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A Brief Commentary on the State of Mexican Electoral Justice

after the 2007 Constitutional Reform

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I. Electoral Reform and Democratic Transition in Mexico

The constitutional reform of 2007 in the area of electoral law, published in the Federal Register[1] on November 13th, 2007, represents a «third generation of electoral reforms» in Mexico. In this paper, I will briefly describe earlier reforms, known as the «first generation» and «second generation» of constitutional reforms related to electoral law and justice. I will then discuss the most important elements of the 2007 reforms, and the current state of electoral justice in Mexico.

[1] The *Diario Oficial de la Federación* is the name of the Federal Register in Mexico.

a. Early Reforms

Between 1977 and 1986, the Mexican Electoral System went through what was subsequently referred to as a «first generation of reforms». The main focus of these reforms was the recognition in the Constitution of political parties and the concept of electoral competition. As a result, the spheres of political representation were opened up and diversified.

The constitutional reform of 1977 in the area of electoral law resulted in the creation of an electoral college for the elections of members of the House of Representatives and Senate, based on a mixed electoral system that was largely majority-rule but with some elements of proportional representation. In addition, for the

first time, a mechanism to try electoral disputes was established, referred to as the «right to appeal.»[2] The Mexican Supreme Court had jurisdiction to resolve these disputes once the election was ratified by the House of Representatives.

Subsequently, on February 12th, 1987, as a part of the Mexican government's efforts in the realm of political modernization, the Federal Electoral Code was enacted. The Code did not include the formerly established right to appeal, as it was considered that political questions and debates should not fall in the sphere of powers of the Supreme Court so as not to affect its prestige and position. However, a specialized Court with full autonomy to try all electoral disputes was established to supervise and control the legality of electoral processes. In order to ensure the separation of powers and checks and balance between the three branches of government enshrined in the Mexican Constitution, the electoral college in each chamber of the Congress was left in place, retaining the power to validate the final results of elections.

That same year, the Court of Electoral Disputes was created as a completely autonomous administrative body, granting political parties and other political entities a stronger sense of security and protection. The objective of the Court was to ensure the impartiality and legality of electoral processes. With respect to the annulment of elections, the Court of Electoral Disputes was only a court of first instance, while the final decision on the results of elections continued to correspond to the electoral college of the Federal Congress, which would emit the final decision on the validity of an election.

b. The «Second Generation» of Reforms

Between 1989 and 1996, what can be referred to as a «second generation of reforms» were passed, which radically transformed the Mexican electoral system. In 1990, as a result of comprehensive constitutional reforms, the Federal Electoral Institute and the Federal Electoral Courts were created. In 1994, further reforms lead to the inclusion of civil society representation in the General Council of the Federal Electoral Institute. Seats were allocated to citizens

[2] In Spanish this was referred to as the «recurso de reclamación.»

without affiliation to any political party or to the government in currently in power, and new powers were granted to the members of said body. A vast set of rules and procedures were implemented to ensure the legality of the all electoral processes.

As a result of the above mentioned constitutional reforms, the organization of federal elections would be considered a state function exercised by the legislative and executive powers, with the participation of national political parties as well as members of civil society. The work of the Federal Electoral Institute, a government entity established as the authority in the field, with complete autonomy in its decision-making processes, would adhere to the principles of certainty, legality, impartiality, objectivity and professionalism.

In addition, as mentioned above, the reforms created a system of Federal Electoral Courts, autonomous judicial bodies with more powers than the previous Court of Electoral Disputes and thus greater authority and independence. The Congress also passed the Federal Code of Electoral Institutions and Procedures, to regulate the organization and performance of the Courts. The decisions of the Supreme Federal Electoral Court would be final and not subject to review by any other court. Post-election cases resolved by the Court could only be reviewed and modified by the electoral colleges, with the vote of two-thirds of the members present.

Thus a system of electoral oversight was established that included two separate and distinct institutions: a) the Federal Electoral Institute, an administrative agency consisting of the General Council, as well as local and district level councils, charged with validating the elections of Congress members running for majority slots and proportional representation seats, as well as Senators, and b) the Federal Electoral Courts, judicial bodies charged with settling cases brought by any of the political parties disputing the results or validity of an election or the assignation of seats by majority or proportional vote. The Federal Electoral Courts would be the ultimate authority on electoral disputes arising around elections for Congress members. With regards to the presidential elections, the House of Representatives still had exclusive

authority to constitute the electoral college and validate the elections, and its decision was definitive and final. This of course limited the efficiency of the Federal Electoral Courts.

The reforms of 1996 had an important impact on Mexican democracy. As a result of these reforms, a mixed system of supervision and validation of elections was created, and the role of the electoral college in presidential elections was eliminated. Electoral processes were slowly put under the supervision of judicial bodies, and a system of mixed legal validation was created. The definitive authority of the Supreme Federal Electoral Court regarding the final result and validity of presidential could not be challenged. The Congress would only retain the power to make the public announcement regarding the winner of the presidential elections known as the *bando solemne*, which is published in the Federal Register and state government publications and is posted in government offices. In addition, it is important to note that for the first time, a process for the public financing of political parties was put in place, regulated by the Federal Code of Electoral Institutions and Procedures.

c. Post-1996 Reforms

Although the reform of 1996 was the last over-arching reform of the electoral system, in the following years Congress approved other changes to the law, including the reform of 2003, which established rules to promote gender equality in relation to candidatures for public office. In addition, the reform of 2005 resulted in the right of Mexicans living abroad to vote, applied for the first time in the presidential election of 2006. The next set of reforms came in 2007, published, as mentioned above, in the Nation Register, on November 13, 2007, entering into force the following day.

The reform of 2007 brought about a «third generation of electoral reforms,» designed to a large degree to address, among others, two important problems facing Mexican democracy: excessive campaign spending, and unequal access to mass media among the political parties. The first objective was to significantly decrease campaign spending. This would be achieved by reducing public monies allocated to the parties and by putting in place mechanisms to ensure clarity and transparency

regarding the cost of electoral campaigns.

The second objective was to strengthen the power of the federal electoral authorities. The role of electoral oversight of the Federal Electoral Institute was strengthened. In addition, and in harmony with their role as constitutional courts, the power of the Federal Electoral Courts to not apply electoral laws determined to be unconstitutional was also recognized.

The third objective of the recent reforms was of fundamental importance: to prevent persons outside the electoral process to influence electoral campaigns and their results by the use of mass media. Rules related to all kinds of governmental propaganda, distributed during or outside of electoral periods, were incorporated into the Constitution.

Based on the above mentioned factors, we can conclude that although democracy is not ensured by the quality of elections alone, it does in essence depend on them. In this regard the recent electoral reform of 2007 in Mexico, as we will see below, is another step towards the consolidation of constitutional rule of law in the country.

II. Electoral Justice in the Constitutional Reform and the Role of the Electoral Courts

Although it is true that the electoral reform of 2007 focused on general aspects of the Mexican electoral system, its impact on electoral justice was also relevant. In this regard, it is important to note that via its interpretation of electoral law, the Electoral Courts have made a valuable contribution over the past decade by adapting their judicial function to the political reality of the country. The second paragraph of Article 99 of the Constitution explicitly now recognizes the permanent nature of this role of both the Supreme Federal Electoral Court and the Regional Electoral Courts. In effect, before the reform, only the Supreme Federal Electoral Court sat on a permanent basis, while the Regional Electoral Courts only functioned during federal electoral processes, in other words, every three years. In addition, the reform is very important because it clarified the role of the Electoral Courts in various areas, as discussed below.

a) Power to Void Elections

The electoral reform of 2007 establishes that elections can only be annulled on the basis of one of the factors expressly specified in the Constitution, seeking to give greater certainty to the decisions of the Court. In addition, the application of the legality principle with regards to the work of electoral authorities and political parties was also included in the Constitution.

With regards to «abstract» nullity of federal elections and the «generic nullity» of state elections, before the reforms, even though it was not expressly stated in the law, the Supreme Federal Electoral Court had the power to annul an election when it found that the fundamental principles regarding free and fair elections were violated, including the universal right to a free, secret and individual vote; the organization of the elections by an autonomous and public authority; and the basic principles of certainty, legal equity, independence, impartiality, and objectivity, as derived from an integral and functional interpretation of constitutional principles. If one of these fundamental principles was violated in an election in a serious and generalized manner, putting into doubt the credibility and legitimacy of the process and its results, it was held that said elections could not have legal results and therefore, the Supreme Federal Electoral Court declared their «abstract» nullity.[3]

However, as a result of the 2007 reform processes, Congress decided that, due to worries about constitutional limits to the interpretative power of the Court in these cases, it was necessary that the Court, within the scope of its important role and wide powers that the Magna Carta gives it, base its decisions on nullity on the factors that the law expressly provides for. It was therefore not to apply, through judicial interpretation, other causes or bases for such a decision. In consequence, the Constitution was reformed to expressly establish that the Supreme Federal Electoral Court and the Regional Electoral Courts can only void an election based on one of the legal causes established in the law.[4]

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[3] Ruling S3 ELJ 23/2004 is authoritative with regards to the causes for the «abstract nullity» of elections.

[4] Section II, Article 99 of the Federal Constitution (Artículo 99, fracción II, de la Constitución Política de los Estados Unidos Mexicanos).

With regards to presidential elections, under the new constitutional provisions, the Supreme Federal Electoral Court will be in charge of the final vote count. Once all cases related to the election are resolved by the Court, if it decides the election was valid, it will issue a declaration to that effect, indicating the candidate who obtained the largest number of votes.

b) Jurisdiction to Consider Appeals

In reference to the jurisdiction of the Court and its ability to consider appeals, the new rules related to the organization and function of the Court will facilitate the speedy resolution of electoral cases. As a result of the reform, the Supreme Federal Electoral Court will be able to, on the request of a party to a case or one of the Regional Electoral Courts, exercise jurisdiction over any cases under the review of one of said courts. Reversely, and in accordance with the new rules and procedures established in the law, it can also send cases that fall under its jurisdiction to the Regional Electoral Courts for resolution.

c) Internal Party Democracy

The constitutional reform also emphasizes the need to ensure the internal democracy of political parties. In this regard, the law specifies that in order for a member of a political power to be able to take a case to the Electoral Courts, she or he should first exhaust the despite resolution mechanisms established in the party's internal rules.

Prior to the reforms, the Supreme Federal Electoral Court established in two cases that, in strict compliance with the principle of finality, before members of political parties can take a case to the Court seeking protection of their electoral rights, they must first exhaust internal party dispute resolution mechanisms.[5] The Court established that the dispute resolution mechanisms that political parties provide for in their internal rules must contain, in essence, the following elements:

[5] According to the Supreme Federal Electoral Court ruling S3ELJ 05/2005 and S3ELJ 04/2003, in order to respect the principle of finality, to appeal actions taken with a political party, one must first exhaust internal party dispute mechanism procedures, even if such action is not prescribed within a certain time period in the internal rules of the party.

1. Authority to resolve disputes that took place prior to the establishment of said mechanisms;
2. Guarantees regarding the independence and impartiality of the members of the dispute resolution bodies;
3. Respect for minimum constitutional procedural standards; and
4. Effective protection of the electoral rights of the offended party. When one of these elements was missing, previously taking one's case to the internal dispute resolution body became optional. Thus, as long as the claimant could prove that she or he did not have a case pending before an internal party dispute resolution body, the case could be taken directly to the electoral courts, *per saltum*.

