

FOREWORD*

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On December 3, 1985, the Batasang Pambansa passed and approved Batas Pambansa Blg. 881 or the Omnibus Election Code (“OEC”). It became the basic election law of the country, replacing all previous election laws. It was enacted a few weeks after Ferdinand Marcos, who had ruled the country for more than 20 years, most of which was under Martial Law, announced that he would be calling a snap presidential election to address the mounting protests to his continued rule. The Batasang Pambansa, taking its cue from the announcement of Marcos, approved Batas Pambansa Blg. 883 on the same day as the OEC. This made the holding of the presidential election on February 2, 1986, which was initially set in 1987, official. To this day, the vintage 1985 OEC remains as the core of the country’s election laws.

The OEC was finalized in time for the snap presidential elections, amid pervasive distrust in the integrity of the Philippine electoral process. Elections during the Marcos regime lacked credibility as they were widely believed to be tainted with massive fraud and irregularities, organized merely to legitimize Marcos’ continued hold on power. It is for this reason that the OEC outlines electoral procedures in their minutest details and provides inflexible templates for election forms and paraphernalia, presumably to remove as much discretion from the equally distrusted Commission on Elections (COMELEC) in implementing the law. The rigid nature of the electoral legal framework, however, also constrains election managers from having the necessary flexibility to design, within existing laws, procedures appropriate to the constantly evolving social and political environment. This was why there was even a need to craft laws just to authorize the use of modern technology in elections, such as Republic Act No. 8189 on computerizing the voters’ list, and Republic Act No. 8436 on automating voting, counting, and canvassing process, when this authority could have already been implied in the election code.

Furthermore, the 1987 Constitution, which came after the OEC, introduced a system of government different from the one on which the 1985 election code was premised. The Constitution reinstated a bicameral

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legislature operating under a system of separation of legislative, executive, and judicial powers. It also introduced a proportional representation system whereby nominees from party lists are allocated 20% of the seats in the House of Representatives depending on the proportion of votes each party obtains.¹ This mode of representation is an alternative to the single-member district representation in which the representatives are elected via a plurality first-past-the-post voting system in their districts.² The district representatives occupy 80% of the House seats. The Constitution also declared its preference for a multi-party system,³ which is a departure from the post-war and pre-martial law two-party system and the single dominant party regime under the Marcos authoritarian rule. On extending the right of suffrage, the Constitution mandates a law that would allow overseas Filipinos to vote⁴ and differently-abled persons to vote without the need of assistance.⁵ On equalizing the opportunities for public service, the Constitution mandates Congress to pass a law prohibiting dynasties.⁶ Finally, the Constitution requires simultaneous or synchronized elections for national and local elective posts,⁷ except for the barangays.

With the notable exception of the non-enactment of a law prohibiting dynasties, Congress has passed laws that made the country's election legal framework conform with the formal requirements of the Constitution. We have Republic Act No. 7166 to address the need to synchronize national and local elections. Republic Act No. 7941 implements the party-list system of representation. Republic Act Nos. 9189 and 10590 provide mechanisms for voting by overseas Filipinos and Republic Act No. 10366 for persons with disabilities and senior citizens.

Notwithstanding these laws, however, the OEC remains the basic law on elections in the Philippines. The current legal framework of Philippine elections remains unable to give true meaning to the declared constitutional principle that the Philippines is a democratic and republican state and that all government authority emanates from the people. Our politics are still largely dominated by the political and economic elites. The cost of elections has become astronomically high, thus reserving electoral contestation to the moneyed class. Our campaign finance disclosure laws have not resulted in a robust system of transparency capable of reducing conflicts of interest

¹ CONST. art. VI, § 5(2).

² Art. VI, § 5(1).

³ Art. IX-C, § 6.

⁴ Art. V, § 2, ¶ 1.

⁵ Art. V, § 2, ¶ 2.

⁶ Art. II, § 26.

