

2011

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Recommended Citation

Allen C. Unzelman, *Latin America Update: The Development of Same-Sex Marriage and Adoption Laws in Mexico and Latin America*, 17 LAW & BUS. REV. AM. 135 (2011)
<https://scholar.smu.edu/lbra/vol17/iss1/9>

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LATIN AMERICA UPDATE: THE DEVELOPMENT OF SAME-SEX MARRIAGE AND ADOPTION LAWS IN MEXICO AND LATIN AMERICA

*Allen C. Unzelman**

ON August 16, 2010, in its second high profile decision of that month, the Mexican Supreme Court announced that it would uphold a Mexico City law allowing for same-sex adoption.¹ The decision came on the heels of the Court's previous decision upholding a separate portion of the same law that allowed for same-sex marriage.² As Justice Arturo Zaldivar explained, "[g]iven that the interests of the child must come first, the proposed reform is constitutional."³ The Court found that because it previously upheld the law's allowance of same-sex marriages, treating same-sex couples differently with respect to adoption would be discriminatory.⁴ As Justice Zaldivar described, "the preferences of the parents do not determine (a child's) sexual orientation. . . that is a discriminatory argument."⁵ Nine of the Court's eleven judges voted to uphold Mexico City's law.⁶

But the law is not the only one of its kind in Latin America. In recent years, a wide variety of judicial and legislative reforms in a number of Latin American countries have extended both adoption and marriage rights to same-sex couples. This update takes a brief look at these recent reform efforts before embarking on a closer examination of Mexico City's law allowing same-sex marriage and adoption, and the Mexican Supreme Court's recent decision upholding the law. This update then concludes with a brief overview and comparison of the status of same-sex marriage in the United States.

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1. Miguel Angel Gutierrez, *Supreme Court Rules Mexico City Gay Adoption Law Legal*, REUTERS, Aug. 16, 2010, <http://www.reuters.com/article/idUSTRE67F4ZH20100816>.

2. *Id.*

3. *Id.*

4. E. Eduardo Castillo, *Mexico Gay Adoption Law Upheld by Supreme Court*, HUFFINGTON POST, Aug. 16, 2010, http://www.huffingtonpost.com/2010/08/16/mexico-gay-adoption-law-u_n_683926.html.

5. *Id.*

6. *Id.*

I. OVERVIEW OF SAME-SEX ADOPTION LAWS IN LATIN AMERICA

Outside of Mexico's federal district, same-sex adoption is permitted in at least three other Latin American jurisdictions.⁷ But even in these jurisdictions, such adoption rights have only recently been recognized.

A. ARGENTINA

In July of 2010, Argentina became the first Latin American state to allow same-sex couples to adopt.⁸ The law is similar to Mexico City's in that it grants same-sex couples both the right to marry and the right to adopt.⁹ The bill was approved after a heated debate between legislators and became law at the behest of church groups in the area.¹⁰ As evidenced by Senator Eugenio Artaza's statement after the bill's passage that "[j]ust like with divorce, women's right to vote and civil marriage, with the passage of time we'll be able to appreciate the benefits of this law," the bill was perceived largely as an accomplishment for human rights rather than just the rights of same-sex couples.¹¹ The law came less than a year after a court in Buenos Aires held that a complete prohibition of same-sex marriage was impermissible.¹²

B. BRAZIL

Gay adoption rights were recognized in Brazil in a 2010 unanimous Superior Court decision.¹³ The case involved an appeal mounted by the State Prosecutor after a lower federal court held that a female couple had the right to adopt children.¹⁴ Just days following the Superior Court's holding, a judge in Mato Grosso extended the same rights to a male couple.¹⁵ As articulated noted by Judge Maria Helena Povoas, "[o]f all the discrimination suffered by homosexuals, the denial of recognition of the right to have children is the ultimate cruel, because it makes impossible the realization of the individual who dreams of having a child,

7. See generally Felipe Seligman, *Casal homosexual pode adotar crianca, decide STJ [Homosexual Couples Can Adopt Children, Decides STJ]*, FOLHA.COM, Apr. 27, 2010, <http://www1.folha.uol.com.br/folha/cotidiano/ult95u726711.shtml>; Karina Grazina, *Argentina Approves Landmark Gay Marriage Bill*, REUTERS, July 15, 2010, <http://www.reuters.com/article/idUSTRE66E11H20100715>; *Lawmakers in Uruguay Vote to Allow Gay Couples to Adopt*, N.Y. TIMES, Sept. 9, 2009, <http://www.nytimes.com/2009/09/10/world/americas/10uruguay.html>.

