

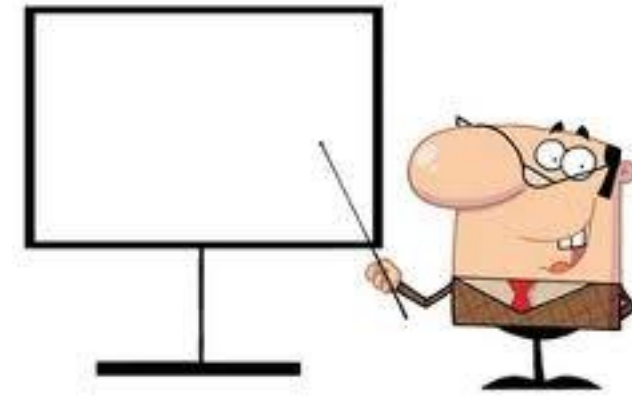
Covers 2016, 2017, 2018, 2019 up to July 2020 cases

Election Law Review

Alberto C. Agra

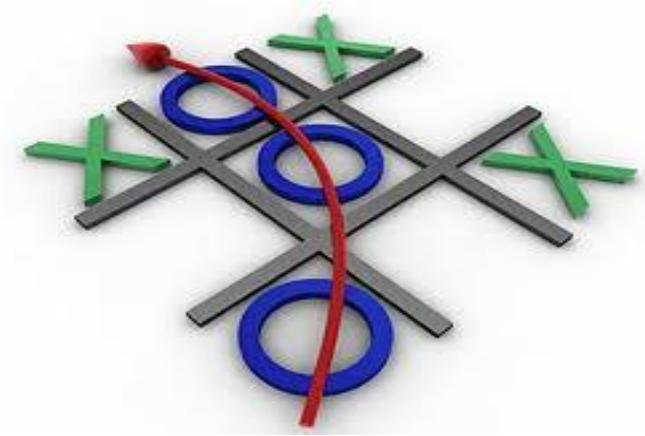
May 16, 2021

Areas



- [1) Philippine Elections
- [2) Commission on Elections and Election Tribunals
- [3) Voters and Voter Registration
- [4) Elective Officials and Candidates
 - [4.1) Party-List System
- [5) Campaign
- [6) Contributions and Expenditures
- [7) Postponement and Failure of Elections
- [8) Automated Elections
- [9) Pre-Proclamation Cases
- [10) Post-Proclamation Cases
- [11) Election Offenses
- [12) Dispute Resolution

1) Election Laws



1. 1987 Constitution
2. Omnibus Election Code (B.P. 881)
3. Automated Election Law (R.A. 9369 amending R.A. 8436)
4. Synchronized Elections Act (R.A. 7166)
5. 1991 Local Government Code (R.A. 7160)
6. Initiative and Referendum (R.A. 6735)
7. Party-List System Act (R.A. 7941)
8. Fair Election Act (R.A. 9006)
9. Voter's Registration Act of 1996 (R.A. 8189)
10. Overseas Absentee Voting (R.A. 10590 amending R.A. 9189)
11. Biometrics (R.A. 10367)
12. Lone Candidate in Special Elections (R.A. 8295)
13. Official Sample Ballots (R.A. 7004)
14. Citizenship Retention and Re-acquisition Act (R.A. 9225)

1) Philippine Elections



- General
- Free
- Direct
- Equal
- Secret
- Choices (Person/ Policy/
Plebiscites – LGU
conversion)
- Automated (or Manual)
- All Levels
- Synchronized conduct
- Regular
- Plurality Formula (and
proportional representation)
- Regulated by Law
- Supervised by an independent
body
- CHOPFE: Credible, Honest,
Orderly, Peaceful and Free
Elections
- Regulated Contributions and
Expenditures
- Participated in by Political Parties
- Public Disclosures

2) Commission on Elections



- **Independent 7-Person Constitutional Body** (administrative agency, public office, 2 levels, fixed term, permanent appointments, Chairperson as Head of Agency)
- **Plenary authority** to decide all questions affecting elections except the question as to the right to vote (qualifications of voters); **commits grave abuse of discretion when it dismisses an initiative petition on the ground that there were no funds allocated for the purpose; has the power to determine whether the propositions in an initiative petition are within the powers of a concerned *sanggunian* to enact**
- **Enjoys Fiscal Autonomy** (automatic and regular release of budget; can augment items in its appropriations from its savings)
- **Schedule elections** (other than 2nd Monday of May) **(1) when the law specifically sets date; and (2) when the law delegates the setting of the date of the elections to COMELEC.**

2) Commission on Elections



- **Wide** discretion in adopting means to carry out its mandate of ensuring **CHOPFE**; not straitjacketed by procedural rules but **cannot amend laws; fixing length and start date of election period outside the 120-day default period does not amount to undue delegation**
- **Enforcement Power:** All election laws (persons and policies); exclusion of others; **enforce, not amend laws; power to investigate implied from power to enforce**
- **Judicial Power:** Qualifications and Election Contests (excludes Suffrage)
- **Quasi-Legislative:** issuance mandatory - RA 7166 uses the word "shall" to impose upon the COMELEC the duty to issue rules and regulations to implement the law (bearing of firearms)

2) Commission on Elections



- **Control and Supervision:** over BEIs and BOCs, **over election officers since its agents**
- **Jurisdiction:** Original (Regional, Provincial and City); and Appellate (Municipal, Barangay and Sangguniang Kabataan)
- **Remedies:** En Banc (MR, administrative) and Division (1st instance, judicial)
- **Process:** Division - MR to En Banc then Certiorari to SC
- **Contempt:** Judicial Proceedings (not Administrative); **Indirect contempt for non-appearance pursuant to Comelec's Constitutional power to investigate and CHOPFE**

