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Jorge Adame Goddard

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## Meaning and Scope of the Restrictions Imposed by the Mexican Constitution on Ministers of Worship\*

*Address Given by Jorge Adame Goddard\*\*:*

### I. INTRODUCTION

In response to the decision by Mexico's Supreme Court of Justice issued in July 2010, declaring that the law permitting marriage between persons of the same sex is consistent with the Mexican Constitution, several Catholic bishops made statements criticizing the decision. These statements generated a strong response from the party promoting the legal reform, the Democratic Revolution Party (PRD), which filed several charges against the bishops, arguing that they had violated the Mexican Constitution and various laws.

The purpose of this Article is to analyze, with reference to this case, the content of the constitutional restrictions affecting ministers of worship, particularly those against engaging in proselytism and opposing the laws and institutions, which are the restrictions allegedly violated in the case, and to propose an interpretation of these restrictions that is fully consistent with the Mexican Constitution and with current human rights doctrine. To this end, I will first present the case (Part I), and then present the constitutional and legal precepts that were allegedly violated (Part II); I will then detail the restrictive—and in my opinion antidemocratic—interpretation given to these precepts by the accusers (Part III), and conclude by proposing the interpretation that I judge to be consistent with the Mexican Constitution and human rights doctrine (Part IV); finally, I will present a few brief conclusions by way of summary (Part V).

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\* This address was originally presented at the Eighteenth International Law and Religion Symposium, organized by Brigham Young University, in Provo, Utah, which took place in October 2010.

\*\* Institute for Legal Research, National Autonomous University of Mexico.

*A. The Case*

In August 2010, Mexico's Supreme Court of Justice ruled that the amendment to the civil code of the Federal District that allows marriages between persons of the same sex, as well as the adoption of minors by such couples, is consistent with the Mexican Constitution. Several Catholic bishops and other religious leaders criticized the court's decision, considering it contrary to the ethics of their respective faiths and Mexican traditions. Having an especially strong impact on public opinion were the views of the Archbishop of Mexico City, Norberto Rivera Carrera, and particularly those of his official spokesman, Father Hugo Valdemar, and those of the Archbishop of Guadalajara, Cardinal Juan Sandoval Íñiguez. Considerable public opinion (that is, opinions expressed in the most influential media outlets) and the political party behind the disputed reform, the PRD, criticized the statements made by these bishops, arguing that they violated Article 130 of the Mexican Political Constitution (which establishes the bases for relations between religious organizations and the State) and the relevant regulatory law. There were even several charges brought before the Ministry of the Interior, calling upon it to investigate whether these statements were in violation of the law and, if they were, to impose the corresponding penalties. Charges were also filed with the Federal Electoral Institute, alleging that these criticisms, insofar as they affected a political party, violated the Electoral Code.

*1. The decision of the Supreme Court of Justice*

An action of unconstitutionality was filed with the Supreme Court of Justice, calling upon it to resolve whether the amendment to the Federal District's civil code to allow marriages between persons of the same sex, as well as adoption of minors by such couples, was or was not consistent with Mexico's federal constitution.

The Plenary Sessions in which this matter was debated were broadcast on television. There were several sessions (on August 3, 5, 9, 10, 12, and 16), at the end of which the ministers declared, by a majority of nine votes to two, that the amendment was constitutional. In brief, the court found in favor of the constitutionality of the amendment, that same-sex marriages entered into in the Federal District would have to be respected in all other Mexican states and that same-sex couples were entitled to adopt.

The press release issued by the Supreme Court outlined a number of reasons for its decision: that marriage is not a “predetermined concept immune to legislation,” and thus may be freely defined to include unions between homosexual persons; that homosexual relations “are totally comparable to heterosexual relations”; that the Constitution “protects all types of families” and that marriage between a man and woman is not “the only way of forming one.” With regard to the validity of same-sex marriages in other Mexican states, the Court added that Article 121, subsection IV should apply, which stipulates that marriages entered into in one state must be respected in all other states of the country. With regard to the adoption of children by same-sex couples, it was determined “that it does not infringe any constitutional guarantees,” and that what the law must guarantee is that the adoption is the best life option for the minor “irrespective of the sexual orientation” of those seeking to adopt, whether they are single persons or heterosexual or homosexual married couples.

## *2. The declarations*

On August 15, at the end of a ceremony celebrating the Assumption of Mary, in the city of Aguascalientes, with the participation of the Archbishop and Cardinal of Guadalajara, Juan Sandoval Íñiguez, the cardinal was asked for his opinion regarding the decision of the Supreme Court of Justice in relation to the constitutionality of same-sex marriages.

According to a report in the August 15 edition of the newspaper *Reforma*, the cardinal answered: “I have no doubt that they (the judges) are well ‘fed’<sup>1</sup> by [Mexico City Federal District Head of Government, Marcelo] Ebrard. They are well ‘fed’ by international organizations.” “I don’t believe that [the Ministers of the Court] would have reached these absurd conclusions, which run counter to the sentiments of the Mexican people, without very big motives. And the very big motive could be the money they are given,” he added.

