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International Notes

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shortly after it cleared the legislature, “grandfathers” minors who had been diagnosed with gender dysphoria and begun receiving gender-affirming care prior to the effective date of the law, which will apply to any minor diagnosed with gender dysphoria from that date forward. The ACLU of Utah and National Center for Lesbian Rights quickly indicated that a challenge to the law will be filed, presumably as soon as they can find plaintiffs. Among other grounds for challenging the law is that it was rushed through the legislature without an opportunity for hearings, so legislative findings are not based on evidence. More significantly, of course, similar laws in Arkansas and Alabama were quickly subjected to preliminary injunctions, with two federal district judges having concluded that plaintiffs were likely to win on the merits on their constitutional challenges under Due Process and Equal Protection (although the Supreme Court’s 2022 ruling in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228, may put a damper on the Due Process claims if the plaintiffs draw a conservative judge). Similar bills have been introduced in two dozen other states, some of which extend the ban into young adulthood as late as 26 years old.

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CHINA – On January 24, *thediplomat.com* published an article by Darius Longarino and Yanhui Peng describing the difficulties faced by LGBT people in China who encounter employment discrimination. While mentioning several cases, they focused on the case of Chai Cheng, who was a flight attendant for China Southern Airlines. He was dismissed after a video of him kissing a male CSA pilot in an elevator went viral. Chai sued for lost wages. The employer claimed, based on speculation

and uncorroborated assertions, that Chai’s discharge was justified on safety grounds, casting aspersions on his mental health and claiming that due to the widespread circulation of the video, it is possible he would be recognized by passengers leading to disruption on flights. A Shenzhen court, without opining whether sexual orientation discrimination by employers is actionable in China, found that the employer met its burden for justifying the discharge.

COLOMBIA – *El Pais* reported on January 2 that Colombia’s highest court ruled in favor of three men who lived together as a family for ten and years and the two who claimed survivor beneficiary rights when one died. The ruling came in a dispute over entitlement to pension funds for surviving spouses. Justice Santander Rafael Brito stated that “The pension fund was trying to impose a definition of a family that was against equality and discriminatory.” Commented *El Pais*, “Until now, Colombian law allowed survivor benefits to be split between the deceased’s spouse and his or her permanent partner. In other words, between the widow or widower and their lover, who had to live in separate houses. But it did not allow granting benefits to members of stable, polyamorous relationships who lived together.” In a statement to the Supreme Court’s media relations department, reported *El Pais*, “the presiding magistrate in the case said, ‘The number of permanent partners is irrelevant. In this case there were three, but there can be more, all with the same proportional rights. The legal issue to resolve was whether, for purpose of distributing survivor pension benefits, simultaneous cohabitation with a permanent partner should be understood as the simultaneity of multiple households, and does not contemplate a single household with multiple members.’”

INDIA – *LiveLaw.ind* reported on January 6 that a three-judge bench of the Supreme Court of India (Chief Justice DY Chandrachud, Justice PS Narasimha, and Justice JB Pariwala), was transferring to itself all the petitions pending in Indian trial courts seeking recognition of same-sex marriages, and listed the petitions to be heard on March 13, 2023. Petitions had been pending in the High Courts of Delhi, Gujarat, and Kerala. The court gave the government until February 15 to file petitions on the issues. The court appointed “nodal counsels” on behalf of petitioners and the national government (Union of India) and charged them with preparing a compilation of precedents, documents, and legislative materials relevant to the matter. Some of the petitioners are same-sex couples who married in other countries (including the U.S.) and sought recognition of their marriages in their home country of India.

ISRAEL – Intense concern has been expressed in the liberal part of the Jewish press about the impact of the new, far-right governing coalition led by Prime Minister Benjamin Netanyahu on LGBT rights in Israel. Israel alone among Middle Eastern nations has developed a robust body of law protecting the equality rights of LGBT people, although there are still gaps. (For example, because marriage in Israel is controlled by orthodox Jewish authorities, civil marriage is not available, and although same-sex marriages performed elsewhere have certain legal recognition, they are not treated as equal to different-sex couple marriages in all respects.) Israeli anti-discrimination law currently prohibits sexual orientation discrimination, and government funding has been available to LGBT community and service organizations. Since some of the coalition partners have traditionally been deeply opposed to LGBT rights, doubts have been expressed about the Prime Minister’s statement that there

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will be no cutback. The installation of a conservative out gay man as speaker of the Knesset (Parliament) is instanced as evidence that the new government will not seek to effect adverse changes in the existing legal framework.

