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The right to compete for senior state offices: internal competitive examinations and protected access to justice and public audit offices

O direito de disputar as cúpulas do Estado: concurso interno e proteção do acesso às funções de justiça e controle

El derecho a competir por las cúpulas del Estado: concurso interno y protección del acceso a las funciones de justicia y control

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Abstract: This article proposes legally protecting access to senior adjudication, prosecution and public audit offices against personal interference. Its normative and documentary analysis connects constitutional law, republican freedom, institutional design and assessment theory. Replacing political appointments with internal competitive examinations requires rules governing vacancies, timing, eligibility, scoring and final results. The article develops an institutional candidacy framework, a continuity requirement and a test of whether procedural discretion can substitute a preferred candidate for the lawful winner. Preliminary qualification is followed by objective, written, oral, credentials and practical assessments. The highest-ranked eligible candidate must be appointed; subsequent candidates may be called only after an express withdrawal before taking office. The analysis addresses professional closure, strategic delays and coerced withdrawal. Implementation requires coordinated constitutional amendments and enforceable protection against exclusion, obstruction and distorted evaluation. The model's empirical superiority remains a hypothesis to be tested.

Keywords: access to public office; institutional candidacy; internal competitive examinations; non-domination; constitutional reform.

Resumo: Propõe-se proteger juridicamente o acesso às cúpulas de jurisdição, acusação e controle contra interferências pessoais. A investigação normativa e documental articula direito constitucional, liberdade republicana, desenho institucional e teoria da avaliação. Sustenta-se que substituir indicações políticas por concurso interno exige disciplinar a disponibilidade da vaga, o calendário, a elegibilidade, a produção das notas e os efeitos do resultado. Formula-se um estatuto da candidatura institucional, associado à continuidade da competição e a um teste de resistência à substituição do favorecido. O procedimento compreende habilitação preliminar e provas objetiva, discursiva, oral, de títulos e prática, com nomeação vinculada do vencedor e convocação subsequente exclusivamente por desistência expressa anterior à posse. Examinam-se fechamento corporativo, manipulação temporal e renúncia estratégica. Conclui-se que a reforma depende de alteração constitucional sistemática e de garantias contra exclusões, bloqueios e classificações arbitrárias. A superioridade empírica do modelo permanece uma hipótese sujeita a avaliação.

Palavras-chave: acesso a funções públicas; candidatura institucional; concurso interno; não dominação; reforma constitucional.

Resumen: Se propone proteger jurídicamente el acceso a las cúpulas de jurisdicción, acusación y control frente a interferencias personales. La investigación normativa y documental articula derecho constitucional, libertad republicana, diseño institucional y teoría de la evaluación. Se sostiene que sustituir las designaciones políticas por un concurso interno exige regular la disponibilidad de la vacante, el calendario, la elegibilidad, la producción de las calificaciones y los efectos del resultado. Se formula un estatuto de la candidatura institucional, asociado a la continuidad de la competición y a una prueba de resistencia a la

sustitución del favorecido. El procedimiento comprende habilitación preliminar y pruebas objetiva, escrita, oral, de méritos y práctica, con nombramiento obligatorio del ganador y convocatoria posterior exclusivamente por renuncia expresa anterior a la toma de posesión. Se examinan el cierre corporativo, la manipulación temporal y la renuncia estratégica. Se concluye que la reforma depende de una modificación constitucional sistemática y de garantías contra exclusiones, bloqueos y clasificaciones arbitrarias. La superioridad empírica del modelo sigue siendo una hipótesis sujeta a evaluación.

Palabras clave: acceso a funciones públicas; candidatura institucional; concurso interno; no dominación; reforma constitucional.

1 Public opportunity as an object of reform

A vacancy in a position of power can also be controlled by someone who does not sign the appointment. It is enough to decide when the competition will begin, which kinds of experience will be accepted, how long an interim replacement will last, or when a result will cease to have effect. Removing political choice at the end of the procedure will be incomplete if its earlier stages retain equivalent means of determining who can reach the office. This is the central difficulty examined in this article.

Internal competitive examinations are defended as the exclusive means of filling the offices defined here. The proposed contribution, however, consists in treating candidacy as a protected legal position throughout the access process. Eligible professionals must be able to enter the competition on their own initiative, obtain a verifiable assessment, resist obstruction of the procedure, and demand the consequences of their ranking. Correspondingly, the State would assume duties to open, conduct, justify, and conclude the competition. This construction is referred to in this work as the institutional candidacy framework.

The expression designates a normative proposal. It is not stated that there is, with this content and scope, an autonomous right already recognized by Brazilian law. Its argumentative foundation lies in the combination of equality of access, impersonality, due process and functional independence; its application to positions currently subject to choice presupposes modifying specific constitutional provisions. Appointments made according to the current regime do not become illegal due to the simple disagreement with its design. The criticism is directed to the distribution of competences and incentives that it allows.

The scope covers the head of the Public Prosecutor's Office, the audit courts and the judicial positions whose composition involves appointments, lists or individualized choices. It covers, therefore, the Attorney General of the Republic, the attorneys-general of Justice, the justices of the higher courts, the appellate judges and the members of the audit courts, observed their different professional origins. It is not deduced from this scope that every governmental

position should be filled by examination. The direction of policies legitimately attributed to elected governments raises another discussion. The present problem is the access to functions responsible for judging, supervising or exercising the public prosecution with autonomy.

The research question is precise: which legal positions and which limits on procedural control would be necessary for an internal competitive examination to effectively remove the choice of individuals from political authorities? The hypothesis is that appointment of the highest-ranked candidate becomes consistent only when the opportunity to compete ceases to be subject to the convenience of those administering the vacancy. This requirement is called the non-discretionary availability of the vacancy: once the legal conditions for filling the office are met, no one may withhold, reshape, or empty it of meaning in order to change the person appointed.

Non-discretionary availability does not mean that every public office must exist forever. Legitimate institutional reforms remain possible within constitutional limits. It means that reorganization cannot serve as an individual device against a competition or its winner. Nor does it mean requiring someone to take office against their wishes. The right to compete includes the possibility of withdrawal; what the proposal seeks to remove is the power of third parties to turn withdrawals, interim appointments, and cancellations into instruments for replacing individuals.

