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Electoral Court Rejects Request for Full Recount of Presidential Votes

by LADB Staff

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In a unanimous decision, the seven-member federal electoral court (Tribunal Electoral del Poder Judicial de la Federacion, TEPJF) rejected a request by a center-left coalition and its candidate Andres Manuel Lopez Obrador for a full recount of the presidential ballots cast on July 2. Official results indicated that Lopez Obrador, representing the Coalicion por el Bien de Todos, lost the election to Felipe Calderon of the center-right Partido Accion Nacional (PAN) by a mere 236,000 votes, or 0.6% (see SourceMex, 2006-07-12). The coalition comprises Lopez Obrador's center-left Partido de la Revolucion Democratica (PRD), the Partido del Trabajo (PT), and the Partido Convergencia por la Democracia (PCD).

Lopez Obrador contends that the federal elections watchdog (Instituto Federal Electoral, IFE) and President Vicente Fox's administration committed fraud to keep him from winning the election. The PRD candidate and his supporters have likened the election to 1988, when Carlos Salinas de Gortari of the long governing Partido Revolucionario Institucional (PRI) defeated the PRD's Cuauhtemoc Cardenas after a mysterious "computer glitch" temporarily halted the vote count. Lopez Obrador claims the IFE and the Fox administration used sophisticated methods to steal the vote this year, but said he cannot prove those claims without a vote-by-vote recount. "This is our only guarantee," Lopez Obrador said at a rally.

Court orders recount of almost 10% of ballots

In handing down its decision on Aug. 6, the TEPJF said Lopez Obrador's coalition failed to submit sufficient evidence to merit a recount of all votes. Furthermore, the court said, fraud was nearly impossible because the 900,000 poll workers were chosen at random from voter-registration lists. "Citizens provide the certainty of the computation process," said TEPJF Chief Justice Leonel Castillo Gonzalez. "This is the method and the way that the law makes the elections certain."

Additionally, each party had the opportunity to assign observers to each polling location. The TEPJF did find enough irregularities to merit a partial recount and ordered the IFE to conduct a recount of votes in 11,839 polling stations, or roughly 9% of Mexico's 130,000 precincts. The recount was scheduled to start Aug. 9 and conclude Aug. 14. The recount will only affect the presidential ballots and not those cast in the congressional races.

The court's decision to call for a partial recount is a small victory for Lopez Obrador and his center-left coalition, since nearly one-third of the polling stations in question are in Jalisco and Baja California, two states where Calderon won handily. Recounts were also ordered in other states that were won by Calderon or are governed by the PAN, including Tamaulipas, Queretaro, Morelos, Yucatan, Puebla, Sonora, Chihuahua, Nuevo Leon, and San Luis Potosi.

Recounts were ordered in a handful of states won by Lopez Obrador, including Mexico City, Mexico state, Zacatecas, Guerrero, Campeche, Chiapas, and Michoacan, but the number of precincts under review is much smaller than those in states that went for the PAN. "This decision is evidence that the coalition was at least partially right in requesting a recount of the electoral ballots," said Lorenzo Cordova, who specializes in electoral law at the Universidad Nacional Autonoma de Mexico (UNAM).

Other experts agreed with this assessment. "This is a partial victory for the coalition, even though it continues to reject the TEPJF decision," said Alberto Aziz Nassif, a political analyst at the Universidad Iberoamericana in Mexico City. Aziz said the TEPJF decision was also a criticism of the IFE because of its failure to open the electoral boxes in the precincts in question shortly after the election to conduct a recount, even though the institute had every legal right to do so. Some legal experts held out the possibility that the TEPJF might order a full recount if a review of the precincts in question reveals signs of fraud. "It opens the door to the possibility of knowing if Mr. Lopez Obrador's accusations have merit," said Cordova.

The TEPJF did not specify how many ballots would be affected by the recount, but some observers estimate that nearly 3.8 million votes might be recounted if turnout at the targeted precincts matches national trends. The large number of votes in play could, in theory, swing the election in favor of Lopez Obrador, given Calderon's small margin of victory.

The other possibility is that judges might annul the result of the election if widespread irregularities are found. "This is not a final decision," said Dan Lund, who operates the Mexico City-based polling company MUND Americas. Under the Mexican Constitution, the electoral court must make a final determination on Lopez Obrador's challenge by Aug. 31. The court has until Sept. 6 either to declare a winner or void the election. Legal experts said the possibility that the election would be annulled is very remote, since very little evidence of outright fraud has surfaced. "There would have to be extreme violations for this scenario to play out," said Arturo Zaldivar, an expert on electoral law at the Instituto Tecnologico Autonomo de Mexico (ITAM) in Mexico City.

