

Decalogue of Challenges for the New Mexican Electoral Reform

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A new electoral reform including amendments to both the Constitution and electoral legislation came into effect on January 12, 2008. Its aims, stated in the decree amending the Constitution, are basically: “a) to significantly decrease electoral campaign spending; b) to strengthen federal electoral authorities’ attributions; and c) to design a new model for communication between political parties and the public.”¹

After Congress and 30 out of 31 state legislatures passed the constitutional and legislative amendments, a broad debate began about their scope and implications for the country’s elections. This article is a contribution to that debate, discussing briefly but specifically ten of the main challenges that the new constitutional and legal frameworks pose for elections in Mexico.

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1. PRE-CAMPAIGNS

Naturally, the new legislation’s regulating what have been called pre-campaigns is one of its outstanding features, positive in all aspects. In these pre-campaigns, some candidates or parties started running long before the campaigns formally kicked off. It is also positive to establish time periods and spending caps. The most difficult task for electoral authorities will be monitoring and making sure that this actually happens; they will also be under greater pressure to monitor income and spending in internal candidate selection processes, as the new law now mandates. Another challenge will be guaranteeing the rights of party members who object to these internal processes, given the short time provided for it, and the now stipulated obligation of that party member to exhaust all the internal party bodies he/she must resort to before going to the Electoral Tribunal of the Federal Judiciary (TEPJF).

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2. ACCESS TO THE BROADCAST MEDIA

Undoubtedly, this is the aspect of the reform that has been most disseminated and discussed. For that very reason, I will not go into too much detail here; suffice it to say that we have gone from a set-up of almost extreme liberalism to one of almost equally extreme state intervention via de Federal Electoral Institute (IFE). Political parties can no longer buy spots or wage formal campaigns in the broadcast media at all. Now everything will have to be broadcast in “official time slots” under IFE control.² And “everything” means everything: during both federal and state election campaigns, and the rest of the time when no campaigns are underway.

These all-encompassing stipulations give the IFE enormous power, also obliging it to set up an enormous logistical operation nationwide and/or spend enormous sums of money to hire companies to constantly monitor everything everywhere. If the IFE does not do it, someone will have to in order to bring charges against any lawbreakers.

Thus, the dilemma will not be so much effectively assigning the “official time slots”, but making sure the guidelines are followed and complaints about violations speedily dealt with. And while all this will be complicated to do merely for the federal elections,³ it increases exponentially if we also take into consideration the local elections, where state electoral institutes do not have the resources for the task, not even if they coordinate with the IFE, as is now required.

3. NEGATIVE CAMPAIGNS

But if regulating the *quantity* of party publicity is going to be a dilemma, trying to monitor its *content* will be an even bigger one. Now electoral authorities have been given the poisoned apple of having the jurisdiction over expeditiously bringing charges against anyone who “denigrates” or “slanders” his or her opponents or public institutions, as if attacks in campaigns were not increasingly the norm rather

than the exception in elections in Mexico and around the world.

This stipulation, which necessarily leads electoral authorities into the slippery world of interpreting the law, will once again expose them to public and private pressure and attacks by political parties, candidates and other stakeholders who feel wronged. In addition, it will open them up to the demand that they rapidly resolve all the litigation that arises in the increasing heat of electoral campaigns, a task practically impossible to fulfill.

4. VOTE COUNTS AND COALITIONS WITH COMMON CANDIDATES

By making the requirements for creating partisan electoral coalitions more flexible and stipulating that each party’s logo should appear separately on the ballot, the legislature introduced positive reforms for the party system. But, it also introduced monumental technical challenges for electoral authorities and the citizens in charge of receiving, counting and registering the vote at polling stations and writing up the corresponding vote-count certificates.

This will bring about the dilemma of solving on a mass scale (simultaneously counting hundreds of thousands of votes in the presidential elections, for example) the problems that have already been noted in practice when dealing with so-called “common candidates.” Polling place officials—and even electoral authorities—do not fully understand when and how they should count votes and register them in the vote-count certificates in favor of an individual candidate and where and how to do it in favor of the different political parties, or how and when to register those votes for the candidate when the vote for the parties would be null and void if the voter crosses more than one logo on the ballot when the candidate is running on more than one party’s ticket.

5. RE-COUNTING THE VOTE IN DISTRICT COUNCILS

Taking its cue from the avalanche of litigation and political conflicts resulting from the 2006 presidential elections, the legislature stipulated in Articles 295, 297 and 298 of the new Federal Code of Electoral Institutions and Procedures (Cofi-

pe) the possibility of a general re-count of votes if the IFE's district councils recognize that the difference between the front runner and the runner-up in any election (whether it be for president, senator or deputy) is one percent or less and if the runner-up's representative requests it. This measure is intended to create certainty in the election process, but it also introduces an element of uncertainty: no candidate will feel duly protected by the law in the increasingly competitive elections.