The other national daily newspaper, *La Jornada*, reproduced these words as being the cardinal’s:

This (the decision of the Supreme Court validating same-sex marriage) is an aberration, which responds to international interests that pursue

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1. Translator’s Note: the word used by the cardinal in Spanish is “maiceados” (lit. “fed with corn”); the original meaning of the word relates to feeding animals, but in colloquial Mexican Spanish, it is generally used to refer to people who have been bribed.

the Malthusian purposes of the very highest economic and advertising powers, which pursue evil purposes and are committed to the reduction of the world's population, especially in the Third World, because they say that we are using up the world's resources, and they've been launching a series of measures for several years now such as contraception, abortion, free love, the perversion of children and youths, the morning-after pill, quick divorce and marriage between homosexuals, who of course are sterile, which pursue these Malthusian purposes orchestrated from the highest levels, which are very well paid.

Subsequently, on September 23, in the Guadalajara Archdiocese's weekly newsletter, *Semanario Arquidiocesano de Guadalajara*, the cardinal published the following statement:

This is a series of laws (related to same-sex marriage and others) that are immoral, very harmful to the country, which if put into practice will severely damage the life of this nation and the institution of marriage. . . . These are dictatorial laws, contrary to democracy; they denigrate the representative nature of governors and legislators, who do not have absolute power, but the power given them by the people they represent . . . .

On Monday, August 16, according to a report by the newspaper *El Universal*, Father Hugo Valdemar, official spokesman for the Archbishopric of Mexico City, declared that

the laypeople now have the "green light" from the Catholic Church to take any actions they have to and raise public awareness of the fact that the author of all this is the Head of Government of the Federal District, Marcelo Ebrard. He and his government have created laws that destroy the family, that do worse harm than the drug trade. Marcelo Ebrard and his party, the PRD, have undertaken to destroy us. The Church will not do it, because it is not within its jurisdiction, but the laypeople will take on the task of raising awareness among the citizens so that at the next elections in the Federal District they can vote responsibly. That is, when the time comes to vote, they can do so in a reasoned manner, considering that they should not vote for pernicious parties like the Democratic Revolution Party, which act against faith and morality.

### 3. *The reactions*

Monday, August 16, in response to the declarations of Cardinal Juan Sandoval, the ministers of the Court published Press Release #185/2010, in which they stated

The Plenary Supreme Court of Justice of the Nation (SCJN) issued a vote of censure against the declarations of the Archbishop of Guadalajara, whereby he questioned the integrity both of this High Court and of its members, in relation to the debate held over same-sex marriages and the possibility of same-sex couples adopting.<sup>2</sup>

Another paragraph was also published, expressing the personal position of the minister Sergio Valls, author of the provisional decision, who considered that “in a secular State such as ours, there must be absolute separation between the church and the State, as set forth in Article 130 of the Constitution.”

In general, the biggest media outlets criticized the declaration of Cardinal Sandoval that the ministers and the Head of Government of the Federal District had been “fed” (“maicados” in Spanish), because they interpreted this word in the sense of having been bribed with money. The Head of Government of the Federal District even filed a claim against the cardinal for “personal injury,” i.e., for harm to his reputation, which is currently in court. I will not examine this issue, which has more to do with respect for the moral integrity of a person than with religious freedom.

But there was also a significant current of opinion supporting the view expressed by Minister Valls, that in a secular State, bishops should not express opinions on public matters. Moreover, two members of the Chamber of Deputies (the lower house of the Mexican Congress) filed a charge with the Ministry of the Interior alleging that the declarations of Cardinal Sandoval and Father Hugo Valdemar violated the Constitution and the *Law of Religious Organizations and Public Worship*, and thus petitioned the Ministry of the Interior to admit the charge, investigate the case and, if applicable, impose the corresponding penalty. The national leader of the Democratic Revolution Party filed another similar charge.

Specifically, there were two accusations made: (i) “political proselytism” against the Democratic Revolution Party; and (ii) “opposing” the law of the Federal District that allows marriage between homosexuals, and the decision of the Supreme Court, which would mean opposing this institution.

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2. Comunicado de Prensa 185/2010, Suprema Corte de Justicia de la Nación, (Aug. 16, 2010), available at <http://www2.scjn.gob.mx/red2/comunicados/comunicado.asp?id=1895>.

*B. The Laws Allegedly Violated*

The charges state that the declarations are in violation of Article 130, paragraph *e* of the Constitution, the Law of Religious Organizations and Public Worship, and the Federal Code of Electoral Procedures and Institutions.

*1. Article 130 of the Constitution*

The allegedly violated precept is paragraph *e* of this article, which literally states:

Ministers may not join any association with political purposes or engage in proselytism for or against any political candidate, party or association. Furthermore they may not, in public meetings, in acts of worship or religious propaganda, or in publications of a religious nature, oppose the laws of the country or its institutions, or in any way denigrate national symbols.

Of the various restrictions imposed by this article, there are only two in dispute in this case: (i) the restriction against engaging in “proselytism for or against any political candidate, party or association,” and (ii) the restriction against opposing “the laws of the country or its institutions”.

To better understand the meaning of these restrictions, it is useful to consider them in relation to the original text of the article, particularly paragraphs nine and thirteen, in order to identify the differences between this text, which is extremely restrictive, and the more liberal, current text.

The original text stated that ministers of worship (¶ 9) “shall not have the right to vote or to stand for election, or to join any association with political purposes.” The amended text now grants them the right to vote, but introduced a new restriction, against engaging in proselytism for or against any party or candidate, without specifying the circumstances of time and place in which this prohibition is to have effect.

The original text of 1917 included a restriction on freedom of the press, which applied not to authors themselves but to “periodical publications of a religious nature,” which were prohibited from (¶ 13) “commenting on national political matters,” “reporting the acts of the authorities of the country, or of individuals, which are directly associated with the operations of public institutions.” The current text no longer contains a general prohibition against publications, but one applicable

only to ministers of worship: that they cannot “oppose the laws of the country or its institutions” in “publications of a religious nature.”

