

# MEXICO CITY LEGALIZES ABORTION

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## I. THE ROAD TO REFORM

IN the last few years, abortion reform has become an international phenomenon.<sup>1</sup> In Latin America, however, social and political differences exist between countries in the region making abortion reform problematic.<sup>2</sup> Paving the way for the liberalization of abortion laws was the left-wing Mexico City Legislature (Legislature), who passed a watershed law, on April 24, 2007, decriminalizing abortion during the first twelve weeks of pregnancy.<sup>3</sup> On August 28, 2008, Mexico City's National Supreme Court (Supreme Court) then upheld the law in an eight-to-three vote allowing unrestricted abortions in the first twelve weeks of pregnancy.<sup>4</sup>

The abortion reform is bringing a radical change for women in a once conservative Mexico City.<sup>5</sup> "Mexico City's law is one of the most liberal laws in Latin America, putting it in line with Cuba and Guyana, the only countries in the region that currently allow abortions for all reasons in the first trimester, as the US allows."<sup>6</sup> Mexico City's new abortion law sets a precedent for the rest of Mexico and other Latin American countries to liberalize their own abortion laws.<sup>7</sup>

### A. SOCIAL AND POLITICAL FACTORS THAT CONTRIBUTED TO THE REFORM

There are a variety of social and political factors that contributed to Mexico City's abortion reform:

A dominant left-wing party in the Mexico City Legislature in an environment of political polarization between the left and right wing, an international human rights framework in favor of abortion rights, and,

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1. Maria Conseulo Mejia & Maria Luisa Sanchez, *Responding to a Real Need: Liberalizing Mexico City's Abortion Law*, CONSCIENCE, Mar. 22, 2008, at 32.

2. *Id.*

3. *Id.*

4. Sarah Miller Llana, *Mexico's Supreme Court Upholds Abortion Law*, CHRISTIAN SCI. MONITOR, Aug. 29, 2008, at 25; Elisabeth Malkin, *Mexico: City's Abortion Law is Upheld*, N.Y. TIMES, Aug. 28, 2008, at A8.

5. Hector Tobar, *In Mexico Abortion is out from Shadows; the Stigma Attached to it has Begun to Fade as the Large Numbers of Legal Procedures have been Done in the Capital*, L.A. TIMES, Nov. 3, 2007, at 1.

6. Llana, *supra* note 4, at 25.

7. *Mexican Court Upholds Abortion/Calderon is Likely to Continue Efforts Opposing the Procedure*, HOU. CHRON., Aug. 29, 2008, at A21.

above all, more than thirty-five years of consistent struggle by the feminist movement, the women's movement and allied civil society organizations to put abortion rights on the public agenda.<sup>8</sup>

A broad range of perspectives developed in Mexico City in favor of safe and legal abortion procedures that contributed to the abortion reform.<sup>9</sup> The diverse perspectives on abortion helped educate "the public, the media, legislators, the health sector and the judicial branch about the complexity of the issue."<sup>10</sup>

The Mexico City Penal Code (Penal Code) was reformed with regard to abortion rights in 2000 and 2003.<sup>11</sup> The reformations decriminalized therapeutic abortion; abortion that occurs when pregnancy threatens a woman's health, abortion that occurs in the case of fetal deformity, or abortion that occurs as a result of nonconsensual artificial insemination.<sup>12</sup> Before these reforms, the only abortion exceptions in the Penal Code were for accidental miscarriages and abortions that resulted from rape.<sup>13</sup> "Although abortion is legal in all of Mexico's thirty-two states for victims of rape, studies show that in practice it is extremely difficult for a rape survivor to exercise her right to terminate her pregnancy, because of an endless list of administrative hurdles and outright obstruction by authorities."<sup>14</sup> While twenty-seven states in Mexico allow for termination when the pregnancy threatens a woman's life, only thirteen states allow it in the case of fetal deformations, and even fewer states allow it in order to protect the mother's health.<sup>15</sup>

