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**Do party rules matter for electoral integrity? Possible effects of the 2017  
Brazilian Political Reform on future party configurations in the coming 2018  
elections.**

**Ana Lúcia Henrique**

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Legislative Analyst  
Center for Documentation and Information  
Chamber of Deputies – Annex II  
Brasilia – 70160-900 – Brazil  
[ana.gomes@camara.gov.br](mailto:ana.gomes@camara.gov.br)

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Professor and Researcher  
CEFOR - COPOS  
Câmara dos Deputados  
Brasilia - DF - Brasil  
[analuhenrique@gmail.com](mailto:analuhenrique@gmail.com)

**Synopsis:** There is extensive literature on the effects of electoral rules on Congressional party configurations and election results. However, there seems to be a lack of studies on the importance of party rules on party configuration and the integrity of the electoral process. Elections in Brazil seemed to be doing well in the current democratic period, which began in 1985. Nevertheless, corruption and campaigns awash with illegal money have sent the country into its worst crisis yet of governability since 1985. This has even called into question the “Coalition Presidential System” model, once praised for its ability to manage the most fragmented party system in the world. Increasing public funding for parties proportional to the lower house seats filled by an OLPR system and court rulings fostered the creation of 7 congressional parties in the last two congresses alone. After the Supreme Court banned campaign financing by corporations in 2015, public funding became even more important. The 55th Congress’ Political Reform focused on reducing the number of parties entitled to the fund (introducing a threshold and banning electoral coalitions) and increasing public campaign financing by adding a new public party fund exclusively for campaigns. Sixty-three percent of the new fund distributions are proportional to party seats in Congress, 15 percent in the Senate (where members are elected in a plurality system). This substantially favors incumbents with implications for electoral integrity. At the same time the changes will offer an unprecedented opportunity to compare the effects of similar incentives in houses using two different electoral systems following the October general elections.

**Keywords:** political reform, electoral integrity, party funding, campaign funding congressional party configuration

## 1. Foreword

Elections are the epitome of the democratic process and legislatures are the most important democratic institutions as they contain representatives of the people. After all, to be “ruled by many”, a polyarchy must comprise an optimum quantum of competition and citizen engagement to make possible fair access to representation (Dahl R. A., 1972). It is utopian, however, to believe that a process in which so much power and money is involved would be automatically flawless. Safeguarding electoral integrity is fundamental to the legitimacy of representatives. It does not come as a surprise that electoral malpractices are commonly seen as undermining contests around the world. However, most election results are not rejected outright or overturned even when there are strong criticisms of the process (Norris, Wynter , & Cameron, *Corruption and Coercion: The Year in Elections 2017*, 2018). The main reason may be that external oversight should not threaten two sacred principles of democracy: the secrecy of the ballot and the will of the people. Therefore, before declaring an election null and void there must be indisputable evidence of a rigged process. The most recent elections in the US and Brazil are very good examples of controversial contests whose results were accepted in spite of serious questions of their electoral integrity.

In Brazil the lack of electoral integrity has substantively diminished the levels of confidence in many institutions. Brazilians are known as the most skeptical people not only in the region (Latinobarómetro Databank) but in the world (Inglehart, 1999; Norris, 2007, p. 151). Average confidence in legislatures has been around 30% during the democratic “New Republic”, which began with the election in 1985 of the first civilian president after the end of 20 years of military rule (Henrique, 2009). In 2017 public approval for parties and Congress fell to 7% (ICJ Brasil, FGV).

Literature often associates low perceptions of electoral integrity with electoral malpractices in the 11 step-electoral cycle, which starts as soon as the Electoral Management Body (EMB) announces results from one election and thus initiates a new cycle (Norris, 2013b). In Brazil, candidates who are seeking a seat or a post must have a party affiliation, binding parties and Congress even closer in public eyes. As far as congressional elections are concerned, there is a whole dimension of legislation and procedures related to parties in Congress that also influence the Perception of Electoral Integrity (PEI), confidence in institutions and electoral results. Particularly in Brazil, where these seats also mean party funding since the National Party Act was enacted in 1995. This was intended to implement the 1988 Constitution writers ideal of a free, vibrant and diverse party system for a country which had just emerged from 20 years of military rule.

Brazil had a high Perception of Electoral Integrity (PEI 68) in the presidential polls, higher than the US (63) Index (Norris, Wynter , & Cameron, 2018). Elections in Brazil seemed to be doing well as far as electoral integrity is concerned in the New Republic. The Brazilian computerization of elections, introduced in the 1998 general elections, was considered successful, not only by the Brazilian Electoral Management Body (Brazilian Superior Electoral Court – TSE) but also by international experts (The International Institute for Democracy and Electoral Assistance Policy Paper, 2011) as well as Brazilian scholars (Nicolau, 2012). Vote count (92) and Electoral Authorities (83) had the highest scores in PEI index, but the voting process had a much lower score (66). The lack of a paper trail, passed by Congress but overruled by the Superior Electoral Court, and of an external oversight system was an evident problem in a very close and controversial election in 2014.

Nonetheless, the country has never faced a worse crisis of governability than today, calling into question the model of the “Coalition Presidential system” (Presidencialismo de Coalizão), a model once praised for its ability to manage a hyper-fragmented party system (Power, 2015).

Continuous corruption scandals and campaigns awash with illegal money, involving state companies and important figures in the government, have ended up in the impeachment and removal of a woman president (Dilma Rousseff), who had been reelected in 2014; the fall and arrest of the speaker of the Chamber of Deputies and could end in the early departure of Dilma's vice-president who took over as president, though this possibility is dropping as the general election approaches. Not surprisingly, campaign finance got the lowest score in the PEI index (38). The evidence of electoral malpractice in the Brazilian electoral process was clear. The media and the courts consider corporate money the source of corruption. In my point of view, this sounds like fish blaming the bait. The Supreme Court banned corporate funding in elections in the first year of the 55<sup>th</sup> congress (2015 - 2019). Nonetheless, PEI survey experts seemed to be on to something. Media coverage scored low (47), results (64), and party registration (63) got similar intermediate evaluations. These results all seemed to be somehow connected to perceptions of malpractices, cynicism towards political institutions and the decreasing turnout in the last two polls. In Brazil, registration and voting are compulsory, but abstention, blanks and null votes added up to 30% in 2014 elections: the highest level since 1998<sup>1</sup>.