The original text prohibited ministers of worship, in public or private meetings or acts of worship or religious propaganda, from making “criticisms of the fundamental laws of the country, of any authorities in particular, or of the government in general.” The amended text has maintained part of this prohibition in the sentence prohibiting ministers of worship from opposing “the laws of the country or its institutions,” in public meetings, in acts of worship or religious propaganda, or, as mentioned above, in publications of a religious nature.

This comparison of the two texts sheds some light on the meaning of the two current restrictions being considered here. The restriction on engaging in proselytism for or against any party or candidate was introduced at the same time that ministers of worship were granted the right to vote in elections. It is natural that any person with a right to vote would talk with others about candidates and parties, and it would be absurd for this to be prohibited by the constitution. This is why it is necessary to clarify the meaning of “engaging in proselytism.”

The restriction against “opposing” the laws and institutions of the country becomes clear when we consider that the original text prohibited making “criticisms of the fundamental laws of the country,” not of any law, or making criticisms of “any authorities in particular,” i.e., members of the government (which is omitted in the amended version), and making criticisms “of the government in general,” which in the amended text would be “the institutions.” If the new text, from the perspective of human rights, constitutes an improvement on the previous text, the prohibition against “opposing” cannot be understood in the sense of “making criticisms” of any law or any institution. I will examine this point and the meaning of “engaging in proselytism” in Part IV.

These two restrictions have been included, with a few modifications, in two federal laws: the Law of Religious Organizations and Public Worship (Law of Religious Organizations), which includes both prohibitions, and the Federal Code of Electoral Institutions and Procedures (Electoral Code), which includes only the restriction related to political parties.

## *2. The Law of Religious Organizations and Public Worship*

This law, which regulates Article 130 of the Constitution, states (in Art. 8-I) that religious organizations must “[a]lways be subject to the Constitution and the laws arising therefrom, and respect the institutions

of the country.” Article 14 repeats the prohibition against ministers of worship joining “associations with political purposes, as well as engaging in proselytism for any political candidate, party or organization.” Then, under the fifth title on offenses and penalties (Art. 29), it indicates the following as punishable offenses against the law by “those subject to the terms set forth herein”: “engaging in proselytism or propaganda of any kind for or against any political candidate, party or association” (subsection I).

A close reading of the text of this law reveals certain discrepancies with the text of the constitution. In the section related to political parties, the text of the constitution prohibits “engaging in proselytism,” while Article 29-I of the law identifies engaging not only in proselytism but also in “propaganda of any kind” for or against a party or candidate as a punishable offense. The prohibition in the law is more extensive than the constitutional prohibition as it includes another activity, not covered in the Constitution, which raises the question of whether this addition is valid or not, since according to Article 1 of the Constitution, the fundamental guarantees can only be restricted by the Constitution itself. (I will examine this question in Part IV.)

The Law of Religious Organizations covers the constitutional prohibition against “opposing” the laws and institutions of the country, but defines it in subsection X in the following terms: “opposing the laws of the country or its institutions in public meetings.” There is a discrepancy between this text and the Constitution in relation to the circumstances: while the Constitution refers to opposition in a public meeting, in acts of worship or of religious propaganda, or in publications of a religious nature, the law only refers to acts occurring at “public meetings.” On this point, the wording of the law proves more benign than that of the Constitution, especially given that it does not deem oppositions made in printed publications as offenses, raising the question of whether the silence of the law eliminates the legal effect of the circumstances set forth in the Constitution.

The penalties for these offenses may be one of the following (Art. 32), depending on the seriousness and the circumstances of the case: a warning, a fine of an amount of up to the equivalent of 20,000 times the minimum daily wage, temporary closure of a place of worship, temporary suspension of the rights of the religious organization, or cancellation of the registration of the religious organization. The penalties are imposed by a special committee made up of officials of the Ministry of the Interior.

### *3. The Federal Code of Electoral Institutions and Procedures*

The constitutional restriction is covered in Article 353-1 of the Code but in different terms from those used in the Constitution. This article of the Code identifies the following as an offense: “[I]nducing voters to abstain, to vote for a candidate or political party or not to vote for any of them, in places intended for worship, in public spaces or in the media.”

The offense is no longer engaging in “proselytism,” as stated in the Constitution, or in “propaganda,” as added by the Law of Religious Organizations, but also includes “inducing” voters to vote for a candidate or party and even inducing them to abstain from voting. This is not only a different action from that defined in the Constitution, which includes the word “inducing” instead of “proselytism,” but Article 353-1 also adds a new purpose: in addition to inducing voters to vote or not to vote for a party or candidate, it is also an offense to induce them to abstain from voting.

The Electoral Code adds a circumstance that was not provided for in the Constitution, which, in relation to the prohibition against engaging in proselytism, did not make any specification regarding the place where the act should occur,<sup>3</sup> while the Electoral Code states that to be deemed an offense the “inducing” must occur in a place intended for worship, in a public space or “in the media”.

The above raises the question of whether or not the offense identified in the Electoral Code is the same as that set forth in the Constitution; if it is the same offense, then a question arises over the validity of the restriction on encouraging abstention, which is not referred to in the Constitution; if the restriction is different, this would raise the question of whether the Electoral Code can restrict political rights that are not restricted in the Constitution.