An important contribution to getting the abortion law liberalized was Mexico City's controversial presidential election in July 2006.<sup>16</sup> Felipe Calderon Hinojosa (Calderon) was the conservative National Action Party (PAN) presidential candidate who defeated Andres Manuel Lopez Obrador (Obrador), the progressive Democratic Revolution Party (PRD) candidate.<sup>17</sup> Even though the PRD had majority control of the Legislature, the PRD allowed the proposed bill to be publicly debated for four months in order to build support from the PAN instead of just passing the bill by a PRD majority vote.<sup>18</sup>

The abortion law provoked heated debates and campaigns for both pro-choice and pro-life activists.<sup>19</sup> Abortion law opponents "played recordings of crying babies outside the legislature," while proponents of the

8. Mejia & Sanchez, *supra* note 1, at 32.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. Diego Cevallos, *Mexico: Conservatives Lose Battle Against Abortion in Capital*, Inter Press Service (English), Aug. 27, 2008.

15. *Id.*

16. Mejia & Sanchez, *supra* note 1, at 32.

17. *Id.*

18. *Id.*

19. *Abortion Rights in Mexico: Breaking a Taboo*, *ECONOMIST*, Apr. 28, 2007, at 1.

law emphasized the importance of a woman's right to choose.<sup>20</sup> The prevention of unplanned pregnancy was a critical factor to the passage of the abortion law and was unanimously agreed upon by both the proponents and opponents of the law.<sup>21</sup> Also critical to the passage of the law was that the "long-established separation of church and state in Mexico, combined with scandals around pedophile priests. . . debilitated the Catholic hierarchy and weakened its public image for a period of time before the bill was proposed."<sup>22</sup> Initially, Calderon stayed out of the debates, but eventually his strong pro-life beliefs influenced his activism in "streamlining adoption laws, improving sex education and providing subsidies to unwed mothers."<sup>23</sup>

### B. THE LEGISLATURE LEGALIZES ABORTION

The Legislature finally approved the abortion law on April 24, 2007, and Mexico City Mayor Marcelo Ebrard signed the bill into law less than a day after it was approved.<sup>24</sup> Unlike many of his predecessors and the newly elected Calderon, "Ebrard. . . championed socially liberal causes" like the new abortion law.<sup>25</sup> The legislators voted forty-six-to-nineteen with one abstention in favor of the law with the "no" votes coming from members of the PAN party.<sup>26</sup>

The Legislature did more than just decriminalize abortion for the first twelve weeks of pregnancy.<sup>27</sup> The law also reduced punishment for women who abort the pregnancy after the gestational period.<sup>28</sup> Even though penalties remain in place for women who terminate a pregnancy after the first twelve weeks, studies show that criminal charges are rarely ever brought.<sup>29</sup> "This inclusive bill requires the Mexico City Ministry of Health [(MOH)] to provide legal abortion services, free of charge, to any woman who lives in Mexico City, even if she is covered by public or private insurance, and charge at a moderate rate for women from other states of the country and foreigners."<sup>30</sup> The abortion law also provides access to sex education to help women learn about contraceptives and counseling.<sup>31</sup> Doctors under the public system, however, can refuse to carry out abortion procedures<sup>32</sup> and private hospitals are not required to

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20. *Id.*

21. Mejia & Sanchez, *supra* note 1, at 32.

22. *Id.*

23. James C. McKinley Jr. ET AL., *Abortion Plan in Mexico Shakes a Heavily Catholic Land*, N.Y. TIMES, Mar. 31, 2007, at A1.

24. Tobar, *supra* note 5, at 1; Mejia & Sanchez, *supra* note 1, at 32.

25. *Abortion Rights in Mexico: Breaking a Taboo*, *supra* note 19, at 1.

26. James C. McKinley Jr., *Mexico City Legalizes Abortion Early in Term*, N.Y. TIMES, Apr. 25, 2007, at A8.

27. Mejia & Sanchez, *supra* note 1, at 32.

28. *Id.*

29. Cevallos, *supra* note 14.

30. Mejia & Sanchez, *supra* note 1, at 32.

31. *Id.*

32. Olga R. Rodriguez, *Mexican Supreme Court Upholds Legal Abortion*, AP DataStream, Aug. 29, 2008.

give abortions (but can do so without receiving criminal penalties).<sup>33</sup>

