

IMPLEMENTING THE CONSTITUTIONAL PROVISION ON ABSENTEE VOTING: PROBLEMS AND PROSPECTS*

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I. Introduction

Absentee voting was necessarily borne out of the complexities of life. When the inhabitants of the different communities increased in numbers, it became necessary for each of these communities to choose a "leader." Thus, they devised elections. And when in the pursuit of happiness they searched the lands beyond their own, but nevertheless wanted to remain a part of the selection of a leader in the affairs of the home, absentee voting became yet another necessity. In these elementary terms is absentee voting sought to be justified.

The purpose thus of an absentee voting program is, correctly, "to accommodate the growing number of people who cannot be present at the polls on election day."¹ In the Philippines, this "accommodation" has come in the form of a constitutional provision which has seen appearance, rather strangely, as an extension of an altogether different congressional duty:

The Congress shall provide a system for securing the secrecy and sanctity of the ballot as well as a system for absentee voting by qualified Filipinos abroad.²

On its face, one may get the impression that the absentee voting provision came as an afterthought to the framers of the Charter. But the paragraph following it apparently reveals a continuum:

The Congress shall also design a procedure for the disabled and the illiterates to vote without the assistance of other persons. Until then, they shall be allowed to vote under existing laws and such rules as the

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¹Note, *The Submerged Constitutional Right to an Absentee Ballot*, 72 MICH. L. REV. 157, 157-158 (1973).

²CONST. art. V, sec. 2, par. 1.

Commission on Elections may promulgate to protect the secrecy of the ballot.³

This section under the Article on Suffrage enumerates the two most important electoral reforms: voting by the disabled and by absentees. Unfortunately, the proceedings of the Constitutional Commission of 1986 do not reveal any particular reason why these two reforms were given special attention and not left merely to legislative discretion.⁴ The proceedings merely disclose that during the deliberations on the residence requirement for the exercise of the right of suffrage, Commissioner Ople asked if the Committee, at the proper time, would be willing to entertain an amendment which will make this exercise of the right available to Filipino citizens abroad "*an effective rather than merely a nominal right under this proposed Constitution.*"⁵ When the Commission did consider such an amendment, twenty-eight members voted in its favor, none against.⁶

A. Statement of the Problem

The enthusiasm of the framers of the Charter in the adoption of an absentee voting mechanism and the support they have given to the same do not seem to be shared by the Legislature which is mandated to pass an implementing measure. For after several elections under the New Constitution, neither the Senate nor the House of Representatives is anywhere close to effectuating this mandate. But this inaction on an absentee voting measure is probably guided by the hand of the Divine Providence. For the matter of outlining the procedures, rules and requirements for the exercise of absentee voting rights is too serious a business to be left to Senators and Congressmen alone, at least not in this country where an election is a national carnival during the day and the wild, wild west at night. There is thus little cause, if at all, for public outcry if the government takes all the time it needs to effectuate the right to an absentee ballot. Even electors in the more advanced electoral systems yield to the seriousness of election contests, especially in cases where a single ballot makes a difference:

Were it not for the closeness of the tally of votes between the two main contenders, Norwood and Hirst, it is doubtful whether any election Board would attach the slightest importance to this superfluous and fragmentary mark on the ballot. However, there is no race so keen, no rivalry so acute as that which is observable in a hotly contested election

³CONST. art. V, sec. 2, par. 2.

⁴See 2 RECORD OF THE CONSTITUTIONAL COMMISSION 7-36 (1986) [hereinafter RECORD].

⁵*Id.* at 11 (emphasis supplied).

⁶*Id.* at 36.

contest. Thus it is that every dot, blemish or smudge on a ballot which may give advantage to one candidate over the other assumes in the former's eyes a size and significance which does not always conform to reality.⁷

B. Objective and Scope of the Study

This paper is an exploratory study of the problems and prospects that the Congress, and the Commission on Elections as enforcing agency, will have to consider in formulating an absentee voting program. Areas of study have been identified to include the following:

- I. Definition of terms
- II. Absentee Registration
 - A. Absentees within the Philippines
 - B. Absentees abroad
 - 1. Constitutional and statutory requirements
 - 2. Residence and other eligibility requirements
- III. Application for an Absentee Ballot
 - A. Oath Requirement
 - B. Procedure
 - C. Action on Application
- IV. Transmittal of the Ballot to the Voter and Back
 - A. Security
 - B. Timetable
- V. Receipt, Counting and Canvass
 - A. Security and Deposit
 - B. Appreciation, Challenge and Recording

⁷Appeal of Norwood, 382 Pa. 547, 116 A. 2d 552, 553, (1955).

C. Importance of the Study

The migration of Filipino laborers to other countries - from sultanates and sheikdoms in the Middle East to the cantons of Switzerland and the prefectures of Nihon - has escalated in the last decade. Approximately a million Filipinos are employed overseas.⁸ The demonstration of the Filipino talent is seen in the performance of jobs as domestic helpers to wealthy London families, masseurs to Japanese sumo wrestlers, architects and engineers on the Kuwaiti pipelines, mariners in Greek tankers, or dishwashers in the USS Vincennes. Facing the same problems and awaiting the same government inputs, exported labor constitutes the biggest lobby group for absentee voting rights. Their interests though seem quite removed from the concept of absentee voting as a "salutary feature in our own democratic processes of government."⁹ In fact, the position of the Confederation of Filipino Overseas Organizations (COFOO)¹⁰ reveals a characteristically mundane outlook on the right to an absentee ballot:

This is a very large block [sic] of votes . . . so overseas Filipinos and their dependents constitute around 20% of the total voting population. That easily makes them potentially the most powerful bloc of votes in the country.

. . . In other words, the overseas worker is perhaps the most important sector [sic] in the economy; it is also potentially the largest single bloc of votes [sic]. It is only fitting that overseas workers be accorded the just and fair treatment they so richly deserve from their government.¹¹

More important than the projected birth of a power bloc,¹² it is the declared policy in our constitutional system that the election and recall of the people's deputies be periodically made. In this regard, "the democratic principle requires the broadest participation in

⁸Unpublished statistics of the Philippine Overseas and Employment Administration.

⁹*In re* Canvass of Absentee Ballots of the 1967 General Election, 431 Pa. 165, 245 A. 2d 258, 261 (1968).

¹⁰See Medina, CONFEDERATION OF FILIPINO OVERSEAS ORGANISATIONS: PROPOSAL ON ABSENTEE VOTING PROCEDURE(1987) [hereinafter COFOO Position Paper] (available in the Office of the Commission on Elections, Manila). COFOO is a London-based Filipino organization.

¹¹*Id.* at 2.

¹²If the projection is made from a "labor bloc" point of view, the concern being for workers abroad, it is interesting to note that there may be no such thing as a "labor bloc." Statistics will show for instance that no Secretary or Minister of Labor has ever won in a senatorial election. In the last congressional elections, former Labor Ministers Augusto Sanchez and Blas Ople both lost.

electoral and similar exercises by persons who have all the qualifications and none of the disqualifications to vote."¹³

A study on the implementation of the absentee voting provision becomes important because of this background. It is submitted that the Congress must pass a law that will truly realize this constitutional grant. Because of the ingenious attempts that we have seen from many fronts of our "multi-party" electoral system towards changing the results of an election - which is why our Election Code is replete with enumerations of election offenses and detailed instructions ranging from how one is to affix his thumbmark to how he is to fold his ballot - the law must be general enough to reach all that it seeks to enfranchise, yet specific to ensure that the voter's intent is given effect. When one realizes that the conventional system of balloting - from registration to voting, from entry to until exit from the polling place, from counting to canvass - has remained susceptible to human frailty, not to mention man's evil designs, one can imagine the problems that will be encountered in this first attempt at instituting balloting for a million absentees.

This paper discusses certain problems and issues that the Congress has to consider for it to legislate a truly meaningful absentee voting law.

II. The Absentee Ballot: A Journey of a Thousand Miles

To fully understand the problems relating to the institutionalization of an absentee ballot, it is necessary to trace the procedure for the issuance and appreciation of an ordinary ballot and discuss, in the light of this procedure, the system of absentee balloting.

A. The Registration Process

1. Qualifications of Absentee Voters Generally - The Residence Requirement

When an individual goes to the polling place on election day, the officials manning the center looks for the voter's name in the "List of Voters"¹⁴ and the prospective elector can rightfully expect his name to be in the list if he has previously registered as a voter.¹⁵

¹³Exec. Order No. 157 (1987), 4th Whereas clause.

¹⁴CE Form No. 2-A.

¹⁵But the fact that one has registered does not always mean that he will be given a ballot. His name may have been cancelled after appropriate exclusion proceedings. See OMNIBUS ELECTION CODE, sec. 142.

In order therefore that a qualified voter may vote in any election, plebiscite, or referendum, he must be registered in the permanent list of voters.¹⁶ A potential registrant must have the following qualifications: (1) he must be a citizen of the Philippines;¹⁷ (2) he must not be otherwise disqualified by law;¹⁸ (3) he must be at least eighteen years of age;¹⁹ and (4) he must have resided in the Philippines for at least one year and in the place wherein he proposes to vote for at least six months immediately preceding the election.²⁰ However, a person who, on the date of registration, does not have the age or period of residence required may also be registered upon proof that he shall have such qualifications on the day of the election.²¹

That the absentee voter must have the same qualifications, except the last on periods of residence, is of general acceptance.²² This submission is supported by the constitutional and statutory provisions aforesaid. Hence, an absentee registrant must be a citizen of the Philippines and at least eighteen years of age on the day of the election.

Two questions related to the residence requirement have been asked and need to be considered.²³ First, how does one deal with the one year residence requirement? Will this deny voting rights to citizens who, although otherwise qualified, were born and raised abroad and have not stayed for a year in the country, or perhaps have never been in the country of their parentage but are nevertheless citizens and thus subject to Philippine laws? Secondly, how should the six-month residence requirement be treated, considering that such requisite determines the *locus* of ballot casting?

The problems on residence requirements are easily resolved by positing two tenable propositions. Albeit apparently inconsistent, both will argue to effectuate the right to an absentee ballot. The first proposition is that the absentee voting provision in article V, section 2 of the Constitution falls outside of the strict operation of the residence

¹⁶Batas Pambansa Blg. 881 (1985), sec. 115.

¹⁷CONST. art. V, sec. 1; Batas Pambansa Blg. 881 (1985), sec. 117.

¹⁸*Id.*; see Batas Pambansa Blg. 881 (1985), sec. 118 for the disqualifications.

¹⁹CONST. art. V, sec. 1; Batas Pambansa Blg. 881 (1985), sec. 117.

²⁰*Id.*

²¹Batas Pambansa Blg. 881 (1985), sec. 116.

²²See Position Papers submitted by various political parties and other organizations during public hearings (for the draft legislation) conducted by the Commission on Elections on February 24-25, 1986 (available in the Office of the Commission on Elections, Manila); see also 1 JOURNAL OF THE CONSTITUTIONAL COMMISSION 335-336 (1986)[hereinafter JOURNAL].

²³See Partido Ng Bayan, Position Paper on Absentee Voting (1987) (available in the Office of the Commission on Elections, Manila).

requirement provision in section 1 of the same article. The second proposition dwells on the meaning of *residence* as it is used in the Constitution.

During the deliberations of the Constitutional Commission of 1986 on section 1, particularly on the residence requirements, Commissioner Ople raised the problems earlier adverted to and the probable consequences the residence requirements would have on the voting rights of citizens abroad:

MR. OPLE: Thank you very much, Madam President. Will the sponsor yield to a question or two?

FR. BERNAS: Very willingly, Madam President.

MR. OPLE: With respect to Section 1, it is not clear whether the right of suffrage, which here has residential restrictions, is not denied to citizens temporarily residing or working abroad. Based on the statistics of several government agencies, there ought to be about two million such Filipinos at this time. Commissioner Bernas had earlier pointed out that these provisions are really lifted from the two previous Constitutions of 1935 and 1973 with the exception of the last paragraph. They could not therefore have foreseen the phenomenon now described as the Filipino labor force explosion overseas.

