HOMOSEXUALS THE RIGHT TO LIBERTY WITHOUT SUBSTANTIVE DUE PROCESS OF LAW.

40. Petitioner submits that applying the strict scrutiny test, Articles 1 and 2 of the Family Code is unconstitutional because there is no rational nexus between the means of limiting marriage to opposite-sex couples and the compelling state interest of protecting marriage as the foundation of the family.

41. Petitioner submits the strict scrutiny test is appropriate. This Honorable Court explained in the case of *White Light Corporation vs. City of Manila*:

“In terms of judicial review of statutes or ordinances, strict scrutiny refers to the standard for determining the quality and the amount of governmental interest brought to justify the regulation of fundamental freedoms. Strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection.”²⁸

42. Articles 1 and 2 of the Family Code regulate the right to decisional privacy, the right to marital privacy, and the right to found a family in accordance with religious convictions. Petitioner avers that such rights are fundamental rights.

43. Preliminarily, Petitioner avers that the presumption of constitutionality is reversed in cases where the strict scrutiny is applied. This Honorable Court has stated that:

²⁸ *White Light Corporation vs. City of Manila*, G.R. No. 122846, January 20, 2009.

*“The application of the strict scrutiny analysis to petitioners’ claims for provisional relief warrants the inevitable conclusion that the trial court cannot deny provisional relief to the party alleging a prima facie case alleging government infringement on the right to free expression without hearing from the infringer the cause why its actions should be sustained provisionally. Such acts of infringement are presumptively unconstitutional, thus the trial court cannot deny provisional relief outright since to do so would lead to the sustention of a presumptively unconstitutional act. It would be necessary for the infringer to appear in court and somehow rebut against the presumption of unconstitutionality for the trial court to deny the injunctive relief sought for in cases where there is a prima facie case establishing the infringement of the right to free expression.”*²⁹

44. Proceeding to the application, for a statute to pass the strict scrutiny test under substantive due process, this Honorable Court explained in the case of *City of Manila vs. Laguio, Jr.* that:

*“[I]f it is an area where strict scrutiny is used, such as for protecting fundamental rights, then the government will meet substantive due process only if it can prove that the law is necessary to achieve a compelling government purpose.”*³⁰

45. Petitioner submits that the compelling state interest is the protection of marriage as the foundation of the family as provided by Section 2, Article XV of the Constitution.³¹ The presence of a state interest is complied with if it is laid down by the Constitution itself. This Honorable Court, speaking through Justice Cruz, in the case of *Association of Small Landowners vs. Secretary of Agrarian Reform* explained:

*“As the subject and purpose of agrarian reform have been laid down by the Constitution itself, we may say that the first requirement has been satisfied. What remains to be examined is the validity of the method employed to achieve the constitutional goal.”*³²

²⁹ *Newsounds Broadcasting Network Inc. vs. Dy*, G.R. No. 170270 & 179411, April 2, 2009.

³⁰ *City of Manila vs. Laguio, Jr.*, G.R. No. 118127, April 12, 2005.

³¹ Section 2, Article XV states: “Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.”

³² *Association of Small Landowners vs. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989.

46. Even though a compelling state interest exists, Petitioner submits that the provisions of the Family Code limiting marriage as between a man and a woman is not necessary to achieve such interest. To emphasize, the state interest is the protection of marriage as the foundation of the family and not the protection of heterosexual relationships per se.

47. What is a family? According to Black's Law Dictionary, a family is a collective body of persons who live in one house and under one head or management.³³ Merriam Webster defines family as a group of people who are related to each other.³⁴

48. Petitioner emphatically avers that homosexuals are people or persons like heterosexuals who can be a part of a family and contribute to that family. Homosexuals are born out of a family and grow up in a family. Homosexuals can leave their family and found their own family. Same-sex couples who live in one house constitute a family. Same-sex couples can formally adopt children as individuals under Philippine law or informally adopt children jointly, either of which is a family according to the definition of Black's Law Dictionary.