With regards to this issue, the newly reformed Constitution provides that in cases in which a political party violates the rights of one of its members, in order to go to the electoral courts for protection and remedy, she or he must indeed first exhaust the internal dispute resolution mechanisms provided for in the internal party rules.[6] The legislators felt that this reform was congruent with the need to strengthen the internal functioning of political parties and avoid continual and unjustified judicial interference of their internal processes.

d) The Power of Constitutional Review with Regards to Electoral Laws

As previously noted, the reform recognized the constitutional review engaged in by the Electoral Courts, confirming that they have the power to declare the inapplicability, based on its unconstitutionality, of an electoral law. It was established, however, that in these cases, the application of Electoral Court decision is limited to the concrete case at hand. In other words, the case will not create binding precedent and will not be taken as a general declaration on the constitutionality of the law. In addition, when such a decision is made, the Supreme Federal Electoral Court will inform the Mexican Supreme Court of the ruling.

[6] Article 99, Section V, of the Federal Constitution.

Between 1996 (following the constitutional reform) and 2001, the Electoral Courts decided various cases based on their power of constitutional review of electoral laws. The Court analyzed in each situation whether the concrete application of the law in question violated the Constitution, in which case, it would not apply to the complainant.[7] In 1999, the Supreme Federal Electoral Court issued an opinion affirming its power of constitutional review, as exercised in various cases.[8] However, this ruling was repealed by Ruling 2/2000-PL,[9] in which the Mexican Supreme Court held that the Electoral Courts lack the power to rule on the constitutionality of an electoral law, not even with regards to its inapplicability in a specific case.

The resulting exclusivity of the power of the Mexican Supreme Court to engage in constitutional review of electoral laws led to a legal vacuum and impunity with regards to legislative acts. For this reason, in the electoral reform of 2007, the Congress enshrined in the law the power of constitutional review of the Electoral Courts, recognizing their authority to declare the inapplicability of the those laws which violate the Constitution.[10] It is important to note that the prior negation of this power created dis-functionality in the electoral system, since the Federal Electoral Courts were validating acts that were

7 See ruling SUP-JRC-041/99, SUP-JRC-127/99, SUP-JRC-015/2000, and SUP JRC-016/2000.

8 Ruling S3 ELJ 05/99. In this case, the Court determined the following: «The Federal Electoral Courts have the power to determine whether an electoral law should not be applied to someone because its application violates the Constitution.»
(Original reads as follows: «Tribunal Electoral del Poder Judicial de la Federación. Tiene facultades para determinar la inaplicabilidad de leyes secundarias cuando éstas se opongan a disposiciones constitucionales.»)

9 Contradicción de tesis 2/2000-PL.

10 In this regard, the newly reformed Article 99, Section IX reads as follows: «In due consideration of Article 105 of this Constitution, the Electoral Courts have the power to rule that an electoral law should not be applied because it contravenes the Constitution. A ruling issued in this regard is limited in application to the specific case at hand. In such cases, the Supreme Federal Electoral Court will inform the Mexican Supreme Court of the ruling.»
(Original reads as follows: «Sin perjuicio de lo dispuesto por el artículo 105 de esta Constitución, las salas del Tribunal Electoral podrán resolver la no aplicación de leyes sobre la material electoral contrarias a la presente Constitución. Las resoluciones que se dicten en el ejercicio de esta facultad se limitarán al caso concreto sobre el que verse el juicio. En tales casos la Sala Superior informará a la Suprema Corte de Justicia de la Nación.»)

based on laws whose constitutionality was doubtful, thus limiting their ability to enforce the principle of constitutional supremacy.

e) Freedom of Political Expression

In the realm of freedom of political expression, the Supreme Federal Electoral Court has established limits regarding campaign propaganda that effects a person's honor and dignity. The Court ruled that, in the framework of political debates, expressions or declarations of any kind made by those involved in the elections that are meant to defame or put in question the name, marital status, nationality or abilities of her or his opponents, represent a violation of the right to honor, a right protected both by the Constitution as well as international treaties signed by Mexico.[11]

In the reform process the legislators, in following with the *ratio essendi,* or the main legal basis, of the above mentioned ruling, established in the Constitution that in the political or electoral propaganda that the parties distribute, they should refrain from using language that degrades government institutions or political parties, or is slanderous against a person.[12]

f) Deregistration of Political Parties

With regards to the lose of registration of a political party, the Supreme Federal Electoral Court has ruled that even when the legal and accounting rules related to the deregistration of a political party do not expressly state so, they must present reports about the origin and amount of money they received via any source. In addition, the party is still responsible for any obligations it may have accrued while it was registered.[13]

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11 See ruling 14/2007, which held that the protection of a person's honor and reputation during electoral processes is justified due to the fact that it is a fundamental right recognized within the framework of the exercise of the freedom of expression. (Original reads as follows: Honra y reputación. Su tutela durante el desarrollo de una contienda electoral se justifica por tratarse de derechos fundamentales que se reconocen en el ejercicio de la libertad de expresión.»)

12 Article 41, Section III, paragraph C, of the Federal Constitution.

13 See Ruling S3ELJ 49/2002, which established the following: «The deregistration of a political party does not imply the disappearance of any duties or obligations it acquired while registered.»

In this regard, as a result of the electoral reform of 2007, the law must be reformed to include procedures for the fulfilment of the obligations of parties who lose their registration. It must also stipulate those cases in which the remaining property and funds of the party passes to the government.

g) Banking Secrecy

With regards to banking secrecy, in several rulings, the Supreme Federal Electoral Court has strengthened the role of the Federal Electoral Institute by recognizing that its requests for information when investigating the funding of political parties can not be denied based on banking secrecy or confidentiality of financial or tax information.[14] The Congress, based on the criteria established in these rulings, reformed the Constitution to expressly state that the role of supervision and oversight of the funding of political parties belongs to a technical division within the General Council of the Federal Electoral Institute. This division is an autonomous body whose Director is named by the President of the General Council and ratified with two-thirds vote of the Council. The Constitution established that the Code of Electoral Institutions and Procedures would specify the set-up and role of this unit, as well as the procedures for the application of sanctions by the General Council for violations to the law.[15] In the fulfilment of its role, the technical division would not be limited by banking or tax secrecy laws.

(Original reads as follows: «Registro de partido político. Su pérdida no implica que desaparezcan las obligaciones adquiridas durante su vigencia.»)

14 See the following rulings: S3ELJ 01/2003, S3ELJ 02/2003, S3ELJ 043/2004, and S3ELJ 167/2002. The rulings held, in summary, that the principle of banking secrecy is not a defense with regards to the power of the Federal Electoral Institute to investigate the funding of political parties.

15 Article 41, Section V, paragraph 10. The Constitution refers to an «órgano técnico.» In January of 2008, the Code of Electoral Institutions and Procedures was reformed to describe the unit or division within the Federal Electoral Institute that would constitute and take on the responsibilities of the órgano técnico referred to in the Constitution, which would be called the «Unidad de Fiscalización de los Recursos de los Partidos Políticos», or the division/unit of supervision of monies of political parties.
See the *Diario Oficial* of January 14, 2008. Later that same month, the General Council of the Federal Electoral Institute announced the appointment of the Director of said unit.
See the *Diario Oficial* of January 30, 2008.

h) Pre-Campaign and Campaign Activity

In the area of pre-campaign and campaign activities, the Court has established that the fact that the law does not specifically mention pre-campaign activities, which are those involving candidates selected by internal party processes but not yet formally registered by the electoral authorities, that does not mean that they can take place.[16] The legislator established the legal prohibition of campaign activity that takes place outside of the legally established time period for such activity. The objective of this prohibition is to guarantee that campaigns take place under conditions of equality, due to the fact that if pre-campaign activities take place, their will be inequality in the electoral processes, as the political party that begins before the legally established campaign period will have more time to influence citizens and violate the rights of other candidates, something that can be avoided if all political parties begin their campaigns on the legally established date.

In this regard, as a result of the reform process in 2007, the Constitution establishes the time periods for internal party processes to select candidates, as well as the rules related to pre-campaign and campaign activities.[17] In addition, new time periods were established in the Constitution for election campaigns, consisting of ninety days for campaigns in those years in which the President and members of both Chambers of Congress will be elected, and sixty days for intermediate election years when members of the House of Representatives are selected. It was also established that pre-campaigns can not last longer than two-thirds of the time established for electoral campaigns.

i) Compliance with Rulings of the Federal Electoral Courts

Lastly, the electoral reform of 2007 dealt with the issue of compliance with the rulings of the Federal Electoral Courts. The Constitution now states that the Courts can make use of all necessary measures to ensure speedy

[16] See ruling S3EL 016/2004, which held that pre-campaign activities are implicitly prohibited.

[17] Article 41, Section IV of the Constitution.

compliance with their decisions, and signals that the Code of Electoral Institutions and Procedures will provide the rules for these cases.

III. Electoral Court Rulings in Accordance to the Electoral Reform

Once the 2007 electoral reform in force, it corresponded to the Court to promote it and adjudicate new and complex cases. Since that reform set new and broader constitutional principles the Court had to fill out with interpretation the abstract terms of political rights and the lack of legislative definition. Mexico is a Civil Law country and therefore the judges role have played a modest intervention before the judge-making law that is proper to Common Law countries.

Standing to sue is still a big issue in Mexican litigation because the influence of personal and direct injury is a present requirement to access courts, in contrast with the nature of collective rights in the citizens derived from elections.

Nevertheless, the advancement through judicial rulings is evident. Thesis J-12/2008 approved by the Court *en banc* recognized in the political parties the right to a «public image». The writ of constitutional revision has allowed the review of any interference on public financing not just as a matter of legality but to preserve the constitutional principle of equality in the electoral contest.

Within the sphere of political campaigns the Court has enacted a thesis J-11/2008 by which freedom of expression should preempt during the political debate. In this context, TV spots are very influential and in the case identified under the docket number SUP-RAP-118/2008, the reference made from one party to another as «violent», because of its participation in the interruption of congressional debates during the reform to the State Oil Company, it was considered under the protection of the freedom of expression.

On the other hand, thesis J-20/2008 has protected the immunity granted by the Constitution to popular representatives from any administrative action against their expressions that might be deemed otherwise as campaigning, under the penalty of the electoral authorities.

Finally, the Court has defined in particular cases whenever the expressions should be limited in order to preserve the dignity of institutions and candidates. But these definitions are still in progress because of the difficulty in setting clear cut boundaries between the free debate and the limits of privacy and dignity.

Regarding the privacy of the press sources, thesis T-XXXI/2009 approved on September 30, 2009, has confirmed the complete freedom of press against all inquiries from the electoral authority.

Elections in aboriginal communities is protected by the Constitution since 2001 and entails the respect by all authorities, federal, state and municipal, as well as administrative and judicial, to observe and preserve their internal rules to elect their authorities. In several cases, the Court has declared null and void certain administrative resolutions and rules abridging the Mexican Indian rights to freely elect their authorities according to their customary law. Files numbers JRC 152/99 and 264/99 approved November 11 and December 22, 1999, have declared null and void State laws intervening into the Indian communities traditions.

The Court is recognizing special interests in the political actors whenever they raise a question affecting constitutional principles or fundamental rights before courts and later on the plaintiffs decide not to continue with the case. Foregoing the case means the individual decision taking by a party, but this particular interest should not prevail over the State jurisdiction when there is public interest involved, according to Thesis J-8/2009.