2) Commission on Elections



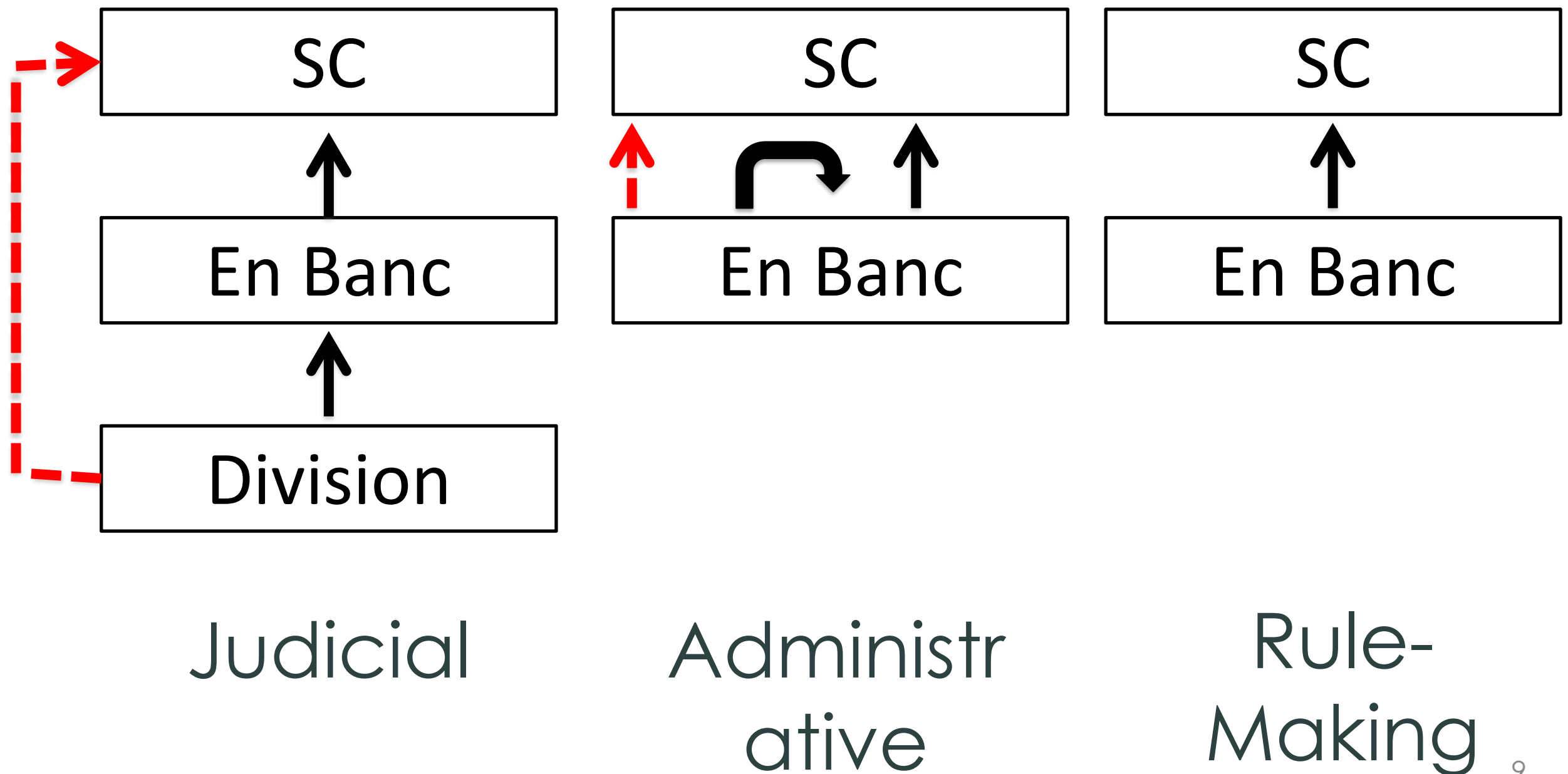
Judicial (Division)

- Disqualification
- Election Protest
- Quo Warranto
- Pre-Proclamation
- Annulment of Proclamation
- Intra- and inter-party
- Cancellation of a certificate of candidacy
- Leadership (not expulsion of member)
- Registration of Political Parties

Administrative (En Banc)

- Canvassing
- Failure of Elections
- Postponement of Elections
- Election Offense (filing of information)
- Annulment of Book of Voters
- Cancellation of certificate of candidacy based on final judgment of conviction with ancillary penalty of DQ
- Allocation of party-list seats
- Accreditation of Major Parties

2) Commission on Elections



2.1) Public Offices



Branch	Public Office
Regular Courts	<ul style="list-style-type: none">○ Supreme Court (judicial review over SET and HRET)○ Court of Appeals○ Regional Trial Court○ Municipal Trial Court
Tribunals	<ul style="list-style-type: none">○ Presidential Electoral Tribunal○ Senate Electoral Tribunal (exclusive and only task)○ House of Representatives Electoral Tribunal (assumes jurisdiction when proclaimed and taken oath; can annul results in precincts; members from Judicial and Legislative branches indispensable for quorum)
COMELEC	<ul style="list-style-type: none">○ National Board of Canvassers○ En Banc○ Division (can become final without en banc confirmation)○ Board of Canvassers○ Board of Election Inspectors○ Law Department
Executive	<ul style="list-style-type: none">○ Department of Justice

2.1) Electoral Offices



	Elective Positions							
Cases	<u>Pres/ VP</u>	Senators	District Reps.	Part-List Reps.	Regional Officials	Provincial Officials	City Officials	Municipal Officials
Disqualification	<u>Comelec</u> Division							
Proclamation	Congress	<u>Comelec</u> En Banc	Local/ District Board of Canvassers	<u>Comelec</u> En Banc	<u>Comelec</u> En Banc	Provincial Board of Canvassers	City Board of Canvassers	Municipal Board of Canvassers
Annulment of Proclamation	[Congress]	[<u>Comelec</u> En Banc]	[<u>Comelec</u> Division]	[<u>Comelec</u> En Banc]	<u>Comelec</u> Division			
Election Protests	Presidential Electoral Tribunal	Senate Electoral Tribunal	House of Representatives Electoral Tribunal	<u>Comelec</u> Division				Regional Trial Court
Quo Warranto								
Postponement of Elections	COMELEC En Banc							
Failure of Elections								
Election Offenses	[Immunity after Proc.]	<u>Comelec</u> Law Department or Prosecutors (<u>Comelec</u> En Banc filing of Information; Regional Trial Court for Trial)						

3) Voters: Concept



- **What?** Suffrage is a Right (not an obligation), reckoned on election day
- **Who?** Qualifications defined in Constitution; Disqualifications defined in Statute; Allow Absentee Voting, Dual Citizens, Disabled and Illiterates to Vote
- **How?** Procedural Requirements allowed to be imposed, Substantive not allowed
- **Reckoning Date of Qualifications/ Right of Suffrage?** Election Day (distinguished from Right to Register which is reckoned on date of application)

3) Voters: Qualifications



- [**Filipino Citizen**
- [At least 18 years of **age** on election day
- [**Resident in Philippines** for at least 1 year prior to election day (domicile; permanent residency)
- [**Resided in place** wherein propose to vote for at least 6 months prior to election day (domicile, permanent or temporary residency); multiple residency allowed but only singular registration
- [**Free** from Disqualifications
- [In order to vote, must be a **registered voter**

3) Voters: Disqualifications



- [Sentenced by final judgment – imprisonment of 1 year or more
- [Sentenced to suffer accessory penalty – political rights
- [Adjudged by final judgment – crime involving disloyalty
- [Court-declared insane and incompetent persons
- [*Note: post-registration circumstances*]