49. Aside from the ability to found and constitute a family, Petitioner submits that homosexuals just like heterosexuals can fulfill the essential marital obligations laid down by the Family Code, as identified by this Honorable Court in the case of Republic vs. Court of Appeals³⁵, namely:

49.1 The obligation to live together, observe mutual love, respect and fidelity, and render mutual help and support.³⁶

49.2 The obligation to fix the family domicile.³⁷

49.3 The obligation to support the family and pay the expenses for such support and other conjugal obligations.³⁸

49.4 The obligations in regard to parents and their children as stated in Articles 220, 221, and 225 of the Family Code.

³³ Black's Law Dictionary 2nd Edition Online, <http://thelawdictionary.org/family/>, last accessed on May 18, 2015.

³⁴ Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/family>, last accessed on May 18, 2015.

³⁵ Republic vs. Court of Appeals and Molina, G.R. No. 108763, February 13, 1997.

³⁶ Article 68 of the Family Code.

³⁷ Article 69 of the Family Code.

³⁸ Article 70 of the Family Code.

50. Petitioner submits that homosexuals can fulfill the essential marital obligations regardless whether it is as between the spouses or as between the parents and their children.

51. To reiterate, as aforementioned, the Family Code does not require married individuals to procreate or have the ability to procreate. There is no legal requirement in any Philippine law for married couples to have children before entering marriage or during its subsistence.

52. Petitioner is aware that this Honorable Court has stated that procreation is one of the essential marital obligations under the Family Code in the case of *Chi Ming Tsoi vs. Court of Appeals*, where it stated:

*“Evidently, one of the essential marital obligations under the Family Code is ‘[t]o procreate children based on the universal principle that procreation of children through sexual cooperation is the basic end of marriage.’”*³⁹

53. Petitioner respectfully submits that such declaration of this Honorable Court is without legal basis and is *obiter dictum*. No such obligation can be found in the Family Code or in any Philippine law.

54. Assuming arguendo that married couples are required, Petitioner respectfully points out, as aforementioned, that homosexuals are not prohibited by Philippine law on domestic adoption⁴⁰ and inter-country adoption⁴¹ from adopting children.

55. Also, again, heterosexuals are no better parents than homosexuals. Stated otherwise, homosexuals aren’t necessarily worse parents than heterosexuals. Homosexuals can raise children well in the same manner that heterosexuals can. While there is no assurance that gays will not be bad or incompetent parents, there is also no assurance that heterosexuals will not be bad or incompetent parents. This Honorable Court itself has stated that:

*“Sexual preference or moral laxity alone does not prove parental neglect or incompetence.”*⁴²

³⁹ *Chi Ming Tsoi vs. Court of Appeals*, G.R. No. 119190, January 16, 1997.

⁴⁰ Republic Act No. 8552 or the Domestic Adoption Act of 1998.

⁴¹ Republic Act No. 8043 or the Inter Adoption Act of 1995.

⁴² *Gualberto vs. Gualberto V*, G.R. No. 154994, June 28, 2005.

56. Thus, Petitioner submits that homosexuals and same-sex couples DO NOT and CANNOT HARM the institution of marriage. In fact, homosexuals and same-sex couples can serve to forward the State's compelling interest in protecting and strengthening the family as a basic autonomous social institution.¹³ Consequently, there is NO NECESSITY to limit marriage as between a man and a woman to protect and strengthen the family. There is actually a necessity to allow same-sex marriage.

57. There being no necessity to limit marriage to opposite-sex couples, there is no rational nexus or relation of the means of limiting marriage as between a man and a woman to the compelling state interest of protecting marriage as the foundation of the family. Thus, Articles 1 and 2 of the Family Code are UNCONSTITUTIONAL for depriving Petitioner of his right to liberty without substantive due process of law.

B. THE FAMILY CODE, IN
DEFINING AND LIMITING
MARRIAGE AS BETWEEN MAN
AND WOMAN, IS
UNCONSTITUTIONAL BECAUSE
IT DENIES PETITIONER AND
OTHER HOMOSEXUALS THE
EQUAL PROTECTION OF THE
LAWS;

58. Petitioner submits that applying the strict scrutiny test, Articles 1 and 2 of the Family Code are unconstitutional because the classification of same-sex and opposite-sex couples is not necessary to achieve a compelling state interest of protecting marriage as the foundation of the family.