### C. THE SUPREME COURT UPHOLDS THE ABORTION LAW

On May 25, 2007, a month after the Legislature voted to pass the law, two public agencies, the National Human Rights Commission (NHC) and the Federal Attorney General's Office (AGO), challenged the bill's constitutionality before the Supreme Court.<sup>34</sup> The constitutional challenge consisted of several arguments: first, the Mexican Constitution guarantees a right to life from conception, second, the abortion reform disregards men's rights, and third, the Legislature is not authorized to create health laws.<sup>35</sup> In response to this constitutional challenge, the Supreme Court held six public hearings between April and June 2008 to receive input from "activists, lawyers, doctors, government officials, and religious groups opposed to and in favor of the law."<sup>36</sup> The Supreme Court heard forty speakers for abortion and forty speakers against abortion during these hearings.<sup>37</sup> In order to overturn the abortion law, eight of the eleven Supreme Court Justices had to vote against it.<sup>38</sup>

Protest groups disputed the abortion law all the way up to the day of the Supreme Court decision.<sup>39</sup> Proponents argued that decriminalizing abortion would make them more widely available to all women regardless of their social class and, in turn, would reduce the risk of death or injury from unsafe abortions.<sup>40</sup> Opponents argued that legalizing abortion would encourage irresponsible sex, legalize killing, and violate the constitution.<sup>41</sup> The day before the Supreme Court Justices began their final debate on abortion, Carlos Aguilar, the president of Mexico's bishops' conference, even appeared in a paid television advertisement urging the court to declare the law unconstitutional.<sup>42</sup>

Despite the arguments posed by opposition groups, Calderon, and the HRC, the protestors failed to convince the necessary majority of Supreme Court Justices.<sup>43</sup> On August 28, 2008, the Supreme Court upheld the abortion law in an eight-to-three vote.<sup>44</sup> The Supreme Court justices took the position that abortions during the first twelve weeks of pregnancy did not violate Mexico's constitution or any international agree-

33. *Id.*

34. *Id.*

35. Mejia & Sanchez, *supra* note 1, at 32.

36. Cevallos, *supra* note 14.

37. Elisabeth Malkin & Nacha Cattán, *Mexico Struggles with Law on Abortion*, N.Y. TIMES, Aug. 24, 2008, at A5.

38. Mejia & Sanchez, *supra* note 1, at 32.

39. Elisabeth Malkin, *Mexico Court is Set to Uphold Legalized Abortion in Capital*, N.Y. TIMES, Aug. 28, 2008, at A12.

40. Ken Ellingwood, *Mexico Court Backs Abortion Rights*, L.A. TIMES, Aug. 29, 2008, at 3.

41. McKinley Jr., *supra* note 26, at A8.

42. Cevallos, *supra* note 14.

43. Ellingwood, *supra* note 40, at 3.

44. Rodriguez, *supra* note 32; Elisabeth Malkin, *Mexico: City's Abortion Law is Upheld*, N.Y. TIMES, Aug. 29, 2008, at A8.

ments.<sup>45</sup> Pro-choice advocate Justice Genaro Gongora Pimentel stated, “[h]uman rights systems cannot require states to defend a right to life from conception. . . . [i]t would mean imposing ideologies and subjective values that could sacrifice other rights that are fully identifiable.”<sup>46</sup> By contrast, anti-abortion advocate Justice Salvador Aguirre stated that his opposition to the abortion law had nothing to do with penalizing women but was safeguarding embryos that are incapable of protecting themselves.<sup>47</sup> Justice Sergio Aguirre Anguina, in agreement with Justice Salvador Aguirre, further remarked that the Legislature even lacked authority to pass such a measure because health laws were under the jurisdiction of the federal government.<sup>48</sup> In the end, the majority of Supreme Court Justices, however, said they voted for the abortion law because overturning the law would be detrimental to women’s rights.<sup>49</sup> The majority of Justices dismissed the NHC’s and AGO’s arguments that the Mexican Constitution protected embryos.<sup>50</sup> Calderon’s administration will likely continue his efforts to prevent the widespread availability of abortions.<sup>51</sup>

