ELECTION LAW REVIEWER

Atty. Alberto C. Agra

Supreme Court Decisions as of December 31, 2025

January 13, 2026

I. IMPORTANT POWERS OF THE COMMISSION ON ELECTIONS (COMELEC)

A. Have exclusive charge of enforcement and administration of election law.

As an independent constitutional body exclusively charged with the power of enforcement and administration of all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall, COMELEC has the indisputable expertise in the field of election and related laws (*Cayetano v. COMELEC, G.R. No. 166388, 23 January 2006; Manzala v. COMELEC, G.R. No. 176211, 8 May 2007*).

COMELEC is mandated to shoulder all expenses relative to recall elections. (*Goh v. Bayron, G.R. No. 212584, November 25, 2014*)

The 2014 General Appropriations Act provide the line item appropriation to allow the COMELEC to perform its constitutional mandate of conducting recall elections. There is no need for supplemental legislation to authorize the COMELEC to conduct recall election for 2014. (*Goh v. Bayron, G.R. No. 212584, November 25, 2014*)

The 1987 Constitution not only guaranteed the COMELEC's fiscal autonomy, but also granted to its head, as authorized by law (as in the 2014 General Appropriations Act, to its Chairman), to augment items in its appropriations from its savings. (*Goh v. Bayron, G.R. No. 212584, November 25, 2014*)

When the COMELEC receives a budgetary appropriation for its "Current Operating Expenditures," such appropriation includes expenditures to carry out its constitutional functions, including the conduct of recall elections. (*Goh v. Bayron, G.R. No. 212584, November 25, 2014*)

To be valid, an appropriation must indicate a specific amount and a specific purpose. However, the purpose may be specific even if it is broken down into different related sub-categories of the same nature. The purpose of the appropriation is still specific – to fund elections, which naturally and logically include, even if not expressly stated, not only regular but also special or recall elections. (*Goh v. Bayron, G.R. No. 212584, November 25, 2014*)

COMELEC is vested with broad power to enforce all the laws and regulations relative to the conduct of elections as well as the plenary authority to decide all questions affecting elections except the question as to the right to vote (*Dibaratun v. COMELEC, G.R. No. 170365, 2 February 2010*).

The determination of the feasibility of holding a plebiscite on a given date is within the competence and discretion of the COMELEC (*Cagas v. COMELEC, GR No. 209185, 25 October 2013*).

COMELEC has wide discretion in adopting means to carry out its mandate of ensuring free, orderly and honest elections. (*Tolentino v. COMELEC, 420 SCRA 438*) In the exercise of the plenitude of its powers to protect the integrity of the elections, COMELEC should not and must not be straitjacketed by procedural rules in resolving election disputes. (*Tolentino v. COMELEC, G.R. No. 187958, 187961, and 187962, 7 April 2010*)

In relation to the Supreme Court, Electoral Tribunals and regular courts:

Supreme Court. The Supreme Court has no general powers of supervision over COMELEC except those which the Constitution specifically grants to it, i.e., to review its decisions, orders, and rulings within the limited terms of a petition for certiorari. *(Aquino v. COMELEC, G.R. Nos. 211789-90, March 17, 2015)*

The findings of fact of COMELEC, when supported by substantial evidence, are final, non-reviewable and binding upon the Supreme Court. It is the specialized agency tasked with the supervision of elections all over the country. Once given an issue to resolve, it must examine the records of the protest, evidence given by the parties, and the relevant election documents. (*Basmala v. COMELEC, G.R. No. 176724, 6 October 2012*)

A resolution of the COMELEC *En Banc* may be reviewed by the Supreme Court by certiorari filed with the latter, within 30 days from the promulgation thereof. (*Falnar v. COMELEC, 331 SCRA 429*) The 30-day rule applies to final orders, rulings and decisions of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers, not in the exercise of its administrative function to enforce and administer election laws to ensure an orderly election. The issuance of a Resolution on the allocation of party-list seats is in the exercise of the administrative, not quasi-judicial powers of the COMELEC. (*Partido ng Manggagawa v. COMELEC, G.R. No. 164702, 15 March 2006*)

The phrase "decision, order, or ruling" of constitutional commissions, the COMELEC included, that may be brought directly to the Supreme Court on certiorari is not all-encompassing, and that it only relates to those rendered in the commissions' exercise of adjudicatory or quasi-judicial powers. In the case of the COMELEC, this would limit the provision's coverage to the decisions, orders, or rulings issued pursuant to its authority to be the sole judge of generally all controversies and contests relating to the elections, returns, and qualifications of elective offices *(Querubin v. COMELEC, G.R. No. 218787, December 8, 2015).*

Sec. 3, Art. IX-C of Constitution applies only “when the COMELEC acts in the exercise of its adjudicatory or quasi-judicial functions and not when, it merely exercises purely administrative functions.” *(Garcia v. COMELEC, G.R. No. 243735, 14 June 2022).*

Certiorari will not generally lie against an order, ruling, or decision of a COMELEC division for being premature, taking into account the availability of the plain, speedy and adequate remedy of a motion for reconsideration. (*Villarosa v. Festin, G.R. No. 212953, August 05, 2014*)

Rule 64 of the Rules of Court does not foreclose recourse to the Supreme Court under Rule 65 of orders of the COMELEC issued in the exercise of its administrative function. (*Macabago v. COMELEC, G.R. No. 152163, 18 November 2002*); Rule 64 is not the exclusive remedy for all Commission on Elections' acts as Rule 65 applies for grave abuse of discretion resulting to ouster of jurisdiction (*Diocese of Bacolod v. COMELEC, G.R. No. 205728, July 5, 2016*).

In exceptional cases, when the COMELEC's action on the appreciation and evaluation of evidence oversteps the limits of its discretion to the point of being grossly unreasonable, the Court is not only obliged, but has the constitutional duty to intervene. When grave abuse of discretion is present, resulting errors arising from the grave abuse mutate from error of judgment to one of jurisdiction. The subject land is within the commerce of man and is therefore a proper subject of an expropriation proceeding (*Leodegario A. Labao, Jr. v. COMELEC, G.R. No. 212615, July 19, 2016*).

The Supreme Court has no power to review an interlocutory order or a final resolution of a division of COMELEC. Said order or resolution must be reviewed by the COMELEC *En Banc* through a motion for reconsideration. (*Panlilio v. COMELEC, G.R. No. 181478, 15 July 2009*) However when a party has hardly enough opportunity to move for reconsideration and to obtain a swift resolution in time for the elections, and the petition involves transcendental constitutional issues, direct resort to the Supreme Court is justified. (*ABS-CBN Broadcasting Corporation v. COMELEC, 323 SCRA 811*) Direct recourse to the Supreme Court is also allowed when the issue is a pure question of law. (*Partido ng Manggagawa v. COMELEC, G.R. No. 164702, 15 March 2006*)

Under the 1993 COMELEC Rules, the COMELEC En Banc is strictly prohibited from entertaining motions for reconsideration of interlocutory orders unless unanimously referred to the En Banc by the members of the division that issued the same, whereas under COMELEC Resolution No. 8804, all motions for reconsideration filed with regard to decisions, resolutions, orders and rulings of the COMELEC divisions are automatically referred to the COMELEC En Banc. Thus, in view of COMELEC Resolution No. 8804's applicability in the instant petition, a motion for reconsideration before the COMELEC En Banc is now available. (*Villarosa v. Festin, G.R. No. 212953, August 05, 2014*)

Both the Supreme Court and COMELEC have concurrent jurisdiction to issue writs of certiorari, prohibition, and mandamus over decisions of trial courts of general jurisdiction (regional trial courts) in election cases involving elective municipal officials. The Court that takes jurisdiction first shall exercise exclusive jurisdiction over the case. (*Carlos v. Angeles, G.R. No. 142907, 29 November 2000*)

The urgency posed by the circumstances during respondents' issuance of the assailed notice and letter-the then issue on the RH Law as well as the then upcoming elections-also rendered compliance with the doctrine on exhaustion of administrative remedies as unreasonable (*Diocese of Bacolod v. COMELEC, G.R. No. 205728, July 5, 2016*).

The Commission on Elections (COMELEC) may not be compelled by mandamus to exercise its discretion in a certain way, i.e., to grant or deny the opening and recounting of ballot boxes. However, it has a clear legal duty to expeditiously resolve motions pending before it, following its own rules of procedure. The present controversy does not involve a ministerial act on the part of the COMELEC as the recount of physical ballots prayed for requires the exercise of the COMELEC's discretion and judgment. (*Rio, Jr. v. COMELEC, G.R. No. 273136, August 20, 2024*).

***Electoral Tribunals*.** The creation of the Presidential Electoral Tribunal (PET) is valid. The PET, as intended by the framers of the Constitution, is to be an institution independent, but not separate, from the judicial department, i.e., the Supreme Court. The present Constitution has allocated to the Supreme Court, in conjunction with latter's exercise of judicial power inherent in all courts, the task of deciding presidential and vice-presidential election contests, with full authority in the exercise thereof. The power wielded by PET is a derivative of the plenary judicial power allocated to courts of law, expressly provided in the Constitution. (*Macalintal v, PET G.R. No. 191618, 7 June 2011*)

It is the Senate Electoral Tribunal, not COMELEC, which has exclusive jurisdiction over complaints contesting the proclamation of the 12th winning senatorial candidate. (*Rasul v. COMELEC, G.R. No. 134142, 24 August 1999*).

Through VI, Section 17, the Constitution segregates from all other judicial and quasi-judicial bodies (particularly, courts and the Commission on Elections) the power to rule on contests relating to the election, returns, and qualifications of members of the Senate (as well as of the House of Representatives). These powers are granted to a separate and distinct constitutional organ. There are two (2) aspects to the exclusivity of the Senate Electoral Tribunal's power. The power to resolve such contests is exclusive to any other body. The resolution of such contests is its only task; it performs no other function (*Rizalito Y. David v. Senate Electoral Tribunal, G.R. No. 221538, September 20, 2016*).

The jurisdiction of the House of Representatives Electoral Tribunal (HRET) begins once the party or organization of the party-list nominee has been proclaimed and the nominee has taken his/her oath and assumed office as member of the House of Representatives (*Jalosjos v. COMELEC, G.R. No. 192474, 26 June 2012; Abayon v. HRET, G.R. No. 189466, 11 February 2010; Reyes v. COMELEC, G.R. No. 207264, 25 June 2013*). Once a candidate for the House of Representatives has been proclaimed and has taken his/ her oath, COMELEC loses jurisdiction over actions to disqualify said representative. Jurisdiction lies with the HRET (*Aggabao v. COMELEC, G.R. No. 163756, 26 January 2005; Tañada v. COMELEC, G.R. No. 207199-200, 22 October 2013; Bibiano C. Rivera v. COMELEC, G.R. No. 210273, April 19, 2016*). By failing to acquire a seat, a candidate does not fall under the jurisdiction of the HRET as he is not a member. (*Layug v. COMELEC, G.R. No. 192984, 28*

February 2012) This rule applies when the proclamation if valid. When the decision of the COMELEC Division disqualifying a candidate who obtained the plurality of votes has not become final, the proclamation of said candidate was valid and thus COMELEC was divested of its jurisdiction. (*Planas v. COMELEC, G.R. No. 167594, 10 March 2006*) However, when a decision of a COMELEC division disqualifying a congressional candidate is not yet final (a motion for reconsideration having been filed with COMELEC *En Banc*), COMELEC *En Banc* retains jurisdiction, *i.e.*, the HRET cannot assume jurisdiction over the matter. (*Codilla v. De Venecia, G.R. No. 150605, 10 December 2002*).

Valid Oath - The "oath or affirmation" before the Speaker of the House in open session is not an empty ritual. To be sure, the third sentence of Rule II, Section 6 of the Rules of the House of Representatives provides for the significant consequential effects of the oath or affirmation before the Speaker in open session. The rule has two scenarios - (1) oath before the Speaker of the House; and (2) oath before duly authorized public officers. In the first scenario, only an oath is required before the Speaker of the House and not an affirmation. In the second scenario, the oath of office before the Speaker of the House in open session is a ceremonial affirmation of a prior and valid oath before duly authorized public officers. In both cases, the oath before the Speaker of the House in open session will enable the members to "enter into the performance of their functions and participate in the deliberations and other proceedings of the House." If one does not take an oath before the Speaker of the House in open session, it bars him from performing his functions and participating in the congressional deliberation. Thus, the required oath, as a ceremonial affirmation of a previous valid oath before duly authorized public officers, is not present *(Uy, Jr. v. COMELEC, G.R. Nos. 260650/260952, 8 August 2023)*.

Rule 6(a) of the 2015 HRET Rules requires the presence of at least one Justice and four members of the Tribunal to constitute a quorum. This means that even when all the Justices are present, at least two members of the House of Representatives need to be present to constitute a quorum. Without this rule, it would be possible for five members of the House of Representatives to convene and have a quorum even when no Justice is present. This would render ineffective the rationale contemplated by the framers of the 1935 and 1987 Constitutions for placing the Justices as members of the HRET. Rule 6(a) of the 2015 HRET Rules does not make the Justices indispensable members to constitute a quorum but ensures that representatives from both the Judicial and Legislative departments are present to constitute a quorum. Members from both the Judicial and Legislative departments become indispensable to constitute a quorum *(Reyes v. COMELEC, G.R. No. 221103, October 16, 2018)*.

The judgments of these tribunals are not beyond the scope of any review. Article VI, Section 17's stipulation of electoral tribunals' being the "sole" judge must be read in harmony with Article VIII, Section l's express statement that "[j]udicial power includes the duty of the courts of justice ... to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." Judicial review is, therefore, still possible (*Rizalito Y. David v. Senate Electoral Tribunal, G.R. No. 221538, September 20, 2016*).

The SET has no express, inherent or implied power to declare void or unconstitutional Section 6.9 of the AES Contracts, which requires the protestant to shoulder the retention costs. The authority of the SET is limited to matters affecting the validity of the protestant's title. While it may be true that the SET has the power to control its,proceedings, such power cannot, by any means, be construed as including the power to interpret much less invalidate a contract between third parties. Thus, any issue concerning the contract between the COMELEC and Smartmatic-TIM is beyond the jurisdiction and constitutional mandate of the SET. To rule otherwise is to overstretch if not to go astray from the interpretation of the SET's constitutional grant of jurisdiction as the sole judge of all contests relating to the elections, returns, and qualifications of the members of the Senate, as laid down in *Javier*. *(Tolentino v. Senate Electoral Tribunal and COMELEC, G.R. No. 248005, May 11, 2021).*

It is the SET which has the exclusive jurisidiction to hear and decide all matters relating to the alleged irregularities in the canvassing of election returns and nullity of the proclamation of the 12 winning senatorial candidates. To delve on these matters would be to usurp on the clear, complete and categorical authority bestowed upon the SET as the sole judge of all contests relating to the election, returns, and qualifications of the members of the Senate. As succintly held in *Barbers*, any pursuit by the Court to assume jurisdiction would be tantamount to an encroachment of the constitutional functions of the SET (*Penson v. Chong, G.R. No. 211636, 28 September 2021*).

The HRET is made by no less than the Constitution to be "the sole judge of all contests relating to the election, returns and qualifications" of the members of the House. The use of the word "sole" emphasizes the exclusive character of the jurisdiction conferred.90 The authority conferred upon it is full, clear and complete and its jurisdiction is original and exclusive. Hence, the judgments of the HRET are, as a rule, beyond judicial interference, and the only exception is in the exercise of the Court's so-called extraordinary jurisdiction upon a determination that the Tribunal's decision was rendered without or in excess of its jurisdiction. The Court meddles only upon a clear showing of such arbitrary and improvident use of power as will constitute a denial of due process. A petition for certiorari – the only vehicle to challenge a decision of the HRET by a finding of it having gravely abused its discretion in so deciding – may not be used to correct mere errors in the HRET's evidence and factual findings. By reason of the special knowledge and expertise of an administrative body like the HRET over matters falling under its jurisdiction, it is in a better position to pass judgment upon such matters. Thus, its findings of fact in that regard are generally accorded great respect, if not finality by the courts. The only exception is when there is absolutely no evidence or no substantial evidence in support of such factual findings. This means that there are manifestly gross errors in the HRET's factual inferences such that critical evidence which have been introduced by the parties are ignored or not accounted for. It means that the conclusions are founded on a gross misreading, if not misrepresentation, of the evidence. (*Piccio v. HRET, G.R. No. 248985, 5 October 2021*).

The HRET has no appellate jurisdiction over rulings of the Comelec *En Banc*. The HRET lacks authority to decide on whether one is a nuisance candidate, and the proper recourse

is to timely file a petition for certiorari before the Supreme Court. It is the Court, not the HRET, that is the proper body to review a Comelec Resolution. The HRET cannot declare a nuisance candidate and cancel a candidate's CoC. *(Uy, Jr. v. COMELEC, G.R. Nos. 260650/260952, 8 August 2023).*

The HRET has no jurisdiction over a proclaimed district representative winner unless the following requisites concur: (1) a valid proclamation, (2) a proper oath, and (3) assumption of office *(Uy, Jr. v. COMELEC, G.R. Nos. 260650/260952, 8 August 2023).*

Inasmuch as the respondent in an election case must have already been proclaimed as winner in the elections, had taken the proper oath of office, and had assumed as Member of the HoR, he or she must still possess such status, i.e., his or her term has not ended, in order for the HRET to retain jurisdiction over questions on the respondent's election, returns, and qualifications. (*An Waray Party-List v. COMELEC, G.R. No. 268546, August 6, 2024*).

While it is true that the removal of the party-list from the registered list of party-lists will necessarily cause the removal of its representative in the HoR for the 2022 to 2025 term, the same cannot, of and by that fact alone, trigger the jurisdiction of the HRET. Apart from the nominee not being the respondent in the main petition to cancel registration, the nature of the case itself is not one of a contest relating to the election, returns, and qualifications of a Member of the HoR (*An Waray Party-List v. COMELEC, G.R. No. 268546, August 6, 2024*).

Regular Courts. The regular courts have jurisdiction to entertain a petition to enjoin the construction of public works projects within 45 days before an election. (*Gallardo v. Tabamo, 218 SCRA 253*)

The COMELEC has jurisdiction over petitions for *certiorari* in election protests pending before inferior courts. (*Besso v. Aballe, 326 SCRA 100*) The COMELEC, not the Regional Trial Courts, has appellate jurisdiction over decisions of the Municipal Trial Court concerning election protests involving barangay officials (*Antonio v. COMELEC, G.R. No. 135869, 22 September 1999*), and Sanggunian Kabataan chairpersons (*Fernandez v. COMELEC, G.R. No. 176296, 30 June 2008*), has jurisdiction to conduct preliminary investigation of election offenses (*Pena v. Martizano, 403 SCRA 281*), has jurisdiction over plebiscite protest cases involving the conversion of a municipality to a city (*Buac v. COMELEC, 421 SCRA 92*), and has jurisdiction to annul a proclamation. (*Gustilo v. Real, 353 SCRA 1*) Lower courts cannot issue writs of injunction against COMELEC. (*COMELEC v. Datu-Iman, 304 SCRA 106*)

Under the law, grievances relating to the COMELEC rulings in protests over the conduct of its project procurement should then be addressed to the RTC. However, this rule only applies to a failed bidder. In the Querubin case, there existed ample compelling reasons to justify the direct resort to the Court as a departure from the doctrine of hierarchy of courts not in relation to but under Rule 65 of the Rules of Court on certiorari and prohibition, and to brush aside the procedural issues in this case to focus on the

substantive issues surrounding the procurement of the 23,000 additional OMRs for the 2016 elections. (*Querubin v. COMELEC, G.R. No. 218787, December 8, 2015)*

MTCC retains residual jurisdiction while two conditions concur: (1) records of the case have not yet been transmitted to COMELEC; and (2) the period to appeal has not yet expired. *(Tolentino v. COMELEC, G.R. No. 218536, 26 January 2016)*

COMELEC has the power and jurisdiction to affirm, reverse, vacate, or annul the MTCC's judgment. The Commission also has jurisdiction to restrain implementation of the MTCC's judgment through injunctive writs. *(Tolentino v. COMELEC, G.R. No. 218536, 26 January 2016)*

The Commission on Elections is given ample discretion to administer the elections, but certainly, its constitutional duty is to "enforce the law." The Commission is not given the constitutional competence to amend or modify the law it is sworn to uphold. Section 6(e), (t), and (n) of Republic Act No. 8436, as amended, is law. Should there be policy objections to it, the remedy is to have Congress amend it *(Bagumbayan-VNP Movement, Inc. v. COMELEC, G.R. No. 222731, March 8, 2016*).

COMELEC commits grave abuse of discretion when it dismisses an initiative petition on the ground that there were no funds allocated for the purpose (*Marmeto v. COMELEC, G.R. No. 213953, 16 September 2017*).

It is COMELEC which has the power to determine whether the propositions in an initiative petition are within the powers of a concerned *sanggunian* to enact (*Marmeto v. COMELEC, G.R. No. 213953, 16 September 2017*).

When the COMELEC receives or acknowledges receipt of COCs and CONAs filed in due form, it performs the administrative function of enforcement and administration of all laws and regulations pertaining to the conduct of an election (*Aggabao v. COMELEC, G.R. No. 258456, July 26, 2022*).

Section 2 of Article IX-C of the 1987 Constitution empowers the COMELEC to exercise jurisdiction over all contests relating to the elections, returns and qualifications of all elective officials, and to decide all questions affecting elections. It is mandated to "investigate and, where appropriate, prosecute cases of violations of elections laws, including acts or omissions constituting election frauds, offenses and malpractices." Thus, even after its acceptance of Ayson's CONA, which initially appeared to be regular, the COMELEC became duty bound to take cognizance of, and investigate, the material information coming from Senator Lacson that Partido Reporma had not issued any CONA in favor of Ayson (*Aggabao v. COMELEC, G.R. No. 258456, July 26, 2022*).

Where the situation calls for the power of the COMELEC to exercise its judgment or discretion involving a determination of fact, or resolution of controversies where parties adduce evidence in support of their contentions, the COMELEC ought to perform its quasi-judicial functions (*Aggabao v. COMELEC, G.R. No. 258456, July 26, 2022*).

Because the COMELEC failed to exercise its quasi-judicial functions, conduct hearings, weigh evidence, and draw conclusions therefrom, let alone, resolve once and for all the issue of party endorsement or representation between [the candidates], the [Supreme] Court itself in this certiorari proceeding cannot do either one or the other. The Court is not a trier of facts. Nor can it draw conclusions or resolve the issue of party endorsement or representation where the facts had not been established on record before the COMELEC at the first instance (*Aggabao v. COMELEC, G.R. No. 258456, July 26, 2022*).

B. Hear and resolve cases in Division and *En Banc*

The prosecution of election violators involves the exercise of administrative function and is therefore within the jurisdiction of the COMELEC *En Banc*, not its divisions (*Munoz v. COMELEC, G.R. No. 170678, 17 July 2006*).

The COMELEC *En Banc* does not have the authority to hear and decide election cases, including pre-proclamation controversies, at the first instance. (*Munoz v. COMELEC, G.R. No. 170678, 17 July 2006*) The authority to resolve petitions for *certiorari* involving incidental issues of election protests filed with the lower courts falls within the division of COMELEC. (*Soller v. COMELEC, G.R. No. 139853, 5 September 2000*) The cancellation of a certificate of candidacy involves the exercise of quasi-judicial function and thus must be heard in the first instance by the COMELEC division. (*Bautista v. COMELEC, G.R. No. 154796, 23 October 2003*)

Decisions rendered by a COMELEC division are subject to review via the timely filing of a motion for reconsideration before the COMELEC *En Banc*. The timely filing of a motion for reconsideration with the COMELEC *En Banc* concerning a decision of its divisions suspending and disqualifying a candidate did not divest the former of its jurisdiction to review the resolution of the latter. The order of the division was unenforceable and had not attained finality (*Codilla v. De Venecia, G.R. No. 150605, 10 December 2002*).

Sec. 3, Article IX-C of the Constitution bestows on the COMELEC divisions the authority to decide election cases. Their decisions are capable of attaining finality, without need of any affirmative or confirmatory action on the part of the COMELEC *en banc*. And while the Constitution requires that the motions for reconsideration be resolved by the COMELEC *en banc*, it likewise requires that four votes must be reached for it to render a valid ruling and, consequently, to grant the motion for reconsideration (*Feliciano Legaspi v. COMELEC, G.R. No. 216572, April 19, 2016*).

Questions involving findings of fact (i.e., sufficiency of evidence) addressed by a COMELEC division is a proper subject of a motion for reconsideration with the COMELEC *En Banc* (*Columbres v. COMELEC, G.R. No. 142038, 18 September 2000*).

The essence of due process is to be afforded a reasonable opportunity to be heard and to submit any evidence in support of one's claim or defense. The fact that a petitioner somehow acquired knowledge or information of the date set for the preliminary

conference by means other than the official notice sent by COMELEC is not an excuse to dismiss his/her protest, because it cannot be denied that he was not afforded reasonable notice and time to adequately prepare for and submit his/her brief. (*Violago, Sr. v. COMELEC, G.R. No. 194143, 4 October 2011*)

The COMELEC *En Banc* shall decide motions for reconsideration only of "decisions" of a Division. Interlocutory orders may not be resolved by the COMELEC *En Banc*. An order is final in nature if it completely disposes of the entire case. But if there is something more to be done in the case after its issuance, that order is interlocutory. The exception is when an interlocutory order issued by a Division of COMELEC does not appear to be specifically provided under the COMELEC Rules of Procedure that the matter is one that the COMELEC *En Banc* may sit and consider (*Cagas v. COMELEC G.R. No. 194139, 24 January 2012*).

The proper way for the COMELEC *En Banc* to act on a motion for reconsideration when the first voting was equally divided is to rehear the matter, not merely to hold a re-consultation amongst themselves. Thus, when the COMELEC *En Banc* failed to hold a rehearing required by the COMELEC Rules of Procedure, said body acted with grave abuse of discretion (*Juliano v. COMELEC, G.R. No. 167033, 12 April 12, 2006*).

Under Section 7, Article IX-A of the Constitution, a majority vote of all the members of the COMELEC *En Banc* is necessary to arrive at a ruling. In other words, the vote of four (4) members must always be attained in order to decide, irrespective of the number of Commissioners in attendance. Failing this, the case must be re-heard pursuant to Sec. 6, Rule 18 of the COMELEC Rules of Procedure (*Sevilla v. COMELEC, G.R. No. 203833, 19 March 2013*).

No fault, let alone grave abuse of discretion, can be ascribed to the COMELEC when the Special First Division issued the questioned writ of preliminary injunction. Contrary to petitioner's claim, it cannot be said that the First Division and the Special First Division are two distinct bodies and that there has been consequent transfers of the case between the two. Strictly speaking, the COMELEC did not create a separate Division but merely and temporarily filled in the vacancies in both of its Divisions. The additional term "special," in this case, merely indicates that the commissioners sitting therein may only be doing so in a temporary capacity or via substitution. (*Villarosa v. Festin, G.R. No. 212953, August 05, 2014*)

C. Exercise supervision and control over officials required to perform duties relative to the conduct of election

The COMELEC has the authority to effect the transfer of election officers (*De Guzman v. COMELEC, G.R. No. 129118, 19 July 2000*). No Election Officer shall hold office in a particular city or municipality for more than four years (*Sec. 44, Republic Act No. 8189*).

As an agent of the Commission, an election officer is under the Commission's direct and immediate control and supervision. *(Tolentino v. COMELEC, G.R. No. 218536, 26 January 2016)*

D. Authorize any instrumentality of the government, except civilian home defense forces, to act as deputies

E. Promulgate rules and regulations

The COMELEC has the discretion to liberally construe its rules and, at the same time, suspend the rules, or any portion thereof, in the interest of justice. Disputes in the outcome of elections involve public interest; as such, technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. Laws governing such disputes must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections (*Suliguin v. COMELEC, G.R. No. 166046, 23 March 2006*)

Settled is the rule that the COMELEC Rules of Procedure are subject to liberal construction. The COMELEC has the power to liberally interpret or even suspend its rules of procedure in the interest of justice, including obtaining a speedy disposition of all matters pending before it. This liberality is for the purpose of promoting the effective and efficient implementation of its objectives — ensuring the holding of free, orderly, honest, peaceful, and credible elections, as well as achieving just, expeditious, and inexpensive determination and disposition of every action and proceeding brought before the COMELEC. Unlike an ordinary civil action, an election contest is imbued with public interest. It involves not only the adjudication of private and pecuniary interests of rival candidates, but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate. And the tribunal has the corresponding duty to ascertain, by all means within its command, whom the people truly chose as their rightful leader *(Sibuma v. COMELEC, G.R. No. 261344, 24 January 2023).*

While it has been held in previous cases that "[t]echnicalities and procedural niceties in election cases should not be made to stand in the way 60 of the true will of the electorate," as a license for parties in election cases to disregard procedural rules altogether. This Court never intended to establish the precedent that the "true will of the electorate" may be used as an excuse for all kinds of procedural errors, no matter how numerous or serious they may be. Noncompliance with the rules of procedure in election cases cannot be justified by the mere invocation of the determination of the "true will of the electorate," and neither is the liberal application of the rules automatically be granted by such invocation. To rule otherwise would be akin to holding that the technical rules of procedure need not be followed in election cases *(Agravante vs. COMELEC, G.R. No. 264029, 8 August 2023)*.

The COMELEC, in the interest of justice, may suspend the rule on 5-day period to file a petition to correct manifest errors (*Dela Llana v. COMELEC, G.R. No. 152080, 28 November 2003*).

COMELEC did not encroach upon the authority of the PNP to regulate private security agencies when it promulgated Resolution No. 10015 which provided for the rules and regulations on the ban on bearing, carrying or transporting of firearms and other deadly weapons and the employment, availment or engagement of the services of security personnel or bodyguards during the election period (Gun Ban) as it merely regulates the bearing, carrying, and transporting of firearms and other deadly weapons by private security agencies and all other persons, **during election period.** Under BP 881 and RA 7166, it is unlawful for any person to bear, carry, or transport firearms or other deadly weapons in public places during the election period, even if otherwise licensed to do so, **unless authorized in writing by the COMELEC**. Section 35 of RA 7166 also uses the mandatory word "shall" to impose upon the COMELEC its duty to issue rules and regulations to implement the law. *(PADPAO Region 7 Chapter Inc. v. COMELEC, G.R. No. 223505, October 3, 2017)*.

The proper way of harmonizing Section 8, Rule 23 of the COMELEC Rules with Article IX of the 1987 Constitution and Rule 64 of the Rules of Court is to understand it to mean that decisions and resolutions of the COMELEC En Banc, in the absence of a restraining order from the Court issued within five days from receipt, are rendered only executory – but not final. Hence, despite COMELEC's issuance of the Certificate of Finality and Entry of Judgment, the COMELEC En Banc Resolution did not actually attain finality, and as such, may be the subject of [a] petition [for review], and may be addressed by the Court (*Gana-Carait v. COMELEC, G.R. No. 257453, August 9, 2022*).

There are two separate election-related firearm offenses. The first offense prohibits anyone from carrying firearms in any public place during the election period, as outlined under Section 32 of RA 7166. The second punishes members of security or police organizations for the unauthorized carrying of firearms outside their official place of work during the campaign period, the day before the election, the election day, and 30 days after the election, as provided under Section 261(s) of the Omnibus Election Code (OEC). In both cases, the prosecution must clearly specify the place where the alleged crime occurred, as this is an essential element that must be included in the Information. In this case, the Information against Baguinon only described him as a security guard who carried a firearm outside his place of work but failed to specify that he did so in a public place – a critical element required under Section 32 of RA 7166. Instead, it merely mentioned the barangay and town without clearly indicating a public setting. The prosecution mistakenly combined elements from the two separate offenses, mixing parts of Section 261(s) of the OEC with Section 32 of RA 7166. *(Baguiñon, Sr. v. People of the Philippines, G.R. No. 255983, 27 January 2025)*

The COMELEC's exercise of quasi-legislative power is subject to limitations, one of which is that it must be within the ambit of legislative authority. Accordingly, the COMELEC's authority to issue resolutions on the bearing, carrying, or transporting of firearms or other

deadly weapons is necessarily confined to the scope provided by the legislative enactments it seeks to implement, particularly the Omnibus Election Code and Republic Act No. 7166. Considering that the Omnibus Election Code and Republic Act No. 7166 do not prohibit the possession of bladed instruments during the election period, as they are neither regulated by law nor subject to licensing or permit requirements, it is clear that petitioner's mere possession of a bladed instrument in a public place without the requisite COMELEC permit during the 2019 election period does not constitute an election offense. Consequently, petitioner is not guilty of the crime charged. This interpretation is consistent with the principle that penal laws are to be construed strictly against the State and liberally in favor of the accused (*Macabuhay v. People, G.R. No. 270337, 13 August 2025*).

F. Summon parties to a controversy pending before it (*Dela Llana v. COMELEC, G.R. No. 152080, 28 November 2003*).

G. Determine the true nature of the cases filed before it

H. Punish contempt

The power to punish contempt can be exercised only in connection with judicial functions and not administrative functions. (*Guevara v. COMELEC, 104 Phil. 268; Masangcay v. COMELEC, 6 SCRA 27*)

The DILG cannot be cited in contempt if it acts according to an Order of the Ombudsman, which may be contrary to a COMELEC ruling if the matter involves two distinct issues, such that the implementation of one agency's ruling would not necessarily result in a violation of the other. A finding that a candidate is qualified to run does not necessarily negate a ruling that he is guilty of an administrative offense (*Undersecretary Austere Panadero v. COMELEC, G.R. No. 215548, April 5, 2016*).

I. Enforce its decisions and orders

J. Prescribe forms to be used in the election.

K. Procure supplies and materials needed for the election.

COMELEC has failed to justify its reasons for directly contracting with Smartmatic-TIM: it had not shown that any of the conditions under Section 50, Article XVI of the GPRA exists; its claims of impracticality were not supported by independently verified and competent data; and lastly, its perceived "warranty extension" is, in reality, just a circumvention of the procurement law. For all these counts, the conclusion thus reached is that the COMELEC had committed grave abuse of discretion amounting to lack or excess of jurisdiction. While this Court recognizes that the COMELEC should be given sufficient leeway in exercising its constitutional mandate to enforce and administer all election laws, it demands equal recognition that it is the Court's constitutional duty to see to it that all governmental actions are legally permissible. In so doing, the Court decides not

only with pragmatism in mind, but pragmatism within the fair bounds of law. Such is the case in examining the COMELEC's apprehensions under the lens of the procurement law, with heightened considerations of public accountability and transparency put to the fore. *(Pabillo v. COMELEC, G.R. No. 216098 & G.R. No. 216562, April 21, 2015)*

L. Prescribe latest technological and electronic devices upon notices to accredited political parties and candidates not less than 30 days before. COMELEC is authorized to use an automated election system for the process of voting, counting of votes, and canvassing of the results (*Sec. 6, Republic Act No. 8436*).

In choosing to disregard the procedures prescribed by the GPRA and its IRR and disqualifying Smartmatic before it had submitted any bid, without any reference to the applicable eligibility requirements and non-discretionary pass/fail criteria prescribed by the Special Bids and Awards Committee, the COMELEC En Banc implemented a discretionary pre-qualification regime antithetical to the very essence of the GPRA—a grave abuse of discretion amounting to lack or excess of jurisdiction. Due to considerations of equity, justice, and practicality, however, as well as the doctrine of operative fact, the finding of grave abuse of discretion on the part of the COMELEC En Banc shall not be deemed sufficient basis to nullify the public bidding conducted by the SBAC, or the COMELEC's award of the contract for the 2025 AES to Miru Systems. To require the COMELEC to conduct another round of public bidding would seriously disrupt its preparations for the 2025 National and Local Elections (NLE) and potentially jeopardize the very conduct of the NLE. Hence, the Decision will be prospective in application (*Smartmatic TIM Corporation, et al. v. COMELEC, G.R. No. 270564, April 16, 2024*).

M. Carry out campaign to educate the public about elections

N. Enlist non-partisan groups to assist

O. Conduct hearings on controversies pending before it

The factual finding of COMELEC, which is supported by substantial evidence, is binding on the Supreme Court (*Badiri v. COMELEC, G.R. No. 165677, 8 June 2005*).

The COMELEC enjoys the presumption of good faith and regularity in the performance of official duty. The COMELEC can base its ruling on official COMELEC records. (*Barbers v. COMELEC, G.R. No. 165691, 15 June 2005*).

P. Fix periods for pre-election requirements

COMELEC may also prescribe a deadline for registration of party-list organizations beyond the 90-day period under Republic Act No. 7941. The 90-day period is a minimum period not subject to reduction but is susceptible to protraction on account of administrative necessities and exigencies (*Aklat Asosasyon Para sa Kaunlaran ng Lipunan at Adhikain para sa Tao v. COMELEC, 427 SCRA 712*).

COMELEC can conduct special elections for barangay officials even beyond the 30 days from cessation of the cause of the failure of election. The 30-day period is directory, and the deadline cannot defeat the right of suffrage of the people (*Sambarani v. COMELEC, 438 SCRA 319*).

Q. Recommend the imposition of disciplinary action upon an employee it has deputized for violation of its order (*Sec. 52, Omnibus Election Code*).

Since COMELEC can recommend that disciplinary action be taken against an officer it had deputized, it can investigate an administrative charge against such an officer to determine whether or not it should recommend that disciplinary action be taken against him (*Tan v. COMELEC, 237 SCRA 353*).

R. Investigate and where appropriate, prosecute cases for violation for election laws, including acts or omissions constituting election frauds, offenses and malpractices

The finding of probable cause in the prosecution of election offenses rests in COMELEC's sound discretion (*Garcia v. COMELEC, G.R. No. 170256, 25 January 2010*).

S. Make minor adjustments of the apportionment of legislative districts (*Sec. 2, Ordinance appended to the Constitution*).