The method combines reading of Brazilian standards and international documents with literature on institutions and evaluation. The consultation covered the official acts indicated in the references, including the repositories of the National Council of Justice (CNJ) and the National Council of Public Prosecution (CNMP). There was no exhaustive survey of all its databases, nor statistical survey of appointments, corruption or performance. The documentary cutoff date is September 28, 2026. The examples are hypothetical and the design solutions are proposed by the author, not descriptions of already proven practices.

The argumentative path starts from the relationship between dependency and candidacy, examines who can compete, faces the government of time and evaluation, disciplines the effects of the result and establishes conditions for control. The conclusion defended is demanding: the reform only fulfills its purpose when the candidate can go through the entire procedure without having to win the personal preference of those who control one of his passages.

2 Candidacy as a protection against dependency

Institutional dependence may exist before any undue order. A professional who knows that his ascension depends on the favor of a particular authority has reason to consider this relationship when deciding how to act. It is not necessary to assume that everyone will give in, nor demonstrate a concrete exchange, to recognize the vulnerability created by institutional design. The question is whether a person has the capacity not sufficiently controlled to interfere with the functional trajectory of another.

Pettit (1999) develops republican freedom as non-domination, linking it to protection against arbitrary interferences. The usefulness of this referential for the problem studied here is to shift the attention from the favor effectively granted to the exposure to the power to grant it. The application to appointments is an inference of this article: a career can preserve formally free decisions and, still, organize expectations around personal relationships on which the transition to senior office depends.

The proposed internal competitive examination seeks to reduce this exposure through enforceable claims. Anyone who meets the requirements should be able to apply without a letter of support, prior inclusion on a list, authorization from a superior, or a discretionary decision concerning their name. A candidate's professional recognition will remain relevant as a social fact; it will cease to be a legal key to entry. Candidacy will arise from the applicant's own act accompanied by proof of the general requirements.

The change also affects the behavior of those who do not intend to compete immediately. If future entry depends on public criteria and an effectively accessible dispute, the usefulness of cultivating relationships to obtain a necessary sponsorship decreases. It is a theoretical expectation, subject to conditions, and not empirically demonstrated effect. Professional relations will continue offering information, training and prestige. The model will have failed if these resources are converted into opaque requirements or advantages that the proof only ratifies.

There is international normative support for equal access, but not an international obligation to adopt exactly the procedure defended here. Article 25(c) of the International Covenant on Civil and Political Rights and article 23.1.c of the American Convention on Human Rights protect access, under general conditions of equality, to public functions. These instruments were promulgated in Brazil by Decrees No. 592/1992 and No. 678/1992,

respectively (Brazil, 1992a, 1992b). The design of six stages results from an additional reformer choice.

The United Nations Human Rights Committee, in the General Comment No. 25, associates equality of access to objective and reasonable criteria for appointment and progression, highlighting protection against political interference in public service (United Nations, 1996, par. 23-24). This orientation supports the requirement of controllable justifications. It does not authorize to affirm that any participation of elected authorities in the composition of institutions is, by itself, incompatible with the Pact.

In its judgment in the case Reverón Trujillo v. Venezuela, the Inter-American Court discussed the dismissal of a provisional judge and articulated judicial independence, conditions of access and permanence. The case offers parameters on objective criteria and function protection, not a specific decision on competitions for the senior Brazilian offices (Inter-American Court of Human Rights, 2009). The Inter-American Commission, in turn, recommends procedures to measure capabilities and avoid undue interference in the selection of justice operators (Inter-American Commission on Human Rights, 2013).

The proposed consequence goes beyond improving the transparency of a personal choice. Applicants should have a claim to the regular opening of the opportunity, assessment according to criteria established before their performance is known, and appointment if they lawfully win. Each of these positions addresses a distinct form of dependence. Transparency makes a decision visible; binding rules limit what may be decided; effective legal protection makes it possible to react when those limits are disregarded.

This protection can neither create a professional privilege indifferent to society. The candidacy framework is functional: it exists because the public needs institutions whose access does not depend on personal subordination. Its immediate holder is the competitor, but its justifying reason is the quality of the exercise of a public competence. Therefore, equality between candidates and openness to social supervision need to be conceived together.

3 Who can compete and who should justify exclusion

The adjective internal requires a definition that goes beyond membership in an organization. Lawyers eligible to compete for a vacancy reserved for the legal profession are not, for that reason, employees of the court. Members of the Public Prosecutor’s Office competing for a judicial position do not belong to the destination career. The operational

meaning adopted here is competition confined to a professional category or career constitutionally eligible for that type of vacancy.

This delimitation precedes the preliminary examination. Registration for qualification will be open to all members of the legally defined professional pool; passing the preliminary stage will allow entry into the five assessments used for ranking. No professional council or originating institution may replace this qualification with a vote on names. Verification of requirements will be declaratory and open to challenge, with no authority to add a political assessment of expediency.

The reference to natural vacancies can express the legitimate intention to respect professional origins. As a legal category, however, it needs to be unfolded. Some origins are already constitutionally foreseen; others would depend on a reforming option. The Federal Supreme Court (STF), for example, does not currently have seats reserved for the judiciary, advocacy or the Public Prosecutor's Office. Creating these reservations or defining an exclusive professional set would represent a substantive change in eligibility, which cannot be presented as simple execution of the current text (Brazil, 1988, art. 101).

In the audit courts, the diversity of knowledge required prevents automatically reducing the eligible universe to lawyers. Article 73 of the Constitution also mentions accounting, economic, financial and public administration knowledge. In addition, the auditors referred to in the constitutionally reserved vacancies are the substitute members of the courts, and not every servant of the supervisory career. Confounding these situations would change the distribution of access without publicly taking the normative decision (Brazil, 1988, art. 73).

A heightened duty is therefore proposed to justify the entry barriers. For each requirement, the establishing rule should identify the activity of the position that it intends to protect, demonstrate the relationship between requirement and fitness and justify why a less exclusionary restriction would be insufficient. Seniority, for example, can represent experience; an excessive level can only postpone the competition of people already capable. The affiliation to a certain school or professional network does not become a functional need because its members historically occupied the position.

