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THE MEXICAN ELECTORAL PROCESS: THE PERPETUATION OF FRAUD BY RESTRICTION OF CITIZEN ACCESS TO ELECTORAL INFORMATION

I. INTRODUCTION

Many Mexicans shouted fraud when the party holding control of the Mexican government for the past sixty-five years announced on August 30, 1994, that it would continue its reign into the twenty-first century. Presidential Candidate Ernesto Zedillo of the Partido Revolucionario Institucional (“PRI”) claimed victory with 48.87% of the vote after election computers in Mexico City completed the tally.

Mexican analysts were confused and competing party candidates

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1. All translations of the Federal Electoral Code (“CFE”) and the Federal Code of Electoral and Institutional Procedures (“COFIPE”) were made by the Comment author.


3. The PRI is known in English as The Institutional Revolutionary Party. Brook Larmer, Mexican Vote Signals Shifting Political Landscape, Christian Science Monitor, July 8, 1988, at 1. Arthur S. Banks describes the history of the PRI:

   Founded in 1929 as the National Revolutionary Party (“PRN”) and redesignated in 1938 as the Mexican Revolutionary Party, the PRI took its present name in 1946. As a union of local and state groups with roots in the revolutionary period, it was gradually established on a broad, popular base and retains a tripartite organization based on three distinct sectors (labor, agrarian, and “popular”), although in 1978 it was officially designated as a “workers’ party”. While the PRI’s outlook may be characterized as moderately left-wing, its membership includes a variety of factions and outlooks. In recent years controversies surrounding electoral outcomes have led to internal turmoil, including a 1984 leadership shakeup amid allegations that state and local PRI organizations had “disregarded” policy set in Mexico City. In late 1986 the controversy yielded the formation of a Democratic Current (“Corriente Democratica - CD”) faction under the leadership of Cuauhtémoc Cárdenas Solórzano and former party president Profiro Muñoz Ledo that called for more openness in PRI affairs, including the abolition of secrecy (tapadismo) in the selection of presidential candidates.


were astounded and outraged. With a history of facilitating electoral fraud and voter bullying, how could Mexican citizens again vote to keep the PRI in power? Perhaps promises of a clean election and a new, more sophisticated electoral computer were nothing more than promises to defraud Mexican voters in state-of-the-art fashion. As allegations of ballot stuffing, computer tampering and other obstacles to a fair election process surfaced, Mexican citizens wondered whether the use of electoral computers facilitated fair elections or simply allowed those in control of the system to manipulate with greater subtlety and efficiency.

The Mexican Constitution dictates that the people of Mexico have the right to vote in popular elections and that Mexican national sovereignty resides in the people. The constitution gives the Mexican citizen "the inalienable right to alter or modify [his] form of government." To effectuate these objectives, the Mexican elections must be run honestly and free of political bias, lest the governing political party cheat the citizens of their right to determine how Mexico is governed. If the party in control of the administration of elections continues to manipulate that

5. Among competing party members expressing dismay at the PRI's 1994 victory was Cuauhtémoc Cárdenas, presidential candidate from the leftist PRD, or Democratic Revolutionary Party. Mark Fineman, Zedillo Awaits Confirmation of Presidential Victory in Mexican Election, LOS ANGELES TIMES, August 25, 1994, at A6. Cárdenas, who was expected by many to capture a portion of the vote close to if not exceeding that of Zedillo, of the PRI only received 17% compared to Zedillo's near 50%. Id. Although the National Action Party ("PAN") was surprised as well, their candidate Fernandez received 27% of the vote and analysts expected that the PAN would approve the final results of the vote. Id.

6. After the 1988 presidential election, Arturo Nufiez, Director of the Federal Election Institute ("IFE") stated that "unidentified officials" opted to crash the computer voting tally system after it appeared that the PRI candidate, Carlos Salinas de Gortari, was losing. Tod Robberson, '88 Ballot Still at Issue as Mexican Election nears, THE WASHINGTON POST, July 27, 1994, at A19.

7. Mexicans turned out in an unprecedented 77.73% to vote in the August 21, 1994 presidential election. Fineman, supra note 2.

8. See infra note 174 for details on Mexico's new electoral computer system.


10. Fineman, supra note 5.

11. Allegations of voter shaving, or the removal of voters with credentials have surfaced. Id. These names may have been removed from the computerized registration list. Id.


13. Id.

14. Without honestly run elections, the choice and freedom of Mexican citizens to "alter or modify" their government will be moot, as Mexicans choose their government by a democratic electoral process. Id.
process, what recourse will the Mexican people have against their government?15

This Comment highlights the PRI’s fraudulent use of the Mexican electoral machine and addresses various remedies the Mexican people have through the Mexican Constitution and electoral laws. This Comment examines the 1988 and 1994 elections and shows how electoral computers were used in various stages of the electoral process. Although the PRI has not adequately transformed the electoral process or effectively used technological advances to guarantee fair democratic elections, this comment concludes that through nonpartisan electoral laws and a publicly controlled electoral system, Mexico will finally enjoy honest and unquestionably valid elections.

II. BACKGROUND

A. GOVERNMENT STRUCTURE AND POWER

The Constitution of the United States of Mexico was ratified by the 31 states in 1917.16 The 1917 Constitution was structured after the 1857 Constitution, written after Mexico declared independence from Spain in 1810.17 The constitution of 1917 purported to follow the spirit

15. The Mexican Constitution dictates that the purpose of political parties is to promote democratic activity through “universal, free, secret and direct suffrage.” CONST. art. 41 (Mex.).

16. By ratifying the 1917 Constitution, the 31 states created the federal republic that exists today. Arthur S. Banks describes the Constitution and government of Mexico:

The preeminent position of the chief executive, who is directly elected for a single year term, is enhanced by the leadership of the dominant party, his persuasive influence on legislatures, and his immense powers of patronage. The bicameral Congress, consisting of an elected Senate and Chamber of Deputies (the latter under a mixed direct and proportional system), is confined by the party system to a secondary role in the determination of national policy. The judicial system is headed by a 21-member Supreme Court, which has four divisions; administrative, civil, labor, and penal. the justices of the Supreme Court are appointed for life by the President with the approval of the Senate. Lower courts include six circuit courts and 49 district courts. The basis of local government is the municipality.

In July 1990 the Chamber of Deputies approved a government sponsored electoral reform bill that provided for the compilation of a new electoral roll, the introduction of voter-identification safeguards, access to electoral commission’s computers [by registered political parties only], and the settlement of electoral disputes by an electoral court; perhaps most importantly, any party receiving 35 percent of the vote would be guaranteed a majority (50 percent plus one seat) in the Chamber, while electoral alliances would effectively be barred.


17. Mexico was conquered by Spain in the sixteenth century and declared itself independent in 1810, forming a republic in 1822. Arthur S. Banks gives a brief history of Mexico:

The country was ruled by Gen. Antonio López de Santa Anna [sic] from 1833 to 1855, a period that encompassed the declaration of Texan independence in 1836
of the Revolution of 1810, creating rights and guarantees for the individual citizen. However, the 1917 constitution did little to set aside or modify the governmental institutions through which these newly enumerated rights are enforced. It instead centralized governmental power and weakened the legislature, setting Mexico on the path to the executive hegemony that PRI enjoys today.

The Constitution of Mexico declares that governmental power shall

and war with the United States from 1846 to 1848. Archduke Maximilian of Austria, installed as emperor of Mexico by Napoleon III in 1865, was executed by Benito Juarez in 1867. The dominant figure during the latter nineteenth century was Gen. Porfirio Diaz who served as president from 1877 to 1910.

Modern Mexican history dates from the Revolution of 1910, which shattered an outmoded social and political system and cleared the way for a generally progressive republican regime whose foundations were laid in 1917. Since 1928 political life has been dominated by a nationwide grouping whose present name, the Institutional Revolutionary Party ("PRI"), was adopted in 1946 and which purports to carry forward the work of the 1917 Constitution.

President Luis Echeverria Alvarez, who assumed office in 1970, adopted the slogan "Upward and Forward" ("Arriba y Adelante") as a rallying cry for his program of reform, which sought to overcome maldistribution of income, widespread alienation and unrest, scattered urban and rural violence, and visible erosion in the prestige, if not the power, of the PRI. Echeverria's efforts were opposed by the Right, because of a feeling that the traditional favoritism shown to business interests was waning, and by the Left, because of a conviction that the reform was a sham... At a congress in October 1987 the PRI ratified the selection of former planning and budget minister Carlos Salinas de Gortari as its 1988 presidential candidate. Although seemingly assured a victory, Salinas was credited with a bare 50.39% vote share at the balloting of July 6, 1988. His three competitors, Cuauhtémoc Cárdenas Solórzano of the leftist National Democratic Front ("FDN"), PAN's Manuel Clouthier, and Rosario Ibarra de la Piedra of the far-left Worker's Revolutionary Party ("PRT"), immediately brought charges of widespread fraud, which in September were rejected by the Congress sitting as an electoral college to review the results.

