



# POLITICAL FINANCE IN THE DIGITAL AGE: A CASE STUDY OF MEXICO

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## INTRODUCTION

While many political parties rely on campaign mobilization on the ground to attract voters, others employ digital strategies for electoral support. Such online tactics typically focus on targeted messages addressed to segmented audiences (Harker 2020; Nadler, Crain and Donovan 2018) that candidates and parties may see as potential supporters. This case study examines the regulatory environment in relation to political finance, including guidelines and strategies as well as norms, practices and patterns of spending on digital campaigns in Mexico. The case study also documents some recent experiences of Mexican political finance oversight agencies in dealing with the digitalization of campaigns. Finally, it reviews two emblematic judicial decisions and cases in tribunals on parties' and candidates' online campaign strategies. The study is based on a literature review of academic and policy papers and judicial documents as well as seven key informant interviews with advisors of the national electoral management body (EMB), campaign activists, campaign consultants and former candidates.

In recent years electoral practitioners and legislators have viewed the regulations of digital campaign spending from two perspectives—traditional and modern. The former conceptualizes online political strategies as a new branch of established models of political communication. From this standpoint, standard regulations on party expenditure must adapt to new practices, essentially by innovative ways to interpret the law (e.g. Chester and Montgomery 2017; Neudert 2020). In contrast, the innovative approach sees digital political spending as a new method for parties to attract voters, which requires a conscious reformulation of regulations. From these views, online interactions between candidates and citizens face unique challenges that risk

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**From a traditional point of view, online political strategies are a new branch of established models of political communication, and standard regulations must adapt to new practices.**

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**Digital campaign spending in Mexico is governed by the principles of freedom of speech and free access to information.**

violating political rights (Dommett and Bakir 2020; Dommett 2019, 2020a, 2020b).

Although both perspectives have contributed significantly to the introduction of spending regulations on digital campaigning, Mexican electoral guidelines provide an interesting case that conflates distinct approaches to digital political finance. In practice, the rules for campaign spending in Mexico rest to a large extent on the model of political communication used in the country, which has been shaped since 2007, and the gradual adoption of secondary statutory instruments influenced by emerging strategies for digital campaigning. Essentially, digital campaign spending in Mexico is governed by the principles of freedom of speech and free access to information and a model of political communication.

With the goals of motivating further analytical review and providing global stakeholders with insights for overseeing online campaign spending in Mexico, this case study proceeds as follows. It first explains the normative background and the current regulatory framework for digital advertisements and online campaign spending. It also examines the implications of other constitutional, financial, technological and regulatory measures for the oversight of online campaign financing. In addition, the case study analyses campaign spending from the 2018 and 2021 Mexican presidential and mid-term elections and reflects upon judicial decisions on digital party practices and behaviour. Finally, it presents closing remarks.

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## **1. BACKGROUND: MEXICO'S NORMATIVE FRAMEWORK AROUND DIGITAL ADVERTISING**

Online political ads in Mexico are unregulated when they are published by individuals, given that doing so is legally understood as a form of free speech. This approach recognizes digital information as free public material that voters can use when deciding how to vote. However, party spending on digital advertising is subject to regulations framed by the National Electoral Institute's (INE) statutory instruments and the so-called model of political communication adopted constitutionally in 2007. In pursuit of fair elections, the constitutional reform introduced three strict guidelines: (a) restricting the direct hiring of traditional media companies; (b) setting the timing for the broadcasting of political advertisements; and (c) setting caps on campaign spending.

### **1.1. Freedom of speech in relation to digital campaigning**

The Mexican Constitution (article 6[2]) guarantees the right to free speech by allowing every person to access, seek, receive and disseminate information and ideas by any means of expression. Based on this principle—and a Supreme Court precedent (Supreme Court of Justice of the Nation 2007)—the Federal Electoral Tribunal (TEPJF) ruled that freedom of speech applies<sup>1</sup> to the Internet

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<sup>1</sup> Unless otherwise indicated, translations from Spanish are by the author.

and its different forms of communication. The electoral judges concluded that to guarantee the constitutional right of freedom of speech, individuals' access to information through communication technologies, broadband and Internet services must remain unregulated. They stated that 'universal access to broadband, broadcasting and telecommunications services allow all people access to information equally, publicly, openly, without any discrimination, thereby contributing to strengthening a society of rights and liberties based on equality' (TEPJF 2016a: 25).

The right to free speech, however, entails the exchange and dissemination of ideas among individuals exclusively; it does not apply to political parties and candidates, as they pay to promote themselves online. The best way to understand this is by dividing ideas propagated online into two categories: those posted without interest other than sharing views and those published for obtaining votes. The electoral authorities have adopted some criteria to decide whether a digital message is subject to regulation: the costs of production involved, the timing of the message and the taxpayer status of the source of the message.

