

## **CONTRADICTION OF LEGAL OPINIONS 250/2024**

**BETWEEN THOSE SUPPORTED BY THE SIXTH COLLEGIATE COURT IN ADMINISTRATIVE MATTERS OF THE FIRST CIRCUIT AND THE THIRD COLLEGIATE COURT IN ADMINISTRATIVE MATTERS OF THE SIXTH CIRCUIT**

**RAPPORTEUR: JUSTICE LENIA BATRES GUADARRAMA**

**SECRETARY: CÉSAR VILLANUEVA ESQUIVEL**

**ASSISTANT SECRETARY: JESÚS IVÁN PÉREZ CHÁVEZ**

**COLLABORATED: AARÓN ENRIQUE HUERTA ORTIZ**

### **SUMMARY**

**Complaint regarding the contradiction of legal opinions.** A Justice from the Sixth Collegiate Court for Administrative Matters of the First Circuit (Central-North region) reported a possible contradiction in legal opinions between that issued by the Third Collegiate Court for Administrative Matters of the Sixth Circuit (Central-South Region) and that ruled by the Sixth Collegiate Court for Administrative Matters of the First Circuit (Central-North Region).

**First criterion of the Central-South Region.** A legal entity sought the protection and defense of the Mexican justice system against the Presidency of the Republic and the Ministry of Health, within the scope of their powers, for issuing and endorsing the Decree reforming, adding, and repealing various provisions of the Regulations of the General Law for Tobacco Control (RLGCT for its acronym in Spanish), published in the Official Gazette of the Federation (DOF by its Spanish abbreviation) on December 16, 2022, considering that the content of various articles was contrary to the principles of exclusive regulation by Congress and hierarchical subordination.

The district court hearing the case ruled in favor of the plaintiff, ordering that the contested provisions must be removed from the legal system.

The Presidency of the Republic and the Ministry of Health, in disagreement with the above, filed an appeal for review in which they essentially argued that the contested provisions of the RLGCT do not violate the provisions of Articles 26, 27, 28, and 29 of the General Law for Tobacco Control, since the challenged provisions regulate these articles for their exact observance, particularly with respect to designated smoking areas.

The collegiate court of first instance decided to modify the appealed judgment and grant the amparo to the complainant, considering that the contested articles exceed the restrictions provided for in the General Law for Tobacco Control (LGCT for its initials in Spanish).

**Second criterion of the Central-North Region.** A legal entity sought protection from federal justice against the Presidency of the Republic for issuing a decree reforming, adding, and

repealing various provisions of the RLGCT, arguing that several articles violated the principles of exclusive regulation by Congress and hierarchical subordination.

The district court hearing the case ruled in favor of the plaintiff, ordering that the contested articles be removed from the legal system.

The Presidency of the Republic, in disagreement with this ruling, filed an appeal for review, arguing essentially that the contested provisions of the RLGCT did not violate the principle of exclusive regulation by Congress, as they strictly comply with Articles 26, 27, 28, and 29 of the LGCT.

The collegiate court that heard the appeals decided to **overturn** the contested decision and **deny** the appeal, considering that the content of the articles in question did not exceed the restrictions established in the LGCT regarding designated smoking areas.

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APPROVED

JUSTICE

**RAPPORTEUR: JUSTICE LENIA BATRES GUADARRAMA**

VERIFIED

**SECRETARY: CÉSAR VILLANUEVA ESQUIVEL**

**ASSISTANT SECRETARY: JESÚS IVÁN PÉREZ CHÁVEZ**

**COLLABORATED: AARÓN ENRIQUE HUERTA ORTIZ**

Mexico City. The Plenary Session of the Supreme Court of Justice of the Nation (SCJN), in a session held on September 25, 2025, issues the following:

### **JUDGMENT**

Deciding on the contradiction of legal opinions 250/2024 raised between the Third Administrative Court of the Sixth Circuit when deciding on the amparo in review 612/2023 and the Sixth Collegiate Administrative Court of the First Circuit when deciding on the amparo in review 333/2023.

The legal issue to be solved by the Plenary of the SCJN is whether Article 60, paragraph one, sections I, II, and III of the Regulations of the General Law for Tobacco Control (RLGCT) violate the principles of exclusive regulation by Congress and hierarchical subordination based on the provisions of the General Law for Tobacco Control (LGCT).

### **BACKGROUND**

**1. Report of contradiction of legal opinions.** A judge of the Sixth Collegiate Court for Administrative Matters of the First Circuit, in official letter 10318/2024, informed of the possible contradiction of legal opinions between that court's ruling in amparo review 333/2023 and the ruling of the Third Administrative Court of the Sixth Circuit in amparo review 612/2023.

2. The report was received by the Regional Plenary in Administrative and Civil Matters of the Central-North Region, based in Mexico City. This court registered the matter under file number 219/2024. By agreement of November 5, 2024, the regional plenary determined that it lacked jurisdiction to hear the dispute and therefore ordered the case files to be referred to the SCJN.

**3. Processing of the matter.** The then Chief Justice of this SCJN, by agreement dated November 11, 2024, ordered the formation and registration of the file on the contradiction of legal opinions 250/2024, as well as determining its respective admission. Similarly, she instructed that the matter be assigned to Minister Lenia Batres Guadarrama, a member of the now-defunct Second Chamber of this high court, so that its then-President could continue processing and integrating the file.

4. She also requested the Chief Justices of the Sixth Collegiate Court in Administrative Matters of the First Circuit and the Third Collegiate Court in Administrative Matters of the Sixth Circuit to submit the digitized version of the original or, where appropriate, the certified copy of the writs of appeal and the enforceable judgments, or the electronic versions thereof bearing the corresponding electronic signatures, relating to the amparo proceedings under review 333/2023 and 612/2023, respectively, as well as the rulings informing whether the opinions upheld in those cases were still in force.

**5. Assumption of jurisdiction by the then Second Chamber of the SCJN.** The Chief Justice of the now-defunct Second Chamber of the SCJN, by agreement dated January 10, 2025, admitted the contradiction of opinions for consideration and assumed jurisdiction. In addition, he accepted the evidence from the Third Collegiate Court in Administrative Matters of the Sixth Circuit, which submitted the digitized version of the final judgment issued in the amparo review 612/2023 of its index, the statement of grievances that gave rise to it, and reported that the opinion upheld remained in force.

6. The Chief Justice of the former Second Chamber of the SCJN, by agreement dated January 17, 2025, accepted the records of the Sixth Collegiate Court in Administrative Matters of the First Circuit, which submitted the digitized version of the judgment issued in amparo case 333/2023 in its index, as well as the statement of grievances that gave rise to it, and reported that the opinion upheld remains in force.

