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CHILE'S GENDER QUOTA: WILL IT WORK?

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Introduction

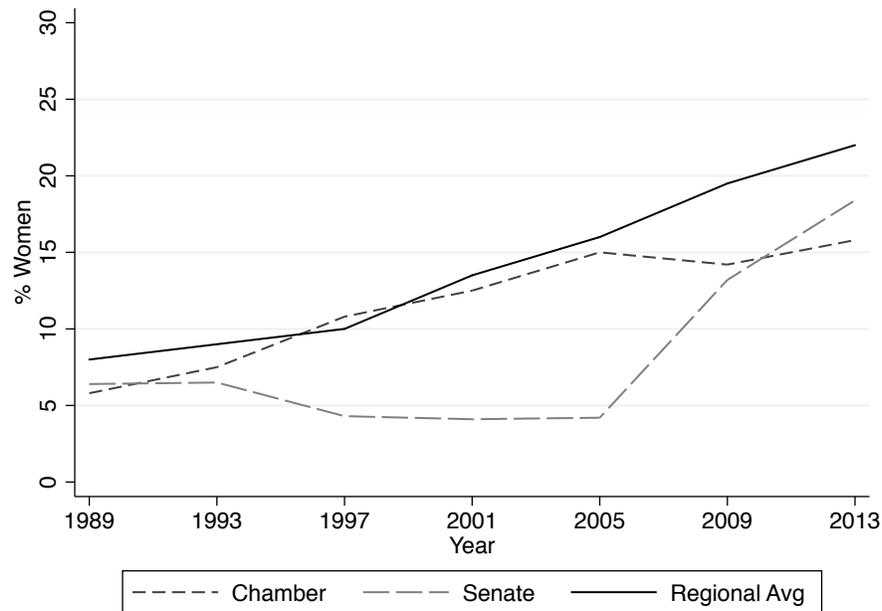
On January 20, 2015, Chile's Congress approved the final version of a bill significantly reforming the national electoral system. After years of discussion about electoral reform and nine months of congressional debate about this specific bill, the Chilean Chamber of Deputies and Senate passed the reform package with support from three-fifths of the members of both houses of Congress and the endorsement of the bill's initiator, Chile's President Michelle Bachelet.¹ At the end of March 2015, Chile's constitutional court rejected claims of unconstitutionality put forth by 12 dissenting senators, clearing the way for President Bachelet to sign the bill into law on April 27.

The new law is significant for many reasons. First, it finally eliminates the highly unrepresentative and unique-to-Chile binomial electoral system designed by former dictator Augusto Pinochet in 1989. Under the binomial system, every electoral district for both houses of Congress had two seats. On Election Day, the party that won the most votes in the district won one of those seats and the runner-up party won the second seat, unless the winning party doubled the vote share of the second-place party. This system resulted in significantly disproportional election outcomes and ensured continued political power for the conservative right long after the transition to democracy occurred. The new electoral reform replaces the binomial system with an open list proportional representation (PR) system with between two and eight seats in every electoral district. Under proportional representation, parties are awarded seats in direct proportion to the percentage of votes they win (40 percent of the vote translates to approximately 40 percent of the seats in the district), and the "open list" means that voters choose not only their preferred party but also their preferred candidates on the party ballot (parties can have as many candidates on the ballot as there are seats in the district plus one). This reform has been widely praised because it is expected to yield a much more representative, competitive, and democratic election process.²

The second important piece of the Chilean electoral reform, and the dimension of primary interest for this issue brief, is a provision that requires all political parties competing in congressional elections to ensure that no more than 60 percent of candidates on the ballot in

every district are of the same sex. Implicitly, this is a requirement that at least 40 percent of candidates on party ballots are women. With this new electoral reform, Chile has implemented a gender quota.

