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4-19-2007

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Recommended Citation

Leffert, Mike. "Power Returns to the People: Trade Agreement to be Decided By Referendum in Costa Rica." (2007).
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Power Returns to the People: Trade Agreement to be Decided By Referendum in Costa Rica

by Mike Leffert

Category/Department: Costa Rica

Published: 2007-04-19

Costa Rica will submit the question of its membership in the Central America Free Trade Agreement (CAFTA) to a binding popular referendum. This was the outcome of a decision of the Tribunal Supremo de Elecciones (TSE) that some in the press called 'the greatest surprise in Costa Rican democratic history.' Six months ago, presidential candidate Jose Miguel Corrales of the Convergencia Patriotica (CP) petitioned the TSE for authorization for a nonbinding referendum that would only poll the sense of the citizenry, with the final decision left to the legislature. That petition was denied, and the CP submitted a revision, this time calling for a binding resolution.

Against all predictions, the TSE approved it. The decision caught the government of President Oscar Arias flat-footed. Arias won the election by the narrowest of margins campaigning on a pro-CAFTA platform. Corrales was surprised and happy. 'We must all congratulate ourselves. This is a triumph of democracy,' he said. He and referendum proponents were given nine months to collect the signatures of 5% of the electorate, or about 133,000 voters, to place the fate of the trade agreement in the hands of the people. He was offered a lot of help with the task; he immediately received commitments from a number of organizations, including the Asociacion Nacional de Educadores (ANDE), the Union de Pequeños y Medianos Productores Agropequarios (UPA), and the Partido Accion Ciudadana (PAC). The PAC was the party whose candidate Otton Solis lost to Arias by a hairsbreadth.

Constitutionality and fairness at issue

While Corrales is glad that the power is being returned to the people, some CAFTA opponents have lingering doubts. Eugenio Trejos, rector of the Instituto Tecnológico de Costa Rica and president of the Frente de Apoyo a la Lucha contra el TLC, has been a principal supporter of the referendum, but now fears that the process will not be conducted evenhandedly. 'The referendum resolves democratically the subject of CAFTA, but it is fundamental to point out that the political system must guarantee that the popular consultation be carried out under equal conditions, meaning guarantees must be given to the diverse social and political forces to guarantee access to the media, advertising, and to impose limits,' he said. His concern stems from the fact that the media have been overwhelmingly pro-CAFTA in the highly charged debate that preceded the TSE decision, when it was thought that the matter would be decided in a legislature tipped in its favor.

Corrales did not see this as much of a problem. 'Chapter 5 of the referendum law regulates that,' he said. 'It says that no one can contribute more than ten minimum salaries [minimum wage calculated monthly times ten], which is about a million colones [about US\$2,000], so individual donations can't surpass that. The government is prohibited from any kind of propaganda. Nor can national or foreign businesses [contribute]. Only individuals can.' In addition, costs of publication of the CAFTA texts must be borne by the TSE.

Trejos is also concerned about the constitutionality of CAFTA, no matter the outcome of the vote. A group of constitutional scholars at the Universidad de Costa Rica (UCR) have presented arguments supporting the position that the treaty is unconstitutional. One of those, Juan Manuel Villasuso, director of the Programa institucional Sociedad de la Informacion y el Conocimiento (PROSIC) at UCR, explained, 'It seems to me some questions remain from the legal point of view despite the TSE applying the referendum, the doubt lingers over the constitutionality of the treaty, where it must be clarified whether, by way of popular consultation, unconstitutional legislation can be passed.'

A contingent issue concerns laws already passed that were required by CAFTA. Said Trejos, 'To give confidence and credibility to the referendum, above all to the forces that oppose us, the temporary withdrawal from CAFTA and its implementation agenda is necessary. This is basic because, if the implementation agenda is maintained in the current legislature, there would be no trade agreement, but there would be an opening in telecommunications and insurance, so we can't just leave something like this.' CAFTA required that these industries, state monopolies, be opened to competition.

Even with these doubts, Trejos supports the referendum. 'I'm confident in Costa Rican democracy. I'm confident in the basic work of the social, political, and civil organizations.' Both he and Corrales are basing their confidence on poll data indicating waning support for the treaty. Other Costa Rican leaders are pleased with the TSE decision because it offers a peaceful and democratic solution to a national debate that has turned bitter and, to some extent, violent.

Demonstrators have poured into the streets off and on in recent months, with some damage to economy and infrastructure. UCR rector Yamileth Gonzalaz said, 'In this country the majority have been identified with democratic processes, and, without doubt, the referendum is a way of deepening the democracy; it is something everyone in the country wants, but at UCR we are concerned that the referendum be done after the constitutional question is resolved, because one must question putting a text with so many problems before the people to say yes or no.'

On March 14, President Arias announced he would send the Asamblea Legislativa a decree calling for the referendum. The decree must be passed by a simple majority of 29 of the 57 deputies so that the TSE can schedule the vote. The decree would obviate the need for the collection of signatures. Reports have said Arias wants, by this measure, to reduce the probability of a political crisis and disorder in the streets, and get on with it. 'He realized he was going to look bad if he appeared to be opposed to [a referendum], so he is throwing his weight behind it. This ruling caught everyone by surprise, Arias included,' Katherine Stanley of The Tico Times told US reporters.

A setback for Arias, the referendum is seen in the US as a setback for President George W. Bush as well. Peter Hakim of the Inter-American Dialogue was quoted in the US press as saying, 'Opposition to the pact in Costa Rica, the most prosperous nation in Central America, may be a sign of waning enthusiasm for similar accords in the region. It suggests that the US is losing ground in Latin America. It says that an agreement with the US isn't valued as much as it once was.'

-- End --