

# Campaign Finance and Playing Field "Levelness" Issues in the Run-up to Mexico's July 2006 Presidential Election

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*October 4, 2005*

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**Abstract:** While Mexico made great gains in consolidating democracy in 1997 and 2000, these advances risk being severely undermined by doubts surrounding the 2006 election. This article contends that the 2006 pre-electoral environment is, if for different reasons, at least as fragile as that in 2000. If proper measures are not taken to improve electoral playing field transparency and levelness and to help ensure the winner's selection through a process accepted by all and with broad participation, post-electoral mobilization and short-term ingovernability are possible outcomes. We focus on emerging challenges posed by profligate campaign spending and the lack of disclosure which threaten to delimit the presidential election outcome months ahead of the race. We conclude that greater international attention should be paid to these elections, and suggest that Mexico's voters and international observers should heed important experimental civil society, media, and academic initiatives to systematically monitor "playing field" levelness.

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<sup>1</sup>The authors thank José Antonio Crespo, Armand Peschard-Sverdrup, and Robert Pastor for their comments, Viridiana Ríos Contreras for research assistance, and acknowledge the institutional sponsorship of American University, the Center for Strategic and International Studies (CSIS), the United States Agency for International Development (USAID), and the University of California San Diego's Center for US-Mexican Studies. All conclusions drawn in this paper are those of the authors only; they do not reflect the views of any of these institutions.

After much fanfare and a dramatic election in 2000 ending 71 years of rule by the Party of the Institutional Revolution (PRI), President Vicente Fox, his National Action Party (PAN), and the divided government Congress they faced, have fallen short in their efforts to reform massive inefficiencies in Mexico's public administration or to bring definitive credibility to Mexico's democratic institutions. Absent strong leadership and inter party cooperation, short-term logrolling and divided government have dominated congressional activity at the expense of more far-sighted and visionary efforts to legislate and implement the ambitious reforms promised by candidate Fox. In the electoral arena, more specifically, Mexico has largely failed to consolidate gains from the democratic opening of 2000 for four reasons: 1) Fox has failed to pass "reform the of state" measures, disenchanting political actors and society and, by extension, diminishing citizens' views of parties and elections; 2) after "winning" alternation for the first time in their decades of social struggle, Mexico's civil society organizations (CSOs) and the electorate have, since 2000, been unable to articulate a new agenda for promoting further changes; 3) party finance scandals have also deflated expectations of an increasingly cynical electorate; and 4) electoral institutions have not achieved the increased authority and autonomy that political actors agree is needed, as legal reforms did not pass in Congress, and while the Federal Electoral Institute remains a strong electoral management body (EMB), its reconfiguration in 2003 was highly controversial.

Mexico made great gains in consolidating democracy in 1997 and 2000, but these advances risk being severely undermined by doubts surrounding the 2006 election. This paper contends that the 2006 pre-electoral environment is, if for different reasons, at least as fragile as that in 2000. If proper measures are not taken to improve electoral playing field transparency and levelness and to help ensure the winner's selection through a process accepted by all and with broad participation, post-electoral mobilization and short-term ingovernability are possible

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Without seeking to sound excessively pessimistic about prospects for a transparent and fair 2006 presidential election, this article asserts that most actors have paid insufficient attention to the critical importance of helping the media and civil society steward the process to a positive outcome. Executive-legislative gridlock throughout the Fox administration, a weary and disappointed electorate and civil society, and a once-again-questioned set of electoral institutions raise doubts about whether a close electoral outcome may, in a worst case scenario, provoke post-electoral mobilizations jeopardizing Mexico's governability, at least in the short term. Perhaps more importantly, Mexicans have revealed in recent surveys that despite the broad wave of disenchantment with government, many do care passionately about setting Mexico's fragile democracy on a clearer path, and are particularly concerned about exorbitant and non-transparent political spending.

This article will be divided into four sections. First, we surmise reasons for the failure of the Mexican government to consolidate its gains after 2000 in policymaking, civil society and electorate participation, and in electoral institution credibility. While the Fox administration experienced some notable successes<sup>2</sup>, we emphasize the Presidency's failures, particularly with regard to the legislative death of his highly-touted state reform initiatives, because this was the

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<sup>2</sup> Beyond failures in the legislative arena, in issues of administration and management, Fox's team did compile a respectable record. For example, Fox succeeded in building upon his predecessor's post 1995 macro-economic stabilization, improved the efficiency of *Oportunidades* social program benefits (food, education, and primary health care to Mexico's poorest), and greatly increased lower middle-class access to home mortgages through INFONAVIT. Some substantive legislative changes were also accomplished (transparency, popular health, civil service reform, etc.), but those were less visible and involved lower political stakes than stalled efforts at social security, energy, labor, and tax reform.

yardstick candidate Fox asked to be judged by, and because this highly-publicized failure became the basis of public perception of his record, which now, during the electoral process, has soured the electorate's expectations for the President's successor, and for the possibilities of change via elections more generally. Second, we discuss the Gordian knot of inter-related issues comprising the biggest threat to the legitimacy of the 2006 federal elections: the relative lack of transparency of campaign finance, the sheer volume of money circulating through the Mexican electoral system, and the high concentration of spending on electronic media advertisements. We describe these problems and also how they are addressed (or not) by the IFE's existing regulatory framework. Third, we consider some of the creative approaches by CSOs and the media for exposing the regulatory structure's legal shortcomings and persuading candidates and campaigns to limit campaign spending and disclose donations voluntarily. Finally, we conclude by sounding a call to domestic and international election monitors and observers to pay attention to the Mexican CSO and media efforts, and for Mexican voters to weight their assessments regarding candidate expenses and disclosure, as they decide which party and candidate will merit their support.

