

SEXUAL WHEREABOUTS: LIKE “ISLANDS IN THE STREAM”¹

Carmen M. Cusack

I. INTRODUCTION

A. Fact Pattern

A senior citizen, a lady named here Dianne W., grew to maturity with her husband, named here Sam G. He had toiled hard throughout their lives. She believed that he was incapable of immoral carnal knowledge. She made a model penal code for her legislature about sexual aggression, and she included excising verbiage to acknowledge him and years of loyalty. The legislature was prohibited in this statute—at least this one—from positing her husband to be a perpetrator—at least in this case against her. She genuinely thought that because they were one flesh spiritually and through their children, he was an upstanding

¹ Kenny Rogers & Dolly Parton, “Islands in the Stream,” *Eyes That See in the Dark* (1983). See *Café Bustelo* can.

lawmaker, and he was incapable of sexual immorality against her or any other being that he should *per se* be recognized in that capacity for his merit. He was her protector, not just the government, from impugment and immorality. He loved her. This Essay is about those like the officials using law to express and exhibit deeply rooted traditions in America.²

B. Essay Map

The Introduction section presents the legal issue, which is whether 11.407, a federal sexual assault rule, is like a model rule to protect marital partners.³ Section Two explains the rule. Section Three presents an analysis including a literature review considering heterosexual and homosexual examples of sexual affinity. Section Four concludes.

² This includes gender studies. *See* 25 CFR § 11.407 (2023).

³ 11.407 (2023).

C. Issue: Spouse's Conviction for Sexual Assault

The legal issue is why a spouse cannot be convicted of sexual assault under 11.407, a federal sexual assault law?⁴ The sociological question is why a spouse cannot commit sexual assault under 11.407?⁵ The answer presented in this Essay combines both fields. It is that the spouse's sexual whereabouts cannot be evidence of perpetration.⁶

Sexual whereabouts are the status of one's sexual person which is always with his or her spouse. The law describes that bond.⁷ Sexual whereabouts are observed within reasonable limits by the government in certain laws.⁸ The laws portray marriage bonds without intruding into the bond of marriage.⁹

The state regulates marriage, but yet certain federal statutes explain marital bonds, even in the absence of direct authority.¹⁰ Federal sexual assault statutes

⁴ 11.407 (2023).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* See Bill of Rights (1791).

¹⁰ 11.407 A(a)(1-8)-(b)(2023).

explain that sexual assault cannot be committed against the spouse, for example when described as offensive sexual contact, apart from a separate complaint not discussed here.¹¹

II. RULE

The rule at bar is the following:

A. § 11.407 Sexual assault.

(a) A person who has sexual contact with another person not his or her spouse, or causes such other person to have sexual contact with him or her, is guilty of sexual assault as a misdemeanor, if:

(1) He or she knows that the conduct is offensive to the other person; or

(2) He or she knows that the other person suffers from a mental disease or defect which

¹¹ *Id.*

renders him or her incapable of appraising the nature or his or her conduct; or

(3) He or she knows that the other person is unaware that a sexual act is being committed; or

(4) The other person is less than 10 years old; or

(5) He or she has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or

(6) The other person is less than 16 years old and the actor is at least four years older than the other person; or

(7) The other person is less than 21 years old and the actor is his or her guardian or otherwise responsible for general supervision of his or her welfare; or

(8) The other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him or her.

(b) Sexual contact is any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, or for the purpose of abusing, humiliating, harassing, or degrading the victim.

The rule is a federal rule.¹² It bears on all 50 states including Indian Country.¹³ The statute only applies to persons treated as Indians directly, but is treated as a model throughout the nation in this Essay.¹⁴ Generally,

¹² *Id.*

¹³ *Id.* U.S. CONST. am. X.

¹⁴ 11.407 (2023).

Native Americans have the same marital rights through state licensing schemes and this statute does not affect that.¹⁵ Conceptually, it is a positive description of marriage.¹⁶ Briefly, prior to the analysis it is noted not to be a statute designed to override protection.¹⁷

B. Ongoing Consent

The United States Constitution's Fifth Amendment is a federal law that recognizes the penumbras and emanations of due process constructing a right to privacy.¹⁸ States regulate morality and marriage,¹⁹ yet

¹⁵ *Id.*

¹⁶ Carmen M. Cusack, *A Feminist Inquiry into Intimate Partner Violence Law, Policy, Policing, and Possible Prejudices in Alaska*, 5 J. L & CONFLICT RES. 24 (2013).

¹⁷ *Id.*

¹⁸ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). U.S. Equal Employment Opportunity Commission (EEOC), Section 12: Religious Discrimination (Jan. 15, 2021), https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#_ftn22. “*EEOC v. Alamo Rent-A-Car, LLC*, 432 F. Supp. 2d 1006, 1012 (D. Ariz. 2006) (finding that it was Muslim employee’s sincerely held religious observance to wear headscarf during Ramadan, even though she did not wear it the rest of the year).” *Id.* at n. 49.

¹⁹ *See e.g. Wisconsin v. Yoder*, 406 U.S. 205 (1972) (while narrowly tailoring the state’s regulation and prohibitions, an application can be drawn to kinky sexual activity, for example nude cruising and *ménage à trois*). *See*, CARMEN M. CUSACK, *TWINS AND DEVIANCE: LAW, CRIME, SEX, SOCIETY, AND FAMILY* (2016).

the federal government protects the right to marry, have a spouse, be a spouse, and have sex as a spouse and with a spouse. When spouses do not privatize their conduct, for example experience love or become intimate, they may not fall under the right to privacy as it is traditionally understood; however, the First Amendment protects the acceptance of rites, such as marriage and conception,²⁰ by a person who holds a sincere religious belief in a *bona fide* religion.²¹ Even

²⁰ *Equal Employment Opportunity Commission (EEOC) v. Abercrombie & Fitch Stores*, 575 U.S. 768 (2015); *United States v. Seeger*, 380 U.S. 163, 166, 176 (1965); *Welsh v. United States*, 398 U.S. 333, 339 (1970); *Bushouse v. Local Union 2209, United Auto., Aerospace & Agric. Implement Workers of Am.*, 164 F. Supp. 2d 1066, 1076 n.15 (N.D. Ind. 2001); *Malnak v. Yogi*, 592 F.2d 197, 209-10 (3d Cir. 1979); *LaFevers v. Saffle*, 936 F.2d 1117 (10th Cir. 1991). *Fallon v. Mercy Cath. Med. Ctr.*, 877 F.3d 487, 490-91 (3d Cir. 2017).