8. Grazina, *supra* note 7.

9. See *id.*

10. *Id.*

11. *Id.*

12. See *Latin America Sees Its First Same-Sex Marriage*, CNN, Dec. 28, 2009, http://articles.cnn.com/2009-12-28/world/argentina.gay.marriage_1_same-sex-marriage-gay-marriage-buenos-aires?_s=PM:WORLD.

13. See Seligman, *supra* note 7.

14. *Id.*

15. *Tribunal de Mato Grosso concede adocao de crianca a casal Gay [Mato Grosso Court Grants the Adoption of Children of Gay Couples]*, ATHOSGLS, Sept. 9, 2009, http://www.athosgls.com.br/noticias_visualiza.php?contcod=29226.

grandchild and transmit and receive love and affection.”¹⁶

C. URUGUAY

In September of 2009, legislators in Uruguay approved legislation granting same-sex couples the right to adopt.¹⁷ With the support of the Frente Amplio Party, the Colorado Party, and President Tabare Vazquez, the law was approved by seventeen out of twenty-three senators.¹⁸ The law’s passage came on the heels of President Vazquez’s decision to allow homosexuals to attend military schools just a few months prior.¹⁹ The law redirects the decision-making authority regarding adoptions, which was previously held by judges, to the National Institute of Children and Adolescents.²⁰

II. OVERVIEW OF SAME-SEX MARRIAGE LAWS IN LATIN AMERICA

Six Latin American countries allow at least some level of same-sex union.²¹ As expected, the Latin American countries that allow for same-sex adoption (Argentina, Brazil, and Uruguay) allow for at least same-sex cohabitation.²² Beyond those countries, the rights of same-sex couples have also been recognized in Colombia and Ecuador.²³

A. ARGENTINA

As mentioned above, in July 2010, Argentina passed legislation that made it the first country in Latin America to legalize same-sex marriage and adoption.²⁴

B. BRAZIL

A number of courts in Brazil have held that same-sex couples should

16. *Id.*

17. Yanina Olivera, *Uruguay Approves Latin America’s First Gay Adoption Law*, AFP, Sept. 9, 2009, http://www.google.com/hostednews/afp/article/ALeqM5gu1QYorSnG_WrGpbQ-ic2fMpxObg.

18. *See id.*

19. *See id.*

20. *Uruguay Allows Same-Sex Adoption*, BBC NEWS, Sept. 9, 2009, <http://news.bbc.co.uk/2/hi/8247540.stm>.

21. *See generally* Grazina, *supra* note 7; Tony Grew, *Colombian Court Confirms Equal Rights for Same-Sex Couples*, PINK NEWS, Jan. 29, 2009, <http://www.pinknews.co.uk/news/articles/2005-10938.html>; Olivera, *supra* note 17; *New Ecuador Constitution Includes Gay Rights Guarantees*, 365GAY, Sept. 29, 2008, <http://www.365gay.com/news/new-ecuador-constitution-includes-gay-rights-guarantees>; Adilson José Moreira, *Equality for Same Sex-Couples: Brazilian Courts and Social Inclusiveness*, REVISTA: HARVARD REV. OF LATIN AM. (2007), available at <http://www.dr-clas.harvard.edu/revista/articles/view/967>; Castillo, *supra* note 4.

22. *See generally* Grazina, *supra* note 7; Olivera, *supra* note 17; Moreira, *supra* note 21.