....

... In a previous hearing of the Committee on Constitutional Commissions and Agencies, the Chairman of the Commission on Elections, Ramon Felipe, said that there was no insuperable obstacle to making effective the right of suffrage for Filipinos overseas. Those who have adhered to their Filipino citizenship notwithstanding strong temptations are exposed to embrace a more convenient foreign citizenship. And those who, on their own or under pressure of economic necessity here, find that they have to detach themselves from their families to work in other countries with definite tenures of employment. Many of them are on contract employment for one, two or three years. They have no intention of changing their residence on a permanent basis but are technically disqualified from exercising the right of suffrage in their countries of destination by the residential requirement in Section 1 I therefore ask the Committee whether at the proper time they might entertain an amendment that will make this exercise of the right to vote abroad for Filipino citizens an effective rather than merely a nominal right under this proposed Constitution.

FR. BERNAS: Certainly, the Committee will consider that.²⁴

²⁴RECORD, *supra* note 4, at 11 (emphasis supplied).

In subsequent sessions, the meaning of the commitment made by Fr. Bernas was expressed in the clarification made by Commissioner Monsod:

MR. MONSOD: . . . The reason we want absentee voting to be in the Constitution as a mandate to the Legislature is that there could be inconsistency on the residence rule if it is just a question of legislation by Congress. So, by allowing it and saying that this is possible, then legislation can take care of the rest.²⁵

This expression is persuasive. A point should however be raised on the implication of Commissioner Ople's statements that the framers of the previous Constitutions lacked the foresight to provide for measures which would protect the rights of electors abroad. His concern was in fact the subject of several proposals made on the floor of the 1971 Constitutional Convention.²⁶ As a matter of fact, the Report of the Committee on Suffrage and Electoral Reforms of the Convention submitted for debate in plenary session contained a proposal which reads:

Article V - SUFFRAGE

Sec. 1. Suffrage shall be both a right and a duty and shall be exercised by citizens of the Philippines not otherwise disqualified by law, who are eighteen years of age or over and who shall have resided in the Philippines for one year and in the municipality wherein they propose to vote for at least six months preceding the election. No literacy, property or other substantive requirement shall be imposed on the exercise of suffrage. It shall be the obligation of all qualified citizens to register as voters and to cast their votes. Penalties and reasonable causes constituting lawful excuse for failure to comply with this obligation shall be prescribed by the Commission on Elections. *Registered voters within the Philippines but temporarily absent from their voting residence and qualified voters temporarily abroad shall exercise suffrage in the election of national officials in accordance with procedures to be determined by the Commission on Elections.*²⁷

The incorporation of absentee voting in the above proposed article, which provides for residence requirements, makes it likewise

²⁵RECORD, *supra* note 4, at 33.

²⁶See Committee Report No. 3, the Committee on Suffrage and Electoral Reforms; *see also* sponsorship speeches of Delegate Gonzalo O. Catan, First District, Negros Or., February 28, 1972 and Delegate Andres R. Flores, Sixth District, Cebu, February 25, 1972, in Delegate Augusto L. Syjuco Jr. Collection, and of Delegate Antonio Tupaz, Lone District, Agusan del Norte, February 26, 1972, in Delegate Antonio Tupaz Collection (available in the Recto Library, University of the Philippines Law Center).

²⁷Committee Report No. 3, as approved by the Committee on Suffrage and Electoral Reforms (emphasis supplied).

clear that the former is in the nature of an exception to the latter. But as history would have it, the absentee voting proposal did not see final print in the 1973 Charter.

The second proposition, as stated, deals with the meaning of *residence* as it is used in the Constitution. Since *Faypon v. Quirino*,²⁸ the courts have consistently held that the term *residence* in this context is the same as *domicile*. *Domicile* is permanent abode and is the place subject of the resident's *animus revertendi*.

Because *Faypon v. Quirino* is decisive on this issue, a recitation of its factual background is proper. In that case, respondent Eliseo Quirino was born in Caoayan, Ilocos Sur. He went to Manila to pursue his studies, proceeded to the United States for further studies, returned to the Philippines in 1923, worked as lecturer in the University of the Philippines, engaged in newspaper work in Manila, and then went home to Ilocos to run for Governor. Previously, Quirino had registered as a voter in Pasay City and voted there. In declaring that Quirino was eligible to run for Governor of Ilocos Sur (the law then, section 2071 of the Revised Administrative Code, required a prior six-month residence), the Supreme Court made this pronouncement:

[M]ere absence from one's residence of origin - domicile - to pursue studies, engage in business, or practice his avocation, is not sufficient to constitute abandonment or loss of such residence. . . . The determination of a person's legal residence or domicile largely depends upon intention which may be inferred from his acts, activities and utterances.²⁹

The Court likewise ruled that previous registration as a voter in a municipality other than that in which one is elected is not sufficient to constitute abandonment or loss of one's residence.

One must also take note of the pertinent provision in the Civil Code:

For the exercise of civil rights and the fulfillment of civil obligations, the domicile of natural persons is the place of their habitual residence.³⁰

The cases forming part of the jurisprudence on the above-cited provision have invariably held that residence and domicile are not

²⁸96 Phil. 294 (1954).

²⁹96 Phil. at 297-298.

³⁰CIVIL CODE, art. 50.

synonymous.³¹ A closer examination of the said article, however, will reveal that for election law purposes, the rule is still *Faypon*, i.e., that residence is synonymous with domicile.³² The rule is the same for purposes of determining venue under the Rules of Court.³³ In deciding disqualification cases on the ground of lack of residence, the Commission on Elections has also followed the *Faypon* rule.³⁴ The rule was also adverted to by Commissioner Bernas in explaining the meaning of residence during the same Ople interpellation, *infra*.

That, in this jurisdiction, residence is not easily lost may be gleaned from section 117 (2) of the Omnibus Election Code, which in fact reflects the rule in *Faypon v. Quirino*:

Any person who transfers residence to another city, municipality or country solely by reason of his occupation, profession, employment in private or public service, educational activities, work in military or naval reservations, service in the army, navy or air force, the constabulary or national police force or confinement or detention in government institutions in accordance with law, shall be deemed not to have lost his original residence.³⁵

The liberal interpretation of residence as a requirement for the exercise of the right to vote is also the rule in areas in the United States where voting laws provide requirements of residence similar to ours. Thus, while

state statutes typically require a person to be a resident of the state for the year immediately preceding the election in which he seeks to vote . . . a resident need not necessarily be physically present within the state It is the intention of this section to show that the overwhelming majority of existing statutes can easily be interpreted in a manner which would allow Americans living abroad to vote.³⁶

The general qualifications having been discussed, the question of which particular group of individuals or which type of individual voters should be reached by the absentee voting law must now be

³¹*Uytengsu v. Republic*, 95 Phil. 890, 893-896 (1954); *Koh v. Court of Appeals*, 70 SCRA 298, 304-305 (1975).

³²*Nuval v. Guray*, 52 Phil. 645, 651 (1928); *Larena v. Teves*, 61 Phil. 36, 38 (1934).

³³*Corre v. Tan Corre*, 100 Phil. 321, 323 (1956) (citing *Evangelista v. Santos*, 86 Phil. 387 (1950)).

³⁴*See Tan v. Azcuna*, COMELEC SPC No. 87-850, at 2 (Jan. 12, 1988); *Ysip v. Norada*, COMELEC SPC No. 87-650, at 1-2 (Jan. 15, 1988); *Eleria v. Mose*, COMELEC SPC No. 87-590, at 3 (Jan. 7, 1988).

³⁵OMNIBUS ELECTION CODE, sec. 117, par. 2.

³⁶*Davidson, Voting Rights of Americans Abroad*, 18 BUFFALO L. REV. 469, 472 (1968-1969).

considered. In other words, who can become an absentee registrant and/or voter?

2. *Classes of Absentee Voters - The Test of Unavoidable Absence*

It has already been mentioned that, generally, an absentee voter is a qualified elector who cannot be in the place or particular precinct where he is registered on the day of the election. Specifically, the Constitution mandates the Congress to formulate an absentee voting law "for qualified Filipinos abroad." This is only the first group of electors in the list. The same constitutional provision cannot be interpreted as to preclude the Congress from considering the plight of other absentees, such as those who are within the country but cannot be in their own precincts on election day. The adoption by the Constitutional Commission of the provision mandating the Congress to design a system for absentee voting by qualified Filipinos abroad came after an understanding that it did not exclude the right to an absentee ballot of transients who are locally situated. This is borne out by the discussions in the Commission:

MR. REGALADO: That is all right. I now propose to amend lines 15 and 16 of Section 1 to read as follows: "The National Assembly shall prescribe a system which shall enable qualified citizens temporarily absent from the Philippines or the place where they are registered to cast their votes."

I am referring to overseas Filipinos and those who at the time of the election may not be in the place where they are registered. They are the so-called absentee voters. I will repeat: "The National Assembly shall prescribe"

. . . .

MR. BENGZON: Madam President, Commissioner Monsod has an amendment to the amendment of Commissioner Regalado insofar as the Filipinos abroad are concerned.

. . . .

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Madam President, there is a group of Commissioners who consolidated their proposals for absentee voting: Commissioners Ople, de los Reyes, Maambong, Foz, and this member. We would like to propose an amendment to the amendment on line 16 which states: "To secure the secrecy and the sanctity of the ballot." This should be followed with the phrase "as well as for absentee voting by Filipinos abroad."

We believe that the phrase "absentee voting" has already its own meaning, and the other provisions on safeguarding secrecy and sanctity of the ballot, and disqualifications and qualifications are already in the Constitution subject only to such modification as the Legislature may deem advisable to provide. That is the reason for proposing that amendment, Madam President.

MR. REGALADO: But before I act on that, may I inquire from Commissioner Monsod if the term "absentee voting" also includes transient voting; meaning, those who are, let us say, studying in Manila need not go back to their places of registration, for instance, in Mindanao, to cast their votes.

MR. MONSOD: I think our provision is for absentee voting by Filipinos abroad.

MR. REGALADO: How about those people who cannot go back to the places where they are registered?

MR. MONSOD: Under the present Election Code, there are provisions for allowing students and military people who are temporarily in another place to register and vote. I believe that those situations can be covered by the Omnibus Election Code. The reason we want absentee voting to be in the Constitution as a mandate to the Legislature is that there could be inconsistencies on the residence rule if it is just a question of legislation by Congress. So, by allowing it, in saying that this is possible, then legislation can take care of the rest.

THE PRESIDENT: Is that accepted?

MR. REGALADO: Just one more clarification, Madam President.

So, in the interim, the rule presently appearing in the Omnibus Election Code as well as the COMELEC rules on transient voting will be applied.

MR. MONSOD: Yes, whatever the rules may be; and at the moment, there are certain rules with respect to those situations.

MR. REGALADO: Since it covers the purpose of the amendment, I accept the amendment to my amendment. This capsulizes my amendment and shortens what is expressed in my amendment.

MR. BENGZON: May I request Commissioner Regalado to read his amendment to the amendment of Commissioner Monsod which would cover from line 7, Section 1, all the way down to lines 15 and 16.

MR. REGALADO: It is our understanding that it will be for the record.

MR. BENGZON: Yes. The Commissioner should read from the beginning because he has some changes.

MR. REGALADO:

The amendment to line 15 states: "The National Assembly shall prescribe a system which will enable qualified citizens temporarily absent from the Philippines or the place where they are registered to cast their votes. In all cases safeguard shall be provided to secure the secrecy and the sanctity of the ballot."

Since Commissioner Monsod says that that is already considered as the correct interpretation in [sic] his amendment to my proposed amendment with respect to "absentee voting," I will accept the amendment to my amendment.