²¹ EEOC, Section 12, Guidance.

The First Amendment religion and speech clauses provide that ‘Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech.’ [Religious Freedom Restoration Act] RFRA, 42 U.S.C. § 2000bb-1(a) and (b), provides: ‘Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability, except...if it demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.’ RFRA defines ‘government’ to include ‘a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States.’ *Id.*

where the government protects religious speech couching sex-related rites,²² under the Fifth Amendment sex partners have a right to deny, express, or imply consent and make it ongoing.²³

The 14th Amendment gives to citizens of the 50 states potential to use the same right to privacy guaranteed under the Fifth Amendment's substantive due process, a hardy Court-made framework.²⁴ Sex-

§ 2000bb-2(1). 'Although the claim is statutory, RFRA protects First Amendment free-exercise rights,' *Korte v. Sebelius*, 735 F.3d 654, 666 (7th Cir. 2013), because it was enacted in response to *Employment Division v. Smith*, 494 U.S. 872, 887 (1990), and designed to 'restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened.' 42 U.S.C.

§ 2000bb(b)(1). The First Amendment applies only to restrictions imposed by the government—federal or state—not by private parties. See *Cantwell v. Connecticut*, 310 U.S. 296 (1940). RFRA applies only to restrictions imposed by the federal government, not by state governments or private parties. See 42 U.S.C. § 2000bb-2(1); *City of Boerne v. Flores*, 521 U.S. 507 (1997); *Guam v. Guerrero*, 290 F.3d 1210 (9th Cir. 2002); [and] *Kikumura v. Hurley*, 242 F.3d 950 (10th Cir. 2001). *Id.* at 116.

²² Carmen M. Cusack, *To-Get-Her ForEVER: A Man Hater's Right to Same-Sex Marriage*, 10 J. L. & PUB. POL'Y 63 (2013).

²³ U.S. CONST. am. I and V.

²⁴ CARMEN M. CUSACK, LAWS RELATING TO SEX, PREGNANCY, AND INFANCY: ISSUES IN CRIMINAL JUSTICE (2015). CARMEN M. CUSACK, ILLICIT SEX WITHIN THE JUSTICE SYSTEM USING WEAK POWER TO LEGISLATE, REGULATE AND ENFORCE MORALITY (2017). CUSACK, TWINS AND DEVIANCE (2016).

related rites protected by the First Amendment may under the Fifth Amendment or 14th Amendment peculiarly be protected, such as some acts of legal sodomy, but normally under a religious auspices found in the First Amendment the believer may not protect unusual beliefs not anticipated by the religion to be protected under the First Amendment, such as a crime or spree involving sinful backsliding, denunciation, terror, and other varying degrees of rebellion against the religion.²⁵

An example comes from deep inside the religious community of America. Amish worshipers are zealots who use no electricity. They are pious abstainers. Amish rumspringa, a funny term meaning to run-around, has been compared to the likes of sodomy, an unfair comparison due to the term “rump.” To “spring” a rump means to have sex or enjoy entertainment involving a rump. However, this religious exception requires good behavior. This departure from the

²⁵ *But see* Kaitlin Stanford, *Tiktok Is Fascinated by Amish Teens’ Rumspringa Party: “I Feel Like I’m Watching Something Illegal,”* (Mar. 22, 2023), <https://www.intheknow.com/post/amish-teens-rumspringa-viral-tiktok/>. The question is “Are you behaving under God’s will for your life?”

religion is not a crime spree, which cannot be excused by the religion.²⁶ Therefore, sexual assault is not protected speech and activity or God's will. Sodomy takes several tacks in family law, which intersects with other laws, like the criminal code at bar.²⁷

Under the traditional notion of marriage and sex-related rites held by the government, a spouse may express or imply the withdraw of consent or use self-defense to avoid harm.²⁸ A spouse has a right under the state and federal regimes to stand his or her ground.²⁹

²⁶ The *Lemon-Kurtzman* Test holds that the state may not impermissibly choose a religion for the people under the First Amendment's Establishment Clause (*Lemon v. Kurtzman*, 403 U.S. 602 (1971)). The government's laws cannot excuse certain acts because the church does, or punish certain acts when the church chooses to punish people internally. Religions have taboo or prohibited actions, for example sin. Sin may be analogizable to crime. The first break of the rules may not be as severe in form or consequence as subsequent recidivism. Lifestyle choices may breakaway from religion and law. The state effectively may return people to secular and religious norms. Religious prison programs, for example, teach about forgiveness, second chances, and reform. Religious atonement may be consistent with the state's aims though the state does not force religious identity or true faith. There is no overlap where a part of a religion cannot be taught or practiced in prison, either because of the religion or the state. CARMEN M. CUSACK, *ANIMALS, DEVIANCE, AND SEX* (2015).

²⁷ 11.407 (2023).

²⁸ Carmen M. Cusack, *Nonconsensual Insemination: Intimate Partner Violence, Patriarchy, Police Education, and Policy*, 4 J. L. & SOC. DEVIANCE 171 (2012).

²⁹ See *id.* Carmen M. Cusack, *Blind Rhyme: The Reasonable Person Standard Violates the First Amendment*, 19 J. L. & SOC. DEVIANCE 3 (2020).

The Second Amendment is one rule cabining the scope of self-defense in the home during domestic violence.³⁰ A presumption exists under common law that the marriage will be consummated or it may be void or voidable.³¹ Some common law also maintains that partners must assume that they should conceive children or demonstrate reciprocal consent to enter into a childless marriage.³² Some rules require a demonstration of potential, such as fertility of both parties or an attempt to conceive and raise children, however short.

