



SENATE PREAMBLE AND FULL TEXT OF THE 2007 ELECTORAL REFORM

CHAMBER OF SENATORS, MEXICAN CONGRESS*

Chamber of Senators

Proposal of the Joint Committee of Constitutional Issues; of Governance; Radio, Television and Cinematography; and of Legislative Studies that contains the draft decree of reforms to the Political Constitution of the United Mexican States concerning Electoral Reform

Approved with 110 votes in favor and 11 against

Remitted to the Chamber of Deputies

Parliamentary Gazette: September 12, 2007

Discussion and Voting: September 12, 2007

Honorable Assembly,

A Draft Decree bill undersigned by legislators from various parliamentary groups, members of the 60th Legislature of the Federal Congress, and presented to the Permanent Committee of the Federal Congress by Senator Manlio Fabio Beltrones Rivera was remitted to the Joint Committee of Constitutional Issues; Governance; Radio, Television and Cinematography; and Legislative Studies of the Chamber of Senators.

* Translated by Carmen Valderrama. Reviewed by Carla I. Espinoza.

Editor's Note: The text below is a translation of the entire preamble and text of the Constitutional reform bill passed by a multi-partisan two-thirds majority of the Chamber of Senators on September 12, 2007. The reform was then quickly passed by the Chamber of Deputies and by a majority of the state legislatures and was published in the *Diario Oficial de la Federación* (Federal Official Register) on November 13th, 2007. For a discussion of the importance of this reform see: Heather K. Gerken, *Mexico's 2007 Election Reforms: A Comparative View*, Vol. II, No. 1 MEXICAN LAW REVIEW 163 (2009) and JOHN M. ACKERMAN, *NUEVOS ESCENARIOS DEL DERECHO ELECTORAL* (IJJ-UNAM, 2009).

The petitioner's proposal is to amend "Articles 41 and 99 in their entirety; amend the first paragraph of Article 85; the first paragraph of Article 108; Section IV of Article 116; First Chapter Section V, Clause f of Article 122; insert three paragraphs to Article 134, and partially repeal the third paragraph of Article 97 of the Political Constitution of the United Mexican States."

On September 5, 2007, having gathered at the seat of the Senate of the Republic and verified the existence of a legal quorum, the abovementioned members of the Joint Committee proceeded with the presentation of the Draft Decree bill presented on August 31, 2007, by Senator Manlio Fabio Beltrones Rivera in his own name and on behalf of senators and deputies from the PAN, PRD, PRI and PT parliamentary groups undersigning it. This Draft serves as the basis for the analysis and discussion to be carried out by the Joint Committee, who unanimously voted to declare themselves in permanent session.

On September 10, 2007, at 7:00 p.m., the Joint Committee held a second work meeting within the framework of the permanent session declared on September 5th, to examine a second version of the Draft Decree, along with a document explaining the changes included by the Working Group formed of members of the Joint Committee. Deputies, members of the Chamber of Deputies Committees of Constitutional Issues and of Governance, attended the meeting for information purposes.

After an extensive exchange of opinions and the presentation of various proposals, the president of the Joint Committee stated that the committees would continue in plenary session until completing its task.

On September 11, 2007, at 12:00 p.m., the Joint Committee resumed the permanent session in order to examine the final Proposal for the Draft Decree concerning the Bill, object of their work.

Members of the National Chamber of the Radio and Television Industry (CIRT) and communications experts attended this work session and exchanged opinions. At the end of these contributions, a recess was called to resume work at 8:30 p.m. with the members of the examining committees.

Having established the above and under Articles 85, 86, 94 and 103 of the Organic Law of the General Congress of the United Mexican States and Articles 56, 60, 87 and 88 of the Internal Regulations governing Congress itself, the Joint Committee of Constitutional Issues; Governance; Radio, Television and Cinematography; and Legislative Studies issue this Proposal with Draft Decree along the following:

LEGISLATIVE HISTORY

As indicated by the petitioners, the Bill under review "is the first substantial result of the Law for State Reform, enacted on April 13th of this year."

The Joint Committee regards as extremely important the agreement that the political parties and parliamentary groups represented in the Federal Congress's Executive Committee for Negotiation and Building Agreements have reached since it aims at promoting an electoral reform that responds to the problems, deficiencies and voids the Mexican electoral system suffers from, as well as consolidating the significant progress brought about by the reforms effected in this matter between 1977 and 2005.

For this purpose, the Joint Committee has adopted the following considerations, stated in the Bill under review:

“The proposals for electoral reform that we now submit for the consideration of the majority required to pass a constitutional reform are based on the positive experiences we have had over these three decades in terms of its strong points, as well as its now apparent deficiencies.

It does not propose to start anew, but to consolidate what in hindsight has shown democratic effectiveness and good results. We want to remedy that which did not function and, above all, continue to build solutions that broaden the way to democracy.

The electoral reform we are setting in motion is the next step of the long journey toward a common objective: a more democratic and less unfair Mexico.”

We also agree with the guiding objectives that the drafters of the bill have explicitly identified:

“The first objective is to significantly lower election campaign expenditures, which is intended to be accomplished by reducing the public funding allotted for this purpose by seventy percent for the midterm elections in which only the Chamber of Deputies is renewed, and fifty percent for the elections in which the Executive Power and the two Chambers of the Federal Congress is renewed.

A new way to calculate annual public funding for the political parties' ordinary activities will make it possible to stop it from growing, as it has so far due to the increased number of national political parties. The proposed method would grant clarity and transparency to the implicated cost the party system, a fundamental part of a democratic system, for society.

To state it clearly and simply: with the new method of calculating proposed in this Bill, the public funding for national political parties estimated per citizen would be 35 pesos and 40 cents a year.

Furthermore, much lower limits than those now in force are purported for the private funding political parties can obtain. If ap-

proved, it would reflect a reduction of more than 85 percent of the total amount each party may annually receive under this concept.

The Bill goes on to address an aspect that concerns society and all political parties: the risk that by means of money, illegal or illegitimate interests may come to influence the life of parties and in the course of election campaigns.

Along with reduced campaign financing and to address society's justified demand, the Bill aims to stipulate that the current duration of the presidential campaign be shortened by almost half, going from 186 days to 90 days. This maximum term is also stipulated for senator and deputy campaigns taking place the same year. For intermediate elections, when only the Chamber of Deputies is renewed, campaigns shall only have a duration of 45 days.

In terms of access to communications means, the Bill lays the bases for the majority required to pass a constitutional reform, in full use of its Sovereignty, to make a suitable decision.

A second objective is to strengthen the attributes and power of federal electoral authorities in order to overcome the limitations they have faced in performing their duties. Thus, the Federal Electoral Institute would see its capacity strengthened as arbitrator during elections. Meanwhile, the Bill proposes to perfect the power of the Federal Electoral Tribunal in deciding the non-application of electoral laws that go against the Federal Constitution, coinciding with its attributes of Constitutional Court, which the Constitution itself reserves for the Federal Supreme Court of Justice.

Strengthening the independence of the Federal Electoral Institute, as well as the structure of the Federal Electoral Tribunal, is the main and central purpose of this Bill.

To this end, we intend to implement a proposal, which for many years has merited consensus, but that various circumstances have made it impossible to settle: the gradual renewal of electoral councilors and electoral magistrates. Combining renewal and experience has given positive results in other public collegiate bodies, so we are sure it will give equally positive results in the two pillar institutions of our electoral system.

Also bearing significant weight is the third objective pursued in the proposed constitutional reforms: to prevent actors not involved in the electoral process from influencing electoral campaigns and their results through communications media, as well as to raise the regulations to which governmental propaganda of any kind is subject to the rank of constitutional law during both election campaigns and non-election periods.

We who undersign this Bill have committed ourselves to devise and implement a new model of communication between society and

parties that addresses both aspects of the problem: private law on one side, and public interest on the other. In Mexico, it is urgent to bring the relationship between politics and the media into line under a new course of action. To attain this goal, public authorities must, at every level, always adhere to impartial conduct regarding electoral competition.

The individual rights acknowledged and consecrated in our Constitution are for the people, and not for the authorities. These principles cannot be invoked as a justification or defense for their acts. Freedom of expression is an individual right before the State; government authorities are not protected by the Constitution. The Constitution protects people, citizens, from any occasional misuse of government authority.

Therefore, we propose that laws preventing the use of government authority in favor or against any political party or candidate for an elective office, as well as the use of this same power to advance personal ambitions of a political nature, be incorporated into the text of our Constitution.”

CONSIDERATIONS

The Joint Committee shares the idea and intent of giving way to a “third generation of electoral reforms.” Between 1977 and 1986, the Mexican electoral system underwent the first generation of reforms, which was fundamentally meant to bring new vitality or political expression into legal life and the electoral competition, thus extending opportunities for national representation in the Chamber of Deputies in the Federal Congress, as well as in state congresses and in city councils.

From 1989 to 1996, a second generation of reforms profoundly transformed the institutions that make up the Mexican electoral system. In 1990, the Federal Electoral Institute (IFE) and the Federal Electoral Tribunal (TEPJF) were established within the framework of comprehensively renovated legislation. In 1994, new reforms gave way to citizen control over the IFE’s General Counsel and a wide-ranging set of laws and procedures were implemented to ensure legality throughout the entire electoral process.

In 1996, the latest comprehensive reform was made to the electoral system. It centered on granting the IFE independence and creating the Federal Electoral Tribunal, a specialized body and the highest jurisdictional authority in the matter, endowed with full powers and whose decisions are final and incontrovertible.

Although the last comprehensive reform to the electoral system was carried out in 1996, the Federal Congress has passed other modifications to the law over the following years, notably those which established the rules

to promote gender equality in elective office candidatures and regulated the right to vote for Mexican citizens residing abroad in 2005 and was implemented for the first time in the past presidential election.

As pointed out in the statement of legislative intent of the Bill under scrutiny:

“The third generation of electoral reforms should respond to the two great problems now facing Mexican democracy: money and the use and misuse of the communications media.

To face these challenges, it is necessary to strengthen electoral institutions, an aim that begins by setting in motion everything within reach of the Federal Congress to regain the trust of the majority of citizens.”

Having established the Joint Committee’s concurrence with the grounds, purposes and objectives of the Bill, we shall proceed to indicate the reasoning behind specific proposals in order to establish its admissibility.

ANALYSIS OF SPECIFIC PROPOSALS INCLUDED IN THE BILL AND RESOLUTIONS OF THE JOINT REVIEWING COMMITTEE

Although the petitioners establish the amendment reform of Articles 41 and 99, as well as Section IV of Article 116, in the proposed Sole Article of the Draft Decree, implying that these are fully reformed articles, the Joint Committee is aware that it is in fact a proposal of reforms and amendments to the text currently in force.

We interpret the petitioners’ reasoning more as a means to provide the reviewers with the full meaning of their proposal to amend Article 41 of the Constitution, than it being a completely different text from the one currently in force.

To provide equal access to all legislators, the Joint Committee has decided to preserve the format of the draft originally proposed in the Bill, transcribing both the texts that are not part of the reform and those under deliberation. These texts deal with Articles 41 and 99, as well as Section IV of Article 116, all of which are from the Political Constitution of the United Mexican States.

In the following section, the substance and the grounds of each specific proposal shall be analyzed to thus be able to carry out a comprehensive assessment of the congruency of the article’s text in its entirety and in the harmonious correlation it must maintain with the other articles proposed for amendment.

FIRST

Article 41

In the first paragraph of section I of Article 41, the Bill proposes giving constitutional grounds to the official registry of political parties, for which it offers the following text:

“I. Political parties are public interest actors. The law shall determine the rules and requirements for the official registry of political parties and the specific ways they can become involved in the electoral process. National political parties shall have the right to participate in state and municipal elections.”

This reform is deemed admissible since the text currently in effect does not make any reference to the requirements to be met by organizations aspiring to and requesting official registry as a national political party. These requirements are set forth in the corresponding legislation, but require precise constitutional grounds.

The second paragraph of section I of the Bill proposes the following changes:

“The purpose of political parties is to promote participation of the people in democratic life, contribute to the integration of national representation and, as citizen organizations, be the sole means of making it possible to gain access to this by exercising government functions,** according to the programs, principles and ideas they propose and by means of universal, free, secret and direct suffrage. Only citizens may form political parties and freely and individually affiliate themselves to political parties. Therefore, it is prohibited for union organizations or organizations with a corporate purpose other than that of founding parties or any kind of corporate affiliation to intervene.”