The restricted nature of the process also does not eliminate the problem of movement between careers. Binding Precedent No. 43 prohibits forms of appointment that allow entry into an office outside the person’s career without first passing the competitive examination intended to fill that office (Brazil, 2015). Holding examinations does not, in itself, resolve the constitutionality of restricting participants. The proposed reform must create the specific access

regime, justify its relationship with equality, and address the substantive limits on constitutional change. The label internal competitive examination offers no immunity from that scrutiny.

The burden of justifying exclusion has a distributive dimension. Requiring experience obtained only in discretionary distributed functions would allow the old nomination mechanism to survive within the curriculum. A requirement of prior leadership, advisory work in senior offices or participation in a certain collegiate needs to be examined also as to the form of access to the valued opportunity itself. It is not enough to say that the experience is useful; it is important to know if the rule transforms a previous choice into a mandatory passport for the next dispute.

Inclusion measures should integrate this definition, and not appear as improvised corrections of an unwanted result. The Constitution and applicable legislation should guide affirmative actions, accessibility and reasonable adaptations, considering the composition of each career and the rules of origin of vacancies. The Convention on the Rights of Persons with Disabilities, promulgated by Decree No. 6,949/2009 and approved by the procedure of art. 5o, § 3o, provides qualified foundation to combat barriers and ensure reasonable adaptations (Brazil, 2009).

Thus, a relevant inversion arises: the professional demonstrates that they satisfy the requirements; the government demonstrates why these requirements can restrict competition. The candidate does not need to prove that he deserves to be admitted by an influential person. The institution needs to legally sustain each condition that allows it to bar an application. This distribution of the duty to explain is a central part of the model.

4 The power to wait and the continuity of competition

The calendar is not a neutral element. The early or late opening of a procedure can reach different universes of candidates, benefit those who will complete a certain requirement and prolong the exercise of someone who did not win the selection. A system exclusively concerned with scores can make invisible this power. The non-discretionary availability of the vacancy requires, therefore, rules on birth and the duration of the duty to compete.

A public register of vacancies and foreseeable ends of terms of office is proposed, linked to a legally established schedule. For departures known in advance, selection should begin sufficiently early, as defined by law, to allow the successful candidate to take office at the appropriate time. For unforeseen vacancies, the triggering event will start a mandatory period for opening the competition. The proposal does not establish a universal number of days here:

courts, prosecution leadership positions, and audit bodies have different conditions. What is indispensable is that the deadline precede the case, be verifiable, and be accompanied by consequences for inaction.

The duty of continuity is born with the valid opening of the procedure and prevents its interruption due to a mere change of institutional preference. Real problems may require corrections, suspension or cancellation. The response, however, should be related to the extent of the defect. An irregularity restricted to the application of a test in a given location does not automatically justify erasing the regular steps of all competitors. The preservation of usable acts protects public resources and prevents the remedy from being more manipulative than failure.

A hypothesis helps to make the problem visible. After the qualification, the organization identifies that a professional associated with the current management cannot obtain enough scores in titles. The institution then announces that it needs to review the profile of the position and suspends the selection for an indefinite period. In the proposed regime, this decision would face a normative presumption of continuity: it would be appropriate to demonstrate supervenient public need, inadequacy of less restrictive solutions and impossibility to preserve the dispute. The generic justification of institutional interest would be insufficient.

Insufficient resources can also be used to halt the process. The proposal does not seek to shield examinations from genuine budget constraints or give examination panels the power to spend without authorization. Ordinary funding for selections, however, must be predictable, included in institutional planning, and accompanied by public information on costs and payments. Anyone invoking a financial obstacle must specify it and the measures taken to overcome it. The absence of an explanation turns a verifiable constraint into a silent veto.

Interim appointment demands its own discipline. The institution needs to continue working as the selection develops, but the provisional occupant cannot acquire the power to prolong his own stay. The replacement should take place as a previous rule, have duration linked to the procedure and prevent the use of the position to interfere in the organizers. When the substitute also competes, its assignments related to selection should be exercised by a previously defined replacement mechanism. The interim experience cannot receive extraordinary scores created during the dispute.

Elster's (2000) studies on commitments and restrictions help to understand why previous rules can limit subsequent decisions. The transposition proposed here is specific: who manages the vacancy should not be able to freely redesign the conditions after knowing those interested. This containment needs, in turn, to be democratically instituted and revised by general

procedures. An unfair previous rule does not deserve preservation only because it was first established.

Continuity therefore allows a framework for change. Structural changes in the career may apply to future competitions, with a public transition and constitutional review. Indispensable corrections to an ongoing selection will require specific reasons, an opportunity to contest compatible with the urgency, and protection of equivalent conditions of competition. The decisive question is whether the change addresses a demonstrable institutional defect or merely changes the group of people capable of winning.

Citizens also have an interest in this schedule. Withholding a vacancy may affect the composition of collegiate bodies, the distribution of work, and the duration of public decision-making. Disclosure should therefore allow monitoring of periods without a permanent officeholder and the reasons for each delay, without turning the dashboard into a simplistic ranking. A longer period may result from a justified challenge; a short period may result from an improper restriction on appeals. The chronological record serves to require explanations in context.

5 The legal meaning of a score

The classification can only link the appointment if it is produced by a defensible evaluation. It is not intended to prove, by a number, who will be the best judge, prosecutor or controller in all future circumstances. This promise would be incompatible with the complexity of positions. What the competition can offer is a limited comparison, organized around relevant capabilities and sufficiently documented to authorize a public decision on access.

Kane (2013) distinguishes the validation of interpretations and uses of results from the idea that an examination would be valid in abstract. The transition from response to score to decision requires arguments and evidence. The Standards for Educational and Psychological Testing deal jointly with validity, precision and equity, including in professional evaluations (American Educational Research Association; American Psychological Association; National Council on Measurement in Education, 2014). These references do not prescribe the Brazilian constitutional solution; they indicate technical requirements to which the classification claim must respond.