### **1.2. Implications of regulatory reforms on digital political communication**

The tightening of regulations on political parties' access to traditional media has also escalated the shift towards online campaigning in Mexico. The 2007 constitutional reform configured a model of political communication aimed at encouraging fair elections between parties and candidates. Nonetheless, this reform established a foundation for online advertising regulations and legal criteria. By amending article 41 of the Constitution, the Federal Congress responded to the 2006 post-election political turmoil motivated by 'negative propaganda', or 'black campaigning' (Buendía Hegewisch and Aspiroz Bravo 2011: 13 and 15; Damazo 2014). But the change had an enormous impact on the regulation of funds spent on campaigns and on the political advertisements that were broadcast. As a result, the reform established a new kind of interaction between political parties and the mass media—in other words, a new model of political communication.

This model also granted new powers to the electoral authorities to monitor, oversee, inspect and sanction violations; these powers gave the INE the right to investigate and punish organizations and individuals outside politics. In addition, the 2007 constitutional reform empowered the INE to enhance its oversight measures concerning money spent on campaigns. The reform has progressively shaped the way parties and candidates hire digital companies and influencers to advertise political messages.

Another aspect regulated by the 2007 reform is the content of the messages broadcast. Initially, the amendment allowed the INE to review and approve campaign messages before their being broadcast on traditional media. Based on that power, the INE developed a national programme for monitoring political messages on radio and television (INE n.d.), which has become gradually more sophisticated since 2009 in terms of reaching emerging forms of campaigning, including through social media and the Internet. Currently, parties and

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**Electoral authorities in Mexico have adopted certain criteria to decide whether a digital message falls under the right to freedom of speech or should be subject to regulation.**

candidates must submit a proposal for any audiovisual promotional material for approval in advance regardless of the means of transmission. In contrast with hiring restrictions on traditional media, however, they are allowed to freely and directly pay companies and individuals for online campaigning as long as they report the transactions transparently.

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## 2. KEY FEATURES OF MEXICO'S REGULATORY APPROACH TO ONLINE CAMPAIGN SPENDING BY POLITICAL PARTIES

To gain a comprehensive understanding of the normative framework for campaigning on the Internet and social media, we must examine INE's statutory instruments (INE 2014). This section discusses five aspects: (a) the legal definition of 'paid advertisement'; (b) the institutional attributes needed for the INE to develop innovative oversight measures; (c) the lawful conditions for parties to substantiate financial transactions about online activities; (d) the constitutional foundations of the non-campaign period before polling days; and (e) the legal liability of third parties regarding digital political advertisements.

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**All e-items aimed at promoting campaigns, political parties or candidates are regulated in Mexico, and may be subject to scrutiny by the authorities.**

### 2.1. Proving a legal definition of 'paid digital advertisement'

The term 'paid digital advertisement' is defined as 'insertions, e-banners, tweets, published messages, social media accounts, websites and other similar paid items whose purpose is to promote a campaign, a political party or a candidate' (INE 2014: article 199[4][2]). A key element of this definition is the regulation of e-items aimed at promoting campaigns, parties or candidates; therefore, all election-related messages might be subject to scrutiny by the authorities. In addition, by law (INE 2014: article 215), parties and candidates must hold contracts and invoices for advertisements published on the Internet.

### 2.2. Empowering the INE to conduct meaningful oversight

Internet campaign items are understood as messages aimed at obtaining citizens' support 'in addition to those indicated in art. 76 of the Political Parties Law [such as the promotion of parties' and candidates' names, personas or manifestos] and those identified by the INE's Technical Unit, based on information disseminated on the Internet, social media or any electronic means benefiting liable subjects' (INE 2014: article 203[1]). One implication of this definition is that the INE has the right to carry out all necessary measures to validate information submitted by parties and candidates with information that it collects itself. Among these measures, the INE is authorized to request information from third parties for confirmation (see Section 2.5). Any anomaly resulting from such an action is further investigated, and sanctions may be applied if a violation has taken place. In other words, overseeing digital campaign spending in Mexico relies on the INE's monitoring operations on the ground and the information provided by parties and candidates. Although implementing such measures tends to be expensive, interviewees agreed with their overall effectiveness.<sup>2</sup>

<sup>2</sup> Interviews 1, 4 and 5.

### 2.3. Ensuring high levels of political finance transparency

Liabile subjects must provide supporting documentation for their campaign expenses. In addition to reports, parties and candidates must submit valid fiscal receipts for advertising published on websites and social media with details of the 'company or companies ... contracted, dates of publication, e-addresses, costs spent, [the name of the] candidate and the campaign that benefited [and] samples of the advertisement posted on the Internet' (INE 2014: article 246[1][e]). The purpose of this requirement is to push political parties and candidates to carry out traceable financial transactions and to avoid informal trading. This rule is also supported by other regulations on credit and financial institutions (see Section 3.2). An interesting innovation here is a data set of thousands of campaign items, a price matrix developed by the INE in which they set market values every year in order to estimate and compare the cost of items reported by parties.

