

# ISSUE BRIEF **09.24.18**

## **Mexico's Electoral Authorities: Implications for Democracy and the Rule of Law**

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On July 1, 2018, Mexicans went to the polls with a relatively low degree of trust in their electoral authorities. While polls indicated that Andrés Manuel López Obrador (AMLO) from the National Regeneration Movement (MORENA) party was leading with a comfortable margin over his opponents, there were plenty of reasons to think that the country's electoral authorities could mishandle the elections. For example, the gap between the front-runner and his nearest rivals could be much smaller than polls suggested, leading to a suspiciously close election in a country that regularly distrusts its government. In addition, the possibility of fraud before and on election day was real given historical precedents for vote buying. Alternatively, candidates could refuse to recognize their rival's victory, which would send the electoral system into a serious crisis. Beyond election day, losing candidates could also launch legal challenges to reverse the outcome of the election or, in some cases, to negotiate legal immunity for past crimes or obtain material benefits from the winner. It was therefore crucial that Mexican electoral authorities act strongly to protect the rule of law, and thus democracy, in the country by ensuring a transparent and credible election process in 2018.

This brief describes Mexico's electoral authorities and examines two poorly made decisions in the two most recent election cycles in light of the continued fragility of its political institutions and the general lack of trust in the rule of law. It further argues that

all rulings by the electoral authorities are pivotal for the credibility of future elections and the consolidation of Mexico's democracy.

### **MEXICO'S ELECTORAL AUTHORITIES**

In Mexico, three bodies supervise the integrity of the electoral process. The first is the National Electoral Institute (INE), an organization with constitutional autonomy that determines the electoral rules and organizes the presidential and congressional elections. The INE's General Council is the highest body responsible for monitoring compliance with electoral law. It is composed of an executive secretary, 11 commissioners appointed by the House of Representatives, one Congress member, and one non-office-holding representative from each political party.<sup>1</sup> The INE decides how much public funding each party and independent candidate gets, maintains the voter registration lists, registers candidates on the ballot, prints and distributes ballots, and organizes the presidential debates, among other duties. The INE has the power to enforce its electoral rules by fining or revoking the political registrations of noncompliant parties and candidates.

The second body that supervises the electoral process is the Federal Electoral Tribunal (TEPJF), which is part of the judicial branch. The TEPJF is a specialized court with seven magistrates who are charged with resolving electoral disputes and certifying the validity of the elections. As Mexico's top electoral court, it



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guarantees that any authority, in particular the INE, does not infringe on any citizen's political or electoral rights. The TEPJF is responsible for the final vote counting and the official announcement of election winners. The TEPJF also functions as an appellate court to the state electoral courts, and it may choose to hear cases from the lower courts in order to establish important legal precedents.

Finally, the Federal Electoral Prosecutor's Office (FEPADE) is an agency within the attorney general's office that is entrusted with the prevention, investigation, and prosecution of electoral crimes and guaranteeing the fairness of the electoral process. Some of the activities that are considered electoral crimes include voting more than once, using a fake voter registration card, hindering voting, vote counting, and pressuring voters to cast their ballots for a candidate or party. In any of these cases, the prosecutor may file charges before a criminal court.<sup>2</sup>

### ELECTIONS AND TENSIONS AMONG ELECTORAL AUTHORITIES

During an election, relations between the INE and TEPJF become tense, primarily because the INE makes managerial and procedural decisions that affect the parties and candidates, and the TEPJF can reverse them. For instance, the INE could ban a candidate's TV campaign ads for sundry violations or fine a party or candidate for exceeding campaign spending limits, but the TEPJF could reverse the INE's decision. Alternatively, the INE could deny candidacy for an independent contender who does not gather the necessary signatures for registration, but the TEPJF could allow the candidacy to stand. Electoral tensions often increase because the TEPJF has a short time frame, usually between 7 and 30 days, to resolve disputes arising from the INE's decisions, and its rulings are final. Heated disagreements generally occur during campaigns, causing the INE's commissioners and TEPJF's magistrates to engage in animated discussions. In the

end, the electoral law is clear, and the INE's commissioners must comply with the TEPJF's rulings. Tensions between these two bodies during the 2018 elections made MORENA and other AMLO followers suspicious. In fact, AMLO's supporters organized protest against the electoral authorities in the event that AMLO was treated unjustly—something that did not materialize in the end.