23. Grew, *supra* note 21; *New Ecuador Constitution Includes Gay Rights Guarantees*, *supra* note 21.

24. Grazina, *supra* note 7.

enjoy equal footing under the law.²⁵ As early as 2001, several courts recognized the validity of civil unions for same-sex couples.²⁶ This recognition has also led to the granting of other rights for same-sex couples such as “property rights, social security rights, inheritance rights, partner benefits, spousal support, joint adoption, and the right to permanent visas for foreign partners.”²⁷

C. COLOMBIA

By way of a 2009 Colombian Court decision, “[same-sex] couples in Colombia are entitled to the same rights as straight couples in common-law marriages.”²⁸ Although the decision does not amount to a legalization of same-sex marriage, the decision does grant same-sex couples such rights as “nationality, residency, housing protection and state benefits.”²⁹

D. ECUADOR

The 2008 Ecuadorian Constitution recognizes the rights of same-sex couples.³⁰ Under the new constitution, same-sex couples are granted the right of same-sex unions.³¹

E. URUGUAY

Uruguay authorized same-sex civil unions in 2009.³² Under the law, same-sex couples are entitled to the same rights as traditionally married couples after they have lived together for five years.³³ In order to gain cohabitation rights, however, same-sex couples must register their relationships.³⁴ Same-sex marriage has not yet been legalized.³⁵

III. THE ATTORNEY GENERAL’S UNCONSTITUTIONALITY ACTION 2/2010

A. MEXICO CITY’S LEGALIZATION OF SAME-SEX MARRIAGE AND ULTIMATELY SAME-SEX ADOPTION

Mexico City’s same-sex marriage and adoption law, which was initially introduced by Assemblyman David Razu, a member of the leftist Party of the Revolution (PRD), altered the definition of “marriage” in Mexico

25. Moreira, *supra* note 21.

26. *Id.*

27. *Id.*

28. Grew, *supra* note 21.

29. *Id.*

30. *New Ecuador Constitution Includes Gay Rights Guarantees*, *supra* note 21.

31. *See id.*

32. Olivera, *supra* note 17.

33. *Uruguay Approves Gay Civil Unions*, BBC NEWS, Dec. 19, 2007, <http://news.bbc.co.uk/2/hi/americas/7151669.stm>.

34. *Id.*

35. *Id.*

City's Civil Code.³⁶ As explained by Razu, the law was designed "to be in agreement with Article 1 of the Constitution, which says that no person can be discriminated against for any reason, and with Article 2 of the Civil Code, which says that no person can be deprived of the exercise of their rights for reasons of sexual orientation."³⁷ The introduction of the law came after the passing of a 2006 ordinance allowing civil unions.³⁸

The bill was passed on December 21, 2009 by the Mexico City Assembly by a vote of thirty-nine to twenty.³⁹ Specifically, the law amended Article 146 of the Federal District Civil Code by adjusting the definition of marriage to state "[m]arriage is the free union between two individuals to create a community of life in which each individual respects the other, seeks equality, and mutual support."⁴⁰ The Article further stated that the marriage must comply with the other requirements of the civil code and must be held before a judge.⁴¹ It is also worth clarifying that the Civil Code's adoption provision, Article 391 of the Federal District Civil Code, was left unchanged by the new law.⁴² Under Article 391, married and unmarried couples may adopt if they accept the adopted child as their own and at least one spouse is at least seventeen years older than the adopted child.⁴³

But before the bill even became law, the National Action Party (PAN) vowed to fight the passage of the law through the referendum process.⁴⁴ The PAN's referendum efforts fell short, however, when the Federal District Legislative Assembly rejected the party's referendum proposal.⁴⁵

Following the unsuccessful referendum efforts, the Supreme Court rejected a number of constitutional challenges by conservative states against the Mexico City law.⁴⁶ Sonora, Baja California, Jalisco, Morelos, Tlaxcala, and Guanajuato all mounted unsuccessful constitutional chal-

36. *Mexico City Lawmakers to Consider Gay Marriage*, LATIN AM. HERALD TRIB., <http://www.laht.com/article.asp?ArticleId=348002&CategoryId=14091> (last visited Nov. 24, 2010).

