

RIGHT TO VOTE VS. RIGHT TO HOLD PUBLIC OFFICE: AN ANALYSIS OF SUBSTITUTION AND REPLACEMENTS IN PUBLIC OFFICE USING THE ETHICAL MODALITY OF CONSTITUTIONAL INTERPRETATION*

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ABSTRACT

The right to suffrage is an essential part of political participation. The grant of this right stems from the nature of a republican and democratic government and the principle of a representative government. Corollary to this is the delegation of sovereign powers and functions to elected officials selected through the electorate's will, or what is referred to as the right to public office. The conflicting operation of these rights can be observed in two distinct situations: during substitutions of candidates during elections, and in choosing replacements for vacant positions without automatic succession provisions. Using the ethical modality of constitutional interpretation in studying judicial decisions shows that the right to vote is given primacy over the right to hold public office. But laws on substitution and replacements may not always reflect the same. This paper seeks to evaluate if present legislation on substitutions and replacements infringe or protect the right to vote.

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INTRODUCTION

Filipinos primarily participate in the conduct of government through the exercise of their right to suffrage and participation in elections. It is widely regarded as public officers gain legitimacy and their mandate to govern.¹ The electoral process involves two distinct rights: the right to vote and the right to hold public office. As an attribute of sovereignty and a primary mode of political participation, citizens have both rights. The Supreme Court has consistently held that courts may not deprive the electorate, who are assumed to have known the life and character of candidates, of their right to elect officers.² However, this does not necessarily imply that public officers have a complementary right to be elected or remain in public office. This principle is embodied in the adage: “Public office is a public trust.”³

In the cycle of public office, the conflicting operation of these rights can be observed in two distinct situations: first, during substitutions of candidates during elections, and second, during the vacancy of an elected position which does not have an automatic succession provision or a mechanism for succession by operation of law. In these instances, the preferred right is unclear, and this may lead to its infringement. This paper aims to determine the relationship between the right to vote and the right to be elected to public office at these key instances and interrogate which the Court considers as the preferred right between them. Using the ethical modality of constitutional interpretation, the author argues that the 1987 Constitution expresses the Philippine identity as rooted in the principles of republicanism and democratic rule. This finds expression in the shared value of the supremacy of the electorate’s will, which serves as the Supreme Court’s guidepost in deciding election law cases. Hence, the right to vote is given more weight in judicial decisions as opposed to the right to hold public office.

Because the right to vote is the preferred right, it is important to determine whether it is infringed in cases of substitution and vacancies without automatic succession, when its relationship with the right to hold public office becomes unclear. Rooted in the Constitutional precept that

¹ Anna Leah Fildelis Castaneda, *Philippine Elections: The Right to Political Participation in an Elite Democracy*, 41 ATENEO L.J. 314, 352 (1997).

² *Ching v. Bonachita-Ricablanca*, G.R. No. 224828, Oct. 12, 2020, at 13. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court Website.

³ CONST. art. XI, § 1.

public office is a public trust⁴, the sanctity of the right to vote must be upheld because it is the expression of the sovereign will of the people.⁵ The importance of protecting this right becomes more evident when considering the characterization of electoral dynamics in the Philippines as patronage-based, dominated by political dynasties, with a weak party system which is prone to political turncoatism.⁶ Hence, this paper seeks to evaluate if present legislation on substitutions and vacancies without automatic succession provide adequate safeguards to ensure its protection.

This will be done through analyzing present laws on vacancies and substitutions using jurisprudence interpreting the right to vote and right to hold public office. For substitutions, this paper will focus on Section 77 of the Omnibus Election Code and its implementing Commission on Elections (COMELEC) Resolutions. For vacancies, it will focus on vacancies in the positions of Vice President, Member of Congress, and Member of the Sangguniang Panlalawigan, Panlungsod, and Barangay. In discussing these concepts, the author will use laws, jurisprudence, books, and journals. This paper will only focus on these specified instances of substitutions and vacancies. It will only focus on permanent, not temporary, vacancies.

Part I will discuss the ethical modality of constitutional interpretation discussed by Philipp Bobbitt and its application in election law cases. Part II will discuss the concepts of substitution and replacements as used in this paper. Part III will discuss substitution and replacements vis-à-vis the right to vote.

I. ETHICAL MODALITY OF CONSTITUTIONAL INTERPRETATION

A. Ethical Modality and its Applicability in the Philippines

In his work, *Constitutional Fate*, Philip Bobbitt characterizes the approaches of constitutional interpretation as either historical, textual, doctrinal, prudential, or structural. Judges use these modes, often in combination, to decide on a constitutional question. However, when analyzing judicial decisions using these frameworks, there are certain expressions of passion and conviction not falling under these modes of

⁴ CONST. art. XI, § 1.