THE PRESIDENT: So, lines 15 and 16 will read as stated by Commissioner Monsod.

MR. BENGZON. Yes. May I request Commissioner Monsod to restate his amendment to the amendment on lines 15 and 16 which has been accepted?

MR. MONSOD: Madam President, lines 15 and 16 will now read: "The National Assembly shall provide a system for the purpose of securing the secrecy and sanctity of the vote as well as a system for absentee voting by Filipinos abroad."³⁷

Except for the inclusion of the word "qualified" between the words "by" and "Filipinos" on motion of Commissioner Tingzon,³⁸ the formulation of Commissioner Monsod saw its place in the final draft of the Charter.

In fine, one cannot conclude from the foregoing that the provision on absentee voting was meant to exclude transient voting in a local situation. It cannot be disputed that Commissioner Regalado, in accepting the formulation of Commissioner Monsod, understood that the provision did not exclude absentee voting within the country. Commissioner Monsod explained that the reason for the inclusion of an absentee voting mandate for Filipinos abroad was to rule out an inconsistency on the residence rule if the subject were left to congressional discretion.

Generally, therefore, two main groups may avail of the right to an absentee ballot under any enabling law: (1) qualified electors who are absent from the place of registration but are within the Philippines, and (2) qualified electors who are outside of the Philippines.

³⁷RECORD, *supra* note 4, at 32-34.

³⁸*Id.*

Executive Order No. 157 referred to absentee voting by the first group but limited its application to persons who, "by reason of public functions and duties, [are] not in [their] place of registration on election day."³⁹ In other words, the first requisite under this law is that the registered voter must be in the government service. As implemented, Executive Order No. 157 benefited mostly those in the military service,⁴⁰ although the law was intended to reach all government employees and officials similarly situated. There are other classes of individuals that can come under the first group, which classes have been held to be entitled to absentee ballots in other jurisdictions. Andres R. Flores, Delegate of the 6th District of Cebu to the 1971 Constitutional Convention, in his sponsorship of the absentee voting provision of the proposed (1973) Constitution,⁴¹ enumerated the following: (1) members of the armed forces and their spouses and dependents in proper cases; (2) other government officials who are assigned to places other than and far from the locality where they are registered as voters; (3) those engaged in the transportation business; and (4) students who are enrolled in schools located in areas other than the place where they are registered. Of course, this enumeration is not exhaustive, and the following may be added to Delegate Flores's list: (5) those physically incapacitated due to sickness or old age to such a degree that they cannot go to their precincts;⁴² (6) persons whose religious beliefs prevent them from attending the polls on election day;⁴³ (7) those absent for reasons of employment;⁴⁴ and (8) detention prisoners and convicts not under any other legal disqualification to vote.⁴⁵ In these cases, the test that must be satisfied is that the potential voter must or expects to be unavoidably absent from the precinct on election day.⁴⁶ "Unavoidable absence" in

³⁹Sec. 1.

⁴⁰The only civilian government employees who availed of absentee voting under the Executive Order were 87 employees of the Radio-TV Malacañang, Office of the President. The rest, over 9,000 voters, were members of the Armed Forces of the Philippines (AFP). See Report of the Commission on Elections to the President of the Philippines and to the Congress of the Philippines 20-21 (1989) (available in the Office of the Commission on Elections, Manila).

⁴¹Sponsorship speech delivered on February 25, 1972, in Delegate Augusto L. Syjuco Jr. Collection (available in the Recto Library, University of the Philippines Law Center)

⁴²Almost all states of the U. S. allow the physically incapacitated to cast absentee ballots. *Supra* note 1, at 160 (citing various state statutes).

⁴³*Id.* at 161.

⁴⁴Garrety, *Absentee Ballot Reform in Pennsylvania: An Unfinished Task*, 79 DICK L. REV. 93-100 (1974) (citing Lancaster City Absentee Ballots Case, 60 LANC. REV. 211 (Pa. C. P. 1966); City of Duquesne Election Appeals, 39 Pa. D. & C. 2d 545 (C.P. Allegheny 1965)).

⁴⁵*O'Brien v. Skinner*, 414 U.S. 524, 94 S. Ct. 742 (1974); see 414 U.S. at 535 (Blackmun, J., dissenting).

this case has been defined by the Philadelphia General Assembly to mean "absence in good faith by reason of duties, occupation or business."⁴⁷ While the Philadelphia law has adopted a more liberal test by dropping the term "unavoidable" in a 1967 amendment, "the debates in the General Assembly concerning passage of the amendment are devoid of reference to this potentially far-reaching change, and it cannot be safely predicted what the legislators had in mind."⁴⁸ What constitutes unavoidable absence "is a subject that cannot be determined by any general rule, nor can it be adequately determined from any individual statement of fact As a matter of practical perspective, the nature of the absence must be left to the voter to determine and to say whether to him, in good faith, his absence is unavoidable."⁴⁹ In any judicial review, therefore, much latitude must be allowed the voter in determining whether or not his absence is in fact unavoidable.⁵⁰ It is submitted that the test adopted and defined by the courts in the foregoing cases is safe for the present purpose.

It is appropriate to discuss here the problems and questions that pertain to the eligibility of the different categories of absentee voters above enumerated. How does one make a finding of unavoidable absence? It is submitted that any doubt must be resolved in favor of eligibility, in accordance with the rule that "[i]n the absence of fraud, election statutes generally will be liberally construed to guarantee to the elector an opportunity to freely cast his ballot, to prevent his disenfranchisement and uphold the will of the electorate."⁵¹ Along this policy, the courts have held that absentee ballots bearing marks may not be invalidated in the absence of fraud,⁵² that voters outside of the county on election day do not invalidate their absentee ballots in the absence of precise statutory limitations,⁵³ and that the approach to the problem of interpretation of absentee voting statutes should be "with full appreciation of our duty to give the statute a liberal construction."⁵⁴

⁴⁶The phrase "unavoidably absent" is taken from N. Y. CONST. (1977) art. II, sec. 2; see PA. CONST. (1957) art. VIII, sec. 19.

⁴⁷Garrety, *supra* note 44, at 98 (citing Act of August 13, 1963, No. 379, § 2 [1963] Pa. Laws 707).

⁴⁸*Id.* at 101 (citing 1968 Pa. Legis. J. 83 (H.R.)).

⁴⁹*Sheils v. Flynn*, 164 Misc. 302, 299 N.Y.S. 64, 77-78 (1937).

⁵⁰299 N.Y.S. at 77-78.

⁵¹*Brown v. Grzeskowiak*, 230 Ind. 110, 101 N.E. 2d 639, 646 (1951) (citing *Jones v. State ex rel. Wilson*, 153 Ind. 440, 55 N.E. 229 (1899); *Blue v. Allee*, 184 Ind. 302, 111 N.E. 185 (1916); *State ex rel. Harry v. Ice*, 207 Ind. 65, 191 N.E. 155 (1934); *Duncan v. Shenk*, 109 Ind. 26, 30, 9 N.E. 690 (1887); *Dobbyn v. Rogers*, 225 Ind. 525, 76 N.E. 2d 570, 582 (1948)).

⁵²*Gregory v. Sanders*, 195 Miss. 508, 15 So. 2d 432, 435 (1943).

⁵³*Grawling v. Lawrence*, 353 Mo. 1028, 185 S.W. 2d 818, 820 (1945).

⁵⁴*Maddox v. Board of Canvassers*, 149 P. 2d 112, 113 (1944).

Prior to the above holdings, courts invariably held the contrary, ruling that since an absentee voting statute was in derogation of the common law,⁵⁵ or was outside of the operation of general election laws,⁵⁶ such "must be construed as mandatory in all its substantial requirements and [is] therefore an exception to the general rule that election laws are construed liberally."⁵⁷ The liberal interpretation accorded election statutes (naturally with no reference to absentee voting procedures) is also the general rule in this jurisdiction, having been applied to problems concerning the consideration of copies of election returns for purposes of canvass,⁵⁸ the right to appeal,⁵⁹ the period for protests,⁶⁰ and the construction of rules in election contests.⁶¹

It is not required for purposes of eligibility that the elector must be definite about his absence. It is sufficient that he expects to be unavoidably absent from the precinct on election day. Hence, it has been held that absentee ballots cast by electors who are actually in the area, or are able to appear before the Board of Election Inspectors or the officials of the Commission on Elections manning the precincts, are subject to challenge and may be invalidated,⁶² although there is also authority to the contrary.⁶³ In all cases, it must be considered that the grant of the right to an absentee ballot is not intended for the convenience of electors who wish to absent themselves on election day on account of pleasure or free will,⁶⁴ or because they despise the seeming rigmarole of going to the precinct, queuing, being thumbprinted, and having an index finger subjected to the application of indelible ink. Thus, reasons like leaving the area of registration for an activity which did not require immediate attention,⁶⁵ and a trip to Hawaii or Florida

⁵⁵State *ex rel.* Whitley v. Rinehart, 140 Fla. 645, 192 So. 819, 823 (1939) (citing Guice v. McGehee, 155 Miss. 858, 124 So. 643 (1929); Straughan v. Meyers, 268 Mo. 580, 187 S.W. 1159 (1916); *In re Baker*, 126 Misc. 49, 213 N.Y.S. 524 (1925); Opinion of Justices, 44 N.H. 633).

⁵⁶*In re Baker*, 213 N.Y.S. 524, 528 (1925).

⁵⁷Guice v. McGehee, 124 So. 643, 647 (1929).

⁵⁸Purisima v. Salanga, 15 SCRA 705, 709 (1965).

⁵⁹Rodriguez v. COMELEC, 119 SCRA 465, 470 (1982); Millare v. Gironella, 122 SCRA 623, 627 (1983).

⁶⁰Miro v. COMELEC, 121 SCRA 466, 470 (1983).

⁶¹Lino Luna v. Rodriguez, 36 Phil. 208, 214 (1917); De Leon v. Guadiz, 104 SCRA 591, 598 (1981); Maquinay v. Bleza, 100 SCRA 702, 708 (1980) (citing De Castro v. Ginete, 27 SCRA 623 (1969); Jalandoni v. Sarcon, 94 Phil. 266 (1954); Surtida v. Lesaca, 66 Phil. 168 (1938); Anis v. Contreras, 55 Phil. 923 (1931); Galang v. Miranda, 35 Phil. 269 (1916)).

⁶²State *ex rel.* Whitley v. Rinehart, 192 So. 819, 823 (1940).

⁶³Wood v. State *ex rel.* Lee, 133 Tex. 110, 126 S.W. 2d 4 (1939).

⁶⁴State *ex rel.* Whitley v. Rinehart, 192 So. 819, 822 (1940).

⁶⁵Garrety, *supra* note 44, at 99 (citing *In re 223 Absentee Ballot Appeals*, 81 York 137, 142 (Pa. C.P. 1967)).

for pleasure and relaxation "without mitigating circumstances such as a business convention,"⁶⁶ an "unavoidable vacation" being inconceivable,⁶⁷ have been held insufficient to justify issuance of an absentee ballot. On the other hand, where the absence is for reasons of employment or duty, such as caring for sick relatives,⁶⁸ babysitting for grandchildren so their parents could pursue business affairs,⁶⁹ attending funerals,⁷⁰ accompanying a friend who needed assistance in order to appear at a college reunion,⁷¹ or where the voter is sick though not totally confined to his home, but going to his precinct would be ill-advised,⁷² resort to the absentee procedure is allowed.