This is a clear example of a legal change born of the mutual distrust of political actors and, perhaps, of the electoral authorities themselves, something no law or procedure can resolve on its own.

6. PRELIMINARY REPORTS FOR MONITORING ELECTION CAMPAIGNS

The requirement that political parties present preliminary reports on the income and spending for all their electoral campaigns to the IFE by June 15 of every federal electoral year will make for a big challenge for the parties' accounting systems and the campaign teams of the 365 probable simultaneous campaigns.⁴ However, the most delicate issue is what the monitoring authority is going to do with this mountain of preliminary reports just three weeks before the election. This is another "poisoned apple" for electoral authorities, since the political demand to issue an evaluation of these reports will be enormous and will inevitably have an impact on the political *zeitgeist* in which any post-electoral actions are taken.

7. REQUIRING AN IDENTITY DOCUMENT TO APPLY FOR A VOTER'S CARD

The new requirement that citizens must, *preferably*, present identification when applying to register to vote is fine, except for one little detail: in Mexico we do not have a national identity document.

This requirement is actually a step forward, setting the stage for actually implementing of the transitory article in the 1996 constitutional amendment that provides for the creation of that national identity document, a task which has become extremely complex technically and is still widely debated politically.

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8. REQUIRING VOTER CARD RENEWAL AND OBLIGATORY NOTIFICATION OF ADDRESS CHANGES

The new stipulations that make Mexico's voter cards valid for 10 years—as opposed to permanent—after which they will have to be renewed, as well as the citizen's obligation to report a change of address within 30 days will make it possible to keep the voters rolls up to date. However, what nobody can guarantee is that the citizens will actually do this paperwork, at least not in a legal regime that does not penalize them for not doing so. Here, the challenge is in finding incentives for getting it done without infringing on citizens' political-electoral rights.

9. LOCAL ELECTIONS

One of the less discussed but most profound aspects of the current reform are the different stipulations favoring IFE intervention in local elections not only with regard to media access and monitoring of political parties, but including in the new Articles 41 and 116 of the Constitution the possibility that local electoral bodies can request federal authorities take charge of organizing local elections. These stipulations, which contain several positive aspects like making so-called "bank, fiduciary and fiscal secrecy" null and void after IFE intervention to facilitate state electoral authorities' monitoring tasks, also contain the enormous challenge of finally opening up the legal door to discussing and beginning to build a single national electoral system that would prevent the repetitions implicit in having a federal organization and 32 local ones that do practically the same thing, but at different times and even with different procedures. In addition, it clearly puts on the table for debate the following question: why do we want local authorities in charge of organizing state elections if we are going to ask the IFE to do it?

10. VOTING ABROAD

Last, but not least, we should underline that the new electoral reform left intact the current rules on Mexicans' voting abroad, whose implementation electoral authorities, Mexican migrant organizations, political parties and even legislators agreed was unsatisfactory. The argument the legislature presented was that it considered it necessary to carry out an exhaustive analysis of the first, 2006, experience before beginning to reform the law in this area. Some of the challenges for that analysis and the bills that might come out of it are: considering those voters Mexican citizens even though they reside abroad; reducing or eliminating the expenses those voters must incur; and making conditions for mailing voter registration requests and the ballots themselves more flexible and agile, considering options like registering people to vote abroad and accepting other supplementary forms of voting besides by mail, like, under certain conditions, setting up polling places in certain Mexican consulates.

Naturally, many important stipulations in the new electoral reform have been left out of this decalogue, as well as

several of its singular challenges. However, I hope that what has been presented here can help make people aware of the enormous complexity of strictly adhering to the new reform, which, to be historic, must first actually be put into practice. **MM**

NOTES

- ¹ "Dictamen de las Comisiones Unidas de Puntos Constitucionales y de Gobernación, con Proyecto de Decreto que reforma los artículos 6, 41, 85, 99, 108, 116 y 122; adiciona el artículo 134 y se deroga un párrafo al artículo 97 de la Constitución Política de los Estados Unidos Mexicanos," *Gaceta Parlamentaria* no. 2341-I (Mexico City), September 14, 2007, p. 2.
- ² In Mexico, radio and television companies hold licenses for the use of the airwaves, a public good, and thus are obliged to offer the state a certain number of free minutes a day on the air for different purposes. These minutes are called "official time slots."
- ³ The president, senators and federal deputies are elected in federal elections. Local elections are held in the 31 states to elect governors, state deputies and members of city councils; while in Mexico City's Federal District, the head of government is elected, along with members of the Legislative Assembly and the heads of the 16 boroughs.
- ⁴ This is the total if we include the candidates for deputies in the 300 federal electoral districts, the two candidates for senator in each of 31 states and the Federal District and the president.