This refers merely to the power to correct an error because of the omission of a municipality or an error in the name of a municipality and does not include the power to make a reappointment of legislative districts (*Montejo v. COMELEC, 242 SCRA 415*).

T. Adjust the apportionment in case of creation of new province or city (*Sec. 3, Ordinance appended to the Constitution*).

The COMELEC is merely authorized to adjust the number of Representatives apportioned to an old province if a new province is created out of it and is not authorized to transfer municipalities from one legislative district to another (*Montejo v. COMELEC, 242 SCRA 415*).

U. Divide a province with only one legislative district into two districts of purposes of the election of the members of the Sangguniang Kabataan (*Sec. 3 (b), Republic Act. No. 7166*).

The basis of the division is the number of inhabitants and not the number registered voters (*Herrera v. COMELEC, 318 SCRA 336*).

V. Schedule elections if power to do so is delegated by Congress.

Elections for Congress should be held on the 2nd Monday of May unless otherwise provided by law. The term "unless otherwise provided by law" contemplates two situations (1) when the law specifically states when the elections should be held on a date other than the second Monday of May; and (2) when the law delegates the setting of the

date of the elections to COMELEC. Section 1 of R.A. 11243 categorically states that the reapportionment of the 1st District of South Cotabato shall "commence in the next national and local elections after the effectivity of this Act." R.A. 11243 did not specifically provide for a different date. Neither did it delegate unto COMELEC the setting of a different date. The law was passed with the view of implementing the reapportionment of the First Legislative District of the Province of South Cotabato at the most feasible and practicable time, i.e., during the next elections on the second Monday of May 2022. Congress could not have intended to enforce R.A. 11243 during the 2019 general elections as the election period had already begun when R.A. 11243 was enacted. To require implementation last May 13, 2019 would lead COMELEC to act precipitously *(Bañas-Nograles v. COMELEC, G.R. No. 246328, 10 September 2019).*

The free and meaningful exercise of the right to vote, as protected and guaranteed by the Constitution, requires the holding of ***genuine periodic elections*** which must be held at intervals which are not unduly long, and which ensure that the authority of government continues to be based on the free expression of the will of electors *(Macalintal v. COMELEC, G.R. No. 263590, 27 June 2023)*.

II. POLITICAL PARTIES

A. To acquire juridical personality, to qualify for accreditation, and to be entitled to the rights of political parties, a political party must be registered with COMELEC (*Sec. 60, Omnibus Election Code, 318 SCRA 336*).

B. The following political parties cannot be registered.

1. Religious sects

2. Those which seek to achieve their goals through unlawful means

3. Those which refuse to adhere to the Constitution

4. Those which are supported by any foreign government (*Sec. 2 (5), Article IX-C of 1987 Constitution*).

C. A party which fails to obtain at least 10% of the votes cast in the constituency in which it nominated candidates shall forfeit its registration (*Sec. 60, Omnibus Election Code*).

D. COMELEC has the authority to register political parties, organizations or coalitions, and the authority to cancel the registration of the same on legal grounds. The COMELEC *En Banc*, has the prerogative to direct that a hearing be conducted on the petition for cancellation of registration of the party list. The COMELEC has jurisdiction over petitions for cancellation of registration of any national, regional or sectoral party, organization or coalition while it is the HRET that has jurisdiction over contests relating to the

qualifications of a party-list nominee or representative (*Alliance for Barangay Concerns Party List v. COMELEC G.R. No. 193256, 22 March 2011*).

E. The validity or invalidity of the expulsion of a political party's officers is purely a membership issue that has to be settled within the party. It is an internal party matter over which COMELEC has no jurisdiction. It may intervene in disputes internal to a party only when necessary to the discharge of its constitutional functions, such as resolving an intra party leadership dispute as an incident of its power to register political parties (*Atienza v. COMELEC, G.R. No. 188920, 16 February 2010*). COMELEC has jurisdiction to resolve the issue of leadership of a political party (*Alcantara v. COMELEC, G.R. No. 203646, 16 April 2013*).

F. While the COMELEC has limited jurisdiction over intra-party leadership disputes it does not mean that COMELEC can substitute its own judgment for that of the party. The COMELEC cannot disregard the party's actions simply because these do not appear to be in line with the COMELEC's interpretation of the party's *Saligang Batas*. A party must be allowed to interpret its own governing rules and remove officials from participating in its own affairs. COMELEC gravely abused its discretion when it focused on purely procedural matters and disregarded the substantive issues raised by the party-list in the proceedings, refused to acknowledge established party practice, and substituted its mandate over that of the party-list (*MAGSASAKA Party-List v. COMELEC, G.R. No. 262975, May 21, 2024*).

G. The COMELEC's ruling that the 2022 Constitution and By-Laws are the prevailing authoritative documents governing the Partido Federal ng Pilipinas (PFP) is supported by substantial evidence. The records of the COMELEC reflect these documents as the most recent and officially-recorded governing documents of the PFP. In the absence of clear and convincing evidence to the contrary, the presumption of regularity in the conduct of an agency's official functions applies. Accordingly, the relevant provision in determining the valid set of officers of the PFP is Article XVII, Section 2 of the 2022 PFP Constitution and By-Laws, which provide for a three-year term. Thus, the COMELEC correctly ruled that Tamayo, et al., as National Officers of the party elected in 2021, have a term of office of three years. Consequently, their terms of office expired only in 2024, and not in September 2023, as Verceles and Rodriguez claimed. The Court further adopts the COMELEC's findings of procedural deficiencies in Verceles and Rodriguez' election. The election conducted by Verceles and Rodriguez on December 14, 2023 was found by the COMELEC to be invalid due to lack of proper notice, quorum and authority. The meeting was not convened by the incumbent Secretary General and likewise failed to meet the notice and quorum requirements as mandated by the party's Constitution. Consequently, the elections conducted by Verceles and Rodriguez produced no legal effect. Moreover, there was no valid reason for holding the election in the meeting of December 14, 2023, because the prevailing PFP Constitution provides that all National Officers of the PFP shall have a term of office of three years, which in Tamayo, et al.'s case ends in 2024. Finally, the Court finds no reason to reverse the COMELEC's finding regarding the late submission of Verceles and Rodriguez' Sworn Information Update Statement (SIUS). Verceles and Rodriguez' electronic submission of their SIUS on December 20, 2023 was well past the COMELEC's filing deadline of September 30, 2023, making Tamayo, et al.'s SIUS,

submitted on September 29, 2023, the valid one. The COMELEC committed no error in refusing to acknowledge Verceles and Rodriguez' SIUS, which was submitted late and without authority (*Partido Federal ng Pilipinas v. COMELEC, G.R. No. 276456, 25 February 2025*).

H. Article VII of the PDP Laban Constitution clearly demonstrates that the National Executive Committee (NEC) does not have the authority to discipline and expel Cusi and Matibag from the party. The authority to discipline members is lodged with the PDP Laban Chapter to which they belong or the National Council. More importantly, Cusi and Matibag's expulsion for their unjustified failure and/or refusal to help, aid, assist, and/or campaign for the official candidate of the Party requires the two-thirds vote of all the members of the disciplining authority-a requirement which was hot complied with. Consequently, the NEC's issuance of NEC Resolution No. 06 expelling them from PDP Laban is ultra vires.

Similarly, NEC Resolution No. 08 which declared as vacant several national officer positions and committee chairmanships, filled in those vacancies, and appointed Pimentel as acting vice-chairman, is void. Nowhere in the PDP Laban Constitution and the by-laws is the NEC granted the power or authority to declare positions as vacant and appoint national officers and national committee chairpersons, even in an acting capacity. Article XVIII, Section 3 of the PDP Laban Constitution vests in the National Assembly the power to nominate and elect National Officers and the National Committee Chairman.

NEC Resolution No. 09, which named Pimentel as acting chairman of PDP Laban, is also void not only because it proceeds from the void NEC Resolution Nos. 06 and 08, but owing to the dearth of evidence that Duterte authorized him to act as such or was absent, incapacitated or unable to preside over the National Council meeting as PDP Laban chairman. This is in contrast with the May 31, 2021 National Council meeting held by the Cusi-led faction, where the "call" for the meeting was made by Duterte by way of the Memorandum dated May 17, 2021.

As for Pimentel and Pacquiao's averment that Duterte's November 2021 filing of his certificate of candidacy for the 2022 national elections under and using the Certificate of Nomination and Acceptance of PDDS resulted in his automatic expulsion from PDP Laban, these acts will not serve to invalidate his actions as PDP Laban chairman during the May 31, 2021 and July 16, 2021 National Council meetings, and the July 17, 2021 National Assembly, which have already become *fait accompli (Pimentel III v. COMELEC, G.R. No. 265395, 8 July 2025).*

III. PARTY-LIST SYSTEM

A. Registration and Accreditation

1. To join electoral contests, a party or organization must undergo the two-step process of registration and accreditation, Registration is the act that bestows juridical personality for purposes of our election laws; accreditation, on the other hand, relates to the privileged

participation that our election laws grant to qualified registered parties. Accreditation can only be granted to a registered political party, organization or coalition; stated otherwise, a registration must first take place before a request for accreditation can be made. Once registration has been carried out, accreditation is the next natural step to follow (*Magdalo Para sa Pagbabago v. COMELEC, G.R. No. 190793, 12 June 2012*).

2. In determining who may participate in party-list elections, the COMELEC shall adhere to the following parameters:

    a. Three different groups may participate in the party-list system: (1) national parties or organizations, (2) regional parties or organizations, and (3) sectoral parties or organizations.
    b. National parties or organizations and regional parties or organizations do not need to organize along sectoral lines and do not need to represent any "marginalized and underrepresented" sector.
    c. Political parties can participate in party-list elections provided they register under the party-list system and do not field candidates in legislative district elections. A political party, whether major or not, that fields candidates in legislative district elections can participate in party-list elections only through its sectoral wing that can separately register under the party-list system. The sectoral wing is by itself an independent sectoral party, and is linked to a political party through a coalition.
    d. Sectoral parties or organizations may either be "marginalized and underrepresented" or lacking in "well-defined political constituencies." It is enough that their principal advocacy pertains to the special interest and concerns of their sector. The sectors that are "marginalized and underrepresented" include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, handicapped, veterans, and overseas workers. The sectors that lack "well-defined political constituencies" include professionals, the elderly, women, and the youth.
    e. A majority of the members of sectoral parties or organizations that represent the "marginalized and underrepresented" must belong to the "marginalized and underrepresented" sector they represent. Similarly, a majority of the members of sectoral parties or organizations that lack "well-defined political constituencies" must belong to the sector they represent. The nominees of sectoral parties or organizations that represent the "marginalized and underrepresented," or that represent those who lack "well-defined political constituencies," either must belong to their respective sectors, or must have a track record of advocacy for their respective sectors. The nominees of national and regional parties or organizations must be bona-fide members of such parties or organizations.
    f. National, regional, and sectoral parties or organizations shall not be disqualified if some of their nominees are disqualified, provided that they have at least one nominee who remains qualified (*Atong Paglaum, Inc. v. COMELEC, GR No. 203766, 2 April 2013*).

3. The enumeration of marginalized and under-represented sectors is not exclusive. The crucial element is not whether a sector is specifically enumerated, but whether a particular organization complies with the requirements of the Constitution and RA 7941. From the standpoint of the political process, the lesbian, gay, bisexual, and transgender have the same interest in participating in the party-list system on the same basis as other political parties similarly situated. State intrusion in this case is equally burdensome. Hence, laws of general application should apply with equal force to LGBTs, and they deserve to participate in the party-list system on the same basis as other marginalized and under-represented sectors (*Ang Ladlad LGBT Party v. COMELEC, G.R. No. 190582, April 8, 2010*).

4. Sectoral parties or organizations are no longer required to adduce evidence showing their track record, *i.e.* proof of activities that they have undertaken to further the cause of the sector they represent. It is enough that their principal advocacy pertains to the special interest and concerns of their sector. Otherwise stated, it is sufficient that the ideals represented by the sectoral organizations are geared towards the cause of the sector/s, which they represent. If at all, evidence showing a track record in representing the marginalized and underrepresented sectors is only required from nominees of sectoral parties or organizations that represent the marginalized and underrepresented who do not factually belong to the sector represented by their party or organization (*Abang-Lingkod Party List v. COMELEC, G.R. No. 206952, 22 October 2013*).

5. COMELEC has the exclusive jurisdiction to rule on the cancellation of party-list registration, as it is categorically provided such power to cancel party-list registrations under the law. This power of COMELEC is recognized in the Constitution, as it likewise grants to COMELEC the concomitant power to register party-list organizations. The power of COMELEC to register party-lists is echoed in Republic Act No. 7941, which confers upon COMELEC the sole and exclusive jurisdiction to act on petitions for registration of party-lists, after the same is published and after the parties are given due notice and hearing. Needless to say, the discretion of COMELEC when it acts on petitions for registration includes denying such petitions. Clearly, both the Constitution and the statute-Republic Act No. 7941-' categorically vest in COMELEC the power and authority to decide on matters relating to an organization's participation in the party-list system – from the grant or denial of its petition for registration as a party, organization or coalition to participate in the party-list elections, to the cancellation of a previously granted registration (*An Waray Party-List v. COMELEC, G.R. No. 268546, August 6, 2024*).

6. The HRET does not have jurisdiction over petitions to cancel the registration of party-lists, including those whose nominees are incumbent Members of the HoR. In the present case involving a petition to cancel the party-list's registration as the party-list is not a Member of the HoR, the case cannot fall under the HRET's jurisdiction. COMELEC, thus, retains its jurisdiction over such cases pursuant to Republic Act No. 7941 and the Constitution (*An Waray Party-List v. COMELEC, G.R. No. 268546, August 6, 2024*).

B. Nominees

1. A party-list organization's ranking of its nominees is a mere indication of preference. The law also provides for their qualifications to be eligible to the said seat. Such requirements must be possessed not only at the time of appointment but during the officer's entire tenure. A nominee who changes his sectoral affiliation within the same party will only be eligible for nomination under the new sectoral affiliation if the change has been effected at least six months before the elections. Section 15 of R.A. No. 7941 provides the effect of a change in affiliation and it covers both changes in political parties and sectoral affiliation. Such change may occur in the latter within the same party because the Philippine Party-List system allows multi-sectoral party-list system to participate. A candidate who is more than 30 on election day is not qualified to be a youth sector nominee. The law provides a nominee of the youth sector must at least be twenty-five (25) but not more than thirty (30) years of age on the day of election. This age limit covers all youth sector nominees vying for party-list representative seats as mandated by R.A. 7941, the Party-List System Act (*Amores v. House of Representatives Electoral Tribunal, G.R. No. 189600, 29 June 2010*).

2. The new ground which granted to the party-list organization the unilateral right to withdraw its nomination already submitted to the COMELEC would not secure the object of R.A. No. 7941 of developing and guaranteeing a full, free and open party-list electoral system. The success of a party-list system could only be ensured by avoiding any arbitrariness on the part of the party-list organization, by seeing to the transparency of the system, and by guaranteeing that the electorate would be afforded the chance of making intelligent and informed choices of their party-list representative (*Lokin, Jr. v. COMELEC, G.R No. 179431-32, 22 June 2010*).

3. The HRET has the authority to interpret the meaning of this particular qualification of a nominee of a party-list representative. A nominee must be a bona fide member or a representative of his party-list organization. They must look in the context of the facts that characterize such nominees and the marginalized and underrepresented interests that they presumably embody. The authority to determine the qualifications and to examine the fitness of aspiring nominees belong to the party or organization that nominates them. However, once an allegation is made that the party or organization has chosen and allowed a disqualified nominee to become its party-list representative in the lower House and enjoy the secured tenure that goes with the position, the resolution of the dispute is taken out of its hand (*Abayon v. House of Representative Electoral Tribunal, G.R. No. 189466, 11 February 2010*).

4. As long as the acts embraced under Sec. 79 of the Omnibus Election Code pertain to or are in connection with the nomination of a candidate by a party or organization, then such are treated as internal matters and cannot be considered as electioneering or partisan political activity. The twin acts of signing and filing a Certificate of Nomination are purely internal processes of the party or organization and are not designed to enable or ensure the victory of the candidate in the elections. The act of submitting the certificate nominating representatives was merely in compliance with the COMELEC requirements for nomination of party-list representatives and, hence, cannot be treated as electioneering or partisan political activity proscribed under by Sec. 2(4) of Art. IX(B) of the Constitution for civil servants (*Señeres v. COMELEC, G.R. No. 178678, 16 April 2009*).

5. The determination of disputes as to party nominations rests with the party, in the absence of statutes giving the court jurisdiction. Where there is no controlling statute or clear legal right involved, the court will not assume jurisdiction to determine factional controversies within a political party, but will leave the matter for determination by the proper tribunals of the party itself or by the electors at the polls. An election in which the voters have fully, fairly, and honestly expressed their will is not invalid even though an improper method is followed in the nomination of candidates. In the absence of a statutory provision to the contrary, an election may not even be invalidated by the fact that the nomination of the successful candidate was brought about by fraud, and not in the manner prescribed by the statute, provided it appears that noncompliance with the law did not prevent a fair and free vote (*Sinaca v. Mula, G.R. No. 135691, 27 September 1999*).

6. A sectoral party's failure to submit a list of five nominees, despite ample opportunity to do so before the elections, is a violation imputable to the party under Section 6(5) of RA No. 7941 (*COCOFED-Philippine Coconut Producers Federation, Inc. v. COMELEC, G.R. No. 207026, 6 August 2013*).

7. In view of a party's subsisting registration with the COMELEC as a multi-sectoral organization, its National Council (which is the entity registered with the COMELEC as a party-list organization) has not become defunct or non-existent, nor replaced by the BOT of the SEC-registered entity, whose registration with the SEC will not per se dispense with the evidentiary requirement under R.A. No. 7941 that its nominees must be bona fide members and nominees of the party (*Bibiano C. Rivera v. COMELEC, G.R. No. 210273, April 19, 2016*).

C. Number of Seats

1. The number of party-list seats is determined using this formula: number of district representatives/0.80 x 0.20. No rounding off is allowed. Parties other than the first party (*i.e.*, the party that obtained the highest number of votes based on plurality) may be entitled to additional seats based on the following formula: number of votes of that party/ number of votes of first party x number of seats of first party (*Veterans Federation Party v. COMELEC, G.R. No. 164702, 15 March 2006*).

2. The three-seat cap provided prevents the mandatory allocation of all available seats. The filling up of all available party list seats thus is not mandatory and is subject to the number of participants in the party list election. The fixed 2% vote requirement is no long viable due to the increases in both party list allotment and the creation of additional legislative districts. The 2% vote requirement cannot be given effect as the 20% of party list seats in the membership of the House of Representatives as provided in the constitution would be mathematically impossible to fill up (*Banat v. COMELEC, G.R. No 179271, 8 July 2009*).

3. Party-list groups garnering less than 2% of the party-list votes may yet qualify for a seat in the allocation of additional seats depending on their ranking in the second round. The continued operation of the two-percent threshold was deemed "an unwarranted obstacle to the full

implementation of Section 5(2), Article VI of the Constitution and prevents the attainment of the 'broadest possible representation of party, sectoral or group interests in the House of Representatives.' and has been declared unconstitutional. The 20% share in representation may never be filled up if the 2% threshold is maintained. In the same vein, the maximum representation will not be achieved if those party-list groups obtaining less than one percentage are disqualified from even one additional seat in the second round. *(Aksyon Magsasaka-Partido Tinig ng Masa (AKMA-PTM) v. COMELEC, G.R. No. 207134, June 16, 2015)*

4. The giving of an additional seat to a party in 2003 was *pro hac vice* (for this one particular occasion) (*Partido ng Manggagawa v. COMELEC, G.R. No. 164702, 15 March 2006*).

5. The COMELEC's reasoning that a party-list election is not an election of personalities is valid to a point. It cannot be taken, however, to justify its assailed non-disclosure stance which comes, as it were, with a weighty presumption of invalidity, impinging, as it does, on a fundamental right to information. While the vote cast in a party-list elections is a vote for a party, such vote, in the end, would be a vote for its nominees, who, in appropriate cases, would eventually sit in the House of Representatives. (*Bantay Republic Act 7941 v. COMELEC, G.R. No. 177271, 4 May 2007*).

6. In determining the number of additional seats for each party-list that has met the 2% threshold, "proportional representation" is the touchtone to ascertain entitlement to extra seats. In order to be entitled to one additional seat, an exact whole number is necessary. Rounding off may result in the awarding of a number of seats in excess of that provided by the law. Furthermore, obtaining absolute proportional representation is restricted by the three-seat-per-party limit to a maximum of two additional slots. The prevailing formula for the computation of additional seats for party-list winners is the formula stated in the landmark case of Veterans. (*Citizen's Battle Against Corruption v. COMELEC, G.R. No. 172103, 13 April 2007*).

7. Under Sections 17 and 18 of Article VI of the 1987 Constitution and their internal rules, the HRET and the CA are bereft of any power to reconstitute themselves. The Constitution expressly grants to the House of Representatives the prerogative, within constitutionally defined limits, to choose from among its district and party-list representatives those who may occupy the seats allotted to the House in the HRET and the CA. However, even assuming that party-list representatives comprise a sufficient number and have agreed to designate common nominees to the HRET and the CA, their primary recourse clearly rests with the House of Representatives and not with the Supreme Court. Under Sections 17 and 18, Article VI of the Constitution, party-list representatives must first show to the House that they possess the required numerical strength to be entitled to seats in the HRET and the CA. Only if the House fails to comply with the directive of the Constitution on proportional representation of political parties in the HRET and the CA can the party-list representatives seek recourse to the Supreme Court under its power of judicial review. Under the doctrine of primary jurisdiction, prior recourse to the House is necessary before direct recourse to the Supreme Court (*Pimentel, Jr. v. House of Representatives Electoral Tribunal, G.R. No. 141489, 29 November 2002*).

8. The party-list system has been branded as "a social justice tool designed not only to give more law to the great masses of our people who have less in life, but also to enable them to become veritable lawmakers themselves, empowered to participate directly in the enactment of laws designed to benefit them. To be entitled to one qualifying seat, a party must obtain 2% of those ballots cast for qualified party-list candidates. Votes cast for a party which is not entitled to be voted for should not be counted. The votes they obtained shall be deducted from the canvass of the total votes for the party-list (*Ang Bagong Bayani-OFW Labor Party v. COMELEC, G.R. No. 147589, 26 June 2001*).

D. Delisting

1. Section 6(8) of RA 7941 provides for two separate grounds for delisting; these grounds cannot be mixed or combined to support delisting; and the disqualification for failure to garner 2% party-list votes in two preceding elections should now be understood, in light of the *Banat* ruling, to mean failure to qualify for a party-list seat in two preceding elections for the constituency in which it has registered. (*Philippine Guardians Brotherhood, Inc. v. COMELEC, G.R. No. 190529, 22 March 2011*).

2. The law provides for 2 separate reasons for the delisting of any national, regional or sectoral party organization or coalition. Section 6(8) of the Party-List system Act provides that the COMELEC may motu proprio or upon verified complaint of any interested party, remove or cancel, after due notice and hearing, the registration of any national, regional or sectoral party organization or coalition. The grounds are : (a) if it fails to participate in the last two (2) preceding elections; or (b) fails to obtain at least two per centum (2%) of the votes cast under the party list system in the two (2) preceding elections for the constituency in which it was registered (*Philippine Guardians Brotherhood, Inc. (PGBI) v. COMELEC, G.R. No. 190529, 29 April 2010*).

3. Under Section 6(5) of RA No. 7941, violation of or failure to comply with laws, rules or regulations relating to elections is a ground for the cancellation of registration. However, not every kind of violation automatically warrants the cancellation of a party-list group's registration. Since a reading of the entire Section 6 shows that all the grounds for cancellation actually pertain to the party itself, then the laws, rules and regulations violated to warrant cancellation under Section 6(5) must be one that is primarily imputable to the party itself and not one that is chiefly confined to an individual member or its nominee (*COCOFED-Philippine Coconut Producers Federation, Inc. v. COMELEC, G.R. No. 207026, 6 August 2013*).

4. When COMELEC exercised its jurisdiction and cancelled the registration of An Waray for violating or failing to comply with election laws, it did so without grave abuse of its discretion. An Waray knowingly and deliberately allowed, and consciously aided, the assumption of Victoria as its second nominee in the HoR, despite its knowledge that Victoria lacked a CoP from COMELEC. Thus, COMELEC was correct in cancelling An Waray's registration (*An Waray Party-List v. COMELEC, G.R. No. 268546, August 6, 2024*).

5. There can be no prescription of the action to cancel the registration of a part-list, as the same is akin to a legislative franchise which never gains finality or conclusiveness because the

granting authority can always review and revoke the same (*An Waray Party-List v. COMELEC, G.R. No. 268546, August 6, 2024*).

E. Standing

1. A party which is still in the process of incorporation, cannot be considered a juridical person or an entity authorized by law to be a party to a civil action and thus cannot pray for the issuance of a writ of mandamus to compel publication of a COMELEC Resolution. Neither does such party have *locus standi* as it is not even a party-list candidate and could not have been directly affected by the COMELEC Resolution. (*Association of Flood Victims v. COMELEC, G.R. No. 203775, August 5, 2014)*

IV. CERTIFICATES OF CANDIDACY

A person files a certificate of candidacy to announce his or her candidacy and to declare his or her eligibility for the elective office indicated in the certificate (*Arlene Llena Empaynado v. COMELEC, G.R. No. 216607, April 5, 2016*).

A. Deadline for filing

1. Certificates of candidacy must be filed not later than the day before the date for the beginning of the campaign period (*Sec. 7, Republic Act No. 7166*).

2. A certificate filed beyond the deadline is not valid (*Gador v. COMELEC, 95 SCRA 431*).

3. A certificate which did not indicate the position for which the candidate is running may be corrected (*Conquilla v. COMELEC, 332 SCRA 861*).

4. **COMELEC RESOLUTION No. 11045 (28 August 2024)**

> SECTION 37. Period for Filing of Certificates of Candidacy. - The COC shall be filed on October 1, 2024 (Tuesday) to October 8, 2024 (Tuesday), including Saturday and Sunday, from 8:00 AM to 5:00 PM. Provided, That, any person who files a COC within filing period shall only be considered as a candidate at the start of the campaign period and unlawful acts or omissions applicable to a candidate shall only apply upon the start of the campaign period.
>
> If at 4:45 PM during the period for filing of the COC, there are aspirants inside the designated queuing area intending to file their respective COCs, the Receiving Office shall:

a. Prepare a complete list, containing the names of the aspirants inside the designated queuing area with completely filled-out COCs. If the COC is not properly filled-out, the name of the aspirant shall not be included in the list.
b. The names of the aspirants shall be consecutively numbered, indicating the time of listing (queue time).
c. Announce the names of the aspirants, in the order in which they are listed. Once name is called, the aspirant shall proceed with the filing of COC. If the name of the aspirant is called beyond 5:00 PM and fails to appear, the Receiving Office is authorized to refuse acceptance of the COC at a later time.

The same procedure shall be observed if at 5:00 PM of the last day of filing of the COC, there are still aspirants inside or within thirty (30) meters from the designated queuing area.

Only the COCs of those whose names were listed by the Receiving Office shall be accepted.

A COC filed in accordance with this procedure shall be stamped "received" at the date and time it is actually filed and shall be deemed filed on time. The signature of the receiving officer shall be affixed in the COC once received.

An incomplete COC shall not be accepted and shall not be stamped "received" on time even when the aspirant is present and waiting to be called. A COC shall be deemed incomplete in the following instances: no documentary stamp attached, no original signature of the aspirant or digital signature as defined under existing laws and rules, not notarized COC, no signature of the notary public, incomplete address, no photograph, not completely filled out COC. The forms for the List of Aspirants in the Queuing/Waiting Area at 4:45 PM for the duration of the period for filing of COC and 5:00 PM of the last day for filing of COC, are attached as Annexes "M", and "M-1", respectively.

5. The SC ruled that the COMELEC gravely abused its discretion when it did not allow Balintay to file his COC pursuant to COMELEC Resolution No. 11045. It held that the COMELEC should reexamine whether its rules serve the interest of justice and fair play. The SC has recognized that elections are not conducted under laboratory conditions – the COMELEC must be prepared to make quick decisions in response to unforeseen circumstances that could undermine or subvert the will of the voters. Given these considerations, along with Balintay's unique circumstances, the SC found that the COMELEC's strict application of its rules was unjustified, warranting the reversal of its decision *(SC Press Briefer on Balintay v. COMELEC, G.R. No. 277540).*

6. The SC ruled that the COMELEC committed grave abuse of discretion by disallowing the substitution of Marie Grace, who failed to file her COC and CONA within the prescribed period under Sec. 59 of COMELEC Resolution No. 11045, finding that Marie Grace fully complied with the requirements of Sec. 77 of the *Omnibus Election Code*, and hence, is a bona fide candidate for the position of Vice Mayor of Limay, Bataan. The SC thus permanently prohibited the COMELEC En Banc from implementing its assailed Resolution dated January 6, 2025 and related issuances *(SC Press Briefer on David v. COMELEC, G.R. No. 277720).*

B. Prohibition against multiple candidacies

1. A person who files a certificate of candidacy for more than one office should not be eligible for any of them.

2. Before the deadline for filing certificates, he may withdraw all except one (*Sec. 73, Omnibus Election Code*).

C. Forms

1. Oath

   a. The certificate must be sworn (*Sec. 73, Omnibus Election Code*).

   b. The election of a candidate cannot be annulled because of formal defects in his certificate, such as, lack of oath (*De Guzman v. Board of Canvassers, 48 Phil. 211*)

2. Name

   a. A candidate shall use his baptismal name or, if none, the name registered with the civil registrar or any other name allowed by law.

   b. He may include one nickname or stage name by which he is generally known (*Sec. 74, Omnibus Election Code*). A resolution of COMELEC cancelling the nickname in a certificate of candidacy without giving the candidate a chance to explain is void (*Villarosa v. COMELEC, 319 SCRA 470*). A wife who used the nickname of her husband in her certificate of candidacy should not be credited with the ballots in which the voter wrote such nickname (*Villarosa v. COMELEC, 340 SCRA 396*).

   c. When two or more candidates for the same office have the same name and surname, each shall state his paternal and maternal surnames, except the incumbent (*Sec. 74, Omnibus Election Code*).

d. A claim that a candidate's use of a particular name in order to appear first in an alphabetical list of candidates would lead to confusion as to put him to undue disadvantage, is merely speculative and without basis as the voters can identify the candidate they want to vote for (*Villafuerte v. COMELEC, GR No. 206698, 25 February 2014*).

e. By using other nicknames to differentiate one candidate from another person, there is sufficient differentiation which negates any intention to mislead or misinform or hide a fact which would otherwise render him ineligible (*Villafuerte v. COMELEC, GR No. 206698, 25 February 2014*).

3. Old Forms

COMELEC has a wide latitude of discretion in adopting means to carry out its mandate of ensuring free, orderly, and honest elections subject only to the limitation that the means so adopted are not illegal or do not constitute grave abuse of discretion. Thus, it has the power to declare that COCs using an old form shall be deemed not filed in a minute resolution *(Sarangani v. COMELEC, G.R. No. 244369. June 14, 2022)*.

4. Formal Defects

Even if the CoC was not was not duly signed or does not contain the required data, the proclamation of the candidate as the winner may not be nullified on such grounds. The defects in the certificate should have been questioned before the election; they may not be questioned after the election without invalidating the will of the electorate, which should not be done. To uphold the cancellation of a candidate's CoC due to an erroneous use of nickname after the votes were cast would render the electorates' votes for the candidate worthless *(Uy, Jr. v. COMELEC, G.R. Nos. 260650/260952, 8 August 2023)*.

D. Effect of Filing

An elective official continues to hold office and is not deemed resigned upon the filing of a certificate of candidacy for the same or different position.

An appointed public official is considered resigned upon filing of his certificate (*Sec. 66, Omnibus Election Code; Sanciangco v. Rono, 137 SCRA 671*). This includes an employee of a government owned or controlled corporation organized under the Corporate Code, since the law makes no distinction (*PNOC-Energy Development Corporation v. National Labor Relations Commission, 222 SCRA 831*).

The power to decide to whom deemed-resigned provisions should apply rests with Legislature and not the Court. As this power rests with Congress itself, and it did not seem fit to apply the same to officers of electric cooperatives, NEA cannot arrogate this power unto itself through its administrative issuances. In mandating that officers of electric cooperatives be deemed resigned upon the mere filing of their certificates of candidacy, NEA expanded Presidential Decree No. 269 and exceeded its authority to implement the law (*National Electrification Administration v. Borja, G.R. No. 232581, 13 November 2024*).

E. Definition of a Candidate

Under Section 79a of the Omnibus Election Code, a "candidate" refers to any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy by himself (herself) or through an accredited political party, aggroupment, or coalition of parties.

Under Section 15 of Republic Act No. 9369, a candidate is "any person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy." Thus, under the law, a person only becomes a candidate when he/ she has filed a certificate of candidacy and when the campaign period has commenced. One is not a candidate, despite having filed a certificate of candidacy, before the start of the campaign period. The law added, "unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the aforesaid campaign period."

A person, after filing his/her COC but prior to his/her becoming a candidate (thus, prior to the start of the campaign period), can already commit the acts described under Section 79(b) of the Omnibus Election Code as election campaign or partisan political activity, However, only after said person officially becomes a candidate, at the beginning of the campaign period, can said acts be given effect as premature campaigning under Section 80 of the Omnibus Election Code. Only after said person officially becomes a candidate, at the start of the campaign period, can his/her disqualification be sought for acts constituting premature campaigning. Obviously, it is only at the start of the campaign period, when the person officially becomes a candidate, that the undue and iniquitous advantages of his/her prior acts, constituting premature campaigning, shall accrue to his/her benefit. This means that a candidate is liable for an election offense only for acts done during the campaign period, not before. The law is clear as daylight — any election offense that may be committed by a candidate under any election law cannot be committed before the start of the campaign period. (*Penera v. COMELEC, GR No. 181613, 25 November 2009*).

The right to equal access to opportunities for public service does not bestow a right to seek an elective office nor elevate the privilege to the level of an enforceable right. The privilege may be limited by law as in the proscription on nuisance candidates under the Omnibus Election Code (*Pamatong v. COMELEC, 427 SCRA 96*).

If the certificate of candidacy is void ab initio, the candidate is not considered a candidate from the very beginning even if his certificate of candidacy was cancelled after the elections. (*H. Sohria Pasagi Diambrang v. COMELEC, G.R. No. 201809, October 11, 2016*).

F. Qualifications

The Constitution prescribes the qualifications (i.e., age, citizenship, residency, voter registration and literacy) for the following positions: President, Vice-President, Senators and Representatives (District and Party-List) while statutes set the qualifications of local officials.

1. Residency

The term "residence" is to be understood not in its common acceptation as referring to "dwelling" or "habitation," but rather to "domicile" or legal residence, that is, the place where a party actually or constructively has his permanent home, where he/ she, no matter where may he/ she be found at any given time, eventually intends to return and remain (*Japson v. COMELEC, G.R. No. 180088, 19 January 2009*).

A domicile of origin is acquired by every person at birth. Meanwhile, if one wishes to successfully effect a change of domicile, he/ she must demonstrate an actual removal or an actual change of domicile, a *bonafide* intention of abandoning the former place of residence and establishing a new one, and definite acts which correspond with the purpose. Without clear and positive proof of the concurrence of these three requirements, the domicile of origin continues (*Limbona v. COMELEC, G.R. No. 186006, 16 October 2009*).

An individual does not lose his domicile even if he has lived and maintained residences in different places. Residence, it bears repeating, implies a factual relationship to a given place for various purposes. The absence from legal residence or domicile to pursue a profession, to study or to do other things of a temporary or semi-permanent nature does not constitute loss of residence. *(Sibuma v. COMELEC, G.R. No. 261344, 24 January 2023).*

A citizen may leave the place of his birth to look for "greener pastures," as the saying goes, to improve his lot, and that, of course includes study in other places, practice of his avocation, or engaging in business. When an election is to be held, the citizen who left his birthplace to improve his lot may desire to return to his native town to cast his ballot but for professional or business reasons, or for any other reason, he may not absent himself from his professional or business activities; so there he registers himself as voter as he has the qualifications to be one and is not willing to give up or lose the opportunity to choose the officials who are to run the government especially in national elections. Despite such registration, the animus revertendi to his home, to his domicile or residence of origin has not forsaken him. This may be the explanation why the registration of a voter in a place other than his residence of origin has not been deemed sufficient to constitute abandonment or loss of such residence. It finds justification in the natural desire and longing of every person to return to his place of birth. This strong feeling of attachment to the place of one's birth must be overcome by positive proof of abandonment for another *(Faypon v. Quirino, G.R. No. L-7068, 22 December 1954).*

On Proofs of Residence: While a *barangay*, through its secretary, is required by the Local Government Code to keep an updated record of all its inhabitants, certifications of residency issued by a *punong barangay* are not conclusive, as he or she is merely *presumed* to know who the residents are in his or her own barangay *(Sibuma v. COMELEC, G.R. No. 261344, 24 January 2023).*

A lease contract entered into a little over a year before the day of elections does not adequately support a change of domicile (*Domino v. COMELEC, G.R. No. 134015, 19 July 1999*).

A Filipino citizen's immigration to a foreign country constitutes an abandonment of domicile and residence in the Philippines. The acquisition of a permanent residency status is a renunciation of Philippine residency status (*Gayo v. Verceles, G.R. No. 150477, 28 February 2005*).

It is the fact of residence, not a statement in a certificate of candidacy which ought to be decisive in determining whether or not an individual has satisfied the constitutions residency qualification requirement." The COMELEC ought to have looked at the evidence presented and see if petitioner was telling the truth that she was in the Philippines during the period claimed (*Poe-Llamanzares v. COMELEC, G.R. No. 221697, March 8, 2016*).

