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Mexico's High Court Supports Mexico City's Gay-Marriage Law, Upholds Right of Gay Couples in Capital to Adopt Children

by Carlos Navarro

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Mexico's high court (Suprema Corte de Justicia de la Nación, SCJN) took a major step toward legitimizing same-gender marriages in Mexico with two separate decisions handed down in August. The first ruling, announced Aug. 5, reaffirms Mexico City's right to allow gay marriage, while the second decision, handed down Aug. 16, upholds the Mexico City government's right to allow gay and lesbian couples to adopt children. The court made the ruling in response to a legal challenge from the federal Procuraduría General de la República (PGR), which argued that the Mexico City law, approved earlier this year was unconstitutional because it threatened the institution of the family ([SourceMex, February 17, 2010](#)).

States must recognize Mexico City marriages, adoptions

The two rulings, approved by an overwhelming margin, apply directly to Mexico City but also stipulate that other states must recognize any marriages or adoptions that take place in the Mexican capital. Other states were given the freedom to decide on their own whether to legalize gay and lesbian marriages.

In issuing the rulings, the court disputed the objections raised by President Felipe Calderón's administration and the Mexican Catholic Church that gay marriages were anti-family. "It does not appear to me to be unconstitutional," Justice José de Jesús Gudiño Pelayo said following the court's 8-2 decision to uphold Mexico City's law. "The concept of the family established in the Constitution...is an open concept."

Furthermore, justices said a primary consideration was to preserve diversity and tolerance in Mexico. "Our Constitution does not establish a concept of marriage," said Justice Arturo Zaldívar.

Justice José Fernando Franco argued that procreation is not an essential element of marriage. "Those who wish to procreate are free to do so, not only within marriage but in any way they see best, and this happens and can happen in heterosexual marriages, and those that are not, or among single persons," said Franco.

The two dissenters were Chief Justice Guillermo Ortiz Mayagoitia and Justice Salvador Aguirre Anguiano. Both argued that marriage, defined as a union between a man and a woman, was an institution that preceded the Mexican Constitution. Aguirre also argued that uniformity was necessary to preserve the legitimacy of a marriage.

The court's decision that upholds the rights of gay couples to adopt children in Mexico City was also approved by an overwhelming margin. As was the case with same-gender marriage, the justices applied the ruling only to Mexico City but also directed all other states to recognize all adoptions that take place in the Federal District. Justice Sergio Valls, who introduced the court's discussion

on the right of gay couples to adopt children, said Article 121 of the Mexican Constitution stipulates that legal acts that occur in one state must be recognized by all the other states.

With the SCJN decision to uphold same-gender marriages, Mexico becomes the second country to at least partially put gay couples on par with their heterosexual counterparts. In July of this year, the Argentine Congress approved a sweeping law allowing gay couples to marry nationwide ([NotiSur, July 30, 2010](#)). Uruguay allows gay couples who have entered into a civil union to adopt children, but the country does not yet allow same-gender marriages.

The center-left Partido de la Revolución Democrática (PRD), led by Mayor Marcelo Ebrard, was generally responsible for passing the gay-marriage legislation in Mexico City, and many local legislators around the country who favor the unions are members of the party. Mexico City authorities said 320 couples have taken advantage of the law since it went into effect in February, including 173 weddings between men and 147 between women.

States have jurisdiction within own borders

The SCJN ruling gives states the option to decide whether to allow same-gender marriages within their own borders, which has prompted heated debate around the country. Officials and legislators in states like Jalisco, Baja California, Coahuila, Michoacán, Tlaxcala, Chiapas and others have already said they are opposed to legalizing gay marriage but promised to comply with the SCJN's order to recognize marriages and adoptions that take place in Mexico City. "We will comply with all the decisions of the high court," said Jalisco Gov. Emilio González Márquez of the conservative Partido Acción Nacional (PAN), who had filed a constitutional challenge to the Mexico City law.

But compliance with the court order does not mean that states are ready to rush out to pass their own laws to legalize gay marriage.

In Tlaxcala, PRD state legislator Gisela Santacruz sees very little chance the state legislature will address the issue in the near future. "Discussion of this issue is taboo here in our state, and that's why it's not part of the agenda for the current legislative session," said Santacruz.

The same goes for Coahuila, where no proposal has emerged for the upcoming legislative session related to gay marriage. "Not a single deputy or group has raised the need to address legislation dealing with this issue," said state deputy Roberto Pedraza Martínez of the Partido Revolucionario Institucional (PRI). Pedraza does not anticipate any challenges in Coahuila to the court decision directing states to recognize the laws approved in Mexico City

Others have taken a harder position. In Chiapas, local deputy Ana Elisa López Coello, who chairs the gender-equity committee (Comisión de Equidad de Género), criticized the SCJN for making the decisions without taking into account the opinions of society. López Coello said citizen input was needed for such an important matter dealing with the tradition of family.

