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Cynthia Anderson-Barker

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II. ELECTION FRAUD IN MEXICO

A Case Study of Elections in the State of Michoacán on July 12, 1992

CYNTHIA ANDERSON-BARKER*

I. INTRODUCTION: INTEGRITY OF MEXICAN ELECTIONS

Mexico is not a democracy. It is an authoritarian state. For the past sixty-three years, the Party of the Institutional Revolution ("PRI"), Mexico's hegemonic ruling party, has controlled the Presidency and virtually all the state governorships while holding mock "democratic" elections for these offices.¹ Today in Mexico, independent movements for democracy are contesting the PRI's control. Political conflict over election fraud ensues. Human rights violations escalate. Now, because of increasing economic and political links between the United States and Mexico, the integrity and stability of the Mexican political system is suddenly thrust to the center of public debate in both nations.

Issues concerning democratization in Mexico are of paramount concern to citizens and lawmakers in the United States. Mexico, the United States, and Canada are on the verge of entering into a trilateral North American Free Trade Agreement, opening new links among their economic, political, and legal systems.

* M.A. (Latin American Studies), University of California at Los Angeles (UCLA), 1990; J.D., Loyola Law School, Los Angeles, California, 1993. This Article is based on the author's work as a Research Scholar of the Loyola Law School Institute of Latin American Legal Studies. Much of the factual information provided in this Article is based on the author's first-hand knowledge.

1. See generally Kevin J. Middlebrook, *Political Liberalization in an Authoritarian Regime: The Case of Mexico*, in *TRANSITIONS FROM AUTHORITARIAN RULE: LATIN AMERICA* (Guillermo O'Donnell et al. eds., 1986); Bo Anderson & James Cockroft, *Control and Cooptation in Mexican Politics*, in *LATIN AMERICAN RADICALISM: A DOCUMENTARY REPORT ON LEFT AND NATIONAL MOVEMENTS* (Irving Louis Horowitz et al. eds., 1969); JUDITH ADLER HELLMAN, *MEXICO IN CRISIS* (2d ed. 1988); ALAN RIDING, *DISTANT NEIGHBORS: A PORTRAIT OF THE MEXICANS* (1989); Judith Adler Hellman, *Social Control in Mexico*, 12 *COMP. POL.* 225 (1980); Alejandro Portes, *Legislatures Under Authoritarian Regimes: The Case of Mexico*, 5 *J. POL. & MIL. SOC'Y* 185 (1977); Charles L. Davis & Kenneth M. Coleman, *Electoral Changes in the One-Party Dominant Mexican Polity, 1958-73: Evidence from Mexico City*, 16 *J. DEVELOPING AREAS* 523 (1982).

Mexican policy on free trade may be different if there were free elections in Mexico. United States policy may be different if U.S. companies, unions, and officials were dealing with Mexican counterparts whose power derived from democratic elections. By dealing, instead, with counterparts whose powers derive from electoral fraud and "looking the other way" at the lack of democracy in Mexico, the U.S. Government and business sector silence the voices of hundreds of thousands of Mexican citizens who are speaking out for democratic reforms. Furthermore, they ignore Mexico's violation of an international human right recognized by the Universal Declaration of Human Rights, the American Declaration and Convention on Human Rights, and the International Convention on Civil and Political Rights—namely, the right to "free," "fair," "honest," and "genuine" democratic elections.

This Article begins by examining the structures at the national level that impede democratic reform in Mexico. These structures are replicated locally in state constitutions and administrative systems of governance and redress for election irregularities. The Article then turns to the elections held in the State of Michoacán on July 12, 1992 for state governor, eighteen local deputies of majority status,² and twelve local deputies of proportional representation.³ At the time of the election in Michoacán, 52 of the 113 municipalities in the state were governed by the Party of the Democratic Revolution ("PRD"), 3 by the National Action Party ("PAN"), 1 by the Authentic Party of the Mexican Revolution ("PARM"), and 7 were shared co-governments between the PRI and the PRD—a product of the electoral conflicts in December 1989.⁴ This Article focuses on the key components of the system of electoral fraud before the election, on election day, and after the votes are cast. Events occurring in Michoacán are not unique; rather, they exemplify how fraud is engineered in state and national elections.

2. "Majority status" deputyships are those elected by a direct majority vote.

3. "Proportional representation" deputyships are those seats which are apportioned according to the percentage of votes won by each party in a congressional region comprised of several states.

4. *Mexico: Ruling Party Admits Defeat in Municipal Elections*, Inter Press Serv., Dec. 6, 1989, available in LEXIS, Nexis Library, INPRES File.

II. THE SUPERSTRUCTURE OF CONTROL BY THE GOVERNMENT PARTY

A. *The Power of the Presidency*

There is no true separation of powers nor a system of checks and balances in the Mexican political system, even though it is a federal system divided into executive, legislative, and judicial branches. In a phenomenon called "*presidencialismo*," the executive branch monopolizes power through the appointment process and mechanisms of the state. *Presidencialismo* is designed to ensure presidential and state party control of the political process.

The President rules for one six-year term and nominates his own successor.⁵ Article 41 of the Mexican Constitution requires ratification of Presidential nominees by two-thirds of the Chamber of Deputies.⁶ Additionally, the President, through the government party apparatus, designates his party's candidates for the state governorships and removes them at will.⁷ He chooses the Supreme Court Justices and directly controls the Federal Attorney General's office as well as the heads of numerous administrative agencies beneath him. The President is also able to dominate the Congress by controlling the nomination of his party's Deputies and Senators. At the national level, prior to the July 1992 elections, 29 of 31 Governors, 61 of 64 Senators, and 321 of 500 Deputies (legislators) were from the PRI.⁸ As a result of the patronage system and the debt owed by PRI legislators to the President for their nomination, "Congress has never failed to pass a bill proposed by the president and has never overridden a presidential veto or passed a bill opposed by the president."⁹ In fact, according to Javier Livas, legal counsel to the PAN, the President has never had to veto legislation because most legislation is initiated by the President. As a result, the autonomy of lawmakers is curbed. In 1989, President Salinas initiated more than ninety percent of the legislation considered by Congress.¹⁰

5. CONST. art. 83 (Mex.); see also TOM BARRY, RESOURCE CENTER, MEXICO: A COUNTRY GUIDE 17 (1992).

6. CONST. art. 41 (Mex.); see also Andrew Reding & Christopher Whalen, *Fragile Stability: Reform and Repression in Mexico Under Carlos Salinas 1989-91* (World Policy Institute Mexico Project, New York, N.Y.), Dec. 9, 1991, at 7.

7. BARRY, *supra* note 5, at 17.

8. Reding & Whalen, *supra* note 6, at 5.

9. BARRY, *supra* note 5, at 13.

10. *Id.*

The power of the Presidency is also manifest during campaign periods. In Michoacán, during the preelection period, the President directed the utilization of government resources to influence voters. As described in a later section on campaign spending, the President personally initiated the *Programa Nacional de Solidaridad* ("PRONASOL"), or "Solidarity" plan, to facilitate the distribution of goods and services in areas critical for influencing the outcome of the elections.¹¹

B. The Governability Clause

In addition to the power of the Presidency, the "governability clause," set forth in Article 54 of the Mexican Constitution, ensures the ruling party an absolute majority of seats in the Chamber of Deputies (equivalent to the U.S. House of Representatives) with as little as 35% of the popular vote.¹² This is accomplished by giving the party "gaining a simple plurality in the direct vote for Chamber of Deputies, and only 35% of the vote nationwide, the right to half the seats plus one in that body."¹³ The PRI's control of the electoral process ensures the requisite 35% minimum. Opposing coalitions cannot control Congress because the PRI can always outpoll the parties individually. Andrew Reding of the World Policy Institute and Christopher Whalen note that, "[i]n combination with the president's absolute control over ruling party legislators, the 'governability clause' reduces the Mexican Congress to little more than a rubber stamp."¹⁴

C. Judicial Review

Article 107 of the Mexican Constitution prohibits judicial review of legislation.¹⁵ "The [Mexican] Supreme Court has never found a presidential decree, law, or proposed constitutional amendment to be unconstitutional . . ."¹⁶ An individual may petition the court for judicial review of his or her particular case when constitutional rights have been violated. The case cannot, however, be used as a vehicle to strike down legislation, and it has no

11. See *infra* part V.D.

12. CONST. art. 54 (Mex.).

13. Douglas W. Payne, *Mexico: Election Engineering*, 22 FREEDOM REV., Nov.-Dec. 1991, at 20, 22.

14. Reding & Whalen, *supra* note 6, at 4.

15. CONST. art. 107 (Mex.).

16. BARRY, *supra* note 5, at 18.

precedential value; an individual in similar circumstances must file his or her own separate action.¹⁷

D. Federal Control over Election Procedures

Traditionally, the Federal Government has effectively controlled the organization of state elections. This control has been implemented by forcing local governments to conform their election procedures to federal mandates even though state elections are legally independent and are governed by state election laws. After widespread charges of fraud in the 1988 Presidential elections, some reforms were made in the federal election law to allow for more local influence, but federal control remains. In 1989, the Federal Electoral Institute ("IFE") was created to organize and validate national and local election procedures for governor, federal and state deputies, and municipal presidents. This office compiles the list of registered voters and distributes voter registration cards. Each of the registered political parties has one representative on the General Council of the IFE. Nonetheless, the President can appoint six additional "non-partisan" members, giving the PRI a guaranteed majority. Additionally, the political parties represented on the IFE are not independent. Through a process of co-optation and patronage, the PRI has established "satellite parties" to help ensure majority votes in legislative and administrative bodies such as the State Electoral Commission and the local District Electoral Commission.¹⁸ Thus, there are only two viable, true opposition parties in Mexico—the PAN and the PRD.

Finally, the president of the IFE is the PRI Secretary of Government, a cabinet minister also in charge of enforcing domestic order, federal-state relations, and federal intelligence.¹⁹ The independence of the IFE is thus compromised by government control of the Institute.

