

BEYOND THE CONSTITUTIONAL MANDATE: LEGAL ISSUES AND POLICY CONSIDERATIONS OF ANTI-POLITICAL DYNASTY LEGISLATION*

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ABSTRACT

The anti-political dynasty bills which have been filed and are pending in Congress seek to give life and effectuate the constitutional mandate against the establishment of political dynasties. This Article analyzes those bills. Reviewing the constitutional issues and policy concerns involved in their passing, this article concludes that the anti-political dynasty legislation based on them may be a futile attempt to remedy the problem of dynastic politics. In fact, they may even aggravate the situation.

[T]he roots of political dynasties, to the extent that these are repugnant in a democratic society, are in the society itself [...] whereby those who were advantaged by the accident of birth and have been born to a considerable possessions and property can acquire an unfair advantage over others.

—Commissioner Blas Ople¹

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¹ IV RECORD CONST. COMM'N 763 (Sept. 18, 1986) (“[T]he roots of political dynasties, to the extent that these are repugnant in a democratic society, are in the society itself [...] whereby those who were advantaged by the accident of birth and have been born to a considerable possessions and property can acquire an unfair advantage over others. But I think, ultimately, the solution should be to reform these iniquitous social and political structures, but we should minimize invasions into the domains of privacy of people; that is

I. INTRODUCTION

Philippine politics has long been considered a family affair. The concentration and monopolization of power in the hands of the few have made public office an almost exclusive domain of political clans. Dynastic politics, “a phenomenon that concentrates political power and public resources within the control of few families whose members alternately hold elective offices,”² has long pervaded the nation’s political system. The continued control by some notable political clans has led to the characterization of Philippine government as democratic *only* in form, but not in substance. Although political dynasties exist in other countries, “the participation of political dynasties in the Philippine scene is among the largest and most enduring in the world.”³

A recent study⁴ on the 15th Congress, for example, provides an overview of the political landscape of the House of Representatives. Representatives from political dynasties accounted for 70% of the jurisdiction-based legislators in Congress. Dynastic legislators also dominated the major political parties. While these dynastic officials were incumbent in regions with lower average incomes, members of these political dynasties tended to be wealthier than non-dynastic legislators. Officials coming from political dynasties also won elections by much larger margins.⁵

These political dynasties exist not only in Congress. They also extend to the lowliest elective positions of local government units. These political dynasties have established themselves in power through “horizontal and vertical expansion,” which is accomplished by having their kin elected not only in other provinces or cities but also in both local and national elective positions.⁶ In fact, as one Center for People Empowerment in

the freedom of choice of electorate. The right to be voted upon is inherent in the right of suffrage.”)

² Navarro v. Ermita, G.R. No. 180050, 648 SCRA 400, 470, Apr. 12, 2011 (Carpio, J., *dissenting*).

³ JC Punongbayan, *How politicians skirt anti-dynasty laws*, RAPPLER (July 23, 2013), at www.rappler.com/move-ph/ispeak/34547-politicians-skirt-anti-dynasty-laws.

⁴ Ronald U. Mendoza, Edsel L. Beja, Jr., Victor Soriano Venida & David Barua Yap II, *An Empirical Analysis of Political Dynasties in the 15th Philippine Congress* (Jan. 1, 2012), at <http://dx.doi.org/10.2139/ssrn.1969605>.

⁵ *Id.*

⁶ Center for People Empowerment in Governance, *Election 2013: Horizontal and Vertical Expansion of Political Dynasties*, Policy Study, Publication and Advocacy, Center for People Empowerment in Governance Issue Analysis Paper No. 8 (Oct. 3, 2012), available at

Governance report⁷ reveals, in the recent 2013 elections, “several nationally-known political dynasties fielded more of their members running for different national (Senate and House) and local positions (from governor, to mayor, vice-mayor, and councilors) in several towns. These dynasties had from 8 to as many as 20 members running.”⁸

The supremacy and influence held by political families extend “across space [and] time.”⁹ While nearly half of the country’s current political dynasties were established during the post-Marcos era when most elective positions were filled up by appointees of then-President Corazon C. Aquino,¹⁰ political dynasties had already been in existence for centuries.

During the Spanish colonial period, economic and political power was already restricted to a small group of *mestizo* elites known as the *principalia*. The Spanish colonial government never established a strong centralized state. Instead, power was dispersed to various elite families in the provinces that own and possess vast properties, thus consolidating their influence to gain public office.¹¹ The power of these political families was further strengthened during the establishment of American rule. Political dynasties expanded with the introduction of electoral politics in the early 20th century. As one author puts it, “[i]t was above all the political innovations of the Americans that created a solid, visible ‘national oligarchy.’”¹²

<http://www.cenpeg.org/2012/ia&c/PDF/CenPEG-Analysis-No-8-Political-Clans-in-2013-Oct-3-2012.pdf>

⁷ Center for People Empowerment in Governance, *Political clans are more entrenched after mid-term polls*, Policy Study, Publication and Advocacy, Center for People Empowerment in Governance Issue Analysis Paper No. 2 (May 28, 2013), at 1, available at http://www.cenpeg.org/2013/ia&c/PDF/CenPEG_Analysis_Political_clans_entrenched_after_elections_May_28_2013.pdf.

⁸ *Id.*

⁹ Punongbayan, *supra* note 3.

¹⁰ Stephen Cabigao, *It runs in the Family: The Making of Political Dynasties in the Philippines*, UP FORUM (Apr. 30, 2013), available at <http://www.up.edu.ph/it-runs-in-the-family-the-making-of-political-dynasties-in-the-philippines>.

¹¹ See Pablo Querubin, *Family and Politics: Dynastic Persistence in the Philippines*, Massachusetts Institute of Technology, September 2010 (“An important source of power in many societies is the *family*. [...] [N]ot only can families exercise their power outside formal institutions of government, but they can also take over these institutions and capture the political system.”).

¹² Benedict Anderson, *Cacique Democracy and the Philippines: Origins and Dreams*, 192 NEW LEFT REV. 11 (1988), quoted in Paul Hutchcroft & Joel Rocamora, *Strong demands and weak institutions: The origins and evolution of the democratic deficit in the Philippines*, 3 J. EAST ASIAN STUD. 259, 263 (2003), available at http://www.eai.or.kr/data/bbs/eng_jeas/200907021021520.pdf.

In the same vein,

Because suffrage was limited initially to propertied and educated Filipinos, political office was monopolized by landowning cacique families in the provinces. These families used their government posts to further enrich themselves and entrench themselves in power. The descendants of many of these families remain in Congress up to this day.¹³

Another study on familial membership in public offices from 1907 to 2004 found that Congress is home to 160 families that have continuously served each chamber with two or more family members. In the 1946 Congress, for example, out of the 98 congressmen elected, 61 came from families with members in elective positions from 1907 to 1941.¹⁴ Two-thirds of the legislators in the post-Marcos Congress are members of political families, of which 70% are second- and third-generation politicians. Nearly all of them also had multiple relatives in public office.¹⁵ Indeed, it goes without saying that since time immemorial, the Philippine political system has been under the control and influence of elite families.

II. ANTI-POLITICAL DYNASTY BILLS

Acknowledging the “evils”¹⁶ brought about by political dynasties, the framers of the 1987 Constitution deemed it important to include in the Declaration of State Policies and Principles a prohibition against political dynasties. Section 26 of Article II provides that: “The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.”¹⁷

¹³ SHEILA CORONEL, YVONNE CHUA, LUZ RIMBAN & BOOMA CRUZ, *THE RULEMAKERS: HOW THE WEALTHY AND THE WELL-BORN DOMINATE CONGRESS* 48 (2007).

¹⁴ Bobby Tuazon, *Six Centuries of Political Dynasties: Why the Philippines will Forever be Ruled by Political Clans?*, Presentation of the Center for People Empowerment in Governance, available at <http://www.cenpeg.org/2012/gov/dec/CenPEG%20Tuazon%206%20centuries%20of%20dynasties%2012%2010%2012.pdf>.

¹⁵ CORONEL ET AL, *supra* note 13, at 47.

¹⁶ *Socrates v. Comelec*, G.R. No. 154512, 391 SCRA, 457, 510, Nov. 12, 2002 (Puno, J., *concurring*) (“We cannot overstress that it is this continuousness that the ConCom feared would open the gates to the two evils sought to be avoided: the incumbent’s use of his undue advantage to put up a political dynasty and limiting the people’s choice of leaders.”).

¹⁷ CONST. art. II, § 26.

The prohibition was originally intended to be included in the article on local government¹⁸ of the Constitution. First introduced by Commissioner Vicente Foz, it would have required Congress to incorporate a prohibition against political dynasties in the new Local Government Code. But the proposition was defeated during the floor debate.¹⁹ It was, however, reintroduced by Commissioner Jose Nollado during the deliberations on Declaration of Principles and State Policies.²⁰ Commissioner Nollado explained:

I am the author of this provision because I take into consideration the political realities in the Philippines, where we have small political kingdoms in the different parts of the country. I am talking of family dynasties. [...] The others who do not have political advantage in the sense that they have no control of government facilities will be denied the right to run for public office. Younger ones, perhaps more intelligent ones, the poorer ones, can no longer climb the political ladder because of political dynasty. It seems to me that public office becomes inherited. Our government becomes monarchical in character and no longer constitutional.²¹

Winning by one vote, the prohibition against political dynasty was included in the Constitution with its final form expressed in Section 26 of Article II.²² But having been incorporated under the Declaration of Principles and State Policies, the provision is not self-executory.²³ In particular, the drafters of the Constitution left Congress the task of defining what a “political dynasty” is.²⁴

Several bills have already been filed and are pending in Congress, which seek to give force and effect to this constitutional mandate. In fact, for the first time in nearly two decades, an anti-political dynasty bill has “hurdled” the committee level of the House of Representatives.²⁵ On May 6, 2014, House Bill No. 3587²⁶ was finally sponsored before the plenary.²⁷

¹⁸ CONST. art. X.

¹⁹ JOAQUIN BERNAS, THE INTENT OF THE 1986 CONSTITUTION WRITERS 682 (1995).

²⁰ IV RECORD CONST. COMM’N 731 (Sept. 17, 1986).

²¹ *Id.*

²² BERNAS, *supra* note 19, at 152.

²³ JOAQUIN BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, A COMMENTARY 38 (2009).

²⁴ *Id.* at 99.