Questions may arise as to the unavoidable absence of the electors in the enumerated categories. It is safe to say, however, that there is no great problem concerning the eligibility of members of the armed forces and employees in government. As it was under the first absentee voting law, the certification of unavailability of the commanding officer or head of office in the proper case would constitute a finding of unavoidable absence.⁷³ The challenge to the employee's eligibility would lie only if it could be established that he was within the place of registration on the day of the election, unless the same could not have been reasonably foreseen. As to the rest of the categories, they would be subject to evidentiary showing of unavoidable absence in their respective applications. In the Philippine electoral experience, the problem regarding the exercise of voting rights by students who pursue higher education in the urban centers, away from their places of residence, is a common one. Those who are well-off can afford to go home to their respective provinces where they are registered just to vote in an election, referendum, or plebiscite. The greater majority, however, will just have to forego participation in the exercise. In showing unavoidable absence, it would be sufficient to meet evidentiary requirements consisting of a school certification that the student is enrolled and is currently attending school (*i.e.*, has not dropped out of school or gone on leave). Other pertinent information may be required in the application, such as

⁶⁶*Id.* (citing City of Duquesne Election Appeals, 39 Pa. D. & C. 2d 545 (C.P. Allegheny 1965)).

⁶⁷*Id.* (citing Decision of County Board of Elections, 29 Pa. D. & C. 2d 499, 507 (C.P. Lebanon 1962)).

⁶⁸*Id.* at 100 (citing *In Re* 223 Absentee Ballots Appeals, 81 York 137 (Pa. C.P. 1967)).

⁶⁹*Id.* (citing Lancaster City Ballots Case, 60 Lanc. Rev. 11 (Pa. C.P. 1966)).

⁷⁰*Id.*

⁷¹*Id.*

⁷²*Id.* (citing *In re* 1968 Primary, Third Ward Dupont, 59 Luz. Leg. Rev. 19 (Pa. C.P. 1968); City of Duquesne Election Appeals, 39 Pa. D. & C. 2d 545 (C. P. Allegheny 1965)).

⁷³Exec. Order No. 157 (1987), sec. 2.

the fact that the student's place of schooling and area of registration are far from each other that it will be expensive and impracticable to make the trip. Again, mere inconvenience will not be sufficient. In one case, it was held that "students attending Princeton University and the University of Pennsylvania were within sufficient proximity to their homes in Montgomery County to enable them to return to their polling places on election day without hardship."⁷⁴ It is proposed that legislation in this regard be made, clearly setting out the test of unavoidable absence to make it apply to all similarly situated.

The grant by the state of absentee voting rights to some and the denial of the same to others who appear to be within the terms of the statute may constitute a violation of the constitutional right to equal protection.⁷⁵ There is such a violation when there is a showing of the existence of a class and of its creation on the basis of an unreasonable distinction by statute, *i.e.*, that the statute discriminates unconstitutionally.⁷⁶ Only when the state demonstrates a "compelling interest" can a denial of the right to equal protection be justified.⁷⁷

3. *Proposals for Absentee Registration Procedure*

a. *General Considerations*

The registration of a qualified elector who may be entitled to an absentee ballot under the first group, *i.e.*, those temporarily absent from their places of registration on election day but are within the borders of the state, should primarily follow the same procedure presently provided by the Election Code. Still, a special set of rules should be promulgated for the registration of absentee electors under the first group, if only for those absentees under the said group who cannot make the trip to their customary residence on registration dates.

Registration under the Omnibus Election Code is made by personally appearing before the Board of Election Inspectors⁷⁸ of each precinct on the date or dates of registration designated by the Commission every regular election, which shall be the "seventh and

⁷⁴Garrety, *supra* note 44, at 99 (citing Canvass of Absentee Ballots of November 2, 1965 General Election, 39 Pa. D. & C. 2d 429, 441 (C.P. Montg. 1965)).

⁷⁵O'Brien v. Skinner, 414 U.S. 524, 94 S. Ct. 740, 745 (1974); Dunn v. Blumstein, 405 U.S. 330, 363, 92 S.Ct. 995, 1013 (1972).

⁷⁶Davidson, *supra* note 36, at 478.

⁷⁷Dunn v. Blumstein, 405 U.S. 330, 363, 92 S. Ct. 995, 1013 (1972); McDonald v. Board of Elections, 394 U.S. 802, 806, 89 S. Ct. 1404, 1407 (1969); Reynolds v. Sims, 377 U.S. 533, 562, 84 S. Ct. 1362, 1381 (1964).

⁷⁸Batas Pambansa Blg. 881 (1985), sec. 126.

sixth Saturdays before the day of the election,"⁷⁹ or on the second Saturday following the day of the proclamation calling for a special election, plebiscite, or referendum.⁸⁰ On these designated days, the Board enters into its list of voters the names of voters transferring to the precinct as well as those who have newly qualified as voters. The registrant accomplishes before the Board a Voter's Affidavit in triplicate, containing information on his personal circumstances. The affidavit contains three specimens of the affiant's signature and includes an oath that the applicant does not have any of the disqualifications of a voter and that he has not been previously registered in the precinct or in any other precinct.⁸¹

Things would be simpler if all absentees could be registered in the usual manner. However, it must be considered that many temporary absentees cannot proceed to their precincts to be registered on specified days for the same reason that they cannot be there on election day - employment, military duty, or the pursuit of higher education. If only for this reason, it is urged that Congress should consider reviving the process of continuing registration which was introduced in 1963⁸² and adopted by the 1971 Election Code.⁸³ Under this system, a permanent Election Registration Board in each city and municipality was constituted, composed of the City or Municipal Election Registrar as Chairman, "two members to be appointed by the Commission upon proposal by the two political parties which polled the largest and the next largest number of votes in the next preceding Presidential election,"⁸⁴ and one representative each of the Nacionalista Party and the Liberal Party. The Committee would meet every Monday of each week to consider applications for registration or entry in the permanent list of voters.⁸⁵ Under this scheme, a qualified elector may file a sworn application before the same Committee on any day "but not later than the first Saturday of August of an election year".⁸⁶ The application would then be posted and calendared for hearing after which the Committee, if the decision was favorable, would enter the applicant's name in the permanent list.⁸⁷

⁷⁹Batas Pambansa Blg. 881 (1985), sec. 120.

⁸⁰Batas Pambansa Blg. 881 (1985), sec. 121.

⁸¹Batas Pambansa Blg. 881 (1985), sec. 126.

⁸²Rep. Act No. 3588 (1963), sec. 5.

⁸³Rep. Act No. 6388 (1971), sec. 105, *et. seq.*

⁸⁴Rep. Act No. 6388 (1971), sec. 105.

⁸⁵Rep. Act No. 6388 (1971), sec. 105.

⁸⁶Rep. Act No. 6388 (1971), sec. 109.

⁸⁷Rep. Act No. 6388 (1971), sec. 111.

Under the continuing scheme of registration, a potential absentee voter would be able to register on any day he is present in the municipality or city of his residence or the place where he wishes to cast his ballot on election day. This, he could do on furloughs, vacation leaves, semestral breaks, or summer breaks, as the case may be. This can prevent the occurrence of problems normally encountered with a system where days of registration are limited as specified by law. Under the present Charter, for instance, registration can be undertaken only during an election year, except in case of a general registration of voters pursuant to a law calling for the same.

Having determined the necessity for procedures to govern absentee registration for qualified electors within the country, what may be considered as possibilities for those outside of the Philippines?

In drawing up rules for the registration of qualified electors who cannot be at their places of residence on registration day, the following factors must be considered: (1) eligibility, (2) practicability and cost, (3) integrity of the process, (4) efficiency, and (5) experience of and procedures in other jurisdictions.

On the question of eligibility, it is submitted that the test of unavoidable absence, which is applied to the determination of the question of entitlement to an absentee ballot, should also be used. To be entitled to absentee registration, therefore, the elector must be unavoidably absent from his place of habitual residence or the place where he is qualified to vote according to the residence requirements under the Constitution. He must establish unavoidable absence in his application to the satisfaction of the person or persons tasked with the determination of eligibility. As this is a matter of proof, the application may be accompanied by the necessary documents to substantiate registrant's claim of unavoidable absence in the proper cases. The type and nature of documentation that might be needed will depend upon the circumstances peculiar to each applicant. Those who have been previously registered but who foresee the need to apply for absentee ballots need not register anew. Their previous registration should be effective for absentee ballot as well as for all other requirements.

For purposes of practicability and cost, any absentee registration scheme must provide for a massive information campaign and must consider the availability of application forms and the non-duplication of expense and procedure.

Under Executive Order No. 50, an ordinary registrant applies for registration by appearing personally before a three-man Board of

Election Inspectors in the precinct of his place of residence.⁸⁸ He then fills up a form called the "Voter's Affidavit,"⁸⁹ which requires certain information to be entered.⁹⁰ His name is entered in the books as a registered voter after the Board finds, on the basis of the affidavit, that the applicant possesses all the qualifications and none of the disqualifications of a voter.⁹¹ For its purposes, the Board of Election Inspectors is empowered to administer oaths, issue subpoena and *subpoena duces tecum*, and to compel witnesses to appear and testify.⁹² It must also be noted that an individual appearing before the Board to register may be challenged before the Board by any member, voter, candidate or watcher, whereupon the Board examines the applicant and receives other evidence it may deem pertinent. The Board then decides whether the application should be denied or given due course.⁹³

It is proposed that the same procedure for ordinary registrants be adopted for absentee registrants, making modifications only as may be necessary under the circumstances. Thus, the elector seeking to be registered as a voter (not yet as an absentee voter although the application may be treated simultaneously as an application for registration and an application for an absentee ballot, *infra*) should personally appear before a Board of Election Inspectors in the area where, at the time of application, he is temporarily settled and should fill up the same information required under Section 126 of the Code, in addition to what may be required of him as an absentee registrant. Furthermore, the process must be provided with safeguards against double registration. How then may a person, applying as an absentee registrant, be prevented from filing more than one application to register as a voter?

Interestingly, even in the case of ordinary registration proceedings, there is no foolproof way of preventing a person from registering more than once. Juan dela Rama can walk up to Precinct No. 1 of Arteche town on registration day and succeed in registering his name in the list of voters. Subsequently, he can go to the town of Hinabangan and again register just as easily. The law indeed makes double registration an election offense,⁹⁴ provides penalties therefor,⁹⁵ offers as

⁸⁸Sec. 5.

⁸⁹CE Form No. 1.

⁹⁰Exec. Order No. 50 (1986), sec. 6.

⁹¹Exec. Order No. 50 (1986), sec. 7.

⁹²Batas Pambansa Blg. 881 (1985), sec. 137.

⁹³Exec. Order No. 50 (1986), sec. 17.

⁹⁴Batas Pambansa Blg. 881 (1985), sec. 261(y), pars. (2) and (5).

⁹⁵Section 264 of the Code, in part, reads: "Any person found guilty of any election offense under this Code shall be punished with imprisonment of not less than

remedies the process of challenge⁹⁶ and the judicial cure of exclusion,⁹⁷ and empowers the Commission to annul a permanent list of voters whose preparation has been affected with fraud, bribery, forgery, impersonation or any other similar irregularity.⁹⁸ But there is nothing, save perhaps physical exhaustion which will prevent a determined lawbreaker from registering in as many precincts as he desires during the registration period. In an absentee registration system, therefore, the same abuse may be committed, perhaps with even more impunity.

In the United States, absentee registration is made possible with the use of a Federal Post Card Application (FPCA).⁹⁹ The FPCA is a postage-free postcard printed and distributed by the Federal government for use by absentee voters covered by the Federal Voting Assistance Act of 1955 (FVAA)¹⁰⁰ and the Overseas Citizens Voting Rights Act of 1975 (OCVRA).¹⁰¹ The FVAA requires the design of a single form of postcard application to serve all states.¹⁰² The extent and manner of its use, however, is controlled by state law. In many states,¹⁰³ the receipt of an FPCA from members of the military and their dependents exempts a voter from registration and is immediately sent a ballot. In other

one year but not more than six years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage...."

⁹⁶Batas Pambansa Blg. 881 (1985), sec. 136.

⁹⁷Batas Pambansa Blg. 881 (1985), secs. 142, 143.

⁹⁸Exec. Order No. 50 (1986), sec. 26. But the power of the Commission on Elections to annul a permanent list of voters cannot be exercised within 30 days before an election. See, e.g., *In Re* Annulment of the Registration in Barangay Tonsuya, Malabon, Metro Manila, COMELEC SPC No. 87-133 (May 10, 1987).