37. *Id.*

38. *Id.*

39. *Mexico City Legalizes Same-Sex Marriage*, GUARDIAN, Dec. 22, 2009, <http://www.guardian.co.uk/world/2009/dec/22/mexico-city-same-sex-marriage>.

40. ACCIÓN DE INCONSTITUCIONALIDAD [UNCONSTITUTIONALITY ACTION], PROMOVENTE: PROCURADOR GENERAL DE LA REPÚBLICA, Pleno de la Suprema Corte de Justicia [S.C.J.N.] [Supreme Court], Febrero de 2010, Pagina 79 (Mex.), available at <http://www.scjn.gob.mx/Documents/AI-2-2010.pdf>.

41. *Id.*

42. *Id.*

43. *Id.* at 62.

44. Horacio Jiménez & Ella Grajeda, *PAN amaga con impedir bodas gay [PAN Threatens to Stop Gay Weddings]*, EL UNIVERSAL, Dec. 16, 2009, <http://www.eluniversal.com.mx/ciudad/99225.html>.

45. Rocío González Alvarado, *Rechaza ALDF referéndum para bodas gay [ALDF Rejects Referendum on Gay Marriage]*, LA JORNADA, Dec. 18, 2009, at 32, available at <http://www.jornada.unam.mx/2009/12/18/index.php?section=capital&article=032n2cap>.

46. ohn Holman, *Anger at Mexico's Gay Marriage Law*, ALJAZEERA, Mar. 6, 2010, <http://english.aljazeera.net/focus/2010/03/201034165223139236.html>.

lenges to the law.⁴⁷ At least a couple of the suits were based on fears that allowing same-sex marriage in Mexico City may compel other states to follow suit.⁴⁸ The Supreme Court previously dispelled such fears in a case involving Mexico City's abortion law when it clarified that nothing in the Court's ruling prevented other states from implementing their own abortion laws.⁴⁹

But the Court was not as fast to reject the constitutional claim filed by the Mexican Attorney General that was based on a provision of the Mexican Constitution that mentions "protecting the family."⁵⁰ The lawsuit was introduced by federal prosecutors on January 27, 2010 and was accompanied by a statement from the Attorney General that the law "violates the principle of legality, because it strays from the constitutional principle of protecting the family."⁵¹ Mexico City legislators responded to the federal claim by contending that the federal government's actions amounted to an interference with the district's authority.⁵²

IV. THE ATTORNEY GENERAL'S ARGUMENT AND THE LEGISLATIVE ASSEMBLY'S RESPONSE

Mexican Attorney General Arturo Chavéz Chavéz had standing to bring the unconstitutionality action under Article 105(II)(c) of Mexico's Constitution, which permits the Attorney General to bring an action of unconstitutionality against laws of the Federal District.⁵³

The Attorney General's main argument was that the amendment to Article 146, in relation to Article 391, was unconstitutional because the Legislative Assembly failed to take into account the "possible impact that these reforms could have on adopted minors."⁵⁴ Specifically, the Legislative Assembly did not conduct studies on the possible psychological and emotional effects on minors subject to adoption under Article 391 by same-sex couples.⁵⁵ Thus, the crux of the argument was that there was a legal implication for not conducting such studies, namely that the proper process for amending legislation was not followed when amending Article

47. *Id.*

48. Steve Williams, *Mexico's Supreme Court Dismisses 'Inappropriate' Cases Against District's Gay Marriage Law*, CARE2, <http://www.care2.com/causes/civil-rights/blog/mexico-supreme-court-dismisses-gay-marriage-law-challenge-but-the-fights-not-over-yet/> (last visited Nov. 24, 2010).

49. *Id.*

50. See Holman, *supra* note 46.

51. *Mexico City Prosecutors Will Try to Overturn Gay Marriage Law*, PINK NEWS, Jan. 28, 2010, <http://www.pinknews.co.uk/2010/01/28/mexico-city-prosecutors-will-try-to-overturn-gay-marriage-law>.