The Court is also focusing its adjudicative function on the protection of autonomy and independence of State electoral authorities who in the past were the most vulnerable before State Executives and now is protecting the citizens claims that challenge decisions made by authorities affecting the integration of electoral boards whom the Constitution establishes on citizens basis.

Sweeping State laws tend to overthrow citizens who are in charge of electoral boards infringing their time periods to serve in office and the Court has protected systematically theses citizens against such encroachments, as the thesis T-VIII/2009 from march 19, 2009 states.

Since 2003, the Court has protected party members against illegal resolutions of their own political parties, introducing the Rule of Law in the political parties, achieving democracy since the internal life of such political organizations. Thesis J-22/2009 and T-XXVII/2009, approved on September 2009, confirmed this ruling.

III. Conclusion: A Movement Towards Legal Federalism in Electoral Matters

With the incorporation in the Constitution of the above-mentioned characteristics, Mexican electoral justice has been strengthened significantly, due to the fact that the powers of the Federal Electoral Courts have been increased. It is also important to note that as a federal republic, in Mexico, electoral systems are linked to the principles of the federal union established in the Constitution.[18] Indeed, federal reforms are often followed by similar state reforms, something which is reinforced now by express provisions in the Constitution regarding state electoral systems. In effect, several articles related to state systems were modified in the Constitution.[19] In this regards, the states were impacted by the reform in many ways, and they are obligated to modify their constitutions and laws within one year, accordingly.

Even if we can not entirely affirm that there exists complete legal federalism in electoral matters, it is clear that these constitutional provisions, which are obligatory for the states, represent an important step towards the consolidation of constitutional rule of law.

[18] The Federal Constitution is titled «Constitución Política de los Estados Unidos Mexicanos.»

[19] Articles 116 and 122 of the Constitution.

DECREE which amends Articles 6, 41, 85, 99, 108, 116 and 122; adds Article 134, and repeals one paragraph of Article 97 of the Political Constitution of the United Mexican States.

FELIPE DE JESÚS CALDERÓN HINOJOSA,

President of the United Mexican States, informs the population.

Tuesday, November 13, 2007

DIARIO OFICIAL
DE LA FEDERACION

ORGANO DEL GOBIERNO CONSTITUCIONAL DE LOS ESTADOS UNIDOS MEXICANOS

Tomo DCL No. 9 México, D.F., martes 13 de noviembre de 2007

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$16.00 EJEMPLAR

PODER EJECUTIVO
SECRETARIA DE GOBERNACION

DECRETO que reforma los artículos 6o., 41, 85, 99, 108, 116 y 122; adiciona el artículo 134 y deroga un párrafo al artículo 97 de la Constitución Política de los Estados Unidos Mexicanos.

Al margen un sello con el Escudo Nacional, que dice: Estados Unidos Mexicanos.- Presidencia de la República.

FELIPE DE JESÚS CALDERÓN HINOJOSA, Presidente de los Estados Unidos Mexicanos, a sus habitantes sabed:

Que el Honorable Congreso de la Unión, se ha servido dirigirme el siguiente

DECRETO

"EL CONGRESO GENERAL DE LOS ESTADOS UNIDOS MEXICANOS, EN USO DE LA FACULTAD QUE LE CONFIERE EL ARTÍCULO 135 DE LA CONSTITUCIÓN GENERAL DE LA REPÚBLICA Y PREVIA LA APROBACIÓN DE LA MAYORÍA DE LAS HONORABLES LEGISLATURAS DE LOS ESTADOS, DECLARA REFORMADOS LOS ARTÍCULOS 6o., 41, 85, 99, 108, 116 Y 122; ADICIONADO EL ARTÍCULO 134 Y DEROGADO UN PÁRRAFO AL ARTÍCULO 97 DE LA CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS.

ÚNICO. Se reforma el primer párrafo del artículo 6o.; se reforman y adicionan los artículos 41 y 99; se reforma el párrafo primero del artículo 85; se reforma el párrafo primero del artículo 108; se reforma y adiciona la fracción IV del artículo 116; se reforma el inciso f) de la fracción V de la Base Primera el artículo 122; se adicionan tres párrafos finales al artículo 134; y se deroga el párrafo tercero del artículo 97, todos de la Constitución Política de los Estados Unidos Mexicanos, para quedar como sigue:

Artículo 6o. La manifestación de las ideas no será objeto de ninguna inquisición judicial o administrativa, sino en el caso de que ataque a la moral, los derechos de tercero, provoque algún delito, o perturbe el orden público; el derecho de réplica será ejercido en los términos dispuestos por la ley. El derecho a la información será garantizado por el Estado.

...

Artículo 41. El pueblo ejerce su soberanía por medio de los Poderes de la Unión, en los casos de la competencia de éstos, y por los de los Estados, en lo que toca a sus regímenes interiores, en los términos respectivamente establecidos por la presente Constitución Federal y las particulares de los Estados, las que en ningún caso podrán contravenir las estipulaciones del Pacto Federal.

La renovación de los poderes Legislativo y Ejecutivo se realizará mediante elecciones libres, auténticas y periódicas, conforme a las siguientes bases:

I. Los partidos políticos son entidades de interés público; la ley determinará las normas y requisitos para su registro legal y las formas específicas de su intervención en el proceso electoral. Los partidos políticos nacionales tendrán derecho a participar en las elecciones estatales, municipales y del Distrito Federal.

Los partidos políticos tienen como fin promover la participación del pueblo en la vida democrática, contribuir a la integración de la representación nacional y como organizaciones de ciudadanos, hacer posible el acceso de éstos al ejercicio del poder público, de acuerdo con los programas, principios e ideas que postulan y mediante el sufragio universal, libre, secreto y directo. Sólo los ciudadanos podrán formar partidos políticos y afiliarse libre e individualmente a ellos; por tanto, quedan prohibidas la intervención de organizaciones gremiales o con objeto social diferente en la creación de partidos y cualquier forma de afiliación corporativa.

Las autoridades electorales solamente podrán intervenir en los asuntos internos de los partidos políticos en los términos que señalen esta Constitución y la ley.

II. La ley garantizará que los partidos políticos nacionales cuenten de manera equitativa con elementos para llevar a cabo sus actividades y señalará las reglas a que se sujetará el financiamiento de los propios partidos y sus campañas electorales, debiendo garantizar que los recursos públicos prevalezcan sobre los de origen privado.

El financiamiento público para los partidos políticos que mantengan su registro después de cada elección, se compondrá de las ministraciones destinadas al sostenimiento de sus actividades ordinarias permanentes, las tendientes a la obtención del voto durante los procesos electorales y las de carácter específico. Se otorgará conforme a lo siguiente y a lo que disponga la ley:

a) El financiamiento público para el sostenimiento de sus actividades ordinarias permanentes se fijará anualmente, multiplicando el número total de ciudadanos inscritos en el padrón electoral por el sesenta y cinco por ciento del salario mínimo diario vigente para el Distrito Federal. El treinta por ciento de la cantidad que resulte de acuerdo a lo señalado anteriormente, se distribuirá entre los partidos políticos en forma igualitaria y el setenta por ciento restante de acuerdo con el porcentaje de votos que hubieren obtenido en la elección de diputados inmediata anterior.

b) El financiamiento público para las actividades tendientes a la obtención del voto durante el año en que se elijan Presidente de la República, senadores y diputados federales, equivaldrá al cincuenta por ciento del financiamiento público que le corresponda a cada partido político por actividades ordinarias en ese mismo año; cuando sólo se elijan diputados federales, equivaldrá al treinta por ciento de dicho financiamiento por actividades ordinarias.

c) El financiamiento público por actividades específicas, relativas a la educación, capacitación, investigación socioeconómica y política, así como a las tareas editoriales, equivaldrá al tres por ciento del monto total del financiamiento público que corresponda en cada año por actividades ordinarias. El treinta por ciento de la cantidad que resulte de acuerdo a lo señalado anteriormente, se distribuirá entre los partidos políticos en forma igualitaria y el setenta por ciento restante de acuerdo con el porcentaje de votos que hubieren obtenido en la elección de diputados inmediata anterior.

La ley fijará los límites a las erogaciones en los procesos internos de selección de candidatos y las campañas electorales de los partidos políticos. La propia ley establecerá el monto máximo que tendrán las aportaciones de sus simpatizantes, cuya suma total no podrá exceder anualmente, para cada partido, al diez por ciento del tope de gastos establecido para la última campaña presidencial; asimismo ordenará los procedimientos para el control y vigilancia del origen y uso de todos los recursos con que cuenten y dispondrá las sanciones que deban imponerse por el incumplimiento de estas disposiciones.

De igual manera, la ley establecerá el procedimiento para la liquidación de las obligaciones de los partidos que pierdan su registro y los supuestos en los que sus bienes y remanentes serán adjudicados a la Federación.

III. Los partidos políticos nacionales tendrán derecho al uso de manera permanente de los medios de comunicación social.

Apartado A. El Instituto Federal Electoral será autoridad única para la administración del tiempo que corresponda al Estado en radio y televisión destinado a sus propios fines y al ejercicio del derecho de los partidos políticos nacionales, de acuerdo con lo siguiente y a lo que establezcan las leyes:

a) A partir del inicio de las precampañas y hasta el día de la jornada electoral quedarán a disposición del Instituto Federal Electoral cuarenta y ocho minutos diarios, que serán distribuidos en dos y hasta tres minutos por cada hora de transmisión en cada estación de radio y canal de televisión, en el horario referido en el inciso d) de este apartado;

b) Durante sus precampañas, los partidos políticos dispondrán en conjunto de un minuto por cada hora de transmisión en cada estación de radio y canal de televisión; el tiempo restante se utilizará conforme a lo que determine la ley;

c) Durante las campañas electorales deberá destinarse para cubrir el derecho de los partidos políticos al menos el ochenta y cinco por ciento del tiempo total disponible a que se refiere el inciso a) de este apartado;

d) Las transmisiones en cada estación de radio y canal de televisión se distribuirán dentro del horario de programación comprendido entre las seis y las veinticuatro horas;

e) El tiempo establecido como derecho de los partidos políticos se distribuirá entre los mismos conforme a lo siguiente: el treinta por ciento en forma igualitaria y el setenta por ciento restante de acuerdo a los resultados de la elección para diputados federales inmediata anterior;

f) A cada partido político nacional sin representación en el Congreso de la Unión se le asignará para radio y televisión solamente la parte correspondiente al porcentaje igualitario establecido en el inciso anterior, y

g) Con independencia de lo dispuesto en los apartados A y B de esta base y fuera de los periodos de precampañas y campañas electorales federales, al Instituto Federal Electoral le será asignado hasta el doce por ciento del tiempo total de que el Estado disponga en radio y televisión, conforme a las leyes y bajo cualquier modalidad; del total asignado, el Instituto distribuirá entre los partidos políticos nacionales en forma igualitaria un cincuenta por ciento; el tiempo restante lo utilizará para fines propios o de otras autoridades electorales, tanto federales como de las entidades federativas. Cada

partido político nacional utilizará el tiempo que por este concepto le corresponda en un programa mensual de cinco minutos y el restante en mensajes con duración de veinte segundos cada uno. En todo caso, las transmisiones a que se refiere este inciso se harán en el horario que determine el Instituto conforme a lo señalado en el inciso d) del presente Apartado. En situaciones especiales el Instituto podrá disponer de los tiempos correspondientes a mensajes partidistas a favor de un partido político, cuando así se justifique.