Banks, supra note 3, at 538.

18. The revolution of 1910 routed the system of an all-powerful executive under General Porfirio Diaz, who held power as in military dictator style from 1877 to 1910. The revolution sought rights and freedoms for the individual. Id.

19. The Writ of Amparo system indirectly guaranteed various rights of the individual under the 1917 constitution and the modern constitution. Article 107 of the modern Mexican Constitution states that:

I. A trial of Amparo shall always be held at the instance of the injured party;
II. The judgement shall always be such that it affects only private individuals, being limited to affording them redress and protection in the special case to which the complaint refers, without making any general declaration as to the law or act on which the complaint is based... CONST. art. 107 (Mex.). See infra notes 81, 82 for a description of the Writ of Amparo under the Mexican judicial system. Article 27 of the 1917 constitution dealt with individual property rights but limited them to benefit of the community at large. See generally Guillermo Flores Margadant S., An Introduction to the History of Mexican Law 287 (Oceana Publications 1983).

20. The 1917 Constitution transferred legislative power from the Congress to the executive branch, increasing federal power over individual state rights by allowing the ruling
issue from the people through a democratic election process. Elected leaders swear an oath to "uphold the Constitution and the laws that emanate from it." These maxims are basic elements of modern democracy, but were manipulated by the PRI for the last sixty-five years to ensure dominance of Mexican government.

The PRI used its sixty-five year control of the Mexican government to sustain itself, warping the spirit of the constitutional oaths elected leaders took. The PRI used its initial foothold in Mexican government to create an apparatus monopolizing the constitutional amendment process. The PRI capitalized on its popularity in the 1950s to ensure future success, capitalizing on proportional representation in Congress in a nation largely dominated by PRI supporters. In 1987, the PRI cemented its control over the Mexican legislature by writing the party to decide what political candidates were suitable at local and municipal levels in Mexico and abolished the vice-presidency.

21. Various articles of the Mexican Constitution when viewed together affirm that the power of government flows from the Mexican citizens and is determined through suffrage. Article 35 states, in pertinent part: "The prerogatives of the citizens are: I. To vote in popular elections..." CONST. art. 35 (Mex.). Article 39 states: "The national sovereignty resides essentially and originally in the people. All public power originates in the people and is instituted for their benefit. The people at all times have the inalienable right to alter or modify their form of government." CONST. art. 39 (Mex.). Article 40 states: "It is the will of the Mexican people to organize themselves into a federal, democratic, representative Republic composed of free and sovereign States in all that concerns their internal government, but united in a Federation established according to the principles of this fundamental law." CONST. art. 40 (Mex.).

22. CONST. art. 128 (Mex.).


24. Article 128 of the Mexican Constitution states: "Every public official, without exception of any kind, before taking office, shall take an oath to uphold the Constitution and the laws emanating therefrom." CONST. art. 128 (Mex.).

25. Livas, supra note 23, at 373-83. A two-thirds majority of the Congress is required to amend the constitution. Reuters, Mexico: New Electoral Law for Mexico, MEXICO AND CENTRAL AMERICA REG. REPORT, August 23, 1990, at 4. See infra notes 26-31 for general aspects of the governmental apparatus put into place by the PRI.

26. Proportional representation is "an electoral system designed to represent in a legislative body each political group or party in proportion to its actual voting strength in the electorate." WEBSTER'S NINTH COLLEGIATE DICTIONARY 944 (9th ed. 1988). In the 1950's, the voting strength of the PRI amounted to an overwhelming majority; the system of proportional representation did little to aid smaller parties while it loaded the Mexican Congress with PRI representatives. Livas, supra note 23, at 375-76.

27. Id.

governability clause into Article 54 of the Mexican Constitution,\textsuperscript{29} guaranteeing a party majority in the Chamber of Deputies\textsuperscript{30} after obtaining a plurality of the popular vote.\textsuperscript{31}

The PRI established a hegemony in the Mexican government by using government monies to fund its political campaign at the expense of other registered political parties and Mexican taxpayers.\textsuperscript{32} The PRI used a provision of Article 41 of the constitution that states "the law shall determine the specific forms of their [political parties'] intervention in the electoral process"\textsuperscript{33} to enact the Federal Code of Electoral and Institutional Procedures\textsuperscript{34} and guarantee itself a share of government funding based upon earlier election results.\textsuperscript{35} Because the PRI won the national elections for the past 65 years, it receives more federal resources than all other political parties combined,\textsuperscript{36} including the National Action Party ("PAN")\textsuperscript{37} and the Democratic Revolution Party

\begin{itemize}
  \item \textsuperscript{29} Proposed by President Miguel de la Madrid of the PRI in 1987 and enacted the same year. Article 54 states in pertinent part:
  \begin{enumerate}
    \item C. If no party should obtain 51\% of the national effective vote and no party should reach, with their constraints of relative majority, one half plus one of the members of the Chamber, the party with more constants of majority, will be assigned deputies, in proportional representation, until they reach the absolute majority of the Chamber.
  \end{enumerate}

  \begin{itemize}
    \item CONST. art. 54 (Mex.).
    \item See supra note 28 for description of Chamber of Deputies.
    \item The PRI need only receive 35\% of the popular vote nationwide and a simple plurality in the direct vote for the Chamber of Deputies to attain half the seats plus one in the Chamber of Deputies. Anderson-Barker, supra note 28, at 310.
    \item Livas, supra note 23, at 377.
    \item Article 41 also states that:
    \begin{quote}
      The people exercise their sovereignty through the powers of the Union in those cases within its jurisdiction, and through those of the states, in all that relates to their internal affairs, under the terms established by the present Federal Constitution and the individual constitutions of the States, respectively, which latter shall in no event contravene the stipulations of the federal pact.
    \end{quote}
    \begin{quote}
      Political parties are entities of public interest. . . The purpose of political parties is to promote the participation of people in democratic activity, to contribute to forming the national representation and, as organizations of citizens, to make possible their access to the exercise of public power, in accordance with the programs, principles and ideas which they postulate and through universal, free, secret and direct suffrage. . .
    \end{quote}
    
    \begin{itemize}
      \item CONST. art. 41 (Mex.).
      \item This code will be referred to hereinafter in the text and footnotes as "COFIPE".
      \item Livas, supra note 23, at 377.
      \item Id.
      \item The PAN was founded in 1931 and is considered to be one of Mexico's more conservative parties, favoring limits of governmental involvement in the economy. Banks, supra note 3, at 541. The PAN has historically been the strongest threat to PRI dominance of the Mexican government. Id. Arthur S. Banks describes the history and character of the PAN:
    \begin{quote}
      Founded in 1939 and dependent on urban middle-class support, the long-time leading opposition party has and essentially conservative, proclerical, and probusi-
MEXICAN ELECTORAL FRAUD

B. THE 1988 PRESIDENTIAL ELECTION

In 1988, the Mexican government under the PRI contracted with UNISYS, an American computer corporation, to supply Mexico with a voter registration system for the upcoming presidential election. In his campaign for the presidency, PRI candidate Salinas mentioned that he hoped the new computer would foster an honest electoral process. In the days before the 1988 election, Salinas stated: “let us respect the citizenship orientation, and favors limitations on the government’s economic role. Largely because of fragmentation within the leftist opposition, PAN was, until recently, the main beneficiary of erosion in PRI support. In 1982, although losing all but one of its directly elective Chamber seats, the party’s proportional representation rose from 39 to 54, party spokesmen claiming that they had been denied a number of victories as a result of PRI electoral fraud. Similar claims were made after the 1985 election, at which PAN gained nine directly elective Chamber seats and a number of mayoralities, and was widely acknowledged to have gained the majority of votes in two gubernatorial races awarded to the PRI. The party ran third in both the presidential and legislative balloting of 1988.

Arthur S. Banks describes the history and character of the PRD:

The PRD was launched in October 1988 by Cuauhtémoc Cardenas, who had previously led the dissent Democratic Current within the PRI and had placed second in the July presidential balloting as standard-bearer of the FDN coalition. By the end of the year however, the PMS [Mexican Socialist Party] was the only formation other than Cardenas’s own Corriente Democratica and a number of minor groups that included the Socialist Democratic Party, led by Manuel Moreno Sanchez, to announce an intention to participate in the new grouping.

The party’s July 1988 loss to the PRI in Michoacan gubernatorial balloting was widely viewed as the result of fraudulent vote tallying. Subsequently, PRD members occupied municipal and commandeered public roads, leading to clashes with PRI adherents and government forces which continued into 1990. Meanwhile, the party, which had been denied legalization on a national basis in June, sought international assistance in investigating the alleged political assassination of some 60 of its members since 1988.

