



3-in-1 Updates:

Administrative Law, Local Government Law, and Election Law

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Administrative Law

Administrative Law (AL) and Administrative Agencies (AAs)

- AL consists of all the laws and policies that regulate or control the administrative *organization and operations* of the government through administrative agencies (AAs)
- AAs exercise some *significant form or combination* of executive, legislative or judicial powers (“4th Branch”) which are *partial* (having some but not all features of legislative or judicial power) (“Quasi”)



Which ones are/
have:

1. Public Offices?
Administrative
Agencies?
2. Created under the
Constitution?
Congress?
3. National in scope?
Local?
4. GOCCs?
Government
Instrumentalities?
5. Quasi-Judicial
Power? Quasi-
Legislative Power?
Contempt powers?

Administrative Agencies (AAs)

“4th Branch”

Public Offices

Legal
Persons

Delegates/
Agents/
Subordinates

Fusion of
Powers

Duty-Bearers/
Accountable
Institutions

AA Categories

Creation

- Constitution
- Congress
- Executive
- AA themselves

Geographical

- National: NGAs
- Local: LGUs

Capital Structure

- GOCC
- GI

Functional

- Offers gratuities, grants or privileges
- Performs specific governmental functions
- Undertakes public service
- Regulates businesses affected with public interest
- Exercises police power to regulate private businesses
- Resolves controversies

Charter: Enabling Instrument

1. Name
2. Principles
3. Mandate/ Purpose
4. Powers
 - Express
 - Implied
 - Incidental
5. Duties and Responsibilities
6. Relationships
7. Jurisdiction
8. Structure
9. Budget
10. Dissolution