52. "Obvia, la injerencia de Calderón" contra las bodas gay: Marcelo Ebrard ["Obviously, Calderon interfered" Against Gay Marriage, Says Marcelo Ebrard], CNN MEXICO, Feb. 2, 2010, <http://mexico.cnn.com/nacional/2010/02/02/obvia-la-injerencia-de-calderon-contra-las-bodas-gay-marcelo-ebnard>.

53. See ACCIÓN DE INCONSTITUCIONALIDAD [UNCONSTITUTIONALITY ACTION], *supra* note 40, at 58-59.

54. See *id.* at 22.

55. See *id.* at 23.

146 because the Legislative Assembly lacked “objective constitutional reasoning”⁵⁶ by placing the interests of same-sex couples above the interest of the child.⁵⁷ The latter is a special interest the State seeks to protect.⁵⁸

The Attorney General also argued that under Article Four of the Constitution, a child has a right to grow up in an “ideal” family.⁵⁹ As the Attorney General saw it, an ideal family is comprised of both a mother and a father.⁶⁰

But the Legislative Assembly responded that the challenge was improper for two reasons.⁶¹ First, Article 391 was not amended as a result of Article 146’s allowance of same-sex marriage.⁶² Second, an action challenging the constitutionality of Article 391 cannot derive from challenging the constitutionality of Article 146 because Articles 146 and 391 operate independent of each other.⁶³

V. THE SUPREME COURT’S RULING

The Court observed the Legislative Assembly’s process resulting in the amendment to Article 146 in ruling that the legislature intended to amend only Article 146 and not Article 391.⁶⁴ The legislative history revealed that the legislature had in fact debated adopting an amendment that would have precluded same-sex adoption.⁶⁵ This debate revealed the legislature’s intent to only amend Article 146 and not Article 391.⁶⁶ As the Court recognized, the legislature actually considered and rejected an amendment to Article 391 and only presented the amendment to Article 146 to the Chief Executive of the Federal District for promulgation.⁶⁷

Nevertheless, the Attorney General argued that the nexus between Article 146 and Article 391 is such that an action against the constitutionality of both could be sustained.⁶⁸ The Court recognized that Article 146 has an effect on other provisions relating to marriage and other matters such as “those that regulate the home, the records of Civil Registration, unmarried couples, kinship, food, affiliation, recognition, emancipation,

56. Señor Ministro [Justice] Franco González Salas, Remarks at the Regular Public Meeting of the Plenary of the Supreme Court of Justice 19 (Aug. 16, 2010), *available at* <http://www.scjn.gob.mx/ActividadJur/Pleno/SecretariaGeneraldeAcuerdos/VerEstenograficas/Documents/2010/Agosto/pl20100816.pdf>.

57. *Id.*

58. *See* ACCIÓN DE INCONSTITUCIONALIDAD [UNCONSTITUTIONALITY ACTION], *supra* note 40, at 24.

59. Señor Ministro [Justice] Franco González Salas, *supra* note 56.

60. *Id.*

61. ACCIÓN DE INCONSTITUCIONALIDAD [UNCONSTITUTIONALITY ACTION], *supra* note 40, at 61.

62. *Id.*

63. *Id.*

64. *See id.* at 62-63.

65. *See id.* at 66-68.

66. *See generally id.* at 74-77.

67. *Id.* at 77-78.

68. *Id.* at 79.

absence, family inheritance, succession, leases, associations, registration in the Public Registry of Property, to name a few.”⁶⁹

But the Court did not buy the Attorney General’s contention that the relationship between these regulations equated to a singular regulatory system where a challenge of one provision amounted to a challenge to each of the related regulations.⁷⁰ The Court explained that although the nature of Article 146 may cause the provision to affect other provisions with respect to marriage and other issues, it cannot be concluded that every provision that is related to or affected by Article 146 forms a single “normative system” through which all of the related provisions are inseparably connected with one another.⁷¹ Instead, Article 146 and Article 391 are distinct provisions that regulate separate matters and function independently of one another.⁷² The distinct nature of both articles means that the law’s amendment of Article 146 did not automatically amount to an alteration of Article 391.⁷³ Hence, the court concluded that the Attorney General could not mount an attack on the constitutionality of Article 391 by merely contending that Article 146 was unconstitutional.⁷⁴