III. HISTORY OF ELECTION INTEGRITY IN MEXICO

Since the PRI was formed in 1929, numerous organized opposition movements have emerged to challenge the hegemony of the government party. Yet, it has only been since the mid-1980s that

17. RICHARD D. BAKER, *JUDICIAL REVIEW IN MEXICO: A STUDY OF THE AMPARO SUIT 83-85* (1971).

18. See Anderson & Cockcroft, *supra* note 1, at 378, 380.

19. C.O.F.I.P.E. art. 74 (Mex.); Reding & Whalen, *supra* note 6, at 7.

the PRI has encountered real opposition—the PAN in the northern states and the PRD in the State of Mexico and several western states. Numerous reports and studies have been written in the last ten years documenting the history of fraud committed against the PAN and the PRD in national and local elections. Available data include studies on elections in the following states: Mexico (1987, 1991); Jalisco (1988, 1991); Sinaloa (1989); Puebla (1990); San Luís Potosi (1990, 1991); Tabasco (1991); Nuevo León (1991); Chihuahua (1991); and Morelos (1991).²⁰

IV. BACKGROUND TO ELECTIONS IN MICHOACAN

Before 1988, Michoacán politics were dominated by the PRI, although the PAN had a small presence in the state. In July 1988, the National Democratic Front (“FDN”), a coalition of political forces and parties led by Cuauhtémoc Cárdenas, swept the elections, winning the state and twelve out of thirteen federal electoral districts. During this year, Cárdenas ran for President and lost due to manipulation of the vote-count after the election.²¹ In July 1989, the PRD won seven seats for local state deputies out of eighteen legislative districts. Five months later, elections were held for municipal presidents and the PRD won 52 municipal presidencies out of 113. The other seven were shared as cogovernments between the PRD and the PRI—a compromise reached due to popular mobilizations charging the PRI with fraud. In the federal elections of August 1991, the PRI won the thirteen federal deputy seats and a disputed senate seat.²²

Numerically, it should be noted that the number of votes cast for the PRI rose from 127,870 in July 1988, to 506,576 in 1991—an increase of 395% in the state between the two federal elections. In July 1989, during the election for local state deputies, the PRI re-

20. See generally NUESTRA PALABRA: EL FRAUDE ELECTORAL DE 1991 Y LA PARTICIPACION CIUDADANA EN LA LUCHA POR LA DEMOCRACIA (Convergencia de Organismos Civiles por la Democracia ed., 1992) [hereinafter NUESTRA PALABRA]; Cuauhtémoc Rivera Godínez, *Michoacán: Derechos Políticos y Pactos de Civilidad* (Centro de Estudios de la Sociedad Mexicana 1992).

21. Andrew Reding, *Mexico Under Salinas: A Facade of Reform*, 6 WORLD POL'Y J. 685, 687 (1989).

22. . . . *Clean Sweep for PRI*, Int'l Rep., Aug. 21, 1991, available in LEXIS, Nexis Library, IBCINT File.

ceived 184,289 votes. Five months later, in new elections, it received 224,763 votes.²³

In contrast, the FDN (Cárdenas' coalition) received 382,787 votes in July 1988. In the August 1991 federal elections, however, the PRD (the renamed Cárdenas party) received only 291,458 votes. In local elections in July 1989, the PRD received 160,695 votes for its candidates for local deputy, and, in December 1991, it received 220,589 votes for its candidates for municipal presidents.²⁴

The PRI estimated that its gubernatorial candidate would obtain 700,000 votes in the July 12, 1992, election in Michoacán.²⁵ In fact, according to the Government, the PRI received 418,080 votes (52.7%), compared to the PRD's 289,724 votes (36.5%).²⁶ By official count, the PRI actually lost 101,000 votes in less than eleven months.

All these numbers are based on government figures that have been disputed by the PRD as fraudulent. The PRD asserts that it won the July 12, 1992, gubernatorial election, estimating that it received 202,570 votes (50%), compared to the PRI's 179,396 votes (44%).²⁷

What factors account for the precipitous numerical decline in PRD support after 1988? While opinion polls show that the PRD may have lost some political support in the state since the Presidential election of 1988,²⁸ the following examination of the July 12, 1992, election reveals other significant factors influencing the officially-tabulated numerical decline in PRD support.

A. July 1992 Elections in the State of Michoacán: Profile of the Candidates

The PRI's candidate for Governor was Eduardo Villaseñor Peña, ex-president of the National Union of Pig Farmers, ex-mayor

23. Gerardo Galarza, *En Michoacán se Perfila la Lucha Hasta Despues de las Elecciones*, PROCESO, June 15, 1992, at 21.

24. *Id.*

25. *PRI Confident of Win in Gubernatorial Race*, Notimex Mex. News Serv., June 10, 1992, available in LEXIS, Nexis Library, NOTIMX File.

26. *PAN Starts Looking Like an Alternative; Fraud Claims Apart, the PRD Is Clearly Losing Ground*, Latin Am. Wkly. Rep., July 30, 1992, available in LEXIS, Nexis Library, LAN File [hereinafter *PAN Starts Looking Like an Alternative*].

27. Jaime Rivera Velázquez, *Michoacán en Litigio*, NEXOS, Aug. 1992 (Cuaderno), at 3-4.

28. Jaime Rivera Velázquez, *Comentario a una encuesta*, NEXOS, June 1992 (Cuaderno), at 3-4.

of the town of La Piedad, a former federal deputy for the State of Michoacán, entrepreneur, and minority stockholder of Banamex, one of the largest banks in Mexico. The PRD's candidate was Cristóbal Arias Solís, former state president of the PRI and Secretary of Government under Cuauhtémoc Cárdenas when Cárdenas was the PRI Governor of Michoacán from 1980 to 1986. The former PRI member was also a federal deputy—once for the PRI and once for the PRD.

The political discourse of the campaign was dominated by issues concerning election fraud and violence. Villaseñor focused on discrediting the PRD by characterizing it as the party of violence. In addition, according to the PRI, the PRD was responsible for capital flight and the economic recession. A wealthy entrepreneur, Villaseñor also stated that there is no difference between governing a country and running a factory.²⁹

Arias focused on respect for the vote and the need to stop electoral fraud by mobilizing the local citizenry to be involved in the electoral process. He also asked farm workers to oppose recent agrarian reform measures allowing for the privatization of common lands (“*ejidos*”), and stated that the objective of this government initiative was dispossession of the rural peasantry. He repeatedly emphasized the need for a peaceful transition to democracy.

B. *The Role of Election Observers*

Numerous Mexican organizations were present in Michoacán to observe and report on the electoral process, including the National Agreement for Democracy (“ACUDE”), the Citizen's Movement for Democracy (“MCD”), the Convergence of Civil Organizations for Democracy (“*Convergencia*”), and the Mexican Commission for the Defense and Promotion of Human Rights. Prior to the election, MCD's and ACUDE's researchers analyzed ten aspects of the electoral process and issued a report on June 29, 1992, stating that conditions do not exist for fair elections in Michoacán.³⁰ The report criticized (1) the use of government resources in the campaigns, (2) the structure and function of the

29. Centro de Estudios para un Proyecto Nacional, *Michoacán y Chihuahua: El Porvenir de la Democracia*, ESTE PAIS, July 1992, at 4.

30. Teresa Gurza, *La oposición, en desventaja: MCD y ACUDE: No se cumplen en Michoacán los requisitos para comicios limpios*, LA JORNADA, June 30, 1992, at 15.

electoral bodies and the arbitrary manner in which complaints regarding electoral processes prior to election day are handled, (3) the inaccuracies in the voter registration list and the process of compiling the list, (4) the manner in which the state and federal electoral laws ensure that the PRI retains a majority in legislative bodies at the state and federal level, and, particularly (5) how the government party controls state electoral bodies.³¹ The report additionally criticized the use of the government Solidarity program as a means to "buy" votes for the PRI.³²

Convergencia is composed of 150 non-partisan, non-governmental associations and works in twenty-two states in Mexico. One goal of the organization is to strengthen the formation of a new electoral actor, a citizen who demands clean elections, fair rules, and standardized conditions for the conduct of elections. To that end, the organization conducts workshops on local election law and trains citizens to be election observers. *Convergencia* also issues reports based on election observations, utilizing the data collected by local observers and drawing on the resources of academics and lawyers who analyze election processes prior to the election. On July 10, 1992, *Convergencia* issued a report based on a three-month study conducted prior to the election in Michoacán, stating: "[T]he electoral process in Michoacán has so many irregularities that we do not consider the universal criteria of cleanness, freedom and impartiality to be present."³³ *Convergencia* also organized 450 Mexican observers to be present at the polling places in thirty municipalities on election day. Thirty-five percent of that number were from Michoacán and 65% were from other states in Mexico. The observers interviewed voters at 200 polling places. Their findings are noted in the section of this Article on election-day fraud.³⁴

Finally, observers from outside Mexico were present for the election in Michoacán. In response to a request by the MCD, the ACUDE, and *Convergencia*, a group of fourteen individuals from

31. El Movimiento Ciudadano por la Democracia & Acuerdo Nacional para la Democracia, *Dictamen sobre las condiciones de competencia efectiva en el proceso político de Michoacán en el mes de julio de 1992*, 1-9 (June 29, 1992) [hereinafter *Dictamen*].

32. *Id.*

33. Convergencia de Organismos Civiles Por La Democracia, *Informe Preliminar de la Observación del Proceso Electoral Previo a La Jornada Electoral 2* (July 10, 1992) (translation by author).

34. See *infra* part VI.

California, Washington, D.C., and Arizona travelled to Michoacán to witness the national observation process on election day and during the preceding week. The group was composed of writers, academics, professionals, and students. Individual members of the group have been involved in analyzing democratic processes and election issues in both the United States and Mexico. The author of this Article participated in the delegation, in addition to conducting interviews and research in Michoacán. The delegation met with representatives and leaders of the PRI, the PAN, the PRD, and civic organizations, as well as members of the national and international press and lawyers and academics in both Michoacán and Mexico City.

Additionally, representatives from the Council of Freely-Elected Heads of Government, led by Dr. Robert A. Pastor of the Carter Center of Emory University, were present in Mexico to witness the elections in both Michoacán and Chihuahua. Their mandate was to witness the observation of the elections by the eight Mexican observer groups. In a report released the day after the election, the delegation noted the impartiality and dedication of the national observers at the polling places, when it stated:

The local observer groups are new and have flaws, but they are dedicated and could play a vital role in the political process if they are given the kind of support and access to the electoral process that is essential to be effective and to demonstrate their impartiality. Such a role can only succeed as civil society deepens, and the political parties increase their capacity to make the system accountable.³⁵

The delegation, however, expressed grave concern over statements made before the election by Mexican observer groups that conditions did not exist for free and fair elections. In particular, the report criticized the conclusion that the voter registration list was flawed by 30 to 37% in both Michoacán and Chihuahua. The delegation also acknowledged the problems raised by the Mexican observer groups—use of state funds by the governing party, disproportionate spending between the parties, inequitable access to the media, and partiality of election officials. The delegation

35. *Report of the Team Sent by the Council of Freely-Elected Heads of Government To Witness the Observation of the Elections in Michoacán and Chihuahua, Mexico* (The Carter Center of Emory University, Latin American & Caribbean Program, Atlanta, Georgia), July 13, 1992, at 4.

noted, however, that meaningful elections can occur without full resolution of these problems.

Mexican national observers from outside the State of Michoacán, as well as foreign election observers, were not welcomed by the Government. In a press release issued on July 10, 1992, the army condemned the presence of "people foreign to the state belonging to diverse political parties with the supposed goal of vigilance and support of the electoral process," asserting that the Mexican observers could cause conflicts among citizens that congregate at polling places to vote.³⁶ Additionally, the Government and all the registered political parties, except the PRD, took a formal position against the presence of foreign election observers in Michoacán on election day.

