# A CONSTITUTIONAL HIATUS AFTER THE MAY 1992 ELECTIONS: MUCH ADO ABOUT NOTHING*

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Interest has been generated concerning what has been described as an impending national crisis after the elections on May 11, 1992, because of an alleged "constitutional hiatus."

It is feared that in the event of either a delay or non-proclamation of the new President due to electoral protests filed by defeated "presidentiables", a vacuum in the political leadership after June 30, 1992 might exist.

In a situation as volatile and unstable as that, one has posited: What then would prevent a pretender to the crown from usurping the highest office of the land? Worse, would this not be an opportunity for overly ambitious and opportunistic military elements to again stage a *coup d'etat* ?

This is where the danger *ostensibly* lies.

A solution has been proposed by Rep. Raul Roco which would supposedly remedy the situation by the simple expedience of allowing the incumbent President to extend her tenure in office, in a *hold-over* capacity, until such time that her duly-elected successor would have qualified and assumed office.

Indeed, if it were true, the above-described scenario is truly a matter worth contemplating. Fortunately, however, the Constitution has more than adequately laid down the requisite safeguards to prevent such an eventuality and the imagined apprehensions would then fail to materialize.

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*This paper was written in response to a privilege speech made by Rep. Jose Cojuangco in the House of Representatives.

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The Constitution provides that the "six-year term of the incumbent President and Vice-President elected in the February 7, 1986 election is ... hereby *extended* to noon of June 30, 1992",[1] while that of "Senators, Members of the House of Representatives, and the local officials *first elected* under this Constitution shall serve until noon of June 30, 1992".[2] "First elections" is defined as the one "held on the second Monday of May, 1987."[3]

Accordingly, the tenure of all incumbent officials in this administration expires by the end of the month of June, 1992, while that of the new administration simultaneously begins thereon.

The term of office of the President begins "at noon on the thirtieth day of June next following the day of the election"[4] and "the *first regular elections* for the President and Vice-President ... shall be held on the second Monday of May, 1992."[5]

Under Article VI, Section 4, first paragraph, the "term of office of Senators shall be six years and shall commence, unless otherwise provided by law, at noon on the thirtieth day of June next following their election". Furthermore, "members of the House of Representatives shall be elected for a term of three years which shall begin, unless otherwise provided by law," also on that day.[6] Section 8 prescribes the "regular elections" for both Houses of Congress to be "on the second Monday of May" unless otherwise provided.

Now then, is there really a danger that the President-elect may not assume office by June 30, 1992 should he or she not be proclaimed by Congress? Is there really a *constitutional gap* or *hiatus*?

The supposed basis for this proposition is Article VII, Section 4, fifth paragraph, which states that:

> The person having the highest number of votes shall be *proclaimed* elected, but in case two or more shall have an equal

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[1]CONST., art. XVIII, sec. 5

[2]CONST., art. XVIII, sec. 2 *(emphasis supplied).*

[3]CONST., art. XVIII, sec. 1.

[4]CONST., art. VII, sec. 4.

[5]CONST., art. XVIII, sec. 5, par. 2 *(emphasis supplied).*

[6]CONST., art. XVIII, sec. 7.

> highest number of votes, one of them shall fortwith be *chosen* by the vote of majority of all the members of both Houses of Congress, voting separately. *(Emphasis supplied).*

The excuse given is that the new Congress may not have convened or may not have selected their respective Senate President and House Speaker, and therefore, will not be in a position to proclaim the duly-elected President.

Had the premises been correct, the apprehensions may be valid; however, it is erroneous to presuppose and assume that it is the new Congress which proclaims, when the Constitution is sufficiently clear that it is not.

The single most important provision on this matter is Article VII, Section 4. The fourth paragraph thereunder directs that:

> The returns of every election for President and Vice-President, ... shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, *not later than thirty days after the day of the election*, open all the certificates in the presence of the Senate and the House of Representatives in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, *canvass the votes. (Emphasis supplied).*

The reference as to what body shall canvass the election returns was obviously directed to the outgoing Congress because when the provision enjoined the Senate President to open the election certificates not later than thirty days after the election or by June 11, 1992, *only the old Congress existed.*

Implicitly, it must be deduced that after canvassing, proclamation follows because one without the other is next to ludicrous. Needless to say, both acts must be done by the same body tasked to accomplish the same. If so, the proclamation must be accomplished within twenty (20) days after the eleventh of June but before the month's end or at anytime before June 30, 1992 at the latest because thereafter, the terms of office of the members of Congress would have expired.

Failure then to accomplish this final act by the old Congress may constitute a serious breach, if not a grave dereliction of their

duties. But even on the assumption that for one reason or the other, Congress fails to proclaim, will there be no Chief Executive after the month of June ?

No, far from it.

Again, the first paragraph of Section 4 is instructive when it states that "the President shall be elected by *direct vote of the people* for a term of six years ..." *(Emphasis supplied).*

It will be noted that it is only with reference to the President and the Vice-President that the qualifying phrase "direct vote of the people" is used; insofar as Senators[7] are concerned or even Members of the House of Representatives,[8] no such qualification is made even though they too, like the Chief Executive, are elected on a national level.

The insertion thereof was not without purpose nor was it merely incidental. It signifies that while Congress may proclaim, the matter of electing the President and Vice-President partakes of a compact between them and the sovereign people. It is therefore not the act of proclamation which validates but rather the very vote of the electorate. Congressional proclamation is really but a formality, as it is a ministerial duty.

