INDEPENDENT CANDIDACIES: AN ANALYSIS OF THEIR SYSTEMIC (DIS) COMPLIANCE

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Abstract: Independent candidacies, understood as those postulated with no intermediation of a political party, although forbidden by the Federal Constitution, attend public debate, notably after the recognition by the Federal Supreme Court of the general repercussion of the topic, in Extraordinary Appeal No. 1.238.853/RJ. Thus, through a bibliographic survey and the deductive method, the conformation of these candidacies with the Constitution, the financing and propaganda rules and the proportional system itself, allied to the coalition presidentialism adopted in the country, is analyzed. The research was able to conclude that the permission to this modality of candidacy can only occur by Constitutional Amendment, which, if it is the option of the Brazilian Legislative, should only be made after a rigid exercise of conforming to the other norms and to the current electoral system.

Keywords: Independent candidacies; Political parties; Campaign financing; Pact of San José, Costa Rica; Judicial activism.

1 Introduction

Independent (or "nonpartisan") candidacies are understood as those that are postulated autonomously, without the intermediation of political parties. This form of competition for elective positions was possible in Brazil between 1932 and 1945. At that first moment, however, there was a serious obstacle that hindered the success of such candidates: blank votes were taken into consideration when calculating the Electoral Quotient, which made it too high and prevented the independents from being elected.

In spite of this, the Agamenon Magalhães Law[2] eliminated that possibility in 1945, thereby securing the primacy of political parties, which have had a monopoly on candidacies in Brazil up to the present day.

Currently, party affiliation is expressly required as a condition for eligibility by the Federal Constitution. Nevertheless, some citizens have already tried to run for office on their own, which culminated in the matter being taken to the Federal Supreme Court (Extraordinary Appeal no. 1.238.853/RJ), whose general repercussion has been acknowledged. Given this context, therefore, the debate regarding the possibility of its admission is relevant and urgent.

This paper will be organized as follows: first, some premises to be observed in the case

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[2] This is how Decree-Law no. 7.586, dated May 28, 1945, which regulated electoral registration and the elections referred to in art. 4 of Constitutional Law no. 9, dated February 28, 1945, came to be known.

will be outlined, listing the four points that are considered the most important in the case study, namely: i) the Federal Constitution's express requirement for party affiliation as an eligibility condition; ii) the provision on the right to passive electoral capacity in the Pact of San Jose, Costa Rica (PSJCR); iii) the conformity of PSJCR to the electoral legal system; and iv) the incongruities of nonpartisan candidacies in the context of the proportional system.

Having such preliminary points been outlined, they will be compared with the results of a literature survey in order to answer the following research question: do independent candidacies comply with the constitutional provisions and the Brazilian electoral system?

In the end, it was possible to conclude that nonpartisan candidacies are expressly forbidden by the current Constitution, so that they can only be allowed through a Constitutional Amendment. If such permission is chosen, however, this will not be a simple exercise, but a conjunctural analysis that will require a complex study of other electoral rules, of the proportional system adopted in the country and of the incongruities between nonpartisan candidacies and those provisions.

In particular, it should be considered how much the effort to allow "nonpartisan" candidacies can add to Brazilian democracy, under the penalty of having countless provisions altered with the purpose of enabling unsuccessful candidacies or electing congressmen with no power of government coalition.

2 Assumptions regarding independent candidacies

In order to ensure the compliance of independent candidacies with the Brazilian Federal Constitution and the electoral system, this topic aims to contextualize the way they are treated by the Brazilian Constitution and their compliance with the electoral system in force - here understood not only as the proportional system, but also encompassing the rules of financing, election broadcasting rights and others. Furthermore, the normative force of the Pact of San Jose, Costa Rica, which prescribes the protection to the right to run for elective office, will be addressed.

2.1 Alleged violation of the Pact of San José, Costa Rica

The first discussion surrounding the (im)possibility of nonpartisan candidacies in Brazil is based on an alleged violation of the American Convention on Human Rights (Pact of San José, Costa Rica - PSJCR).

In effect, the American Convention on Human Rights, in its article 23, 2, prescribes that "The law may regulate the exercise of the rights and opportunities referred to in the preceding section solely on the basis of age, nationality, residence, language, education, civil or mental capacity, or conviction by a competent judge in criminal proceedings". The exhaustive list of the Pact, therefore, does not include the requirement of party affiliation, considered by the

advocates of independent candidacies as an undue restriction to the fundamental right to passive electoral capacity.