The PRI argued that the presence of observers violates the sovereignty of Mexico. The PRD argued that national and international observers were necessary to observe and report on the integrity of the electoral process to the local and international community. As the debate raged on in the Michoacán press, the author of this Article and Craig Cardon, a student of Loyola Law School, Los Angeles, California, were ordered to leave a public meeting of the State Electoral Commission while they were gathering research on how complaints regarding election irregularities were resolved by the Commission. Subsequently, on the day of the election, the State Electoral Commission passed a resolution requesting the Federal Government to order the two students deported for allegedly telling voters how to vote at the polling places on election day. The State Electoral Commission charges were completely false. The lack of foundation to the charges and the Commission's vote to expel the students based on false charges demonstrate how the Commission acts as a rubber stamp for the Government's political interest.

V. PREELECTION MANIPULATIONS

A. *Intimidation of Opponents*

During the campaigns, both the PRD and the PRI leveled charges of intimidation of opponents through political propaganda

36. Jaime Lopez Martínez, *Gente Ajena al Estado, Podría Ocasionar Conflictos: SDN, LA VOZ DE MICHOACAN*, July 11, 1992, at A1; Pascal Beltran del Rio & Francisco Castellanos, *Las elecciones en Michoacán, Encaminadas Ineludiblemente Hacia el Conflicto, PROCESO*, July 13, 1992, at 16 (translation by author).

and campaign speeches. PRD candidate Arias asserted that the PRI's strategy was to delegitimize the PRD by characterizing the PRD as the party of violence responsible for the political conflicts arising out of prior elections. In one speech, PRI candidate Villaseñor asserted: "Political violence has plunged Michoacán in misery. I bring peace to the state. With peace comes investment and with investment comes progress."³⁷ The PRI formed a civilian group called the Committee for the Defense of Stability and Social Peace. The group's leader, Leonardo Pedraza Miranda, was a member of the PRI gubernatorial candidate's campaign committee. The purpose of the civilian group was to prevent violence on election day.³⁸

Political conflict over elections is a reality in Mexico. It is fueled by widespread government fraud and manipulation of the political process. The PRD claims that, since 1988, at least 110 activists and leaders of the PRD have been assassinated in politically motivated killings, and approximately 35% of that number died in acts of repression while they were protesting electoral fraud. The majority of those killed came from the States of Guerrero, Michoacán, Oaxaca, and Puebla—states where the PRD has the greatest support.³⁹

In response to the PRI's charges of violence during the preelectoral period, PRD candidate Arias asserted that the PRD was not renouncing its right to peacefully mobilize people against fraud. Yet, he expressed concern that the climate of fear would affect support for the PRD on election day. "Peace only can affect them [the PRI] because they know that if there is confidence in voting, without risks, people will vote overwhelmingly for us. On the other hand, if there is fear many people will prefer to stay home."⁴⁰

The PAN candidate for Governor, Fernando Estrada Samano, had a different analysis of what constitutes violence in the electoral process. He asserted that "the only formula for real peace is an absence of fraud; the government generates violence . . . when its

37. Pascal Beltran del Rio & Francisco Castellanos, *Encabezados por el Candidato Villaseñor, los Priistas Michoacanos Impulsan el Temor a la Violencia*, PROCESO, June 29, 1992, at 16 (translation by author).

38. *Id.*

39. COMISION DE DERECHOS HUMANOS PARTIDO DE LA REVOLUCION DEMOCRATICA, TRES ANOS DE REPRESION POLITICA EN MEXICO 4 (1991).

40. Beltran del Rio & Castellanos, *supra* note 37, at 16 (translation by author).

candidate brings people to a meeting and wants to buy them with a kilo of tortillas.”⁴¹

The presence of the military also charged the electoral atmosphere. Prior to the elections, three PRI officials—the Secretary of Government, the leader of the State Legislature, and the President of the State Electoral Commission—spoke of the need to guarantee order. Later, officials in the state government asked for the presence of the military at the voting booths. Consequently, during the few days before the election, as well as on election day, the military was visibly present throughout the state.

B. Campaign Spending

The PRI has been criticized by both the PAN and the PRD for using the institutional resources of the state to influence potential voters. This familiar technique is unfair and wrong whenever it is practiced, including in the United States, but in Mexico, it is carried to extremes. Resources that should be distributed equitably are, instead, channeled by the Federal Government into key states and municipalities to influence votes. In addition to wasting resources, minority parties are put at a competitive disadvantage because they cannot offer the same goods and services to voters. Citizens are put at a disadvantage by what is, in essence, bribery for their votes. Dr. Arnaldo Córdova, advisor to the PRD’s gubernatorial candidate in Michoacán and author of numerous texts on politics in Mexico, states: “The PRI is not a party, it’s the government. It does not compete under equal conditions with the other political parties, at least not here.”⁴²

Resources are channeled into the PRI campaign through different mechanisms: the public financing provisions of the federal election code, the Government’s public works Solidarity program, and private sector donations.

C. Public Financing of Political Campaigns

Public financing of political parties is established by Article 49 of the Federal Code of Electoral Institutions and Procedures

41. *Id.*

42. Pascal Beltran del Rio, *La Pugna Entre Salinas y Cárdenas Diluyó la Posibilidad de Triunfo de Arias: Arnaldo Córdova*, PROCESO, July 20, 1992, at 15 (translation by author).

("COFIPE")⁴³ and Article 39 of the State Election Law.⁴⁴ The Federal Government budgeted approximately 1 million U.S. dollars for campaign-spending nationwide from a total public-financing budget of approximately 20 million U.S. dollars. At the national level, there are ten registered parties—each was to receive 1 million U.S. dollars. The balance of the 20 million U.S. dollars (10 million U.S. dollars) is dispensed to the ten parties in proportion to the percentage of votes received in the most recent federal election. In fact, 1991 total public financing for all the political parties rose to 36.3 million U.S. dollars for the ten registered parties.⁴⁵ Through election engineering, the PRI can monopolize the bulk of public funds for elections.

The political parties are not legally required to account for funds received from other sources. One political analyst recommends a comprehensive audit of all campaign expenditures by an independent electoral body.⁴⁶ This could help determine whether public funds are diverted into the campaigns beyond the authorized amounts. There are no exact figures on actual campaign expenditures because there are no reporting requirements for funds from non-public sources. According to Dr. Alfonso Millan, campaign consultant for the PRD, the PRD will spend 5 million U.S. dollars for the state election in Michoacán, while the PRI will spend 50 million U.S. dollars.⁴⁷ Gubernatorial candidate Villaseñor denied that the PRI was spending that amount. According to Villaseñor, the PRI has only spent between 2 and 2.3 million U.S. dollars in the state in addition to campaign funds received from other sources. Villaseñor stated that his thirteen finance committees have raised about 2 million U.S. dollars.⁴⁸

D. Use of State Resources To Influence Voters

Another source of support for political campaigns is government spending programs. President Salinas de Gotari has amassed more economic and political control than any of the last six Presi-

43. C.O.F.I.P.E. art 49 (Mex.).

44. LEY ELECTORAL DEL ESTADO DE MICHOACAN DE OCAMPO art. 39 (Mex.).

45. IFE, *Perrogativas del Registro de Partidos*, NEXOS, Jan. 1992, at 74.

46. Payne, *supra* note 13, at 22.

47. Interview with Dr. Alfonso Millan, Campaign Consultant for the PRD, in Morelia, Michoacán (July 1, 1992).

48. Interview with Eduardo Villaseñor Peña, PRI candidate for Governor, in Morelia, Michoacán (July 3, 1992) (conducted by Lisa Bransten).

dents by creating programs to take spending out of the hands of local government and by giving states less control over their own budgets. One way he has done this is by creating a huge government spending program called PRONASOL. One of the program objectives is to diffuse social discontent through selective subsidies and to undermine the strength of left-wing opposition movements by establishing ties with and commitments to the government-sponsored Solidarity movements.⁴⁹ For example, over a two-year period preparing for mayoral and legislature elections in the State of Mexico in 1990, "The government pumped 92 million U.S. dollars into Mexico state through its Solidarity public works program, which was closely identified with the PRI."⁵⁰ Furthermore, "[T]wo weeks before the midterm elections of August 1991, Salinas toured Mexico and personally handed out in less than ten days as many land titles as distributed by the Mexican government over the past fourteen years."⁵¹

Nationwide the Federal Government controls about 85% of public funds, leaving states less than 12% and municipal governments about 3%. Most municipalities get 80% of their revenues from Federal and state governments and only 20% from local sources.⁵² Nationally, PRONASOL operated with a budget of 1.7 billion U.S. dollars in 1991—2.2% of total budgeted federal government spending for that year.⁵³ Local governments need federal programs like PRONASOL to bring resources into their communities. Yet, local communities may be excluded from participating in the programs when opposition party mayors run the municipalities.

Critics of the federally-funded Solidarity program in Michoacán focus on how the Government decides which programs to fund and the way the programs are used to promote the PRI. Obviously, one function of a government is the distribution of goods and services. Every incumbent naturally derives political support and media benefits from such projects. The issue is whether the government-sponsored program is designed specifically to influence voters in key contested areas, denying other states or municipi-

49. DENISE DRESSER, UNIVERSITY OF CALIFORNIA, SAN DIEGO, *NEOPOPULIST SOLUTIONS TO NEOLIBERAL PROBLEMS: MEXICO'S NATIONAL SOLIDARITY PROGRAM 2* (1991).

50. Marjorie Miller, *Democracy Is the Biggest Loser in Mexico State Election*, L.A. TIMES, Nov. 18, 1992, at A5.

51. DRESSER, *supra* note 49, at 24.

52. BARRY, *supra* note 5, at 17.

53. DRESSER, *supra* note 49, at 5.

palities their fair share of the pie, and whether these resources actually are appropriated by the PRI to promote the party. Additional concerns are cited in a recent report published by the Center for U.S. Mexican Studies at the University of California at San Diego. Denise Dresser notes that

what is particularly wrong with PRONASOL is that it is run out of the president's private pocket, its beneficiaries are selected on personalistic and partisan political grounds, and, most fundamentally, it is immune from any democratic means of control or accountability. As a result, PRONASOL may strengthen institutions and practices—such as presidentialism and unfair competition among parties—that constitute the main obstacles to political change in Mexico.⁵⁴

The Federal Government receives requests and distributes PRONASOL resources through local Solidarity committees composed primarily of PRI activists. In some cases, requests are received directly from municipal governments. Salinas believes, however, that it is often necessary to bypass municipal governments to put control of the program into the hands of the less politically-corrupt and more efficient Solidarity committees. Conversely, the PAN believes the bulk of public funds should be distributed through the local municipalities because it is the central Government that is corrupt and inefficient.⁵⁵

The PRD asserts that because states and municipalities have less control over resources, municipalities with PRD mayors receive discriminatory treatment by the Federal Government; proposed projects are not funded and the input of PRD municipal governments is not solicited in the formulation of Solidarity projects. In Morelia, the capital of Michoacán, the PRD mayor, Samuel Maldonado, stated that his administration has been hampered by the lack of promised federal resources and that his office is completely bypassed in the development and delivery of social service projects.⁵⁶ Public works projects he has proposed have not been considered even though the State of Michoacán is the largest recipient of PRONASOL funds for Solidarity projects.

