

## Church responds differently to same-sex marriage laws

Nancy Frazier O'Brien Catholic News Service | Mar. 8, 2010

### State of Marriage

The majority of states define marriage as the union of a man and a woman.

■ permits same-sex marriage   ■ permits civil unions or domestic partnerships for same-sex couples   ■ has constitutional amendment defining marriage as the union of one man and one woman   □ has law banning same-sex marriage



**WASHINGTON** -- When San Francisco passed an ordinance more than 13 years ago requiring agencies that contract with the city to provide spousal benefits to employees' domestic partners, then-Archbishop William J. Levada asked for a religious exemption, arguing that it imposed "an unconstitutional condition" on religiously affiliated organizations like Catholic Charities.

Within a few days, however, the city and the archdiocese worked out a compromise that allowed employees to designate "legally domiciled" members of their households -- a dependent parent, child or sibling, for example, or an unmarried heterosexual or homosexual partner -- for spousal equivalent benefits, without requiring the church to recognize the "partners" as married.

Nine years later, Catholic Charities of the Archdiocese of Boston was forced to drop out of the adoption business when it could not get an exemption from Massachusetts regulations requiring agencies contracting with the state not to discriminate against same-sex couples who seek to adopt children.

Although then-Gov. Mitt Romney called it "a mistake for our laws to put the rights of adults over the needs of children" and vowed to seek legislation allowing religious agencies to provide adoption services without violating their religious tenets, no such law ever materialized.

Now the issue of same-sex marriage has hit the nation's capital, where in recent days Catholic Charities of the Archdiocese of Washington has had to hand off its adoption and foster care services to another agency and announce that spousal benefits will no longer be provided to new employees or to current employees who want to add a spouse to their coverage after March 1.

Problems with same-sex marriage also threaten to spill over into neighboring Maryland, where the law states that "only a marriage between a man and a woman is valid in the state" but Attorney General Douglas F. Gansler issued an opinion Feb. 24 that same-sex marriages performed in other jurisdictions could be recognized as legal.

The archbishops of Baltimore and Washington and the bishop of Wilmington, Del., whose dioceses each include parts of Maryland, immediately took exception to the opinion, which is not legally binding.

"The attorney general's opinion demonstrates a fundamental disregard for the nature and purpose of marriage and its impact on society, as well as for the expressed will of the legislature and previous attorney general opinions," they said.

So why have there been different church responses to similar dilemmas posed by same-sex marriage? It's all in the wording of the laws and in "shifting the debate," as Levada put it in a 1997 article for *First Things* magazine on "The San Francisco Solution."

The church teaches that marriage is the union of a man and a woman and supports traditional marriage as the building block of society and the best way to nurture and protect children.

The new law in the District of Columbia, where same-sex couples began receiving marriage licenses March 3 and would be eligible to marry the following week, says no religious leader will be compelled to participate in a same-sex marriage ceremony and religious organizations "shall not be required to provide services, accommodations, facilities or goods" for such a ceremony if it violates their religious beliefs.

But officials in the Archdiocese of Washington had sought a wider religious exemption, similar to the one contained in Vermont's same-sex marriage law.

Vermont's "Act to Protect Religious Freedom and Recognize Equality in Civil Marriage" adds "advantages" and "privileges" to the list of things that religious organizations cannot be required to extend.

It also adds: "This subsection shall not be construed to limit a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization from selectively providing services, accommodations, facilities, goods or privileges to some individuals with respect to the solemnization or celebration of a marriage but not to others."

"That's three times in one subsection" that the Vermont law specifically excludes religious organizations, noted Helen Alvare, an associate professor of law at George Mason University School of Law in Arlington, Va.

The District of Columbia law provides little protection for religious organizations beyond what is already guaranteed in the First Amendment, said Alvare, who formerly worked as a law professor at The Catholic University of America's Columbus School of Law and as pro-life spokeswoman for the U.S. Conference of Catholic Bishops.

But a religious exemption, like that in the Vermont law, "says you're going to get a break from a law of general applicability because you are a religious organization," she added.



## The Archdiocese of San

Francisco, where the battle was fought first, got a lot of criticism from both sides for its compromise solution.

But Levada, now a cardinal and head of the Congregation for the Doctrine of the Faith at the Vatican, said in *First Things* that the solution "changes the focus from domestic partners and thus removes the primary purpose of the original legislation for many of those who promoted it."

In its place, the archbishop substituted a focus on an issue that remains in the public eye today.

"I am in favor of increasing benefits, especially health coverage, for anyone," he wrote. "I would welcome the opportunity to work with city officials to find ways to overcome what I believe is a national shame, the fact that many Americans have no health coverage at all."

Under what was then the new plan, "we would know no more or no less about the employee's relationship" with the person covered by his or his health insurance "than we typically know about a designated life insurance beneficiary," Levada wrote.

"What we have done is to prohibit local government from forcing our Catholic agencies to create internal policies that recognize domestic partnerships as a category equivalent to marriage," he added. "I agree with moral theologians like William May who see no compromise of Catholic moral principle in this practice."