59. Alternatively, assuming that the rational basis test is applicable, Petitioner submits that Articles 1 and 2 of the Family Code are still unconstitutional because there is no substantial distinction between same-sex and opposite-sex couples and the classification is not applied equally to all members of the same class.

i. Strict scrutiny test

60. Petitioner submits the strict scrutiny test is appropriate. This Honorable Court explained in the case of *White Light Corporation vs. City of Manila*:

¹³ Section 12, Article II states: "The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution."

*“Congress retains its wide discretion in providing for a valid classification, and its policies should be accorded recognition and respect by the courts of justice except when they run afoul of the Constitution. The deference stops where the classification violates a fundamental right, or prejudices persons accorded special protection by the Constitution. When these violations arise, this Court must discharge its primary role as the vanguard of constitutional guaranties, and require a stricter and more exacting adherence to constitutional limitations. Rational basis should not suffice.”*⁴⁴

61. Classifying legally capacitated and consenting adults into same-sex and opposite-sex couples violate decisional and marital privacy. The decision who to marry is a fundamental right, thus strict scrutiny test is appropriate.

62. Furthermore, strict scrutiny is appropriate when the classification is considered suspect. This Honorable Court explained in the case of *Serrano vs. Gallant Maritime Services, Inc.*:

*“The Court has in a way found the strict scrutiny standard, an American constitutional construct, useful in determining the constitutionality of laws that tend to target a class of things or persons. According to this standard, a legislative classification that impermissibly interferes with the exercise of fundamental right or operates to the peculiar class disadvantage of a suspect class is presumed unconstitutional. The burden is on the government to prove that the classification is necessary to achieve a compelling state interest and that it is the least restrictive means to protect such interest.”*⁴⁵

63. Petitioner submits that classifying individuals by sexual orientation and gender, so as to distinguish between same-sex and opposite-sex couples, is a suspect classification.

64. Former Chief Justice Reynato Puno imported into Philippine jurisprudence the factors that the United States Supreme Court takes into account in assessing whether or not a classification is suspect. In the case of *Ang Ladlad vs. COMELEC*, former Chief Justice Puno explained in his Separate Concurring Opinion:

⁴⁴ *Central Bank Employees Association, Inc. vs. Bangko Sentral ng Pilipinas*, G.R. No. 148208, December 15, 2004.

⁴⁵ *Serrano vs. Gallant Maritime Services, Inc.*, G.R. No. 167614, March 24, 2009.

“Instead of adopting a rigid formula to determine whether certain legislative classifications warrant more demanding constitutional analysis, the United States Supreme Court has looked to four factors, thus:

(1)The history of invidious discrimination against the class burdened by the legislation;

(2)Whether the characteristics that distinguish the class indicate a typical class member's ability to contribute to society;

(3)Whether the distinguishing characteristic is ‘immutable’ or beyond the class members' control; and

(4)The political power of the subject class.”⁴⁶

65. Former Chief Justice Puno, looking into the four factors, found that state action singling out homosexuals or homosexuality warrant a heightened judicial scrutiny. Looking into the first factor, he finds:

“The first consideration is whether homosexuals have suffered a history of purposeful unequal treatment because of their sexual orientation. One cannot, in good faith, dispute that gay and lesbian persons historically have been, and continue to be, the target of purposeful and pernicious discrimination due solely to their sexual orientation. Paragraphs 6 and 7 of Ang Ladlad’s Petition for Registration for party-list accreditation in fact state:

6. There have been documented cases of discrimination and violence perpetuated against the LGBT Community, among which are:

(a) Effeminate or gay youths being beaten up by their parents and/or guardians to make them conform to standard gender norms of behavior;

(b) Fathers and/or guardians who allow their daughters who are butch lesbians to be raped[, so as] to “cure” them into becoming straight women;

⁴⁶ Ang Ladlad LGBT Party vs. Commission on Elections, Separate Concurring Opinion of Chief Justice Puno, G.R. No.190582, April 8, 2010.