54. *Id.* at 3.

55. FERNANDO ESTRADA, PARTIDO ACTIVO NACIONAL, SOLUCIONES MICHOCAN 92, 10 (1992).

56. Pascal Beltran del Rio, *En Su Improvisado Despacho Callejero, el Alcalde de Morelia Denuncio la "Ilegalidad" Electoral*, PROCESO, July 13, 1992, at 17.

An additional criticism is the manner in which government programs are used to generate support for the PRI and the way people are excluded from the Solidarity programs for not supporting the PRI. For example, in the town of Realito, Michoacán, the PRONASOL milk distribution program was used to distribute PRI propaganda and to organize meetings for the party. The milk came in containers with the portrait of the PRI gubernatorial candidate and, when people came to get their allotment of milk, they were invited to the campaign events of the candidate.⁵⁷ In the town of Colonia Ampliación Primo Tapia, one individual working with the local Solidarity committee complained that PRI activists advised individuals in the group to affiliate with the PRI. He told PRI activists that a political party affiliation was not necessary to solve the town's problems. There was no response to the group's subsequent petitions for Solidarity projects. In fact, the construction of a milk distribution project, which had already been authorized, was canceled.⁵⁸

The huge expenditure of government funds for Solidarity programs has garnered support for the PRI in Michoacán, and "in this election year the coffers of the National Program of Solidarity have opened wide for Michoacán as in no other state."⁵⁹ From December 1988 (the year Cárdenas ran for President against Salinas and lost the election because of fraud) to the end of 1991, federal spending increased by 800% in the state. In 1989, PRONASOL spent 14,500,000 U.S. dollars; in 1990, 53,348,000 U.S. dollars; and in 1991, 144,451,000 U.S. dollars. In 1992, an election year, a total of 295,333,000 U.S. dollars was allocated for Michoacán.⁶⁰ Thus, in four years, approximately 507,632,000 U.S. dollars will have been spent on federal public works projects in Michoacán.

As spending in the state increased after the 1988 elections, the PRD apparently lost voters. According to official figures, in 1988, the Cárdenas coalition received 64% of the vote in Michoacán, compared to only 23% for the PRI. In the 1991 congressional elections, however, the PRD received only 31% of the vote to the PRI's 54%. President Salinas justified the massive increase in pub-

57. Jesus Cantu, *Solidaridad, Ademas de Electorero, se Manejo en Michoacán Corectivamente*, PROCESO, July 13, 1992, at 14.

58. *Id.*

59. Carlos Acosta, *Con su Apresuramiento del Lunes 13, Salinas Culminó su Intervención en Chihuahua y Michoacán*, PROCESO, July 20, 1992, at 12 (translation by author).

60. *Id.*

lic spending by stating that Michoacán needed the solidarity and support of all Mexicans. Other analysts assert that the PRI is investing such huge amounts in the state because the PRI is looking ahead to the 1994 election and cannot afford to lose the Governorship to a PRD candidate. In order to stop the momentum of the PRD, the PRI must defeat the PRD in the home state of its political leader.

According to official (but disputed) figures, the PRI won the election in Michoacán by 128,356 votes. It is probable that the organized network of more than 10,000 PRI-identified Solidarity committees, incorporating about 80% of the Michoacán population into PRONASOL programs, had some impact on voting patterns. Funds were targeted to key areas, as evidenced by the fact that, in 1991, more than 60% of the money invested in Michoacán was destined for the twenty-five municipalities where the PRI received 60% of the vote in the August 1991 elections.⁶¹

It is difficult to determine how government funds are commingled with campaign expenditures. During the campaign in Michoacán, the PRI gubernatorial candidate was accompanied by the national leader of the party, Genaro Borrego, who distributed thousands of PRI promotional goods with PRI logos: raincoats, shirts, pens, and notebooks. In one town that is strongly supportive of the PRD, Villaseñor actually handed out cash to potential voters.⁶² Villaseñor denied that he was trying to buy or corrupt voters, although he acknowledged that he had distributed money, resources, and materials for projects on which people have solicited his help. "If we have the resources, why not—the help is not conditioned on their vote and the vote is secret."⁶³

Nonetheless, use of government institutions to promote the government party is easier to detect. For example, a study by *Convergencia* notes that the IFE uses information gathered during the registration process to identify PRI supporters.⁶⁴ With this information, the PRI organizes vote promoters to mobilize PRI voters before the election.

The timing of the release of government resources is also revealing. For example, in June 1992, one month before the election,

61. Cantu, *supra* note 57, at 14.

62. Samuel Máynez Puente, *Incredulidad*, PROCESO, July 20, 1992, at 34.

63. Galarza, *supra* note 23, at 20 (translation by author).

64. See generally NUESTRA PALABRA, *supra* note 20.

the Government announced a new government credit program to benefit marginal landholders called "*Credito a la Palabra*" (an unsecured loan program). The state said it would allocate 34 million U.S. dollars in credits to benefit 100,000 agricultural workers who previously had not been able to get credits from Banrural and FIRA (a government trust fund).⁶⁵

E. Private Sector Resources

In Michoacán, the PRI also had a competitive advantage when raising funds from the private sector. While the PRD is identified as the party of the poor, the PRI has substantial financial support from the middle and upper classes. Friends of PRI candidates contribute goods, services, and actually build infrastructure in impoverished communities. Villaseñor acknowledged that he received contributions from his entrepreneurial friends. A friend in Mexico lent him a helicopter and a pilot for the campaign tour. His friends on the campaign finance committee gave 2 million U.S. dollars, some of it in resources. In Uruapan, a city in Michoacán, the PRI organized a hospitality event for mothers, where the PRI distributed stoves, refrigerators, irons, juicers, and other housewares donated by a local businessman.

In conclusion, the massive use of state resources and public financing, combined with private sector spending, all gave the government party a greater resource-base to promote the PRI vote. On the surface, such patronage by a government in power may seem no different from practices in the United States, where, for example, then-President Bush, facing an election, sold military jets to a foreign government to save a defense plant in St. Louis, Missouri.⁶⁶ But in Mexico, in contrast to the United States, the PRI has had a monopoly on the exercise of political power for the last sixty-four years. As in the sphere of economics, such a monopoly creates distortions and corruption of the counterbalancing corrective forces—forces that must be allowed to operate for a democracy to exist. Even with the massive expenditures by the PRI, however, by official figures, the PRI candidate won by only a 16% margin,⁶⁷ indicating that, despite PRI's investment in the state, the

65. "*Credito a la Palabra*" a Cien Mil Productores Michoacanos, *LA VOZ DE MICHOCAN*, June 24, 1991, at 32A.

66. Simon Tisdall, *Bush Approves Sale of Fighter Jets to Saudis To Protect Jobs*, *GUARDIAN*, Sept. 13, 1992, at 13.

67. *PAN Starts Looking Like an Alternative*, *supra* note 26.

PRD maintained about the same number of votes received in the 1991 elections. Nonetheless, it should be noted that, between 1988, when the PRONASOL program started, and 1992, voting levels for the PRD have decreased markedly.

F. Manipulation of the Voter Registration List

In Michoacán, the registration period for new voters and those with expired credentials was April 20 to April 30.⁶⁸ Representatives of the IFE go from house to house, taking the requisite data from new eligible voters, including fingerprints and signatures. If the eligible voter is not home, the information is not taken, and it is up to the voter to go to a predesignated location to register to vote.

In past elections, it has been shown that, in areas with high concentrations of opposition voters, the IFE visited some homes at hours inconvenient for residents (work hours); thus, registration ended up being higher in areas with PRI supporters and lower in areas with opposition voters. For example, in a study of the voting sections in the 1991 Chihuahua elections, *Convergencia* found that only 20.8% of the population in a voting district known to support the PRI were not registered at home, while 31.8% of the population known to support PAN were not registered at home.⁶⁹

During the same 1991 election period, *Convergencia* surveyed a district of known PAN supporters. The IFE had estimated that there were 214,409 citizens in District IV; by contrast, *Convergencia* found 285,155 voters. Thus, 70,000 more people existed than were surveyed and registered by the IFE.⁷⁰

A study done prior to the July 1992 election in Michoacán by Cuauhtémoc Rivera of the Center for the Study of Mexican Society found that, statewide, 112,000 eligible voters had been excluded from the voting list.⁷¹

Dr. Alfonso Millan, Electoral Coordinator of the National Executive Committee of the PRD, and Antonio Santos, PRD Secretary for the Defense of the Vote, assert that the voting list utilized

68. *Calendario del Proceso Electoral en el Estado de Michoacán 1 (1992)* (calendar of Michoacán's electoral process, published by the State Electoral Commission, on file with *Loyola of Los Angeles International and Comparative Law Journal*).

69. Hugo Amada Mireles et al., *Como se hizo el Fraude en las Elecciones Federales de 1991: El Caso de Ciudad Juárez, Chihuahua*, in NUESTRA PALABRA, *supra* note 20, at 115, 118.

70. *See id.* at 126-27.

71. Puente, *supra* note 62, at 34.

in December 1989 and 1991 has been reduced in number by 212,000 citizens. They assert that these decreases are the result of selective shaving. Not counting areas where registration increased, the total number of voters shaved off the registration list amounted to 240,000.⁷² For example, there were three municipalities where the registration list decreased by approximately 46%. On the other hand, in the four municipalities where voter registration increased, the PRI won 52% of the vote in 1989, and the percentage of registered voters increased by 179.39% between 1991 and 1992.⁷³

G. Identification of Opposition Voters

How does the PRI know how to identify opposition voters? According to a report by *Convergencia*, the PRI can count on receiving all the information obtained by the representatives of the IFE from the house visits and the voter lists. Additionally, the PRI puts together its own election list by going block by block and house by house to detect and note sympathizers in each of the political parties.⁷⁴ Prior to the 1991 elections in the State of Chihuahua, *Convergencia* found that the list of PRI sympathizers and opposition supporters had been compiled in the following manner: under the pretext of verifying data, the PRI activist parallels the work of the IFE representatives by visiting the same houses to get the voters' party preference; in some cases, the PRI visitor actually substitutes for the IFE representative; and the PRI visitor poses as a seller of cosmetics and other goods and, through casual conversation, obtains the information. This work is coordinated by PRI *promotores del voto* (vote promoters) or *jefes de manzana* (block captains). Each of the PRI's neighborhood section committees corresponds exactly to electoral sections. The list does not simply identify party sympathizers but also includes a list of opposition party preferences and undecided voters. According to *Convergencia*, the list is computerized and integrated into the IFE's registered voter computer program, thereby facilitating the process of "shaving" opposition voters off the registration lists or "losing" voter registration cards.⁷⁵

72. This figure includes voters shaved off the lists in both the 1991 and 1992 pre-electoral period.

73. Galarza, *supra* note 23, at 21.

74. Mireles et al., *supra* note 69, at 131.

75. *Id.* at 131-33.