### 2.4. Setting time for reflection

The Constitution (article 41[II] and [III]) states that political messages should not be broadcast during a 'closed season', which is a period in which campaigning is banned so that electors can reflect on their voting intentions. The TEPJF (2009) ruled by precedent that, to safeguard the principles of fair elections, the dissemination of government advertisements in the mass media is restricted in terms of content and timing. As to content, the TEPJF stated that, 'in no case may messages be published with an electoral nature; that is, they must refrain from aiming to influence electoral preferences for or against parties or candidates'. As to timing, the precedent stipulates that 'messages may not be disseminated in the context of elections during the periods that comprise the pre-campaign, the campaign and the period of reflection [closed season], consisting of three days before and up to the end of polling'. In the words of one interviewee, candidates are aware of both restrictions but do not necessarily follow them properly, 'given that they usually are trying to find a way to promote themselves'.<sup>3</sup> A more comprehensive analysis of a judicial case is presented below (see Section 4.3) to clarify how this rule works.

### 2.5. Regulating third-party campaigners

The fiscal status of taxpayers who post campaign-related messages online plays a fundamental role in the INE's decisions over sanctions. Since freedom of speech pertains to ideas disseminated by individuals only, when someone who makes money from online advertisements publishes political messages, that person may be accountable to the INE. In some cases, the electoral authority could assume that specific election-related messages that are not reported by parties or candidates must be considered part of campaign spending. In such a situation, the INE uses its price matrix to calculate the money spent and then unilaterally adds the estimation to the campaign that is benefiting from the messages.<sup>4</sup> Parties and candidates may face underreporting sanctions or penalties for exceeding the campaign spending cap, which could result in the withdrawal of a candidacy.

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**Together with financial reports, political parties and candidates must submit valid fiscal receipts for advertising published on websites and social media.**

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**When anyone who makes money from online advertisements publishes political messages, they are accountable to the INE.**

<sup>3</sup> Interview 2.

<sup>4</sup> This decision is also based on another constitutional precept, discussed in Section 3.1.

In order to trigger this procedure, the INE applies certain criteria when monitoring political messages. For example, to distinguish between a non-political from a campaign video/clip that has been broadcast, one of the elements the INE observes closely is the level of technicality and sophistication involved in the production of the item. If the video employs a drone or expensive equipment, or shows national celebrities, well-known presenters or footballers, the message is eligible for further inspection. In the case of written messages, the INE looks for campaign patterns by comparing other political messages posted by parties and candidates.<sup>5</sup> Although finding a written campaign trend may rely on a subjective interpretation, the INE has successfully sanctioned a party in a complex case about written campaign messages online, discussed below (see Box 4.1). Despite criticisms of this unilateral measure, expressed by politicians and political parties—based on hundreds of legal challenges against the INE—voters, the general public and civil society groups appear to see the action positively.<sup>6</sup>

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### 3. ADDITIONAL LEGAL INSTRUMENTS FOR OVERSEEING ONLINE CAMPAIGNING

As explained in Section 2, Mexico recently adopted regulations for overseeing online campaigning. Nonetheless, the framework is assisted by legal instruments beyond the realm of elections which make a substantial contribution to monitoring and verifying digital advertising. Firstly, this section discusses the implications of a constitutional precept regarding the responsibility of political parties for spending state resources. Secondly, it examines a banking and fiduciary secrecy exception—a controversial measure adopted in Mexico in 2005—with considerable implications for overseeing public funds. Thirdly, it describes the development of technological tools for tracking parties' and candidates' expenditures, registering candidates for legal liability, registering campaign service providers, and monitoring street and printed political advertising.

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**As 'entities of public interest' who receive public money, political parties in Mexico are fully accountable for actions of third parties who make contributions to them.**

#### 3.1. Political parties share constitutional responsibility for monitoring digital content

Some of the legal foundations for sanctioning political parties against illicit funding rest on their constitutional definition. Given that political parties in Mexico use public money, the Constitution understands them to be 'entities of public interest' (article 41[II]), a definition with significant implications for judicial decisions. Political parties are organizations that are neither subject to nor subordinated to private or particular interests, which entitles the electoral authorities to sanction parties for operations with private donors and individuals who contribute to parties and campaigns.

<sup>5</sup> Interview 1.

<sup>6</sup> Interview 1.