### **The Lost Opportunities of 2000 and the Run-up to 2006**

Mexico was lauded internationally in 2000 for its smooth and peaceful transition to its first non-PRI president since well before World War II. The country's EMBs were roundly lauded, with IFE Council General "gurus" sent on international missions, such as to design Iraq's interim electoral system, and the magistrates of the Electoral Tribunal of the Judicial Power of the Federation (TEPJF) became globe-trotting celebrities whose lessons and perspectives were widely sought and heeded. The cost of electoral transparency in Mexico was high; these two

EMBs in election years in the 1990s absorbed more funds from Mexico's public budget than the judicial and legislative branches **combined**. Election management has cost relatively less in recent years (see Table I), and defenders of this investment point out that a majority of the funds are distributed to political parties as those parties' public campaign funds and used to ensure the security of Mexico's electoral registration card, a de facto national ID card, which in many countries is paid for from other public budget lines. Still, elections in Mexico are among the most expensive – and perhaps the most expensive - in the world.<sup>3</sup> But Mexicans are justifiably proud of their great success in converting one of the most fraudulent electoral systems in the world to one of the cleanest in less than decade, and wary of “cutting back” extensively before those gains are more fully institutionalized.

The Mexican government, Congress, political parties, and civil society have not been protecting this considerable investment as well as they could have. Fox and the three major parties failed to pass many significant reforms – including urgently needed electoral reforms - despite the PAN candidate's vociferous promises to overhaul the political system, Mexico's CSOs and the electorate failed to effectively frame a new agenda for change after achieving alternation in 2000, and Mexico's electoral institutions, renowned worldwide in the late 1990s for their transparency and independence, have lost some of their reformist steam, due in part to legislators' failures. We consider these issues in turn.

First, divided government has led to gridlock and partisan infighting rather than to any widespread changes in relations between the executive and legislative branches, dooming the ambitious reforms promised by President Fox. Fox failed to work closely with his own party's caucus in Congress, and proved utterly unable to negotiate majorities with the ideologically

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<sup>3</sup> As per Table I, EMB spending relative to judicial and legislative branch budgets has diminished since 2000, although Mexico still spends inordinately on elections and a major portion of the cost is public funding of parties. A proper caveat is also that Mexico's IFE is in charge of the national voter registry, one of the most trustworthy in the world, and Mexico's only source of valid nationwide identification.

centrist PRI, or the center-left Party of the Democratic Revolution (PRD) which also must shoulder their shares of the blame. The electorate was not impressed, and demonstrated disappointment through one of the lowest turnouts in decades for the 2003-midterm congressional elections. The fate of Fox's economic reforms, the centerpiece of his electoral platform, illustrate his intransigence and that of Congress, which was unaccustomed until 1997 to actually deciding issues, on policy merits, political expediency, or on any other criteria.

President Fox took office with a broad agenda of economic reform proposals, but settled for approval only of his reforms to strengthen regulation of the stock market, banking, insurance, mortgages and other financial services, i.e., only low-cost reforms that technocrats at the finance secretariat (*Hacienda*) executed with key legislators from the PRI and the PAN. Congress failed to approve Fox's all-important effort to improve the efficiency of the state oil company *Petróleos Mexicanos* (PEMEX) and Mexico's inadequate electricity grid, perhaps by allowing private investment in at least some portions of the energy sector. Social reforms to decentralize the education system, improve the pension system, promote worker training, job creation, and labor standards, and reconstitute the pact between the federal government and the states, also stalled. And efforts to better distribute the tax burden and rationalize tax collection may be Fox's highest profile failure of all. Through the blow-by blow of Mexico's first modern experience with gridlock and divided government, the electorate saw little return on their enthusiastic support for alternation in 2000. The president did successfully manage Mexico's macro economic stability and obtain moderate growth, and he added guarantees of transparency and accountability to administrative procedures at all levels of government, but these accomplishments were quiet and incremental. The president's failures, on the other hand, while partially attributable to Congress and the political parties' leadership, were dramatic and definitive, provoking a fairly widespread public disillusionment with the limits of electoral alternation.

Second, after “winning” alternation for the first time in their decades of social struggle, Mexico’s social movements, CSOs, and the electorate, which had been caught unprepared for electoral alternation in 2000, have only recently begun to articulate a strategy for addressing post-alternation government accountability and responsiveness after several years of bearing witness to democracy’s disappointments. Societal groups seemed finally to have superceded this lack of forward vision by the summer of 2005, although it remains unclear whether they will be able to effectively galvanize public support for the extended campaign of methodical “second generation” electoral observation which analysts recognize is needed.<sup>4</sup> CSOs have also faced difficulties maintaining the hard-fought organizational unity they had acquired over more than a decade of social mobilization, and adjusting their agendas to the surprising results of 2000. “We didn’t have the political capacity to reach a consensus about the country’s democratic governability,” said Alianza Cívica director Silvia Alonso (interview). “This left holes for each group to fill however they could.”

Having labored to achieve the free and fair elections typified by “first generation” electoral observation, Alianza Cívica and its extensive network of CSOs were stymied for several years after 2000, at least with regard to continuing to advance methodologies for electoral observation, and the Fox administration weakened their leadership by including prominent CSO leaders into his government. Recent polls showing a dramatic increase in the number of respondents believing campaigns to be expensive and uninformative<sup>5</sup> also exemplify the demobilization of civil society and disenchantment by the electorate. The new pattern of excessive campaign spending, ineffective regulation of media expenditures and campaign finance, and the failure to

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<sup>4</sup> We distinguish “second generation” electoral observation, that dealing over months before elections with “playing field” issues (campaign finance, media coverage, and substantive platforms and positions), from “first generation” observation, such as that pioneered in Mexico during the 1980s and 1990s, which focused on exposing electoral fraud on Election Day.

<sup>5</sup> The polling firm Paramétrica found that while 66 percent of a nationwide sample believed in August 2002 that campaigns were expensive and informed citizens “little or not at all,” in June 2005 that group had increased to 77 percent of the sample (Carta Paramétrica, August 18, 2005).

sanction perpetrators of electoral crimes,<sup>6</sup> has become chronic in state-level elections over the last couple of years, placing demands on her group and others to conduct “second generation” electoral observation. Indeed, these conditions, combined with the challenges to IFE’s credibility post-2003, may make federal electoral observation – but of campaign finance and disclosure, and with monitoring of political platforms and their salience – quite relevant again in 2006.