### TEPJF MAGISTRATE APPOINTMENTS

The 2018 election was poised to be an important challenge to Mexico's electoral institutions, as many of AMLO's supporters believed they were victims of electoral fraud in 2006 and 2012 and thought they were going to be again in 2018. All three of the institutions running the elections needed to respond to this anticipated challenge if the country was to guarantee a peaceful transition. Further suspicions arose from the fact that MORENA and AMLO thought that the TEPJF magistrates were biased against them, as the magistrates had been appointed primarily by the Institutional Revolutionary Party (PRI) and National Action Party (PAN).

On October 20, 2016, the Senate appointed new TEPJF magistrates. The appointment process is fairly simple. The Supreme Court submits seven lists with three names each to the Senate for every TEPJF magistrate position. The Senate picks one person from each list to fill the seven seats. Successful candidates require two-thirds approval in the Senate. Each position has a different term in office, resulting in a system of staggered appointments. Because the Senate was divided among seven political parties at the time, candidates needed to have the approval of several political parties to be appointed. Consequently, coordinators of the three major political parties—PRI, PAN, and the Party of the Democratic Revolution (PRD)—divided the appointments among candidates amenable to their political preferences. Thus, after 2016, the TEPJF was composed of three magistrates who were supported by PRI, two by PAN, one by PRD, and one by PAN and PRD jointly.<sup>3</sup> MORENA, AMLO's party, is relatively new and did not

participate in the selection of magistrates, fueling the sentiment that the TEPJF was “fixed” against the party.

On October 26, 2016, after the seven magistrates were sworn in, Congress passed legislation to extend the office term of four of the seven magistrates.<sup>4</sup> Lawmakers from MORENA and the PRD challenged this move before the Supreme Court. Opponents of the term extension argued that the appointment process concluded when the magistrates were sworn in, and changes could not be applied retroactively to existing appointments. On July 27, 2017, the Supreme Court, in a 6–5 ruling, affirmed the constitutional validity of the term extension. This further fueled MORENA’s suspicions that the TEPJF system was rigged.

Indeed, the way magistrates were appointed and the amendments extending their terms raised doubts about the impartiality of TEPJF magistrates in the summer 2018 elections. The speed with which Congress approved the amendments for the term extension (eight days) did not help. In addition, the fact that the appointments go through the Senate means that magistrate candidates are beholden to the political parties that endorse them. Shedding their party affiliation is therefore difficult and further places the magistrates under suspicion of bias. MORENA and its followers knew that four of these magistrates would be responsible for certifying the 2018 presidential election, and they also knew that the term extensions meant these same magistrates would also certify the 2024 presidential election. Despite doubts surrounding these magistrates, they successfully certified the 2018 election, and there is hope they will do so again in 2024.

However, the magistrates made two important decisions in the first months after their appointments that fueled distrust in their work and added to MORENA’s doubts over their impartiality for the 2018 presidential election.

## COAHUILA’S ELECTION AS A TEST OF ELECTORAL LAW

The state of Coahuila has always been governed by the PRI. The last two governors were the Moreira brothers. Humberto Moreira, a former PRI party president, was Coahuila’s governor from 2005 to 2011. Humberto was succeeded as governor by his brother Rubén Moreira, who governed the state from 2011 to 2017. In January 2016, the government of Spain arrested Humberto Moreira on suspicion of money laundering and embezzlement. He was released largely upon the request of the Mexican government. Both brothers remain prominent members of the PRI party. Both are suspected of graft and funneling millions of dollars to PRI campaigns, including President Enrique Peña Nieto’s run for office. They also manipulated Coahuila’s election to ensure the PRI stayed in power in 2017.

The first big challenge for the newly appointed TEPJF magistrates was the dispute between the PRI and PAN candidates for governor of Coahuila in 2017. The official results of the election determined that Miguel Ángel Riquelme, the PRI candidate, won with 38.2% of the votes.<sup>5</sup> Guillermo Anaya, the PAN candidate, obtained 35.7% of the votes.<sup>5</sup> This meant that the PRI candidate won with a difference of 2.5%. Since a 2014 amendment to the constitution mandates a recount if the difference is less than 5%, any violations committed during the electoral process could be detected during the recount, which could potentially result in the annulment of the entire election. The recount in 2017 detected several PRI violations that should have disqualified the PRI candidates. The TEPJF had to decide if the results of this election were valid.