Los partidos políticos en ningún momento podrán contratar o adquirir, por sí o por terceras personas, tiempos en cualquier modalidad de radio y televisión.

Ninguna otra persona física o moral, sea a título propio o por cuenta de terceros, podrá contratar propaganda en radio y televisión dirigida a influir en las preferencias electorales de los ciudadanos, ni a favor o en contra de partidos políticos o de candidatos a cargos de elección popular. Queda prohibida la transmisión en territorio nacional de este tipo de mensajes contratados en el extranjero.

Las disposiciones contenidas en los dos párrafos anteriores deberán ser cumplidas en el ámbito de los estados y el Distrito Federal conforme a la legislación aplicable.

Apartado B. Para fines electorales en las entidades federativas, el Instituto Federal Electoral administrará los tiempos que correspondan al Estado en radio y televisión en las estaciones y canales de cobertura en la entidad de que se trate, conforme a lo siguiente y a lo que determine la ley:

a) Para los casos de los procesos electorales locales con jornadas comiciales coincidentes con la federal, el tiempo asignado en cada entidad federativa estará comprendido dentro del total disponible conforme a los incisos a), b) y c) del apartado A de esta base;

b) Para los demás procesos electorales, la asignación se hará en los términos de la ley, conforme a los criterios de esta base constitucional, y

c) La distribución de los tiempos entre los partidos políticos, incluyendo a los de registro local, se realizará de acuerdo a los criterios señalados en el apartado A de esta base y lo que determine la legislación aplicable.

Cuando a juicio del Instituto Federal Electoral el tiempo total en radio y televisión a que se refieren este apartado y el anterior fuese insuficiente para sus propios fines o los de otras autoridades electorales, determinará lo conducente para cubrir el tiempo faltante, conforme a las facultades que la ley le confiera.

Apartado C. En la propaganda política o electoral que difundan los partidos deberán abstenerse de expresiones que denigren a las instituciones y a los propios partidos, o que calumnien a las personas.

Durante el tiempo que comprendan las campañas electorales federales y locales y hasta la conclusión de la respectiva jornada comicial, deberá suspenderse la difusión en los medios de comunicación social de toda propaganda gubernamental, tanto de los poderes federales y estatales, como de los municipios, órganos de gobierno del Distrito Federal, sus delegaciones y cualquier otro ente público. Las únicas excepciones a lo anterior serán las campañas de información de las autoridades electorales, las relativas a servicios educativos y de salud, o las necesarias para la protección civil en casos de emergencia.

Apartado D. Las infracciones a lo dispuesto en esta base serán sancionadas por el Instituto Federal Electoral mediante procedimientos expeditos, que podrán incluir la orden de cancelación inmediata de las transmisiones en radio y televisión, de concesionarios y permisionarios, que resulten violatorias de la ley.

IV. La ley establecerá los plazos para la realización de los procesos partidistas de selección y postulación de candidatos a cargos de elección popular, así como las reglas para las precampañas y las campañas electorales.

La duración de las campañas en el año de elecciones para Presidente de la República, senadores y diputados federales será de noventa días; en el año en que sólo se elijan diputados federales, las campañas durarán sesenta días. En ningún caso las precampañas excederán las dos terceras partes del tiempo previsto para las campañas electorales.

La violación a estas disposiciones por los partidos o cualquier otra persona física o moral será sancionada conforme a la ley.

V. La organización de las elecciones federales es una función estatal que se realiza a través de un organismo público autónomo denominado Instituto Federal Electoral, dotado de personalidad jurídica y patrimonio propios, en cuya integración participan el Poder Legislativo de la Unión, los partidos políticos nacionales y los ciudadanos, en los términos que ordene la ley. En el ejercicio de esta función estatal, la certeza, legalidad, independencia, imparcialidad y objetividad serán principios rectores.

El Instituto Federal Electoral será autoridad en la materia, independiente en sus decisiones y funcionamiento y profesional en su desempeño; contará en su estructura con órganos de dirección, ejecutivos, técnicos y de vigilancia. El Consejo General será su órgano superior de dirección y se integrará por un consejero Presidente y ocho consejeros electorales, y concurrirán, con voz pero sin voto, los consejeros del Poder Legislativo, los representantes de los partidos políticos y un Secretario Ejecutivo; la ley determinará las reglas para la organización y funcionamiento de los órganos, así como las relaciones de mando entre éstos. Los órganos ejecutivos y técnicos dispondrán del personal calificado necesario para prestar el servicio profesional electoral. Una Contraloría General tendrá a su cargo, con autonomía técnica y de gestión, la fiscalización de todos los ingresos y egresos del Instituto. Las disposiciones de la ley electoral y del Estatuto que con base en ella apruebe el Consejo General, regirán las relaciones de trabajo con los servidores del organismo público. Los órganos de vigilancia del padrón electoral se integrarán mayoritariamente por representantes de los partidos políticos nacionales. Las mesas directivas de casilla estarán integradas por ciudadanos.

El consejero Presidente durará en su cargo seis años y podrá ser reelecto una sola vez. Los consejeros electorales durarán en su cargo nueve años, serán renovados en forma escalonada y no podrán ser reelectos. Según sea el caso, uno y otros serán elegidos sucesivamente por el voto de las dos terceras partes de los miembros presentes de la Cámara de Diputados, a propuesta de los grupos parlamentarios, previa realización de una amplia consulta a la sociedad. De darse la falta absoluta del consejero Presidente o de cualquiera de los consejeros electorales, el sustituto será elegido para concluir el periodo de la vacante. La ley establecerá las reglas y el procedimiento correspondientes.

El consejero Presidente y los consejeros electorales no podrán tener otro empleo, cargo o comisión, con excepción de aquellos en que actúen en representación del Consejo General y de los que desempeñen en asociaciones docentes, científicas, culturales, de investigación o de beneficencia, no remunerados. La retribución que perciban será igual a la prevista para los Ministros de la Suprema Corte de Justicia de la Nación.

El titular de la Contraloría General del Instituto será designado por la Cámara de Diputados con el voto de las dos terceras partes de sus miembros presentes a propuesta de instituciones públicas de educación superior, en la forma y términos que determine la ley. Durará seis años en el cargo y podrá ser reelecto por una sola vez. Estará adscrito administrativamente a la presidencia del Consejo General y mantendrá la coordinación técnica necesaria con la entidad de fiscalización superior de la Federación.

El Secretario Ejecutivo será nombrado con el voto de las dos terceras partes del Consejo General a propuesta de su Presidente.

La ley establecerá los requisitos que deberán reunir para su designación el consejero presidente del Consejo General, los consejeros electorales, el Contralor General y el Secretario Ejecutivo del Instituto Federal Electoral; quienes hayan fungido como consejero Presidente, consejeros electorales y Secretario Ejecutivo no podrán ocupar, dentro de los dos años siguientes a la fecha de su retiro, cargos en los poderes públicos en cuya elección hayan participado.

Los consejeros del Poder Legislativo serán propuestos por los grupos parlamentarios con afiliación de partido en alguna de las Cámaras. Sólo habrá un Consejero por cada grupo parlamentario no obstante su reconocimiento en ambas Cámaras del Congreso de la Unión.

El Instituto Federal Electoral tendrá a su cargo en forma integral y directa, además de las que le determine la ley, las actividades relativas a la capacitación y educación cívica, geografía electoral, los derechos y prerrogativas de las agrupaciones y de los partidos políticos, al padrón y lista de electores, impresión de materiales electorales, preparación de la jornada electoral, los cómputos en los términos que señale la ley, declaración de validez y otorgamiento de constancias en las elecciones de diputados y senadores, cómputo de la elección de Presidente de los Estados Unidos Mexicanos en cada uno de los distritos electorales uninominales, así como la regulación de la observación electoral y de las encuestas o sondeos de opinión con fines electorales. Las sesiones de todos los órganos colegiados de dirección serán públicas en los términos que señale la ley.

La fiscalización de las finanzas de los partidos políticos nacionales estará a cargo de un órgano técnico del Consejo General del Instituto Federal Electoral, dotado de autonomía de gestión, cuyo titular será designado por el voto de las dos terceras partes del propio Consejo a propuesta del consejero Presidente. La ley desarrollará la integración y funcionamiento de dicho órgano, así como los procedimientos para la aplicación de sanciones por el Consejo General. En el cumplimiento de sus atribuciones el órgano técnico no estará limitado por los secretos bancario, fiduciario y fiscal.

El órgano técnico será el conducto para que las autoridades competentes en materia de fiscalización partidista en el ámbito de las entidades federativas puedan superar la limitación a que se refiere el párrafo anterior.

El Instituto Federal Electoral asumirá mediante convenio con las autoridades competentes de las entidades federativas que así lo soliciten, la organización de procesos electorales locales, en los términos que disponga la legislación aplicable.

VI. Para garantizar los principios de constitucionalidad y legalidad de los actos y resoluciones electorales, se establecerá un sistema de medios de impugnación en los términos que señalen esta Constitución y la ley. Dicho sistema dará definitividad a las distintas etapas de los procesos electorales y garantizará la protección de los derechos políticos de los ciudadanos de votar, ser votados y de asociación, en los términos del artículo 99 de esta Constitución.

En materia electoral la interposición de los medios de impugnación, constitucionales o legales, no producirá efectos suspensivos sobre la resolución o el acto impugnado.

Artículo 85. Si al comenzar un periodo constitucional no se presentase el presidente electo, o la elección no estuviere hecha o declarada válida el 1o. de diciembre, cesará, sin embargo, el Presidente cuyo periodo haya concluido y se encargará desde luego del Poder Ejecutivo, en calidad de Presidente interino, el que designe el Congreso de la Unión, o en su falta con el carácter de provisional, el que designe la Comisión Permanente, procediéndose conforme a lo dispuesto en el artículo anterior.

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Artículo 97. ...

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Artículo 99. El Tribunal Electoral será, con excepción de lo dispuesto en la fracción II del artículo 105 de esta Constitución, la máxima autoridad jurisdiccional en la materia y órgano especializado del Poder Judicial de la Federación.

Para el ejercicio de sus atribuciones, el Tribunal funcionará en forma permanente con una Sala Superior y salas regionales; sus sesiones de resolución serán públicas, en los términos que determine la ley. Contará con el personal jurídico y administrativo necesario para su adecuado funcionamiento.

La Sala Superior se integrará por siete Magistrados Electorales. El Presidente del Tribunal será elegido por la Sala Superior, de entre sus miembros, para ejercer el cargo por cuatro años.

Al Tribunal Electoral le corresponde resolver en forma definitiva e inatacable, en los términos de esta Constitución y según lo disponga la ley, sobre:

I. Las impugnaciones en las elecciones federales de diputados y senadores;

II. Las impugnaciones que se presenten sobre la elección de Presidente de los Estados Unidos Mexicanos que serán resueltas en única instancia por la Sala Superior.

Las salas Superior y regionales del Tribunal sólo podrán declarar la nulidad de una elección por las causales que expresamente se establezcan en las leyes.

La Sala Superior realizará el cómputo final de la elección de Presidente de los Estados Unidos Mexicanos, una vez resueltas las impugnaciones que se hubieren interpuesto sobre la misma, procediendo a formular, en su caso, la declaración de validez de la elección y la de Presidente Electo respecto del candidato que hubiese obtenido el mayor número de votos.