H. Inflation of the Voter Registration List

Another problem is the inflation of the voter lists with PRI supporters during the registration process by creating false and duplicate vote credentials. In the State of Chihuahua during the 1991 elections, *Convergencia* found that false credentials were made in the name of those who were not home for the visit by the IFE representative and did not go to register, but were known to be eligible voters.⁷⁶ Any person living in the home can make up information on a person who does not exist, is dead, or exists but does not live at that address. A birth certificate or an old voter credential can be used for identification. The person fabricating the false voter goes to the *modulo* (a predesignated location) to give fingerprints and a signature. It is impossible to detect the false credentials at the voting booth because the voter is presenting a facially valid credential.

In Michoacán, the PRD mobilized 2,000 people to participate in checking the voter registration list for dead people, those who had moved to the United States, or people who simply did not exist. Their results showed that the number of irregularities in this category totaled approximately 150,000.⁷⁷

For example, in Pátzcuaro, one of eighteen electoral districts in Michoacán, the PRD reviewed 64 of 134 voter sections and encountered 1,740 irregularities—an average of 27.5 per section.⁷⁸ In the Pátzcuaro survey, the PRD discovered 689 voters on the electoral list of 115,679 voters who did not exist or did not live at the indicated address. They discovered 129 people on the list who were dead, 34 duplicate names, and 52 names of people who did not receive their credential but appeared on the preliminary voter registration list. The surveyors also discovered 568 citizens who appeared on the registration list but were actually in the United States. Additionally, 246 voters had lost their credentials and had asked for replacements but had not received them, so they could not vote.⁷⁹

76. *Id.* at 124.

77. Beltran del Rio & Castellanos, *supra* note 37, at 19. Note that the final voter registration list in Michoacán had 1,560,979 names.

78. *Id.*

79. Informe Sobre las Irregularidades del Proceso Electoral en el III Distrito Local de Michoacán con Cabecera en Pátzcuaro, June 1992 (complaint from PRD representative on the State Electoral Commission to the State Electoral Commission of Michoacán) [hereinafter *Complaint*].

In addition to the 150,000 irregularities in the statewide voter registration list, the PRD claimed that over 100,000 voter credentials were either lost or simply not distributed during the 1992 preelectoral period.⁸⁰

I. *Distribution of Voter Credentials*

The voter must present a valid voter credential at the voting booth in order to vote. Voter credentials for the July 12, 1992, Michoacán elections were issued up until May 31. Information from the registration form circulated by representatives of the IFE is used to make the voter credentials. The credential is brought to the voter's home by a representative from the IFE. If the voter is not home, however, he must go to a predesignated location to pick up the credential.

The same selectivity used in the registration process is also used in the distribution of voter credentials. For example, representatives of the IFE arrive at the homes of opposition voters at hours when most people are not home. Thus, it is likely that credentials of opposition voters are not distributed in home visits and, therefore, must be picked up at the predesignated location. In past elections, this has resulted in the distribution of fewer credentials for opposition voters. For example, in a 1991 study in the State of Chihuahua by *Convergencia*, it was found that, in sections with PAN supporters, 47% of the voting credentials were received at home, as compared to 55.8% for the whole district. Additionally, in the entire district surveyed (districts are made up of voting sections), 25.4% of PAN supporters were left without credentials, as opposed to 18.9% in PRI sections and 19.8% for the whole district.⁸¹ The PRD states that there are a total of 145,000⁸² voter credentials that have not been distributed in Michoacán but that have been applied for or have been pending since August 1991. The Federal Electoral Registry ("RFE") asserts that it has distributed 46,000 of that number and has distributed an additional 40,000 credentials to newly registered voters.⁸³

Part of this number is made up of lost voter credentials—the documents of people who are registered but do not receive or do

80. Beltran del Rio & Castellanos, *supra* note 37, at 19.

81. Mireles et al., *supra* note 69, at 119.

82. This figure covers the preelectoral period of 1991 and 1992.

83. Godínez, *supra* note 20, at 5.

not pick up the credentials at designated locations. The IFE is supposed to publicly destroy credentials that are not claimed. Opposition parties claim, however, that credentials are intentionally lost and that, therefore, opposition voters who are registered cannot vote. For example, in the 1991 elections in Chihuahua, the leadership of the PAN declared that 11,968 credentials were lost, 5,632 of which corresponded to District IV, an area where they had strong support.⁸⁴

In Michoacán, a study by Julio Santoyo, a representative of the PRD on the local committee of the RFE, shows that there was selectivity as to who received credentials in municipalities with strong PRD support. The two worst examples were in the municipality of Tiquicheo, where the percentage of credentials not received represented 20% of the voter registration list, and in Lázaro Cárdenas, where 15.77% of potential voters could not vote because they had no credentials.⁸⁵

In sum, the PRD estimated that approximately 330,000 people could not vote in the July 12 election because they either did not have credentials or were left off the voter registration list.⁸⁶

J. Verification of the Validity of the Voter Registration List

In Michoacán, great public debate ensued over procedures for verifying the registration list and the federal control of the process. The COFIPE establishes the IFE to organize and oversee election procedures at the federal and state level. The IFE and the RFE carry out tasks such as the compilation of the voter registration list and the distribution of voter registration cards.

Article 56 of the State Election Law gives the state the authority to compile its own list independent of the Federal Government or in collaboration with the IFE.⁸⁷ In fact, the state allows the Federal Government to compile the list. Computer fraud and manipulation of the registration list is thus carried out by the IFE, an organization controlled by the government party, with the support of local PRI activists.

In the spring of 1991, 256 people were mobilized in Michoacán to identify irregularities in a voter registration list of 1,560,979 citi-

84. Mireles et al., *supra* note 69, at 125.

85. Beltran del Rio & Castellanos, *supra* note 37, at 19.

86. *Id.*

87. LEY ELECTORAL DEL ESTADO DE MICHOACAN DE OCAMPO art. 56 (Mex.).

zens. Of the 256 people mobilized, 91 were technicians from the RFE and 165 represented the six registered political parties. The representatives of the political parties were observers overseeing the methodology of the survey. The survey was conducted in 91 municipalities, covering 401 city blocks and 200 (10%) of all the voting sections. During the survey, 7,605 questionnaires were filled out with information from 15,653 citizens. As a result of the review, inconsistencies were found in 3.9% of the voter registration list. The State Electoral Commission then asserted that the voter registration list was 96.1% accurate.

On July 18, 1992, five of the six political parties represented on the State Electoral Commission voted to approve the verification process conducted in the 10% sample study. The PRD voted against the approval. The PRI argued that the PRD participated in the review of the electoral lists and that the PRD's political strategy was to delegitimize the organization of the elections by voting against approval. Subsequently, the PRI used this vote, which focused only on a sample study, to assert that all the parties except the PRD believed the registration list was 96.1% accurate. Yet, in its statements to the press, the PRI manipulated facts about what had occurred at the State Electoral Commission. The state president of the PAN, Luís Mejía Guzmán, described what had actually occurred at the State Electoral Commission: "What we were asked to vote on and approve was whether the verification process (sample study) had been accomplished as designed [I]t's very possible that the '*padron*' (list of registered voters) has a much higher percentage of irregularities than shown by the verification process. The government wanted to use our vote for other purposes, that's very clear."⁸⁸

The PRD asserted that the study was flawed because the sample was not representative of the state as a whole—it did not include rural areas where there are more irregularities. According to the PRD, there were approximately 150,000 irregularities found in the registration list, including people who were dead or residing outside the country. Julio Santoyo, the PRD representative on the State Electoral Commission, asserted that in the countryside there are citizens who have no residence, who don't live in the place the

88. Beltran del Rio & Castellanos, *supra* note 37, at 19 (translation by author).

election list says they live in, and who plainly don't exist."⁸⁹ Additionally, in Pátzcuaro, a district of Michoacán with strong PRD support, 27.5% of the registration list in each voting section was irregular.⁹⁰

An additional problem was that the survey did not include the number of people who simply did not receive credentials but were on the registration list. According to the PRD, this is about 104,000 persons. Of the thirty-six municipalities where there are the highest numbers of people not receiving credentials, seventeen are PRD-governed and seven are areas where the PRD and the PRI co-govern. For example, in the city of Lázaro Cárdenas, which has a PRD mayor, there are 47,852 registered voters, and 7,550 (15.7%) of them did not receive their voter credentials. In the municipality of Aquila, there are 6,604 registered voters, and 789 people (11.9%) did not receive their voter credentials.⁹¹

These figures show a clear bias by the IFE in the distribution of voter credentials and the compilation of the voter registration list. One way to solve the problem is for the states to have more control over the registration process through establishment of an independent commission that conducts registration and compiles its own voter registration list.⁹²

K. Location of Polling Places

The State Election Law requires that the polling places be located no more than two kilometers from population centers to facilitate easy transportation access. Additionally, the polling places cannot be located in the homes of party officials.⁹³ The location of the polling places is published a few days prior to the election in local newspapers. A frequent problem occurs when polling places are moved from their predesignated locations. For example, opposition parties in the 1990 elections in the State of Mexico accused the Government of making unannounced, last-minute changes in the locations of as many as 40% of the voting places, creating wide-

89. José Ureña, *El Pri Hará Campaña en California para Legitimar los Comicios de Michoacán*, La Jornada, June 24, 1992, at 48 (translation by author).

90. Beltran del Rio & Castellanos, *supra* note 37, at 19.

91. Ureña, *supra* note 89, at 48.

92. Beltran del Rio & Castellanos, *supra* note 37, at 19.

93. LEY ELECTORAL DEL ESTADO DE MICHOACAN DE OCAMPO art. 76 (Mex.).

spread confusion.⁹⁴ In Michoacán during the 1992 election, the PRD claimed that, in District XVI, the authorities completely removed twenty-six polling places that were located in places where the PRD received the most votes in prior elections. As a result, as of two weeks before the election, 3,923 citizens in the district were left without polling places.⁹⁵

Additionally, *casillas extraordinarias* (floating voting booths that do not have predesignated locations) can be used to inflate the vote for the government party. According to the State Election Code, these voting booths cannot have more than 750 listed voters.⁹⁶ The State Electoral Commission designates so many floating voting booths per district, but their location may not be known to voters, or PRI supporters may know the location but not opposition party members. Additionally, the booths may be placed only in locations where the PRI knows they have strong support. By adding a floating polling place, an additional 750 voting slots become available that can be used for dead people, fictitious people, and those residing elsewhere, for example, in other states or in the United States. Another problem is that when the location of the floating polling place is published in local newspapers just a few days before the election, a voter on the registration list of that booth may not know where he or she should vote because he or she assumes voting will take place in the regular neighborhood voting location and he or she is not familiar with the newly announced "floating" location.