The proposed application requires each component of the competition to have an identifiable function. The preliminary examination will certify the minimum level required to participate and will not contribute to the final score. After qualification, all candidates will face

objective, written, oral, credentials, and practical assessments related to the vacancy. The four performance assessments may have justified minimum passing scores; the credentials assessment will contribute to ranking only. The absence of academic distinctions eligible for points will not, by itself, eliminate professionals who demonstrate the required skills.

The problem is not solved by the simple accumulation of steps. If all of them measure memorization of the same statements, five examinations may reproduce a single limitation. The matrix should explain what each one adds: precision in the recognition of questions, elaboration of reasons, response to objections, relevant professional path and execution of tasks compatible with the position. These functions guide the design, but do not allow to convert rhetorical fluency, academic prestige or amount of documents into automatic equivalents of institutional capacity.

The practical examination deserves to contain real decision difficulties under incomplete information, within safe and simulated limits. Its object will not be to predict the candidate's political position. It can be required that he identifies what still needs to be determined, explain the consequences of alternatives and establish limits for his own competence. A solution that recognizes the insufficiency of elements can reveal better judgment than a categorical answer. The correction pattern needs to admit this type of performance without depending on the sympathy of the evaluator.

In oral evaluation, the personal encounter makes it especially important to delimit the object of observation. The board cannot assign autonomous note to affinity, pleasant temperament, social origin, accent or conformity with an informal image of authority. The score should correspond to registered elements of the answer. Complementary questions can clarify the reasoning, as long as they respect equivalent difficulty and duration and are documented. The interaction cannot function as a disguised confidence interview.

The credentials assessment raises another difficulty. Academic production and experience may be relevant, but their acquisition opportunities are unevenly distributed. The model proposes scoring limits, recognition of diverse professional trajectories and prohibition of repeatedly counting the same realization. Above all, the table needs to declare what it intends to infer from each credential. An accreditation that does not support relevant inference to the function should not receive points just because it seems prestigious.

The warning of Holmström and Milgrom (1991) about incentives in activities with multiple tasks helps to formulate a risk: intensely rewarding what is easy to measure can divert attention from important dimensions less measurable. Applied by analogy to the competition, the observation recommends caution with amounts of publications, decisions or procedural acts.

The article does not deduce from this study an ideal measure of judicial performance; it uses its theoretical problem to question tables that confuse volume with quality.

Weights, minimum scores, and tie-breaking criteria must be established before registration and accompanied by an accessible technical justification. A genuine tie will not allow personal choice to return. Once the previously announced impersonal criteria have been exhausted, a public draw may break the tie, provided it too was specified in advance. A very close result does not authorize selecting whoever the institution considers to have the better profile; it requires checking the precision, consistency, and correct application of the rules that produced the difference.

The examination panel should deliver, with the result, the elements that allow reconstructing the score, preserved legitimate secrecy. The candidate must be able to locate the evaluated passage, the applicable criterion and the reason for the score. The classificatory authority derives from this chain of justification. Where the explanation is reduced to the statement that the examiner is experienced, the system asks for personal trust at the same point where he had promised to offer a procedure.

6 A test to find out where personal choice survives

This article proposes a resistance test against substitution of the favored candidate. It is a normative exercise, not a validated statistical indicator. Candidates' answers, legally relevant credentials, and legitimate eligibility conditions are held constant. The question is then whether any actor can change the winner's identity merely by exercising a procedural power that requires no reviewable justification. If so, personal choice survives somewhere in the system.

The test may be applied before approval of the reform and again in each set of implementing rules. It does not prohibit changes resulting from the discovery of fraud, a calculation error, or an unmet requirement. In those cases, legally relevant facts change or are corrected. Its target is powers that allow the recipient to be replaced without demonstrating a relevant difference between competitors: cancellation because the result is unwelcome, changing weights after an examination, refusing certification for convenience, or manufacturing an exclusionary documentary requirement.

Consider a commission that has the competence to choose which titles will be accepted after receiving the CVs. Even if the final score is calculated by formula, the commission retains power to determine which curriculum this formula will reward. The problem precedes arithmetic operation. The proposed solution is to fix categories, equivalences and limits before

the identification of candidates, admitting further review only to apply or correct rules under public motivation and equivalent treatment.

Another example involves qualification. If the number of preliminary approvals can be reduced discretionarily according to the total number of subscribers, the organizer may narrow the dispute after knowing the names. The preliminary examination defended here must have a level of sufficiency and application rules prior to registration. Additional quantitative restrictions, if indispensable, would require legal basis and objective criterion previously disclosed; they could not be invented to administer the convenience of an application.

The same question reaches the evaluators. The replacement of an disqualified examiner is necessary, but it cannot allow the administrator to experiment with compositions until he obtains a favorable examination panel. The order of summoning alternates must be defined and verifiable. Contacts about applications outside the channels of the competition must be declared, and decisions on impediment need to be resolved by those who have no interest in the result. The recording of these events allows us to observe a part of the process that a list of scores does not show.

Hurwicz (2008) restores the problem of supervision of those who must ensure compliance with the rules. The question is pertinent because an independent commission on paper will still be composed of people with relationships, incentives and possibilities for coordination. The answer of this article is to share functions and expose decisions to contestation: who organizes will not concentrate the correction, the definitive judgment of appeals and the certification of their own acts. It is not assumed the existence of an immune guardian to interests.

Ostrom (2009), when discussing polycentric arrangements, offers a reference to think about coordination between decision centers. The use here is analogical, because its investigation does not establish a model of competition for senior judicial and legal offices. The suggested design distributes tasks between units with delimited competencies, common documentation and reciprocal controls. The plurality will only be useful if it does not produce a labyrinth in which each body assigns to the other the responsibility for a blockage.

Each relevant act, therefore, needs to have competent author, deadline and reviewer instance identifiable. The division of functions does not dispense individual responsibility for motivating the decision. Nor can it create an informal veto of any participant to continuity. Divergences will be resolved by the foreseen procedure, with defined effects, instead of indefinitely suspending the competition. The acceptable complexity is necessary to control decisions, and not the one that makes it impossible to know who decided.