Despite the fact that this tendency is more guarantorist and favors the least interference in the context of political rights, the argument itself does not eliminate the constitutional requirement of party affiliation to run for elective office.

Although it is an international convention, the Pact has no normative force to overcome or flexibilize constitutional provisions. This is because article 5, §3, of the 1988 Federal Constitution, included by Constitutional Amendment (CA) 45, of 2004, requires approval in each house of the National Congress, in two rounds, by three-fifths of the votes of the respective members for international treaties and conventions on human rights to be equivalent to constitutional amendments. This procedure was not observed when the Pact of San Jose, Costa Rica was published in 1992, years before the promulgation of the Constitutional Amendment referred to.

Incidentally, in order to settle any questions regarding the normative status of international treaties and conventions on human rights, the matter was the object of a ruling by the Federal Supreme Court in the proceeding files of RE 466343/SP. The vote given by the Rapporteur, Minister Cezar Peluso, was based on the recognition that the inclusion of §3 is an eloquent statement that "treaties already ratified by Brazil, prior to the constitutional change, and not submitted to the special legislative process of approval by the National Congress, cannot be compared to constitutional provisions". In other words,

> [...] in resolving the issue for the future - when for human rights treaties to enter the legal system as constitutional amendments, they will have to be approved by a special quorum in both houses of Congress - the constitutional change at least points to the insufficiency of the thesis regarding the ordinary legality of international treaties and conventions already ratified by Brazil, which has been advocated by the jurisprudence of the Federal Supreme Court since the remote judgement of RE 80.004/SE, reported by Minister Xavier de Albuquerque (judged on June 10, 1977; DJ 29.12.1977) and supported by a large repertoire of cases judged after the advent of the 1988 Constitution.
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> After the reform, it became even more difficult to advocate the third of the theses enunciated above, which supports the idea that human rights treaties, as any other conventional instruments of an international nature, could be conceived as equivalent to ordinary laws. For this thesis, such agreements would not have the legitimacy to confront, nor to complement, the provisions of the Federal Constitution in matters of fundamental rights. (RE 466.343/SP, Rapporteur, Minister Cezar Peluso, 2008).

Thus, as summarized by Ramos (2015), only treaties incorporated by the procedure of article 5, §3, according to the Federal Supreme Court, have constitutional status, while human rights treaties incorporated in the traditional form or before that amendment have supralegal hierarchy.

In this system, given that the Federal Constitution in force expressly requires party

affiliation, and that the American Convention on Human Rights has supralegal status, it is not possible for the provisions of the Pact of San José, Costa Rica to override the constitutional requirement regarding party affiliation as a condition for eligibility.

The first research assumption, therefore, points to the absence of a violation of the Pact of San José, Costa Rica.

2.2 Party affiliation as a requirement set forth in the Federal Constitution

The analysis concerning the possibility of independent (or nonpartisan) candidacies must start from an inseparable presupposition: the requirement of party affiliation as a condition for eligibility is established in the Constitution of the Federative Republic of Brazil (article 14, §3, V), in line with the model adopted in the country since 1945. From this point of view, there seem to be only two ways out: either accepting the impossibility of running for office outside the party spectrum or proposing a Constitutional Amendment.

Despite this assumption, the Federal Supreme Court (STF) admitted Extraordinary Appeal (RE) no. 1.238.853/RJ (formerly Appeal to Extraordinary Appeal no. 1.054.490/RJ), in which two citizens claim the right to be candidates without party affiliations, recognizing the general repercussion of the underlying constitutional issue. The discussion, therefore, seems to be moving towards a judicial analysis of the topic.

Based on Kelsen's theory (1987), it is assumed that judicial interpretation will only be authentic if it can create the law - in the sense that legal-scientific interpretation discovers possible meanings, but it should never be understood as a prerogative to opt for any of them as imposing. This is the exclusive responsibility of the Legislative Branch, which is the creator of the Law par excellence.

It is true that the party affiliation requirement is not an entrenchment clause, but the separation of branches is. Thus, it does not seem possible that those who do not have the democratic legitimacy to amend the norm can do so. This conclusion does not stem from an unjustified repudiation of judicial activism, but on the contrary, the judiciary often assumes an important social role, notably through counter-majoritarian decisions that guarantee rights which sometimes are not honored by legislative means.