Electoral reformers in Chile have worked for over 20 years to replace the binomial system, and quota advocates have worked almost as long to enact a gender quota that would help to improve women's underrepresentation in the national Congress. In the first post-transition congressional election in 1989, women won seven of 120 seats (5.8 percent) in the Chamber of Deputies and three of 38 seats (6.4 percent) in the Senate. Twenty-four years later in 2013, women's representation had only increased to 15.8 percent in the Chamber of Deputies and 18.4 percent in the Senate, and the country has continued to lag behind the Latin American regional average (see Figure 1). Despite changing cultural attitudes toward women in the public sphere, women's significant entry into the formal labor force, and the near-parity numbers in institutions of higher education, women have not gained entry to Congress to the same degree. Chile's congressional representation of women today is one of the worst in the region. After a quarter century of relatively minimal progress moving women into the legislative arena in Chile, proponents of the new gender quota law hope that the quota will finally achieve what more traditional efforts to increase women's representation have failed to do. Will it work?

Figure 1: Women's Representation in the Chilean Congress

Source: Inter-Parliamentary Union, "Women in National Parliaments," <http://www.ipu.org/wmn-e/world-arc.htm>

Gender Quotas in Latin America

Gender quotas are not a new phenomenon. In the 1970s, several leftist political parties in Scandinavia adopted the first quotas to increase women's election to parliament; Norway's Liberal and Socialist Parties led the way in 1975.³ In 1991, Argentina became the first country in the world to enact quota legislation requiring all parties running candidates for election to consider candidate sex in the nomination processes.⁴ Argentina's law requires all parties electing candidates to the Chamber of Deputies to ensure that at least 30 percent of their ballots are women. In contrast to the United States, Argentina, like many countries around the world, uses proportional representation rules for elections, whereby parties present ballots with several candidates listed and rank ordered according to the party's preferences. Argentina's quota was extended to the Senate when direct popular elections were first held for senators in 2001. Sixteen of Latin America's 18 democracies (including Chile) have followed Argentina's lead over the past 24 years (see Table 1). Today, all but two countries (Guatemala and Venezuela) have quotas. Eight countries adopted quotas between 1996 and 1997, two adopted in the early 2000s (Honduras and Mexico), and five stragglers added quotas to their electoral laws from 2008 to

2015. Chile is the most recent country in the region to enact a gender quota. Worldwide, over 40 countries use “legal candidate quotas” for legislative elections, and over 100 have some kind of gender quota in use, be it a voluntary party quota, a legal candidate quota, or reserved seats for women.⁵

Table 1: Gender Quota Adoption in Latin America

Country	Year Adopted
Argentina	1991
Costa Rica	1996
Paraguay	1996
Bolivia	1997
Brazil	1997
Dominican Republic	1997
Panama	1997
Peru	1997
Ecuador	1997
Honduras	2000
Mexico	2002
Uruguay	2008
Colombia	2011
Nicaragua	2012
El Salvador	2013
Chile	2015

Source: Author's data

Legal candidate quotas can take a variety of forms and are implemented in many different types of electoral systems. Scholars have identified three key dimensions on which quotas vary: their size, whether they include placement mandates, and their enforcement mechanisms.⁶ The size of the quota refers to the minimum percentage of the party ballot that is required to be female. Some quota laws prescribe a specific minimum for women, such as the new El Salvador law, which says explicitly that 30 percent of a ballot must be comprised of women (i.e., if the district has six seats and a party nominates six candidates on their ballot for those seats, then two of those six candidates must be women). Other laws use neutral language and require only that a ballot cannot have any more or less than a specific percentage of any given sex (male or female). Uruguay, for example, requires candidates of both sexes in every set of three candidates on the ballot. Others now use the language of gender-parity for their laws (equal numbers of women

and men). Although laws vary in language, they all can be translated into a minimum percentage of women. This permits comparison of quota size across countries.

Placement mandates require that women be nominated to ballots and ranked on the ballot in positions where they can actually get elected. These mandates stipulate that the party includes at least one woman among the number of ballot positions that correspond to the quota. For example, a 30 percent quota with a placement mandate would require one woman in every third position on the ballot; a 50 percent quota with a placement mandate would require alternation of women and men on the ballot.

Finally, enforcement mechanisms are explicit statements in the quota law that outline the punishment for parties that do not meet the quota's requirements. The strongest enforcement mechanisms reject the entire party ballot if it does not fulfill the quota. Weak mechanisms are those that just ask for a good faith effort by parties or assess small financial penalties. Some quota laws do not specify any mechanism for electoral oversight tribunals to ensure that the quota is met.