⁷ See art. XVIII, §§ 1–2, 5.

situations and preventing regulatory capture. Moreover, the COMELEC cannot monitor and regulate the use of money in politics effectively to mitigate its adverse impact on governance and accountability. The registration, voting, counting, and vote consolidation processes operate within an analog paradigm that is ill-fitted with the opportunities that modern technology can offer to simplify the delivery of electoral services to the people. The requirement of synchronized elections with 20 to 40 elective positions at stake and with a theoretically unlimited number of candidates presents a tremendous operational challenge to election management, a situation least understood by many.

All these problems are largely due to an outdated and unresponsive legal and policy framework on elections. There is a wide gap between the democratic aspirations affirmed in the Constitution and the current policy and legal regime that serve as authority on how elections are to be conducted. The current pandemic demonstrates the need for a more flexible legal framework that would allow the delivery of electoral services to adapt to current circumstances. It is unfortunate that past administrations have not prioritized political reforms, and that significant initiatives like the bill on strengthening political parties have languished in the committees of both Houses since its multi-partisan initiation in 2003. Efforts at re-codifying election laws to make it comprehensible not only to legal scholars and lawyers, but also to the public and the wide array of election stakeholders have been given the cold shoulder.

Revisiting, therefore, the legal framework for Philippine elections is an important electoral reform initiative. Scholarly reviews and critical analyses of existing laws and policies relating to democracy and elections should provoke and jumpstart a serious review by policymakers of the current state of election legislation and democracy-related policies and laws. There is a need to redesign our electoral processes so that they can truly empower the people in a sense consistent with the constitutional affirmation that the authority of government emanates from them. Democracy through electoral participation should be made more meaningful to the people for if we fail in this, the alternatives for change are dire.

In this themed issue, the PHILIPPINE LAW JOURNAL showcases scholars, legal practitioners, and law students who have answered the call to write on the most pressing legal issues confronting the conduct and outcome of elections. This is an opportune time—not only for those of us in the legal profession but most importantly for the country, as millions of Filipinos will

troop to the polling places come May 9, 2022—for these matters and concerns to come out. It prompts the need for a lucid, nuanced, and critical rumination on the exercise of the most potent means for the making or unmaking of our democratic and republican way of life.

In *Nuisance Candidacies in Philippine Election Law: Legal History, Legal Analysis, and Legal Reform*, Paolo Celeridad ably traces the legal concept of nuisance candidacies in the annals of Philippine legal history. He posits that nuisance candidacies as currently worded in Section 69 of Batas Pambansa Blg. 881 is not an innocuous legal concept as it seems to be, but has exclusionary underpinnings that effectively operate as property requirements upon the privilege of running for office. The author’s critical interrogation of the provision reveals that while assessment of nuisance candidacies is based on textual standards such as a candidate’s “intent, manner, and actual identity,” its actual operationalization is hinged on “subjective criteria” that tangentially, if not consciously, consider one’s campaign resources. While the Philippine Supreme Court has tempered this in its recent ruling in *Marquez v. Commission on Elections*, the author argues that legislative reform is still needed. His inquiry leaves us with a progressive direction towards a fairer and more inclusive electoral process informed by international election standards and the growing scholarship on the fundamental right to candidacy.

In *When Private Corporations Give Political Donations: Some Corporate Governance Considerations*, Russell Stanley Geronimo and Theodore Joseph Jumamil examine the issues surrounding the power of corporations to make reasonable donations to political candidates and parties, as provided under Section 35(i) of the Revised Corporation Code. The authors identify which types of corporations are permitted by law to make political contributions and delineate the scope and limitations of their power. They also provide counsels of corporations a useful guide on matters of procedure and due diligence, including voting thresholds, disclosure requirements, tax treatment of political donations, and potential penalties and sanctions. Furthermore, this Article notably addresses two rarely discussed but important issues in Philippine corporate law: (1) the remedies of dissenting stockholders against corporations that decide to give political contributions; and (2) corporations’ right to free speech and the extent of permissible regulation thereof.

