



## Individual Candidacies and the Federal Constitution of 1988

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OLIVEIRA, João Eduardo Souza  
CORDEIRO, Gabriella

### Summary

This article examines the legal possibility of independent candidacies in Brazil in light of the 1988 Federal Constitution, which establishes party affiliation as a condition for eligibility. It begins by analyzing the jurisprudence of the Federal Supreme Court (STF) and the Superior Electoral Court (TSE), contextualizing the debate within the context of a crisis in political representation and tensions between domestic norms and international human rights treaties, especially the Pact of San José, Costa Rica. The discussion is enriched by international comparisons, critical academic perspectives, and alternatives for reforming the political-electoral system.

**Keywords** Individual candidacies; Party affiliation; Federal Constitution of 1988; Political rights; Representation; STF; TSE; Pact of San José de Costa Rica; Representative democracy.

### Abstract

This article examines the legal possibility of independent candidacies in Brazil in light of the 1988 Federal Constitution, which establishes party affiliation as a condition for eligibility. It begins by analyzing the jurisprudence of the Federal Supreme Court (STF) and the Superior Electoral Court (TSE), contextualizing the debate within the context of a crisis in political representation and tensions between domestic norms and international human rights treaties, especially the Pact of San José, Costa Rica. The discussion is enriched with international comparisons, critical academic perspectives, and alternatives for reforming the political-electoral system.

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## 1. Introduction

The debate on the viability of individual candidacies — that is, those in which the citizen presents himself as a candidate without being linked to a political party — has gained strength in Brazil. The 1988 Federal Constitution imposes, in its art. 14, §3º, V, party affiliation as a requirement for eligibility, making the Brazilian representative model strictly partisan. However, in times of crisis of representation and discredit of political parties, many question whether such requirement still serves the democratic interests of society. Cases like that of Rodrigo Rocha Barbosa, who took the discussion about mandatory party membership to the Supreme Court, rekindled the reflection on the system of political representation in the country. The analysis proposed here seeks to understand whether there is legal or institutional room to relax such a requirement, including in light of the treaties international agreements ratified by Brazil, such as the Pact of San José, Costa Rica.



## 2. Historical and Normative Context of Individual Applications

Since redemocratization, the Brazilian political system has strengthened the role of political parties and politicians as institutional mediators of the popular will. The 1988 Constitution enshrined the parties as “necessary instruments” for representative democracy, based on the idea that they aggregate interests, organize public debate and promote stable legislative majorities.

The requirement for party affiliation was consolidated in electoral legislation (Law No. 9,504/1997) and in the Law of Political Parties (Law No. 9,096/1995), which reinforced the party monopoly over candidacies. However, the growing distrust in parties and the emergence of social movements independent of parties raise questions about the legitimacy of this requirement.

## 3. Constitutional Requirements and Party Affiliation

Article 14, §3, V of the Constitution establishes that party affiliation is a condition of eligibility. This provision was designed as an institutional stabilization mechanism, since political parties have the role of structuring the political debate and presenting candidacies.

However, many scholars and political actors consider that the rigidity of this requirement may limit political renewal and the expression of sectors of society that do not identify with the existing parties. It is argued that in times of widespread distrust in institutions, the requirement of membership may be an obstacle to the full realization of political rights.

## 4. Conflict between Domestic Law and International Standards

The normative tension between the Brazilian Constitution and international human rights treaties is central to this debate. Article 23 of the Pact of San José, Costa Rica, guarantees every citizen the right to participate in the political life of the country “on equal terms” and “without restrictions” unnecessary.” The requirement of party affiliation is not mentioned as a prerequisite.

Although advocates of independent candidacies argue that this requirement could be relativized based on the pro homine interpretation, it is important to highlight that the Supreme Court Federal has already decided that international human rights treaties — even with supralegal status — cannot revoke express norms of the Federal Constitution, such as art. 14, §3º, V (RE 466.343/SP).



## 5. The Interpretation and Positions of the STF and the TSE

The Supreme Federal Court (STF), as guardian of the Federal Constitution, has a role central to the debate on the constitutionality of independent candidacies. Historically, the STF jurisprudence has aligned itself with the interpretation that party affiliation is a requirement mandatory constitutional, according to article 14, §3º, V, of the 1988 Constitution.

This understanding is based on the premise that political parties are the essential link between society and the State, responsible for aggregating interests and structuring the democratic system.

However, the current position of the STF demonstrates a significant openness to reassess the issue. In the judgment of Extraordinary Appeal (RE) No. 1,238,853 (originating from the ARE 1,054,490), the Court recognized the general repercussion of the issue, a crucial step that indicates the relevance legal, social and political aspects of the matter.

Although this decision does not mean an immediate change in mandatory membership, it signals the Court's intention to hold an in-depth debate, considering arguments that range from from the crisis of party representation to the compatibility of the requirement with treaties international human rights treaties, such as the Pact of San José, Costa Rica. Ministers like Luís Roberto Barroso, the case rapporteur, has highlighted the need to consider social evolution and the importance of broader political participation.