These differences in gender quotas are important because they make some quota laws stronger than others, and, as a result, more effective.⁷ The most successful quotas are those with a large size, placement mandates appropriate to the size of the quota, and strong enforcement mechanisms. The least successful quotas are those that lack placement mandates and have weak or no enforcement, regardless of the size of the quota. A parity law is unlikely to make much difference increasing women's presence in a legislature if it does not require parties to put women in winnable positions on party ballots (usually by alternating women and men) or allows parties to run ballots that do not comply with the quota. Thus, the design of quota laws is critical to making quotas effective mechanisms for increasing women's legislative representation.

Quota laws in Latin America vary across these three dimensions, yielding some very strong quota laws and other laws that are much weaker (see Table 2).⁸ The strongest laws are in Bolivia, Costa Rica, Ecuador, and Mexico, which currently require gender parity on ballots, have alternation requirements for men and women, and stipulate that electoral tribunals reject ballots

that ignore the quota. Argentina, Uruguay, and the Dominican Republic also have placement and enforcement mechanisms but have smaller quota sizes; approximately one in three candidates must be women. Paraguay only requires one in five candidates to be female, and Nicaragua has a parity law with alternation but leaves compliance with the quota in the hands of the parties themselves. Weaker laws exist in Colombia and Peru because they do not have placement mandates, although the electoral tribunal does enforce the size of the quota. The weakest quotas are in Panama, Honduras, Brazil, and El Salvador. These countries have reasonably sized quotas but do not require women to be placed in winnable seats (in part due to their electoral systems) and enforcement is minimal. Panama only requires that parties try to meet the quota; if they claim not to be able to find a qualified woman, the party can nominate a man instead. Brazil's only penalty is that the party must run fewer candidates to match the quota, which is little penalty if the party does not expect to win many seats anyway. Honduras only added an enforcement mechanism in 2012, and it simply requires a fine of 5 percent of the government-allocated party election funds for violators.

Table 2: Variation in Latin American Gender Quota Laws, as of April 2015⁹

Country	Legislative Chamber to Which Quota Applies	Size	Placement Mandate	Enforcement Mechanism	Electoral System ¹⁰
Bolivia	Lower and Upper	50	Yes	Strong	Mixed
Costa Rica	Unicameral	50	Yes	Strong	CLPR
Ecuador	Unicameral	50	Yes	Strong	Mixed
Mexico	Lower and Upper	40/50	Yes	Strong	Mixed
Dominican Republic	Lower	33	Yes	Strong	CLPR
Uruguay	Lower and Upper	33	Yes	Strong	CLPR
Argentina	Lower and Upper	30	Yes	Strong	CLPR
Paraguay	Lower and Upper	20	Yes	Strong	CLPR
Nicaragua	Unicameral	0/50	Yes	None	CLPR
Chile	Lower and Upper	0/40	No	Strong	OLPR
Colombia	Lower and Upper	30	No	Strong	CLPR
Peru	Unicameral	30	No	Strong	OLPR
Brazil	Lower	30	No	Weak	OLPR
El Salvador ¹¹	Unicameral	30	No	Weak	CLPR
Honduras	Unicameral	40/50	No	Weak	OLPR
Panama ¹²	Unicameral	50	No	Weak	OLPR