Constant changes in the late 90s Party and Electoral Rules managed to sharply increase the number of parties and even more importantly the number of parties in Congress and fragmentation - measured by the proportion of seats in the lower house or the Effective Number of Parties at Legislative Level (EffNs) (Gallagher, Elections Indices Dataset, 2015), and making consensus ever harder to achieve. As I argue in my doctoral research and in this paper, these developments were the result of a fierce dispute over party funding, among other benefits related to the parties' share of deputies in the Chamber of Deputies (Gomes, 2016).

Introduced by legislators in 1995, the party fund, which can be used for campaigning, has ballooned more than a thousand percent since its introduction. At the same time, skyrocketing fragmentation saw the three largest parties' share of the fund shrink from over 55% to 35% in two decades. Public party funding was introduced in the 1995 National Party Act to grant freedom to parties as well as greater opportunity for disadvantaged candidates. However, until corporate money was banned in 2015 it represented less than 3% of campaign funding. After the Supreme Court ban on campaign financing by corporations in 2015, public funding became way more important.

Congress reacted to crisis and chaos in decision making in a hyper-fragmented legislature (EffNs 13.69, 2014) by passing campaign limits, ending electoral coalitions and reintroducing a vote threshold for parties seeking office, unwisely overturned by a Supreme Court decision in December 2006. However, to compensate for banning corporate funding, it also passed campaign funding proportional not only to parties' share in the Chamber of Deputies, the lower house, but also in the Senate, setting a precedent. Sixty-three percent of the new fund is proportional to party seats in Congress, 15 percent in the Senate, where members are elected under a plurality (FTPT) system.

Regulation and democracy are questions of trade-offs. Measures may reduce party fragmentation, ease governability and increase the Perception of Electoral Integrity by citizens but they also considerably increase the advantages of incumbents, particularly well-off incumbents who, following Electoral Court decision, can freely

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<sup>1</sup> Available at: < <http://g1.globo.com/politica/eleicoes/2014/blog/eleicao-em-numeros/post/nivel-de-abstencao-nas-eleicoes-e-o-mais-alto-desde-1998.html>>. Access in June, 29, 2018.

finance their campaigns up to the set limit, and undermine fair competition<sup>2</sup>. Literature already signals electoral advantage of incumbents (Jacobson, 1981; Ferejohn., 1986; Cox & Katz, . 1996). The integrity of the electoral results relies on fair competition among candidates and parties though (Weiner & Brickner, 2017).

Parties in Congress have two main roles. First, they depict the will of voters in a representative regime so dependent on parties that authors consider it a “partocracy” (Muller & Strom, 1999). Secondly, they organize the legislative process, particularly in Brazil where there can be no independent candidates. Besides this, the parties have an important role in whole electoral process. They recruit and organize citizen’s preferences around candidates and representatives. In Brazil, as party funding is part of the national budget they also have a civic role as educators (Henrique, 2014) and campaign financers for candidates who cannot easily access funding, as happens with minority candidates. Therefore, they have a key role in fair access to campaign funding, thus electoral integrity. That was exactly why party’s freedom and funding was treasured by the Constitutional writers and the original party legal framework, as I show in the following section.

As far as electoral systems and party configurations are concerned, the new provisions offer an unprecedented opportunity to assess the impact of incentives related to party share normally associated to PR legislatures in a FPTP legislature (the Senate) in the approaching elections (October 2018) and in the new congress (2019 – 2022).

The present paper takes advantage of the Brazilian case to assess the impact of congressional party rules in electoral integrity. It also lays the groundwork for future comparative analyses by collating fragmentation indexes in both houses of Congress and party funding allocation since introduction in 1995, as well as speculating over the main beneficiaries from the changes in electoral party funding just passed for the October 2018 elections.

## **2. Electoral Integrity and the Brazilian Party System Legal Framework**

Defining electoral integrity is not easy. The Electoral Integrity Project (EIP) conceives it as meeting a set of international standards and global norms designed to prevent abuses in an electoral process (Norris, 2013a). In a legalistic manner, the electoral process is defined as a cycle with 11 features and aspects: electoral management bodies, election laws, electoral procedures, boundaries, voter registration, party and candidate registration, campaign media, campaign finance, the voting process, the vote count and the results (Norris, 2013a). Those concerned with public management associate electoral integrity with the prevention and reduction of “electoral maladministration” meaning “flaws and mishaps by election officials” (id., ibid.). A more classical concept of electoral integrity looks to the principles of liberal democracy, meaning electoral processes where “the will of the people” is fairly and genuinely voiced, in a process characterized by transparency, inclusiveness and participation (ibid.). The last best describes the view taken by the present paper.

Parties are at the core of democracy today (Muller & Strom, 1999; Dahl R. , 2000). The literature ordinarily focuses on the role of parties in electoral integrity on the citizen’s side of the “counter”. However, the growing role of parties coincided with the decline of affiliates (Dalton, 2009) increased the importance of parties’ share in government, thereby promoting cartelization and dependence on public money (Mair & Katz, 1997) with consequences for the electoral process.

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<sup>2</sup> Information available at: <https://g1.globo.com/politica/noticia/tse-definir-que-candidatos-poderao-financiar-as-campanhas-com-recursos-proprios.ghtml>. Access on Jun. 28, 2018.

In Brazil, parties have constantly increased their role since 1945, when independent candidacies were banned, and parties could only be created on a national basis. These prerogatives as well as the Open-List Proportional System (OLPR) were set during the period considered as our first democratic experience (1945 to 1964) and were maintained during the military regime (1964-1985). In the republican era since 1889, Brazil has passed through two periods of dictatorship. First there was the “New State” from 1937 till 1945, when Congress was dissolved. Then there was the military dictatorship from 1964 till 1985, where Congress functioned most of the time under a very strict state of exception (Mainwaring S. P., 1999, p. 83)<sup>3</sup>. The first National Party Act was enacted in Brazil during the military regime as was also the current Electoral Code (1965). Parties were restricted to only two until 1979. In Brazil a two-party system and tight party regulations were thus not a help but a hindrance to democracy (Henrique & Paiva, 2014).