**7. Procedure.** In accordance with the sixth transitional provision<sup>1</sup> of General Agreement Number 1/2025 (12a.) of the Plenary Session of the SCJN, which regulates the receipt, registration, and scheduling of matters within its jurisdiction, published in the Official Gazette of the Federation (D.O.F for its initials in Spanish) on September 4, 2025, it was determined that matters heard by the Justices of the previous chambers would continue to be heard by them without the need for an agreement to reassign them.

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<sup>1</sup> SIXTH. By decision of the Plenary Session of the Supreme Court of Justice of the Nation, and to take advantage of the knowledge and study of the matters referred to Ministers Lenia Batres Guadarrama, Yasmín Esquivel Mossa, and Loretta Ortiz Ahlf in the previous integration, it is determined that they shall continue to hear these matters, without the need for a new referral agreement. Likewise, Justices María Estela Ríos González and Giovanni Azael Figueroa Mejía shall be responsible for the issues referred to the reports of Justices Jorge Mario Pardo Rebolledo and Juan Luis González Alcántara Carrancá, respectively, subject to a prior agreement to reassign them.

8. Publication of the draft. The draft ruling was published in accordance with Article 18<sup>2</sup> of the Rules of Procedure of the Supreme Court of Justice of the Nation, as well as the integration of the lists of matters with draft resolutions.

## I. JURISDICTION

9. The Plenary Session of this SCJN has jurisdiction to hear this conflict of opinions in accordance with the provisions of Article 107, Section XIII, of the Political Constitution of the United Mexican States (CPEUM in Spanish)<sup>3</sup>; Article 226, Section II, of the Amparo Law;<sup>4</sup> and Article 16, Section IX, of the Organic Law of the Federal Judiciary (LOPJF in Spanish),<sup>5</sup> as well as in accordance with the second point, section X, subsection e)<sup>6</sup> of General Agreement number 2/2025 (12a.) of the Plenary of the Supreme Court of Justice of the Nation dated September 3, 2025, indicating the matters falling within its jurisdiction and those assigned to other federal justice authorities, published in the Official Gazette of the Federation on September 19, 2025, given that this is a complaint of a contradiction of opinions between collegiate courts in different regions.

## II. STANDING

10. The report of contradiction of legal opinions comes from a party entitled to do so in accordance with the provisions of Article 107, Section XIII, of the CPEUM and Article 227, Section II, of the Amparo Law, since it was filed by a judge who is a member of one of the disputing collegiate courts.

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<sup>2</sup> **Article 18.** Publication of draft judgments. Draft judgments shall be published when the respective list is released. To this end, the reporting justice shall produce a public version of the drafts and send it to the General Secretariat of Agreements for entry into the digital system.

<sup>3</sup> **Article 107.** The disputes referred to in Article 103 of this Constitution, except those relating to electoral matters, shall be subject to the procedures determined by regulatory law, in accordance with the following principles:  
(...)

**XIII.** When the Collegiate Circuit Courts of the same region uphold contradictory criteria in the amparo proceedings within their jurisdiction, the Attorney General of the Republic, in criminal and criminal procedural matters, as well as those related to the scope of their functions, the aforementioned courts and their members, the District Judges, the parties to the matters that gave rise to them, or the Federal Executive, through the Legal Counsel of the Government, may report the contradiction to the corresponding Regional Plenary, so that it may decide which opinion should prevail as precedent.

<sup>4</sup> **Article 226.** Contradictions in opinions shall be resolved by:  
(...)

II. The Plenary Session of the Supreme Court of Justice of the Nation when contradictory opinions held by regional plenary sessions or by collegiate circuit courts belonging to different regions must be clarified, and  
(...)

<sup>5</sup> **Article 16.** The Supreme Court of Justice of the Nation shall hear:

**IX.** Complaints of contradictory opinions issued by the Chambers of the Electoral Court under the terms of Articles 293 and 294 of this Law, by Regional Plenary Sessions, or by Collegiate Circuit Courts belonging to different regions.  
(...)

<sup>6</sup> **SECOND.** Exclusive jurisdiction of the Plenary Session of the SCJN. The Supreme Court of Justice of the Nation shall retain jurisdiction over: (...)

X. Contradictions in criteria between: (...)

e) Collegiate Circuit Courts from different regions. (...)

### III. LEGAL OPINIONS REPORTED

11. In order to determine whether the alleged contradiction exists and, if so, to establish the legal opinion that should prevail as case law, it is necessary to know the particularities of each of the cases.

**12. First competing legal opinion, ruled by the Third Collegiate Court for Administrative Matters of the Sixth Circuit in ruling on the amparo in review 612/2023, corresponding to the Central-South Region.**

**13. Indirect amparo petition and district court ruling.** A legal entity sought the protection of the Mexican federal courts against the President of the Republic and the Ministry of Health for issuing and endorsing the Decree amending, adding, and repealing various provisions of the RLGCT, published in the Official Gazette of the Federation on December 16, 2022; specifically Articles 2, sections II, IV, IV Bis, 60 sections I, II, and III, and 65 Bis.

14. In addition, the complainant sued the National Commission for Regulatory Improvement (CONAMER in Spanish) for failing to submit the draft decree in question to public consultation, in violation of the procedure established in the General Law on Regulatory Improvement and the Guidelines for the Preparation and Review of Regulations issued by the President of the United Mexican States.

15. The plaintiff made the following arguments regarding the contested articles:

- The contested decree is contrary to the principles of exclusive regulation by Congress and hierarchical subordination, as it requires more than what's set out in the LGCT. In addition, it broadens definitions previously established in the LGCT, particularly the concepts of “physical areas with public access,” “outdoor space,” and “enclosed space.”
- Articles 60 and 65 Bis of the contested decree violate the right to private property by imposing an absolute prohibition on providing services in designated smoking areas, which does not meet a proportionality review. In addition, these articles establish specific conditions for such areas that not all businesses can meet.
- The definition of “public gathering places” outlined in Article 65 Bis of the RLGCT exceeds the provisions of the LGCT, which provides a more generic concept.

16. The Fifth District Court for Civil, Administrative, and Labor Matters and Federal Trials in the State of Puebla had jurisdiction over the indirect amparo case with file number 369/2023. In its ruling of April 28, 2023, it decided, on the one hand, to **dismiss** the case with respect to the omission attributed to CONAMER and, on the other hand, to **grant** the amparo filed by the plaintiff and hence remove Articles 2, sections I, IV, and IV Bis, 60, sections I, II, and III, and 65 Bis



of the RLGCT as published in the Official Gazette of the Federation on December 16, 2022, from the legal system, based on the following considerations:

- The contested decree exceeds the restrictions established by the Legislative Branch in the LGCT. Such law (LGCT) does not prohibit the consumption of tobacco or nicotine products in public gathering places.
- The measure does not meet a proportionality test because, although it pursues a constitutionally valid purpose in that it seeks to protect the right to health and is suitable for that purpose because it protects people in public gathering places, the fact is that it is not necessary because there are less harmful measures to achieve those ends, such as educational campaigns or the dissemination of information.
- The ban disproportionately restricts freedom of trade because it prohibits the consumption of food or beverages in areas where people consume tobacco.