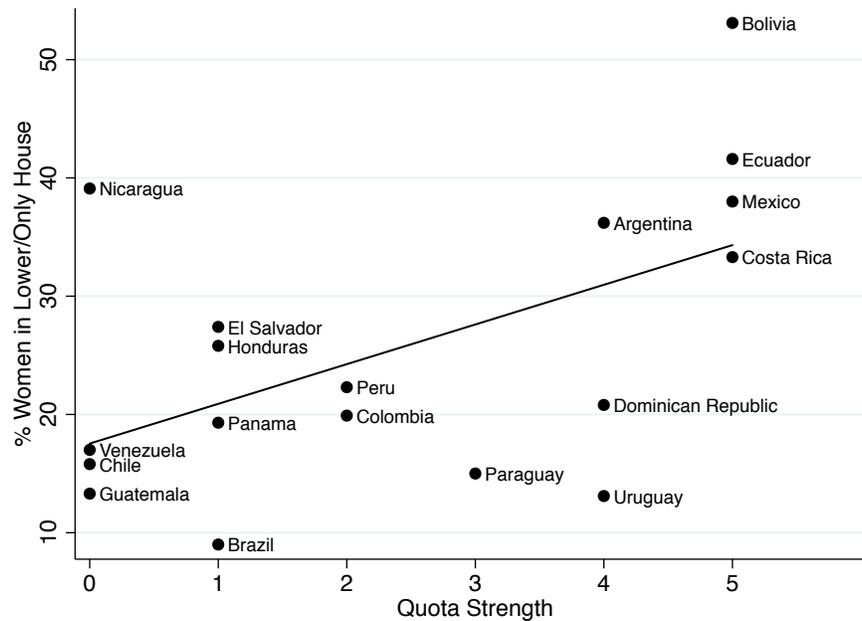
Source: Schwindt-Bayer, 2010; www.quotaproject.org

Note: Where the size has two values, the first is the size applied in the previous legislative election and the second is the size for the next national legislative election (resulting from a recent reform).

The strength of gender quota laws varies across countries and can have a strong impact on how effectively quotas increase the number of women elected to legislatures. But the electoral system in which the quota operates is also important for determining how successful a quota will be. Some electoral systems facilitate implementation of quotas, whereas others make it much more difficult for quotas to have their desired impact. The most quota-friendly electoral system is a closed list proportional representation (CLPR) system. In this system, electoral districts have two or more legislators elected via rules that allocate seats to political parties in proportion to the votes they receive in an election, and parties determine which candidates win those seats (i.e., voters place a vote for a party only, not for individual candidates on the party's ballot). This type of system coupled with a strong gender quota (large size, placement mandates, and enforcement mechanisms) is most effective at translating the proportion of women on the ballot (determined by the quota) into a comparable proportion of women in the legislature.

Alternatively, an open list proportional representation (OLPR) system is less compatible with quotas. This is the system just adopted in Chile, whereby seats are allocated to parties in proportion to the votes parties receive and the candidates who win those seats are those who win the most preference votes. In this type of system, parties lose the ability to ensure that gender representation on the ballot translates into gender representation in the legislature, as gender bias among voters (if it exists) can lower vote totals for female candidates. In Latin America, the strength of the quota law often varies with the type of electoral system (see Table 2). Closed list proportional representation systems use some of the strongest quotas. Open list proportional representation systems have some of the weakest quotas.

The three dimensions of size, placement mandate, and enforcement can be combined with the electoral system and provide a relatively simple way to classify quotas on a scale of 1 to 5 (0 if no quota is in place), as indicated by the shaded areas of Table 2. This ranking of quotas can then be compared to the percentage of women in a legislature to determine just how strongly quota strength relates to women's representation. Figure 2 illustrates this for the 18 democracies of Latin America, with data on women in legislatures as of January 2015. The figure shows quite clearly that the countries with the highest representation of women are those with the strongest quotas and closed list proportional representation electoral systems (Figure 3).¹³ Bolivia, Ecuador, Mexico, and Costa Rica all have strong quotas and also have some of the highest representation of women in the region. Venezuela, Chile, and Guatemala, with no quotas as of their most recent election, have some of the lowest representation of women. Of course, the relationship is not a perfect fit and some countries have achieved higher representation of women than one might expect with their quota (e.g., Nicaragua)¹⁴ or lower representation of women (e.g., Dominican Republic). But, it is clear that quotas and women's presence in legislatures are strongly related.