This Code does not indicate the penalty to be imposed on a minister of worship who commits the offense mentioned, leading to the assumption that the penalty would have to be imposed by the Ministry of the Interior, which is the body with jurisdiction over religious

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3. Paragraph *e* of Article 130 sets forth the prohibition against engaging in proselytism in a sentence that contains no indication of the places where such proselytizing may occur, and it ends with a period immediately followed by a new sentence. The sentence that follows sets forth the restriction on “opposing” the laws and institutions and indicates various places where such opposition may not be expressed: “public meetings,” “acts of worship or religious propaganda,” and in “printed publications of a religious nature.”

organizations.<sup>4</sup> The Electoral Code itself establishes (in Art. 355-4) that whenever the Electoral Institute becomes aware of an offense committed by a minister of worship or religious organization, it shall inform the Ministry of the Interior “to take the corresponding legal action.”

*C. The Restrictive Interpretation Asserted by the Accusers*

The accusers assert that the declarations giving rise to their lawsuit violate the Constitution and the laws and should therefore be punished. They believe that the freedom of expression of ministers of worship is restricted by the terms of Article 130 of the Constitution and also by the terms set forth in the laws, as analyzed above, go beyond the constitutional provisions. To judge whether this assertion is justified, I will now analyze the declarations in light of the applicable legal provisions.

*1. Prohibition against engaging in proselytism, propaganda, or inducing voters to vote for or against a political party*

The accusers assert that the declaration of the spokesman for the Archdiocese of Mexico, Father Hugo Valdemar, constitutes an offense against the Law of Religious Organizations, the Electoral Code, and Article 130 of the Constitution in relation to engaging in proselytism, propaganda, or inducing voters to vote against the Democratic-Revolution Party (PRD).

The controversial statement made in this context is as follows:

The Church will not do it, because it is not within its jurisdiction, but the laypeople will take on the task of raising awareness among the citizens so that at the next elections in the Federal District they can vote responsibly. That is, when the time comes to vote, they can do so in a reasoned manner, considering that they should not vote for pernicious parties like the Democratic Revolution Party, which act against faith and morality.<sup>5</sup>

An analysis of the content of this statement reveals that it is not an invitation or direct exhortation to vote against the PRD, but it is an

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4. See Ley Orgánica de la Administración Pública Federal [LOAPF] [Enabling Law for Federal Public Administration], *as amended*, art. 27 frac. XVIII, Diario Oficial de la Federación [DO], 29 de Diciembre de 1976 (Mex.).

5. Julián Sánchez, *Iglesia llama a votar contra PRD*, EL UNIVERSAL, Aug. 17, 2010, <http://www.eluniversal.com.mx/nacion/179755.html>.

affirmation that the lay faithful “will take on the task of raising awareness among the citizens” so that they can vote in a reasoned manner and make them see “that they should not vote for pernicious parties like the Democratic Revolution Party.” There is certainly in this declaration the statement or expression of a negative opinion of the PRD, which is deemed “pernicious” because it acts “against faith and morality.” Does this declaration violate the laws?

Article 130 paragraph *e* of the Constitution prohibits “engaging in proselytism” for or against any party.<sup>6</sup> The statement of this negative opinion cannot be considered “proselytism,” as it is not an act forming part of a series of acts or a process aimed at winning proselytes; it is merely the expression of a negative view of a party. Nor can the comment that “the laypeople will take on the task of raising awareness among the citizens” be considered proselytism, as it is merely the expression of a desire regarding the action that may or may not be freely undertaken by the lay faithful, who, in any case, in their capacity as citizens, may freely promote the political options they prefer and, if they so desire, engage in political proselytism.

From the perspective of the Law of Religious Organizations, which in addition to prohibiting proselytism also prohibits “propaganda,”<sup>7</sup> it could be argued that if “propaganda” is something distinct from proselytism, the law has overstepped its bounds because it identifies an offense not provided for in the Constitution and, in so doing, restricts fundamental rights beyond the terms set forth in fundamental law.

Pursuant to the prohibition in the Electoral Code against “inducing” voters to vote for or against a party, the statement could be deemed an offense insofar as it calls upon citizens, if not directly at least indirectly, not to vote for a political party; but if “inducing” is an activity distinct from proselytism, the Electoral Code has overstepped constitutional bounds.

The declaration might therefore be in violation of the laws but not of the Constitution. The question then is whether the law can expand the restrictions established in the Constitution.

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6. Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 130, Diario Oficial de la Federación [DO], 28 de Enero de 1992 (Mex.).

7. Ley de Asociaciones Religiosas y Culto Público [Law of Religious Associations and Public Worship], *as amended*, art. 29 frac. X, Diario Oficial de la Federación [DO], 25 de Mayo de 2011 (Mex.).

## 2. *Prohibition against opposing the laws and institutions*

In the opinion of the accusers, the declarations of Cardinal Juan Sandoval constitute an act of opposition to the laws and institutions, and therefore violate Article 130 paragraph *e* of the Constitution and Article 29-X of the Law of Religious Organizations.