After the military coup on March 31, 1964, the 13 then existing parties were phased out under decree (AI2) on October 27, 1965. Then the military government made a two-party system compulsory until a Constitutional Amendment in 1978 fostered a multiparty system by lowering the minimum district support requirements and by allowing the creation of parties by as few as 10% of the congressmen (founders).

The New Democratic Constitution enacted in the aftermath of 20 years of military rule guaranteed the complete freedom of legally constituted social organizations and for citizens to voice their dissent as a fundamental right in Article 5<sup>4</sup>. On top of granting freedom of association and an autonomous party system free from state interference, the 1988 Constitutional writers made clear their preference for a proportional system for legislatures. Introduced in the country as far back as 1934, the proportional rule was suspended during the authoritarian government of Getúlio Vargas (1937-1945), and only came into force for the 1945 elections (Porto, 1989) which began what is called Brazil’s “first democratic period”. Proportional elections lead to multiparty systems (Duverger, 1980 [1951]). Thus, PR multiparty systems in Brazil have been associated with embedded democratic memories. For this reason, the 1988 Constitution kept the proportional system and granted a multiparty system for the Chamber of Deputies.

The Brazilian legal system is constantly changing. A recent study to be published by the Coordination of Research of the Chamber of Deputies shows that in 30 years, there were 3,700 proposed amendments to the Constitution (PECs), only 99 of which have passed so far (2017). The section on parties has had five amendments added to it, all of them passed in the last year. Today the Constitutional text has 14 court decisions written into it. It is a patchwork.

Legislators and courts did not spare the National Party Act (Law #9096), enacted September 19th, 1995, under Constitutional guidelines for minimum state intervention. Congress has amended it 22 times. Eleven resolutions of the Superior Electoral Court (TSE) and eight Supreme Court decisions have also altered the text producing legislative effects before the legislatures’ approval. Judicial interventions in this area are common (Nicolau, 2010b; Santos, 2014) and constantly produce deadlocks. The first Electoral Code established the Brazilian Electoral Court in 1930. It not only judges but also works

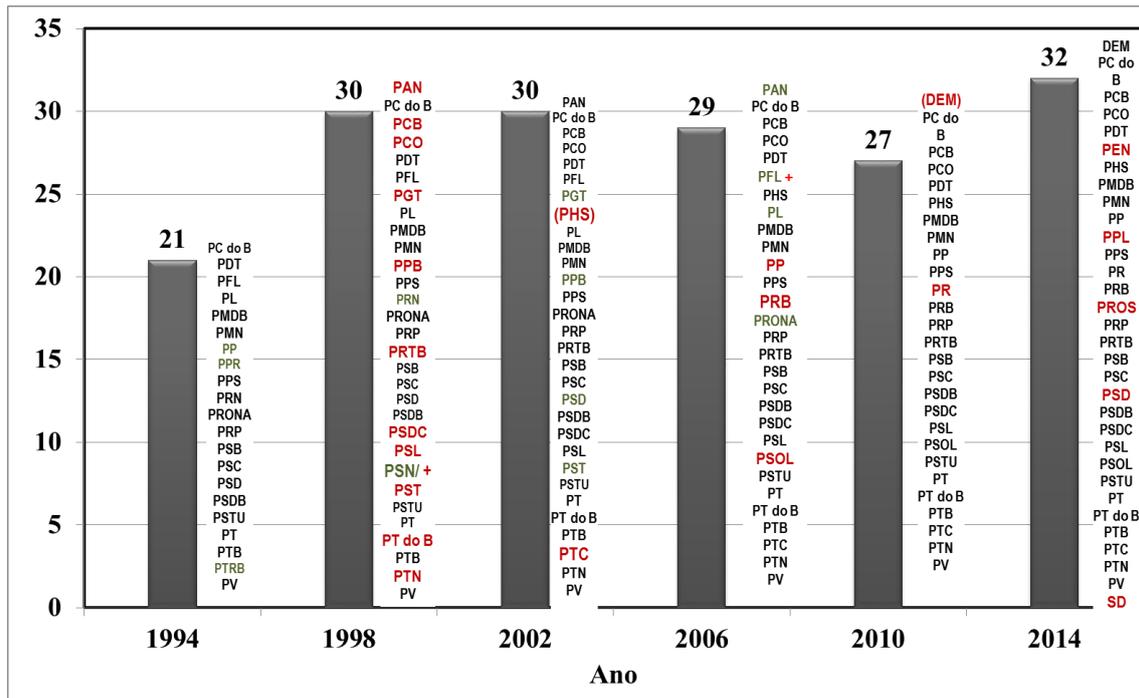
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<sup>3</sup> As it is so difficult to differentiate periods when Congress was shut down to “under strict state of exception ruling”, we consider the absence of legislative work – meaning no activity registered on the Diaries of Congress -, as evidence of Congress shutdown. There were no Diaries of the Chamber of Deputies from December 12, 1968 to October 23, 1969 (period just after the military government issued the Institutional Act 5, which allowed Congress shutdown) and from April 4, 1977 to April 14<sup>th</sup> 1977, period ruled by the so-called *Pacote de Abril* (April Decree Package).

<sup>4</sup> Immutable clause

as the Electoral Management Body (EMB), playing the role of the Judiciary, the Executive and, as seen in this case, the Legislature on electoral matters.

Party legal framework dramatically changed after the enactment of the current National Act on September 1995. Its effects were only seen with the elected Congress after 1999. The number of parties in the first election to the Chamber of Deputies held after law's enactment grew 43% and the number stayed stable until 2002. Started decreasing in 2010, till two important Superior Court decisions (in 2006 and 2007) set a series of party regulation changes that encouraged the creation of 7 congressional parties by party-changing - meaning without going through any electoral process first, as I explain in section 4 – in two congresses. Graph 1 shows the results.



**Graph 1:** Party offer to Chamber of Deputies elections (1994 to 2014). New parties or parties resulting from fusion or changing names, in red. Source: TSE, Brazilian EMB, 2014.