**17. Appeal for review and ruling by the collegiate circuit court.** The Presidency of the Republic and the Ministry of Health, in disagreement with the decision summarized before, filed an appeal for review in which they essentially argued that the contested provisions of the RLGCT do not violate the provisions of Articles 26, 27, 28, and 29 of the LGCT, since the contested provisions regulate the LGCT to ensure strict compliance with these provisions, notably concerning designated smoking areas. In addition, the Presidency of the Republic and the Ministry of Health argued that the prohibition on lighting tobacco or nicotine products in public places is a proportionate and necessary measure.

18. The Third Collegiate Court for Administrative Matters of the Sixth Circuit heard the appeal for review under case number 612/2023. In its ruling, this court decided, on the one hand, to **modify** the appealed ruling and, on the other, to **grant** the amparo.

19. Concerning the principles of exclusive regulation by Congress and hierarchical subordination, the Third Collegiate Court for Administrative Matters of the Sixth Circuit stated the following:

- Article 2 of the RLGCT defines the concepts of open spaces and enclosed spaces, while Article 60 prohibits the provision of any service or consumption of food, beverages, or entertainment, among other things, as well as the carrying out of social or recreational activities in areas exclusively designated for smoking. It also sets forth the characteristics that such areas must have.
- Article 65 Bis of the RLGCT prohibits any person from consuming or lighting any tobacco or nicotine product in public spaces.
- Article 26 of the LGCT only prohibits any person from consuming or lighting any tobacco or nicotine product in spaces that are 100% free of tobacco and emissions, as well as in public gathering spaces. Meanwhile, Article 27 of the same law only establishes that, in places with public or private access, there may be areas designated for smoking, which must be located outdoors.

- The articles of the LGCT do not prohibit the provision of any service or consumption of food, beverages, or entertainment, among other things, nor do they prohibit social or recreational activities in areas designated exclusively for smoking.
- The LGCT does not expressly prohibit the provision of any service or consumption of food, beverages, or entertainment, or the carrying out of social or recreational activities. However, Article 60 of the RLCT does provide for such a prohibition.
- Therefore, Articles 60 and 65 Bis of the LGCT Regulations exceed the provisions of Article 27 of the LGCT, as they include a prohibition on providing any type of service or consumption of food, beverages, or entertainment, as well as carrying out social or recreational activities, in areas designated for smoking.

**20. Second competing legal opinion of the Sixth Collegiate Court in Administrative Matters of the First Circuit in resolving the amparo in review 333/2023, corresponding to the Central-North Region.**

**21. Indirect amparo action and district court ruling.** A legal entity sought the protection of the Union's justice system against the Presidency of the Republic for issuing the Decree reforming, adding, and repealing various provisions of the RLCT, published in the Official Gazette of the Federation on December 16, 2022; specifically Articles 1, 2, sections II, IV, IV Bis, VII, XV, and XIX, 5, section VI, 51, section I Bis, 53, 60 sections I to V, 65 Bis, 70, and 79, section I, as well as its first temporary article, under the following considerations:

- The RLCT establishes stricter restrictions on smoking areas than those in the LGCT and requires modification of spaces already authorized under the previous LGCT.
- The contested legal provisions are contrary to the principle of legal certainty in that they do not clearly define various concepts.
- The RLCT violates the plaintiff's right to freedom of trade by prohibiting the provision of services in areas designated exclusively for smoking.

**22.** The Ninth District Court for Administrative Matters of Mexico City had jurisdiction over the claim for indirect amparo relief under case file number 365/2023. In a ruling dated May 24, 2023, it decided to **grant** the amparo to the plaintiff for the purpose of annulling Articles 1, 2, sections II, IV, IV Bis, VII, XV, and XIX, 5, section VI, 51, section I Bis, 53, 60 sections I to V, 65 Bis, 70 and 79, section I, as well as the first transitory article of the Decree reforming, adding, and repealing various provisions of the RLCT, published in the Official Gazette of the Federation on December 16, 2022. The court based its decision on the following considerations:

- The challenged articles are part of a regulatory system that should be studied as a whole.

- Articles 26 to 29 of the LGCT say that there can be two different areas in places open to the public when it comes to smoking: totally smoke-free areas and areas just for smoking; the latter should be located outdoors.
- Article 60 of the RLGCT establishes an absolute prohibition on the provision of services and the supply of food and beverages, even in smoking areas, which are significantly restricted to a maximum of ten percent of the premises' surface area. It also includes the obligation to display graphic signage on the health effects of tobacco.
- A comparison between the LGCT and the RLGCT shows that the administrative regulation exceeds the restrictions on the fundamental right to freedom of trade established by the Legislative Branch because, despite considering special smoking areas, it did not in any way prohibit the provision of services for the sale and consumption of food, beverages, and hospitality in general.
- The contested regulations violate the constitutional principle of exclusive regulation by Congress by establishing prohibitions that result in a limitation of the aforementioned fundamental right, as well as obligations not provided for in the law.

23. **Appeal for review and ruling by the circuit court.** The Presidency of the Republic, in disagreement with the ruling summarized before, filed an appeal for review, essentially arguing that the challenged provisions of the RLGCT do not violate the principle of exclusive regulation by Congress, since they regulate the provisions of Articles 26, 27, 28, and 29 of the LGCT for their strict observance.

24. The Sixth Collegiate Court in Administrative Matters of the First Circuit heard the appeals for review under file number 333/2023. In its ruling, it decided to **revoke** the contested decision and **deny** the plaintiff's appeal.

25. Regarding the principle of exclusive regulation by Congress, he stated the following:

- During the legislative work that led to the LGCT published in the Official Gazette of the Federation on May 30, 2008, the Legislative Branch took into account, among other factors, that the purpose of the law was to protect all persons from tobacco smoke consumption and exposure, which would be achieved through the adoption of various types of measures aimed at reducing the prevalence of tobacco smoke consumption and exposure.
- Articles 23 to 29 of the LGCT, specifically paragraphs 26 and 27, show that the Congress of the Union established different obligations, restrictions, and limitations on tobacco control, including: the prohibition of smoking or having any tobacco or nicotine product lit in the spaces designated by law, as well as the possibility of having designated smoking areas.