²⁵ On November 20, 2013, the House committee on suffrage and electoral reforms approved the consolidated bill, House Bill No. 3587, which seeks to prohibit relatives up to the second degree of consanguinity to hold or run for both national and local office in

A. Previous Bills (8th to 15th Congress)

For the past eight Congresses—spanning more than 25 years—at least 37 bills were filed in both the Senate and the House of Representatives.²⁸ Unfortunately, none of them was successfully passed into law.

As early as August 1987, Senator Teofisto Guingona, Jr. initiated the first attempt in enacting an anti-political dynasty law through Senate Bill No. 82.²⁹ It reached, and was approved on, the third reading but failed to materialize into law.

Other measures were submitted in the succeeding Congresses but none reached as far as the third reading. Senator Arturo Tolentino filed Senate Bill No. 1919³⁰ in the 9th Congress. Senator Orlando Mercado's version, Senate Bill No. 599,³¹ was introduced in the 10th Congress. In the subsequent Congress, Senate Bill No. 599³² was refiled *en toto* as Senate Bill No. 83³³ by Senator Juan Flavio. Four bills were filed in the 13th Congress:

successive, simultaneous, or overlapping terms. Angel Casuay, *Anti-political dynasty bill hurdles House committee*, RAPPLER (Nov. 20, 2013), at <http://www.rappler.com/nation/44169-anti-political-dynasty-bill-hurdles-house-committee>.

²⁶ H. No. 3587, 16th Cong.

²⁷ Angel Casuay, *Anti-political dynasty bill reaches House plenary*, RAPPLER (May 6, 2014), available at <http://www.rappler.com/nation/57370-anti-political-dynasty-bill-house-plenary>.

²⁸ The review of bills was conducted through extensive survey of online archives and databases of the Philippine Senate and the House of Representative. Keywords used include “dynasty” and “dynasties.” Search results were independently verified by the authors. Data triangulation was made through desk review of news articles, online blogs, government website entries, and other references. Copies of the bills were secured through online downloading for publicly-searchable materials. For copies not available online, the authors secured hard copies from the legislative archives of both the Senate and the House of Representatives.

²⁹ S. No. 82, 8th Cong.

³⁰ S. No. 1919, 9th Cong.

³¹ S. No. 599, 10th Cong.

³² *Id.*

³³ S. No. 8, 11th Cong. See Norman Bordadora, *Senate passed antipolitical dynasty bill in 1987*, PHIL. DAILY INQUIRER (Nov. 9, 2012), available at <http://newsinfo.inquirer.net/304298/senate-passed-antipolitical-dynasty-bill-in-1987> (“The Senate in the first Congress established after the EDSA Revolt passed an antipolitical dynasty measure drafted shortly after the ratification of the 1987 Constitution that called for such a move [...] Former Vice President Teofisto Guingona Jr., a senator in the 8th Congress and the author of Senate Bill No. 82 in 1987, said that a week after the Senate approved his antidynasty bill, a House leader told him that the chamber would not approve the measure.”).

Senate Bill No. 12,³⁴ refiled by Senator Juan Flavies; Senate Bill No. 412³⁵ of Senator Sergio Osmena III; Senate Bill No. 1317³⁶ of Senator Alfredo Lim, Jr.; and Senate Bill No. 1904³⁷ of Senator Miriam Defensor-Santiago. Senator Panfilo Lacson introduced his own version, Senate Bill no. 1468,³⁸ in the 14th Congress. In the last Congress, Senator Miriam Defensor-Santiago refiled *en toto* Senate Bill No. 1904 as Senate Bill No. 2649.³⁹

In the House of Representatives, the first attempt to pass an anti-political dynasty law was made by Congressman Magdaleno Palacol in the 8th Congress through House Bill No. 1855.⁴⁰ In the 9th Congress, four bills also sought to address the absence of an anti-political dynasty law. Congressman Palacol again submitted two bills: House Bill No. 90⁴¹ and House Bill No. 13867.⁴² Congressman Roger Mercado likewise introduced his own version through House Bill No. 10810.⁴³ The proposed Election Code of 1993⁴⁴ also included a prohibition against political dynasties. In the succeeding Congress, four more bills were introduced: House Bill No. 2692⁴⁵ of Congressman Emigdio Tanjuatco, Jr.; House Bill No. 3584⁴⁶ and House Bill No. 10066,⁴⁷ both of Congressman Alfredo Amor Abueg, Jr.; and House Bill No. 13867.⁴⁸

The 11th and 12th Congresses saw the most number of attempts with five bills submitted for each Congress. For the 11th Congress, the following bills were filed: House Bill No. 385⁴⁹ of Congressman Alfredo Amor Abueg, Jr.; House Bill No. 2839⁵⁰ of Congressman Salvio Fortunio; House Bill No. 8140⁵¹ of Congressman Jose Mari Gonzales; House Bill No. 8272,⁵² and

³⁴ S. No. 12, 13th Cong.

³⁵ S. No. 412, 13th Cong.

³⁶ S. No. 1317, 13th Cong.

³⁷ S. No. 1904, 13th Cong.

³⁸ S. No. 1468, 14th Cong.

³⁹ S. No. 2679, 15th Cong.

⁴⁰ H. No. 1855, 8th Cong.

⁴¹ H. No. 90, 9th Cong.

⁴² H. No. 13867, 9th Cong.

⁴³ H. No. 10810, 9th Cong.

⁴⁴ H. No. 10911, 9th Cong.

⁴⁵ H. No. 2692, 10th Cong.

⁴⁶ H. No. 3584, 10th Cong.

⁴⁷ H. No. 10066, 10th Cong.

⁴⁸ H. No. 13867, 10th Cong.

⁴⁹ H. No. 385, 11th Cong.

⁵⁰ H. No. 2839, 11th Cong.

⁵¹ H. No. 8140, 11th Cong.

⁵² H. No. 8272, 11th Cong.

House Bill No. 10722.⁵³ For the 12th Congress, the following bills were filed: House Bill No. 463,⁵⁴ all of which were filed by Congressman Antonio Eduardo Nachura; House Bill No. 14⁵⁵ of Congressman Henry Lanot; House Bill No. 430⁵⁶ of Congressman Oscar Rodriguez; House Bill No. 1275⁵⁷ of Congressman Roseller Barinaga; and House Bill No.1642⁵⁸ of Congressman Eladio Jala.

Congressman Satur Ocampo authored two versions in the 13th Congress: House Bill No. 335⁵⁹ and House Bill No. 5925.⁶⁰ Another bill, House Bill No. 4407,⁶¹ was introduced by Congressman Arthur Defensor. In the 14th Congress, three measures were filed: House Bill No. 783⁶² of Congressman Arthur Defensor; House Bill No. 2026⁶³ of Congressmen Teodoro Casino, Satur Ocampo, Liza Maza, Luzviminda Ilagan, and Crispin Beltran; and House Bill No. 2493⁶⁴ of Congressmen Satur Ocampo and Teodoro Casino. In the last Congress, two more bills were filed: House Bill No. 3413⁶⁵ of Congressmen Teodoro Casino, Neri Javier Colmenares, Rafael Mariano, Luzviminda Ilagan, Antonio Tinio, Emerenciana De Jesus and Raymond Palatino, and House Bill No. 6660⁶⁶ of Congressman Mary Mitzi Cajayon.

B. Pending Bills (16th Congress)

In the current Congress, there are again numerous attempts to enact an anti-political dynasty law. So far, there have been six versions, with three in each chamber. Senator Miriam Defensor-Santiago submitted two bills: Senate Bill No. 55⁶⁷ and Senate Bill No. 1580.⁶⁸ Another bill, Senate Bill No. 1906,⁶⁹ is unexpectedly sponsored by Senator Joseph Victor “JV” Ejercito, a

⁵³ H. No. 10722, 11th Cong.

⁵⁴ H. No. 463, 12th Cong.

⁵⁵ H. No. 14, 12th Cong.

⁵⁶ H. No. 430, 12th Cong.

⁵⁷ H. No. 1275, 12th Cong.

⁵⁸ H. No. 1642, 12th Cong.

⁵⁹ H. No. 335, 13th Cong.

⁶⁰ H. No. 5925, 13th Cong.

⁶¹ H. No. 4407, 13th Cong.

⁶² H. No. 783, 14th Cong.

⁶³ H. No. 2026, 14th Cong.

⁶⁴ H. No. 2493, 14th Cong.

⁶⁵ H. No. 3413, 15th Cong.

⁶⁶ H. No. 6660, 15th Cong.

⁶⁷ S. No. 55, 16th Cong.

⁶⁸ S. No. 1580, 16th Cong.

⁶⁹ S. No. 1906, 16th Cong.

member of a political family himself.⁷⁰ Said Senate Bill No. 1906 is the counterpart bill of House Bill No. 172⁷¹ filed in the lower chamber by Congressmen Neri Colmenares, Carlos Isagani Zarate, Luzviminda Ilagan, Emmi De Jesus, Antonio Tinio, Fernando Hicap, Terry Ridon, and Edgardo Erice. Two other bills submitted before the House of Representatives were House Bill No. 837⁷² of Congressman Erlinda Santiago and House Bill No. 2911⁷³ of Congressman Oscar Rodriguez. These three House bills⁷⁴ were eventually consolidated into House Bill No. 3587,⁷⁵ which is currently pending before the plenary level.

1. *Senate Bill No. 55*

Rather than defining the term “political dynasty,” which Senator Miriam Defensor-Santiago admits is “very difficult and complicated,”⁷⁶ her bill specifies situations in which political dynasty exists. It contemplates such existence in two instances: first, whenever “a person who is the spouse of an incumbent elective official or a relative within the second civil degree of consanguinity or affinity of an incumbent elective official holds or runs for an elective office simultaneously with the incumbent elective official within the same province or occupies the same office immediately after the term of office of the incumbent elective official,” and second, “where two or more persons who are spouses or are related within the second civil degree of consanguinity or affinity run simultaneously for elective public office within the same province, even if neither is so related to an incumbent elective official.”⁷⁷

A relative of an incumbent official is disqualified from running if the incumbent is also seeking re-election and the office sought by the relative is the same office or any local office within the same province of the incumbent.⁷⁸ If the incumbent is not seeking re-election, the only instance that a relative is disqualified is when he immediately succeeds the *same office* previously held by the incumbent.⁷⁹ It follows that if the position sought by

⁷⁰ His father, former President Joseph “Erap” Ejercito Estrada, is currently the mayor of the City of Manila. His mother, Guia Gomez, is currently the mayor of San Juan City. Senator Jinggoy Ejercito Estrada is his half-brother.