Third, Mexico’s citizens have been saturated by non-stop media coverage of sensational political scandals. The most colorful political corruption scandals may have been those alleged against Mexico City Mayor Andrés Manuel López Obrador’s staff, and the “PEMEXGate” scandal in which some \$US 45 million was laundered into the PRI during the 2000 campaign from the public oil company’s employee union.<sup>7</sup> However, the election-related scandal most emblematic of current challenges was the 2000 Amigos de Fox “laundering” of some \$30 in campaign contributions through a special interest PAC for then-candidate Fox. This case- and its investigation by IFE- revealed the limits of Mexico’s election management bodies in punishing private sector accomplices to campaign spending excesses, and established precedents for “off the books” political action committee-like groups in Mexico. After some three years of judicial wrangling for exemptions to Mexico’s “secret banking” laws, IFE investigators were denied access to PAN donor accounts by federal courts, but then granted permission by the Fox campaign donor in question, on the eve of an expected Supreme Court ruling, which might have opened private bank accounts to greater IFE scrutiny. The court precedent never came, however, and although the PAN was found guilty of laundering excessive campaign contributions from

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<sup>6</sup> Sanctions by IFE and the TEPJF are always administrative rather than criminal, and do not effectively dissuade campaign finance violations because electoral victories cannot be overturned on such grounds, according to law. To Alianza Cívica CSO director Silvia Alonso, the adage, “*vale más pedir perdón que pedir permiso* (it’s better to apologize than to ask permission),” exemplifies the incentives offered by the existing system.

<sup>7</sup> Several high-level public officials were fined and banned from public service, and the PRI itself was fined about US \$100 million, but no one was criminally charged with federal electoral crimes, and as evidenced in Table II, the fine was not overwhelming as a percentage of PRI public funding.



illegal foreign donors and fined some US \$30 million, no election results could be legally challenged, and no culprit was criminally charged by the Election Crimes Prosecutor (FEPADE).

Fourth, the failure of electoral reform has meant delays in further fortification of electoral institutions and resolution of their regulatory shortcomings. Indeed, despite the identification of several critical problems by all three major parties in the electoral regulatory framework, they all dutifully presented reform initiatives in Congress, but then let them languish, perpetuating the regulatory regime's inability to prepare itself for the renewed challenges of 2006. The FEPADE has always been weak and overly dependent on the executive branch, the once-revered Federal Electoral Institute (IFE) lost some of its credibility in the naming of its new post 2003 General Council without approval from presidential frontrunner López Obrador's PRD. The Electoral Tribunal of the Judicial Power of the Federation (TEPJF) has been accused of rendering subjective, and possibly party-driven verdicts over the last several years, including in annulment of gubernatorial races such as in Tabasco 2001 and Colima 2004, over issues sure to be at the forefront in this federal election, such as "campaigning" by incumbent governors and other public officials while still in office. Whatever the dubious validity of claims about the potential shortcomings of IFE and TEPJF, parties have resorted again to their pre-2000 tactic of systematic and severe questioning of these authorities' rulings whenever these do not favor their causes.<sup>8</sup>

In negotiations of the aborted pre-2006 electoral reform, it was apparently widely recognized that the FEPADE's powers were deficient.<sup>9</sup> Indeed, María de los Angeles Fromow, the assistant attorney general for electoral crimes, acknowledged that being named directly by

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<sup>8</sup> On September 30, 2005, and only two weeks after supporting a consensus vote (6-0, with the absence of Magistrate Jesús Orozco) which confirmed the PRI's recent change of leadership against a formal challenge from Elba Esther Gordillo, former Secretary General and national leader of the powerful teachers' union, Magistrate Eloy Fuentes stepped down from the presidency of the Tribunal, citing 'strictly personal' reasons behind his decision, but fueling speculation about party interference. Gordillo had denounced the Tribunal on the days after the vote.

<sup>9</sup> While resistance existed to proposals by all three of the major parties' legislators, the PRI's objections were to granting the FEPADE greater authority, which had been proposed in a whole range of areas (see Hidalgo).

the president may be perceived as compromising her autonomy (interview). And the FEPADE has lobbied unsuccessfully for reforms, seeking to broaden prosecutorial authority. All of these proposals failed to achieve congressional passage, and despite Fromow's involvement in cases such as the Amigos de Fox and PEMEXGate campaign finance scandals, these investigations resulted in civil sanctions by the IFE and electoral court, but yielded no criminal prosecutions, which are FEPADE's purview.

The IFE, a pillar of institutional credibility in 2003, may be the institution which has suffered the greatest challenges to its credibility. The immediate turn to party politics by former "citizen" General Council members Santiago Creel (Councilor until 1997, and then federal congressman for the PAN), José Ortiz Pinchetti (peer of Creel's both at IFE and later in the House, but for the PRD), Emilio Zebadúa (post-1997 Councilor who is now a member of the PRD's congressional caucus) and Juan Molinar (post-1997 Councilor who is now a PAN congressional member) may have set precedents for appointment processes like that of 2003 less focused on the 'autonomy' of the new Council members.<sup>10</sup> This revolving door pattern between the IFE and Congress has led some observers to suggest that the institution may better protect itself from allegations of partisan bias by implementing stronger conflict-of-interest legislation.<sup>11</sup> Indeed, the 2003 General Council which began its seven-year term in October 2003, charged with the 2006 and 2009 federal elections, was not selected with the same level of consensus as in

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<sup>10</sup> While they may be overly idealized in hindsight for their deft crafting of compromises leading to the successful 2000 election, the 1997 IFE General Council members were accomplished academics and CSO leaders without overt partisan affiliations and their selection via a PRI-PAN-PRD consensus in the Chamber of Deputies reinforced the parties' investment of good faith in the body (on debate over partisanship issue in 1997 IFE, see Schedler). Former Council President José Woldenberg, who served with distinction from 1997 to 2003 and has since retired from public life, has been viewed as a symbolic reaffirmation of the independence of IFE from the political parties it regulates. It should be noted, however, that while he himself had a long history in the political left, when Woldenberg was selected General Council president in 1997, his wife was President Zedillo's Environment Secretary, which in turn raised questions, later dismissed, about whether he would be partial towards the PRI. Scholars studying the voting records of former and current IFE Councilors indicate that the voting patterns of IFE Councilors may be somewhat tinged with partisan influence, but are no more so after 2003 than they were after 1997 (Rosas, Estévez and Magar 2005).