³⁰ Carmen M. Cusack, *Right to Food Not Arms: Beefing to Update Second Amendment Interpretation*, 17 J. L. & SOC. DEVIANCE 47 (2019).

³¹ CUSACK, LAWS RELATING TO SEX, PREGNANCY, AND INFANCY (2015).

³² See, Olena Riabchynska, Eduard Stomatov, Mykhailo A. Anishchenko, & Yurii V. Filei, *Medical Secrecy in the Context of Doctor's Obligation and Patient's Right: Legal Analysis*, 24 J. L. & SOC. DEVIANCE 1 (2022). Ongoing consent is a condition that could involve child-making. See, National Heart, Lung, and Blood Institute (NHLBI), "Turn off All the Lights at Night: Your Heart Will Thank You," National Institute Health (NIH) (Aug. 16, 2022), <https://www.nhlbi.nih.gov/news/2022/turn-off-lights-at-night-your-heart-will-thank-you>.

III. SEXUAL WHEREABOUTS, ANALYSES, AND LITERATURE REVIEW

A. Marriage Material

Marriage is a symbol of union.³³ It occurs when two people profess love. They profess to the church and government.³⁴ Normally, without those two, marriage has not been recognized.³⁵ However, some people have use substitutive modes of recognition (e.g., common law marriage) and been presumed to have joined the social constraints of legal marriage.³⁶

³³ I Corinthians 13:1-13.

³⁴ See Beastie Boys, “Paul Revere,” *Licensed to Ill* (1986). Furthermore, under laws such as the Tenth Amendment, the administration of law county-by-county—using state authority or some form thereof—the people curtail freedom, for example use of unions or gay marriage classifications. Terminology is relevant. Ergo, gays have terminological relativistic realities or relativistic terminological realities.

³⁵ *E.g.*, Genesis 1:1.

³⁶ Conversion equals equality. Equanimity is achieved peaceably (U.S. CONST. am. I, II, IX, X, and XIII) (Cusack, *Right to Food Not Arms* (2019)) (no right to complain about a slave, theretofore expanding the right to speak). U.S. CONST. am. IVX (one cannot contract to marry therefore one cannot form a marriage through contract law, only family law (in consideration of a father-mother right), even though marital (in consideration of a mother-father right) duties may be enforced contractually (in consideration of duty-obedience); see pre/post-nuptial agreements, Brian M. Balduzzi, *Boys Talking About the Boys in the Band: Reading Windsor and Obergefell Decisions into Commercial Queer Theatre*, 18 J. L. SOC. DEVIANCE 1 (2019)).

Union imbues and builds sympathy and empathy.³⁷ The rationale is evolutionary and spiritual, and that may be emotional. They foster interchange and exchange. Sympathy and empathy, respectively, express norms and expectations.

Sympathy and empathy are two forms of support.³⁸ Sympathy is feeling mercy for a person who is unrelatable, unrelated, or unqualified to relate pain to the sympathizer.³⁹ Empathy is compassion. It relates to inference, deductive reasoning, and imagination.⁴⁰ One

³⁷ Carmen M. Cusack, *Assumed Corpus and Presumed Corpus to Save the Environment: When Urine Green Spots, on Nature Trails, and Stopping through Soil*, 21 J. L. & SOC. DEVIANCE 289 (2021).

³⁸ Carmen M. Cusack, *A Right Not to Parent One's Children*, 18 J. L. & SOC. DEVIANCE 103 (2019); Cusack, *Blind Rhyme* (2020).

³⁹ The reality is translation of the art of love, theatrically perhaps, to experience union. Artsy beings may be a translation of life, yet the loss of norms may reveal true love. Even whole concepts can be termed, such as the display of God in a two-dimensional form whilst surrounded by unled men. For example, transfiguration has been described as being a source convertive apostasy (CARMEN M. CUSACK, *FISH IN THE BIBLE* (2017)). (Brannon Deibert, "What Was the Transfiguration of Jesus? Bible Story and Meaning," Christianity (Apr. 6, 2023), <https://www.christianity.com/wiki/jesus-christ/what-was-the-transfiguration-of-jesus.html>. Matthew 17:1–8, Mark 9:2–8, and Luke 9:28–36.

⁴⁰ Cusack, *Assumed Corpus and Presumed Corpus to Save the Environment* (2021).

can sense the hurt or grief another person experiences, could experience, or would have experienced.⁴¹

Spouses cannot be so unsympathetic or unempathetic that they can be prosecuted under this statute.⁴² The union renders them the same. The emotional support given demonstrates that the victim/abuser would be incapable of demonstrating the prohibited sexual whereabouts.⁴³ Needless to say, the state reserves a right to end marriage that is abusive under the Tenth Amendment, yet the marriage⁴⁴ reserves the right not to force its people to exclaim their private lives to the public, a right held under the Ninth Amendment.⁴⁵ A right equally giving other

⁴¹ Carmen M. Cusack, *The Theory of Equality: Patriarchy Disguised as Feminism*, 20 J. L. & SOC. DEVIANCE 83 (2020); Cusack, *A Right Not to Parent One's Children* (2019).

⁴² 11.407 (2023).

⁴³ *Id.*

⁴⁴ The people hold the right. Termination of parental rights after abuse and lengthy incarceration could be an example. They cannot be confined to marriage. The bonds of marriage are not by right bondage. U.S. CONST. am XIII.

⁴⁵ U.S. CONST. am IX and X. Normally, the court, state, and people are prohibited from divorcing a couple that chooses to stay together, however, the state, court, and people have exercised the right to divorce an innocent plaintiff from a defendant. The process is a divorce lawsuit. This differs from typically mutual dissolution. Divorce may be like a form of property defense for the instigating litigant against an aggressor (e.g., horrible husband or bad dad).

people the right to end an abusive household.⁴⁶ This statute protects all interests evenly.⁴⁷ The spouse is excused presumably because his or her partner deeply senses the innocence and the alleged aggressor sincerely sympathizes and feels empathy, which Americans may be able to judge as innocence and portray.⁴⁸

Discussed below, research studies show that sympathy and empathy are real.⁴⁹ A person may

⁴⁶ U.S. CONST. am IX. Matthew 5:38-39, King James Version, “38 Ye have heard that it hath been said, An eye for an eye, and a tooth for a tooth: 39 But I say unto you, That ye resist not evil: but whosoever shall smite thee on thy right cheek, turn to him the other also.”