⁷¹ H. No. 172, 16th Cong.

⁷² H. No. 837, 16th Cong.

⁷³ H. No. 2911, 16th Cong.

⁷⁴ H. No. 172, 16th Cong.; H. No. 837, 16th Cong.; H. No. 2911, 16th Cong.

⁷⁵ H. No. 3587, 16th Cong.

⁷⁶ S. No. 1580, 16th Cong., Explanatory Note.

⁷⁷ *Id.* at § 3(a).

⁷⁸ *Id.* at § 4.

⁷⁹ *Id.*

the relative is a national office, which is not the same as that of the incumbent, or a local office not within the same province of the incumbent, then, no disqualification attaches.⁸⁰ A candidate, although not related to any incumbent official, may also be disqualified if a relative or spouse of such candidate is also running for office in the same election. Both candidates are prohibited from simultaneously seeking any local office within the same province.⁸¹

The bill covers both national and local elective officials, excluding *punong barangays* and members of the *sangguniang barangay*. However, the prohibition against a national position only arises in one instance, i.e., when the relative immediately succeeds the same national office previously held by the incumbent.⁸²

2. *Senate Bill No. 1580*

Two months after filing the first bill, Senator Miriam Defensor-Santiago introduced another similar measure. The bill also covers both national and local elective officials. Nevertheless, as a significant improvement from the previous bill which only covered local office, under S. No. 1580, related candidates⁸³ are further prohibited from holding or running for national office.⁸⁴

Generally, the positions that a relative is prohibited from occupying were only limited to local offices except in two instances: first, when the relative immediately succeeds the same national office previously held by the incumbent; and second, where *related candidates* run simultaneously for any national position.

3. *Senate Bill No. 1906*

Recognizing the “pernicious effects” of the extended family system that is prevalent in the political arena, Senator Joseph Victor “JV” Ejercito envisions anti-political dynasty legislation as a “means to give force and effect to the social justice provisions of the Constitution.”⁸⁵ Such a law diffuses the economic and political influence and “opening public office to

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ As used in this paper, “related candidates” refers to candidates who are spouses or are relatives of each other who are running simultaneously in the same election.

⁸⁴ S. No. 1580, 16th Cong., § 4.

⁸⁵ S. No. 1906, 16th Cong., Explanatory Note.

persons who are equally qualified to aspire on even terms with those from politically dominant families.”⁸⁶

Senate Bill No. 1906 defines political dynasty as “[t]he concentration, consolidation or perpetuation of public office and political power by persons related to one another.”⁸⁷ This situation exists “when a person who is the spouse of an incumbent elective official or a relative within the second civil degree of consanguinity or affinity of an incumbent elective official holds or runs for an elective office simultaneously with the incumbent elective official within the same city and/or province or occupies the same office immediately after the term of office of the incumbent elective official”; or “where two or more persons who are spouses or are related within the second civil degree of consanguinity or affinity run simultaneously for elective public office within the same city and/or province, even if neither is so related to an incumbent elective official.”⁸⁸

These definitions are the same instances contemplated in Senator Miriam Defensor-Santiago’s version. In fact, the section on persons covered and prohibited candidates of both bills are almost identically worded.⁸⁹ Senate Bill No. 1906 also excludes *punong barangays* and members of the *sangguniang barangay* from its coverage. In the case of related candidates who are simultaneously running in the same election, they are only disqualified from seeking any local office within the same province.⁹⁰ This is less restrictive than Senate Bill No. 1580, which bars these related candidates from running for both national and local positions.

As distinguished from Senator Santiago’s versions, this bill explicitly exempts incumbent elected officials from the retroactive application of the prohibition.⁹¹ The bill provides that “incumbent elected officials who have political dynasty relationships with one another in the same city and/or province [are] allowed to run in all subsequent elections until they reach their term limit as provided by law.”⁹²

⁸⁶ *Id.*

⁸⁷ *Id.* at § 3.

⁸⁸ *Id.*

⁸⁹ Compare S. No. 1906, 16th Cong., § 5, with S. No. 55, 16th Cong., § 4.

⁹⁰ S. No. 1906, 16th Cong., § 5.

⁹¹ *Id.* at § 4.

⁹² *Id.*

4. House Bill No. 3587

For the first time in 27 years, an anti-political dynasty bill successfully went past the committee level deliberations in the House of Representatives.⁹³ House Bill No. 3587⁹⁴ which is the consolidated version of the three⁹⁵ earlier bills filed in the current 16th Congress was finally approved by the Committee on Suffrage and Electoral Reforms. It is currently pending before the plenary.⁹⁶

Under this bill, “a political dynasty exists when two or more individuals who are related within the second degree of consanguinity or affinity hold or run for national or local office in successive, simultaneous or overlapping terms.”⁹⁷ With the exception of *punong barangays* and members of the *sangguniang barangay*, House Bill No. 3587 covers all national and local officials, extending to spouses, whether legal or common-law, and relatives within the second degree of consanguinity or affinity, whether legitimate or illegitimate, full- or half-blood.⁹⁸

This consolidated version is more restrictive as compared to its counterpart measure in the Senate. It absolutely prohibits the simultaneous holding of offices. If an incumbent official is seeking re-election, no relative may be allowed to run for any local or national office in the same election.⁹⁹ The prohibition extends to all local positions even outside the city or province of the incumbent.

This absolute prohibition also applies to *related candidates*. They are disqualified from running simultaneously for any local or national office.

⁹³ Feliciano Belmonte, Jr., Remarks of Speaker Feliciano Belmonte Jr. on the Opening of the Second Regular Session, 16th Congress (July 28, 2014), at <http://congress.gov.ph/press/details.php?pressid=8040>.

⁹⁴ The authors of this consolidated version are the authors of the three bills: Congressmen Neri Colmenares, Carlos Isagani Zarate, Luzviminda Ilagan, Emmi De Jesus, Antonio Tinio, Fernando Hicap, Terry Ridon, Edgardo Erice, Erlinda Santiago, and Oscar Rodriguez.

⁹⁵ House Bill No. 172 of Congressmen Neri Colmenares, Carlos Isagani Zarate, Luzviminda Ilagan, Emmi De Jesus, Antonio Tinio, Fernando Hicap, Terry Ridon and Edgardo Erice; House Bill No. 837 of Congressman Erlinda Santiago; and House Bill No. 2911 of Congressman Oscar Rodriguez.

⁹⁶ Belmonte, *supra* note 93.

⁹⁷ H. No. 3587, 16th Cong., § 3(a).

⁹⁸ *Id.* at §§ 3(a) & 5.

⁹⁹ *Id.* at § 5.

Only one of them may be allowed to run which shall be chosen through a raffle, unless one is willing to withdraw.¹⁰⁰

C. Survey of Bills

At least 43 bills were filed in both chambers for the last nine Congresses.¹⁰¹ Although they all have the same primary purpose (to give force and effect to the constitutional prohibition against political dynasties) these measures varied in terms of the officials covered, the relatives included in the disqualification, and the positions which these relatives are prohibited from occupying. Some bills even included appointive officials in the prohibition, while others provided for penal sanctions. These variations inevitably determine the attempt of the legislators to define the extent of the prohibition against political dynasties.

1. Covered Officials

A survey of these bills reveals that some intended to cover officials from both the national and local levels while others were only limited to local officials. Senator Alfredo Lim's Senate Bill No. 1317 was only limited to local officials in the barangay, municipality, province, city, representative district, and autonomous region.¹⁰² House Bill No. 783 of Congressman Arthur Defensor had a more restricted coverage. Although his version was also limited to local officials, he exempted barangay officials, city/municipal councilors, and provincial board members from the coverage of the bill.¹⁰³ Senator Arturo Tolentino's version, Senate Bill No. 1919, had an even more limited coverage, i.e., it was only applicable to one official – the President.

On the other hand, Senate Bill No. 12 filed by Senator Juan Flavier covered both national and local officials (from the President down to the mayors) but excluded members of the *sangguniang panlalawigan*, vice mayors, members of the *sangguniang panlungsod or bayan*, *punong barangays* and members of the *sangguniang barangay*.¹⁰⁴

¹⁰⁰ *Id.* at § 5(2).

¹⁰¹ See note 28 for accounting methodology.

¹⁰² S. No. 1317, 13th Cong., § 6.

¹⁰³ H. No. 783, 14th Cong., § 5.

¹⁰⁴ S. No. 12, 13th Cong., § 4.

The four bills¹⁰⁵ pending before the current 16th Congress have a more extensive coverage. Except for Senate Bill No. 1580,¹⁰⁶ they cover all elective officials—from the President down to the local positions—excluding the *punong barangays* and members of the *sangguniang barangay*.

2. Relatives Included

Bills also differed in terms of the extent of the relationship covered by the prohibition on political dynasties. The bills included the spouse and the relatives by consanguinity and affinity in the disqualification. The legislative measures, however, differed in the degree of relationship, i.e., from the second civil degree to the fourth civil degree.

Senate Bill No. 82 of Senator Teofisto Guingona was limited to relatives within the fourth civil degree.¹⁰⁷ Senate Bill No. 1468¹⁰⁸ of Senator Panfilo Lacson, Senate Bill No. 2649¹⁰⁹ of Senator Miriam Defensor-Santiago, and House Bill No. 2493¹¹⁰ of Congressmen Satur Ocampo and Teodoro Casino disqualified relatives within the second civil degree. Under Senator Alfredo Lim's Senate Bill No. 1317, the prohibition extended up to the third civil degree. Senator Juan Flavies's version, Senate Bill No. 12, was broader, covering "[p]erson[s] who are related within the third civil degree of consanguinity or affinity, including their spouses and the spouses of their brother-in-law and sister-in-law (*bilas*)."¹¹¹ The most comprehensive measures extended up to fourth civil degree. An example of this is Senate Bill No. 412¹¹² of Senator Sergio Osmena III.

A substantial development in these bills is the change in the definition of the term "spouse." Unlike their earlier predecessors, recent bills explicitly referred to both legal and common-law relationships. There are also some bills which included half-blood, illegitimate, and adopted relatives.¹¹³ All the four pending bills¹¹⁴ have included the spouse, whether

¹⁰⁵ S. No. 55, 16th Cong.; S. 1580, 16th Cong.; S. No. 1906, 16th Cong.; H. Bill No. 3587, 16th Cong.

¹⁰⁶ For national officials, Senate Bill No. 1580 only covers members of the Senate and the House of Representatives.

¹⁰⁷ S. No. 82, 8th Cong., § 4.