The proposed amendment aims, on one hand, to solve a dilemma to which an appropriate solution has yet to be found. We refer to political parties’ right to name candidates to elective offices, as recognized by Article 175 of the corresponding legislation as an exclusive right, notwithstanding the electoral reforms that have taken place in some states that allow, under

** Editor’s Note: This explicit prohibition of the possibility of independent candidates was eliminated on the Senate floor during discussion and did not find its way into the final reform bill. All other aspects of the present bill passed without modification.

its jurisdiction, the registry of so-called "independent candidates," that is, the participation of citizens not affiliated to a political party in elections as candidates to public elective offices.

The Supreme Court of Justice of the Nation had ruled that the provisions approved by local legislatures (the Yucatan case) in terms of the above are grounded in the systematic and functional interpretation of constitutional principles and laws on electoral matters. They have also alluded to the various international treaties Mexico has ratified on issues of human and political rights, defending citizens' right to being elected without having fulfilled the requirement of being postulated by a political party.

Establishing a general solution for this issue, one that is valid for every moment, place, and circumstance has proven itself impossible. International cases and comparative law shows that each country has solved this issue in accordance with the particularities of its political culture, its history of elections and its party system.

In Mexico since the late 1940s, the electoral system has been patently oriented toward promoting the rise, development and consolidation of a party system, as the basis of electoral competition. The reforms that took place between 1977 and 1996 were oriented along the same line and gradually defined a system of rights and obligations for political parties, which our Constitution defines as "Public Interest Actors." Establishing the right of each citizen who so decides to register and participate as a candidate for an elective office in the Constitution, even when satisfying legal requirements, would go against the path Mexico has followed successfully.

Moreover, it is evident that the so-called "independent candidacies," if adopted as a way of exercising the right to be elected to office, would openly contradict the legal framework that outlines the course of elections and campaigns, notwithstanding the guiding principles of the entire system. To recall, the Constitution establishes, for example, the obligation that the public funding political parties receive must exceed resources from private sources. A citizen who by himself, without the support of a political party, participates in an electoral competition should have the right to receive public funding; otherwise, the funds he used for his campaign would have to come from private sources, which would violate the constitutional law.

We can cite other contradictory effects in the complex system of regulation and control as established in the Constitution and expounded in the law as regards political parties' revenue and expenditures. The application of the law would be practically impossible since people are dealt with as individuals.

Therefore, the Joint Committee expresses its conformity with the implications of the proposals made by the legislators undersigning the Bill, but believes that the way it is expressed is not accurate since the purpose stipulated in the Constitution currently in effect for political parties has a different aim from that proposed in the Bill under review. This decision is con-

gruent with the objective of bringing about the undivided consolidation of the party system as one of the fundamental components of our democracy and the electoral system.

The other proposed amendment to the second paragraph of section I of the article in question is deemed necessary and justified in light of the negative experiences that have occurred in recent years. If our Constitution already establishes the binding effect that citizens' affiliation to political parties is to be done freely and individually, it is unacceptable for union organizations of any kind, or organizations not involved in the party system, to intervene, almost openly, in the creation of new parties and their official registry processes. Therefore, the Joint Committee believes that the proposal in the Bill should be approved. As a result, this paragraph would read as follows:

“The purpose of political parties is to promote participation of the people in democratic life, contribute to the integration of national representation and, as citizen organizations, make it possible to gain access to this by exercising government function, according to the programs, principles, and ideas they propose and by means of universal, free, secret, and direct suffrage. Only citizens may form political parties and freely and individually affiliate themselves to political parties. Therefore, it is prohibited for union organizations or organizations with a corporate purpose other than that of founding parties and any kind of corporate affiliation to intervene. Political parties have the exclusive right to request the registry of candidates for elective offices.”***

The insertion of a third paragraph to section I of Article 41 to limit the intervention of electoral authorities in the internal life of political parties to what is provided for in the Constitution and in the law should be approved in view of the general purpose behind the amendment so as to consolidate a political party system that has a defined legal framework.

Thus, the Bill proposes the following text:

“Electoral authorities may only intervene in political parties' internal issues under the terms stipulated in the Constitution and the law.”

The Joint Committee moves for its approval because the extreme *judicialization* of political parties' internal issues is a negative phenomenon for Mexican democracy. There are many causes of this phenomenon, but perhaps the most important is the federal jurisdictional authority's continued

*** See *supra* note **.

practice of interpreting constitutional and legal laws on matters of parties' internal lives. This situation has resulted in the wrongful practice of substituting the law dictated by the Legislative Branch with decrees issued by the chambers of the Federal Electoral Tribunal that have given rise to complex and vast jurisprudence on this matter, which in turn feeds the *judicialization* of politics to further extremes. This was neither the intent nor the spirit of the 1996 electoral reform that instated the Electoral Tribunal and defined its faculties and powers.

The proposal in question shall bring about the amendment of the corresponding legislation for the purpose of perfecting political parties' obligation to have, within their own laws and common practices, internal bodies for efficient and opportune protection of its members' rights, without any delays or subterfuge that would render ineffective the exercise of its militants' rights.

As to political party financing, the *Bill* under review contains proposals that aim at addressing one of the most critical aspects of the electoral system as a whole.

It should be noted that the 1996 constitutional amendment on electoral matters established the bases, still in effect, to determine three types of public funding, the criteria for its distribution and other rules in which the law elaborates on matters of campaign expenditure, oversight, and scrutiny of the national political parties.

In its rules for calculating the amount of resources to be distributed, the public funding system still uses the so-called "minimum campaign cost" as a baseline, which the IFE General Council must establish each year. The text currently in force stipulates that in order to calculate the total amount to be distributed among the political parties "the number of senators and deputies to be elected, the number of political parties represented in the Chambers of the Federal Congress and the length of the electoral campaigns" should also be taken into account. The law elaborates on these factors in a complex set of regulations, which is very difficult for citizens to understand.

The IFE's experience since the enactment of the 1996 reform has been that after the first and only study carried out to establish the "minimum cost of a campaign for deputy," the General Council has continued with the practice of updating this cost each year based on the consumer price index prepared by the Bank of Mexico. While it is true that the law lacks objective criteria to determine the so-called "campaign cost," it should be noted that there is tremendous difficulty involved in establishing objective criteria that can be applied as a rule in view of the diverse demographic and territorial factors, as well as those concerning the availability of communications infrastructure and urban facilities seen in the universe of the 300 districts that the national territory has been divided into for electoral purposes.

To this, we must add the effect of the increase in the number of parties represented in either Chamber of the Federal Congress, which was unforeseen in the 1996 amendment. Since for purposes of calculation this number is multiplied by the base, it has an expansive effect on the amount of ordinary funding and, hence, in that of campaign financing. It should be noted that the total amount for this concept grew by more than 25 percent in 2007, in comparison to 2006. This is largely explained by the fact that two new political parties ratified their official registry and are represented in the Federal Congress, making the multiplier go from six to eight.

In view of this, the Joint Committee deems it convenient to modify the way to calculate ordinary public funding allotted to national political parties as outlined in the proposal since it adopts an easily-applied rule that consists of only two factors: a percentage of the daily minimum wage in the Mexico City stipulated in the Constitution, and the number of citizens registered in the voters registry. The result of this mathematical operation is multiplied by the second factor. The result is the total amount to be distributed among political parties under the concept of public funding for their ordinary activities.

With this new method of calculation, which has been adopted by more than twenty states and is commonly used in other nations, the following benefits would be obtained:

First, it would prevent any increment in the amount to be distributed that results from an increase in the number of political parties, as has happened over time. Any increase in this amount would be directly related any increase in the minimum wage and with any growth in the number of citizens registered in the voter registry, which, due to the changes in our country's demographic pyramid, should be much lower than that observed over the last two decades. It is even foreseen that in the short term, the number of registered citizens should begin to stabilize or even fall.

A second benefit of this new method of calculation is that it will convey to society transparency and clarity in terms of the cost of the party system, as the Bill under consideration fittingly points out:

“The proposed method would grant clarity and transparency to the implicated cost the party system, a fundamental part of a democratic system, for society.”

“To state it clearly and simply: with the new method of calculation proposed in this Bill, the public funding for national political parties estimated per citizen would be 35 pesos and 40 cents a year.”

Having established the above, the Joint Committee has, however, come to the decision to bring about even further savings than those proposed in the Bill under review, in terms of funding for campaign expenditure, which will be analyzed below. Therefore, the committee has decided that the per-

centage of the daily minimum wage in effect in Mexico City shall be used as the base for the annual calculation of ordinary public funding and stand at sixty-five percent, five percent less than that proposed in the Bill. Just this reduction would save the public treasury more than 200 million pesos once the amendment enters in effect.

The Bill also proposes a change in the current distribution criteria, making it completely proportional to the votes each party obtains in the preceding deputy elections. The current law in effect proposed to be amended was established in 1996 as affirmative action to bring about the advancement of the then-emerging parties. It aimed at creating conditions of competition that, in the beginning, were not conditioned by election results, the product of a system marked by deep-rooted inequality in terms of access to public funding and the communications means.

The measure adopted in 1996 has given results that have been positive in general terms. Today, we have a system of eight national political parties, whose official registries were endorsed by the electorate in 2006.

We, who are members of the Joint Committee, shall assume the responsibility of and understand the justified concern that five of the eight national political parties have expressed regarding the possible negative effects of the implementation of distribution criteria strictly proportional to the number of votes might have on their possibilities to compete, and even more so when the rule of forming part of the Chambers of the Federal Congress is not one of absolute proportionality, but is mixed with a dominant majority.

Therefore, the Joint Committee proposed to the Senate *en banc* that the method to distribute annual ordinary public funding to which political parties have a right, remain under its current terms. As a result, the paragraph in question would remain as follows:

“a) Public funding to sustain political parties’ permanent ordinary activities shall be determined each year by multiplying the total number of citizens registered in the voters registry by sixty-five percent of the daily minimum wage for Mexico City. Thirty percent of the amount resulting from the above calculation shall be distributed equally among the political parties and the remaining seventy percent, according to the percentage of votes obtained in the immediately preceding deputy elections.”

The Bill under review proposes a change of enormous weight: a substantial cut in public funding allotted to political parties’ electoral campaigns. Today, this funding is established as an identical amount allotted to each party in an election year under the concept of ordinary financing, without any distinction whatsoever between years in which the Federal Executive Branch and the two Chambers of Federal Congress are renewed, and in which only the chamber of Deputies is renewed.

We propose that in general election years, that is, when the Federal Executive and the two Chambers of the Federal Legislative Branch are renewed, public campaign funding should be equal to fifty percent of the amount each party receives under the concept of ordinary funding, half of what is currently in effect. In midterm election years, with the renewal of only the Chamber of Deputies, there will be a seventy percent reduction. In other words, in midterm elections, the treasury would give parties only thirty percent of the amount received for ordinary funding to be used for electoral campaigns.

This reform responds to society's justified demand to lower campaign expenditures and the prevent squandering and misuse of funds so offensive to society.

Hence, paragraph b) of section II of Article 41 would read as follows:

“b) Public funding for activities aimed at obtaining votes during a year in which the President of the Republic, senators and federal deputies are elected shall equal fifty percent of the public funding that corresponds to each political party for ordinary activities that same year. When only federal deputies are to be elected, the amount shall be equal to thirty percent of said funding for ordinary activities.”

As to paragraph c) of section II, the Joint Committee move that the proposal in the Bill be approved with one modification. The reason for this is that the law currently in effect has brought about undesired effects in parties' access to the funds the IFE assigns them and thus comply with the rights of parties. There are no objective criteria to determine the total amount that should be assigned to parties, nor does it indicate the method of distribution among them. The absence of this in the law has brought about a certain degree of discretionary judgment in determining amounts to be distributed and a sense of uncertainty among parties, since the party that spends it at an earlier date has a better possibility of obtaining more resources, to the detriment of the others.

For this reason, the Joint Committee move that the proposal contained in the Bill be approved. However, we believe it judicious to strengthen the amount of funds destined for performing specific activities already established in the Constitution, and adopt the rule of thirty percent for all parties and seventy-five percent proportional to the votes obtained by each party, in keeping with the abovementioned criteria for the distribution of ordinary public funding. As a result, paragraph c) of section II of the article in question would be drafted as follows:

“c) Public funding for specific activities associated with education, training and socio-economic and political research, as well as for publishing activities, shall be equivalent to three percent of the total

amount of the annual public funding that corresponds to ordinary activities. Thirty percent of the total amount resulting from the above calculation shall be distributed equally among political parties while the remaining seventy percent shall be distributed to parties based on the percentage of votes obtained in the immediate preceding deputy elections.”