(c) Effeminate gays and butch lesbians are kicked out of school, NGOs, and choirs because of their identity;

(d) Effeminate youths and masculine young women are refused admission from (sic) certain schools, are suspended or are automatically put on probation;

(e) Denial of jobs, promotions, trainings and other work benefits once one's sexual orientation and gender identity is (sic) revealed;

(f) Consensual partnerships or relationships by gays and lesbians who are already of age, are broken up by their parents or guardians using the [A]nti-kidnapping [L]aw;

(g) Pray-overs, exorcisms, and other religious cures are performed on gays and lesbians to "reform" them;

(h) Young gays and lesbians are forcibly subjected to psychiatric counseling and therapy to cure them[,] despite the de-listing (sic) of homosexuality and lesbianism as a mental disorder by the American Psychiatric Association;

(i) Transgenders, or individuals who were born male but who self-identity as women and dress as such, are denied entry or services in certain restaurants and establishments; and

(j) Several murders from the years 2003-2006 were committed against gay men, but were not acknowledged by police as hate crimes or violent acts of bigotry.

7. In the recent May 2009 US asylum case of Philip Belarmino, he testified that as a young gay person in the Philippines, he was subjected to a variety of sexual abuse and violence, including repeated rapes[,] which he could not report to [the] police [or speak of] to his own parents

Accordingly, this history of discrimination suggests that any legislative burden placed on lesbian and gay people as a class is "more likely than others to reflect deep-seated prejudice rather than legislative rationality in pursuit of some legitimate objective."¹⁷

66. Moving into the second factor, former Chief Justice Puno finds that homosexuality is not related or relevant to a person's ability to contribute to society.

"A second relevant consideration is whether the character-in-issue is related to the person's ability to contribute to society. Heightened scrutiny is applied when the classification bears no relationship to this ability; the existence of this factor indicates the classification is likely based on irrelevant stereotypes and prejudice. Insofar as sexual orientation is concerned, it is gainful to repair to *Kerrigan v. Commissioner of Public Health*, viz.:

The defendants also concede that sexual orientation bears no relation to a person's ability to participate in or contribute to society, a fact that many courts have acknowledged, as well. x x x If homosexuals were afflicted with some sort of impediment to their ability to perform and to contribute to society, the entire phenomenon of 'staying in the [c]loset' and of 'coming out' would not exist; their impediment would betray their status. x x x In this critical respect, gay persons stand in stark contrast to other groups that have been denied suspect or quasi-suspect class recognition, despite a history of discrimination, because the distinguishing characteristics of those groups adversely affect their ability or capacity to perform certain functions or to discharge certain responsibilities in society.

Unlike the characteristics unique to those groups, however, "homosexuality bears no relation at all to [an] individual's ability to contribute fully to society." Indeed, because an individual's homosexual orientation "implies no impairment in judgment, stability, reliability or general social or vocational capabilities"; the observation of the United States Supreme Court that race, alienage and national origin -all suspect classes entitled to the highest level of constitutional protection- "are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect

¹⁷ Ibid.

prejudice and antipathy" is no less applicable to gay persons. (italics supplied)

*Clearly, homosexual orientation is no more relevant to a person's ability to perform and contribute to society than is heterosexual orientation."*⁴⁸

67. Going further into the third factor, former Chief Justice Puno finds that homosexuality is so central to the identity of gays and lesbians that to penalize persons for it would be abhorrent.

"A third factor that courts have considered in determining whether the members of a class are entitled to heightened protection for equal protection purposes is whether the attribute or characteristic that distinguishes them is immutable or otherwise beyond their control. Of course, the characteristic that distinguishes gay persons from others and qualifies them for recognition as a distinct and discrete group is the characteristic that historically has resulted in their social and legal ostracism, namely, their attraction to persons of the same sex.

Immutability is a factor in determining the appropriate level of scrutiny because the inability of a person to change a characteristic that is used to justify different treatment makes the discrimination violative of the rather "basic concept of our system that legal burdens should bear some relationship to individual responsibility." However, the constitutional relevance of the immutability factor is not reserved to those instances in which the trait defining the burdened class is absolutely impossible to change. That is, the immutability prong of the suspectness inquiry surely is satisfied when the identifying trait is "so central to a person's identity that it would be abhorrent for government to penalize a person for refusing to change [it]."