¹⁰⁸ S. No. 1468, 14th Cong., § 5.

¹⁰⁹ S. No. 2649, 15th Cong., § 3.

¹¹⁰ H. No. 2493, 14th Cong., § 3(2).

¹¹¹ S. No. 12, 13th Cong., § 3.

¹¹² S. No. 412, 13th Cong.

¹¹³ S. No. 1468, 14th Cong., § 5; H. No. 2493, 14th Cong., § 3; S. No. 2649, 15th Cong., § 3; H. No. 6660, 15th Cong., § 4.

¹¹⁴ S. No. 55, 16th Cong.; S. No. 1580, 16th Cong.; S. No. 1906, 16th Cong.; H. Bill No. 3587, 16th Cong.

legal or common-law, and relatives within the second degree of consanguinity or affinity, whether legitimate or illegitimate.

3. Prohibited Positions

The bills also differ in the positions that the relatives of the incumbent officials are prohibited from occupying. Although most bills mandated an absolute ban from seeking any public office—both national and local—some bills only barred offices within a particular territorial jurisdiction. For example, the disqualification in Senate Bill No. 1317 of Senator Alfredo Lim was only limited to local elective positions within the same political unit of the incumbent relative.¹¹⁵ This means that the relatives of a municipal official are prohibited from running for office only within said municipality.

Senator Panfilo Lacson's Senate Bill No. 1468 also limited the prohibition to local offices. The disqualification applies even if the incumbent official is already a national officer. Accordingly, it forbade the relatives from running for any office in the same province, city, or municipality where the official is seeking re-election or, in the case of a national officer, in the same province where the latter is a registered voter.¹¹⁶ The same prohibitions are found in Senate Bill No. 1904¹¹⁷ of Senator Miriam Defensor-Santiago and House Bill No. 2493¹¹⁸ of Congressmen Satur Ocampo and Teodoro Casiño.

Senator Juan Flavio Velez's Senate Bill No. 12¹¹⁹ and Senator Sergio Osmena III's Senate Bill No. 412¹²⁰ barred relatives of the President, Vice-President, and Senators from seeking both national and local offices—from the President down to the vice mayor. At the same time, relatives of the Congressman, governor, and mayor are banned from any elective position within the same district, province, city, or municipality. Congressman Mary Mitzi Cajayon's version, House Bill No. 6660, was more comprehensive. It prohibited relatives of the President and the Vice-President from seeking any elective public office. The relatives of the Senators, Congressmen (including party-list representatives), and other local elective officials are disqualified from running in any national position and any local position within the same province where the incumbent official is a registered

¹¹⁵ S. No. 1317, 13th Cong., § 3.

¹¹⁶ S. No. 1468, 14th Cong., § 5

¹¹⁷ S. No. 1904, 13th Cong., § 4

¹¹⁸ H. No. 2493, 14th Cong., § 5

¹¹⁹ S. No. 12, 13th Cong., § 4

¹²⁰ S. No. 412, 13th Cong., § 4

voter.¹²¹ Relatives are also disqualified from seeking these prohibited positions either successively or simultaneously with an incumbent official. Most bills barred both succession to the same office and the simultaneous holding of offices.¹²²

The four pending bills¹²³ similarly prohibit both the simultaneous and the successive holding or running for office. In the case of successive holding, the prohibition is only limited to the office previously held by the incumbent. Of these four bills, only House Bill No. 3587 mandates an absolute ban against simultaneous holding or running for office, *whether national or local*. On the other hand, the three counterpart measures in the Senate only disqualify relatives from running simultaneously with the incumbent *within the same province or city*. Thus, under these Senate bills, members of the same political family are allowed to simultaneously hold national offices or even local offices as long as these offices are in of different localities.¹²⁴

4. Other Variations

Although majority of the proposed bills covered only elective officials, some versions were more comprehensive by including appointive officials. House Bill No. 1855,¹²⁵ House Bill No. 90,¹²⁶ and House Bill No. 13867,¹²⁷ all filed by Congressman Magdaleno Palacol, covered both elective and appointive officials.

There are also bills that provided penal sanctions for violations of the prohibition. Senate Bill No. 412¹²⁸ and Senate Bill No. 1468¹²⁹

¹²¹ H. No. 6660, 15th Cong., § 4

¹²² S. No. 1468, 14th Cong., § 5; H. No. 2493, 14th Cong., § 3; S. No. 2649, 15th Cong., § 3; H. No. 6660, 15th Cong., § 4.

¹²³ S. No. 55, 16th Cong.; S. 1580, 16th Cong.; S. No. 1906, 16th Cong.; H. Bill No. 3587, 16th Cong.

¹²⁴ But under Senate Bill No. 1580 (16th Congress), related candidates are disqualified from holding or running for any local office within the same province or any national office.

¹²⁵ H. No. 1855, 8th Cong.

¹²⁶ H. No. 90, 9th Cong.

¹²⁷ H. No. 13867, 9th Cong.

¹²⁸ S. No. 412, 13th Cong., § 6 (“The Commission on Elections may *motu proprio* or upon verified petition of any aggrieved relative falling within the dynastic relation, may refuse to give due course to or cancel a certificate of candidacy if it is shown that such certificate has been filed to prevent or disqualify such aggrieved relative from becoming a candidate, being elected to or assuming the position of President, Vice-President, Senator, Congressman, Governor, Vice-Governor, City or Municipal Mayor, or City or Municipal Vice-Mayor. Any violation of this provision shall constitute an election offense under the

characterized the violation as an election offense under the *Batas Pambansa Bilang 881* or the *Omnibus Election Code*. Senator Alfredo Lim's version, Senate Bill No. 1317, imposed imprisonment of six years to twelve years and perpetual disqualification from holding any public office to both the disqualified relative and the incumbent official who abet or aided such relative.¹³⁰

Some bills also explicitly exempted incumbent officials from the retroactive application of the prohibition.¹³¹ These officials, who are themselves members of political dynasties, were allowed to run in all subsequent elections until they reach their term limit as provided by law. Except for Senate Bill No. 1906,¹³² the three other pending bills do not exempt incumbent elected officials from the retroactive application of the law.

III. LEGAL ISSUES AND POLICY CONSIDERATIONS

Notwithstanding the constitutional prohibition against political dynasties, the numerous bills filed before Congress have failed to garner enough support to get enacted. Aside from lack of political will and strong political opposition, legal issues and political considerations have also been raised against such legislation.

Batas Pambansa Bldg. [sic] 881, otherwise known as the Omnibus Election Code of the Philippines.")

¹²⁹ S. No. 1468, 14th Cong., § 9 ("The [Commission on Elections] shall, upon the filing of a verified petition by any interested party, deny due course any certificate of candidacy filed in violation of this Act and the votes cast for the disqualified candidate, if any, shall not be counted nor shall such candidate be proclaimed nor be qualified to assume office. Violation of this Act [...] shall also constitute an election offense [...]").

¹³⁰ S. No. 1317, 13th Cong., § 5 ("Any person who shall occupy any local elective position through an election during the incumbency of his relative as defined in Sec. 3 hereof, notwithstanding the prohibition hereof, shall not be entitled to any compensation and shall be liable for criminal prosecution under this Act and who, upon conviction, may be sentenced to an imprisonment of from six years to twelve years and perpetual disqualification from holding any public office; provided that, the incumbent who abets or aids a relative to hold such public position shall be criminally liable and suffer the same disqualification as the aspirant's.>").

¹³¹ S. No. 1468, 14th Cong., § 4; H. No. 2493, 14th Cong., § 4; H. No. 3413, 15th Cong., § 4.

¹³² S. No. 1906, 16th Cong.

A. Legal Issues

1. *Democracy and Republicanism*

As categorically expressed in the Constitution, the Philippines is both a democratic and republican state.¹³³ The “citizenry have thus been given the supreme guaranty of a democratic way of life, with all its freedom and limitations, all its rights and duties.”¹³⁴ As such, political rights are to be enjoyed by every citizen subject only to such restrictions and obligations as may be required by the Constitution and the laws.

These rights are not only guaranteed by domestic laws but are also recognized by international instruments such as the *Universal Declaration of Human Rights*¹³⁵ and the *International Covenant on Civil and Political Rights*,¹³⁶ which further cement the mandatory character of the rule ensuring the free exercise of political rights by every citizen. Among these rights are the right to run for public office and the right to vote.

a. *Right to Run*

The right to seek public office is one of the basic rights guaranteed to citizens of a democratic state. The essence of democracy is the enjoyment of this right “regardless of the social or economic distinctions,”¹³⁷ thus “allow[ing] the widest participation of the citizenry” and “giv[ing] free rein for the pursuit of one’s highest aspirations to public office.”¹³⁸

¹³³ CONST. art. II, § 1

¹³⁴ *Maquera v. Borra*, G.R. No. L-24761, 15 SCRA 7, 10, Sept. 7, 1965 (Bengzon, *J. concurring*).

¹³⁵ *Universal Declaration of Human Rights*, G.A. Res. 217A (III), Dec. 10, 1948, art. 21. (“(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”).

¹³⁶ *International Covenant on Civil and Political Rights*, 16 Dec. 1966, 999 U.N.T.S. 171, art. 25 (“Every citizen shall have the right and the opportunity [...] (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.”) [hereinafter “ICCPR”].

¹³⁷ *Maquera v. Borra*, G.R. No. L-24761, 15 SCRA 7, Sept. 7, 1965 (Bengzon, *J. concurring*).

¹³⁸ *Quinto v. COMELEC*, G.R. No. 189698, 607 SCRA 258, 296, Dec. 1, 2009.

Although the right to seek public office is universal, open, and unrestrained, it is not absolute. It is subject to limitations and qualifications provided by the Constitution and the laws.¹³⁹ There is neither a vested right to hold any public office nor a right on the expectancy of holding one.¹⁴⁰ Public service is not a property right.¹⁴¹ And as the Constitution expressly states: “Public office is a public trust.”¹⁴² It is imbued with public interest.¹⁴³ As early as 1920, the Court already clarified in *Cornejo v. Gabriel*¹⁴⁴ that:

[A] public office is not property within the sense of the constitutional guaranties of due process of law, but is a public trust or agency [...] The basic idea of the government [...] is that of a popular representative government, the officers being mere agents and not rulers of the people, one where no one man or set of men has a proprietary or contractual right to an office, but where every officer accepts office pursuant to the provisions of the law and holds the office as a trust for the people he represents.¹⁴⁵

In the 2010 case of *Quinto v. Comelec*,¹⁴⁶ the Court declared that that the right to run for public office may *not* be considered a fundamental right. It does not stand on the same pedestal as other fundamental rights such as the freedoms of expression and association, which are accorded a prime niche in the hierarchy of rights. It may thus be subjected to certain restrictions such as the prohibition against political dynasty.