When the PRI’s violations were revealed, Guillermo Anaya and the PAN argued that the PRI candidate failed to report all campaign expenses and had exceeded the spending limits by more than 5%. The unreported expenses included expenditures on social media (especially Facebook), payments to party representatives that supervised the precincts during election day,

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and the cost of “voter reward” debit cards. These cards were controversial because they promised future government benefits in exchange for voters’ personal information and vote pledges.

After the INE reported a series of irregularities in the PRI candidate’s campaign, the TEPJF examined the complaints made by Miguel Ángel Riquelme, and the TEPJF upheld the victory of the PRI candidate 173 days after the election. The arguments presented by the magistrates exposed the complexity of the electoral legal framework. More importantly, most of the magistrates’ arguments avoided ruling on substantive issues and simply called for a study of the rules, as demonstrated in the three following examples.

First, the INE audited the candidates’ campaign ads on social media and found an unreported Facebook page that promoted Riquelme. The INE sanctioned the candidate for not reporting this expense to the electoral authorities. Riquelme then challenged the INE’s decision before the TEPJF, and the TEPJF reversed it. The majority of magistrates argued that the INE did not give clear and convincing evidence of payments that Riquelme’s campaign made to social media companies during the elections.

This demonstrated the difficulty of auditing campaign-related social media ads. The law places the burden of proof on the candidate’s campaign, but the TEPJF shifted the burden of proof to the INE. This judgment therefore impeded the INE’s power to hold candidates accountable. The INE requested information from the PRI campaign and all third parties involved in the social media strategy that promoted Riquelme, including Facebook Mexico, the company that designed the social media strategy, and Facebook Ireland, the branch of the company that charged for the ads. All of the parties sent incomplete and vague information to the INE. As one of the magistrates stated in his dissenting vote, the TEPJF should not have reversed the INE’s decision, but it should have remanded the case to the INE for further investigation. In the end, the TEPJF did not take advantage of the opportunity to establish a legal precedent for social media electoral ads. The

majority of magistrates, pressured by time, chose to issue a quick decision instead of ensuring that an important precedent be set for future elections.

Second, the TEPJF reversed the INE’s resolution to punish the PRI and Riquelme’s campaign for not reporting payments made to party representatives. Electoral laws allow payment to party representatives, but they require parties to report any payments made to these representatives in a timely manner. Party representatives have vital campaign tasks, especially on election day. They are in charge of supervising the lawful implementation of the elections and protecting the votes. However, electoral law requires that all political parties keep a record of their representatives that specifies whether they are volunteers or receive remuneration, in the latter case specifying the amounts paid. After election day, political parties have a three-day period to file campaign expense reports.

During the Coahuila election audit, the INE detected that no such information was provided for 388 PRI representatives. The INE then requested this information, which the PRI submitted after the legal deadline. The INE fined the PRI for having missed this deadline. The PRI candidate then challenged the INE’s decision and the TEPJF subsequently reversed it, using the argument that it did not matter that the documentation was late because it showed that the representatives worked for free. This ruling showed how the TEPJF, instead of remanding the case to the INE to further investigate and clarify the campaign expenses report, privileged a fast decision in lieu of following the law. They also continued shifting the burden of proof from the political parties to the INE, which is against the law.

Finally, the PRI’s use of “voter reward” debit cards was considered problematic. These cards, similar to bank cards, carried the promise of future benefits in exchange for voters’ personal information and pledges to vote for the party. During campaigns, staff commonly distributed electoral propaganda with the candidate’s proposals. In some cases, they also distributed gift cards and debit cards to attendees of

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political events in exchange for a copy of their electoral card and a vote pledge. This vote-buying practice was used in the 2012 Monex scandal during the presidential elections, in which the opposition accused the PRI of using cards from Monex bank to buy votes for President Peña.<sup>6</sup> As a result of this scandal and many others, lawmakers amended the law to strengthen party expenditure accountability and to reduce illegal campaign financing.