According to the PRD, there were irregularities in 5.5% of the polling places listed in local newspapers by the State Electoral Commission. The irregularities were caused by changes in the locations, substitutions of functionaries, and omissions or additions of polling places.⁹⁷

L. Who Runs the Polling Place

There were 3,400 polling places in the 1992 Michoacán election. The state electoral law establishes what is in theory a fair and impartial process for determining who runs each polling place and

94. Mark A. Uhlig, *One Clear Result of Mexican Vote: Fraud Changes*, N.Y. TIMES, Nov. 15, 1990, at A9.

95. Ureña, *supra* note 89, at 48.

96. LEY ELECTORAL DEL ESTADO DE MICHOACAN DE OCAMPO art. 129 (Mex.).

97. Pascal Beltran del Rio & Francisco Castellanos, *Compas de Espera entre Villaseñor y Arias; el PRI no logro su objetivo de arrollar al PRD*, PROCESO, July 21, 1992, at 8.

who counts the votes.⁹⁸ Yet, party affiliation and partiality of those who run the polling places have been reoccurring issues in prior elections. The functionaries at the polling places are supposed to prevent fraud and receive complaints about fraud. They have the authority to sign complaints regarding irregularities, thereby facilitating the annulment of election returns in individual polling places.⁹⁹

Each polling place has a president, a secretary, and two vote-counters. Additionally, each of the political parties may name a representative of their party to be present in the polling place to monitor the integrity of the process.

Article 73 of the State Election Law requires that the president and the secretary of the polling place be chosen by lottery from the registration list of each voting section.¹⁰⁰ Twenty percent of the citizens in each voting section are to be randomly picked from the voter registration list for these posts. The vote counters are taken from lists proposed by the political parties. The potential presidents and secretaries are then given training and an objective test by instructors named by the District Electoral Committees to determine who is actually capable of fulfilling the positions.

The problem with this selection procedure is that PRI activists end up being the functionaries in disproportionate numbers. Moreover, they are often the same people who have run the polling place in prior years. For example, in 1991 elections in Chihuahua, in one voting section, 80% of those chosen to be secretaries and presidents of the polling places were secretaries and presidents of the polling places in the prior election. Because there is only a 20% possibility of being chosen to be in the pool, an 80% repetition rate was statistically impossible, especially in voting sections with high numbers of registered PAN voters.

In a study of this phenomenon in the 1992 Michoacán elections by *Convergencia*, it was found that, in District III (Pátzcuaro), 122 out of 157 (77%) of the presidents of the polling places and 107 out of 157 (68%) of the secretaries were active members of the PRI—a statistical impossibility considering that, in the 1991 elections, by official count, 52.67% of the voters in District III were opposition party voters and that, in the July 12, 1992, election, op-

98. LEY ELECTORAL DEL ESTADO DE MICHOACAN DE OCAMPO arts. 72-81 (Mex.).

99. *Id.*

100. *Id.* art. 73.

position parties received 21,171 votes as compared to the PRI's 19,044 votes. Additionally, 100% of those who administered the selection and the testing of the randomly-selected citizens were members of the PRI.

A leader of the PAN in Uruapan found another irregularity. In one voting section (a voting section has 750 to 1,500 voters), the list of vote-counters proposed by the Party of the Cardenist Front for National Reconstruction ("PFCRN") (a satellite party of the PRI) corresponded exactly to that proposed by the PRI. In this way, the PRI increased the probabilities that its activists would be chosen.¹⁰¹

In a formal complaint filed by the PRD before the State Electoral Commission on June 30, 1992, the PRD's representative on the Commission, Leoncio Ferrería Sánchez, submitted a document with evidence of disproportionate repetition of the presidents and the secretaries of the polling places.¹⁰² The complaint demonstrated the partiality of the State Electoral Commission's process for selecting the presidents and the secretaries.

VI. ELECTION-DAY FRAUD

Fraud on election day takes many forms. For example, in past elections, opposition voters who have official voter credentials in hand have been denied the right to vote when their names could not be found on the voter registration lists, while members of the PRI have been allowed to vote without voter credentials or with false voter credentials. False credentials are difficult to detect unless observers inside the poll know that the person voting is not the person who appears on the registration list.

In Chihuahua during the 1988 elections, the observers in one voting district found thirteen polls with voters from other districts. They arrived at the poll in taxis.¹⁰³ These voters are called "flying brigades"—people going from polling place to polling place to vote repeatedly. This is made possible through the issuance of multiple voting cards. Premarked ballots have also been stuffed inside

101. Pascal Beltran del Rio & Francisco Castellanos, *Las Elecciones en Michoacán Encaminadas Ineludiblemente Hacia el Conflicto*, PROCESO, July 13, 1992, at 19.

102. Recurso de Apelación del PRD ante el Tribunal Estatal Electoral de Michoacán sobre la Illegalidad en la Integración de las Mesas Directivas de Casilla y el Numero y Ubicación de Casillas, June 30, 1992 (PRD appeal before the State Electoral Commission regarding illegal activities at polling sites).

103. Andrew Reding, *Mexico at a Crossroads*, 5 WORLD POL'Y J. 615, 623 (1988).

other ballots (called "tacos"). Moreover, in the 1988 Chihuahua elections, ballot boxes were found to contain marked ballots ("pregnant boxes") before the first vote was cast.¹⁰⁴

In the days preceding the Presidential elections of 1988, ballots already marked in favor of the PRI were distributed to government employees and union members in what is called the "carousel." Voters were expected to substitute their marked ballots for the clean ballots they are given at the polling location, then return the clean ballots to their bosses for recycling.¹⁰⁵

In districts unfavorable to the PRI, voters have also been turned away when the supply of ballots ran out. For example, in the July 12, 1992, Michoacán elections, the electoral commissioners of the PAN and the PRD in District VI, headquartered in Uruapan, denounced the disappearance of more than 5,000 ballots from the local electoral committee. The commissioners complained that 2,137 ballots were missing for Governor and 3,337 for deputy. These were counted and sent from the capital but never arrived in Uruapan. Of the 5,474 ballots, 3,310 corresponded to the municipality of Ziracuaretiro, one of the twenty-five municipalities in which the PRI had lost to the PRD in the last four elections and where, in the past federal election, the PRD had a 300 vote advantage over the PRI.¹⁰⁶

On election day, *Convergencia* conducted its observations at the polling places with a detailed questionnaire. The following is a sample of the irregularities and violations of the State Election Law identified by national observers from *Convergencia*: in fourteen polling places, there was no voter registration list (Article 123); in eighteen polling places, indelible ink was not used to mark thumbs, so that a voter could conceivably vote more than once (Article 123); in sixty-four polling places, there were more ballots than the number of voters on the list, allowing for the possible marking of additional ballots (Article 123); in seventy-eight polling places, there were fewer ballots than the number of voters on the list, thus preventing some people from voting (Article 123); in sixty-seven polling places, people were permitted to vote without showing their voting credential (Article 128); in 174 polling places, political party identification rather than the voting credential was

104. *Id.*

105. *Id.*

106. Beltran del Rio & Castellanos, *supra* note 97, at 16.

accepted, increasing the likelihood that the person voting was not the registered voter (Article 128);¹⁰⁷ in sixty-three polling places, people were not able to vote secretly (Article 133); in sixty-nine polling places, there was coerced voting (Article 135);¹⁰⁸ in fourteen polling places, representatives of the political parties were not allowed to be present and, thus, were unable to ensure that the procedures were in conformity with the law (Article 118); in ten polling places, written complaints regarding the voting process were not accepted (Article 138); and in sixty-five polling places, 284 citizens with voting credentials in hand did not appear on the voter registration list and thus were not allowed to vote.¹⁰⁹

On election day, our group from the United States¹¹⁰ divided up into four teams and visited communities surrounding Los Reyes, Pátzcuaro, and Uruapan. In the city of Morelia, we visited polling places in Morelia Norte. Three of the four groups asked a set of questions from an interview form developed by members of the Council of Freely Elected Heads of Government. In order to respect the concern voiced by the Government that the presence of foreign observers constituted interference with the national election process, our group did not interview citizens leaving and entering the polling places. Rather, we interviewed the national observers as they conducted their own observations at the polling places. While interviewing the observers and watching the pro-

107. Article 134 requires that the voting credential be perforated with a card punch to prevent multiple voting. LEY ELECTORAL DEL ESTADO DE MICHOACAN DE OCAMPO art. 134 (Mex.).

108. In 18 of those polling places, the person responsible for the act was a member of the governing body of the polling place.

109. Convergencia Michoacana y Convergencia Nacional de Organismos Civiles Por La Democracia, *Informe Preliminar de la Jornada Electoral del 12 de Julio de 1992 en Michoacan* 1-4 (July 13, 1992).

110. Members of the delegation: Cynthia Anderson-Barker, Loyola Law School '93, Executive Committee, National Lawyers Guild-Los Angeles Chapter; Robert Benson, Professor of Law, Loyola Law School, Los Angeles; Tony Bracamonte, Dean, South Mountain Community College, Southwest Voters Research Institute; Jose Carranza, UCLA student in Latin American and Chicano Studies; Craig Cardon, Loyola Law School '93; Arnoldo Garcia, Resource Coordinator for the National Network for Immigrant and Refugee Rights; Jin Sook Lee, Young Koreans United; Wally Marks, businessman, Liberty Hill Foundation board member; Ellen Melinkoff, writer, Humanitarian Law Project board member; Charles Rappleye, writer, biographer; Dr. Gloria Romero, Professor of Psychology, California State University, Los Angeles; Nancy Sanchez, staff attorney, Los Angeles Catholic Charities; Claude Steiner, writer, psychologist. Organizations are listed for identification purposes only.

ceedings from outside the polling places, members of our group also directly observed some irregularities in the voting process.

The following is a brief summary of information gathered and events witnessed on election day.

A. *Pátzcuaro, Tzintzuntzan, and Santa Fe*

Complaints were made that the location of polling places had been changed at the last minute, creating widespread confusion. In Pátzcuaro, we discovered that numerous polling places had been moved from their published locations. For example, two days prior to the election, one polling place was moved from a school where it had been located for thirty years to the home of a PRI activist. Two polling places were actually located in this home. Under the State Election Law, polling places cannot be located in the homes of party officials and activists.¹¹¹

In all three areas, the national observers reported incidents of people voting without credentials and with expired credentials. National observers also reported that people were voting who were not on the voter registration list. At many of these same locations, voter credentials were not punched, thus allowing for the possibility of voting a second time. One of the functionaries of the polling place, the president, responded that there was no time to punch all the credentials.

In Santa Fe, a small community with four polling places, the national observer informed us that many people were sent to a different town eight kilometers away when they arrived to vote at their polling place. State Election Law requires that the polling places be located no more than two kilometers from population centers.¹¹²

In Tzintzuntzan, the secretary of a polling place allowed three to five young men to loiter all day within five to ten feet of the table for marking ballots, compromising the secrecy of the vote. This is a clear violation of the election law.¹¹³ Additionally, people arriving from different towns were allowed to vote over the protest of party representatives.

In Pátzcuaro, intimidation by the presence of the army was a problem. Two days before the election, the army conducted ma-

111. LEY ELECTORAL DEL ESTADO DE MICHOACAN DE OCAMPO art. 76 (Mex.).

112. *Id.* art. 93.

