
Other Publications

Faculty Scholarship

2-2023

Professional Notes

Arthur S. Leonard

Follow this and additional works at: https://digitalcommons.nyls.edu/fac_other_pubs

PROFESSIONAL *notes*

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 600,00 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.

PROFESSIONAL NOTES

By Arthur S. Leonard

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

staff attorney devoted to LGBTQ civil rights issues. The application process is open until the position, posted late in January is filled. The job can be performed remotely, but the successful applicant must be a Florida resident. For information, consult their website: <https://www.aclufl.org/en/jobs/staff-attorney-lgbtq-rights>.

EDITOR'S NOTES

All points of view expressed in *LGBT Law Notes* are those of identified writers, and are not official positions of the LGBT Bar Association of Greater New York or the LGBT Bar NY Foundation, Inc. All comments in Publications Noted are attributable to the Editor. Correspondence pertinent to issues covered in *LGBT Law Notes* is welcome and will be published subject to editing. Please address correspondence to the Editor, Arthur S. Leonard, via e-mail to info@lgbtbarny.org

PUBLICATIONS NOTED

1. Antognini, Albertina, *Unwed Parents: The Limits of the Constitution*, 35 J. Amer. Acad. Matrimonial Lawyers No. 2 (2023).
2. Ball, Carlos A., *The Judicial Activism of Justice Anthony Kennedy* (draft, December 16, 2022). *American University Law Review*, Vol. 72, No. 5, 2023, Available at SSRN: <https://ssrn.com/abstract=4298322>.
3. Black, Derek W., *When Religion and Public-Education Mission Collide*, 132 Yale L.J. Forum 559 (Nov. 17, 2022).
4. Bonneau, Sonya G., *The Romantic Author as Compelled Speaker*, 97 Tul. L. Rev. 53 (Nov. 2022) (critiques Justice Thomas's concurrence in *Masterpiece Cakeshop* regarding petitioner's claim to be a "cake artist" entitled to strict scrutiny of any requirement that he make a wedding cake for a same-sex couple as a matter of freedom of speech).
5. Girgis, Sherif, *Defining "Substantial Burdens" on Religion and Other Liberties*, 108 Va. L. Rev. 1759 (Dec. 2022) (In light of support by many of the Justices for overruling *Employment Division v. Smith*, how should the court define "substantial burdens" on free exercise in evaluating general laws that incidentally burden religious practice or belief?).
6. Hall, Stacey Lyn, *Bad Service: The Case for Removing the Sec. 501(c) (3) Tax Exemption for Nonprofits That Discriminate on the Basis of Sex*, 4 Corp. & Bus. L.J. 151 (Jan. 8, 2023) (includes consideration of discrimination on the basis of gender identity).
7. Krauss, Stanton D., *New Light on the History of Free Exercise Exemptions: The Debates in Two Eighteenth-Century State Legislatures*, 71 Cath. U.L. Rev. 763 (Fall 2022).
8. Marcus, Nancy, Bendita Cynthia Malakia, Ann E. Tweedy, and Mya Reid, *Briding the Gap in LGBTQ+ Rights Litigation: A Community Discussion on Bisexual Visibility in the Law*, 34 *Hastings J. Gender & L.* 69 (Winter 2023).
9. Redburn, Kate, *Before Equal Protection: The Fall of Cross-Dressing Bans and the Transgender Legal Movement, 1963–86*, 2023 *L. & History Rev.* 1.