¹³⁹ *Id.*

¹⁴⁰ *Montesclaros v. COMELEC*, G.R. No. 152295, 384 SCRA 269, July 9, 2002.

¹⁴¹ *Provincial Gov't of Camarines Norte v. Gonzales*, G.R. No. 185740, 701 SCRA 635, 660, July 23, 2013.

¹⁴² CONST. art. XI, § 1

¹⁴³ *Saura v. Sindico*, G.R. No. L-13403, 107 Phil. 336, 338, Mar. 23, 1960

¹⁴⁴ *Cornejo v. Gabriel*, G.R. No. 16887, 41 Phil. 188, Nov. 17, 1920.

¹⁴⁵ *Id.* at 194. (Citation omitted.)

¹⁴⁶ *Quinto v. COMELEC*, G.R. No. 189698, 613 SCRA 384, Feb. 22, 2010. In the earlier 2009 case of *Quinto v. Commission on Elections* (G.R. No. 189698, 607 SCRA 258, Dec. 1, 2009), the Court initially declared that the right to run for public office may be considered as a fundamental right touching on two fundamental freedoms: the freedom of expression and the freedom of association. The 2009 Resolution was eventually reversed on a motion for reconsideration in 2010, wherein the Court held: “Accordingly, our assailed Decision’s submission that the right to run for public office is “inextricably linked” with two fundamental freedoms – those of expression and association – lies on barren ground. [...] [O]ne’s interest in seeking office, by itself, is not entitled to constitutional protection. Moreover, one cannot bring one’s action under the rubric of freedom of association, absent any allegation that, by running for an elective position, one is advancing the political ideas of a particular set of voters.” *Quinto v. COMELEC*, G.R. No. 189698, 613 SCRA 385, 438-39, Feb. 22, 2011, *reversed by* 613 SCRA 384, Feb. 22, 2010.

The Constitution itself subjects the right to run for public office to certain qualifications such as citizenship, age, and residency. For example, the Constitution requires that the President must be “a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election and a resident of the Philippines for at least ten years immediately preceding such election.”¹⁴⁷ The Local Government Code also prescribes qualifications for elective local government officials. An elective official must be a “citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the *sangguniang panlalawigan*, *sangguniang panlungsod*, or *sangguniang bayan*, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.”¹⁴⁸

Insofar as local government offices are concerned, Congress is empowered to provide such qualifications. It may also enact laws prescribing additional disqualifications, including the power to define and, ultimately, prohibit political dynasties, provided that this does not transgress the Constitution.

Enacting an anti-political dynasty law gives life to the mandate of the Constitution to “give highest priority to the enactment of measures that protect and enhance the right of all the people to reduce political inequalities, and remove cultural inequities by equitably diffusing political power for the common good.”¹⁴⁹ As emphasized in the explanatory note of Senate Bill No. 1906, “[a]s a means to give force and effect to the social justice provisions of the Constitution which provides for the diffusion of economic and political influence, it is necessary that the political arena be levelled by opening public office to persons who are equally qualified to aspire on even terms with those from politically dominant families.”¹⁵⁰

It is clearly within the powers of Congress to enact such law. The extent of such restriction, however, must be consistent with the essence of democracy because “[a] democratic form of government requires that political rights be enjoyed by the citizens regardless of social or economic

¹⁴⁷ CONST. art. VII, § 2.

¹⁴⁸ LOCAL GOV'T CODE, § 39(a).

¹⁴⁹ CONST. art. XIII, § 1.

¹⁵⁰ S. No. 1906, 16th Cong., Explanatory Note.

distinctions.”¹⁵¹ Even the *International Covenant on Civil and Political Rights* mandates that as a state party, the Philippines should ensure that every citizen shall have the right and the opportunity, without distinction of any kind and without unreasonable restrictions.¹⁵²

Of the four pending bills before the current 16th Congress,¹⁵³ notable is the absolute ban contained in House Bill No. 3587.¹⁵⁴ It absolutely prohibits simultaneous holding or running for office, whether national or local. The prohibited positions are not only limited to the particular city or province of the incumbent but extends to all other localities. As such, in no case will there be two officials who are relatives of each other.

Unlike the absolute ban mandated by the lower house version, the prohibition advanced by the three Senate bills¹⁵⁵ is only limited to local governments. Relatives are disqualified from running only within the same province or city of the incumbent. Under the Senate versions, relatives are allowed to simultaneously run or hold national offices or even local offices as long as they run in different localities.

Within the local territory of a city or province, this prohibition appears reasonable. On one hand, it is not unusual for public officers to gain electoral support, by virtue of his position and political base, within a specified locality. On the other hand, outside the confines of his city or province, there may hardly be any political base or electoral support to speak of. Hence, a prohibition extending beyond the local jurisdiction may appear to be too sweeping and amount to an unreasonable restriction on the right to seek public office.

For example, under the absolute ban mandated by House Bill No. 3587,¹⁵⁶ a *sangguniang bayan* councilor of a town in Sulu may not simultaneously hold or run for office with a relative who is also a councilor of a town in Tarlac. It is absurd to expect that the pernicious effects of political dynasties will arise from this situation. There is hardly any chance of concentration, consolidation, or perpetuation of public office and political power between these two councilors. Whatever political power exercised by

¹⁵¹ *Maquera v. Borra*, G.R. No. L-24761, 15 SCRA 7, 10, Sept. 7, 1965 (Bengzon, *J. concurring*).

¹⁵² ICCPR, art. 25.

¹⁵³ S. No. 55, 16th Cong.; S. 1580, 16th Cong.; S. No. 1906, 16th Cong.; H. No. 3587, 16th Cong.

¹⁵⁴ H. No. 3587, 16th Cong.

¹⁵⁵ S. No. 55, 16th Cong.; S. No. 1580, 16th Cong.; S. No. 1906, 16th Cong.

¹⁵⁶ H. No. 3587, 16th Cong.

a local public officer is usually limited only within the territorial jurisdiction of his locality. This case is especially true for municipal positions and for territories that are geographically distant from each other. Local public officers of distant local government units could not be said as monopolizing political power as to prevent equal access and opportunity to public service.

Absolute prohibition against relatives, without taking into account the probability that this will indeed result in concentration, consolidation, or perpetuation of public office, is an unreasonable restriction on the right to seek public office. As the Court had the occasion to say, “[s]pecific evils require specific treatments.”¹⁵⁷ The prohibition, therefore, must be customized to address the pernicious effects of political dynasties without amounting to an overly broad measure that infringes upon the guaranteed rights in a democratic society. There is a need to strike a balance between the right to seek public office and the ban against political dynasties.

b. Right to Vote

The right of suffrage is the foundation of Philippine democracy.¹⁵⁸ It is “so indubitably cherished and accorded primacy, if not utmost reverence, no less than by the fundamental law.”¹⁵⁹ The exercise of such right is perhaps the purest “expression of the sovereign power of the people.”¹⁶⁰

Similar to the right to seek public office, however, the right to vote is not absolute. It is subject to such restrictions as may be provided by the Constitution and the laws. In *Akbayan-Youth v Comelec*,¹⁶¹ the Court explained:

In a representative democracy such as ours, the right of suffrage, although accorded a prime niche in the hierarchy of rights embodied in the fundamental law, ought to be exercised within the proper bounds and framework of the Constitutions and must properly yield to pertinent laws skillfully [sic] enacted by the

¹⁵⁷ *Quinto v. COMELEC*, G.R. No. 189698, 607 SCRA 258, 296, Dec. 1, 2009 (“Specific evils require specific treatments, not through overly broad measures that unduly restrict guaranteed freedoms of the citizenry. After all, sovereignty resides in the people, and all governmental power emanates from them.”).

¹⁵⁸ *Palatino v. COMELEC*, G.R. No. 189868, 608 SCRA 248, 250, Dec. 15, 2009.

¹⁵⁹ *Akbayan-Youth v. COMELEC*, G.R. No. 147066, 355 SCRA 318, 328, Mar. 26, 2001.

¹⁶⁰ *Taule v. Santos*, G.R. No. 90336, Aug. 12, 1991.

¹⁶¹ *Akbayan-Youth v. COMELEC*, G.R. No. 147066, 355 SCRA 318, Mar. 26, 2001.

Legislature, which statutes for all intents and purposes, are crafted to effectively insulate such so cherished right from ravishment and preserve the democratic institutions our people have, for so long, guarded against the spoils of opportunism, debauchery and abuse.¹⁶²

The constitutional provision against political dynasties may be viewed as one such restriction. The prohibition constrains not only the right to run for public office but also indirectly affects the right of the people to vote. The right to run and the right to vote do not lend themselves to a neat distinction. The right to run always has some theoretical, correlative effect on the right to vote.¹⁶³

The resulting exclusion brought about by the disqualification of candidates who are members of political families narrows the choices of the voters, effectively limiting the freedom of choice of the electorate. It impinges on the voter's right to choose. This restriction "rob[s] the electorate of a meaningful say in who does and does not belong in office."¹⁶⁴ In his concurring opinion in *Maquera v Borra*,¹⁶⁵ then Justice Bengzon emphasized the importance of the freedom of choice in relation to the freedom of the people to exercise the elective franchise, to wit:

Freedom of the voters to exercise the elective franchise at a general election implies the right to freely choose from all qualified candidates for public office. The imposition of unwarranted restrictions and hindrances precluding qualified candidates from running is, therefore, violative of the constitutional guaranty of freedom in the exercise of elective franchise. It seriously interferes with the right of the electorate to

¹⁶² *Id.* at 332.

¹⁶³ *Quinto v. COMELEC*, G.R. No. 189698, 607 SCRA 258, 286-87, Dec. 1, 2009, citing *Bullock v. Carter*, 405 U.S. 134, 143 (1972) ("The rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters").

¹⁶⁴ Everett Carl Ladd, *Congress itself must undergo reform*, THE SUNDAY TELEGRAPH (May 13, 1990), quoted in Oliver Cromwell II, *Yes: A Reform Whose Time Has Come*, ANN. REP. OF THE COSMOS CLUB 89-90 (1991), quoted in Pablo Querubin, *Political Reform and Elite Persistence: Term Limits and Political Dynasties in the Philippines* (Oct. 2011) available at http://www.econ.yale.edu/conference/neudc11/papers/paper_242.pdf (the original quotation describes term limits, but the same effect may well be applicable for political dynasties).