113. *Id.* art. 137.

neuers in the streets. In Huecario and Uaracuaro, state police went to three polling places and asked the functionaries of the polling place to give their names.

At one polling place, we saw a Suburban (jeep) arriving with PRI stickers on the back. A PRI federal deputy emerged with four other men. They entered the polling place and photographed everyone present. They also photographed the license plates of all the cars in the vicinity. When the ballot-count began at this polling place, the representatives of the PAN and the PRD were expelled from their rightful location inside the polling place and the doors were shut. This violates Articles 26(e) and 141 of the State Election Law, which allow party representatives to be present during the ballot-count.¹¹⁴

Elsewhere in Pátzcuaro, we were informed by the national observers that people with press credentials lacking affiliation with any newspaper or other media were videotaping the proceedings inside the polling places. These individuals were commonly believed to be members of the PRI or state security.

In Los Reyes, there also was a strong presence of the military and police. We saw three truckloads of police pull up and approximately twenty uniformed officers walk about the town on election day.

B. Morelia Norte

In Morelia Norte, we visited seven polling places. In one polling place, the indelible ink used to identify multiple voters was not used, so that a person was allowed to vote whose thumb had already been inked at another polling place; police officers bearing arms were allowed in the polling place; and one large group of people arrived to vote at the same time.¹¹⁵ Additionally, at this polling place, the number of ballots counted did not coincide with the number of people who actually voted.

At another polling place, there were no official party representatives present. This polling place had the greatest number of election law violations. Thus, the presence of party representatives in the polling place seems critical for ensuring fair election practices. At this location, voters were pressured to vote for the PRI; a

114. See *id.* arts. 26(e), 141.

115. While this is not a violation of the electoral law, it indicates that people may be going from polling place to polling place, voting repeatedly.

group of voters arrived in taxis; PRI propaganda (hats, shirts, etc.) were allowed in the polling place; four people were allowed to vote whose names were not on the registration list; two people were allowed to vote without showing a voter credential; and five people did not have their thumbs inked.

In another polling place, five people were allowed to vote without showing a credential, and the PRI representatives were instructing people as to where to mark their ballots. In another location, we witnessed an altercation between a party representative and the president of the polling place. A woman came to vote who could not read or write. She asked for instructions on how to vote, and the president told her to mark the box for the PRI. The PRD representative objected and said that the vote should be annulled. Additionally, at this polling place, there was a false threat of a gas explosion the evening before the election, and this apparently caused a low voter turnout. At another polling place, a man was permitted to vote for the Governor twice. At another location, eleven people came to vote and each had voter credentials; however, they were not on the registration list. Five of these individuals were members of the PRD and claimed they had been deliberately left off the list. Two of the seven polling places surveyed ran out of ballots, and thus, approximately fifteen people were not able to vote.

C. Uruapan

In Uruapan, our team visited ten polling places. Two polling places had no registration lists, and the locations of these polling places were not known to voters until the day of the election. Half of the polling places surveyed did not use any ink to prevent multiple voting. There was an altercation at one polling place when it was discovered that the president of the polling place, a member of the PRI, was the son of a man who was president in four prior elections.¹¹⁶ In some polling places, the president and the secretary were the same as those in the prior election, a statistical improbability. In another polling place, the PAN party representative requested that indelible ink be used, but his offer was rejected by the president of the polling place.

116. The State Election Law requires that the president and the secretary be chosen from a random pool of 20% of the registration list in a section. LEY ELECTORAL DEL ESTADO DE MICHOACAN DE OCAMPO art. 73 (Mex.).

Convergencia released a report summarizing the data from their national election observation teams covering 200 polling places. The national observers reported forty-four different violations of the State Election Law and an average of 8.4 generic types of violations in each polling place.¹¹⁷ The irregularities we observed were serious. While not numerous, we may have been able to see just the tip of the iceberg. Nonetheless, the instances of fraud we did see reflect an attitude of manipulation—labyrinthine schemes devised to obtain votes fraudulently.

VII. POST-ELECTION MANIPULATIONS

Votes are counted at the polling places in the presence of the functionaries, which include one representative from each of the opposition parties. One copy of the election results is posted at the polling place, another is given to each of the party representatives, and the original is sent to a regional center, which receives and tallies the returns from other polling places. One way to verify the validity of the officially-published returns is by summing up the numbers on copies of official tally sheets from individual polling locations or from those copies in the possession of the different political parties. One problem is that the posted results and those in the possession of the party representatives often differ from the official results released by the State Electoral Commission. For example, in August 1991, Vincente Fox Quezada, PAN party candidate for Governor in Guanajuato, filed a complaint with state election officials, charging that, in 500 out of 3,600 polling places, there were more votes recorded than voters who turned out to cast ballots.¹¹⁸

After the election in Michoacán, Samuel del Villar, the PRD's lawyer and Secretary of Planning, stated that his party had copies of the official voting results of 90% of the polling places. The PRD was missing about 350 official tally sheets because the PRD representatives had been expelled from the polling places and could not obtain them. Del Villar estimated that 30% of the polling place results should be annulled because of irregularities occurring at the polling places on election day.¹¹⁹ The PRD requested that the bal-

117. Beltran del Rio & Castellanos, *supra* note 97, at 8.

118. Marjorie Miller, *Victor in Mexico Vote Resigns Amid Charges of Fraud*, L.A. TIMES, Aug. 30, 1991, at A28.

119. Beltran del Rio & Castellanos, *supra* note 97, at 9.

lot boxes be opened publicly and votes recounted in questionable cases. The president of the PRI, Genaro Borrego, initially agreed to arrange for a public recount to compare the vote tally sheets gathered separately by the PRD and the PRI functionaries in the polling place. He later refused, however, perhaps because the results would not have been favorable to the PRI.

When asked if copies of tally sheets held by other opposition parties were not sufficient assurance against fraud, Del Villar stated that the other satellite and opposition parties frequently side with the PRI in return for postelection favors. Thus, above and beyond all the other problems with the electoral process, the system suffers from a fatal flaw, which by itself prevents any electoral system from possessing legitimacy: there is no fool-proof system in place to assure the integrity of the official vote count.

VIII. Procedures for Election Complaints

There are numerous levels of review for complaints of electoral irregularities and fraud. Complaints regarding fraud on election day are either taken to or made by the functionaries of the polling place. The complaint is then submitted to the District Electoral Committee, the State Electoral Commission, and the State Electoral Tribunal.¹²⁰

There are eighteen District Electoral Committees in the State of Michoacán. Opposition groups and independent non-governmental citizens organizations charge that members of the District Committees operate arbitrarily and do not prepare studies or analyze adequately complaints submitted by opposition parties.

Prior to the election and publication of the "definitive" voter registration list, the six registered political parties in Michoacán had the opportunity to submit written complaints regarding irregularities in the registration list to the State Electoral Commission during what is called the "purification period." Upon receiving complaints during the purification period, the Commission must investigate and correct irregularities. Some changes were made in the voter registration list, the location of polling places, and the designation of functionaries as a result of complaints submitted by opposition parties.

120. See LEY ELECTORAL DEL ESTADO DE MICHOACAN DE OCAMPO arts. 187-94 (Mex.).

One problem with the complaint process is that the State Electoral Commission itself is not impartial. Rather, it is dominated by the PRI and its satellite parties. The president of the State Electoral Commission and the six "impartial" citizen members are picked by the Governor. The six registered political parties represented on the Commission choose their own representatives. The political parties, with the exception of the PRD and sometimes the PAN, generally vote with the PRI-affiliated majority. Thus, the Commission may not act on complaints using procedural excuses or may simply ignore the irregularities. It should be noted that the State Electoral Commission's own survey results of the voter registration list showed 96.1% accuracy in the list. As mentioned earlier, these results were contested by the PRD in an independent survey.¹²¹

If no action is taken on a valid complaint, an appeal may be made to the State Electoral Tribunal, which is composed of three magistrates and three jurors. The partiality of the Tribunal is an issue because members of the Tribunal are appointed by the State congress at the suggestion of the State Governor. This tribunal was established because there is no constitutional provision for review of electoral issues in the federal or state court systems.

Remedies for violations of voting procedures on election day are covered in Articles 185 and 186 of the State Election Law.¹²² If a representative of one of the political parties sees a voting irregularity, he or she must put the complaint in writing, and that complaint must be accepted by the officials of the polling place to be included in the *acta* (official document noting votes counted and events occurring at the polling place).

Complainants have difficulty proving election fraud. According to Article 193, in order for a complaint regarding voting irregularities to be valid, it must be included in the *acta* (the designated officials of the polling place may be reluctant to do this) or witnessed by a notary, a judge, or a public official.¹²³ Oral testimony or written testimony by non-official witnesses is not accepted. Yet, it is often difficult to get a complaint notarized because the notaries are generally members of the PRI and are unwilling to witness and acknowledge that voting irregularities have occurred.

121. See *supra* part V.J.

122. LEY ELECTORAL DEL ESTADO DE MICHOACAN DE OCAMPO arts. 185-86 (Mex.).

123. *Id.* art. 193.

The notarized complaint must be presented to the functionaries of the polling place or to the District Electoral Committee within three days after the vote-count at the polling place. In cases where the complaint contests the tabulation of votes, the complaint must be presented within forty-eight hours. The District Electoral Committee must then present the complaint to the State Electoral Tribunal and the other political parties within forty-eight hours. The Tribunal may issue a finding before the installation of the Electoral College, or it may simply not respond to the complaint. When acting on complaints, the Tribunal has the authority to substantiate appeals and complaints regarding electoral irregularities. The Tribunal can recommend that the Electoral College confirm the results of the polling place, nullify all the votes from one or more polling places, or change the vote computation based on the irregularities.¹²⁴

According to Article 185 of the State Election Law, the results of an entire polling place can be nullified when there are gross irregularities, such as allowing people to vote without credentials, or when physical violence or the bribing of functionaries significantly alters the results.¹²⁵ According to Article 186 of the State Election Law, results of an entire election can be nullified when irregularities are found in 50% of the polling places.¹²⁶ Independent citizens' groups have argued that the standard is too stringent—the state should adopt the provision in the Federal Code, which allows for the nullification of results when irregularities are found in 20% of the polling places.¹²⁷

The Electoral Tribunal cannot make any definitive decisions about the results of elections. Only the State Electoral College has the legal authority to nullify the results of an entire election. The MCD and the ACUDE charge that the Tribunal is simply a buffer, or a cushion, to help complainants feel that there is a system of redress and review for election irregularities; the tribunal has no real authority. These groups feel that the complaint process simply drains the resources of those making claims.¹²⁸

The State Electoral College has the final authority to nullify or approve the results of the election. Electoral College members can

124. *Id.* art. 204.

125. *Id.* art. 185.

126. *Id.* art. 186.