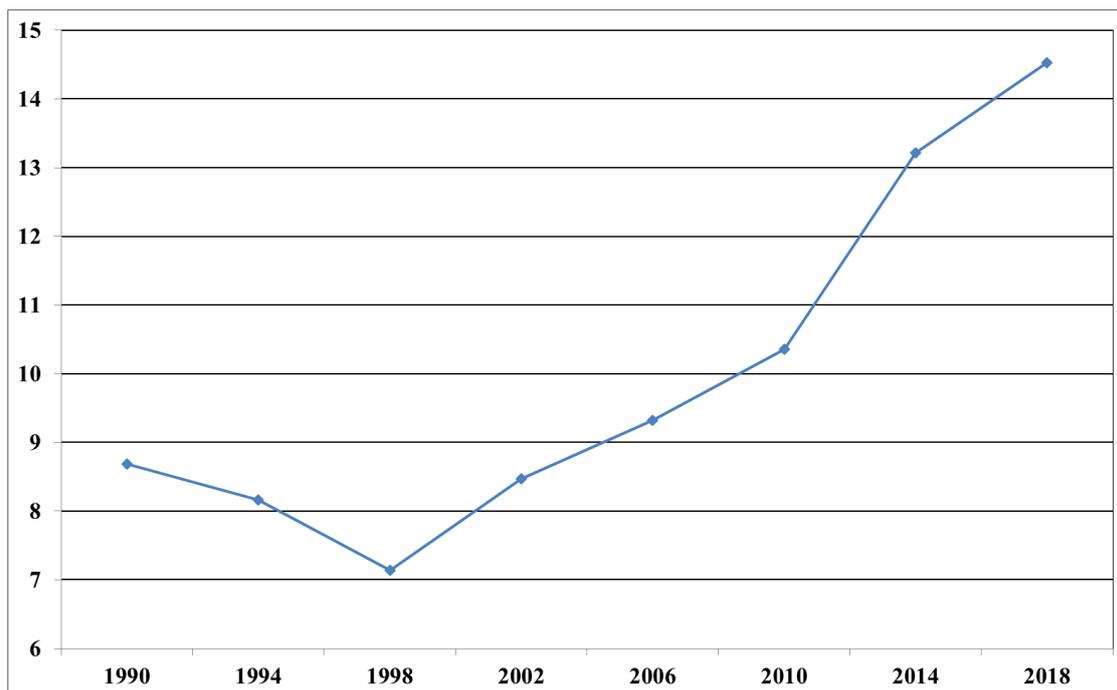
However, the impact of the number of parties is only important as they are welcome to Congress and the 1988 original legal system encompassed some well thought out mechanisms for controls.

The current Brazilian Electoral Code, which was enacted by the military regime in 1965, set a party threshold. Parties had to reach the Electoral Quota (EQ)<sup>5</sup> to get a seat. Before 1998, EQ was effectively even higher as blank votes were counted as valid votes, but this was ended by the National Electoral Act in 1997. All these changes may have had a considerable impact on facilitating the access of smaller parties (Nicolau, 2006). But they cannot be regarded as the main reason for the increasing party fragmentation, measured by the Effective Number of Parties at Legislative Level (EffNs) since 1999, as show in graph 2.

Today Brazil has the most fragmented party system in the world: 35 political parties are registered in the Electoral Management Body (TSE), there are 26 congressional parties and the fragmentation measured by EffNs is 14.525. We broke our own record following 2014 polls (see table 1).

<sup>5</sup> EQ is the result of the division of valid votes by district magnitude.

Graph 2: Effective Number of Parties at Legislative Level (EffNs) 1994 – 2018



Source: (Gallagher, Elections Indices Dataset) - Data: COMPI – SGM - Chamber of Deputies

The 1988 Constitution writers did not set any threshold. They also, for the first time, explicitly granted parties facilities to work in legislatures. These prerogatives, called *parliamentary functioning*, conditioned the access to public party funding and party campaign air time, proportional to seats in the Chamber of Deputies. They also entitled the party to have a leader and a leadership with staff, offices and committee memberships, all proportional to votes or seats. It also granted access to prerogatives set by Chamber Internal Rules which may considerably help or hinder bill passage by increasing the number of important supporters or opponents, like vital committee chairs and bill rapporteurs, as well as actors with veto powers, particularly in committee procedures. One of them is the proportional number of vice-leaders who substitute for the leaders in many procedures. For instance, as party representatives, leaders and vice-leaders may demand a roll-call vote in any committee, which is otherwise a prerogative exclusively of committee members, and therefore hinder votes on adversaries' bills' votes.

The 1995 law restricted *parliamentary functioning* prerogatives to parties which had at least 5% of the valid votes for the Chamber with at least 2% of the votes in 1/3 of the states (nº 9096/1995 article 13, original text) introducing an indirect threshold. These rules were to be progressively enforced over two and a half following congresses, ten years, after enactment (art. 56 and art. 57). In other words, the provision would be fully effective for members elected in 2006 to the 52th Congress (2007-2011). The law passed at the end of the first year of the 50th Congress (1995-1999). The Brazilian legislative year starts on February 2nd and it ends on December 22nd with a recess from July 17th to August 1st.

The original thresholds never went into effect. The 1995 provision's effects were blocked by many lawsuits brought by parties and representatives that the Supreme Court finally suspended the threshold and Article 13 was ruled unconstitutional in December 2006. Plaintiffs claimed that the thresholds violated minorities' constitutional rights to

expression. The provision also conflicted with Congress's internal rules, which granted a leadership to parties with at least five members (1% of 513 representatives).

Yet a threshold for *parliamentary functioning*, as opposed to parliamentary seats, was easier to accept, at least for the voters. It would also gradually discourage the creation of so-called opportunistic parties and force parties to merge as happened between 2002 and 2006, just before the deadline for enforcement of the final threshold rule (Gomes, 2016). Adjusting to new legislation is a common fact of life in the Brazilian party system. TSE (EMB) data shows that 11 out of the 32 current regular parties have been subjected to mergers or name changes (Freire, 2012). Significantly, some parties abandoned merger efforts after the Supreme Court decision.

There were two other court decisions that contributed to the creation of congressional parties and skyrocketing fragmentation. The original National Party Act stated that 1% of the party fund should be allocated to all parties registered in the EMB and 99% to those which had *parliamentary functioning*. After banning the threshold, the courts passed a new party fund distribution raising the general allocation to 42%. Congress reacted and passed a distribution of 5% general and 95% proportional seats (Law 11,459/2007). Creating a party became more lucrative. A second Supreme Court decision in October 2007 banned party switching by members but made exceptions for parties merged or recently created<sup>6</sup>.