On this basis, the TEPJF ruled that political parties must reject any contribution made by unauthorized individuals, which means that, as direct beneficiaries, political parties are fully accountable for the actions of third parties. The tribunal stated the following:

the political party is the guarantor of the conduct of its members and other persons related to its activities, in compliance with its functions and/or in the achievement of its goals and, therefore, is responsible for their conduct, regardless of the responsibility of each individual in particular, which can be internal to the organization, or exceed those limits. ... This means that there can be both an individual responsibility (on the part of a natural person who is a member of the party, or of an outsider) and a responsibility of the party as a legal person in charge of the correct and adequate fulfilment of the functions and obligations of its members for non-compliance with the duty of vigilance. (TEPJF 2003)

In fact, this legal precept was invoked in a case against the political party Movimiento Ciudadano (Citizens' Movement, MC), which explains the fine imposed on the party for posts published by an unaffiliated individual (see Box 4.2).

### 3.2. The banking and fiduciary secrecy exception

An enactment that helps authorities to track financial transactions is the exemption for banking and fiduciary secrecy in the Credit Institutions Law (article 142[1]). Consistent with the protection of personal data, the law regulates how credit institutions are permitted to store information about deposit holders, services and all kinds of financial operations. The instrument also establishes the basis for collecting data from depositors, debtors, account holders or beneficiaries, and representatives involved in banking operations and financial services. Furthermore, the law establishes guidelines for lawsuits or claims filed by trustees and the requirements of judicial authorities. However, the enactment stipulates secrecy exceptions by enabling banking and credit institutions to provide data and information when requested by the authorities in specific settings without a judicial order (article 142[3]).

The measure assists governmental agencies in tracking the origins and destination of funds, particularly when public money is involved. Essentially, the rule allows prosecutors or federal authorities to request information from customers of banking institutions when they face processes of review, certification or audit, for the verification of potential criminal activity, such as money laundering, fiscal fraud or other possible fiscal offences. In particular, the INE and local EMBs across the country have been expressly granted the right to request financial information from parties, candidates and individuals when auditing, inspecting and investigating anomalies in party financing (article 142[3][IX]).

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**The exemption for banking and fiduciary secrecy in the Credit Institutions Law allows prosecutors or federal authorities to request information from banking institutions about customers when investigating fiscal offences.**



**Different national systems and platforms developed by the INE help it in inspecting political parties and candidates and analysing evidence in cases involving party funds.**

### 3.3. Technology for spending oversight

In order to collect and organize financial data, the INE has developed four national systems for inspecting political parties and candidates: (a) the Audit Comprehensive System 5.0; (b) the National Registration System for Precandidates and Candidates; (c) the National Registry of Providers; and (d) the Comprehensive System for Monitoring Street and Printed Political Advertising (INE 2022).<sup>7</sup> These platforms have assisted the INE substantially in analysing evidence to decide numerous cases involving party funds.

The Audit Comprehensive System 5.0 is an online instrument designed for liable candidates and parties to report income and expenditure operations, submit supporting documents, generate accounting reports and submit quarterly/annual reports on ordinary financial operations. The National Registration System for Precandidates and Candidates is a system in which citizens interested in running for a post submit their candidacies. This tool organizes and digitizes potential candidates' information at the national and local levels. The National Registry of Providers is an online tool in which potential parties' and candidates' providers must register and submit supporting documents. The Comprehensive System for Monitoring Street and Printed Political Advertising is a tool that helps the INE to identify street displays and printed advertisements nationally and locally. Reports from this tool are subsequently compared with parties' and candidates' statements, and any difference is then assessed in detail.

## 4. ONLINE CAMPAIGN ADVERTISING IN MEXICO: HOW DO PARTIES AND CANDIDATES REPORT DIGITAL ACTIVITIES, AND HOW DO THE AUTHORITIES RESPOND?

Political parties and candidates in Mexico have gradually developed more sophisticated methods for digital campaigns (Cárdenas, Ballesteros and Jara 2017: 23). Paid online advertisements during electoral cycles, however, undergo scrutiny because of existing regulations around party spending. Given the nature of the public financing system in Mexico,<sup>8</sup> the INE and other governmental oversight agencies are empowered to conduct inspections and hold liable individuals and organizations accountable. A remaining question is how parties and candidates report their online campaign platforms. This section examines some online campaign evidence and numbers from the 2018 presidential election and the 2021 mid-term elections in Mexico.

### 4.1. What do we know about digital campaign advertising in Mexico?

Shaped by changing forms of digital campaigning, the Mexican electoral authorities have faced challenges in developing regulatory instruments

**Shaped by changing forms of digital campaigning, the INE has issued a set of compulsory items for reporting that obliges parties and candidates to disclose their expenses on digital strategies.**

<sup>7</sup> With the exception of the Comprehensive System for Monitoring Street and Printed Political Advertising, the remaining platforms offer restricted public access.

