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Good morning to you all.

It is a huge privilege for me to be able to participate in this panel. I want to thank in the name of the Mexican Government to Brigham Young University for the invitation.

I would like to take this opportunity to share with you some brief thoughts about the state of religious freedom in the legislative debates, currently held in Mexico. And of course, it would be very enriching for me if this succinct presentation can lead us to further discussion.

As you may know, since the 19<sup>th</sup> century Mexico developed a secular tradition, suspicious with the presence of churches in public space, which has profoundly impacted our political, civil and academic life, and evidently, the legislation that regulates the relationship between the State and the churches.

In fact, the main responsibility of the Interior Ministry of Mexican Government in connection with religious affairs is the application of that legal framework, which is supposed to simultaneously grant constitutional rights for individuals and religious organizations, and limits to the action of the churches in the political, economic, and social spaces.

For example, in Mexico, religious ministers are banned to associate for political purposes, to object the laws or institutions of the country, or proselytize for or against candidates or political parties.

The Religious Associations have only allowed the ordinary celebration of acts of worship inside the temples; to do it outside the temples they need to notify the General Direction of Religious Associations of the Interior Ministry. The broadcasting of religious celebrations by radio or television is still restricted and requires an extraordinary permit, and the possession or administration of radio or television concessions is absolutely forbidden for the churches by the law.

In that context, last March, the Mexican Senate approved amendments to articles 24 and 40 of the Constitution for the purpose of expressly enshrine both freedom of religion and secularism of our republican system, respectively. Currently, the reform of both items is being discussed at the level of local congresses.

Since freedom of religion and secular State were already part of our constitutional order, even without the recent reforms, in my opinion the real significance of

these changes would lie in the possibility that Mexican political and legal system could transcend the false choice between these two principles.

The amendment to Article 40 of the Constitution is reduced to the inclusion of the word "secular" in the definition of the type of government assumed by Mexico.

Instead -if finally approved- the amendment of Article 24 would imply a mayor change:

- It would replace “freedom of religious belief and practice”, for “freedom of ethical convictions, conscience and religion”.
- Additionally it would establish some kind of scope for religious freedom, as "the right to participate, individually or collectively, in public or in private, in the ceremonies, devotions or respective

acts of worship, provided they do not constitute an offense punishable by law”.

- Finally, it would expressly exclude any political activities from the exercise of religious freedom.

Traditionally it has been argued, often even by the authority, that Mexican Constitution recognized only two dimensions of religious freedom: the freedom of belief and worship; since it is so stated in the text of current Article 24. The statement of this view is mainly the reason why the amendment of that article has seemed necessary.

However, the freedom of religion was part of the Mexican legal system, at least since 1948 by means of international instruments signed by Mexico.

It is worth remembering that in 1998 the Supreme Court set a major precedent for defining the hierarchy of legislation in Mexico, and determined that international treaties have precedence over that of federal laws and are located just below the Constitution. So all those rights were already part of our legal system and were already due, even against a federal law.

Moreover, even beyond the precedent of the Court, on June 9, 2011, President Felipe Calderon issued a major reform on Human Rights, which incorporates to the first article of the Constitution any fundamental rights set forth in international treaties Mexico has ratified, and therefore, since that date the Mexican State has been obliged to provide guarantees for their protection, beyond all question of compatibility with the Constitution.

Nevertheless, restrictions to religious freedom, inherited from our post-revolutionary history; have

survived in federal legislations as well as in political speech.

Specifically, it can be said that in Mexico there are three types of restrictions on religious freedom: those that affect the general population, those that affect the religious ministers and those that affect religious associations.

Concerning the general population, the major constraint to the full protection of religious freedom are:

- Non-recognition of the right to conscientious objection.
- Lack of adequate general mechanisms for a person to receive spiritual assistance in public health centers or prisons.
- The lack of guarantees for the parents to educate their children in accordance with the religious beliefs of their choice, which does not

necessarily translate into religious instruction in public schools, but in respect to their religious convictions in the process of formation of children, even in public schools and educational materials required.

- The prohibition of establishing a political association on a religious conviction.

On the other hand maybe the religious ministers are the group who suffer a greater restriction on their rights because of their religious convictions and profession:

- They cannot be voted for elected office or appointed to superior public office.
- They cannot associate for political purposes, or proselytize for or against candidates or political parties.
- They cannot oppose the laws and institutions of the country in public meetings or religious publications.