Another provision in the Charter, peculiar only to the President and the Vice-President, is found in Article VII, Section 7, first paragraph:

> The President-elect and the Vice-President-elect shall assume office at the beginning of their terms.

The tenor is *specific* as it is *mandatory*. It plainly reiterates that the duly elected President of the Republic, who garnered the highest number of votes in the preceding electoral contest must, by June 30, 1992, assume the mantle of the Office of the President and officially discharge his functions and duties. There are no exceptions, no qualifiers, and no other prerequisites.

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[7]CONST., art. VI, sec. 4.
[8]CONST., art. VI, sec. 7.

Again, there is no equivalent provision with regard to the Senators or Members of the House of Representatives.

This is in addition to the general provisions relative to the assumption, beginning, and/or commencement of the various terms of office uniformly set on the "thirtieth day of June following their election" for all national and local officials. In fact, with reference to Congressional officials, their own assumption is subject to the condition that it is not "otherwise provided by law"; a qualitative phrase conspicuously absent insofar as the Chief Executive and the Vice-President are concerned.

Further thereto, the final paragraph of Section 4 mandates that:

> The Supreme Court, sitting *en banc*, shall be the *sole judge* of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose. *(Emphasis supplied).*

Requiring the President-elect to secure Congressional approval before assuming office would, in effect, add another layer of qualification that could not have been intended nor desired. Worse, it would give Congress, a co-equal branch of the government, the power to frustrate the sovereign will of the people by merely delaying or not issuing the required proclamation. This will not only undermine the Presidency, but likewise constrict the inherent, vested, and exclusive prerogative of the High Court. It is axiomatic that where the power is reposed to the exclusion of others, the same must be strictly construed as having removed, assuming one was there in the first place, any such grant of power to another in consonance with the principle of *inclusio unius est exclusio alterius.*

When the Constitution grants unto the Supreme Court the sole authority to pass upon the qualifications of the President and Vice-President, it does so because in the finite wisdom of those who drafted the same, they knew Congress, being a partisan political body, can never be truly impartial.

This is especially true where the members of Congress and the Chief Executive do not have the same political affiliation. The possibility that they might abuse such power for partisan recrimination

or vendetta is ever present and looming; the Highest Tribunal, at least ideally, is expected to be fair and impartial.

There is but one instance whereby Congress has a pre-emptive right of "choosing" the President-elect, as adequately explained in the latter part of the fifth paragraph, Section 4, Article VII.

When two or more persons aspiring for the Presidency, receive "an equal and highest number of votes" cast in the elections, Congress, by a vote of a majority of all the Members of both Houses, voting separately, shall "choose" who among them shall assume as President-elect, and thereby "qualify" said person to that esteemed post.[9] In all other instances, the Vice-President assumes the position, in an acting capacity, until the matter is finally resolved.[10]

This is understandable because in the former instance, it is not at all clear who among two or more aspirants won; hence, Congressional action may be required to break the deadlock. In all other instances, a clear winner has emerged though the same may have been questioned or subjected to electoral protests. Such suits should not militate against his or her assumption into office at the prescribed moment, in accordance with the Constitution.

What if the Vice-President cannot, for one reason or another, assume office?

Again, the Charter is explicit. The provisions governing the orderly succession to the Office of the President will then have to apply, that is, the Senate President and then the Speaker of the House, in that order, must assume office.[11] In either case, they do so "subject to the same restrictions of powers and disqualifications as the Acting President."[12]

What is not clear, however, is when the Speaker, for one cause or another, fails to assume the mantle of the Presidency. What happens in such case? It is only in this instance where both Houses of Congress may enact a statute and provide for a contingency by allowing

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[9]CONST., art. VII, sec. 4, par. 5.
[10]CONST., art. VII, sec. 7.
[11]CONST., art. VII, sec. 4, pars. 4 & 5.
[12]CONST., art. VII, sec. 8, par. 2.

the temporary ascencion of another until such time that a new President may have qualified or when applicable, presidential elections shall have been conducted.[13]

Though this situation is extremely remote, there is no harm in legislating even for such a contingency. Any such law, however, must so provide only in case of vacancy of the Office of the President and only after failure of the Vice-President, the Senate President and the Speaker of the House to assume office. It cannot amend nor modify the present successional set-up without first amending the Constitution.

Penultimately, something needs to be said about the proposed "hold-over" by the incumbent Chief Executive after June 30, 1992. While the principle of "hold-over", under ordinary circumstances, is normal, the same is inapplicable with regard to the incumbent President. The Charter already contains specific periods when her term of office begins and expires. Moreover, in the case of the incumbent President, her term of office had already been extended once before through a specific constitutional provision.[14] How can another extension again lengthen what was already an extension, without first requiring an amendment to the Constitution?

While it may be noted that the incumbent President no longer desires to continue in office in whatever capacity when her term expires by June 30, 1992, it must also be reiterated that the option to choose her successor is not a residual power reposed either in the outgoing Chief Executive or in Congress.

With all of the aforementioned premises having been taken into consideration, it becomes evident that the perceived "hiatus" or gap in our constitutional processes is really but an imagined problem, a non-issue. There is really too much ado over nothing. The requisite safeguards have already been adequately incorporated in our Constitution, if and when, the anomaly of a non-proclamation, as portended, should occur.

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[13]Const., art. VII, sec. 7, par. 6.
[14]CONST., art. XVIII, sec. 5.