The cardinal's declarations (leaving aside those that may constitute an offense for personal injury to the Head of Government of the Federal District or the ministers of the Supreme Court, which is the object of a civil action for liability for personal injury), which may be deemed to oppose the institutions and laws, are those that claim the following: that the Supreme Court decision contains "absurd conclusions, which run counter to the sentiments of the Mexican people," or that it is an "aberration"; that the law allowing same-sex marriages in the Federal District and other laws arising from it are "immoral," "very harmful to the life of the country," "dictatorial," and "contrary to democracy."<sup>8</sup>

In fact, it seems an exaggeration to claim that such statements may be deemed an act of opposition to the laws of the country. This conclusion could only be drawn if the constitutional prohibition against opposing the laws were understood to mean that ministers of worship cannot criticize any law, i.e., interpreting the amended text as much more restrictive than the original text, which only prohibited criticism of the "fundamental laws."

The declarations of Fr. Hugo Valdemar that expressed a negative opinion of a political party could also be deemed an act of opposing the institutions if it is accepted that the party is one of the institutions of the country. According to this position, the constitutional restriction would be expanded to include negative criticism of any institution, which would again result in a heavier restriction than that set forth in the original text, which referred to making criticisms "of the authorities" or "the government in general."

## 3. *Critique of this interpretation*

The interpretation of the constitutional restrictions established in Article 130, paragraph *e*, asserted by the accusers is essentially as

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8. *See id.* *See also* Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 6, Diario Oficial de la Federación [DO], 13 de Noviembre de 2007 (Mex.); Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 7, Diario Oficial de la Federación [DO], 20 de Julio de 2007 (Mex.).

follows: engaging in proselytism or opposing the laws and institutions of the country consists simply of making a declaration expressing a negative opinion of any law or institution of the country.

They maintain that the right to freedom of expression of ministers of worship is restricted by this paragraph of Article 130 of the Constitution and that this restriction is expanded or developed with the limitations set forth in the Law of Religious Organizations and the Electoral Code.

The result is that ministers of worship do not have the right to free expression, except to express positive opinions regarding the institutions and laws. Is this conclusion acceptable in a democratic republic?

The terms in which the right to free expression and publication of ideas and opinions are defined in the Mexican Constitution do not admit such a conclusion. Article 6 of the Constitution literally states: “The expression of ideas shall not be subject to any judicial or administrative inquiry, except in cases of offenses against morality or the rights of others, provocation of a crime or disturbance of public order.”<sup>9</sup> Why then is an “administrative inquiry” being pursued in relation to ideas expressed by ministers of worship? It would be a gross exaggeration to assert that these declarations offend morality, the rights of others (remembering that I am not considering the question of personal injury here), or that they provoke a crime or disturb public order. Article 7 is no less emphatic with regard to freedom of publication. It states: “The freedom to write and publish writings on any topic is inviolable,”<sup>10</sup> with basically the same exceptions as those set forth in Article 6.

But those who assert the restrictive interpretation allege that any declaration by a minister of worship that negatively criticizes any law or any institution of the country is a violation of Article 130 and, as such, constitutes a “disturbance of public order,” and, consequently, it is an exceptional case in which freedom of expression may be restricted. Irrespective of the question of the meaning of “public order” in Article 6,<sup>11</sup> it can be asserted that the accusers’ argument is based on an

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9. Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 6, Diario Oficial de la Federación [DO], 13 de Noviembre de 2007 (Mex.).

10. Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 7, Diario Oficial de la Federación [DO], 20 de Julio de 2007 (Mex.).

11. *Id.* Given the fact that Art. 6 speaks of “disturbing” public order and Art. 7 speaks of not respecting “public peace,” it could be inferred that, in Article 6, public order is understood in the sense of public peace or calm that might be “disturbed,” for example by a riot, attack, or similar actions; “public order” is not meant in the sense of imperative laws or laws of public order, such as constitutional precepts, because these cannot be “disturbed,” but are simply either obeyed or

unproven assumption: that the declarations in question violate Article 130 of the Constitution. Their reasoning is simple: such declarations violate the constitution, and, therefore, ministers of worship have no right to make them.

But the issue to be resolved is whether such declarations in fact violate the Constitution when the Constitution itself protects freedom of expression so broadly and when its first article prohibits discrimination on religious grounds (as well as others) with an aim to undermine fundamental rights.

The restrictive interpretation not only violates the right to free expression of religious ministers, but it also violates the rights of all citizens who are members of religious organizations. In a representative democracy such as Mexico,<sup>12</sup> citizens participate in public decisions and processes through representatives: through deputies and senators in the Legislative Branch, and through governors, municipal mayors, councilors, and the President of the Republic, who is the representative of the nation. But they also participate through representatives of the different organizations of which citizens are members: workers participate in public processes through union leaders, and through them they express opinions on public matters; business leaders do so through the heads of the chambers of industry, commerce, or services; college students do so through university presidents, and thus each grouping of citizens expresses its position through the leaders of its organization.

For example, to remove the right to free expression of union leaders would be to violate the right of workers to free expression on public matters through those leaders. Union leaders have the obligation to publicly express the opinions of their members so that society at large and government agencies will be aware of their points of view and take them into account. If their leaders are silenced, union members are effectively left without a voice, and thus gagging leaders would be an infringement of the individual rights of each worker. If the leaders of a union or of any organization make a statement that is not consistent with the interests and opinions of union members, it is these members, not the government, who may dismiss their representatives or change to another organization.

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disobeyed.

12. Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 40, Diario Oficial de la Federación [DO], 20 de Marzo de 1997 (Mex.).

The restrictive interpretation discussed here attempts to strip representatives of religious organizations of their right to broadcast the points of view and interests of their members with regard to public matters. It claims that ministers of worship must not in any way criticize the laws, decisions, programs, or performance of political parties. It seeks to silence religious leaders, thereby ensuring that the points of view and opinions of citizens who are members of registered religious organizations are not heard in the public arena. This interpretation thus has the perverse effect of discriminating against citizens by reason of their religious beliefs, depriving them of the right to publicly express their points of view on public matters through their accredited and registered representatives before the State.