⁹⁹Federal Voting Assistance Act, 42 U.S.C. sec. 1973cc-1 (1955).

¹⁰⁰42 U.S.C. secs. 1973cc, et. seq. (1955). The FVAA applies to members of the United States Armed Forces on active duty, members of the merchant marine, spouses and dependents of both categories, and other citizens temporarily residing outside the United States. Members of the United States Armed Forces or merchant marine and their spouses and dependents may vote as absentees while away from their place of voting residence, wherever stationed, within or without the United States.

¹⁰¹42 U.S.C. secs. 1973dd, et. seq. (1975). The OCVRA applies to U.S. citizens residing outside of the United States and its territories on other than a temporary basis. These citizens must vote in the state in which they last resided immediately prior to departing the United States, even if many years have elapsed and the voter maintains no abode in the state and the intent to return to that state may not be certain.

¹⁰²42 U.S.C. sec. 1973cc.

¹⁰³Arkansas, Illinois, Kansas, Massachusetts, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Washington, Wisconsin, Wyoming, and Puerto Rico. See FEDERAL VOTING ASSISTANCE PROGRAM, VOTING ASSISTANCE GUIDE 20 [hereinafter VOTING ASSISTANCE GUIDE].

states,¹⁰⁴ the receipt of the FPCA is equal to registration and the applicant is immediately sent a ballot. The whole procedure is done by mail.

This procedure cannot be strictly adopted in this jurisdiction for the simple reason that verification and authentication of the application and ballot request will take more time here than it does in the United States, where the election processes have kept pace with modernization. The realities of a Third World culture prevent us from achieving that kind of efficiency or from relying on the mail system.¹⁰⁵ Some features of the Post Card system, however, may be adopted for our purposes. For instance, an application for absentee registration can be treated as an application for an absentee ballot. In addition, the form of the post card application may be followed, *mutatis mutandis*. The periods for compliance and verification would however differ. The following discussion is proposed for consideration.

b. Absentee Voters within the Territory

A form called "Absentee Registration and Ballot Request, [hereinafter called "Request"],"¹⁰⁶ shall be made available by the Commission on Elections in all cities and municipalities to persons who wish to register in another area or to cast an absentee ballot. The form shall be accomplished in duplicate. Essentially, it shall contain the personal circumstances of the applicant showing his eligibility as an elector. This will include his name, voting residence, date of birth, and other personal data. It will also indicate that the applicant requests that he be allowed to register as an absentee and, should the request be given due course, that he be allowed to vote as an absentee. The entries shall be sworn to by the head of office or commanding officer in the case of government employee or such other superior as may be designated by law or implementing regulation, according to the type of absentee registrant. Both the original and the duplicate copy must bear the photographs of the applicant. Below the label "Absentee Registration and Ballot Request" shall appear the proper warning that any

¹⁰⁴Alabama, Alaska, Arizona, Colorado, Connecticut, Georgia, Hawaii, Idaho, Indiana, Kentucky, Maine, Michigan, Montana, Nebraska, New York, North Carolina, South Dakota, Virginia, District of Columbia, and Guam. *Id.*

¹⁰⁵See, e.g., the Position Papers submitted by political parties and other organizations that appeared before the Commission on Elections during public hearings for draft legislation on absentee voting, February 24 and 25, 1987 (available in the Office of the Commission on Elections, Manila). There was an almost unanimous opinion that our mail system was unreliable for purposes of transmittal of election paraphernalia which needed to be secured.

¹⁰⁶The names of these forms have been designated by this writer. The Congress is, obviously, free to label these forms as it pleases.

falsification or false information given shall result in criminal prosecution. The applicant must also swear or affirm that he is a citizen of the Republic eligible to vote in the area where his vote shall be appreciated, that he has been neither convicted of a felony or other disqualifying offense nor judicially declared mentally incompetent, and that he has no existing valid registration nor is he seeking registration as a voter elsewhere.¹⁰⁷ The Request is filed with the office of the Election Registrar, hereinafter called the Sending Registrar, in the city or municipality where the applicant temporarily resides at least two weeks before a scheduled regular registration. The second copy is immediately mailed to the Election Registrar, hereinafter called the Receiving Registrar, of the city or municipality which has jurisdiction over the precinct where the absentee is a resident. This copy shall be posted for seven (7) consecutive days in a safe and conspicuous place outside of the COMELEC office together with a notice that the person whose name and picture appears on the form has applied for absentee registration and ballot with the office of the Sending Registrar, and that any challenge to his eligibility must be made within seven (7) days from posting. The notice shall also indicate the first day of posting. At the end of the posting period, the Receiving Registrar shall accomplish and return to the Sending Registrar the Report on challenges, hereinafter called the Report, earlier transmitted to the former by the latter along with the Request.

Upon receipt of the receiving Registrar's Report, the same shall be attached to the original Request. On the day of the regular Registration, the applicant shall appear before a Special Board of Election Inspectors for Absentee Registrants which shall be constituted for the purpose by the Commission. The Board shall hold office in the Municipal or City Registrar's office, or in such other place as may be designated by the Commission, and shall entertain only those individuals who duly filed the Request. The absentee is then given the regular Voter's Affidavit which shall contain the same information and require the same entries as those enumerated in section 6 of Executive Order No. 50. The Affidavit shall be accomplished in quintuplicate. The original shall be sent by mail to the Receiving Registrar who shall append the affidavit to those of voters registered in the precinct where the absentee registrant's residence is located. The name of the absentee registrant shall then be added to the permanent list of voters upon advise of inclusion by the Election Registrar to the regular Board of Election Inspectors. There may be no need for the Board of Election Inspectors of the precinct to specially convene to make the inclusion. This can be done on Revision Day, when the Board meets to close the list

¹⁰⁷The affirmations are copied from the Federal Post Card Application. See VOTING ASSISTANCE GUIDE, *supra* note 103, at 15.

of voters, which is the second Saturday immediately preceding the day of the regular election or the second day immediately preceding the day of the special election, plebiscite or referendum, whether it be a Sunday or a legal holiday.¹⁰⁸ There will, however, be a need to amend the enabling law to allow the inclusion of the name of the absentee registrant in the list of voters on Revision Day. As it is, inclusion on revision day is made only pursuant to a court order.¹⁰⁹ It is also suggested that the Board be specially convened before Revision Day to make the inclusion; otherwise, there might be no time for a person challenging the eligibility of the registrant to file exclusion proceedings in Court, or for the applicant whose petition has been rejected, to file inclusion proceedings. The periods may also be adjusted such that the applicant's appearance before the Special Board of Election Inspectors is made not simultaneously with the day of regular registration but earlier, for instance seven (7) days before registration day, in order that the inclusion of his name in the permanent list by the regular Board of Election Inspectors in his precinct may be made on the period of regular registration itself. In this case, the periods provided for by law for the filing of petitions for exclusion and inclusion as well as the Board's meeting to close the list of voters need not be changed.

The duplicate of the affidavit shall form part of the provincial central file in the custody of the Provincial Election Supervisor,¹¹⁰ and the triplicate shall be sent to the central office of the Commission to form part of the national central file.¹¹¹ The fourth copy shall be sent in a separate envelope also to the central office to form one master file of all absentee registrants. This file will provide an early advise to the Committee on Printing of the Commission on the number of proposed absentee voters. The last copy is retained by the registrant.

We have thus far considered the situation where the Report on Challenges made by the Receiving Registrar contains no challenge. Where such Report contains a challenge, the Special Board must require the applicant to execute an affidavit negating the ground or grounds relied upon by the person challenging his eligibility. This affidavit is sworn to before the Board and, upon execution, the Board processes and gives due course to the registrant's application. The remedy then of the person whose challenge has been overruled is to file a petition for exclusion under section 17 of Executive Order No. 50. There are accompanying problems, however, if the provisions of section 17, in

¹⁰⁸Batas Pambansa Blg. 881 (1985), sec. 124.

¹⁰⁹*Id.*

¹¹⁰Batas Pambansa Blg. 881 (1985), sec. 113; Exec. Order No. 50 (1986), sec. 12.

¹¹¹Exec. Order No. 50 (1986), sec. 13.

relation to sections 19 and 23 of the same Executive Order, are to be applied because the rules set forth thereunder do not pertain to a situation where there is a multiplicity of Boards processing an application for registration, or to a case where the registrant is an absentee. There are also potential problems of venue and notice. There are several possible solutions to these problems. First, the law may require the Court taking cognizance of the petition to make an initial finding that the petition is *prima facie* meritorious, i.e., that on its face, there is probable cause to believe that the Board of Election Inspectors has committed an error in finding for the eligibility of the registrant. Notice is then sent to the Special Board of Election Inspectors, the regular Board, and the registrant, for the latter not to appear but to file an Answer with documentary evidence in support thereof. The Court then decides the petition on the basis of the pleadings submitted. No hearing should be required, otherwise a member of the Marine forces in Tawi-tawi who is called to appear in the Municipal Trial Court of Lallo, Cagayan for the hearing of the petition for exclusion against him might as well register personally. If a hearing cannot be dispensed with and the registrant is required to appear, the latter has the choice of either making the sacrifice of appearing before the court or risking an exclusion by being in default. The balancing of these interests is better left to Congress. It is, however, submitted that very few of these cases are likely to arise because exclusion proceedings are usually brought when a significant number of individuals whose eligibility to vote in a certain precinct is dubious and their inclusion will prejudice the chances of a certain candidate. The experience under the first absentee voting law showed that there was not even one absentee voter for each of the country's precincts.¹¹² The problems then are expected to be "few and far between".

c. Electors Abroad

The second group of absentees that must be considered refers to those temporarily outside the country. Their types have been identified, their numbers estimated, and eligibility requirements discussed. Like the first group of absentees, and like all other electors, the members of this group must first register as voters before they can even claim an absentee ballot, for they are under the same constitutional and statutory restrictions. There are, however, Filipino citizens abroad the determination of whose eligibility may present some problems. These

¹¹²There were 9,920 absentee voters as against 101,551 precincts during the 1987 congressional elections. See Comelec Election and Barangay Affairs Department, Project of Precincts (available in the Office of the Commission on Elections, Barangay Affairs Department, Manila).

are those classified as "permanent residents,"¹¹³ expatriates, or "TNT's." What test must be applied in considering their eligibility? If the Constitution talks of absentee voting for "qualified electors" - then overseas Filipinos must be tested against the qualifications provided by the Constitution and the law pertaining to (1) citizenship, (2) voting age set at eighteen years old, (3) non-disqualification by law, and (4) residence requirements. If an individual abroad satisfies these four requirements, his classification does not matter, unless it has a meaning inconsistent with any of the four requirements. For example, a permanent resident may be argued, even under the test of *Faypon v. Quirino, supra*, to have abandoned his residence here. On the other hand, it may also be argued that a permanent resident's classification as such is not his own, that the Filipino classified as a permanent resident abroad still has the intention to return to the Philippines, and that his right to participate in the affairs of his country subsists, considering that he is still subject to the laws of the Philippines, like its family laws. This question is better left to the final determination by the Courts. Considering however the liberal interpretation that must be accorded election statutes, as well as the rulings on loss and acquisition of residence, it is submitted that the right to absentee voting will extend to this particular group of Filipinos.

There is no question as to the eligibility of Filipinos abroad who are already registered as voters here. Unless they have become aliens or have renounced their citizenship in the meantime, their registration does not cease to be effective, unless some legal cause exists to bar them from availing of their right to vote. Commonwealth Act No. 63, for instance, suspends the right of suffrage of any Filipino citizen rendering service to, or commissioned in, the armed forces of a foreign country.¹¹⁴

The mechanics of the registration of those who become qualified electors while outside the country, as well as those whose registration prior to 1986 were annulled pursuant to law,¹¹⁵ now require contemplation.