Figure 2: Quota Strength and Women in Legislatures in Latin America

Source: Inter-Parliamentary Union, “Women in National Parliaments: Situation as of 1st February 2015,” <http://www.ipu.org/wmn-e/arc/world010215.htm>

Prospects for Success in Chile

The new Chilean electoral reform breaks new ground not only by replacing the Pinochet-created highly disproportional binomial electoral system with a more proportional open list system, but also by mandating attention to candidate gender in national legislative elections.¹⁵ As noted above, the quota specifies that no more than 60 percent of party or electoral coalition candidates in a district can be of the same sex; in other words, it establishes a 40 percent quota for women. It applies to both the Chamber of Deputies and the Senate. Parties or coalitions that do not comply with the quota will have their ballots rejected by the Consejo del Servicio Electoral. Additionally, parties that elect women to Congress will get financial resources from the state to establish programs to help increase women’s inclusion and participation in politics; female candidates running for election have the right to reimbursement of some of their electoral expenses from the state. The Chilean quota has some significant strengths. The quota has a reasonable size (40 percent), a strong enforcement mechanism, and provides financial assistance to female candidates and parties who work to increase women’s representation.¹⁶ However, the

gender quota and revised electoral system have several weaknesses that raise questions about just how successful the quota will be at getting more women elected to Congress.

First, even though Chile has reformed the electoral system from binomial to proportional representation, it has maintained the candidate-centered nature of its rules with open lists. This leaves the election of individual candidates in the hands of voters. As described previously, this can allow voter discrimination and offset any government or party efforts to translate gender balance on ballots into gender balance in the legislature. Given how poorly women fared getting elected under the previous candidate-centered system in Chile, there is little reason to think they will fare better under the same type of system.

Second, Chile's new electoral system increases the number of representatives elected in a district (i.e., district magnitude) from two to between three and eight in the Chamber of Deputies and between two and five in the Senate. Existing research finds that larger district magnitudes provide greater opportunity for the election of women because the election is not a zero-sum game where only one candidate, male or female, wins.¹⁷ Chile's increase in district magnitude would appear to be beneficial to women's election; however, the number of legislators elected in any given district is still quite small, making it unlikely to increase women's representation very much. The average magnitude is 5.5 in the Chamber and 3.3 in the Senate, and with the quota being set at 40 percent, a party running in a district of five representatives needs only two women on the ballot to meet the quota. The law also does not specify how parties should meet the quota if a district has a number of seats that does not divide easily to match the quota. If a district has three seats, for example, assigning two seats on a party ballot to men and one to a woman violates the quota; 66 percent are male which is greater than the 60 percent limit. A district with two seats would presumably require parties to have gender parity on their ballot—one woman and one man—but the law is not specific about this kind of interpretation. Thus, the change in district magnitude, coupled with the vagueness of how quota size applies to districts of varying sizes, leaves much to interpretation by parties and the electoral tribunal at election time.

Third, the new quota law lacks a placement mandate. As Table 2 shows, this is not uncommon in open list PR systems, but it still decreases the strength of the quota law. Chilean political parties

(and coalitions) have complete autonomy in deciding how to rank order candidates on party ballots. Without a placement mandate, it is entirely legal for Chilean parties to list the women candidates at the bottom of their ballots. Voters do vote for individual candidates on the ballot, so they can still vote for the female candidates even if they are all listed last on the ballot. But, to the extent that voters go to the polls with limited knowledge of individual candidates and simply choose candidates in the order presented by the party, women have no real chance of getting elected. The lack of a placement mandate opens the door to significantly fewer women moving from the ballot to the Congress in an election. Women's 40 percent representation on party ballots is much less likely to translate into 40 percent representation in Congress without a placement mandate.

Looking again at Table 2 and Figure 2, Chile's new quota law is in the same category as Colombia and Peru—a "2" on the quota strength scale in Figure 2. Based on the recent elections in those two countries, this would translate into only about 20 percent of Chile's Chamber of Deputies being female in an election under the quota, about the same level of women's representation it has today. Of course, this is a very rough estimate based on a simple analysis of one election and two countries. The larger point is that past experience in Latin America (and other countries around the world) suggests that the open list system and lack of a placement mandate in Chile opens the door for female candidates to continue to be marginalized in Chilean congressional elections, despite the gender quota.

Chile's quota law has other disadvantages, as well. The quota size of 40 percent is larger than what has been adopted in some Latin American countries and constitutes a reasonable threshold for women's representation. Yet, for Chile to implement a 40 percent threshold at a time when many Latin American governments have pushed for parity laws over quotas, Chile has continued to place itself in a game of catch-up with the rest of the region in regards to the value it places on gender equality. It also sends a signal that the goal is not gender equality but only more women. A quota of 50 percent (i.e., a parity law) would have offered greater opportunity for increasing women's representation in the Chilean Congress and would have showed Chile's symbolic commitment to women and gender equality.