3) Voters: Registration



- **Nature:** Continuing
- **Listing:** Computerized List at all Levels
- **Number:** 200 Voter-Precinct (several precincts can be clustered); precinct – voting unit
- **Biometrics:** Mandatory for new; for registered voters, validation
- **Changes:** Permanent but subject to changes (+ or -)

3) Voters: Registration



Addition (+)

- New Voters
- Transfer of Residence to
- Reactivation
- Inclusion

Deletion (-)

- Cancellation (death)
- Transfer of Residence from
- Deactivation
- Exclusion
- Annulment of Book of Voters

3) Voters: Deactivation



- [Disqualified to Vote]
- [Failed to Vote in 2 preceding elections]
- [Registration excluded by the Court]
- [Lose Filipino Citizenship]
- [Failure to have biometrics taken (validation)]
- [*Note: not permanent disenfranchisement; can apply for reactivation*]

3) Voters: Opposition



- **What?** Applications not yet resolved
- **Where Oppose?** Election Registration Board
- **Who may Oppose?** Voter, Candidate or Political Party
- **When?** Specified Period
- **How Oppose?** File Written Opposition/ Challenge
- **Why Oppose?** Not Qualified, Fictitious
- **Appearance?** Mandatory if application opposed

3) Voters: Inclusion/ Exclusion



- **What?** Applications already acted upon
- **Where File?** MTC (not Comelec), then RTC (not Comelec), then SC (question of law)
- **Grounds?** Inclusion - Disapproval or Name Stricken Out (not failure to apply); Exclusion - Not Qualified or Fictitious Voter
- **When?** Specified Period

3) Voters:

Annulment of Book of Voters



- **Annul What?** Book of Voters per precinct
- **Where File?** Comelec
- **When Filed?** Normally, after period to file inclusion/exclusion lapses
- **Who Files?** Any Voter, EO or Party
- **What Grounds?** (1) Book Prepared Improperly, Preparation Attended with Vice or Fraud, and (2) Book contains Statistically Improbable Data (procedural, not substantive, not qualification of voters)

3) Voters: Election Day



Illegal Voter

- [Not registered; Use another name; Disqualified; Multiple Registrant (*allowed to vote if properly identified by BEI*)

Illegal Act

- [Vote-Buying; Vote-Selling; Vote-Betting: Promise to induce or withhold vote (*allowed to vote if take oath before BEI*)

3) Voters - Summary



What Cases	When Raised	What Grounds	Where File	Effect if Granted	Effect if Denied
<i>Opposition</i>	Application pending	Not qualified Fictitious	ERB	Application rejected – excluded	Application accepted – included
<i>Inclusion</i>	Application acted upon - Rejected	Disapproved Name stricken out	MTC to RTC to SC/ CA	Voter included in list – can vote	Voter remains not listed – cannot vote
<i>Exclusion</i>	Application acted upon – Accepted	Not qualified Fictitious	MTC to RTC to SC/ CA	Voter removed from list – cannot vote	Voter will remain in list – can vote
<i>Annulment</i>	Pre-election day	Flaw or vice in BoV preparation	Comelec En Banc	BoV annulled, voters cannot vote	BoV confirmed valid, voters can vote
<i>Challenges</i>	Upon casting	Illegal Voter Illegal Act	BEI	Not allowed to vote	Voter can vote

4) Officials: Elective



National Office (Constitutional – office and officer)

—President; Vice-President; Senators (24; $\frac{1}{2}$ every election); Representatives (District and Party-List)

Local Office (Constitutional – office; Statutory - officer)

—LCE: Regional Governor, Provincial Governor, City or Municipal Mayor and Punong Barangay

—VLCE: Vice-Governor and Vice-Mayor; Sanggunian Members

4.1) Types of Representatives



<i>Features</i>	<i>District Representatives</i>	<i>Party-List Representatives</i>
<i>Candidate</i>	Natural Person	Party or Organization
<i>Persons</i>	Directly, Natural Persons	Indirectly
<i>Portion of House</i>	80%	20%
<i>Formula</i>	Plurality	Proportional Representation
<i>Electorate</i>	District/ Local	National
<i>Nominee Qualifications</i>	Natural-Born; 25 yo; Literate; 1 year residency; Registered in District	Same; except 25-30 if youth; registered anywhere

4.1) Number of PL Seats



- 20% of House of Representatives
- All seats are “reserved”
- All seats must be filled up
- Formula: $(\# \text{ of DRs} / 0.8) \times 0.2$
- In 2019:

$$238 / 0.8 \times 0.2 = 59.5$$

(59 seats per Comelec)

4.1) Qualified Participants



National Parties/ Organizations	<ul style="list-style-type: none">• need not be sectoral• geographical presence/ track record
Regional Parties/ Organizations	<ul style="list-style-type: none">• need not be sectoral• geographical presence/ track record
Sectoral Parties/ Organizations	<ul style="list-style-type: none">• principal advocacy• no need to show track record• represents 12 marginalized sectors• list of 12 not exclusive
Political Parties	<ul style="list-style-type: none">• Register under system• Not field district representatives• If field district representatives, through sectoral wing

Not SEC, “transferred” to Comelec (2019 Revised Corporation Code)

Nominees

1. Membership: Belong to accredited party or organization *and*
 - a) Must belong to the sector (organic) or
 - b) Must have track record of sectoral advocacy (synthetic)
2. Nominees must consent in writing
3. Possess qualifications under the Constitution
4. Qualifications/ fitness determined by Party (internal matter unless nominee disqualified)
5. Submit List of 5 Nominees

Nominees

6. Continuing requirement from appointment and during entire tenure (qualifications, party membership)
7. Nominated by 1 Party only
8. Not losing candidate in 2016 elections (any position)
9. List in order of priority cannot be altered except when nominee:
 - a) Dies
 - b) Withdraws (party cannot unilaterally withdraw)
 - c) Incapacitated, then substituted by next in list

4.1) Disqualified Parties



Religious Sect

Advocates
Violence

Adjunct of,
Funded by
Government

Foreign or
Foreign-
Assisted Party

4.1) Statutory Thresholds



2% of 2nd
votes per seat

Maximum
3 seats (only 2
parties)

Real Threshold: <2%, fill up 20%

Procedure in Seat Allocation

1. Rank parties according to plurality
2. Determine 1st Party (most number of votes)
3. Calculate percentage per Party: # of votes of Party/ total # of 2nd votes
4. Parties that obtain at least 2% gets 1 guaranteed seat (*1st round*)
5. No rounding-off
6. For additional seats (*2nd round*), # of votes of that party/ # of votes of first party x number of seats of 1st party
7. Only Top 2 Parties can get 3 seats each

4) Officials: Qualifications



List: Set by the Constitution (national) and statutes (local)

