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Controversy over Separation of Church and State Resurfaces after Cardinal Claims Vatican Influenced Supreme Court Vote on Abortion

by Carlos Navarro

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Seven of the court's justices deemed the provisions incompatible with the federal Constitution, but the SCJN fell short of the eight votes needed to force changes to the two states' laws.

Justices José Ramón Cossío, Sergio Valls, Arturo Zaldívar, Olga Sánchez Cordero, Luis María Aguilar, Fernando Franco, and Juan Silva Meza voted to consider both states' measures unconstitutional. But they were unable to convince one of the four other SCJN members—Justices Jorge Pardo Rebolledo, Salvador Aguirre Anguiano, Margarita Luna Ramos, and Guillermo Ortiz Mayagoitia--to cross over to gain the eight-vote total needed to overturn the state constitutional provisions.

In the aftermath of the SCJN decision regarding Baja California, which the court considered first, Bishop Isidro Guerrero Macías of Mexicali boasted that a call from the Vatican was able to sway one of the judges who was thinking of voting the other way. "Yesterday, we almost lost," said Guerrero Macías. "But a call from the pope to one of the justices, I don't know which one, changed everything."

Bishops, Vatican deny there was interference

The very suggestion that the Vatican would interfere in Mexican judicial decisions unleashed a storm of controversy in Mexico, forcing both the Vatican and Mexico's Catholic bishops conference (Conferencia del Episcopado Mexicano, CEM) to issue strong statements denying any direct influence from Rome on this vote. Jorge Camargo, a SCJN spokesperson, also denied that any call was made from Rome to a member of the high court.

"There is no truth to that statement," said Vatican spokesperson Federico Lombardi. "We have to ask the bishop where he obtained that information."

"We concur with the statements of the Vatican spokesperson when he said that the comments from Mexicali Bishop Isidro Guerrero Macías are inaccurate," said a communiqué signed by CEM secretary general Víctor René Rodríguez Gómez. "We are very cognizant that the Holy Father is always respectful of the internal affairs of countries...and did not intervene in the decision of the SCJN ministers."

All three were appointees of President Felipe Calderón, whose conservative Partido Acción Nacional (PAN) is often in step with Catholic Church positions.

The two cases, which were considered separately, served as a measuring stick on the state of Mexico's policies regarding abortion rights. More than half of Mexico's states have enacted laws similar to those in Baja California and San Luis Potosí. Those states are Tamaulipas, Chiapas,

Veracruz, Querétaro, Chihuahua, Campeche, Colima, Puebla, Durango, Jalisco, Nayarit, Quintana Roo, Guanajuato, Yucatán, Sonora, Morelos, and Oaxaca.

There was ample debate among the justices, who discussed the issue during three days of deliberation. "Criminalizing the interruption of a pregnancy in all cases...is disproportionate and unreasonable, while at the same time violating women's dignity and autonomy," said Justice Fernando Franco, who led the effort to overturn the state laws.

Justice Zaldívar took a similar stance, suggesting that forcing women, especially those who are poor, to seek clandestine abortions or to face imprisonment for having the procedure was "profoundly unfair, profoundly immoral, and profoundly unconstitutional."

Other justices countered with the argument that state legislatures are empowered to include language in their constitutions that stipulates when life begins. "There is no human being who was not conceived. An embryo dies without the mother dying, evidence of an independent life to which Mexican law has recognized the right of protection since the 19th century," said Justice Aguirre Anguiano.

Justice Luna Ramos, who voted with the minority, said she supports the right of states to allow abortions but also their right to determine when life begins.

Supporters of abortion rights said there was a silver lining in the SCJN vote, even though the high court did not overturn the constitutional provision in the two states. "Years ago no one would have thought seven justices would have ruled this way," said Regina Tamés, director of the Grupo de Información en Reproducción Elegida (GIRE). "I think these are slow but sure steps."

