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Same-Sex Marriage Slowly Gaining Acceptance in Mexico

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On March 5, Mayor Miguel Mancera marked the fifth anniversary of Mexico City's decision to legalize gay marriage, presiding over a collective wedding ceremony involving 21 couples. Many of those celebrating their marriage at the Juzgado Civil 1 traveled to Mexico City from other parts of the country to celebrate their nuptials. "This is a city where people will always be treated equally," said Mancera. "Where families can comprise two fathers or two mothers," said the mayor. "Everyone will be afforded the same rights."

The Mexico City legislature (Asamblea Legislativa del Distrito Federal, ALDF) approved the initiative legalizing same-sex marriage in December 2009, surviving an effort by conservative elements in the federal Congress to overturn the initiative before it was to go into effect in March 2010 ([SourceMex, Feb. 17, 2010](#)). Later that year, the high court (Suprema Corte de Justicia de la Nación, SCJN) ruled that other states must recognize any marriages or adoptions that take place in the Mexican capital ([SourceMex, Aug. 25, 2010](#)). Any same-sex couples married in Mexico City would be afforded the rights of any married couple in all 31 states without exception, including fundamental spousal rights such as alimony payments, inheritance, and coverage under the social security system.

Five years later, Mexico City remains a primary destination for same-sex couples in Mexico to marry, but more options are available. Same-sex marriage is legally performed in Quintana Roo and Coahuila, and separate decisions by the SCJN have opened the door for gay nuptials to take place in Baja California and Campeche states.

There have been individual cases where same-sex couples have been allowed to marry in the states of Colima, Aguascalientes, Baja California Sur, Campeche, Chihuahua, Colima, Durango, Guanajuato, Jalisco, México, Michoacán, Morelos, Nayarit, Nuevo León, Oaxaca, Querétaro, San Luis Potosí, Sinaloa, Sonora, Tabasco, Veracruz, and Yucatán. These exceptions occurred because the couples either filed legal action to have their marriage validated or because local officials agreed to hold the weddings in deference to the SCJN ruling in 2010. None of these states has amended the legal code to allow same-sex marriage, however, which makes it difficult in these states for gay couples to marry. Therefore, residents of these states generally travel to Mexico City to wed.

Coahuila, Quintana Roo amend statutes

The Coahuila state legislature was the first entity outside Mexico City to change its state legal code to allow same-sex marriage. The measure, which was approved in September 2014, passed by an overwhelming vote of 20-1. "This legal update intends to put an end to restrictions and limitations to the rights and prerogatives imposed by the law on marriage and on the lesbian, gay, bisexual, transsexual, and transvestite communities," the daily newspaper *El Universal* said on the day the legislation was approved. "[These limitations] evidently represented a violation to the Constitution and international law."

There has also been some movement on same-sex marriages in Quintana Roo. The state had allowed same-sex marriages before Coahuila, but authorities were doing so with the use of a

legal loophole. The civil code of Quintana Roo does not define gender requirements for marriage, specifying only "people interested in getting married," and several same-sex couples used this loophole to marry despite efforts by some state authorities to block the unions. Cancún and other resorts launched a campaign in 2012 to attract gay and lesbian couples to the state to perform their weddings ([SourceMex, Jan. 11, 2012](#)).

Some communities in Quintana Roo—Bacalar, Playa del Carmen, and Othón P. Blanco—took it upon themselves to change the local legal code to allow same-sex marriages. In November 2014, a bill was approved in the state legislature to replace the loophole with language legalizing same-sex marriage, bringing Quintana Roo legally on par with Mexico City and Coahuila.

Federal Supreme Court intervenes in Baja California

Baja California has also not yet amended its Constitution, but a decision from the SCJN was the impetus to legalize same-sex marriage in a state governed by the socially conservative Partido Acción Nacional (PAN). In June 2014, the high court ruled that a clause in the Baja California state Constitution that prohibited same-sex marriage was in violation of the federal Constitution.