- [Citizenship (naturalized: oath and renounce; foundling presumed natural-born unless proven otherwise; clerical error in date of notarization of Affidavit of Renunciation [dual citizenship] not fatal)
- [Age
- [Residency (physical presence may be broken; not require 24/7)
- [Registered Voter
- [Literacy
- [Free from Disqualifications
- [Not perpetually disqualified (grave misconduct; repeated failure to file SOCE)
- [Undertake Drug Test under CDDA OF 2002, unconstitutional]
- [National Office: Finite/ exclusive list (local office: inclusive list)

Procedure: Electoral aspect of DQ (administrative proceeding): summary

4) Officials: Qualifications



<i>Elective Position</i>	<i>Qualifications</i>					<i>Term (Years)</i>	<i>Term Limit</i>
	<i>Citizenship</i>	<i>Age</i>	<i>Literacy</i>	<i>Voter</i>	<i>Residency</i>		
<i>President and Vice President</i>	Natural-Born	40	Read and Write	Registered	10 years in <u>Phl</u>	6	P-1 VP-2
<i>Senator</i>	Natural-Born	35	Read and Write	Registered	2 years in <u>Phl</u>	6	2
<i>District Representatives</i>	Natural-Born	25	Read and Write	Registered in District	1 year in District	3	3
<i>Party-List Representatives</i>	Natural-Born	25 (if youth: 25-30)	Read and Write	Registered	1 year in <u>Phl</u>	3	3
<i>ARMM Governor</i>	Natural-Born	35	Read and Write	Registered in ARMM	5 years in ARMM	3	3
<i>ARMM Legislators</i>	Natural-Born	21	Read and Write	Registered in District	5 years in District	3	3
<i>Local Officials</i>	Citizen	<u>Prov/HUC</u> : 23 Other Mayor/ VM: 21 Others: 18	Read and Write Filipino or Local dialect	Registered in Locality	1 year in Locality	3	3

4) Officials: Candidate



- **Definition:** (1) Seeks public office, (2) files certificate of candidacy *and* (3) campaign period has started (under automated system) – operative fact;
October 11 to 17, 2018 for May 13, 2019 elections
- **Nature of CoC:** only 1 CoC; announce and declare eligible; if CoC void, candidate not considered a candidate from the beginning even if cancelled after elections; perpetual disqualification [guilty of grave misconduct] renders CoC void, cannot be re-elected
- **Ministerial Duty:** If filed in due form, ministerial duty to receive COC; Comelec may look into patent defects (appearing on the face) of CoCs
- **Effect Prior to Campaign Period:** Not a candidate (*not liable for unlawful acts and omissions before becoming a candidate, i.e. before start of campaign period*)
- **Effect of Filing:** On Tenure of Incumbents (elective – remain in office regardless of position held and vied for; appointive – *ipso facto* resigned)

35

4) Officials: Substitution



- **Grounds:** (1) Death, (2) Withdrawal, and (3) Disqualification (*not allowed if:* (a) violate term limit; (b) lack of residency; (c) CoC denied due course or cancelled – (c.1) nuisance and (c.2) material misrepresentation); if invalid substitution – not considered a candidate [*Note; substitution only allowed if ground to disqualify existed after filing of CoC*]
- **Who?** Substitute must be Qualified; **not allowed for independent candidate (PP/ Coalition can only nominate 1)**
- **When?** Up to mid-day of election day (**if withdrawal, not after November 29, 2018; death or final DQ decision, mid-day of May 13 provided same surname**)
- **Substitute?** Qualified (not disqualified) and Same Party
- **Limitations:** Substituted candidate can still run for other elective positions; Withdrawal not affect liabilities

4) Officials: Disqualifications



- Purpose of DQ: prevent candidate from running, or if elected, from serving; **DQ distinct from administrative case**
- Lack qualifications/ possess some disqualifications
- Violate Term Rule (1-2-3 terms)
- Commission of an election offense
- Nuisance Candidate
- Sentenced by Final Judgment (accessory penalty)
- Willfully Commits Material Misrepresentation
- No valid, timely and properly filed certificate of candidacy
- Grounds under the 1991 LGC, for local elective officials

4) Officials: Disqualifications



Lack of Qualifications (fact prevails over statements in CoC)

- **Pleading?** Petition to Disqualify a Candidate
- **Grounds?** Constitution or Statutes; for local officials under OEC and LGC (e.g. fugitives); suspension not a ground since law provides for removal by final judgment
- **Where File?** Comelec Division
- **When File?** Before Proclamation
- **Process?** Summary, Due Process, requires a complaint/ petition; not motu proprio unless there is final judgment
- **If Not File?** Quo Warranto

4) Officials: Disqualifications



Commission of Election Offenses

- **Pleading?** Petition to Disqualify a Candidate
- **What Offenses?** Enumerated in Section 68 OEC (2 options – DQ case or Election Offense criminal case): Vote-Buying, Terrorism, Unlawful Expenditures, Unlawful Campaign, Coercion of Subordinates, Threats, Prohibition against Release of Public Funds (other election offenses not listed in Section 68 – file EO case – RTC hears)
- **Where File?** Comelec Division
- **When File?** Before Proclamation
- **If Not File?** Election Protest; Election Offense

4) Officials: Disqualifications



Nuisance Candidate

- **Petition?** Petition to Declare a Candidate a Nuisance Candidate
- **Who Is/ Considerations?** Campaign Capability, Intention, Performance, Exposure, Platform, Party Affiliation, Organization, Profession, Income, Health, Education, Name
- **Who Files?** Real Parties-in-Interest, i.e., those with similar names with nuisance candidates, others are silent observers; vote for nuisance will be credited to legitimate candidate since nuisance was never a candidate; ballots must be examined then added to legitimate candidate
- **Where File?** Comelec Division, not Electoral Tribunals
- **When File?** Within 5 days from Last Day Filing of Certificate of Candidacy
- **If Not File?** No remedy

4) Officials: Disqualifications



Willful Material Misrepresentation

- **Pleading?** Petition to Deny Due Course to or Cancel a Certificate of Candidacy
- **What?** Misrepresentation must be (1) Material (pertains to Qualifications and Disqualifications, **residency; knew conviction of crime involving moral turpitude (libel); violation of 3-term rule [not petition to disqualify]**; not material if pertaining to surname, profession, political party affiliation, civil status, legitimacy; (2) Willful/ Deliberate/ Intent to defraud voters; (3) not actually qualified
- **Where File?** Comelec Division (**summary nature, rule on patent misrepresentations, not make conclusions of law contrary to jurisprudence**)
- **When File?** **25 days from Filing of CoC**
- **If Not File?** Quo Warranto