⁵ *Civil Service Commission v. Sojor*, G.R. No. 168766, 554 SCRA 160, 180, May 22, 2008.

⁶ Julio Cabral Teehankee & Yuko Kasuya, *The 2019 midterm elections in the Philippines: Party system pathologies and Duterte's populist mobilization*. 5(1) ASIAN J. COMP. POL. 69, 71 (2020).

interpretation but, rather, might be found in the dictum.⁷ He classifies these arguments as ethical arguments, stating:

By ethical argument I mean constitutional argument whose force relies on a characterization of American institutions and the role within them of the American people. It is the character, or *ethos*, of the American polity that is advanced in ethical argument as the source from which particular decisions derive.⁸

Ethos, meaning, “the habits and character of the individual”, is of Greek origin, derived from *ethikos*, which means, “expressive of character”.⁹ This view posits that law is constructed out of society’s shared values,¹⁰ stemming from the idea that the American people have a distinct national identity with traditions and beliefs which are embedded in the Constitution.¹¹ Delimited from generally moral arguments, ethical arguments draw support from specific text that can support them.¹² This can be indicated by a specific provision in the Bill of Rights or it could be drawn from the more general American constitutional ethos of limited government.¹³ Under the ethos of a limited government, what the government is not granted the power to do by the Constitution, it may not do.¹⁴ Ethical arguments arise as a result of the constitutional arrangement in the United States whereby rights are defined as choices beyond the power of the government to compel and the presumption that residual authority not granted to a limited government remains in the private sphere.¹⁵ Thus, using the ethical argument can result in the identification and application of rights not enumerated under the Bill of Rights.¹⁶ However, the ethical argument does not wholly depend on the construction of a particular piece of text; it focuses on the necessary relationships that can be inferred from the overall arrangement captured by it.¹⁷

⁷ PHILIP BOBBITT, *CONSTITUTIONAL FATE* 93-94 (1982).

⁸ *Id.* at 94.

⁹ *Id.* at 95.

¹⁰ Gerald Torres, *Social Movements and the Ethical Construction of Law*, 37 CAP. U. L. REV. 535, 538 (2009).

¹¹ Brian Golger, *Copyright in the Artificially Intelligent Author: A Constitutional Approach Using Philip Bobbitt’s Modalities of Interpretation*, 22 U. PA. J. CONST. L. 867, 887 (2020).

¹² Bobbitt, *supra* note 7, at 142-143.

¹³ Philip Bobbitt, *Constitutional Fate*, 58 TEXAS L. REV. 695, 740 (1980).

¹⁴ *Id.* at 729-730.

¹⁵ Philip Bobbitt, *Is Law Politics*, 41 STAN. L. REV. 1233, 1284 (1989).

¹⁶ See Jeffrey Jackson, *Modalities of the Ninth Amendment: Ways of Thinking About Unenumerated Rights Inspired by Philip Bobbitt’s Constitutional Fate*, 75 MISS. L.J. 495, 540 (2006).

¹⁷ Bobbitt, *supra* note 15, at 1284.

Aside from the adjudication of the rights between parties, a constitutional decision also has an expressive function.¹⁸ In this situation, the Court's role is "to give concrete expression to the unarticulated values of a diverse nation."¹⁹ By asserting an ethical argument, the constitutional decision declares that, as a group of people, this specific basis is used to make decisions on this specific matter. But the decision also serves an expressive function because the availability, force, and focus of ethical arguments are determined by the exercise of the expressive function.²⁰ Hence, judicial decisions are not only sources of doctrinal pronouncements, but they are also expressive of "what we are as people and of what, in our more reflective moments, we would wish to become."²¹

While the ethical argument's primary concern is the character of the American people—and it has been explicitly noted that the bases of ethical arguments may not be "shared by all cultures"²²—there is support for the use of the ethical argument in the Philippines. Philippine constitutionalism, as adapted from Western constitutionalism, is a framework of limited government to safeguard against limitless political power.²³ Due to the American occupation and the introduction of American institutions and principles of government, the following became a defining part of Philippine constitutionalism:

1. The constitution as fundamental law provides for the organization of government, defines and delimits its powers and prescribes guarantees to human rights.

* * *

4. A written constitution represents the supreme will of sovereign people. Having promulgated it, the people themselves are bound by its limitations...

¹⁸ Bobbitt, *supra* note 13, at 750–751.

¹⁹ *Id.* at 764.

²⁰ *Id.* at 766.

²¹ *Id.* at 697.

²² Robert Black, *Comparative Law in the Modalities of Constitutional Argument*, 38 N.C. CENT. L. REV. 1, 25 (2015).