127. C.O.F.I.P.E. art. 288 (Mex.).

128. *Dictamen*, *supra* note 31, at 9.

challenge the results from individual polling places, seek to annul entire districts, or dispute the victory of declared winners. Nonetheless, the Electoral College has been criticized for simply being a rubber stamp for all election results. The Electoral College is made up of deputies in the State congress. In a state election, these deputies are installed before the Electoral College meets. Thus, the persons entering office by fraud may be the same individuals ratifying the results of their own contested election. Provisional approval of election results by the State Electoral College in Michoacán took place on August 16 to 19, 1992, and final ratification of election results occurred on December 23, 1992.

IX. AFTERMATH

The PRI's hope to win the election by an overwhelming 720,000 votes in order to moot the charges of fraud did not work. According to the official figures of the State Electoral Commission, the PRI received 418,080 (52.7%) of the vote for Governor, while the PRD received 289,724 (36.5%) of the vote.¹²⁹ The PRI officially won by only 16 percentage points. The PRD maintains that the actual vote was 202,570 votes (50%) for the PRD, 179,396 votes (44%) for the PRI, and 22,570 votes (6%) for the PAN.¹³⁰ The PRD's figures reflect votes that should have been annulled due to irregularities detected on election day. It should also be noted that, according to PRD estimates, 240,000 voters were shaved off the registration list, 106,007 credentials were either lost or not distributed, and approximately 150,000 dead or nonexistent people were on the final voter registration list.¹³¹ The official margin of victory was narrow enough that widespread political protest after the election forced President Salinas to replace the "elected" PRI candidate Villaseñor with Ausencio Chávez, former PRI Secretary of the Interior in charge of political affairs, elections, and the federal police. Until it was announced in mid-October that Villaseñor would resign, thousands of people participated in protests throughout the state and in the capital. The day after the July 12 election, more than 10,000 people assembled in the town square in Morelia for a victory celebration for the PRD candidate Arias. Hundreds of protesters remained in the town square, blockading

129. Beltran del Rio & Castellanos, *supra* note 97, at 8.

130. Velázquez, *supra* note 27, at 3-4.

131. Beltran del Rio & Castellanos, *supra* note 37, at 19.

the entrances to the Governor's office and preventing Villaseñor from entering the state office building until the day Villaseñor's resignation was announced. Chávez, the new temporary Governor, became known as the "Iron-hand" after he ordered the forced eviction in December 1991 of PRD activists who had seized fifty-two town halls to demand recognition of their victories in local elections. Since the July 12 election, twenty-one people have died in Michoacán in political conflicts over the election.

X. CONCLUSION: ELECTORAL REFORM

Despite minor reforms instituted by the Government since 1963, the government party still controls the election process and the mechanisms by which the laws are monitored and enforced. At the national level, a bicameral Congress consists of a sixty-four-member Senate directly elected for six years, and a 500 member Chamber of Deputies elected for three years—300 by direct vote and 200 through a system of proportional representation. A 1986 reform added 100 seats to the Chamber of Deputies on the basis of proportional representation to give the smaller parties a chance for a seat in the Federal Congress. The political power of these parties is diluted, however, by the "governability clause," which guarantees the PRI control of the majority of Congressional seats even when it wins less than half of the direct votes for those seats. Therefore, it is difficult to reform the election laws unless the PRI decides it will support such changes. Furthermore, under a 1989 "reform," parties are prohibited from voting for a Presidential candidate whose slates of deputies are not from the same party. This "reform" was a direct response to the threat posed by FDN, a coalition formed of opposition groups and political parties in 1988 under the leadership of Cuauhtémoc Cárdenas.¹³²

The State Election Law of Michoacán was modified in 1991 to reflect 1989 reforms made in the COFIPE. Article 49 of the State Election Law requires that the State Electoral Commission have equal representation by all the registered political parties.¹³³ Each of the parties has one vote on the Commission, and a majority vote is required for approval of major decisions. There are five independent citizen members of the Commission, in addition to the six representatives of the political parties. The executive branch

132. BARRY, *supra* note 5, at 31.

133. LEY ELECTORAL DEL ESTADO DE MICHOACAN DE OCAMPO art. 49 (Mex.).

(controlled by the PRI) and the legislature (dominated by the PRI), however, select the non-political party members and the president of the Commission. In actuality, the executive branch has the final say in the composition of the Electoral Commission.¹³⁴ As a result of the biased nature of the Commission, the PRD generally found itself outvoted. In Michoacán, the satellite parties of the PRI, the PAN, and the citizen members of the Commission generally voted with the PRI majority.

José Agustín Ortíz Pinchetti, lawyer, journalist and member of the MCD, notes that a major antidemocratic feature of the State Election Law is the provision providing for nullification of an election only when irregularities are found in 50% of the polling places.¹³⁵ As noted earlier, the federal law and the election laws of many states provide that an election can be annulled when irregularities are found in just 20% of the polling places.¹³⁶

Another issue is state acquiescence of federal control over state elections through the IFE's organization and validation of election procedures. Control and oversight over the compilation of the voter registration list was taken away from the Federal Government by the State legislatures in Baja California and, most recently, in Chihuahua during its 1992 gubernatorial elections. This had a significant impact on the outcome of elections in these two states.

Prior to PAN's 1992 victory of the Governorship in the State of Chihuahua, Baja California was the only state that did not have a PRI Governor. In 1989, amid charges of fraud, President Salinas reluctantly conceded that Ernesto Ruffo Appel of the PAN won the Governorship in Baja California.¹³⁷ Subsequently, Ruffo won federal approval of a plan whereby the state, not the Federal Election Commission, controlled the compilation of the voter registration list for the 1992 elections. The federal registration list was then audited, and the state auditors found 150,000 voters in Baja California without known addresses. In just one example of the

134. *Dictamen, supra* note 31, at 9.

135. Teresa Gurza, *LA JORNADA*, June 30, 1992, at 15 (untitled article).

136. C.O.F.I.P.E. art. 288 (Mex.).

137. Lucy Conger, *Opposition Wins Mexican State Governorship*, *FIN. TIMES*, July 6, 1989, at 6.

gross irregularities, a Mexicali woman was discovered in possession of sixteen federal voter credentials.¹³⁸

Additionally, Baja California has a new high-tech voter registration and identification system aimed at eliminating fraud through repeat voting and the inflation of lists with fictitious and dead voters. There is a photo on the voter credential and a computerized registry of the photos, fingerprints, and signatures on the voter identification card. The identification card also has a laser printed hologram that serves as a security seal. Finally, to ensure maximum voter participation in Baja California, the PAN doubled the amount of time previously allotted for voter registration, extending the deadline from March to mid-May. In contrast, in Michoacán, the time allotted for voter registration during the 1992 elections was from April 1 to April 30.¹³⁹

Electoral reform had an impact on the 1992 elections in Chihuahua. In December 1991, the State congress in Chihuahua unanimously approved a new advance in the electoral law that incorporated numerous proposals by the PAN opposition. The state partially funded an independent six-month audit of the electoral lists by technical experts from the PAN. The voter registration lists were analyzed, and the documents made during the initial home interviews were reviewed. Most of the detected irregularities were then incorporated into the RFE list. The State Electoral Commission dominated by the PRI agreed to these changes and, as a result of changes made in the voter registration list, half of the functionaries of the polling places ended up being PRI, the other half PAN. The location of the polling places, an issue in prior elections, was determined from proposals taken from each of the municipal committees of the political parties. All the ballots and materials used in the polling places were guarded by the representatives of the political parties and a notary. A new high-tech indelible ink was used uniformly in all the polling places.¹⁴⁰ Finally, on July 13, there was an agreement to distribute voter credentials over

138. Sebastian Rotella, *Baja's Hex on Voter Black Magic*, L.A. TIMES (San Diego County Edition), Jan. 3, 1992, at B1.

139. Calendario del Proceso Electoral en el Estado de Michoacán, *supra* note 68.

140. José Agustín Ortíz Pinchetti, *En Chihuahua, Barrio Vuelve a Provocar Pasión, Mientras Promueve las Elecciones Mas Technicamente Confiables*, PROCESO, June 29, 1992, at 14.

a ten-day period to the 65,000 people of Chihuahua who appeared on the voter registration list but had not received credentials.¹⁴¹

Reforms were made in election procedures in Chihuahua prior to the 1992 elections because the State legislature was responsive to PAN reform proposals. Yet, the PRI argues that significant reforms had already been made at the state and federal level, such as the creation of the IFE to organize and validate election procedures, the use of indelible ink to mark voters to ensure they do not vote twice, the use of translucent ballot boxes to prevent ballot-stuffing, the closure of voter registration well before the elections to allow the lists to be scrutinized, and the presence of opposition party members at polling places to monitor voting procedures. Additionally, the Federal Congress has authorized a new photo identified federal election credential to be used in the 1994 Presidential elections.

It should be noted, however, that the closure of voter registration a few months prior to an election does not ensure *independent* review of the voter registration list. The integrity of the Government audit is questionable; thus, the political parties need sufficient time to conduct their own independent audit. *Convergencia* recommends that the final voting list be given to the political parties for review at least two months before the election.¹⁴² This would give the parties time to make house visits, check for duplicate names, verify that the deceased do not appear on the list, etc. In Michoacán, the voter registration list was distributed to the political parties for review on June 17, and the final list was published on June 23, leaving only six days for the submission of complaints and revisions to the State Electoral Commission.

Twelve days before voters went to the polls in the July 12 Michoacán elections, the MCD and the ACUDE released a report stating that conditions did not exist for fair elections in Michoacán. Addressing preelection issues, the two groups proposed the following reforms: (1) public disclosure of the amount and source of resources used in the campaigns; (2) public disclosure of the biographies of the functionaries of the polling places; (3) cessation of the PRI's campaign of defamation in the press against the two major opposition parties; (4) access to the media by the opposition

141. Jorge Fernández Menéndez, *Chihuahua y Michoacán: Cinco Diferencias*, NEXOS, July 1992, at 59.

142. NUESTRA PALABRA, *supra* note 20, at 155.

parties during the hours of greatest audience viewing; (5) a debate between the three candidates, to be transmitted by radio and television;¹⁴³ (6) a prohibition on state and federal government employees working in the PRI campaign; and (7) removal of a military presence on election day. "The presence of the military only serves to terrorize the people and as a result they do not go to vote."¹⁴⁴

Looking ahead to the 1994 national elections, the PRD will be presenting amendments to the COFIPE in the Federal Chamber of Deputies. These proposals include: (1) more television and radio time for opposition parties; (2) limits on campaign spending by all political parties; (3) independent revision of the voter registration list; (4) an expanded role for the IFE so that the IFE can establish limits on campaign spending and monitor the spending; (5) a new mechanism for designating the president and the secretary of the IFE;¹⁴⁵ and (6) an expanded role for the Vigilance Commissions of the Federal Election Registry so that the Commission can receive and resolve complaints against IFE employees for acts or omissions that affect the integrity and confidentiality of the electoral list.

143. There were no face-to-face debates between the gubernatorial candidates during the campaign.

144. Gurza, *supra* note 135 (translation by author).

145. Currently, the president is the PRI Secretary of Government (equivalent to the Minister of Interior).