With Article 391 left unchanged and Article 146 amended to allow for same-sex marriage, the Court found that prohibiting same-sex couples to adopt would be a discriminatory violation of Article 1 of the Constitution.⁷⁵ The Court emphasized that “once same-sex marriages had been approved, it would be discriminatory to consider those couples less capable of parental duties than heterosexual couples.”⁷⁶

The Court also rejected the Attorney General’s argument that the “ideal” family was comprised of a mother and a father, explaining that the Constitution did not define the “ideal” family as one with a mother and a father and there is not one definition of what constitutes a family.⁷⁷

Moreover, the Court clarified that under Mexican law, marriage and adoption matters are governed by civil law.⁷⁸ As such, the federal district is permitted to implement policies regarding marriage and adoption as it sees necessary.⁷⁹

69. *Id.* at 80.

70. *Id.*

71. *See id.*

72. *Id.*

73. *Id.*

74. *See id.*

75. Señor Ministro [Justice] Margarita Beatriz Luna Ramos, Remarks at the Regular Public Meeting of the Plenary of the Supreme Court of Justice 44-45 (Aug. 16, 2010), available at <http://www.scjn.gob.mx/ActividadJur/Pleno/SecretariaGeneraldeAcuerdos/VerEstenograficas/Documents/2010/Agosto/pl20100816.pdf>.

76. Castillo, *supra* note 4.

77. *See* Señor Ministro [Justice] Franco González Salas, *supra* note 56, at 19.

78. Sara Miller Llana, *Mexico Court Upholds Gay Adoption Law. Is Mexico More Tolerant than US?*, CHRISTIAN SCI. MONITOR, Aug. 17, 2010, <http://www.csmonitor.com/World/Americas/2010/0817/Mexico-court-upholds-gay-adoption-law-Is-Mexico-more-tolerant-than-US>.

79. *See* Señor Ministro [Justice] Franco González Salas, *supra* note 56, at 17.

Justice Saldivar, commenting with the majority, held that same-sex adoptions do not go against the best interest of the child but instead further protect the interest of the child.⁸⁰ He agreed with the Attorney General that there have not been studies conducted in Mexico regarding the effects of same-sex adoption on minors.⁸¹ But the fact that these studies had not been conducted was insufficient to support the contention that laws allowing same-sex adoption should be declared unconstitutional.⁸² Justice Saldivar also found that the studies that Justice Aguirre presented in support of the adverse effects of same-sex marriage on adopted children were not supported by enough scientific evidence.⁸³ As he explained, “[t]here is no reliable evidence that sexual orientation determines, by itself [] any other type of behavior . . . ‘the preferences of the parents do not determine (a child’s) sexual orientation.’”⁸⁴

VI. UNITED STATES PARALLELS AND COMPARISONS

In the United States, same-sex marriages are permitted in Connecticut, Massachusetts, New Hampshire, Vermont, Iowa,⁸⁵ and the District of Columbia.⁸⁶ At the same time, however, a number of states have implemented constitutional amendments precluding marriages between same-sex couples.⁸⁷

Same-sex legislation has also been implemented at the federal level by way of the Defense of Marriage Act (“DOMA” or “Act”), which was enacted in 1996.⁸⁸ DOMA states that

No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.⁸⁹

The law further stipulates that “[i]n determining the meaning of any Act of Congress . . . the word ‘marriage’ means only a legal union between

80. Señor Ministro [Justice] Zaldívar Lelo De Larrea, Remarks at the Regular Public Meeting of the Plenary of the Supreme Court of Justice 4-5 (Aug. 16, 2010), *available at* <http://www.scjn.gob.mx/ActividadJur/Pleno/SecretariaGeneraldeAcuerdos/VerEstenograficas/Documents/2010/Agosto/pl20100816.pdf>.

81. *Id.* at 6.