4) Compare and Contrast



<i>Aspects</i>	<i>Grounds</i>			
	<i>Lack of Qualifications, etc.</i>	<i>Commission of an Election Offense</i>	<i>Material Misrepresentation</i>	<i>Nuisance Candidate</i>
<i>Pleading</i>	Petition to Disqualify a Candidate	Petition to Disqualify a Candidate	Petition to Deny Due Course to or Cancel a Certificate of Candidacy (CoC)	Petition to Declare a Candidate as a Nuisance Candidate (or <u>Comelec</u> initiates)
<i>Allegations</i>	<ol style="list-style-type: none"> 1. Candidate does not possess all qualifications 2. Candidate possesses some or all of disqualifications 3. Candidate violated rule on term limits 	<p>Candidate committed any of enumerated election offenses:</p> <ol style="list-style-type: none"> 1. Vote-Buying 2. Terrorism 3. Unlawful Expenditures 4. Unlawful Campaign 5. Coercion of Subordinates 6. Threats 7. Prohibition against Release of Public Funds 8. Failure to submit Statement of Contributions and Expenditures in at least 2 elections 	<ol style="list-style-type: none"> 1. Misrepresentation is material, i.e., qualification-related 2. Candidate intended to defraud the voters (deliberate) 3. Candidate is not actually qualified 	<p><u>CoC</u> has been filed to:</p> <ol style="list-style-type: none"> 1. <u>put</u> the election process in mockery or disrepute 2. <u>cause</u> confusion among the voters by the similarity of the names of the registered candidates <p>Candidate no bona fide intention since no/ not:</p> <ol style="list-style-type: none"> 1. Campaign Capability 2. Bona fide intention to run for office 3. Track Record 4. Exposure 5. Platform 6. Party Affiliation 7. Funds 8. Good Health 9. Appropriate education

4) Compare and Contrast



	<i>Grounds</i>			
<i>Aspects</i>	<i>Lack of Qualifications, etc.</i>	<i>Commission of an Election Offense</i>	<i>Material Misrepresentation</i>	<i>Nuisance Candidate</i>
<i>Where File</i>	<u>Comelec</u> Division			
<i>When File</i>	Any time before proclamation	Any time before proclamation	Within 25 days from Filing of <u>CoC</u>	Within 5 days from Last Day Filing of Certificate of Candidacy
<i>Who Files</i>	Registered voter or registered political party	[Registered voter or registered political party] <u>Comelec</u> Campaign Finance Office, SEC-registered NGOs and CSOs	Registered voter or registered political party	Registered candidate for the same position
<i>Remedy After Period</i>	Quo <u>Warranto</u> case	Election Offense	Quo <u>Warranto</u>	No remedy
<i>Substitution after Resolution</i>	Not allowed	Allowed	Not allowed	Not allowed

4) Effect of DQ



Succession or Special Elections

- Commission of an election offense

Note:

- Succession: P/ VP and local officials
- Special elections: Congress

“2nd Placer” is 1st Placer

- Violation of 3-term limit
- Not a voter (inclusion denied with finality)
- Conviction of criminal offense involving moral turpitude
- Not a Filipino citizen
- **Dual Citizen**
- Final decision on DQ before elections

[Note: Votes of 1st placer = stray

Votes of nuisance = added to legitimate]

5) Campaign: Concept



- **Definition:** *Act designed to promote the election or defeat of a candidate (candidate-specific); satire of political parties on social issues not election propaganda/ freedom of speech (not follow campaign rules)*
- **Operative Act:** *Intent/ Design material (not all acts of beneficence are considered campaigning) and Period (start of campaign)*
- **Application:** All Candidates for All Elective Offices
- **Framework:** Regulated but Liberalized
- **Period:** 90 days for nationally-elected and 45 days for locally-elected (February 12 and March 29 for May 13, 2019 elections)

5) Campaign: Allowable Forms



- [Forming Organizations
- [Holding Rallies
- [Making Speeches
- [Distributing Campaign Materials
- [Soliciting Votes
- [Publishing Advertisements

5) Campaign: Propaganda



- [Paid Political Advertisements (Comelec debates could be live-streamed)
- [Free Space and Airtime
- [Use of Gadgets and Billboards (prohibition repealed by Fair Election Act)
- [Private Poster Areas
- [Posting in Private Places, PUVs and terminals (requires consent)

5) Campaign: Forms



- [Printed Materials (8.5" W x 14" L)
- [Letters
- [Posters (2' x 3') in Poster Areas (12' x 16')
- [Rally Streamers (3' x 8')

5) Campaign: Paid Ads



- **Print:** 1/4th page in broadsheet; ½ in tabloid 3x a week
- **Television:** 120 minutes (for national); 60 minutes (for local) per station **(not overall)**
- **Radio:** 180 minutes (for national); 90 minutes (for local)
- *(Note: being in news not counted)*

5) Campaign: Unlawful Acts



- [Foreign Intervention
- [Removal or Destruction of Lawful Propaganda
- [Materials not Disclose Payor
- [Exceed Limits (Time and Space)
- [Transportation, Foods and Drinks During Rallies
- [Movie or Video of or by Candidate

6) Prohibited Contributions



- [All SEC-registered corporations (repealed by RA 11232[?])]
- [Financing Institutions]
- [Public Utility Operator]
- [Natural Resources Explorer]
- [Government Contractors]
- [Franchise Holders]
- [Donee Institution from Government (P100,000)]
- [Donee Educational Institutions (P100,000)]
- [Foreigners/ Foreign Corporations (reiterated under RA 11232)]
- [Civil Servants and AFP]

6) Other Prohibited Acts



- [Not reveal true name of contributor
- [Not report all contributions
- [Exceed Limits (P10, P5, P3)
- [Not file Statement of Contributions and Expenditures (perpetual DQ for repeated failure)
- [Expenditures made by unauthorized persons

6) Lawful Expenditures



- [Use of Facilities
- [Travel
- [Compensation
- [Communications
- [Written Materials
- [Pollwatchers
- [Office/ HQ
- [Advertisements
- [Meetings/ Rallies
- [Counsel*
- [Copying of List of Voters*
- [Sample Ballots*
- [Volunteers

(- not included in cap)*



7) Postponement of Elections

- **Grounds:** (1) Force majeure, (2) Violence, (3) Terrorism, (4) Loss or Destruction of Election Paraphernalia, and (5) Analogous Causes
- **Extent:** Serious *and* Impossible to have free and orderly elections
- **Conditions:** Grounds must exist before end of voting/transmission
- **Authority:** Comelec en banc (petition or motu proprio); not BEI or election officers
- **Result:** Special Elections within 30 days from cessation