Immediately after the Supreme Court vote, supporters of the abortion law began campaigning for the expansion of the decision to other parts of Mexico and Latin America where abortion is prohibited.<sup>52</sup> Raffaella Schiavon, director of the International Abortion Rights group stated, “[the abortion law] opens the road for all of Latin America to start visualizing legal paths to abortion.”<sup>53</sup> Mexico City officials said they would help prepare other local governments interested in liberalizing their abortion laws.<sup>54</sup> Supreme Court Justice Margarita Luna said, “[t]his decision was in regard to Mexico City’s Legislative Assembly, but in the end it establishes a precedent that can be applied to other local lawmaking bodies[.]”<sup>55</sup> Opponents of the abortion law announced that they will push for a referendum in the hope that the public will vote to overturn the law.<sup>56</sup>

## II. THE EFFECT OF THE ABORTION REFORM ON THE CATHOLIC CHURCH

The Supreme Court decision was an enormous defeat for the Roman Catholic Church,<sup>57</sup> “driv[ing] a wedge into [Mexico City’s] deeply Catho-

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45. Jane Bussey & Kevin G. Hall, *Abortion Rights Upheld in Mexico City*, KAN. CITY STAR (MO), Aug. 29, 2008, at A8; Malkin, *supra* note 39, at A12.

46. Ellingwood, *supra* note 40, at 3.

47. Cevallos, *supra* note 14.

48. Ellingwood, *supra* note 40, at 3.

49. *Id.*

50. *Id.*

51. *Mexican Court Upholds Abortion/Calderon is Likely to Continue Efforts Opposing the Procedure*, *supra* note 7, at A21.

52. Rodriguez, *supra* note 32.

53. *Id.*

54. *Id.*

55. *Id.*

56. Malkin & Cattan, *supra* note 37, at A5.

57. Ellingwood, *supra* note 40, at 3.

lic society and shed[ding] light on the waning influence of the church in the wake of sexual abuse scandals involving priests.”<sup>58</sup> While the Mexico City Legislature was debating the abortion law, Pope Benedict XVI urged the law-makers not to approve it, and, thus, igniting protests that the Catholic Church was interfering in state affairs.<sup>59</sup> The Catholic Church continued to meddle when Vatican officials led demonstrations against the abortion law and Mexican bishops protested the passage of the law.<sup>60</sup> After the law was passed in April 2007, the Catholic Church collected 70,000 signatures supporting an abortion referendum.<sup>61</sup> When the Supreme Court approved the law, the church blasted the Court and declared itself in mourning for “the millions of children who are being sacrificed.”<sup>62</sup>

Pope Benedict hinted that Mexico City legislators and Supreme Court justices who voted to allow abortion in the first twelve weeks of pregnancy had excommunicated themselves from the Catholic Church.<sup>63</sup> Further, Pope Benedict indicated that since excommunication is part of church law, killing an innocent child is “incompatible with going into communion in the body of Christ.”<sup>64</sup> According to Catholic Church law, those who play a significant role in support of abortions have automatically excommunicated themselves from sharing in communion.<sup>65</sup> Excommunication applies to women who end unwanted pregnancies and the medical professionals who perform them.<sup>66</sup> The current debate inside the Church, however, is whether this applies to politicians and justices who support abortion laws.<sup>67</sup> Liberals such as Mayor Ebrard disagree with excommunication and believe that the Church should not interfere in secular matters.<sup>68</sup> Ebrard stated, “We are in the 21st century, not the 16th,. . . I have a lot of respect for issues of faith. . . . [b]ut this is a case where the affairs of state reign.”<sup>69</sup>

### III. THE SOCIAL CONSEQUENCES OF THE ABORTION REFORM

Mexico City’s abortion law is a landmark vote for women’s rights in Latin America.<sup>70</sup> Before the passage of the law, many women in Mexico with unwanted pregnancies would buy herbs from the market and try

58. McKinley Jr., *supra* note 26, at A8.

59. Cevallos, *supra* note 14.

60. *Mexico City Legalizes Abortion*, CATH. INSIGHT, June 1, 2007, at 18.

61. *Id.*

62. Rodriguez, *supra* note 32.

63. Ian Fisher & Larry Rohter, *Pope Opens Trip with Remarks Against Abortion*, N.Y. TIMES, May 10, 2007, at A3.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. See McKinley Jr., *supra* note 26, at A8.