⁴⁷ 11.407 (2023).

⁴⁸ Carmen M. Cusack, *Celebrity Justice and Gossip Blogs: Demographic Characteristics of Victimized and Allegedly Criminal Celebrities Featured on Top Gossip Blogs*, 5 J. L. & SOC. DEVIANCE 244 (2013).

⁴⁹ Ashley Abramson, “Cultivating Empathy Psychologists’ Research Offers Insight Into Why It’s So Important to Practice The ‘Right’ Kind of Empathy, and How to Grow These Skills,” *Monitor on Psychology*, (Nov. 1, 2021) <https://www.apa.org/monitor/2021/11/feature-cultivating-empathy>. “Students with eligible transfer credits can complete this degree in less than two years of full-time study.” Maryville University, Online Bachelor's in Psychology: Expand Your Expertise to Unlock More Versatility, May 8, 2023, https://online.maryville.edu/lpppc-bapsyc?Access_Code=MVU-BAPSYC-BING&utm_source=bing&utm_medium=sn&utm_term=degree%20psychology&utm_content=ssp-psychology-nat-pm&utm_campaign=MVU-MS-SN-NB-P-SOCSCI-BACH-BAPSYC-PR-04192019-NAT-MMT-NSP-NSP-NSP&utm_campaignid=279296709&utm_adgroupid=12369507035926

thoroughly believe the reason and emotion proffered, even by a close loved one after being attacked. They, marital partners, believe the same things. They are in an accord.⁵⁰ They do not disagree.⁵¹

One of the terms of their marriage, like a contract, is to be silent toward police, prosecutors, and judges seeking to end their marriage's right to exist.⁵² A right is between them, in the flesh. Even though the law says marriage is not a contract, an example given below shows a contract to act like a marriage also may nurture requisite deference. A partner cannot make a contract to forgive a criminal in contravention of the state's right to prosecute by lying to the state.⁵³ Yet,

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psychology-nat-
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id=7f7f237761e11db6ed8a47436ec806a9&gclid=7f7f237761e11db6ed
8a47436ec806a9&gclsrc=3p.ds.

⁵⁰ Philippians 2:2.

⁵¹ E.g. "What We Believe," Family Matters, <https://www.familymatterschicago.org/what-we-believe/>. "Family Matters prepares and supports youth and families in effectively navigating institutional and systemic constraints." *Id.*

⁵² A spousal immunity doctrine, for example, gives a right not to testify against one's own spouse or allow one's own spouse to testify against him or her. *See also*, CUSACK, LAWS RELATING TO SEX, PREGNANCY, AND INFANCY (2015).

⁵³ *Id.*

unobligated to imagine the state's need to find the sexual whereabouts of the perpetrator, immediately after the harm, the supposed victim would naturally agree with the supposed perpetrator and believe that the crime never occurred.⁵⁴

The loyalty between some family members cannot be measured and meted fairly by the government.⁵⁵ Also, the perpetrator would be incapable of communicating criminal intent to the victim.⁵⁶ The state's goal to enforce due process rights would be too difficult.⁵⁷ This is distinguishable from the early days' marital rape exception to rape law.⁵⁸ However, it is similar.⁵⁹ This Essay states that in this context the

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Expand Your Expertise to Unlock More Versatility (2023).

⁵⁷ U.S. CONST. am XIV.

⁵⁸ Rebecca M. Ryan, *The Sex Right: A Legal History of the Marital Rape Exemption*, Cambridge University Press, (Dec. 27, 2018) <https://www.cambridge.org/core/journals/law-and-social-inquiry/article/abs/sex-right-a-legal-history-of-the-marital-rape-exemption/15B4BC0F145FC41B6E53C25C69701FAE>. See VA Stat. § 18.2-61 B(2)(c) (2203). FP Explainers, *Sexual Assault by Husband Can Take Form of Rape, says Supreme Court. Understanding Why This is Significant*, First Post, (Sep. 29, 2022), <https://www.firstpost.com/explainers/marital-rape-supreme-court-india-abortion-verdict-10484371.html> (discussing nonconsensual insemination (No Coin)).

⁵⁹ *Id. compare with* 11.407 (2023).

federal government may demonstrate that the marriage is unlike other interactions, and incapable of making those claims against her or him, and vice versa themselves.⁶⁰

B. Belief in Vows: A Class

Gay people can be lifelong bachelors.⁶¹ Some are divorced from people of the opposite sex.⁶² Normally, they do not marry.⁶³ Some may settle-down.⁶⁴ Yet, most are unmarried.⁶⁵ In their relationships, some of them may experience sympathy and empathy, but not marital union.⁶⁶

⁶⁰ The national state is compared to the sovereign states.

⁶¹ CARMEN M. CUSACK, *MUTATED SYMBOLS IN LAW AND POP CULTURE* (2018).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Being a sex offender is so problematic that it may cause disparagement of groups affiliated with the offender. Therefore, in this model mete, a code, married spouses should not be affiliated with sex offense because the subtle labeling of model citizens may attack spouses, children, marriage, etc. *See e.g.*, “Nirvana – Rape Me (Live at the Paramount 1991),” Seattle, (Oct. 31, 1991) www.youtube.com/watch?v=Ax0C6rlo-54. Curt Kobain once described as the topic of his song “men who rape.” *Id.* The artists Nirvana wore dresses while espousing average criticisms of racial and gender delinquency regarding sex offense.