LITHUANIA – A ruling by the European Court of Human rights concerning censorship of a book containing LGBTQ characters will be covered in the March issue of *Law Notes*. Case of *Macate v. Lithuania*, Application No. 61435/19 (Grand Chamber, Jan. 23, 2023).

SURINAME – The republic of Suriname, on the north coast of South America with a population a bit under 600,000 people, does not yet have marriage equality. On January 31, its Constitutional Court ruled that the Central Bureau for Civil Affairs, the agency that records legal marriages, was not obliged to record the marriage of a Surinamese male couple who had married in Argentina, according to an internet posting by journalist Rex Wockner. This violates Suriname’s obligations as a signatory to the American Convention on Human Rights, as the Inter-American Court of Human Rights, which issues interpretations of the Convention that are binding on signatories, ruled in favor of marriage equality in 2017. There is no legal enforcement mechanism other than appealing this ruling by the Constitutional Court to the Inter-American court, but in some cases LGBT rights advocates have been able to persuade their national governments to comply voluntarily with Inter-American court precedents.

TAIWAN (REPUBLIC OF CHINA) – The Ministry of the Interior has reversed the country’s policy regarding recognition of same-sex marriages contracted by cross-national same-sex couples. Previously, the government

would not recognize such marriages if the foreign partner was a national of a country that did not allow same-sex marriages. In a directive issued on January 20, the Ministry described this policy as discriminatory and said that it contradicted the law allowing same-sex marriages in Taiwan. Household Registration Offices have not been directed to register such marriages involving citizens of Taiwan as one party, regardless of the nationality of their partner. This responded to a series of rulings from the Taipei High Administrative Court in individual cases ruling in favor of cross-national same-sex couples with partners from Malaysia, Macao, Singapore, Japan and Hong Kong. The Ministry said it was effectuating a decision taken in the Cabinet on January 10, and that the administrative court’s “consistent” rulings on the subject were also taken into consideration. However, the Ministry noted that this new rule would not apply to same-sex couples with one partner from China, “as their marriage registration should abide by the Act Governing Relations Between the People of the Taiwan Area and the Mainland Area and its relevant regulations.” Under those regulations, marriages involving mainland Chinese nationals must be registered in China.

UKRAINE – *Alliance.GlobalKyiv*, a non-governmental organization, reported online on January 20 that the Parliament of Ukraine adopted Draft Law No. 6364 on January 12, amending the law concerning spread of diseases caused by HIV, to make HIV testing much more widely available, as well as access to PreP (pre-exposure prophylaxis against contracting or transmitting HIV) and other HIV treatments. The measure also imposes strict confidentiality on HIV test results, eliminates the concept of “risk groups” in favor of characterization of risky behaviors, and expressly prohibits humiliating people

based on belong to “key groups” such as men who have sex with men, LGBTIQ+ people, sex workers, prisoners . . . The Ministry of Health is expected to follow up on the enactment with “progressive by-laws” (i.e., regulations?).

UNITED KINGDOM / SCOTLAND – The *NY Times* (January 16) reported that “for the first time, the [national] government in London is blocking legislation approved by the Scottish Parliament, saying the measure on gender identity would undermine U.K.-wide equality law.” The bill in question was intended to make it easier for transgender individual to effect a legal change of gender designation without going through all the steps required by English law, most particularly by obtaining a medical diagnosis of gender dysphoria before they could obtain new birth certificates if they were age 16 or older. The Scottish bill would rely on personal declarations. The U.K. government relied on a 25-year-old statute that has not previously been invoked, and argued that the basis for issuing such documentation should be uniform throughout the U.K. and was not an appropriate subject for local legislation. There was speculation that this step by the U.K. government would whip up support in Scotland for leaving the U.K. and asserting independence by joining the European Union. Scottish voters rejected Brexit, the referendum by which U.K. left the European Union, but they were outvoted. A binding referendum on separating from the U.K. would require approval by the U.K. Parliament and is opposed by the government at present.

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The **ACLU OF FLORIDA** is taking applications for their first full-time