²³ Merlin M. Magallona, *Philippine Experience in Judicial Independence: General Context and Specific Problems*, 72 PHIL. L.J. 164, 164 (1997).

5. The constitution though supreme law, is not self-executing. It falls on the various organs of government to implement it and for the people to insist that this be done.²⁴

Aside from embodying these principles on state power and citizens' rights, the Constitution can also be considered as a "blueprint of national destiny" because it identifies the ideals and aspirations of the nation through the State Policies.²⁵ Diane A. Desierto argues that, in drafting the 1987 Constitution, the 1986 Constitutional Commission implemented the policies of: "1) direct inclusion of Filipino individuals in the processes of executive accountability; and 2) direct participation in decision-making and judgment-forming in the political collective, bypassing the agency of the Executive Branch."²⁶ These twin policies imply the primacy and importance given to "Filipinos' individual rationalities in determining and legitimating decisions in their political community."²⁷

The role of the judiciary under the 1987 Constitution also provides another rationale for the applicability of the ethical modality. Under its expanded judicial review power²⁸, courts can test the validity of executive and legislative acts for their conformity with the Constitution.²⁹ The Supreme Court also has the power to promulgate rules concerning the enforcement and protection of constitutional rights.³⁰

Angara v. Electoral Commission exhaustively discusses the power of judicial review. As Justice Jose P. Laurel explains, the Constitution has defined "with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments..."³¹ In cases of conflict involving the exercise of powers, it is only the judicial branch which can determine the proper allocation of powers between different departments and branches of government. The Constitution does not strictly set the restrictions and limitations upon governmental powers and agencies.

²⁴ Irene R. Cortes, *Constitutionalism in the Philippines - A View from Academia*, 59 PHIL. L.J. 338, 339 (1984).

²⁵ Magallona, *supra* note 23, at 166.

²⁶ Diane A. Desierto, *A Universalist History of the 1987 Philippine Constitution (II)*, 11 HISTORIA CONSTITUCIONAL 427, 454–455 (2010).

²⁷ *Id.* at 455.

²⁸ CONST. art. VIII, § 1.

²⁹ *Garcia v. Executive Secretary*, G.R. No. 157584, 583 SCRA 119, 128–129, Apr. 2, 2009.

³⁰ CONST. art. VIII, § 5(5).

³¹ *Angara v. Electoral Commission*, 63 Phil. 139, 157 (1936).

Rather, the judiciary has been expressly granted the moderating power to determine them.³² Chief Justice Reynato Puno explains the exercise of this moderating power as follows:

Within this democratic and republican framework, both the apostles of judicial restraint and the disciples of judicial activism agree that government cannot act beyond the outer limits demarcated by constitutional boundaries without becoming subject to judicial intervention...³³

Scholars also note the role of the judiciary in meaning-making. In the context of legitimizing historical narratives, Dante Gatmaytan argues that law is a powerful force in constructing social meaning, identity, and everyday consciousness. It can shape culture, opinion, and attitude through the effects of its orders and through its language and form. Thus, it can validate certain moral meaning while disrupting others.³⁴ In connection with this, Adrian S. Cristobal, Jr. argues that the Supreme Court's role within a democratic system of government allows it to shape national policies which address social, economic, and political concerns. Through judicial review, the Supreme Court can legitimize policy choices made by the executive or legislative branches. In settling constitutional questions involving these policy choices, the Court necessarily addresses certain values to which citizens prescribe. It may also be called upon to determine the hierarchy of values at a given time, allowing the Supreme Court to weigh the scale in favor of certain preferences.³⁵

Meanwhile, Bryan Dennis Tiojanco and Leandro Angelo Aguirre argue that the Supreme Court has expanded its role in rulemaking and its certiorari jurisdiction by construing the grand normative statements of the Constitution as directly enforceable by courts, without need of legislative implementation and by relaxing the traditional requirements for standing. The Philippine political culture permits the Court to exercise this form of exercise of judicial power.³⁶ Similarly, Judge Raul C. Pangalangan notes that the Supreme Court has demonstrated, in several cases, its readiness to elevate

³² *Id.*

³³ Desierto, *supra* note 26, at 456.

³⁴ Dante Gatmaytan, *Judicial Historical Revisionism in the Philippines: Judicial Review and the Rehabilitation of Ferdinand Marcos*, 15 U. PA. ASIAN. L. REV. 339, 355 (2020).

³⁵ Adrian S. Cristobal Jr., *The Supreme Court and Judicial Policy-Making*, 36 ATENEO L.J. 57, 58–59 (1991).