Implied callousness, or a lack of sympathy and empathy, may seem insulting, but it is not for the state to determine in this statute which concerns all people other than spouses.⁶⁷ Scientific research, which may be underlying legal reasoning, detected that people in classes can be distinguished according to their expressions of sympathy and empathy.⁶⁸

Cultural differences were evident in a study among people wishing to avoid poor connections (i.e., emotions).⁶⁹ This changed sympathy.⁷⁰ Researchers found, roughly, that tragedy and hardship are beautified by European-Americans, yet correlated with darkness by Germans.⁷¹ Those studied were classified by Stanford University's psychologists.⁷² Sympathy

⁶⁷ Clifton B. Parker, *Stanford Research: People from Different Cultures Express Sympathy Differently*, Stanford University, March 25, 2015, <https://news.stanford.edu/2015/03/25/cultural-differences-sympathy-032525/>.

Stanford psychologist Jeanne Tsai found that Americans tend to focus on the positive in expressions of sympathy while Germans focus on the negative. The research showed that how much people wanted to avoid negative emotion influenced their expressions of sympathy more than how negative they actually felt. *Id.*

⁶⁸ *United States v. Carolene Products*, 304 U.S. 144 n. 4 (1938).

⁶⁹ Parker, *Stanford Research* (2015).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

correlated with aversion to emotional suffering more than perception of objective negativity.⁷³ Jeanne Tsai and Birgit Koopmann-Holm from Santa Clara University, said “Most research in psychology has focused on how people actually feel, but this work and other work in our lab shows that the emotions that people want or don’t want to feel are just as important in everyday life” about their work distributed in the *Journal of Personality and Social Psychology*, describing four investigations of the cultural differences expressed in sympathy among 525 American and German university students throughout the United States and Germany.⁷⁴

Sympathy is cultural, and sympathy, like empathy, is often personal.⁷⁵ It may likely be familial.⁷⁶ A study of siblings similarly found “that siblings who have intense conflict are also intensely loyal and loving to

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Parker, *Stanford Research* (2015).

⁷⁶ CARMEN M. CUSACK, *BIRDS AND WOMEN IN MUSIC, ART, AND POLITICS* (2019).

one another.”⁷⁷ Like a culture may have certain expressive notions, siblings and other relatives, may have specific forms of sympathy and empathy.⁷⁸ Siblings may empathize, substituting themselves as the subjects of judgment or calamity.⁷⁹ Three reasons could be that they understand revenge, experience environmental similitude, and believe in second chances.⁸⁰ Their notions of wellbeing may rely on

⁷⁷ Kirsten Weir, *Improving Sibling Relationships*, 53 APA 60 (2022) (quoting Susan McHale). “Sibling conflict can also lead to negative consequences. While minor squabbles can help children learn to solve problems and navigate conflict, high levels of conflict and aggression between siblings can have lasting effects on a child’s mental health.” *Id.*
⁷⁸ *Id.*

⁷⁹ Siblings are a vector.

⁸⁰ In art, the image of Christ is resurrected. Carmen Cusack, *The Buzz* (2003-2005). He comes. *Supra* note 1. To the New World Jesus brings the message. One message is that Christ travelled. Although only a few scholars discuss it, Jesus travelled during the months described in accounts. The months it takes shows that Jesus’ life may have spanned the globe in a physical, spiritual, and artistic form. Biblical scholars talk about time travel by his father God, and perhaps others such as Paul, Peter, and Mary. Travels may have included far-off places (Nathan Katz, Global Jewish Studies Program, Florida International University (2023)). A moving island, an atoll, an archipelago floating, and rooting unexpectedly yields a strange postulate in art through which Jesus boated, travelled festively, walked on water, and landed in unpredictable places, like The Philippines (Revelation 1:9; Psalms 16). See CARMEN M. CUSACK, DEER JHONN (2021) (discussing prayer and God in far off places and saving the white tiger); see CARMEN M. CUSACK, FISH IN THE BIBLE (2017) (discussing salvation, sea travel, and historic knowledge); see CARMEN M. CUSACK, ABORTION IS THE “A” WORD (2018) (a discussion about unwanted siblings). Proverbs 3:23-24 (*compare* Pesach’s travel authority to isolate good people *with*

empathetic understanding and sympathetic expression.⁸¹

The statute here describes spouses, and while some Americans directly analogize spouses to same-sex spouses, the statute is understood predominantly in the tradition of spouses.⁸² Therefore an example using gay spouses is beneficial because it removes the government in this hypothetical from viewing the inside of the home, where spouses dwell.⁸³ It also demonstrates that the concept, whether in accord with the majority or not, is universally understood and experienceable.

C. Lifelong Bachelors

Lovers share an identity.⁸⁴ Heterosexual norms encourage and rely on it.⁸⁵ Also, homosexuals, outliers

Christmas isolating good children from good parents *contra* Genesis 3:3).

⁸¹ See Henry VIII.

⁸² 11.407 (2023).

⁸³ U.S. CONST. am X.

⁸⁴ Carmen M. Cusack, *Comparative Sexology: Nonconsensual insemination in the United States and the European Union*, 23 SEXOLOGIES e19 (2013).

⁸⁵ *Id.*

in heteronormativity, exhibit, adapt, and apply them.⁸⁶ Strong heteronormativity has overcome comparisons to gay relationships.⁸⁷ Gay relationships continue to model themselves after heterosexual relationships.⁸⁸ While becoming less disliked or suspicious, they have become a good example of how a partner can view himself or herself as being the same as his or her partner without religious and legislative contribution, authority, and stigmatization.⁸⁹ This shapes their identity and allows them to tell others that they are sympathetic and empathetic toward each other.

Whether valid or invalid in context, this applied statute supports some freedom to construct and preserve family stories.⁹⁰ Transmission of family stories is a reason that people give to excuse familial abuse.⁹¹ Transmission of repaired or molded stories

⁸⁶ *Id.*

⁸⁷ Cusack, *The Theory of Equality: Patriarchy Disguised as Feminism* (2022).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ 11.407 (2023). See e.g., Family Matters, <https://www.familymatterschicago.org/what-we-believe/>.