Under Section 74 of the Omnibus Election Code, persons who file their certificates of candidacy declare that they are not a permanent resident or immigrant to a foreign country. Therefore, a petition to deny due course or cancel a certificate of candidacy may likewise be filed against a permanent resident of a foreign country seeking an elective post in the Philippines on the ground of material misrepresentation in the certificate of candidacy (*Arlene Llena Empaynado v. COMELEC, G.R. No. 216607, April 5, 2016*).

The concurrence of the three requisites for the acquisition of a new domicile of choice may be reckoned only from the time that a candidate has resigned from his elective post in another locality *(Mangudadatu v. COMELEC, G.R. No. 260219 & 260231, 22 April 2025)*.

2. Registered Voter

A person who worked in a different town but resides in another and is a registered voter and owns property in the latter (*Papaudayan v. COMELEC, G.R. No. 147909, 16 April 2002*), and a person who lived in a house that he/ she bought for more than 25 years and is a registered voter of that place for more than a year (*Torayno v. COMELEC, G.R. No. 137329, 9 August 2000*) meet the residency requirement.

Registration as a voter in another place is not sufficient to consider a person to have abandoned his/ her residence. (*Perez v. COMELEC, G.R. No. 133944, 28 October 1999*).

Respondents substantially established their residency requirement, i.e., at least one year in the Philippines and at least six months in the place wherein they propose to vote immediately preceding the election. At most, the sworn statement and affidavit presented by petitioners tended to prove that respondents are employees of the Olivar family and that they temporarily use their employer's bunk house after work. However, these declarations did not conclusively prove that respondents' residence for at least six months prior to election is other than Brgy. Punta, San Remigio, Cebu. Also, property ownership is not among the qualifications for one to qualify as a voter in a city or municipality. A voter may be staying in a place as a lessee, in a certain gratuitous living arrangement, or in some other capacity other than that as a property owner, but such circumstances do not make such voter any less of a resident in such area. It is enough that respondents actually resided in the said barangay and municipality for the required period. To require property ownership would imply that only the landed can establish compliance with the residency requirement. In practicality, respondents' physical presence in Brgy. Punta, San Remigio, Cebu is justified by their employment therein. Thus, it is not absurd nor fraudulent for these respondents to register as voters of Brgy. Punta, San Remigio, Cebu despite petitioners' allegations that they merely occupy their employer's bunk house. Again, no sufficient evidence was presented to support such contention. Moreover, respondents' declaration in their application for registration confirms their intention to establish their residence in Brgy. Punta, San Remigio, Cebu as their residence or domicile. Petitioners failed to establish the fact that these respondents were indeed domiciled in some other municipality or city. Mere allegation that the respondents are residents of other nearby municipalities is not worthy of consideration before courts of law without evidence to prove the same *(Bascon v. Negre, G.R. Nos. 191299-191302, March 14, 2023).*

3. Citizenship

For national elective positions, the candidate must be a natural-born citizen. For local elective positions, the candidate may be naturalized citizen.

Natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country can seek elective office provided they re-acquire Philippine citizenship by taking the oath of allegiance to the Republic prescribed under the Citizenship Retention and Re-acquisition Act of 2003, and make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath.

The use of a foreign passport amounts to repudiation or recantation of the oath of renunciation. Matters dealing with qualifications for public elective office must

be strictly complied with. A candidate cannot simply be allowed to correct the deficiency in his qualification by submitting another oath of renunciation *(Arnado v. COMELEC, G.R. No. 210164, August 18, 2015)*

Dual citizens are disqualified from running for any elective local position. They cannot successfully run and assume office because their ineligibility is inherent in them, existing prior to the filing of their certificates of candidacy. Their certificates of candidacy are void ab initio, and votes cast for them will be disregarded. Consequently, whoever garners the next highest number of votes among the eligible candidates is the person legally entitled to the position (*Arlene Llena Empaynado v. COMELEC, G.R. No. 216607, April 5, 2016*).

The petitioner's continued exercise of his rights as a citizen of the USA through using his USA passport after the renunciation of his USA citizenship reverted him to his earlier status as a dual citizen. Such reversion disqualified him from being elected to public office. *(Agustin v. COMELEC, G.R. No. 207105, November 10, 2015)*

As a matter of law, foundlings are as a class, natural-born citizens (*Poe-Llamanzares v. COMELEC, G.R. No. 221697, March 8, 2016*). When the names of the parents of a foundling cannot be discovered despite a diligent search, but sufficient evidence is presented to sustain a reasonable inference that satisfies the quantum of proof required to conclude that at least one or both of his or her parents is Filipino, then this should be sufficient to establish that he or she is a natural-born citizen (*Rizalito Y. David v. Senate Electoral Tribunal, G.R. No. 221538, September 20, 2016*).

The assumption should be that foundlings are natural-born unless there is substantial evidence to the contrary. This is necessarily engendered by a complete consideration of the whole Constitution, not just its provisions on citizenship. This includes its mandate of defending the well-being of children, guaranteeing equal protection of the law, equal access to opportunities for public service, and respecting human rights, as well as its reasons for requiring natural-born status for select public offices. Moreover, this is a reading validated by contemporaneous construction that considers related legislative enactments, executive and administrative actions, and international instruments. (*Rizalito Y. David v. Senate Electoral Tribunal, G.R. No. 221538, September 20, 2016*).

Natural-born citizenship can be reacquired even if it had been once lost. COMELEC's position that natural-born status must be continuous was already rejected in Bengson Ill v. HRET where the phrase "from birth" was clarified to mean at the time of birth: "A person who at the time of his birth, is a citizen of a particular country, is a natural-born citizen thereof." Neither is "repatriation" an act to "acquire or perfect" one's citizenship. There are only two types of citizens under the 1987 Constitution: natural-born citizen and naturalized, and that there

is no third category for repatriated citizens (*Poe-Llamanzares v. COMELEC, G.R. No. 221697, March 8, 2016*).

A foundling, considered a natural-born Filipino citizen, re-acquired natural-born Filipino citizenship when, following her naturalization as a citizen of the United States, she complied with the requisites of Republic Act No. 9225. (*Rizalito Y. David v. Senate Electoral Tribunal, G.R. No. 221538, September 20, 2016*).

A clerical error in the date of notarization does not invalidate an Affidavit of Renunciation. Thus, the execution thereof still complies with the requirements of Republic Act No. 9225 for a person with dual citizenship to be qualified to run for any elective public office *(Cardino v. COMELEC, G.R. No. 216637, March 7, 2017)*.

The mere issuance and existence of the genuine and authentic IC, while not conclusive proof is, at the very least, prima facie proof of compliance with R.A. 9225, including the submission of the petition therefor and its supporting documents as well as their due processing and approval by the BI (*Piccio v. HRET, G.R. No. 248985, 5 October 2021*).

Considering that petitioner is a dual citizen by birth, not a dual citizen by naturalization, it was not incumbent upon her to perform the twin requirements of Sections 3 and 5(2) of R.A. 9225. R.A. 9225 covers only natural-born Filipinos who personally and voluntarily become naturalized foreign citizens, thereby possessing simultaneously two or more citizenships and allegiances. It is not concerned with dual citizenships acquired upon birth or due to the circumstances of one's birth, which are involuntary and a product of the concurrent application of different laws of two or more states (*Gana-Carait v. COMELEC, G.R. No. 257453, August 9, 2022*).

The failure to renounce foreign citizenship as required by Section 5(2), R.A. 9225 does not affect even a naturalized person's status as a Filipino citizen, which is retained or reacquired upon the taking of the oath of allegiance under R.A. 9225 – the same oath contained in the CoC. Such failure merely maintains his status as a dual citizen. The requirement to renounce foreign citizenship, and therefore have full and sole allegiance to the Republic of the Philippines, is merely a condition imposed upon the exercise by a naturalized dual citizen of his political right to seek elective public office, but not upon his status as a Filipino citizen (*Gana-Carait v. COMELEC, G.R. No. 257453, August 9, 2022*).

Failure to renounce foreign citizenship under R.A. 9225 and thereby remaining a dual citizen having dual allegiances does not appear to be an ineligibility, as it presupposes that the candidate is a Filipino citizen. If at all, the same is a disqualification under Section 40 of the Local Government Code (LGC), and thus, the proper subject of a petition for disqualification (*Gana-Carait v. COMELEC, G.R. No. 257453, August 9, 2022*).

4. Legitimacy

Legitimacy or illegitimacy has no relevance to elective public office (*Tecson v. COMELEC, 424 SCRA 277*).

5. Other Requirements

The requirement under the Comprehensive Dangerous Drugs Act of 2002 (i.e. undergoing and passing a drug test) is unconstitutional since it partakes of an additional requirement not allowed under the Constitution for senators (*Pimentel v. COMELEC, G.R. No. 161658, 3 November 2008*).

G. Disqualification

1. Constitution

a. Three-term limit for local elective officials (*Art. X, Sec. 8 of the Constitution)*

i. Violation of the three-term limit rule is not a ground for a petition for disqualification, however, it is an ineligibility which is a proper ground for a petition to deny due course to or to cancel a Certificate of Candidacy under Section 78 of the OEC (*Albania v. COMELEC, G.R. No. 226792, 7 June 2017*).

ii. Two conditions must concur for the application of the disqualification of a candidate based on violation of the three-term limit rule, which are: (1) that the official concerned has been elected for three consecutive terms in the same local government post, and (2) that he has fully served three consecutive terms (*Albania v. COMELEC, G.R. No. 226792, 7 June 2017, Halili v. COMELEC, G.R. No. 231643, January 15, 2019*).

iii. An involuntary interrupted term, as in the case of assumption of office only after winning an election protest, cannot, in the context of the disqualification rule, be considered as one term for purposes of counting the three-term threshold, since prior to winning, the candidate was not the rightful holder of the position (*Abundo v. COMELEC, G.R. No. 201716, 8 January 2013*).

iv. When an elective local public officer is administratively dismissed by the OMB and his penalty subsequently modified to another penalty, like herein petitioner, the period of dismissal cannot just be nonchalantly dismissed as a period for preventive suspension considering that, in fact, <u>his term is effectively interrupted</u>. During said period, petitioner cannot claim to be Governor as his title is stripped of him by the OMB despite the pendency of his

appeal. Neither does he exercise the power of the office. Said title and power are already passed to the Vice Governor. He also cannot claim that the exercise of his power is merely suspended since it is not. Hence, the Court cannot turn a blind eye on the interruption of his term despite the ex post facto redemption of his title following the OMB rule *(Tallado v. COMELEC, G.R. No. 246679, 3 November 2020).*

v. When it was only upon the favorable decision on his petition for correction of manifest error that a candidate was proclaimed as the duly-elected official, he is deemed not to have served office for the full term of three years to which he was supposedly entitled, since he only assumed the post and served the unexpired term of his opponent (*Albania v. COMELEC, G.R. No. 226792, 7 June 2017*).

vi. A provincial board member's election to the same position for the third and fourth time, but now in representation of the renamed district, is a violation of the three-term limit rule (*Naval v. COMELEC, GR No. 207851, 8 July 2014*).

vii. The conversion of a municipality into a city does not constitute an interruption of the incumbent official's continuity of service. To be considered as interruption of service, the "law contemplates a rest period during which the local elective official steps down from office and ceases to exercise power or authority over the inhabitants of the territorial jurisdiction of a particular local government unit *(Halili v. COMELEC, G.R. No. 231643, January 15, 2019).*

2. Omnibus Election Code

The purpose of a disqualification proceeding is to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. A petition to disqualify a candidate may be filed pursuant to Section 68 of the Omnibus Election Code. (*Ejercito v. COMELEC, G.R. No. 212398, November 25, 2014*)

Offenses that are punished in laws other than in the Omnibus Election Code cannot be a ground for a Section 68 petition (*Ejercito v. COMELEC, G.R. No. 212398, November 25, 2014*).

Under Section 1(c)(3) of COMELEC Resolution No. 11046, the disqualification for violation of all other grounds under the Local Government Code and the Omnibus Election Code requires that the person subject of the disqualification was

declared guilty of said violation by final decision of a competent court in an action or protest in which they are a party. Simply put, it is the final decision finding the party guilty of a violation of the Local Government Code or the Omnibus Election Code that shall serve as the basis for their disqualification. This means that the finding of guilt was done in a prior proceeding separate from the disqualification case itself. This is consistent with Section 26541 of the Omnibus Election Code, as amended by Republic Act No. 9369, which vests COMELEC with the duty to conduct the preliminary investigation for election offenses; and Section 268, of the Omnibus Election Code which grants the Regional Trial Court the exclusive original jurisdiction to try and decide on whether an election offense was committed. Incidentally, Section 264 of the Omnibus Election Code imposes disqualification as a penalty for the commission of an election offense. Instead of following the foregoing procedure, it appears that COMELEC decided to directly rule on whether petitioner Erice is guilty of violation of Section 261(z)(11), an election offense, and after having done so, imposed the penalty of disqualification. This cannot be permitted. The COMELEC cannot skip the processes laid down in our laws, no matter how noble the cause of protecting the integrity of the elections may be. The jurisdiction of the COMELEC to disqualify candidates is limited to those enumerated in Section 68 of the Omnibus Election Code. All other election offenses are beyond the ambit of COMELEC jurisdiction. They are criminal and not administrative in nature. COMELEC cannot expand the grounds for disqualification under our laws using COMELEC Resolution No. 11046 as its basis. The powers of COMELEC under the 1987 Constitution do not include the power to amend laws passed by the legislature. Therefore, COMELEC went beyond its jurisdiction in disqualifying Erice for violation of Section 26 J (z)(l 1) of the Omnibus Election Code (*Erice v. COMELEC, G.R. No. 277608, 8 July 2025).*

a. Grounds

   i. Any person declared by competent authority insane or incompetent

   ii. Any person sentenced by final judgment for any of the following offenses:

      1. Insurrection, or rebellion

      2. Offense for which he was sentenced to penalty of more than 18 months

      3. Crime involving moral turpitude (*Sec. 12, Omnibus Election Code*)

   iii. A permanent resident to or immigrant to foreign country unless he waives such status (*Sec. 68, Omnibus Election Code*)

b. Removal

i. Insanity or incompetence – declaration of removal of disqualification by competent authority

ii. Conviction

1) Plenary pardon

d. The phrase in the presidential pardon which declares that the person "is hereby restored to his civil and political rights" substantially complies with the requirement of express restoration of his right to hold public office, or the right of suffrage. Articles 36 and 41 of the Revised Penal Code should be construed in a way that will give full effect to the executive clemency granted by the President, instead of indulging in an overly strict interpretation that may serve to impair or diminish the import of the pardon which emanated from the Office of the President and duly signed by the Chief Executive himself/herself. The said codal provisions must be construed to harmonize the power of Congress to define crimes and prescribe the penalties for such crimes and the power of the President to grant executive clemency. All that the said provisions impart is that the pardon of the principal penalty does not carry with it the remission of the accessory penalties unless the President expressly includes said accessory penalties in the pardon. It still recognizes the Presidential prerogative to grant executive clemency and, specifically, to decide to pardon the principal penalty while excluding its accessory penalties or to pardon both. Thus, Articles 36 and 41 only clarify the effect of the pardon so decided upon by the President on the penalties imposed in accordance with law (*Risos-Vidal v. COMELEC, G.R. No. 206666, 21 January 2015*).

e. A whereas clause in a pardon which states that the person “publicly committed to no longer seek any elective position or office” does not make the pardon conditional. Whereas clauses do not form part of a statute because, strictly speaking, they are not part of the operative language of the statute. The whereas clause is not an integral part of the decree of the pardon, and therefore, does not by itself alone operate to make

the pardon conditional or to make its effectivity contingent upon the fulfilment of the aforementioned commitment nor to limit the scope of the pardon (*Risos-Vidal v. COMELEC, G.R. No. 206666, 21 January 2015*).

2) Amnesty

3) Lapse of 5 years after service of sentence (*Sec. 12, Omnibus Election Code*)

3. Local Government Code

a. Those sentenced by final judgment for an offense involving moral turpitude or an offense punishable by imprisonment for at least one year, within 2 years after service of sentence.

The disqualification from running for public office due to libel shall be removed after service of the five-year sentence, which is counted from the date the fine is paid. *(Ty-Delgado v. HRET, G.R. No. 219603, 26 January 2016)*

b. Those removed from office as a result of an administrative case.

Perpetual disqualification to hold public office is a material fact involving eligibility, which renders a Certificate of Candidacy void from the beginning, if the candidate who filed the COC was not eligible to run for any public office at the time he filed the same, as in the case where the person filing his COC had already been found guilty of Grave Misconduct) *(Dimapilis v. COMELEC, G.R. No. 227158, April 18, 2017)*.

Suspension from office is not a ground for a petition for disqualification as Section 40(b) of the LGC clearly speaks of removal from office as a result of an administrative offense that would disqualify a candidate from running for any elective local position. The penalty of suspension cannot be a bar to the candidacy of a local official so suspended as long as he meets the qualifications for the office as provided under Section 66(b) of R.A. No. 7160 (*Albania v. COMELEC, G.R. No. 226792, 7 June 2017*)

c. Those convicted by final judgment for violating his oath of allegiance to the Republic.

d. Those with dual citizenship.

e. Fugitives from justice in criminal or non-political cases.

Fugitives from justice include not only those who flee after conviction to avoid punishment but also those who, after being charged, flee to avoid prosecution (*Marquez v. COMELEC, 243 SCRA 538*).

Evidence of presence and participation in DOJ and RTC proceedings negates an allegation that one is a fugitive from justice (*Leodegario A. Labao, Jr. v. COMELEC, G.R. No. 212615, July 19, 2016*).

f. Permanent residents in foreign country or those who have the right to reside abroad and continue to avail of it (*Caasi v. Court of Appeals, 191 SCRA 229*).

g. The insane or feeble-minded (*Sec. 40, Local Government Code*).

4. Revised Administrative Code-Municipal Office

a. Ecclesiastics (*Pamil v. Teleron, 86 SCRA 413*)

b. Persons receiving compensation from provincial or municipal funds

c. Contractors for public works of the municipality (*Sec. 2175, Revised Administrative Code*).

5. Burden of Proof

The burden to prove the ineligibility of a duly elected public official is upon the person asserting such ineligibility. A petitioner in a quo warranto case must first prove the very fact of disqualification of the candidate by substantial evidence. Once the petitioner makes a *prima facie* case, the burden of evidence shifts to the candidate who should now defend himself or herself with countervailing evidence. A taint of doubt is not enough to discharge the burden (*Piccio v. HRET, G.R. No. 248985, 5 October 2021*).

H. Effect of Re-Election on Administrative Liability

The concept of public office is a public trust and the corollary requirement of accountability to the people at all times, as mandated under the 1987 Constitution, is plainly inconsistent with the idea that an elective local official's administrative liability for a misconduct committed during a prior term can be wiped off by the fact that he was elected to a second term of office, or even another elective post. Election is not a mode of condoning an administrative offense, and there is simply no constitutional or statutory basis in our jurisdiction to support the notion that an official elected for a different term is fully absolved of any administrative liability arising from an offense done during a prior term. *(Carpio-Morales v. Binay, G.R. No. 217126-27, November 10, 2015)*

I. Duty to receive certificates of candidacy

It is the ministerial duty of COMELEC and its officers to receive a certificate of candidacy (*Sec. 76, Omnibus Election Code*).

The duty of the COMELEC to give due course to COCs filed in due form is ministerial in character, and that while the COMELEC may look into patent defects in the COCs, it may not go into matters not appearing on their face. The question of eligibility or ineligibility of a candidate is thus beyond the usual and proper cognizance of the COMELEC (*Cerafica v. COMELEC, G.R. No. 205136, December 2, 2014*).

J. Disqualification of Candidates

1. Distinction between Disqualification and Cancellation of Certificate of Candidacy.

    a. A petition for cancellation of a certificate of candidacy is not based on lack of qualification but on false representation, which may relate to lack of qualification, such as residence. A petition for disqualification refers to commission of prohibited acts and possession of permanent resident status in a foreign country.

    b. A candidate whose certificate of candidacy was cancelled is not treated as a candidate. A candidate who is disqualified cannot continue as a candidate.

    c. A candidate whose certificate of candidacy was cancelled could be substituted. A candidate who is disqualified cannot be substituted.

    d. A petition to deny due course or to cancel a certificate of candidacy must be filed within 25 days from the time of filing of the COC, as provided under Section 78 of the OEC (*Albania v. COMELEC, G.R. No. 226792, 7 June 2017*).

    e. A petition for disqualification of a nuisance candidate should be filed within 5 days from the last day for filing certificate of candidacy (*Fermin v. COMELEC, G.R. No. 179695, 18 December 2008*).

2. Grounds

    a. Violation of Omnibus Election Code

        i. Giving money or other material consideration to influence voters or public officials performing electoral functions.

        ii. Committing acts of terrorism to enhance his candidacy (*Dangka v. COMELEC, 323 SCRA 887*).

iii. Spending in his election campaign in excess of the amount allowed by the Code

iv. Soliciting, receiving or making any prohibited contribution

v. Violation of Section 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6 (*Sec. 68, Omnibus Election Code*).

b. Nuisance candidate (*Sec. 69, Omnibus Election Code*).

A nuisance candidate is defined as one who, based on the attendant circumstances, has no bona fide intention to run for the office for which the certificate of candidacy has been filed, his/her sole purpose being the reduction of the votes of a strong candidate, upon the expectation that the ballots with only the surname of such candidate will be considered strayed and not counted for either of them (*Martinez III v. HRET, G.R. No. 189034, 12 January 2010*).

A petition to disqualify a candidate for councilor for failure to indicate in his certificate of candidacy the precinct number and the barangay as a registered voter cannot be considered a petition to disqualify him for being a nuisance candidate, since his certificate was not filed to make mockery of the election or to confuse the voters (*Jurilla v. COMELEC, 232 SCRA 758*).

For equating the perceived inability of Marquez to mount an election campaign – with his supposed absence of bona fide intention to run for office, the COMELEC indirectly violated the proscription against conflating a candidate's financial capacity with bona fide intention to run as *Marquez v. COMELEC* had aptly decreed. Verily, the grounds for the disqualification of Marquez in this case are in truth shrouded property qualifications employed by the COMELEC to disqualify an otherwise qualified candidate. In other words, the attempt of the COMELEC to pass off the inability of Marquez to wage an election campaign as an indication of lack of bona fide intent to run for office is unconstitutional and will not be allowed by the Court. For what cannot be done directly, cannot be done indirectly (*Marquez v. COMELEC, G.R. No. 258435, June 28, 2022*).

A similar power to suspend the proclamation of a winning candidate is not available in proceedings filed under Section 69 of the OEC or a petition to refuse to give due course to or cancel a CoC against an alleged nuisance candidate *Uy, Jr. v. COMELEC, G.R. Nos. 260650/260952, 8 August 2023)*.

The pivotal criterion that characterizes a nuisance candidate lies in the absence of a bona fide intent to run for public office and it is incumbent upon the COMELEC to identify and to add to supporting evidence of acts or circumstances that show a candidate's lack of bona fide intent to run for public office with the objective of preventing a faithful determination of the true will of the electorate. This determination is governed by the statutes and the concept is satisfactorily defined by the Omnibus Election Code. Needless to say, the COMELEC is not precluded from considering other factors in determining a candidate's lack of bona fide intention to run for public office such as a candidate's inability to organize a campaign, whether it be manifested through the lack of a nomination by an established political party, a national organization or coalition, a labor union, or similar movements. In lieu or in addition to this non-nomination the COMELEC may also consider checking for the absence of said candidate's past record of service. On the other hand, while a mere expression of a candidate's desire to become an elected official does not suffice, the candidate is only required to show a significant modicum of support before his or her name is printed on the ballot (*Ollesca vs. COMELEC, G.R. No. 258449, July 30, 2024*).

In a Section 69 proceeding, the burden is upon the COMELEC, as the petitioner, to prove by substantial evidence that the candidacy falls within any of the three grounds provided in said provision of the OEC. On the other hand, the COMELEC, acting as a tribunal, is in turn obliged to ensure that its decision declaring a candidate as nuisance is: (1) arrived at after affording the parties real opportunities to be heard; (2) rendered after considering the evidence submitted by the parties; and (3) supported by substantial evidence. If the COMELEC's decision declaring a candidate as a nuisance candidate fails to comply with any of these, then such decision is void insofar as the candidate challenging the same is concerned (*Mustapha v. COMELEC, G.R. No. 277177, 8 July 2025*).

Votes clearly cast for a nuisance candidate, whose certificate of candidacy is cancelled or not given due course, shall be considered stray votes and shall not be counted in favor of any candidate. Under the automated election system (AES), there are no longer "vague votes" because the voting machines will base their count on the full names with aliases of each candidate, as shaded in the ballots. As opposed to the manual elections where the voters had to handwrite the name of their chosen candidates, there should no longer be any room for confusion under the AES. Thus, in cases where a nuisance candidate is declared as such, the votes clearly cast for the legitimate candidate are counted in favor of the legitimate candidate; and, the votes clearly cast for the nuisance candidate, whose certificate of candidacy is cancelled or not given due course, are considered stray votes and shall not be counted in

favor of any other candidate (*Amutan v. COMELEC, G.R. No. 266331, 3 December 2025*).

The Court has always recognized the COMELEC's expertise over election matters, justifying the Court's deference save for grave abuse of discretion or any jurisdictional infirmity or error of law. Specifically, as to the COMELEC's application of its rules, the Court has previously said that the COMELEC has discretion to determine when it will construe rules strictly, liberally, or suspend these altogether. Where there are no circumstances to warrant a relaxation of the COMELEC rules of procedure, grave abuse of discretion cannot be attributed to the COMELEC for denying a petition on technical grounds. The COMELEC correctly ruled that the pendency of civil or criminal cases and even incarceration awaiting judgment are not among the grounds in law or jurisprudence to declare one a nuisance candidate. Provided that laws and jurisprudence are complied with, the Court will look for bona fide intent to run for public office. A serious candidate is one that has a real agenda for the country. Whether this is a desirable, sincere, or sufficient one shall be determined by the people (*Matula v. COMELEC, G.R. No. 277784, August 5, 2025*).

c. Falsity of material representation in certificate of candidacy (*Sec. 78, Omnibus Election Code*).

Where a candidate declares that he or she is eligible to run for public office when in truth he or she is not, such misrepresentation is a ground for a Section 78 petition *(Sibuma v. COMELEC, G.R. No. 261344, 24 January 2023).*

The misrepresentation must be material, deliberate and willful (*Tecson v. COMELEC, 424 SCRA 277*).

Aside from the requirement of materiality, it is essential that a false representation under Section 78 be committed with a "deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible." In other words, the false material representation "must be made with a malicious intent to deceive the electorate as to the potential candidate's qualifications for public office." *(Sibuma v. COMELEC, G.R. No. 261344, 24 January 2023).*

The cancellation of a certificate of candidacy is "not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he [or] she is running for." This reiterates the indispensability of the element of intent to deceive the electorate in a Section 78 petition, the lack of which gives rise to a presumption of good

faith in favor of a candidate's declaration in his or her CoC under oath *(Sibuma v. COMELEC, G.R. No. 261344, 24 January 2023).*

A candidate who while he was still a minor, registered him/herself as a voter and misrepresented that he was already of legal age is not guilty of misrepresentation if he runs for a position possessing the necessary age qualification (*Munder v. COMELEC G.R. No. 194076, 19 October 2011*).

When a candidate is actually qualified even if the entries in the certificate of candidacy as filled up by the candidate will show that he/ she is not, there is no material misrepresentation (*Romualdez-Marcos v. COMELEC, 248 SCRA 300*).

When a candidate, supported by a preponderance of evidence, believed that he/ she was qualified and there was no intention to deceive the electorate as to one's qualifications for public office, there is no material misrepresentation (*Tecson v. COMELEC, 424 SCRA 277*).

The falsity of the statement in the certificate of candidacy of a candidate that he was a registered voter is a ground for its cancellation (*Bautista v. COMELEC, 414 SCRA 299*; *Velasco v. COMELEC, G.R. No. 180051, December 24, 2008*).

The use by a married woman of the surname of her husband in her certificate of candidacy when their marriage is bigamous does not constitute falsity of a material representation, since she had no intention to deceive the public as to her identity (*Salcedo v. COMELEC, 312 SCRA 447*).

The use by a candidate of the name he was authorized to use when his petition for change of name was granted does not constitute misrepresentation (*Justimbaste v. COMELEC, G.R. No. 179413, November 20, 2008*).

Falsely stating in a certificate of candidacy that a candidate is a certified public accountant is not material, because profession is not a qualification for elective office (*Lluz v. COMELEC, 523 SCRA 456*).

A petition to deny due course and to cancel COC on the ground of a statement of a material representation that is false; to be material, such must refer to an eligibility or qualification for the elective office the candidate seeks to hold. The use of a nickname is not a qualification for a public office which affects his eligibility; the proper recourse is to file an election protest and pray that the votes be declared as stray votes (*Villafuerte v. COMELEC, GR No. 206698, 25 February 2014*).

Under Sec. 74 of the Omnibus Election Code, it is required that a candidate must certify under oath that he is eligible for the public office he seeks election. When a candidate states in his COC that he is a resident of the place where he is seeking to be elected, and is eligible for a public office, but it turned out that he was declared to be a non-resident thereof in a petition for his inclusion in the list of registered voters, he commits a false representation pertaining to a material fact in his COC, which is a ground for the cancellation of his COC under Section 78 of the Omnibus Election Code (*Hayudini v. COMELEC, GR No. 207900, 22 April 2014)*.

Section 74 only requires that the facts declared in the CoC be true to the best of the candidate's knowledge, thus: Section 74 requires the inclusion in the CoC of a declaration that the facts stated therein are true to the best of the candidate's knowledge. Evidently, this declaration qualifies all of the information that Section 74 requires. In other words, the law does not demand from candidates perfect accuracy and absolute certainty in the information that they supply in a CoC, but only such facts which they believe to be true to the best of their knowledge. This means that a candidate who makes a representation which is subsequently found to be false, would still be compliant with Section 74 if he or she made such representation in good faith. What is material is that at the time that he or she made such declaration, he or she believed said information to be true to the best of his or her knowledge. Accordingly, the reference by Section 78 to Section 74 effectively limits the scope of Section 78 to only those false material representations which were knowingly made, i.e., those which the candidate did not know to be true to the best of his or her knowledge or which he or she downright knew to be false. A contrary interpretation of Section 78 would lead to the absurdity that a CoC of a candidate who had fully complied with the requirements under Section 74 can nonetheless be denied due course or cancelled under Section 78. To stress, Section 78 requires that the ground for the petition be the existence of a false material representation in the CoC as required in Section 74 and Section 74 requires only facts which are true to the best of the candidate's knowledge *(Sibuma v. COMELEC, G.R. No. 261344, 24 January 2023).*

A COC may be cancelled on the ground that the "candidate" misrepresented his eligibility in his COC because he knew that he had been convicted by final judgment for libel, a crime involving moral turpitude regardless of the fact that he was merely the publisher of the libelous articles, and that his penalty was merely a fine *(Ty-Delgado v. HRET, G.R. No. 219603, 26 January 2016).*

Self-evident facts of unquestioned or unquestionable veracity and judicial confessions are bases equivalent to prior decisions against which the falsity of representation can be determined. In the candidate admits

having been elected and having served for three consecutive terms, his admission already served as basis against which the falsity of his representation can be determined *(Halili v. COMELEC, G.R. No. 231643, January 15, 2019*).

The grounds to file a petition for disqualification are provided for in Section 12 or 68 of the OEC, or under Section 40 of the Local Government Code. This includes the petition for disqualification of fugitives from justice in criminal or non-political cases here or abroad" from running for any elective local position. (*Leodegario A. Labao, Jr. v. COMELEC, G.R. No. 212615, July 19, 2016*).

A petition for disqualification of a nuisance candidate clearly affects the voters' will and causes confusion that frustrates the same. This is precisely what election laws are trying to protect. They give effect to, rather than frustrate, the will of the voter. Thus, extreme caution should be observed before any ballot is invalidated. Further, in the appreciation of ballots, doubts are resolved in favor of their validity *(Santos v. COMELEC, G.R. No. 235058, September 4, 2018).*

The law mandates the COMELEC and the courts to give priority to cases of disqualification to the end that a final decision shall be rendered not later than seven days before the election in which the disqualification is sought *(Santos v. COMELEC, G.R. No. 235058, September 4, 2018).*

While the judgment in the criminal case had become immutable and unalterable, the same may be reopened insofar as modifying the penalty imposed due to the enactment of Republic Act No. 10951 after the finality of the said judgment. At any rate, pending resolution of the Petition to determine the proper penalty for his conviction for qualified theft, he must continue to serve the sentence for reclusion temporal with the accessory penalty of absolute perpetual disqualification *(Amangyen v. COMELEC, G.R. No. 263828, 22 October 2024).*

Considering that three years already passed from when an Entry of Judgment was made on a candidate’s conviction when he filed his COC, he could not have represented by an honest mistake that he has not been “been found liable for an offense which carries with it the accessory penalty of perpetual disqualification to hold public office which has become final and executory.” Due to the considerable lapse of time, such material misrepresentation cannot but be deemed intentional. *(Amangyen v. COMELEC, G.R. No. 263828, 22 October 2024).*

An allegation of materially false and deceptive representation must be supported by substantial evidence *(Notice of Resolution in Ritualo, Jr. v. COMELEC, G.R. No. 277719)*.

3. Procedure

If the ground is that the candidate is a nuisance candidate, any registered candidate for the same office can file the petition. (Sec. 5 (a) Republic Act No. 6646) If the ground is that a material representation in the certificate of candidacy is false, or that the candidate is disqualified or committed any act which is a ground for disqualification, any citizen of voting age or registered political party may file the petition (*Sec. 1, Rule 23 and Sec. 1, Rule 25, COMELEC Rules of Procedure*).