³⁶ Bryan Dennis Tiojanco & Leandro Angelo Aguirre, *The Scope, Justifications and Limitations of Extrajudicial Judicial Activism and Governance in the Philippines*, 84 PHIL. L.J. 73, 74–75. (2009).

constitutional norms into judicially enforceable rights because justices can ground social and welfare rights they are lobbying for on neutral principles, as opposed to partisan, ethical, or economical opinions, since these rights are codified in the Constitution.³⁷

As illustrated, ethical modality would be applicable in analyzing Supreme Court decisions for three reasons. First, the 1987 Constitution clearly adheres to the ethos of limited government and expressly embodies protections of citizen's rights. Second, the Court not only enforces Constitutionally protected rights but also expresses adherence to certain constitutional norms articulated as State policies by transforming them to judicially enforceable rights. Third, through judicial review, the Court can influence policy outcomes and highlight societally upheld values in its interpretation of the Constitution. These facets reflect the characterization and expressive function of ethical arguments.

B. Explaining the Right to Vote Using Ethical Modality

People exercise their sovereign authority through ballots cast in duly appointed elections, wherein they choose their officials for definite and fixed periods. During this period, they entrust the exercise of the powers of government to their chosen representatives.³⁸ The right of suffrage stems from the theory of the representative form of government. People who bear the burden of government should share in the privilege of choosing its officials.³⁹ It is not a natural right, but it is one created by law. It is a privilege which the State grants to persons most likely to exercise it for the public good.⁴⁰ It is also an obligation imposed on every citizen.⁴¹ The right finds its origins in the state policy that the Philippines is a republican and democratic state, and the declaration that “[s]overeignty resides in the people and all government authority emanates from them.”⁴² This right is not expressly provided in the 1987 Constitution, but Article V thereof specifies the qualifications and limitations of its exercise. A republican government implies the adoption of a representative form of government. The citizen is considered as a part of a wider rule of popular sovereignty and has a voice in

³⁷ Raul C. Pangalangan, *Chief Justice Hilario G. Davide Jr.: A Study in Judicial Philosophy, Transformative Politics and Judicial Activism*, 80 PHIL. L.J. 538, 556 (2006).

³⁸ *Garchitorena v. Crescini*, 39 Phil. 258 (1918).

³⁹ *Macolor v. Amores*, 94 Phil. 1, 7 (1953).

⁴⁰ *The People of the Philippine Islands v. Corral*, 62 Phil. 945, 948 (1936).

⁴¹ ELECT. CODE, § 4.

⁴² CONST. art. II, § 1.

his government which must be given efficacy to, and not stifled, when called upon.⁴³ Supreme Court decisions repeatedly stress the importance of giving effect to the sovereign will to ensure democracy's survival.⁴⁴

Previous iterations of the present Article II, Section 1 provision only focus on the Philippines as a republican state. However, the Records of the 1986 Constitutional Commission reveal a deliberate intent to ascertain that the Philippines is not only a republican, but also a democratic state.⁴⁵ The inclusion of the word "democracy" in the present provision emphasizes the democratic aspect of republicanism and highlights the presence of mechanisms such as initiative, recall, and referendum to allow the people to act directly and not only through their elected representatives.⁴⁶

Preserving the sanctity of the right to suffrage is important because it is an assurance that the State derives its power from the consent of the governed and it ensures people empowerment and involvement in public and civic affairs.⁴⁷ Although it is accorded primacy in the hierarchy of rights, it must be exercised within the proper bounds and framework of the Constitution and must yield to laws enacted by the Legislature that aim to preserve the country's democratic institutions against opportunism and abuse.⁴⁸

Article V, Section 1 of the 1987 Constitution outlines the requirements and restrictions for the exercise of the right to suffrage. The minimum qualifications required are that the voter must be: (1) a Filipino citizen; (2) at least 18 years of age; (3) residing in the Philippines for at least 1 year and in the place wherein they propose to vote for at least 6 months immediately preceding the election. However, the Constitution also allows the State to impose statutory disqualifications and regulations on the right to vote with the restriction that these disqualifications do not amount to literacy, property, or other substantive requirements.⁴⁹ It may be inferred that the restriction aims to eliminate standards purely based on socio-economic considerations which have no bearing on an individual's capacity

⁴³ *Moya v. Del Fierro*, 69 Phil. 199, 204 (1939).

⁴⁴ *Frivaldo v. COMELEC*, G.R. No. 120295, 257 SCRA 727, 771, June 28, 1996.

⁴⁵ *See* Desierto, *supra* note 26, at 451.

⁴⁶ *See id.* at 453.

⁴⁷ *Palatino v. COMELEC*, G.R. No. 189868, 608 SCRA 248, 254, Dec. 15, 2009.