The Federal Post Card System in the United States discussed above is also used to register absentees outside the United States. The same problems expected from the adoption of the said system in the case of absentees within the Philippines may likewise be attendant when the system is used for the registration of electors abroad. Can we then

¹¹³These include Filipinos in the United States known as "green-card" holders.

¹¹⁴Com. Act No. 63 (1936). sec. 1, par. 4(b).

¹¹⁵Executive Order No. 50 annulled the existing permanent list of voters and required a new general registration of qualified voters in 1987, in preparation for the plebiscite on the new Constitution.

follow the same procedures earlier outlined for absentees within the Philippines? As a basic proposition, it is submitted that it is the most feasible procedure, and the proper changes may be made to take into account the situation peculiar to this second category of electors.

Thus, the same Request form shall be made available to all overseas Filipinos who are qualified electors. Instead of obtaining these forms from the Registrar's office, however, a Filipino citizen abroad may request for these forms either personally or through the mail from the proper Philippine embassies and consulates. A relative in the Philippines of the absentee abroad is, of course, free to mail such an application to the absentee. The form will also be accomplished in duplicate; the original will be retained by the embassy or consulate, while the other copy will be sent to the Election Registrar of the municipality or city in the Philippines where the applicant is a resident. The head of office of the person applying, or in the proper cases, the Consul-General, Charge d'Affaires or Foreign Officer so designated, shall certify to the unavoidable absence of the applicant.

This procedure will serve a two-fold purpose: first, it will enable a Filipino to register and vote abroad; and second, it will enable a Filipino to register himself in the precinct at home without having to appear personally before the Board of Election Inspectors on the day of registration. In case he does not later apply for an absentee ballot, or he finds himself at his permanent residence on election day, he may be allowed to cast his vote in his precinct. It is also important to note that the application must be received at home in time for publication, challenge and entry in the list of voters during the regular registration day, or at the latest, on Revision day.

For the processing of these applications, the Commission on Elections must constitute in each of the consulates and embassies, a Special Board of Election Inspectors before whom all applicants for registration must appear to fill up personally a Voter's Affidavit, which shall again require substantially the same information enumerated by law. The fact that the appearance is made before a Special Board and that such appearance is conducted in an embassy or consulate may also be indicated in the affidavit. The affidavit shall be in sextuplicate and the distribution shall be as follows: the original is sent to the Election Registrar of the place where the registrant is a permanent resident, the duplicate forms part of the provincial file, the triplicate forms part of the national central file, the quadruplicate is incorporated in a master book of absentee registrants/voters, the fifth copy is retained in the embassy or consulate where the application is processed, and the last copy is given to the registrant. This registration shall be as effective as if the elector registered in the place of his

permanent residence on registration day. Thus, when the elector returns to the Philippines, he need not register anew as his name has already been entered in the permanent list of voters in his precinct.

The process of verification and opportunity for challenge shall be substantially the same as that proposed for absentee voters who are within the territory of the state. The Request shall be accomplished in duplicate and the second copy, together with the Report, is sent to the Registrar at home where the request shall be posted for the same number of days and the Report thereafter returned to the requesting embassy or consulate. The periods for compliance must be adjusted, however, to take into account the distance between the Receiving Registrar and the sending consulate or embassy. It is also to be noted that while all election mail enjoys franking privileges,¹¹⁶ the same does not extend to the international mailing system. There are two options: either the Commission defrays the expenses or the Department of Foreign Affairs allows the use of diplomatic pouches. The latter arrangement is recommended, considering the need for security in the transmission of election paraphernalia.

Where a challenge to the eligibility of the absentee abroad is recorded, the Special Board must require the execution of an affidavit from the Registrant on the day he reports to personally fill up the Voter's Affidavit, belying the alleged ground of disqualification. The Board may then give due course to his petition. The remedy of the person making the challenge is to file an action to exclude the registrant. This remedy, however, is even more difficult to avail of in view of the greater distance between the registrant and the challenger. The sending of notices between the parties alone can take weeks between service of transmittals. Furthermore, one has to contend with the period that must be allowed the parties to prepare their respective cases.

It is submitted that in such an instance, the registrant should be required to appoint an attorney-in-fact to represent him in the exclusion or inclusion proceedings in the Philippines. Another alternative is to specially designate the Ambassador or such other officer who has jurisdiction over the registrant to take cognizance of the petition and decide the same, which decision shall not be subject to appeal. The problem with the latter proposition is that exclusion and inclusion proceedings are judicial, and not administrative, in nature and only the courts can adjudicate on the issues presented therein. Ordinarily, an officer in the foreign service will not have the requisite training to do the same. Another alternative is to declare inapplicable the right to

¹¹⁶Batas Pambansa Blg. 881 (1985), sec. 9.

challenge in absentee balloting and absentee registration procedures. It has been held that the omission of the right to challenge in an absentee voting statute does not make the same unconstitutional.¹¹⁷

B. The Voting Process

1. General Considerations

Like the discussion on the registration process in the case of qualified absentee voters, this discussion on the voting procedures for absentee electors will start with a summary of the voting process under existing election laws.

Ordinarily, voting takes place at the polling place designated by law.¹¹⁸ On election day, the voter goes to the polling place corresponding to his precinct.¹¹⁹ During the hours of voting,¹²⁰ and in the order of entrance to the polling place¹²¹ - usually a public elementary or high school - each voter approaches the Chairman of the Board of Election Inspectors and gives his name and address. When the identity of the voter has been established to the satisfaction of the Board, the voter affixes his signature to the List of Voters and the Chairman hands him one ballot correctly folded.¹²² The voter proceeds to a voting booth and fills out his ballot, folds it in the same manner in which it was folded when he received it, and returns it to the Chairman.¹²³ After verification of the serial number of the ballot, the thumbprinting of the voter, and the application of the indelible ink, the Chairman deposits the ballot in the ballot box.¹²⁴

Any voter or watcher has the right to challenge a voter on the ground that the voter is not registered or that he is using the name of another or that he is suffering some legal disqualification. In any of such cases, the Board shall satisfy itself as to the truth of the ground for

¹¹⁷Burke v. State Board of Canvassers, 152 Kan. 826, 107 P. 2d 773, 778 (1940).

¹¹⁸Batas Pambansa Blg. 881, sec. 152.

¹¹⁹A polling place is the building or place where the Board of Election Inspectors conducts its proceedings and where the voters cast their votes. Batas Pambansa Blg. 881 (1985), sec. 152. On the other hand, a precinct is a unit of territory for purposes of voting. Batas Pambansa Blg. 881 (1985), sec. 149. These two terms are obviously not synonymous and should not be used interchangeably.

¹²⁰Batas Pambansa Blg. 881 (1985), sec. 190.

¹²¹Batas Pambansa Blg. 881 (1985), sec. 193.

¹²²Batas Pambansa Blg. 881 (1985), sec. 194.

¹²³Batas Pambansa Blg. 881 (1985), sec. 195.

¹²⁴Batas Pambansa Blg. 881 (1985), secs. 198 (a), (d), and (f).

the challenge by requiring proof of registration, which may consist of evidence other than the Voter's Affidavit.¹²⁵

On the close of voting, or as soon as the voting is finished, the Board counts the votes cast in the polling place.¹²⁶ As the Chairman reads the vote per ballot, the poll clerk¹²⁷ records on the election return each vote as the names voted for each office are read, and the third member records the results on the tally board or sheet.¹²⁸

Upon the accomplishment of the return, each copy thereof shall be sealed in the presence of the watchers and the public, then placed in the proper envelope. The disposition of the copies of the returns varies according to the particular election being conducted - whether it is a presidential, congressional or local election. Under the Electoral Reforms Law¹²⁹ the original copy of the return is transmitted to the Board of Canvassers for use in the canvass. If there is more than one Board of Canvassers, the second copy is delivered to the second Board. The third copy is transmitted to the Commission; the fourth, known as the advance return, is delivered to the city or municipal treasurer for posting; the fifth is deposited in the ballot box's compartment for valid ballots; and the sixth is delivered to the municipal or municipal circuit trial judge.¹³⁰

After the Board of Election Inspectors has disposed of the returns, the envelopes for used ballots, the unused ballots, the tally board or sheet and the minutes of its proceedings are placed in the compartment for valid ballots of the ballot box. The ballot box is then locked. The box and the supplies of the Board are delivered to the City or Municipal Treasurer. Upon their receipt by the said officials, the

¹²⁵Batas Pambansa Blg. 881 (1985), sec. 199; *see also* sec. 200 for other grounds for challenge.

¹²⁶Batas Pambansa Blg. 881 (1985), sec. 206.

¹²⁷The Board of Election Inspectors is composed of a Chairman, one poll clerk and a third member, who shall all be public school teachers. Batas Pambansa Blg. 881 (1985), sec. 164.

¹²⁸An election return (CE Form No. 9) is a form on which the results of the voting in a particular precinct are written. It is made in sextuplicate and is the basis for canvass. A tally board (CE Form No. 10) is a form on which the results are tallied or recorded for public viewing. Unlike the return, however, the tally board's utility starts and ends at the polling place. It is placed in the ballot box after the counting by the Board while the return is transmitted to a Board of Canvassers.

¹²⁹Rep. Act No. 6646 (1988).

¹³⁰Rep. Act No. 6646 (1988), sec. 19.

Board becomes *functus officio*. Canvass¹³¹ and proclamation by the Board of Canvassers follow.

2. Proxy Voting As An Alternative

A proposed mechanism to allow the absent elector to vote and for his ballot to be included in the counting and canvass must consider the following: (1) the application for the issuance of an absentee ballot; (2) the classification of absentee electors; (3) the kinds of election in which absentee voting is allowed; (4) the transmittal, receipt, and return of the ballot duly filed; (5) security; and (6) the appreciation of the vote.

Voting by qualified absentee voters has received varied treatment in different jurisdictions. In the United Kingdom, for instance, British residents abroad are entitled to vote in general parliamentary elections and elections for the European Assembly, but not in local government polls. They are required to register every year if they continue to be absent from their domicile. An overseas British elector who intends to vote files a duly completed form called "Registration as an Overseas Elector" with a consular officer in the country of present residence, presenting evidence of his British citizenship and absentee status. The consular official attests to the genuineness of the application and the veracity of the proposed voter's affirmation. If the elector is not voting overseas for the first time, the attestation is not required. The "Registration" form is mailed or delivered to an electoral registration officer in the place of permanent residence of the elector and upon determination by the latter of the eligibility and status of the applicant, the voter is informed that he has been included in the "Register of Electors." A second form is also sent to the voter so that he may make a declaration to be included in the Register the following year.

Postal ballot papers cannot be sent to addresses outside the United Kingdom. The elector must then ask to be allowed to vote by proxy. If the elector made an overseas elector's declaration in the past year, the previous appointment of a proxy remains valid and a new appointment will be necessary only if the elector wishes to appoint a different person.

The proxy must also be a British citizen, other Commonwealth citizen or a citizen of the Irish Republic, of voting age and not under a

¹³¹Canvass is the process whereby a Board of Canvassers opens the election return from each precinct, examines the return for defects, rules on objections to the return's inclusion or exclusion, adds the votes obtained by the candidates as it appears in the return, and summarizes the figures reported by the returns.

legal disqualification to exercise his own right to vote.¹³² An "Application to Vote by Proxy" is attached to the "Registration" form.