10 Differentiators

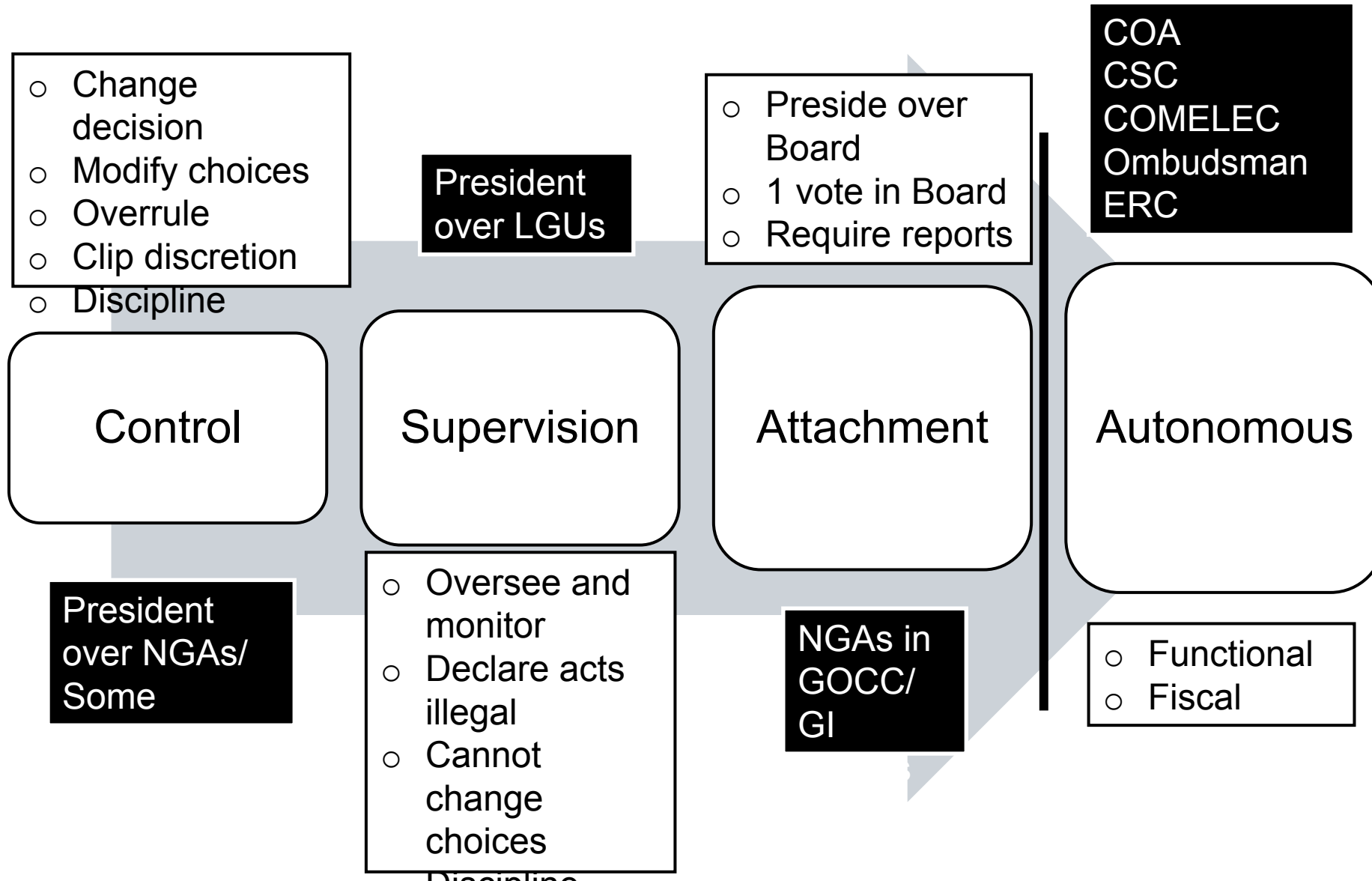
Functional Jurisdiction

- **NCIP** must respect statutory exclusions, i.e., IPRA exempts Baguio City
- **ERC** has jurisdiction over the generation and supply sectors even if they are not public utilities so as to guard against abuse or irregular activities
- Grant of fiscal autonomy of **PHILHEALTH** is not absolute and cannot be sole basis for the grant of benefits and allowances
- **NHA**, not the courts, has jurisdiction to rule on civil liability arising from Contract to Sell of condominiums as part of its mandate to regulate real estate and business
- **IAC-Tobacco** does not have sole and exclusive jurisdiction over tobacco since all products affecting health like tobacco are covered by **FDA**'s mandate

Incidental Jurisdiction

- A grant of jurisdiction, barring prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it
- Includes power to do all things necessary for the administration of justice within scope of its jurisdiction, and for enforcement of its judgment and mandates (e.g. look into correctness of execution and consider supervening events)

Administrative Relationship



1	THE 1987 CONSTITUTION (People)
2	STATUTES: SPECIAL AND GENERAL (Congress)
3	JURISPRUDENCE (Supreme Court)
4	EXECUTIVE ORDERS (President)
5	RULES & REGULATIONS (Administrative Agencies)
6	ORDINANCES (Local Government Units)

CONSTITUTIONAL STUDIES NO. 3

HIERARCHY OF POLICIES



Twin Test of Valid Delegation

The **delegating law** must:

1. Be **complete** (the ‘what’, rights; even if “formulate plan” under Cybercrime Law; delegation of power of the President to DOE to takeover utilities); *and*
2. Contain a **sufficient standard**:
 - may be broad, such as public order, safety, social justice, quality of education; genuine local development; public interest
 - but not vague; not vague when AA has no unbridled discretion; even if term undefined in law, reasonableness is a question of fact that can be determined by the circumstances; efficiency and effectiveness of delivery of metro-wide services; implied from purpose of law since considered as a whole

Investigate-Protect-Compel

Express/ Implied in Charter

- Cease and Desist
- Withdrawal of Privilege

Delegated by Law

- Preventive Suspension
- Abatement of Nuisance

Informational

Preventive/
Protective

Coercive/
Penal

Express/ Implied in
Charter

- Fact-Finding
- Clearance
- Ocular Inspection
- Visitorial
- Investigate anomalies