- Article 60, section IV, of the RLCT states that designated smoking areas must be located only in outdoor spaces where the provision of any service or supply is prohibited. For its part, section 65 Bis of the same regulation stipulates that it is forbidden for any person to consume or have lit any tobacco or nicotine product in public spaces and therefore defines the spaces that should be considered as such.
- Although Article 27 of the LGCT does not expressly prohibit the provision of any service or consumption of food, beverages, or entertainment, or the carrying out of social or recreational activities, an express statement to that effect was unnecessary because the wording used by the Congress leaves no room for interpretation.
- The Congress of the Union determined that there may be designated smoking areas, in which case no other activity may be carried out in such spaces, in accordance with the grammatical meaning of the term used.
- As can be seen from the legislative process that led to the LGCT, it is clear that if the system of prohibitions and restrictions introduced by the legislature sought to create or increase smoke-free spaces to protect the health of the general population, it would be contradictory to consider that any other activity, such as the provision of food, beverage, or entertainment services, would be permitted in designated smoking areas.
- The contested articles do not exceed the restrictions, prohibitions, and obligations established in the LGCT, that is, these articles do not violate the principle of hierarchical subordination to the detriment of the plaintiff.
- The same consideration applies to the obligation to display signs prohibiting entry to minors and including health warnings about the health effects to which people are exposed by entering designated smoking areas, in accordance with the provisions of Article 60, section IV of the RLCT. This is so because, since it was issued, the LGCT required signs, logos, and emblems to be posted inside and outside.
- The plaintiff's arguments that the articles in question are contrary to freedom of trade because the prohibitions contained in the RLCT were already provided for in the LGCT are ineffective.

#### **IV. THERE IS A CONTRADICTION OF LEGAL OPINIONS**

26. The analysis of the existence of a contradiction in legal opinions must be approached from the perspective of the need to unify legal views in the country, since its objective is to provide

legal certainty to judges and citizens in order to preserve unity in the interpretation of legal norms.

27. First, it is necessary to establish whether, in the case under analysis, there is a contradiction of opinions, inasmuch as only under that assumption it will be possible to carry out the relevant study to determine the opinion that, where appropriate, should prevail as case law.

28. In this regard, it is essential to note that for a contradiction of opinions to exist, it is necessary that the former chambers of this SCJN, the circuit plenary sessions, regional plenary sessions, or circuit collegiate courts, when resolving the matters subject to complaint, have:

- a) Examined essentially the same legal hypotheses, even if the factual issues surrounding these hypotheses are not the same; and,
- b) Reached conflicting conclusions regarding the resolution of the raised dispute.

29. Therefore, a contradiction in legal opinions arises when the conditions mentioned above are met. The fact that the legal opinions adopted on an identical point of law do not have the same factual basis is not an obstacle to concluding that there exists a contradiction.

30. The following opinions of the Plenary Session of this high court support the above:

- **“CONTRADICTION OF THESES. A CONTRADICTION OF THESIS EXISTS WHEN THE CHAMBERS OF THE SUPREME COURT OF JUSTICE OF THE NATION OR THE CIRCUIT COURTS OF APPEAL ADOPT DISCREPANT LEGAL CRITERIA IN THEIR RULINGS ON THE SAME POINT OF LAW, REGARDLESS OF WHETHER THE FACTUAL ISSUES SURROUNDING THE RULINGS ARE NOT EXACTLY THE SAME.”<sup>7</sup>**
- **“CONTRADICTION OF THESIS. IT MUST BE CONSIDERED TO EXIST, EVEN IF THERE ARE DIFFERENT SECONDARY ELEMENTS IN THE ORIGIN OF THE ENFORCEMENT PROCEEDINGS.”<sup>8</sup>**
- **“CONTRADICTION OF THESES BETWEEN CIRCUIT COURTS. EVEN IF THE CONTENDING CRITERIA ARE BOTH ERRONEOUS, THERE SHOULD BE A DECISION ON THE MERITS IN ORDER TO PROTECT THE GUARANTEE OF LEGAL CERTAINTY.”<sup>9</sup>**

31. From the analysis of the competing opinions in this case, the Full Chamber of the SCJN notes that the collegiate circuit courts **examined essentially the same legal hypotheses**, given that:

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<sup>7</sup> **Filing information:** Thesis: P./J. 72/2010. Source: Weekly Judicial Journal of the Federation and its Gazette. Ninth Era, Volume XXXII, August 2010, page 7. Digital record: 164120.

<sup>8</sup> **Filing information:** Thesis: P. XLVII/2009. Source: Weekly Judicial Journal of the Federation and its Gazette. Ninth Era, volume XXX, July 2009, page 67. Digital record: 166996.

<sup>9</sup> **Filing information:** Thesis: P./J. 3/2010. Source: Weekly Judicial Journal of the Federation and its Gazette. Ninth Era, volume XXXI, February 2010, page 6. Digital record: 165306.

- The appeals for review arose from indirect amparo actions challenging the Decree that amended, added, and repealed various provisions of the RLCT, published in the Official Gazette of the Federation on December 16, 2022.
- The collegiate circuit courts reviewed the judgments handed down by district courts to determine whether or not the challenged articles of the RLCT violate the principles of exclusive regulation by Congress and hierarchical subordination.

32. The Plenary Session of the SCJN considers that the collegiate circuit courts reached **conflicting conclusions regarding the resolution of the dispute raised**, given that:

- a) On the one hand, the **Third Collegiate Court for Administrative Matters of the Sixth Circuit, corresponding to the Central-Southern Region**, concluded that the challenged regulations violate the principles of exclusive regulation by Congress and hierarchical subordination since Articles 26 and 27 of the LGCT do not indicate that the Legislative Branch intended to prohibit the provision of any service or consumption of food, beverages, or entertainment, as well as the carrying out of social or recreational activities, in designated smoking areas.
- b) On the other hand, the **Sixth Collegiate Court in Administrative Matters of the First Circuit, a member of the Central-North Region**, ruled that the contested regulations do not violate the constitutional principles of exclusive regulation by Congress or hierarchical subordination, since Articles 26 and 27 of the LGCT indicate that there may be areas exclusively for smoking. Therefore, in such spaces, no other activity is permitted. In his view, this conclusion is in accordance with the grammatical meaning of the term used.

33. It does not go unnoticed that the Third Collegiate Court for Administrative Matters of the Sixth Circuit modified a ruling in which Articles 2, sections I, IV, and IV Bis, 60, first paragraph, sections I, II, and III, and 65 Bis of the RLCT were challenged, whereas the Sixth Collegiate Court for Administrative Matters of the First Circuit revoked a ruling challenging various articles 1, 2, sections II, IV, IV Bis, VII, XV, and XIX, 5, section VI, 51, section I Bis, 53, 60, first paragraph, sections I to V, 65 Bis, 70, and 79, section I, of the RLCT, as well as the first transitory article of the contested Decree. Consequently, the conflicting legal opinions coincide, in principle, in ruling only on articles 2, sections I and IV, 60, first paragraph, sections I, II, and III, and 65 Bis of the RLCT.