The test has an important limit: it identifies opportunities for personal substitution but does not guarantee the substantive quality of the criteria. A discriminatory rule applied with perfect consistency may withstand the test and remain invalid. The analysis must therefore combine two questions: are the conditions of competition justifiable, and can any actor manipulate them to favor a specific identity? Only satisfying both provides a basis for the binding final result.

Table 1 – Procedural powers and corresponding guarantees

Passage	**Interference possibilities**	**Proposed guarantee**
Open	Retaining the position to change competitors	Legal trigger and calendar requirement
Eligibility	Require distributed experience.	Functional justification and previous challenge
Evaluation	Adapt criteria to known names	Previous rules and statement reasoning
Continuation	Dropout when the result displeasures	Reinforced motivation and preservation of valid acts
Dropout	Pressing the winner to call the following	Express manifestation and coercion determination
Effectiveness	Refuse certification for convenience	Linked effect and protection against omission

Source: elaboration of the author. Hypothetical situations for analysis of institutional design.

The table synthesizes hypothetical vulnerabilities. It is not a survey of irregularities that occurred in any institution. Its usefulness is to allow the legislative debate to examine concrete powers, instead of assuming that the expression public competitive examination solves, by itself, all problems of access.

7 The dossier of the vacancy and the right to reconstruct the decision

A selection can spread thousands of pages and remain incomprehensible. If the documents do not allow to relate rule, answer, note and effect, the amount of information offers a control appearance. It is proposed to organize disclosure around a unique dossier of the vacancy, identified since its origin and preserved after taking office. Its purpose will be to allow the reconstruction of decisions, including by those who did not participate in the procedure.

This dossier will bring together the generating fact of vacancy, the applicable professional origin, the calendar, the versions of the notice, the justification of the criteria, the identification of those responsible, the records of impediments, assessments and appeals. Each change will keep its previous version, the date and the foundation. The final result should refer to the acts that support it. Disclosure will lose utility if the institution can silently replace documents and erase the conditions in which competitors have taken their decisions.

Law No. 12.527/2011 provides the national legal basis for access to information, while Law No. 13.709/2018 regulates personal data protection. CNJ Resolution No. 215/2015 and CNMP Resolution No. 89/2012 address transparency within their respective spheres (Brazil, 2011, 2018; CNJ, 2015; CNMP, 2012). These instruments ground existing duties and limits; they do not, by themselves, establish the integrated dossier proposed here.

Access should distinguish what is necessary for inspection from what only exposes private life. Reasons for scores, acts of the examination panel and scoring rules have evident relevance for the control of selection. Health documents, private addresses and personal information from third parties require distinct treatment. An adaptation of accessibility must be monitored for legality without imposing the indiscriminate publication of the candidate's diagnosis. Data protection needs to be implemented by specific and motivated constraints, not by general secrecy of the procedure.

There are also different access positions. A competitor may need additional information to exercise the right to contest under adequate protection conditions. The public can follow the procedure by versions that hide unnecessary data. Researchers can receive anonymized sets, as long as the possibility of reidentification is evaluated, particularly high in disputes with few participants. These differences do not diminish disclosure; they make explicit the purpose of each form of circulation of information.

The dossier must register formal attempts to influence selection. Meetings, requests for privileged information and institutional communications about candidates need to follow documented channels. It is not assumed that any professional contact is irregular. The objective is to prevent interventions directed to the dispute from escaping the same duty of registration imposed on other acts. Pressure claims must be received per unit with conditions to protect the informant and determine the facts, without precipitated exposure of accused people.

Technology can facilitate this organization, but does not replace the norm. Electronic signatures, version control and access records help to verify document integrity; they do not demonstrate that the decision content is correct. A system can perfectly conserve an arbitrary note. For this reason, the project does not condition its legitimacy to a specific platform, nor does it treat automation as synonymous with impersonality. The person responsible for the decision remains obliged to explain the judgment he made.

The use of automated tools in correction would require prior evaluation of adequacy, identification of its participation and possibility of effective human review. For written, oral and practical responses, it is not proposed to delegate the final classification decision to an opaque system. The candidate should be able to discuss the reason for the score, and not just

receive the information that a program produced it. The prohibition stems from the normative design defended in this article, without assuming a general prohibition already existing for all administrative automation.

Law No. 9.784/1999, applicable to the Federal Public Administration in accordance with its scope, requires motivation in decisions of contest or public selection processes, among other hypotheses. Its art. 50 constitutes an especially relevant reference (Brazil, 1999). For the reform proposed here, the requirement must follow all passages capable of changing the result or preventing competition. The justification will only be sufficient if it allows us to understand why the decision adopted stems from facts and criteria applicable to that situation.

8 The result as a legal fact and the abandonment as a free act

Once the ordinary appeals provided for in the procedure have been concluded, the final ranking must produce a consequence that no agent can renegotiate. The proposal is to give the formally approved result the constitutional effect of appointing the highest-ranked candidate who continues to meet the legal requirements. Certification and publication will be mandatory. Taking office, once its conditions are met, will complete the investiture. This construction must be included in the reform; it does not describe the appointment powers currently in force.

The act will not be sent to the President of the Republic, a governor, or a legislative chamber for confirmation, veto, or choice. Nor may it be submitted to a final vote of confidence within the destination institution. Formal approval will verify the regularity of the examination within the limits defined by law. If it can freely reassess who deserves the office, selection will return to its starting point, after applicants have borne the costs of all assessments.

The binding effect requires a remedy for refusal to certify. A legal deadline is proposed for performing the act, with successive action by previously identified administrative officers. If the deadline expires without a reasoned decision, the winner may obtain a judicial ruling recognizing the result and ordering its formalization. Silence cannot amount to rejection. The reform must define the relevant judicial jurisdiction, preventing the defaulting authority itself from finally deciding the dispute for its own benefit.

The ranking belongs to the vacancy that gave rise to the examination. A permanent list that the institution can distribute among future posts may not be created. If the highest-ranked candidate expressly withdraws before taking office, the next candidate will be called in the final order; the sequence will continue only while valid withdrawals occur. The subsequent candidate may not be appointed because they appear more suitable, have greater support, or are willing

to accept conditions the winner refused. Conditions of office not provided for in its legal regime may not be added to the call.