7) Failure of Elections

- **Grounds:** (1) Force majeure, (2) Violence, (3) Terrorism, (4) Fraud, and (5) Analogous Causes
- **Extent:** Failure to elect *and* affect results of elections (materiality); **relates to entire elections**
- **Examples:** *Failure* - transfer of venue of counting without notice, ballots replaced/ burned; *No Failure* – voting resumes after sporadic violence/ gun fire, fake ballots, landslide results, vote-buying, destruction of copies of ERs; **convincing evidence showing will of people muted by causes**
- **Conditions:** Election not held or suspended, After voting, During preparations or transmission of election returns, Canvassing
- **Authority:** Comelec en banc (petition)
- **Result:** Special Elections within 30 days from **cessation (objective of declaration)**



7) Compare and Contrast

	<i>Postponement of Elections</i>	<i>Failure of Elections</i>
Legal Bases	Section 5, Omnibus Election Code Section 4, RA No. 7166	Section 6, Omnibus Election Code Section 4, RA No. 7166
Grounds	<ol style="list-style-type: none"> 1. Force Majeure 2. Violence 3. Terrorism 4. Loss or Destruction of Election Paraphernalia 5. Analogous causes 	<ol style="list-style-type: none"> 1. Force Majeure 2. Violence 3. Terrorism 4. Fraud 5. Analogous causes
Extent of Cause	Serious and Impossibility to have free and orderly elections	Failure to elect and affect results of elections (illegality must affect 50% of the votes)
Basis	Expectancy/ potential Effect	Actual outcome/results
Conditions	Grounds must exist before voting	<ol style="list-style-type: none"> 1. Election not held or suspended 2. After voting or during preparation 3. Transmission 4. Canvassing
Area	Any political subdivision	Any polling place
Procedural Requirements	<ol style="list-style-type: none"> 1. <u>Motu Propio</u> or by Verified Petition 2. Notice and Due Process 	<ol style="list-style-type: none"> 1. Verified Petition 2. Notice and Due Process
Authority	<u>Comelec</u> En Banc	
Effect if Petition Granted	<ol style="list-style-type: none"> 1. Postpone elections 2. Conduct elections reasonable close to elections which was not held; but not later than 30 days from cessation of the cause 	<ol style="list-style-type: none"> 1. Declaration of failure of elections 2. Holding or continuation of elections reasonably close to elections which was not held; but not later than 30 days from cessation of cause

8) Automated Elections



- **When:** 2nd Monday of election year (May 13, 2019)
- **Statutory Bases:** RA 9369 amending RA 8436
- **Automated Election System:** voting, counting, consolidating, canvassing, and transmission (not proclamation)
- **Paper-Based or Direct Recording Election System:** Ballots, Election Returns, Certificate of Canvass, Statement of Votes (25% shading threshold)
- **Comelec Discretion:** AES or AESs, Paper-Based or Direct Recording

8) Automated Elections



— **Features:** Use of Ballots, Stand-alone machine, with Audit Trails, Minimum Human Intervention and Security Measures

— **Processes:**

1. Casting, Counting and Transmission at Precinct Level
2. Consolidation and Proclamation at Canvassing Levels

8) Vote-Counting Machines



- USES PASSWORDS & PERSONAL IDENTIFICATION NUMBERS (PIN)
- USES 3 DIGITAL SIGNATURES



8) Automated Elections



- **Precinct-Level Result:** Printing of Elections Returns (30 copies) then Electronic Transmission to Board of Canvassers; Results loaded in Data Storage Devices
- **Canvassing at BoC:** Consolidation of Results in Data Storage Devices then Electronic Transmission to Comelec (Senate and Party-List) and Congress (President and Vice-President) and Proclamation
- **Canvassing Periods:** May 13 to 16, 2019 (city/municipal); May 17 to 19, 2019 (others)

8) Automated Elections



- A. **Preliminaries: 5:00 to 6:00 a.m.**
 - 1. BEI sets up Polling Place
 - 2. Pollwatchers present credentials to BEI
 - 3. BEI posts Precinct Certified Voters List (PCVL)
 - 4. BEI shows sealed Vote Counting Machine (VCM) and empty Ballot Box to public
 - 5. BEI turns on Vote Counting Machine (VCM) and logs in

8) Automated Elections



- B. **Voting Proper:** 6:00 a.m. to 6:00 p.m. (2019)
1. Voters vote in the order of arrival
 2. Voter approaches BEI
 3. BEI verifies Voter identity
 4. BEI checks if fingers unstained with Indelible Ink (if stained, cannot vote)
 5. BEI announces name of Voter
 6. If no challenge or challenged dismissed, Voter signs in Election Day Computerized Voters List (EDCVL)

8) Automated Elections



7. BEI Chair:
 - a) Signs Ballot in space provided
 - b) Gives Ballot inside Secrecy Folder and Marking Pen to voter
8. Voter votes by shading circles
9. Voter inserts Ballot in the VCM
10. Ballot is accepted or rejected (given another Ballot):
 - a) Misread Ballot (re-fed in 4 different orientations)
 - b) Previously Read Ballot (diverted to Bin for Rejected Ballot)
 - c) Invalid Ballot

8) Automated Elections



11. BEI applies Indelible Ink
12. Voter gets Voter Receipt
13. Voter returns Secrecy Folder and Marking Pen
14. Voter departs
15. Illiterates and Persons with Disability can be assisted by relative within 4th degree, person of confidence or BEI
16. No premature announcement of status of voting before close of polls

8) Automated Elections



C. Closing of Polls: 6:00 p.m. up

- 1.If there are Voters within 30-meter radius, they will be allowed to vote (must fall in line, fill-up sheet and called)
- 2.BEI prints 8 copies of National Election Returns (NERs) and 8 copies of Local Election Returns (LERs)
- 3.VCM transmits results to:
 - a) Comelec
 - b) Transparency Server (KBP)
 - c) City/ Municipal Board of Canvassers (C/ M BoC)

8) Automated Elections



4. VCM prints 22 copies of NERs and 22 copies of LERs
5. BEI signs all ERs and affixes thumbmarks and places 8 NERs and 8 LERs inside Envelopes
6. Distribute all 30 NERs and 30 LERs (Next/ Higher Level of Canvassing, National and Local Political Parties, Media, Citizens' Arm, Ballot Box, Posted on Wall)
7. BEI shall post 1 copy of ER in a conspicuous place inside polling place

8) Automated Elections



8. VCM prints Statistical and Audit Reports
9. Unused Ballots shall be disposed (torn lengthwise and placed in Envelopes)
10. BEI removes SD card (Slot A) and place inside Envelope (SD is Slot B not removed)
11. VCM shall be turned over to Logistics Provider or Election Officer
12. Deliver Ballot Box to the Local Treasurer