⁹¹ Jerome Kagan, *The Role of Parents in Children's Psychological Development*, (July 1, 1999) <https://publications.aap.org/pediatrics/article->

helps children maintain moralistic memories that steer them into healthy habits.⁹²

Without regard for their parents' positive portrayals, children could be relegated to cycles of abuse, poverty, and dependence on the state that may not be reparable.⁹³ Stories survive in the system, as witnessed by those seeking criminal records, issuing a time bar on the use of criminal records, enduring family proceedings relevant to behavior, and requesting sealed juvenile histories.⁹⁴

abstract/104/Supplement_1/164/28250/The-Role-of-Parents-in-Children-s-Psychological?redirectedFrom=fulltext.

This article reviews the three major ways parents influence children: direct interaction, identification, and transmission of family stories. This essay summarizes some of the relevant empiric data in support of this claim and describes the operation of other mechanisms that also contribute to the child's development. *Id.* at 104.

⁹² Carmen M. Cusack, *Feminism and Husbandry: Drawing the Fine Line between Mine and Bovine*, 11 J. CRITICAL ANIMAL STUD. 24 (2013). Carmen M. Cusack, *Kent Make-Up Their Minds: Juveniles, Mental Illness, and the Need for Continued Implementation of Therapeutic Justice within the Juvenile Justice and Criminal Justice Systems*, 22 AM. U. J. GENDER, SOC. POL'Y & L. 149 (2013).

⁹³ See LENORE WALKER, *THE BATTERED WOMAN SYNDROME* (2016) (discussing contrition, tension building, and battering in the cycle of abuse in battered woman's syndrome). Cusack, *Kent Make-Up Their Minds* (2013).

⁹⁴ *Id.*

Union is based on similitude.⁹⁵ Lifelong bachelorhood pursued through state means, research agendas, legal proceedings, assertion of due process, and the adoption of state standards attests to the desire to be seen as desirable yet untethered. The American Psychiatric Association (APA) has cured gay people of their beliefs that they can be both maritally unified and single gays.⁹⁶ The attempts have been harmful, though the APA only removed the lifestyle from the Diagnostic and Statistical Manual of Mental Disorders (DSM-II) in 1973.⁹⁷

The APA once assisted many patients suffering from harmful or dangerous homosexuality.⁹⁸ The

⁹⁵ Cusack, *To-Get-Her ForEVER* (2013).

⁹⁶ *Id.*

⁹⁷ Erin Blakemore, "Gay Conversion Therapy's Disturbing 19th-Century Origins," *History*, June 28, 2019, <https://www.history.com/news/gay-conversion-therapy-origins-19th-century>. AMERICAN PSYCHIATRIC ASSOCIATION (APA), *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (DSM-II)* (1974).

⁹⁸ For example, things change: The 21st Amendment repeals the 18th Amendment. Repealing may have been of the dormant, unenforced, or compromised interpretations lending to a practical implementation of the day. The 18th Amendment still may prohibit exportation of intoxicating liquors and any laws (i.e., sale, importation, transportation, etc.) allowing liquors for beverage purposes. The newer law, the 21st Amendment, allows states to regulate intoxicating liquors through possession, importation, and transportation laws. It does not directly grant authority to export, sell, or consume any intoxicating liquors as beverages.

diagnosis often was comorbid with other mental illnesses.⁹⁹ Those believing that they could step into the shoes of an opposite-sex person were hurt and hurtful.¹⁰⁰ Diagnoses may correlate with a belief, such as a narcissistic, psychotic, or paranoid belief, that a hurt individual shares an identity with an aggressor whether a present or ex opposite-sex or same-sex spouse.¹⁰¹ Since the shared identity has been opposed, it cannot be repackaged psychologically.

Some gay pairs implement a plan to adhere to relationship norms.¹⁰² They capture the moment to relive their happiness.¹⁰³ It comes from being one-in-the-same, thus free, and also single and mixing. The pairs initially plan to follow a long-term plan to date then demonstrate an innate reflection of oneself in pairing. Gay people meet, seal the mood, relive it, and

⁹⁹ Cusack, *The Theory of Equality: Patriarchy Disguised as Feminism* (2022).

¹⁰⁰ *Id.*

¹⁰¹ Carmen M. Cusack, *To-Get-Her ForEVER* (2013).

¹⁰² CUSACK, *MUTATED SYMBOLS IN LAW AND POP CULTURE* (2018).

¹⁰³ *E.g.*, Thirty Seconds to Mars, "Stuck" (2023), <https://www.youtube.com/watch?v=di-VTrW7Kr0>.

agree to do that each day following the first meeting.¹⁰⁴ Public behavior, moderated and comely, becomes private behavior. Same-sex relationships may conform to standards meriting Fifth Amendment protection, such as when couples do not fight in private, etc. They, like heteronormative households, may have a right to maintain a homelife in accord with their original meeting (e.g., vegan soul food dinner).¹⁰⁵

¹⁰⁴ Mood dominates some of these gay pairings wavering or staying more or less than heteronormative experiences. They too, though, may have a right to be free from lack of nutrition and starvation inside the home correlating with an exchange of labor (Cusack, *Right to Food Not Arms* (2019)). Their terms may be different from the mainstream.

¹⁰⁵ EEOC, Section 12, Guidance.