1. The petition shall be filed within 5 days from the last day for filing certificates of candidacy (*Secs. 5 (a) and 7, Republic Act No. 6646*).

    i. The fact that no docket fee was initially paid is not fatal (*Sunga v. COMELEC, 216 SCRA 76*).

    ii. A petition filed after the election is filed out of time (*Loong v. COMELEC, 216 SCRA 760*).

    iii. Since filing by facsimile transmission is not sanctioned and a facsimile copy is not an original pleading, a petition for disqualification should be deemed filed upon filing of the original petition (*Garvida v. Sales, 271 SCRA 764*).

    iv. Where a disqualified candidate was replaced on the day before the election, a petition to disqualify the replacement filed on election day should be entertained, as it was impossible to file the petition earlier (*Abella v. Larrazabal, 180 SCRA 509*).

    v. The COMELEC may *motu proprio* refuse to give due course or cancel a certificate of candidacy (*Sec. 69, Omnibus Election Code*). When the ground for the denial in due course or cancellation of a COC is based on a final judgment, it falls within the administrative functions of COMELEC, and there is no denial of due process when the COMELEC *En Banc* issues a resolution *motu propio* denying due course to, or cancelling a COC (*Jalosjos v. COMELEC, G.R. No. 205033, 18 June 2013*).

    vi. Where the disqualification is based on age, residence, or any of the many grounds for ineligibility, the reglementary period provided by law should be applied strictly. On the ground that the candidate allegedly misrepresented himself as being a registered voter, [there is] no reason to depart from settled jurisprudence and the reglementary period provided by law

should likewise be strictly applied to such a disqualification *(Guro v. COMELEC, G.R. No. 234345, 22 June 2021).*

b. The COMELEC will be grossly remiss in its constitutional duty to "enforce and administer all laws" relating to the conduct of elections if it does not *motu proprio* bar from running for public office those suffering from special disqualification by virtue of a final judgment *(Dimapilis v. COMELEC, G.R. No. 227158, April 18, 2017)*.

c. The cancellation of COC is a quasi-judicial process, and accordingly must be heard by COMELEC in Division and En Banc on appeal (*Cerafica v. COMELEC, G.R. No. 205136, December 2, 2014*).

d. The proceeding shall be summary (*Sec. 5 (d) and 7, Republic Act No. 6646; Nolasco v. COMELEC, 279 SCRA 762*). The electoral aspect of a disqualification case is done through an administrative proceeding which is summary in character. (*Ejercito v. COMELEC, G.R. No. 212398, November 25, 2014*).

e. The summary nature of proceedings under Section 78 only allows it to rule on patent material misrepresentations of facts, not to make conclusions of law that are even contrary to jurisprudence (*Juliet B. Dano v. COMELEC, G.R. No. 210200, September 13, 2016*).

f. In a choice between provisions on material qualifications of elected officials, on the one hand, and the will of the electorate in any given locality, on the other, we believe and so hold that we cannot choose the will of the electorate *(Halili v. COMELEC, G.R. No. 231643, January 15, 2019*).

g. COMELEC can decide a disqualification case directly without referring it to its legal officers of investigation (*Nolasco v. COMELEC, 275 SCRA 762*).

h. A candidate is ineligible if he is disqualified to be elected to office, and he is disqualified if he lacks any of the qualifications for elective office. Even if the COMELEC made no finding that the petitioner had deliberately attempted to mislead or to misinform as to warrant the cancellation of his CoC, the COMELEC could still declare him disqualified for not meeting the requisite eligibility under the Local Government Code. *(Agustin v. COMELEC, G.R. No. 207105, November 10, 2015)*

i. COMELEC cannot *motu proprio* deny due course to or cancel an alleged nuisance candidate's certificate of candidacy without providing the candidate his opportunity to be heard. *(Timbol v. COMELEC, G.R. No. 206004, February 24, 2015)*.

j. When a verified petition for disqualification of a nuisance candidate is filed, the real parties-in-interest are the alleged nuisance candidate and the interested party, particularly, the legitimate candidate. Other candidates, who do not have any similarity with the name of the alleged nuisance candidate, are not real parties-in-interest and would not have the opportunity to be heard in a nuisance petition. Obviously, these other candidates are not affected by the nuisance case because their names are not related with the alleged nuisance candidate. Regardless of whether the nuisance petition is granted or not, the votes of the unaffected candidates shall be completely the same. Thus, they are mere silent observers in the nuisance case. *(Santos v. COMELEC, G.R. No. 235058, September 4, 2018).*

k. The decision shall be final and executory after 5 days from receipt unless stayed by the Supreme Court (*Secs. 5 (e) and 7, Republic Act No. 6646*).

l. The votes of the nuisance candidate shall be credited to the legitimate candidate once the decision becomes final and executory, whether before or after the elections. *Martinez III* provides the basis for this rule: "final judgments declaring a nuisance candidate should effectively cancel the certificate of candidacy filed by such candidate as of election day." Accordingly, when there is a final and executory judgment in a nuisance case, it shall be effective and operative as of election day. It is as if the nuisance candidate was never a candidate to be voted for because his candidacy caused confusion to the electorate and it showed his lack of bona fide intention to run for office. Thus, the votes for the said nuisance candidate shall be transferred to the legitimate candidate, with the similar name, as of election day also *(Santos v. COMELEC, G.R. No. 235058, September 4, 2018).*

m. In a multi-slot office (e.g. Sanggunian), the COMELEC must not merely apply a simple mathematical formula of adding the votes of the nuisance candidate to the legitimate candidate with the similar name. To ascertain that the votes for the nuisance candidate is accurately credited in favor of the legitimate candidate with the similar name, the COMELEC must also inspect the ballots. In those ballots that contain both votes for nuisance and legitimate candidate, only one count of vote must be credited to the legitimate candidate *(Santos v. COMELEC, G.R. No. 235058, September 4, 2018; Zapanta v. Lagasca, G.R. No. 233016, March 05, 2019).*

n. In a multi-slot office, such as membership of the *Sangguniang Panlungsod*, a registered voter may vote for more than one candidate. Hence, it is possible that the legitimate candidate and nuisance candidate, having similar names, may both receive votes in one ballot. In that scenario, the vote cast for the nuisance candidate should no longer

be credited to the legitimate candidate; otherwise, the latter shall receive two votes from one voter (Teves v. COMELEC, , *G.R. No. 262622, 14 February 2023*).

o. Since Section 1 (a), Rule 13 of the COMELEC Rules of Procedure prohibits the filing of a motion for reconsideration, the remedy of the losing party is to file a petition for certiorari in the Supreme Court (*Bautista v. COMELEC, 414 SCRA 299*).

p. HRET has no jurisdiction to declare a candidate a nuisance candidate. The proper remedy is a petition for certiorari before the Supreme Court assailing the decision of the COMELEC *En Banc* within 5 days from promulgation *(Tañada v. HRET, G.R. No. 217012, March 1, 2016; Uy, Jr. v. COMELEC, G.R. Nos. 260650/260952, 8 August 2023)*.

q. The votes cast for the nuisance candidate must be credited in favor of the legitimate candidate with a similar name to give effect to, rather than frustrate, the will of the voters, even if the declaration of the nuisance candidate became final only after the elections *(Santos v. COMELEC, G.R. No. 235058, September 4, 2018).*

r. A petition to declare a person a nuisance candidate or a petition for disqualification of a nuisance candidate is already sufficient to cancel the COC of the said candidate and to credit the garnered votes to the legitimate candidate because it is as if the nuisance candidate was never a candidate to be voted for *(Santos v. COMELEC, G.R. No. 235058, September 4, 2018).*

s. In administrative cases, such as election cases, the burden of proof falls on the complainant. When the complainant fails to show in a satisfactory manner the facts upon which he bases his claims, the respondent is under no obligation to prove his exception or defense. To repeat, the burden is upon the COMELEC to prove, by substantial evidence, that the candidacy of Marquez falls within any of the three (3) grounds provided in Section 69 of the Omnibus Election Code (*Marquez v. COMELEC, G.R. No. 258435, June 28, 2022*).

t. The COMELEC insists that Marquez is not virtually known to the entire country except possibly in the locality where he resides. Assuming this to be true, it does not, standing alone, suffice to declare one a nuisance candidate. In fact, it is not among the grounds for declaration of a nuisance candidate enumerated in Section 69 of the Omnibus Election Code. Further, declaring one a nuisance candidate simply because he or she is not known to the entire country reduces the electoral process-a sacred instrument of democracy – to a mere popularity contest. The matter of the candidate being known (or unknown) should not be taken

against that candidate but is best left to the electorate. As it is, our democratic and republican state is based on effective representation. Thus, the electorate's choices must be protected and respected (*Marquez v. COMELEC, G.R. No. 258435, June 28, 2022*).

u. The status of a winning candidate in a petition for declaration of a nuisance candidate is merely that of an observer. In a petition for disqualification of a nuisance candidate, the only real parties in interest are the alleged nuisance candidate, the affected legitimate candidate, whose names are similarly confusing. A real [party-in-interest] is the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit. Consistent therewith, the fact that Teves, the winning candidate for the gubernatorial position in Negros Oriental, was not impleaded in the Petition filed by Roel against Ruel before the COMELEC will not amount to a violation of his right to due process. Not being a real party in interest, Teves' non-participation in the Petition filed by Roel, will not affect the proceedings conducted by the COMELEC. Moreso, the number of votes he has garnered will remain the same, with the COMELEC proceeding merely on the appreciation of the votes cast by the voters and determine whether all of the votes obtained by the declared nuisance candidate will have to be credited in favor of the declared real candidate. (*Teves v. COMELEC, G.R. No. 262622, 14 February 2023*).

v. Under Section 3, Rule 25 of the COMELEC Rules of Procedure, disqualification petitions shall be filed any day after the last day for filing of certificates of candidacy (COCs) but not later than the date of proclamation. A petition for disqualification can be filed even after the exact time of the proclamation of a candidate, so long as it was filed within the same day. This is in accordance with Article 13 of the Civil Code, that states that a day should be understood to mean 24 hours. As rules of procedure cannot take precedence over substantive law, the COMELEC Rules of Procedure should yield to the interpretation directed by the Civil Code. Hence, the date or day of proclamation should be understood to mean the full 24 hours of the day on which such proclamation takes place. Since Mamba was proclaimed on May 11, 2022 at 1:39 a.m., petitions for disqualification against Mamba could still be filed anytime within that day. The Court added that the period to file pleadings through email under Section 5 of COMELEC Resolution No. 10673 should have taken stock of particular circumstances surrounding petitions for disqualification given that the proclamation of candidates can happen at any time, whether day or night (*De Guzman-Lara v. COMELEC, G.R. No. 265847, April 16, 2024*).

w. The period within which to file petitions for disqualification based on Rule 25 of the COMELEC Rules of Procedure is any day after the last day for

filing of certificate of candidacy until the date of proclamation. As worded, a petition for disqualification can be filed even after the exact time of the proclamation of a candidate, so long as it was still filed within the same day. As the Petition for Disqualification against respondent was filed within the prescribed period, it was filed on time. The phrase "not later than the date of proclamation" sets a period of a lapse of the 24-hour period of the day of proclamation, where it can be said that a petition for disqualification is filed out of time.

This Court now holds that a petition for disqualification of a candidate based on Section 68 of the OEC may be filed during the period beginning the whole day after the last day of filing of certificate of candidacy until the end of the day of the date of proclamation, even after the exact time of the proclamation of the winning candidate *(De Guzman-Lara v. COMELEC, G.R. No. 265847. August 6, 2024).*

x. While the COMELEC Rules provide that a Petition to Deny Due Course or Cancel a Certificate of Candidacy should invoke the exclusive ground that any material misrepresentation contained in a COC is false, the Court also agrees with the COMELEC that this procedural rule may be relaxed to ascertain the real choice of the electorate *(Amangyen v. COMELEC, G.R. No. 263828, 22 October 2024).*

4. Aspects of a Disqualification Case

The electoral aspect of a disqualification case determines whether the offender should be disqualified from being a candidate, or from holding office. Proceedings are summary in character and require only clear preponderance of evidence. An erring candidate may be disqualified even without prior determination of probable cause in a preliminary investigation. The electoral aspect may proceed independently of the criminal aspect, and vice-versa (*Lanot v. COMELEC, G.R. No. 164858, 16 November 2006*).

The criminal aspect of a disqualification case determines whether there is probable cause to charge a candidate for an election offense. The prosecutor is the COMELEC, through its Law Department, which determines whether probable cause exists. If there is probable cause, the COMELEC, through its Law Department, files the criminal information before the proper court. Proceedings before the proper court demand a full-blown hearing and require proof beyond reasonable doubt to convict. A criminal conviction shall result in the disqualification of the offender, which may even include disqualification from holding a future public office. The two aspects account for the variance of the rules on disposition and resolution of disqualification cases filed before or after an election. When the disqualification case is filed before the elections, the question of disqualification is raised before the voting public. If the candidate is

disqualified after the election, those who voted for him assume the risk that their votes may be declared stray or invalid. These two aspects can proceed simultaneously (*Lanot v. COMELEC, G.R. No. 164858, 16 November 2006*).

5. Effects of disqualification case

   a. Votes cast for a candidate declared by final judgment to be disqualified shall not be counted.

   b. If a candidate is not declared by final judgment before an election to be disqualified, the case shall continue and his proclamation may be suspended if the evidence of guilt is strong (*Sec. 6, Republic Act No. 6646*). COMELEC cannot suspend the proclamation of a candidate simply because of the seriousness of the allegation of the petition (*Codilla v. De Venecia, 393 SCRA 639*). COMELEC should not dismiss the case simply because the respondent has been proclaimed (*Sunga v. COMELEC, 288 SCRA 76; Lonzanida v. COMELEC, 311 SCRA 602; and Coquilla v. COMELEC, 385 SCRA 607; Lanot v. COMELEC, 507 SCRA 114*). This does not apply if the petition for disqualification was filed after the election (*Bagatsing v. COMELEC, 320 SCRA 817; Albaña v. COMELEC, 435 SCRA 98*). Since the suspension of the proclamation is merely permissive, the proclamation of a candidate with a pending disqualification case is valid, if COMELEC did not suspend his proclamation (*Grego v. COMELEC, 274 SCRA 481; Planas v. COMELEC, 484 SCRA 329; Lanot v. COMELEC, 507 SCRA 114*). COMELEC may not disqualify a candidate when no complaint or petition had been filed against him yet (*Ibrahim v. COMELEC, G.R. No. 192289, 8 January 2013)*.

   c. Where the votes cast for a nuisance candidate whose disqualification had not yet become final on election day were tallied separately, they should be counted in favor of the petitioner (*Bautista v. COMELEC, 298 SCRA 480*).

   d. Since disqualification cannot extend beyond the term to which the disqualified candidate was elected, he cannot be disqualified if he was re-elected (*Trinidad v. COMELEC, 315 SCRA 175*).

   e. A person who has been declared guilty of an offense punishable by perpetual disqualification at the time he filed his Certificate of Candidacy could not have been validly re-elected so as to avail of the condonation doctrine, unlike in other cases where the condonation doctrine was successfully invoked by virtue of re-elections which overtook and thus, rendered moot and academic pending administrative cases *(Dimapilis v. COMELEC, G.R. No. 227158, April 18, 2017)*.

f. A person whose COC was cancelled due to ineligibility for failure to prove Filipino citizenship and the one-year residence requirement could not have been a valid candidate, and could not have been validly proclaimed. Thus, she could not have validly assumed her position. (*Velasco v. Belmonte, G.R. No. 211140, 12 January 2016)*

K. Withdrawal

1. The withdrawal need not be filed with the office where the certificate of candidacy was filed, as it is not required by law. While it may be true that Section 12 of COMELEC Resolution No. 3253-A, adopted on 20 November 2000, requires that the withdrawal be filed before the election officer of the place where the certificate of candidacy was filed, such requirement is merely directory, and is intended for convenience. It is not mandatory or jurisdictional. (*Go v. COMELEC, G.R. No. 14774, 10 May 2001*).

L. Substitution

1. If after the last day for filing certificates, a candidate dies, ~~withdraws~~ or is disqualified, he may be substituted by a person belonging to his party not later than mid-day of election day (*Sec. 77, Omnibus Election Code*).

2. Substitution of candidates should be allowed even for barangay elections, as it is not prohibited by law (*Rulloda v. COMELEC, 395 SCRA 535*).

3. Even if the withdrawal was not under oath, the certificate of the substitute cannot be annulled after the election (*Villanueva v. COMELEC, 140 SCRA 352*).

4. The nomination of a substitute candidate who won cannot be annulled on the ground that it lacked the signature of one of the authorized signatures (*Sinaca v. Mula, 315 SCRA 266*).

5. Substitution is not allowed if the certificate of the candidate to be substituted was cancelled, because he was running for the fourth consecutive term (*Miranda v. Abaya, 311 SCRA 617; Ong v. Alegre, 479 SCRA 473*), or because he failed to meet the one-year residency requirement (*Tagolino v. House of Representatives Electoral Tribunal, G.R. No. 202202, 19 March 2013*).

6. Substitution is also not allowed when the original candidate was disqualified on the ground of material misrepresentation (*Fermin v. COMELEC, G.R. No. 179695, 18 December 2008*).

7. However, a candidate who commits an election offense and is disqualified under Section 68 of the Omnibus Election Code, can be substituted (*Fermin v. COMELEC, G.R. No. 179695, 18 December 2008*).

8. An independent candidate who joined the party of a disqualified candidate may be nominated as his substitute even if he joined the party only after the disqualification (*Sinaca v. Mula, 315 SCRA 266*).

9. Rules and regulations relating to the substitution of nominees remain mandatory even after elections. Section 16 of the Party-List Law applies to a vacancy in a party-list seat not in the list of nominees. It applies only during the legal existence of the seat, i.e., during the term of the party list representative, i.e., from noon of the 30th day of June next following their election and not prior. Since the substitution here occurred prior to June 30, 2022, Section 8 of the Party-List System Act as implemented by the relevant COMELEC resolutions remains to be the applicable law in this case and not Section 16 (*Duty to Energize the Republic through the Enlightenment of the Youth [Duterte-Youth] Party-List v. COMELEC G.R. No. 261123 & 261876, August 20, 2024*).

10. Since P3PWD could not have legally caused the substitution of its five new nominees after the elections and prior to the beginning of the term of the party-list representative, it cannot be permitted to renominate them last the time-honored principle that what cannot be legally done directly cannot be done indirectly be violated. Thus, P3PWD is strictly enjoined from renominating said nominees for the duration of the 19th Congress (*Duty to Energize the Republic through the Enlightenment of the Youth [Duterte-Youth] Party-List v. COMELEC G.R. No. 261123 & 261876, August 20, 2024*).

V. CAMPAIGN AND ELECTION PROPAGANDA

A. Nomination of candidates

1. President, vice president, and senators – not earlier than 165 days before election day

2. Congressmen, provincial, city or municipal officials – not earlier than 75 days before election day (*Sec. 6, Republic Act No. 7166*).

B. Campaign period

1. President, vice president, and senators – 90 days before election day

   COMELEC can order the removal of billboards using the name or image of some to advertise a product if he later on ran for public office to prevent premature campaigning (*Chavez v. COMELEC, 437 SCRA 419*).

2. Congressmen, provincial, city and municipal officials – 45 days before election day (*Sec. 5, Republic Act No. 7166*).

3. As a general rule, the period of election starts at ninety (90) days before and ends thirty (30) days after the election date pursuant to Section 9, Article IX-C of the Constitution and Section 3 of BP 881. This rule, however, is not without exception. Under these same provisions, the COMELEC is not precluded from setting a period different from that provided thereunder. *(Aquino v. COMELEC, G.R. Nos. 211789-90, March 17, 2015)*

C. Definition of Campaign

1. The term "election campaign" or "partisan political activity" under Section 79b of the Omnibus Election Code refers to an act designed to promote the election or defeat of a particular candidate or candidates to a public office which shall include: (1) forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign for or against a candidate; (2) holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/ or undertaking any campaign or propaganda for or against a candidate; (3) making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office; (4) publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or (5) directly or indirectly soliciting votes, pledges or support for or against a candidate.

2. Not every act of beneficence from a candidate may be considered 'campaigning.' The term 'campaigning' should not be made to apply to any and every act which may influence a person to vote for a candidate, for that would stretching too far the meaning of the term. Examining the definition and enumeration of election campaign and partisan political activity found in COMELEC Resolution No. 3636, the COMELEC is convinced that only those acts which are primarily designed to solicit votes will be covered by the definition and enumeration. The distribution of sports items in line with the sports and education program of the province does not constitute election campaigning since what is prohibited is the release of public funds within the 45-day period before election (*Pangkat Laguna v. COMELEC, 376 SCRA 97*).

D. Election Propaganda

1. Lawful Propaganda

   a. Election propaganda on television, cable television, radios, newspapers or any other medium is allowed (*Sec. 3, Republic Act No. 9006*).

      i. Written or printed materials not exceeding 8 ½ inches by 14 inches (*Sec. 3.1, Republic Act No. 9006*).

ii. Handwritten or printed letters urging voters to vote for or against a party of candidate (*Sec. 3.2, Republic Act No. 9006*).

iii. Posters not exceeding 2 feet by 3 feet, but streamers not exceeding 3 feet by 8 feet may be displayed at the site of a rally 5 days before the rally and should be removed within 24 hours after the rally (*Sec. 3.3, Republic Act No. 9006*).

iv. Paid advertisements in print or broadcast media (*Sec. 3.4, Republic Act No. 9006*).

v. All other forms of propaganda not prohibited by the Omnibus Election Code or the Fair Election Act (*Sec. 3.5, Republic Act No. 9006*).

vi. Use of gadgets and billboards are now allowed considering the express repeal of Section 65 of the Omnibus Election Code by the Fair Election Act prohibiting the use of use of billboards and audio-visual units, tin-plate posters, balloons, pens, lighters, fans, hats, wallets, t-shirts, cigarettes, etc..

2. What COMELEC can regulate

a. COMELEC does not have the authority to regulate the enjoyment of the preferred right to freedom of expression exercised by a non-candidate. Regulation of speech in the context of electoral campaigns made by persons who are not candidates or who do not speak as members of a political party which are, taken as a whole, principally advocacies of a social issue that the public must consider during elections is unconstitutional. Such regulation is inconsistent with the guarantee of according the fullest possible range of opinions coming from the electorate including those that can catalyze candid, uninhibited, and robust debate in the criteria for the choice of a candidate (*Diocese of Bacolod v. COMELEC, G.R. No. 205728, 21 January 2015*).

b. Regulation of election paraphernalia will still be constitutionally valid if it reaches into speech of persons who are not candidates or who do not speak as members of a political party if they are not candidates, only if what is regulated is declarative speech that, taken as a whole, has for its principal object the endorsement of a candidate only. The regulation (a) should be provided by law, (b) reasonable, (c) narrowly tailored to meet the objective of enhancing the opportunity of all candidates to be heard and considering the primacy of the guarantee of free expression, and (d) demonstrably the least restrictive means to achieve that object. The regulation must only be with respect to the time, place, and manner of the rendition of the message. In no situation may the speech be prohibited or censored on the basis of its content. For this purpose, it will

notmatter whether the speech is made with or on private property. (*Diocese of Bacolod v. COMELEC, G.R. No. 205728, 21 January 2015; Note: Obiter Dictum*).

c. Satire of political parties that primarily advocates a stand on a social issue and only secondarily-even almost incidentally-will cause the election or non-election of a candidate is not election propaganda as its messages are different from the usual declarative messages of candidates. It is an expression with political consequences, and "[t]his court's construction of the guarantee of freedom of expression has always been wary of censorship or subsequent punishment that entails evaluation of the speaker's viewpoint or the content of one's speech (*Diocese of Bacolod v. COMELEC, G.R. No. 205728, July 5, 2016*).

d. R.A. No. 9006 only permits the COMELEC to regulate the election propaganda owned by candidates and political parties. It does not allow the COMELEC to regulate the political speech of private persons on private property. While COMELEC may validly implement "Oplan Baklas" against candidates and political parties, it cannot implement "Oplan Baklas" against private individuals expressing their political preferences or support for a candidate or political party. The COMELEC also violated the property rights of St. Anthony College, as there was no legal basis for the COMELEC's entry into their private property and removal and destruction of their privately-owned campaign materials *(St. Anthony College of Roxas City, Inc. v. COMELEC, G.R. No. 258805, 10 October 2023)*.

3. Requirements

   a. Any election propaganda shall indicate the name and address of the candidate or party for whose benefit it was printed or aired (*Sec. 4.1, Republic Act No. 9006*).

   b. If the broadcast is given free of charge, it should indicate it was provided free of charge and state the name and address of the broadcast entity (*Sec. 4.2, Republic Act No. 9006*).

   c. Donated advertisements shall not be broadcasted or exhibited without the written acceptance of the candidate or party to whom it was donated. (*Sec. 4.3, Republic Act No. 9006*).

4. Equal Access to Media

   a. Regulation of volume

      i. Print advertisements shall not exceed ¼ page in broadsheet and ½ page in tabloids thrice a week for publication (*Sec. 6.1, Republic Act No. 9006*).

ii. Each candidate or party for national office shall be entitled to not more than 120 minutes of television advertisement and 180 radio minutes of radio advertisement (*Sec. 6.2, Republic Act No. 9006*).

iii. Each candidate or party for local office shall be entitled to not more than 60 minutes of television advertisement and 90 minutes of radio advertisement (*Sec. 6.2 (b), Republic Act No. 9006*).

iv. The Fair Election Act does not justify a conclusion that the maximum allowable airtime should be based on the totality of possible broadcast in all television or radio stations, and the COMELEC has no authority to provide for rules beyond what was contemplated by the law it is supposed to implement (*GMA Network, Inc. v. COMELEC, G.R. No. 205357, September 2, 2014*).

b. Action by COMELEC

i. COMELEC shall procure print space upon payment of just compensation from at least 3 national newspapers to be allocated free of charge equally among all candidate for national office on 3 different days (*Sec. 7.1, Republic Act No. 9006*).

ii. COMELEC shall procure free airtime from at least 3 national television networks and 3 national radios nationals to be allocated free of charge equally among all candidates for national office on 3 different days (*Sec. 7.2, Republic Act No. 9006*).

iii. COMELEC may require national television and radio networks to sponsor at least 3 debates among presidential candidates and at least one debate among vice presidential candidates and at least one debate among vice presidential candidates (*Sec. 7.3, Republic Act No. 9006*).

iv. The presidential and vice-presidential debates are held primarily for the benefit of the electorate to assist the electorate in making informed choices on election day. Through the conduct of the national debates among presidential and vice-presidential candidates, the electorate will have the "opportunity to be informed of the candidates' qualifications and track record, platforms and programs, and their answers to significant issues of national concern." The political nature of the national debates and the public's interest in the wide availability of the information for the voters' education certainly justify allowing the debates to be shown or streamed in other websites for wider

dissemination, in accordance with the MOA. Therefore, the debates should be allowed to be live streamed on other websites, including petitioner's, as expressly mandated in Part VI (C), paragraph 19 of the MOA (*Rappler, Inc. v. Bautista, G.R. No. 222702, April 5, 2016*).

c. Right to Reply

All parties and candidates have the right to reply to charges published against them. The reply shall be given the same prominence and shall be printed in the same page or section and in the same time slot as the first statement (*Sec. 10, Republic Act No. 9006*).

When it comes to election and the exercise of freedom of speech, of expression and of the press, the latter must be properly viewed in context as being necessarily made to accommodate the imperatives of fairness by giving teeth and substance to the right to reply requirement. (*GMA Network, Inc. v. COMELEC, G.R. No. 205357, September 2, 2014*)

d. Supervision by COMELEC

COMELEC shall supervise the use of the press, radio and television facilities to ensure equal opportunities to candidates. (*Sec. 6.4, Republic Act No. 9006*).

COMELEC may properly take and act on the advertising contracts without further proof since the contracts are ought to be known by COMELEC because of its statutory function as the legal custodian of all advertising contracts promoting or opposing any candidate during the campaign period. (*Ejercito v. COMELEC, G.R. No. 212398, November 25, 2014*)

e. Restrictions on Media

i. The scheduling of a program to manifestly favor or oppose a candidate or party shall not be allowed, and a sponsor shall not be permitted to manifestly favor oppose a candidate or party by unduly referring to or including the candidate or party in the program (*Sec. 6.4, Republic Act No. 9006*).

ii. Any media practitioner who is a candidate or a campaign volunteer or is retained by any party of candidate must resign or take a leave of absence (*Sec. 6.6, Republic Act No. 9006*).

iii. Motion pictures

1) No motion picture portraying the life of a candidate shall be publicly exhibited during the campaign period. (*Sec. 6.7, Republic Act No. 9006*).

2) No motion picture portrayed by an actor or media personality who is a candidate shall be publicly exhibited during the campaign period (*Sec. 6.8, Republic Act No. 9006*).

5. Posting of Campaign Materials

a. COMELEC may authorize parties to erect common poster areas in not more than 10 public places.

b. Independent candidates may be authorized to erect common poster areas in not more than 10 public places.

c. Candidates may post propaganda in private places with the consent of the owner and in public places to be allocated equitably among the candidates (*Sec. 9, Republic Act No. 9006*).

d. The posting of election campaign material on vehicles used for public transport or on transport terminals is not only a form of political expression, but also an act of ownership – it has nothing to do with the franchise or permit to operate the PUV or transport terminal. *(1-United Transport Koalisyon (1-Utak) v. COMELEC, G.R. No. 206020, April 14, 2015)*

6. Truth

a. All members of media shall scrupulously report and interpret the news, taking care not to suppress essential facts nor to distort the truth by omission or improper emphasis.

b. All members of media shall recognize the duty to airtime other side and to correct substantive errors promptly (*Sec. 6.5, Republic Act No. 9006*).

7. Standing of Broadcast Companies

a. Broadcast companies have standing to question a COMELEC Resolution on airtime limits in view of the direct inquiry they may suffer relative to their ability to carry out their tasks of disseminating information because of the burdens imposed on them (*GMA Network, Inc. v. COMELEC, G.R. No. 205357, September 2, 2014*).

b. Broadcast companies have standing to assert the constitutional freedom of speech and of the right to information of the public in addition to their own freedom of the press (*GMA Network, Inc. v. COMELEC, G.R. No. 205357, September 2, 2014*).

8. Free Speech and Freedom of the Press

a. Section 9 (a) of COMELEC Resolution No. 9615, with its adoption of the "aggregate-based" airtime limits unreasonably restricts the guaranteed freedom of speech and of the press. (*GMA Network, Inc. v. COMELEC, G.R. No. 205357, September 2, 2014*)

b. The reporting requirement for broadcast companies in COMELEC Resolution No. 9615 does not constitute prior restraint; it is a reasonable means adopted by the COMELEC to ensure that parties and candidates are afforded equal opportunities to promote their respective candidacies. There is no restriction on dissemination of information before broadcast (*GMA Network, Inc. v. COMELEC, G.R. No. 205357, September 2, 2014*).

c. Section 7(g) items (5) and (6), in relation to Section 7(f), of Resolution No. 9615 unduly infringe on the fundamental right of the people to freedom of speech. Central to the prohibition is the freedom of individuals, i.e., the owners of PUVs and private transport terminals, to express their preference, through the posting of election campaign material in their property, and convince others to agree with them. *(1-United Transport Koalisyon (1-Utak) v. COMELEC, G.R. No. 206020, April 14, 2015)*

9. Prior Hearing

a. COMELEC Resolution No. 9615 adopting the aggregate-based airtime limit required prior hearing before adoption since it introduced a radical change in the manner in which the rules on airtime for political advertisements are to be reckoned. (*GMA Network, Inc. v. COMELEC, G.R. No. 205357, September 2, 2014*)

E. Election Surveys

During the election period, any person who publishes a survey must include the following:

1.a. The name of the person who commission it;

2.b. The name of the person or firm who conducted it;

3.c. The period during which the survey was conducted, the methodology used, and the questions asked.

4.d. The margin of error

5.e. The question in which the margin of error is greater than that of the survey

6.f. The address and telephone number of the sponsor (*Sec. 5.2, Republic Act No. 9006*).

The names of those who commission or pay for election surveys, including subscribers of survey firms, must be disclosed pursuant to Section 5.2(a) of the Fair Election Act. This requirement is a valid regulation in the exercise of police power and effects the constitutional policy of "guaranteeing equal access to opportunities for public service.", and neither curtails petitioners' free speech rights nor violates the constitutional proscription against the impairment of contracts. *(Social Weather Stations, Inc. et al v. COMELEC, G.R. No. 208062, April 7, 2015)*

When published, the tendency of election surveys to shape voter preferences comes into play. In this respect, published election surveys partake of the nature of election propaganda. It is then declarative speech in the context of an electoral campaign properly subject to regulation. *(Social Weather Stations, Inc. et al v. COMELEC, G.R. No. 208062, April 7, 2015)*

While Resolution No. 9674 does regulate expression (i.e., petitioners' publication of election surveys), it does not go so far as to suppress desired expression. There is neither prohibition nor censorship specifically aimed at election surveys. The freedom to publish election surveys remains. All Resolution No. 9674 does is articulate a regulation as regards the manner of publication, that is, that the disclosure of those who commissioned and/or paid for, including those subscribed to, published election surveys must be made. *(Social Weather Stations, Inc. et al v. COMELEC, G.R. No. 208062, April 7, 2015)*

There is no prior restraint because Resolution No. 9674 poses no prohibition or censorship specifically aimed at election surveys. Apart from regulating the manner of publication, petitioners remain free to publish election surveys. The disclosure requirement kicks in only upon, not prior to, publication. *(Social Weather Stations, Inc. et al v. COMELEC, G.R. No. 208062, April 7, 2015)*

As a valid exercise of COMELEC's regulatory powers, Resolution No. 9674 is correctly deemed written into petitioners' existing contracts, therefore not violative of the principle against impairment of contracts. *(Social Weather Stations, Inc. et al v. COMELEC, G.R. No. 208062, April 7, 2015)*

F. Exit Polls

1.a. Surveys shall not be conducted within 50 meters from the polling places.

2.b. Pollsters shall inform the voters that they may refuse to answer.

3.c. The result may be announced after the closing of the polls on election day and must identify the number of respondents and the places where they were taken. The announcement must state that it is unofficial and does not represent a trend (*Sec. 5.5, Republic Act No. 9006*).

G. Rallies

1. An application for a permit for a rally shall not be denied except on the ground that a prior written application for the same purpose has been approved. A denial is appealable to the provincial election supervisor or COMELEC (*Sec. 87, Omnibus Election Code*).

2. It is unlawful to give or accept transportation, food, drinks or things of value within 5 hours before and after a public rally, before election day and on election day (*Sec. 89, Omnibus Election Code*).

H. Prohibited Donations

It is prohibited for any candidate, his spouse, relative within second degree of consanguinity or affinity, a representative to make any contribution for any structure for public use or for use of any religious or civic organization, except the normal religious dues and payments for scholarships established and school contributions habitually made before the campaign period (*Sec. 104, Omnibus Election Code*).

I. Prohibited Contributions

No political contribution shall be made by the following:

1. Public or private financial institutions

2. Public utilities and those who exploit natural resources.

   Thus, where an operator of a public utility disguised a contribution to a candidate for governor as a loan, the promissory note is void (*Halili v. Court of Appeals, 83 SCRA 633*).

3. Persons who hold contracts or sub-contracts to supply the government with goods or services

4. Persons granted franchise, incentives, exemptions or similar privileges by the government

5. Persons granted loans in excess of P25,000 by the government or any of its subdivisions or instrumentalities

6. Schools which received grants of public funds of at least P100,000

7. Employees in the Civil Service or members of the Armed Forces

8. Foreigners (*Sec. 95, Omnibus Election Code*)

9. Corporations (*Sec. 36(9), Corporation Code*)

With regard to electoral contributions, these are exempt from payment of gift tax under Republic Act No. 7166; provided the same are reported to the COMELEC. However, contributions made prior to the effectivity of such law are not exempt (*Abello v. Commissioner of Internal Revenue, G.R. No. 120721, 23 February 2005*).

J. Limitation on expenses

The phrase "those incurred or caused to be incurred by the candidate" is sufficiently adequate to cover those expenses which are contributed or donated in the candidate's behalf. By virtue of the legal requirement that a contribution or donation should bear the written conformity of the candidate, a contributor/supporter/donor certainly qualifies as "any person authorized by such candidate or treasurer." (*Ejercito v. COMELEC, G.R. No. 212398, November 25, 2014*)

1. Candidates

    a. President and vice president – P10 per voter

    b. Other candidates – P3 per voter in his constituency

    c. Independent Candidate/ Candidate without political party – P5 per voter

2. Political Party – P5 per voter in the constituency where it has candidates (*Sec. 13, Republic Act No. 7166*).

K. Statement of contributions and expenditures

1. Filing

    a. Every candidate and treasurer of political party shall file, within 30 days after election day, a statement of contributions and expenditures.

b. No person elected shall assume office until he and his political party had filed the required statements.

2. Penalties

a. First offense – administrative fine from P1,000 to P30,000

b. Subsequent offense

i. Administrative fine from P2,000 to P60,000

ii. Perpetual disqualification to hold public office (*Sec. 14, Republic Act No. 7166*).

The penalty of perpetual disqualification to hold public office may be properly imposed on a candidate for public office who repeatedly fails to submit his Statement of Contributions and Expenditures (SOCE) pursuant to Section 14 of Republic Act No. 7166. The penalty does not amount to the cruel, degrading and inhuman punishment proscribed by the Bill of Rights *(Maturan v. COMELEC, G.R. No. 227155, March 28, 2017)*.

3. Effect of Withdrawal

A candidate who withdrew his certificate of candidacy must still file a statement of contributions and expenditures, for the law makes no distinction (*Pilar v. COMELEC, 245 SCRA 759*).

VI. REGISTRATION OF VOTERS

A. Definition and Features

Registration refers to the act of accomplishing and filing of a sworn application for registration by a qualified voter before the election officer of the city or municipality wherein he resides and including the same in the book of registered voters upon approval by the Election Registration Board (*Sec. 3a, Republic Act No. 8189*).

Each voter is assigned a 'voter's identification number' (VIN) and issued a 'voter's identification card' (*Secs. 26 and 25, Republic Act No. 8189*). Each precinct shall have no more than 200 voters and shall comprise contiguous and compact territories except when precincts are clustered (*Sec. 6, Republic Act No. 8189*).

The permanent list of voters per precinct shall be computerized (*Sec. 43, Republic Act No. 8189*). While described as 'permanent," the list of voters is subject to change (*i.e.,*

additions and deletions) in cases where new voters register (*Sec. 8, Republic Act No. 8189*), voters change their addresses in the same (*Sec. 13, Republic Act No. 8189*) or to another city or municipality (*Sec. 12, Republic Act No. 8189*), registration is deactivated i.e., voter later disqualified after being registered (*Sec. 27, Republic Act No. 8189*) and reactivated i.e., cause of deactivation lifted or removed (*Sec. 28, Republic Act No. 8189*), registration is cancelled i.e., when voter dies (*Sec. 29, Republic Act No. 8189*), voter's name is included or excluded by judicial action, *i.e.*, decisions on petitions for inclusion and exclusion respectively (*Secs. 34 and 35, Republic Act No. 8189*) and the Book of Voters is annulled by COMELEC (*Sec. 39, Republic Act No. 8189*).

A voter's name is placed in the deactivated list when he/ she is disqualified to vote, failed to vote in two preceding elections, lose his/ her Filipino citizenship and his/ her registration is excluded by the court.

Under the system of continuing registration of voters, application for registration of voters shall be conducted daily in the office of the Election Officer during regular office hours (*Sec. 8, Republic Act No. 8189*) and all applications for registration shall be heard and processed on a quarterly basis (*Sec. 17, Republic Act No. 8189*) by the Election Registration Board.

No registration shall be conducted during the period starting 120 days before a regular election and 90 days before a special election (*Sec. 8, Republic Act No. 8189*). No special registration can be conducted by the COMELEC within said periods (*Akbayan-Youth v. COMELEC, G.R. No. 147066, 26 March 2001*).