<sup>8</sup> In Mexico, article 41 (II) of the Constitution states that 'public financing prevails over private financing'. For more details about the party financing system, see Arredondo et al. (2021), Díaz Santana (2019), Valdéz Zepeda and Huerta Franco (2018), Valles Santillán (2018), Zovatto (2016), Mondragón Quintana (2015), López Serrano and López Serrano (2006), De la Calle (2004) and Orozco Henríquez (2004).



within the law. In 2014 the INE issued a set of innovative compulsory items for reporting that force parties and candidates to disclose their expenses on digital strategies (INE 2014). Firstly, the list includes no fewer than 10 entries, including 'Internet websites' as digital campaign activity. By 2016, however, the INE had added 26 items applicable to the 2018 Mexican presidential election (see Table 4.1). All the entries can be divided into two key dimensions: on the one hand, those aimed at identifying parties, candidates, coalitions, locations and dates, and, on the other hand, those that classify types of spending and the amounts of money spent. Initially, the INE used one item for identifying liable persons; in its latest guidelines, however, the authority established 13 entries with crucial information such as level of election (federal, state or local), electoral jurisdictions and both campaign and expense dates. To classify types of spending and amounts, the INE originally developed 10 key entries for reporting expenses on media strategies and later expanded this to 13 items (indicated by the \$ symbol in Table 4.1).

Furthermore, the item for reporting online strategies changed from 'Internet websites' to 'Advertisement published on the Internet' (compare item 2 in the left-hand column with item 23 in the right-hand column); currently, this entry includes social media activities. This adjustment has had a significant impact on investigations and sanctions imposed by the INE. Since 2018 online campaigns have been evaluated based on published content—audiovisual, imagery, text or sound—rather than websites contracted. The most recent debates about online activities and legal challenges rest on this substantial change.

The essence of the mandatory expenditure entries has remained since 2014. Although most conventional means of campaigning—traditional and novel—are well covered by the set of items, some interviews confirm that it is still possible to underreport transactions or to avoid reporting them at all.<sup>9</sup> According to those accounts, this is made possible by paying in cash. Once parties and candidates manage to legally withdraw money from their bank accounts or receive donations in cash, it becomes complicated for the authorities to track the funds. One interviewee, however, also admitted that, for many reasons, the accounting operations necessary to conceal financial information had to be performed surgically to succeed.<sup>10</sup>

Another possible way to underreport online transactions during campaigns is by persuading influencers who are not well known to post messages aligned with campaign strategies. Such tactics tend to be more selective and aimed at specific audiences. In some cases, the selection of influencers—interviewees suggest<sup>11</sup>—is determined to a great extent by their limited knowledge of electoral regulations, particularly those associated with online campaign oversight. A judicial case discussed in Section 4.3 illustrates this point.

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**There remains a possibility of underreporting spending, either by paying suppliers in cash or by mobilizing micro influencers to post messages aligned with campaign strategies on their social media handles.**

<sup>9</sup> Interviews 2, 3, 4, 5, 6 and 7.

<sup>10</sup> Interview 6.

<sup>11</sup> Interviews 4 and 5.

Table 4.1. Spending items that had to be reported by parties and candidates, 2015 and 2018

2015 Mexican mid-term elections	2018 Mexican presidential election		
Liabile subject	1	1	Type of election
Internet websites \$	2	2	Level of election
Cinema advertisement \$	3	3	County/state
Street displays \$	4	4	Electoral precinct
Overall canvassing \$	5	5	Post/candidacy
Campaign operations \$	6	6	Type of coalition
Newspapers, magazines and printed media \$	7	7	Liabile subject
Radio and TV production \$	8	8	Coalition acronyms
Written media advertising \$	9	9	Candidate's full name
Total \$	10	10	Campaign starting date (tied to regulations)
Unreported \$	11	11	Campaign closing date (tied to regulations)
		12	Date and time of the report's approval
		13	Date and time of cancellation (where applicable)
		14	\$ Accounting status
		15	\$ Spending cap (tied to regulations)
		16	\$ Difference (if any)
		17	\$ Financial
		18	\$ Campaign operations
		19	\$ Radio and TV (allocated to each party and paid directly to companies by the INE)
		20	\$ Overall canvassing
		21	\$ Print media
		22	\$ Street displays
		23	\$ Advertisement published on the Internet
		24	\$ Cinema advertisement (messages)
		25	\$ Utilitarian items
		26	\$ Total campaign
<b>Total</b>	<b>11</b>	<b>26</b>	<b>Total</b>

Source: Author with data from the INE (2015, 2018b).

#### 4.2. How much have parties and candidates spent on digital strategies?

This section examines the 2018 and 2021 Mexican elections to understand the volume of party expenditure on digital strategies. Given how problematic it is to gather information worldwide on digital party spending, the fact that the INE makes organized, classified data publicly available free of charge is commendable. Meta and Google, two of the most dominant global companies in terms of digital content, also disclose terms on Mexican election advertising. Through its Ad Library, Meta provides a transparent instrument for political advertising by offering a comprehensive searchable collection of ads published across Meta (n.d.a and n.d.b). Through Google Ads Help, the company shows how it adheres to the Mexican regulatory framework on party and governmental communication (Google n.d.).

