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## Supreme Court Rules That Statute in Campeche State Against Gay Adoption Violates National Constitution

by Carlos Navarro

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For the second time this year, Mexico's high court (Suprema Corte de Justicia de la Nación, SCJN) has issued a ruling dealing with gay rights at the state level that has implications for the rest of the country. In an overwhelming decision, the high court on Aug. 11 determined that the state of Campeche violated the national Constitution when it published a statute that prevented gay couples from adopting children. The Campeche ban on gay adoptions has been in place since December 2013.

While the ruling applies only to the laws of Campeche, legal experts believe the SCJN set a precedent that could be used for other states that restrict the right of gay couples to adopt children.

The SCJN's decision is similar to the court's position—presented in an opinion paper published in June of this year—stating that any definition of marriage as a union only between a man and a woman is discriminatory and in violation of the Mexican Constitution. That decision did not explicitly state that same-sex marriage was legal, but the ruling weakened efforts in some states to block homosexual unions ([SourceMex, June 24, 2015](#)).

The court issued the position paper following a series of individual decisions in which it ruled that the laws of several states prohibiting gay marriage violated the Constitution. The decisions were based on legal challenges brought by couples who were denied the right to marry.

Additionally, the recent ruling on gay adoption is similar to one that the court issued in 2010, when it upheld the Mexico City government's right to allow gay and lesbian couples to adopt children ([SourceMex, Aug. 25, 2010](#)). The court made that 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, Feb. 17, 2010](#)).

### *Decision considers the rights of children*

Observers said the court was not making a simple decision on whether the state of Campeche was discriminating against gay adoptions. Rather, the justices took a broad view of state's code on civil societies of coexistence (Ley Regulatoria de Sociedades Civiles de Convivencia del Estado de Campeche), approved in December 2013. The extended look at the law prompted the SCJN to delay its decision by a day, issuing its ruling on Aug. 11 instead of Aug. 10.

In the decision, the justices agreed that Article 19 of the Campeche code was discriminatory because it ran counter to the rest of the document. The Campeche law defines the civil society of coexistence as a contract under which two people of different or the same sex, of age, and of full legal capacity can establish a common home with the intention of permanence and mutual aid, to organize their life together. However, Article 19 prohibits its members from adopting together or individually.

Also, this article does not allow sharing or entrusting paternal authority or guardianship and custody of minor children belonging to the other partner.

In reaching their decision, the justices specifically pointed out that Article 19 violates the rights of children. The court used these same criteria in the 2010 ruling that upheld the right of gay couples in Mexico City to adopt.

"The opinion of Justice Fernando Franco was key in the final decision," said the daily newspaper La Jornada. "His argument was that the decision could not be limited to the area of sexual preference and that other individuals who decided to live together via coexistence societies would also be prohibited from adopting."

The majority of the justices had similar stances. Margarita Luna Ramos, who introduced the case based on a complaint filed by the Comisión de Derechos Humanos del Estado de Campeche (CODHECAM), also viewed the issue as much broader than one of discrimination based on sexual orientation.

Still, Justice Arturo Zaldívar Lelo de Larrea reminded his colleagues that the issue of discrimination against same-sex couples was an important principle that had to be considered. "In my view, the violation of the Constitution lies in the fact that there is discrimination against people who are homosexual."

"In Campeche, homosexual couples lack the same rights as married people and heterosexual couples who are living together," said La Jornada.

Justice Luis María Aguilar Morales, president of the high court, suggested that society should make adoptions easier, not harder. "According to statistics, there are 100,000 children living on the street and begging for alms in our country. They are being exploited and many are addicted to drugs," said Aguilar Morales.

### *Dissent by only one justice*

The court reached its decision by an overwhelming margin of 9-1, with only newly appointed Justice Eduardo Medina Mora, who is considered a social conservative, voting against the measure.

In contrast to his colleagues on the court, Medina Mora emphasized that the competence of same-sex couples to raise a family was paramount in his decision. The justice argued that same-sex couples were not as capable of raising children as heterosexual couples. "In my judgment, not every decision related to this issue is necessarily related to the question of whether it complies with the Constitution," said Medina Mora, who until March was Mexico's ambassador to Washington. His election to the high court caused some controversy because of his lack of judicial experience ([SourceMex, March 18, 2015](#)).

Medina Mora also defended the right of authorities in Campeche to set policies on certain issues. "We must recognize that the states have the freedom to define the terms under which an adoption can take place," said the SCJN justice.

As expected, officials in the Roman Catholic Church took the same position as Medina Mora. José Guadalupe Barragán Oliva, a spokesperson for the Archdiocese of Antequera-Oaxaca, said many Catholics oppose the decision taken by the SCJN. "Marriage should be a symbol of respect and values," said Barragán Oliva.

Barragán Oliva raised the possibility that the Catholic leadership would file a legal motion to challenge the decision of the court. '

### *Gay marriage initiative fuels tensions in Tamaulipas*

While the SCJN has generally come out in support of gay marriage, state legislatures are the ones charged with approving legislation allowing same-sex unions. In Tamaulipas, the center-left Partido de la Revolución Democrática (PRD) and the conservative Partido Acción Nacional (PAN) have come out on different sides of the issue.

In January, the PRD introduced a legislative initiative to legalize gay marriage in the northeastern state. State legislator Jorge Valdez Vargas, who introduced the measure, said it was essential to respect the rights of all citizens in Tamaulipas to marry. Anything less would be a violation of their individual rights, said the PRD legislator.

The PAN responded by launching a campaign to gather signatures to oppose the PRD initiative. "First, they will seek to legalize gay marriage and then they will push for gay couples to be allowed to adopt," said PAN state legislator Humberto Barrientos Barrón, who launched a special Web site to collect the signatures.

Not surprisingly, Roman Catholic officials sided with the PAN. "This initiative violates the natural principle of marriage, which should be between a man and a woman who have the ability to bear children," said Bishop Antonio González Sánchez of the Diocese of Ciudad Victoria.

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