The biometrics registration requirement is not a "qualification" to the exercise of the right of suffrage, but a mere aspect of the registration procedure, of which the State has the right to reasonably regulate. Unless it is shown that a registration requirement rises to the level of a literacy, property or other substantive requirement as contemplated by the Framers of the Constitution - that is, one which propagates a socio-economic standard which is bereft of any rational basis to a person's ability to intelligently cast his vote and to further the public good - the same cannot be struck down as unconstitutional. *(Kabataan Partylist v. COMELEC, G.R. No. 221318, December 16, 2015)*

The assailed biometrics registration regulation on the right to suffrage was sufficiently justified as it was indeed narrowly tailored to achieve the compelling state interest of establishing a clean, complete, permanent and updated list of voters, and was demonstrably the least restrictive means in promoting that interest. *(Kabataan Partylist v. COMELEC, G.R. No. 221318, December 16, 2015)*

The public has been sufficiently apprised of the implementation of RA 10367, and its penalty of deactivation in case of failure to comply. Thus, there was no violation of procedural due process. *(Kabataan Partylist v. COMELEC, G.R. No. 221318, December 16, 2015)*

The power of COMELEC to restrict a citizen's right of suffrage should not be arbitrarily exercised. *(Timbol v. COMELEC, G.R. No. 206004, February 24, 2015)*

RA No. 11935 violates the freedom of suffrage as it failed to satisfy the requisites of the substantive aspect of the due process clause of the Constitution. The Court found that there was no legitimate government interest or objective to support the legislative measure, and that the law unconstitutionally exceeds the bounds of the Congress' power to legislate. The postponement of the 2022 Barangay and Sangguniang Kabataan Elections (BSKE) by RA No. 11935 for the purpose of augmenting the Executive's funds is violative of the Constitution because it unconstitutionally transgresses the constitutional prohibition against any transfer of appropriations, and it unconstitutionally and arbitrarily overreaches the exercise of the rights of suffrage, liberty, and expression *(Macalintal v. COMELEC, G.R. No. 263590, 27 June 2023).*

The pronouncement on the constitutionality of RA No. 11935 shall retroact to the date of its enactment, subject to the proper recognition of the consequences and effects of the said law's existence before the instant ruling. It likewise held that the declaration of unconstitutionality of RA 11935 results in the revival of RA No. 11462, the law governing the BSKE prior to the enactment of the assailed act. The Court also declared that the BSKE scheduled for October 2023 shall proceed. The Court, however, stressed that the term of office of the sitting BSK officials shall be deemed to have ended on December 31,2022, following the provisions of RA No. 11462, the law impliedly repealed by RA No. 11935. In the interim, the sitting BSK officials shall continue to hold office until their successors shall have been elected and qualified. This notwithstanding, the Court clarified that the continued discharge of functions by the sitting BSK officials in a "hold-over" capacity, following the provisions of RA No. 11935, shall in no way constitute an unconstitutional "legislative appointment." The Court further ruled that the succeeding BSKE shall be held on the first Monday of December 2025 and every three years thereafter, pursuant to RA 11462, and that the Congress is not precluded from further amending RA 9164 (as amended), the law which provides for synchronized BSKE *(Macalintal v. COMELEC, G.R. No. 263590, 27 June 2023).*

The Court found it imperative to set forth guidelines and principles for the bench, the bar, and the public as regards any government action that seeks to postpone any elections. The Court outlined the criteria as follows:

1. The right of suffrage requires the holding of honest, genuine, regular, and periodic elections. Thus, postponement of the elections is the exception.
2. The postponement of the election must be justified by reasons sufficiently important, substantial, or compelling under the circumstances:
    a. The postponement must be intended to guarantee the conduct of free, honest, orderly, and safe elections;
    b. The postponement must be intended to safeguard the electorate's right of suffrage;
    c. The postponement must be intended to safeguard other fundamental rights of the electorate; or

d. Such other important, substantial, or compelling reasons that necessitate the postponement of the election, *i.e.,* necessitated by public emergency, but only if and to the extent strictly required by the exigencies of the situation.

Reasons such as election fatigue, purported resulting divisiveness, shortness of existing term, and/or other superficial or farcical reasons, alone, may not serve as important, substantial, or compelling reasons to justify the postponement of the elections. To be sufficiently important, the reason for the postponement must primarily be justified by the need to safeguard the right of suffrage or other fundamental rights or required by a public emergency situation.

3. The electorate must still be guaranteed an effective opportunity to enjoy their right of suffrage without unreasonable restrictions notwithstanding the postponement of the elections.
4. The postponement of the elections is reasonably appropriate for the purpose of advancing a sufficiently important, substantial, or compelling governmental reasons.
    a. The postponement of the elections must be based on genuine reasons and only on objective and reasonable criteria.
    b. The postponement must still guarantee that the elections will be held at regular periodic intervals that are not unduly long.
        1) The intervals must still ensure that the authority of the government continues to be based on the free expression of the will of the electorate.
        2) Holding the postponed elections at a date so far remote from the original election date may serve as badge of the unreasonableness of the interval that may render questionable the genuineness of the reasons for the postponement.
    c. The postponement of the election is reasonably narrowly tailored only to the extent necessary to advance the government interest.
5. The postponement must not violate the Constitution or existing laws *(Macalintal v. COMELEC, G.R. No. 263590, June 2023).*

B. Qualifications

1. Filipino citizen

2. At least 18 years old on election day

3. Resident of the Philippines for at least one year immediately before the election

4. Resident of the city or municipality where he proposes to vote at least 6 months immediately before the election (*Sec. 9, Republic Act No. 8189*). A registered voter who fled to the United States after the EDSA revolution for fear for his personal safety did not abandon his residence in the Philippines and he is entitled to register as a voter (*Romualdez v. Regional Trial Court, 226 SCRA 445*).

Any person who temporarily resides in another place by reason of his employment, educational activities, or detention does not lose his original residence (*Sec. 9, Republic Act No. 8189*).

The law does not require that physical presence be unbroken. In *Japzon v. Comelec*, the Supreme Court ruled that to be considered a resident of a municipality, the candidate is not required to stay and never leave the place for a full one-year period prior to the date of the election. *In Sabili v. Comelec*, the Supreme Court reiterated that the law does not require a candidate to be at home 24 hours a day 7 days a week to fulfill the residency requirement (*Juliet B. Dano v. COMELEC, G.R. No. 210200, September 13, 2016*).

5. Not otherwise disqualified by law (*Sec. 9, Republic Act No. 8189*).

C. Disqualification

1. Grounds

    a. Sentence by final judgment to imprisonment of at least 1 year

    b. Conviction by final judgment of any of the following crimes:

        i. Crime involving disloyalty to the government, such as rebellion or sedition

        ii. Firearms laws

        iii. Crime against national security

    c. Insanity or incompetence declared by competent court

2. Removal of disqualification for conviction

    a. Plenary pardon

    b. Amnesty

    c. Lapse of 5 years after service of sentence (*Sec. 111, Republic Act No. 8189*).

D. Illiterate and disabled voters

The Election Officer shall place an illiterate person under oath, ask him the questions, and record his answers. The form shall then be subscribed by the illiterate person.

The application of a physically disabled voter may be prepared by a relative within the fourth degree of affinity or consanguinity, the Election Officer, or any member of the accredited citizens' arm (*Sec. 14, Republic Act No. 8189*).

E. Inclusion and exclusion cases

1. Jurisdiction

   a. Municipal or Metropolitan Trial Court – original and exclusive jurisdiction

   b. Regional Trial Court – appellate jurisdiction (5 days) (*Sec. 33, Republic Act No. 8189*)

   c. Supreme Court – appellate jurisdiction over Regional Trial Court on questions of law (15 days) (*Sec. 5 (2) (e), Art. VIII, 1987 Constitution; Section 2, Rule 45 of the Rules of Court*).

2. Petitioner

   a. Inclusion

      i. Private person whose application was disapproved by the Election Registration Board or whose name was stricken out from the list of voters (*Sec. 34, Republic Act No. 8189*). Failure to register is not a ground for a petition for inclusion (*Diawan v. Inopiquez, 358 SCRA 10*).

      ii. COMELEC (*Sec. 2 (6), Art. IX-C, 1987 Constitution*).

      There is a distinction between a petition for inclusion of voters in the list and a petition to deny due course or cancel a certificate of candidacy as to issues, reliefs and remedies involved. Voter's inclusion/exclusion proceedings essentially involve the issue of whether a person shall be included in or excluded from the list of voters based on the qualifications required by law and the facts presented to show possession of these qualifications. On the other hand, denial or cancellation of Certificate of Candidacy proceedings involves the issue of whether there is a false representation of a material fact. The false representation must necessarily pertain not to a mere innocuous mistake but to a material fact or those that refers to a candidate's qualification for elective office (*Panlaqui v. COMELEC, G.R. No. 188671, 24 February 2010*).

   b. Exclusion

      i. Any registered voter in city or municipality

ii. Representative of political party

iii. Election Officer (*Sec. 39, Republic Act No. 8189*)

iv. COMELEC (*Sec. 2 (6), Art. IX-C, 1987 Constitution*)

3. Period for filing

a. Inclusion – Any day except 105 days before regular election or 75 days before a special election (*Sec. 34, Republic Act No. 8189*).

b. Exclusion – Any time except 100 days before a regular election or 65 days before a special election (*Sec. 35, Republic Act No. 8189*).

4. Procedure

a. Petition for exclusion shall be sworn (*Sec. 35, Republic Act No. 8189*).

b. Each petition shall refer to only one precinct (*Sec. 32(c), Republic Act No. 8189*).

c. The Election Registration Board must be notified of the hearing and made a party to the case (*Siawan v. Inopiquez, A.M. No. MTJ 95-1056, 21 May 2001*).

d. Notice

1. Parties to be notified

i. Inclusion – Election Registration Board (*Diawan v. Inopiquez, 358 SCRA 10*)

ii. Exclusion

a) Election Registration Board

b) Challenged voters (*Sec. 35(b), Republic Act No. 8189*)

2. Manner

Notice stating the place, day and hour of hearing shall be served through any of the following means:

i. Registered mail

ii. Personal delivery

iii. Leaving copy in possession of person of sufficient discretion in residence

iv. Posting in city hall or municipal hall and two other conspicuous places in the city or municipality at least 10 days before the hearing (*Sec. 32(b), Republic Act No. 8189*)

e. Any voter, candidate or political party affected may intervene (*Sec. 32 (c), Republic Act No. 8189*).

f. Non-appearance is prima facie evidence the registered voter is fictitious (*Sec. 32 (f), Republic Act No. 8189*).

g. Decision cannot be rendered on stipulation of facts (*Sec. 32(f), Republic Act No. 8189*).

h. The decision cannot be rendered on the basis of interview of the petitioners for inclusion by the judge (*Mercado v. Dysangco, 385 SCRA 327*).

i. The decision does not constitute res judicata (*Domino v. COMELEC, 310 SCRA 546*).

j. No motion for reconsideration is allowed (*Sec. 33, Republic Act No. 8189*).

F. Annulment of list of voters

1. Upon verified complaint of any voter, election officer or registered political party or *motu proprio*, COMELEC may annul a list of voters which was not prepared in accordance with Republic Act No. 8189 or whose preparation was affected with fraud, bribery, forgery, impersonation, intimidation, force or other similar irregularity or is statistically improbable.

2. The COMELEC acting on a petition to annul has the authority to exclude a precinct from an election where there are no buildings and inhabitants in said precinct and there are no registered voters (*Sarangani v. COMELEC, 334 SCRA 379*).

3. No list of voters shall be annulled within 60 days before an election (*Sec. 33, Republic Act No. 8189*).

VII. OVERSEAS ABSENTEE VOTING

A. SCOPE

1. Definition

Absentee voting refers to the process by which qualified citizens of the Philippines abroad exercise their right to vote (*Sec. 3 (a), Republic Act No. 9189*).

2. Coverage

All citizens of the Philippines abroad who are not disqualified by law, at least 18 years of age on election day, may vote for president, vice president, senators and party list representatives (*Sec. 4, Republic Act No. 9189*).

3. Disqualifications

a. Those who lost their Filipino citizenship

b. Those who expressly renounced their Philippine citizenship and pledged allegiance to a foreign country.

c. Those convicted by final judgment of an offense punishable by imprisonment of at least one year, including those found guilty of disloyalty under Article 137 of the Revised Penal Code.

d. An immigrant or permanent resident recognized as such in the host country, unless he executes an affidavit that he will resume physical permanent residence in the Philippines within 3 years of his registration.

i. The affidavit shall also state that he has no applied for citizenship in another country.

ii. Failure to return shall be cause for removal of his name from the registry of absentee voters and his permanent disqualification to vote in absentia

In designing a system for overseas absentee voting, the 1987 Constitution dispensed with the requirement of actual residency mentioned in Section 1, Article V of the 1987 Constitution. The affidavit required serves as an explicit expression of non-abandonment of one's domicile of origin (*Macalintal v. COMELEC, G.R. 157013, 10 July 2003*).

e. A citizen of the Philippines declared insane or incompetent by competent authority in the Philippines or abroad (*Sec. 5, Republic Act No. 9189*).

Natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country can vote in

Philippine elections provided they re-acquire Philippine citizenship. They must take the oath of allegiance to the Republic prescribed under the Citizenship Retention and Re-acquisition Act of 2003 (*Secs. 3 and 5 (1)*).

> Natural-born Filipinos who have been naturalized elsewhere and wish to run for elective public office must comply with all of the following requirements: First, taking the oath of allegiance to the Republic. This effects the retention or reacquisition of one's status as a natural-born Filipino. This also enables the enjoyment of full civil and political rights, subject to all attendant liabilities and responsibilities under existing laws, provided the solemnities recited in Section 5 of Republic Act No. 9225 are satisfied. Second, compliance with Article V, Section 1 of the 1987 Constitution,251 Republic Act No. 9189, otherwise known as the Overseas Absentee Voting Act of 2003, and other existing laws. This is to facilitate the exercise of the right of suffrage; that is, to allow for voting in elections. Third, "mak[ing] a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath." This, along with satisfying the other qualification requirements under relevant laws, makes one eligible for elective public office (*Rizalito Y. David v. Senate Electoral Tribunal, G.R. No. 221538, September 20, 2016*).
>
> Failure to renounce foreign citizenship in accordance with the exact tenor of Section 5(2) of R.A. 9225 renders a dual citizen ineligible to run for, and thus hold, any elective public office (*Sobejana-Condon v. COMELEC, G.R. No. 198742, 10 August 2012*).
>
> The re-acquisition of Philippine citizenship has no automatic impact or effect on his/her residence/domicile. After his/her renunciation of his/her American citizenship, his/her length of residence in the municipality shall be determined from the time s/he made it his/her domicile of choice and shall not retroact to the time of his/her birth (*Soriano v. COMELEC, G.R. No. 201936, 3 July 2012*).
>
> There is no provision in the Citizenship Retention and Re-acquisition Act of 2003/ dual citizenship law requiring "duals" or dual citizens to actually establish residence and physically stay in the Philippines first before they can exercise their right to vote. On the contrary said Act, in implicit acknowledgment that “duals” are most likely non-residents, grants under its Section 5(1) the same right of suffrage as that granted an absentee voter under Overseas Absentee Voting Act of 2003. (*Nicolas-Lewis v. COMELEC, G.R. No. 162759, 4 August 2006*).

B. REGISTRATION

1. Requirements

a. Valid Philippine passport or certification by the Department of Foreign Affairs that the applicant submitted documents for issuance of a passport or is a holder of a valid passport but cannot product it for a valid reason.

b. Accomplished registration form.

c. Affidavit declaring intention to resume physical permanent residence within 3 years in the case of immigrants (Sec. 8).

2. Procedure

a. Registration shall be done in person.

b. Qualified Filipino citizens may apply for registration with the election registration board of the city or municipality where they were domiciled prior to their departure, or the representative of COMELEC in the Philippines, or with an embassy, consulate or any other foreign service establishment.

c. The registration form shall be transmitted within 5 days to COMELEC, which shall coordinate with the election officer of the city or municipality of the residence of the applicant (*Sec. 6), Republic Act No. 9189*).

d. The election officer shall set the application for hearing.

i. Notice of the hearing shall be posted in city or municipal hall at least one week before

ii. A copy of the application shall be furnished the representatives of political parties or other accredited groups (*Sec. 6.1, Republic Act No. 9189*).

iii. If no objection is filed, the election officer shall notify the applicant to the election registration board for decision (*Sec. 6.2, Republic Act No. 9189*).

iv. If an objection is filed, the election officer shall notify the applicant and enclose the documents in support of the objection. The applicant shall have the right to file his counter-affidavit (*Sec. 6.3., Republic Act No. 9189*).

v. If the application was approved, any interested party may file a petition for exclusion not later than 210 days before election day with the interior court.

1. The petition shall be decided within 15 days after its filing on the basis of the documents.

2. Should the court fail to decide on time, the ruling of the election registration board shall be deemed affirmed (*Sec. 6.6, Republic Act No. 9189*).

vi. If the application was disapproved, the applicant or his representative may within 5 days from receipt of notice of disapproval file a petition for inclusion with the inferior court, which shall decide within 5 days after the filing (*Sec. 6.7, Republic Act No. 9189*).

vii. A certificate of registration shall be issued by COMELEC to all applicants whose applications were approved (*Sec. 5, Republic Act No. 9189*).

C. APPLICATION TO VOTE IN ABSENTIA

1. Every qualified Filipino citizen abroad previously registered as a voter may file with an embassy, consulate or other foreign service establishment an application to vote in absentia (*Sec. 11.1, Republic Act No. 9189*).

2. The application may be filed personally or by mail (*Sec. 11.2*).

3. The application shall be transmitted to COMELEC (*Sec. 11.1, Republic Act No. 9189*).

   a. COMELEC shall act on the application not later than 150 days before election day.

   b. In case of disapproval of the application, the voter or his authorized representative may file a motion for reconsideration personally or by registered mail within 10 days from receipt of notice.

   c. The decision of COMELEC is final (*Sec. 12, Republic Act No. 1989*).

D. CASTING OF BALLOTS

1. The overseas voter shall cast his ballot within 30 days before election day or 60 days before election day in the case of seafarers (*Sec. 16.3, Republic Act No. 9189*).

2. The voter should present an absentee voter identification card (*Sec. 16.3, Republic Act No. 9189*).

3. The voter must fill out his ballot personally, in secret, and in the embassy, consulate, or foreign service establishment (*Sec. 16.1, Republic Act No. 9189*).

4. The ballot shall be placed inside a special envelope. Otherwise, it will not be counted (*Sec. 16.6, Republic Act No. 9189*).

5. For 2004, voting by mail shall be authorized in not more than 3 countries. Thereafter, voting by mail in any country shall be allowed only upon approval of the Joint Congressional Oversight Committee (*Sec. 17.1, Republic Act No. 9189*).

E. COUNTING OF BALLOTS

1. Only ballots cast, and mailed ballots received by embassies, consulates and other foreign establishments before the closing of voting on election day shall be counted (*Sec. 16.7 and Sec. 18.3, Republic Act No. 9189*).

2. The counting shall be conducted on site and shall be synchronized with the start of counting in the Philippines (*Sec. 18.1, Republic Act No. 9189*).

3. Special Board of Election Inspectors shall be composed of a chairman and two members.

   a. The ambassador, consul general or career public officer designated by COMELEC shall be the chairman.

   b. In the absence of government officers, two Filipino citizens qualified to vote under this Act shall be deputized as members (*Sec. 18.3, Republic Act No. 9189*).

4. Immediately after the counting, the Special Boards of Election Inspectors shall transmit by facsimile or electronic mail the result to COMELEC and the accredited major political parties.

F. CANVASSING

1. A Special Board of Canvassers composed of a lawyer preferably of COMELEC as chairman, a senior career officer from any government agency maintaining a post abroad and, in the absence of another government officer, a citizen of the Philippines qualified to vote under Republic Act No. 9189, shall be constituted to canvass the election returns.

2. The Special Board of Canvassers shall transmit by facsimile, electronic mail or any other safe and reliable means of transmission the certificate of canvass and the statements of votes to COMELEC and the major accredited parties.

3. The certificates of canvass and the statements of votes shall be the primary basis for the national canvass (*Sec. 18.4, Republic Act No. 9189*).

   a. The returns prepared by the Special Board of Canvassers shall be deemed a certificate of canvass of a city or a province (*Sec. 18.6, Republic Act No. 9189*).

   b. The canvass of votes shall not delay the proclamation of the winning candidate if the outcome of the election will not be affected by it.

   c. The winning candidates shall be proclaimed despite the fact that the scheduled election has not taken place in a particular country because of circumstances beyond the control of COMELEC. (*Sec. 18.5, Republic Act No. 9189*).

VIII. BOARD OF INSPECTORS

A. The board of election inspectors shall be composed of a chairman and two members, all of whom are public school teachers.

B. If there are not enough public school teachers, teachers in private schools, employees in the civil service, or other citizens of known probity and competence may be appointed. (*Sec. 13, Republic Act No. 6646*)

IX. WATCHERS

A. Number

1. Official watchers

   a. Every registered party or coalition of parties and every candidate is entitled to one watcher per precinct and canvassing counter.

   b. Candidates for the local legislature belonging to the same party are entitled collectively to one watcher.

   c. Six principal watchers from 6 accredited major political parties shall be recognized (*Sec. 26, Republic Act No. 7166*).

2. Other Watchers

   a. The accredited citizens' arms is entitled to a watcher in every precinct.

   b. Other civic organization may be authorized to appoint one watcher in every precinct (*Sec. 180, Omnibus Election Code*).

B. Important rights of watchers

1. All watchers

   a. To stay inside the precinct

   b. To inform themselves of the proceedings

   c. To file a protest against any irregularity

   d. To obtain a certificate of the number of votes cast for each candidate. (*Sec. 179, Omnibus Election Code*).

2. Citizen's arm

   To be given a copy of the election return to be used for the conduct of an unofficial count (*Sec. 1, Republic Act No. 8045*).

X. CASTING OF VOTES

A. The chairman of the board of election inspectors should sign each ballot at the back. (Sec. 24, Republic Act No. 7166). The omission of such signature does not affect the validity of the ballot (*Libanan v. House of Representatives Electoral Tribunal, 283 SCRA 520; Punzalan v. COMELEC, 289 SCRA 702; Pacris v. Pagalilauan, 337 SCRA 638; Malabaguio v. COMELEC, 346 SCRA 699; De Guzman v. Sison, 355 SCRA 69*).

B. A voter who was challenged on the ground that he has been paid for his vote or made a bet on the result of the election will be allowed to vote if he takes an oath that he did not commit the alleged in the challenge (*Sec. 200, Omnibus Election Code*).

C. An illiterate or physically disabled voter may be assisted by a relative by affinity or consanguinity within the fourth degree or any person of his confidence who belongs to the same household or any member of the board of election inspectors (*Sec. 196, Omnibus Election Code, De Guzman v. COMELEC, 426 SCRA 698*).

D. It is unlawful to use carbon paper, paraffin paper or other means for making a copy of the contents of the ballot or to use any means to identify the ballot (*Sec. 195, Omnibus Election Code*). A ballot prepared under such circumstances should not be counted. (*Gutierrez v. Aquino, G.R. No. L-14252, February 28, 1959*).

E. Absentee Voting

1. Members of the board of election inspectors and their substitutes may vote in the precinct where they are assigned (*Sec. 169, Omnibus Election Code*).

2. Absentee voting for President, Vice President and Senators is allowed for members of the Armed Forces of the Philippines, Philippine National Police and other government employees assigned in connection with the performance of election duties to places where they are not registered (*Sec. 12, Republic Act No. 7166*).

F. Postponement of Election

When for any serious cause such as violence, loss of election paraphernalia, force majeure, and other analogous causes elections cannot be held, COMELEC shall *motu proprio* or upon petition by any interested party postpone the election not later than 30 days after the cessation of the cause of the postponement (*Sec. 5, Omnibus Election Code*).

1. An election officer cannot postpone an election (*Basher v. COMELEC, 330 SCRA 736*). Under Republic Act No. 7166, only the COMELEC *En Banc* can postpone an election.

2. The transfer of the location of the precinct and the replacement of the public school teacher by military personnel as member of the board of inspectors made by an election officer without notice and hearing are illegal (*Cawasa v. COMELEC, 383 SCRA 787*).

3. The Commission on Elections does not have the power to postpone elections on a nationwide basis. This power lies with the Congress pursuant to (i) its plenary power to legislate, and (ii) its power to fix the term of office of barangay officials under Article X, Section 8 of the Constitution. As such, the Congress did not unconstitutionally encroach on the power of the COMELEC to administer elections when it enacted Republic Act No. (RA) 11935. Neither did the provision for "hold-over" capacity amount to an unconstitutional "legislative appointment." *(Macalintal v. COMELEC, G.R. No. 263590, 27 June 2023).*

4. Article X, Section 8 of the Constitution grants Congress the authority to set the term duration of barangay officials. These officials are not bound by the general three-year term limit that applies to other elective local officials. This legislative power is not merely permissive; it makes Congress the sole body empowered to define the term of office of barangay officials. Further, under the doctrine of necessary implication, this authority to define the term of office of barangay officials necessarily includes the power to decide when the new term begins, provided that the period is reasonable and not unduly long from the law's enactment. R.A. No. 12232 is fundamentally a term-setting law for barangay and Sangguniang Kabataan (BSK) officials, establishing a four-year term and prohibiting consecutive terms for the Sangguniang Kabataan officials. It is not a law postponing elections; the rescheduling of the elections is merely incidental. Therefore, the *Macalintal guidelines,* which set out the parameters Congress must follow in postponing elections, do not apply to R.A. No. 12232. The law does

not violate the public's right to vote, as it neither abolishes nor indefinitely suspends the BSK elections. It simply changes the interval from three to four years. Elections remain regular, periodic, and certain. Voters know when the next election will take place, can hold officials accountable at fixed intervals, and retain full democratic control over barangay governance. Finally, R.A. No. 12232 is not discriminatory. A law treating barangay officials differently does not amount to undue favor or discrimination when such treatment is expressly allowed by the Constitution. Barangays are distinct from other local government units. As the smallest political unit serving smaller communities, they perform different functions and operate with less complex administrative structures (*Macalintal v. Senate, G.R. No. E-02002, 11 November 2025*).

G. Failure of Election

1. If on account of force majeure, violence, fraud or other analogous cause election in any precinct was not held or was suspended, or if during the preparation and transmission of the election returns or in the custody or canvass of the election returns, the election results in failure of election, and the election will affect the outcome of the election, on petition of any interested party, COMELEC shall hold special election no later than 30 days after the cessation of the cause (*Sec. 6, Omnibus Election Code*). For the declaration of a failure of election, the illegality must affect more than 50% of the votes cast and the good votes must be distinguishable from the bad ones (*Carlos v. Angeles, 346 SCRA 571*).

2. Failure of Election cannot be declared in a precinct because of suspension of the election if 220 of the 316 registered voters were able to vote (*Batabor v. COMELEC, 434 SCRA 630*).

3. Where voting resumed after armed men fired shots near an election precinct, there is no failure of election (*Benito v. COMELEC, 349 SCRA 705*).

4. Where during the counting of the ballots, armed men replaced the ballots and coerced the election inspectors to prepare spurious returns, there is failure of election (*Sanchez v. COMELEC, 114 SCRA 454*).

5. A special election should be held if the ballot box in a precinct was burned (*Hassan v. COMELEC, 264 SCRA 125*).

6. The destruction of the copies of the election returns intended for the board of canvassers is not a ground for the declaration of a failure of election as other copies of the returns can be used (*Sardea v. COMELEC, 225 SCRA 374*).

7. The fact that less than 25% of the registered voters voted does not constitute failure of election, since voting took place (*Mitmug v. COMELEC, 230 SCRA 54*).

8. Lack of notice of the date and time of the canvass, fraud, violence, terrorism, and analogous causes, such as disenfranchisement of voters, presence of flying voters, and lack of qualification of the members of the board of inspectors are not grounds for a declaration of failure of election but for an election protest (*Borja v. COMELEC, 260 SCRA 604; Tan v. COMELEC, 417 SCRA 532*).

9. The fact that armed men signed and filled up the ballots before election day, the election returns were filled up before election day, votes credited to a candidate exceeded the number of registered voter, and that the tally sheets were filled up before the counting of ballots is not a ground to declare a failure of election. (*Mutitan v. COMELEC, 520 SCRA 152*).

10. There is a failure of election if the place of counting was transferred without notice to the watchers and the canvassing was made without their present (*Soliva v. COMELEC, 357 SCRA 336*).

11. The fact that the names of some registered voters were omitted from the list of voters, strangers voted for some of the registered voters, a candidate was credited with less votes than he received, the control data of some election returns were not filled up, the ballot boxes were brought to the municipal hall without padlock and seals, and that there was a delay in the delivery of the election returns are not grounds for the declaration of failure of election. (*Canicosa v. COMELEC, 282 SCRA 512; Macabago v. COMELEC, 392 SCRA 178*).

12. If voting actually took place, the use of a fake ballots is not a ground to declare a failure of elections (*Galo v. COMELEC, 487 SCRA 549*).

13. The fact that the supporters of a candidate filled up some of the ballots and that some members of the board of inspectors failed to sign some ballots at the back and to remove their detachable coupons is not a ground for the declaration of a failure of election (*Pasandalan v. COMELEC, 384 SCRA 695*).

14. The fact that the ballots were filled up by the relatives and appointees of a candidate is not a ground to declare a failure of elections, as it should be raised in an election contest (*Tan v. COMELEC, 507 SCRA 352*).

15. The fact that several election returns were prepared by one person is not a ground for the declaration of a failure of election (*Typoco v. COMELEC, 319 SCRA 498*).

16. The resort to manual counting of the ballots because of the breakdown of the automated machines does not constitute failure of election (*Loong v. COMELEC, 305 SCRA 832*).

17. Vote buying and discrepancies in the election returns are not grounds for failure of election (*Banaga v. COMELEC, 336 SCRA 701*).

18. An election cannot be annulled because of the illegal transfer of a precinct less than 45 days before the election if the votes of those who were not able to vote will not alter the result (*Balindong v. COMELEC, 260 SCRA 494*).

19. There is no reglementary period for filing a petition for annulment of an election if there has as yet been no proclamation (*Loong v. COMELEC, 257 SCRA 1*).

20. The COMELEC may decide a petition to declare a failure of election *En Banc* at the first instance, since it is not a pre-proclamation case or an election protest. (*Borja v. COMELEC, 260 SCRA 604*).

    In petitions to declare a failure of election on the ground of fraud, COMELEC may conduct a technical examination of election documents and compare and analyze the signatures and fingerprints of the voters (*Loong v. COMELEC, 257 SCRA 1*). The absence of a rule which specifically mandates the technical examination of election paraphernalia does not mean that the COMELEC division is barred from issuing an order for the conduct thereof. The power of the COMELEC division to order the technical examination election paraphernalia in election protest cases stems from its "exclusive original jurisdiction over all contest relating to the elections, returns and qualifications of all elective regional, provincial and city officials." Otherwise stated, the express grant of power to the COMELEC to resolve election protests carries with it the grant of all other powers necessary, proper, or incidental to the effective and efficient exercise of the power expressly granted. Verily, the exclusive original jurisdiction conferred by the constitution to the COMELEC to settle said election protests includes the authority to order a technical examination of relevant election paraphernalia, election returns and ballots in order to determine whether fraud and irregularities attended the canvass of the votes. (*Sahali v. COMELEC, G.R. No. 201796, 15 January 2013*).

21. The difference between the annulment of elections by electoral tribunals and the declaration of failure of elections by the COMELEC cannot be gainsaid. First, the former is an incident of the judicial function of electoral tribunals while the latter is in the exercise of the COMELEC's administrative function. Second, electoral tribunals only annul the election results connected with the election contest before it whereas the declaration of failure of elections by the COMELEC relates to the entire election in the concerned precinct or political unit. As such, in annulling elections, the HRET does so only to determine who among the candidates garnered a majority of the legal votes cast. The COMELEC, on the other hand, declares a failure of elections with the objective of holding or continuing the elections, which were not held or were suspended, or if there was one, resulted in a failure to elect. When COMELEC declares a failure of elections, special elections will have to be conducted (*Harlin C. Abayon v. HRET, G.R. No. 222236, May 3, 2016*).

22. The power to declare a failure of elections should be exercised with utmost care and only under circumstances which demonstrate beyond doubt that the disregard of the law had been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatsoever, or that the great body of the voters have been prevented by violence, intimidation and threats from exercising their franchise." Consequently, a protestant alleging terrorism in an election protest must establish by clear and convincing evidence that the will of the majority has been muted by "violence, intimidation or threats (*Harlin C. Abayon v. HRET, G.R. No. 222236, May 3, 2016*).

23. A special election is not valid if notice of its date and of the transfer of the precincts was given less than a day before, since the voters were deprived of the opportunity to vote (*Hassan v. COMELEC, 264 SCRA 125*).

24. The fact that the special election was scheduled more than thirty days after the cessation of the cause of the failure of the election does not affect its validity. (*Pangandaman v. COMELEC, 319 SCRA 283*). The period is merely directory (*Sambarani v. COMELEC, 428 SCRA 319*).

25. The fact that the candidate who was proclaimed has assumed office does not deprive COMELEC of its authority to declare a failure of election, since the proclamation was illegal (*Ampatuan v. COMELEC, 375 SCRA 503*).

H. Special Election

1. In the event of a vacancy in the House of Representatives that occurs at least one year before the expiration of the term of such seat, it is incumbent upon the Commission on Elections (COMELEC) to call for and hold a special election to fill such vacancy not earlier than 60 days nor longer than 90 days after the occurrence of the vacancy. This mandatory and ministerial duty of the COMELEC to call and hold the special election emanates from Republic Act No. 6645, as amended by Republic Act No. 7166, and is no longer conditioned upon any certification or call from the House of Representatives (*Hagedorn v. House of Representatives, G.R. No. 275800, 22 April 2025*).

2. A vacancy in the Senate will be filled up at the next regular election (*Sec. 4, Republic Act No. 7166*).

   The fact that COMELEC did not notify the people that a special election for senator would be held, that the candidates for senators did not specify whether they were running in the regular or special elections, and that the voters' information sheet did not specify the candidates for the special election does not affect the validity of the special election (*Tolentino v. COMELEC, 420 SCRA 438*).

XI. COUNTING OF VOTES

A. Manner

1. The board of election inspectors shall read the ballots publicly and shall not postpone the counting of votes until it is completed (*Sec. 206, Omnibus Election Code*).

2. The board of election inspectors shall assume such positions as to provide the watchers and the public unimpeded view of the ballot being read. (*Sec. 25, Republic Act No. 7166*).

3. If on account of violence or similar causes it becomes necessary to transfer the counting of the votes to a safer place, the board of election inspectors may effect the transfer by unanimous approval of the board and concurrence of a majority of the watchers present (*Sec. 18, Republic Act No. 6646*).

4. Where a commotion resulted in suspension of the counting, the board of election inspectors may recount the ballots (*Dayag v. Alonzo, 134 SCRA 202*).

5. Where the use of automated machines will result in an erroneous counting, manual counting may be used (*Loong v. COMELEC, 305 SCRA 832*).

B. Special Problems

1. Excess ballots

   If there are excess ballots, the poll clerk shall draw out as any ballots equal to the excess without seeing them, and the excess ballots shall not be counted. (*Sec. 207, Omnibus Election Code*).

2. Spoiled ballots

   a. Ballots in the compartment for spoiled ballots are presumed to be spoiled ballots.

   b. If the board of election inspectors finds that a valid ballot was erroneously deposited in the compartment for spoiled ballots, it shall be counted (*Sec. 209, Omnibus Election Code*).

3. Marked ballots

   a. Marked ballots shall not be counted (*Sec. 208, Omnibus Election Code*).

   b. A ballot is considered marked in any of the following cases:

      i. The voter singed the ballot (*Ferrer v. De Alban, 101 Phil. 1018*).

ii. The name of a candidate was written more than twice (*Salalima v. Sabater, G.R. No. L – 14829 May 28, 1959; Katigbak v. Mendoza, 19 SCRA 543; Bautista v. Castro, 206 SCRA 305*).

iii. The voter wrote the names of well-known public figures who are not candidates such as actors, actresses, and national political figures (*Protacio v. De Leon, 9 SCRA 472; Pangontao v. Alunan, 6 SCRA 853*).

iv. The ballot contains irrelevant expressions (*Bautista v. Castro, 206 SCRA 305*). However, the use of nicknames and appellations of affection and friendship, if accompanied by the name of the candidate, does not annul the ballot except when it is used to identify the voter (*Sec. 211 (13), Omnibus Election Code; Ong v. COMELEC, 347 SCRA 681*).

v. Ballots with the words "Joker", "Alas", "Queen" and "Kamatis" written on them are marked (*Villagracia v. COMELEC, 513 SCRA 556*).

vi. The name of a candidate was written in blue ink, while the rest of the names were written in black in (*Dojillo v. COMELEC, 496 SCRA 484*)

vii. Placing an encircled "15" and an enriched "16" after the names of a candidate constitutes marking the ballot (*Perman v. COMELEC, 515 SCRA 519*).

c. The use of two or more kinds of writing does not invalidate the ballot unless it clearly appears that it was deliberately made to identify the voter (*Sec. 211 (22), Omnibus Election Code; Ong v. COMELEC, 347 SCRA 681; Dojillo v. COMELEC, 496 SCRA 484*).

d. A ballot with "x" marks, lines and similar marks should not be considered marked in the absence of any showing of an intention to mark the ballot (*De Guzman v. Sison, 355 SCRA 69; Dojillo v. COMELEC, 496 SCRA 484*).

e. Evidence *aliunde* is not necessary to prove a ballot is marked (*Bocobo v. COMELEC, 191 SCRA 576*).

f. A ballot in which a sticker was stuck by another person to invalidate it should not be rejected (*Lerias v. House of Representatives Electoral Tribunal, 202 SCRA 808*).

C. Rules of appreciation of ballots

1. A ballot in which the first name or surname of a candidate is written should be counted for him, if there is no other candidate with the same name. (*Lerias v. House of Representative Electoral Tribunal, 202 SCRA 808; Dojillo v. COMELEC, 496 SCRA 484*).

2. If only the first name of a candidate is written and it sounds like the surname of another candidate, the vote shall be counted in favor of the latter.

3. If there are two or more candidates with the same name and one of them is incumbent, the vote shall be counted in favor of the incumbent.

4. When two or more words are written on different lines which are the surnames of two or more candidates with the same surname for an office for which the law authorizes the election of more than one, the vote shall be counted in favor of all candidates with the same surname.

5. When the word written is the first name of one candidate and the surname of another candidate, the vote shall be counted for the latter.

6. If the ballot contains the first name of one candidate and the surname of another candidate, the vote shall not be counted for either.

7. An incorrectly written name which sounds like the correctly written name of a candidate shall be counted in his favor (*Bautista v. Castro, 206 SCRA 606; Cantoria v. COMELEC, 444 SCRA 538; Dojillo v. COMELEC, 496 SCRA 484*).

8. *Idem Sonans* Rule: When a name or surname incorrectly written which, when read, has a sound similar to the name or surname of a candidate when correctly written shall be counted in such candidate's favor. The *Idem Sonans Rule* is particularly provided for under Section 211(7) of the Omnibus Election Code *(Sevilla v. COMELEC, G.R. No. 227797, November 13, 2018)*.