<sup>11</sup> Current legislation only requires that electoral Council Members and Magistrates not serve for the administration whose election they conducted or supervised for one year after they have left their EMB posts.

the past; the PRI and PAN (and the Green Party, or PVEM) approved the selection of the General Council, but over public PRD objections.

Whatever partisanship might lurk in the past or future lives of the current General Council members, for 2006, there is no reason that an open, plural, and collegial IFE cannot achieve impartial decisions. As long as the General Council members are willing to seriously engage opposing positions across the range of issues they address, it can render optimal collegial decisions without being a “mini-parliament” where all positions are represented proportionate to their levels of political support. The institution itself seems sufficiently mature (and possesses sufficient checks and balances) to withstand political pressures.

While most observers argue that IFE’s collective decision-making leadership, and professionalized bureaucracy and structure are conducive to administering free and fair elections, the PRD leadership seems to believe—or at least argue—otherwise. Several analysts interviewed pointed to the PRD leadership’s continued mentions of the IFE’s “sins of origin” as possible indicators of that party’s possible plans to undermine the process if it loses by a narrow margin. Indeed, PRD president Leonel Cota’s recent retention of the Mexican office of the Brazilian Institute of Public Opinion and Statistics (IBOPE) to systematically document all parties’ national television advertising spots is seen as an indication that the party is gathering evidence for possible post-electoral charges that IFE allowed the race to transpire on a non-level playing field.<sup>12</sup> However, another plausible interpretation may be that the PRD’s strategy is simply to attain unduly favorable electoral authority treatment in exchange for their full legitimation of the election after it takes place.

Legal challenges to the election’s legitimacy would be filed before the electoral court (TEPJF), which has been accused by some of excessive discretion in recent years in annulling

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<sup>12</sup> The same firm was chosen by IFE for its own monitoring effort.

gubernatorial elections (Tabasco 2001, Colima 2004), congressional elections (especially the 2003 Zamora, Michoacán-based congressional district), and mayoral elections (notably Ciudad Juárez in 2001) by invoking, to greater or lesser extents, “generic” and “abstract” causes of annulment which critics claim is at least partially subjective. Critics argue the magistrates’ discretion is even more worrisome given that they are at the end of their terms and that the entire electoral court will turn over weeks after the magistrates certify the 2006 elections.<sup>13</sup> Tribunal Officials acknowledged that the outwardly more subjective nature of the “generic” and “abstract” causes of annulment had been utilized by critics to undermine TEPJF decisions; admitting that deciding when irregularities were sufficient as to taint electoral outcomes was a delicate exercise. As an example, assuming complainants submit well-founded cases, the magistrates must decide what frequency, duration, and intensity of a governor’s interventions constitute a determinant interference in the election, among other factors accounting for their alleged effect on electoral behavior. The difficulty of this exercise is reflected in the magistrates’ split - rather than unanimous - decisions.

As with IFE, we attest to the electoral court’s integrity and trust the large and still-growing body of case law precedents to restrain any temptations even by any imaginary “wayward” magistrates. However, the electoral court’s newfound discretion may be questioned by electoral losers, especially since the entire court will be retired just weeks after completing certification of the 2006 elections. As with IFE, measures might be considered, through conflict of interest legislation or some other mechanism, to safeguard the credibility of that institution<sup>14</sup>

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<sup>13</sup> The sole exception is Alejandro Luna Ramos, the replacement named for the distinguished and recently deceased Superior Court Magistrate José Luis de la Peza. Luna Ramos was named for a ten-year term in April 2005.

<sup>14</sup> The fear – which is hypothetical only - is that magistrates’ incentives to strictly defend the law may diminish as their terms come to an end, as they may be looking for their next positions, perhaps as specialists in how parties can overturn elections. Indeed, with the exception of the few magistrates “on loan” from the federal judiciary, who will re-enter other circuits in 2006, the rest of the electoral court’s magistrates will have to commence careers elsewhere when their 10-year terms expire in October 2006 (Omar Espinosa electronic correspondence with author). While the TEPJF’s magistrates are known to possess great personal integrity, it may serve the institution better in the future to stagger magistrate terms. Similar reforms to the appointment of IFE Council members may also be appropriate.

In summary, then, four partial causes have been suggested for Mexicans' diminished credence in elections as a solution to the broader malaise of Mexican politics: gridlock and public policy failures; the perceived inability of social movements and CSOs to propose a new course for social activism and the electorate's refusal to participate; a culture of campaign finance scandals which has prompted suspicion and disillusionment; and the increased threats to the authority of electoral institutions by partisan stake-holders. This backdrop sharpens the context of the main problem, of the lack of campaign finance transparency, exorbitant spending levels, and the inadequacies of regulations to ensure adequate coverage by the electronic media. After specifying these problems in the next section, we then consider the wide-ranging strategies emerging very recently among CSOs, academia, and the media, for pressuring candidates towards greater transparency and frugal spending, even in the absence of an adequate regulatory regime.