34. Similarly, while it is true that both collegiate circuit courts reached a conclusion regarding the validity of all of the articles challenged, it is also true that their analysis was limited to the content of specific articles. Therefore, it is necessary to distinguish between these arguments in order to correctly define the present contradiction in opinions regarding the constitutionality of the respective articles of the RLCT.

35. The Third Collegiate Court for Administrative Matters of the Sixth Circuit pointed out that Articles 2, sections II and IV, 60, and 65 Bis of the RLCT outstripped the provisions of Articles 26 to 29 of the LGCT. However, the considerations leading to that conclusion focused on analyzing the content of Article 60, paragraph one, sections I, II, and III of the RLCT, as it contains the guidelines established by the Legislative Branch to define the designated smoking areas outlined in Article 27 of the LGCT. Therefore, it is clear that the Court only analyzed the content of that article without relating it to the rest of the sections on which it ruled.

36. For its part, the Sixth Collegiate Court for Administrative Matters of the First Circuit transcribed Articles 53, 60, paragraph one, sections I to V, and 65 Bis of the RLCT to determine that they do not exceed the provisions of the LGCT established by the Congress of the Union. However, its analysis focused on the content of Articles 60, paragraph one, sections I to V, and 65 Bis of the RLCT, insofar as these provisions deal with the characteristics that designated smoking areas must have and the prohibition of smoking in places other than these. Therefore, the considerations for finding that the regulation exceeded the provisions of the law did not follow from a study of the content of all the articles referred to, but only from Articles 60, paragraph 1, sections I, II, and III, and 65 Bis of the RLCT.

37. Based on the above considerations, the Full Chamber of the SCJN notes that there is a contradiction between the criteria upheld by the contending courts solely in determining whether **Article 60, paragraph one, sections I, II, and III of the RLCT**, relating to the delimitation of designated smoking areas, violates the principles of exclusive regulation by Congress and hierarchical subordination.

38. Therefore, in order to resolve the existing contradiction in legal opinions, the Full Chamber of the SCJN must answer the following question: Does the regulation of designated smoking areas established in Article 60, paragraph one, sections I, II, and III of the RLCT violate the principles of exclusive regulation by Congress and hierarchical subordination in accordance with the provisions of the LGCT?

## **V. CONSIDERATION OF THE MERITS**

39. The criterion upheld by the Full Chamber of the SCJN should prevail as case law in accordance with the following considerations.

### **Right to health**

40. The decisions of the Full Chamber of the SCJN cannot disregard the right to health of workers in establishments that have designated smoking areas, with which workers are in constant contact during the performance of their duties. Various health institutions and reports, through scientific and statistical studies, have revealed that not only active but also passive tobacco consumption has a considerable impact on people's quality of life. Therefore, those who work in these areas put their health at risk and to their detriment.

41. The Department of Health has reported that tobacco smoke contains a mixture of toxic and carcinogenic chemicals that can damage the respiratory system not only for active smokers, but also through exposure to secondhand smoke, since exhaled smoke contains the same harmful chemicals. These chemicals are associated with an increased risk of developing cardiovascular disease, lung cancer, respiratory diseases such as asthma, chronic bronchitis, chronic obstructive pulmonary disease (COPD), and respiratory infections. In addition, for pregnant women, the repercussions are not only for them, but also have adverse effects on the fetus.

42. The World Health Organization noted in a report published in July 2023 that secondhand smoke causes serious cardiovascular and respiratory diseases, including ischemic heart disease and lung cancer, and kills approximately 1.3 million people prematurely each year. According to the same organization, smokers are at greater risk of developing respiratory infections and experiencing severe symptoms of COVID-19.<sup>10</sup>

43. The Ministry of Health reported that in the first eight months of the COVID-19 pandemic—March 11, 2020, to November 18, 2020—an average of 4,000 people died each day worldwide from the virus, and 14,400 people died from smoking.<sup>11</sup> In 2021, there were 39,509 deaths in Mexico attributable to active tobacco use and 1,568 deaths from respiratory infections and tuberculosis attributable to exposure to secondhand smoke.<sup>12</sup>

44. According to data from the National Institute of Statistics and Geography (INEGI by its Spanish acronym) and the Epidemiological and Statistical Subsystem of Deaths (SEED by its Spanish acronym), mortality in Mexico attributable to secondhand smoke in the year 2022 was 6,165 people. According to SEED, the projected number of deaths for the exact reason in 2023 was 5,678.

45. The implementation of a legal framework for the regulation of tobacco consumption aims to protect the health of the population from the harmful effects of tobacco, as well as the rights of non-smokers. Therefore, the considerations that this court makes are of paramount importance for public health and the Mexican health system.

46. The purpose of protecting citizens from the harmful effects of tobacco is evident in Articles 2, sections I and II, and 5 of the LGCT, which stipulate that this law is applicable in matters of protection against exposure to tobacco smoke in order to safeguard the health of the population from the harmful effects of tobacco, the rights of non-smokers to live in spaces that are 100% free of tobacco smoke, to establish the basis for protection against tobacco smoke, to institute

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<sup>10</sup> World Health Organization report on tobacco facts and figures. Available for consultation at: <https://www.who.int/es/news-room/fact-sheets/detail/tobacco>.

<sup>11</sup> Technical note from the Ministry of Health dated November 18, 2020, on COVID-19 in Mexico. Available for consultation at: [https://www.gob.mx/cms/uploads/attachment/file/592960/Salud\\_CTD\\_coronavirus\\_COVID-19\\_18nov20.pdf](https://www.gob.mx/cms/uploads/attachment/file/592960/Salud_CTD_coronavirus_COVID-19_18nov20.pdf).

<sup>12</sup> Data from the Institute for Health Metrics and Evaluation on mortality rates in Mexico from 2018 to 2021. Available for consultation at: <https://vizhub.healthdata.org/gbd-results/>.



measures to reduce tobacco consumption, and to establish general guidelines for the design and evaluation of evidence-based legislation and public policies against smoking.<sup>13</sup>

### **Regulatory power: the principles of exclusive regulation by law and hierarchical subordination**

47. This SCJN has repeatedly held that the Federal Executive Branch has the power to issue the regulatory provisions necessary for the enforcement of laws enacted by the legislative body in accordance with the provisions of Article 89, Section I, of the CPEUM.<sup>14</sup> Furthermore, regulatory norms are general and abstract provisions designed to execute the law by developing and supplementing in detail the content of the laws enacted by the Congress of the Union.<sup>15</sup>

48. This power is limited by the principle of legality, from which the subordinate principles of exclusive regulation by Congress and hierarchical subordination stem. The former prevents regulations from addressing matters that are exclusively reserved for laws enacted by the Congress of the Union. The latter requires that regulations issued by the executive branch cannot modify or contemplate limitations beyond those established by law. Consequently, the law determines the what, who, where, and when of a general, hypothetical, and abstract legal situation, while regulations develop the how.<sup>16</sup>

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<sup>13</sup> **Article 2.** This Law shall apply to the following matters:

- I. Health control of tobacco products, as well as their importation, and
- II. Protection against exposure to tobacco smoke.