⁴⁸ *Akbayan Youth v. COMELEC* [hereinafter "*Akbayan Youth*"], G.R. No. 147066, 355 SCRA 318, 332, Mar. 26, 2001.

⁴⁹ CONST. art. V, § 1. *See* *Kabataan Party-list v. COMELEC* [hereinafter "*Kabataan Party-list*"], G.R. No. 221318, 777 SCRA 574, 593, Dec. 16, 2015.

to intelligently cast a vote and to further the public good. By removing these requirements, the political base is broadened, and the voting process became more inclusive.⁵⁰

The intention to broaden the political base can also be inferred when considering the system of overseas absentee voting under Article V, Section 2 of the 1987 Constitution. In resolving whether Filipinos abroad are disqualified from voting in the Philippines due to the absence of the residency requirement, the Court held that the Constitution mandates Congress to provide a system for absentee voting by qualified Filipinos abroad. For the purposes of voting, the Philippines is still considered their domicile.⁵¹ This allows Filipinos temporarily abroad to participate in the electoral process without meeting the residency requirement in the Constitution. Participation in absentee voting also extends to dual citizens.⁵²

While the 1987 Constitution broadened the voting base established by its predecessors, it still allows for restrictions via procedural requirements.⁵³ An example is the requirement of registration.⁵⁴ This regulates the exercise of the right to vote.⁵⁵ COMELEC has been granted rule-making powers relating to pre-election activities to enable people to exercise the right of suffrage. However, this power should be exercised in accordance with the prevailing laws. Hence, COMELEC can only set alternate dates for pre-election activities, such as registration, aside from those fixed under Section 8 of Republic Act No. 8189 if the said pre-election activities cannot be reasonably held within the period provided by law.⁵⁶

Aside from imposing procedural limitations, the State also has the right to deprive persons of the right of suffrage by setting disqualifications to its exercise⁵⁷ to preserve the purity of elections.⁵⁸ For instance, persons

⁵⁰ *Id.* at 594.

⁵¹ *Macalintal v. COMELEC*, G.R. No. 157013, 405 SCRA 614, 677, July 10, 2003.

⁵² *Nicolas-Lewis v. COMELEC*, G.R. No. 162759, 497 SCRA 649, 662, Aug. 4, 2006.

⁵³ *Kabataan Party-list*, 777 SCRA at 596.

⁵⁴ *AKBAYAN Youth*, 355 SCRA at 332.

⁵⁵ *Yra v. Abaño*, 52 Phil. 380, 385 (1928).

⁵⁶ *See Palatino v. COMELEC*, G.R. No. 189868, 608 SCRA 248, 256, Dec. 15, 2009.

⁵⁷ *See* ELECT. CODE, § 118; Rep. Act. No. 8189 (1996), § 111. The Voter's Registration Act of 1996; Rep. Act. No. 9189 (2003), § 5. The Overseas Absentee Voting Act of 2003.

⁵⁸ *See People v. Corral*, G.R. No. 42300, 62 Phil. 945, 948 (1936).

convicted of a crime are disqualified from voting because of the presumption that one convicted of a felony or offense indicative of moral turpitude is unfit to exercise such right for its protection. It is the withholding of a privilege, not an imposition of a punishment or denial of a personal right.⁵⁹

The right to suffrage should also be understood in relation to other protections under the Bill of Rights. COMELEC cannot impose unreasonable restrictions on the individual's right to expression⁶⁰ and prohibitions on the freedom to choose based on moral grounds⁶¹ during elections and political contests.

An analysis of jurisprudence shows that Supreme Court decisions on the right to vote emphasize the importance of freedom of choice of the electorate and the limitation of this right only by the allowable parameters set under the law. Decisions lean towards allowing the broad political base to exercise this right with no substantive limitations, but only procedural regulations and disqualifications set by law. The purpose of these restrictions and disqualifications is to ensure the sanctity of the electoral process. Inherent in this freedom of choice is also the adjunct right of the freedom of expression. This emphasizes the value and importance placed by the Constitution on the notion that sovereignty resides in the people and as such, they must be given a wide latitude to exercise their will in choosing their candidates.

C. Explaining the Right to Public Office Using Ethical Modality

In *Aparri v. Court of Appeals*, the Supreme Court, quoting Floyd Mechem, defines a public office as:

the right, authority, and duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public.⁶²

⁵⁹ *Id.*

⁶⁰ *Diocese of Bacolod v. COMELEC*, G.R. No. 205728, 747 SCRA 1, 26, Jan. 21, 2015.

⁶¹ *Ang Ladlad LGBT Party v. COMELEC*, G.R. No. 190582, 618 SCRA 32, 125, Apr. 8, 2010.