### **The Gordian Knot - Campaigns, Television "Spots" and Money**

Mexico's party finance system is one of the most equitable in the world – on paper. Parties are granted public funding by IFE according to a transparent formula which grants each party 30 percent of the total amount of public funding in equal portions (regardless of a party's size or electoral history), and allocates the other 70 percent of public funds according to each party's most recent federal election vote share. A party's private donations can match, but not exceed, public funding. The problem resides in six areas beyond the scope of this regulatory framework:

- 1) The sheer amounts of money flowing through the system are unprecedented and alarming. While the *Universal* estimates of TV ad costs in Table III must be interpreted with caution (as no candidate is known to pay "retail" for television ads), they do indicate massive expenditures that may never be entered in the books, if they transacted before IFE regulation enters in vigor. Still nearly a year from the actual election, these profligate spending levels seem to already be approaching total reported public and

private expenditures by all parties in the 1994 presidential election (compare tables III and IV).

- 2) Lack of disclosure is also disconcerting, as PAC-like special interest groups are springing up in association with many of the pre-candidates, and their incomes and expenses could end up beyond the scope of IFE regulation – for the pre-primary, primary, and campaign seasons. Indeed, the Amigos de Fox model is being viewed as the scheme to replicate, despite the fines imposed against the PAN for the aforementioned reasons. While campaigning abroad by candidates is illegal under the new law allowing Mexicans abroad to mail in ballots, the proliferation of candidate-promoting PACs in the United States may be troubling.<sup>15</sup>
- 3) IFE regulation of campaign finance will only be publicized long after the election, meaning that campaigns may engage in dubious financial dealings without incurring “real time” penalties which might affect their vote shares prior to the election. While the primary season audit will be publicly disclosed during the campaign (by March 15, 2006), campaign season spending will only be publicly released in 2007, and there will be no IFE disclosure of pre-primary spending.<sup>16</sup>
- 4) The pre-primary season is completely unregulated by IFE, implying that in parties without primaries (such as all the smaller parties for 2006), candidates may remain outside the formal regulatory framework until they declare their formal candidacies by January 15, 2006 (see Table V). The PAN has disclosed its primary schedule, and a primary is expected in the PRI, although no date has been set.<sup>17</sup> Similarly, the PRD on August 1 declared López Obrador as its candidate of unity, entering the “primary season” IFE regulatory framework. The difference is that the PRD may defer declaring its primary victor (presumably López Obrador) until close to January 15, thereby deferring “primary season” disclosure until later next spring.
- 5) “Real time” disclosure of fundraising sources is not required and candidates who receive funds from illicit sources, or via *quid pro quo* deal-making, may not have to pay a cost in the court of public opinion.<sup>18</sup>

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<sup>15</sup> If 10 percent of the eligible Mexican voters abroad cast votes (internationally, absentee votes usually account for 3-5 percent of balloting), the estimated 4 million Mexicans with electoral registration cards abroad (98 percent of whom are in the U.S.), the resulting 400,000 votes could exceed one percent of the total number of votes cast. This assumes that some 40 million of the current 69 million card-carrying voters do cast ballots.

<sup>16</sup> On October 3<sup>rd</sup> 2005, IFE and Televisa signed an agreement through which the firm will allow IFE to directly review, during the course of the campaign, all information regarding party spending on all of Televisa’s radio and TV outlets. This agreement, the first of its kind ever signed between IFE and any provider of services for political parties, will allow IFE to guarantee that all money spent in Televisa is accounted for, and may generate incentives for other media outlets to follow suit.

<sup>17</sup> One of the closest advisors of PRI frontrunner Roberto Madrazo stated on August 1 (Aguilar Solís interview) that the campaign had not yet given much thought to how to organize the pre-candidate’s finances in a transparent manner.

<sup>18</sup> In the most prominent public scandal regarding favor-mongering, former Secretary of *Gobernación* Santiago Creel is alleged to have traded “off track” betting licenses in exchange for favorable TV ad rates. Whatever the veracity of the claims, the scandal may cost Creel his party’s nomination, as Felipe Calderón, campaigning as the anti-corruption pre-candidate, has surpassed Creel in the first and second rounds of the party’s three-round internal primary. The PAN’s several hundred thousand party members and adherents will be voting in the party’s staggered primaries, which end in early November.

- 6) Two media outlets sell over 90 percent of Mexico’s national-level campaign “spots” with limited public accountability.<sup>19</sup> Allegations that certain candidates and parties receive unduly preferential treatment regarding this lifeblood of political campaigns are constant and present two problems. On the one hand, if differential rates and sale schemes are only the result of a normal market logic (i.e. discounts for schedule slots with fewer viewers, early buys, “bulk” purchasing, “cash” or at least short-term, as opposed to long-term, financing), then the ‘disadvantaged’ parties may merely be “crying wolf” to offset the other parties’ media buy advantages. On the other hand, if such differential rates are the result of alternative considerations, be they unfair or even illegal, then they should be considered as a major threat to the overall transparency of the election.

Thus, even if this will in fact be the most closely monitored election ever by IFE,<sup>20</sup> these efforts may be ineffective, since monitoring and auditing cannot by themselves solve the problem of enforcing campaign finance regulations (Lujambio, in press). CSOs and other pioneers of Mexico’s innovative “first generation” electoral observation had it easier back when they only had to identify acts of Election Day-fraud, rather than having to track playing field irregularities months ahead of time. However, they have risen to the pre-2006 challenge of seeking to pressure parties and candidates to disclose expenditures and donors, and to punish campaigns that fail to do so via adverse press.

### **CSO and Media Efforts to Overcome Weak Regulatory Framework**

Efforts by CSOs to level the “playing field” in the absence of the oft-praised (but never legislated) electoral reforms may be divided into two general categories. These are “carrot” efforts to provoke voluntary commitments by candidates and campaigns to transparency and campaign frugality in the absence of a legal framework to substitute for this moral suasion; and “stick” attempts to shame candidates and campaigns via negative publicity into reducing their

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<sup>19</sup> This estimate is from *Proceso* reporter Jenaro Villamil Rodríguez (interview), who argued that Televisa is by far the most important player, and that its market power transcends obvious manifestations.