Prescinding from these premises, it is not appropriate to require a person to repudiate or change his or her sexual orientation in order to avoid discriminatory treatment, because a person's sexual orientation is so integral an aspect of one's identity. Consequently, because sexual orientation "may be altered [if at all] only at the expense of significant damage to the individual's sense of self," classifications based thereon "are no less entitled to consideration as a suspect or quasi-suspect class than any other group that has been deemed to exhibit an immutable characteristic." Stated differently, sexual orientation is

⁴⁸ Ibid.

not the type of human trait that allows courts to relax their standard of review because the barrier is temporary or susceptible to self-help.”⁴⁹

68. Finally, looking into the fourth factor, former Chief Justice Puno finds that lesbians and gays are a small and insular minority.

“The final factor that bears consideration is whether the group is “a minority or politically powerless.” However, the political powerlessness factor of the level-of-scrutiny inquiry does not require a showing of absolute political powerlessness. Rather, the touchstone of the analysis should be “whether the group lacks sufficient political strength to bring a prompt end to the prejudice and discrimination through traditional political means.”

Applying this standard, it would not be difficult to conclude that gay persons are entitled to heightened constitutional protection despite some recent political progress. The discrimination that they have suffered has been so pervasive and severe – even though their sexual orientation has no bearing at all on their ability to contribute to or perform in society – that it is highly unlikely that legislative enactments alone will suffice to eliminate that discrimination. Furthermore, insofar as the LGBT community plays a role in the political process, it is apparent that their numbers reflect their status as a small and insular minority.”

⁵⁰

69. Former Chief Justice Puno concludes that state action classifying homosexuals or individuals on the basis of sexual orientation is a quasi-suspect classification that requires intermediate review.

“Guided by this framework, and considering further that classifications based on sex or gender – albeit on a male/female, man/woman basis – have been previously held to trigger heightened scrutiny, I respectfully submit that classification on the basis of sexual orientation (i.e., homosexuality and/or bisexuality) is a quasi-suspect classification that prompts intermediate review.”⁵¹

70. Petitioner respectfully disagrees with the former Chief Justice’s conclusion. Petitioner respectfully submits to this Honorable Court that based on the four factors in assessing classifications, the appropriate conclusion is

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

that classifications on the basis of sexual orientation is a suspect classification that requires strict scrutiny.

71. Classifications on the basis of sexual orientation are suspect because it is almost always arbitrary and unreasonable. There is nothing in one's sexual orientation that would be relevant to a person's ability to contribute to society. Sexual orientation by itself is not debilitating to a person's ability to function.

72. Sexual orientation is an immutable trait. The Separate Concurring Opinion of former Chief Justice Puno implies that sexuality can be changed or altered, only that it is abhorrent to penalize persons for refusing to change it because it is central to a person's identity. Petitioner emphatically avers that sexuality is wholly, totally, and absolutely immutable. Homosexual individuals cannot change or choose who they are sexually attracted to. Lesbians and gays cannot choose to be straight in the same way that heterosexuals or straight individuals cannot choose to be gay.

73. Sexuality as a choice or preference is an illusion. While any individual can choose to have sex with any individual of the same or opposite sex, they cannot choose who they have feelings of sexual attraction with, such as butterflies in the stomach or erotic arousal. If a gay person is sexually attracted to a woman and ends up having sex with a woman, he is better called a bisexual rather than as having "chosen to change sexuality".

74. Thus, classifications on the basis of sexual orientation are suspect because such classifications are often meaningless and ultimately unfair.

75. In summary, Articles 1 and 2 of the Family Code trigger a strict judicial scrutiny because it violates the fundamental rights to decisional and marital privacy and because it created a suspect classification.

76. Applying the strict scrutiny test, Petitioner submits that Articles 1 and 2 of the Family Code are unconstitutional because the classification is not necessary to achieve a compelling state interest.

77. As aforementioned in the 1st legal argument regarding the Due Process Clause, homosexuals and same-sex couples DO NOT and CANNOT HARM the institution of marriage and the State's compelling interest in protecting marriage as the foundation of the family. Thus, Articles 1 and 2 of the Family Code fail to pass the strict scrutiny test.

ii. Rational basis test

78. Assuming *arguendo* that strict scrutiny test is not applicable, Petitioner submits that Articles 1 and 2 of the Family Code are still unconstitutional because there is no substantial distinction between same-sex and opposite-sex couples and the classification is not applied equally to all members of the same class of individuals who cannot procreate.