In the 52<sup>nd</sup> Congress (2003-2007), there was another precedent set. A group of dissidents of the Workers Party created PSOL in 2005. PSC, a party with one elected member became a medium sized party as 13 members migrated. Internal regulation gave to those parties created within Congress the prerogatives of parliamentary functioning: staff, leadership, funding and airtime, as they met minimum requirements stated by the Chamber Internal Rules (five members).

The consequences of these changes for party configuration were evident. Table 1 shows the number of congressional parties (P) and EffNs indexes of fragmentation in every elected congress (*eleitos*) as well as in the first floor session of the legislative year since 1994, meaning the last congress before enactment of the 1995 National Party Act.

I assessed the party configuration of the first deliberative session of every legislative year in the Chamber of Deputies from 1994 to 2018 to measure fragmentation developments following migration by members after each election. These developments normally follow internal incentives, like directing board seat and committee seat allocations as well as electoral incentives proportional to Chamber seats, and they cannot be understood merely from the party configurations of elected members (TSE)<sup>7</sup>.

Notice that the indexes were either reduced (1994 -1998), or stable (1998-2005), as members tended to move to bigger parties looking internal benefits and or better electoral chances, including campaign funding and air time. In Brazil, parties have a specific amount of airtime for institutional and electoral campaigns regulated by law and proportional to seats in the Chamber of Deputies. However, after all the court decisions in 2006 and 2007, as well as the creation of PSOL, the first party created by migration, and the parliamentary party functioning prerogatives granted to PSC and PSOL in 2006, the fragmentation index started to increase steadily after 2007 reaching a peak in the 54<sup>th</sup> Congress, when five parties were created, four of them with members in Congress.

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<sup>6</sup> For a detailed report of the 54th Congress developments see (Henrique & Paiva, Be Alert of Be Alarmed: Investigating the Nexus between the New Breed of Brazilian Parties and the Quality of Democracy, 2015)

<sup>7</sup> For a detailed report on these developments see (Gomes, 2016).

Table 1: Number of Parties and EffNs (1995-2018)

Year	P	N
1994 Eleitos	18	8,1434
1995	17	8,1578
1996	17	6,9196
1997	16	6,7259
1998	16	6,7272
1998 Eleitos	18	7,1264
1999	17	6,6826
2000	16	6,9469
2001	17	7,0929
2002	16	7,6731
2002 Eleitos	19	8,4896
2003	16	8,8513
2004	16	8,8911
2005	15	8,4596
2006	17	9,4114
2006 Eleitos	21	9,2891
2007	21	9,3508
2008	20	9,5680
2009	20	9,4370
2010	19	10,0504
2010 Eleitos	22	10,4271
2011	22	10,4603
2012	23	10,7940
2013	23	10,5169
2014	21	11,3901
2014 Eleitos	28	13,4236
2015	28	13,4260
2016	28	13,9191
2017	26	13,9265
2018	26	14,5325

**Source:** Chief Parliamentary Office (SGM)

As I argue, these changes made creating a new party with staff a way to get party funding and electoral airtime (Gomes, 2016). They were, therefore, promoted by increasing funding to the smaller, and decreasing funding to the three biggest parties, as I explain in the following section.

### **3. The Impact of Party Funding on Party Configuration in the Chamber of Deputies**

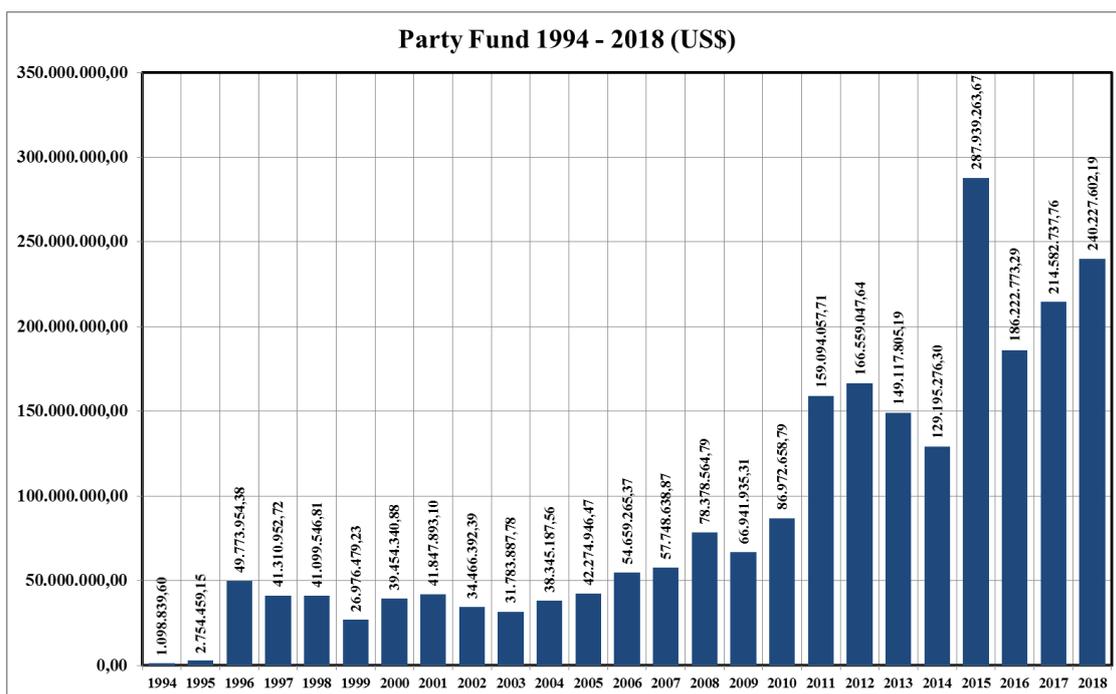
Autonomy requires independent funding which ordinarily means public resources if one wishes to avoid dependence on big donors. Government funding of parties is not a novelty in Brazil. The first National Party Act in 1965 established party funding rules very similar to the current legislation. Resources came from statutory public funding, fines and citizens' contributions. There is one main difference though. Congress votes the party funding as part of the National Budget and it represents a considerable increase in party financial resources. Before the 1995 National Act the small amount of resources was considered an obstacle to the institutionalization of Brazilian parties (Mainwaring S. P., 1999). After 1995, the amount of resources became a definite aid to their institutionalization.