Based on official data and reports, Table 4.2 shows the expenditure reported by candidates for the 2018 and 2021 elections. In aggregated terms, we can see that for the 2018 elections, presidential candidates spent nearly a quarter of the entire campaign cost on digital strategies, more than USD 10 million. In contrast, congressional candidates disbursed a proportion of less than 10 per cent on online campaigning, slightly more than USD 5 million. An interesting aspect of the numbers is the fair parity between the items 'street displays' and 'Internet', given that the former represents one of the oldest and most traditional methods of campaigning while the latter is the most contemporary

**In 2018 presidential elections, candidates spent nearly a quarter of their campaign expenditure on digital strategies.**

**Table 4.2. Campaign expenses by item (USD), federal elections 2018 and 2021**

Campaign expenses by item	2018 presidential election <i>Only five presidential candidates</i>		2021 mid-term election <i>Only federal congressional candidates</i>	
	USD	(%)	USD	(%)
Financial	566.84	0.00	27,107.54	0.04
Campaign operation	11,478,658.01	25.57	19,720,314.17	30.69
Radio and TV*	1,317,741.97	2.94	890,873.35	1.39
Overall canvassing	3,896,003.83	8.68	11,299,670.24	17.59
Printed media	2,415,414.12	5.38	251,602.45	0.39
Street displays	12,468,370.54	27.77	5,123,323.76	7.97
Internet**	10,620,601.81	23.66	5,195,716.41	8.09
Cinema advertisement	1,276,152.00	2.84	0.00	0.00
Utilitarian items	1,417,341.95	3.16	21,747,015.22	33.84
<b>Total spending</b>	<b>44,890,851.07</b>	<b>100.00</b>	<b>64,255,623.14</b>	<b>100.00</b>

Source: Author with data from INE (2018a: 15) for 2018 and own calculations for 2021 from (INE 2021c).

Notes: Source figures reported in MXN, with conversions into USD by the author.

\* By law, allocated to each party and paid directly to media companies by the INE.

\*\* Including social media.

**There is a huge disparity in the proportions and amount spent by presidential candidates on Internet strategies, ranging between 3 per cent to more than half of their campaign budgets.**

approach for persuading voters. In both elections, the disbursement share is somewhat similar; for the 2018 presidential elections, candidates employed 27 per cent versus 23 per cent, whereas congressional candidates reported 7 per cent versus 8 per cent of their funds. Another interesting point relates to the comparison between ‘canvassing’ and ‘Internet’. During the presidential contest, candidates reported less than 9 per cent versus 23 per cent of the total, whereas congressional candidates expended nearly double, 18 per cent versus 8 per cent. This difference suggests diversified methods of electioneering according to the levels of elections—federal, state and local.

While aggregate numbers indicate collective campaign trends, individual reports suggest more strategic campaign methods of candidates. Table 4.3 shows that both proportions and amounts spent by each presidential candidate on Internet strategies during the 2018 election are staggeringly dissimilar. Whereas José Antonio Meade Kuribreña reported over USD 5 million in online spending, 24 per cent of his total campaign budget, Andrés Manuel López Obrador—the current president—declared spending USD 274,682.75 on Internet strategies, 3 per cent of his total expenditure. Only one presidential candidate spent more than half of their overall spending reported for the 2018 Mexican election on Internet strategies. Although the impact of digital campaigning on voting behaviour is not discussed in this case study, these findings provide some contrasting insights for the debate on the power of manipulating voters through social media campaigning (Kruschinski and Bene 2022; Dommett and Bakir 2020; Harker 2020; Neudert 2020; Yablon 2020; Dommett 2019, 2020a, 2020b; Nadler, Crain and Donovan 2018; Chester and Montgomery 2017; Goodman et al. 2017; Williamson, Miller and Fallon 2010; Langston and Benton 2009). Yet, as pointed out, for former candidates interviewed here, it is possible to underreport digital campaign expenses.<sup>12</sup>

### 4.3. The judicialization of digital campaigning in Mexico

As described earlier, spending on digital advertising is regulated by specific guidelines. In order to illustrate how these guidelines operate in practice, this section examines two emblematic cases decided by the TEPJF on digital media framed by the 2021 Mexican mid-term elections: (a) against the national campaign of the Green Party (PVEM) (INE 2021a); and (b) against the state campaign of the Citizens’ Movement party (Movimiento Ciudadano, MC) (INE 2021b). Both incidents were reported to the INE, which imposed fines after conducting exhaustive investigations. However, the parties appealed the fines to the TEPJF, which ratified the sanctions in the first case but overturned them in the second one.