In my opinion, this restrictive interpretation is anticonstitutional and antidemocratic. It is anticonstitutional because it contradicts the spirit or reasoning behind the new Article 130 of the Constitution, as explained in the following section, and because it is contrary to Articles 1, 6, and 7 of the Fundamental Law. It is anti-democratic because it prevents citizens who are members of religious organizations from publicly expressing their voice.

#### *D. An Interpretation Consistent with the Mexican Constitution*

There is currently a general consensus that the Constitution serves to protect the fundamental rights of persons, also called human rights. Article 1 of the Mexican Constitution establishes that “all individuals” shall enjoy the rights granted by the Constitution, “which may not be restricted or suspended, except in the cases and under the conditions set forth herein.”<sup>13</sup> This is a principle that is crucial for the analysis of the matter examined in this paper: that constitutional guarantees (i.e., fundamental rights) cannot be restricted, except in cases with the conditions set forth in the Constitution itself.

The constitutional restrictions on ministers of worship against “engaging in proselytism” and “opposing the laws and institutions” can be interpreted in a manner consistent with the Mexican Constitution if we dismiss any attempt to interpret them in the restrictive and outdated manner implicit in the charges discussed above. In principle, these

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13. Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 1, Diario Oficial de la Federación [DO], 10 de Junio de 2011 (Mex.).

restrictions must be considered valid because they are set forth in the Constitution, but it is important to clarify their meaning and scope.

*1. The prohibition against “engaging in proselytism”*

As mentioned above, this prohibition was introduced into the Constitution with the reform of 1992, which also gave ministers of worship the right to vote. What was it that the constitutional reformers sought to prohibit in referring to “proselytism,” without specifying the details of place, time, or means by which it might occur?

The word “proselytism” does not appear in any other article of the Constitution and is not a technical legal term; it should therefore be interpreted based on its plain meaning. The *Diccionario de la Lengua Española*<sup>14</sup> (Dictionary of the Spanish Language) gives it meaning as “zeal to win proselytes” and defines “proselyte” as a “convert to a faction, party or doctrine.” According to this popular meaning and considering the exact context where it appears (the prohibition against joining organizations with political purposes), it is clear that the prohibition is against ministers of worship engaging in any ongoing political activity, i.e., an activity that implies zeal or determination and that has the aim of increasing or reducing supporters for a political party, candidate, or organization.

This interpretation of the word proselytism is corroborated by several paragraphs of the Chamber of Deputies Report<sup>15</sup> that proposed the approval of the constitutional reform. The report states that, in the past, the Catholic Church (without stating its name) and its ministers of worship had “a decisive influence on the direction of the vote” and adds: “Today, mobilization of votes is in the hands of the political parties.”<sup>16</sup> The proselytism in which ministers of worship are prohibited from engaging is what this paragraph refers to as “mobilization of votes,” which is an activity reserved for political parties. Another paragraph of the same report states that added to the “restriction on participating in

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14. DICCIONARIO DE LA LENGUA ESPAÑOLA [SPANISH LANGUAGE DICTIONARY] (21st ed. 1992).

15. Cámara de Diputados, DIARIO DE LOS DEBATES [DIARY OF DISCUSSION], 14 de Diciembre de 1991 (Mex.). This portion of the report cited can be found in DERECHO ECLESIASTICO MEXICANO [MEXICAN ECCLESIASTICAL LAW], coord., por José Antonio González Fernández *et al.*, 154 (1992) (Mex.).

16. Cámara de Diputados, *supra* note 15. This portion of the report cited can be found in DERECHO ECLESIASTICO MEXICANO [MEXICAN ECCLESIASTICAL LAW], *supra* note 15, at 171–2.

electoral politics” imposed upon ministers of worship is the prohibition against engaging in political proselytism, which effectively confirms that it is a restriction on the right to participate in electoral politics.<sup>17</sup>

Interpreting this restriction in this way, as a restriction on the right of participation in electoral politics rather than a restriction on the right to free expression, is consistent with the constitutional principle of the separation between the state and the churches; the intention behind this restriction is to prevent ministers of worship from participating actively in the lives of political parties and electoral processes. It is not a restriction on freedom of expression. Therefore, the expression of a positive or negative opinion for or against a particular party or candidate cannot be considered on its own to be an act of proselytism, as there is no evidence of the existence of zeal or determination to win proselytes; if the opinion were given repeatedly, it could be considered proselytism and therefore a violation of the constitution. On the other hand, a minister of worship could engage in proselytism without having to publicly express his preferences for or against a party, for example, by forming or promoting groups that encourage voters to vote for a candidate or to join a particular political party.

Interpreting the constitutional restriction on proselytism as a restriction on the right to participate in electoral politics also clarifies the content of this restriction as defined in the Law of Religious Organizations and the Electoral Code. In addition to proselytism, this law also prohibits “propaganda.”<sup>18</sup> This addition is consistent with the first article of the Constitution if we understand it to mean not a distinct activity from that prohibited by the Constitution, but as a means of engaging in proselytism, since “propaganda,” as a continuous and ordered activity to attack or promote a party or candidate, is effectively a form of proselytizing. Understood in this way, the law does not contradict the Constitution, but rather explains its content.