The method used in the United Kingdom is as efficient as the post system in the United States in that it implements, without much bureaucratic difficulty, the rights of overseas electors. The proxy system seems to be an even better alternative, as it cuts short the procedure for absentee voting practiced in the United States. Under the British system, the elector abroad asks that he be allowed to vote as an absentee and to appoint a proxy for the purpose. Once the request is granted - and the grant depends mainly on questions of eligibility of the applicant to vote as an absentee - the proxy at home proceeds to vote for the absent elector on election day. At the precinct, the only duty of the inspector is to ascertain the genuineness and due execution of the appointment and to determine whether the elector appointing the proxy appears in the list of registered electors. This procedure makes unnecessary the oaths on envelopes as required under Arizona's absentee voting statute¹³³ or the special enrolment requirements for applications filed by mail under New York's absentee voting statute,¹³⁴ as well as obviates the probability of objections regarding compliance with detailed statutes as the Mississippi law.¹³⁵ Similarly, the problems related to transmittal and security under Executive Order No. 157, discussed *infra*, are avoided. The proxy method may also be used by an absentee who is within the country of his residence, but expects to be unavoidably absent from his precinct on election day. Under this scheme, only one election form need be printed by the government for distribution - the Registration form which includes on its other pages the forms for the application to vote by proxy, the appointment of a proxy, and the attestation by the officer certifying to the elector's absence. Neither envelopes nor specialized election returns need to be printed.

The proxy procedure may be adopted in the Philippines in the following manner:

First, an absentee elector applies for registration as a voter in order to vote as an absentee under the procedure discussed above. Once his application for registration is approved, he fills up in duplicate application forms to vote by proxy, which are sent to his proxy in the city or municipality where he permanently resides. The application must be sworn to before the Registrar of the place where he temporarily

¹³²Excerpt from Representation of the People Acts, appearing in sample "Application to vote by proxy" form provided by the British Council, Manila, 1988.

¹³³6 ARIZ. REV. STAT. ANN. sec. 802 (1975).

¹³⁴13 N.Y. [Elec.] LAW, sec. 8-400, et. seq. (Consol.).

¹³⁵1920 Miss. Laws Ch. 155; 1922 Miss. Laws Ch. 256, secs. 8116-8129.

resides or, in the case of an elector abroad, before a consular officer. The proxy, upon receipt, signs his conforme and requests his Election Registrar to subscribe his conformity. The latter keeps the duplicate of the form, approves the same upon verification in the local list of voters and accordingly informs the proxy and the absentee of the action taken on the application which is noted on the form. The form must then be secured under the seal of the Registrar, to be opened only on election day by the Board of Election Inspectors before voting begins. The right to challenge the eligibility of the absent elector or the validity or genuineness and due execution of the appointment is preserved.

While one may not foresee the same veritable monkey wrench in a balloting by proxy procedure which would otherwise be present in balloting by post, some valid observations should be considered. There is, for instance, the observation that the voting by proxy will become an exception to the "one man, one vote" principle - the proxy votes twice, the first time for his principal, and the second, for himself.

Questions on the preservation of the secrecy of the ballot may also be raised. The absent elector will have to communicate his choices to his proxy, trusting that the proxy will write these down on his substitute ballot without revealing the same to a third person. His choice is, by necessity, known to a second person. In addition, a proxy procedure will encourage vote-buying at even greater proportions, if not prices.¹³⁶

Usually, when the candidate, ward leader or agent goes out to buy an elector's vote, the latter receives money or other valuable consideration in exchange for his promise to vote for whoever the buyer names as candidate. It is still the seller-electror who enters the polling place on election day and casts his vote, the physical act of voting and casting a ballot being non-transferable under the present electoral procedures. Unless the buyer has devised a way for the elector to bring out his ballot, the former has to concede "good faith" to the elector and trust that the name of the candidate given by the buyer has in fact been written down.¹³⁷ It is difficult to ascertain whether the seller actually complied with the agreement. An element of privacy, perhaps a false sense of secrecy, is preserved.

A proxy procedure will eliminate whatever uncertainties the buyer has. The moment the absent elector sells his vote, there is no way for him to accept value and not vote for the agreed candidate, because it is no longer he who will get a ballot, write the vote and cast the same. It

¹³⁶This is another election offense under Batas Pambansa Blg. 881, sec. 261 (a).

¹³⁷Various means have been devised to "perfect" this practice.

will either be the buyer himself or an agent of the buyer or anyone whose name appears on the proxy form who will perform these acts. It is altogether probable that a particular camp in an election will obtain proxies on a large scale, thus ensuring that the absentee votes are for that camp. The whole process would be prostituted such that it would defeat the purpose for which the absentee balloting procedure is designed and created.

This danger may be obviated by the requirements of oaths and attestations, as well as a restricted power of appointment of a proxy, e.g., a requirement that only certain relatives of the elector may become proxies. But then again, how is the elector to know that his choice has been followed?

Beyond these important issues that need to be addressed in a proxy balloting procedure for absentees, the adaptability of the same and its disadvantages, already discussed *infra*, must be considered. Apart from the fact that it constitutes a radical departure from the kind of balloting¹³⁸ that our people are used to, the proxy system is in fact a viable alternative to the American post procedure.

2. Other Proposed Alternatives

The balloting system for absentees in the United States differs among the various states, but all of the states have some form of an absentee voting system. Generally, eligibility of the voters boils down to unavoidable absence requirements, although in five states,¹³⁹ no excuse to avail of an absentee ballot is required. Other eligibility requirements, procedures for application and other problems have already been discussed.¹⁴⁰

Federal laws¹⁴¹ require all the states to adopt absentee voting procedures for presidential and congressional elections only. The individual states, however, have passed laws allowing qualified electors to register and vote as absentees in state and local elections as well. Apart from the specified classes of absentee voters identified in federal and state laws, *supra*, two general situational classifications based on the location of the voter determine the procedure for each of the classes.

¹³⁸The Philippine voting system is patterned after the Australian ballot system.

¹³⁹California, Texas, Oregon, Alaska and Washington.

¹⁴⁰See discussion relating to the use of the FPCA.

¹⁴¹The FVAA and the OCVRA.

The mechanism followed will be discussed under each classification.

The members of the first group are those electors who apply to vote as absentees while still within the jurisdiction of the city or municipality where they reside because they expect to be unavoidably absent on election day on account of business, study or occupation. This classification will include all prospective absentees, e.g., military and civilian officers and employees of the government, students, as well as businessmen. Necessarily, registered voters under this classification will need to inform their respective Election Registrars that they will be unable to appear in their precincts on election day, fill up the official form provided by the Commission and swear to the same. This procedure should not be confused with absentee registration, as the voter in this case has already been registered and only expects to be in another place on election day, although at the time of application he is still within the borders of his own city or municipality. The procedure for application and verification may be simplified because of the presence of the voter in his place of residence at the time of application. First, the application is filed with the local Registrar who determines whether the application should be given due course. This determination or the exercise of discretion by the Registrar is limited to making a finding of unavoidable absence. Subsequently, the fact of registration as a voter in the precinct, as indicated in his application, shall be ascertained. This should not be a tedious procedure because the Registrar may only require the presentation of the Voter's Affidavit of the applicant or verify the claim of registration in the book of voters in his custody.¹⁴² The Registrar shall then prepare a list of advance absentee voters by precinct, certifying that the names appearing thereon are qualified absentee electors.

Two alternatives are open for the members of this first group. First, a special day for balloting may be designated, which should be reasonably ahead of the election day, when the voters so certified can receive their ballots and cast the same.

This method of advance voting was the scheme introduced by Executive Order No. 157, which allowed qualified government officials and employees who were away from their places of registration on election day because of official duties to vote. Under the said law, the applicants were given absentee ballots which were filled up and cast by

¹⁴²Exec. Order No. 50 (1986), sec. 11.

them a full week before the election for senators and congressmen¹⁴³ scheduled for May 11, 1988.¹⁴⁴

Under this first option, the Commission shall appoint, on the recommendation of the Election Registrar, as many Special Boards of Election Inspectors as may be necessary, who shall then conduct the balloting. The venue for casting votes should as much as possible be confined in one area, preferably the municipal or city hall, or the courthouse, subject to adjustments as may be necessary according to the needs of certain types of voters.

The order and conduct of voting, the right to challenge a voter, the right to appoint watchers, and all other statutory grants shall be respected as if the procedure is being undertaken on election day. Each voter shall be identified and given his ballot as well as an envelope marked "Absentee Ballot." He shall sign in the list of voters and affix his thumbmark thereon, and the Board shall make the appropriate notation that the voter had already cast his ballot. This is to ensure that the voter would be unable to vote again on election day. The voter shall fill up the ballot, detach the stub on which the serial number of the ballot appears, enclose the ballot in the envelope, and seal it with an official paper seal. The members of the Special Board of Election Inspectors shall sign the envelope in such a way that each of their signatures would appear on both the envelope and the seal. No other mark shall be placed on the envelope, which shall then be dropped into the compartment for valid ballots. There is no need for a separate ballot box; the same ballot box which will be used on the regular election day may be utilized. After the balloting is concluded, the Board shall lock the box with three padlocks and a self-locking metal seal which shall bear a serial number. The keys to the three padlocks shall then be placed in three envelopes, sealed and signed by the members of the Board of Election Inspectors. The box, as well as the envelopes containing the keys, shall be transmitted to and received by the Municipal or City Treasurer. The latter shall be the custodian of the ballot box until the time that it is again delivered to the Board just before election day.¹⁴⁵ The last step is here suggested because the Municipal or City Treasurer is the officer mandated by law to receive official election paraphernalia intended for election day, such as official ballots and election returns. It is projected that at the time of advance balloting, election paraphernalia for a certain municipality shall not have yet been apportioned or received by the Treasurer. During the distribution of these materials to the different Boards on

¹⁴³Exec. Order No. 157 (1987), sec. 8.

¹⁴⁴CONST. art. XVIII, sec. 1; Exec. Order No. 134 (1987).

¹⁴⁵Batas Pambansa Blg. 881 (1985), sec. 186.

election day, the Treasurer shall return to the Board the keys to the box. The Board shall then open the same to accommodate the paraphernalia. At this time, it shall note on the minutes of voting¹⁴⁶ (in which entries pertaining to the conduct of polling on absentee voting day appear) the condition of the box and the absentee envelope containing the ballot. At the end of voting hours on election day, the Board, before proceeding to count the regular ballots, shall retrieve the absentee envelope, note whether its integrity has been preserved, and open the same. In addition to the rights granted them by law,¹⁴⁷ the accredited watchers shall be entitled to examine the envelope as well as the seal, and their observations, if any, shall be recorded in the minutes. Any objection to the inclusion of the absentee ballot in the count shall be ruled upon by a majority vote of the Board as in the case of all other questions that may arise in the performance of its duties.¹⁴⁸ The votes shall then be read and recorded in the election returns like regular ballots except that the returns may provide a special column for absentee ballots. After all the envelopes shall have been opened, the Board shall commence to read from the ordinary ballots.

The second option is more complicated and fraught with the dangers of bureaucratic delays, intentional or otherwise. It would require absentee electors to get their absentee ballots from the Election Registrar after their applications have been given due course and to mail them or cause their delivery to the Election Registrar within a reasonable period before election day so that they may be forwarded to the Board of Election Inspectors of his precinct on election day. The absentee envelope thus received may be tendered to the Board of the precinct where such vote will be appreciated and counted on election day at the time the members of the Board obtain the box and election paraphernalia from the Municipal or City Treasurer. The same shall immediately be recorded in the minutes as having been duly received. The appearance of the envelope shall be noted by the Board. Upon the close of voting, the envelope shall be opened and counted in the manner previously described.

The second procedure necessitates the use of two security envelopes: an inner and an outer envelope. The ballot is enclosed in the inner envelope, which shall contain no mark except the words "Inner Envelope" and an indication that it contains an absentee ballot, as well as other instructions to the voter. The voter then encloses the inner envelope in the outer envelope, seals it with an official paper seal, and affixes his signature on the seal. The outer envelope is printed with the

¹⁴⁶Batas Pambansa Blg. 881 (1985), sec. 203; CE Form 11.

¹⁴⁷Batas Pambansa Blg. 881 (1985), sec. 179.