Nevertheless, political parties continued to flout electoral laws, as in the 2017 Coahuila governor election. During the massive events for the PRI candidate, campaign staff distributed these voter reward cards and registered attendees' personal information. The aim of collecting this personal information was to create a registry of future beneficiaries of government programs. As can be expected, the opposition candidates reported this to the electoral authority. The INE then sanctioned the PRI, which again challenged the resolution before the TEPJF. The majority of the magistrates concluded that these cards were legal political propaganda that was used to promote the ideas of the candidate. Only one magistrate argued that law prohibited the distribution of these cards because they also offered future benefits. In his opinion, the use of these cards was a corrupt practice that manipulated the electoral decisions of voters.

As is clear in the Coahuila election, there were plenty of reasons to annul the 2017 election results, but the TEPJF found various arguments to justify the PRI's actions and validate the election. The magistrates did not take the opportunity to establish important precedents on vital issues that would likely occur in the 2018 election, including social media ads, payments to party representatives, and the distribution of voter reward cards. The TEPJF could have chosen to adhere more closely to the law in their decisions. It is important to note that the PRI is not the only political party that has carried out these activities. Nearly all political parties have implemented these illegal strategies during the electoral process.<sup>7</sup> The TEPJF's rulings further raised doubts as to whether they would be able to rule impartially over the 2018 presidential election.

## RODRÍGUEZ CALDERÓN'S PRESIDENTIAL CANDIDACY

The impartiality of the TEPJF was also questioned in the year leading up to the 2018 presidential election. The history of Jaime Rodríguez Calderón, known as "El Bronco," is plagued with accusations of fraud. In 2015, Rodríguez Calderón, a former PRI member, was the first independent candidate to win a gubernatorial election. When he became Nuevo León's governor, he promised to stay in office for the entire six years of his term. However, it only took him 24 months to break this promise.

In 2017, Rodríguez Calderón announced that he was going to run for president in 2018 as an independent candidate. The 2018 election was the first presidential election in which independent candidates were allowed to run. Because election laws state that an independent candidate must collect the signatures of at least 1% of the national voter registry to be included on the presidential ballot, independent candidates needed 866,593 signatures for the 2018 election. Electoral law additionally requires candidates to obtain these signatures from at least 17 of the 32 states within a 125-day period. Signatures must also be recorded on a mobile app created by the INE, on which potential candidates and their staff can scan the electoral identification cards of supporting voters. Through this app, the INE can directly receive information about citizens who are endorsing the independent candidate and verify its authenticity.

Only three of the potential independent candidates—the former first lady Margarita Zavala, a former PRD senator Armando Ríos Piter, and Rodríguez Calderón—gathered the required signatures. However, after an audit, the INE reported that all three had submitted false signatures. All three potential candidates registered invalid signatures of citizens who had died, did not have a valid voter registration card, or had been removed from the voter registration rolls, among other things. The INE concluded that once all invalid signatures were discarded, only Margarita Zavala had the required number of signatures. She later dropped

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out of the presidential race, and the INE denied the registration of the remaining two independent candidates.

Armando Ríos Piter and Rodríguez Calderón challenged the INE's decision. Both made similar due-process-related arguments to challenge the INE's resolution.<sup>8</sup> The rulings of the TEPJF were quite different, however. Regarding Ríos Piter, the TEPJF remanded the case to the INE. In this decision, the TEPJF concluded that the INE did not respect the candidate's right to a hearing because he was not allowed to review the fraudulent signatures and correct the mistakes. Thus, the TEPJF ordered the INE to grant a 10-day period for Ríos Piter to verify around one million signatures, a nearly impossible task. As a result, Ríos Piter dropped out of the race and joined the PRI candidate José Antonio Meade's campaign.

In contrast, the TEPJF gave what appeared to be preferential treatment to Rodríguez Calderón. In a highly controversial decision, the TEPJF reversed the INE's decision and registered Rodríguez Calderón as an independent candidate for the 2018 presidential election. The court based this ruling on the number of signatures obtained by each candidate. Rodríguez Calderón submitted 2,034,403 signatures, and the INE determined that only 849,937 were valid. This meant that he needed an additional 16,656 signatures, less than 2% of the total required to register as an independent candidate. The magistrates' majority held that Rodríguez Calderón would be able to easily correct the signature issues and register as an independent candidate if the TEPJF remanded the case to the INE for a hearing. As a result, they gave him the registration. However, an important fact seemed to have escaped the TEPJF. On 12 separate occasions, Rodríguez Calderón had already had the opportunity to verify the signatures. In fact, his team had already obtained 62,720 additional signatures. In a dissenting opinion, the TEPJF minority explained how this decision went against the most elemental procedural rules in which the TEPJF's decision would have been to remand the case to the INE. The

minority also argued that the decision affected future independent candidates and the credibility of the electoral authorities.