69. Mark Stevenson, *Mexico Catholic Church Tells Doctors not to Perform Abortions Under New Law*, AP DATASTREAM, Apr. 29, 2007.

70. Tobar, *supra* note 5, at 1.

dangerous home versions of the procedure.<sup>71</sup> Women also resorted to buying prescription drugs obtained from pharmacists without a doctor's signature.<sup>72</sup> Some women even ingested huge doses of drugs for arthritis and gastritis, available over the counter, which can cause miscarriages.<sup>73</sup> All of these methods are inherently dangerous.<sup>74</sup>

Since the passage of the law, however, “[m]any of the old ‘secret’ clinics that offered the cheapest and most dangerous surgical abortions, usually for around \$400, have closed. Private hospitals that once charged as much as \$2,000 for an illegal abortion have been forced to sharply reduce their prices.”<sup>75</sup> Since abortion and adequate health services are now available to 10,000,000 women in Mexico City,<sup>76</sup> 26,000 women have already sought information from public health facilities on abortion and 12,262 women have had legal abortions in Mexico City.<sup>77</sup> According to the MOH, eighty-five percent of the women who have had an abortion are Catholic despite the Catholic Church's efforts to prevent abortion.<sup>78</sup> Maria Consuelo Mejia, director of Mexico's Catholics for the Right to Decide, stated that, “[t]he reality is, women who have resources have the possibility to have abortions. Women who are poor don't have that possibility. That was one of the major points the assembly made when discussing this [law]. . . [i]t is a social justice issue.”<sup>79</sup>

In addition to giving women of all social classes equal rights, the passage of the new law has significantly reduced abortion-related deaths.<sup>80</sup> Reports from the World Health Organization reveal that in 2003, 3,900,000 women in Latin America obtained unsafe abortions resulting in 2,000 deaths.<sup>81</sup> Studies show that before the new law, maternal mortality attributed to unsafe abortion procedures was the fourth or fifth cause of death for women in Mexico City.<sup>82</sup> Since the passage of the new law, MOH statistics show that in Mexico City, maternal mortality has been reduced significantly.<sup>83</sup> Mexico City officials at MOH have prioritized the standardization of abortion procedures in all public hospitals in an effort to reduce abortion-related deaths.<sup>84</sup> Serrano Limon, an anti-abortion activist with the pro-life group *Provida*, believes that, “[t]his is going to promote abortion in other states. Instead of 12,000 deaths in a year,

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71. Ellingwood, *supra* note 40, at 3.

72. *Id.*

73. McKinley Jr., *supra* note 23, at A8.

74. *Id.*

75. Tobar, *supra* note 5, at 1.

76. McKinley Jr., *supra* note 26, at A8.

77. Cevallos, *supra* note 14.

78. Mejia & Sanchez, *supra* note 1, at 32; *Eighty-five Percent of Women Getting Abortions in Mexico City are Catholics*, EFE INGLÉS, Sept. 9, 2008, at Mexico-Abortion.

79. Llana, *supra* note 4, at 25.

80. Mejia & Sanchez, *supra* note 1, at 32.

81. *Council Works to Reduce Unsafe Abortions in Mexico*, POPULATION BRIEFS, Dec. 1, 2007, at 5.

82. Cevallos, *supra* note 14.

83. Mejia & Sanchez, *supra* note 1, at 32.

84. *Id.*

we'll see 25,000."<sup>85</sup> Limon further reasons that since one fifth of the women who have had abortions in Mexico City have been foreigners, the abortion law is merely the product of the personal interests of judges and legislators.<sup>86</sup>

However, "helping poor women gain equal access to the procedure has turned out to be almost as complicated as passing the law."<sup>87</sup> Many women who have tried to obtain legal abortions were denied access to health services.<sup>88</sup> A reason for this is because eighty-five percent of Mexico City's gynecologists that practice in public hospitals have declared themselves "conscientious objectors,"<sup>89</sup> amounting to twenty-two doctors and sixty nurses and social workers not performing abortions.<sup>90</sup> There is not only a shortage of doctors willing to perform abortion procedures, but there is confusion and lack of knowledge that abortion is even decriminalized.<sup>91</sup> Some doctors consider themselves "conscientious objectors" because they are morally opposed to it, fear public scorn, or fear excommunication from the Roman Catholic Church.<sup>92</sup>