The Bill under review also proposes the amendment of the last paragraph of section II and the insertion of a second paragraph *in fine* to the text currently in effect.

In terms of the first proposal, the provisions already established in the text currently in effect shall remain intact while the proposed insertions aim mainly at conferring constitutional grounds for the law to regulate not only political party spending for electoral campaigns, but also those for their primary elections to select their candidates.

The proposal is deemed admissible because internal candidate selection procedures, one of which is in the form of primary elections, are part of a permanent reality in the Mexican electoral system and must be regulated by law. Moreover, court precedent states that these procedures and primary elections are part of the electoral process governed by the Constitution.

As to the second addition proposed in the new draft, it should be noted that it aims at setting a maximum amount of contributions from party supporters, that is, political parties' private funding, equivalent to ten percent of the maximum amount of expenses set in the immediately preceding presidential election. With this, the amount each party can receive under this concept would lower significantly. To date, under the rules established by law, this amount comes to almost 270 million pesos a year per each party. Changing the calculation base would lower this amount to some 65 million pesos, if the cap on presidential campaign expenses remained at 2006 levels. However, it is apparent that the Federal Congress needs to lower the criteria in the corresponding legislation so the IFE's General Council may set the amount in order for it to coincide with the substantial reduction proposed in this Proposal for public funding for election campaigns. Thus, it is estimated that the maximum amount of private funding each party may receive a year will not exceed 40 million pesos, a decrease of approximately 85 percent in comparison to the current amounts.

Meanwhile, regarding the proposal to insert a paragraph *in fine* to section II, it should be noted that some time ago, specialists and parties proposed codifying the destination of the assets and resources of parties that lose their official registry due to any of the presumptions stipulated in the law. The assertion arose from the openly unscrupulous behavior of one political organization upon losing its official party registry. This organization refused to fulfill its obligation of rendering accounts and its leaders apparently dis-

posed of the assets and the remainder of the revenue from public funding they had been receiving for more than four years.

The Bill proposes, and the Joint Committee concurs, establishing constitutional grounds that will make the liquidation of assets and liabilities mandatory, as well as the return of the remaining assets and resources of political parties that lose their official registry to the treasury, based on the presumptions and rules to be established in the law.

Therefore, the approved text for the above paragraphs in this section, would read as follows:

“The law shall establish the limit of the disbursements for political parties’ primary election and election campaigns. The law itself shall establish the maximum amount of contributions parties may receive from their supporters. The annual total amount of these contributions per party may not exceed ten percent of the maximum amount of expenses established for the preceding presidential campaign. Likewise, the law shall classify control and oversight procedures on the origin and use of all the resources in their possession, and shall apply the sanctions deemed necessary for non-compliance with these provisions.

Likewise, the law shall establish the procedure to liquidate the assets and liabilities of parties that lose their registry and the premises under which their assets and balances shall be transferred to the State.”

The Bill under review proposes inserting a new section III to Article 41 of the Constitution to establish the rights of political parties to use radio and television be regulated in the corresponding legislation.

Therefore, the Joint Committee outlines the following considerations:

First of all, we believe it necessary to give solid constitutional grounds to the amendments introduced in the law on this critical issue. Therefore, the decision has been made to articulate these grounds in the new section III of Article 41 of the Federal Constitution.

Second, the four Reviewing Committees, at the session ordered by the Managing Committee of the Permanent Committee of the Federal Congress, go on to discuss the motives that jointly led them to propose to the Federal Congress, and through Congress to the majority required to pass a constitutional reform, a new model of communication between political parties and society, under the following considerations:

1. For several years societies and nations worldwide have been immersed in the revolution brought about by scientific and technological developments that have made instant communication possible through ra-

- dio, television and new cybernetic means, among which the Internet stands as a change of historic proportions;
2. Societies and nations in the 21st century have been placed within the globalization process by means of information flows, which have irreversibly crossed over national borders. This new reality, which we are just beginning to know, opens up unprecedented challenges for the preservation of democracy and the sovereignty of each Nation. It is no exaggeration to say that the political-constitutional systems that each State has established for itself, in exercising its right to self-determination, are now experiencing great challenges within the framework of International Law;
 3. For at least the past fifteen years, democratic nations have shown the tendency to move political races and election campaigns out of their historically established places —first, public squares, then printed media— towards electronic means of social communication, principally radio and television;
 4. This new reality, marked by the growing social influence of radio and television, have created effects that go against democracy by consciously or unconsciously leading to the acceptance of patterns of political and electoral propaganda that imitate or replicate those used in the market to place or promote merchandise and services to those who aim at consumer acceptance;
 5. In view of these trends seen worldwide, politics and electoral competition are exposed not only to models of propaganda that are foreign to it, but also to the risk of falling under the influence of radio station and television channel owners or concessionaires, or of other groups with the sufficient economic leverage to reflect their influence in communications media. Such a situation would give way to an extralegal economic power that goes against democratic constitutional order;
 6. In Mexico, with the 1996 electoral reform, the conditions of electoral competition underwent a radical change toward equality and transparency. The instrument to bring about this change was the new model of public funding for parties and their campaigns. The root of this change is found in the constitutional provision that establishes the mandatory prevalence of public funding over private;
 7. However, since 1997, a growing tendency for political parties to earmark increasingly larger proportions of the funds received from the State to purchase air time on radio and television has been observed. This situation reached extreme proportions in the 2006 elections since, according to IFE data, parties on average allotted more than 60 percent of their campaign spending budget to purchasing air time on television and radio, in that order of importance;
 8. In addition to concentrating expenditures in radio and television, there is a worrying fact consistent with the proliferation of negative

messages excessively spread in these communications media, however harmful to society and to the democratic system. Despite the fact that legal provisions establish political parties' obligation to use half their allotted time on television and radio to make their electoral platforms known, this law has become a dead document from the moment parties opted to purchase and broadcast spots (20 seconds) in which their message takes on the traits of commercial advertising or aims at attacking other candidates or parties;

9. This situation has become increasingly exacerbated in state campaigns for governor and in municipalities with larger populations and socio-economic importance, as in the case of the Mexico City;
10. Society clamors for this; it is a democratic obligation and in the best interest of all political forces committed to advancing democracy and strengthening electoral institutions to put a complete stop to the negative trends seen in using television and radio for political-electoral purposes during campaign periods as well as in non-campaign periods.

In summary, the legislators who form part of the Joint Committee are convinced that the time has come to make way for a new model of social communication between parties and society, with different bases, different aims and in such a way that neither the money nor power held by the communications media is erected as determining factors in election campaigns and their results or in the political life of the nation.

This is society's clamor; this is the Federal Congress's response, which we hope will be fully shared by state legislatures, an integral part of the majorities required to amend the Political Constitution of the United Mexican States.

The bases for the new model of social communication proposed for incorporation into Article 41 of the Constitution are:

- I. Political parties shall be strictly prohibited from acquiring air time, in any form, on radio and television;
- II. Political parties' permanent access to radio and television shall take place exclusively during the amount of time allotted to the State on these means, according to this Constitution and the law. This time shall be consigned to the Federal Electoral Institute as the sole authority for these purposes;
- III. The specific allocation of radio and television air time shall be made by the Federal Electoral Institute, for its own purposes and to effect the exercise of the rights that this Constitution and the law grants to political parties;
- IV. The constitutional right that, for purposes of a new model of social communication between society and political parties, the State must allocate the amount of time allotted on radio and television for the objectives stipulated in the new section III of Article 41 of

the Constitution during both federal and state election processes, as well as in Mexico City. This changes the use of the air time the State already has at its disposal and does not impose fees or taxes in addition to those already in place, by the concessionaires of these communications media;

- V. Along with the decision adopted regarding the criteria for distributing funding for ordinary and specific activities, it is directed that parties' allotted time on radio and television during primary elections and electoral campaigns shall be distributed the same way, that is, thirty percent equally and seventy percent in proportion to the votes obtained;
- VI. The laws that apply to the use of radio and television by state electoral authorities and political parties during local electoral campaigns are established in section III, sub-section B, stipulating that during periods of local elections that coincide with federal elections, the allotted time for to the first shall be included in the total time established in section III, sub-section A;
- VII. New criteria for national political party access to radio and television outside periods of primary elections and electoral campaigns are established, following the method of equal distribution established since the 1978 electoral reform;
- VIII. Political parties' obligation to abstain from using denigrating expressions against institutions and parties or slander against people in its political propaganda is raised to constitutional level. Likewise, compulsory suspension of all government propaganda during electoral campaigns until the end of the election day is also established, specifying the only admissible exceptions;
- IX. The prohibition of third parties from buying or broadcasting messages on radio and television with the intention of influencing voters' preferences or benefiting or harming any party or candidate to elective offices is elevated to constitutional level. An express provision to hinder broadcasting on national territory of this type of messages when undertaken abroad is also established;
- X. To give the Federal Electoral Institute the power needed in the exercise of its new attributes, the law must establish the sanctions applicable to those who breach the new constitutional and legal provisions, thus empowering the IFE to order, in extreme cases, the immediate suspension of radio and television transmissions that violate the law in these cases and in compliance with the procedures stipulated in the law itself.

This is the most in-depth and most transcendental reform in the matter of political parties' use of radio and television that has ever been carried out in Mexico.

Along with the new rules in matters of party funding, regulating primary elections, the duration of campaigns and the laws to ensure no interference from third parties and the impartiality of civil servants, the constitutional laws on matters of political parties' use of radio and television constitute the basis to bring about an in-depth democratic transformation of our Electoral System and give rise to a new, stronger, more independent Federal Electoral Institute, which will be better able to fully exercise its powers and attributes than those it already had and that will be granted with this reform.

The Joint Committee moves to approve the proposal in the Bill for a new section IV of Article 41 of the Constitution to be established, stipulating that the law should specify the periods of time for primaries for candidates to elective offices, as well as the rules that apply to primary elections and electoral campaigns. Likewise, it is deemed necessary that the Constitution stipulate the length of the new periods of time for electoral campaigns. Election years in which the Federal Executive Branch and the two Chambers of Federal Congress are renewed shall comprise a period of ninety days for all campaigns, while for the case of midterm elections, campaigns for federal deputies, the Bill proposes that they have a length of forty-five days. Related to the above, it is proposed that it be stipulated that primary elections may not exceed more than two-thirds of the time established for constitutional campaigns. The law shall establish the sanctions to be applied to whoever violates these provisions.

The Joint Committee has decided to insert an amendment to the proposal of the Bill with the intention that campaigns for federal deputies in midterm election years have a length of sixty days, in view of the diversity that exists among the 300 federal electoral districts.

Therefore, the new approved section IV of Article 41 of the Constitution shall read as follows:

“IV. The law shall establish the periods of time to carry out party proceedings for selecting and postulating candidates to elective offices, as well as the rules for primary elections and electoral campaigns.

The length of campaigns for presidential, senate and federal deputy elections shall be ninety days. In years with only federal deputy elections, campaigns shall last sixty days. In no case shall primary elections exceed two-thirds of the period of time stipulated for electoral campaigns.

Any violation of these provisions by parties or any individual or corporation shall be punishable by law.”

The current section IV would become V, with the laws that give origin to the existence of the Federal Electoral Institute, its organic structure and matters pertaining to the structure and functioning of the body of higher

authority and the relationships between it and executive and technical bodies remaining intact with the following changes:

The Bill proposes that the figure of an Internal Comptrollership with technical and administrative independence to oversee and supervise the IFE's revenue and expenditures be established in the Constitution, as well as a procedure for appointing the head of this internal body, that can hold all the civil servants in the Institute responsible, including electoral councilors and the President of the General Council.

The Committees are well aware of the legitimate concern this proposal has awakened in certain circles of specialized opinion, as well as among legislators from various parties, in the sense of ensuring care that the IFE's independence not be infringed upon or undermined by the existence of a body of internal control whose head is appointed by the Chamber of Deputies with the vote of two-thirds majority of the members present. Likewise, concern has been expressed regarding the proposal of granting this internal body the power to sanction even electoral councilors and the President-Councilor of the General Council.

The Joint Committee has carefully analyzed the various advantages and implications of the proposal contained in the Bill and reached the conclusion that it is in accordance with the independence and the guiding principles the Constitution establishes for the Federal Electoral Institute and its eminent responsibility.