⁶² G.R. No. 30057, 127 SCRA 231, 237, Jan. 31, 1984.

The right to hold a public office is not a natural right and it exists only by virtue of a law expressly or impliedly creating and conferring it.⁶³ While Article II, Section 26 of the Constitution recognizes equal access to opportunities for public office, this is not a constitutional right because provisions under Article II are generally not considered self-executing and judicially enforceable constitutional rights, but are merely guidelines for legislative or executive action.⁶⁴

Public office is also not property within the sense of the constitutional guaranties of due process but rather a public trust or agency.⁶⁵ Government officials are mere agents, not rulers, of the people and no man has a proprietary or contractual right to an office. A person who accepts an office pursuant to a law holds such office as a trust for the people who he represents.⁶⁶ So there is no vested right or an absolute right to hold a public office. However, constitutional offices have special immunities pertaining to their salaries and tenure.⁶⁷ Suspension from public office also does not amount to a deprivation of property without due process of law.⁶⁸ Because it is not property, it cannot be transmitted to a holder's heirs upon death, since the right is exclusive and personal to the holder.⁶⁹ Upon the expiration of the officer's term, his rights, duties, and authority as a public officer ceases unless he is authorized by law to hold over.⁷⁰

Essential to holding a public office is the precept that public office is a public trust.⁷¹ One's tenure in government springs exclusively from the trust given to him by the public and his continuance in office is dependent on his ability to maintain that trust.⁷² A public office must be discharged by its holder not for personal gain but for the public's benefit since he holds office in trust for them.⁷³ Of the facets constituting a public office, the

⁶³ *Id.* at 238.

⁶⁴ *Pamatong v. COMELEC*, G.R. No. 161872, 427 SCRA 96, 100, 101, Apr. 13, 2004.

⁶⁵ *Cornejo v. Gabriel*, G.R. No. 16887, 41 Phil. 188, 194 (1920).

⁶⁶ *Id.* at 194.

⁶⁷ *National Land Titles and Deeds Registration Administration v. CSC*, G.R. No. 84301, 221 SCRA 145, 150, Apr. 7, 1993.

⁶⁸ *Libanan v. Sandiganbayan*, G.R. No. 112386, 233 SCRA 163, 167, June 14, 1994.

⁶⁹ *De Castro v. COMELEC*, G.R. No. 125249, 267 SCRA 806, 809, Feb. 7, 1997.

⁷⁰ *Aparri v. Ct. of Appeals*, G.R. No. 30057, 127 SCRA 231, 233, Jan. 31, 1984.

⁷¹ CONST. art. XI, § 1.

⁷² *Office of the Ombudsman v. Regalado*, G.R. Nos. 208481-82, 855 SCRA 54, 69, Feb. 7, 2018.

⁷³ *Abakada Guro Party-list v. Purisima*, G.R. No. 166715, 562 SCRA 251, 271, Aug. 14, 2008.

delegation to an individual of some sovereign functions of government is the most important. This determines whether a position is a public office and sets it apart from an employment or a contract since sovereign functions of government are required to be exercised for public benefit.⁷⁴

Constitutional and statutory provisions provide the qualifications for eligibility to elective public offices. These requirements may not be enlarged or reduced by mere agreements between private parties. Any voter possessing the qualifications for an elective office may present his candidacy without further limitations other than those provided by law, either by campaigning by himself or through a political party to respect the voters' right to select their candidate at a general election.⁷⁵ Qualifications are continuing requirements; thus, they must be possessed by the officer from the time of his election or assumption of office and up to the end of his tenure in office.⁷⁶

The importance of the qualifications for public office have been discussed in several Supreme Court decisions. For instance, establishing the residency requirement in a community is for the purpose of being acquainted with its conditions and needs. Fulfilling this to meet the election law requirement defeats the purpose of representation, which is for voters to elect persons most cognizant of the community's needs. The residency period gives the candidates the opportunity to be familiar with their constituency and for the electorate to evaluate the candidate's qualifications and fitness.⁷⁷ Meanwhile, the citizenship requirement is important because a citizen has the duty to maintain allegiance to his flag and country. Those seeking public office are required to renounce their foreign citizenship to be deserving of public trust since holding public office requires full and undivided allegiance to the Philippines. However, renunciation is not required for dual citizens to exercise their right to vote.⁷⁸ The candidate's status as a registered voter is also important because it shows that if the candidate wins, they will work for and represent the local government of which he is running.⁷⁹

⁷⁴ See *Laurel v. Desierto*, G.R. No. 145368, 381 SCRA 48, 62, Apr. 12, 2002.

⁷⁵ See *Saura v. Sindico*, G.R. No. 13403, 107 Phil. 336, 337, 338 (1960).