9. *Idem Sonans* in Automated Elections: The principle of "idem sonans" or the similarity in the pronunciation is irrelevant because the voters only need to shade the oval beside their chosen candidate. The claim that the voters would be confused with the candidates' nicknames is a product of too much inference without adequate proof. The erroneous use of a nickname registered in the CoC is not enough to declare a candidate nuisance. The proper recourse is to bring this to the attention of the Comelec as a defect of an entry in the CoC to disallow a candidate from using that nickname. The rules and regulations for the conduct of elections are mandatory before the election, but when they are sought to be enforced after the election, they are held to be directory only if that is possible, especially where, if they are held to be mandatory, innocent voters will be deprived of their votes without fault on their part. Thus, even if the CoC was not was not duly signed or does not contain the required data, the proclamation of

the candidate as the winner may not be nullified on such grounds. The defects in the certificate should have been questioned before the election; they may not be questioned after the election without invalidating the will of the electorate, which should not be done. To uphold the cancellation of a candidate's CoC due to an erroneous use of nickname after the votes were cast would render the electorates' votes for the candidate worthless *(Uy, Jr. v. COMELEC, G.R. Nos. 260650/260952, 8 August 2023)*.

10. If the word written is the identical name of two or more candidates for the same office none of whom is incumbent, the vote shall be counted in favor of the candidate who belongs to the same ticket as all the other candidates voted for in the ballot for the same constituency.

11. The erroneous initial of the first name accompanied by the correct surname of a candidate or the erroneous initial of the surname accompanied by the correct first name of a candidate shall not annul the vote in his favor.

12. A ballot in which the correct first name but wrong surname of a candidate is written or the correct surname but wrong first name of a candidate is written, shall not be counted in his favor.

    Where a candidate named Pedro Alfonso died on the eve of the election and his daughter Irma Alfonso substituted him, ballots in which the name Pedro Alfonso was written cannot be counted in her favor (*Alfonso v. COMELEC, 232 SCRA 777*).

13. If two or more candidates were voted for in an office for which the law authorizes the election of only one, the vote shall not be counted in favor of any of them (*Dojillo v. COMELEC, 496 SCRA 484*).

14. If the candidates voted for exceed the number of those to be elected, the votes for the candidates whose names were firstly written equal to the number of candidates to be elected shall be counted.

15. Even if the name of a candidate was written on the wrong space, it should be counted if the intention to vote for him can be determined, as when there is a complete list of names of candidates for other offices written below his name or the voter wrote the office for which he was electing the candidate (*Cordero v. Moscardon, 132 SCRA 414; Lerias v. House of Representatives Electoral Tribunal, 202 SCRA 808; Bautista v. Castro, 206 SCRA 305, Velasco v. COMELEC, 516 SCRA 947*). If the space for punong barangay was left blank and the name of the candidate for punong barangay was written on the first line for barangay kagawad, it should be counted. However, it should not be counted if it was written on the second line for barangay kagawad (*Ferrer v. COMELEC, 330 SCRA 229; Abad v. Co, 496 SCRA 505*).

Under the neighborhood rule, excepted from the rule that a voter must write the name of the candidate for whom he desired to vote in the proper place are the following: (1) a general misplacement of an entire series of names intended to be voted for the successive offices appearing in the ballot; (2) a single or double misplacement of names where the name is preceded or followed by the title of the contested office or where the voter wrote after the name of the candidate a directional symbol indicating the correct office for which the misplaced name was intended; (3) a single misplacement of a name written (a) off-center from the designated space, (b) slightly underneath the line for the intended office; (c) immediately above the title for the contested office, or (d) in the space for an office immediately following that for which the candidate presented himself (*Velasco v. COMELEC, 516 SCRA 447*).

16. A ballot with undetached coupon should be counted (*De Guzman v. Sison, 355 SCRA 69*).

17. For purposes of the 2016 elections, the fifty percent (50%) shading threshold was no longer applied. Instead of a single numerical threshold, what was applied was a threshold that ranged from twenty percent (20%) to twenty-five percent (25%) of the oval spaces in the ballots *(Marcos v. Robredo, PET Case No. 005, 18 September 2018 [Resolution])*.

D. Correction of returns

1. Before the announcement of the results of the election in a precinct, any correction or alteration in the election returns must be initialed by all member of the board of election inspectors.

2. After the announcement of the results of the election in a precinct, the authorization of COMELEC is needed to make any correction or alteration.

    a. If the petition is by all members of the board of election inspectors, the results of the election will not be affected, and none of the candidates affected objects, COMELEC, upon being satisfied of the veracity of the petition, shall order the correction.

    b. If a candidate affected by the petition objects and the correction will affect the results of the election, COMELEC shall order a recount of the votes if it finds the petition meritorious and the integrity of the ballot box has not been violated (*Sec. 216, Omnibus Election Code*).

3. It is too much of a stretch for the Court to hold that the constitutional right of suffrage encompasses the supposed right of the sovereign electorate in a locality to have an entire election conducted thereat fully and manually recounted based on unsubstantiated surmises and unfounded conjectures that supposedly shadow the

said election's conduct and results. Without any proof of the manipulations and anomalies complained of that would have prevented their votes from being counted, Legaspi, et al. had no legal justification to present to the COMELEC in order for the requested full manuai count in Pangasinan to happen – to say nothing of a recount. Again, there is also no statutory basis for said recount – indeed, Legaspi, et al. could not even invoke the random manual audit provided for in Section 29 of Republic Act No. 8436 (as amended by Section 2455 of Republic Act No. 9369), which only has a limited scope (i.e., one polling precinct per congressional district). (Legaspi v. COMELEC, G.R. No. 264661, July 30, 2024).

E. Certificate of votes

1. The board of election inspectors shall issue a certificate of the number of votes received by a candidate upon request of a watcher (*Sec. 16, Republic Act No. 6646*).

2. The certificate of votes is admissible in evidence to prove any anomaly in the election return when authenticated by testimony or documentary evidence of at least two members of the board of election inspectors (*Sec. 17, Republic Act No. 6646*).

3. The certificate of votes cannot be used to prove the result of the election. (*Recabo v. COMELEC, 308 SCRA 793*).

XII. CANVASSING AND PROCLAMATION

A. Canvassing Bodies

1. Congress

    a. President

    b. Vice President (*Sec. 3, Art. VII of 1987 Constitution, Sec. 30, Republic Act No. 7166*)

2. COMELEC

    a. Senators (*Sec. 2, Executive Order No. 144*)

    b. Regional Officials (*Sec. 7, Art. XIX, Republic Act No. 6734*)

3. Provincial Board of Canvassers

    a. Congressmen

b. Provincial officials (*Sec. 28 (d), Republic Act No. 7166*)

4. District Board of Canvassers in each legislative district in Metro Manila

   a. Congressmen

   b. Municipal officials (*Sec. 28 (c), Republic Act No. 7166*)

5. City and Municipal Board of Canvassers

   a. Congressmen

   b. City and municipal officials (*Sec. 28 (a) and (b), Republic Act No. 7166*)

6. Barangay Board of Canvassers

   Barangay officials (*Sec. 17, Batas Pambansa Blg. 222*)

B. Procedure

1. COMELEC has direct control and supervision over the board of canvassers except Congress. It may *motu proprio* relieve at any time and substitute any member of the board of canvassers (*Sec. 227, Omnibus Election Code*).

   A municipal court has no jurisdiction to restrain the municipal board of canvassers (*Libardos v. Casar, 234 SCRA 13*).

2. Manner of delivery of election return

   a. The board of election inspectors shall personally deliver to the city and municipal boards of canvassers the copy of the election returns intended for them, sealed in an envelope, signed and thumbmarked by the members of the board of election inspectors.

      The mere fact that an election return was not locked in the ballot box when it was delivered to the board of canvassers is not ground for excluding it in the absence of proof that it was tampered with (*Pimentel v. COMELEC, 140 SCRA 126*).

   b. The board of election inspectors shall personally deliver to the provincial and district boards of canvassers the copy of the election returns intended for them to the election registrar.

   c. Watchers have the right to accompany the members of the board of election inspectors and the election registrar during the delivery of the

election returns to the board of canvassers (*Sec. 229, Omnibus Election Code*).

3. Steps in canvassing

    a. City and municipal board of canvassers

        i. The city and municipal board of canvassers shall canvass the election returns

        ii. They shall prepare a certificate of canvass for President, Vice President, Senators, Congressmen, and provincial officials.

        iii. They shall proclaim the elected city or municipal officials.

        iv. If the city comprises one or more legislative districts, the city board of canvassers shall proclaim the elected congressmen.

    b. District Board of Canvassers

        i. The district board of canvassers shall canvass the election returns.

        ii. They shall prepare a certificate of canvass for President, Vice President and Senators.

        iii. They shall proclaim the elected congressmen and municipal officials.

    c. Provincial Board of Canvassers

        i. The provincial board of canvassers shall canvass the certificates of canvass for President, Vice President, Senators, Congressmen and provincial officials submitted by the board of canvassers of municipalities and component cities.

        ii. They shall prepare a certificate of canvass for President, Vice President, and Senators.

        iii. They shall proclaim the elected congressmen and provincial officials (*Sec. 28, Republic Act No. 7166*).

    d. COMELEC

        i. It shall canvass the certificates of canvass submitted by the board of canvassers of provinces and highly urbanized cities.

ii. It shall proclaim the elected Senators.

e. Congress

i. It shall canvass the certificates of canvass submitted by the board of canvassers of the provinces, highly urbanized cities, and districts.

COMELEC cannot conduct an unofficial canvass (*Brillantes v. COMELEC, 432 SCRA 269*).

ii. It shall determine the authenticity and due execution of the certificates of canvass for President and Vice President.

iii. If a certificate of canvass is incomplete, the Senate President shall require the board of canvassers concerned to transmit the election returns that were not included in the certificate of canvass.

iv. If there is an erasure or alternation in any certificate of canvass or statement of vote which may cast doubt as to the veracity of the votes stated and may affect the result of the election, upon request of the candidate concerned or his party, Congress shall count the votes in the copies of the election returns (*Sec. 30, Republic Act No. 7166*).

v. Congress shall proclaim the elected President and Vice President (*Sec. 4, Art. VII of 1987 Constitution*).

4. Problem areas

a. Lost return

i. If any election return has been lost, upon prior authority of COMELEC, the board of canvassers may use any authentic copy or a certified copy issued by COMELEC (*Sec. 233, Omnibus Election Code; Samad v. COMELEC, 224 SCRA 631*). It is not necessary that all the other copies be considered (*Pangarungan v. COMELEC, 216 SCRA 522*).

ii. If an election return is missing a recount should not be ordered if there is any authentic copy available (*Ong v. COMELEC, 216 SCRA 866*).

iii. If all copies of the election returns were lost, a recount of the ballots should be made (*Ong v. COMELEC, 221 SCRA 475*).

iv. The certificate of votes signed by the board of inspectors and the tally board cannot be used for the canvass, because only election returns are evidence of the results of the election (*Garay v. COMELEC, 261 SCRA 222*).

b. Omission in the return

i. In case of an omission in the election return of the name of a candidate or his votes, the board of canvassers shall require the board of election inspectors to complete it (*Lee v. COMELEC, 405 SCRA 363*).

ii. If the votes omitted cannot be ascertained except by recounting the ballots, after ascertaining the integrity of the ballot box has not been violated, COMELEC shall order the board of election inspectors to count the votes for the candidate whose votes were omitted and to complete the return (*Sec. 234, Omnibus Election Code*). Since the omission on the election return of the number of votes certain candidates received is not a discrepancy, a recount of the votes should be ordered instead of excluding the election return in the canvassing (*Patoray v. COMELEC, 249 SCRA 440*).

c. Tampered or falsified return

i. If the election return submitted to the board of canvassers was tampered with or falsified or prepared under duress or by persons other than the board of election inspectors, the board shall use the other copies of the election return.

ii. If the other copies of the election returns were also tampered with or falsified or prepared under duress or by persons other than the board of election inspectors, COMELEC, after ascertaining that the integrity of the ballot box has not been violated, shall order the board of election inspectors to recount the votes and prepare a new return (*Sec. 235, Omnibus Election Code*).

iii. In the absence of proof that the election returns were tampered with, the mere fact that the ballot boxes were not secured with padlocks is not sufficient for questioning the election returns (*Navarro v. COMELEC, 396 SCRA 620*).

iv. Erasures in the certificates of canvass which were merely corrections do not constitute tampering (*Sarangani v. COMELEC, 415 SCRA 614*).

v. If the certificate of canvass was tampered with, COMELEC may order that any of the copies of the election returns be used in making a new canvass (*Mastura v. COMELEC, 285 SCRA 493*).

vi. Since an election return prepared without counting the ballots is a fabrication, it should not be counted and a count of the ballots should be ordered (*Lucero v. COMELEC, 234 SCRA 280*).

d. Discrepancies in returns

If there are discrepancies in the other authentic copies of the return or in the words and figures in the same return and it will affect the result of the election, COMELEC, after ascertaining that the integrity of the ballot box has not been violated, shall order a recount of the ballots (*Sec. 236, Omnibus Election Code; Olondriz v. COMELEC, 313 SCRA 128*).

If there is discrepancy between the tally and the written figures in the election return, it should be excluded from the canvassing and a recount of the ballots should be made or the certificate of votes cast in the precinct should be used (*Patoray v. COMELEC, 249 SCRA 440*).

e. Proclamation

i. An incomplete canvass cannot be the basis of a valid proclamation. (*Samad v. COMELEC, 224 SCRA 631; Castromayor v. COMELEC, 250 SCRA 298; Loong v. COMELEC, 257 SCRA 1; Jamil v. COMELEC, 283 SCRA 349; Immam v. COMELEC, 322 SCRA 866; Alauya v. COMELEC, 395 SCRA 742; Lorenzo v. COMELEC, 418 SCRA 448; Sales v. COMELEC, 425 SCRA 735*).

ii. If the questioned election returns will not affect the result of the election, a proclamation may be made upon order of COMELEC after notice and hearing. (*Sec. 238, Omnibus Election Code; Barbers v. COMELEC, 460 SCRA 569*).

iii. COMELEC is authorized by law to proclaim winning candidates if the remaining uncanvassed election returns will not affect the result of the elections. *(Aksyon Magsasaka-Partido Tinig ng Masa (AKMA-PTM) v. COMELEC, G.R. No. 207134, June 16, 2015)*

iv. The manual COCP is the official COMELEC document in cases wherein the canvassing threshold is lowered. In fact, clear from

the language of the Resolution is that the winners, in such instances, are proclaimed "by manually preparing a Certificate of Canvass and Proclamation of Winning Candidates," the format for which is appended to COMELEC Resolution No. 9700. *(Garcia v. COMELEC, G.R. No. 216691, July 21, 2015)*

v. *As to the first requisite of proclamation, the law requires that a CoP be issued specifically in favor ofthe nominee who shall be taking a seat in the HoR for the party-list, which must be different from any such certificate that may have been issued to the party-list. It is the CoP in favor of the nomine'e which works to satisfy the requisite of proclamation under the law (An Waray Party-List v. COMELEC, G.R. No. 268546, August 6, 2024*).

vi. It is a directive to COMELEC itself to proclaim the winning party-list representatives according to their rankings in the list of names submitted by such party-lists. Being that the provision speaks of COMELEC's duty and responsibility to make such proclamation, it defies logic to find An Waray to have violated or failed to comply with the same. Again, it was not its responsibility to obtain such proclamation under Section 13. Its failure to do so cannot be regarded as a violation of this section *(An Waray Party-List v. COMELEC, G.R. No. 268546, August 6, 2024*).

5. Rights of candidates

a. Every registered political party and candidate is entitled to one watcher in the canvassing center, but candidates for the local legislative bodies belonging to the same party are entitled collectively to one watcher. (*Sec. 26, Republic Act No. 7166*) The fact that the watcher of a candidate was not present when the canvassing was resumed because he was not notified is not a ground to annul the canvass (*Quilala v. COMELEC, 188 SCRA 902*).

b. Any registered political party and candidate has the right to be present and to counsel.

i. Only one counsel may argue for each party or candidate

ii. No dilatory action shall be allowed (*Sec. 25, Republic Act No. 6646*).

c. Only the winning candidates have the demandable right to be furnished a copy of the COCP. *(Garcia v. COMELEC, G.R. No. 216691, July 21, 2015)*

6. Tie

a. A tie among two or more candidates for President or Vice President shall be broken by majority vote of both houses of Congress voting separately (*Sec. 4, Art. VII of 1987 Constitution*).

b. In the case of other positions, the tie shall be broken by the drawing of lots. (*Sec. 240, Omnibus Election Code, Tugade v. COMELEC, 517 SCRA 328*).

7. Failure to assume office

If a candidate fails to take his oath of office within 6 months from his proclamation, unless for a cause beyond the control of the elected official, his office will be considered vacant (*Sec. 12, Omnibus Election Code*).

The term office refers to a fixed duration which is not analogous to assumption of office that pertains to overt acts in the discharge of one's duties. Also, the term of office commences on June 30 following the elections, unlike the assumption of office which may transpire at a different time. Verily, assumption of office cannot be constructive but must involve actual discharge of duties *(Uy, Jr. v. COMELEC, G.R. Nos. 260650/260952, 8 August 2023)*.

XIII. PRE-PROCLAMATION CASES

A. Issues

1. Provincial, city and municipal officials

a. The composition or the proceeding of the board of canvassers is illegal;

b. The returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies;

c. The returns were prepared under duress or are obviously manufactured or not authentic;

d. Substitute or fraudulent returns were canvassed, the results of which materially affect the standing of the aggrieved candidate (*Sec. 243, Omnibus Election Code; Sec. 16, Republic Act No. 7166*).

2. President, Vice President, Senators and Congressmen

No pre-proclamation case is allowed regarding the preparation, transmission, receipt, custody and appreciation of the election returns or certificate of canvass (*Chavez v. COMELEC, 211 SCRA 315; Ong v. COMELEC, 216 SCRA 806, Pangilinan v. COMELEC, 228 SCRA 36*).

In a congressional election, all losing candidate cannot file a petition for correction of manifest errors (*Cerbo v. COMELEC, 516 SCRA 51; Vinzons-Chato v. COMELEC, 520 SCRA 166; Dimaporo v. COMELEC, 544 SCRA 381*).

3. Correction of Manifest Errors

The canvassing body may *motu proprio* or upon petition of an interested party correct manifest errors in the certificate of canvass or election return (*Sec. 15, Art No. 7166, Sandoval v. COMELEC, 323 SCRA 403*).

a. A copy of an election return or certificate of canvass was tabulated more than once.

b. Two or more copies of the same election return or certificate of canvass were tabulated separately.

c. There was a mistake in copying the figures into the statement of votes or certificates of canvass.

Errors in the addition in the certificate of canvass may be corrected. (*Ong v. COMELEC, 221 SCRA 475; Lucero v. COMELEC, 234 SCRA 280; Baddiri v. COMELEC, 439 SCRA 809*).

d. Returns from non-existent precincts were included in the canvass (*Sec. 5(a), Rule 27 of COMELEC Rules of Procedure*).

i. The statement of votes cannot be corrected on the basis of a certification given to a watcher, since election returns are what are supposed to be the basis of the canvass (*Ramirez v. COMELEC, 290 SCRA 590*).

ii. The alleged error in the certificate of canvass committed by carrying forward 7,000 votes is not a manifest error where the petition did not specify the precincts where the alleged errors were committed and are not manifest, since they do not appear on the face of the certificate of canvass (*O'Hara v. COMELEC, 379 SCRA 247*).

iii. The claim that fabricated statements of votes and non-existing precincts were included in the tabulation cannot be raised in a petition for correction of manifest errors, as they are not clerical

errors evident on the face of the documents (*Tamayo-Reyes v. COMELEC, 524 SCRA 577*).

iv. The respondent may file a counter-petition (*Trinidad v. COMELEC, 320 SCRA 836*).

v. The petition should be filed not later than five days after the proclamation of the winner (*Sec. 5 (b), Rule 27 of COMELEC Rules of Procedure*).

vi. The petition can be filed at any time even before the proclamation of the winner (*Sec. 7, Rule 27 of COMELEC Rules of Procedure; Bince v. COMELEC, 242 SCRA 373; Baddiri v. COMELEC, 459 SCRA 808*).

vii. COMELEC can suspend the period for filing the petition (*Arbonida v. COMELEC, 518 SCRA 320*).

4. However, Congress and the COMELEC *En Banc* are authorized to determine the authenticity of the certificates of canvass for President, Vice President and Senators, respectively (*Section 30, Republic Act No. 7166, as amended by Republic Act No. 9369*).

a. Authenticity of the certificates of canvass transmitted to them shall be determined on the basis of the following:

i. Signatures and thumbmarks of the chairman and members of the board of canvassers.

ii. Completion of the names of all the candidates and their corresponding votes in words and figures.

iii. Absence of discrepancy in other authentic copies of certificate of canvass or any of its supporting documents such as statement of votes or in the votes of any candidate in words and figures in the certificate of canvass.

iv. Absences of discrepancy in the votes of any candidate in words and figures in the certificate of canvass against the aggregate number of votes appearing the election returns of precincts covered by the certificate of canvass (*Sec. 30, Republic Act No. 7166, as amended by Republic Act No. 9369*).

b. This applies only to Congress and COMELEC *En Banc* as canvassing boards and does not extend to the canvass proceedings before local board, Vice-President, and Senators (*Pimentel v. COMELEC, 543 SCRA 169*).

5. Jurisprudence

a. Issues involving the casting or the counting of the ballots are not proper in pre-proclamation cases.

i. The use of illegal election propaganda, vote-buying, and terrorism of the voters are not proper issues in a pre-proclamation case (*Villegas v. COMELEC, 99 SCRA 582*).

ii. Questions of appreciation of the ballots cannot be raised in a pre-proclamation case (*Allarde v. COMELEC, 159 SCRA 632; Bautista v. COMELEC, 159 SCRA 641; Abella v. Larrazabal, 180 SCRA 506; Alfonso v. COMELEC, 232 SCRA 777; Sinsuat v. COMELEC, 492 SCRA 391*) Thus, the claim that a candidate was not credited with votes cast for him because his name was similar to that of another disqualified candidate cannot be raised in a pre-proclamation case (*Sanchez v. COMELEC, 211 SCRA 315*).

Likewise, the claim that some ballots were spurious, marked or invalid cannot be raised in a pre-proclamation case. (*Patoray v. COMELEC, 274 SCRA 470*).

iii. Terrorism of voters, voting by flying voters, deprivation of the right to vote of registered voters, and vote-buying cannot be raised in a pre-proclamation case (*Robes v. COMELEC, 123 SCRA 193; Allarde v. COMELEC, 159 SCRA 632; Lucman v. COMELEC, 462 SCRA 299*).

iv. Vote-buying and lack of secrecy in the preparation of ballots are not proper grounds for a pre-proclamation case (*Salazar v. COMELEC, 184 SCRA 433*).

v. The claims that voters were allowed to vote without verifying their identities, that there were discrepancies between the signatures in the voter's affidavits and the voting record, and third persons falsely voted for voters who did not vote are not proper issues in a pre-proclamation case (*Dipatuan v. COMELEC, 185 SCRA 86; Dimaporo v. COMELEC, 186 SCRA 769*).

vi. Technical examination of the signatures and thumbprints of the voters to prove substitute voting is not allowed in a pre-proclamation case (*Balindong v. COMELEC, 260 SCRA 494*).

vii. The padding of the list of voters cannot be raised in a pre-proclamation case, since it does not involve the election return (*Ututalum v. COMELEC, 181 SCRA 335*).

viii. The fact that the voting was sham or minimal is not a ground for filing a pre-proclamation case, since this is properly cognizable in an election protest (*Salih v. COMELEC, 279 SCRA 19*).

ix. The fact that the counting of the votes was not completed because of the explosion of a grenade and that no election was held cannot be raised in a pre-proclamation case, as these are irregularities that do not appear on the face of the election returns (*Matalam v. COMELEC, 271 SCRA 733*).

b. Administrative lapses which do not affect the authenticity of election returns cannot serve as basis for annulling the election return (*Ocampo v. COMELEC, 325 SCRA 636*).

i. The failure to close the entries in the election returns with the signatures of the board of election inspectors, lack of seals, absence of time and date of receipt of the election return by the board of canvassers, lack of signatures of the watchers of the petitioner, and lack of authority of the person who received the election returns do not affect the authenticity of the returns (*Baterina v. COMELEC, 205 SCRA 1*).

ii. The lack of inner paper seals in the election returns is not a proper subject of a pre-proclamation case (*Bandala v. COMELEC, 424 SCRA 267*).

iii. The absence of the signature of the chairman of the board of inspectors on the voter's affidavits, list of voters, and voting records; absence or excess of detachable coupons; discrepancies between the number of detachable coupons and the number of ballots; and missing voter's lists are mere administrative omissions and cannot be used as basis to annul an election return (*Arroyo v. House of Representative Electoral Tribunal, 246 SCRA 384*).

iv. It is the over-all policy of the law to place a premium on an election return, which appears regular on its face, by imposing stringent requirements before the certificate of votes may be used to convert the election return's authenticity and operate as an exception to the general rule that in a pre-proclamation controversy, the inquiry is limited to the four corners of the election return. In the absence of clearly convincing evidence, the

validity of the election returns must be upheld. Any plausible explanation, one which is acceptable to a reasonable man in the light of experience and of the probabilities of the situation, should suffice to avoid outright nullification, which results in disenfranchisement of those who exercised their right of suffrage. Where COMELEC disregards the principle requiring "extreme caution" before rejecting election returns, and proceeds with undue haste in concluding that the election returns are tampered, it commits a grave abuse of discretion amounting to lack or excess of jurisdiction (*Doromal v. Biron, G.R. No. 181809, 17 February 2010*).

c. Where the threats of the followers of a candidate did not affect the genuineness of the election return, it should not be excluded (*Salvacion v. COMELEC, 170 SCRA 513*).

d. An election return which is statistically improbable is obviously fabricated and should not be counted.

i. Where the votes cast in 50 precincts for the candidates for senators of one party equaled the number of registered voters, all the candidates for senators of that party received the same number of votes, and all the candidates for senators of the opposing party got no votes, the election returns are statistically improbable and are obviously fabricated (*Lagumbay v. Climaco, 16 SCRA 175; Sinsuat v. Pendatun, 33 SCRA 630*).

ii. Where only one candidate of a party got all the votes in some precincts and his opponent got zero, the other candidates of the other party for other positions received votes, and the number of votes cast were less than the number of registered voters, the election returns are not statistically improbable (*Sangki v. COMELEC, 21 SCRA 392; Ocampo v. COMELEC, 325 SCRA 636*).

iii. The mere fact that a candidate got no votes in a few precincts does not make the election returns statistically improbable (*Velayo v. COMELEC, 327 SCRA 713*).

iv. The mere fact that a candidate received overwhelming majorities over another candidate in numerous precincts does not make the election returns statistically improbable (*Ilarde v. COMELEC, 31 SCRA 72*)

v. The mere fact that the percentage of turnout of voters was high and that a candidate received a high percentage of the votes

does not make the election returns statistically improbable (*Doruelo v. COMELEC, 133 SCRA 376*).

e. Duress in the preparation of an election return cannot be raised in a pre-proclamation use, because it cannot be decided summarily. (*Sebastian v. COMELEC, 327 SCRA 406; Dumayas v. COMELEC, 357 SCRA 358*).

f. Irregularities which do not appear on the face of the election returns, such as the claim that they were prepared by persons other than the members of the board of inspectors, cannot be raised in a pre-proclamation case (*Belac v. COMELEC, 356 SCRA 394*).

g. A candidate for mayor who finished second cannot be proclaimed simply because the candidate who received the highest number of votes died, since he was not the choice of the people (*Benito v. COMELEC, 235 SCRA 436*).

h. If the votes cast for the candidates exceeded the number of registered voters, the election return should be considered tampered (*Camba v. COMELEC, 543 SCRA 157*).

i. A petition for disqualification in no way qualifies as a pre-proclamation controversy if it has absolutely nothing to do with any matter or ground pertaining to or affecting the proceedings of the board of canvassers or any matter raised under Sections 233, 234, 235 and 236 of the Omnibus Election Code in relation to the preparation, transmission, receipt, custody and appreciation of the election returns. The enumeration of pre-proclamation cases in Section 234 is restrictive and exclusive. (*Leodegario A. Labao, Jr. v. COMELEC, G.R. No. 212615, July 19, 2016*).

j.

B. Jurisdiction

1. Questions involving the legality of the composition or proceeding of the board of canvassers, except Congress, may be raised initially in the board of canvassers or COMELEC (*Secs. 15 and 17, Republic Act No. 7166*).

2. Questions involving the election returns and certificates of canvass should be brought initially before the board of canvassers (*Sec. 17, Republic Act No. 7166; Fernandez v. COMELEC, 504 SCRA 116*).

C. Procedure in Contested Composition or Proceeding of Board of Canvassers

The illegality of the composition of the board of canvassers cannot be questioned after the proclamation of the winner, since it must be raised immediately (*Laodenio v. COMELEC, 276 SCRA 705*).

Since if the district school supervisor is disqualified, it is the school principal who should replace him, the proclamation made by a board of canvassers in which it was a public school teacher who replaced the district school supervisor is void (*Salic v. COMELEC, 425 SCRA 735*).

It is valid for COMELEC to create a committee to investigate an anomalous double proclamation, where the recommendations of the committee were merely advisory (*Ardais v. COMELEC, 428 SCRA 277*).

The annulment of the proclamation of a candidate for vice mayor adjudged in a petition for annulment of the proclamation of the winning candidate for mayor is valid, where the losing candidate for vice mayor filed a motion for intervention and the winning candidate for vice mayor file an answer in intervention (*Salic v. COMELEC, 425 SCRA 735*).

The ruling of the board of canvassers on questions affecting its composition or proceeding may be appealed to COMELEC in 3 days, (*Sec. 19, Republic Act No. 7166; Sema v. COMELEC, 347 SCRA 633*).

D. Procedure in Case of Contested Returns

1. Objections to an election return shall be submitted orally to the chairman of the board of canvassers at the time the return is presented for inclusion in the canvass and shall be entered in the minutes of the canvass. Simultaneous with the oral objection, the objection shall be entered in the form of written objections (Sec. 20 (a) and (c), Republic Act No. 7166).

    a. An objection made after the canvass is late (*Guiao v. COMELEC, 137 SCRA 356; Allarde v. COMELEC, 159 SCRA 632; Navarro v. COMELEC, 228 SCRA 596; Siquian v. COMELEC, 320 SCRA 440*).

    b. The submission of an offer of evidence and the affidavits within 24 hours, even if no written objections were submitted, is substantial compliance (*Marabur v. COMELEC, 516 SCRA 696*).

    c. A petition for correction of the statement of votes may be filed after the proclamation of the winner, although no objection was made during the canvass, as the error was discovered only after the petitioner got a copy of the statement of votes (*Villaroya v. COMELEC, 155 SCRA 633; Duremdez v. COMELEC, 178 SCRA 746; Sinsuat v. COMELEC, 485 SCRA 219*). It must be filed not later than 5 days after the proclamation (*Sec. 5(b), Rule 27 of COMELEC Rules of Procedure; Trinidad v. COMELEC, 320 SCRA 836*). However, COMELEC can entertain the petition even if it was filed out of time and the proper docket fees were not paid because of its power to suspend the rules (*Barot v. COMELEC, 404 SCRA 352; Milla v. Balmores-Laxar, 406 SCRA 679; De la Llana v. COMELEC, 416 SCRA 638*).

d. However, the five-day deadline is not applicable to a petition for the annulment of the proclamation of a candidate when it was his opponent who obtained the majority for what was corrected as not the entries but the computation of the votes (*Mentang v. COMELEC, 229 SCRA 666; Alejandro v. COMELEC, 481 SCRA 4*).

e. COMELEC can annul a proclamation because of an error in the computation of the votes in the statement of votes, since the proclamation is void (*Torres v. COMELEC, 270 SCRA 583; Arboneda v. COMELEC, 518 SCRA 320; Cumligad v. COMELEC, 518 SCRA 551*)

f. Under the COMELEC Rules of Procedure, a petition for correction of the certificate of canvass may be filed even before the proclamation of the winner (*Bince v. COMELEC, 242 SCRA 273; Baddiri v. COMELEC, 459 SCRA 808*).

g. A petition for correction of manifest errors in the statement of votes can be decided by COMELEC *En Banc* in the first instance, since it does not involve an election protest or a pre-proclamation case (*Ramirez v. COMELEC, 270 SCRA 590*).

COMELEC has the power to order a correction of the statement of votes to make it conform to the election returns (*Castromayor v. COMELEC, 250 SCRA 298*).

2. The canvass of any contested return shall be deferred, and the board of canvassers shall proceed to canvass the uncontested returns (*Sec. 20 (b), Republic Act No. 7166*).

3. Within 24 hours, the objecting party shall submit evidence in support of the objections (*Sec. 20 (c) Republic Act No. 7166*). Failure to comply with this is a ground for dismissing the objection (*Cordero v. COMELEC, 310 SCRA 118*).

4. The claim that the boards of election inspectors were intimidated in the preparation of election returns cannot be proven summarily and must be raised in an election protest (*Chu v. COMELEC, 319 SCRA 482; Siquian v. COMELEC, 320 SCRA 440*).

5. Within 24 hours after presentation of the objection, a party may file a written opposition and attach the supporting evidence (*Sec. 20 (c), Republic Act No. 7166*).

6. The board of canvassers shall summarily rule on the contested returns (*Sec. 20 (d), Republic Act No. 7166*).

7. A party who intends to appeal should immediately inform the board of canvassers (*Sec. 20 (e), Republic Act No. 7166*). Within 48 hours, he must file a written and verified notice of appeal with the board of canvassers and take his appeal to COMELEC within 5 days (*Sec. 20 (f), Republic Act No. 7166; Sema v. COMELEC, 347 SCRA 633*).

   Filing a pre-proclamation case with COMELEC instead of appealing should be allowed where the board of canvassers immediately proclaimed the winner (*Jainal v. COMELEC, 517 SCRA 799*).

   a. Jurisdiction

      i. The Regional Trial Court has no jurisdiction to review the decision of the municipal board of canvassers to correct a certificate of canvass (*Cabanero v. Court of Appeals, 232 SCRA XXV*).

      ii. The Regional Trial Court has no jurisdiction to compel the municipal board of canvassers, which suspended the proclamation because of a possible discrepancy in an election return, to make a proclamation (*In re: COMELEC Resolution No. 2521, 234 SCRA 1*).

      iii. The Regional Trial Court has no jurisdiction to annul the proclamation of a winning candidate (*Gustilo v. Real, 353 SCRA 1*).

   b. Period of Appeal

      i. Since the proclamation of a candidate who finished second made after the candidate who got the highest number of votes was killed is patently void, a late appeal should be allowed (*Benito v. COMELEC, 235 SCRA 436*).

      ii. The COMELEC cannot by regulation shorten the period to question its decision before the Supreme Court, for under the Constitution the period of 30 days can be shortened by law only (*Sardea v. COMELEC, 225 SCRA 374*).

8. The COMELEC shall decide the appeal within 7 days from receipt of the records, and the decision shall be executor after 7 days from receipt by the losing party. (*Secs. 18 and 20 (f), Republic Act No. 7166*).

9. The pre-proclamation case should no longer be decided if exclusion of the questioned election returns will not change the result of the election (*Matalam v. COMELEC, 271 SCRA 733; Basorte v. COMELEC, 523 SCRA 76*).

10. The board of canvassers shall not make any proclamation without authorization from COMELEC (*Jamil v. COMELEC, 283 SCRA 349; Utto v. COMELEC, 375 SCRA 523; Muñoz v. COMELEC, 486 SCRA 645; Camba v. COMELEC, 543 SCRA 157); Marabur v. COMELEC, 516 SCRA 696*).

    a. A proclamation may be made if the contested returns will not adversely affect the results of the election (*Sec. 20 (i), Republic Act No. 7166; Benwaren v. COMELEC, 486 SCRA 645*).

    b. COMELEC may order the proclamation of other winning candidates whose election will not be affected by the pre-proclamation case (*Sec. 21, Republic Act No. 7166*).

11. Termination of Pre-Proclamation Case

    a. Once a proclamation has been made, the pre-proclamation case is no longer viable and should be dismissed (*Mangca v. COMELEC, 112 SCRA 273; Padilla v. COMELEC, 137 SCRA 424; Casimiro v. COMELEC, 171 SCRA 468; Sardea v. COMELEC, 225 SCRA 374; Siquian v. COMELEC, 320 SCRA 440; Aggabao v. COMELEC, 449 SCRA 400*). However, this rule presupposes the proclamation is valid. It does not apply if the proclamation is void, because it was based on incomplete returns (*Mutuc v. COMELEC, 22 SCRA 662; Duremdes v. COMELEC, 178 SCRA 746; Castromayor v. COMELEC, 178 SCRA 746; Castromayor v. COMELEC, 250 SCRA 298*). This applies if the winner was proclaimed without ruling on the objections to the inclusion of contested returns (*Espidol v. COMELEC, 472 SCRA 380, Jainal v. COMELEC, 517 SCRA 799*). The same holds true if the returns were manufactured (*Agbayani v. COMELEC, 186 SCRA 484*).

        The same holds true where the computation of votes was erroneous (*Tatlonghari v. COMELEC, 199 SCRA 849; Mentang v. COMELEC, 229 SCRA 669*).

    b. The filing in the Regional Trial Court of a petition to annul a premature proclamation is not an abandonment of the pre-proclamation case, because the court has jurisdiction over it (*Dumayas v. COMELEC, 357 SCRA 358*).

    c. The filing of a protest implies abandonment of the pre-proclamation case (*Sinsuat v. COMELEC, 492 SCRA 391*). This applies to a petition for correction of manifest errors, since it is a pre-proclamation case (*Cerbo v. COMELEC, 516 SCRA 51*). This rule does not apply if the protest was filed as a precautionary measure (*Tuburan v. Ballecer, 24 SCRA 941; Agbayani v. COMELEC, 186 SCRA 484; Mitmug v. COMELEC, 186 SCRA 484; Mitmug v. COMELEC, 230 SCRA 54*). The filing of an election protest results in abandonment of a pre-proclamation case even if the protest alleged it

was filed as a precautionary measure, if it did not explain why (*Laodenio v. COMELEC, 276 SCRA 705*).

d. The rule that the filing of an election protest implies the abandonment of the pre-proclamation case does not apply if the board of canvassers was improperly constituted, as when the Municipal Treasurer took over the canvassing without having been designated (*Samad v. COMELEC, 224 SCRA 631*).

e. A pre-proclamation case and an election protest can be filed simultaneously because they involve different issues (*Tan v. COMELEC, 507 SCRA 352*).

f. All pre-proclamation cases pending before COMELEC shall be terminated at the beginning of the term of the office concerned, and the rulings of the board of canvassers shall be deemed affirmed, without prejudice to the filing of an election protest. (*Sarmiento v. COMELEC, 212 SCRA 307; Verceles v. COMELEC, 214 SCRA 159; Penaflorida v. COMELEC, 282 SCRA 241; Sison v. COMELEC, 304 SCRA 170*).

g. If the petition appears meritorious on the basis of the evidence presented so far, COMELEC or the Supreme Court may order the case to continue (*Sec. 16, Republic Act No. 7166*).