<sup>20</sup> Primary campaign spending will be audited for the first time, and media spending will be monitored for at least twice the time that it was monitored in 2000.

excesses by exposing suspicions about fund sources, illuminating campaign excesses, and regularly reporting on the monitoring of relations between electronic media and the campaigns.

Beyond IFE's own – mostly unheeded – calls for candidates to submit disclosures covering the pre-primary period,<sup>21</sup> Transparencia Mexicana (the international group's Mexican affiliate) sought to adapt existing legal frameworks to the demand for campaign transparency by offering to “vouch” for the transparency of candidates who: 1) disclosed all campaign receipts; 2) subjected these receipts and the accounts they came from to external auditors; and 3) set up a fiduciary trust from which the ingress and egress of funds could be tightly monitored. At least three criticisms were raised of the Transparencia effort, although most interviewees agreed that it helped generate awareness of the need for greater campaign disclosures, and that as a regulatory framework, it was far better than nothing. First, Transparencia was only able to negotiate candidate compliance by promising not to disclose donor identities or amounts.<sup>22</sup> Second, unlike IFE, which was granted legal access to private bank accounts during its 2000-2004 pursuit of the Amigos de Fox paper trail, Transparencia was restricted to reviewing only documents furnished in participating campaigns' voluntary disclosures. Third, by having to rely on voluntary compliance and by working only with candidates who approached them (rather than actively soliciting candidate participation), Transparencia was relegated to working with underdogs who were more desperate for the positive publicity such collaboration might garner.

Another effort, reliant on negative “stick” incentives for disclosure rather than on “carrot” positive publicity, has been a media campaign, organized by political scientist/columnist José Antonio Crespo, and the newspaper where he collaborates, *El Universal*. Crespo sought to force pre-candidates to publicly reveal expenditures, and simultaneously, to galvanize public

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<sup>21</sup> As of mid-August, among active pre-candidates, only the three from the PAN had complied with IFE requests that they voluntarily submit pre-campaign account deposits and withdrawals.

<sup>22</sup> Campaign strategists such as Creel Coordinator Adrián Hernández (interview) said that no history of donor disclosure existed in Mexico and thus business owners and other donors did not want their donations revealed, especially since many of them were hedging bets and donating to all three major parties.



opinion against frivolous spenders. Crespo's effort is premised on accepting that in the absence of disclosure, the only hard data available on campaign expenditures was the number of national television "spots" aired (which according to IFE figures represents some 50-60 percent of total campaign spending – see Table I). *El Universal* is monitoring all national television spots from April 15, 2005 until election day (July 2, 2006), estimating expenditures on TV ads by each campaign at retail costs given in the directories of Televisa (some 65 percent share of the national campaign "spot ad" market), and TV Azteca (a 25 percent market share).<sup>23</sup> For a recent data "cut" using this methodology, see Table III.

The mechanism of estimating costs from the expenditure side of the campaign in the absence of data documenting income from donations would have been useful in and of itself, but becomes even more relevant when leveraged to an effort to force campaign disclosure and to an attempt to punish profligate spenders and reward campaign spendthrifts. Crespo has promised to "add" only costs paid for TV spots (rather than estimating them at list rate), for candidates who submit receipts. In other words, total expenditures on media buys may be shown to be much lower than retail rate by candidates willing to document these buys, and this information could dramatically lower the estimated cost of their campaigns.

IFE will eventually fine parties that overspend their official limits (even if these fines are issued a year after the election and amount to a "slap on the wrist" against perpetrating parties since IFE cannot revoke electoral victories garnered in part with excess funds). But Crespo seeks to further incentivize parties' disclosure of actual prices paid for spots by punishing the "big spender" candidate each reporting period with negative publicity. *El Universal* will reinforce this point by surveying on whether voters would consider voting for "the most frugal

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<sup>23</sup> Market share data is approximate and provided by *Proceso* reporter Jenaro Villamil Rodríguez (August 6, 2005 interview).

spender” (regardless of party or candidate) as a means of rewarding frugality and punishing excess.

Other CSOs such as Mexico’s venerable “first generation” electoral observers, Alianza Cívica, are also planning campaign finance audits focusing on estimates of expenditures, in an extension of methodologies developed during observations of some of Mexico’s more questionable recent gubernatorial elections, such as Veracruz 2004, Oaxaca 2004, and Mexico State 2005. Less constrained than Crespo’s narrow focus on television advertising, Alianza will seek to broadly trace money trails from their destinations back to their sources, and by virtue of its broader purview, will be able to seek out “parallel” sources of campaign finance (i.e. PAC-like special interest groups which collect contributions in the regulatory “shadows,” as in Amigos de Fox), as well as merely considering official campaign sources. Related groups like the foundation FUNDAR (directed by Alianza Cívica founder Sergio Aguayo) may also apply well-honed methodologies to the recurring problem of federal social spending targeted to electoral ends.

### **Conclusions: Bolstering Mexico’s Electoral Credibility for 2006**

Whether the aforementioned CSO and media campaigns to supplement inadequate regulatory campaign finance and disclosure frameworks with ethical appeals and public relations carrots and sticks, the lack of playing field transparency and levelness will detract from the election’s credibility, and could even provoke mobilization by losing candidates. Such mobilizations could no doubt command extensive popular support, as the electorate has shown itself to be disillusioned about democracy and even cynical about the potent mix of campaigns, media, and money. Indeed, three main points would seem to exemplify the possibilities for post-

electoral volatility among the Mexican electorate and its political leaders. First, there will be allegations of irregularities from losing candidates with prominent histories of mobilization. These allegations will have greater resonance if the presidential election is particularly close.<sup>24</sup> Second, mobilizations might provoke strong political arguments for the existence of 'massive' electoral fraud, or at least of the potential illegitimacy of the process as a whole. Indeed, partisan efforts already underway to discredit IFE and other electoral institutions and to document media buys and infer campaign finance violations from the estimated costs of these, would indicate that such strategies are being elaborated as possible contingencies. Third, these allegations will have far-reaching salience among important segments of the Mexican electorate, who have been disillusioned with the prospects for "clean and fair" elections by the post-2000 Amigos de Fox and PEMEXGate scandals, the apparent overspending in Mexico State 2005 and other recent subnational elections, the PRD's governance scandal in Mexico City, and most recently, the revelations this summer related to PAN "big spender" Santiago Creel's (see *El Universal* tracking on Table III) alleged trading of "off track betting" licenses for favorable television advertising rates while he was still Secretary of the Interior (*Gobernación*).<sup>25</sup>