Another drawback to the quota is that it is temporary. The law specifies that the gender quota will apply only to four elections—2017, 2021, 2025, and 2029. For the quota to continue after 2029, the electoral code will have to be revised again. As it took more than 20 attempts to reform the electoral code to begin with,¹⁸ future revision may too be challenging. It is unlikely that the Chilean cultural, social, and institutional environment will change enough over four elections that the quota could be removed and gender equality could persist without quotas. Additionally, the imposition of a time limit by the Chilean reform contrasts sharply with the unlimited time frame used in most other countries and the removal of these kinds of time limits where they have previously been used (e.g., Mexico). It also sends a signal that gender equality need only be temporary.¹⁹

Chile's gender quota faces additional challenges due to rules about candidate selection to party ballots. In Chile, candidate selection is entirely in the hands of political parties and coalitions. In 2013, Chile passed a party primary law that allows parties or coalitions to use primary elections to select candidates for congressional elections. Primaries have many strengths—greater voter choice, being more democratic—but they are incompatible with a gender quota. Quotas in primary systems can only require that voters consider women in the primary process; they cannot mandate gender representation in the outcome of the primary. Chile's electoral reform addressed this challenge by modifying the party primary law, restricting parties to selecting only 40 percent of their candidates through primary elections. The party selects the remaining 60 percent of candidates, making it possible to meet the gender quota law even with party primaries. This is a smart solution to the challenge that primary elections can create in Chile, but only time will tell how well it works in practice.

Another potential challenge to the quota law comes from a new rule that allows political parties to nominate as many candidates to their ballots as there are seats in the district plus one. So, if the district elects three deputies, a party can nominate four people to the ballot. The purported benefit of this is that voters will have more candidates to choose from. But, in terms of the gender quota, it spreads votes across more candidates, one of whom cannot possibly win election no matter how well the party does. This allows parties to use the so-called “N + 1” rule as a way to meet the quota with a token woman, whom they expect to win few votes. It also allows them

to nominate extra men to the ballot in some districts that would otherwise be limited by the quota. If the district has a magnitude of four, for example, a party meets the quota with two women and two men or with two women and three men (under the “N+1” rule), increasing competition and decreasing the probability that one of the women will get elected. The new “N+1” rule, then, can serve as another obstacle to increasing women’s representation.

Conclusion

Chile’s long-awaited adoption of a gender quota finally brings it into line with the vast majority of Latin American countries that use quotas to prioritize a commitment to gender equality in the national government. The quota is part of a broader electoral reform in Chile that had as one of its many goals to increase partisan and social representativeness. The gender quota has clear symbolic benefits; however, the likely impact of the quota on women’s actual representation in the Chamber of Deputies and Senate is much less clear. The open list system, still-small district magnitudes, and lack of a placement mandate put Chile’s law in the category of a relatively weak quota, compared to the rest of Latin America. The law has other disadvantages as well. It is temporary—lasting only four elections—and it faces challenges being implemented alongside other rules about candidate selection.

The success of Chile’s quota will depend on how strongly political parties and voters embrace the spirit of the law. If parties implement the quota in a way that matches its intent—to counter years of women’s underrepresentation with a greater presence of women in politics—and voters embrace the effort to support female candidates, then the quota and new electoral system have a good chance of electing more women to office. If parties and/or voters choose to continue marginalizing women in politics and limiting their access to the national legislature, numerous institutional loopholes in the new electoral reform exist to allow them to do so. The success of the quota will be up to Chilean parties and voters. In 2017, we will see just how important gender equality in politics really is in Chile.

¹ For an extensive summary of the bill and the process of getting it passed, see http://www.senado.cl/fin-al-binominal-en-ardua-y-extensa-sesion-despachan-nueva-composicion-del-congreso-y-sistema-electoral-proporcional/prontus_senado/2015-01-13/101536.html.