79. Under the rational basis test, a classification to be valid and constitutional must pass four standards. Citing the case of *People vs. Cayat*, this Honorable Court has consistently required that a classification:

- “(1) must rest on substantial distinctions;*
- (2) must be germane to the purposes of the law;*
- (3) must not be limited to existing conditions only; and*
- (4) must apply equally to all members of the same class.”⁵²*

80. Petitioner submits that Articles 1 and 2 of the Family Code fail the 1st and 4th requisites.

81. The classification of same-sex couples as a group that is denied marriage and of opposite-sex couples as a group that is allowed marriage does not rest on substantial distinctions. Gay couples can do everything that opposite-sex couples can do as required by the Family Code. Gay couples can live together, observe mutual love, respect and fidelity, and render mutual help and support.⁵³ Gay couples can fix the family domicile.⁵⁴ Gay couples can support the family and pay the expenses for such support and other conjugal obligations.⁵⁵

82. Assuming *arguendo* that same-sex couples are denied marriage because of their inability to procreate, the classification is not applied equally to all members of the same class. While all same-sex couples might not be able to naturally procreate, a portion of opposite-sex couples who are in their old age are sterile and cannot procreate as well. However, the law allows sterile opposite-sex couples to marry.

83. There being no rational basis in classifying same-sex couples as a group to protect marriage as the foundation of the family, Articles 1 and 2 of the Family Code are UNCONSTITUTIONAL for denying Petitioner of the equal protection of the laws.

⁵² *Biraogo vs. Philippine Truth Commission*, G.R. No. 192935, December 7, 2010.

⁵³ Article 68 of the Family Code.

⁵⁴ Article 69 of the Family Code.

⁵⁵ Article 70 of the Family Code.

C. THE FAMILY CODE, IN
DEFINING AND LIMITING
MARRIAGE AS BETWEEN MAN
AND WOMAN, IS
UNCONSTITUTIONAL BECAUSE
IT VIOLATES SEC. 3(1) ART. XV OF
THE 1987 PHILIPPINE
CONSTITUTION.

84. Petitioner submits that Articles 1 and 2 of the Family Code are contrary to Section 3(1) Article XV of the Constitution because it prohibits same-sex couples from founding a family through the vehicle of marriage in accordance with their religious convictions.

85. This Honorable Court has recognized Sec. 3(1) Art. XV of the Constitution as a source of rights specifically the right to marital privacy and autonomy. In the case of *Imbong vs. Ochoa*, this Court said:

“Petitioner CFC assails the RH Law because Section 23(a) (2) (i) thereof violates the provisions of the Constitution by intruding into marital privacy and autonomy. It argues that it cultivates disunity and fosters animosity in the family rather than promote its solidarity and total development.

The Court cannot but agree.

The 1987 Constitution is replete with provisions strengthening the family as it is the basic social institution. In fact, one article, Article XV, is devoted entirely to the family.”⁵⁶

86. Petitioner avers that individuals belonging to religious denominations that believe in same-sex marriage exist and are denied of the right to found a family in accordance with their religious convictions. Gay Christian Filipinos belonging to LGBTS Christian Church Inc.⁵⁷ or Metropolitan Community Church⁵⁸ believe in same-sex marriage.

⁵⁶ *Imbong vs. Executive Secretary Ochoa*, G.R. No. 204819, April 8, 2014.

⁵⁷ *LGBTS CHRISTIAN CHURCH INC.*, accessed on May 18, 2015, <https://lgbtschristianchurch.wordpress.com/>

⁵⁸ *LGBT Holy Union / Weddings - Metropolitan Community Church*, accessed on May 18, 2015, <http://mccmb.webs.com/lgbtholyunionweddings.htm>

87. Same-sex weddings have been held by members belonging to such Christian denominations from Baguio City⁵⁹ to Quezon City.⁶⁰ Such religious weddings have been denied recognition under civil law unlike the religious convictions of Catholics⁶¹ and Muslims.⁶²

88. Thus, Articles 1 and 2 of the Family Code are UNCONSTITUTIONAL for violating Section 3(1) Article XV of the Constitution.