XIV. AUTOMATED ELECTIONS

A. Features

Statutory Bases. Republic Act No. 9369 amending R.A. No. 8436

Automated Election System (AES). The following processes can be automated – voting, counting, consolidating, canvassing, and transmission. The AES may either be a paper-based or direct recording election system for the use of ballots, election returns, certificate of canvass, and statement of votes. COMELEC has discretion to provide an AES or AESs or a paper-based or direct recoding election system. The AES must provide for use of ballots, stand-alone machine, with audit trails, minimum human intervention and security measures.

Voting Procedure. The basic steps of the procedure are: Voter gets ballots from Board of Election Inspectors (BEI); Voter fills up ballot in voting booth (spoil only 1x); Voter affixes thumbmark on voting record; BEI applies indelible ink; and Voter drops ballot in ballot box.

Counting-Canvassing Procedures. Counting at Counting Centers as ballots arrive; Printing of Election Returns (30 copies) at precinct-level then Electronic Transmission to Board of Canvassers; Results loaded in Data Storage Devices; Consolidation of Results in Data

Storage Devices then Electronic Transmission to COMELEC (Senate and Party-List) and Congress (President and Vice-President) and Proclamation.

Pre-Proclamation Cases. Objections pertaining to Proceedings and Composition of Board of Canvassers, and where Data-Storage Delayed, Destroyed, Falsified *(before canvass)* allowed. Not allowed are the following objections: material defects, manifest errors, rules of appreciation; violence, voting procedure, and eligibility of voters.

Random Manual Audit. As mandated by law, there shall be a manual audit of the precinct vote count results generated by the automated voting and/or counting machine used for the election in one randomly selected precinct from each of the legislative districts in the country (*See Sec. 1 of COMELEC Resolution No. 10458, December 15, 2018)*.

B. Jurisprudence

As COMELEC is confronted with time and budget constraints, and in view of COMELEC's mandate to ensure free, honest, and credible elections, the acceptance of the extension of the option period, the exercise of the option, and the execution of the Deed of Sale, are the more prudent choices available to COMELEC for a successful 2013 automated elections. (*Capalla, et. al. v. COMELEC, G.R. No. 201121/201127/201413, 13 June 2012*)

The source code is the "human readable instructions that define what the computer equipment will do." It is the master blueprint that reveals and determines how the machine will behave. These are analogous to the procedures provided to election workers. The review of the source code that any interested political party or group may conduct is for security reasons and must be conducted "under a controlled environment" to determine the presence of any error and claims of fraud. Section 12 of R.A. No. 9369 states that, "once an Automated Election System (AES) technology is selected for implementation, the Commission shall promptly make the source code of that technology available and open to any interested political party or groups which may conduct their own review thereof." The only excusable reason not to comply with the said requirement is that the said source code was not yet available when an interested party asked for it (*Center for People Empowerment in Governance v. COMELEC, G.R. No. 189546, 21 September 2010*).

The COMELEC may conduct automated election even if there is no pilot testing. (*Information Technology Foundation of the Philippines v. COMELEC, G.R. 159139, 13 January 2004*).

The contract to automate may be awarded to the private sector, provided the solutions provider is under the supervision and control of COMELEC. This is not an abdication of the constitutionally mandated duty of COMELEC.

COMELEC has no authority to provide for the electronic transmission of the results of the elections in the precincts to COMELEC which it will use for an advanced unofficial

tabulation since there is no appropriation for the project and that there is no law which authorizes COMELEC to augment funds from savings (*Brillantes v. COMELEC, 432 SCRA 269*).

COMELEC has no authority to use automated counting machines in the 2004 Synchronized Elections when the purchase contract was in violation of laws, jurisprudence and its bidding rules, and the hardware and software failed to pass legally mandated technical requirements (*Information Technology Foundation of the Philippines v. COMELEC, G.R. 159139, 13 January 2004*).

The VVPAT ensures that the candidates selected by the voter in his or her ballot are the candidates voted upon and recorded by the vote-counting machine. The voter himself or herself verifies the accuracy of the vote. In instances of Random Manual Audit and election protests, the VVPAT becomes the best source of raw data for votes *(Bagumbayan-VNP Movement, Inc. v. COMELEC, G.R. No. 222731, March 8, 2016*).

There is no clear violation of the Constitution which would warrant a pronouncement that Sections 8, 9, 10 and 11 of R.A. No. 8436, as amended by Section 9 of R.A. No. 9369, are unconstitutional and void. The power to enforce and administer R.A. No. 8436, as amended by R.A. No. 9369, is still exclusively lodged in the COMELEC, and the Advisory Council and the Technical Evaluation Committee may not substitute its own opinion for the judgment of the COMELEC (*Glenn A. Chong v. Senate of the Philippines, G.R. No. 217725, May 31, 2016*).

XV. ELECTION CONTESTS

A. Contests

[T]he term "contest" as it was understood at the time Article XII-C, section 2(2) was incorporated in the 1973 Constitution did not follow the strict definition of a contention between the parties for the same office. Under the Election Code of 1971, which presumably was taken into consideration when the 1973 Constitution was being drafted, election contest included the quo warranto petition that could be filed by any voter on the ground of disloyalty or ineligibility of the contestee although such voter was himself not claiming the office involved. The word "contests" should not be given a restrictive meaning; on the contrary, it should receive the widest possible scope conformably to the rule that the words used in the 1973 Constitution should be interpreted liberally. As employed in the 1973 Constitution, the term should be understood as referring to any matter involving the title or claim of title to an elective office, made before or after proclamation of the winner, whether or not the contestant is claiming the office in dispute (*Javier v. COMELEC, G.R. Nos. L-68379-81, 22 September 1986)*.

"[C]ontests" should not be confined to its restrictive meaning but should be given a wide possible scope of construction as to encompass contentions involving a claim or title to

the office without due regard to the contestant's claim to such office (*Penson v. Chong, G.R. No. 211636, 28 September 2021*).

B. Distinction between Election Protest and Quo Warranto

1. An election protest can only contemplate a post-election scenario. The Supreme Court has no jurisdiction over cases brought directly before it questioning the qualifications of a candidate for the presidency, before the elections are held. Ordinary usage would characterize a "contest" in reference to a post-election scenario. Election contests consist of either an election protest or a *quo warranto* which, although two distinct remedies, would have one objective in view, *i.e.*, to dislodge the winning candidate from office (*Tecson v. COMELEC, 424 SCRA 277*).

2. Election protest refers to an election contest relating to the election and returns of elective officials, grounded on frauds or irregularities in the conduct of the elections, the casting and counting of the ballots and the preparation and canvassing of returns. The issue is who obtained the plurality of valid votes cast. (*Sec. 3 (c), Rule 1, Rules of Procedure in Election Contests*).

3. *Quo warranto* refers to an election contest relating to the qualifications of an election official on the ground of ineligibility or disloyalty to the Republic of the Philippines. The issue is whether the respondent possesses all the qualifications and none of the disqualifications prescribed by law (*Sec. 3 (e), Rule 1, Rules of Procedure in Election Contests*).

4. While an elective official may only be considered a presumptive winner as his/ her proclamation was under protest, does not make him/ her less than a duly elected official (*Ong v. Alegre, G.R. No. 163295, 23 January 2006*).

5. *Certiorari*, not an election protest or *quo warranto*, is the proper recourse to review a COMELEC resolution approving the withdrawal of the nomination of its original nominees and substituting them with others even if the substitute nominees have already been proclaimed and have taken their oath of office (*Lokin, Jr. v. COMELEC, G.R. No. 179431-32, 22 June 2010*).

C. Compared with Pre-Proclamation Cases

In a regular election protest, the parties may litigate all the legal and factual issues raised by them inasmuch detail as they may deem necessary or appropriate. Issues such as fraud or terrorism attendant to the election process, the resolution of which would compel or necessitate the COMELEC to pierce the veil of election returns which appear to be *prima facie* regular, on their face, are proper for election protests, not pre-proclamation cases. Proceedings in a pre-proclamation controversy are summary in nature. Reception of evidence *aliunde*, such as the List of Voters with Voting Record is proscribed (*Lucman v. COMELEC, G.R. No. 166229, 29 June 2005*).

D. Jurisdiction

1. Supreme Court (Presidential Electoral Tribunal)

    a. President

    b. Vice President (*Sec. 4, Art VII of the Constitution*)

2. Senate Electoral Tribunal – Senators (*Sec. 17, Art. VI of the Constitution*)

3. House of Representatives Electoral Tribunal – Congressmen (*Sec. 17, Art. VI of the Constitution, Sampayan v. Daza, 213 SCRA 807*)

4. COMELEC

    a. Regional officials

    b. Provincial officials

    c. City officials (*Sec. 2 (2), Art. IX-C of the Constitution, Sec. 249, Omnibus Election Code*)

5. Regional Trial Court – Municipal officials (*Sec. (2), Art. IX-C of the Constitution; Sec. 251, Omnibus Election Code; Papandayan v. COMELEC, 230 SCRA 469*)

6. Metropolitan Trial Court, Municipal Circuit Trial Court, and Municipal Trial Court – Barangay officials (*Sec. 2 (2), Art. IX-C of Constitution; Sec. 252, Omnibus Election Code; Regatcho v. Cleto, 126 SCRA 342*)

7. Metropolitan Trial Court, Municipal Circuit Trial Court, and Municipal Trial Court - Sangguniang Kabataan (*Sec. 1, No. 7809; Marquez v. COMELEC, 313 SCRA 103*)

E. Presidential Electoral Tribunal

1. When sitting as the Presidential Electoral Tribunal, all Justices of the Supreme Court act as one body. The order asking the Commission on Elections and the Solicitor General to comment was not Justice Leonen's directive. Rather, it was this Tribunal's. When protestant and the Solicitor General argue that Justice Leonen was grossly ignorant in issuing these Orders, in effect, what they are saying is that this Tribunal was grossly ignorant ofthe law. This is disrespectful and discourteous to this Tribunal *(Marcos, Jr. v. Robredo, PET Case No. 005, 17 November 2020).*

2. The Presidential Electoral Tribunal's actions on pending matters before it are not always publicized. There is no requirement to keep the parties abreast with all its internal proceedings, especially on administrative matters which do not directly concern them *(Marcos, Jr. v. Robredo, PET Case No. 005, 17 November 2020).*

F. Best Evidence

The ballots are the best and most conclusive evidence in an election contest where the correctness of the number of votes of each candidate is involved (*Delos Reyes v. COMELEC, G.R. No. 170070, 28 February 2007*).

Testimonial evidence may be adduced if there are allegations and reports that the ballots are spurious. Examination of the ballots is not enough in this case (*Rosal v. COMELEC, 518 SCRA 473*).

They should be available and their integrity preserved from the day of election until revision for the rule to apply. In cases where such ballots are unavailable or cannot be produced, the untampered and unaltered election returns or other election documents may be used as evidence. No evidentiary value can be given to the ballots where a ballot box is found in such a condition as would raise a reasonable suspicion that unauthorized persons could have gained unlawful access to its contents (*Sema v. HRET, G.R. No. 190734, 26 March 2010*). When authentic ballots have been replaced by fake ones, the physical count of votes in the precincts as determined during the revision of the ballots cannot be considered the correct number of votes cast. The election returns shall be basis of the votes (*Torres v. House of Representatives Electoral Tribunal, 351 SCRA 312*).

There is no need to resort to revision when the protestant concedes the correctness of the ballot results concerning the number of votes obtained by both protestant and protestee, and reflected in the election returns. The constitutional function, as well as the power and duty to be the sole judge of all contests relating to the election, returns and qualification of the President and Vice-President, is expressly vested in the Presidential Electoral Tribunal, and includes the duty to correct manifest errors in the Statement of Votes and Certificates of Canvass (*Legarda v. De Castro, PET Case No. 003, 31 March 2005*).

G. Procedure

1. Periods for filing contest

The prescriptive period ought to be reckoned from the actual date of proclamation, not from notice through service of a COCP, since the losing candidates are not even required to be served a copy of the COCP in the first place. *(Garcia v. COMELEC, G.R. No. 216691, July 21, 2015)*

a. Periods

i. President and Vice President

1) Protest – 30 days (*Rule 14, Rules of Presidential Electoral Tribunal*)

2) Quo warranto – 10 days (*Rule 15, Rules of Presidential Electoral Tribunal*)

ii. Senators

1) Protest – 15 days (*Rule 14, Revised Rules of Senate Electoral Tribunal*)

2) Quo warranto – 10 days (*Rules 15, Revised Rules of Senate Electoral Tribunal*)

iii. Congressmen – 10 days (*Rules 16 and 17, 1998 Rules of House of Representative Electoral Tribunal*)

iv. Regional, provincial and city official – 10 days (*Secs. 250 and 253, Omnibus Election Code; Republic v. De la Rosa, 232 SCRA 78*)

v. Municipal officials – 10 days (*Secs. 251 and 253, Omnibus Election Code*)

vi. Barangay officials – 10 days (*Secs. 252 and 253, Omnibus Election Code*)

vii. Sangguniang Kabataan – 10 days (*Sec. 1, Republic Act No. 7808*)

b. Exceptions

i. The period to file an election protest or *quo warranto* case is suspended from the filing of a pre-proclamation case until receipt of the order dismissing the case (*Sec. 248, Omnibus Election Code; Esquivel v. COMELEC, 121 SCRA 786; Resurreccion v. COMELEC, 127 SCRA 1; Marino v. COMELEC, 135 SCRA 546; Macias v. COMELEC, 182 SCRA 137; Gatchalian v. Court of Appeals, 245 SCRA 208*). This rule applies even if the pre-proclamation was filed by a candidate other than the one who filed the election protest (*Tan v. COMELEC, 507 SCRA 352*). If the dismissal was elevated to the Supreme Court, the period does not run until receipt of the dismissal by the Supreme Court, because review by the Supreme Court is part of the proceeding (*Gallardo v. Rimando, 187 SCRA 463*).

ii. The period to file an election protest is suspended by the filing of a petition to annul the proclamation of the winner (*Manahan v. Bernardo, 283 SCRA 505*).

iii. Since the filing of a pre-proclamation case merely suspends the running of the period to file an election protest, only the balance of the period is left in case of its dismissal (*Roquero v. COMELEC, 289 SCRA 150*).

iv. Where the evidence of the lack of Filipino citizenship of a provincial official was discovered only 8 months after his proclamation, the quo warranto case should be allowed even if it was filed more than 10 days after his proclamation (*Frivaldo v. COMELEC, 174 SCRA 245*).

v. Since an action for a declaration of a failure of election is not a pre-proclamation case, its filing does not suspend the period to file an election protest (*Dagloc v. COMELEC, 321 SCRA 273*).

2. Protestant or petitioner

a. President and Vice President

i. Protest – Candidate with second or third highest number of votes (*Rule 14, Rules of Presidential Electoral Tribunal*)

ii. *Quo warranto* – any voter (*Rule 15, Rules of Presidential Electoral Tribunal*)

b. Senator

i. Protest – any candidate (*Rule 14, Revised Rules of Senate Electoral Tribunal*)

ii. Quo warranto – any voter (*Rule 15, 1998 Rules of Senate Electoral Tribunal*)

c. Congressman

i. Protest – Any candidate (*Rule 16, 1998 Rules of House of Representatives Electoral Tribunal*)

ii. *Quo warranto* – any voter (*Rule 17, 1988 Rules of House of Representatives Electoral Tribunal*). If COMELEC executed immediately its resolution disallowing the substitution of a withdraw candidate despite the pendency of a motion for reconsideration, the substitute can file a protest. (*Roces v. House of Representatives Electoral Tribunal, 469 SCRA 681*)

d. Regional, provincial, and city officials

i. Protest – any candidate (*Sec. 250, Omnibus Election Code*)

ii. *Quo warranto* – any voter (*Sec. 253, Omnibus Election Code*)

e. Municipal officials

i. Protest – any candidate who received the second or third highest number of votes or in a multi-slot position was among the next four candidates following the last ranked winner (*Sec. 5, Rule 2, Rules of Procedure in Election Contests*).

ii. *Quo Warranto* in Election Contests – any voter who voted in the election concerned (*Sec. 6, Rule 2, Rules of Procedure in Election Contests*).

f. Barangay Officials

i. Protest – any candidate who received the second or third highest number of votes or in a multi-slot position was among the next four candidates following the last ranked winner (*Sec. 5, Rule 2, Rules of Procedure in Election Contests*).

ii. Quo warranto – any voter who voted in the election concerned. (*Sec. 6, Rules of Procedure in Election Contests*).

g. Sangguniang Kabataan

i. Protest – any candidate who received the second or third highest number of votes or in a multi-slot position was among the nest four candidates following the last ranked winner (*Sec. 5, Rule 2, Rules of Procedure in Election Contests*).

ii. *Quo warranto* – any voter who voted in the election concerned. (*Sec. 6, Rules of Procedure in Election Contests*).

3. Payment of docket fee

The payment of the docket fee beyond the period for filing the election protest is fatal to the election protest (*Melendres v. COMELEC, 319 SCRA 262; Soller v. COMELEC, 339 SCRA 685*).

Where the protestant included a claim for attorney's fees in his election protest and paid the docket fee for his claim for attorney's fees but did not pay the basic docket fee for the election protest, the election protest should be dismissed (*Gatchalian v. Court of Appeals, 245 SCRA 208*).

- *See contrary rulings in Pahilan v. Tabalba, 230 SCRA 205 and Enojas v. Gacott, 322 SCRA 272.*

The protestee is stopped to question the insufficiency of the docket fee paid, if he filed a counter-protest and actively participated in the proceedings (*Navarosa v. COMELEC, 411 SCRA 369; Villagracia v. COMELEC, 513 SCRA 655; Mañago v. COMELEC, 533 SCRA 669*).

4. Payment of Cash Deposit

A petition for *quo warranto* may be dismissed for failure to pay the prescribed cash deposit upon its filing (*Garcia v. House of Representatives Electoral Tribunal, 312 SCRA 353*).

5. Allegations in protests

a. Regional, Provincial and City Officials

i. An election protest should contain the following jurisdictional allegations.

1) The protestant is a candidate who duly filed a certificate of candidacy and was voted for in the election

2) The protestee has been proclaimed elected

3) The date of the proclamation (*Miro v. COMELEC, 121 SCRA 466*)

An election protest which does not specify the precinct where the alleged irregularities occurred is fatally defective (*Pena v. House of Representatives Electoral Tribunal, 270 SCRA 340*). However, if the protest states that the election returns from all the precincts are being questioned, there is no need to specify the precincts involved in the protest (*Saquilayan v. COMELEC, 416 SCRA 658*)

ii. Substantial compliance is sufficient. Thus, the following allegations sufficiently comply with the first requirement:

1) The protestant received a certain number of votes (*Anis v. Contreras, 55 Phil. 923*).

2) The protestant finished second in the election (*Ali v. Court of First Instance of Lanao, 80 Phil. 506*)

3) The protestant was a candidate voted for in the election with a valid certificate of candidacy for mayor (*Pamania v. Pilapil, 81 Phil. 212*).

4) The protestant was one of the registered candidates voted for and he received a certain number of votes (*Jalandoni v. Sarcon, 94 Phil. 266*).

5) The protestant was the official candidate of a particular political party and received a certain number of votes. (*Maquinay v. Bleza, 100 SCRA 702*).

6) The protestant was a candidate for governor and was voted for (*Macias v. COMELEC, 182 SCRA 137*).

iii. Even if the protest did not allege the date of the proclamation, it can be determined from the records of the case that it was filed on time, as when the protest was filed on the tenth from the date the casting of votes was held, the protest should not be dismissed (*Miro v. COMELEC, 121 SCRA 466*).

b. Municipal, Barangay and Sangguniang Kabataan Officials

An election protest or petition for quo warranto shall state the following:

i. The position involved;

ii. The date of proclamation;

iii. The number of votes credited to the parties per proclamation

An election protest shall also state:

iv. The total number of precincts of the municipality or the barangay;

v. The protested precincts and the votes of the parties in the protested precincts, per the statement of votes by precincts or, if the votes of the parties are not specified, an explanation why the votes are not specified; and

vi. A detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies, or irregularities in the

protested precincts (*Sec. 11, Rule 2, Rules of Procedure in Election Contests*).

6. Verification

An election protest must be properly verified (*Sec. 7, Rule 2, Rules of Procedure in Election Contests; Soller v. COMELEC, 349 SCRA 685*).

7. Certificate of absence of forum shopping

a. The requirement that every initial pleading should contain a certification of absence of forum shopping applies to election cases (*Sec. 7, Rule 2, Rules of Proceeding in Election Contests; Loyola v. Court of Appeals, 245 SCRA 477; Tomarong v. Lubguban, 269 SCRA 624; Soller v. COMELEC, 339 SCRA 685*).

b. The filing of the certification of absence of forum shopping after the filing of the protest but within the period for filing a protest is substantial compliance (*Loyola v. Court of Appeals, 245 SCRA 477*). The filing of the certification after the period for filing a protest is not substantial compliance (*Tomarong v. Lubguban, 269 SCRA 624*). The same is true if it was submitted after the protestee filed a motion to dismiss the election protest on this ground (*Batoy v. COMELEC, 397 SCRA 506*).

c. COMELEC's rules of procedure on certifications of non-forum shopping should be liberally construed, and COMELEC's interpretation of such rules in accordance with its constitutional mandate should carry great weight *(Halili v. COMELEC, G.R. No. 231643, January 15, 2019*).

8. Joinder of election protest and *quo warranto* case

a. An election protest and *quo warranto* case cannot be filed jointly in the same proceeding (*Sec. 2, Rule 2, Rules of Procedure in Election Contests; De la Rosa v. Yonson, 52 Phil 446; Luison v. Garcia, G.R. No. L-10916, May 20, 1957*). However, they can be filed separately (*Luison v. Garcia, G.R. No. L-10916, May 20, 1957*).

b. If they were joined in a action, they should be ordered separated (*Pacal v. Ramos, 81 Phil. 30*).

9. Composition of Board of Canvassers

The illegality of the composition of the board of canvassers cannot be raised in a *quo warranto* case, as only the ineligibility or disloyalty of the winner can be raised in such case (*Samad v. COMELEC, 224 SCRA 631*).

10. Change of theory

Substantial amendments to the election protest cannot be made after the expiration of the period for filing an election protest (*Arroyo v. House of Representatives Electoral Tribunal, 246 SCRA 384*).

11. Summary dismissal

The court shall summarily dismiss, *motu proprio*, an election protest, counter-protest or petition for *quo warranto* on any of the following grounds:

a) The court has no jurisdiction over the subject matter;

b) The petition is insufficient in form and content;

c) The petition is filed beyond the prescribed period;

d) The filing fee was not paid within the period for the filing of election protest or petition for *quo warranto*;

e) The cash deposit was not paid within five days from the filing of the protest (*Sec. 13, Rule 2, Rules of Procedure in Election Contests*).

COMELEC Resolution No. 8486 allows an appellant to pay the COMELEC appeal fee at the COMELEC's Cash Division through the ECAD or by postal money order payable to the COMELEC within a period of 15 days from the time of the filing of the notice of appeal in the trial court. COMELEC Resolution No. 8486, for all intents and purposes, extended the period provided for the filing of the COMELEC appeal fee under Section 4, Rule 40 in relation to Section 3, Rule 22 of the COMELEC Rules of Procedure *(Bungcaras v. COMELEC, G.R. No. 209415-17, November 15, 2016)*.

The rationale behind the requirement to state the material dates in a petition is to enable the appellate court to determine whether such petition was filed within the period fixed in the rules. Not all pleadings and parts of the records are required to be attached to a petition – only such as would give the reviewing body enough documentary and evidentiary bases to resolve the issues and, ultimately, the case before it. The crucial question to consider, then, is whether the documents accompanying the petition sufficiently substantiate the allegations therein (*Piccio v. HRET, G.R. No. 248985, 5 October 2021*).

A.M. No. 07-4-15-SC, that took effect on May 15, 2007, governs the “Rules of Procedure in Election Contests before the Courts Involving Elective Municipal and Barangay Officials.” Under Section 9, Rule 14 thereof, an appeal fee of ₱1,000.00 is imposed, separate and distinct from, but payable within the same period, as the appeal fee of ₱3,200.00, imposed by the COMEL EC under Secs. 3 and 4, Rule

40 of the COMELEC Rules of Procedure, as amended by COMELEC Resolution No. 02-0130. The rule requiring the payment of two appeal fees has been well-established. Confusion arising from the twin requirements may no longer be used as a reason for liberality *(Belango v. COMELEC, UDK 17572, 28 June 2022)*.

12. Prohibited Pleadings

a. Regional, provincial and city officials

The following pleadings are not allowed:

i. Motion to dismiss;

ii. Motion for a bill of particulars;

iii. Motion for extension of time to file memorandum of brief;

iv. Motion for reconsideration of an *En Banc* ruling, resolution or decision except in election offense cases;

v. Motion for reopening or rehearing of a case;

vi. Reply in special actions and special cases;

vii. Supplemental pleadings in special actions and in special cases (*Rule 13, COMELEC Rules of Procedure*).

b. Municipal, barangay and Sangguniang kabataan officials.

The following pleadings are not allowed:

v. Motion to dismiss except on the ground of lack of jurisdiction over the subject matter;

vi. Motion for a bill of particulars;

vii. Demurrer to evidence;

viii. Motion for new trial, or for reconsideration of a judgment or for reopening of trial;

ix. Petition for relief from judgment;

x. Motion for extension of time to file pleadings, affidavits or other papers;

xi. Memoranda except memoranda within a non-extensible period of ten days from receipt of its ruling on the last offer of exhibits;

xii. Motion to declare the protestee or respondent in default;

xiii. Dilatory motion for postponement

xiv. Motion to inhibit the judge except on clearly valid grounds;

xv. Reply or rejoinder; and

xvi. Third-party complainant (*Sec. 1, Rule 6, Rules of Procedure in Election Contests*).

13. Answer

a. Effect of failure to answer

i. Regional, provincial and city officials

A general denial shall be deemed to have been entered (*Sec. 4, Rule 20, COMELEC Rules of Procedure*).

ii. Municipal, barangay and Sangguniang kabataan officials

1) The court shall render judgment on the basis of the allegations of the election protest or petition for quo warranto unless it requires in its discretion the protestant or petitioner to present evidence ex parte.

2) In the case of election contests involving ballot revision, the court shall order revision of ballots, and the protestee or his representative has the right to be presented and observe without the right to object (*Sec. 3, Rule 4, Rules of Procedure in Election Contests*).

b. Effect of late filing

An answer filed out of time cannot be admitted (*Kho v. COMELEC, 279 SCRA 463; Baltazar v. COMELEC, 350 SCRA 518*).

Where the answer of the protestee was filed out of time and a general denial was entered in favor of the protestee, the rule in civil cases that a general denial operates as an admission is not applicable (*Loyola v. House of Representatives Electoral Tribunal, 229 SCRA 90*).

A counter protest cannot be allowed if the answer was filed out of time. (*Lim v. COMELEC, 282 SCRA 53*).

14. Cash deposit

A protestee who file a counterclaim for attorney's fees cannot be required to file a cash deposit, since a cash deposit is required only for a counter-protest. (*Roa v. Inting, 231 SCRA 57*).

15. Injunction

A protestee cannot be enjoined from assuming office because of the pendency of an election protest. Until the case is decided against him, he has the right to assume office (*Cereno v. Dictado, 160 SCRA 759*).

16. Interlocutory Orders

Interlocutory orders issued by a division of COMELEC cannot be elevated to COMELEC *En Banc* (*Kho v. COMELEC, 279 SCRA 463*).

17. Correction of Manifest Errors

Correction of manifest errors in the statements of votes and certificates of canvass can be made if the protestee admits the errors (*Legarda v. De Castro, 454 SCRA 242*).

18. Substitution

a. Even if the protestee has resigned, the protest should continue, as a favorable judgment will entitle the protestant to assume the office (*De los Angeles v. Rodriguez, 46 Phil. 599*). The same holds true if the protestee accepted another position (*Calvo v. Maramba, G.R. No. 13206, January 7, 1918*).

b. If the protestee died, he should be substituted by his successor, such as the vice mayor (*De Mesa v. Mencias, 18 SCRA 533; Silverio v. Castro, 19 SCRA 520; De la Victoria v. COMELEC, 199 SCRA 561; Pagaduan v. COMELEC, 519 SCRA 512*). He cannot be substituted by his heirs, since public office cannot be inherited (*De Mesa v. Mencias, 18 SCRA 533; De la Victoria v. COMELEC, 199 SCRA 561; Abeja v. Tanada, 236 SCRA 60*).

c. If it is the protestant who died, he should be substituted by the public official who would have succeeded him, such as the vice mayor. (*Lomugdang v. Javier, 19 SCRA 402; Unda v. COMELEC, 190 SCRA 827; De Castro v. COMELEC, 267 SCRA 806*).

d. **OVERTURNED:** A candidate who was elected but was later disqualified for failing to meet the residency requirement was never a valid candidate from the very beginning, and was merely a *de facto* officer. The eligible candidate who garnered the highest number of votes must assume the office. The rule on succession in the Local Government Code does not apply (*Jalosjos v. COMELEC, G.R. No. 193314, 25 June 2013*; *Ty-Delgado v. HRET, G.R. No. 219603, 26 January 2016)*.

e. The second placer rule laid down in Jalosjos, Jr. has no legal basis. No law authorizes the proclamation of the second placer in the elections in case the candidate who received the most votes is disqualified or turned out to be ineligible. The second placer rule undermines the people's choice in every election and is repugnant to the people's constitutional right to suffrage. The Court cannot impose upon the electorate to accept as their representative, the candidate whom they did not choose in the elections. Accordingly, regardless of the nature of the proceedings, whether disqualification (under Sections 12 and 68 of the OEC and Section 40 of the LGC), denial/cancellation of COC (under Section 78 of the OEC), or quo warranto (under Section 253 of the OEC), the second placer cannot be proclaimed as winner in lieu of the disqualified first-placer. *(Mangudadatu v. COMELEC, G.R. No. 260219 & 260231, 22 April 2025)*.

f. Where the person who should succeed into office to replace a disqualified candidate is the subject of the same petition for disqualification, the Court shall not immediately grant the office to the successor but remand the disqualification issue against the successor to COMELEC, which should accordingly docket the same as a disqualification case to determine the truth of his presence in the subject assistance payouts, and if the same likewise warrants his disqualification from office (*Rosal v. COMELEC, G.R. No. 264125/G.R. No. 266775/G.R. No. 266796/G.R. No. 269274, October 22, 2024*).

g. The rule on succession under Section 45 would not apply if the permanent vacancy was caused by one whose certificate of candidacy was void *ab initio*. Specifically, with respect to dual citizens, their certificates of candidacy are void ab initio because they possess "a substantive [disqualifying circumstance] [existing] prior to the filing of their certificate of candidacy." Legally, they should not even be considered candidates. The votes casted for them should be considered stray and should not be counted (*Arlene Llena Empaynado v. COMELEC, G.R. No. 216607, April 5, 2016*).

h. It is presumed that the deadline for filing of COC of substitute candidates shall follow the usual government office hours unless explicitly stated. Section 5, Rule XVII (on Government Office Hours), Omnibus Rules

Implementing Book V of Executive Order No. 292, provides that the official government office hours shall be from 8 a.m. to 12 p.m. and from 1 p.m. to. 5 p.m. on all days except Saturdays, Sundays and Holidays. The same is reiterated in Civil Service Commission Memorandum Circular No. 01, s. 2017. Also, a review of the aforementioned COMELEC resolutions would show that the filing of COC shall be from 8:00 a.m. to 5:00 p.m. only, which is the official government office hours *(Garcia v. COMELEC, G.R. No. 243735, 14 June 2022).*

19. Abandonment of protest

A defeated candidate who filed an election protest and ran for another office should be deemed to have abandoned the protest (*Santiago v. Ramos, 253 SCRA 559; Idulza v. COMELEC, 427 SCRA 701; Legarda v. de Castro, 542 SCRA 125*).

20. Summary judgment

An election protest cannot be decided by summary judgment, as summary judgment applies only to ordinary civil actions for recovery of money (*Dayo v. COMELEC, 199 SCR 449*).

21. Opening of ballot boxes

When an election protest is filed, the ballot boxes should be opened without requiring proof of irregularities and misappreciation of the ballots (*Jaguros v. Villamor, 134 SCRA 553; Crispino v. Panganiban, 219 SCRA 621; Manahan v. Bernardo, 283 SCRA 505; Miguel v. COMELEC, 335 SCRA 172*).

A partial revision of the ballots is erroneous (*Jaucian v. Espinas, 382 SCRA 11*).

The revision of the ballots in an election protest filed with COMELEC should be held in Manila (*Cabagnot v. COMELEC, 260 SCRA 503*)

If the same ballots are involved in election protests pending in the Regional Trial Court and in COMELEC, COMELEC may allow the Regional Trial Court to first take custody of the ballot boxes (*Quintos v. COMELEC, 392 SCRA 489*).

If the ballots were substituted after the counting, the result of the election must be determined on the basis of the election returns (*Torres v. House of Representatives Electoral Tribunal, 351 SCRA 312*).

22. Certiorari

Under Section 50 of Batas Pambansa Blg. 697, COMELEC has jurisdiction over petitions for *certiorari*, prohibition and *mandamus* involving election cases

pending before courts whose decisions are appealable to it (*Relampagos v. Cumba, 243 SCRA 690; Edding v. COMELEC, 246 SCRA 502; Beso v. Aballe, 326 SCRA 100*).

Where a petition for *certiorari* merely questioned the denial of the motion of the protestee for extension of time to answer, COMELEC cannot affirm the decision on the merits in the election protest (*Acosta v. COMELEC, 293 SCRA 578*).

23. Revision Process

The objective of the revision process of mimicking or verifying/confirming how the Vote Counting Machines (VCMs) read or counted the votes can be achieved by referring to the election returns (ERs) generated by the VCMs used in the 2016 elections. In the segregation of the ballots of the parties, the PET Head Revisors shall be guided by the number of votes indicated in the ERs. In this way, the reading of the VCM is mimicked and verified/confirmed. Also, in using the ERs generated by the VCMs used in the 2016 elections and not merely adopting a specific shading threshold, the Tribunal's revision procedure will be more flexible and adaptive to calibrations of the voting or counting machines in the future. After the revision process, all objections and claims raised by both Party A and Party B shall be resolved by the Tribunal during the appreciation stage, taking into consideration the intent of the voters. As such, the votes of the parties counted during the revision stage are only preliminary figures as the Tribunal may reject or admit votes, taking into consideration the objections and claims of the parties *(Marcos v. Robredo, PET Case No. 005, 18 September 2018 [Resolution]).*

24. Evidence

An election protest is no ordinary petition. It alleges anomalies and irregularities which, if proven true, would perniciously deprive a significant portion of the voting population of its constitutionally protected right of suffrage. Given this extraordinary nature, an election protestant takes on the heavy burden of clearly and specifically alleging, and then proving, the irregularities that led to a breakdown in our mechanisms for suffrage. When the protestant fails to meet the strict requirement of specificity and established rules on evidence to support the allegations of election irregularities, the election protest must be dismissed *(Marcos, Jr. v. Robredo, PET Case No. 005, 16 February 2021).*

The genuineness of the handwriting on the ballots can be determined without calling handwriting experts (*Erni v. COMELEC, 243 SCRA 706*).

Unless the original documents or certified true copies of them cannot be produced, mere photo-copies cannot be used as evidence (*Arroyo v. House of Representatives Electoral Tribunal, 246 SCRA 384*).

Ballots cannot be excluded on the ground that they were written by one person or were marked, on the basis of mere photo-copies, as they are not the best evidence (*Nazareno v. COMELEC, 279 SCRA 89*).

The COMELEC can order a technical examination of the signature and thumbmarks of the voters where there were irregularities in the preparation of the ballots (*Mohamad v. COMELEC, 320 SCRA 298*).

A motion for technical examination filed after completion of the revision of the ballots should be denied (*Dimaporo v. House of Representatives Electoral Tribunal, 426 SCRA 226*).

The proposed testimonies of chairman of the boards of inspectors to prove that their signatures on the back of the ballots were spurious were properly excluded to avoid delay (*Batul v. Bayron, 424 SCRA 26*).

The filing of a protest before the BEI is not required before COMELEC acquires jurisdiction over the present election protest. Jurisdiction is conferred only by law and cannot be acquired through, or waived by, any act or omission of the parties (*Panlilio v. COMELEC, G.R. No. 181478, 15 July 2009*).

The picture images of the ballots, as scanned and recorded by the PCOS, are likewise "official ballots" that faithfully captures in electronic form the votes cast by the voter, as defined by Section 2 (3) of R.A. No. 9369. The printouts of the picture images of the ballots are the functional equivalent of the ballots and may be used for revision of votes in the electoral protest (*Vinzons-Chato v. COMELEC, G.R. No. 199149, 22 January 2013*).