The independence our Constitution grants to the public entities indicated in the Constitution itself has well-defined aims for each. The common objective is that of preventing any government authority from interfering, obstructing or influencing the decisions that independent entities may adopt in the exercise of their powers.

However, independence is not self-sufficiency. Independent institutions are governed by the general framework of obligations and responsibilities established by the Mexican Constitution and legal order. It is advisable therefore to elaborate on the rules and regulations that permit the effective and opportune rendering of accounts by those institutions of the Mexican State that, we insist, are independent and not self-sufficient.

It is evident that the head of an internal control body should not be designated by those to be subjected to the oversight established by law. It would be a situation of being both judge and jury, producing harmful effects like those already seen in a not too distant case within the Federal Electoral Institute itself.

Nor is it recommendable for the Secretary of State, who within the scope of the Executive Branch has been assigned powers in matters of internal control of the centralized and semi-private public administration, to interfere with the powers of an independent body like the IFE. The Judicial Branch can likewise be an example of possible intervention in these matters, which are foreign to its nature.

The only course lies in turning to the popular sovereignty found in the Federal Congress to address the dilemma that arises in establishing a body for internal control at the core of constitutionally independent institutions. In particular, the Joint Committee believes it to be entirely congruent that being the Chamber of Deputies the depository of the sole power to choose electoral councilors and the President-Councilor of the IFE General Council, it be this same Chamber of Federal Congress that chooses the head of the Internal Comptrollership for this same Institution, endowing it with the constitutional grounds that allow it to exercise its heightened responsibilities with complete professionalism and adhering to law.

However, the Joint Committee believes that in order to safeguard the impartiality and professionalism that the head of the IFE's Internal Comptrollership must observe in the fulfillment of his duties, the candidates nominated to this office should hail from prestigious public universities as stipulated by law. The law should also establish the requirements the elected official should fulfill and the corresponding procedure.

Therefore, we move that the following proposals regarding the creation of the IFE's General Comptrollership by Constitutional law be included in the Bill under review, recalling that the current section IV would become section V:

“V. ...

The executive and technical bodies shall have at their disposal the qualified personnel needed to render professional electoral services. *A Comptrollership General, with technical and administrative independence shall be responsible for overseeing all the Institute's revenues and expenditures.* The provisions of the electoral law and of the Statute, based on what the General Council approves, shall govern the work relationship with the public servants of the public body. The oversight bodies of the electoral registry shall be made up in its majority by representatives of the national political parties. Polling station boards shall be made up of citizens.”

...

The head of the Institute's General Comptrollership shall be appointed by the Chamber of Deputies with a two-thirds majority vote of the members present and nominated by public institutions of higher education, under the form and terms determined by law. The term of office shall be six years and with the possibility of only one reelection. The head shall be administratively part of the Office of the President of the General Council and shall maintain the necessary technical coordination with the scrutinizing body of the Federation.

The Joint Committee concurs with the proposal posed by the drafters of the Bill under review to establish the staggered renewal of electoral council-

ors of the General Council, as well as of the magistrates of the Federal Electoral Tribunal.

We subscribe to the declarations in the statement of legislative intent for the bill under review, in the sense of implementing "a proposal, which for many years has merited consensus, but that various circumstances have made it impossible to settle: the gradual renewal of electoral councilors and electoral magistrates. Combining renewal and experience has given positive results in other public collegiate bodies, so we are sure it will give equally positive results in the two pillar institutions of our electoral system."

To make the staggered renewal possible, coinciding with the frequency of federal elections, we concur with the proposal of increasing the term of office for electoral councilors of the IFE's General Council by two years, leaving it to the corresponding legislation to regulate the exact transition period for this purpose. It is expected that the same criteria shall be adopted for electoral magistrates of the Chambers of the TEPJF.

To complement the new method of renovating electoral councilors and the President-Councilor of the IFE General Council, we accept the proposal of contemplating the possibility of mandatory elections due to a definitive absence of any of these public servants. In this case, whosoever fills the vacancy shall do so for the remainder of the term that was not discharged by the absentee. Likewise, the proposal of expressly establishing the principle of non re-election for those who have held these positions shall be included.

As to the President-Councilor of the Federal Institute's General Council, the Joint Committee has decided to approve the proposal presented by the Working Group responsible for drafting the Draft Decree to differentiate the term of office from the one granted to electoral councilors, setting it at six years and establishing that these public servants only have the possibility of being re-elected once. This proposal coincides with the staggered renewal being decided upon for electoral councilors, so that, like the staggered renewal of these councilors, it would be possible to renew the President-Councilor, or increase his term in this high position to six years more than the original appointment, should the Chamber of Deputies so deem it.

The Joint Committee has gathered and evaluated the proposals that have come from the people and their organizations aimed at opening a widespread process of an open consultation procedure to present nominees for electoral councilors and President-Councilor of the IFE General Council. Therefore, it has been decided to not only consider these proposals in a favorable light, but also give it the constitutional grounds to make this mandatory.

Finally, in terms of this issue, we believe it pertinent to suppress the figure of deputy electoral councilors, as well as to derogate the extraordinary powers granted to the Permanent Committee of the Federal Congress to

carry out councilor and President-Councilor elections, if deemed necessary because the Chamber of Deputies is in recess.

It is clear that deputies or senators can be summoned and can attend extraordinary sessions at short notice. Therefore, the provisions being discussed are unnecessary and their repeal is legally warranted.

As a result, it is proposed that the corresponding part of the section being discussed read as follows:

“The President-Councilor shall remain in his position for six years and may be re-elected only once. The electoral councilors shall remain in their positions for nine years. Their renewal shall be staggered and they may not be re-elected. Depending on the case, the one or the others shall be successively chosen by a two-thirds majority vote of the members of the Chamber of Deputies present, based on nominations made by parliamentary groups after holding a far-reaching open consultation procedure. In the event of the definite absence of the President-Councilor or of any of the electoral councilors, a replacement shall be chosen to conclude the remainder of the term. The law shall establish the corresponding rules and procedures.”

Along with the abovementioned amendment, modifications in style and congruency of the other paragraphs mentioning electoral councilors and the President/Councilor are recommended.

In the seventh paragraph of the section in question, the Bill proposes that the Comptroller General be included among the IFE officials compelled to fulfill the requirements stipulated by law for their appointment. Likewise, it specifies that electoral councilors, the President-Councilor and the executive secretary may not, for a period of two years after the date of their stepping down from office, hold a position of government authority in the elections of which they have participated. As to the appointment of the executive secretary, it is only proposed that it stipulate that the power of the General Council shall be exercised through the vote of whosoever has this right in said body.

As to the new constitutional law that would enable IFE officials stipulated in this law to hold positions of government authority in whose election they have participated, for a period of two years as of their stepping down from their positions in the IFE, it should be noted that this law already exists in the Federal Law of Administrative Responsibilities of Public Servants. However, this law proscribes this restriction for the lapse of only one year after leaving their positions.

In view of recent experiences and the nature of the law, the proposals are accepted by the Joint Committee and, therefore, the reformed text would read as follows:

“The law shall establish the requirements the President-Councilor of the General Council, electoral councilors, the Comptroller General and the Executive Secretary of the Federal Electoral Institute must meet for their appointment. Those who have acted as President-Councilor, electoral councilors, and Executive Secretary may not hold, for two years after the date of their retirement, positions of government authority in the elections of which they have participated.”

“The Executive Secretary shall be appointed by the vote of two-thirds of the General Council from the nominees proposed by its President.”

Likewise, the Bill under review proposes that the creation of a technical body to oversee national political parties' finances, its legal nature and the method of appointing the head of this agency be established in paragraphs 10th and 11th of the new section V of Article 41. It also establishes that in order to be able to fulfill its objectives, it shall not be limited by privileged bank, trust, and tax information, since it is also the compulsory medium for its state counterparts to overcome the restriction imposed by this same legal standard.

These proposals are significant because they make it possible to take another step toward the professionalization and impartiality in the work of oversight that, in terms of national political parties, the Constitution gave to the IFE General Council in 1996. This has caused unnecessary distortions in dealings between these civil servants and political party representatives in the Council itself, as well as the now competent councilors' failure to exercise this power.

In favor of the powers conferred to the Institute in this matter and for the technical and legal security of the national political parties subject to oversight and surveillance, the technical body the Bill under review proposes should be created. As a result, the constitutional law would read as follows:

“The oversight of national political parties' finances shall be under the responsibility of a technical body of the General Council of the Federal Electoral Institute, endowed with administrative independence, whose head shall be appointed by the two-thirds vote of the Council from the nominees proposed by the President-Councilor. The law shall expound the integration and functioning of this body, as well as the procedures for the General Council to apply sanctions. In the fulfillment of its functions, the technical body shall not be limited by privileged bank, trust, or tax information.

The technical body shall be the channel through which the competent authorities in matters of party oversight within the limits of

federal entities can overcome the limitation referred to in the previous paragraph.”

The Bill proposes that the IFE be endowed with a new and important attribute: that of organizing, upon reaching agreement with the competent authorities, local election processes within state limits, thus addressing a proposal from various political parties and numerous civil organizations, as well as specialists in electoral matters.

The solution devised by the drafters of the Bill under review is acceptable since it allows internal sovereignty granted by the Constitution to the states that form part of the Federation, which is initially expressed in its ability to organize and carry out elections for public offices within their territory and to form city councils, to be harmoniously coupled with the possibility of benefitting from the material and human resources the IFE has at its disposal throughout the national territory. This new constitutional provision shall make it possible to assist in lowering costs and raising efficiency and reliability in local elections in the short and mid-term, while fully respecting the internal sovereignty of the federal states.

Therefore, we move that the draft proposed in the Bill be approved so it establishes that:

“The Federal Electoral Institute shall assume, by means of mutual agreement with the competent authorities from the federal states who so request, the organization of local elections, under the terms provided for in the applicable legislation.”

The Joint Committee moves that the proposed reform be approved in order to remove the mention of national political groups from the ninth paragraph of section V of the text currently in force so that the law may regulate their rights and obligations. This is in view of the specific nature and purposes of these groups.

Finally, as to the makeup of Article 41 of the Constitution, it only remains to state that, with the effects of the amendment, the section currently identified by Roman numeral IV is now identified as number “VI,” without any other change.

SECOND

Article 85

The Bill under review proposes an insertion to Article 85 of the Constitution so it specifies one of the presumptions that, if the case arose, would lead to the need for the Federal Congress to appoint an interim President. This presumption is in the event that the Upper Chamber of the TEPJF de-

clares the annulment of a presidential election, in which case the election would not have been declared *valid*. The Joint Committee believes it pertinent to insert, and likewise specify, that in dealing with three regulated presumptions in the first phrase in the article, it is convenient to substitute “and” for “or,” to clearly differentiate the third, which refers to the case in which the Upper Chamber of the TEPJF declares the presidential election null and void. Thus, the first paragraph of Article 85 of the Constitution would read as follows:

“Article 85. If at the commencement of a constitutional term the President-elect does not present himself, or if the elections have not been held *or* not declared *valid* on December 1st, the president whose term has ended shall nevertheless cease to function, and the executive power shall be entrusted to an individual whom the Federal Congress shall designate as interim President, or if the Congress is not in session, to an individual whom the Permanent Committee appoints as Provisional President, proceeding in accordance with that set forth in the preceding article.”

THIRD

Article 97

In the above electoral reforms, the convenience of derogating the power granted to the Supreme Court of Justice to conduct investigations regarding possible violations of the public vote as established in the third paragraph of Article 97 of the Constitution has been analyzed and discussed. The paragraph in question establishes the following:

“The Supreme Court of Justice is enabled to conduct the investigation of an act or acts that constitute the violation of the public vote, but only in the cases that in its judgment place doubt upon the legality of the entire election process for one of the Powers of the Union. The results of the investigation shall be brought to the attention of the competent bodies in a timely manner.”

There is general agreement about the inapplicability of the power mentioned in the preceding paragraph, which since the 1996 reform enters into contradiction with the powers that the Constitution itself confers to the TEPJF. Since Electoral Tribunal rulings are final and irrefutable, the question is how and to what effect could the Supreme Court of Justice, the highest authority in the Federal Judicial Branch, conduct an investigation on possible violations of the public vote, which would have also affected the le-

gality of the entire election process for one of the Powers of the Union. If this presumption ever occurred, it is clear that the Upper Chamber of the TEPJF would have to fully exercise its powers and declare the process in question null and void.