The discussion in the STF Plenary, which already included favorable statements from bodies such as the Attorney General's Office, is in progress and may, in the future, result in a new interpretation or an invitation to the legislator to promote the necessary changes.

The Superior Electoral Court (TSE) has a consolidated position aligned with the Federal Constitution, requiring party affiliation as an indispensable requirement for registration of candidacies. Unlike the Supreme Federal Court, which recognized the general repercussion of subject for further debate, the TSE acts as guardian of current electoral legislation, strictly applying article 14, §3º, V, of the Constitution.

In its decisions, the TSE has reinforced that party affiliation is a pillar of the system Brazilian representative democratic system, ensuring the organization of the electoral process and the responsibility of candidates before a party structure.

Thus, while the STF considers a possible future flexibility, the current jurisprudence of the TSE maintains the mandatory nature of membership, being the body that, in practice, makes this requirement effective for all claims.



## 6. Academic Perspectives and Implications for Representative Democracy

Several scholars of constitutional and electoral law point out that the party model, despite its organizing role, it faces limits in current political representation.

Among the main arguments in favor of flexibility: Crisis of representation policy, adoption of the *pro homine* interpretation (meaning "for the person" or "in favor of a person"). It is a principle of human rights law that emphasizes the importance of interpreting and applying the legal norms in order to maximize the rights and well-being of the individual. Essentially, it prioritizes the best possible protection and advancement of human rights for the individual), to ensure greater participation and the possibility of political renewal through candidacies independent.

On the other hand, scholars who defend party affiliation warn that independent candidacies can, depending on their institutional design, compromise the stability of coalitions legislative.

International experiences show that the requirement of requirements such as minimum support can mitigate these risks, such as the following examples:

### - Chile

How it works: Allows independent candidacies for Congress.

Observed effects:

There has been increasing fragmentation in the legislature, especially after the 2019 protests. The 2021 Constituent Assembly had a significant number of independent candidates, which made it difficult the formation of consensus and delayed important decisions.

Conclusion: Without party cohesion, the legislative process became slower and more unstable.

### - Mexico

How it works: Since 2014, Mexico has allowed independent candidates for positions electives.

Observed effects: Few independents were elected to the Legislature; those elected had difficulties in exercising political influence, due to lack of support base.

The party system remained dominant, but independents fragmented votes, especially in majoritarian disputes.

Conclusion: Moderate impact, but still with dispersion effects and less cohesion.



## 7. STF Debate: The Constitutionality of Individual Candidacies

The Supreme Federal Court (STF) debated the constitutionality of independent candidacies, analyzing historical, comparative and procedural aspects, culminating in the decision to assign general repercussion to the issue.

Minister Roberto Barroso, the rapporteur of the case, presented an extensive history of the legislation Brazilian electoral system, showing the alternation between periods of permission and prohibition of candidacies separate, relating them to the strength and fragility of political parties at different moments in history of the country. He also gave an overview of comparative law, showing that most of the Modern democracies allow this type of candidacy.

The main controversy revolves around the interpretation of Article 14, paragraph 3, of the Federal Constitution, which requires party affiliation for candidacies. Defending candidacies avulsas argues that the requirement of party affiliation may be incompatible with treaties international human rights, especially the Pact of San José de Costa Rica, which guarantees the political participation. Several ministers expressed differing opinions on the interpretation constitutionality and compatibility with international law. There was a heated debate about the prejudicial nature of the specific case, since the election in question had already taken place.

Despite the harmfulness, the majority of ministers understood that the issue has repercussions general, justifying the need for a more in-depth debate on the topic, which transcends the case specific. The decision to attribute general repercussions allows the STF to analyze the issue more time and depth, involving broader studies and debates, without limiting itself to the urgency of the case concrete. Minister Alexandre de Moraes and Minister Ricardo Lewandowski disagreed, arguing for the harmfulness and against the attribution of general repercussion, while other ministers, such as Gilmar Mendes and Marco Aurélio agreed with the rapporteur.

The session ends with the majority decision to give general repercussion to the issue, opening path to a future trial that will define the constitutionality of individual candidacies in the Brazil. Video: STF Debate: The Constitutionality of Individual Candidacies. Available at:

<https://www.youtube.com/watch?si=kTLMPI9uLNmzzg8O&v=Z6Zlqr7bDZw&feature=youtu.be>

(accessed on: May 22, 2025).

## 8. Conclusion

The debate over the viability of independent candidacies in Brazil reveals a crucial tension between the rigidity of our Federal Constitution and the growing desire for greater participation democratic. Although the requirement for party affiliation is clear in our constitutional text, the



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current political scenario — marked by the crisis of representation of parties and the influence of international human rights treaties — presses for a reassessment.

The decision of the Federal Supreme Court (STF) to recognize the general repercussion of the issue is an important indicator. It opens the doors to a more in-depth debate, which could, in a future judgment, reconsider the current parameters on access to political life.

However, it is essential to understand that, given the centrality of parties in our representative democracy, effective and lasting changes may depend on reform broader constitutional framework, capable of harmonizing the need for party organization with the legitimate demand for new forms of representation.

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