PAN officials said they were not worried that the recount would go against Calderon. "It is possible that there may be some fluctuations upward or downward for either candidate," said PAN secretary-general Cesar Nava. "It is natural to see some minor arithmetic errors, but these will not justify a massive recount, as Mr. Lopez Obrador has requested."

Court decision in compliance with Constitution

Analysts said the decision by the TEPJF, also known as the TRIFE, was in strict compliance with Mexico's electoral law. "The magistrates...determined that the July 2 election fulfilled the criteria of certainty as spelled out in Article 41 of the Mexican Constitution," said syndicated columnist Sergio Sarmiento. "A full recount can only be justified when this principle is not met."

Former Zacatecas Gov. Ricardo Monreal, one of Lopez Obrador's closest advisors, said the electoral court did not necessarily have to adhere so strictly to the electoral law. He suggested the TEPJF justices had the power to "interpret" the law without violating its spirit, which could have resulted

in a different verdict. Lopez Obrador was more explicit in his criticism, suggesting that the court interpreted the law as if it applied to an individual rather than to the collective good of the country. "This court approached this complaint like the Ministerio Publico (public prosecution tribunal), reducing the case to individual rights when they could have resolved the matter to the benefit of the common good."

After the verdict was announced, an angry crowd of Lopez Obrador's supporters blocked the TEPJF building calling the seven magistrates "traitors!" and "rats!" and trapping court personnel inside for nearly two hours. "For us, it's very clear," the PRD candidate told a crowd gathered at Mexico City's Zocalo square. "If they refuse a full recount, that's proof that we won the presidential election....They may have the money and the power, but we have what's most important the people's support." Lopez Obrador discarded the possibility of having the election annulled, insisting that a full vote-by-vote recount was the only acceptable recourse. "I could not accept any other outcome," he said.

Center-left candidate pledges to continue civil resistance

After the TEPJF verdict was announced, Lopez Obrador pledged to continue his campaign of civil resistance. As part of his demand for full recount, Lopez Obrador organized a series of marches in Mexico City, drawing hundreds of thousands of supporters (see SourceMex, 2006-07-19). In the last rally, held July 31, he asked his supporters to set up encampments along the heavily traveled Avenida Juarez and Paseo de la Reforma to press the demands for a vote-by-vote recount.

The PRD candidate, who set up his own tent along Paseo de la Reforma, acknowledged that the action had been partially intended to put pressure on the TEPJF judges to order a full recount. The action not only brought traffic to a halt but also blocked access to thousands of businesses and hotels in the area. Some of the PRD candidate's supporters took their protests to other important buildings in Mexico City, blocking such buildings as the IFE headquarters and the Bolsa Mexicana de Valores (BMV). "We are going to continue with our movement of peaceful civil resistance," Lopez Obrador said after the electoral court handed down its decision. "We are not going to stop...because we have to make democracy work."

The PAN has responded to the PRD protests by flooding television and radio with commercials dismissing the need for a full vote-by-vote recount, also partly in an attempt to influence the TEPJF. "[The judges] were swayed by both and chose the middle ground," said Lund, by neither certifying Calderon as winner nor choosing a full recount. "It was a good choice."

The TEPJF invited both candidates to present testimony a week before its decision, but only Calderon showed up at the tribunal. Lopez Obrador sent his legal representative Horacio Duarte and Senators-elect Ricardo Monreal and Arturo Nunez to represent him. "Mine was a clean victory," the PAN candidate told the magistrates, asking them not to allow the street demonstrations to act as a substitute for the vote of 42 million Mexicans."

Protesters take over main boulevards in Mexico City

The coalition takeover of large stretches of Avenida Juarez and Paseo de la Reforma, two of the city's busiest boulevards, achieved one of its intended effects, which was to create chaos in the capital and bring national and international attention to the PRD's demands. The actions had their negative side

as well, causing losses estimated at more than 1 billion pesos (US\$92 million) during a one-week period to restaurants, banks, hotels, and shops in the vicinity of the two boulevards.

A survey by the Mexico City tourism office said 20 of 31 hotels near the area of the protests reported operation problems, resulting in losses of about 35 million pesos (US\$3.2 million). While the large operations may be able to take a hit, small and medium-sized businesses may not be able to recover, some business leaders said. "The smallest businesses are not able to withstand a blockade longer than a week and will have to close and to lay off workers," said the Confederacion Patronal de la Republica Mexicana (COPARMEX).