¹⁶⁵ *Maquera v. Borra*, G.R. No. L-24761, 15 SCRA 7, Sept. 7, 1965 (Bengzon, J., concurring).

choose freely from among those eligible to office whomever they may desire.¹⁶⁶

Commissioner Christian Monsod had the same view during the deliberations of the Constitutional Commission on the anti-political dynasty provision. He argued that by restricting the candidate choices of the electorate, “we are underestimating our people in their right to choose; we are trying to put a pre-screening mechanism so that the public office is not after all accessible to all because we are going to prohibit or exclude certain people from running for public office.”¹⁶⁷ He further stressed that this is “a policy of exclusion so that the ultimate choice is not left to the people but that there is a pre-screening process so that we tell the people: ‘You can only vote for a certain people we want you to vote for’ seems to be going against the very principle of democratic elections.”¹⁶⁸

There is again the need to strike a balance between the constitutional mandate of prohibiting political dynasties and the right of the people to vote. A sweeping ban may appear to be unreasonable. The unqualified prohibition effectively curtails the freedom of choice of the electorate, unduly restricting a guaranteed right of the citizenry.¹⁶⁹

2. *Equal Protection*

The Constitution guarantees that no person shall be denied the equal protection of the laws.¹⁷⁰ It upholds the right of the citizens against arbitrary discrimination. In *Biraogo v. Philippine Truth Commission*¹⁷¹, the Court explained that:

[E]qual protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. It requires public bodies and institutions to treat similarly situated individuals in a similar manner. The purpose of the equal protection clause is to secure every person within a state’s jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state’s duly constituted authorities. In other words, the concept of equal justice under the law requires the state to govern impartially, and it

¹⁶⁶ *Id.* at 14.

¹⁶⁷ IV RECORD CONST. COMM’N 936 (Sept. 23, 1986).

¹⁶⁸ III RECORD CONST. COMM’N 393 (Aug. 16, 1986).

¹⁶⁹ *Quinto v. COMELEC*, G.R. No. 189698, 607 SCRA 258, Dec. 1, 2009.

¹⁷⁰ CONST. art. III, § 1.

¹⁷¹ *Biraogo v. Phil. Truth Comm’n*, G.R. No. 192935, 637 SCRA 78, Dec. 7, 2010.

may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective.¹⁷²

The equal protection clause is, however, not absolute. It does not require a universal application. It may be subject to reasonable distinction or classification.¹⁷³ Such classification, however, to be reasonable, must pass the four requisites enumerated in the landmark case of *People v Cayat*:¹⁷⁴ “[T]he classification to be reasonable: (1) must rest on substantial distinctions; (2) must be germane to the purposes of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class.”¹⁷⁵

The resulting classification of the anti-political dynasty law must necessarily pass this rational basis test.¹⁷⁶ Those covered by the prohibition must be substantially distinguishable from others who are not disqualified and such distinction must be germane to the purpose of the law. Short of these requirements, such a classification will violate the equal protection clause. It need not be of absolute symmetry. Substantial similarity will suffice as long as all those falling under such classification are treated alike.¹⁷⁷

Noteworthy is the prohibition contained in Senate Bill No. 1580.¹⁷⁸ The bill treats related candidates simultaneously running in the same election differently from a candidate who is a relative of an incumbent official. There is less restriction on the latter. Relatives of incumbent officials are disqualified from running only within the same province or city of the incumbent official, but they are allowed to run or hold national offices even simultaneously with the incumbent. In contrast, related candidates are

¹⁷² *Id.* at 167. (Citations omitted).

¹⁷³ *Pichay v. Office of the Deputy Executive Secretary for Legal Affairs*, G.R. No. 196425, 677 SCRA 408, July 24, 2012.

¹⁷⁴ *People v Cayat*, G.R. No. 45987, 68 Phil. 12, May 5, 1939.

¹⁷⁵ *Id.* at 18 (Citations omitted).

¹⁷⁶ The 2010 *Quinto* decision overturned the 2009 decision which stated that used strict scrutiny as basis of review. *Quinto v. Commission on Elections*, G.R. No. 189698, 606 SCRA 258, 294, Dec. 1, 2009, *rev'd* 613 SCRA 385, Feb. 22, 2010. *But see* *Quinto v. Commission on Elections*, G.R. No. 189698, 613 SCRA 385, 422, Feb. 22, 2010, *citing* *Morial v. Judiciary Commission of the State of Louisiana*, 565 F.2d 295 (1977) (“[I]nsofar as government employees are concerned, the correct standard of review is an interest-balancing is an interest-balancing approach, a means-end scrutiny that examines the closeness of fit between the governmental interests and the prohibitions in question.”).

¹⁷⁷ *Biraogo v. Phil. Truth Comm’n*, G.R. No. 192935, 637 SCRA 78, 168, December 7, 2010.

¹⁷⁸ S. No. 1580, 16th Cong.

disqualified from simultaneously seeking any national or local office even if neither of them is related to any incumbent official.¹⁷⁹ This distinction creates a distinguishable classification between these two groups of candidates.

To illustrate, under the same bill, a candidate who is a relative of an incumbent national official is not disqualified from seeking a national position, even if this results to the simultaneous holding of offices. Applying this rule, Maria Imelda Josefa “Imee” Marcos will not be disqualified from running for a Senator even if his brother, incumbent Senator Ferdinand “Bong-bong” Marcos, Jr., will also seek re-election or run for an even higher national position like the presidency.

In contrast, siblings Pedro and Juan, who are related candidates, are prohibited from simultaneously running for a national office although neither of them is related to any incumbent official. The law makes a substantial distinction between the Marcos siblings and the siblings Pedro and Juan. Furthermore, such classification seems to be arbitrary. No distinction between these two sets of candidates appears relevant to the declared policy of the bill which is to guarantee equal access and opportunity to public office and public service and to prohibit political dynasties.¹⁸⁰

Worse, this classification may even result in greater inequality. Candidates who are relatives of incumbent officials are already enjoying political backing and electoral support from the latter. They are, thus, placed in a more advantageous situation as compared to related candidates who are not associated with any incumbent official. The classification seems to be unwarranted. Although the relatives of incumbent official are placed in a more favorable position than the related candidates, the law imposes a stricter prohibition on the latter.

In prohibiting political dynasties, the Constitution likewise mandates the State to guaranty equal access to opportunities for public service.¹⁸¹ This guaranty applies to all citizens and should not be discriminatory. It is for the benefit of everyone, including even members of political families. As Commissioner Christian Monsod reiterated during the Constitutional Commission’s deliberations, the ultimate objective is “to make sure that an elective office is accessible to all, whether rich or poor.”¹⁸²

¹⁷⁹ *Id.* at § 4.

¹⁸⁰ S. No. 1580, 16th Cong., § 2.

¹⁸¹ CONST. art. II, § 26.

¹⁸² III RECORD CONST. COMM’N 394 (Aug. 16, 1986).

3. *Additional Disqualifications*

The restriction arising from the anti-political dynasty law may be viewed as a form of disqualification. The prohibition imposed by the law disqualifies members of political families from seeking public office. In effect, Congress, in enacting anti-political dynasty law, imposes an additional qualification in the exercise of the right to seek public office.

There is no doubt that Congress is empowered to provide such additional qualifications with respect to local offices.¹⁸³ The Constitution ultimately provides that:

The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.¹⁸⁴

A dilemma, however, arises as to the right of Congress to impose additional qualifications with respect to offices from the President down to members of the House of Representatives. Qualifications for such offices have already been provided by the Constitution. Any law which imposes additional requirements therein may be considered violative of the Constitution.

Justice Isagani Cruz, in his book *Philippine Political Law*,¹⁸⁵ is of the view that “under [the] principle of expression *unius est exclusion alterius*, Congress is not competent to provide by mere legislation additional qualifications no matter how relevant they may be.”¹⁸⁶ The Court also made the same pronouncement with respect to the qualifications of the Senators. In *Social Justice Society v. Dangerous Drugs Board and Philippine Drug Enforcement Agency*,¹⁸⁷ the Court nullified Section 36(g) of Republic Act No. 9165¹⁸⁸ and

¹⁸³ CONST. art. X, § 3.

¹⁸⁴ *Id.*

¹⁸⁵ ISAGANI CRUZ, *PHILIPPINE POLITICAL LAW* 112 (2002).

¹⁸⁶ *Id.*

¹⁸⁷ *Social Justice Society v. Dangerous Drugs Board and Philippine Drug Enforcement Agency*, G.R. No. 157870, 570 SCRA 410, Nov. 3, 2008.

¹⁸⁸ “All candidates for public office whether appointed or elected both in the national or local government shall undergo a mandatory drug test.” R.A. No. 9165, § 36(g).

Commission of Elections Resolution No. 6486¹⁸⁹ which impose, as an additional qualification, that Senatorial candidates be certified as “illegal-drug clean.” The Court held:

In the same vein, the COMELEC cannot, in the guise of enforcing and administering election laws or promulgating rules and regulations to implement Sec. 36(g), validly impose qualifications on candidates for senator in addition to what the Constitution prescribes. If Congress cannot require a candidate for senator to meet such additional qualification, the COMELEC, to be sure, is also without such power. The right of a citizen in the democratic process of election should not be defeated by unwarranted impositions of requirement not otherwise specified in the Constitution.

Sec. 36(g) of RA 9165, as sought to be implemented by the assailed COMELEC resolution, effectively enlarges the qualification requirements enumerated in the Sec. 3, Art. VI of the Constitution. As couched, said Sec. 36(g) unmistakably requires a candidate for senator to be certified illegal-drug clean, obviously as a pre-condition to the validity of a certificate of candidacy for senator or, with like effect, a condition *sine qua non* to be voted upon and, if proper, be proclaimed as senator-elect. The COMELEC resolution completes the chain with the proviso that “[n]o person elected to any public office shall enter upon the duties of his office until he has undergone mandatory drug test.” Viewed, therefore, in its proper context, Sec. 36(g) of RA 9165 and the implementing COMELEC Resolution add another qualification layer to what the 1987 Constitution, at the minimum, requires for membership in the Senate. Whether or not the drug-free bar set up under the challenged provision is to be hurdled before or after election is really of no moment, as getting elected would be of little value if one cannot assume office for non-compliance with the drug-testing requirement.¹⁹⁰

In the American case of *Powell v. McCormack*,¹⁹¹ the United States Supreme Court held that Congress has no power to exclude members who

¹⁸⁹ “All candidates for public office both national and local, in the May 10, 2004 Synchronized National and Local Elections shall undergo mandatory drug test in government forensic laboratories or any drug testing laboratories monitored and accredited by the Department of Health.” Commission on Elections Resolution No. 6486 (Jan. 17, 2004), §1.