38. Referred to hereinafter as the “PRD." The PRD was founded in 1988 by Cuauhtémoc Cárdenas Solórzano after he left the PRI. Banks, supra note 3, at 524. Cárdenas’ relatively new party is considered leftist and many of its members have actively engaged in public protest of PRI electoral practices, going as far as blocking off roads after elections believed fraudulent. Id.

1985-1988

39. CONST. art. 41 (Mex.).


41. Id.
zen's vote.\textsuperscript{42} As the elections proceeded, the early vote tallies suggested that Cuauhtémoc Cárdenas, the candidate of the PRD, was ahead of PRI candidate Salinas.\textsuperscript{43} Suddenly, the Federal Electoral Commission announced that the multi-million dollar electoral computer system crashed.\textsuperscript{44}

While candidates Cárdenas of the PRD and Clouthier of the PAN met with Interior Minister Mañuel Díaz to voice their concern over a number of reports of electoral fraud including ballot stuffing, repeat voting and voter intimidation; the head of the PRI, Jorge de la Vega, announced that the PRI had won a "crushing triumph that was legal and uncontestable."\textsuperscript{45} However, the Federal Electoral Commission was unable to corroborate de la Vega's claim.\textsuperscript{46} One Commission official questioned the integrity of the statement because it was made without any release of official results.\textsuperscript{47}

Between July 8 and 11, all three candidates from the PRI, PRD, and PAN declared victory amidst the confusion over the computer crash.\textsuperscript{48} Anonymous high ranking officials of the PRI told the media that they had orders from Salinas and former President de la Madrid to encourage fraud.\textsuperscript{49} Electoral commission members debated the allegations of fraud and violations of codified federal electoral law.\textsuperscript{50} PAN candidate Clouthier staged rallies in 10 of Mexico's 31 states and called upon the Mexican people to begin civil disobedience until fair elections could be held.\textsuperscript{51} When the computer system was restored, PRI candidate Salinas was ahead by just over 50 per cent of the votes and was declared the victor.\textsuperscript{52} In response to the computer failure of the 1988 election, the PRI under President Salinas and the Chamber of Deputies passed the Federal Code of Institutional and Electoral Procedures ("COFIPE").\textsuperscript{53} Other parties such as the PAN helped to pass the new electoral law, be-

\begin{thebibliography}{53}
\bibitem{42} Id.
\bibitem{43} Id.
\bibitem{44} Davidson, \textit{supra} note 40, at 14.
\bibitem{45} Larmer, \textit{supra} note 3, at 1.
\bibitem{46} Id.
\bibitem{47} Id.
\bibitem{48} Cárdenas of the PRD, Salinas of the PRI, and Clouthier of the PAN declared victory while election results were delayed due to the electoral computer crash. Jim Mulvaney, \textit{Election Results Delayed, 3 Contenders Claim Mexico Presidency}, \textit{NewSDay}, July 1988, at 5. Clouthier and Cárdenas, convinced that the results would be fraudulent, encouraged citizens to protest through civil disobedience. Supporters of Clouthier and Cárdenas blocked streets and bridges, demanding to see raw voting tally sheets. Police were placed on a state of alert. \textit{Id}.
\bibitem{49} Id.
\bibitem{50} Id.
\bibitem{51} Id.
\bibitem{52} Davidson, \textit{supra} note 40, at 14.
\bibitem{53} Reuters, \textit{supra} note 25, at 4.
\end{thebibliography}
believing that sufficient protections would be put into place to ensure honest elections in the future.\textsuperscript{54} The PRD walked out of the negotiations, objecting to the governability clause\textsuperscript{55} and the establishment of the new Federal Electoral Institute ("IFE").\textsuperscript{56}

The IFE was created under authority of the COFIPE to avoid electoral fraud in future elections.\textsuperscript{57} The COFIPE allows the President to appoint the head of the IFE and to provide all eighteen names for suggested appointment to the Institute's General Council, who then picks the appointees.\textsuperscript{58} Six of the names provided by the President must be appointed and each registered party may appoint a representative.\textsuperscript{59} The six members appointed by the President should be non-partisan, but the obvious result of this formula will guarantee a majority of members hailing from the PRI and others owing their nomination to the PRI.\textsuperscript{60} COFIPE further attempts to limit the possibility of electoral fraud by allowing all registered parties access to the electoral computers while votes are being counted.\textsuperscript{61} COFIPE dictates that preliminary election results shall be released immediately,\textsuperscript{62} and that disputes over alleged fraud shall be settled by an electoral court.\textsuperscript{63}

Despite the equitable appearance of many of the newer provisions of the Mexican Constitution and electoral laws, the scandal that followed the 1988 presidential election did little to deter fraud. The PRI did respond; it attempted to reform the electoral process, but refused to give up its position of power in Mexico's electorate.

III. ANALYSIS

To discover how the PRI has been able to taint the results of the Mexican electoral process and how it continues to be able to do so, the Mexican constitution, the electoral laws, and the new electoral computer system must be analyzed. This analysis shows how the provisions of the

\textsuperscript{54} Id.

\textsuperscript{55} The Governability Clause allows the party who gains a plurality of the vote in the Mexican legislature to hold a majority of the seats in the Chamber of Deputies. Anderson-Baker, supra note 28, at 310. The powers of the Chamber are analogous to those of the U.S. House of Representatives. Const. art. 54 (Mex.). See supra note 29 for the text of the Governability Clause.

\textsuperscript{56} Id.

\textsuperscript{57} Id. Article 1 of the COFIPE states in pertinent part: "2. This code regulates the constitutional norms relative to ... d. The system of means of invalidation [of elections] to guarantee the legality of electoral acts and resolutions." COFIPE art. 1.

\textsuperscript{58} Livas, supra note 23, at 380-81.

\textsuperscript{59} Anderson-Barker, supra note 28, at 311.

\textsuperscript{60} Id.

\textsuperscript{61} Reuters, supra note 25, at 4.

\textsuperscript{62} Id.

\textsuperscript{63} Id.
Mexican constitution have been used, modified, and amended by the PRI to facilitate electoral fraud. This analysis outlines Mexican electoral law and demonstrates how the PRI's substantial role in writing these laws allows it to monopolize control of electoral safeguards to virtually bar the discovery of fraud and prevent effective recourse against unfair elections. The role of Mexico's new electoral computer system will be evaluated in the context of the 1994 presidential election. This analysis demonstrates that the computer system is an incomplete effort to obviate fraud, and worse, a technological smoke-screen to lull the Mexican people into a false sense of security. Finally, this Comment concludes that a reformed, publicly controlled and accessible process can effectively deter electoral fraud in Mexico despite present abuses by the PRI.

A. FOUNCING THE RIGHTS OF THE MEXICAN CITIZEN: THE MEXICAN CONSTITUTION

Although the modern Mexican Constitution, particularly Article 123,64 allows Mexican citizens to benefit from some social reforms such as the right to strike and the abolition of child labor, it does so in rhetoric alone.65 The constitution66 has continued to allow the executive branch to dominate and compel legislative approval without a supreme court capable of judicial review of such action or the laws that result;67 the people of Mexico have come to see the emptiness of their constitutional guarantees.

Article 39 states that “the national sovereignty resides essentially and originally in the people.”68 The constitution imparts rights and obligations to the Mexican citizen to ensure that any government of Mexico “arise[s] from the people” and is “instituted for their benefit.”69 Citizens

64. Article 123 deals with the right of citizens to “dignified work that is socially useful” and allows that “the creation of jobs and social organization for labor shall be promoted in conformance with the law.” CONST. art. 123 (Mex.) It also directs that the Congress of Mexico enact laws that affect labor regarding wages, age limitations, and social security. Id.

65. President Carranza was elected under the 1917 constitution but did little to effect these guarantees under Article 123. NEEDLER, supra note 16, at 17-18, 20. In 1920, President Obregon did begin to encourage the passage of law in the legislature that would put such guarantees into effect. Id.

66. See supra note 64 for an example of Article 123 rhetorical language.

67. Under the 1917 constitution, the judicial branch does not have the power of judicial review, merely the power of Writ of Amparo. See supra note 19 for a description of the Writ of Amparo in the Federal Judiciary.

68. Article 39 further states that “All public power arises from the people and is instituted for their benefit. CONST. art. 39 (Mex.). The people at all times have the right to alter or modify their form of government.” Id.