On the other hand, it is also true that active judicial action should not be the rule. According to Ely (2016), the phenomenon is acceptable in two circumstances: i) as a way to facilitate minority representation and ii) as a way to unblock the channels of political change.

It does not seem that the problem of nonpartisan candidacies is embraced by any of the exceptions brought by the author to the limit of action of the Judiciary. Firstly, because, as will be discussed in a separate topic, it is unlikely that the model will benefit minorities. Secondly, because the case does not fit an issue that is stuck in Parliament and requires other means of political discussion.

There are, in fact, several Proposals for Constitutional Amendments (PECs) in progress on the matter. PEC 229/2008, authored by Federal Deputy Leo Alcântara PR/CE, for example, already dealt with the matter long before the proposal of the Extraordinary Appeal. Besides that, PEC 407/2009, authored by Lincoln Portela (PR/MG), PEC 350/2017, by João Derly (REDE/RS) and PEC 378/2017, by Federal Deputy for São Paulo, Renata Abreu, who is affiliated with Podemos, are also being discussed.

PEC 407/2009, for example, proposes that citizens who are not affiliated with political parties be able to run for elective office, provided only that, in the case of proportional elections, they are only considered elected if they have a number of votes that is at least equivalent to the electoral quotient of the respective district.

The following PECs, on the other hand, are concerned with addressing the problems related to adherence to these candidacies. Thus, PEC 229/2008 makes party affiliation or the support of a minimum number of voters an eligibility condition for an individual candidacy, although it only states that the minimum number should be set "under the law".

The other proposals follow this line, so that PEC 350/2017, while making party affiliation optional, requires that the candidate have the support of at least five-tenths percent of voters in the respective district, for executive candidates, and two-tenths percent of voters in the respective district when it comes to an independent candidacy or civic list for the Legislative Branch. PEC 378/2017, in turn, suggests the support of at least one percent of voters in the respective district.

It is important to mention that there is already a report by Rapporteur, Luiz Philippe de Orleans e Bragança (PSL-SP), for the admissibility of Proposals for Constitutional Amendments 229/2008, 407/2009, 350/2017, and 378/2017.

This considered, and given the lack of legislative inertia in discussing the matter and the absence of a minority clamoring for representation, there seems to be no justification for judicial interference, and the separation of powers should prevail.

Therefore, based on these considerations, the second postulate in this study is outlined: the Constitution prohibits nonpartisan candidacies, and any understanding to the contrary must necessarily go through the legislative process.

2.3 The systemic electoral order

Assuming that, by means of a Constitutional Amendment, the Legislative Branch chooses to modify article 14, §3 of the Federal Constitution in order to remove subsection V and the party affiliation requirement as an eligibility condition, or even to include the permission for independent candidacies with minimum support, other issues remain - and they are not peripheral.

The first of them certainly lies in the division of public resources and broadcasting

rights (radio and television time), both of which are the prerogative of political parties (article 16-C, §7, Law no. 9.504/97 and article 7, §2, Law no. 9.096/95).

In an attempt to previously clarify the issue, PEC 350/2017 suggests the inclusion of article 17-A to the constitutional text, adding the following provision: "§ 3 Independent candidates and civic lists are guaranteed participation in free electoral time, as well as public financial resources as provided by law". However, we see that the paragraph does not clarify how this distribution will be made in order to ensure equity between affiliated and independent candidates.

If, on the one hand, it would not be isonomic to restrict these prerogatives to candidates - who may, depending on the proposal that is eventually approved, even count on significant popular support -, it is not possible to equate individual candidates to political parties for the purposes of resource distribution, notably when there is an internal division of inputs in the latter that is not always equitable.

A superficially less complex proposition might then suggest that independent candidates expressly renounce the use of public resources and broadcasting rights, but not without the weight of removing from the electoral process two of its most basic premises: equality of arms and isonomy among candidates. Would an electoral process be truly democratic if some candidates were deprived of free electoral broadcasting time, for example? What does this say about the legitimacy of results?

Another possible scenario is that the approved PEC would be silent as to the division of public resources and access to the radio and TV, allowing independent candidates to seek judicial protection in defense of their right to equality. How to settle the issue when, on one side, there is the protection of equality among candidates, and on the other side, the protection of the proportional system and the isonomy even of affiliated candidates, who compete internally for the resources of their party?

And if they are effectively denied such access, they will barely be able to finance their own campaign, since, with the advent of Law no. 13,878/2019, § 2-A was included in article 23 of Law no. 9.504/97, providing that "the candidate may use his own resources in his campaign up to a total of 10% (ten percent) of the limits set for campaign spending in the office for which he is running" and increasing the dependence on funding through political parties.