Since 1995, the number of parliamentary parties has increased from 18 to 28, or by 56% (Please see table 1). At the same time, party public funding increased over 21,000% (21,761.94), as shown in Graph 3. The figures were updated in dollars in February, at the beginning of each legislative year. However, the number of parties eligible to funding increased from 21 to 35 (52%) and the share of the biggest parties diminished from 50.77% to 35.06%, due to cited changes in legislation.

The original text of the New Party Act favored the largest parties in the distribution of funds. One percent of the fund went to all parties and 99% to congressional parties (the ones who met the threshold). In previous legislation under the military regime the amount was 20% and 80%, respectively, but Congress did not vote the budget and the amount was much smaller.

As with the threshold, distribution was to be progressively applied over 10 years. But after the Supreme Court decision to overturn the party threshold, the Superior Electoral Court tried a transitory distribution in 2007 (29% proportional to elected members, 29% to parties meeting the parliamentary functioning requirements and 42% to all registered parties). Shortly thereafter, the Supreme Court decided to allocate 5% of party funding to all parties and 95% to parliamentary parties, proportional to valid votes. Congress passed the same distribution (Law # 11,459/2007) and - despite intense efforts to change it - it has remained intact so far (Law 9096/1995, article 40-A).

Graph 3 shows the yearly allocation of party fund since the last congress before the enactment of the National Party Law, hence, without national budget allocation. Funding was insignificant in 1994 and 1995. There is a considerable increase of almost 1,707% after Congress voted the first party fund allocation to take effect in 1996.

**Graph 3: Public Party Funding allocation (1994-2018)**

**Source:** TSE. US rate from BACEN – Brazilian Federal Reserve Bank.<sup>8</sup>

Notice there was a sharp increase (821%) in party funding from 2010 to 2011. This was not coincidental. As previously said, party funding is voted with the budget at the end of the year. In 2010, it was voted after October elections, so parties already knew their seats. The change seems to be associated with increasing campaign costs. The biggest parties (The Workers' Party - PT - and PMDB) knew that changes should be made to campaign funding, which mostly originated from corporate donations. Campaigns were too expensive to be funded only by ever scarcer public funds. With the increasing number of parties in the Chamber of Deputies after the suspension of the threshold in 2007, the number of parties with access to it was increasing while the share of the available money that went to the biggest parties was declining every year (see table 2).

<sup>8</sup> Please note that in graphs and tables I use an international and not an US/UK configuration of numbers. This means that 1 thousand is written 1.000 and 1.00 means 1,00 in the US/UK. I apologize but as the data sheets are constantly updated by Brazilian Congress and EMB (TSE) files, changing configuration would unstable them.

Table 2: Parties, EffNs, Seats share and Funding Share (3 biggest parties)

Year	Parties (TSE)	Parties CD	Electoral Parties	EffNs	Seats (3 biggest)	Fund (3 biggest)
1994/1995	21	18	21	8,1434	50,29%	50,77%
1998/1999	30	18	30	7,1264	55,95%	55,71%
2002/2003	27	19	30	8,4896	49,73%	51,94%
2006/2007	28	21	29	9,2891	46,70%	40,56%
2010/2011	29	22	27	10,4271	42,49%	41,04%
2014/2015	35	28	32	13,3609	37,05%	35,06%

**Source:** EMB (TSE) and Chamber of Deputies Databank (SGM)

Unlike previous editions, the 2011 Political Reform was a joint priority for the President and for Congress (Henrique, 2012). The 2011 Political Reform Special Committee was chaired by a member from the PMDB and drafted by a member of PT (the two biggest parties in Congress). The Workers Party (PT – President Rousseff’s party) was very confident of passing the draft political reform, which included campaign funding limits, a closed list system, and public campaign funding, while just after elections in 2010, Congress had increased the budget allocations. But neither provision passed. Still, the members were clever and found their own ways of getting a “bite” of the increasing fund.

#### 4. Court Interference, “Political Reforms” and the “New Breed of Parties”

Electoral changes and political reforms are recurrent issues in Brazil. In this article, however, I make a distinction between the two. A “Political Reform” includes the legislative debates and procedures related to a set of propositions on political or electoral rules examined, drafted and reported by a Special Committee especially appointed for it. From 1995 to 2017 the Chamber of Deputies, representing the people in the Brazilian constitutional framework, has created seven Special Political Reform Committees. There were also two special committees set up in the Chamber of Deputies in 1992 and 1997 to analyze electoral and party legislation. The drafting of the current Law on Political Parties started in 1992 in the Electoral and Party Legislation Special Committee. The Senate sent back the Chamber’s draft bill with amendments in 1995, and Congress finally enacted the current Law on Political Parties (nº 9096/1995) as finally drafted and reported by the 1995 appointed Special Committee. The current Elections Law (nº 9504/1997) also a product of the 1997 Special Committee Report. Contrary to what is commonly said, special committees on Political Reform do produce major legislation that is consistent with public opinion, the constitutional courts and judicial review.

In 2007<sup>9</sup>, the Supreme Court decided that members who crossed the floor should also renounce their seats as they were elected by a party quota in the OLPR. However, another Supreme Court decision allowed members to change parties without a penalty if it was due to party mergers or party creation. In June 2011 this decision was further clarified in that the members would have 30 days after the creation of a new party to decide on affiliation. At the beginning of the legislative year in 2011, the mayor of the largest city in Brazil, Sao Paulo, a member of an opposition party (DEM), started “luring” dissatisfied congressmen into a “third way” party. The movement grew and on September 27, the Electoral Court allowed the creation of Brazil’s 28th party, the PSD

<sup>9</sup> Resolution 22,610/2007

(Social Democratic Party). It became the fourth largest party in Congress with 48 members in the Chamber of Deputies. The creation of the PSD inspired an internal political reform on party configuration (Henrique, 2011a; 2012b), and caused a dispute between Congress and the courts, the latter always favoring the “new parties” with respect to congressional prerogatives, including airtime and party funding (Gomes, 2016). In the 54<sup>th</sup> Congress (2011-2015), five parties were registered, four of them with members in Congress. In the 55<sup>th</sup> Congress, there were three more. Party disputes for office space and parliamentary funding have been making headlines since the end of 2011.