- They cannot receive inheritance from people they have assisted spiritually.

As regards to religious associations, major restrictions in force against them translate into:

- The prohibition preventing the churches from owning or managing mass media not printed.
- The prohibition preventing them to carry out activities for profit or receive the grant of property or rights of any kind that are not essential to its purposes.
- And the same restrictions on political matters weighing on their religious ministers and the faithful individually.

As can be seen, except for the provision prohibiting religious ministers to run for elected office, all other restrictions are groundless in the international

commitments made by Mexico, and since last year are also likely inconsistent with article 1 of the Constitution.

Arguably the amendments approved by the Congress to Article 24 of the Constitution, have the potential to remove the textual elements that served to maintain that in Mexico were only recognized freedoms of belief and worship.

And if freedom of religion is a fundamental right recognized textually and by all possible means, each of its dimensions must be guaranteed.

This implies a challenge to the Mexican authorities responsible for implementing the legal framework on religion. First, to the Interior Ministry, because although the reform decree of Article 24 does not expressly derogate any rule that is considered incompatible with it, it's contrary to the logic of any legal system to enforce a

secondary rule, as the Law of Religious Associations and Public Worship, over the Constitution.

For twenty years, the Ministry of the Interior has interpreted and applied the Law of Religious Associations and Public Worship, using their own criteria in defining concepts such as "religious doctrine" or "religious body", "deeply rooted", "act of cult, "" political campaigning ", "contrary to the laws and institutions of the country ", and so on. So the administrative authority has defined the limits and scope of religious rights. In the presence of a new constitutional scenario, wider perspectives for freedom of religion could be opened; there is no reason why the same administrative authority could not establish new standards and interpretations in accordance with the reality of a greater respect for this right.

However, the reform of Article 24 of the Constitution has been object of heated discussions both in the media and in the political arena.

Among those who have supported the reform, the typical argument is that this is a necessary modification to harmonize the Constitution with Mexico's international commitments in this field. Moreover, the political, religious and civilians who have expressed opposition to the reform have focused primarily on three issues:

- The alleged deregulation of acts of worship outside the temples.
- The accusation of a hidden agenda to include the religious instruction in public schools.
- The idea that the reform would open the way for religious associations to possess mass media.

On the celebration of acts of public worship outside the temples, the new wording of Article 24 does not

change anything. In any case it explicates some dimensions of freedom of worship, but subject to the regulatory law, so that the obligation to give notice to the authority to hold those acts of worship would subsist, which by the way, does not totally obstruct the exercise of this right, because the notice does not imply a permit that could may be refused. The statements of both, religious ministers and political or social actors, who have claimed either to congratulate or criticize the alleged change of situation, surely respond to ignorance of the content of the proposed new article 24.

With regard to religious instruction in public schools, it was largely discussed to remove from the preamble of the reform, a specific mention of the right of parents to educate their children in accordance with their religious convictions. As already indicated, that right does not necessarily imply the inclusion of religious content in public education, but it demands respect for the religious convictions of the parents of any student, even in a public

school. Beyond whether or not this dimension of religious freedom is expressly referred in the preamble of the legislative initiative, it is an inherent part of the right to freedom of religion, and therefore if it would be contained in the new Article 24, if definitively approved.

Finally, the issue of access to mass media is a bit more complex. Indeed, freedom of religion means freedom to propagate doctrines. However, Article 16 of the Law on Religious Associations prohibits ministers and religious associations to possess or administrate radio, television and telecommunications concessions. It must be remembered that while not all fundamental rights imply a positive obligation for the State, however they do require at least not impeding the exercise of a right.

Thus, while the bans of law in this matter remain, it seems necessary to interpret them in a new way, to give an answer to those religious groups that demand to exercise their rights in this particular way.

The reform of article 24 requires to be approved by 16 local congresses to definitively be incorporated to the Constitution. Today it has been approved in 6 States and rejected in another 6. May be is not the ideal text that mayor religious groups in Mexico would expect, but it took 20 years for the legislative branch to discuss again about a change in the legislation of the religious rights. It might be a shame if this reform is rejected and it takes us another 20 years to discuss this subject again.