The chances of a destabilizing 2006 election in Mexico, rather than a democracy-affirming one, are low, but the possibility exists. Perhaps more important in the longer term are the considerable prospects for further disillusioning an already-cynical electorate, through the

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<sup>24</sup> After losing the governorship to Madrazo in 1994, López Obrador headed an extensive post-electoral movement in Tabasco (see Eisenstadt 1999), and it was not his first. López Obrador's mobilizational campaign surrounding the Fox administration's efforts to disqualify his presidential candidacy by eliminating his constitutional immunity from prosecution (*desafuero*) also showcased the PRD candidate's capacity for mobilization. Madrazo is thought to mobilize his considerable corporatist base behind the scenes, while PAN pre-candidate Calderón is no stranger to post-electoral mobilization, but like most early national PAN leaders, has used extra-legal tactics in tandem with legal challenges (see Eisenstadt 2004, 162-192).

<sup>25</sup> The scandal cost was probably a key element in his defeat in the first and second of three primary rounds for the PAN candidacy. The September 11th primary was held in the states of Durango, Guanajuato, Hidalgo, México, Nuevo León, Querétaro, San Luis Potosí, Tamaulipas, Tlaxcala and Zacatecas. Calderón obtained 45 percent of the vote, to Creel's 36 percent. This advantage was consolidated in the second regional primary, held in the southern states of Campeche, Chiapas, Oaxaca, Puebla, Quintana Roo, Tabasco, Veracruz and Yucatán on October the 2<sup>nd</sup>, where Calderón obtained 50 percent of the vote, to Creel's 36 percent. Other reasons cited for Creel's defeat were Calderón's focus (catering to strong partisans, rather than to party leaners and weak partisans), and his performance on the primary TV debate on September 8<sup>th</sup>, 2005.

frivolous projection of vacuous television ads and billboards, using excessive sums of public money which could be put to much more efficient use elsewhere. The traditional “first generation” approach to election-monitoring in Mexico utilized in the past by domestic CSOs and international donors is woefully inadequate for documenting potential campaign finance excesses and lack of disclosure which may already be swaying the July 2006 electoral outcome nearly one year ahead of time.

Mexico’s CSOs need to start monitoring campaign expenses immediately through whatever methodologies are available, and should partner with methodologically sophisticated social scientists; offer “real time” updates on estimated expenditures by each campaign over regular intervals, thereby drawing public debate and forcing greater accountability; and develop didactic material for diffusion via domestic media outlets and in election observer training courses. Such material can be used to brief the thousands of domestic and international observers who will arrive next July, so that they may possess a broader context upon which to assess the critical 18-month-process some of them will have to evaluate in 18 hours.

It is a real shame that Congress’ failure to pass an adequate electoral reform – even after a broad consensus existed about needed measures, has left Mexico’s EMBs and civil society having to plead for voluntary cooperation regarding disclosure of donation sums and sources, which should have been legally required, with stiff and automatic penalties for non-compliance. Worldwide, politicians’ good will may be an oxymoron, and Mexican civil society groups’ appeal to this sentiment is at best something of a desperate ploy. However, if they can capture the voters’ attention, and help the electorate assess the quality of the campaigns and judge the virtue and vice inherent in candidates’ finance choices, they may be able to raise the level of the campaign, and salvage an ethical regulatory system, even without adequate legal safeguards.

**Table I – Public Budgets for Mexico’s EMBs, Legislative, and Judicial Branches**  
(in millions of pesos)

	2000	2001	2002	2003	2004	2005
<b>IFE Parties</b>	3,530.8	2,352.8	2,303.7	5,306.1	1,922.7	2,117.2
<b>IFE Administration</b>	4,922.9	2,941.3	3,491.7	5,790.9	3,545.6	4,280.9
<b>TEPJF</b>	1,352.4	595.7	663.0	1,004.2	912.5	1,175.6
<b>FEPADE</b>	TBA	3.9	5.351	8.1	5.8	5.5
<b>Legislative Branch<sup>26</sup></b>	3,790.4	4,398.7	4,896.9	5,576.0	5,439.0	6,355.9
<b>Judicial Branch<sup>27</sup></b>	6,723.4	13,207.8	14,700.6	16,727.9	18,487.5	19,862.1

**Sources:** “Decreto de Presupuesto de Egresos de la Federación para el Ejercicio Fiscal” in *Diario Oficial de la Federación*, December 31, 1999, December 30, 2000, January 1 2002, December 4, 2002, December 31, 2003, December 20, 2004, “Acuerdo del Consejo General del Instituto Federal Electoral que presenta el consejero presidente, por el que se aprueban modificaciones al presupuesto del instituto federal electoral para el ejercicio fiscal,” for 2000-2005.