¹⁹⁰ *Id.* at 423-24, *citing* Go v. Commission on Elections, G.R. No. 147741, 357 SCRA 739, May 10, 2001 (Bellosillo, J., *concurring*).

¹⁹¹ *Powell v. McCormack*, 395 U.S. 486 (1969).

were duly elected and who possessed all the constitutional requirements.¹⁹² The Court cited the arguments made by James Madison during the 1787 Constitutional Convention which stated:

The qualifications of electors and elected were fundamental articles in a Republican Govt., and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the Constitution. A Republic may be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected as the number authorised to elect. [...] It was a power also which might be made subservient to the views of one faction against another. Qualifications founded on artificial distinctions may be devised by the stronger in order to keep out partisans of [a weaker] faction.¹⁹³

In so far as constitutional offices are concerned, “[t]he Congress cannot validly amend or otherwise modify these qualification standards, as it cannot disregard, evade, or weaken the force of a constitutional mandate, or alter or enlarge the Constitution.”¹⁹⁴

All four pending bills¹⁹⁵ in the current 16th Congress cover both constitutional offices as well as local government positions. As stated, insofar as local offices are concerned, Congress is empowered to provide such a restriction. For national offices, however, the prohibition may be viewed as an enlargement of the qualification standards set forth in the Constitution, which may be *ultra vires* to Congress.

Considering that it may be argued that the prohibition is not necessarily an unwarranted additional qualification because the Constitution itself prohibits political dynasties, the law may still be subject to attack based on the ground discussed above. Ultimately, however, it is for the Supreme Court to settle and decide this issue in light of two seemingly conflicting constitutional prescriptions.

¹⁹² *Id.*

¹⁹³ *Id.* at 533-34.

¹⁹⁴ *Social Justice Society v. Dangerous Drugs Board and Philippine Drug Enforcement Agency*, G.R. No. 157870, 570 SCRA 410, 422, Nov. 3, 2008. (Citation omitted.)

¹⁹⁵ S. No. 55, 16th Cong.; S. No. 1580, 16th Cong.; S. No. 1906, 16th Cong.; H. Bill No. 3587, 16th Cong.

B. Policy Considerations

While the implementation of an anti-political dynasty law is important, the bills before Congress have several deficiencies and shortcomings that can make these proposed solutions futile attempts to curb the dynasty problem.

First and foremost, all of the pending bills in Congress exclude *barangay* officials from the prohibition.¹⁹⁶ The prohibition should, however, cover this office considering the predominance of clan politics in the *barangay* level. The *barangay* is the most basic unit of governance and serves as “the primary planning and implementing unit of government policies, plans, programs, projects, and activities in the community.”¹⁹⁷ The *barangay* has been depicted as:

[A] microcosm of oligarchic politics [...] It serves as an extension of ruling political dynasties and as a base of future traditional politicians. Many candidates for punong barangay (barangay captain) are the children or relatives of the local mayor or councilors. It is also a stepping stone for future municipal and [C]ongressional leaders. Many members of Congress started their political career in the barangay. Candidates for barangay posts – totaling 336,200 – also receive backing from [C]ongressmen and other local politicians who seek to maintain their power base particularly during elections.¹⁹⁸

Barangay elective positions have long become breeding grounds of political dynasties. The *barangay* offices are dominated by influential families who use such positions to further entrench themselves in power. If *barangay* officials are excluded from the coverage of the prohibition, *barangay* positions will continue to serve as political machineries of bigger political clans. *Barangay* elective offices are bound to create and sustain local dynasties by serving either as an appendage or extension by kinship of bigger political dynasties.

Secondly, the extent of the relationship covered by the prohibition is

¹⁹⁶ S. No. 55 16th Cong, § 4, S. No. 1580 16th Cong, § 4, S. No. 1906 16th Cong, § 4, H. No. 3587, 16th Cong, § 4.

¹⁹⁷ LOC. GOV'T CODE, § 384.

¹⁹⁸ Center for People Empowerment in Governance, *Barangay: Grassroots Democracy or Clan Politics?*, Center for People Empowerment in Governance Policy Study, Publication, and Advocacy Issue Analysis Paper No. 12 (Nov. 4, 2010), at p. 1, available at <http://www.cenpeg.org/2010/2ia&c/PDF/CenPEG%20ISSUE%20ANALYSIS%20Nov%202012%20Barangay%20grassroots%20democracy%20Nov%202010.pdf>.

not broad enough. All the pending bills limited the scope to relatives within the second degree of consanguinity or affinity, whether legitimate or illegitimate, full- or half-blood.¹⁹⁹ It is noteworthy to point out that the Constitution itself, when it prohibits nepotism, has extended the scope to cover relatives by consanguinity or affinity within the fourth civil degree of the President.²⁰⁰ The Constitutional provision against nepotism is a recognition that the evils and danger sought to be avoided exist up to the 4th civil degree of relationship.

To limit the extent of the relatives covered to only those of the second degree may not be sufficient considering that Filipino culture has always been characterized by extended family relationships.²⁰¹ Accordingly, the family under the Philippine context is not limited to the immediate members of the family but also extends to other relatives beyond the second degree of relationship such as, among others, uncles, aunts, cousins, nephews, and nieces. Since strong familial ties bind these individuals, incumbent officials are still likely to use their positions to support relatives from the extended family. These relatives can, thus, still take advantage of the political machineries and strong political base of the incumbent relative for their own benefit. Given this scenario, the goal sought to be achieved, which is to level the playing field will be difficult to attain.

Lastly, the pending bills in Senate, namely Senate Bill No. 55,²⁰² Senate Bill No. 1580,²⁰³ and Senate Bill No. 1906,²⁰⁴ allow a candidate to run

¹⁹⁹ S. No. 55, 16th Cong., § 4; S. No. 1580, 16th Cong., § 4; S. No. 1906, 16th Cong., § 5; H. No. 3587, 16th Cong., § 4.

²⁰⁰ “The spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not, during his tenure, be appointed as Members of the Constitutional Commissions, or the Office of the Ombudsman, or as Secretaries, Undersecretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries.” CONST. art. VII, § 13(2).

²⁰¹ Filipino family system is characterized by bilateral kinship, that is, “ancestry is traced though both the mother’s and father’s line. Effective kinship ties are maintained with relatives of both parents. A bilateral system gives a potentially huge number of living kin, especially as five to ten children are not uncommon even today in each nuclear family of each generation.” ALFRED W. MCCOY (ED.), *AN ANARCHY OF FAMILIES: STATE AND FAMILY IN THE PHILIPPINES* 9 (2009).

²⁰² S. No. 55, 16th Cong., § 4 (“In case the constituency of the incumbent elective official is national in character, the above relatives shall be disqualified from running only within the same province where the former is a registered voter.”).

²⁰³ S. No. 1580, 16th Cong., § 5 (“In case the constituency of the incumbent elective official is national in character, the above relatives shall be disqualified from running only within the same province where the former is a registered voter.”).

for any national or local position office even if he or she is related to an incumbent official holding either a local or national office. The only limitation is that the said candidate may not run for the same province or locality where the incumbent official is seated. If the position sought by the relative is a national office, not the same as that of the incumbent official, or a local office not within the same province of the incumbent official, then no disqualification attaches.²⁰⁵

Limiting the prohibition to local positions within the same province or city, without imposing the same restrictions on national positions and local positions outside the province or city, may not effectively address the problem of political dynasties in the Philippines. The hold of dynastic politicians is not only felt in local offices; it is also prominent in national offices. In the Senate alone, there are members of the same political clan or families who hold positions concurrently as Senators. If the goal is to prevent the concentration of power in the hands of the few, then the national elective offices possessing greater power and influence than local officials should likewise be included in the prohibition.

In the same manner, limiting the prohibition to those belonging to the same province might have the unintended consequence of broadening the political base of the oligarchic politicians by forcing them to horizontally expand by seeking positions in other nearby provinces. Although the control and influence may not necessarily extend to provinces remote from each other, there is a possibility that the political power may extend to provinces contiguous or close to the territories governed by the incumbent relative. Instead of confining and constraining the political power and influence, the prohibition might actually strengthen the dynastic structure.

The anti-political dynasty bills pending in Congress are ineffective solutions against political dynasties. Unless the bills absolutely prohibit the members of political dynasty from seeking elective offices, regardless of the position (national or local) or the territories governed, any Act arising from these bills will be unable to solve the problem. In fact, these proposed solutions may not only result in absurdities, but also violate the Constitution.

If the goal is to deter the perpetuation of political dynasties, the solutions should focus on the fundamental causes of the problem. As aptly

²⁰⁴ S. No. 1906, 16th Cong., § 4 (“In case the constituency of the incumbent elective official is national in character, the above relatives shall be disqualified from running only within the same province where the former is a registered voter.”).

²⁰⁵ See discussion in Part III(A)(2).

stated by Professor Pablo Querubin, “political reforms that do not modify the underlying sources of dynastic power may be ineffective in changing the political equilibrium.”²⁰⁶ Moreover, the implementation of an ineffective regulation may have the effect of aggravating the situation in the same manner that other political reforms, such as the three-term limit rule, exacerbated the problem.

For instance, as illustrated in Professor Querubin’s study of the [C]ongressional and gubernatorial race in the Philippines, from 1946 (when the Philippines achieved independence from the United States) until 2007, results show that incumbency advantage increased considerably after 1987 in the presence of term limits. His research revealed that term limits have not effectively altered the dynastic nature of Philippine politics. Quite the contrary, these term limits have worsened the situation by encouraging the incumbents to have their relatives run for public office, as a “survival strategy” when the term limits attach. According to Professor Querubin, “term limits may force term-limited incumbents to run for higher offices while training and bringing additional family members into politics. This can make dynasties more powerful as a family then controls multiple offices simultaneously.”²⁰⁷

The adoption of the “creative strategies”²⁰⁸ by the political dynasties to circumvent the term limit rules have, in fact, preserved, strengthened, and broadened their power and control. There is a possibility that the adoption of anti-political dynasty legislation will exacerbate the elite persistence problem in the same manner that the term limit rule has unintentionally contributed to the growth of dynastic rule in the country. The reason for this problem lies in the fact that:

Term limits do not directly affect the fundamental sources of dynastic political power such as their control over land, access to state resources, employment, and violence in their respective

²⁰⁶ Querubin, *supra* note 164, at 26.