9) Pre-Proclamation Cases



- **Aspects:** (1) BoC-related (BoC or Comelec division, concurrent) and (2) Results-related (BoC)
- **Allowed:** Objections pertaining to Proceedings and Composition of BoC; Pollwatchers-related; Data-Storage Delayed, Destroyed, Falsified (*before canvass*)
- **Not Expressly Allowed:**
 1. Material Defects, Manifest Errors, Omission, Discrepancy (not allowed under Comelec Resolution for AES, allowed for manual)
 2. Rules of Appreciation; Violence; Voting Procedure; Eligibility of Voters (whether manual or AES since evidence aliunde)

10) Post-Proclamation: Election Protests



- **Grounds:** Fraud and Irregularities in Casting, Counting and Canvassing
- **Documents in Question/ Evidence:** Depends on grounds - Ballots (or decrypted ballot images), ERs, CoCs and Data-Storage Devices
- **Venue:** P/VP (PET); Senators (SET); Representatives (HRET); Regional; Province; City (Comelec Division); Municipality (RTC); Barangay (MTC)
- **Requirements:** Filed by candidate; Within period; Protestee proclaimed; Protestant admits legality of proclamation; Payment of filing fee; Allegations of fraud; Identify precincts; Verified; Certificate of non-forum shopping (liberally construed)

10) Post-Proclamation: Election Protests



- [Material Qualifications vs. Will of Electorate: former
- [Procedure: Revision; Trial; range of shading thresholds; objective of the revision process of mimicking or verifying/confirming how the VCMs read or counted the votes can be achieved by referring to the ERs generated by the VCMs; decrypted ballot images where the integrity of the ballots and the ballot box was not preserved; extreme caution in invalidating ballots
- [If prosper: protestee removed, true winner proclaimed; rendered moot upon the occurrence of a subsequent election since it is impossible to assume office for the previous term

10) Post-Proclamation: Annulment of Proclamation



- **Grounds:** Proclamation based on irregular and illegal canvass
- **Period to File:** 10 days from proclamation
- **Venue:** Comelec Division
- **Effect:** Proclamation annulled; re-canvass

10) Post-Proclamation: Quo Warranto



- **Grounds:** Disloyalty to Republic; Ineligibility
- **Venue:** Same as Election Protest
- **If prosper:** Respondent ousted; special elections or succession
- **Covers Impeachable Officers:** quo warranto and impeachment can proceed independently and simultaneously; Constitution does not foreclose a quo warranto action against impeachable officers; To subscribe to the view that election of impeachable officers are outside judicial review is to cleanse their election of any possible defect pertaining to the Constitutionally-prescribed qualifications

11) Election Offenses



PHASE	ELECTION PERIOD							
	PRE-ELECTION DAY		ELECTION DAY			ELECTION DAY +1		POST-PROCLAMATION
	CAMPAIGN PERIOD	EVE	VOTING	CASTING	TRANSMISSION	CANVASSING	PROCLAMATION	
ELECTION OFFENSES	VOTE BUYING / SELLING OR CONSPIRACY TO COMMIT ACT							
	WAGERING UPON RESULTS OF ELECTION							
	COERCION OF SUBORDINATES TO INFLUENCE VOTE							
	THREATS, FRAUD, OR TERRORISM TO INFLUENCE VOTE							
	COERCION OF ELECTION OFFICIALS							
	CREATION OF NEW POSITION, APPOINTMENT OF EMPLOYEES, PROMOTION, GIVING SALARY INCREASE							
	WITHIN 45 DAYS BEFORE ELECTION DAY							
	TRANSFER OF EMPLOYEES OR OFFICERS IN CIVIL SERVICE							
	CIVIL SERVICE OFFICERS OR EMPLOYEES ENGAGING IN PARTISAN POLITICAL ACTIVITIES							
	PROMISE/ SOLICIT EMPLOYEMENT TO INFLUENCE VOTING							
	UNLAWFUL ELECTIONEERING							
	PROHIBITION AGAINST DISMISSAL OF EMPLOYEES, LABORERS, OR TENANTS FOR REFUSING OR FAILING TO VOTE FOR A CANDIDATE							
	APPOINTMENT OR USE OF SPECIAL POLICEMEN, AGENTS, COFIDENTIAL AGENTS							
	ILLEGAL RELEASE OF DETENTION PRISONERS							
	WITHIN 60 DAYS BEFORE ELECTION DAY				WITHIN 30 DAYS AFTER ELECTION DAY			
	USE OF PUBLIC FUNDS FOR CAMPAIGN							
	BEARING, CARRYING, OR TRANSPORTING FIREARMS OUTSIDE RESIDENCE OR BUSINESSES EVEN WITH PERMIT TO CARRY							
				CARRYING DEADLY WEAPONS WITHIN RADIUS OF 100 METERS				
				USE OF ARMORED LAND, WATER, OR AIR CRAFT				
	WEARING UNIFORMS AND BEARING ARMS OURSIDE VICINITY OF WORK PLACE							
	USE OF SECURITY PERSONNELS OR BODYGUARDS BY CANDIDATES, UNLESS AUTHORIZED							

11) Election Offenses



PHA	PRE-ELECTION DAY		ELECTION DAY			ELECTION DAY +1		POST-PROCLAMATION
	CAMPAIGN PERIOD	EVE	VOTING	CASTING	TRANSMISSION	CANVASSING	PROCLAMATION	
ELECTION OFFENSES	ORGANIZATION OR MAINTENANCE OF REACTION FORCES, STRIKE FORCES, OR OTHER SIMILAR FORCES							
	RELEASE OF PUBLIC FUNDS FOR PUBLIC WORKS, SOCIAL WELFARE, COMMISSION ON HUMAN SETTLEMENTS		VOTING MORE THAN ONCE OR IN SUBSTITUTION					
	WITHIN 45 DAYS BEFORE ELECTION DAY							
	CONSTRUCTION AND DELIVERY OF MATERIALS FOR PUBLIC WORKS, ISSUANCE OF TREASURY WARRANTS		OPENING OF BOOTHS OR STALLS FOR SALE OF MERCHANDISE OR REFRESHMENT WITHIN 30 METERS RADIUS					
	WITHIN 45 DAYS BEFORE ELECTION DAY		HOLDING OF FAIRS, COCKFIGHTS, BOXING, HORSE RACES, OR ANY OTHER SIMILAR SPORTS					
	SUSPENSION OF ELECTIVE PUBLIC OFFICIAL WITHOUT APPROVAL OF COMELEC							
	ALTERATION OF TERRITORY OF A PRECINCT OR ESTABLISHMENT OF A NEW PRECINCT							
	GIVING DONATIONS OR GIFTS IN CASH OR IN KIND							
	CAMPAIGNING ON HOLY WEEK		SELLING, FURNISHING, OFFERING, BUYING, SERVING, OR TAKING INTOXICATING LIQUOR					
			GIVING, ACCEPTING, FREE TRANSPORTATION, FOOD, OR DRINKS OR THINGS OF VALUE					
			CAMPAIGNING					
			SOLICITING VOTES OR BLACK PROPAGANDA WITHIN					