**Table II – IFE Estimates of Campaign and “Ordinary” 2006 Party Public Funds**  
(in millions of pesos)

Party	Permanent, Ordinary (non-campaign) Activities	Campaign Expenses	Support for Production of Radio and TV Programs	Total Net
PAN	573.3	573.3	0.2	1,146.8
PRI	632.7	632.7	0.2	1,265.6
PRD	372.0	372.0	0.2	744.2
PT	139.3	139.3	0.2	278.8
PVEM	196.7	196.7	0.2	393.6
Convergencia	137.3	137.3	0.2	274.8
Nueva Alianza	41.0	41.0	0.2	82.2
Alternativa Social Demócrata y Campesina	41.0	41.0	0.2	82.2
<b>TOTAL</b>	<b>2,133.4</b>	<b>2,133.4</b>	<b>1.6</b>	<b>4,268.4</b>

Source; IFE 2006 budget approved August 18, 2005

Available at

[http://www.ife.org.mx/InternetCDA/COMSOC/detalle\\_comunicado.jsp?idComunicado=348825438ffc5010VgnVCM1000002d01000aRCRD](http://www.ife.org.mx/InternetCDA/COMSOC/detalle_comunicado.jsp?idComunicado=348825438ffc5010VgnVCM1000002d01000aRCRD)

<sup>26</sup> Includes the budget assigned to the Chamber of Deputies, the Senate, and the General Accounting Office-like Auditoría Superior de la Federación.

<sup>27</sup> Includes the budget assigned to the Supreme Court and the Council of the Federal Jurisdiction.

**Table III – *El Universal* Estimates of 2005 Pre-Primary Candidate TV Advertising Costs**  
(in millions of pesos)

<b>ASPIRANT and PARTY (T signifies TUCOM in PRI)</b>	<b># Spots TV</b>	<b>% TOTAL COST</b>	<b>% TV TIME</b>	<b>TOTAL COST*</b>	<b>NUMBER OF DAYS</b>	<b>AVG DAILY COST *</b>
Arturo Montiel-PRI T	640	17.2	18.8	75.880	113	0.671
Enrique Jackson-PRI T	633	11.9	13.2	51.557	113	0.456
Enrique Martínez-PRI T	613	14.1	<b>19.5</b>	52.132	113	0.461
Tomás Yarrington-PRI T	482	14.6	14.8	55.697	113	0.492
Santiago Creel-PAN	339	<b>22.7</b>	13.8	130.783	60	2.179
Alberto Cárdenas-PAN	26	0.4	0.6	1.686		
Víctor González-Dr. Simi	183	1.0	5.8	5.430		
Bernardo dl Garza-PVEM	377	13.1	8.0	48.073	113	0.425
Felipe Calderón-PAN	52	1.4	1.4	6.057		
M.A.Nuñez Soto-PRI T	45	0.4	1.3	1.366		
<b>TOTAL</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>441.731</b>		
<b>PROMEDIO</b>				<b>49.081</b>		<b>3.909</b>

**Source:** August 8, 2005 “cut” (covering April 15, 2005-August 5, 2005) monitoring by *El Universal* newspaper.

**Note:** Based on monitoring of Federal District television outlets only. All expenditures are limited to estimates of television ad costs only, at listed retail rates. It is well known that these rates are never those paid by candidates, who almost always negotiate considerable discounts. Nonetheless, since better information is not available except from the television sources which are reticent to provide it, or from IFE months and years after the election, this is considered, at the very least, a fair means of assigning/estimating campaign “spot” advertising expenditures.

**Table IV – IFE-Disclosed Public and Private Funds (1994-2003)**  
(in millions of pesos)

<b>Election Year</b>	<b>Propaganda</b>	<b>%</b>	<b>Operations</b>	<b>%</b>	<b>Television, Radio, and Print</b>	<b>%</b>	<b>TOTAL</b>
<b>1994</b>	\$ 146.3	<b>35.3</b>	\$ 163.7	<b>39.5</b>	\$ 104.8	<b>25.3</b>	<b>\$ 414.8</b>
<b>1997</b>	\$ 266.9	<b>22.2</b>	\$ 275.1	<b>22.8</b>	\$ 662.6	<b>55.0</b>	<b>\$ 1,204.6</b>
<b>2000</b>	\$ 493.5	<b>22.2</b>	\$ 529.7	<b>23.8</b>	\$ 1,203.4	<b>54.1</b>	<b>\$ 2,226.5</b>
<b>2003</b>	\$ 343.5	<b>28.0</b>	\$ 225.1	<b>18.4</b>	\$ 656.7	<b>53.6</b>	<b>\$ 1,225.3</b>

**Source:** IFE Parties and Prerogatives Division.

**Note:** This data, for 2000 and 1994, represents campaigns for president, senate, and the Chamber of Deputies, while for 1997 and 2003 it only represents expenditures for the Chamber of Deputies.

**Table V – “Seasons” of Campaign Finance Regulation During the Run-up to 2006**

<b>Campaign Phase</b>	<b>Level of IFE Regulation</b>	<b>When IFE Publicly Discloses</b>	<b>When it applies to PAN</b>	<b>When it applies to PRD</b>	<b>When it applies to PRI</b>
<b>Pre-primary Season</b> (ends when primary contenders are registered by their party)	No IFE regulation at all for contenders' 'personal' spending (but monitors TV spots and news content starting July 1st)	Never	July 12, 2005	August 1, 2005	October 7, 2005
<b>Primary Season</b> (ends when final party candidate selected, with outside deadline of January 15, 2005)	IFE requires campaign funding disclosure; no regulation of spending limits	For candidates chosen by Nov-15-05, Mar-15-06; if later, Jun-15-06.	October 23 if no run-off, November 6 2005 if run-off needed.	No primary competition; as late as January 15	November 13, 2005
<b>Campaign Season</b> (January 15, 2005-June 28, 2006 for President)	IFE requires campaign funding disclosure and regulates spending limits	April 2007	January 15, 2006	January 15, 2006	January 15, 2006
<b>Pre-election "Quiet" Period</b> (period between formal conclusion of campaigns and Election Day; June 29 to July 1st).	All campaign activities are prohibited (including promotion of public works by incumbents).	IFE investigates if a complaint is presented, but disclosure is not likely until well after the election.	IFE investigates if a complaint is presented, but disclosure is not likely until well after the election.	IFE investigates if a complaint is presented, but disclosure is not likely until well after the election.	IFE investigates if a complaint is presented, but disclosure is not likely until well after the election.

**Source:** Media accounts and IFE regulations.

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