Therefore, and taking into account that the Supreme Court of Justice itself has clearly expressed its agreement with those who propose the repeal of this paragraph, the Joint Committee moves to accept the proposal contained in the Bill under review and, in consequence, propose the repeal of the third paragraph of Article 97 of the Constitution.

FOURTH

Article 99

As in the case of Article 41, the Joint Committee first defines that the Bill under review affirms that it proposes the complete amendment of this article, when in reality it discusses amendments and insertions to several of the already existing paragraphs. Having made this clarification, we proceed to analyze each concrete proposal.

In the second paragraph of the article in question, the Bill proposes an in-depth proviso to establish that both the Upper Chamber of the TEPJF and regional chambers shall operate on a permanent basis. To date, it is not so due to a provision established in the corresponding legislation that stipulates that regional chambers are only to work during periods of federal elections.

In view of the workloads the Upper Chamber deal with each year, it is not deemed proper for regional chambers to be kept in recess outside the period of federal elections, and even less so when the electoral magistrates that form part of these chambers are guaranteed the right to continue to receive a salary as stipulated by law. The law should establish the distribution of powers between the Upper Chamber and regional chambers, within the framework of that which is provided for in the Federal Constitution.

Therefore, the Joint Committee approves the amendment proposed in the following terms:

“For the exercise of its functions, the Tribunal shall function with an Upper Chamber and regional chambers *on a permanent basis*. Its resolution sessions shall be public, under the terms determined by law. It shall have the necessary legal and administrative personnel for its proper functioning.”

The Bill proposes the insertion of a new paragraph after the current section II of the fourth paragraph of Article 99, sections that from I to IX de-

fine the powers of the Electoral Tribunal. Specifically, the proposed text would establish the following:

“The Upper and regional chambers of the Tribunal shall only declare an election null and void for causes that are expressly established in the laws.”

After a long exchange of opinions and discussions, the Joint Committee members responsible for the proposal have come to hold the conviction that the above transcribed text should be approved since it addresses a concern regarding the interpretive limits that should or should not be established in the Constitution itself for all jurisdictional authorities. We agree with the need for the TEPJF to ground its rulings in cases of nullity to the causes that are expressly stipulated in the law without establishing different causes through jurisprudence while not contravening the high purpose and broad powers the Constitution grants the TEPJF. In due course, the law will need to be amended to fill the void now present regarding the causes for annulling a presidential election, as well as specify other causes for annulling senator and federal deputy elections.

In the third paragraph of section II, a change consisting of relocating the phrase “*if it be the case*” is proposed. The proposal is admissible since it allows for a better understanding of the acts regulated in this paragraph, leaving it as follows:

“The Upper Chamber shall issue the final results of the election for President of the United Mexican States, once it has resolved any challenges regarding the election that have been brought to its attention. It shall proceed to formulate, if it be the case, the declaration of validity of the election and that of the President-Elect regarding the candidate who obtained the highest number of votes.”

In section V of Article 99, the Bill under review proposes an insertion to its final part with the aim of establishing the legal obligation for citizens who believe their political rights have been affected by the party to which they are affiliated, after having exhausted the party instances of conflict resolution before appearing before the Electoral Tribunal. The proposal coincides with the general sense that motivated the petitioners, and which is shared by the Joint Committee, to strengthen political parties’ internal life by preventing the continuous and undue judicialization of their primary elections. As citizen organizations, political parties must establish clear rules and internal agencies with simple and expedite procedures to settle the controversies that may arise between its supporters and their administrative bodies. Once these internal instances of conflict resolution have been exhausted, there is the recourse guaranteed by the Constitution and by law to appearing before the TEPJF.

As a result, the abovementioned section V would read as follows:

“Challenges of acts and resolutions that violate the political-electoral rights of citizens to vote, be voted for, and freely and peacefully affiliate themselves to take part in the political affairs of the country, under the terms this Constitution and laws specify. For citizens to be able to have recourse to the jurisdiction of the Tribunal for violations of their rights by the political party to which the individual is affiliated, the individual must have previously exhausted the instances of conflict resolution provided for in its internal rules. The law shall establish the applicable regulations and terms;”

The amendment the Bill proposes for section VIII of Article 99 coincides with the extended powers of the administrative electoral authority established by the reform to Article 41 of this Draft Decree. The proposal is accepted since by establishing the IFE’s authority to sanction individuals or corporations for violations to constitutional and legislative rules that frame electoral processes, these same individuals must be ensured of the possibility of appearing before the specialized jurisdictional authorities in these matters, electoral, for the protection of their rights. Therefore, the section in question would be as follows:

“VIII. The determination and imposition of sanctions by the Federal Electoral Institute to parties or political associations or individuals or corporations, whether national or foreign, that violate the provisions of this Constitution and the law; and”

The Bill proposes the insertion of two paragraphs to Article 99, for the purpose of enhancing the powers of the TEPJF and settling a contradiction that arose in 2002. The paragraph proposed to be inserted immediately after section IX of the current text aims at granting the TEPJF the constitutional grounds to make use of any means of pressure it may require, in accordance with what the law stipulates, for the purpose of enforcing their sentences.

“The Electoral Tribunal chambers shall make use of any means of pressure needed to expeditiously enforce its sentences and rulings, within the terms established by law.”

If approved, the second paragraph proposed to be inserted would settle a contradiction that has arisen between the Upper Chamber and the Supreme Court of Justice of the Nation regarding the Upper Chamber’s authority to rule on the non-application of electoral laws that go against the Federal Constitution. On resolving on the contradictory rulings, the SCJN holds that this faculty pertains to it, as a Constitutional Court deciding on the constitutionality or unconstitutionality of laws. In general, the Court’s de-

cision is irrefutable within the framework of the authority and distribution of power that the Constitution stipulates for the Federal Judicial Branch.

However, it is evident that since 1996, the majority required to pass a constitutional reform decided to grant the Upper Chamber the power to decide on the constitutionality of electoral laws, as confirmed in the reading of paragraph of Article 99 currently in force that states:

“When an Electoral Tribunal Chamber sustains an opinion on the unconstitutionality of an act or resolution or on the interpretation of a precept of this Constitution and this opinion is contradictory to one sustained by the Chambers or the whole of the Supreme Court of Justice, any of the Ministers, Chambers or parties may bring the contradiction to the attention to the Supreme Court of the Nation en banc so it may decide which opinion should prevail. The resolutions that are issued in this case shall not affect affairs already decided.”

The debate does not center on the previous existence or non-existence of the TEPJF’s authority to decide on the non-application of electoral laws that go against the Constitution, but on the concordance of two constitutional laws and the effects of the resolutions issued by TEPJF Chambers on these matters.

The Joint Committee believes that the solution proposed in the Bill under review is apt since it establishes the limits of TEPJF resolutions and leaves ample space for the SCJN to exercise its functions as Constitutional Court.

As a result, and to better illustrate the proposed modification, the two paragraphs in question are transcribed below. The first is to be inserted and the second shall remain without any changes:

“Notwithstanding what is provided for in Article 105 of this Constitution, the chambers of the Electoral Tribunal may decide upon the non-application of laws on electoral matters that go against this Constitution. The decisions issued in the exercise of this power shall be limited to the specific case seen in the court proceeding. In these cases, the Upper Chamber shall notify the Supreme Court of Justice of the Nation.”

“When an Electoral Tribunal Chamber sustains an opinion on the unconstitutionality of an act or resolution or on the interpretation of a precept of this Constitution and this opinion is contradictory to one sustained by the Chambers or the whole of the Supreme Court of Justice, any of the Ministers, Chambers or parties may bring the contradiction to the attention to the Supreme Court of the Nation en banc so it may decide which opinion should prevail. The resolutions that are issued in this case shall not affect affairs already decided.”

Since the Joint Committee has accepted the proposal of an amendment for regional chambers to operate on a permanent basis, the proposal to establish the Upper Chamber's authority to undertake court proceedings that appear in regional chambers in the text of Article 99, incorporating the precise and exact regulations for this power, in order to avoid contradictions or conflicts between regional chambers and the Upper Chamber.

“The Upper Chamber may, ex officio, undertake the trials that appear in regional chambers at the request of some or any of these chambers. The law shall specify the regulations and procedures for the exercise of this power.”

As to the configuration of TEPJF chambers and of the electoral magistrates that form them, the Bill under review proposes three important measures, with which the Joint Committee concurs:

The first is the establishment of the staggered renewal of the electoral magistrates, along with the proposal already stated in this Draft Decree for electoral councilors of the IFE General Council. Based on the arguments above, this proposal is approved.

The second measure pertains to making compatible the terms in office of the members of the bodies of highest authority from both institutions, foundations of the Mexican electoral system. The term in office for electoral magistrates in both the Upper Chamber as in regional chambers is proposed to be nine years, which, it should be noted, shall facilitate their staggered renewal based on the frequency of federal elections. It is approved; and

The third measure establishes that in the case of a definitive vacancy in any of the TEPJF chambers, the new magistrate shall only conclude the term for which the absentee was elected. It is also passed.

As result, the paragraphs in questions would be as follows:

“The Electoral Magistrates that form the Upper Chamber must fulfill the requirements established by law, which may not be less than those required to be a Minister of the Federal Supreme Court of Justice and shall have a non-extendible term of office of *nine years*. Resignations, absences and licenses of Upper Chamber Electoral Magistrates shall be processed, covered and granted by this Chamber, as corresponds under the terms of Article 98 of this Constitution.

“The Electoral Magistrates that form the regional chambers must fulfill the requirements established by law, which may not be less than those required to be a Magistrate of the Collegiate Circuit Court. Their term in office shall be *nine years* and non-extendible, unless they are promoted to higher positions.

In the event of a definitive vacancy, a new Magistrate shall be appointed for the remaining period of the original appointment.”

FIFTH

Article 108

The text currently in effect of the first paragraph of Article 108 of the Constitution sets the bases for Federal Electoral Institute officials and employees to be responsible and be subject to sanctions determined by law to this effect. However, it does not expressly consider the existence of other independent bodies that should be included under the same law. Thus and in agreement with the constitutional amendment —Article 41— on the administrative responsibilities to which electoral councilors, the President-Councilor and other IFE public servants are subject to, Article 108 of the Constitution should be amended as the Bill under review proposes, to extend the last part of the established law.

Considering that at the public ordinary session held on December 19, 2006, at the Senate of the Republic, the Minutes of the Draft Decree in which the first paragraph of Article 108 of the Political Constitution of the United Mexican States was approved for amendment and was returned with modifications to its co-legislative body for constitutional effects. To this regards it must be noted that these minutes display the same aim as that presented in the above Bill. Therefore, the Joint Committee has decided to incorporate the same text proposed in the abovementioned minutes in this proposal and in the corresponding Draft Decree. As a result, the first paragraph of said article would be the following:

“For the purposes of stating the responsibilities alluded to in this Title, representatives of public election, members of the Federal Judicial Branch and the Judicial Branch of the Mexico City, officials and employees and, in general, any person who performs a job, position or committee of any kind *in the Federal Congress, the Legislative Assembly of Mexico City or the Federal or Mexico City Public Administration*, as well as civil servants *of the bodies to which this Constitution grants independence* and who shall be held responsible for any acts or omissions in which they occur in the performance of the respective duties shall be regarded as public servants.”

SIXTH

Article 116

In Article 116, section IV, amendments and insertions are proposed to several of its clauses so that the reforms to Articles 41 and 99 analyzed above concur with state constitutions and electoral laws. The object is very precise: to maintain a basic uniformity in the applicable legal standards in

the Mexican electoral system, considered as a congruent set of rules in their scopes of application and validity.

The Joint Committee is of the same opinion regarding this purpose and therefore moves to approve the amendments to the clauses listed below, so that each may read as indicated:

In clause b) of section IV of Article 116 of the Constitution the guiding principles to be followed by the electoral authority are grammatically re-structured.

“b) In the exercise of electoral functions, responsibility of electoral authorities, the guiding principles are certainty, impartiality, independence, legality, and objectivity;”

A new clause d) regarding the powers that Article 41, as amended, grants the IFE to come to an agreement with the local competent authorities to take charge of the organization and carry out state or municipal elections shall be inserted.

“d) Competent electoral authorities of an administrative nature may come to an arrangement with the Federal Electoral Institute so the latter may take charge of organizing local elections;”

Two new clauses, e) and f), regarding that which is set forth in Article 41 about creating political parties, procedures for their establishment and registry and their right to register candidates to offices of public election are inserted. Likewise, the general limits on the intervention of local electoral authorities in the internal life of political parties are also established.