Fallon, 877 F.3d at 492-93 (recognizing that anti-vaccination beliefs such as those held by Christian Scientists can be part of a 'broader religious faith' and therefore subject to Title VII religious accommodation in some circumstances, but concluding that plaintiff's beliefs did not qualify as religious because he 'simply worries about the health effects of the flu vaccine, disbelieves the scientifically accepted view that it is harmless to most people, and wishes to avoid this vaccine.'). *with Chenzira v. Cincinnati Child. 's Hosp. Med. Ctr.*, No. 1:11-CV-00917, 2012 WL 6721098, at *4 (S.D. Ohio Dec. 27, 2012) (holding that Title VII could cover a request to be excused from hospital mandatory vaccination policy due to vegan opposition to a vaccine that was animal-tested or contains animal byproducts if plaintiff 'subscribe[d] to veganism with a sincerity equating that of traditional religious views,' noting her citation to essays about veganism and to Biblical excerpts). *Davis*, 765 F.3d at 486 (quoting *Tagore v. United States*, 735 F.3d 324, 328 (5th Cir. 2013)); *see also Adeyeye v. Heartland Sweeteners, LLC*, 721 F.3d 444, 452 (7th Cir. 2013) (emphasizing that

Like with opposite-sex partners, even married people, at first, suddenly, or after a while touching may become humiliating or offensive.¹⁰⁶ “Humiliation” and “offensive” touching are unpleasant, harmful, disorienting, demoting, and embarrassing forms of contact.¹⁰⁷ Ongoing consent is not completely eviscerated by a momentary complaint or request not to be touched.¹⁰⁸ However, consent must be revoked expressly, whether expressed or implied.¹⁰⁹

Heteronormative or untraditional partners may change.¹¹⁰ Sameness may appear to change in contravention of asserted rights. One person may feel it is “offensive” and feel “humiliation.”¹¹¹ In response this statute gives the right to reasonably enforce sameness, tradition, and stable living.¹¹² For example, when a feminine partner is feeling fat and spontaneously demonstrating anger, yet that spouse’s

Title VII has a ‘broad and intentionally hands-off definition of religion’). *Id.* at n. 33-34.

¹⁰⁶ EEOC, Section 12, Guidance. 11.407 (2023).

¹⁰⁷ 11.407 (2023).

¹⁰⁸ See Cusack, *Comparative Sexology* (2013).

¹⁰⁹ *Id.*

¹¹⁰ 11.407 (2023).

¹¹¹ *Id.*

¹¹² 11.407 (2023). Cusack, *Blind Rhyme* (2020).

“genitals” are touched, that statute is not invocable even when the touch seems wrong because the joke about that partner’s breasts growing larger is not comparable to an outsider’s wrongful touch, which would be actionable here.¹¹³

Gays may follow a family honor code. Yet, they are not always the same as those married people addressed in the statute.¹¹⁴ Despite support for homonormativity, normal gays can be prohibited from using the statute, though paradoxically homosexuals may not want to reject legal intervention into intimate partner violence.¹¹⁵ It seems to have been made to enforce normativity and help heteronormativity.¹¹⁶ Informally, they may have social pairings that are held accountable and therefore receive some lenience. For example, throughout a county, the gay residents may not condone gay marriage as explained by a Pew Research Center study found that 21% of non-religiously affiliated Americans do not support gay

¹¹³ 11.407 (2023).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ 11.407 (2023).

marriage; however, under the Tenth Amendment they can still support normal household relations.¹¹⁷ The full-faith-and-credit doctrines of family law¹¹⁸ could momentarily be applied by the residents to stop unfairness, but the law will not bend. This statute could not be used.¹¹⁹ Theoretically too many homosexuals and heterosexuals would oppose gay marriage for it to be the type of licensed activity embedded in general understandings of lifelong synthesis prohibiting law enforcement regimes from suspecting their partners of abuse and violations, a point-of-view potentially supported by Pew Research Center's finding that only 36% of subjects said that gay marriage "is very good for society."¹²⁰ Their undesirable actions could be pursued by their partners or by the government on

¹¹⁷ U.S. CONST. am. X. David Masci, Anna Brown, & Jocelyn Kiley, 5 Facts about Same-sex Marriage, Pew Research Center, (June 24, 2019) <https://www.pewresearch.org/short-reads/2019/06/24/same-sex-marriage/>.

¹¹⁸ U.S. CONST. art. IV, § I (full faith and credit clause). *Fallon v. Mercy Cath. Med. Ctr.*, 877 F.3d 487 (3d Cir. 2017).

¹¹⁹ 11.407 (2023).

¹²⁰ Susan Ciancio, *Defending the Sanctity of Marriage*, Human Life International, Pew Research Center, (Jan. 6, 2023) <https://www.hli.org/resources/the-debate-about-homosexuality//>.

behalf of sympathetic aggressors, no matter how empathetic the people felt toward the victim.

The legislature's reasoning for helping married people may be comprehensive.¹²¹ Encouragement of unchanged sexual values is one purpose that the legislature may sense and feel is rational, important, and compelling. Another reason is to differentiate between a personal right and a group right. The relevant Amendments describe personal rights, but also are premised on group rights, such as religion and class. The legislature is interested in barring sex outside of marriage as a group right.¹²² The tradition of marriage intends to support wealth over poverty, invest in one's livelihood, and nurture children within marriage. Intelligently designed, it reduces domestic violence, divorce, unplanned parenthood, supremacy strife, unconscious abuse, cheapness, and unloved, accidental, or unassisted children.¹²³

¹²¹ *Id.*

¹²² For example, a ban on adultery under civil or criminal bodies of law. 11.407 (2023).

¹²³ Carmen M. Cusack, *Nonconsensual Insemination: A Pilot Study*, 2 ONLINE J SOC SCI RES 61 (2013).

A third reason is to make the government restrained. The government cannot bang-down-the-door—of a married landowning couple, for example—the minute it suspects that a harmful form of sex is pervading within the walls of the home.¹²⁴ Community, governmental, and societal rules demand the acknowledgment of some interpersonal authority and reasonably flexible interpretations of mood, offense, harassment, humiliating discord, etc. The federal, state, and local governments overlap with concern.¹²⁵

Women's rights doctrines add that single people do not have watered down rights to protect themselves from government intrusion.¹²⁶ Rather, they have a form of heightened rights under this statue to protect them from harm inflicted by strangers and short-term partners; and married people have stronger rights to

Carmen M. Cusack, *50 State Survey of Prosecutors' Willingness to Prosecute Nonconsensual Insemination*, 6 FAM. & INTIMATE PARTNER VIOLENCE Q. 7 (2014).

¹²⁴ The government cannot stand crime. It cannot be asked to watch sexual assault. Therefore, no matter how long, the victim and government have rights.

¹²⁵ 11.407 (2023).