69. Id.
have the right to vote in popular elections and to run for office.\textsuperscript{70} Citizens must vote "in the electoral district to which they belong,"\textsuperscript{71} serve in positions they are elected to perform, and fulfill other civic duties.\textsuperscript{72}

In order to truly declare that the power and legitimacy of the Mexican government flows from the citizens, rights and obligations enumerated in the electoral process must be honored. The rights must be free from partisan meddling by any branch of the government.\textsuperscript{73} The constitution provides articles which guide the electoral process, but these articles have been manipulated over the sixty-five year period of PRI rule to place ultimate authority in the executive and legislative branches of government, not in the citizen.\textsuperscript{74} The sovereignty of the Mexican electorate has been effectively subjected to the will of institutions created by the government under one-party rule.\textsuperscript{75} This subjection has found authority in the constitution itself, in an amendment to Article 41 which states "the organization of federal elections is a state function that is exercised by the legislative and executive branches of the Union, with the participation of national political parties and the citizens in accordance of the Law."\textsuperscript{76}

Such organization by the PRI-dominated government virtually destroys the power of the individual vote.\textsuperscript{77} With complete control over the central government, the PRI organized a federal system which practi-

\textsuperscript{70}. CONST. art. 35 (Mex.).
\textsuperscript{71}. The text of Article 36 provides:
The obligations of the citizens of the Republic are:
I. To register on the tax lists of the municipality, declaring the property they possess, the industry, profession, or occupation by which they subsist, and also to register in the electoral poll books, according to the provisions prescribed by law;
II. To enlist in the National Guard;
III. To vote in popular elections in the electoral district to which they belong;
IV. To serve in the elective offices of the Federation or of the States, which shall in no case be gratuitous, and;
V. To serve in municipal council positions where they reside, and to fulfill electoral and jury functions.
CONST. art. 36 (Mex.).
\textsuperscript{72}. Other civic duties include registration with a tax assessor in each citizen's respective community, to enlist in the National Guard, and to register in the electoral census. \textit{Id.} 73. Article 41 states that suffrage shall be "universal, free, secret, and direct." CONST. art. 41. (Mex.).
\textsuperscript{74}. Livas notes the amendment to Article 41 that allows the federal government to oversee organization of elections. Livas, supra note 23, at 375.
\textsuperscript{75}. The PRI has held power over the Mexican legislature and executive branch for the past sixty-five years and has placed organizations in the electoral process such as the IFE, or Federal Electoral Institute (Instituto Federal Electoral in Spanish). \textit{Id.} at 373-83.
\textsuperscript{76}. CONST. art. 41 (Mex.).
\textsuperscript{77}. Such organizations can conceivably may manipulate the vote tallies and produce whatever result they desire, as many allege the PRI did in the 1988 elections. \textit{See supra} note 6 for details on allegations of electoral fraud in the 1988 Presidential Election.
cally guarantees victory for itself. With the PRI dominating the executive and the legislature from the early twentieth century into the twenty-first century, requiring a two-thirds majority to amend the Constitution will allow the PRI to continue to erode the concept of voter sovereignty in Mexico.

The Mexican Constitution provides for a separation of governmental power between the executive, legislative, and judicial branches of government. However, the branch of government that has traditionally and effectively checked the power of the legislature and executive in the United States, the judiciary, is left without the power of judicial review in Mexico. The Mexican Constitution allows for a unique constitutional proceeding known as a Writ of Amparo. However, this is not

78. With complete control over the electoral computer system of Mexico, the PRI may easily declare itself victor through fraud as alleged after the electoral computer “crash” in the 1988 Presidential Election. See supra note 6.

79. The requirement to amend the Mexican Constitution is a two-thirds majority of Congress and a majority of the 31 state legislatures. Needler, supra note 16, at 88-90. From the 1920’s to present, the PRI has enjoyed a majority in the Congress sufficient to enact any amendment to the constitution they desire. Id.

80. Article 49 of the Constitution states “the Supreme Power of federal government is divided, for its exercise, into Legislative, Executive, and Judicial branches.” Const. art. 49 (Mex.).

81. The Mexican Judiciary has the power of Writ of Amparo, not judicial review as in the United States. See Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803). For an examination of the Writ of Amparo, see supra note 19 and accompanying text.

82. Article 107 sets forth the “Judicio de Amparo” or Writ of Amparo by referring to the jurisdiction of the “Courts of the Federal Government” to hear cases arising out of “laws or acts of the authorities that violate individual guarantees” under Article 103. Const. art. 107 (Mex.).

Article 103 sets out the federal courts’ jurisdiction over claims that leads to a Writ of Amparo hearing:

I. Out of law or acts of the authorities that violate individual guarantees.

Article 103 extends general federal jurisdiction further:

II. Because the laws or acts of the federal authority restricting or encroaching on the sovereignty of the States, and

III. Because of laws or acts of states authorities that invade the sphere of federal authority.

Article 104 completes the description of the realm of federal jurisdiction:

The federal courts shall have jurisdiction over:

I. All controversies of a civil or criminal nature that arise from the enforcement and application of federal laws or from treaties signed by the Mexican State. Whenever such controversies affect only the interests of private parties, the regular local judges and courts of the states or the Federal District may also assume jurisdiction, at the election of the plaintiff. Judgements of the courts of first instance may be appealed to the next higher court above that in which the case was first heard. . .

II. All controversies that involved admiralty law;

III. Those in which the Federation is a party;
equivalent to the American jurisprudential concept of judicial review.\textsuperscript{83} When issued, this Writ may serve to prohibit or command specific acts of government, but limits itself to the case in question and the rights of the individual in the case in question.\textsuperscript{84} Article 107 states: "the resolution shall always be such that it will only refer to private individuals, limiting itself to protect them in the case in question, but without making a special declaration about the law or act that generated it."\textsuperscript{85} In the entire history of judgments under the \textit{Writ of Amparo}, the Mexican Supreme Court never challenged a president or held any law of Congress or the action of the executive branch unconstitutional.\textsuperscript{86} The PRI enjoys an executive-legislative hegemony; the only check on the PRI's power is a weak judicial system unable to enforce the principles of the Mexican Constitution or protect the citizens from partisan manipulations.\textsuperscript{87} Most notably, in light of recent criticism of federal elections, the Mexican federal judiciary has declared that the right to vote in free, secret, and unbiased elections\textsuperscript{88} is not a right guaranteed within the first 29 articles of the constitution and is therefore not an individual right that may be protected by an \textit{Amparo}-style trial.\textsuperscript{89} The guarantee of the citizens' right to vote and the legitimacy of government itself under the Mexican Constitution is left to the mercy of the executive and legislative bodies.\textsuperscript{90} Single-party domination of these branches ensures that election abuses go unchecked and allows the PRI to pass laws and amendments to strengthen the PRI's hold on the electoral process, despite conflict with the spirit of the Mexican constitution.\textsuperscript{91}

\hspace{1cm} IV. Those that arise between two or more states, or one State and the Federation, and those that arise between courts of the Federal District and those of the Federation or a State;

\hspace{1cm} V. Those that arise between a State and one or more residents of another state, and

\hspace{1cm} VI. All cases that involve members of the diplomatic and consular corps.

\textsuperscript{83} Judicial review in the United States may have the effect of the declaration of a law or an act as unconstitutional; in effect removing the act from the written body of law. Livas, \textit{supra} note 23, at 381-82. This is not true for a \textit{Writ of Amparo}, which goes no further than to address the individual case and injured party at hand. \textit{Id}.

\textsuperscript{84} \textit{Needler, supra} note 16, at 87, 90.

\textsuperscript{85} Const. art. 107 (Mex.).

\textsuperscript{86} The judiciary has rendered decisions against the executive in specific \textit{Amparo} cases, but has never declared an law or any act of a Mexican president unconstitutional. \textit{Needler, supra} note 16, at 90.

\textsuperscript{87} \textit{Id}.

\textsuperscript{88} Const. art. 41. (Mex.).

\textsuperscript{89} Livas, \textit{supra} note 23, at 381-82.

\textsuperscript{90} With no power to review action of the legislature and executive beyond an individual case by case basis, the executive and legislative powers under the Constitution have become near-supreme. Const. arts. 50-93 (Mex.).

\textsuperscript{91} Const. arts. 35, 41 (Mex.).
B. The Electoral Process and the Disenfranchisement of the Mexican Electorate

In recent history, the PRI has controlled the laws and institutions of the Mexican electoral process. In 1987, the Mexican Constitution was amended to allow for a system of electoral laws called the Código Federal Electoral ("Federal Electoral Code" or "CFE"). This electoral code, set forth under former President Miguel de la Madrid, was heralded as a vehicle of reform of the electoral process. The PRI promoted the CFE as a new system of electoral laws that would obviate electoral fraud and remove various inconsistencies that had arisen in previous federal elections. However, the CFE served only to ensure that the PRI would continue to control the electoral process by keeping verification of election results inaccessible.

In the years following the presidential election of 1988, the Mexican government responded to the worldwide fraud scandal and political outcry with another document that established electoral bodies again controlled by the PRI. In 1989, the Mexican Congress put the Federal Code of Electoral Institutions and Procedures into effect which created the Federal Electoral Institute. This new body of law and organization were enacted to replace the CFE and its Federal Electoral Commission, which were considered ineffective guarantees for an honest nonpartisan electoral process after the 1988 Election catastrophe.