Taking the 2020 municipal elections as an example, most Brazilian municipalities showed the amount of R$ 12,307.75 (twelve thousand, three hundred and seven reais and seventy-five cents) as the maximum allowed to be spent on a councilman's campaign, which means that each candidate could only fund himself up to the limit of R$ 1,230.77 (one thousand, two hundred and thirty reais and seventy-seven cents) - an inexpressive amount in the context of a campaign, even for a modest one (BRASIL, 2020).

It is true that the candidate could resort to other financing methods, such as donations

from individuals directly or through crowdfunding. However, based again on the 2020 elections, of the estimated R$ 2.8 billion that was spent by candidates, R$ 2,034,954,824 (two billion, thirty-four million, nine hundred and fifty-four thousand, eight hundred and twenty-four reais) came from FEFC, which corresponds to 72.67% of the total amount (BRASIL, 2020).

Therefore, the prospects for non-party financing are still discouraging. Donations from individuals are not yet part of the Brazilian political culture, and they account for a low percentage of the resources received by campaigns. In this respect, when a strong argument in favor of independent candidacies is to remove the political decision from the monopoly of the "big bosses" in the large parties, there seems to be an inconsistency.

With the resource constraints to be faced by independent candidates, it seems hardly credible that the noblemen will not be the ones to make themselves available in this modality, as they are notably those who have the greatest ballast for self-financing and networks of contacts with potential donors with sufficient wealth to do so.

Beyond this point, it is also necessary to consider that the proposal to remove the affiliation requirement largely undermines the importance of associations, which does not seem to fit with the logic found in the latest changes in legal and party matters.

Take as a reference the changes made in 2015 and 2017, more specifically with regard to the individual Barrier Clause of 10% of the Electoral Quotient, the end of proportional coalitions and the Performance Clause for purposes of division of the Party Fund (FP) and television broadcasting time (MORAIS, 2020): all these provisions, under some bias, seek the strengthening of political parties.

The individual barrier clause, for example, seeks to diminish personalism: even if a candidate obtains an expressive number of votes, which is can also elect other colleagues from the same party, such modification requires that the co-religionists also achieve a certain number of votes, so that the votes can be minimally distributed within the list. In this way, there is prestige for the party to the detriment of the candidate's individual figure. The Performance Clause, in turn, limits the resources of unrepresentative parties, fostering the ideal of stronger parties.

Based on the same principle, the end of proportional coalitions requires that each party promote its identity and its candidates, without counting on the votes of others with whom it has associated in that election, thus supplanting parties individually. In this context, it would be incoherent that their existence should be undermined immediately after a series of legislative measures that seek to strengthen them.

This leads to the third premise: non-partisan candidacies are not in line with the current system of electoral rules, especially when considering the instruments for transforming candidacies into terms of office (propaganda) and the logic of party strengthening.

2.4 The party logic of proportional systems

Despite the recurrent flirtation with other electoral systems - the discussion on the change to the Mixed District Electoral System, the so-called *Distritão*, has even been part of the current Political Reform agenda - Brazil still adopts the proportional system for the elections of Representatives and Councilmen, which is another constitutional option that can only be reviewed with great caution. From this point of view, therefore, it is also necessary to reflect on the impacts of allowing independent candidacies when conformed to this system.

The first point is that, with independent candidacies in a proportional system, the candidate would need to reach the Electoral Quotient (EQ) by him/herself. In the elections for councilman in the city of São Paulo in 2020, for example, EQ was 91,802 votes (BRASIL, 2020), which is not a negligible figure.

Even if the candidate overcomes this initial obstacle and succeeds in attaining a seat in Parliament, the term of office tends to pose the same limitations. It is well known that, in the term coined by Sérgio Henrique Abranches, Brazil has a system of coalition presidentialism, which requires that members of parliament form groups to negotiate demands and interests with the head of the Executive Branch. Although the term refers to the national level, it is known that this type of political organization is repeated in other spheres, including the City Councils of small municipalities.

In such negotiation logistics, it is a natural path that many of these blocs are formed from political parties, where the most relevant decisions are deliberated by party executives and, sometimes, there is a statutory obligation of observance by the party members. In this context, it is absolutely more difficult for an independent representative to be able to form coalitions and represent agendas.