Delegated by Law

- Contempt
- Subpoena
- Search &

Rule-Making

- **2 tests** of valid exercise of subordinate legislation
 1. Germane to objects and purposes of law
 2. Regulation not contradict and must conform with law
- An administrative issuance must comply with these **4 requisites** to be held valid:
 1. Its promulgation must be authorized by the legislature;
 2. It must be promulgated in accordance with the prescribed procedure;
 3. It must be within the scope of the authority given by the legislature; and
 4. It must be reasonable.

12 Rules on Quasi-Legislative Power

1. Executive in nature
2. Force and effect of law
3. Germane to the objects of the law
4. By authority of law
5. Issued by proper issuer
6. Subordinate legislation
7. Interpretations are persuasive
8. Presumed legal, valid and constitutional
9. Notice and hearing not required
10. Subject to judicial review unless business judgment
11. Subject to repeal and amendment unless vested or contractual rights involved
12. Prospective application

6 Rules

<i>Supplementary</i>	Supplies the details, implements and supplements the law, and governs the public.
<i>Procedural</i>	Outlines the procedures and remedies.
<i>Contingent</i>	Determines the existence of a fact which is specified and defined in the law, and operationalizes said statutory provision.
<i>Penal</i>	Provides for the conditions and penalties for the violation of rules as expressly allowed under the law.
<i>Interpretative</i>	States the official position or opinion of the AA.
<i>Internal</i>	Governs the administration and operations of a particular AA or other AAs.

Why Differentiate?

<i>Type</i>	<i>Grant</i>	<i>Publication</i>
Supplementary/ Implementing	Express (E) or Implied (I)	Required
Interpretative	E or I	Not Required
Contingent	E	Required
Penal	E	Required
Procedural	E or I	Required
Internal	E or I	Not Required

Quasi-Legislation: Valid Rules

Law

procedure allowed but silent on period

20% on sale of goods
and services

BIR duty to assess and collect tax due

DAR to CA

exclusive authority to investigate

prescribe competition

regulate and supervise activities

Rules

provide for 60 days

exempt from discount
membership dues

obligates registration of book of accounts and
pay registration fees

DAR to OP to CA

withheld right to examine and cross-examine
during investigations

determine eligibility of bidders

Imposes accreditation requirement for external
auditors of covered entities

Quasi-Legislation: Invalid Rules

Law

20% on sale of goods and services

BIR duty of assessment and collection of tax due

SEC jurisdiction over corporations

PSC 5% share of PAGCOR gross income
| 30% of lottery games of PCSO

New Good Conduct Time Allowance
includes any offender

Non-discretionary pass-fail criteria
under GPRA

VAT zero-rating on local purchases of domestic market enterprises or registered export enterprises

Rules

Discount not extend to fees for locker rental in golf courses

Requiring submission of affidavits containing fee structures/ factors

SEC jurisdiction over accountants

PAGCOR remittance subject to deductions | PCSO excluded lotto games

Excluded persons convicted of heinous crimes, repeat offenders, habitual delinquents