² For more on the motivations for the reform, see <http://www.gob.cl/2015/01/20/camara-aprobo-en-tercer-tramite-el-fin-del-sistema-binominal/>.

³ Miki Caul, "Political Parties and the Adoption of Candidate Gender Quotas: A Cross-National Analysis," *Journal of Politics* 63, no. 4 (2001).

⁴ Mark P. Jones, "Increasing Women's Representation Via Gender Quotas: The Argentine Ley De Cupos," *Women & Politics* 16, no. 4 (1996).

⁵ Mona Lena Krook, *Quotas for Women in Politics: Gender and Candidate Selection Reform Worldwide* (New York: Oxford University Press, 2009).

⁶ Quotas vary on other dimensions as well, such as whether they apply to political parties that use primaries and whether they include candidates selected as substitutes as well as primary candidates. These do not apply in every country, however.

⁷ Leslie A. Schwindt-Bayer, *Political Power and Women's Representation in Latin America* (New York: Oxford University Press, 2010); Mark P. Jones, "Gender Quotas, Electoral Laws, and the Election of Women: Evidence from the Latin American Vanguard," *Comparative Political Studies* 42, no. 1 (2009).

⁸ Quota laws in Latin America have been surprisingly fluid over the years. The laws listed in Table 2 have changed significantly in some countries since they were first adopted. For example, Costa Rica's initial quota did not include a placement mandate. The mandate was added only in 1999 after the national electoral tribunal passed a ruling requiring placement and enforcement. Costa Rica moved from a 40 percent quota to parity in 2009. None of the five countries that have parity laws today enacted their quotas with that requirement initially.

⁹ For more information, see Schwindt-Bayer, *Political Power and Women's Representation in Latin America*; "Making Quotas Work: The Effect of Gender Quota Laws on the Election of Women," *Legislative Studies Quarterly* 34, no. 1 (2009); IDEA, "Global Database of Quotas for Women," International IDEA and Stockholm University, <http://www.quotaproject.org>.

¹⁰ CLPR stands for closed list proportional representation, OLPR is open list proportional representation, and mixed refers to systems that use both majoritarian and proportional rules (either CLPR or OLPR).

¹¹ The law was passed in 2013 and applied for the first time to the March 2015 legislative elections. It is unclear from El Salvador's reform to the political party code just how strong the enforcement mechanism will prove to be. Parties must pay a fine and are then given 15 days to fix the quota violation, but the law does not state that the party cannot run the ballot anyway if they choose not to fix the violation.

¹² Applies to party primaries only. Increased to 50 percent in 2012 and applied to the 2014 elections.

¹³ More sophisticated statistical analyses support this conclusion, as well. See, particularly, Schwindt-Bayer, *Political Power and Women's Representation in Latin America*; Jones, "Gender Quotas, Electoral Laws, and the Election of Women"; Schwindt-Bayer, "Making Quotas Work."

¹⁴ Nicaragua's quota passed in 2012 and will apply to the 2016 legislative election. The major parties in Nicaragua, however, have had voluntary quotas for several years, leading to the high representation of women in 2015.

¹⁵ See the electoral reform bill, Boletín #9326-07, for more information (http://www.camara.cl/pley/pley_detalle.aspx?prmID=9742). The quota part of the new law makes changes to the Chilean electoral code, political party code, and political primary law.

¹⁶ Table 2 includes Chile to facilitate comparison with other quotas in the region.

¹⁷ Wilma Rule, "Electoral Systems, Contextual Factors and Women's Opportunity for Election to Parliament in Twenty-Three Democracies," *Western Political Quarterly* 40, no. 3 (1987); Richard E. Matland, "Putting Scandinavian Equality to the Test: An Experimental Evaluation of Gender Stereotyping of Political Candidates in a Sample of Norwegian Voters," *British Journal of Political Science* 24, no. 2 (1994).

¹⁸ Susan Franceschet and Jennifer M. Piscopo, "Deepening Democracy? Electoral Reforms and Gender Quotas in Chile," *Panoramas*, February 18, 2015, <http://www.panoramas.pitt.edu/content/deepening-democracy-electoral-reforms-and-gender-quotas-chile>.

¹⁹ Ibid.