⁵⁹ "10 couples exchange vows in Baguio's first same-sex wedding," *The Philippine Star*, accessed May 18, 2015, <http://www.philstar.com/headlines/699582/10-couples-exchange-vows-baguios-first-same-sex-wedding>.

⁶⁰ "Protestant church performs same-sex weddings in PHL," *GMA News Online*, accessed on May, 18 2015, <http://www.gmanetwork.com/news/story/224555/news/nation/protestant-church-performs-same-sex-weddings-in-phl>

⁶¹ Articles 1 and 2 of the Family Code of the Philippines.

⁶² Chapter Two Marriage (NIKAH), Code of Muslim Personal Laws of the Philippines.

RELIEF

WHEREFORE, in light of all the foregoing, Petitioner respectfully requests that the Honorable Court grant the Petition for Certiorari and Prohibition and declare Articles 1 and 2 of the Family Code as unconstitutional and, as a consequence, nullify Articles 46(4) and 55(6) of the Family Code.

Other just or equitable reliefs under the premises are likewise requested for.

Quezon City for the City of Manila, May 18, 2015.

Jesus Nicardo M. Falcis III
JESUS NICARDO M. FALCIS III

Counsel for Petitioner

Roll of Attorneys No. 64793

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CIVIL REGISTRAR-GENERAL

Public Respondent

3rd Floor, NSO-CVEA Building

East Avenue, Diliman, Quezon City



VERIFICATION
AND
CERTIFICATION OF NON-FORUM SHOPPING

I, JESUS NICARDO M. FALCIS III, of legal age, Filipino, after having been duly sworn in accordance with law, hereby depose and state that:

1. I am the petitioner in the instant case entitled "*Jesus Nicardo M. Falcis III vs. Civil Registrar-General*" that was filed before this Honorable Court.

2. I caused the preparation of the foregoing *Petition for Certiorari and Prohibition*.

3. I have read the said pleading and hereby aver that the allegations therein are true and correct of my personal knowledge or based on authentic records.

4. I have not commenced any other action or filed any claim involving the same issues in any court, tribunal, or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein.

5. If I should hereafter learn that the same or a similar action or claim has been filed or is pending before the Supreme Court, Court of Appeals, or any other tribunal or agency, I shall report such fact within five (5) days therefrom to this Honorable Court.

IN WITNESS WHEREOF, I have hereunto set our hand this 18th day of May 2015 in QUEZON CITY, Philippines.


JESUS NICARDO M. FALCIS III
Affiant

SUBSCRIBED AND SWORN to before me this 18th day of May 2015 at QUEZON CITY, affiant exhibiting his/her competent evidence of identity, to wit:

Name
Jesus Nicardo M. Falcis III

Identification Card

Valid until


Roll of Attorneys # 64723 and IBP Roll # 01371

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ATTY. ROMEO C. CRUZ
Notary Public for Quezon City, Until Dec. 31, 2015
Adm. Matter NP-004 (2014-2015) / Roll No. 31559
PTR O.R. No. 0558856, 1-5-2015, Q.C.
IBP O.R. No. 975559, 11-19-14, Q.C.
122 Alumni, Ctr. UP Dil., Tel No. 3523587
MCLE Compliance No. V-000116, Issued on 11-20-13

VERIFIED DECLARATION


I, JESUS NICARDO M. FALCIS III, of legal age, Filipino, after having been duly sworn in accordance with law, hereby declare that the document/s (and annexes thereof) hereto submitted electronically in accordance with the Efficient Use of Paper Rule is/are complete and true copy/ies of the document/s (and annexes) filed with the Supreme Court.


JESUS NICARDO M. FALCIS III
Affiant

SUBSCRIBED AND SWORN to before me this 18th day of May 2015 at QUEZON CITY, affiant exhibiting his/her competent evidence of identity, to wit:

Name	Identification Card	Valid until
Jesus Nicardo M. Falcis III	IBP Roll # 013716	

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ATTY. ROMEO C. CRUZ
Notary Public for Quezon City, Until Dec. 31, 2015
Adm. Matter NP-004 (2014-2015) / Roll No. 31559
PTR O.R. No. 0558856, 1-5-2015, Q.C.
IBP O.R. No. 975559, 11-19-14, Q.C.
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