Discretionary pre-qualification regime

VAT zero-rating on local purchases of registered export enterprises only

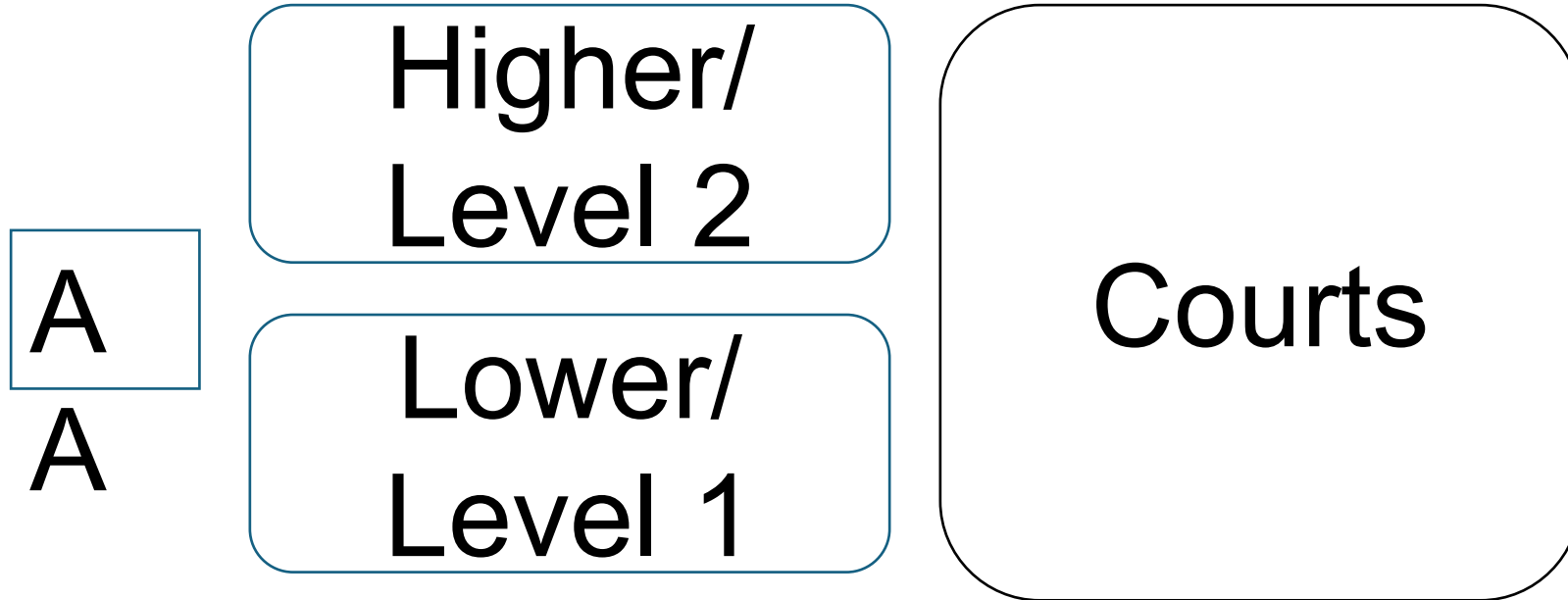
12 Rules on Quasi-Judicial Power

1. Express delegation
2. Jurisdiction defined
3. Questions of fact
4. Non-delegable
5. Due process
6. Follow procedural rules
7. Impartial Tribunal
8. Substantial Evidence
9. Decision needed
10. Writs of Certiorari
11. Counsel dispensable
12. Judicial Review

Quasi-Legislative vs. Quasi-Judicial

<i>Subject</i>	<i>Quasi-Judicial</i>	<i>Quasi-Legislative</i>
Grant	E	E or I
Parties	Particular	All/ Sectors
Adversarial	Yes	No
Controversy	Exists	None
Notice and Hearing/ Due Process	Required	Not Required (unless 4 situations)
Primary/ Exhaustion	Applicable	Not Applicable; judicial review at first instance
Time	Past/ Present	Future
Publication	Not Required	Depends on type
Res Judicata	Applicable (to	Not Applicable

Scenarios



Defenses

- **Ripeness:** No actual injury, filed case in AA or Court
- **Primary Jurisdiction:** Instead of filing case before AA, filed directly with Court
- **Finality of Action:** While case pending before AA Level 2, filed case in Court