III. Las impugnaciones de actos y resoluciones de la autoridad electoral federal, distintas a las señaladas en las dos fracciones anteriores, que violen normas constitucionales o legales;

IV. Las impugnaciones de actos o resoluciones definitivos y firmes de las autoridades competentes de las entidades federativas para organizar y calificar los comicios o resolver las controversias que surjan durante los mismos, que puedan resultar determinantes para el desarrollo del proceso respectivo o el resultado final de las elecciones. Esta vía procederá solamente cuando la reparación solicitada sea material y jurídicamente posible dentro de los plazos electorales y sea factible antes de la fecha constitucional o legalmente fijada para la instalación de los órganos o la toma de posesión de los funcionarios elegidos;

V. Las impugnaciones de actos y resoluciones que violen los derechos político electorales de los ciudadanos de votar, ser votado y de afiliación libre y pacífica para tomar parte en los asuntos políticos del país, en los términos que señalen esta Constitución y las leyes. Para que un ciudadano pueda acudir a la jurisdicción del Tribunal por violaciones a sus derechos por el partido político al que se encuentre afiliado, deberá haber agotado previamente las instancias de solución de conflictos previstas en sus normas internas, la ley establecerá las reglas y plazos aplicables;

VI. Los conflictos o diferencias laborales entre el Tribunal y sus servidores;

VII. Los conflictos o diferencias laborales entre el Instituto Federal Electoral y sus servidores;

VIII. La determinación e imposición de sanciones por parte del Instituto Federal Electoral a partidos o agrupaciones políticas o personas físicas o morales, nacionales o extranjeras, que infrinjan las disposiciones de esta Constitución y las leyes, y

IX. Las demás que señale la ley.

Las salas del Tribunal Electoral harán uso de los medios de apremio necesarios para hacer cumplir de manera expedita sus sentencias y resoluciones, en los términos que fije la ley.

Sin perjuicio de lo dispuesto por el artículo 105 de esta Constitución, las salas del Tribunal Electoral podrán resolver la no aplicación de leyes sobre la materia electoral contrarias a la presente Constitución. Las resoluciones que se dicten en el ejercicio de esta facultad se limitarán al caso concreto sobre el que verse el juicio. En tales casos la Sala Superior informará a la Suprema Corte de Justicia de la Nación.

Cuando una sala del Tribunal Electoral sustente una tesis sobre la inconstitucionalidad de algún acto o resolución o sobre la interpretación de un precepto de esta Constitución, y dicha tesis pueda ser contradictoria con una sostenida por las salas o el Pleno de la Suprema Corte de Justicia, cualquiera de los Ministros, las salas o las partes, podrán denunciar la contradicción en los términos que señale la ley, para que el pleno de la Suprema Corte de Justicia de la Nación decida en definitiva cuál tesis debe prevalecer. Las resoluciones que se dicten en este supuesto no afectarán los asuntos ya resueltos.

La organización del Tribunal, la competencia de las salas, los procedimientos para la resolución de los asuntos de su competencia, así como los mecanismos para fijar criterios de jurisprudencia obligatorios en la materia, serán los que determinen esta Constitución y las leyes.

La Sala Superior podrá, de oficio, a petición de parte o de alguna de las salas regionales, atraer los juicios de que conozcan éstas; asimismo, podrá enviar los asuntos de su competencia a las salas regionales para su conocimiento y resolución. La ley señalará las reglas y los procedimientos para el ejercicio de tales facultades.

La administración, vigilancia y disciplina en el Tribunal Electoral corresponderán, en los términos que señale la ley, a una Comisión del Consejo de la Judicatura Federal, que se integrará por el Presidente del Tribunal Electoral, quien la presidirá; un Magistrado Electoral de la Sala Superior designado por insaculación; y tres miembros del Consejo de la Judicatura Federal. El Tribunal propondrá su presupuesto al Presidente de la Suprema Corte de Justicia de la Nación para su inclusión en el proyecto de Presupuesto del Poder Judicial de la Federación. Asimismo, el Tribunal expedirá su Reglamento Interno y los acuerdos generales para su adecuado funcionamiento.

Los Magistrados Electorales que integren las salas Superior y regionales serán elegidos por el voto de las dos terceras partes de los miembros presentes de la Cámara de Senadores a propuesta de la Suprema Corte de Justicia de la Nación. La elección de quienes las integren será escalonada, conforme a las reglas y al procedimiento que señale la ley.

Los Magistrados Electorales que integren la Sala Superior deberán satisfacer los requisitos que establezca la ley, que no podrán ser menores a los que se exigen para ser Ministro de la Suprema Corte de Justicia de la Nación, y durarán en su encargo nueve años improrrogables. Las renuncias, ausencias y licencias de los Magistrados Electorales de la Sala Superior serán tramitadas, cubiertas y otorgadas por dicha Sala, según corresponda, en los términos del artículo 98 de esta Constitución.

Los Magistrados Electorales que integren las salas regionales deberán satisfacer los requisitos que señale la ley, que no podrán ser menores a los que se exige para ser Magistrado de Tribunal Colegiado de Circuito. Durarán en su encargo nueve años improrrogables, salvo si son promovidos a cargos superiores.

En caso de vacante definitiva se nombrará a un nuevo Magistrado por el tiempo restante al del nombramiento original.

El personal del Tribunal regirá sus relaciones de trabajo conforme a las disposiciones aplicables al Poder Judicial de la Federación y a las reglas especiales y excepciones que señale la ley.

Artículo 108. Para los efectos de las responsabilidades a que alude este Título se reputarán como servidores públicos a los representantes de elección popular, a los miembros del Poder Judicial Federal y del Poder Judicial del Distrito Federal, los funcionarios y empleados y, en general, a toda persona que desempeñe un empleo, cargo o comisión de cualquier naturaleza en el Congreso de la Unión, en la Asamblea Legislativa del Distrito Federal o en la Administración Pública Federal o en el Distrito Federal, así como a los servidores públicos de los organismos a los que esta Constitución otorgue autonomía, quienes serán responsables por los actos u omisiones en que incurran en el desempeño de sus respectivas funciones.

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Artículo 116. ...

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IV. Las Constituciones y leyes de los Estados en materia electoral garantizarán que:

a) Las elecciones de los gobernadores, de los miembros de las legislaturas locales y de los integrantes de los ayuntamientos se realicen mediante sufragio universal, libre, secreto y directo; y que la jornada comicial tenga lugar el primer domingo de julio del año que corresponda. Los Estados cuyas jornadas electorales se celebren en el año de los comicios federales y no coincidan en la misma fecha de la jornada federal, no estarán obligados por esta última disposición;

b) En el ejercicio de la función electoral, a cargo de las autoridades electorales, sean principios rectores los de certeza, imparcialidad, independencia, legalidad y objetividad;

c) Las autoridades que tengan a su cargo la organización de las elecciones y las jurisdiccionales que resuelvan las controversias en la materia, gocen de autonomía en su funcionamiento e independencia en sus decisiones;

d) Las autoridades electorales competentes de carácter administrativo puedan convenir con el Instituto Federal Electoral se haga cargo de la organización de los procesos electorales locales;

e) Los partidos políticos sólo se constituyan por ciudadanos sin intervención de organizaciones gremiales, o con objeto social diferente y sin que haya afiliación corporativa. Asimismo tengan reconocido el derecho exclusivo para solicitar el registro de candidatos a cargos de elección popular, con excepción de lo dispuesto en el artículo 2o., apartado A, fracciones III y VII, de esta Constitución;

f) Las autoridades electorales solamente puedan intervenir en los asuntos internos de los partidos en los términos que expresamente señalen;

g) Los partidos políticos reciban, en forma equitativa, financiamiento público para sus actividades ordinarias permanentes y las tendientes a la obtención del voto durante los procesos electorales. Del mismo modo se establezca el procedimiento para la liquidación de los partidos que pierdan su registro y el destino de sus bienes y remanentes;

h) Se fijen los criterios para establecer los límites a las erogaciones de los partidos políticos en sus precampañas y campañas electorales, así como los montos máximos que tengan las aportaciones de sus simpatizantes, cuya suma total no excederá el diez por ciento del tope de gastos de campaña que se determine para la elección de gobernador; los procedimientos para el control y vigilancia del origen y uso de todos los recursos con que cuenten los partidos políticos; y establezcan las sanciones por el incumplimiento a las disposiciones que se expidan en estas materias;

i) Los partidos políticos accedan a la radio y la televisión, conforme a las normas establecidas por el apartado B de la base III del artículo 41 de esta Constitución;

j) Se fijen las reglas para las precampañas y las campañas electorales de los partidos políticos, así como las sanciones para quienes las infrinjan. En todo caso, la duración de las campañas no deberá exceder de noventa días para la elección de gobernador, ni de sesenta días cuando sólo se elijan diputados locales o ayuntamientos; las precampañas no podrán durar más de las dos terceras partes de las respectivas campañas electorales;

k) Se instituyan bases obligatorias para la coordinación entre el Instituto Federal Electoral y las autoridades electorales locales en materia de fiscalización de las finanzas de los partidos políticos, en los términos establecidos en los dos últimos párrafos de la base V del artículo 41 de esta Constitución;

l) Se establezca un sistema de medios de impugnación para que todos los actos y resoluciones electorales se sujeten invariablemente al principio de legalidad. Igualmente, que se señalen los supuestos y las reglas para la realización, en los ámbitos administrativo y jurisdiccional, de recuentos totales o parciales de votación;

m) Se fijen las causales de nulidad de las elecciones de gobernador, diputados locales y ayuntamientos, así como los plazos convenientes para el desahogo de todas las instancias impugnativas, tomando en cuenta el principio de definitividad de las etapas de los procesos electorales, y

n) Se tipifiquen los delitos y determinen las faltas en materia electoral, así como las sanciones que por ellos deban imponerse.

V. a VII. ...

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Artículo 122. ...

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A ...

B. ...

C ...

BASE PRIMERA.- ...

I. a IV. ...

V. La Asamblea Legislativa, en los términos del Estatuto de Gobierno, tendrá las siguientes facultades:

a) al e) ...

f) Expedir las disposiciones que garanticen en el Distrito Federal elecciones libres y auténticas, mediante sufragio universal, libre, secreto y directo; sujetándose a las bases que establezca el Estatuto de Gobierno, las cuales cumplirán los principios y reglas establecidos en los incisos b) al n) de la fracción IV del artículo 116 de esta Constitución, para lo cual las referencias que los incisos j) y m) hacen a gobernador, diputados locales y ayuntamientos se asumirán, respectivamente, para Jefe de Gobierno, diputados a la Asamblea Legislativa y Jefes Delegacionales;

g) al o) ...

BASE SEGUNDA a BASE QUINTA ...

D al H ...

Artículo 134. ...

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Los servidores públicos de la Federación, los Estados y los municipios, así como del Distrito Federal y sus delegaciones, tienen en todo tiempo la obligación de aplicar con imparcialidad los recursos públicos que están bajo su responsabilidad, sin influir en la equidad de la competencia entre los partidos políticos.

La propaganda, bajo cualquier modalidad de comunicación social, que difundan como tales, los poderes públicos, los órganos autónomos, las dependencias y entidades de la administración pública y cualquier otro ente de los tres órdenes de gobierno, deberá tener carácter institucional y fines informativos, educativos o de orientación social. En ningún caso esta propaganda incluirá nombres, imágenes, voces o símbolos que impliquen promoción personalizada de cualquier servidor público.

