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Electoral Court Will Not Review Ballots from 2006 Presidential Race

by LADB Staff

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Nearly nine months after the 2006 presidential election, the country's electoral court (Tribunal Electoral del Poder Judicial de la Federacion, TEPJF) handed another defeat to center-left presidential candidate Andres Manuel Lopez Obrador with a ruling that the ballots cast in the presidential race cannot be open to public scrutiny. The 2006 presidential election was the closest in modern history, with the official count giving Felipe Calderon of the center-right Partido Accion Nacional (PAN) a razor-thin victory (see SourceMex, 2006-07-12).

Lopez Obrador and his supporters from the center-left Coalicion por el Bien de Todos charged that fraud had been committed and demanded a vote-by-vote recount (see SourceMex, 2006-08-09). When this demand was turned down, the coalition sought to examine the ballots, but the federal electoral agency (Instituto Federal Electoral, IFE) rejected this request. The coalition appealed the IFE decision to the TEPJF, which has now upheld the IFE ruling.

In a decision handed down in late April, the TEPJF turned down the coalition's request in a unanimous decision, saying that the ballots were not "public documents," nor are they available to the general public. The seven TEPJF judges cited statutes in Mexico's electoral code (Codigo Federal de Instituciones y Procedimientos Electorales, COFIPE), which stipulate that only voting officials at each respective election district are entitled to view the ballots. In the event that a recount is ordered, TEPJF officials would also be entitled to review the ballots.

Confidentiality trumps transparency

The TEPJF judges said a factor guiding their decision was the principle of confidentiality. Once a ballot is converted into a vote, it gains a confidential status, they noted. Still, the TEPJF's chief magistrate Flavio Galvan said the judges gave serious consideration to the right to information, particularly in light of the move to allow the public more access to public documents. In 2002, the Congress approved legislation allowing citizens access to archives that had been off limits (see SourceMex, 2002-05-08). Galvan said, however, that there are no "absolute rights" and that the justices had to weigh that right against the principle of confidentiality.

Some political observers disagreed with these criteria. "This is a step backward in our country's effort to attain transparency in government," said political analyst Andreas Schedler of the Centro de Investigaciones y Docencia Economica (CIDE). "In this particular case, where you had such a tight election, there would be ample reasons to allow civil society to review the ballots." Schedler urged the Mexican Congress to include a recount provision when they consider legislation on state reforms this year or next. "Other countries have this recount provision," said the analyst. As expected, the decision did not sit well with Lopez Obrador's party, the center-left Partido de la Revolucion Democratica (PRD).

In addition to the PRD, the Coalicion por el Bien de Todos included the Partido Convergencia por la Democracia (PCD) and the Partido del Trabajo (PT). "The TEPJF, far from clearing up doubts about the July 2 fraud, added further uncertainty," said Horacio Duarte, the PRD's representative in the IFE.

PRD president Leonel Cota Montano went one step further, accusing the electoral court of "sweeping the 2006 election under the rug." Calling the decision "an extremely serious matter" for Mexico, he said citizens would never know the extent of fraud that was committed in the 2006 presidential election. Cota said the coalition was especially interested in reviewing the results of presidential ballots in some central and northern states. "In Guanajuato, we have suspicions that the Partido Nueva Alianza (PANAL) took the votes that were going for the PRD in congressional elections while the PAN took the presidential votes," said Cota.

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