12) Cases per Category



Categories	Specific Cases
<i>Electorate</i>	<ul style="list-style-type: none">○ Opposition to Application for Registration○ Inclusion and Exclusion○ Annulment of Book of Voters○ Challenge on Election Day○ Election Offense
<i>Candidate</i>	<ul style="list-style-type: none">○ Disqualification○ Quo Warranto○ Election Offense
<i>Integrity of Electoral Procedures</i>	<ul style="list-style-type: none">○ Postponement of Elections○ Failure of Elections
<i>Pre-Proclamation</i>	<ul style="list-style-type: none">○ BoC-related○ Consolidated Results-related
<i>Election Protests/ Post-Proclamation</i>	<ul style="list-style-type: none">○ Annulment of Proclamation○ Election Protest○ Quo Warranto
<i>Election Offenses</i>	<ul style="list-style-type: none">○ Against Candidates○ Against Non-Candidates and Voters

12) Dispute Resolution



	<i>Cases/ Disputes</i>									
<i>Aspects</i>	<i>Annul Book of Voters</i>	<i>DQ of Candidates</i>	<i>Postpone Elections</i>	<i>Failure of Elections</i>	<i>Voter Challenges</i>	<i>Pre-Proc.</i>	<i>Annul Proclamation</i>	<i>Election Protest</i>	<i>Quo Warranto</i>	<i>Election Offenses</i>
<i>Grounds</i>	Book Prepared Improperly, Preparation Attended with Vice or Fraud; Book contains Statistically Improbable Data	Lack of Qualifications; Material <u>Misrep. in CoC</u> ; Nuisance; Commission of Election Offense	Impossible to have free elections due to: Force Majeure Violence Terrorism Loss or Destruction of Election Paraphernalia Analogous causes	Failure to elect and affect outcome of elections due to: Force Majeure Violence Terrorism Fraud Analogous causes	Illegal Voter Illegal Acts	Illegal Composition and Proceedings of Board of Canvassers Irregularities affecting authenticity of Election Returns/ Certificates of Canvass (Data-Storage Delayed, Destroyed, Falsified)	Anomalies in the Proclamation	Fraud or irregularities in election (whole process)	Disloyalty to the Republic; Ineligibility	Offenses enumerated in Election Laws

12) Dispute Resolution



	<i>Cases/ Disputes</i>									
<i>Aspects</i>	<i>Annul Book of Voters</i>	<i>DQ of Candidates</i>	<i>Postpone Elections</i>	<i>Failure of Elections</i>	<i>Voter Challenges</i>	<i>Pre-Proc.</i>	<i>Annul Proclamation</i>	<i>Election Protest</i>	<i>Quo Warranto</i>	<i>Election Offenses</i>
<i>Period</i>	Pre-election	Filing of CoC to Pre-Proc.	Pre-election	Election Day to Pre-Proc.	Election Day	During Canvassing	After Proclamation	After Proclamation	After Proclamation	Pre-and Post-Election
<i>Jurisdiction (1st Instance)</i>	Comelec En Banc	Comelec Division	Comelec En Banc	Comelec En Banc	Board of Election Inspectors	1 st : Board of Canvassers or Comelec Division 2 nd : Board of Canvassers	Comelec Division	P/ VP: SET Senate: SET Reps: HRET Reg'l, Prov'l and City: Comelec Division Municipal: RTC	P/ VP: SET Senate: SET Reps: HRET Reg'l, Prov'l and City: Comelec Division Municipal: RTC	Comelec Law Dept. or Prosecutors Comelec En Banc (for filing of information)
<i>Period to File</i>	[no order to execute within 90 days before election]	Lack of Q and Election Offense: Before Proc. Material Misrep: Within 25 from CoC filing Nuisance: Within 5 days from CoC deadline	Before or on Election Day	Before Proclamation	Before Voter casts ballot	1 st : When ground apparent 2 nd : Before canvass of ER/ CoC	10 days from proclamation/ within period to file Election Protest	P/ VP: 30 days from proclamation Senate: 15 days from proclamation Others: 10 days from proclamation	10 days from proclamation	5 years from commission

12) Dispute Resolution



<i>Aspects</i>	<i>Annul Book of Voters</i>	<i>DQ of Candidates</i>	<i>Postpone Elections</i>	<i>Failure of Elections</i>	<i>Voter Challenges</i>	<i>Pre-Proc.</i>	<i>Annul Proclamation</i>	<i>Election Protest</i>	<i>Quo Warranto</i>	<i>Election Offenses</i>
Procedure	Petition and hearing	Petition and hearing	<u>Motu proprio</u> or Petition and hearing	Petition and hearing	Challenge recorded	1 st : Petition and hearing; canvassing suspended during pendency 2 nd : verbal and written objections at the same time, then evidence within 24 hours	Petition and hearing	Petition, hearing and revision	Petition and hearing	Complaint, Finding of Probable Cause, Filing of Information and Trial before RTC
Petitioner	Voter, election officer or political party	Lack of Q, Election Offense and Material Misrep: Registered voter or registered political party Nuisance: Registered candidate Election Offense: <u>Comelec</u> Campaign Finance Office, NGOs	Any interested party	<u>Comelec</u> <u>motu proprio</u> or any interested party	Voter or watcher	Any candidate or political party	Any candidate or political party	P/ VP/ Municipal: 2 nd or 3 rd placer Others: Any candidate	Any voter	Any interested party/ Any voter

12) Dispute Resolution



	<i>Cases/ Disputes</i>									
<i>Aspects</i>	<i>Annul Book of Voters</i>	<i>DQ of Candidates</i>	<i>Postpone Elections</i>	<i>Failure of Elections</i>	<i>Voter Challenges</i>	<i>Pre-Proc.</i>	<i>Annul Proclamation</i>	<i>Election Protest</i>	<i>Quo Warranto</i>	<i>Election Offenses</i>
<i>Effect if Granted</i>	Book of Voters annulled	Prevent candidate from running, or if elected, from serving; Can be substituted if DQ based on commission of election offense	Elections will be postponed in political subdivision; Special elections will be held not later than 30 days from cessation of cause	Declaration of failure (no winner can be determined) in affected polling place; <u>elections will be held not later than 30 days from cessation of cause</u>	Not allowed to vote	1 st : <u>BoC</u> reconstituted or rectifies proceedings 2 nd : <u>ER/ CoC</u> set aside and corrected	Proclamation annulled and canvassing anew	True winner proclaimed	Incumbent ousted	Conviction Imprisonment <u>DiO</u> to hold public office Deprivation of right of suffrage

09175353823

alberto.c.agra@gmail.com

www,albertocagra.com

THANK YOU. GOOD LUCK.