Las leyes, en sus respectivos ámbitos de aplicación, garantizarán el estricto cumplimiento de lo previsto en los dos párrafos anteriores, incluyendo el régimen de sanciones a que haya lugar.

TRANSITORIOS

Artículo Primero. El presente Decreto entrará en vigor el día siguiente al de su publicación en el Diario Oficial de la Federación.

Artículo Segundo. Por única vez el Instituto Federal Electoral deberá establecer, conforme a las bases legales que se expidan, tope de gastos para campaña presidencial en el año 2008, sólo para efecto de determinar el monto total del financiamiento privado que podrá obtener anualmente cada partido político.

Artículo Tercero. El Congreso de la Unión deberá realizar las adecuaciones que correspondan en las leyes federales en un plazo máximo de treinta días naturales contados a partir del inicio de la vigencia de este Decreto.

Artículo Cuarto. Para los efectos de lo establecido en el tercer párrafo de la base V del artículo 41 de esta Constitución, en un plazo no mayor a 30 días naturales contados a partir de la entrada en vigor del presente Decreto, la Cámara de Diputados procederá a integrar el Consejo General del Instituto Federal Electoral conforme a las siguientes bases:

a) Elegirá a un nuevo consejero Presidente, cuyo mandato concluirá el 30 de octubre de 2013; llegado el caso, el así nombrado podrá ser reelecto por una sola vez, en los términos de lo establecido en el citado párrafo tercero del artículo 41 de esta Constitución;

b) Elegirá, dos nuevos consejeros electorales, cuyo mandato concluirá el 30 de octubre de 2016.

c) Elegirá, de entre los ocho consejeros electorales en funciones a la entrada en vigor de este Decreto, a tres que concluirán su mandato el 15 de agosto de 2008 y a tres que continuarán en su encargo hasta el 30 de octubre de 2010;

d) A más tardar el 15 de agosto de 2008, elegirá a tres nuevos consejeros electorales que concluirán su mandato el 30 de octubre de 2013.

Los consejeros electorales y el consejero Presidente del Consejo General del Instituto Federal Electoral, en funciones a la entrada en vigor del presente Decreto, continuarán en sus cargos hasta en tanto la Cámara de Diputados da cumplimiento a lo dispuesto en el presente artículo. Queda sin efectos el nombramiento de consejeros electorales suplentes del Consejo General del Instituto Federal Electoral establecido por el Decreto publicado en el Diario Oficial de la Federación de fecha 31 de octubre de 2003.

Artículo Quinto. Para los efectos de la renovación escalonada de los Magistrados Electorales de la Sala Superior y de las salas regionales del Tribunal Electoral del Poder Judicial de la Federación a que se refiere el artículo 99 de esta Constitución, se estará a lo que determine la Ley Orgánica del Poder Judicial de la Federación.

Artículo Sexto. Las legislaturas de los Estados y la Asamblea Legislativa del Distrito Federal deberán adecuar su legislación aplicable conforme a lo dispuesto en este Decreto, a más tardar en un año a partir de su entrada en vigor; en su caso, se observará lo dispuesto en el artículo 105, fracción II, párrafo cuarto, de la Constitución Política de los Estados Unidos Mexicanos.

Los Estados que a la entrada en vigor del presente Decreto hayan iniciado procesos electorales o estén por iniciarlos, realizarán sus comicios conforme lo establezcan sus disposiciones constitucionales y legales vigentes, pero una vez terminado el proceso electoral deberán realizar las adecuaciones a que se refiere el párrafo anterior en el mismo plazo señalado, contado a partir del día siguiente de la conclusión del proceso comicial respectivo.

Artículo Séptimo. Se derogan todas las disposiciones que se opongan al presente Decreto.

México, D.F., a 6 de noviembre de 2007.- Dip. **Ruth Zavaleta Salgado**, Presidenta.- Sen. **Santiago Creel Miranda**, Presidente.- Dip. **Antonio Xavier López Adame**, Secretario.- Sen. **Adrian Rivera Pérez**, Secretario.- Rúbricas."

En cumplimiento de lo dispuesto por la fracción I del Artículo 89 de la Constitución Política de los Estados Unidos Mexicanos, y para su debida publicación y observancia, expido el presente Decreto en la Residencia del Poder Ejecutivo Federal, en la Ciudad de México, Distrito Federal, a los doce días del mes de noviembre de dos mil siete.- **Felipe de Jesús Calderón Hinojosa**.- Rúbrica.- El Secretario de Gobernación, **Francisco Javier Ramírez Acuña**.- Rúbrica.

FEDERAL REGISTER
TUESDAY, NOVEMBER 13, 2007

EXECUTIVE BRANCH
DEPARTMENT OF STATE

FEDERAL REGISTER[1]
TUESDAY, NOVEMBER 13, 2007

EXECUTIVE BRANCH
DEPARTMENT OF STATE

DECREE which amends Articles 6, 41, 85, 99, 108, 116 and 122; adds Article 134, and repeals one paragraph of Article 97 of the Political Constitution of the United Mexican States. **FELIPE DE JESÚS CALDERÓN HINOJOSA,** President of the United Mexican States, informs the population:

That the Honorable Congress of the Union has sent me the following

DECREE

"THE CONGRESS OF THE UNITED MEXICAN STATES, USING THE POWER CONFERRED TO IT UNDER ARTICLE 135 OF THE FEDERAL CONSTITUTION, AND FOLLOWING THE APPROVAL BY THE LEGISLATURES OF THE MAJORITY OF THE HONORABLE STATES OF THE REPUBLIC, DECLARES THE AMENDMENT OF ARTICLES 6, 41, 85, 99, 108, 116 AND 122; THE ADDITION OF ARTICLE 134, AND THE REPEAL OF ONE PARAGRAPH OF ARTICLE 97 OF THE POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES.

SECTION ONE. The first paragraph of Article 6 is amended; Articles 41 and 99 are amended; the first paragraph of Article 85 is amended; the first paragraph of Article 108 is amended; Section IV of Article 116 is amended; Article 122 Paragraph 1 Section V (f) is amended; three paragraphs are added at the end of Article 134; and the third paragraph of Article 97 is repealed, with the amended articles reading as follows:

Article 6. The expression of ideas shall not be subject to any judicial or administrative review, except in the case of attacks against the morality of a person; violations of the rights of third parties; provocation of a crime; or disturbance of the public order. The right of reply will be exercised under the terms established in the law. The government will guarantee the right to information.

...

Article 41. Sovereignty is exercised by the people through the Powers of the Union, in their respective spheres of power, and by the States, with regards to local government, under the terms established in this Federal Constitution and in the respective State Constitutions, which under no circumstance can violate the provisions of the Federal Pact.

The representatives of the Legislative and Executive Branches will be selected through free, authentic and periodic elections, based on the following criteria:

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1 The *Diario Oficial* is the name of the Official Gazette, or equivalent to the United States National Register, in Mexico.

I. Political parties are entities of public interest. The law will establish the rules and requirements for their legal registration and the ways in which they can participate in the electoral process. National political parties have the right to participate in state and municipal elections as well as elections in the capital city (the Federal District).

The main role of political parties is to promote the participation of the people in democratic life; contribute to the election of public officials; and, as citizen organizations, facilitate the access of the population to the exercise of public power in a way that corresponds to the programs, principles and ideas that they themselves promote, based on the universal right to a free, secret and direct vote. Only citizens can form and join political parties, and the participation of unions or other non-political organizations in the creation of political parties is prohibited, as is the existence of relationships between parties and other social organizations that make party membership automatic.[2]

Electoral authorities can only intervene in the internal matters of political parties under the terms established in this Constitution and in the corresponding legislation.[3]

II. The law will guarantee that national political parties have, under equal conditions, the resources necessary to carry out their activities, and will specify the rules regarding the funding of parties and their electoral campaigns. The law must ensure that the amount of public funding received by parties is greater than the funding received by private sources.

During non-election years, the public financing of registered political parties will consist of the funding necessary to support their ordinary and permanent activities; those activities which support the winning of votes in elections; and other specific party activities. Such funding will be granted according to the following conditions, as well as others specified in the law:

a) Public financing to support their ordinary and permanent activities will be set annually, multiplying the total number of registered party members by the equivalent of sixty-five percent of the minimum wage in force in the Federal District. Thirty percent of the total will be equally distributed among the political parties, and the remaining seventy percent will be distributed based on the percentage of votes obtained in the last election for members of the House of Representatives.

b) Public financing of activities designed to win votes during years where there are Presidential as well as Congressional elections, will be equivalent to fifty percent of the funding corresponding to the party for ordinary party activities for that year; for those years where there are only elections for members of the House of Representatives, the funding will be equal to thirty percent of the funding for ordinary activities.

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2 This must be understood in the historical context of Mexico, where there was long time one-party rule and the cooptation by the party of a large variety of civil society organizations and groups, such as labor unions. Thus if one joined a labor union, she or he was automatically affiliated with the party in power, and if it were known that this person voted for another party, she or he would be kicked out of the union. These "official organizations" existed in all realms of public life and constituted one way in which one-party rule was maintained for approximately seventy years.

3 I use the term "corresponding legislation," although the Constitution itself simply says "the law." When the Constitution refers to "the law" in these articles, it is referring to the Federal Code of Electoral Institutions and Procedures, or "*Código Federal de Instituciones y Procedimientos Electorales*," known as the COFIPE.

c) Public financing of specific activities related to education, training, socio-economic and political research, as well as publications, will be equal to three percent of the total amount of the funding of ordinary activities for that year. Thirty percent of this funding will be equally distributed among the political parties, and the remaining seventy percent will be distributed based on the percentage of votes obtained in the last election for members of the House of Representatives.

The law will establish the limits to political party expenditures related to internal candidate selection processes and internal party electoral campaigns. The law will set the maximum amount of supporter contributions, which for each political party, in total, shall not exceed ten percent of the maximum amount of spending set for the last presidential campaign. The law will also establish the procedures for the control and regulation of the origin and use of all party finances and will establish the sanctions which correspond to the violation of said provisions.

In addition, the law will establish the procedure for the fulfillment of any outstanding financial obligations of those political parties that lose their registration, as well as specifying those cases in which their properties and surplus income pass to the government.

III. National political parties will have the continual right to use the media.

Section A. The Federal Electoral Institute will be have complete control over the management of government radio and television air time,[4] as well as that of the national political parties, under the following rules and those to be established in the law:

a) From the time that pre-campaign activities begin, until election day, the Federal Electoral Institute will have forty-eight minutes of airtime daily, which will be divided in two to three minutes of transmissions per hour in every radio station and television channel, during the time schedule referred to in subsection d) of this section;

b) During pre-campaign activities, a total of one minute of transmissions per hour in every radio station and television channel will be available to the political parties in their totality; the time left over will be used according to the provisions established in the law;

c) During the electoral campaign, parties should receive at least eighty-five percent of the total available air time referred to in subsection a) of this section;

d) The transmissions in every radio station and television channel will occur between 6 a.m. and 12 pm;

e) The air time corresponding to the totality of political parties will be distributed among them according to the following criteria: thirty percent will be divided among them equally, and the remaining seventy percent will be divided among them according to the outcome of most recent elections for members of the House of Representations;

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4 The exact language here is as follows: "The Federal Electoral Institute will be the sole authority for the management of its radio and television air time, as well as that of the national political parties,…" (Original reads as follows: "El Instituto Federal Electoral será autoridad única para la administración del tiempo que corresponda al Estado en radio y televisión destinado a sus propios fines y al ejercicio del derecho de los partidos políticos nacionales…"

f) Those national political parties that do not have seats in Congress will only be assigned the radio and television air time that corresponds to them under the equal division set out in last subsection, and

g) Apart from that which is established in sub-section a) and b) of this section, and outside of federal electoral pre-campaign and campaign periods, twelve percent of the total air time in radio, television and other media sources assigned under the corresponding law to the government will be allocated to Federal Electoral Institute. Of this airtime, the Institute will equally distribute fifty percent among the national political parties. It will use the remaining air time for its own purposes or for those of other electoral authorities, both federal and state. Each national political party will use the corresponding time assigned to it for a five minutes program every month and the rest for twenty second long messages. The transmissions referred in this sub-section will be made according to a schedule established by the Institute in accordance with that established in subsection d) of this section. Under special circumstances and when justified, the Institute can grant the total time destined to all the political parties to one political party.