As the amount of public resources has grown, the fight over them has become fiercer. With court decisions, creating parties and getting members, particularly elected members, became a big deal. This has nothing to do with the spirit of the Constitution, its “mens legis”.

With the 54th Congress Brazil already had the most fragmented party system in the world. But as I predicted in 2014 and in 2016 (Henrique & Paiva, 2014; Gomes, 2016), it looks as if the sky is the limit and the consequences can be seen in table 1.

The number of parties in the Chamber increased 27% in the 55<sup>th</sup> congress. Though they tended to be reduced over time due to the organization of Congress into party coalitions (blocs), the number of parties registered and the fragmentation index (EffNs) still kept growing. This means that the prognosis for the 2018 elections is not good and, though it hardly seems possible, congressional decision making would become even more complex. Members sensed it. Congress had to do something. And it did.

## 5. The 55th Congress’s Political Reforms

Electoral Reforms often arise in response to citizen dissatisfaction with unrepresentative legislatures. The 55th Congress had a record disapproval rate of 58% and only 7% of Brazilians approved of the work of the deputies (Datafolha 2017). Not surprisingly, there were two political reforms. The first, in 2015, was supported by the speaker Eduardo Cunha, who is today under arrest, and was signed into law by President Dilma, who was later impeached and removed. The second, in 2017, was signed into law by President Michel Temer (Dilma’s vice-president), who has spent his term threatened with removal and has an approval rating of 3%. The 2014 ticket was still in dispute until the Electoral Court approved the results in June, 2017<sup>10</sup>.

As frequently happens, the 2015 political Reform was voted separately in two forms, as a bill and as a constitutional amendment. Members have constantly passed political reforms as constitutional amendments in response to the Supreme Court’s habit of overturning legislation as “unconstitutional”.

The corruption scandals were related to the increasing costs of electoral campaigns. An estimate from the **Center for Responsive Politics (CRP)** shows that the 2014 Brazilian presidential campaigns were among the most expensive in the world (US\$1,9 billion), equivalent to the 2012 Mexican Presidential campaign (US\$1,9 billion). According to the same source the 2014 US presidential campaign’s estimated cost was US\$2,6 billion<sup>11</sup>, though the real costs of campaigning are very difficult to establish precisely.

With all the disputes over party funding, posts, offices, staff, and air time proportional to Chamber seats (Gomes, 2016), it is not surprising that measures to

<sup>10</sup> <https://g1.globo.com/politica/noticia/por-4-votos-a-3-tse-rejeita-cassacao-da-chapa-dilma-temer-na-eleicao-de-2014.ghtml>

<sup>11</sup> Available at: <https://www.bbc.com/portuguese/internacional-37864609>. Access on Jun, 23<sup>rd</sup>, 2018.

reduce the number of parties and to regulate campaign funding were the most popular issues in the 55<sup>th</sup> Congress's Political Reform.

The bill version (Law # 13,165/2015) included a permanent party switch waiver (janela partidária) 30 days before the party affiliation deadline (six months before) each election. This year it was between March 3<sup>rd</sup> and April 6<sup>th</sup>. It also included measures to make creating a party harder, such as a maximum of only two years to demonstrate the minimum legal political support.

There were several Congress-court battles. As far as gender is concerned, Congress passed a minimum of 5% of party funding to promote women's campaigns. On March 15, 2018 the Supreme Court ordered that a minimum of 30% of the funds go to women's campaigns<sup>12</sup>. The bill reintroduced paper trails for electronic voting, but this was again overturned by the upper courts at the last minute (2018) as it has done since 1997.

One of the most controversial issues was corporate campaign financing, included in both proposals. The Supreme Court decided that corporate financing was unconstitutional (ADIN 5650) over a battle between the President Rousseff and the Speaker, Eduardo Cunha, in 2015. Congress confirmed the 2007 judicial decision banning party-switching for legislature members (elected in a PR vote) in exchange for a 30-day constitutional waiver (window) in which members could switch parties, just after promulgation (# 91/2016).

The 2015 reform also included some other issues related to the reduction of campaign costs, such as cutting campaigning time in half (90 to 45 days) and airtime from 45 to 35 days. It also set maximum expenditure limits for campaigns. The measures visibly increased the power of incumbents and wealthy candidates, who can freely donate until they reach the maximum limit. This was also the object of a judicial dispute in 2018 (see below).

Assembled in the aftermath of Dilma's impeachment and Cunha's arrest in 2016, the 2017 Political Reform focused on the same issues but offered different solutions. To compensate for the loss of corporate funding and the visible advantage given to wealthier candidates (evidenced in 2016 local elections), the bill proposed a Campaign Fund which was also voted as a budget amendment, for 2018. Two percent of the funding would be equally divided among all registered parties, 35% divided by parties with one representative at the Chamber, 48% proportional to seats in the Chamber. The fund favors those parties better represented in the lower house, but also innovates by including 15% proportional to seats in the Senate. The measure openly favors incumbents. In its first edition (2018) the fund holds US\$ 450 million: PMDB, PT, PSDB, which hold 32% of the seats in the Chamber and 53% of the seats in the Senate will have 37% of the funding. Crowdfunding was also allowed and regulated by EMB for the 2018 elections. But with the current level of citizen disaffection and individual limits as low as US\$ 300 it should not help much.

The judicial disputes continued though. To reduce the advantage of wealthier candidates, the 2017 Congress passed a limit of 10% of candidates' personal income that could be donated to themselves. This was vetoed by President Temer. Congress overrode his veto, but the Electoral Court overturned the law on February, 2018<sup>13</sup>. It is

<sup>12</sup> <http://www.valor.com.br/politica/5388211/stf-fixa-minimo-de-30-do-fundo-partidario-para-campanhas-de-mulheres>

<sup>13</sup> Available at: <https://oglobo.globo.com/brasil/tse-permite-que-candidato-financie-campanha- apenas-com-recursos-proprios-22393660>. Access on June, 29<sup>th</sup>, 2018.

getting harder and harder to know the electoral laws as they often change just before elections.