⁷⁶ *Maquiling v. COMELEC* [hereinafter "*Maquiling*"], G.R. No. 195649, 696 SCRA 420, 453, Apr. 16, 2013.

⁷⁷ *Torayno v. COMELEC*, G.R. No. 137329, 337 SCRA 574, 584 & 587, Aug. 9, 2000.

⁷⁸ *Maquiling*, 696 SCRA at 454.

⁷⁹ *Velasco v. COMELEC* [hereinafter "*Velasco*"], G.R. No. 180051, 575 SCRA 590, 604, Dec. 24, 2008.

While the State cannot interfere with the voters' right to select their candidates, it can put limitations on the electorate's choices, such as prohibitions against nuisance candidates or cancellation of certificates of candidacies (CoCs). The State has a compelling interest in ensuring that elections are rational, objective, and orderly. It upholds this interest through accounting for practical considerations in conducting elections, such as logistical concerns and sufficiency of time and resources. To include candidates who have no serious intentions or capabilities of running a viable campaign to the already complex process of election operations would impair the electoral process because they could detract from the larger purpose of the elections and from the COMELEC's duty in ensuring the conduct of free, orderly, and honest elections.⁸⁰ Moreover, allowing a candidate who has no *bona fide* intention to run for office prevents a faithful determination of the true will of the electorate.⁸¹ By including nuisance candidates, elections are turned into an uneven playing field where a *bona fide* candidate may have a significant number of votes cast for him invalidated as stray votes by the mere presence of another candidate with a similar name. Thus, the prohibition against nuisance candidates aims to prevent uncertainty and confusion in ascertaining the will of the electorate.⁸²

The State is also allowed to prevent persons who make material misrepresentations in their CoCs from participating in elections. Filing a CoC is a mandatory requirement before elections⁸³ as it is a formal manifestation to the whole world of the candidate's political creed or lack of political creed, his eligibility for the office he seeks, his political affiliations, and his post-office address for all election purposes.⁸⁴ A material misrepresentation for which a candidate's CoC may be cancelled pertains to a false statement for his qualifications to elective office or a concealment of any disqualification for the office to which he seeks to be elected.⁸⁵ When a material representation in a CoC is made, there constitutes a violation of the country's election and criminal laws and is an assault on the will of the people as expressed in the country's laws. In a choice between provisions on material qualifications of elected officials and the will of the electorate, the

⁸⁰ *Pamatong v. COMELEC*, G.R. No. 161872, 427 SCRA 96, 104, 105, Apr. 13, 2004.

⁸¹ *Fernandez v. Fernandez*, G.R. No. 32675, 36 SCRA 1, 14, Nov. 3, 1970.

⁸² *Dela Cruz v. COMELEC*, G.R. No. 192221, 685 SCRA 347, 367, 369, Nov. 13, 2012.

⁸³ *Velasco*, 575 SCRA at 615.

⁸⁴ *Sinaca v. Mula*, G.R. No. 135691, 315 SCRA 266, 276, Sept. 27, 1999.

⁸⁵ *Engle v. COMELEC*, G.R. No. 215995, 781 SCRA 201, 217, 218, Jan. 19, 2016.

Court has held that it cannot choose the electorate's will as the balance must always tilt in favor of upholding and enforcing the law to preserve the rule of law.⁸⁶

Jurisprudence shows that the right to hold public office is an offshoot or necessary consequence of the right to vote. Because persons are allowed to select their representatives in government, their chosen representatives are imbued with public trust in the discharge of their delegated sovereign functions. Without public trust, persons would not be able to assume or continue in public office. While any qualified person is allowed to run for public office, the requirements for eligibility emphasize the importance of being cognizant of the electorate's needs and loyalty to the country. The state is also allowed to disqualify otherwise qualified persons to run for public office if they have no *bona fide* intention to run for public office to prevent distortions of the electorate's will. Thus, even the right to public office is interpreted to emphasize the protection of the public interest involved in the electoral process. However, even if this is the case, the electorate's will cannot prevail in cases where it will conflict with the Court's duty to uphold, enforce, and preserve the rule of law.

D. Comparing the Right to Vote and the Right to Public Office

As previously established, jurisprudence generally leans towards treating the right to vote as a preferred right over the right to hold public office. The Supreme Court has repeatedly held that the manifest will of the people as expressed through the ballot must be given fullest effect and in case of doubt, political laws must be interpreted to give life and spirit to the popular mandate.⁸⁷ Election laws are meant to give effect, rather than frustrate, the will of the people.⁸⁸ Laws governing election contests should be liberally construed to the end that the will of the people in choosing their public officials is not defeated by technical objections.⁸⁹ Election contests and disqualification cases most clearly illustrate the operation of these pronouncements.