Local Government Law

Local Governments

- Local Governments are Territorial and Political Subdivisions, Public Corporations, Municipal Corporations Proper, Administrative Agencies, and Public Offices.
- Unitary Form (not Federal)
- 5 Levels (Autonomous Regions, Provinces, Cities, Municipalities, and Barangays)
- Sources of Powers: Constitution, Charters, General Laws, Powers not prohibited for general welfare
- Separation of Powers under the law
- LGU Creation is a Legislative Act (with Plebiscite)
- Corporation succession
- Dual Capacity and Dual Agency

Local Autonomy

- Local autonomy means a **more responsive** and **accountable** local government structure instituted through a system of **decentralization**.
- Local autonomy is either **decentralization of administration** or **decentralization of power**.
- Decentralization comes in two forms: **deconcentration** and **devolution**.
- Devolution is **power-specific**.
 - Like tricycles, cockfighting, hospitals, locally-significant subdivision plans, National Building Code enforcement
 - Not buses and jeepneys, cable TV operations, driver's licenses
- 2 Views on Local Autonomy: **Centralist** or **Liberal**
- Local autonomy includes administrative autonomy and **fiscal autonomy**

Relationships

Executive Supervision

- Review of Ordinances and Executive Orders
- Integration of Plans and Zoning Ordinances
- Settlement of Boundary Disputes
- Imposition of Disciplinary Action
- Filling-up of Council Vacancies

Legislative Control

- Structure
- Qualifications of Officials
- Term of Barangay
- Manner of Selection
- Imposing Ban on Dynasties
- Delineation of Local Taxes
- Just Share in National Tax
- Criteria for LGU Creation

Conflict Resolution

Default Rule: Follow the letter of the law

If no law or law vague: based on scope

In Favor of National

- Single-Ticketing (MMDA)
- Lotto Outlets (PCSO)
- Fish Pens (LLDA)
- Driver's Licenses (LTO)
- Buses and Jeepneys (LTFRB)
- Cable TV (NTC)
- Profession (PRC)
- Mining Ban (DENR)

In Favor of LGU

- Barangay Bingo (PAGCOR)
- Allowances for Judges (DBM)
- Excessive Tax Ordinances (DOJ)
- Fee Measures (DOJ)
- Expropriation of Agricultural Land (DAR)
- Open Subdivisions (MMDA)
- Regulate towers (NTC)

Police Power

Aspects

- Extent: Impose burdens, restrictions; destruction
- Basis: General Welfare Clause
- Authority: All LGUs
- 2 Requirements: Lawful Subject and Means
- 2 Branches: General Legislative and Police Power Proper

Examples

- Curfew
- Business Permits
- National Building Code requirements
- Zoning
- Mining Ban
- Lotto Ban
- Abate Nuisance per se
- Anti-Obscenity

Eminent Domain

- Delegated to all LGUs
- Genuine Public Necessity
- Public Purpose
- Ordinance
- Valid and Definite Offer
- Legislative then Executive then Judicial
- Comply with other laws
- Immediate Entry
- Review by Supervising LGU

Local Taxation

- Constitutional Power
- Subject to Legislative Control (National and Local; Amongst LGUs)
- Exclusively LGU's
- Ordinance
- Inclusive List
- Previous Tax Exemption by GOCCs repealed
- DOJ review

Other Revenue Sources

Fees and
Charges

National Tax
Allotment

National
Wealth Tax

Public-
Private
Partnerships

Loans,
Bonds, and
Grants

Privatization/
Divestment

Local Legislation

- Constitutional Power
- Sanggunian and People (Initiative and Referendum)
- Presumption of Constitutionality and Legality
- Ordinance vs. Resolutions
- Veto, Review and Judicial Action
- Operative Fact doctrine
- Contracts require Sanggunian Authorization

Tests of a Valid Ordinance:

- Subordinate Legislation (Hierarchy of Policies)
- Consistent vs. Not Inconsistent
- Not discriminate
- Reasonable
- Consistent with Public Policy
- Not prohibit trade