The tribunal’s decision to overturn the sanctions against the MC and the candidate was controversial because it was possible that the election results would have to have been nullified otherwise. Two interviewees said that the judges decided under pressure given that a gubernatorial candidate—the winner and current incumbent—was involved.<sup>13</sup> Also, by the time the INE determined its sanctions, the candidate had already won the election by a wide margin. As a result, reversing the overall outcome on the grounds of

<sup>12</sup> Interviews 6 and 7.

<sup>13</sup> Interviews 6 and 7.

**Table 4.3. 2018 proportion of candidates' presidential campaign expenditure on Internet strategies**

2018 presidential candidate	2018 presidential campaign spending		
	Internet strategies* (USD)	Total spending (USD)	(%)
Ricardo Anaya Cortés	4,513,102.19	18,729,242.63	24.10
José Antonio Meade Kuribreña	5,169,052.55	15,851,124.05	32.61
Andrés Manuel López Obrador	274,682.75	8,166,580.79	3.36
Margarita Ester Zavala Gómez del Campo	370,801.80	587,725.48	63.09
Jaime Heliodoro Rodríguez Calderón	292,962.53	1,556,178.11	18.83
<b>Total spending</b>	<b>10,620,601.81</b>	<b>44,890,851.07</b>	

Source: INE (2018a: 17).

Notes: Source reported in MXN, with conversions into USD by the author.

\* Including social media.

#### Box 4.1. Sanctioning administrative procedure against the Green Party

As discussed in Section 2.4, political messages may not be published during the so-called period of reflection (closed season), which includes the three days before and up to the end of polling. In other words, nobody can conduct any type of political campaigning during this period. Based on this rule, a complaint was filed against the PVEM alleging that popular influencers had disseminated digital political messages on behalf of the party during the reflection period. The complaint identified 80 well-known influencers who 'presumably had received money in exchange for the posts' (INE 2021a: 7).

Given that the PVEM denied any wrongdoing, the INE conducted further inquiries, including directly questioning some of the influencers involved, who eventually admitted that they had received payments for the posts. The party alleged that the influencers were permitted to post messages through their individual digital accounts based on the freedom of expression. However, the INE collected sufficient evidence to conclude that these publications were a 'systematic campaign' to promote candidacies rather than a spontaneous expression of ideas and feelings on the part of users. Given the dates of the publications, the INE decided that the PVEM had violated the period of reflection and the principles of equality and legality.

The INE determined the amount of the penalties to be imposed based on the influencers' fiscal status and its price matrix. Firstly, the INE counted the number of messages broadcast and the average single cost based on quotes from different providers. Then it fined the PVEM MXN 40,933,568 (around USD 2 million), which the party paid through monthly instalments from its annual publicly funded budget. Secondly, the INE prohibited the PVEM from using political ads on radio or television for political advertising for a year. Finally, they notified the Attorney General's Office for Election Crimes that the party had potentially engaged in criminal behaviour. In essence, the case involved violations of restrictions on the timing of political campaigning and campaign spending caps.

The PVEM appealed the sanction to the TEPJF, but the latter dismissed the party's arguments and fully ratified the INE's decision (TEPJF 2021a).

social media posts was arguably complicated. Although the judges admitted misbehaviour on the part of the party, the candidate and his wife, ratifying the INE's decision might have made it necessary to call a new gubernatorial election. Most of the people interviewed for this case study agree that the TEPJF faces political pressure in cases like this, as once an election is concluded with ample margins, it is difficult to uphold claims of wrongdoing that would reverse the election results.<sup>14</sup>

In the case of the MC, the interviewees said that the messages the candidate's wife published on social media could have shaped public opinion to the benefit of her husband's campaign. At the same time, they said that the official investigation and sanctioning of a gubernatorial candidate are notoriously slow compared with the pace at which information is disseminated on the Internet. In addition, they said that the intention to punish an elected governor who will eventually acquire political immunity puts the electoral authorities in a difficult position. Although the INE has the power to issue injunctions against candidates and parties during campaigns and pre-campaign periods, avoiding impunity depends on the possibility of withdrawing candidacies before election day.

<sup>14</sup> Interviews 2, 3, 5, 6 and 7.

#### Box 4.2. Special sanctioning procedure against the Citizens' Movement party

The second case involves digital content posted on social media (i.e. Facebook and Instagram). In this case, the wife of a gubernatorial candidate (the current incumbent in Nuevo León) supported her husband by posting dozens of images and clips. In total, the INE collected evidence from 1,300 iterative posts and 118 photographs employing the party's logo and campaign slogans in an effort to persuade voters. In contrast with the case of the PVEM, the posts were not published during the reflection period; nonetheless, the INE confirmed that the candidate's wife was a professional influencer whose services must have been paid for by the party.