“e) Political parties are only founded by citizens without the involvement of union organizations or organizations with a different social object and without having any corporate affiliation whatsoever. Likewise, with the exception of that set forth in Article 2, Section A, subsections III and VII of this Constitution, their exclusive right to request the registry of candidates to offices of public election is acknowledged;

“f) Electoral authorities may only intervene in internal affairs of parties under the conditions expressly set forth;”

Two clauses of Article 116 are amended to become g) and h) respectively. These define ordinary and campaign public funding, as well as the liquidation process of parties that lose their registry. Likewise, the grounds for setting limits to disbursements to parties for primary elections and private funding are established and may not exceed an amount equivalent to ten percent of the amount set for the campaign for governor per year and

per party. The grounds for enforcing the corresponding sanctions are established.

“g) Political parties receive equal amounts of public funding for their permanent ordinary activities and those leading towards obtaining votes during election processes. The procedure for liquidating the parties that lose their registry and the destination of their assets and residual amounts are also established;

“h) The criteria for establishing the limits on the disbursements of political parties during their primary elections and election campaigns are set, as are the maximum amounts for the contributions from their followers, the total sum of which shall not exceed ten percent of the limit on campaign spending determined for the election of Governor; procedures for the control and oversight of the origin and use of all the resources political parties have are determined and sanctions are established for non-compliance with the provisions set forth for these matters;”

The proposals for the amendment of the clauses that are now clauses i) and j) in section IV of Article 116 of the Constitution, refer to the right of parties to have access to radio and television in local election processes, as well as the obligation for the corresponding state constitutions and electoral laws to establish the laws applicable to local primary elections and campaigns, as well as sanctions for those who violate these laws. Furthermore, the maximum period of time for campaigns for elections for governor, which shall be 90 days, and for local and municipal deputies, which shall be 60 days when only campaigns to these effects are carried out, is established.

“i) Political parties have access to radio and television, in accordance with the laws established in section III, sub-section B of Article 41 of this Constitution;

j) The rules for political parties’ primary elections and election campaigns, as well as the sanctions for whoever violates them are established. In every case, the period of time for campaigns shall not exceed ninety days for election for Governor, or sixty days when only local deputies or city councils are elected. Primary elections may not be longer than two-thirds of the respective election campaigns;”

Clause k), which specifies the non-limitations of the oversight bodies of political parties in terms of privileged bank, trust, and tax information, is inserted so as to correspond with that proposed in Article 41 of the Constitution. To this effect, oversight bodies at state level may overcome this limitation by turning to the competent federal body for this matter.

“k) The mandatory bases for the coordination between the Federal Electoral Institute and the local electoral authorities in matters of political party finance over-

sight, are instituted under the terms established in section V of Article 41 of this Constitution;”

The content is altered so that of clause l) be amended and clause m) be inserted to establish the bases for the possible recount of votes, whether total or partial, at jurisdictional and administrative levels. The obligation of establishing the causes for nullifying the election for governor, local deputies, and city councils in local Constitutions and electoral laws is set.

l) A system of means of challenges is established so that all electoral acts and resolutions are consistently subject to the principle of legality. Likewise, that it establishes the premises and rules to carry out total or partial recounts of votes at administrative and jurisdictional levels;

m) The causes for declaring elections for Governor, local deputies and city councils null and void are set, as well as the terms convenient for filing any challenges, taking into account the principle of finality of the stages of election processes; and”

Having established the above regarding Article 116, it is necessary to underline an agreement reached in the core of the Joint Committee. It is well-known that the calendar of state elections is one of the problems to be solved in the national election system. Although thirteen states and Mexico City have made their local election day coincide with the election day established for federal elections—the first Sunday of July—and Michoacán holds its local elections the week immediately after, the election calendar in the rest of the states poses a real problem in terms of the various dates for their respective election days.

On one hand, there is the situation that practically every year, including federal election years, more than half the states stipulate the dates for beginning and ending their respective electoral processes in their state Constitutions or laws, a fact that can only be explained by inaction in the past. In the two years of every period of three years in which there are no federal elections, the calendar of local elections is characterized by dispersed periods of times and dates.

This produces negative effects not only on the citizens in most states who must go to local elections on different days, and even on different dates within the same state and the same year; it is also a factor that raises the cost of elections nationwide and that is a permanent burden on states’ public finances, as well as on national political parties.

One of the significant advances of the electoral reform being discussed is the new power granted to the IFE to organize and carry out local elections, on reaching an agreement with state or Mexico City electoral authorities, but that intention will find the dispersion that still prevails in the election calendar of yet more than half the states an obstacle.

Finally, another significant negative effect of this dispersion should be noted: that of subjecting national political parties to endless pressure in election competition, challenging or denying them the time to perform other political or public opinion activities, negotiations, and building agreements, which would be of significant value in consolidating the role of parties as citizens organizations, as well as legitimate expressions directly linked to its parliamentary groups in the Federal Congress.

Therefore, the Joint Committee has once more taken up the proposal from various parties and specialists in electoral matters and decided to incorporate the proposal of amending Clause a), section IV of Article 116 into its Draft Decree to establish that local state elections that are held in years in which federal elections are not, the constitution and electoral laws of the respective states should set the first Sunday of July of the corresponding year as the election day.

To address the situation of states with election days that coincide with that of federal elections, as is also the case of Mexico City, the text of cited clause a) establishes the corresponding provision, which shall also apply to states that hold their local elections the same year as the federal ones, so they may continue with a different date for their respective election days from that established for federal elections.

In a Transitory Article, the Draft Decree establishes the period of time for state legislatures to make the corresponding modifications to their respective constitutions and electoral laws, which should be completed within a period of six years.

This way, the election calendar shall cease to be a source of problems to society, citizens, constituents, political parties, and the three branches of government. It is a measure that should benefit all.

As a result, clause a) of Section IV of Article 116 would read as follows:

“a) The elections for governors, members of local legislatures and members of city councils are held by means of universal, free, secret, and direct suffrage. The election day shall be the first Sunday of July of the corresponding year. States with election days during a federal election year that do not coincide with the date for federal elections shall not be subject to this last provision;”

SEVENTH

Article 122

An indispensable adjustment is proposed for Clause f) of Section V of Article 122 so that what is set forth in Section IV of Article 116 regarding the federal states henceforth applies to local elections in Mexico City. Since it is

a modification strictly referred to in two articles of the Constitution, the Joint Committee confines itself to approve it.

However, analysis and debate resulted in a proposal to continue with the equating the Mexico City electoral system with that of other states. Therefore, we specifically propose to remove the last phrase of the clause in question, which to the letter states:

“Only political parties with national registry may participate in these elections,”

This provision currently in effect assumes an exception to citizens’ right to assemble and form local political parties in the Mexico City. This may have been justified in earlier periods when direct rule of Mexico City was entrusted to an administrative department part of the centralized Federal Public Administration Office and the President had the constitutional power to directly appoint or remove the head of the Department of the Federal District (Mexico City).

However, in view of the in-depth and positive transformation that the system of government of Mexico City has undergone for over more than two decades, the restriction imposed in the phrase in question has lost relevance and there is no reason whatsoever to preserve it.

Therefore, the Joint Committee moves to approve the joint proposal presented by PAN, PRD and PRI legislators to proceed with its repeal, and thus establish the grounds for the Federal Congress to stipulate the requirements, procedures and periods of time for the creation and registry of local political parties, in the Federal District Government Act.

“f) Issue the provisions that guarantee free and genuine elections in Mexico City through universal, free, secret and direct suffrage; subject to the bases established in the Government Act, which shall comply with the principles and rules established in clauses b) through n) of Section IV of Article 116 of this Constitution. Therefore, the references made in clauses j) and m) regarding the Governor, local deputies, and city councils shall be interpreted as meaning the Head of Government, Legislative Assembly deputies and Heads of Boroughs, respectively;”

EIGHTH

Article 134

In the Bill under review, the insertion of three paragraphs is proposed to Article 134 of the Constitution for the purpose of establishing new and stricter provisions so that civil servants from all ranks of government conduct themselves with absolute impartiality in the administration and use of

the public resources under their responsibility. Furthermore, it is ordered that governmental propaganda of any kind and origin must be institutional, without promoting the personal image of civil servants.

Concurring with the aims of the Bill under review, the Joint Committee deems it necessary to make the proposed drafts clear in order to avoid confusion in their interpretation and regulation in the corresponding legislation.

Therefore, the paragraphs to be inserted in the abovementioned article would read as follows:

“Civil servants of the Federation, states, and municipalities, as well as from Mexico City and its boroughs, have the obligation of using the public resources under their responsibility with impartiality at all times, without influencing fair competition between political parties.

“The propaganda in any form of social communication that the government authorities, independent bodies, agencies, and public administration bodies and any other body from the three branches of government disseminate must be of an institutional nature and for information, educational or socially-oriented purposes. In no case shall this propaganda include names, images, voices or symbols that imply personalized endorsement of any civil servant. News and information that have not been paid for shall not be considered propaganda.

“The laws, in their respective areas of application, guarantee strict compliance with that set forth in the two preceding paragraphs, including the system of sanctions deemed necessary.”

Finally, in terms of the changes approved by the Joint Committee regarding the content of the bill under review, it the Working Group’s proposal to insert a first paragraph to Article 6 of the Constitution has been approved for the purpose of filling a void that has survived in our legal order to our days. We refer to the right of reply that every person must have with regard to social communications means. The only law in which this right is found embodied, the Law of the Press, precedes the 1917 Constitution of Querétaro and its irrelevance has been apparent for decades. By including the right of reply in the Constitution, the Federal Congress shall be able to comprehensively update the legal framework that protects the right to information, as intended by the majority required to pass a constitutional reform with the amendment of Article 6 itself in the recently enacted reform.

In its transitory system, the Draft Decree establishes the bases for the staggered renewal of electoral councilors to the IFE General Council, making it possible to meet the two objectives of the reform: renovation and experience in the configuration of the body of highest authority in electoral

administration. Meanwhile, the rules for the staggered renewal of Electoral Magistrates are submitted to the corresponding law.

In light of what has been stated and proven, the Joint Committee of Constitutional Issues, Governance; Radio and Television and Legislative Studies, hereby submit for consideration to the Chamber of Senators of the Federal Congress *en banc* the following:

DRAFT DECREE

SOLE.- The first paragraph of Article 6 is amended; Articles 41 and 99 are amended and supplemented; the first paragraph of Article 85 is amended; the first paragraph of Article 108 is amended; Section IV of Article 116 is amended and supplemented; Clause f), Section V of the First Chapter of Article 122 is amended; three paragraphs are inserted at the end of Article 134; and the third paragraph of Article 97 is repealed, all of which are in the Political Constitution of the United Mexican States, to read as follows:

Article 6. The expression of ideas shall not be the object of any judicial or administrative inquiry, except in the case in which it attacks moral order, the rights of a third party, incites a criminal offense or disturbs the public order. The right of reply will be exercised in the terms determined by law. The right to information shall be guaranteed by the State.

...

Article 41. The people exercise their sovereignty through the Powers of the Union in the cases of the competency of these, and by those of the States in matters concerning their internal affairs, under the terms established by this Federal Constitution and those of the States, which in no case may contravene the stipulations of the Federal Pact.

The renewal of the Legislative and Executive powers shall take place by means of free, authentic, and periodic elections, conforming to the following bases:

I. Political parties are public interest actors. The law shall determine the rules and requirements for the official registry of political parties and the specific ways they can become involved in the electoral process. National political parties shall have the right to participate in state and municipal elections, as well as for the Federal District.

The purpose of political parties is to promote participation of the people in democratic life, contribute to the integration of national representation and, as citizen organizations, make it possible to gain access to this by exercising government function, according to the programs, principles and ideas they propose and by means of universal, free, secret and direct suffrage. Only citizens may form political parties and freely and individually affiliate themselves to political parties. Therefore, it is prohibited for union organizations or organizations with a corporate purpose other than that of found-

ing parties and any kind of corporate affiliation to intervene. Political parties have the exclusive right to request the registry of candidates for elective offices.****

Electoral authorities may only intervene in political parties' internal issues under the terms stipulated in the Constitution and the law.

II. The law shall guarantee that national political parties shall equally have the elements to conduct all their activities and shall specify the rules to which political party financing shall be subject, guaranteeing that public resources prevail over those of private origin.