Article 5. This Law has the following purposes:

- I. To protect the health of the population from the harmful effects of tobacco;
- II. To protect the rights of non-smokers to live and coexist in spaces that are 100 percent free of tobacco smoke and emissions;
- III. To establish the basis for protection against tobacco smoke;
- IV. To establish the basis for the production, labeling, packaging, promotion, advertising, sponsorship, distribution, sale, consumption, and use of tobacco products;
- V. To institute measures to reduce tobacco consumption, particularly among minors;
- VI. To promote health education and awareness of the risks attributable to tobacco consumption and exposure to tobacco smoke;
- VII. Establish general guidelines for the design and evaluation of evidence-based legislation and public policies against tobacco use;
- VIII. Establish general guidelines for the delivery and dissemination of information on tobacco products and their emissions; and
- IX. Any others that may be necessary for the fulfillment of its objectives.

<sup>14</sup> **Filing information:** Thesis: P./J. 79/2009. Source: Weekly Judicial Journal of the Federation and its Gazette. Ninth Era, Volume XXX, August 2009, page 1067. Digital record: 166655. Heading: “**REGULATORY POWERS OF THE FEDERAL EXECUTIVE BRANCH. ITS PRINCIPLES AND LIMITATIONS.**”

<sup>15</sup> **Filing Information:** Source: Weekly Judicial Journal of the Federation. Volume 60, Part Three, page 49. Seventh Era. Digital Record: 238609. Subject: “**ADMINISTRATIVE REGULATIONS. POWER OF THE PRESIDENT OF THE REPUBLIC TO ISSUE THEM. THEIR NATURE.**”

<sup>16</sup> **Filing information:** Thesis: P./J. 30/2007. Source: Weekly Judicial Journal of the Federation and its Gazette. Ninth Era, Volume XXV, May 2007, page 1515. Digital record: 172521. Subject: “**REGULATORY AUTHORITY. ITS LIMITS.**”

49. Similarly, the regulation may refer to the questions of what, who, where, and when, provided that the law already addresses these aspects. Therefore, it cannot go beyond, extend, or contradict the provisions of the law.

### **Designated smoking areas**

50. In ruling on appeal 672/2023,<sup>17</sup> the SCJN determined that Article 27 of the LGCT<sup>18</sup> establishes the premises on which designated smoking areas may exist, provided that they are located only in outdoor spaces. Similarly, from its reasoning, it is clear that the Ministry of Health is the authority responsible for establishing the provisions that these areas must comply with.<sup>19</sup> Therefore, this general and abstract rule answers the following questions:

- What legal situation does Article 27 of the LGCT regulate? The possibility of creating designated smoking areas.
- Where should designated smoking areas be located? Only outdoors.
- Which establishments can set up designated smoking areas? Places with free or restricted public access, workplaces with or without customer service, public or private.
- Which authority should establish the provisions for designated smoking areas? The Ministry of Health.

51. Based on the foregoing, the Federal Executive Branch, through the Ministry of Health, issued the Decree reforming, adding, and repealing various provisions of the RLCT, published in the Official Gazette of the Federation on December 16, 2022.

52. Article 60, paragraph one, of the RLCT<sup>20</sup> establishes that designated smoking areas (“zonas exclusivas para fumar,” in Spanish) must be located only in outdoor spaces, where it is prohibited to provide any service or consume food, beverages, or entertainment, among other things, as well as to carry out social or recreational activities. The word “exclusiva” is an adjective that means unique or excluding any other, that is, it does not contemplate any other option.<sup>21</sup>

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<sup>17</sup> Decided in a session held on March 13, 2024, by a majority of four votes from Ministers Yasmín Esquivel Mossa, Lenia Batres Guadarrama (rapporteur), Javier Laynez Potisek, and President Alberto Pérez Dayán. Minister Luis María Aguilar Morales voted against the decision because there was a lack of justification for the absolute prohibition. Justice Javier Laynez Potisek voted against the methodology and considerations, stating that he would issue a concurring opinion.

<sup>18</sup> Article 27. In places with free or restricted public access, and in workplaces with or without customer service, whether public or private, there may be areas exclusively for smoking. These areas must be located only in outdoor spaces, in accordance with the provisions established by the Secretariat.

<sup>19</sup> Article 6. For the purposes of this Law, the following definitions apply:

(...)

XXIII. Secretariat: The Secretariat of Health;

(...)

<sup>20</sup> Article 60. - Areas exclusively for smoking shall be located only in outdoor spaces, in which it is prohibited to provide any service or consumption of food, beverages, or entertainment, among others, as well as to carry out social or recreational activities. These areas shall have the following characteristics:

(...)

<sup>21</sup> Dictionary of the Royal Spanish Academy. Available for consultation at: <https://dle.rae.es/exclusivo?m=form>.

Therefore, this collegiate body determines that the article mentioned above does not violate the principles of exclusive regulation by Congress and hierarchical subordination, based on the following considerations.

53. On the one hand, this provision reiterates the provisions of the LGCT regarding where designated smoking areas should be located. On the other hand, it elaborates on how activities will be carried out in these areas, detailing the prohibition of various activities other than smoking. In this regard, it specifies a general limitation expressly contemplated in Article 27 of the LGCT. Consequently, Article 60, paragraph 1, of the RLCT does not address any new issue because it is an obvious, clear restriction that is previously established by general and abstract law.

54. Article 60, sections I, II, and III, of the RLCT<sup>22</sup> establishes that designated smoking areas must be separated from spaces that are 100% free of tobacco smoke and emissions, which must be located at least ten meters away from any place where people pass or gather, and that such spaces must not exceed 10% of the total area of the property. The sections outline the necessary characteristics for operating exclusive smoking areas, including their location and the distance from other spaces. Therefore, the sections define the scope of designated smoking areas in outdoor spaces regarding their operation. The existence of those areas is authorized under Article 27 of the LGCT.

55. Consequently, Article 60, paragraph one, sections I, II, and III of the RLCT does not violate the principles of exclusive regulation by Congress and hierarchical subordination, since this article fulfills the purpose of specifying the regulatory provisions necessary for the effective enforcement of the exclusivity of smoking areas without adding new issues and in accordance with the power defined by the terms of Article 27 of the LGCT.

56. To conclude otherwise would allow the provision of services or consumption of food, beverages, or entertainment in designated smoking areas, as well as the carrying out of social or recreational activities in those places. The occurrence of these hypotheses would undermine the objective and purpose of the LGCT, namely to protect the rights of non-smokers to enjoy spaces that are 100% smoke-free, people from exposure to tobacco smoke, and the implementation of measures to reduce tobacco consumption.