Even though the issue is ripe for debate, some analysts said politicians would avoid the controversy during the upcoming presidential campaign. "Both the decriminalization of abortion and the legalization of drugs are themes that the political class wants to avoid during the federal elections in 2012," said Ruth Zavaleta Salgado, an expert on constitutional law at the Universidad Nacional Autónoma de México (UNAM).

Zavaleta praised Mexico City residents for their willingness to discuss the issue so openly before the Mexico City legislature (Asamblea Legislativa del Distrito Federal, ALDF) voted in 2007 to allow abortion rights. The SCJN later ratified the Mexico City decision.

But Zavaleta also pointed out that the inconsistency in the Mexico City law versus that of other states reflects the views of the citizens of those entities. "While it's true that the majority of citizens in the Federal District opposed the criminalization of abortion, the opposite is true in many states in our country," said the UNAM expert.

The semi-independent Comisión de Derechos Humanos del Distrito Federal (CDHDF) also raised concerns about the discrepancies across state borders on abortion. "It is a very serious matter that a supposedly constitutional and democratic government like Mexico's establishes different levels of human rights protection for women, depending on which state they live in," said the CDHDF.

Mexico City Mayor Marcelo Ebrard—who helped push through the measure to decriminalize abortion in Mexico City—weighed in with the seven justices who voted to oppose the measures in Baja California and San Luis Potosí. The mayor said the prohibition of abortion would send the procedures underground, "and this does not resolve any problems."

"I will not change my point of view or my convictions about abortion and gay rights if elected president," the mayor said.

Guadalajara cardinal involved in new controversy

In an earlier controversy, a previously confidential diplomatic dispatch leaked through Wikileaks Web site in July of this year suggested that Cardinal Juan Sandoval Íñiguez of Guadalajara, in a meeting with Francis Rooney, then US ambassador to the Vatican, had raised concerns in 2006 about the rise of leftist leaders in Latin America, including then candidate López Obrador.

"Sandoval, after mentioning his personal dream of building a sanctuary in Guadalajara to commemorate Mexican martyrs, echoed some of our Vatican interlocutors in raising concern about the increasing presence of leftist leaders in Latin America—[Fidel] Castro, [Hugo] Chavez, [Evo] Morales, [Nestor] Kirchner, [Michelle] Bachelet, and perhaps Lopez Obrador--and called it a dangerous trend," said the dispatch, dated April 6, 2006. "He asked whether President [George W.] Bush could help. Sandoval said that under Lopez Obrador's governance, crime and violence had risen in Mexico City."

The Wikileaks dispatch created indignation in Mexico and brought a swift reaction from the Archdiocese of Guadalajara denying that Sandoval had been involved in a conspiracy against López Obrador, who narrowly lost the presidential race to Felipe Calderón in a disputed election ([SourceMex, July 12, 2006](#)).

In an editorial, the center-left Mexico City daily newspaper La Jornada suggested that the matter deserved closer investigation by the Mexican government. "In a country of laws, the behavior of Sandoval Íñiguez would merit further clarification, an investigation, and a sanction according to the law," said the newspaper. "But the cardinal from Jalisco is supported by a history of impunity that has freed him from charges of illegal political campaigning, violations of our principles of separation of church and state, money laundering, misuse of donations, and protection of pedophile priests."

President Carlos Salinas de Gortari's administration might have been behind the murder of Cardinal Juan Jesus Posadas Ocampo in Guadalajara in May 1993.

The Archdiocese of Guadalajara issued a strong statement denying that Sandoval had in any way sought to influence the 2006 election. "[The cardinal] is not interested in becoming involved in the political affairs of our country," said a statement from the archdiocese.

The statement went on to say that Sandoval and López Obrador had met on several occasions at the request of the PRD politician. "There has always been a relationship of mutual respect between them," said the archdiocese. "The cardinal values the work of the left, which is necessary for a true political discourse in our country, even though there are some points of disagreement."

The archdiocese did not deny that a meeting took place between Sandoval and Rooney. "The only theme that was addressed was the request for US support for the construction of the Santuario de los Mártires," said the archdiocese. "This assistance was never received."

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