Expectedly, the TEPJF's opinion was widely criticized. Again, the TEPJF continued to shift the burden of proof from the candidates to the INE. Additionally, the TEPJF ignored other concerns raised by the INE, including claims that Rodríguez Calderón used state bureaucrats from Nuevo León's government during work hours to collect signatures. It was also later revealed that thousands of PRI militants worked as Rodríguez Calderón's campaign staff for the same purpose. These instances only strengthened existing rumors that the PRI was supporting Rodríguez Calderón's candidacy to take away votes from AMLO.

For all of these reasons, the TEPJF's rulings were wrong. The voters will never know if Rodríguez Calderón gathered sufficient signatures to meet the legal requirements to appear on the presidential ballot. As a result, his legitimacy as a candidate will always remain in doubt.

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## CONCLUSION

Mexico is still a young democracy that requires strong and credible institutions if its democratic practices are to be consolidated and the rule of law strengthened. Electoral institutions are central to any democracy, and they must be rigorous in the application of the law, especially for those who want to govern the country. Candidates or political parties who break the law have to be punished as the law mandates. If electoral institutions allow exceptions to this, as in the recent cases outlined above, they reduce the legitimacy of the electoral institutions themselves and undermine the strength of democracy and the rule of law.

Fortunately for Mexico, the 2018 election appears to have been a success. AMLO won with more than 50% of the vote. His opponents quickly recognized his victory, even before the INE officially announced who was leading the election. Millions of people were able to cast their votes peacefully, and over one million volunteers ran the poll locations and supervised the election's

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results. Despite this positive result, it is most likely that in the future, the electoral margins will not be so clear. Exceptions in the application of electoral law, like during Coahuila's 2017 gubernatorial election and Rodríguez Calderón's 2018 presidential candidacy, should not be permitted. It is imperative that the electoral authorities stop such practices because they undermine Mexico's democracy and legal authority.

## ENDNOTES

1. At the time of the 2018 presidential election, the INE's General Council was composed of 30 members.
2. Each state also has a similar structure to organize and judge the validity of the elections. This brief addresses only the federal elections.
3. "¿A quién responden los Magistrados?" *Reforma*, accessed August 1, 2018, <https://www.reforma.com/aplicacioneslibre/articulo/default.aspx?id=1369246&md5=90fe4c9052b8818216bc6830afa185c8&ta=0dfdbac11765226904c16cb9ad1b2efe>.
4. Two magistrates changed from a three-year term to a seven-year term, and the other two magistrates changed from a six-year term to an eight-year term. The remaining three magistrates will be on the court for nine years.
5. "Election Results for Governor 2017," Electoral Institute of Coahuila, accessed August 31, 2018, [http://www.iec.org.mx/v1/images/computos/acta\\_computo\\_gobernador\\_entidad/acta\\_comp\\_est\\_gob.pdf](http://www.iec.org.mx/v1/images/computos/acta_computo_gobernador_entidad/acta_comp_est_gob.pdf).
6. Marguerite Cawley, "Mexico President's Campaign Funds Tied to Suspicious Ring: Reforma," *InSight Crime*, December 12, 2013, <https://www.insightcrime.org/news/brief/mexico-presidents-campaign-funds-tied-to-money-laundering-ring/>.
7. Ana de la O, "How Governmental Corruption Breeds Corruption," in *Mexico Evolving Democracy: A Comparative Study of the 2012 Elections*, eds. Jorge I. Domínguez, Kenneth F. Greene, Chappell H. Lawson, and Alejandro Moreno (Baltimore: Johns Hopkins University Press, 2015), 181-199.
8. The potential candidates argued that the INE did not allow them to jointly verify the

number of invalid signatures. Additionally, the candidates argued that the INE's resolution did not describe the verification process for the signatures in detail. Consequently, they concluded that the INE did not respect their constitutional right to a hearing.

## AUTHOR

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