The prohibition of the Electoral Code against “inducing voters to vote or not to vote” for a political candidate or party is a similar case.<sup>19</sup>

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17. Cámara de Diputados, *supra* note 15. This portion of the report cited can be found in DERECHO ECLESIASTICO MEXICANO [MEXICAN ECCLESIASTICAL LAW], *supra* note 15, at 172–3.

18. Ley de Asociaciones Religiosas y Culto Público [Law of Religious Associations and Public Worship], *as amended*, art. 29 frac. X, Diario Oficial de la Federación [DO], 25 de Mayo de 2011 (Mex.).

19. Código Federal de Instituciones y Procedimientos Electorales [COFIPE] [Federal Code for Electoral Institutions and Procedures], *as amended*, art. 353, Diario Oficial de la Federación

The Code is not establishing a new prohibition, but simply explaining a way of engaging in proselytism; inducing voters to vote a certain way, which may be done without expressing or publishing opinions, and without the need of public propaganda. However, the Code does overstep its bounds when it identifies inducing voters not to vote (i.e., inducing abstention) as an offense, as this is not provided for in the Constitution, which only prohibits proselytism for or against a party or candidate, but makes no statement regarding the promotion of abstention.

*2. The constitutional prohibition against “opposing the laws and institutions.”*

In relation to the meaning and scope of this restriction, there are several statements in the reports of the two chambers of congress that help to clarify its meaning. As mentioned above, the prohibition in the original text was against “making criticisms of the fundamental laws of the country,” of “the authorities in particular” (meaning members of the government), or “the government in general.” Regarding this prohibition, the Chamber of Deputies Report states: “The restriction on participating in electoral politics should not be confused with holding and maintaining social ideas about the national situation and its problems. For this reason, the reform eliminates the prohibition against ‘making criticisms’ and maintains the requirement of not opposing the Constitution and its laws.<sup>20</sup> The Senate Report<sup>21</sup> contains a similar paragraph,<sup>22</sup> which reads:

On the other hand, the essence of the constitutional mandate prohibiting ministers of worship from interfering in political affairs is maintained. In this respect, and as the restriction on intervening in electoral politics does not imply a restriction on taking a perspective on the national situation, the reform proposes to eliminate the prohibition against “making criticisms of the fundamental laws of the country” to propose a duty not to “oppose the laws of the country and its institutions.”

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[DO], 17 de Abril de 2009 (Mex.).

20. Cámara de Diputados, *supra* note 15. This portion of the report cited can be found in DERECHO ECLESIASTICO MEXICANO [MEXICAN ECCLESIASTICAL LAW], *supra* note 15, at 172–3.

21. Dictamen de la Cámara de Senadores, DIARIO DE LOS DEBATES [DIARY OF DISCUSSION], 20 de Diciembre de 1991 (Mex.), available at <http://bit.ly/Nw4uLQ>; see DERECHO ECLESIASTICO MEXICANO [MEXICAN ECCLESIASTICAL LAW], *supra* note 15, at 183.

22. Dictamen de la Cámara de Senadores, *supra* note 21, art. IV, frac. 5, pfo. 8; see DERECHO ECLESIASTICO MEXICANO [MEXICAN ECCLESIASTICAL LAW], *supra* note 15, at 196.

With some minor differences, the two paragraphs coincide and go far to clarify the meaning of the prohibition against opposing the laws and institutions. First of all, they clarify that the restriction applies to the right to political participation and, more specifically as stated in both reports, to participation in “electoral politics.” This is perfectly consistent with the other prohibitions contained in Article 130 paragraph *e* of the Constitution: the inability of ministers of worship to stand for election and the prohibitions against joining organizations with political purposes and engaging in proselytism for or against any party or candidate. These are all restrictions on participation in electoral politics.

Secondly, both reports refer to the elimination of “the prohibition against making criticisms,” which is replaced by the prohibition against opposing the institutions and laws. This makes it perfectly clear that making criticisms of the laws or institutions is not something that the authors of the amended text wished to prohibit. This is confirmed by the reason that both reports give for eliminating the prohibition against “making criticisms.” The Chamber of Deputies Report states that the prohibition against ministers of worship “participating in electoral politics should not be confused with holding and maintaining ideas about the national situation and its problems”; in other words, they have the right to hold and maintain such ideas and, the report continues, “for this reason the reform eliminates the prohibition against ‘making criticisms’ . . . .”<sup>23</sup> The Senate report uses similar language, stating that the “restriction on intervening in electoral politics does not imply a restriction on taking a perspective on the national situation,” and it is for this very reason that it is proposed to “eliminate the prohibition against ‘making criticisms’ . . . .”<sup>24</sup>

If the constitutional reformers did not wish to prohibit criticism of laws and institutions, how should we interpret the prohibition against opposing the laws and institutions?

It is surprising to note that the Mexican Constitution does not expressly state the duty of Mexicans<sup>25</sup> or of the citizens<sup>26</sup> to obey its laws or respect its institutions. Obviously, this omission does not mean that such duties do not exist (unless we wish to interpret the Constitution

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23. Cámara de Diputados, *supra* note 15.

24. *Id.*

25. Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 31, Diario Oficial de la Federación [DO], 10 de Junio de 2011 (Mex.).

