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There's a Better Way for Mexico to Elect Its Judges

New constitutional amendments will hurt voters, the rule of law, and economic development.

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On Sunday, Mexican President Andrés Manuel López Obrador signed into law a contentious slate of constitutional amendments aimed at overhauling the country's judiciary. The key proposal: to elect all judges by popular vote—including justices on Mexico's Supreme Court.

Mexico has been in turmoil for weeks over the amendments, and 55,000 judicial employees have gone on strike to oppose the changes. The day prior to the Senate's Sept. 11 vote approving the measures, protesters stormed the legislative chambers, bringing deliberations to an abrupt halt.

In Mexico and abroad, a fierce debate is underway on whether the amendments endanger or enhance democracy. On one hand, the Mexican Bar Association, Inter-American Dialogue, and scholars from Stanford Law School have that the amendments pose a grave threat to judicial independence. On the other, López Obrador and his successor, President-elect Claudia Sheinbaum, have championed the reforms as creating a "true democracy." "If judges ... are elected by the people, where is the authoritarianism?" Sheinbaum asked on social media.

We argue that the real problem with Mexico's judicial overhaul is not just direct elections for judges but rather the specific design of those elections. The basic idea of electing judges may have democratic appeal among voters. But Mexico's reforms are poised to deprive these voters of meaningful choices in judicial elections, lock in the ruling party's power, and harm the livelihoods of ordinary citizens.

The amendments—known as "Plan C"—were a key component of the election platform that won López Obrador and Sheinbaum's party, Morena, control of the presidency and legislature

this June. In addition to introducing the popular election of judges, the reforms also reduce the number of justices on the Supreme Court from 11 to nine, shorten term limits for the Supreme Court and Federal Electoral Tribunal to coincide with presidential elections, and create a popularly elected disciplinary tribunal with broad powers to punish judges, including those on the Supreme Court.

The consensus among scholars has long been that popularly electing judges is detrimental to judicial independence and impartiality. Former U.S. Supreme Court Justice John Paul Stevens famously quipped that electing judges is like “allowing football fans to elect the referees.” Yet it’s not necessarily a death sentence for democracy. In the United States, where many judges below the federal level are elected, 87 percent of state appellate and trial court judges will face the voters at some point during their time in office. While the U.S. model is far from perfect, democracy lives on. What, then, is so alarming about Morena’s Plan C?

Far from giving voters meaningful democratic choices, the current reforms would overwhelm voters with elections for nearly 7,000 judges, half to be held in 2025 and half in 2027. The amendments allow up to nine candidates for each judicial seat, meaning the election for the Supreme Court alone could have up to 81 candidates. With hundreds, if not thousands, of candidates on each ballot, it is unlikely that voters will be able to make informed choices. It is also unclear how Mexico’s election authority—whose budget López Obrador slashed—plans to organize thousands of new elections starting next year.

Mexico’s proposal for judicial elections would very likely lead to low turnout and blank ballots, as evidenced by the special elections championed by López Obrador and judicial elections elsewhere in Latin America. Such low-turnout elections are worrying for the rule of law, especially in smaller, local elections that receive less media scrutiny and in which a few votes obtained under duress can tip election outcomes. While the amendments explicitly bar using public or private campaign funds, there is nothing stopping public figures—such as businesspeople, union leaders, or even cartel capos—from backing a judicial candidate. Support may range from a public endorsement or social media post to vote-buying and even voter intimidation. In recent elections in Veracruz, independent observers reported local officials rounding up voters, busing them to the polls, and using local police to intimidate them.

Just as troublingly, López Obrador’s reforms will likely damage Mexico’s democracy by locking in his party’s power for a generation and severely corroding constraints on executive power. A key element of the judicial overhaul is that all nine judges on the Supreme Court will be elected in a single election in June 2025, rather than staggering elections across multiple presidential administrations.

Undoubtedly, Morena stands to benefit most from this rule. Given that the party won the 2024 presidential election by more than 30 percentage points, judges nominated by a Morena president and Morena-controlled legislature would likely clinch an enduring supermajority on the Supreme Court. Even if public opinion later shifts against the ruling party and voters would prefer judges nominated by a different party, Morena will have profoundly influenced the highest court in the land for the foreseeable future. In contrast, under the previous rules, upon taking office on Oct. 1, Sheinbaum would only be able to appoint three of the Supreme Court's 11 judges—two of which would occur after midterm elections, when a new Senate could put a more formidable check on her appointments.

Of equal importance, under the current plan, voters may face a ballot full of pro-government choices. Mexico's opposition parties have no way to ensure opposition candidates are even on the ballot in Supreme Court elections. Instead, the president will nominate up to three candidates for elections to the Supreme Court, as will the legislature and the plenary of the Supreme Court. However, because López Obrador's party controls both the presidency and legislature, opposition parties may not be able to nominate *any* candidates for the Supreme Court.

If elections for judges heavily favor the ruling party, Mexican democracy would face a heightened risk of what political scientists call "executive aggrandizement," a process in which elected executives eliminate the checks and balances fundamental to democracy. Throughout Latin America, illiberal leaders have used friendly judiciaries to reinterpret their countries' constitutions in ways that subvert democracy and undermine key safeguards. For instance, former Presidents Evo Morales of Bolivia and Juan Orlando Hernández of Honduras as well as current Presidents Daniel Ortega of Nicaragua and Nayib Bukele of El Salvador were all elected under constitutions that banned reelection. Yet friendly courts helped these leaders evade term limits. Mexico itself has a constitutional ban on presidential reelection, but a pro-government judiciary could declare that provision void.

Finally, Mexico's judicial overhaul threatens to jeopardize the livelihoods of many of its citizens. A real risk of these changes is that foreign businesses will not want to make long-term investments in the country for fear that judges allied with the governing party might rule against foreign companies in favor of Mexican-owned or state-owned competitors or that they will demand greater financial concessions from out-of-state businesses. Fewer investments likely mean fewer jobs and worsening economic prospects for Mexicans. Already, the value of the peso has plunged by almost 18 percent since the June elections.

And while state-owned companies may benefit from more politicized courts, ordinary citizens accused of crimes may suffer. Numerous studies from the United States find that

elections make judges more punitive—to avoid the appearance of being soft on crime. Worse still, this increased punishment is disproportionately borne by defendants from marginalized groups. This is a serious concern in Mexico, where more than 20 percent of the country identifies as Indigenous.

Although some of the problems mentioned here are inherent to electing judges, institutional design matters. If Mexico wishes to directly elect its judges, it should do so in ways that minimize possible harms to its citizens.

For instance, it should prohibit judges from seeking reelection, which creates electoral pressures that undermine judicial independence. Because special interests and criminal organizations are most effective at influencing smaller, local elections, the reforms should specify that only higher-level judges will be elected, thus creating larger constituencies that are more difficult for any one group to capture. Supreme Court elections should be staggered over time to reduce the risk of one party locking in long-term control of the court in a single election, and they should explicitly guarantee that opposition parties will be able to nominate candidates—thus giving voters real choices, not a slate of government nominees.

Instead, by pushing through the current amendments, López Obrador is just one of many populists—from El Salvador and Venezuela to Hungary, India, and Turkey—who have invoked democracy to justify attacking the institutions that make democracy workable.

Sheinbaum, who will inherit the presidency come October, has thrown her support firmly behind the constitutional amendments, López Obrador, and continuing his legacy. In early September, when the Supreme Court heard arguments that Plan C should be halted, Sheinbaum declared that there was “no possibility of reversing the judicial reform.”

Electing judges need not be fatal to democracy. But absent changes, Mexico's judicial overhaul could be a step in that direction.

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