Withdrawal must be unequivocal, personal, and free. The procedure must require verifiable confirmation and allow a reasonable period for deciding. Failure to respond, a communication failure, or a request for clarification will not automatically become a withdrawal. The administration must prove that the call was properly made and seek an express statement. The model makes a restrictive choice here: the mere convenience of filling the office quickly does not authorize manufacturing a withdrawal.

This option creates a cost that must be addressed. A candidate who remains silent may prevent the process from concluding normally. The proposal is, after regular notices and a final statutory deadline, to close the competition without appointing the next candidate and open a new selection if there is no express statement. Persistent refusal to decide will not secure an indefinite reservation of the vacancy. At the same time, its effect will not be to award the post to the next name without the required condition. The solution preserves the chosen restriction, although it may increase time and expense.

Death, subsequent loss of an eligibility requirement, permanent disqualification, or invalidation of the winner's approval are not withdrawals. To remain consistent with calling the next candidate exclusively in the withdrawal scenario, such occurrences will require a new examination, reusing administrative work only insofar as this does not predetermine the result. If everyone withdraws, a new competition will also be required. This does not describe the general rules of existing examinations; it is a particular choice of the model, whose cost to continuity must be explicitly accepted.

The dropout may also suffer pressure. Professional threats, promises from another position or campaigns aimed at forcing withdrawal can reconstruct personal choice after scores. The formal manifestation should not shield these facts against investigation. If there are consistent nominations, the following call may be temporarily suspended by a competent authority, with controlled duration and review. The determination cannot force the winner to take office; protecting the freedom to give up includes preventing it from being instrumentalized against his will.

Renunciation after taking office has another nature. It ends an investiture already constituted and produces new vacancies, which should be submitted to a new competition. The previous list will not remain available for successional combinations. The temporal distinction is essential: if the posterior exit would automatically call the second-ranked candidate, an agreement for brief taking office and renunciation could circumvent the safeguards of choice.

The procedure needs to consider predictable strategies, without assuming that any voluntary exit is fraudulent.

Finally, obtaining the highest-ranked candidate does not dispense with legality control. Proven fraud, document falsity or violation of requirement may affect approval through due process. What is prohibited is to convert inspection into subjective reconsideration of the winner's convenience. The validity of the result depends on rules; its effectiveness cannot depend on a new preference.

9 Politics continues in the rules and leaves the choice of names

The strongest democratic objection is that the withdrawal of appointments would reduce the participation of elected representatives in the composition of powerful institutions. Judges and members of control bodies interpret open norms and produce relevant collective effects. A competition does not transform these decisions into uncontroversial technical operations. Defending the model requires recognizing this difficulty, instead of describing it as a simple neutral application of knowledge.

The proposed response distinguishes the authority to establish the regime from the authority to choose its individual beneficiary. The legislature will continue to deliberate on powers, general requirements, structure, funding, and accountability within constitutional limits. Society will continue to contest these choices. What the proposal seeks to exclude is the possibility of using that position to decide which candidate will occupy the vacancy after the procedure opens. Democratic legitimacy will be sought in the making and oversight of rules, without parliamentary or executive selection of individuals.

This displacement does not eliminate politics. A very narrow eligibility rule can reflect corporate interests; a content of proof may favor a certain legal tradition; a distribution of resources may hinder the participation of certain groups. Therefore, the public discussion of the design must precede the contest and count on accessible justifications. The prohibition of personal nomination will be compatible with hearings on general rules, but incompatible with hearings intended to choose, veto or pressure a specific candidate.

Professional closure is a real threat to the model. The career can try to convert the contest into certification of its own customs, moving away from external perspectives and protecting informal hierarchies. The defense of the procedure does not rest on the moral superiority of corporations. Its legitimacy will depend on functional criteria, independent supervision,

diversity of admitted experiences and contestability. The universe of eligible people cannot be redefined by the interested associations whenever an inconvenient competitor presents himself.

There is relevant empirical literature, but it needs to be used accurately. Dahlström, Lapuente and Teorell (2012) found an association between meritocratic recruitment and lower levels of corruption in an international comparison of bureaucracies. Charron et al. (2017) related bureaucratic career conditions and risks in European public contracting. The results do not demonstrate that an internal competitive examination for ministers or prosecutors-general will produce the same effect, nor allow to estimate the magnitude of a reduction in corruption in Brazil.

The contribution of these studies is to make possible the research on relationships between recruitment, professional incentives and integrity. The OECD Public Integrity Handbook associates merit systems with previously defined criteria, transparency and mechanisms of oversight and appeals (Organization for Economic Cooperation and Development, 2020). At the conventional level, article 7 of the United Nations Convention against Corruption, promulgated by Decree No. 5,687/2006, deals with recruitment systems based on principles such as efficiency, transparency and objective criteria, observed their terms and domestic law (Brazil, 2006).

None of these sources dispenses with an independent constitutional argument. The authority of a STF justice is not reduced to that of an agent of an ordinary bureaucracy. The selection needs to consider the collegiate exercise, constitutional interpretation and institutional effects of the function. At the same time, the complexity of the position does not demonstrate that a personal preference is necessarily better instrument of access. The debate must compare concrete mechanisms of decision and accountability, instead of opposing an idealized technique to an equally abstract policy.

The same care goes for the leadership of the Public Prosecutor's Office. Legal knowledge does not exhaust the ability to direct an organization, establish priorities compatible with the law or manage internal conflicts. The practical test must face these attributions, without asking for promises of action in concrete cases. After taking office, the occupant will account for management acts and respond in the own regimes of responsibility. The competition will not confer managerial immunity, nor will it authorize the examiners to direct their future performance.

The alternative defended thus assumes a political price: elected representatives would lose a current prerogative of individual composition. On the other hand, professional competition would no longer depend on this relationship and would be protected by verifiable

duties. Accepting the exchange requires demonstrating that the remaining controls are sufficient and that the regime does not become an instrument for self-preservation of careers. This demonstration is a permanent public task, not a conclusion guaranteed by the word merit.