26. *Id.* art. 36.

from a highly positivist perspective that only deems as valid what is literally stated therein), but should be considered implicit, not only for Mexicans but for all foreigners who live on national territory.<sup>27</sup> In particular, regarding churches and other religious organizations, the final sentence of the first paragraph of Article 130 does state that they “shall observe the law.”<sup>28</sup> In relation to this sentence, opposing the law would mean not to observe it, i.e., to disobey it. Obviously, not only ministers of worship but also any member of a religious organization or citizen who does not obey the law will have to face the corresponding penalties. The prohibition against opposing the laws or institutions could mean that a minister of worship who disobeys any laws or legally issued orders will be punished by the same laws, but this would not be a prohibition distinct from the general duty to respect the law applicable to any person.

In a democratic and representative republic (such as that established for Mexico under Article 40 of the Constitution),<sup>29</sup> political opposition is an essential part of the democratic system and of the human rights regime. Democracy allows for a governing party and opposition parties, and any attempt to disallow political opposition would be completely anti-democratic. The rules of democracy establish resources and institutional channels for the opposition to express itself and, potentially, to assume government. In Mexican democracy, the citizens have the means to oppose any acts of government they consider harmful, such as by complaints to human rights commissions or appeals against acts of members of government or even against laws; the vote itself is exercised as a form of opposition (or ratification) of the government in power, and the regime of freedom of expression and publication of ideas<sup>30</sup> is another means that guarantees that opposition can be peacefully expressed. All these forms or acts of opposition are not only permitted, but are an integral and essential part of a democratic republic. Nor can these resources be withheld from ministers of worship, who have every right to

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27. Article 33 of the Constitution, the only one dedicated exclusively to foreigners, states that they shall enjoy the constitutional guarantees, but that the Executive Branch may deport them “without need of prior trial” if it determines that their staying in Mexico “is not advisable.” But it does not state that they have the duty to respect the laws and institutions; it only prohibits them from “interfering in the political affairs of the country.”

28. Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 130, Diario Oficial de la Federación [DO], 10 de Junio de 2011 (Mex.).

29. *Id.* art. 40.

30. *Id.* arts. 6, 7.

file complaints or administrative appeals, or to petition against acts of the authorities, and also, as granted under the constitutional reform of 1992, the right to vote. Therefore, the prohibition against ministers of worship opposing the laws and institutions cannot mean that they do not have the right to make use of the institutional channels available to oppose acts or laws which they consider detrimental to their personal rights or to the national community. They have the same rights—and the same duties—as any other citizen.

The only opposition that can be prohibited in a democratic constitution, which in itself contains the mechanisms to establish a political opposition, is opposition by undemocratic means, i.e., via non-legal channels. This is the content of the constitutional precept and of the regulatory law interpreted from a democratic perspective respectful of the human rights of Mexicans who practice as ministers of worship or who are members of the registered religious organizations that are recognized as an integral part of the nation under Article 130 of the Constitution.

The above is corroborated by the wording of Article 130 itself, as it prohibits opposing “the laws” and “the institutions.” It does not prohibit any law in particular or any institution in particular, but all of them as a whole: all of the “laws,” or the legal system, and all of the “institutions,” or the institutional system. Opposition through non-legal, undemocratic channels would be a genuine opposition to the law as a whole, as the channels established by the legal system are rejected, and to judge the institutional system incapable of self-correction is truly to oppose it.

As the constitutional prohibition refers to opposition made at public meetings, it seems to be referring to a minister promoting opposition via non-legal channels. This would mean inciting criminal activity against the political system of the kind defined in the Federal Criminal Code, which are the crimes of sedition, rebellion, or sabotage.<sup>31</sup> This seems to me to be the only meaning consistent with democracy and human rights that the prohibition against opposing the laws and institutions could have.

However, since opposition via nonlegal channels constitutes a crime that is prohibited for any citizen or foreigner, what would be the point of including this prohibition specifically for ministers of worship in the

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31. Código Penal Federal [CPF] [Federal Criminal Code], as amended, arts. 130–45, Diario Oficial de la Federación [DO], 24 de Octubre de 2011 (Mex.).

Constitution? The fact that the Constitution prohibits this opposition expressly for ministers of worship has a very clear legal effect: a minister of worship who engages in opposition via nonlegal channels violates the constitution, while an ordinary citizen who does so violates only the criminal code. This proves that the responsibility of ministers of worship is greater than that for other citizens. Moreover, pursuant to the Law of Religious Organizations, opposition by ministers of worship via nonlegal channels could result in the organization to which they belong being penalized, which is not applicable to other citizens, regardless of whether they are members of a religious organization.

Interpreting the constitutional prohibition against opposing the laws not as a prohibition against “making criticisms,” which was eliminated with the constitutional reform of 1992, but as a prohibition against opposition by undemocratic means aggravates the guilt of any ministers of worship who violate it and results in a prohibition that guarantees democracy and the institutional system, thus maintaining the due separation between the State and the churches.

#### *E. Conclusions*

In summary, the restrictive interpretation asserted by the accusers of the ministers of worship, who criticized the law admitting same-sex marriages and the decision of the Supreme Court that upheld it, is an anticonstitutional and antidemocratic interpretation.

The restrictions imposed by Article 130 of the Constitution are not restrictions on the right to free expression and publication of the ideas of ministers of worship, or on the right to free expression of the citizens who belong to religious organizations, but restrictions on the right of ministers of worship to participate in electoral politics.

This interpretation of these restrictions on ministers of worship is fully consistent with the Constitution and its respect for fundamental rights and is a suitable means of guaranteeing that the guiding principle of Article 130 of the Constitution, which is the separation of the State and the churches, is followed.