The path seems to lead to a bifurcation: either the independent politician becomes an insignificant congressman, or he/she eventually joins a party to form coalitions. Bernie Sanders, for example, despite being the longest-serving independent politician in the history of the United States Congress, has joined forces with the Democrats on numerous occasions in order to gain prominence and influence agendas. He actually joined the party twice, the first time between 2015 and 2016, and the second time between 2019 and 2020.

Still regarding the United States, where independent candidacies are allowed, there is a scenario in which, for many years now, power has alternated between a member of the Democratic Party and a member of the Republican Party. The studies by Abramson et al (1995) indicate that, from 1832 to 1992, a total of thirteen non-major party presidential candidates (that is, “third-way” or “independent” candidates) received 5% of votes. These data show that, besides not conforming to the proportional system, independent candidates would also have limited chances in majoritarian elections, as is the case of presidential elections in Brazil.

It is not difficult to imagine the challenge to be faced by independent majoritarian

candidates in a Brazilian presidential election. For instance, the candidate will have to travel across a country of continental dimensions to conduct campaign activities, facing a reality where coalition candidates have the capillarity of their political parties, who can count on other political representatives in their coalitions to lend political support to their candidacies in almost every state of the federation. Therefore, once again, an imbalance is shown that should be cautiously solved in case this candidacy model is allowed.

The Brazilian case also poses other sensitive issues. The highly fragmented parliament[3] and the difficulties that this represents for governability in the country are often criticized. In this regard, it is noteworthy that allowing independent candidacies would add more people and more interests to the political parties in that coalition, with which the head of the Executive Branch would need to bargain.

Finally, there is also the accountability aspect of these campaigns, not only in terms of financial transparency, but also of the interests represented. Politics is, by essence, a collective exercise and, even if apart from a political party, an elected congressman must represent a group, a social segment, and some political or financial interests.

In this respect, it is possible to clarify that there are no nonpartisan individuals, but, on the contrary, there are invisible parties. Even if they are not registered and thus nicknamed, it is possible to believe that when someone manages to achieve the votes required by a high electoral quotient on his/her own, there is a group of people represented, responsible for the financing and the votes cast for that candidate. When that person is affiliated with a party, there is greater transparency in the identification of the group and the interests behind his/her purview. In the case of an independent candidacy, however, it is more possible that such interests remain hidden and unknown to the population.

The fourth assumption is thus formulated, sustaining that independent candidacies do not conform to the proportional system adopted in the country for the elections of councilmen and deputies, while they have questionable chances of success in the majoritarian system.

3 Discussions in the literature

The literature does not ignore the requirement for party affiliation provided for in the Brazilian Federal Constitution. This is the first issue on which academic positions may be taken, therefore, it divides those who argue that the matter may be the object of judicial activism and those who postulate the need for a legislative process so that the requirement may eventually be revised.

The supporters of the first trend mainly argue that the National Congress would not face the issue with the necessary breadth and impartiality, which is why an analysis by the Judiciary

[3] The country has one of the most attended Parliaments in the world, and its Effective Number of Parties (NEP) is currently 16.40 - almost four times the world average.

would be appropriate:

> [...] it is obvious that the issue will never be the object of deliberation within the National Congress, which is dominated by partisan forces and absolutely biased to maintain the status quo. Therefore, it is the Judiciary's competence to analyze the issue based on the development of constitutional sentiment by citizens over these almost 30 (thirty) years of the Federal Constitution. (CYRINEU, 2019, p. 4)

Gomes (2020) complements this interpretation by arguing that, despite the Proposals for Constitutional Amendment currently being considered in the National Congress, it is difficult to assume that political parties will voluntarily renounce the monopoly they hold over candidacies and the power that stems from such prerogative. For this controversy, it is proposed that:

> The Judiciary Branch cannot adopt such a preponderant role to the point of violating express constitutional provisions, under the penalty of using judicial activism as a form of decision-making that lacks democratic legitimacy. The political crisis involving political parties is well understood. However, it is not believed that the focus of the debate is correct. Forcefully adopting independent candidacies, obliviously to the decisions of the National Congress (which has repeatedly chosen not to adopt them) can only collaborate with the weakening of institutions. And this will definitely not solve the real problems of Brazilian democracy. (SANTANO, 2018, p. 137)

In fact, there is no historical evidence that the Judiciary makes better decisions than the Legislative. Since the division of powers is an entrenchment clause, despite any doubts about the willingness of the National Congress to change the system of the monopoly on candidacies, it is still an option that falls to it. Considering that a significant number of proposals are being processed in this regard, and have already been declared admissible, the argument that there is an unwillingness on the part of the Legislative Branch, by itself, does not seem to justify judicial interference in the case.