Consistent with the previous case, the defence alleged the right to freedom of expression. The INE, however, invoked article 54[d] of the Law of Political Parties that prohibits legal persons from making contributions to political parties and candidates, in money or in kind, by themselves or through intermediaries. Although the wife of the candidate—and influencer—did not have the fiscal status necessary for providing such digital services, judicial precedents suggested that she should be treated as if she had such status given that she earns money from those activities (TEPJF 2016b).

The INE imposed two fines—one in the amount of MXN 55,151,879 (about USD 2.8 million), on the party, and the other of MXN 448,100 (about USD 22,000), on the candidate. To determine the amount of these fines, the INE calculated the average income the candidate's wife reported to the Tax Office up to one year before the campaign. Then the INE included that figure in the party's campaign expenses, assuming they were reported by neither the party nor the candidate. Like the PVEM case, the INE referred the case to the Attorney General's Office for Election Crimes.

The candidate and the party appealed the sanction to the TEPJF, which dismissed the INE's allegations and overturned the sanctions. The electoral judges admitted the potential offence and the detriment to the fairness of the election during the campaign; however, they reversed the decision on the grounds that the influencer was married to the candidate, thus acknowledging a kind of spousal privilege. According to the judges, 'the publications were posted for the moral and reciprocal support that exists in a marriage relationship'. Therefore, the party, the candidate and the candidate's wife were exonerated of all guilt (TEPJF 2021b).



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## 5. FINAL REMARKS

The Mexican case provides some lessons on institutional design, the regulatory system and party strategies for digital campaign advertising. Based on the discussion in this case study, a few crucial aspects are listed below.

1. Internet content and social media posts are highly complex areas for the authorities to monitor. The first lesson is there is a need to develop transformative, robust institutional measures for overseeing novel methods of campaigning and party spending, such as digital strategies.
2. A second lesson is that the effectiveness of institutional regulatory frameworks is highly dependent on mechanisms on the ground for challenging the information provided by parties. Consistent with the negative perception of parties worldwide—in particular, when politicians manage money—there is a need to devise sophisticated rules beyond the realm of elections to force candidates to disclose private information and make all their transactions transparent.
3. Another lesson addresses the ethical responsibility of non-political groups when involved in digital campaign activism. Since parties and candidates might be tempted to employ influencers to promote campaigns, successful regulation is highly dependent on individuals' social reputations.
4. When parties violated the reflection period (closed season) by posting digital content, they compromised the principles of fair elections in Mexico. Although the INE implemented swift measures to ensure that the posts were taken down, these violations serve as a warning that digital campaigning might turn into a threat to elections in specific settings. EMBs might lack the powers and the budget needed to investigate and impose criminal sanctions, given their administrative nature.
5. Another aspect is the complexity of sanctioning candidates—who could eventually claim political immunity—for digital content. Messages can spread online in a fraction of the time needed to investigate and prove that an offence has been committed. Successful measures should address the withdrawal of candidacies, for example, rather than trying to remove elected officials. Once elected candidates swear their oath of office, it is nearly impossible for the authorities to hold them accountable.

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### List of interviews

All interviews were conducted in Mexico City in 2022.

Pedro Constantino Echeverria, advisor to National Electoral Institute, 22 July

Anonymous campaign activist 1 (PAN, PRI), 16 August

Anonymous campaign activist 2 (PRI, PRD, MORENA), 14 September

Anonymous campaign consultant/advisor 1, 25 August

Anonymous campaign consultant/advisor 2, 27 August

Anonymous former federal candidate for Mexico City in 2018, 12 September

Anonymous former local candidate for Mexico City in 2021, 22 August

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## ABBREVIATIONS AND ACRONYMS

**EMB** Electoral management body

**INE** National Electoral Institute, Mexico

**MC** Movimiento Ciudadano [Citizens' Movement party]

**PVEM** Partido Verde Ecologista de México [Green Party]

**TEPJF** Tribunal Electoral del Poder Judicial de la Federación [Federal Electoral Tribunal]



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**Octael Nieto-Vazquez**, PhD, is a Senior Consultant, Advisor and Lecturer with over 15 years of international experience in election crimes, electoral malpractice, political clientelism, vote buying, anti-corruption, party financing and election observation. He has served in governmental agencies, companies, multilateral organizations, higher education institutions and non-governmental organizations in the Latin American and Caribbean region and the United Kingdom. He has advised election bodies and governmental agencies on planning and implementing electoral crime prevention programmes, capacity-building initiatives and electoral reforms. In 2021–2022 he was a member of international technical assessment missions for the Brazilian, Colombian, Honduran and Mexican elections. In 2020 he was a member of an international team for implementing the electoral reform in the Dominican Republic. In 2018 he served as senior advisor to the head of the Attorney General's Office for Election Crimes in Mexico.

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## ABOUT THIS SERIES

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