The business slowdown is expected to result in major losses of tax revenue for the PRD-led Mexico City government. These losses could amount to 130 million pesos (US\$12 million) for just a one-week period. The action put Mexico City Mayor Alejandro Encinas in the difficult position of supporting his party's candidate while denouncing the takeover of the streets. Some demonstrators apologized to tourists with signs printed in English, which said, "We're sorry for the inconvenience, but we're building democracy," noted the Mexico City daily newspaper Reforma. "We hope that some day people will realize that we were right and we needed to do this," one participant told the Associated Press.

Still, Lopez Obrador faced a lot of criticism from prominent intellectuals who supported his call for the vote-by-vote recount but strongly opposed the takeover of Paseo de la Reforma. "There are a lot of people supporting him in a recount of the votes. But in blocking [the center of the city], he is going to lose a lot of people who have been backing him all along," said analyst Rafael Fernandez de Castro of ITAM. "Why take this city hostage? It seems to me in the end this will backfire."

Prominent writers like Carlos Monsivais and Carlos Fuentes did not mince words when they came out against the blockade of the street. "This is a just cause, but it shouldn't be converted into an attack on the city by blocking streets and affecting so many people," said Monsivais, who had appeared on stage with Lopez Obrador during early demonstrations. Fuentes suggested that Lopez Obrador should have limited the demonstrations to Mexico City's central square. "The wide expanse of the Zocalo is sufficient for the demonstration, where you don't infringe on the rights of third parties," said the writer.

More than 130 other writers and intellectuals added their signature to a published ad that read, in part, "We found no firm evidence supporting the existence of orchestrated fraud." Signers included internationally renowned academics such as Nobel Prize-winning chemist Mario Molina, environmentalist Jose Sarukhan, literary critic Emmanuel Carballo, and prominent political scientists Denise Dresser, Federico Reyes Heróles, Leo Zuckermann, and Enrique Krauze.

A handful of intellectuals came out strongly in support of Lopez Obrador, including Carlos Montemayor and Elena Poniatowska. Poniatowska, who has served informally as an advisor to Lopez Obrador, acknowledged that the blockades are causing some harm to the Mexico City population, but said they are not as dangerous for Mexico as a whole as the pressure exerted by the powerful on the electoral tribunal. [Note: Peso-dollar conversions in this article are based on the Interbank rate in effect on Aug. 9, reported at 10.85 pesos per US\$1.00] (Sources: Associated Press,

07/31/06; Spanish news service EFE, 08/03/06; Notimex, 07/31/06, 08/03/06, 08/04/06; The Chicago Tribune, 07/30/06, 08/04/06, 08/06/06; Copley News Service, 08/06/06; The Washington Post, 07/29/06, 08/07/06; Los Angeles Times, 07/31/06, 08/01/06, 08/02/06, 08/06/06, 08/07/06; The Christian Science Monitor, 08/02/06, 08/07/06; The Dallas Morning News, 07/31/06, 08/02-04/06, 08/06/06, 08/07/06; The New York Times, 07/31/06, 08/06/06, 08/07/06; Agencia de noticias Proceso, 08/02/06, 08/03/06, 08/07/06; Reuters, 07/31/06, 08/02/06, 08/05/06, 08/07/06; The Wall Street Journal, 08/07/06; Excelsior, 07/20/06, 07/31/06, 08/03/06, 08/04/06, 08/07/06, 08/08/06; Bloomberg news service, 07/31/06, 08/03/06, 08/04/06, 08/08/06; El Economista, 07/31/06, 08/02/06, 08/03/06, 08/07/06, 08/08/06; El Financiero, 07/31/06, 08/03/06, 08/07/06, 08/08/06; Milenio Diario, 07/31/06, 08/03/06, 08/04/06, 08/08/06; The Herald-Mexico City, 07/31/06, 08/03/06, 08/04/06, 08/07/06, 08/08/06; El Universal, 07/31/06, 08/03/06, 08/06-08/06; La Jornada, 07/31/06, 08/03/06, 08/04/06, 08/06-08/06; La Cronica de Hoy, 07/31/06, 08/03-08/06; La Crisis, 07/31/06, 08/05/06, 08/07/06, 08/08/06; Reforma, 08/02/06, 08/03/06, 08/06-08/06)

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