1. The Federal Electoral Code ("CFE")

The text of the CFE reflects much of the same sentiment that can be found in the Mexican Constitution. The Mexican citizen's right to vote is recognized and declared to be "universal, free, secret and direct."

92. Andrew Reding, For Mexico's Rulers, Reform is Risky... But Another Fraudulent Vote Could Guarantee More Unrest, THE WASHINGTON POST, August 7, 1994, at C1.
93. Livas, supra note 23, at 376.
95. Id.
96. Id.
97. The new electoral code, the COFIPE, was passed by the Mexican Legislature in 1990. Reuters, supra note 25, at 4. It created the IFE, or Federal Electoral Institute, which became the dominant electoral body in Mexico. COFIPE art. 68. Article 68 of the COFIPE sets forth the IFE: "1. The Federal Electoral Institute, deposit of the electoral authority, is responsible for the exercise of... organizing elections." Id.
98. Id. See also Robberson, supra note 6, at A19.
99. Article 4 of the CFE describes the rights of the Mexican citizen: Suffrage expresses the sovereign will of the Mexican people. Voting in elections constitutes a right and obligation of the Mexican citizen he will exercise to carry out public function of forming the popularly elected organs of the state. The vote is universal, free, secret, and direct. In the United States of Mexico the authorities guarantee the freedom and secrecy of the vote.
However, the CFE also declares that the Federal Government shall control the preparation, development and vigilance over the electoral process.\textsuperscript{101} The CFE establishes the Federal Electoral Commission\textsuperscript{102} and states that the citizens and political parties of Mexico shall control the electoral process through their participation in this body.\textsuperscript{103} Despite the rhetoric of the CFE, the structure of the Federal Electoral Commission guarantees that the PRI has total regulatory power over the electoral process.\textsuperscript{104}

The CFE proclaims that the Federal Electoral Commission is an independent part of electoral government.\textsuperscript{105} The CFE declares the autonomy of the Federal Electoral Commission,\textsuperscript{106} but sets forth the membership of the commission in such a fashion as to guarantee PRI dominance over its leadership.\textsuperscript{107}

Under the CFE, the executive branch of government appoints the head of the Commission, who functions as the president of the body.\textsuperscript{108} Next, two members of the legislature are named, one from each house.\textsuperscript{109} Needless to say, the PRI dominance over both houses in the Mexican legislature guarantees that the house committee\textsuperscript{110} leaders who appoint

\begin{itemize}
\item \textsuperscript{101} Article 162 of the CFE proclaims:
\textit{The preparation, development and vigilance of the elections is a publicly mandated function that belongs to the Federal Government within the limits of this law. The citizens and political parties are both responsible for this function and participate in the formation of the following electoral bodies:}
\begin{itemize}
\item I. The Federal Electoral Commission;
\item II. The local electoral commissions;
\item III. The district election committees, and
\item IV. The boards of directors.
\end{itemize}
\item \textsuperscript{102} CFE arts. 164-75. In creating the Federal Electoral Commission, Article 164 states:
\textit{The Federal Electoral Commission is an autonomous organism, of a permanent character, with its own legal character, charged with carrying out Constitutional norms, the contents of this code, and other provisions that guarantee the right of political organization of the Mexican citizens; and responsible for the preparation, development and vigilance of the electoral process.}
\item \textsuperscript{103} CFE art. 164.
\item \textsuperscript{104} CFE arts. 165, 166.
\item \textsuperscript{105} CFE art. 164.
\item \textsuperscript{106} Id.
\item \textsuperscript{107} Id.
\item \textsuperscript{108} Id.
\item \textsuperscript{109} The Mexican Congress is bicameral, made up of an upper and lower bodies called the Senate and Chamber of Deputies respectively. \textit{Banks, supra note 3. See also CFE art. 165.}
\item \textsuperscript{110} The heads of each of the two bodies of the Mexican legislature (Chamber of Deputies and Senate) may appoint these members. CFE art. 165. The pertinent section of Arti-
these persons will likely choose a member of the PRI.

In an ineffective effort to diversify the composition of the party members comprising the Commission, the CFE includes a provision that allocates seats for members of all political parties. However, those parties with greater than 6% of the national vote (and corresponding proportional representation in the legislature) are allowed additional seats. The CFE uses a formula that favors the dominance of the PRI: every 3% above the 6% mark allows a political party to add an additional member to the ranks. From 1988 to 1989, the years that the CFE was the electoral law of the land, the PRI held the presidency and 260 seats in the legislature. With the total number of seats at 499 in 1981, the PRI was guaranteed all sixteen seats in the Commission. Combined with the nominations of the executive under a PRI president and those of the legislative committees in the two houses, the PRI was assured a majority of seats in the Commission.

The PRI's control of the Federal Electoral Commission is enhanced by the duties and powers the Commission held under the letter of the

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111. Each party that has attained over 3% of the vote will be allotted additional representative members to sit on the Federal Electoral Commission, therefore all parties are not given even remotely equal representation. CFE art. 165.

112. Id.

113. Id. A formula is set forth in the CFE to calculate the additional number of representatives allotted. See infra note 114 for the formula set out in the CFE.

114. The formula for calculating the membership of the Federal Electoral Commission by political party members is outlined in Section III of Article 165 of the CFE: The Federal Electoral Commission resides in the Federal District and includes the following members:

III. Commissioners of the registered national political parties in the following terms:

A. A commissioner for each registered national political party that has up to 3% of the effective national vote in the immediately preceding federal election, for deputies of relative majority;

B. An additional commissioner for those parties that have obtained more than 3% and up to 6% of the national vote referred to in the previous clause,

C. Each party that has obtained more than 6% of the effective national vote has the right to as many commissioners in total, as many times they exceed the 3% requirement previously referred to;

D. No political party will have the right to accumulate more than 16 commissioners, and

E. The political parties that have more than one commissioner may designate one common representative to act before the commission.

CFE art 165 § III (c).


116. See Needler, supra note 16, at 83.

117. Calculation based on the formula set forth in the CFE. CFE art. 165 § III (c).
law contained in the CFE. The Commission sets up and directs through appointed special electoral committees any hearing regarding the electoral process including fraud and other CFE violations. Past accusations of fraud have largely been directed at the PRI. As a result, the PRI, the very party accused of fraud has in effect designated itself as its own watchdog.

The objectivity of the complaint resolution against the PRI brought before an electoral court assembled by a PRI-dominated electoral commission is questionable. With the power and duty to assure that elections proceed in accordance with CFE and constitutional standards vested in a Commission President appointed by the PRI head of the Mexican executive, it is unlikely that such inquiries would be afforded a fair trial.

In the event of an electoral complaint, the Mexican citizen's chance of success in court is almost nil. The rules of evidence that govern electoral tribunals are biased in favor of the ruling political party. The evidence presented by the complaining party must be a public document or documents. As Javier Livas, an attorney for the PAN party points out:

These public documents consist only of those signed by a public official, a notary, or an election official. This translates into a whole range of absurdities. For instance, if all the voters gather and allege that the voting did not even take place at all, their declaration cannot be consid-

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118. CFE arts. 164-75.
119. Article 170 of the CFE provides in pertinent part:

The functions of the Federal Electoral Commission are as follows:

I. To assure the effectuation of the relative constitutional resolutions and the contents of this code;
II. To resolve petitions and consultations that arise from citizens, national political associations, political parties and candidates, relative to the formation and function of the electoral bodies, to the development of the electoral process and other similar matters;
III. Care of the proper formation and function of the local commissions and the electoral district committees. . .

CFE art. 170.

120. Among the duties of the Federal Electoral Commission are to resolve complaints, in the form of petitions, of citizens, national political associations, political parties and their candidates as to all aspects of the electoral process. The Commission also tallies the final vote for members of the legislature, informs the Electoral College of factors that may effect the validity of elections, and names special electoral aides to investigate electoral conduct in the event of a petition. CFE arts. 164-75.

121. The PRI has dominated the Federal Electoral Commission under the CFE. See supra note 114 for the formula that calculates the membership of the Commission by party.

122. The sections of the Mexican Constitution that deal with the spirit of the Mexican electoral process are detailed. See CONST. arts. 35, 36, 39-41 (Mex.).

123. Id.
124. Id.
125. Livas, supra note 23, at 382-83.
As Livas concludes, the electoral tribunal serves as a rubber stamp for the party that created it. Former President Miguel de la Madrid’s CFE set up the Electoral Tribunal using language that would purport autonomy and fairness. However, any decision in favor of a petitioning party is then subject to the veto of the electoral college and the PRI-dominated Federal Electoral Commission. The local legislature has veto power if the complaint arises out of a state election.