Election Law

Overview of Philippines Elections

- General
- Free
- Direct
- Equal
- Secret
- Choices (Person/ Policy/ Plebiscites)
- Automated (and Manual)
- All Levels
- Synchronized conduct
- Genuine Periodic Regular
- Plurality Formula (and proportional representation)
- Regulated by Law
- Supervised by an autonomous body (COMELEC)
- CHOPFE: Credible, Honest, Orderly, Peaceful and Free Elections
- Regulated Contributions and Expenditures
- Political Parties

Commission on Elections

- Independent 7-member body
 - Plenary authority/ wide discretion over elections to achieve CHOPFE
 - Enjoys fiscal autonomy
 - Choice of appropriate technology
 - Delegated power to schedule elections
 - Jurisdictions: Judicial (Division) and Administrative (En Banc)
 - Other Electoral Bodies: SC, Tribunals, Prosecutors
- Powers:
- Quasi-Legislative
 - Quasi-Judicial
 - Contempt
 - Subpoena
 - Enforcement
 - Investigative
 - Prosecutorial

Suffrage and Registration

- Suffrage is a right (not an obligation)
- Qualifications outlined in the Constitution
- Right of Suffrage vs. Right to Register
- COMELEC no authority over this right
- Periodic and regular elections
- Continuing Registration
- Addition and Deletion from Permanent List of Voters
- Annulment of Book of Voters
- 2 Challenges on Election Day

Elective Officials

National Office

- President
- Vice-President
- Congress
 - Senators
 - Representatives
 - District (80%)
 - Party-List (20%)

Local Office

Local Chief Executive and Legislators:

- Autonomous Regions
- Provinces
- Cities
- Municipalities
- Barangays (Sangguniang Kabataan)

Qualifications

Position	Citizen	Age	Literacy	Voter	Resident	Term
<i>President/ Vice-President</i>	Natural-Born	40	R and W	Registered	10 years Phl	P: 6 yr x 1 VP: 6 yr x 2
<i>Senator</i>	Natural-Born	35	R and W	Registered	2 years Phl	6 x 2
<i>District Representative</i>	Natural-Born	25	R and W	Registered in District	1 year in District	3 x 3
<i>Party-List Representative</i>	Natural-Born	25 (if youth: 25-30)	R and W	Registered	1 year Phl	3 x 3
<i>BARMM Parliament</i>	Citizen	25	R and W	Registered in BARMM	---	3 x 3
<i>LGU Officials</i>	Citizen	P/ HUC: 23 Other M/ VM: 21	R and W Filipino or Local Dialect	Registered in LGU	1 year LGU	3 x 3

Disqualification

- Lack of Qualification (possess Disqualification)
- Violation of Term Rule
- Commission of an Election Offense
- Nuisance Candidate
- Willful Material Misrepresentation in CoC
- Untimely filing of CoC
- Convicted of an Election Offense
- *Note:* Effect of Disqualification – Special Elections or Succession (2nd placer rule abandoned)