82. *See id.*

83. *See id.* at 7-10.

84. Castillo, *supra* note 4.

85. Glenn Adams, *Maine Voters Reject Gay-Marriage Law*, *GUARDIAN*, Nov. 4, 2009, <http://www.guardian.co.uk/world/feedarticle/8789627>.

86. Ian Urbina, *Gay Marriage is Legal in U.S. Capital*, *N.Y. TIMES*, Mar. 3, 2010, <http://www.nytimes.com/2010/03/04/us/04marriage.html>.

87. Adams, *supra* note 85.

88. Federal Defense of Marriage Act, *DOMA WATCH*, <http://www.domawatch.org/about/federaldoma.html> (last visited Nov. 24, 2010) [hereinafter *DOMA WATCH*].

89. Defense of Marriage Act, Pub. L. No. 104-199 (West 1996) (codified as amended at 28 U.S.C.A. § 1738C).

one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or wife."⁹⁰ Under DOMA, "states need not recognize a marriage from another state if it is between persons of the same sex."⁹¹

DOMA's allowance of individual states to refuse marriages conducted in other states presents an interesting parallel to several Mexican states that fear Mexico City's law will compel them to permit same-sex marriages and adoptions in their states as well.⁹²

DOMA's parallel controversy is rooted within the Full Faith and Credit Clause of the U.S. Constitution. The clause states "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."⁹³ Predictably, the debate ensuing from Congress' implementation of DOMA centered on the question of whether the Act was in conflict with the Full Faith and Credit Clause of the U.S. Constitution.⁹⁴

Without delving too far into issues of United States constitutional law, what is interesting to note about the DOMA issue and the fears of other Mexican states is the response of the respective federal governments. While the United States has responded to same-sex marriage legislation at the state level with legislation,⁹⁵ the federal government in Mexico has yet to do so. Going forward, following the unsuccessful judicial challenge of the law, it will be interesting to see if the federal government of Mexico pursues a similar legislative path as the United States.

With respect to same-sex adoption, a number of U.S. states allow same-sex couples to adopt.⁹⁶ According to the Human Rights Campaign, California, Connecticut, Illinois, Massachusetts, Oregon, Vermont, Florida, Maine, New York, Indiana, New Jersey, and the District of Columbia all extend adoption rights to same-sex couples.⁹⁷

VII. CLOSING REMARKS

The international implications of this decision are numerous. Consider, for instance, the effect that such marriages and adoptions will have across international borders. Will same-sex adoptions that take place in Argentina or Mexico City be honored in the United States? Even further, what

90. Defense of Marriage Act, Pub. L. No. 104-199 (West 1996) (codified as amended at 1 U.S.C.A. § 7).

91. DOMA WATCH, <http://www.domawatch.org/index.php> (last visited Nov. 24, 2010).

92. See Williams, *supra* note 48.

93. U.S. CONST. art. IV, § 1.

94. See Jon-Peter Kelly, *Act of Infidelity: Why the Defense of Marriage Act is Unfaithful to the Constitution*, 7 CORNELL J.L. & PUB. POL'Y 203, 209 (1997).

95. See 1 U.S.C.A. § 7.

96. See *Adoption Laws: State by State*, HUMAN RIGHTS CAMPAIGN, <http://www.hrc.org/issues/parenting/adoptions/8464.htm> (last visited Nov. 24, 2010).

97. See *id.*

if a same-sex couple who is denied adoption rights in the United States travels to Mexico City, adopts a child, and then attempts to bring the adopted child back to the United States? Will the adoption be honored in the United States? Although the answers to these questions venture far beyond the scope of this update, it is likely that these issues will be brought to the forefront in the very near future.

What is clear from this recent wave of legislative reform is that the perception about which rights should be extended to same-sex couples is changing in Latin America. But, it must also be remembered that changes of this nature do not often come without opposition and resistance. Just how far this recent wave of reform will go toward recognizing the rights of same-sex couples in all of Latin America remains to be seen. Considering the rapid nature of reform thus far, it seems further change is on the horizon.