To reduce the number of parties, the 2017 Political Reform banned party coalitions for proportional elections, though this will only go into effect after 2020. The reform also set a party threshold by way of a constitutional amendment. To have access to party funding and campaign air time, parties will have to have at least 3% of the votes, in 9 states or 15 deputies in at least 3 districts (states) with 2% of the votes in each district, but these rules will only take full effect in 2030 (Constitutional Amendment # 97/2017). In 2018, parties must have at least 1.5% of the votes in 9 districts with 1% of the votes in each district to have access to party funding. The original threshold in the National Party Act in 1995 was 5%. A member elected to a party that does not reach the threshold can switch parties, but the member will not “take” the proportional share of air time and party funds. The measure may help reduce fragmentation in the Chamber, if the upper courts do not interfere and waive parties from the obligation as has happened since 1996.

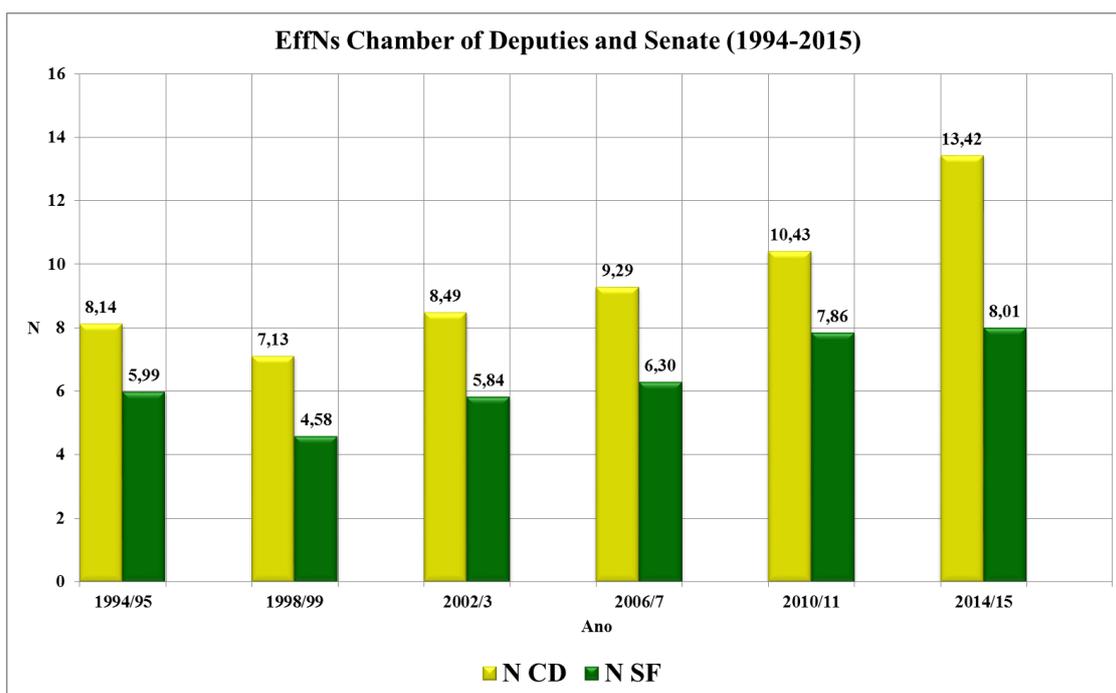
The measures were understandable. In the 55<sup>th</sup> Congress, though party funding increased sharply, the share of the three biggest parties kept on shrinking as shown on table 2.

Notice that after passing the first measures (2015, voted in 2014), party funding was reduced in 2016 (graph 3). But in 2018 the ascending curve resumes with the campaign financing fund that was enacted in October 2017.

## **6. Future Developments**

Electoral Integrity depends on campaign limits and on fair elections (Weiner & Brickner, 2017). Overall, the 55th congressional measures tend to reduce the number of congressional parties, thus affecting the distribution of public funding. It will take at least two congresses for them to go into full effect, so it is doubtful that they will increase governability for the president elected in 2018. But they certainly increase the advantage of incumbents.

The measures might, however, help in defining the causes of the skyrocketing Brazilian fragmentation. An analysis of party configurations in the Chamber and in the Senate since 1994 elections (the last one before the enactment of the National Party Law) shows that plurality lost ground to fragmentation in the period.



**Source:** Chief Parliamentarian Office (SGM) Chamber of Deputies, Senate Historical Files (Reports from the President)

At the beginning of current congress, there were 35 registered parties, 28 parties with representatives in the Chamber of Deputies, and 15 parties in the Senate. Senators are elected in a plurality single-member district and a plurality two-member district alternately every congress, 4 years, to an eight-year term. Deputies are elected in Open-List Proportional System for a four-year term. Thus, one cannot compare the number of elected senators with elected deputies every polls. In order to solve that I compare the party share of elected members in the Chamber with the party share of the senators every four years in the beginning of the legislative year (February).

Since 1995, the average EffNs in the Chamber has been 9.48 and in the Senate is 6.43. Adding an electoral fund proportional to seats in the Senate may offer a unique opportunity to see the effects of party rules and internal rules on electoral integrity with respect to party representation and fair competition, as it will affect party configuration in the Senate.

It is important to remark that there is no ban on changing seats in the Senate as members are elected by the FPTP system. In fact, the Supreme Court was asked to confirm previous decisions again on June 27, 2018, which suggests that some members intend to cross the blue floor next year<sup>14</sup>.

As the creation of parties with congressional prerogatives is controlled by law until the next court decision says otherwise, migration should also benefit the largest parties. The three biggest parties in the Chamber and in the Senate (PMDB, PT and PSDB, in order) have the largest share of the first electoral fund distribution, corresponding to 37%. In 2018, they had 35% of the party fund, which can also be used to elections (see table 2).

<sup>14</sup> The Senate floor is blue.

## 7. Conclusion

Parties have a determinant role in present day democracies. As the amount contributed by affiliates drops, the importance of the Congressional parties in funding and in the electoral processes rises, and the advantages in incumbency. But electoral integrity relies on equal access to the electoral processes for candidates and parties.

This paper takes advantage of the Brazilian case to examine the importance of congressional and party rules for the electoral process.

More than conclusions, I share thoughts. Limits, rulings and court intervention may be important to the fairness of the electoral process. Yet, one cannot forget that these rulings can end up favoring incumbents.

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