Women complain that in the hospitals that do perform abortions, medical personnel are often demeaning and throw up "bureaucratic hurdles."<sup>93</sup> Mexico City hospitals that were barely able to handle the amount of patients before the passage of the law are now turning away women seeking abortions because they are unable to provide proper medical attention.<sup>94</sup> Mexico City hired four new doctors at the fourteen city hospitals who are trained to use abortion pills and perform quick abortion surgeries to accommodate the influx of new patients.<sup>95</sup> "To speed up treatment, officials are [also] moving low-risk abortions out of overworked public hospitals into three smaller public clinics, based in part on models in Britain and the United States."<sup>96</sup>

#### IV. AN INTERNATIONAL TREND TOWARD LIBERALIZATION

Mexico's government is a federation, so abortion laws will have to take place state by state if the abortion reform is going to spread outside of Mexico City.<sup>97</sup> While many countries can legalize abortion nationwide, Mexico does not have a federal law that applies to all of its states.<sup>98</sup> Even

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85. Llana, *supra* note 4, at 25.

86. *Id.*

87. Malkin & Cattan, *supra* note 37, at A5.

88. *Council Works to Reduce Unsafe Abortions in Mexico*, *supra* note 81, at A5.

89. Malkin & Cattan, *supra* note 37, at A5.

90. Tobar, *supra* note 5, at 1.

91. *Council Works to Reduce Unsafe Abortions in Mexico*, *supra* note 81, at 5.

92. Rodriguez, *supra* note 30.

93. Malkin & Cattan, *supra* note 37, at A5.

94. Ellingwood, *supra* note 40, at 3.

95. Malkin & Cattan, *supra* note 37, at A5.

96. *Id.*

97. Mejia & Sanchez, *supra* note 1, at 32.

98. *Id.*

though the future of abortion rights is uncertain and left to the politicians of each state to debate, Mexico City's Supreme Court decision sets a trend for the rest of Mexico and Latin America to follow.<sup>99</sup> Abortion reform is particularly needed in countries such as Chile, El Salvador, and Nicaragua where abortion is strictly prohibited even for therapeutic reasons.<sup>100</sup>

Mexico is a country where abortions have historically deprived women of their basic human rights. The liberal abortion law, however, is beginning to diminish the country's cultural stigma.<sup>101</sup> Both the passage of the abortion law and the Supreme Court's decision to uphold the law is a sign of social and political change in Mexico City.<sup>102</sup> As Mexico "has become more urban and educated, [it] has become less socially conservative."<sup>103</sup> The biggest change since Mexico transitioned to become a full democracy in 2000 has been the willingness of Calderon and Obrard to even debate abortion issues.<sup>104</sup> In addition, on January 23, 2009, President Obama overturned a ban on U.S. support to international aid groups that provide abortion services around the world.<sup>105</sup> Reversing the so-called "global gag rule" shows international support for Mexico City's liberal abortion law.<sup>106</sup> These changes may also "mark. . .the start of American-style culture wars" into Mexico and Latin America.<sup>107</sup> Mexico City's politics are largely controlled by economics and social policy, thus the abortion reform is a sign of "deepening democracy" that will hopefully expand into the rest of Mexico and Latin America.<sup>108</sup>

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99. *Id.*

100. Christina Zampas & Jaime M. Gher, *Abortion as a Human Right—International and Regional Standards*, 8 HUMAN R. L. R., 249, 292 (2008).

101. Tobar, *supra* note 5, at 1.

102. *Abortion Rights in Mexico: Breaking a Taboo*, *supra* note 19, at 1.

103. *Id.*

104. *Id.*

105. Noam N. Levy, *Obama Lifts Ban on Abortion-linked Aid*, L.A. TIMES, Jan. 24, 2009, at 11.

106. *Id.*

107. *Abortion Rights in Mexico: Breaking a Taboo*, *supra* note 19, at 1.

108. *Id.*