2. The Federal Code of Electoral Institutions and Procedures

After the 1988 election fiasco and resulting critical international attention the PRI party received, then-President Salinas and his Party undertook to reform the electoral laws into a new code. This code, the

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126. Livas continues by contending that the results of the 1988 election were examples of what he calls “desktop” elections, or the tampering of election results on a “desktop”, implying that election tally results have been modified by a small group of PRI members that have access to the tally sheets. Id.

127. The Electoral Tribunal has no real power to equitably settle disputes arising under electoral law. Id. PRI members manipulated the drafting of the COFIPE, which created the Tribunal, to ensure that PRI-favorable election results will not be effectively contested by citizens and none will be invalidated by the Tribunal. Id. See also CFE art. 352.

128. The CFE was passed in the Mexican legislature under former-President Miguel de la Madrid and the PRI. Butler, supra note 94 at 75.

129. CFE art. 353. The electoral tribunal’s proper name is El Tribunal de lo Contencioso Electoral (Spanish).

130. The portion of Article 352 of the CFE creating the Electoral Tribunal states: “the Electoral Tribunal is the autonomous organization of an administrative character, endowed with full autonomy, to resolve petitions of nullity and complaints, referred to by the seventh book of this code.” CFE art. 352.

131. Livas, supra note 23, at 383 referring to the CFE. Under the COFIPE, the IFE hears petitions regarding electoral complaints brought by groups like citizens, party members, and national political organizations. COFIPE art. 264.

1. The Federal Electoral Tribunal is the autonomous jurisdictional body over electoral issues, that has the power to substantiate and resolve petitions of appeal and nonconformity, referred to in the second title of Book Seven of this code, as with the imposition of sanctions established in the third title of the Book Seven.

2. To the ends of Article 41 of the Constitution, the Tribunal in resolving petitions of appeal and nonconformity guarantee that the acts or electoral resolutions will be subject to legal principles. There will be no judgement or petition against its resolutions.

Id.

132. Livas, supra note 23, at 383.

133. Mulvaney, supra note 48, at 5. See also Robberson, supra note 6, at A19; Larmer, supra note 3, at 1; Reding, supra note 92, at C1.

134. Salinas and the PRI wanted to remove any doubts regarding the legitimacy of the PRI dominated government and hoped that the new law that would ultimately be passed, the COFIPE, would convince doubters from the 1988 election results that such allegations
Federal Code of Electoral Institutions and Procedures, was passed in 1990. The older Federal Electoral Commission under the CFE was replaced by the new Federal Electoral Institute ("IFE"). Sadly, but not surprisingly, the new COFIPE did little to ensure the quality of future elections for the Mexican people.

As with the CFE, the COFIPE integrated into the electoral provisions various guarantees of its own hegemony over the electoral process. Once again, the COFIPE like the CFE opens with an the Constitutional rhetoric, this time embellishing: "the vote shall be universal, free, secret, direct, personal, and inalienable." The COFIPE creates the Federal Electoral Institute and declares, as did the CFE with its Federal Electoral Commission, that the IFE would "assure[ ] the citizens' the exercise of the political-electoral rights and oversee that their electoral obligations are completed." The Mexican citizen is further urged

of fraud would be absurd in 1994 if the new Code was followed. Anderson-Baker, supra note 28, at 311.

135. The COFIPE was approved by the Chamber of Deputies by 369 of a total of 500 votes. Reuters, supra note 25, at 4. There were 65 votes in the Chamber against it, and two formal abstentions. Id. Some members of the Chamber were absent when the vote was taken. Id. Members of the PRD walked out of the Chamber, sharply opposing the bill that members of the PAN considered as offering some key concessions. Id. PRD members objected to the "Governability Clause" addition to the COFIPE bill and were discouraged by the fact that the president would elect the head of the new electoral commission under the COFIPE. Id.

136. See supra note 102.

137. The IFE is the Institucion Federal Electoral, or Federal Electoral Institute in English.

138. COFIPE is the Spanish acronym for Código Federal de Instituciones y Procedimientos Electorales, or Federal Code of Electoral Institutions and Procedures.

139. See following textual discussion of COFIPE provisions.

140. In the COFIPE, the creation of the IFE allows the PRI to continue to dominate the electoral validation process by sheer numbers of members on the IFE. See infra notes 146-50.

141. COFIPE art. 4; CONST. art. 41 (Mex.). Article 4 of the COFIPE states: "1. To vote in elections constitutes a right and obligation of the citizen that is exercised to constitute the political bodies of the State by popular election. 2. The vote is universal, free, secret, direct, personal, and inalienable." COFIPE art. 4.

142. Article 69 of the COFIPE states:

1. The ends of the Institute are:
   a. Contribute to the development of democratic life;
   b. Preserve the fortification of the political party system;
   c. Compile the Federal Electoral Register;
   d. Assure the citizens the exercise of their political-electoral rights and watch over the completion of their obligations;
   e. Guarantee the periodic and peaceful solemn performance of elections to renew the composition of the Legislative and Executive Powers of the Union;
   f. To guard the authenticity and effectiveness of the vote; and
   g. Coenable the promotion and spread of political culture.

2. All the activities of the Institute will adhere to the principles of certitude, legality, impartiality, and objectivity.
to take comfort that the IFE will act in the spirit of "legality, impartiality, and objectivity." Despite its opening rhetorical guarantees, the COFIPE ultimately lays out an electoral watchdog nearly identical in composition to its predecessor under the CFE, the Federal Electoral Commission.

The IFE is dominated by the PRI. Although each political party is allowed a seat on its General Council, the head of the Commission is chosen by the Mexican President. The President also reserves the right to appoint six additional members of the Council, but the members must be non-partisan. These six magistrates are subject to the approval of a two-thirds majority of the lower legislative house. However, this is not a concession because the list of eighteen magistrates is provided by the president, not by the legislature itself. In case of non-approval of the requisite six by the legislature, the remaining necessary members are chosen by lot from the original list of eighteen. Regardless of whether the legislature agrees with the President's choice, the six magistrates are ultimately chosen from the list of eighteen. Therefore, as often seen in Mexican politics, the power of the President dominates over what becomes a rubber-stamp legislature.

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3. In the discharge of their activities the Institute will report to an integrated body of functionaries in a Professional Electoral Service.

143. COFIPE art. 69.

144. See infra notes 146-50.


146. The pertinent section of Article 74 of the COFIPE reads: "1. The General Council is composed of a commissioner from the Executive Branch, four commissioners from the Legislative Branch, six magistrate commissioners, and representatives of the national political parties."

COFIPE art. 74.

147. The pertinent section of Article 74 of the COFIPE reads: "2. The commissioner from the Executive Branch will be the Secretary of Governing who will function as the president of the General Council." Id.


149. The pertinent section of Article 74 of the COFIPE reads: "5. The magistrate council members shall be elected on the following basis: a. The President of the Republic will propose to the House of Deputies a list of candidates of double number of available positions; b. Between these candidates the House of Deputies will chose the magistrate council members by a two-thirds vote. . . ." COFIPE art. 74.

150. COFIPE art. 74. The relevant portion of Article 74 of the COFIPE that describes this process states: "c. If in the first vote the required majority [two-thirds] is not obtained, a lot will proceed amongst those candidate proposed until the required number magistrate council members is reached." Id.

151. Id. See supra note 149 for the textual provision of the COFIPE that provides that the president is the dominant actor in the candidate selection process.

152. Anderson-Baker, supra note 28, at 310.
Funding of Mexican political parties under the IFE is completely biased in favor of the PRI, giving other parties little or no media attention and rendering many members of the Mexican electorate unaware of their choices, exposed only to PRI propaganda. When examined in light of the Mexican constitution, the provisions of the COFIPE that set forth how political parties are endowed with government monies are unconstitutional. The constitution dictates that “political parties shall have the right to permanent use of public communications media in accordance with the means and procedures established by law. In the federal electoral process national political parties shall rely on, in an equitable basis, a minimum of resources for their efforts to obtain popular suffrage.”

Although all parties may constitutionally make use of the media, the monies that are required to engage in political advertising (i.e. billboards, radio advertisements, et cetera) are distributed based on a calculation made by the IFE that sets the minimum amount required to run an electoral campaign. The minimum amount is given to all parties,

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153. The COFIPE contains provisions for the funding of political parties. COFIPE art. 49.

154. Although the Writ of Amparo Court cannot overturn a legislative Act as unconstitutional in Mexico, under American standards of judicial review and laws conforming with the letter and spirit of the U.S. Constitution, one may consider the allocation of monies set in out in Article 49 of the COFIPE as unconstitutional when examining Article 41 of the Mexican constitution. COFIPE art. 49; CONST. art. 41 (Mex.).

