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Carlos Navarro

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Controversy Shrouds Upcoming Vote on Mexico's New Independent Prosecutor

by Carlos Navarro

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Mexican President Enrique Peña Nieto agreed last November to promote a change to the Constitution to ensure full independence for the head of the new prosecutor's office, to be known as the *Fiscalía General de la República* (FGR). The change aimed to eliminate the possibility that the current attorney general, Raúl Cervantes Andrade, who heads the *Procuraduría General de la República* (PGR), would automatically gain the nine-year appointment to the FGR, as provided by the original wording of the law ([SourceMex, Nov. 30, 2016](#)).

The proposal to create a more independent prosecutor's office was part of the far-reaching political and electoral reforms that the Congress approved in 2011 and 2013. Most of the attention at the time was focused the portions of the law that allowed citizen consultations and independent candidacies ([SourceMex, May 4, 2011](#), and [Dec. 11, 2013](#)). But the changes, published in Mexico's federal register in February 2014 ([SourceMex, March 19, 2014](#)), also contained the provision that required the transformation of the PGR into the FGR.

A major problem was that the 2014 legislation contained provisions that would have the attorney general automatically become the new prosecutor. Peña Nieto's action suspended that.

But as a result of Senate maneuvers, Attorney General Cervantes Andrade might yet become the head of the FGR. The governing *Partido Revolucionario Institucional* (PRI) supports nominating him to head the new FGR but lacks the votes in the Senate to make this happen. In what many consider behind-the-scenes wheeling and dealing, the PRI is said to have reached a deal with some of the members of the conservative opposition, the *Partido Acción Nacional* (PAN).

PAN divisions exposed

According to the allegations, the PRI agreed to support PAN leader Sen. Ernesto Cordero as the next president of the Senate in exchange for the conservative party's vote for Cervantes Andrade as the next independent prosecutor.

Cordero won the vote as the next Senate leader with support from seven members of his party as well as a majority of senators from the PRI, the *Partido Verde Ecologista de México* (PVEM), the *Partido de la Revolución Democrática* (PRD), and the *Partido del Trabajo* (PT).

The PAN members who supported Cordero included two influential senators, Roberto Gil Zuarth and Javier Lozano. Notably, more than 30 PAN senators did not support Cordero, following the recommendations of party president Ricardo Anaya.

"This is a violation, a shame," said Sen. Fernando Herrera, who has served as coordinator of the PAN delegation in the upper house. "We can now identify the traitors who have turned their back on the Mexican people by negotiating in secret. They have betrayed the confidence of millions of Mexicans."

Anaya went as far as to demand that the PAN senators who negotiated with the PRI resign from the party. He also said the PAN's delegation in the lower house had passed a resolution opposing the automatic nomination of Cervantes Andrade as the new independent prosecutor.

"We will not allow the PRI to impose a new prosecutor to watch the party's back during the next administration," Anaya said in a joint press conference with Deputy Marko Cortés, coordinator of the PAN in the lower house.

The PAN governing body, the Comisión Permanente, went on record as opposing the automatic approval of Cervantes as the new independent prosecutor.

Some PAN members raised concern about the tone of confrontation between the factions of the party, which are said to be positioning themselves for the upcoming presidential elections. Cordero and Gil Zuarth are strong supporters of Margarita Zavala, wife of former President Felipe Calderón (2006-2012). Anaya, for his part, has made no secret of his desire to seek the PAN nomination. Former Puebla Gov. Rafael Moreno Valle is also said to have presidential ambitions.

Senators for the center-left parties also voted for Cordero, suggesting that he was a better option than any PRI senator. "We voted for Ernesto Cordero because he is a quality legislator who has a lot to offer," said Sen. Miguel Barbosa, floor leader for the PT in the Senate.

In a piece in the daily newspaper Milenio, Barbosa underscored his opposition to giving Cervantes the FGR post automatically, a move that could occur during the current session as the Senate debates the legal reforms that would create the Ley de la Fiscalía General de la República. "We oppose any move to make the current attorney general the new independent prosecutor for the next nine years," Barbosa said.

Cordero, for his part, denied that his election as leader of the Senate had any direct links to the pending debate on legal reforms and the nomination of a new prosecutor.

"Many senators who support Raúl Cervantes voted for me, but many others who do not support his automatic nomination to the new post also cast a vote in my favor," Cordero said in an interview with journalist José Cárdenas. "This is evidence that one thing did not have to do with the other."

Cordero also noted that Anaya had been a leader of the PAN delegation in the Chamber of Deputies when the 2014 law was approved.

Is Cervantes qualified?

The debate on whether Cervantes should be selected to head the new FGR has focused on political considerations and not necessarily on his qualifications to hold the post.

"The discussion has been politicized, which has set aside the primary goal of the 2014 legal reforms, which was to transform Mexico's system of justice," columnist Carlos Salazar wrote in the online news site Reporte Índigo, adding that senators should strengthen the new FGR to enable it to effectively implement anti-corruption legislation approved in 2016 ([SourceMex, June 22, 2016](#), [July 13, 2016](#), [Nov. 2, 2016](#)).

Salazar praised Cervantes' qualifications. "Cervantes Andrade meets all the prerequisites to hold the post, both from an academic standpoint and from his performance as attorney general over the past several months."

According to Salazar, one conflict of interest should be brought up during the debate on legal reforms, but this should not be enough to disqualify Cervantes. "The one concern is that he is the cousin of Humberto Castillejos Cervantes, who is legal counsel to the presidency."

Neither Peña Nieto nor the members of his Cabinet have said anything about the pending vote.

NGOs speak out

In a letter to Senate leader Cordero, a group of 200 civic and human rights organizations, demanded that the Senate hold transparent and open hearings on the legal reforms and to refrain from automatically giving the post to Cervantes. They requested a thorough reform of Article 102 of the Mexican Constitution before anyone is nominated to lead the prosecutor's office. Article 102 deals with the structure of the Public Prosecution Service (Ministerio Público de la Federación).

The groups proposed that the Senate appoint a transitional prosecutor who would hold the post until a permanent one could be named.

"We respectfully ask that you consider our request, which is to consider the possibility of naming a qualified person, determined under a broad consensus, to lead the prosecutor's office on a transitional basis," said the letter signed by five members of a committee representing the 200 groups. "We stand ready to work with the Senate under the format of an open parliamentary process to help build a consensus for an autonomous, independent and efficient prosecutor's office, which Mexico requires urgently."

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