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<sup>22</sup> (...)

I. Be physically separated and isolated from areas that are 100 percent free of tobacco smoke and emissions; not be a mandatory passageway for people or located at the entrances or exits of buildings; II. Be located in a perimeter fence at least ten meters from entrances, accesses, exits, or any mandatory place where people pass or congregate, as well as from places where air intake ducts are located; III. Outdoor spaces shall not exceed 10 percent of the total area of the building or establishment. Where applicable, the measurement of the total space shall take into account only the area used for the provision of the service, excluding in all cases areas used for cooking, beverage preparation, sound equipment and its operators, restrooms, or parking lots;  
(...)

57. Indeed, allowing these activities in designated smoking areas would undermine the purpose of the LGCT, as it would expose non-smokers and workers providing services or carrying out activities to secondhand smoke. This is because the establishment of such areas was based on the premise that they would be outdoors solely for the purpose of consuming tobacco products, unlike the actions permitted in 100% smoke-free and public spaces.

58. Article 6, section X,<sup>23</sup> states that spaces that are **100% smoke-free** and emission-free are those physical areas with public access, all workplaces, public transportation, or **spaces where people gather**, in which, for reasons of public order and social interest, it is prohibited to smoke, consume, or have any tobacco or nicotine product lit.

59. Article 6, section X Bis,<sup>24</sup> provides that public gathering places are all spaces intended for public access for sporting, artistic, cultural, and entertainment activities, both public and private, regardless of whether they are covered by a roof and enclosed by walls or whether the structure is permanent or temporary.

60. The concepts of 100% smoke-free spaces and spaces for collective gatherings, by their very nature, are at odds with the existence of designated smoking areas, since the purpose of these areas is solely for the consumption of tobacco products outdoors without engaging in any other activity, i.e., activities related to entertainment, culture, art, and sports.

61. Therefore, designated smoking areas cannot be equated with spaces where services or food, beverages, or entertainment can be provided, or where social or recreational activities can be carried out, as these actions are inherent to public spaces, which, in turn, form part of 100% smoke-free spaces where it is not possible to smoke, consume, or have any tobacco or nicotine product lit.

62. In conclusion, the regulation of exclusive smoking areas established in Article 60, paragraph one, sections I, II, and III of the RLGCT respects the principles of exclusive regulation by Congress and hierarchical subordination in accordance with the provisions of Article 27 of the LGCT. This determination is considered a progressive measure aimed at ensuring the maximum degree of the right to health for individuals, within the set of gradual actions available to the State to consolidate its full effectiveness.

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<sup>23</sup> Article 6. For the purposes of this Law, the following definitions apply:

[...]

X. 100 percent smoke-free and emission-free space: Any physical area accessible to the public, any workplace, public transportation, or public gathering space where, for reasons of public order and social interest, smoking, consuming, or having any tobacco or nicotine product lit is prohibited.

<sup>24</sup> Article 6. For the purposes of this Law, the following definitions apply:

[...]

X Bis. Public gathering space: Any space intended for public access for the purpose of sporting, artistic, cultural, and entertainment activities, whether public or private, regardless of whether it is covered by a roof and enclosed by walls or whether the structure is permanent or temporary;

63. This Full Chamber does not overlook the fact that, in deciding the amparo appeals under review 203/2024, 82/2024, and 253/2024,<sup>25</sup> the now-defunct Second Chamber of the SCJN determined that Article 60, paragraph one, sections I, II, and III, of the RLGCT violated the principle of hierarchical subordination. However, these precedents were not binding because a majority of three votes approved the reasons justifying those decisions, and Article 223 of the Amparo Law in force at the time of their resolution established that precedents issued by the former Chambers of this SCJN were binding when a majority of four votes approved them. Therefore, in order to guarantee legal certainty within the national legal system concerning the legal opinion that should prevail, the case law derived from this ruling is hereby issued.

64. Similarly, it does not go unnoticed that the contending collegiate courts cited the content of Article 65 Bis of the RLGCT,<sup>26</sup> which defines spaces considered to be areas of collective gathering in which it is prohibited to consume or have lit tobacco or nicotine products.

65. In this regard, this Full Chamber considers that the reasoning referred to above regarding the content of Article 60 of the RLGCT should be applied extensively to Article 65 Bis of the RLGCT, as it establishes restrictions that are directly related.

66. In terms of the preceding paragraphs, Article 60, paragraph one, of the RLGCT establishes the prohibition on providing any service or consumption of food, beverages, or entertainment, as well as carrying out social or recreational activities in areas designated for smoking. Sections I, II, and III of Article 60 of the RLGCT set forth the necessary characteristics for the implementation of

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<sup>25</sup> Amparo in review 203/2024, decided in a session on May 22, 2024, by a majority of three votes from Justices Luis María Aguilar Morales, Javier Laynez Potisek, and Chief Justice Alberto Pérez Dayán (rapporteur). Justices Yasmín Esquivel Mossa and Lenia Batres Guadarrama cast their votes against the decision, and the former will issue a dissenting opinion.

Amparo in review 82/2024, resolved in session on June 5, 2024, by a unanimous vote of five with the first, second, and third resolutions, Ministers Luis María Aguilar Morales and President Alberto Pérez Dayán voted with exception regarding the denial of the amparo with respect to Article 2, Section IV, of the contested regulation. And by a majority of three votes from Ministers Luis María Aguilar Morales, Javier Laynez Potisek, and President Alberto Pérez Dayán, with Ministers Yasmín Esquivel Mossa (rapporteur) and Lenia Batres Guadarrama voting against the fourth resolution. Minister Yasmín Esquivel Mossa will issue a dissenting opinion.

Amparo in review 253/2024, resolved in a session on June 5, 2024, by a unanimous vote of five Justices: Yasmín Esquivel Mossa, Luis María Aguilar Morales, Lenia Batres Guadarrama, Javier Laynez Potisek, and President Alberto Pérez Dayán (rapporteur) with regard to the first and second operative paragraphs; exception expressed by Justices Luis María Aguilar Morales and Alberto Pérez Dayán, regarding the denial of the amparo with respect to Article 2, Section IV, of the contested regulation. And, by a majority of three votes of Justices Luis María Aguilar Morales, Javier Laynez Potisek, and President Alberto Pérez Dayán (rapporteur) with respect to the third operative paragraph. Justices Yasmín Esquivel Mossa and Lenia Batres Guadarrama cast their votes against, and the former will issue a dissenting opinion.