The official ballot and its picture image are considered original documents which simply means that both of them are given equal probative weight. When either is presented as evidence, one is not considered weightier than the other (*Maliksi v. COMELEC, G.R. No. 203302, 12 March 2013)*.

For purposes of the revision process, the decrypted ballot images may be used during limited instances as listed in Rule 74 of the 2018 Revisor's Guide. Even as early as the 2010 PET Rules, the use of the printed ballot images had been allowed in instances where the integrity of the ballots and the ballot box was not preserved *(Marcos v. Robredo, PET Case No. 005, 18 September 2018 [Resolution])*.

25. Post revision determination of merits

After the revision of ballots in election contest involving municipal, barangay and Sangguniang kabataan officials, the protestant shall pinpoint twenty per cent of the precincts that best attest to the votes recovered or best exemplifies the frauds or irregularities. The court shall determine the merits of the protest and

may dismiss the protest or proceed with the revision of the ballots in the counter-protested precincts (*Sec. 9, Rule 10, Rules of Procedure in Election Contests*).

26. Decision

a. Losing candidates who were not parties to an election contest should be proclaimed elected, if they obtained the plurality of the votes (*Idulza v. COMELEC, 427 SCRA 701*).

b. An authentic election return cannot be annulled because the ballots were lost or destroyed (*Arroyo v. House of Representatives Electoral Tribunal, 246 SCRA 384*).

c. If the winner is ineligible, the candidate who got the next highest number of votes cannot be proclaimed elected, as he did not get the majority or plurality of the votes. (*Luison v. Garcia, 103 Phil. 453; Labo v. COMELEC, 176 SCRA 1; Abella v. COMELEC, 201 SCRA 253; Labo v. COMELEC, 211 SCRA 297; Republic v. De la Rosa, 232 SCRA 785; Aquino v. COMELEC, 248 SCRA 400; Garvida v. Salas, 271 SCRA 767; Nolasco v. COMELEC, 275 SCRA 762; Sunga v. COMELEC 288 SCRA 76; Recabo v. COMELEC, 308 SCRA 793; Domino v. COMELEC, 310 SCRA 546; Miranda v. Abeja, 311 SCRA 610; Loreto v. Brion, 311 SCRA 694; Codilla v. De Venecia, 393 SCRA 639; Latasa v. COMELEC, 417 SCRA 601; Idulza v. COMELEC, 427 SCRA 701; Ocampo v. House of Representatives Electoral Tribunal, 432 SCRA 144; Albaña v. COMELEC, 435 SCRA 98; Sinsuat v. COMELEC, 492 SCRA 391*).

Thus, if the winning candidate for mayor is disqualified, the vice mayor should succeed to the position (*Kare v. COMELEC, 428 SCRA 264*).

d. Actual damages may be awarded in accordance with law (*Sec. 259, Omnibus Election Code*).

What is patently clear from Section 259 of the Omnibus Election Code is that only actual or compensatory damages may be awarded in election contests. The above provision is a stark contrast to the aforestated provisions in the past election codes that expressly permit the award of moral and exemplary damages. As the Court concluded in Atienza, the omission of the provisions allowing for moral and exemplary damages in the current Omnibus Election Code clearly underscores the legislative intent to do away with the award of damages other than those specified in Section 259 of the Omnibus Election Code, i.e., actual or compensatory damages *(Bungcaras v. COMELEC, G.R. No. 209415-17, November 15, 2016)*.

The loser cannot be ordered to reimburse the winner for the expenses incurred in the election protest, for no law provides for it (*Atienza v. COMELEC, 239 SCRA 298*).

When a decision in an election protest includes a monetary award for damages, the issue of the said award is not rendered moot upon the expiration of the term of office that is contested in the election protest *(Bungcaras v. COMELEC, G.R. No. 209415-17, November 15, 2016)*.

e. The mere fact that the decision in favor of the protestant was reversed on appeal is not sufficient basis for ruling that the protestee should be awarded attorney's fees, because the protest was filed for harassment. (*Malaluan v. COMELEC, 254 SCRA 397*).

f. The issue of which of the candidates won in a prior election is rendered moot upon the occurrence of a subsequent election since it is impossible to assume office for the previous term. (*Chua v. COMELEC, G.R. No. 236573, August 14, 2018*).

g. Administrative Matter No. 10-4-29-SC, otherwise known as The 2010 Rules of the Presidential Electoral Tribunal governs its proceedings. There is no rule requiring that an election protest should be decided within twenty (20) months or twelve (12) months *(Marcos, Jr. v. Robredo, PET Case No. 005, 17 November 2020).*

h. The resolution of [a] case remains relevant as [the candidate's] continued tenure as a Member of the House hinges on the resolution of the issue of whether she had validly re-acquired her Philippine citizenship. Stated differently, should the Court find that she is ineligible for not being a Philippine citizen, she must be removed from office. Needless to say, the issue of her citizenship remains to be a justiciable controversy, hence, the case is not rendered moot and academic (*Piccio v. HRET, G.R. No. 248985, 5 October 2021*).

27. Mandamus

A petition for mandamus will lie against the Speaker of the House and the House Secretary General for not performing their ministerial duties to administer the oath of the second placer and enter his name in the Roll of Members of the House of Representatives, when the winner's COC had been cancelled due to ineligibility. (*Velasco v. Belmonte, G.R. No. 211140, 12 January 2016)*

28. Execution pending appeal

a. Discretionary

A writ of execution pending resolution of the motion for reconsideration of a decision of the division is not granted as a matter of right. The discretion belongs to the division that rendered the assailed decision, order or resolution, or the COMELEC *En Banc* as the case may be. Such issuance becomes a ministerial duty that may be dispensed with even just by the Presiding Commissioner (*Saludaga v. COMELEC, G.R. No. 189431 & 191120, 7 April 2010*).

b. Regional, provincial and city officials

Execution pending appeal cannot be ordered on the basis of gratuitous allegations that public interest is involved and that the appeal is dilatory (*Camlian v. COMELEC, 271 SCRA 757*).

If the decision did not explain the basis of the rulings on the contested ballots, execution pending appeal cannot be ordered, as there is no strong evidence of the will of the electorate pending appeal (*Astarul v. COMELEC, 491 SCRA 300*).

The fact that the term is about to end, public interest, and the filing of a bond are good reasons for ordering execution pending appeal in favor of the protestant (*Garcia v. De Jesus, 206 SCRA 779; Abeja v. Tanada, 236 SCRA 60; Malaluan v. COMELEC, 270 SCRA 413; Lindo v. COMELEC, 274 SCRA 211; Ramas v. COMELEC, 286 SCRA 180; Alvarez v. COMELEC, 353 SCRA 434*). Execution pending appeal may be ordered on the basis of the combination of two or more of the following reasons: (1) public interest or the will of the people; (2) the shortness of the remaining portion of the term of the contested office; and (3) the length of time that the election contest has been pending (*Santos v. COMELEC, 399 SCRA 611; Navarosa v. COMELEC, 411 SCRA 369, Batul v. Bayron, 424 SCRA 26*).

A motion for execution pending appeal filed after the expiration of the period to appeal can no longer be granted (*Relampagos v. Cumba, 243 SCRA 690*).

c. Municipal, barangay and Sangguniang kabataan officials.

Execution pending appeal may be ordered on the basis of the following reasons: (1) superior circumstances demanding urgency outweigh the injury or damage should the losing party secure reversal of the judgment or appeal; and (2) it is manifest in the decision that the victory of the protestant has been clearly established.

The aggrieved has twenty day to secure a restraining order or status quo order from the Supreme Court or COMELEC. Otherwise, the writ of

execution shall issue (*Sec. 11, Rule 14, Rules of Procedure in Election Contests; Pecson v. COMELEC, G.R. No. 182865, December 24, 2008*).

29. Motion for reconsideration

a. One motion for reconsideration is allowed in the election contests involving the following:

i. President – 10 days

ii. Vice President – 10 days (*Rule 65, Rules of Presidential Electoral Tribunal*)

iii. Senator – 10 days (*Rule 64, Revised Rules of Senate Electoral Tribunal*)

iv. Congressman – 10 days (*Rule 74, 1998 Rules of House of Representative Electoral Tribunal*)

v. Regional, provincial and city officials – 5 days (*Sec. 2, Rule 19, COMELEC Rules of Procedure*)

b. No motion for reconsideration is allowed in election contests involving the following:

i. Municipal officials (*Sec. 256, Omnibus Election Code; Veloria v. COMELEC, 211 SCRA 907*).

However, this rule should not be applied to the dismissal of an election protest for failure of the counsel of the protestant to appear at the pre-trial, since pre-trial is not applicable to election protests (*Pangilinan v. De Ocampo, 232 SCRA XXXII*).

ii. Barangay and Sangguniang kabataan officials – (*Sec. 1, Rule 6, Rules of Procedure in Election Contests*).

iii. A motion for reconsideration of the decision of COMELEC may be filed within 5 days (*Sec. 2, Rule 19; COMELEC Rules of Procedure; San Juan v. COMELEC, 531 SCRA 178*).

c. Since only decisions of the COMELEC *En Banc* may be elevated to the Supreme Court a party who did not file a motion for reconsideration of a decision of a division of COMELEC cannot elevate the case to the Supreme Court (*Reyes v. Regional Trial Court of Oriental Mindoro, 244 SCRA 41*).

d. Appeals from decisions of the MeTC in election protest cases are classified as ordinary actions under the COMELEC Rules of Procedure. As

such, decisions or resolutions pertaining to the same shall become final and executory after thirty (30) days from promulgation. The concerned party, however, may file a petition for certiorari with the Supreme Court to interrupt the period and challenge the ruling on the ground of grave abuse of discretion (*Chua v. COMELEC, G.R. No. 236573, August 14, 2018*).

30. Review

a. Jurisdiction

i. Senator – Supreme Court within 60 days (*Sec. 4, Rule 65, Rules of Court*).

ii. Congressman – Supreme Court within 60 days (*Lazatin v. COMELEC, 168 SCRA 391; Leria v. House of Representatives Electoral Tribunal, 202 SCRA 808; Sec. 4, Rule 65, Rules of Court*).

iii. Regional, provincial and city officials – Supreme Court within 30 days (*Sec. 7, Art. IX-1 of Constitution*).

iv. Municipal officials

1) COMELEC within 5 days (*Sec. 22, Republic Act No. 7166, Sec. 3 Rule 22 of COMELEC Rules of Procedure; Lindo v. COMELEC, 194 SCRA 25; Batoy v. Regional Trial Court, 397 SCRA 506*)

2) Supreme Court within 30 days (*Galido v. COMELEC, 193 SCRA 78; River v. COMELEC, 199 SCRA 178*)

v. Barangay officials

1) COMELEC within 5 days (*Sec. 2 (2), Art. IX-C of Constitution; Guieb v. Fontanilla, 247 SCRA 348; Calucag v. COMELEC, 274 SCRA 405; Antonio v. COMELEC, 315 SCRA 62; Sec. 3, Rule 22, COMELEC Rules of Procedure*)

2) Supreme Court within 30 days (*Flores v. COMELEC, 184 SCRA 484; Alvarez v. COMELEC, 353 SCRA 434*).

vi. Sangguniang Kabataan

1) Metropolitan Trial Court, Municipal Circuit Trial Court.

2) COMELEC within 5 days (*Fernandez v. COMELEC, 556 SCRA 765*)

3) Supreme Court within 30 days (*Sec. 1, Republic Act No. 7808; Marquez v. COMELEC, 313 SCRA 103*)

b. Form

Where the appellant filed an appeal brief instead of a notice of appeal to COMELEC, the appeal should not be dismissed, since the determination of the will of the people should not be thwarted by technicalities (*Pahilan v. Tabalba, 230 SCRA 205*).

c. Appeal

i. An appeal may be dismissed for failure of the appellant to pay the appellate docket fee (*Reyes v. Regional Trial Court of Oriental Mindoro, 244 SCRA 41*).

ii. An appeal may be dismissed if the full appellate docket fee was not paid, as payment of the full amount is indispensable for perfection of the appeal (*Rodillas v. COMELEC, 245 SCRA 702; Villota v. COMELEC, G.R. No. 146724, 363 SCRA 676; Zamora v. COMELEC, 442 SCRA 397*).

iii. The period of appeal and the perfection of the appeal are not mere technicalities. They are essential to the finality of judgments. The short period of five days as the short period to appeal recognizes the essentiality of time in election protests, in order that the will of the electorate is ascertained as soon as possible so that the winning candidate is not deprived of the right to assume office, and so that any doubt that can cloud the incumbency of the truly deserving winning candidate is quickly removed (*Gomez-Castillo v. COMELEC, G.R. No. 187231, 22 June 2010*).

d. Scope of authority

Errors committed by the trial court may be considered even if they were not assigned as errors (*Cababasada v. Valmoria, 83 Phil. 112; Borja v. De Leon, 9 SCRA 216; Roldan v. Monsanto, 9 SCRA 489; Tagoranao v. Court of Appeals, 37 SCRA 490; Arao v. COMELEC, 210 SCRA 290*).

XVI. CRIMINAL OFFENSES

A. Jurisdiction to Try the Case

The expanded jurisdiction of the Municipal Trial Court does not include criminal cases involving election offenses, because by special provision of Section 268 of the Omnibus Election Code, they fall within the jurisdiction of the Regional Trial Court (*COMELEC v. Noynay, 292 SCRA 354; Juan v. People, 322 SCRA 125; COMELEC v. Aguirre, 532 SCRA 545*).

B. Offenses

1. Vote-buying

a. The fact that at least one voter in at least 20% of the precincts in a municipality, city or province was offered money by the relatives, leaders, or sympathizers of a candidate to promote his elections shall create a presumption of conspiracy to bribe voters.

b. The fact that at least 20% of the precincts of the municipality, city or province to which the office aspired for by the candidates relates is affected by the offer creates the presumption that the candidate and his campaign managers are involved in the conspiracy.

c. Any person who is guilty and willingly testifies shall be exempt from prosecution (*Sec. 28, Republic Act No. 6646; COMELEC v. Tagle, 397 SCRA 618; COMELEC v. Español, 417 SCRA 554*)

d. The traditional gift-giving by the municipality during Christmas, which was not done to include voters to vote for the mayor, does not constitute vote-buying (*Lozano v. Yorac, 203 SCRA 256*).

e. Petitioners' Complaint Affidavit, as filed, is insufficient to sustain their allegations of vote-buying under Section 261(a)(1) of the Omnibus Election Code. It is not "supported by affidavits of complaining witnesses attesting to the offer or promise by or of the voter's acceptance of money or other consideration from the relatives, leaders or sympathizers of a candidate" as required under Section 28 of the Electoral Reforms Law. The absence of supporting affidavits shows the frailty of petitioners' Complaint Affidavit and makes it vulnerable to dismissal. Submission of self-serving statements, uncorroborated audio and visual recordings, and photographs are not considered as direct, strong, convincing and indubitable evidence *(Rodriguez v. COMELEC, G.R. No. 255509, 10 January 2023).*

f. It requires more than a mere tenuous deduction to prove the offense of vote-buying. There must be concrete and direct evidence or, at least, strong circumstantial evidence to support the charge of vote-buying *(Rodriguez v. COMELEC, G.R. No. 255509, 10 January 2023).*

g. The testimonies of the alleged vote-sellers are also invaluable in proving the intent of the vote-buyer. Section 261(a) of the Omnibus Election Code explicitly states that intent an element the offenses of vote-buying and vote-selling *(Rodriguez v. COMELEC, G.R. No. 255509, 10 January 2023).*

h. To be disqualified under Sec. 68(a) of the OEC, the following elements must be proved: (a) the candidate, personally or through his or her instructions, must have given money or other material consideration; and (b) the act of giving money or other material consideration must be for the purpose of influencing, inducing, or corrupting the voters or public officials performing electoral functions (*Rosal v. COMELEC, G.R. No. 264125/G.R. No. 266775/G.R. No. 266796/G.R. No. 269274, October 22, 2024*).

i. COMELEC proceedings on vote-buying are summary in nature and the appropriate standards that apply to COMELEC as an administrative or quasi-judicial tribunal are those outlined in the seminal case of Ang Tibay v. Court of Industrial Relations. Significantly, one of these standards provides that to support a finding or conclusion, it is not enough that there is merely some evidence; it is imperative that the evidence must, at the very least, be "substantial." Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion (*Rosal v. COMELEC, G.R. No. 264125/G.R. No. 266775/G.R. No. 266796/G.R. No. 269274, October 22, 2024*).

j. The first element of vote-buying, the act of giving money or other material consideration, is absent when payouts are merely continuations of a program of the CSWDO that started even before the relevant election period began. The same is a government project and there is neither allegation nor proof that petitioners used their own personal funds in these projects (*Rosal v. COMELEC, G.R. No. 264125/G.R. No. 266775/G.R. No. 266796/G.R. No. 269274, October 22, 2024*).

k. Indicators that persons are not campaign volunteers are: i) they were not part of the volunteers' exclusive group chat; (ii) they were invited only on the day of the event; and (iii) they were excluded from logistical provisions such as meals. These individuals were mere participants, not volunteers, and that the event was not exclusive to campaign staff, but aimed at securing electoral support. The distribution of material considerations, such as red t-shirts and Php1,000 cash was neither documented nor subjected to liquidation, contrary to the petitioner's claim that these were campaign-related advances, and the absence of records, such as logbook entries or receipts, undermined petitioner's defense and suggested that the funds were given to influence electoral

choices. The petitioner's presence and active participation in the event, including delivering a campaign speech and engaging with private respondents during and after the distribution, demonstrated his knowledge and tacit consent. These acts, coupled with the timing and undocumented nature of the distributions, supported the finding that vote-buying occurred, in violation of Section 261(a)(1) of the OEC (*Florido v. Pasilao, G.R. No. 280515, 12 August 2025).*

2. Release, Disbursement, or Expenditure of Public Funds

a. Sec. 261 (v) of the OEC penalizes as an election offense the act of a public official or employee of releasing, disbursing, or expending public funds within 45 days before a regular election or 30 days before a special election. Particularly under the above provision, the public funds should be intended for social development projects undertaken by the Department of Social Welfare and Development (DSWD) and other agencies performing similar functions, except salaries of personnel, routine and normal expenses and such other expenses as may be authorized by COMELEC after due notice and hearing (*Rosal v. COMELEC, G.R. No. 264125/G.R. No. 266775/G.R. No. 266796/G.R. No. 269274, October 22, 2024*).

b. The Court in *Velez* has clarified that it would be more in keeping with the object and purpose of the prohibition in Section 261(v)(2) to disallow the release, disbursement, or expenditure of public funds for all social welfare and development projects and activities, regardless of whether the activity is undertaken by the DSWD itself or the LGU concerned (*Rosal v. COMELEC, G.R. No. 264125/G.R. No. 266775/G.R. No. 266796/G.R. No. 269274, October 22, 2024*).

c. A "continuing'" project is not exempted from the prohibition under Section 261(v)(2). The law does not clearly state so, unlike the exemption provided for in Section 261(v)(1) as regards continuing programs or projects relating to public works (*Rosal v. COMELEC, G.R. No. 264125/G.R. No. 266775/G.R. No. 266796/G.R. No. 269274, October 22, 2024*).

d. Section 261(v)(2) does not only cover the disbursement, release, or expenditure of public funds; it also covers the "distribution of any relief or other goods to the victims of the calamity or disaster," and accordingly prohibits any candidate or his or her spouse or member of his or her family within the second civil degree of affinity or consanguinity to participate, directly or indirectly, in the distribution thereof (*Rosal v. COMELEC, G.R. No. 264125/G.R. No. 266775/G.R. No. 266796/G.R. No. 269274, October 22, 2024*).

e. It would be more in keeping with the object and purpose of the prohibition in Section 261(v)(2) to apply said prohibition regardless of whether the

activity is undertaken by the DSWD itself or the LGU concerned, it should be of no moment here, as well, whether the monetary reliefs were not distributed by the PNRC but by the LGU through its CSWDO. It should also not matter that the cash assistance was not given in view of a calamity or disaster. The crux of the prohibition in Section 261 (v) is the release, disbursement, or expenditure of public funds. Essentially, Section 261(v)(2) prohibits that such public funds be used for relief efforts to the less fortunate. It specifically adds the proscription against the direct or indirect participation of candidates or their spouse or any member of their family within the second civil degree of affinity or consanguinity in the distribution of such relief goods. It does not matter, therefore, that the candidate is not an incumbent public official when he or she participated during the distribution of the relief goods. The rationale for this is, again, not hard to fathom. Relief effort projects are arguably the best arena for electoral candidates to make themselves visible, known, or endeared to many voters as possible. These objectives can also be obtained through the representation of a candidate's spouse or family members who can be easily associated to said candidate during the distribution of relief goods. The rationale behind the prohibition of Section 261(v)(2) is also true regardless of the motivation behind the relief effort project -- be it in light of a recent calamity or disaster, or a "continuing" amelioration project of the LGU for its constituents. In all such instances, the rationale behind the prohibition is undermined: public funds do not get insulated from political partisan activities and government works are easily used for electioneering purposes (*Rosal v. COMELEC, G.R. No. 264125/G.R. No. 266775/G.R. No. 266796/G.R. No. 269274, October 22, 2024*).

f. Section 13 of COMELEC Resolution No. 10747, which specifically pertains to "projects, activities, and programs pertaining to social welfare projects and services (non-infrastructure projects)" should apply in this case. What should have been filed was a petition for the issuance of a Certificate of Exception before the Clerk of the COMELEC and not a mere letter sent to COA informing it of the conduct of the cash assistance payouts. Notably, the petition to be filed under Section 13 of COMELEC Resolution No. 10747 is for due notice and hearing, which is what Section 261(v)(2) specifically requires in order to fall under the exception from the prohibition (*Rosal v. COMELEC, G.R. No. 264125/G.R. No. 266775/G.R. No. 266796/G.R. No. 269274, October 22, 2024*).

g. As regards the argument of Noel, Carmen, and Barizo that the cash assistance payouts happened during the pandemic, the Court finds that this fact will not remove the prohibition or exempt the events from the prohibition under Section 261(v)(2). To put it bluntly, the Bayanihan Law should not be used as an excuse to skirt the prohibition under the Section. Whatever liberality was granted to the LGUs under the Bayanihan Law, was tailored to address the pandemic. The cash assistance payouts in this case incidentally happened during the pandemic, as it was, in fact, already at the tail-end of the

pandemic. It is fair to say, therefore, that there was hardly any urgency anymore, so to speak, which could have justified noncompliance with Section 26l(v)(2) (*Rosal v. COMELEC, G.R. No. 264125/G.R. No. 266775/G.R. No. 266796/G.R. No. 269274, October 22, 2024*).

h. Nowhere in the law can it be inferred that the release, disbursement or spending of public funds must be for electioneering or vote-buying. As long as there was release, disbursement or expenditure of public funds within the prohibited period for the enumerated activities under Section 261(v), the offense is committed. Furthermore, under Section 261(v)(2), it suffices that a candidate or his or her spouse or member of their family within the second civil degree of affinity or consanguinity participated directly or indirectly in the distribution of relief or goods. Nowhere in the law can it be inferred; as well, that their participation in such distribution is for electioneering or vote-buying purposes. (*Rosal v. COMELEC, G.R. No. 264125/G.R. No. 266775/G.R. No. 266796/G.R. No. 269274, 22 October 2024*).

3. Threats, intimidation, terrorism, use of fraudulent device or other forms of coercion

The unlawful and unauthorized use of government resources by public officers constitutes fraud. Similarly, the printing of campaign materials for the election campaign of an incumbent public official by a government employee within government premises is a fraudulent device or scheme involving the diversion of government resources to unauthorized ends. A candidate can be disqualified under Section 261(e) even if the unauthorized printing of his campaign materials in LGU premises was done by someone else, because Section 261(e) does not distinguish between direct and indirect participation. What matters is that he was the ultimate beneficiary of the acts committed by the employee, and that he exercised moral and legal ascendancy over the latter by virtue of his position and as appointing authority *(Noveras v. COMELEC, G.R. No. 268891, 22 October 2024).*

4. Appointment of New Employees

The prohibition against appointment of a government employee within 45 days before a regular election refers to positions covered by the civil service and does not apply to the replacement of a councilor who died (*Ong v. Martinez, 188 SCRA 830*).

5. Premature Campaigning

Premature campaigning before a candidate has filed his certificate of candidacy is not punishable (*Lanot v. COMELEC, 507 SCRA 114*).

6. Undertaking Public Works Projects

The holding of the bidding of public works projects within 45 days before election is not an election offense, because what is prohibited is the release of public funds within that period (*Pangkat Laguna v. COMELEC, 376 SCRA 97*).

7. Transfer of Government Employees

The fact that the transfer of an employee was needed is not an excuse for failure to obtain approval from COMELEC (*Regalado v. Court of Appeals, 325 SCRA 516*).

Since the Omnibus Election Code does not per se prohibit the transfer of government employees during the election period but only penalizes such transfers made without the prior approval of COMELEC in accordance with its implementing regulations, the transfer of a government employee before the publication of the implementing regulations is not an election offense (*People v. Reyes, 247 SCRA 328*).

Since Resolution No. 3300 exempted COMELEC from the requirement of obtaining its prior appeal before transferring its employees during the election period, the Chairman can transfer a director to another position during the election period (*Matibag v. Benipayo, 380 SCRA 49*).

If the transfer of employees was approved by COMELEC, the documents pertaining to the transfer need not be submitted to COMELEC for approval (*Commissioner of Internal Revenue v. Alonzo-Legasto, 488 SCRA 4*).

Any personnel action, when caused or made during the election period, can be used for electioneering or to harass subordinates with different political persuasions. This possibility – of being used for electioneering purposes or to harass subordinates – created by any movement of personnel during the election period is precisely what the transfer ban seeks to prevent. *(Aquino v. COMELEC, G.R. Nos. 211789-90, March 17, 2015)*

The prohibition on transfer or detail covers any movement of personnel from one station to another, whether or not in the same office or agency when made or caused during the election period, and includes reassignment. *(Aquino v. COMELEC, G.R. Nos. 211789-90, March 17, 2015)*

If the reassignment orders are issued prior to the start of the election period, they are automatically rendered beyond the coverage of the prohibition and the issuing official cannot be held liable for violation of Section 261(h) of BP 881. *(Aquino v. COMELEC, G.R. Nos. 211789-90, March 17, 2015)*

Retention of duties and temporary discharge of additional duties do not contemplate or involve any movement of personnel, whether under any of the various forms of personnel action enumerated under the laws governing the civil

service or otherwise. Hence, they are not covered by the legal prohibition on transfers or detail. *(Aquino v. COMELEC, G.R. Nos. 211789-90, March 17, 2015)*

8. Carrying Firearm during Election Period

It is an offense to carry a firearm during the election period (*Caño v. Gebusion, 329 SCRA 132*).

9. Failure to Make Proclamation

Proclaiming a losing candidate instead of the winning candidate also constitutes failure to make a proclamation (*Agujetas v. Court of Appeals, 261 SCRA 17*).

10. Refusing to Credit Candidate with Correct Votes

Refusing to credit a candidate with the correct votes is punishable (*Pimentel v. COMELEC, 289 SCRA 586; Domalanta v. COMELEC, 334 SCRA 555; Garcia v. Court of Appeals, 484 SCRA 617, Pimentel v. Fabros, 501 SCRA 346*).

C. Prescription

Election offenses prescribe after five years from the date of their commission, and the period of prescription is interrupted by the filing of a complaint for preliminary investigation (*Bayton v. COMELEC, 396 SCRA 703*).

The COMELEC is constitutionally committed to act promptly on cases filed before it. In fact, this is one of the reasons why Article IX-C, Section 3 of the 1987 Constitution authorized the COMELEC to promulgate its own rules of procedure (*Peñas v. COMELEC, UDK-16915, February 15, 2022)*.

A respondent in a criminal prosecution or investigation is not duty bound to follow up on his or her case; it is the governing agency that is tasked to promptly resolve it, thus, he cannot be deemed to have waived his right to a speedy disposition of his case and against inordinate delay, regardless of whether the petitioner did not object to the delay or that the delay was with his acquiescence provided that it was not due to causes directly attributable to him (*Peñas v. COMELEC, UDK-16915, February 15, 2022)*.

Article III, Section 16 of the Constitution states that all persons are guaranteed the right to the speedy disposition of cases before judicial, quasi-judicial, and administrative bodies. When this right is violated, the Court will not hesitate to dismiss the case. Under the COMELEC Rules of Procedure, a preliminary investigation should be completed within 20 days after receiving the respondent's counter-affidavit or after the deadline to file one has passed, and a resolution should be made within five days following that. It has been more than six years had passed since Sarigumba was required to submit his counter-affidavit, yet the COMELEC failed to finish and resolve the preliminary investigation within

the time limits set by its own rules. Sarigumba's failure to file a counter-affidavit did not excuse the COMELEC's prolonged inaction. Any delay after the filing period had lapsed was attributable to the COMELEC, and the case for the election offense of overspending should be dismissed (*Sarigumba v. COMELEC, G.R. No. 263615, 19 August 2025*).

D. Prosecution

1. In reading and interpreting the provisions governing election offenses, we should consider the terms of the election laws themselves and how they operate as a whole. As a necessary and indispensable tool in this interpretation process, we must likewise consider these provisions in the light of the constitutional and legislative goal of attaining free, honest, and peaceful elections. *(Aquino v. COMELEC, G.R. Nos. 211789-90, March 17, 2015)*

2. The COMELEC has exclusive jurisdiction to conduct preliminary investigation of and prosecute election offenses (*Sec. 2 (6), Art. IX-C of 1987 Constitution; Sec. 265, Omnibus Election Code; People v. Golez, 116 SCRA 165; Naldoza v. Lavilles, 254 SCRA 286; Peña v. Martizano, 403 SCRA 281*). The "exclusive power of the COMELEC to conduct a preliminary investigation of all cases involving criminal infractions of the election laws" stated in Par. 1 of COMELEC Resolution No. 2050 pertains to the criminal aspect of a disqualification case. (*Ejercito v. COMELEC, G.R. No. 212398, November 25, 2014*)

3. This power emanates from Article IX, Section 2, Paragraph 6 of the 1987 Constitution which empowers the COMELEC to "investigate and, where appropriate, prosecute cases for violation of election laws, including acts or omissions constituting election frauds, offenses and malpractices." This grant of authority is reiterated in Section 265 ofthe OEC as amended by RA. No. 9369 (*Peñas v. COMELEC, UDK-16915, February 15, 2022)*.

4. This holds true even if the offense was committed by a public officer in relation to his office (*De Jesus v. People, 120 SCRA 760; Corpus v. Tanodbayan, 149 SCRA 281*).

5. A provincial election supervisor authorized to conduct a preliminary investigation may file a case without need of approval of the provincial prosecutor (*People v. Inting, 187 SCRA 788*).

6. COMELEC can deputize prosecutors to investigate and prosecute election offenses even after election (*People v. Basilla, 179 SCRA 87; Margarejo v. Escoses, 365 SCRA 190*).

7. Since in a preliminary investigation, it is COMELEC who will determine the existence of probable cause, the complainant cannot ask it to gather evidence in support of the complaint (*Kilosbayan, Inc. v. COMELEC, 280 SCRA 892*).

8. As with ordinary criminal cases, the COMELEC is tasked with finding probable cause whenever it conducts preliminary investigation of election-related offenses. It is settled thongh that the finding of probable cause in the prosecution of election offenses rests in the sound discretion o f the COMELEC. Generally, the Court will not interfere with such finding of the COMELEC absent a clear showing of grave abuse of discretion (*Peñas v. COMELEC, UDK-16915, February 15, 2022).*

9. The court in which a criminal case was filed may order COMELEC to conduct a reinvestigation (People v. Delgado, 189 SCRA 715).

10. A prosecutor who was deputized by COMELEC cannot oppose the appeal filed by COMELEC from the dismissal of a case, since the power to prosecute election offenses is vested in COMELEC (*COMELEC v. Silva 286 SCRA 177*).

11. The nullification by COMELEC of the resolution issued by a provincial prosecutor directing the filing of cases for vote-selling is in effect a withdrawal of his deputation (*COMELEC v. Español, 417 SCRA 557*).

12. When it pertains to the conduct of a preliminary investigation, the constitutional right to the speedy disposition of the case can be invoked before the COMELEC. It is important to note, however, that the right to a speedy disposition of a case is a relative or flexible concept; a mere mathematical reckoning of the time involved is not sufficient as particular regard must be taken of the facts and circumstances peculiar to each case. Thus, in the determination of whether the right has been violated, the factors that may be considered and balanced are the length of the delay, the reasons for the delay, the aggrieved party's assertion or failure to assert such right, and the prejudice caused by the delay (*Peralta v. COMELEC, January 30, 2024, G.R. No. 261107*).

13. The right to speedy disposition of cases may be invoked to question the inordinate delay in the course of preliminary investigations by the COMELEC. While fact-finding proceedings and investigations such as these do not form part of the criminal prosecution proper, the respondent may already be prejudiced by such proceedings (*Peñas v. COMELEC, UDK-16915, February 15, 2022)*.

14. Inordinate delay in the resolution and termination of a preliminary investigation violates the accused's right to due process and the speedy disposition of cases, and may result in the dismissal of the case against the accused. The burden of proving delay depends on whether delay is alleged within the periods provided by law or procedural rules. If the delay is alleged to have occurred during the given periods, the burden is on the respondent or the accused to prove that the delay was inordinate. If the delay is alleged to have occurred beyond the given

periods, the burden shifts to the prosecution to prove that the delay was reasonable under the circumstances and that no prejudice was suffered by the accused as a result of the delay. The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case *(Ecleo v. COMELEC, G.R. No. 263061, 10 January 2023).*

XVII. PLEBISCITE

A city becomes a distinct political entity independent and autonomous from the province by virtue of its conversion into a highly urbanized city. Hence, it can no longer be considered a "political unit directly affected" by the proposed division of the province into separate provinces. Thus, the qualified voters of the highly urbanized city are properly excluded from the coverage of the plebiscite (*Del Rosario v. COMELEC, G.R. No. 247610, March 10, 2020*)

As the constitutional body charged with the responsibility of effecting the conduct of elections, plebiscites, and referendum, the Commission on Elections has the authority to modify or alter the dates of the plebiscite. It must be highlighted that the Commission on Elections cannot be paralyzed by the literal interpretations of a guiding law. If strict compliance with the period provided in the law is given priority over the assurance that a safe, honest, and successful plebiscite is conducted, it would defeat the purpose of holding a plebiscite in the first place. The Commission on Elections, as a specialized constitutional body, has the unique position to determine whether a plebiscite or elections is capable of successfully taking place. With this, we will refrain from striking down their actions unless there is a clear showing of grave abuse of discretion *(Sula v. COMELEC, G.R. No. 244587, January 10, 2023).*

It must be emphasized that the ratification of the Organic Law would have the effect of abolishing the original Autonomous Region in Muslim Mindanao. Accordingly, only those directly affected by such, specifically, those provinces already part of the Autonomous Region in Muslim Mindanao and at risk of abolition were asked the question regarding the ratification of the Organic Law. On the other hand, those contiguous areas, including Cotabato City, were not asked to ratify the Organic Law as it may create an absurd situation concerning the majority votes "YES" to the ratification of the Bangsamoro Organic Law but "NO" vote to its inclusion to the Bangsamoro Autonomous Region, thus abolishing the original Autonomous Region in Muslim Mindanao despite its noninclusion to it in the first place. Accordingly, those contiguous areas were only asked one question: whether they desired to be part of the Bangsamoro Autonomous Region in Muslim Mindanao *(Sulu v. COMELEC, G.R. No. 244587, January 10, 2023).*

The phrase "qualified voters in a plebiscite to be conducted in the barangays comprising the municipality pursuant to Section 2 hereof" in the uniform text of Section 5 of BAAs 53, 54, and 55 violates the 1987 Constitution and the Bangsamoro Organic Law. Notwithstanding the phrase "it shall be approved by a majority of the votes cast in a plebiscite in the political units directly affected" in Section 1, the uniform text in Section 5 of BAAs 53, 54, and 55 plainly allows only the qualified voters of the barangays comprising the new municipalities as enumerated under Sections 2 of BAA Nos. 53, 54, and 55, to vote in the plebiscite. BAAs 53, 54, and 55 clearly and unequivocally deny the voting rights of qualified voters in the Municipalities of Sultan Kudarat and

Datu Odin Sinsuat, which are not part of the new municipalities ofNuling, Datu Sinsuat Balabaran, and Sheik Abas Hamza. The existing Municipalities of Sultan Kudarat and Datu Odin Sinsuat will be directly affected by the creation of the new municipalities since their economic and political rights are affected. As such, all qualified voters in the existing Municipalities of Sultan Kudarat and Datu Odin Sinsuat should be allowed to vote in the plebiscite (*Sinsuat v. Bangsamoro Transition Authority G.R. No. 271741/G.R. No. 271972, August 20, 2024*).

COMELEC is not bound by the schedule of plebiscites prescribed by laws. COMELEC has the power to administer elections beyond the period prescribed by law (*Sinsuat v. Bangsamoro Transition Authority G.R. No. 271741/G.R. No. 271972, August 20, 2024*).

Every territory, i.e., every province, city, and geographic area, must favorably vote for its inclusion in BARMM in a plebiscite called for this purpose. In considering the ARMM as one geographical area, the Bangsamoro Organic Law transgressed the Constitution and disregarded the autonomy of each constituent unit of what used to comprise the ARMM. The Province of Sulu, as a political subdivision under the ARMM, did not lose its character as such and as a unit that was granted local autonomy. The Constitution and the Local Government Code provide for how political e, entities may be abolished. The Province of Sulu cannot be deemed abolished upon its rejection of the Bangsamoro Organic Law. Thus, it was illegally included in the autonomous region, and the Organic Law explicitly violated the constitutional provision that "only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region (Province of Sulu v. COMELEC, G.R. No. 242255/G.R. No. 243246/G.R. No. 243693, September 9, 2024).

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