Regarding the alleged violation of the Pact of San José, Costa Rica, there are authors who advocate its application in a *pro homine* principle, applying to the case the norm that best defends men's rights - in the case of independent candidacies, it should be protected by the exercise of passive and active political rights (CHALITTA, 2018).

On the other hand, Ferreira and Fortes (2020) mention that the Inter-American Court of Human Rights understood that there was no violation of political rights based on the requirement for party affiliation as an eligibility condition on two occasions, namely in the cases "Yatama *vs.* Nicaragua" and "Castañeda Gutman *vs.* Mexico". On the contrary, the Court stated that the Convention contemplates both electoral systems, and that each country's internal regulations are responsible for its electoral organization.

Therefore, a violation to the American Convention would only occur in cases where the restriction to eligibility conditions was due to prejudice on the grounds of race, language and other types of discrimination. In this regard:

> The restriction must be provided for by law, be non-discriminatory, be based on reasonable criteria, serve a useful and timely purpose that makes it necessary to satisfy a compelling public interest, and be proportional to that purpose. Where there are several options to achieve that end, the one that least restricts the protected right and is most proportional to the purpose being pursued should be chosen. States may establish minimum standards for regulating political participation, as long as they are reasonable according to the principles of representative democracy. These standards must guarantee, among other things, the holding of periodic, free, fair elections based on universal, equal and secret suffrage as an expression of voters' will that reflects the people' s sovereignty [...]. (CORTH IDH, 2005, p. 206-207)

It is well known that allowing independent candidacies is common in Western democracies. Despite this, the challenges raised here for its implementation are also found in other realities.

In analyzing nonpartisan candidacies in Mexico, Gallardo (2015) notes that although the country provides independents with access to public funding and broadcasting rights, these resources are only granted to registered candidates. He exemplifies that, in order to register his/her candidacy for the presidency of the Republic, it is necessary for the candidate to collect the signatures of at least 1% of the Mexican national electorate (which, in 2015, corresponded to approximately 800,000 people) within a period of four months. Given the usual lack of resources of independent candidates, this requirement alone would significantly hinder their registration and access to resources.

In this regard, even the conformations to a possibility of funding and TV and radio time seem to become an inorganic and impractical requirement. For this reason, the present study is in line with Santano's (2018) proposition, with the suggestion of rethinking the internal democracy of political parties before promoting such abrupt adjustments that have little proven effectiveness in the candidacy system.

4 Conclusion

We sought to investigate the conformity of independent candidacies, which are understood as those postulated without the intermediation of political parties, to the Brazilian system, considering the constitutional and infra-legal provisions and the electoral system in force.

The following premises were established: i) the requirement for party affiliation as an eligibility condition does not correspond to a violation of the Pact of San José, Costa Rica; ii) the Constitution prohibits independent candidacies, and their permission can only be given by legislative means, through a Constitutional Amendment; iii) independent candidacies are not consistent with the current system of electoral rules, particularly with respect to the distribution of public funds and the granting of broadcasting rights, as well as with recent legislative changes and the party strengthening logic; iv) independent candidacies do not conform to the

proportional system adopted in the country for the election of councilmen and deputies, while their chances of success in the majoritarian system are questionable.

Based on the bibliography used for the brief study conducted here, the hypotheses that independent candidacies, at least in the current normative system, do not fit the Brazilian reality, either because they are prohibited by the Federal Constitution, or because they are difficult to reconcile with the financing and advertising rules, or because they have little chance of success in a proportional system, have been reiterated.

The studied papers show that countries such as Mexico and the United States, which allow nonpartisan candidacies, have not experienced great success for independent candidates, even with the normative efforts to contemplate them. Transposed to the Brazilian reality, such evidence is even more dramatic when we consider the already complex coalition system and the obstacles to governability in the country.

In this regard, if the National Congress were to opt for a Constitutional Amendment - the only possibility to allow independent candidacies, respecting the separation of Branches and the express constitutional requirement for party affiliation - it would have to be accomplished with a broad systematization of norms in order to prevent the inorganic inclusion of such a mechanism from conflicting excessively with the electoral norms and system in effect, producing more damage to democracy than the benefits that its advocates propose.

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