<sup>26</sup> Article 65 Bis. It is prohibited for any person to consume or have lit any tobacco or nicotine product in public spaces. In accordance with the provisions of Article 6, Section X Bis of the Law, the following are considered public spaces: patios, terraces, balconies, amusement parks, play areas or places where children and adolescents remain or congregate, urban development parks, sports parks, beaches, entertainment and performance centers, courts, stadiums, arenas, shopping malls, markets, hotels, hospitals, health centers, medical clinics, places of religious worship, places where food or beverages are consumed or served, transportation stops, and other spaces established by the Secretariat in accordance with the Law, these Regulations, and other applicable legal provisions.

designated smoking areas, including their location and the distance they must maintain from other spaces. Article 65 Bis of the RLGCT prohibits the consumption or lighting of tobacco or nicotine products in public spaces, including entertainment and performance venues, as well as places where food or beverages are consumed or served.

67. Therefore, in the spaces defined in Article 65 Bis of the RLGCT, the consumption of tobacco products is prohibited, as this article's purpose is to allow for collective activities which, conversely, cannot be carried out in areas exclusively designated for smoking under Article 60 of the RLGCT. Both articles expressly prohibit the consumption of tobacco products in spaces other than those designated solely for smoking.

68. Therefore, the Plenary Session of the SCJN considers that the reasoning regarding the constitutionality of Article 60, paragraph one, sections I, II, and III of the RLGCT should be regarded as applicable to Article 65 Bis of the RLGCT.

69. As the now defunct Second Chamber of the SCJN, in resolving the amparo appeals under review 145/2024,<sup>27</sup> 203/2024,<sup>28</sup> and 253/2024,<sup>29</sup> unanimously ruled, the prohibition established in Article 65 Bis of the RLGCT is not contrary to the principle of normative hierarchy insofar as it merely replicates the restriction implemented by the legislature in Article 26 of the LGCT. Furthermore, Article 65 Bis of the RLGCT does not violate the aforementioned principle because it merely specifies which spaces are considered public gathering places.

## **VI. PROPOSED CASE LAW**

70. In accordance with the foregoing considerations, the legal opinion that should prevail, in accordance with Article 226, Section II, of the Amparo Law, is as follows:

**TOBACCO CONTROL. ARTICLE 60, FIRST PARAGRAPH, SECTIONS I, II, AND III OF THE REGULATIONS OF THE GENERAL LAW FOR TOBACCO CONTROL, THAT REGULATE DESIGNATED AREAS FOR SMOKING AND ESTABLISH ITS FEATURES, DO NOT INFRINGE THE PRINCIPLES OF EXCLUSIVE REGULATION BY CONGRESS AND HIERARCHICAL SUBORDINATION.**

**Facts:** The competing collegiate circuit courts upheld contradictory legal opinions when determining whether the content of Article 60, paragraph one, sections I, II, and III, of the Regulations of the General Law for Tobacco Control infringes upon the principles of exclusive

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<sup>27</sup> Decided in a session held on August 14, 2024, by a unanimous vote of four Justices: Yasmín Esquivel Mossa, Luis María Aguilar Morales, Javier Laynez Potisek (rapporteur), and President Alberto Pérez Dayán. Justice Lenia Batres Guadarrama was absent.

<sup>28</sup> Decided in a session held on May 22, 2024, by a majority of three votes from Justices Luis María Aguilar Morales, Javier Laynez Potisek, and Chief Justice Alberto Pérez Dayán (rapporteur). Justices Yasmín Esquivel Mossa and Lenia Batres Guadarrama cast their votes against the decision, and the former will issue a dissenting opinion.

<sup>29</sup> Decided in a session held on June 5, 2024, by a unanimous vote of five Ministers: Yasmín Esquivel Mossa, Luis María Aguilar Morales, Lenia Batres Guadarrama, Javier Laynez Potisek, and President Alberto Pérez Dayán (rapporteur).

regulation by Congress and hierarchical subordination under the provisions of the General Law for Tobacco Control.

**Legal opinion:** Article 60, paragraph one, sections I, II, and III, of the Regulations of the General Law for Tobacco Control does not violate the principles of exclusive regulation by Congress and hierarchical subordination.

**Reasoning:** Article 27 of the General Law for Tobacco Control provides that designated smoking areas must be located outdoors, in accordance with the regulatory provisions established by the Secretary of Health. For its part, Article 60 of the Regulations of the General Law for Tobacco Control restates the location of such areas outdoors and supplements and specifies the prohibition on activities other than smoking, such as the provision of any service or consumption of food, beverages, or entertainment, among others, as well as carrying out social or recreational activities. Likewise, sections I, II, and III of the aforementioned Article 60 set forth the necessary characteristics for the implementation of exclusive smoking areas regarding their location and the minimum distance from other spaces. Consequently, the regulatory standard respects the principles of exclusive regulation by Congress and hierarchical subordination established in Article 89, Section I, of the Political Constitution of the United Mexican States. This is so because the regulation fulfills its purpose of specifying the regulatory provisions necessary for the effective enforcement of the exclusivity of smoking areas without adding new issues, and in compliance with the powers defined in Article 27 of the General Law for Tobacco Control.

## **VII. DECISION**

Based on the foregoing arguments, this Full Chamber of the Supreme Court of Justice of the Nation decides:

**FIRST.** The contradiction in legal opinions reported to the Supreme Court is real.

**SECOND.** The opinion upheld by the Full Chamber of the Supreme Court of Justice of the Nation shall prevail as case law.

**THIRD.** The case law thesis supported by this resolution shall be published in accordance with the provisions of Articles 219 and 220 of the Amparo Law.

**Notify** the disputing parties of this ruling; send the case law and the reasoning behind this ruling to the General Directorate for the Coordination of the Compilation and Systematization of Theses, for publication in the Federal Judicial Weekly and in its Gazette, in accordance with Articles 219 and 220 of the Amparo Law; and, in due course, file the case as closed.

So ruled the Plenary Session of the Supreme Court of Justice of the Nation by a majority of eight votes from Justices Herrerías Guerra, Espinosa Betanzo, Ríos González, Esquivel Mossa, Batres Guadarrama (rapporteur), Figueroa Mejía, Guerrero García, and President Aguilar Ortiz; Justice

Ortiz Ahlf cast her vote against the ruling. Justice Esquivel Mossa announced that she would issue a concurring opinion.

Chief Justice Aguilar Ortiz declared that the matter had been resolved in accordance with the above terms.

Signed by the Chief Justice and the Reporting Justice, with the Secretary General of Agreements, who authorizes and certifies this document.

CHIEF JUSTICE  
JUSTICE HUGO AGUILAR ORTIZ

REPPORTEUR  
JUSTICE LENIA BATRES GUADARRAMA

SECRETARY GENERAL OF AGREEMENTS  
ATTORNEY RAFAEL COELLO CETINA

This document corresponds to the contradiction of legal opinions 250/2024, ruled on by the Plenary Session of the Supreme Court of Justice of the Nation, held on September 25, 2025. Let it be noted.