In its decision, the SCJN said a handful of articles in the Baja California State Constitution, which describe marriage as a union between a man and a woman, were in violation of individual rights protected by the federal Constitution. The court said that, by excluding same-sex couples, Baja California was "violating the right of self-determination of individuals and the right of free development of personality of each individual." Furthermore, said the court, the Baja California state statutes were in violation of the principle of equality by giving different treatment to homosexual couples compared with heterosexual couples.

Even though the SCJN issued the decision in mid-2014, the first gay marriage did not take place in Baja California until January 2015, and the ceremony came as a big surprise. Two Mexicali residents, Víctor Manuel Aguirre Espinoza and Víctor Fernando Urías Amparo, had attempted on three separate occasions to obtain a marriage license but were rejected each time. On Jan. 17, 2015, they joined several people in a gay-rights protest at City Hall. At that time, they learned that authorities had relented and decided to grant the marriage license, and they decided to marry on the spot. This was the first same-sex marriage in Baja California since the SCJN handed down its decision.

While the move represented a temporary break of the impasse between advocates of same-sex marriage and conservative opponents in Baja California, the two sides are bracing for a contentious fight. A conservative organization known as the Frente Ciudadano en Defensa del Matrimonio: Solo hombre y mujer (The Front for the Defense of Marriage: Only a Man and a Woman) on Feb. 10 sent a letter to Gov. Francisco Vega, a member of the PAN, urging him to uphold Article 7 of the state Constitution, even though the SCJN had already declared some sections unconstitutional. To support its position, the group presented 15,000 signatures from Baja California citizens.

"We are in the process of consciousness raising, working with different groups and organizations that, like us, are uncomfortable with the decision of the high court," Guillermo Montaña Gracia, a spokesperson for the Frente Ciudadano, told the Tijuana weekly newspaper *Semanario Zeta*. "In Baja California, we continue to ask, we continue to demand that the sovereignty of our state be respected."

Advocates of same-sex marriage in Baja California are working hard to remove the uncertainty and ambiguity resulting from the SCJN decision. The only way to do so is to have the state legislature

amend Article 7 of the Constitution to remove the language that the SCJN said was in violation of the federal constitution. In mid-February, a coalition comprising state legislators from the Partido Revolucionario Institucional (PRI), the Partido del Trabajo (PT), and the Partido Verde Ecologista de México (Partido Verde Ecologista de México, PVEM) introduced a legislative initiative to make the necessary changes to the state Constitution to match the language in the federal Constitution that deals with protection of human rights.

State legislator Miriam Ayón, the lead sponsor of the initiative, said Article 7 of the state Constitution clearly promotes discrimination, which is something that cannot be tolerated. "[Our state] should not only be open to plurality but should be committed to absolute respect of human rights," said Ayón, a member of the PRI.

Ambiguous statutes

The need for clear language is also evident in the Constitutions of other states that have not yet approved amendments that allow same-sex marriage. In December 2013, the Campeche state legislature unanimously approved legislation to allow civil unions for both same-sex and opposite-sex couples, a step short of marriage. Under the measure, these unions were to be registered with the public registry of property and trade (Registro Público de la Propiedad y del Comercio) instead of the Civil Registry.

The decision created enough ambiguity to discourage same-sex couples to apply for a marriage license, which must be obtained via a Civil Registry. Despite the obstacles, lesbian couple María José Estrada Muñoz and Faride Zulema Cabrera Can applied for a marriage license in March 2014. Authorities denied their request, saying that marriages cannot be registered through the Registro Público de la Propiedad y del Comercio. The couple brought the matter to the SCJN, which in July 2014 declined to force Campeche authorities to grant the marriage license. However, the high court directed authorities to clarify the law, and authorities allowed Estrada Muñoz and Cabrera Can to marry.

Even with the individual victory for one same-sex couple in Campeche, the state legislature has been slow to make needed changes in the law. The PRD, which is the party pushing for the changes, said 16 other same-sex couples have filed injunctions against the existing law.

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