155. CONST. art. 41 (Mex.).

156. The complexity of the calculation is extremely daunting but clearly indicates that the party with the most votes and most occupied seats in the Mexican Legislature gets the lion’s share of public funding. COFIPE art. 49. The relevant portion of Article 49 of the COFIPE states:

1. The national political parties, in addition to the fees they collect through the contributions of their affiliated organizations, have the right of public financing of their activities, independent of other grant prerogatives in this code, in conformity with the following provisions:

   a. For electoral activity:

      I. The General Council of the Federal Electoral Institute will determine, based on the studies of the present Director General of the Institute, for a political campaign of a deputy and that of a senator. Each of these values shall be multiplied, respectively, by the number of candidates to deputies of the relative majority and by the number of candidates to registered senators in the provisions of this Code for each election. For this calculation, only those candidates of political parties that have retained their register . . .

      II. The total amount obtained by deputies according to the previous fraction, is divided by the national vote for the corresponding election, thereby determining the total unit value per vote;

      III. To each political party the amount assigned that resulted results from the multiplication of the unit value obtained according to the preceding fraction by the number of valid votes that were obtained in the election for deputies by relative majority . . .

Id.
but additional funding is given based on prior election results.\textsuperscript{157} The combination of the calculation being made by the PRI-dominated IFE and the formula for extra monies under previous election results guarantee that the PRI will receive a vast majority of government electoral monies. A cycle hostile to the success of other parties has been created by the COFIPE: the PRI gets the majority of monies due to its electoral successes so it can dominate the media, win again, and increase its campaign funding.\textsuperscript{158} The result is that the average Mexican citizen is bombarded by PRI boosting and lacks awareness of other party choices.\textsuperscript{159} From a constitutional perspective, Mexican political parties under the COFIPE will not receive monies on any kind of equitable basis.\textsuperscript{160} With no judicial review of legislative events,\textsuperscript{161} it seems unlikely that such a law will ever be stricken without the removal of the PRI from power and the passage of a substitute electoral code.

The COFIPE package that President Salinas and the PRI pushed through the Mexican Legislature also contained an affirmation of the governability clause\textsuperscript{162} by which any party that secures more than 35\% of the vote receives automatic majority status in the Legislature.\textsuperscript{163}

The COFIPE attempts to create better access to election results, but grants such access to political parties only, in effect disallowing the citizen access to the results of the exercise of his own constitutional rights and compounding the difficulty of succeeding in an action before the Electoral Tribunal.\textsuperscript{164} The COFIPE gives all political parties access to the electoral computers while votes are being counted, a direct response to the worries of many after the unmonitored and unconfirmed computer “crash” in the 1988 election.\textsuperscript{165} Mexican citizens have no such access.\textsuperscript{166}

The COFIPE further favors political parties over the citizen by not allowing citizens to register a candidate for such an election independent of an established political party.\textsuperscript{167} Article 175 proclaims that the right

\begin{itemize}
  \item \textsuperscript{157} Livas, supra note 23, at 377.
  \item \textsuperscript{158} Id.
  \item \textsuperscript{159} Reding, supra note 94 at C1.
  \item \textsuperscript{160} Const. art. 41 (Mex.).
  \item \textsuperscript{161} Livas, supra note 23, at 381-82.
  \item \textsuperscript{162} For an explanation of the governability clause, see supra note 29.
  \item \textsuperscript{163} Reuters, supra note 25, at 4.
  \item \textsuperscript{164} Id. See also Const. art. 35 (Mex.).
  \item \textsuperscript{165} See supra note 6.
  \item \textsuperscript{166} Reuters, supra note 25, at 4.
  \item \textsuperscript{167} Article 175 states in regard to the registration of political candidates: “1. It is the exclusive right of the national political parties to solicit the registration of candidates for popular elections. 2. The list of candidates of deputies are chosen through . . . proportional representation, as are. . . senators, and each will be registered with a primary and substitution candidate.” COFIPE art. 175.
\end{itemize}
to register candidates belongs to the registered political parties only.\textsuperscript{168} The citizen is locked into the party system as it exists. As demonstrated by the outcome of the 1994 elections, Mexican citizens seeking office will have to conform their political approach to an existing party platform to have a chance of holding political office.\textsuperscript{169}

\section*{C. The 1994 Election and the Computerization of the Electoral Process: A Reliable Protection of the Citizens' Vote?}

From the historically low showing of the PRI in the 1994 election,\textsuperscript{170} one might hastily conclude that the $1 billion investment former President Carlos Salinas made in Mexico's new computerized electoral system was effective in deterring fraud.\textsuperscript{171} The COFIPE outlines the creation of a new electoral roll through census.\textsuperscript{172} The Mexican government expects this new roll to purge the voter registration list of voters that have died or do not exist.\textsuperscript{173} However, after the government contracted with IBM and others\textsuperscript{174} to put new voter registration computers into effect, various tests were conducted by members of opposition parties which resulted in contrary findings.\textsuperscript{175} One computer study conducted by Carlos Imaz of some 107,000 registered voters revealed an unlikely 384 voters over the age of 104.\textsuperscript{177} He found 1,297 voters in Mexico City's 39th District

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{168} Id.
\item \textsuperscript{169} Livas, supra note 23, at 383-84. A citizen must join a political party to seek an elected position; in doing so the citizen must support the party platform to have any chance for nomination within the party. \textit{Id}.
\item \textsuperscript{170} After the ballots were in and counted by the Federal Electoral Institute, Zedillo had one by a plurality of the vote, not a simple majority. Fineman, \textit{supra} note 2, at A14. Zedillo obtained a record-low of 48.77\% of the popular vote, and this tally was inflated with the inclusion of spoiled and annulled ballots. \textit{Id}.
\item \textsuperscript{171} Robberson, \textit{supra} note 6, at A19.
\item \textsuperscript{172} Reuters, \textit{supra} note 25, at 4.
\item \textsuperscript{173} \textit{Id}.
\item \textsuperscript{174} IBM was among other computer and related companies to join the computerization effort for the 1994 Mexican Presidential Elections. Juanita Darling, \textit{Computers Will Watch, Tally Mexican Vote}, \textit{Los Angeles Times}, August 19, 1994, at 2. Polaroid built a plant in Queretaro, Mexico to print photographs, hidden bar codes, and fingerprints onto the voter identification cards. \textit{Id}.
\item \textsuperscript{175} Fernandez of the PAN alleged that "Millions of votes were extracted through pressure, threats, and double dealings by officialism which refuses to disappear..." Colin McMahon, \textit{Late Returns Give Zedillo a Fat Margin}, \textit{Chicago Tribune}, August 28, 1994, at 8.
\item \textsuperscript{176} Robberson, \textit{supra} note 6, at A19.
\item \textsuperscript{177} The survey conducted showed that Mexico's 39th District contained 244 registered voters older than age 104, 100 over age 114. \textit{Id} at A19. Imaz also discovered unusually large groups of people born in the years 1940, 1950, 1960, and 1970 after he made a bar graph of voters' birth dates. \textit{Id}. Imaz commented, "It's as if somebody added hundreds of extra names." \textit{Id}.
\end{enumerate}
\end{footnotesize}
alone listed in neighborhoods that do not exist.  

Salinas’ $1 billion system is a voter-credential system that forces each registered voter to carry a card with his photograph, fingerprint, and other personal data. Five official seals are stamped on each card to make duplication of theses cards nearly impossible, at least by the average Mexican citizen. However, when Fernando Bazua, a Mexican political scientist, attempted to obtain multiple voter credential cards with falsified personal information, he succeeded without any difficulty. If such an act of fraud can be so easily perpetrated by an academic, it is likely that the PRI, who conceived and supervised the system, could also easily defraud the Mexican electorate.

To make matters worse, the PRI government is threatening criminal sanctions against Bazua, while refusing to prosecute PRI’s secretary of agriculture for fraudulently diverting government resources for the support of the PRI election campaign.

Registration officials have responded to criticisms by citing that the computerized list is compiled supposing the good faith of the applicants. This admission cannot be given enough emphasis. With a computerized system that depends on good faith to address overwhelming allegations of bad faith in the Mexican electoral process, how can such a system guarantee anything in the way of legitimacy? Although voter registration is computerized, the balloting is not. All ballots are marked by hand and dropped into a clear plastic box as they always have in the past.

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178. As a result of the study, 300 voters were discovered by Carlos Imaz to be registered at an address that was a municipal water supply station. Id.

179. Reuters, supra note 25, at 4. It appears that anyone with sufficient resources and a desire to do so may actually obtain voter registration cards that bear fake names, dates of birth, places of residence, etc, and may also obtain more than one new voter registration card for a single identity.

180. Id.

181. Id.

182. The PRI was the dominant group involved in the drafting, presentation, and implementation of the COFIPE and the organizations contained therein. President Salinas was the COFIPE’s principle proponent in the effort to replace the old CFE. Reuters, Mexico: Mexicans Promised Honest Poll Computing, INDEPENDENT, July 1, 1994, at 14.