Under no circumstance can political parties purchase or other acquire any kind of radio and television air time, either directly or through a third party.

No other natural or legal person, directly or through a third party, can purchase propaganda in radio and television meant to influence citizens' electoral preferences, either in favor or against political parties or candidates to public office. The transmission in Mexico of these kinds of messages purchased outside of the country is strictly prohibited.

The provisions of the two previous paragraphs shall be complied with in the states and the Federal District, according to applicable laws or legislation.[5]

Section B. With regards to state elections, the Federal Electoral Institute will manage corresponding government air time in radio and television on stations and channels in the specific state at question according to the following criteria, as well as that which is established in the law:

a) In the case of local electoral processes which coincide with federal elections, time assigned in each state will be included in the total time available according to Section A subsections a), b) and c) of this Article;

b) Regarding other electoral processes, the distribution will be done according to that which is established in the law, which will follow the criteria found in this Article, and

c) The distribution of air time among political parties, including those with local registration, will be carried out according to the criteria found in Section A of this Article and that which is stipulated in the applicable legislation.

Should the Federal Electoral Institute judge that the total air time in radio and television referred to in this section and the previous one is not sufficient for its own needs or that of

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5 An interpretative reading of this paragraph could read as, "whose legislation should adjust to said provision." The intent here is to harmonize state laws federal laws in this area.

other electoral authorities, it will determine any necessary action to take to acquire the additional time need according to the powers granted to it by law.

Section C. In the political or electoral propaganda that the parties distribute, they should refrain from using language that degrades government institutions or political parties, or is slanderous against a person.

During federal and local electoral campaigns and until the end of the elections, the distribution of any kind of government propaganda in the media, whether it be federal, state or municipal government, or that of the Federal District or any of its delegations,[6] or any other public entity, should be suspended. The only exception will be information campaigns of electoral authorities, those related to education and health services, or those that are necessary for the protection of the population in case of an emergency.

Section D. Violations of the provisions of this Article will be sanctioned by Federal Electoral Institute through speedy procedures which may include an immediate order of suspension of radio and television transmissions, acquired with concessionaries or other contracted parties, which result in violations of the law.

IV. The law will stipulate the time frame for carrying out internal party selection processes of candidates for public office, as well as for electoral pre-campaigns and campaigns.

In those years where there will be elections for President, Senators and members of the House of Representatives, the length of campaigns will be ninety days. Those years when only members of the House of Representatives are elected, campaigns will last sixty days. In no case may pre-campaigns last longer than two thirds of the time allocated for electoral campaigns.

The violation of these provisions by political parties or any other natural or legal person will be sanctioned under the terms established in the law.

V. The organization of federal elections is a government function carried by the Federal Electoral Institute, a public agency which has autonomy, legal capacity, and its own property and assets. The federal legislature, national political parties, and civil society participate in the selection of its officials under the terms established by law. The work of the Institute will be guided by the principles of certainty, legality, independence, impartiality and objectivity.

The Federal Electoral Institute will be the ultimate authority in electoral matters, and will engage in its work with independence and professionalism. Its internal structure will include managing, executive, technical and supervising bodies. The General Council will be the Institute's supreme management body and will be made up of a President and eight council members.[7] Representatives from Congress and political parties will participate in the Council but will not have a vote; the same is true for the Council's Executive Secretary. The organizational structure, powers and responsibilities of the different divisions of the General Council, as well as the hierarchy of power among them, will be determined in the relevant legislation. The management and technical divisions will have the necessary qualified personnel to carry out

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6 Mexico City, the Federal District ("*Distrito Federal*") is divided into delegations ("*delegaciones*"), each of which have a local government structure, with elected officials and other government infrastructure.

7 The eight council members are called "*consejores electorales*."

its electoral functions in a professional manner. An autonomous Auditor General will be in charge of the supervision of all the finances of the Institute. The relevant provisions of the electoral law and the Statute of the General Council, which the Council will approve based on said provisions, will guide the labor relations with the employees of this public agency. The supervision of electoral rolls will be done by units composed in their majority by representatives of national political parties. Electoral booths will be supervised by committees made up of members of civil society.

The President of the Council will serve a six year term and can be re-elected for one additional term. The other Council members will be selected in staggered appointment processes,[8] and will serve nine year terms, with no possibility of re-election. Council members will be nominated by parliamentary groups and, following a process of extensive civil society consultations, appointed by the vote of two-thirds of members of the House of Representatives present. Should the Council President or any of the Council members leave their post,[9] a substitute will be elected to conclude their term. The relevant rules and procedures will be established in the law.

The President and other Council members can not have any other employment, post or commission, except those in which they act in representation of the General Council and those carried-out without remuneration in academic, scientific, cultural, research or charitable institutions. Their salaries will be equal to that of the Justices of the Mexican Supreme Court.

The candidate for Auditor General of the Federal Electoral Institute will be proposed by public institutions of higher education and ratified by the House of Representatives[10] with the vote of two thirds of members present, under the terms and formalities stipulated in the law. She or he serves a six year term and can be reelected for one additional term. In the organizational structure of the Institute, she or he will be a part of the office of the President of the General Council, and will engage in all necessary technical coordination with the Federal Auditor General's office.

The Executive Secretary of the General Council will be proposed by the Council President and appointed by the vote of two thirds of the members of the Council.

The law will establish the required qualifications to be appointed as a member or President of the General Council, Auditor General or Executive Secretary of Federal Electoral Institute. For two years following their tenure, the President of the Council as well as other Council members and the Executive Secretary can not hold any government post in agencies in which they participated in the organization of elections.

The Congressional Council members will be proposed by parliamentary groups affiliated to a political party in either one of the chambers. There can only be one representative from any one parliamentary group regardless of its existence in both chambers of Congress.

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8 The term in Spanish is "*elecciones escalonadas*," meaning not all Council members are selected in the same year but in differing years, such as is done with members of the Mexican House of Representatives, for instance.

9 The term used in the law, in Spanish, is "falta absoluta," which includes leaving the post for any reason, voluntary or involuntary, including not only resignation but death, removal (impeachment), etc.

10 This can also be translated as Chamber of Deputies. In Mexico it is referred to as the *Cámara de Diputados*, one of two chambers of the Federal Congress (the other being the Senate, or *Senado*).

In addition those activities stipulated in the law, the Federal Electoral Institute will be directly in charge of activities related to training and civic education; electoral districting; the rights and responsibilities of political associations and parties; electoral rolls and voter lists; printing of electoral materials; preparation of elections; the counting of votes, under the terms established in the law, in congressional elections (both for deputies and senators) as well as the declaration of the validity of said elections and the official recognition of winners; the counting of votes in presidential elections in every one of the electoral districts; as well as the control of election monitoring and any opinion polls related to elections. All the sessions of the divisions that manage the Institute will be public according to the terms set out in the law.

An autonomous technical body[11] within the General Council of the Federal Electoral Institute will be in charge of the supervision and oversight of the funding of national political parties (financial auditing). The head of this technical body will be proposed by the President of the Council and appointed by two-thirds vote of Council members. The make-up and operation of this body will be established in the law, as well as the procedures by which the General Council will apply sanctions for violations to the law. The body will not be limited by banking, financial or tax secrecy laws in its work.

The technical body will be the channel through which authorities charged with the supervision and auditing of political parties at the state level will be able to avoid the limitations set up under banking, financial and secrecy laws, as mentioned in the previous paragraph.

At the request of state electoral authorities, the Federal Electoral Institute will enter into agreements with said authorities to assume the organization of local electoral processes, according to the terms of the applicable legislation.

VI. In order to ensure the constitutionality and legality of electoral acts and decisions, a system of appeals (judicial review) will be established in accordance to the terms of this Constitution and the law. This system will allow for certainty in the different stages of the electoral process and will guarantee the protection of citizens' right to vote, run for public office, and association, in accordance with Article 99 of this Constitution.

In matters of electoral law, appeals, whether they be constitutional or those stipulated by law, will not produce a suspension (injunction) of the ruling or appealed act.

Article 85. Even if, at the beginning of his or her term the President elect does not appear, or, if the election did not taken place or was declared null, on December 1st, the prior President's term will end, and an interim President will be named by the Congress of the Union to temporarily head of the Executive Power, or, if that does not occur, one will be named on a provisional basis by the Permanent Commission, in accordance to that stipulated in the previous article.

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11 The Constitution refers to an "*órgano técnico*." In January 2008, the Code of Electoral Institutions and Procedures was reformed to describe the unit or division within the Federal Electoral Institute that would constitute and take on the responsibilities of the *órgano técnico* referred to in the Constitution, which would be called the "Unidad de Fiscalización de los Recursos de los Partidos Políticos", or the Division/Unit of Financial Supervision/Auditing of Political Parties. *See* the *Diario Oficial* of January 14, 2008. Later that same month, the General Council of the Federal Electoral Institute announced the appointment of the Director of said Unit. *See* the *Diario Oficial* of January 30, 2008.

Article 97. REPEALED.

Article 99. With the exception of that stipulated in Article 105 Section II of this Constitution, the Federal Electoral Courts will be the maximum judicial authorities in electoral matters, and will function as specialized courts within the Federal Judicial branch.

In order to fulfill their function in the proper manner, the Courts will operate on a permanent basis, with a Supreme Federal Electoral Court and Regional Federal Electoral courts. The sessions in which they issue rulings will be public, under the terms stipulated in the law. They will have the legal and administrative staff required for their operation.

The Federal Supreme Electoral Court will be composed of seven Electoral Justices. The President of the Court will be elected by the Justices, and will serve in that capacity for four years.

In accordance with this Constitution and that which is stipulated in the law, the Federal Electoral Courts are in charge of issuing final rulings[12] on the following matters:

I. Challenges or appeals related to elections for members of the federal House of Representatives and Senate;

II. Challenges or appeals related to presidential elections, which will only be considered by the Supreme Federal Electoral Court.

The Supreme Federal Electoral Court and Regional Federal Electoral Courts can only declare the nullity of an election based on one of the grounds of nullity expressly established in the law.

With regards to presidential elections, once all challenges and appeals have been resolved, the Supreme Federal Electoral Court will carry out the final vote count, declaring the validity of the election and the winner based on who won the largest number of votes.

III. The challenge or appeal of the actions or resolutions of federal electoral authorities not mentioned in the two previous sub-sections which violate constitutional or legal norms.