¹⁴⁸Batas Pambansa Blg. 881 (1985), sec. 174.

words "Outer Envelope for Absentee Ballot" and, on the space intended for the name of the addressee, the words "TO: The Election Registrar," with appropriate spaces where the voter indicates the address of the Election Registrar. As sender, the voter writes his name, address, and voter's affidavit number in the space provided therefor.

The indication on the outer envelope of the name of the voter is essential as this will determine questions on eligibility. Upon receipt of the envelope, the Board examines the list of voters to determine if the name of the sender is in the list. If so, a notation on the list to the effect that that particular voter may not be expected in the precinct that day, the latter having cast an absentee ballot, shall be made. If, in fact, an individual claiming to be that voter asks to be allowed to vote, the Board shall determine whether the person before them is the registered voter by requiring him to present proof of his identity and to take an oath swearing to the same. If the Board is satisfied, it shall then allow him to vote and destroy the absentee ballot, indicating the same in the minutes of voting.

The procedure described contemplates a situation where the person appearing repudiates the absentee ballot cast. What does the Board do when the person appearing admits having cast the absentee ballot, but, being in his precinct that day, decides to personally cast his ballot, as when, for instance, he wants to change his vote? There seems to be no cogent justification for the Board to deny the request, provided that the Board ascertains that the person appearing before them is the same person who cast the absentee ballot. Verification may be done by comparing the signature appearing on the seal of the envelope, the signature on the voter's affidavit, and the signature of the person present. If the Board is satisfied, it shall give the person appearing another ballot. By analogy, the absentee ballot should be considered spoiled and the absentee envelope disposed of as a spoiled ballot.¹⁴⁹

As stated above, there are valid arguments against the use of the mails in the transmittal of absentee ballots. The Position Paper of the Confederation of Filipino Overseas Organizations (COFOO) presents a well-known fear in the use of the mails:

The important point about US absentee voting is that it is done by mail: the overseas American applies to the state for registration, the state sends the ballot to him and he returns the ballot to the state, all by mail.

¹⁴⁹See Batas Pambansa Blg. 881 (1985), sec. 197.

If such a method were used by overseas Filipinos, just imagine the cost of mailing registration forms, ballots, etc. to 1 million overseas Filipinos. Also realize the well known 'efficiency' of our dearly beloved Philippine postal service. The scenario is too horrible to contemplate: forms getting lost or ending up in the wrong hands or not getting delivered, ballots getting lost, etc. The point being made is that we should avoid a system that will rely on postal service.¹⁵⁰

The Position Paper of the Armed Forces of the Philippines, submitted to the Commission on Elections on March 3, 1987, initially suggests the use of the mails, but proposes the use of "special couriers" to obviate the problems of delay.¹⁵¹

The National Movement for Free Elections (NAMFREL), on the other hand, expressed reservations on absentee voting during the Commission's public hearing held on February 24, 1987 "because of the unreliability of the postal service."¹⁵²

The universal indictment of our Bureau of Posts, however, does not rule out the use of the mails in absentee voting. There are indeed difficulties in the use of the mail and its use may result in the nullification of absentee ballots transmitted through it, which ballots might have been otherwise valid for all purposes when received at the point of origin. One can expect objections to the inclusion of an absentee envelope in the counting of ballots where the envelope has been marked "Received Torn" or "Received Damaged" or "Received with Flap Open" by postal employees. That a large percentage of mails from abroad bears these markings may even be subject to judicial notice. Because of the extensive network of the postal service in this country, however, the Bureau of Posts does seem to be an indispensable partner in an absentee balloting scheme. The following procedures are therefore suggested: first, the Commission on Elections, during the election period, should make the Bureau of Posts its deputy;¹⁵³ second, it must set up a task force to design a procedure with special security measures for mails containing absentee ballots and whereby they are given priority in receipt and delivery; and third, the use of the mails in absentee voting should be made on an experimental basis and on a limited scale, with a view to expanding the operation as it progresses.

¹⁵⁰COFOO Position Paper, *supra* note 10, at 2 (emphasis supplied).

¹⁵¹See Soriano, AFP Position Paper on Absentee Voting (1987) (available in the Office of the Commission on Elections, Manila).

¹⁵²See Atienza, NAMFREL Position Paper on Absentee Voting (1987) (available in the Office of the Commission on Elections, Manila).

¹⁵³CONST. art. IX-C, sec. 2 (4).

The second group of absentee voters are those who are absent from their domiciles and cannot be present therein even shortly before election day, but are within the Philippines.

The application procedure for the members of this group may substantially follow the Federal Post Card Application scheme already discussed under absentee registration, *infra*. The application is filed with the Election Registrar of the place where they are situated, but approval of the request must be made either by the Board of Election Inspectors or by a special committee composed of the Election Registrar and two residents of the city or municipality where the applicant proposes to vote. It may be necessary for the political parties in the area to agree on these two members. Action on the request shall be communicated to the applicant. If it is given due course, the communication to that effect shall include a ballot and two security envelopes for mailing purposes. The ballot must be mailed within a reasonable period such that it will be received by the Board of Election Inspectors at the time the Board receives the ballot box and election paraphernalia from the Municipal or City Treasurer on election day. The envelope shall be subject to the closest scrutiny by the Board of Election Inspectors and shall be compared with the information appearing on the request and the voter's affidavit. The adoption of security measures similar to those in absentee registration through the mail becomes even more essential here.

The last group counts as its members Filipino electors who are abroad. If an elector is in the country before election day but expects to be abroad on that day, he can avail of the procedure outlined for members of the first group, i.e., advance voting. If he has been abroad for such time that he cannot avail of this procedure here, then a system similar to that suggested for absentee registration in embassies and consulates is likewise proposed. The elector initially applies for an absentee ballot, which application must be attested to by the consular or embassy officer designated by law. The deadline for compliance with application requirements would vary according to *locus*. On such deadline, the embassy or consular officer certifies a list of absentee voters, indicating the precise precincts where they are registered, and for each applicant, a request is sent to the Commission in Manila, which procures approval of the application from the place where the voter is registered. The application forms should be retained by the embassy or consulate receiving them for use on the day designated for balloting which must be reasonably ahead of the election day in the Philippines.

Approval of the applications shall be communicated by the Commission in Manila to the requesting foreign office, at the same time sending the corresponding number of absentee ballots and double security

envelopes. The requesting foreign office shall in turn transmit these forms to the elector. Two options for balloting are available here. The law may require the elector to personally appear at the consulate or embassy on the designated day and there cast his vote, or the mails may again be used. The decision will be made by authorized officials in the particular foreign office. It is, however, urged that in countries like West Germany or the United States, there is no need for the elector to personally cast his ballot at the consulate or embassy. Where it is necessary that the elector cast his ballot personally, the Commission shall appoint particular officers to conduct the balloting in places where there are qualified electors, designating the consulate or embassy as a polling place. At the close of the voting, or after the lapse of the period for mailing and receiving ballots, the envelopes received shall be gathered and the ballots separated and counted. If the enabling law allows the elector to vote in local elections, it shall be necessary for the election inspectors operating in that country to summarize the results per municipality. The results shall be in the form of an election return which shall be signed and sealed in the hand of the Ambassador or embassy or consular officer in charge of the procedure. The return shall be sealed such that the integrity of the report is preserved. The result shall then be transmitted by diplomatic pouch to the Commission in Manila which shall request the Department of Foreign Affairs to authenticate the seal. The Commission then transmits the return to the local Registrar for inclusion in the counting by the Board of Election Inspectors at the precinct level.

The procedure so far outlined seems simple except that it might be unmindful of the problems experienced by the embassies and consulates of the Republic abroad. Will it in fact be effective in the implementation of this delicate task? Secondly, the counting of the ballots in embassies and consulates in advance of election day in the Philippines may create more problems than it seeks to solve. There is no way of preventing the result from being transmitted to the city or municipality by telephone, and in cases where an election is hotly contested, the lead obtained in the foreign country by one candidate will encourage the other to spend more on election day.

In any of these three scenarios, the problems will be greatly curtailed if the exercise of absentee voting rights will be limited to positions voted for by the national electorate, like the President, Vice President and Senators. In such a case, the absentee ballot need not be returned to the precinct where the elector is a registered voter. Its results can be forwarded directly to the board canvassing the results of the election.

III. Conclusions and Recommendations

No democracy can long endure if the electorate is corrupted and enticed to depart from the constitutional pattern on election day The most abject traitor to democratic institutions is the one who buys or intimidates the electorate for personal gain and next to him is the voter who habitually goes into the open market and pawns his vote to anyone who will purchase it. They are the termites and screw worms of democracy It is a strange paradox that they parade as human beings and are protected by the law against homicide. Such enemies of the cotton crop, the tobacco crop or the citrus crop would be relentlessly chased and destroyed. If democracy is as precious as we profess it to be, why not pursue its enemies as relentlessly as we do the boll weevil, the tobacco bug, the Mediterranean fruit fly or the bean beetle?¹⁵⁴

The success of any governmental measure depends largely on the bona fide compliance of the people whom the measure seeks to benefit. It counts on the sincerity and determination of these very people. Sadly, however, we can rely neither on good faith nor on candor, much less on the angelic behavior of our fellowmen, in achieving the goals that we have set for ourselves. The absentee voting law, as well as its implementing rules and regulations, must be carefully promulgated. It must leave little room for discretion. All conceivable situations and problems must be addressed. The men and women tasked with its implementation must be sufficiently trained in all levels of the endeavor to ensure the efficiency and integrity of the process.

Like many other tasks that the state, albeit aimlessly at times, sets out for the nation, the implementation of the absentee voting provision of the Constitution is a step for the advancement of the people. This paper is an attempt to help in the taking of that step. It has tried to survey the areas of further study and consultation.

The incorporation of the absentee voting provision in the 1987 Charter is not a novel idea. People have talked about it before, but only recently did policymakers gather enough courage to adopt the scheme in positive terms.

Because, as shown in the foregoing discussion, the procedure on absentee balloting, no matter how legally airtight, is susceptible of mischief and other unpatriotic misdeeds, it would not be prudent for the Congress and the Commission on Elections to rush headlong into opening the gates to accommodate all types of absentees, or allow such voters to vote in all types of elections, or use all types of mechanisms in the

¹⁵⁴*Chief Justice Terrel in State ex rel. Whitley v. Rinehart*, 192 So. 819, 822 (1940).

application for, transmittal, and receipt of election paraphernalia. The program needs a cautious, step-by-step approach.

Executive Order No. 157, which provides for absentee voting by government officials and employees, was one such step. It limited the exercise of absentee voting rights to government officials - the greatest beneficiary of which was the military sector - who were unavoidably absent from their precincts because of election day duties. It also limited the exercise to senatorial elections, thus obviating the need for intricate procedures whereby each and every ballot would be returned to each and every voter's precinct. It was admitted then that the time factor hindered the formulation of such procedure. The results of that exercise were satisfactory. Areas where breaches of secrecy and sanctity of the ballot occurred were identified. While the program did not reach as many people as it had hoped to, and while it entailed horrendous costs, it was still a symbolic affirmation of the belief that the disenfranchisement of the citizen for causes he could not avoid -- business, occupation, health or religion -- was a matter of serious concern that had to be addressed. The second absentee voting measure should get much from the first.

Specifically, the absentee voting measure should provide for or mandate the following:

(1) An Absentee Voting Information Program where the education of the general public about the statute is made a priority. Rules pertaining to the operation of the statute must be widely disseminated in all areas. For this, the Commission on Elections need only tap its national organization which, during lean periods when no elections are scheduled, should be directed to use the media for this effort. Literature must be made available to all sectors, especially those expected to avail of the statute. The Commission would do well to produce an assistance guide for the purpose.

(2) All agencies of the government concerned with the well-being of prospective absentee voters should be included in this information program. Their support should be solicited and they should cooperate readily.

(3) The military and foreign offices should be specifically tapped to coordinate with the Commission in each step of the process.

Because the right of suffrage is a most treasured right of the citizen, the problems that result from the implementation of the measure must be approached with a view to giving effect to the voter's intention.