¹²⁶ Cusack, *50 State Survey of Prosecutors' Willingness to Prosecute Nonconsensual Insemination* (2014).

declare that their partners are not the perpetrators, right away, and that their partners deserve the benefit of the doubt from those wondering, nosily or compassionately, whether they are harming them behind closed doors.¹²⁷ Not a dispensation of decorum, the law strictly divides between spouses who cannot be blamed, and those sex interests who offend and humiliate.¹²⁸ Those, too, who are licensed by the state are not at issue during play or foreplay, however dry at times, or procreative sex acts, however sappy and sappy at other times.¹²⁹

D. Married People's Lives Are Designed by the Government to Follow the Law with Each Other

Predetermined by genetic propensity to follow a law, which suits them, hypothetically they are growing joy for a community, society, and state.¹³⁰ People tend to follow the law unless they deviate. Deviation is the

¹²⁷ 11.407 (2023).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

result of drifting, failing, recidivism, poverty, and other causes. Deviants break the law.

Deviance may be positive. Fetishization of marriage is an example.¹³¹ Spouses may humiliate or offend spouses with consent for pleasure.¹³² Because it is done privately, and does not enter the public sphere, the government is not alarmed. The spirit of sexual conduct, restful and respectable, is between spouses.¹³³ A spouse is protected by the law when the other spouse's liberty is overexerted; but the statute is not the right place to evaluate couples suffering from excessive or habitual deviance.¹³⁴

When people follow the law, they invest in society. Investment is like growing joy. The emanations are evident in sexual whereabouts.¹³⁵ The spouse's sexuality extends into the other spouse. The penumbra's effect is to block and simultaneously be

¹³¹ See Carmen M. Cusack, *Obscene Squirting: If the Government Thinks it's Urine, Then They've Got Another Thing Coming*, 22 TEX. J. WOMEN & L. 45 (2013).

¹³² 11.407 (2023).

¹³³ NIH (2022).

¹³⁴ *Id.* U.S. CONST. am V.

¹³⁵ U.S. CONST. am V.

visible.¹³⁶ The shaded view is rare. Sexual whereabouts prove the doctrine and vice versa.

A state's moral regime creates a solid foundation that is the basis for a fertile culture.¹³⁷ The state and society aim for respectful and thus legal relations between spouses.¹³⁸ Society limits investment in private affairs, but prepares the spouses with legal doctrines that cover some instances of experimentation and private moments. For example, conditional consent is a protection.¹³⁹ Exclusion of sodomy, adultery, dalliance, and homoerotic swinging is another.

Members of society invested do not believe that the sexual whereabouts of a spouse are probably criminal.¹⁴⁰ Therefore, the people will not side against

¹³⁶ *Id.*

¹³⁷ Cusack, *The Theory of Equality: Patriarchy Disguised as Feminism* (2022). EEOC, Section 12, Guidance.

¹³⁸ 11.407 (2023).

¹³⁹ Cusack, *50 State Survey of Prosecutors' Willingness to Prosecute Nonconsensual Insemination* (2014). This may include impregnation. It also includes reproduction. Finally, it can include religious conversion of unborn and unliving individuals.

¹⁴⁰ See, Filei, et al., *Medical Secrecy in the Context of Doctor's Obligation and Patient's Right: Legal Analysis*, 24 J. L. & SOC. DEVIANCE 1.

them using this definition of “sexual assault.”¹⁴¹ They do not assume that spouses will give bad sex, which occurs for example when an orgasm or reproductive attempts have been promised and revoked unfairly or illegally.¹⁴² Sexual whereabouts guarantee that sexual contact will not be humiliating or offensive.¹⁴³

IV. CONCLUSIONS, LIMITATIONS, AND RECOMMENDATIONS

This model law shows widespread recognition of marital bonds.¹⁴⁴ A of suspicion rape within one’s marriage is removed. It may appeal to soon-to-be married couples as well as lifelong bachelors.¹⁴⁵ It exhibits requisite respect and understanding. They will into their marriages bring sexual dignity and consent. While they may be less likely to have to invoke in crisis spousal rights granted by the states because of forebearer’s work, other problems than some

¹⁴¹ 11.407 (2023).

¹⁴² This may apply during sodomy. *See* Lawrence v. Texas, 539 U.S. 558 (2003). CARMEN M. CUSACK, SEX CASE LAW (2019).

¹⁴³ 11.407 (2023).

¹⁴⁴ *Id.*

¹⁴⁵ *See e.g.*, BALDUZZI, 18 J. L. SOC. DEVIANCE 1; Family Matters, <https://www.familymatterschicago.org/what-we-believe/>.

experienced by predecessors, should continue to be noticed by them. For their wellbeing, they must increase the likelihood of remaining moral, practicing sexual equality, and following other maxims.

Mature adults have developed under this law and therefore should be noticed for their reluctance to exploit, expose, and harm marriage like less obedient people.¹⁴⁶ In this sense, all people, including children, widowed seniors, victims of sexual harassment, and others potentially may benefit from this model statute's effect on the public. For example, it may be used to stipulate that spouses are extremely less likely to be harassed by a spouse.¹⁴⁷ It is limited by ongoing concern that somehow it would take more to break the shroud of privacy and blame spouses despite acts of forgiveness.¹⁴⁸

A class of people are carved-out, in this day-and-age, by the legislature as those who may commit other atrocities, but not the same kind of sexual assault

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Matthew 5:38-39

committed by a non-spouse (e.g., nine year-old).¹⁴⁹ When anti-violence statutes are violated by spouses, terrible crimes already recognized widely ensue and can be prosecuted in the court of public opinion, by the public civilly, or by the government under criminal codes. Misplaced sexual whereabouts lead to misuse and abuse of marriage (e.g., obsessive stalking). The future seems bleak resting on actions and countersuits and defenses including provocation, crime of passion, battering, and self-defense.¹⁵⁰ In conclusion, marriage should be left sacrosanct, and this model statute does that.¹⁵¹

¹⁴⁹ *Id.* 11.407 (2023).

¹⁵⁰ WALKER, THE BATTERED WOMAN SYNDROME

¹⁵¹ *Id.* 11.407 (2023).