183. Reding, supra note 92, at C1.

184. The same registration official commented on the good faith reliance of the voting public by stating, “We record information the way the citizens give it to us. Sometimes that creates errors.” Darling, supra note 174, at C2.

185. Id. Allegations of bad faith directed at the PRI can be traced back to 1982 national elections when the PAN claimed that PRI-induced fraud deprived PAN of seats in the Chamber of Deputies. Banks, supra note 3, at 541.

186. Voter registration is truly only partially computerized because the citizen must send in his voter credential information before he is sent the voter credential card, created though a computerized process. Robberson, supra note 6, at A19.

been.\textsuperscript{188} No computerized system of balloting exists to obviate the physical act of ballot-stuffing.\textsuperscript{189} The computerization of the electoral process picks up again after the polls close.\textsuperscript{190} The votes are then tallied by the IFE computers.\textsuperscript{191} This is the stage during which the 1988 elections were allegedly sabotaged.\textsuperscript{192}

The days following the 1994 ballot casting on August 21\textsuperscript{193} were filled with skepticism and criticism on the part of foreign observers, Mexican citizens, and many opposition party leaders.\textsuperscript{194} While votes were being tallied on Sunday evening, an attempt was made to sabotage central electoral computers with a computer virus.\textsuperscript{195} According to an election official, the attempt was intercepted before it could affect the tally.\textsuperscript{196} Reports of PRI intimidation, ballot stuffing, and insufficient ballot amounts in some areas began to flow into Mexico City.\textsuperscript{197} Despite the costly computerized registration system, persons with valid creden-

\textsuperscript{188} Balloting has been carried out by voters dropping ballots into a box ever since Mexico has elected its government officials. Id. Balloting with clear, see-through boxes has been in place since allegations of fraud began to be taken seriously in the 1980's.

\textsuperscript{189} Id.

\textsuperscript{190} Robberson, supra note 6, at A19.

\textsuperscript{191} Id.

\textsuperscript{192} Id. at A19. The vote tally is checked by computer on a precinct by precinct basis on the IFE central computer to make certain that results recorded and reported from the tally sheets are identical to those counted at individual polling places. Juanita Darling, Mexico is Winding Up its First Vote Without Horse-Trading Elections: A Central Computer is Keeping Precinct by Precinct Tally, Negating the Traditional Back-Room Dealings, LOS ANGELES TIMES, August 29, 1994, at 4. Obviously, the usefulness of the computer is completely dependent on the accuracy of the polling place counts. Id.

\textsuperscript{193} Diane Francis, Election Results Should be Positive for Mexico, FINANCIAL POST, August 23, 1994, at 9.

\textsuperscript{194} PRD candidate for the 1994 presidential election responded by stating that he would not run again. Rick Rockwell, Mexico Leftist Leads Protest of Election Charging Fraud, Party Leader Vows to Continue Campaign Until New Vote Held, SAN FRANCISCO EXAMINER, August 28, 1994, at C12. Independent poll watchers stated that the PRI had a psychological, built-in advantage because of their association with the institutions of government, cultivated during their 65 year control of the Mexican government. Mark Fineman, Zedillo Awaits Confirmation of Presidential Victory in Mexico Election: With 90% of the Returns Counted, Officials Say it is Statistically Clear That He is Winner. PRD Still Refuses to Concede Defeat, LOS ANGELES TIMES, August 25, 1994, at 6.


\textsuperscript{196} Id.

\textsuperscript{197} Other observed irregularities included PRI officials offering food to voters, lack of indelible ink to fill out ballots with, and the names of dead persons appearing on the registration lists. McMahon, supra note 175, at 8.
tials did not appear on the new computerized voter list. Additionally, Mexican observer groups like the Civic Alliance reported that some polling stations would not allow citizens to vote secretly.

To the credit of the IFE, some ballots were annulled due to many complaints. Despite the annulment of various ballots due to fraud, PRI candidate Ernesto Zedillo ultimately won the election with an all time low of 48.77% of the vote. Both foreign and Mexican observer groups ultimately observed that the incidents of fraud would not significantly affect the outcome of the election. By Wednesday, August 24, 1994, only 10 formal complaints of election day abuses were reported to the special prosecutor for election fraud. Other complaints are being aired in public before the IFE for debate and resolution. The PAN has collected an additional 13,108 complaints.

D. A Proposal for Reform

The Mexican government must immediately draft and pass a new body of electoral law that establishes a truly non-partisan electoral commission. The executive branch of the federal government must not be allowed to control selection of the commission members, nor should it name the head of the commission. Each party in the Mexican legislature must appoint one member to the electoral commission to ensure fairness. In recognition of the legislative majority, the party with the most seats should select a commission head. This commission president should only enjoy limited, procedurally oriented powers. Such a multi-partisan electoral commission will be a far more legitimate electoral watchdog than one dominated by a single political party.

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198. Id.
199. The Civic Alliance is the main electoral independent electoral observer group not set forth under the CFE or COFIPE. Rockwell, supra note 4, at C12.
200. Id.
201. Fineman, supra note 2, at A14.
202. The results of the 1994 Mexican national election in votes received and percentage of the popular vote per candidate are as follows: Diego Fernandez de Cevallos of the PAN received 9,222,899 votes which amounts to 25.94% of the popular vote. Id. Cuauhtémoc Cárdenas of the PRD received 5,901,557 votes which amounts to 16.60% of the popular vote. Id. Ernesto Zedillo of the PRI received 17,336,325 votes amounting to 48.77% of the popular vote. Id. In Congress, the PRI now holds 300 seats in the Chamber of Deputies and 96 seats in the Senate. Id. The PAN holds 119 seats in the Chamber of Deputies and 24 seats in the Senate. Id. The PRD holds seventeen seats in the Chamber of Deputies and eight seats in the Senate. Id.
203. Id. Officials also observed that irregularities at polling places seemed to be occurring at random and did not suggest a plot by the PRI to defraud the 1994 voter results. See also McMahon, supra note 175, at 8.
204. Fineman, supra note 194, at 6.
205. Darling, supra note 192, at 4.
206. Id.
The costly electoral computer system already in place must be improved and expanded if the Mexican government wants to minimize complaints of fraud and make good on promises of honest elections. The good-faith basis on which voter credentials are processed must be replaced by a computerized census. Information on each Mexican citizen must be collected by a non-partisan national census and compiled as a voter registration list. The computerized list cannot depend on the validity of information mailed to the federal government. Under a computerized census program that is updated every ten years, the federal government may mail voter credentials to Mexican citizens based on information previously gathered and computerized. This process would eliminate the names of dead persons from registration lists and promote efficiency at election time for production of voter credentials.

The computer-compiled electoral voter list must also be subjected to public scrutiny. If political parties are the only groups with access to such lists, how can the Mexican electorate be certain that their very identities are not being manipulated to benefit a particular party? With access to these computerized lists, the Mexican citizen may feel more confident that his vote will count, and that the power of government is truly derived from him and not partisan electoral manipulations. Public access would also provide the Mexican electorate with concrete evidence of any doctoring of voter credentials.

Vote tallies must be computerized, not counted by hand at each local electoral station. An alternative to ballot boxes should be considered; perhaps polling booths such as those used in many parts of the United States would be more secure. The choice made by the citizen in these private booths should be electronically transferred to a central electoral computer to minimize ballot box stuffing.

If Mexican citizens are given the privacy they deserve when selecting a candidate, the possibility of voter intimidation by party members will be kept at a minimum. Nonpartisan officials should be posted at all voting stations to discourage bribery of voters and last-minute intimidation techniques employed by the PRI in past elections.207

IV. CONCLUSION

Many Mexicans still fear that the real results of the elections are dictated after the votes are counted.208 Perhaps these fears are justified, but in light of the 1994 presidential election results, some strides have been made in the direction of honesty despite the persistence of PRI-biased laws and procedures. With the PRI receiving less than an absolute majority in the 1994 election, opposition parties will have a greater say

207. McMahon, supra note 175, at 8.
208. Id.
in the future of constitutional amendments and new electoral laws. With
greater diversity in the Mexican legislature, it is less likely that one
party will dominate the regulation of the electoral process. The improve-
ments to date are inadequate and have been misused; further change is
required to ensure honest elections.

These changes will surely come at a high monetary cost. However,
the expenditure is warranted. Honestly run elections are a crucial gov-
ernment function in any democracy. Based on the interest of maintain-
ing a safe trade environment in light of the North American Free Trade
Agreement, technological aid to Mexico may be called for on the part of
the United States. By cooperating with the international community,
the Mexican government will undoubtedly find an abundance of re-
sources to further modernize and legitimize its electoral process.

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