Candidates

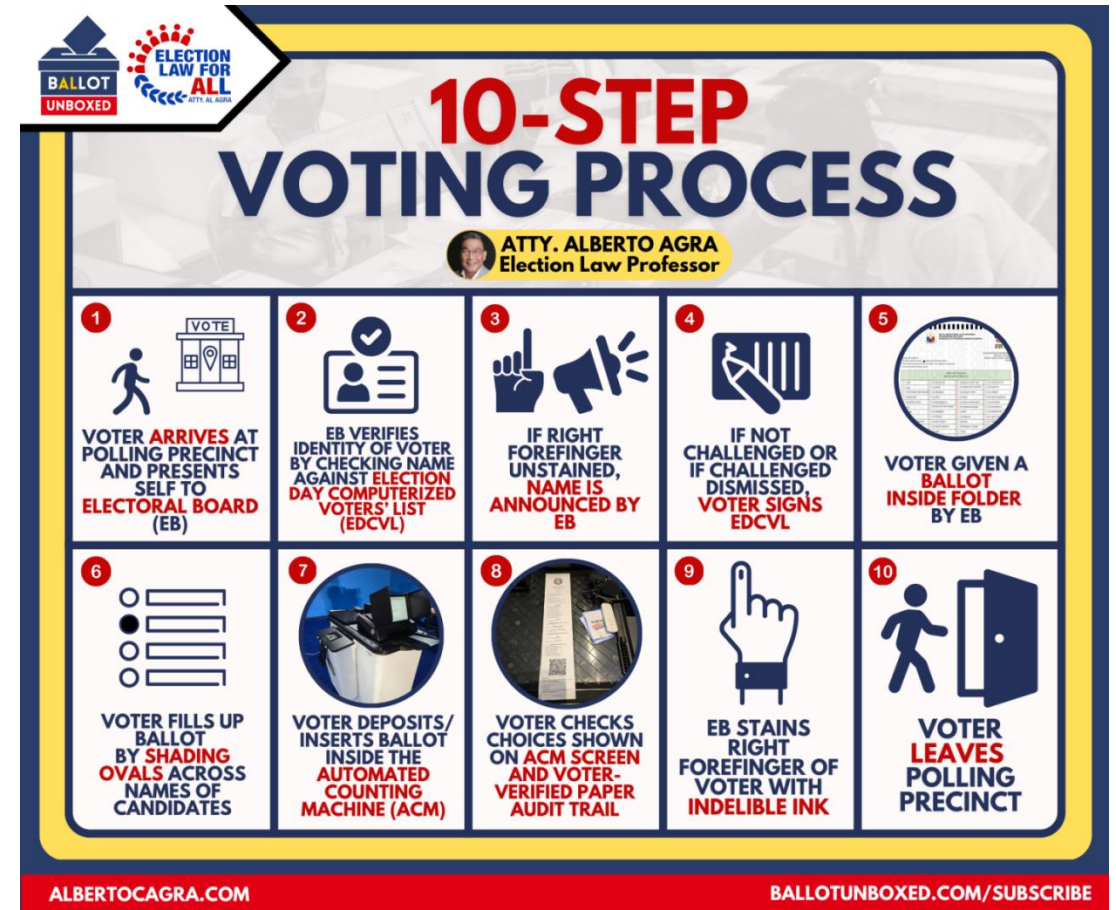
- Operative Fact
 - Start of Campaign Period: Automated Elections
 - Upon filing of the Certificate of Candidacy (CoC): Manual
- Effect on Incumbent Public Officers
 - Elective: Retains position (no effect)
 - Appointive: Ipso facto resigned upon filing of CoC
- Ministerial Duty to Receive by COMELEC (unless patent defects)
- Period to File: COMELEC Calendar (5 minutes delayed)
- Substitution: Death, Withdrawal, and Disqualification (election offense)

Campaign

- Definition: Act **designed to promote the election or defeat** of a candidate (candidate-specific); satire of political parties on social issues not election propaganda/ freedom of speech (not follow campaign rules)
- Under the Automated System, since there are no candidates until the start of the campaign period, there is no such thing as premature campaigning.
- Requirements for campaign paraphernalia must be observed by candidates and political parties and need not be followed by voters.
- Gadgets and billboards no longer prohibited.
- Tri-media regulation is on a per station basis.
- Use of social media cannot be prohibited and penalized.
- Private corporations can make reasonable campaign contributions.
- P10/ P5/ P3 per voter (counsel, ballots and list of voters not covered)

Automated System

- COMELEC discretion to choose appropriate system
- Procurement of machines must follow the Procurement Law
- Casting-Counting-Transmission-Canvassing-Proclamation
- No pre-proclamation controversy on results



Election Contests


Annulment of Proclamation

Election Protests

Quo Warranto

Election Offenses

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**Together, let us learn-unlearn-
relearn.**

Thank you.