Public financing for political parties that maintain their registry after each election shall consist of remittances destined to sustain their permanent ordinary activities, and those aimed at obtaining votes during elections. It shall be granted as follows, and according to law:

- a) Public funding to sustain political parties' permanent ordinary activities shall be determined each year by multiplying the total number of citizens registered in the voters registry by sixty-five percent of the daily minimum wage for Mexico City. Thirty percent of the amount resulting from the above calculation shall be distributed equally among the political parties and the remaining seventy percent, according to the percentage of votes obtained in the immediately preceding deputy elections.
- b) Public funding for activities aimed at obtaining votes during a year in which the President of the Republic, senators and federal deputies are elected shall equal fifty percent of the public funding that corresponds to each political party for ordinary activities that same year. When only federal deputies are to be elected, the amount shall be equal to thirty percent of said funding for ordinary activities.
- c) Public funding for specific activities associated with education, training, and socio-economic and political research, as well as for publishing activities, shall be equivalent to three percent of the total amount of the annual public funding that corresponds to ordinary activities. Thirty percent of the total amount resulting from the above calculation shall be distributed equally among political parties while the remaining seventy percent shall be distributed to parties based on the percentage of votes obtained in the immediate preceding deputy elections.

The law shall establish the limit of the disbursements for political parties' primary election and election campaigns. The law itself shall establish the

**** Editor's Note: This explicit prohibition of the possibility of independent candidates was eliminated on the Senate floor during discussion and did not find its way into the final reform bill. All other aspects of the present bill passed without modification.

maximum amount of contributions parties may receive from their supporters. The annual total amount of these contributions per party may not exceed ten percent of the maximum amount of expenses established for the preceding presidential campaign. Likewise, the law shall classify control and oversight procedures on the origin and use of all the resources in their possession, and shall apply the sanctions deemed necessary for non compliance with these provisions.

Likewise, the law shall establish the procedure to liquidate the assets and liabilities of parties that lose their registry and the premises under which their assets and balances shall be transferred to the State.

III. National political parties shall have the right to permanent use of social communications means.

Subsection A. The Federal Electoral Institute shall be the sole authority for administrating the amount of time allotted to the State on radio and television for its own purposes and in exercise of the right of national political parties, in accordance with the following and that which is stipulated by law:

- a. As of the beginning of primary elections to the day of elections, the Federal Electoral Institute shall have at its disposal forty-eight minutes a day, which shall be distributed in two or even three minutes per hour of broadcasting time on each radio station and television channel in the schedule referred to in clause d) of this Subsection;
- b. During their primary elections, political parties shall have at their disposal a total of one minute per hour of broadcasting time on each radio station and television channel. The remaining time shall be used in accordance with that which is stipulated by law;
- c. During election campaigns at least eighty-five percent of the total time available referred to in clause a) of this Subsection must be allotted to cover the rights of political parties;
- d. The broadcast times on each radio station and television channel shall be distributed within the programming schedule between six a.m. and midnight;
- e. The amount of time established as a right of political parties shall be distributed based on the following: thirty percent equally and the remaining seventy percent based on the results of the immediately preceding federal deputy elections;
- f. Any national political party without representation in the Federal Congress shall only be assigned the amount of time on radio and television that corresponds to the equal percentage established in the preceding clause; and
- g. Notwithstanding that which is set forth in Subsections A and B of this Chapter and outside periods of primary elections and electoral campaigns, the Federal Electoral Institute shall be allotted up to twelve

percent of the total amount of time on radio and television allotted to the State, by law and under any form. Of the total amount allotted to it, the Institute shall distribute fifty percent equally to the national political parties. The remaining amount of time shall be used for purposes of its own or of other electoral authorities, both federal and state. Each national political party shall use the time allotted to it under this concept for a monthly five-minute program and the remainder for twenty-second messages. In any case, the broadcasts referred to in this clause shall be made during the schedule determined by the Institute according to that which is stipulated in clause d) of this Subsection.

At no moment may political parties contract or acquire, on its own or through third parties, air time under any form on radio and television.

No other person, whether public or private, on his own behalf or through a third party, may buy propaganda on the radio or television with the intention of influencing citizens' electoral preferences, nor for or against political parties or candidates to elective offices. The broadcast of messages of this type undertaken abroad is prohibited.

The provisions contained in the two preceding paragraphs must be fulfilled within state territories and in the Federal District, in accordance with the corresponding legislation.

Subsection B. For election purposes in the states of the Federation, the Federal Electoral Institute shall administrate the amount of time allotted to the State on radio and television with coverage in the state in question, in accordance with the following and that which is stipulated by law:

- a. In the case of local elections with election days that coincide with that of the federal election, the allotted time in each state of the Federation shall be included within the total amount of time available according to clauses a), b) and c) of Subsection A in this Chapter;
- b. For other elections, the allotment shall be made according to law and the criteria in this Chapter of the Constitution; and
- c. For the distribution of the allotted time among political parties, including those with local registry, shall be carried out in accordance with the criteria stipulated in Subsection A of this Chapter and that which is determined in the corresponding legislation.

When in the Federal Electoral Institute's opinion, the total amount of time on radio and television referred to in this Subsection and the preceding one is insufficient for purposes of its own or of other electoral authorities, it shall take the relevant action to cover the want of time, in accordance with the powers granted to it by law.

Subsection C. In the political or electoral propaganda published, parties must abstain from using denigrating expressions against institutions and parties, or slander individuals.

During the period that covers federal and local election campaigns and until the end of their respective election days, all dissemination of government propaganda from both federal and local authorities, as well as municipalities and bodies from the Federal District government, its boroughs and any other public body via means of social communication must be suspended. The only exceptions to the above shall be information campaigns on behalf of electoral authorities, those concerning educational and healthcare services, or those deemed necessary for civil protection in the event of an emergency.

Subsection D. Any violation to that which is provided for in this Chapter shall be punishable by the Federal Electoral Institute through expeditious procedures that may include the order of immediate cessation of radio and television broadcasts, of concessionaires and licensees, if found guilty of violating the law.

IV. The law shall establish the periods of time to carry out party proceedings for selecting and postulating candidates to elective offices, as well as the rules for primary elections and electoral campaigns.

The length of campaigns for presidential, senate and federal deputy elections shall be ninety days. In years with only federal deputy elections, campaigns shall last sixty days. In no case shall primary elections exceed two-thirds of the period of time stipulated for electoral campaigns.

Any violation of these provisions by parties or any individual or corporation shall be punishable by law.

V. The organization of federal elections is a State function that is carried out by an independent public body called the Federal Electoral Institute, endowed with legal identity and its own budget. It shall be formed with the participation of the Legislative Power, national political parties, and citizens under the terms stipulated by law. In the exercise of this State function, certainty, legality, independence, impartiality, and objectivity shall be its guiding principles.

The Federal Electoral Institute shall be the authority in these matters, independent in its decisions and functioning, and professional in the discharge of its duties. It will have a structure with administrative, executive, technical, and oversight bodies. The General Council shall be its body of higher authority, and shall be made up of a President-councilor and eight electoral councilors. With a voice, but without a vote, it shall include councilors from the Legislative Branch, political party representatives, and an Executive Secretary. The law shall determine the rules of its organization and the functions of its bodies, as well as the chain of command among them. The executive and technical bodies shall have at their disposal the qualified personnel needed to render professional electoral services. A

Comptroller General, with technical and administrative independence shall be responsible for overseeing all the Institute's revenues and expenditures. The provisions of the electoral law and of the Statute, based on what the General Council approves, shall govern the work relationship with the public servants of the public body. The oversight bodies of the electoral registry shall be made up in its majority by representatives of the national political parties. Polling station boards shall be made up of citizens.

The President-Councilor shall remain in his position for six years and may be re-elected only once. The electoral councilors shall remain in their positions for nine years. Their renewal shall be staggered and they may not be re-elected. Depending on the case, the one or the others shall be successively chosen by a two-thirds majority vote of the members of the Chamber of Deputies present, based on nominations made by parliamentary groups after holding a far-reaching open consultation procedure. In the event of the definite absence of the President-Councilor or of any of the electoral councilors, a replacement shall be chosen to conclude the remainder of the term. The law shall establish the corresponding rules and procedures.

The President-Councilor and electoral councilors may not have any other source of employment, position or commission, with the exception of those performed in representing the General Council and those carried out at educational, scientific, cultural, research, or non-profit associations, for which they shall not be reimbursed. The pay received shall be equal to that stipulated for ministers of the Supreme Court of Justice of the Nation.

The head of the Institute's General Comptrollership shall be appointed by the Chamber of Deputies with a two-thirds majority vote of the members present and nominated by public institutions of higher education, under the form and terms determined by law. The term of office shall be six years and with the possibility of only one reelection. The head shall be administratively part of the Office of the President of the General Council and shall maintain the necessary technical coordination with the scrutinizing body of the Federation.

The Executive Secretary shall be appointed by the vote of two-thirds of the General Council from the nominees proposed by its President.

The law shall establish the requirements the President-Councilor of the General Council, electoral councilors, the Comptroller General, and the Executive Secretary of the Federal Electoral Institute must meet for their appointment. Those who have acted as President-Councilor, electoral councilors, and Executive Secretary may not hold, for two years after the date of their retirement, positions of government authority in the elections of which they have participated.

The councilors from the Legislative Branch shall be proposed by parliamentary groups with party affiliation in one or both of the Chambers. There shall be only one councilor for each parliamentary group regardless of its recognition in both Chambers of the Congress of the Union.

The Federal Electoral Institute shall be completely and directly responsible for, in addition to that stipulated by law, activities concerning civic training and education, electoral boundaries, the rights and prerogatives of interest groups and political parties, the voter registry and lists, printing of electoral material, preparing for the election day, tallying votes under the terms specified by law, the statement of validity and granting certification at deputy and senator elections, tallying votes from the presidential election of the United Mexican States at each uninominal electoral district, as well as regulating of poll observation and surveys or opinion polls for electoral purposes. The sessions of all the collegiate administrative bodies shall be public, under the terms specified by law.

The oversight of national political parties' finances shall be under the responsibility of a technical body of the General Council of the Federal Electoral Institute, endowed with administrative independence, whose head shall be appointed by the two-thirds vote of the Council from the nominees proposed by the President-Councilor. The law shall expound the integration and functioning of this body, as well as the procedures for the General Council to apply sanctions. In the fulfillment of its functions, the technical body shall not be limited by privileged bank, trust or tax information.

The technical body shall be the channel through which the competent authorities in matters of party oversight within the limits of federal entities can overcome the limitation referred to in the previous paragraph.

The Federal Electoral Institute shall assume, by means of mutual agreement with the competent authorities from the federal states who so request, the organization of local elections, under the terms provided for in the applicable legislation.

VI. In order to guarantee the principles of constitutionality and legality of electoral acts and rulings, a means system of challenge shall be established, under the terms stipulated in this Constitution and by law. This system shall give finality to the different stages of electoral processes, and guarantee the protection of the citizens' political rights to vote, be voted for and of assembly, under the terms of Article 99 of this Constitution.

In electoral matters, the filing of means of challenges whether constitutional or legal, shall not have a suppressive effect on the challenged ruling or act.

Article 85. If at the commencement of a constitutional term the President-elect does not present himself, or if the elections have not been held or not declared valid on December 1st, the president whose term has ended shall nevertheless cease to function, and the executive power shall be entrusted to an individual whom the Federal Congress shall designate as interim President, or if the Congress is not in session, to an individual whom the Permanent Committee appoints as Provisional Resident, proceeding in accordance with that set forth in the preceding article.

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Article 97. ...

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Repealed

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Article 99. The Electoral Tribunal shall be, with the exception of that set forth in Section II of Article 105 of this Constitution, the highest jurisdictional authority in electoral matters, and a specialized body of the Judicial Branch of the Federation.

For the exercise of its functions, the Tribunal shall function with an Upper Chamber and regional chambers on a permanent basis. Its resolution sessions shall be public, under the terms determined by law. It shall have the necessary legal and administrative personnel for its proper functioning.

The Upper Chamber shall be formed of seven Electoral Magistrates. The President of the Tribunal shall be selected by the Upper Chamber, from its members, and shall serve in this position for a period of four years.

The Electoral Tribunal shall be responsible for ruling definitively and indisputably under the terms established in this Constitution and according to that which is stipulated by law, on:

I. Challenges in the federal elections of deputies and senators;

II. Challenges presented regarding the election of the President of the United Mexican States, which shall only be resolved by the Upper Chamber.