But in some instances, legislators in conservative states are willing to dialogue with center-left counterparts to consider alternatives. This is the case in Jalisco, where PAN legislative leader José Antonio de la Torre Bravo has held discussions with Olga Araceli Gómez Flores of the PRD to consider alternatives, such as civil unions. "While both recognize that the court overwhelmingly declared gay marriage constitutional and required states to recognize them as such, they also do not believe that the conditions are ripe to push for legislative approval of marriages [in Jalisco]," wrote columnist Ricardo Salazar in Milenio.com.

Some legislators say acceptance of gay marriage might be an easier sell than adoptions. For example, Wilfrido Lázaro Medina, the floor leader of the PRI in the Michoacán state legislature, said he is open to considering a proposal from PRD legislator Gabriela Molina Aguilar to legalize gay marriage in the state. The legislator, whose comments were carried by the Michoacán-based news agency *Quadratín*, said he firmly believes that all people, no matter what their sexual orientation, should have the same rights.

However, Lázaro Medina applied this logic to gay adoptions, saying that the rights of children should be considered. "I subscribe to the position that adults and children both have rights," said Lázaro Medina. "A child is not given the opportunity to offer an opinion on whether he or she wants to live in a household where the parents are of the same gender."

Legislators in Tamaulipas held a similar position, saying that the court's decision on gay adoptions was too hasty. State deputy José Elías Leal, a member of the PRI, suggested that heterosexual couples should be given preference in most cases of adoption. Still, there is little chance that states would pass their own legislation regarding gay adoptions, so the comments from Lázaro Medina and Elías Leal are only opinions on the SCJN's decision regarding Mexico City.

Conflict arises between Catholic Church, Mexico City government

The SCJN decisions have caused a major war of words between Mexico City Mayor Ebrard and the Mexican Catholic Bishops Conference (Conferencia del Episcopado de México, CEM), primarily Cardinals Norberto Rivera and Juan Sandoval Iñiguez. Rivera, who is the primate archbishop of Mexico, has not minced words when criticizing the court and the Mexico City government for advancing gay marriage and gay adoptions. He described same-sex unions as "inherently immoral," saying they "distort the nature of marriage raised by Christ to the dignity of a sacrament."

Rivera agreed that society has discriminated in many ways against homosexuals, but granting them the right to marry and to adopt children was not the answer. "The injustices that have been committed against homosexual persons can never be a justification to grant them false rights," said the cardinal.

Regarding adoptions, Rivera repeated the assertion that the rights of children were being violated. "They will be denied the right to have a father and mother so they can experience an adequate moral and psychoaffective development," said Rivera.

Sandoval Iñiguez, the archbishop of Guadalajara, took the matter a step further by suggesting that Ebrard or members of his administration bribed the SCJN to favor the law. This prompted a sharp rebuke from Ebrard, who immediately asked the cardinal to present proof or retract his comments. Sandoval Iñiguez refused to issue a retraction, saying he has clear evidence that the justices were bribed. He did not disclose the evidence.

In the absence of a retraction, Ebrard announced he would file a lawsuit against the Guadalajara archbishop, charging defamation. Furthermore, the mayor said the Catholic Church had no business interfering in matters that were the exclusive domain of the government. "We want the law of the land, the concept of a secular state, and respect for institutions to prevail," said the mayor.

In February of this year, the Chamber of Deputies approved constitutional changes reaffirming the separation of church and state ([SourceMex, February 17, 2010](#)).

The SCJN also rebuked Sandoval Iñiguez for levying false accusations of corruption against the 11 justices. Justice Sergio Valls Hernández said the court had no immediate plans to take any actions against the cardinal, but said it reserved the right to do so if the situation warranted such action.

Furthermore, Valls criticized Sandoval Iñiguez for ignoring the Mexican Constitution that guarantees the separation of church and state. "In a secular state like ours, there must be an absolute separation between the church and the state," said Valls.

The debate over gay marriage and adoptions has extended beyond the official Catholic Church and the government. Several conservative secular groups have come out in favor of the position of the bishops and most members of the PAN. For example, the Colegio de Abogados Católicos de México (CACM) issued a strongly worded statement urging the justices not to ratify gay adoptions in Mexico City. "That would directly affect the rights of children," the group's president Armando Martínez said just days before the justices took the vote. "We will seek impeachment hearings against any justices who vote in favor of adoption."

Another group with a similar stance is the Instituto Mexicano de Orientación Sexual (IMOS), which argued vehemently against gay adoptions. "A boy or a girl needs a model of father and mother figures to develop his or her psychological identity," said IMOS director Óscar Rivas.

But groups that support the rights of lesbians, gays, bisexuals, and transgender persons criticized the Catholic bishops and conservative politicians for seeking to trample on their rights. Daniel Ramos, a leader with the organization Agenda LGBT, accused Cardinal Rivera of inviting intolerance and hate against the homosexual community in Mexico.

Still, the organization was very pleased with the SCJN decisions, which it said "buried" institutional homophobia. "We are very happy because we now have all the rights and responsibilities of any married couple, including adoption," Agenda LGBT director Jaime López Vela told reporters.

López Vela said a lesbian couple plans to take advantage of the court's most recent decision by filing adoption papers as a couple for the biological child of one of the women.

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