10 Reform as a reorganization of competences

A punctual change that determined the appointment of the highest-ranked candidate would leave conflicts spread throughout the constitutional text. The competences of nomination, approval, formation of lists, choice and appointment assigned to different bodies would remain. The legally consistent path is to jointly reorganize these competences and create the corresponding candidacy regime. Ordinary laws, administrative resolutions or an extensive interpretation of the public competitive examination cannot simply erase express constitutional powers.

The review should reach the general rules of appointment and parliamentary approval and the specific provisions of each institution. This includes, according to the position, articles 52, 73, 75, 84, 93, 94, 101, 104, 107, 111-A, 115, 119, 120, 123, 125 and 128, in addition to related norms. The enumeration indicates harmonization fields, not a complete amendment. The reform will also need to distinguish initial provision, promotion, access to the court and temporary exercise of mandate, so as not to apply the same consequence to different situations (Brazil, 1988).

Within the Public Prosecutor's Office, article 128 governs the leadership of the Union differently from that of the States and the Federal District and Territories. The latter must not be treated as a State Public Prosecutor's Office. Eligibility for each examination must be expressly defined in the new regime, with attention to the careers and relevant organic laws. Nor can it be said that all current prosecution leadership positions result from direct choice by the Executive: some appointments belong to internal authorities, as provided in articles 88 and 121 of Complementary Law No. 75/1993 (Brazil, 1993). The reform must identify the act it intends to replace in each case.

In the judiciary, the origin of the vacancy will continue to be important when preserved by the amendment. The competition for advocacy cannot end in informal transfer from the post to another category due to the absence of a preferred candidate. If no person fulfills the legitimate minimums, a new selection will be opened within the applicable regime. The possibility of modifying the origin would require another normative decision, subject to constitutional limits and without opportunistic adaptation to a specific result.

In the audit courts, it is also necessary to consider Constitutional Amendment No. 139, of May 5, 2026, which recognized its permanence and essentiality to external control and modified articles 31 and 75 (Brazil, 2026). This discipline reinforces the need to distinguish legitimate reorganization from institutional suppression. The non-discretionary availability of the vacancy proposed here does not replace the guarantees already incorporated into the Constitution, nor authorizes creation, extinction or installation of courts in disagreement with them.

If the reforming objective also achieves places of composition of national councils, it will be indispensable to examine the articles 103-B and 130-A, their origins and the presidencies exercised by reason of another position. It is not correct to treat all seats as equivalent professional vacancies. The suppression of interference of the executive needs to reach even residual appointment powers. The functions of councils in the control of selection, in turn, should be compatible with their own composition and with the impediment regime.

The statute should indicate who performs each task: registration of the vacancy, organization of examinations, correction, judgment of appeals, certification and preservation of the dossier. These competences can be distributed according to the institutions and the Federation. It is not proposed a national body that chooses, alone, all the leaders and judges of the country. The law should combine common standards of protection with adequate execution to the attributions and autonomy of the entities, without giving back to the rulers the possibility of indicating those responsible for a specific selection.

The Resolutions No. 75/2009 of the CNJ and No. 14/2006 of the CNMP demonstrate the existence of institutional discipline of admission competitions, but do not offer authorization to replace constitutional regimes of access to senior offices (CNJ, 2009; CNMP, 2006). Its utility is administrative and comparative: they show that organizing professional evaluations is not an unknown activity of the institutions. The transposition to higher functions will depend on its own design and the change of the competent normative source.

The control of the amendment must face art. 60, § 4o, particularly the federative form, the separation of powers and individual rights and guarantees. The proposal can be defended as redistribution aimed at protecting independence and equality, but this does not guarantee, in advance, its constitutionality. An excessive corporate restriction, a national concentration incompatible with the Federation or a control that empties functions of another Power may compromise the design. The analysis must fall on the concrete text of the reform.

The transition must respect situations constituted according to the current rules and avoid cuts of mandate or collective removals as an instrument for implementation. The new

procedure will focus on future opportunities, in a determined schedule, with clear rules for processes already initiated. Until its entry into force, institutions remain subject to the current regime. It is not recommended that authorities fail to comply with the Constitution on behalf of a Constitution that is intended to be approved.

11 Enforceable claims and control without a second choice

The candidacy framework needs to allow different responses to different violations. The professional excluded by irregular requirement seeks access to competition; the candidate whose response was corrected without observing the rubric seeks motivated review; the winner before omission seeks effectiveness of the result. A single generic appeal against the final list does not adequately protect these positions, especially when damage occurs before classification exists.

It is proposed to ensure timely contestation of eligibility rules, disqualification of examiners and calendar changes, as well as appeals against assessments and exclusion acts. The deadlines should allow real knowledge of the fundamentals and answer compatible with the complexity of the issue. The publication of a score without the necessary motivation should not start the full appeal period. Otherwise, the duty to explain would arrive too late to be useful.

Protection of continuity should make it possible to challenge failure to open or proceed with the examination. This requires defining when the obligation becomes enforceable, who has standing, and which authority is responsible. The proposal does not assume that a specific action with all these characteristics already exists. Its institutionalization depends on constitutional and statutory rules consistent with the guarantee of judicial review and the jurisdiction of adjudicating bodies.

Control should not convert the judge into a universal examiner. There is a difference between checking whether the response received the expected treatment, requiring motivation and replacing a technical assessment admissible by another preference. The reform should protect the justified space of evaluation and allow intervention when criteria are missing, there is unequal treatment, objective error or violation of rules. Control needs to achieve arbitrariness without creating a new place of personal choice for the winner.

The composition of the review body deserves attention when candidates and examiners belong to nearby institutions. Ordinary functional relationships do not make every judgment impossible, but specific interests must generate verifiable impediments and replacement by previous criteria. The competence to resolve the conflict cannot arise from a designation made

after the names are known. Otherwise, the same selection problem will reappear in the mechanism intended to correct it.

Also, the scope of precautionary measures needs to be calibrated. Suspending the entire contest can be indispensable in the face of widespread disclosure of examination material, but excessive in the face of an individual reversible error. The decision should explain which acts need to stop and which ones can continue without harming the solution. The inspection of the revision deadlines will have the same degree of publicity required from the administration. Control cannot produce, without justification, the prolonged interim appointment that the reform intends to combat.