The Upper and regional chambers of the Tribunal shall only declare an election null and void for causes that are expressly established in the laws.

The Upper Chamber shall issue the final results of the election for President of the United Mexican States, once it has resolved any challenges regarding the election that have been brought to its attention. It shall proceed to formulate, if it be the case, the declaration of validity of the election and that of the President-Elect regarding the candidate who obtained the highest number of votes.

III. Challenges of acts and federal electoral authority resolutions, other than those in the two preceding sections, which violate constitutional or legal laws;

IV. Challenges of definite acts or staunch and definitive rulings by the competent authorities of the states of the Federation, to organize and certify the elections or rule on the controversies that arise during the elections, which may be determining factors in the fulfillment of the electoral process, or the final result of the elections. This course of action shall only proceed when the remedy sought is materially and legally possible within the time

frame of the elections, and is feasible before the constitutional or legal date set for the inauguration of the bodies or the swearing in of the officials elected to them.

V. Challenges of acts and resolutions that violate the political-electoral rights of citizens to vote, be voted for, and freely and peacefully affiliate themselves to take part in the political affairs of the country, under the terms this Constitution and laws specify. For citizens to be able to have recourse to the jurisdiction of the Tribunal for violations of their rights by the political party to which the individual is affiliated, the individual must have previously exhausted the instances of conflict resolution provided for in its internal rules. The law shall establish the applicable regulations and terms;

VI. Labor conflicts or differences between the Tribunal and its employees;

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

VIII. The determination and imposition of sanctions by the Federal Electoral Institute to parties or political associations or individuals or corporations, whether national or foreign, that violate the provisions of this Constitution and the law; and

IX. Other stipulated by law.

The Electoral Tribunal chambers shall make use of any means of pressure needed to expeditiously enforce its sentences and rulings, within the terms established by law.

Notwithstanding what is provided for in Article 105 of this Constitution, the chambers of the Electoral Tribunal may decide upon the non-application of laws on electoral matters that go against this Constitution. The decisions issued in the exercise of this power shall be limited to the specific case seen in the court proceeding. In these cases, the Upper Chamber shall notify the Supreme Court of Justice of the Nation.

When an Electoral Tribunal Chamber sustains an opinion on the unconstitutionality of an act or resolution or on the interpretation of a precept of this Constitution and this opinion is contradictory to one sustained by the Chambers or the whole of the Supreme Court of Justice, any of the Ministers, Chambers or parties may bring the contradiction to the attention to the Supreme Court of the Nation *en banc* so it may decide which opinion should prevail. The resolutions that are issued in this case shall not affect affairs already decided.

The organization of the Tribunal, the powers of the chambers, the procedures for resolving affairs under its jurisdiction, as well as the mechanisms to set the criteria of jurisprudence deemed mandatory in electoral matters, shall be determined in this Constitution and in the laws.

The Upper Chamber may, *ex officio*, undertake the trials that appear in regional chambers at the request of some or any of these chambers. The law shall specify the regulations and procedures for the exercise of this power.

The administration, oversight, and control of the Electoral Tribunal, under the terms stipulated by law, shall be carried out by a Committee from the Council of the Judiciary Branch of the Federation, which shall consist of the president of the Electoral Tribunal, who shall preside over it, an Electoral Magistrate from the Upper Chamber appointed from among its members, and three members of the Council of the Judiciary Branch of the Federation. The Tribunal shall submit its budget to the president of the Supreme Court of Justice of the Nation for its inclusion in the proposed Budget of the Judicial Branch of the Federation. Likewise, the Tribunal shall issue its internal regulations and general resolutions on its proper functioning.

The Electoral Magistrates who form the Upper and regional chambers shall be selected by the vote of a two-thirds majority of the members present of the Chamber of Senators, from the nominees proposed by the Supreme Court of Justice of the Nation. The election of those forming part of these chambers shall be staggered, according to the rules and procedures stipulated by law.

The Electoral Magistrates that form the Upper Chamber must fulfill the requirements established by law, which may not be less than those required to be a Minister of the Federal Supreme Court of Justice and shall have a non-extendible term of office of nine years. Resignations, absences and licenses of Upper Chamber Electoral Magistrates shall be processed, covered and granted by this Chamber, as corresponds under the terms of Article 98 of this Constitution.

The Electoral Magistrates that form the regional chambers must fulfill the requirements established by law, which may not be less than those required to be a Magistrate of the Collegiate Circuit Court. Their term in office shall be nine years and non-extendible, unless they are promoted to higher positions.

In the event of a definitive vacancy, a new Magistrate shall be appointed for the remaining period of the original appointment.

The personnel of the Tribunal shall govern its work relationships according to the provisions that apply to the Federal Judicial Branch and the specific rules and exceptions stipulated by law.

Article 108. For the purposes of stating the responsibilities alluded to in this Title, representatives of public election, members of the Federal Judicial Branch and the Judicial Branch of the Mexico City, officials and employees and, in general, any person who performs a job, position or committee of any kind in the Federal Congress, the Legislative Assembly of Mexico City or the Federal or Mexico City Public Administration, as well as civil servants of the bodies to which this Constitution grants independence and who shall be held responsible for any acts or omissions in which they occur in the performance of the respective duties shall be regarded as public servants.

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Article 116. ...

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I to III. ...

IV. State Constitutions and laws on electoral matters shall guarantee that:

- a) The elections for governors, members of local legislatures and members of city councils are held by means of universal, free, secret and direct suffrage. The election day shall be the first Sunday of July of the corresponding year. States with election days during a federal election year that do not coincide with the date for federal elections shall not be subject to this last provision;
- b) In the exercise of electoral functions, responsibility of electoral authorities, the guiding principles are certainty, impartiality, independence, legality and objectivity;
- c) The authorities responsible for organizing elections, and with the judicial functions to resolve controversies in electoral matters, shall enjoy independence in their functioning and independence in their decisions;
- d) Competent electoral authorities of an administrative nature may come to an arrangement with the Federal Electoral Institute so the latter may take charge of organizing local elections;
- e) Political parties are only founded by citizens without the involvement of union organizations or organizations with a different social object and without having any corporate affiliation whatsoever. Likewise, with the exception of that set forth in Article 2, Section A, subsections III and VII of this Constitution, their exclusive right to request the registry of candidates to offices of public election is acknowledged;
- f) Electoral authorities may only intervene in internal affairs of parties under the conditions expressly set forth;
- g) Political parties receive equal amounts of public funding for their permanent ordinary activities and those leading towards obtaining votes during election processes. The procedure for liquidating the parties that lose their registry and the destination of their assets and residual amounts are also established;
- h) The criteria for establishing the limits on the disbursements of political parties during their primary elections and election campaigns are set, as are the maximum amounts for the contributions from their followers, the total sum of which shall not exceed ten percent of the limit on campaign spending determined for the election of Governor; procedures for the control and oversight of the origin and use of all the resources political parties have are determined and sanctions are es-

established for non-compliance with the provisions set forth for these matters;

- i) Political parties have access to radio and television, in accordance with the laws established in section III, sub-section B of Article 41 of this Constitution;
- j) The rules for political parties' primary elections and election campaigns, as well as the sanctions for whoever violates them are established. In every case, the period of time for campaigns shall not exceed ninety days for election for Governor, or sixty days when only local deputies or city councils are elected. Primary elections may not be longer than two-thirds of the respective election campaigns;
- k) The mandatory bases for the coordination between the Federal Electoral Institute and the local electoral authorities in matters of political party finance oversight are instituted under the terms established in section V of Article 41 of this Constitution;
- l) A system of means of challenges is established so that all electoral acts and resolutions are consistently subject to the principle of legality. Likewise, that it establishes the premises and rules to carry out total or partial recounts of votes at administrative and jurisdictional levels;
- m) The causes for declaring elections for Governor, local deputies and city councils null and void are set, as well as the terms convenient for filing any challenges, taking into account the principle of finality of the stages of election processes; and
- n) Crimes shall be typified and omissions shall be determined, in electoral matters, as well as the sanctions that are to be imposed for these.

V. to VII. ...

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Article 122. ...

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A ...

B. ...

C. ...

FIRST...

I. to IV. ...

V. Under the provisions of the Government Act, the Legislative Assembly shall have the following powers:

a) to e) ...

f) Issue the provisions that guarantee free and genuine elections in Mexico City through universal, free, secret and direct suffrage; subject to the bases established in the Government Act, which shall comply with the prin-

ciples and rules established in clauses b) through n) of Section IV of Article 116 of this Constitution. Therefore, the references made in clauses j) and m) regarding the Governor, local deputies and city councils shall be interpreted as meaning the Head of Government, Legislative Assembly deputies and Heads of Boroughs, respectively;

g) to o) ...

SECOND TO FIFTH...

D to H ...

Article 134. ...

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Civil servants of the Federation, states and municipalities, as well as from Mexico City and its boroughs, have the obligation of using the public resources under their responsibility with impartiality at all times, without influencing fair competition between political parties.

The propaganda in any form of social communication that the government authorities, independent bodies, agencies and public administration bodies and any other body from the three branches of government disseminate must be of an institutional nature and for information, educational or socially-oriented purposes. In no case shall this propaganda include names, images, voices or symbols that imply personalized endorsement of any civil servant. News and information that have not been paid for shall not be considered propaganda.

The laws, in their respective areas of application, guarantee strict compliance with that set forth in the two preceding paragraphs, including the system of sanctions deemed necessary.

TRANSITORY ARTICLES

Article First. This Decree shall enter into force the day after its publication in the Federal Official Gazette.

Article Second. Only for this occasion, the Federal Electoral Institute shall establish, the upper limit of presidential campaign expenses in 2008, based on the legal grounds issued, for the sole purpose of determining the total amount of private funding that each party can receive a year.

Article Third. The Federal Congress must make the corresponding modifications in federal laws within a maximum period of thirty calendar days as of the entry into force of this Decree.

Article Fourth. For the purposes of that which has been established in the third paragraph of section V of Article 41 of this Constitution, within a

period no longer than 30 calendar days as of the entry into force of this Decree, the Chamber of Deputies shall proceed to form the General Council of the Federal Electoral Institute according to the following bases:

- a. A new President-Councilor, whose term in office shall end on October 30, 2013, shall be elected. If the case arises, the person nominated may be re-elected only once under the provisions established in the abovementioned third paragraph of Article 41 of this Constitution;
- b. Two new electoral councilors, whose terms in office shall end on October 30, 2016;
- c. From among the eight electoral councilors in office at the entry into force of this Decree, three shall be selected to end their term in office on August 15, 2008 and three shall remain in their positions until October 30, 2010;
- d. By August 15, 2008, at the latest, three new electoral councilors, whose term in office shall end on October 30, 2013, shall be elected.

The electoral councilors and the President-Councilor of the General Council of the Federal Electoral Institute in office at the entry into force of this Decree shall remain in their positions until the Chamber of Deputies fulfills that which is set forth in this Article. The appointment of deputy electoral councilors of the General Council of the Federal Electoral Institute established in the Decree published in the Federal Official Gazette on October 31, 2003 no longer applies.

Article Fifth. For the purpose of staggered renewal of Electoral Magistrates of the Upper Chamber and regional chambers of the Federal Electoral Tribunal referred to in Article 99 of this Constitution, it shall adhere to that which is established in the Organic Law of the Federal Judicial Branch.

Article Sixth. State legislatures and the Legislative Assembly of the Federal District must make the corresponding modifications in their legislation according that which has been set forth in this Decree within a year, at the latest, as of the entry into force of this Decree. If the case arises, that which is provided for in Article 105, Section II, fourth paragraph of the Political Constitution of the United Mexican States shall be observed.

The states that upon the entry into force of this Decree have begun electoral processes or are about to begin them, shall carry out their elections according to that which is stipulated in their constitutional and legal provisions in force. However, once the electoral process has ended, they must make the modifications referred to in the preceding paragraph within the same period of time, as of the day after the completion of their respective electoral process.

Seventh Article. Any provisions that contradict this Decree are hereby repealed.

Main Session Room of the Chamber of Senators of the Federal Congress of the United Mexican States on the eleventh day of the month of September in the year two thousand seven.

COMMITTEE OF CONSTITUTIONAL ISSUES
COMMITTEE OF GOVERNANCE
COMMITTEE OF RADIO, TELEVISION AND CINEMATOGRAPHY
COMMITTEE OF LEGISLATIVE STUDIES