²⁰⁷ *Id.* at 3-4.

²⁰⁸ Political families in the Philippines have resorted to at least three strategies to circumvent the provisions on term limits: 1. “benchwarming” strategy- where politician A is replaced by a relative (politician B) for one term, after which politician A returns and serves for another series of terms, 2. “swapping” strategy- relatives often just swap elective positions among themselves, never really giving up power while observing term limits and 3. “ladderized” strategy- by introducing more family members to politics by having elder relatives take on higher elective positions (and not necessarily swapping positions) to make room for their younger relatives. In the process, this strategy could allow a family to potentially hold several local and national positions simultaneously. See Punongbayan, *supra* note 3.

provinces. This is a more general concern about political reforms. Reforms that do not alter the underlying sources and distribution of political power may not succeed in substantively changing the political equilibrium because incumbents often adapt and remain powerful under the new set of institutions.²⁰⁹

C. Recommendation

The Philippine party system has been characterized as weak. Political coalitions in the Philippines are unstable, volatile, and devoid of any ideological platform. They are “personality-based organizations largely organized around dominant local political clans and warlords; and anchored on clientelistic, parochial, and personal inducements rather than on issues, ideologies, and party platforms.”²¹⁰ Unlike in other countries where political alliances are based on common ideology and principles, the Philippine political parties are made up of candidates based on their perceived winnability without regard to the aspirant’s political stand or advocacies.²¹¹

The weak party system in the Philippines is often pointed out as the justification for the emergence and domination of political dynasties in the Philippines.²¹² It has contributed to the growth of dynastic rule in at least four ways. First, it strengthens the political family as the unit of political organization. In democracies where political parties are weak and unstable, the family assumes the role of political parties and functions as the unit of political organization.²¹³ Family alliances and power is reinforced by the concentration and monopolization of political offices among members of the same clan.

²⁰⁹ Querubin, *supra* note 164, at 26.

²¹⁰ Julio C. Teehankee, *Citizen-Party Linkages in the Philippines: Failure to Connect?*, in REFORMING THE PHILIPPINE POLITICAL PARTY SYSTEM IDEAS AND INITIATIVES, DEBATES AND DYNAMICS 23, 24 (Friedrich Ebert Stiftung 2009), available at <http://library.fes.de/pdf-files/bueros/philippinen/07131.pdf>. (Emphasis omitted).

²¹¹ Center for People Empowerment in Governance, *Coalition Politics- or Coalition of Family Dynasties*, Center for People Empowerment in Governance Policy Study, Publication, and Advocacy Issue Analysis Paper No. 1 (Mar. 8, 2013), available at http://www.cenpeg.org/2013/ia&c/PDF/CenPEG_Analysis_ML_Victims_Coalition_Politics_&_Sabah_March-8-2013.pdf.

²¹² Julies Trajano & Yoes Kenawas, *Political Dynasties in Indonesia and the Philippines*, EAST ASIA FORUM (Feb. 13, 2013), available at <http://www.eastasiaforum.org/2013/02/13/political-dynasties-in-indonesia-and-the-philippines>.

²¹³ See generally Querubin, *supra* note 164 (“Political dynasties, exemplify a particular form of elite persistence in which a single or few family groups monopolize political power.”).

Second, the low degree of party institutionalization contributes to the personalistic mindset of voters.²¹⁴ In countries with low degree of party institutionalization, the linkages between parties and voters are usually less ideological and programmatic.²¹⁵ Individuals do not develop strong attachments to parties because they believe that those parties do not advance their interests.²¹⁶ Instead of voting based on principles, ideologies, and advocacies, voters pay more attention to the personal appeal of the candidate. Name recall plays an important role because without any ideological linkages, name recognition remains the only way by which a voter can identify with a candidate. The incumbency advantage of a dynastic politician is reinforced because popularity serves an important factor in winning elections.

Third, it hampers electoral competition. In a weak a party system, personality trumps skill and talent, thereby depriving the majority of the population, who do not possess the required social capital, from political participation. Thus, in most instances, dynastic politicians run unopposed.

Fourth, because political parties are bereft of any ideological foundation, the selection, nomination, and promotion mechanisms of a party are defined not by ideology but by personality. Dynastic rule is strengthened because political parties are dominated by members of well-known political clans. As such, parties “do not fulfill the task of interest aggregation but instead serve as mechanisms for patronage politics to perpetuate vested interests. Parties do not select candidates, but are instead formed by the candidates themselves as vehicles for their own campaigns.”²¹⁷

²¹⁴ Scott Mainwaring & Mariano Torcal, *Party System Institutionalization and Party System Theory After the Third Wave of Democratization*, Helen Kellogg Institute for International Studies Working Paper No. 319 (Apr. 2005), at p. 2, available at <http://www3.nd.edu/~kellogg/publications/workingpapers/WPS/319.pdf>

²¹⁵ *Id.* at 6 (“Party systems characterized by a low degree of institutionalization can be called fluid or weakly institutionalized. Compared to more institutionalized party systems, fluid systems are characterized by less regularity in patterns of party competition, weaker party roots in society, less legitimacy accorded to parties, and weaker party organizations, often dominated by personalistic leaders.”).

²¹⁶ See Teehankee, *supra* note 210, at 26 (“Two surveys conducted by the Social Weather Stations (SWS) in 2004 and 2006 reveal that 67% of respondents do not consider any political party as representing their welfare.”).

²¹⁷ Joy Aceron, *It's the (Non-) System, Stupid!: Explaining 'Mal-development' of Parties in the Philippines*, REFORMING THE PHILIPPINE POLITICAL PARTY SYSTEM, IDEAS AND INITIATIVES, DEBATES AND DYNAMICS 5, 8 (Friedrich Ebert Stiftung 2009).

One possible solution to the problem of dynastic politics in the Philippines is to develop a stronger party system, that is, “the creation of more effective and cohesive political parties, oriented to programmatic rather than particularistic goals.”²¹⁸

A number of studies have stressed the importance of strengthening the party system as a means to achieving a functioning democracy. In fact, it is claimed that political parties are the “main organizational forms of modern democracy.”²¹⁹

In a democracy, most if not all citizens should be involved in political activities. However, a direct democracy where every citizen is directly involved in all political decisions is not possible within modern mass societies. This is why a modern democracy needs institutions and organisations that represent the will and the interests of the citizens as authentically as possible. These can be associations, informal groups[,] or non-governmental organisations. In particular, the political parties carry out such a representative function. They offer to the citizens the possibility to influence politics and political decisions. They are an important instrument and institution of politics.

Without political parties, a modern representative democracy is not conceivable. Only, the parties ensure that the citizens are permanently capable to act politically. They articulate and integrate different interests, visions and opinions. They are also the main source for the recruitment of political elites.²²⁰

In the same vein, political scientist Julio C. Teehankee explained that:

Citizen participation is the critical foundation upon which democracy is built. Political parties are vehicles for enabling citizens to engage and reconnect with the institutions and processes of democracy. Citizenship is nurtured on values, knowledge, and practice. Parties can perform an integral function in citizen education and voters education activities as part of their constituency building activities.²²¹

²¹⁸ Hutchcroft & Rocamora, *supra* note 12, at 259.

²¹⁹ THOMAS MEYER, EASY GUIDE TO A MODERN POLITICAL PARTY 8 (2007), *quoted in* Aceron, *supra* note 223, at 7.

²²⁰ WILHELM HOFMEISTER & KARSTEN GRABOW, POLITICAL PARTIES FUNCTIONS AND ORGANIZATION IN DEMOCRATIC SOCIETIES 8 (Konrad Adenauer Stiftung 2011), *available at* http://www.kas.de/wf/doc/kas_7671-1442-2-30.pdf?120920114650.

²²¹ Teehankee, *supra* note 210, at 29.

Political parties are “supposed to perform the important functions of candidate selection, leadership formation, interest aggregation and agenda development.”²²² A stronger party will help remedy the situation where the family serves as the most basic unit of political organization. Parties can provide the necessary political machineries, which can encourage competition and participation of individuals of members with different backgrounds and economic interests. These parties may serve as the primary mechanism of electoral accountability. In particular:

For electoral accountability to work well, voters must be able to identify—in broad terms—what the main parties are and what they stand for. In contexts where parties disappear and appear with frequency, where the competition among them is ideologically and programmatically diffuse, and where personalities often overshadow parties as routes to executive power, the prospects for effective electoral accountability suffer.

For electoral accountability to function well, the political environment must provide citizens with effective information cues that enable them to vote in reasoned ways without spending inordinate time to reach these reasoned decisions. In more institutionalized systems, parties provide an ideological reference that gives some anchoring to voters.²²³

Parties may serve as ideological linkage between the voters and candidates. Ideology is important because it “is the basis for choice in large, mass electorates [...] Ideology is a means of creating coherent and meaningful cues to aid voter choice [...] Ideology provides voters with some means of comparing candidates and parties [...] Ideology is the organizing principle [...] in which elections are won or lost.”²²⁴ Hence, if parties espouse a specific principle or ideology and a voter is strongly attached to such ideology, the voter will most likely vote for the candidate of that party. It will eliminate the tendency to vote a candidate based on personality or name recall. Ultimately, “stronger parties can promote clearer choices to voters and help to structure political competition toward the realization of aggregate rather than particularistic interests.”²²⁵

²²² Akeron, *supra* note 217, at 5.

²²³ Mainwaring & Torcal, *supra* note 220, at 25-26. (Citation omitted.)

²²⁴ *Id.* at 11-12, quoting MELVIN HINICH & MICHAEL MUNGER, IDEOLOGY AND THE THEORY OF POLITICAL CHOICE 95, 100-102 (1994).

²²⁵ Hutchcroft & Rocamora, *supra* note 12, at 259, citing Gabriela Montinola, *Parties and Accountability in the Philippines*, 10 J. DEMOC. 126, 133 (1999) (“Meaningful social change has been inhibited because political parties have failed to structure political competition to

Stronger parties can reduce the incumbency advantage of dynastic politicians and lessen patronage politics. Doing so will make the electoral offices accessible to the public without curtailing the political rights of either the candidate or the electorate.

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allow for the representation of interests of the poor and marginalized sectors. [...] Quality of choice depends on political parties, the main organizations that structure political competition.”).