IV. Challenges or appeals of actions or definitive rulings issued by relevant state electoral authorities for the organization and validation of elections or the resolution of conflicts that emerge from said elections, which can be determinant in the electoral process or the final results of the election. The Federal Electora Courts will decide to hear these cases only when the relief sought is materially and legally possible within the electoral time frames and is feasible before the date fixed in the Constitution or law for the elected official to take office;

V. The challenges or appeals of actions or rulings that violate the rights of citizens to vote, run for public office, or associate freely and peacefully in political organizations, under the terms established in this Constitution and the relevant laws. In order for a citizen to take a case to the Federal Electoral Courts for violations of her or his rights by the political party of which she or he is a member, she or he must have previously exhausted the dispute resolution mechanisms established in the internal party rules. The law will establish the applicable rules and time frames for the filing of such cases.

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12 These rulings are not subject to judicial review by other Courts ("*inatacable*.")

VI. Labor law conflicts between the Federal Electoral Courts and its personnel;

VII. Labor law conflicts between the Federal Electoral Institute and its personnel;

VIII. The application of sanctions by the Federal Electoral Institute against political parties or associations, or national or foreign natural or legal persons, who violate the provisions of this Constitution and the respective laws, and

IX. Others which are determined in the law.

The Federal Electoral Courts will use all necessary measures to ensure the speedy compliance with their decisions, under the terms fixed by the law.

Without detriment to that established in Article 105 of this Constitution, the Federal Electoral Courts can rule that an electoral law that is unconstitutional not be applied.[13] The rulings they issue under this power of judicial review are limited to the concrete case at hand. In these cases the Supreme Federal Electoral Court will inform the Mexican Supreme Court of their ruling.

When a Federal Electoral court issues a ruling declaring that a particular action or ruling is unconstitutional, or regarding the interpretation of a provision of this Constitution, and said ruling is contrary to a Supreme Court ruling, one of the Federal Electoral Court Justices or the parties can denounce this contradiction under the terms established in the law, and ask the Mexican Supreme Court of Justice to issue a definitive sentence on which ruling should prevail. The sentences that the Supreme Court of Justice issues in these cases will not affect prior decisions.

The organizational structure of the Federal Electoral Courts, their jurisdiction to hear cases, the procedures to resolve cases that full under their jurisdiction, and the criteria by which they decide which rulings constitute binding precedent in electoral matters, will be determined by this Constitution and the relevant laws.

The Supreme Federal Electoral Court can, on its own will, or based on a request by one of the parties to the case or one of the Regional Courts reviewing a case, grant writ of certiorari and exercise jurisdiction in a case under review by one of said Courts. It can also send cases that fall under its jurisdiction to one of the Regional Electoral Courts for resolution. The law will establish the rules and procedures for the exercise of jurisdiction in such cases.

The management, supervision and discipline of the staff of the Federal Electoral Courts will be undertaken by a Commission of the Federal Judicial Council, which will be made up of the President of the Supreme Federal Electoral Court, who will preside said Commission; one of the Justices of the Supreme Federal Electoral Court who will be chosen randomly, and three members of the Federal Judicial Council. The Supreme Federal Electoral Court will send a proposed budget for the Federal Electoral Courts to the President of the Supreme Court of Justice for inclusion in the proposed Federal Judiciary Budget. In addition, the Supreme Federal Electoral will issue internal rules and regulations and general rules for the proper functioning of the federal electoral courts.

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13 The Federal Electoral Courts' power of judicial review as recognized by the Constitution is limited in the sense that they can declare the unconstitutionality of an electoral law in the particular case at hand and thus rule that it should not be applied in said case, but they can not declare the unconstitutionality of the law and its non applicability in a broad sense. Thus their review is limited to the circumstances of the concrete case at hand and their ruling applies only in that particular case to that particular person—they can not, by way of their rulings, repeal a law.

The Justices of the Supreme Federal Electoral Court and the Regional Electoral Courts will be nominated by the Supreme Court of Justice and ratified by two-thirds vote of Senators present. The election of the Justices of said courts will be staggered, as indicated in the rules and procedures established in the law.

The Justices of the Supreme Federal Electoral Court must meet the qualifications established in the law, which can not be less stringent than those required to be a Justice of the Supreme Court of Justice, and they serve a single nine year term. The resignations and requests for time off from the Justices of the Supreme Federal Electoral Court will be presented and decided upon within the Court, under the terms established in Article 98 of this Constitution.

The Electoral Court Justices of the Regional Courts must meet the qualifications established in the law, which can not be less stringent than those required to be a Federal Circuit Court of Appeals judge. They will serve a single nine year term, unless they are promoted to a higher post.

In case a Justice leaves the post for good, a new Justice will be named to finish the remaining time of her or his term.

The labor law applicable to the staff of the Federal Electoral Courts is that of the Federal Judiciary, as well as those special rules and exceptions found in the law.

Article 108. With regards to the responsibilities set out in this Chapter of the Constitution, elected officials, members of the Federal Judiciary and the Judiciary of the Federal District, the officials and staff and, in general, any person who works in the Congress, in the Legislature of the Federal District or in the federal government or the government of the Federal District, as well as those public officials that work in those agencies to which this Constitution grants autonomy, will be considered public servants, and will thus be responsible for their actions and omissions undertaken while carrying out their respective functions.

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Article 116

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I to III...

IV. State Constitutions and electoral laws must guarantee the following:

a) The elections for governors, members of state legislatures, and local municipal government officials must be by universal, free, secret and direct vote. Elections must take place on the first Sunday in July of the corresponding year. Those states with elections taking place in the same year as federal elections, yet with voting on a different day, will not be bound by the provisions of this sub-section;

b) In their work, electoral authorities must adhere to the principles of certainty, impartiality, independence, legality and objectivity;

c) The authorities in charge of the organization of elections and those judges that resolve electoral cases are autonomous in their work and have independence in their decision-making functions;

d) Relevant administrative electoral authorities can come to an agreement with the Federal Electoral Institute by which the Institute is in charge of organizing the local electoral processes;

e) Only citizens are members of political parties, and the participation of unions or other non-political organizations is prohibited, as is the existence of relationships between parties and other social organizations that make party membership automatic. Only political parties have the right to register candidates for public office, except for those cases which fall under the provisions of Article 2, Part A, Section III and VIII of this Constitution;

f) Electoral authorities can only intervene in the internal affairs of political parties under the terms expressly established in the law;

g) Political parties receive, on an equal basis, public financing for their ordinary and permanent activities and those activities which support the winning of votes in elections. In addition, a procedure is established for the fulfillment of any outstanding financial obligations of those political parties that lose their registration, as well as what will happen to their properties and surplus income.

h) Criteria is established to limit pre-campaign and campaign spending by political parties, as well as limits for campaign contributions from supports, the total of which can not be greater than ten percent of the maximum allowed for spending for the governor's campaign. Procedures for the control and supervision of the origin and use of all the parties' resources must also be established, as well as sanctions for the violation of the rules in these matters;

i) Political parties have access to air time on radio and television, according to the rules established in Part B Section III of Article 41 of this Constitution;

j) Rules are established regarding political party's pre-campaigns and electoral campaigns, as well as sanctions in case of violations. In no case may a governor's campaign last for longer than ninety days, and a campaign for members of the state legislatures or city government officials can not last more than sixty days. Pre-campaigns can not be longer than the equivalent of two thirds of the time allocated for the respective electoral campaign.

k) Mandatory criteria are established for the coordination between the Federal Electoral Institute and state electoral authorities with regards to the supervision and auditing of the finances of political parties, under the terms found the in the last two paragraphs of Article 41, Section V of this Constitution;

l) A system of appeals is established for all electoral acts and rulings which strictly abides by the principle of legality. In addition, criteria and rules must be established and rules around a total or partial recount of votes both by administrative and judicial authorities;

m) Causes are established for the nullity of elections for governor, members of the state legislature, and city government officials, as well as the time period for the resolution of all conflicts or appeals of decisions, taking into account the principle of finality of all stages of electoral processes, and

n) The definition of electoral crimes and the sanction to be applied.

V. to VII...

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Article 122. ...

V. The legislature, under the provisions of the Statute of Government, will have the following powers:

a) to e)...

f) Pass laws that guarantee free and authentic elections in the Federal District, via universal, free, secret and direct vote; conforming to the criteria found in the Statute of Government, and following the principles and rules established in Article 166, Part IV, sub-section b) to n) of this Constitution, in which, references made in sub-section j) and m) to governors, local legislatures and city government officials will apply to the Head of the Federal District Government, Federal District legislators, and Heads of Federal District Delegation governments, respectively.

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Article 134...

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Federal, state and municipal level public officials, as well as those in the government of the Federal District and its delegations, are required at all times to spend the public resources and monies under their control in an impartial manner, without influencing the equality of competition between the political parties.

Any kind of propaganda distributed in any form of media, by the political powers, autonomous agencies, government agencies and offices or any of entity of one of the three branches of government, must be of an official character and serve information, education or other social pursuits. Propaganda can under no circumstances include names, images, voices or symbols that imply the personal promotion of a public official.

The respective laws will guarantee the strict observation of that which is found in the two previous paragraphs, including the sanctions to be imposed in case of violations.

Transitory Articles

Article 1. The present Decree will come into force the day following its publication in the Official Gazette.

Article 2. Under the legal criteria hereby established, the Federal Electoral Institute should establish the spending limits which would apply to a presidential campaign in 2008, with the sole purpose of determining the total amount of private funding which each party can receive annually.

Article 3. The Congress of the Union should make the changes necessary to relevant federal laws within thirty days after this Decree comes into force.

Article 4. With relation to that which is established in Article 41, Section V, paragraph three, within no more than thirty days after this Decree comes into force, the House of Representatives will select the members of the General Council of the Federal Electoral Institute based on the following criteria:

a) They will select a new President of the Council, whose term will end on October 30, 2013. The newly appointed President can be re-elected only once, under the terms of Article 4, paragraph three of this Constitution;

b) They will select two new Council members, whose term will end on October 30, 2016;

c) They will select, among the eight members currently on the Council at the time this Decree comes into force, three to conclude their terms on August 15, 2008 and three to continue in their post until October 30, 2013;

d) No later than August 15, 2008, they will elect three new Council members who will conclude their terms on October 13, 2013.

The current President and members of the General Council of the Federal Electoral Institute will continue in their posts until the House of Representatives completes what is set out in this Article. The selection of alternative or substitute members of the General Council of the Federal Electoral Institute set out in the Decree published in the Official Gazette on October 31, 2003 is repealed.

Article 5. The Law of the Federal Judiciary[14] will determine what will apply in relation to the staggered election of the Justices of the Supreme Federal Electoral Court and the Regional Federal Electoral Courts of the Federal Judiciary which is mentioned in Article 99 of this Constitution.

Article 6. The state legislatures and the Legislative Assembly of the Federal District should adjust and harmonize their respective laws on the basis of that which is established in this Decree within one year after it comes into force, following the provisions of Article 105, Section II, paragraph four of the Political Constitution of the United Mexican States.

Those states which, upon the coming into force of this Decree, have initiated electoral processes or are about to do so, will conduct the campaigns according to the state constitutional and other legal provisions in force prior to this Decree, but once their electoral process is complete, they must make the changes necessary to harmonize their laws with the new Constitutional provisions as mentioned in the previous paragraph and in the same time period, but beginning the day after their respective electoral process is complete.

Article 7. All legal provisions that violate this Decree are repealed.

Mexico City, November 6, 2007."

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14 "*Ley Orgánica del Poder Judicial de la Federación*."

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