Collective protection and social supervision occupy another plan. Society has an interest in disclosure, in the absence of discrimination and compliance with the access regime, even though no candidate is willing to face the institution. The reform should recognize channels for reasoned representation and predict those legitimated to appropriate collective measures. This does not mean opening the decision on scores to popular voting, nor allowing external campaigns to determine classification.

The effects of invalidation must be specified. A defect affecting only one act may authorize its repetition; fraud compromising the entire competition may require a new examination. If the winner’s approval is definitively invalidated, the rule already adopted will apply: a new competition, without automatic appointment of the next candidate, because no withdrawal occurred. The consistency of this consequence prevents review from being used as a succession shortcut, although it retains the administrative cost of this choice.

The accountability of organizers should require their own assumptions and due process. Justifiable technical error is not equivalent to fraud, as well as interpretive divergence does not prove favoring. Disproportional sanctions can make the function of evaluating little attractive and encouraging defensive decisions. The objective is to make unlawful conducts imputable, preserve good faith correction and prevent the allegation of technical autonomy from functioning as a shield for demonstrated manipulation.

12 How to submit the proposal to the possibility of failure

A reform that promises to reduce personal choices needs to admit signs that it failed to do so. Its evaluation program must be defined before implementation and include information that may contradict the thesis. Campbell's (1979) discussion on the evaluation of planned social changes is pertinent precisely because the occurrence of subsequent results does not

demonstrate, by itself, that they were produced by the intervention. Institutions change under multiple influences.

The initial unit of observation proposed is the trajectory of the vacancy. For each selection, there will be registered foreseen and effective dates, eligible universe when measurable, registrations, exclusions and their fundamentals, dropouts, costs, appeals and changes in results. These data will allow us to examine where the competition narrowed and where the procedure stopped. The disclosure of only how many candidates attended the test hides the question about who stopped applying and why.

The denominator requires care. In certain careers, administrative records allow estimating how many people met the requirements. In broader professional universes, this number can be uncertain. The research should explain the source, date and limitations of the estimate, instead of transforming incomplete records into an exact measure of participation. Interviews or voluntary questionnaires can help identify barriers, respecting the research and protection conditions of the participants.

A second dimension is the consistency of the evaluation. Differences between graders, frequency of note review, concentration of differences in a given stage and relationship between scored credentials and opportunities previously distributed by nomination should be examined. None of these signals automatically proves fraud. A revised correction can demonstrate that the appeal worked. The purpose is to locate decisions that need explanation or criteria that need reassessment for future competitions.

The third dimension follows the strategic behavior provided for in this article. Repetition of suspensions close to the result, concentrated dropouts after institutional contacts or frequent changes in examiners would justify contextual investigation. The substitution resistance test can be used in documented simulations, without real candidates, to identify faculties capable of changing recipients. The discovery of a vulnerability must generate prospective correction or provision legally adequate, never a secret change of the rule during the dispute.

The National Database of Data from the Judiciary, established by Resolution 331/2020 of the CNJ, provides procedural data infrastructure for the judicial statistics system (CNJ, 2020). Its object does not allow treating it as direct proof that a naming method generates independence, integrity or better performance. Any research that associates selection and institutional results will need to build compatible bases, explicit links and consider changes in competence, composition, resources and demand.

In the Public Prosecutor's Office and in the audit bodies, the comparison faces similar difficulty. The number of acts can vary because the institution received attributions, reorganized

flows or changed the way to register activities. Nor can substantive results be reduced to the volume of accusations, convictions or sanctions. A system that rewards punitive intensity as proof of merit may encourage behavior incompatible with rights. Independence needs to include the ability to recognize when state intervention is not justified.

As the proposal removes the individual choice of elected authorities, the evaluation should observe its effects on plurality and institutional openness. Has the competition expanded the set of trajectories capable of reaching senior office or concentrated it in already favored groups? Do the criteria allow grounded legal disagreement or induce reproduction of a single school? The answer will require qualitative and quantitative analysis, with transparent categories and care not to transform legitimate legal convictions into indices of suspicion.

The design allows for negative results. If the oral examination concentrates differences without sufficient justification, it must be redesigned; if credentials scoring reproduces improper barriers, the scoring table must change; if the schedule allows recurrent obstruction, the continuity rules will be insufficient. These corrections do not allow the winner's political selection to be reintroduced in a valid competition. They require improving the rules through general procedures and publicly acknowledging what experience has revealed.

13 Conclusion

The proposal of internal competitive examination gains density when one asks who controls the opportunity to compete. The choice of a name can survive the prohibition of nomination if someone conserves power to close access, manage time, remodel the evaluation or prevent the effectiveness of classification. The core of the reform defended consists in subjecting these decisions to defined duties and enforceable claims, from the occurrence of the vacancy to taking office.

The institutional candidacy framework brings protection to the registration, justified stability of competition conditions, reconstructable evaluation, continuity of the procedure and linked consequence of the result. The non-discretionary availability of the vacancy prevents its use as a personal resource. The test of resistance to substitution of the favored offers a practical question to examine the design: keeping the relevant facts, who still manages to change the recipient just because it controls a passage of the procedure?

The model preserves preliminary qualification and the five forms of assessment, assigns appointment to the valid result, and allows the next candidate to be called exclusively following express withdrawal before taking office. It accepts the costs of this option, including new

examinations when the winner cannot take office for other reasons. It also recognizes that a numerical ranking is a limited institutional decision that requires evidence supporting its use and does not prove absolute human or professional superiority.

The execution depends on coordinated constitutional reform, respect for the material limits of amendment, careful definition of eligible universes and protection against corporate closure. The legislature retains democratic responsibility for the general rules; the executive and the legislature lose their individual choice in the vacancies covered. The agencies responsible for the selection remain subject to motivation, publicity, impediments and control. The autonomy to evaluate does not become a license to choose people out of the criteria.

The scope of the proposed transformation can be expressed by an institutional requirement: access to senior office must continue to be possible even for those who do not have the preference of their current controllers. If this possibility depends on tolerance, there will still be favor. If it can be exercised, supervised and protected as a legal position, competition will have acquired the public sense that justifies replacing the nomination regime.

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