In *Revisiting the Three-Term Rule: Counting Terms with the “Two-Thirds” Standards*, Andrew Stephen Lota tackles the recurring controversy involving the proper interpretation of the three-term rule as provided under Article X, Section 8 of the Constitution. The author reviews the prevailing jurisprudence on the three-term rule and identifies the absurdities resulting from the current interpretation. For instance, he points out that some local elective officials

have benefitted from their suspensions and ousters from office since in certain cases, these were deemed to be involuntary interruptions to the continuity of their service. This in turn has opened the door for several three-term incumbents to run again for a “fresh” three consecutive terms with only a short hiatus in between.

Given that the three-term rule is currently the only legal deterrent against political elites perpetuating their stranglehold over their elective posts, this Note proposes a new interpretation that relies on a uniform and quantitative test based on the actual time an official has served in office. If a local elective official has occupied the post for at least two of three years in a term, the author asserts that this should be considered as substantial service of a term in the context of the three-term rule.

In *Unconstitutional House Caretaking*, Juan Paolo Artiaga and Katrina Crista Artiaga assail the practice of the House of Representatives of filling vacancies in congressional districts by appointing legislative caretakers instead of calling for special elections. While “house caretaking” is by no means a new phenomenon, it became prevalent in recent years and has served as an outlet for patronage politics. Remarkably, the Lower House of the 17th and 18th Congress has not called for a single special election and instead opted to fill all vacancies via the appointment of legislative caretakers, regardless of when the vacancies arose. The authors contend that this practice is undemocratic and illegal as it is based on a flawed interpretation of Section 1 of Republic Act No. 6645 which seemingly gives the Lower House unbridled discretion on whether or not to hold a special election. Instead, they assert that the said law has already been repealed due to its irreconcilable conflict to a subsequent statute, Section 4 of the Republic Act No. 7166, which impels the Commission on Elections—not the Lower House—to call for a special election if the vacancy arises with at least one year left in the term.

In *Litigated Democracy: Judicial Disenfranchisement of Voters Through Annulment of Elections*, Christian Marchan and Jonas Miguelito Cruz deftly examine the remedy of annulment of elections as a peculiar species in the network of available procedures by which an election result may be questioned. The authors characterize this as an “extreme” remedy, and rightly so, as its direct effect is the “*en masse* disenfranchisement of voters.” The authors give us a clearer look into the legal history of the remedy of annulment to shed light on the framework and the rules within which it operates. The Note offers a critical inquiry into the repercussions of annulling an election to the other elective positions not covered by the annulment, the possibility of

inconsistent rulings between electoral tribunals and the courts, the necessity of conducting special elections thereafter, the appreciation and revision of ballots, among others. The authors forward some recommendations to highlight the role of the courts, the electoral tribunals, and the COMELEC in breathing life into the sovereign will of the people, particularly in times when allegations of fraud, terrorism, and other irregularities hound the integrity of the elections.

Under our democratic and republican system of government, all elections are important since the consent of the people is the source of all government authority. But in the context of a global pandemic, an economic recession, news of pervasive corruption, curtailment of civil and political rights, unresolved extrajudicial killings, and the most serious threats to our democratic institutions since Martial Law, the 2022 polls are shaping up to be one of the most consequential elections in our country's history. Members of the legal profession should play an active and leading role in fighting for free, fair, honest, and meaningful elections. With the publication of this themed issue, the PHILIPPINE LAW JOURNAL has made a significant contribution to this endeavor. It is hoped however that the JOURNAL replicates this effort as there are other significant facets of the legal framework on elections that need to be analyzed and examined critically.

The role of a law journal is not to serve as an indifferent repository of legal scholarship. Its duty does not end in providing spaces for vibrant and cutting-edge academic discussions—this is a function of excellence. Its role can only be completely assessed if it responds to the times and the legal questions that spring from it—this is a function of relevance. The PHILIPPINE LAW JOURNAL has accomplished both yet again in its themed issue on the Law on Elections, Parties, and Representation.