While the right to a public office is personal, the determination of an election protest is not personal to the parties involved. Since it involves the determination of the real choice of the electorate, it is a process imbued

⁸⁶ *Velasco*, 575 SCRA at 615.

⁸⁷ *Garay v. COMELEC*, G.R. No. 121331, 261 SCRA 222, Aug. 28, 1996.

⁸⁸ *Bautista v. COMELEC*, G.R. No. 133840, 298 SCRA 480, 490, Nov. 13, 1998.

⁸⁹ *Alberto v. COMELEC*, G.R. No. 132242, 311 SCRA 215, 222, July 27, 1999.

with public interest.⁹⁰ When the Court is called upon to possibly reverse the popular electoral choice, it must exert utmost effort to resolve the controversy in a way that would give effect to the will of the majority because of the public policy to fill elective offices with the majority's choice. Any person challenging a winner's qualifications must clearly demonstrate that the latter's ineligibility is so patently antagonistic to the Constitution and laws that giving effect to the electorate's will would result in greater prejudice to the country's democratic institutions which the law seeks to protect.⁹¹

In line with these principles and with the rule that every ballot is presumed valid, unless there is a clear and good reason to justify its rejection, the Court has set out various guidelines to ensure that votes are not invalidated. Prior to the automated elections, the Court used interpretative rules such as the *idem sonans* rule, the neighborhood rule, the intent rule, and the written by two rule in evaluating the validity of handwritten votes.⁹² The Court is also careful in treating votes as stray or cancelled. A stray vote is invalidated because there is no way of determining the real intention of the voter. However, votes in favor of a nuisance candidate are not considered stray but are counted in favor of the legitimate candidate bearing a similar surname to prevent the frustration of the electorate's will and voters' disenfranchisement.⁹³ But in multi-slot offices, if the ballot contains votes for both the nuisance and *bona fide* candidate, only one vote will be counted in the latter's favor to prevent double counting.⁹⁴ Meanwhile, in election contests, votes would only be considered void when a CoC is cancelled but not when a candidate is disqualified. In the former, a person is treated as if he never filed a CoC and as such, is not a candidate at all. But in the latter, a person is still considered a candidate for all intents and purposes.⁹⁵

Aside from this, the Court also does not automatically deem the second placer as the valid holder of a contested position in successful disqualification cases to prevent the disenfranchisement of voters who cast their vote in favor of a candidate they believed could be validly voted during the elections. To simplistically assume that the second placer would have

⁹⁰ De Castro v. COMELEC, G.R. No. 125249, 267 SCRA 806, 809, Feb. 7, 1997.

⁹¹ Frivaldo v. COMELEC, G.R. No. 120295, 257 SCRA 727, 771, June 28, 1996.

⁹² Sevilla v. COMELEC, G.R. No. 227797, 885 SCRA 374, 397, 398, 399, Nov. 13, 2018.

⁹³ See Dela Cruz v. COMELEC, G.R. No. 192221, 685 SCRA 347, 365, Nov. 13, 2012.

⁹⁴ Santos v. COMELEC, G.R. No. 235058, 879 SCRA 120, 142, 143, Sep. 4, 2018.

⁹⁵ Tagolino v. HRET, G.R. No. 202202, 693 SCRA 574, 592, Mar. 19, 2013.

received the votes given to the first placer if the disqualification had occurred prior to the election would be a substitution of the voter's mind with the Court's judgment. The second placer cannot be considered the winner among the remaining contenders because he was repudiated by a plurality of voters. Moreover, the first placer's disqualification would have substantially changed the conditions of the electoral landscape.⁹⁶ The only exception to this rule is when the CoC is considered *void ab initio* since this cannot operate to defeat one or more valid CoCs for the same position.⁹⁷

Jurisprudence illustrates that the primary purpose of election law is to give effect to the electorate's will and to uphold the popular mandate through clean, fair, and honest elections. Election laws ensure that public office is conferred only to candidates who have been selected by popular mandate, subject only to the limitation that upholding such mandate will not cause greater prejudice to the country's democratic institutions. It is only this that the court seeks to prevent in construing election laws.

II. CONTEXT-SETTING: SUBSTITUTION VS. REPLACEMENT

A. Substitution

Substitution of candidates under the Omnibus Election Code must comply with the following requisites: First, there is an official candidate of a registered or accredited political party. Second, the official candidate dies, withdraws or is disqualified for any cause. Third, the substitute belongs to the same political party as the official candidate and was nominated and certified by the political party as the official candidate's substitute.⁹⁸ However, there is nothing in the Constitution or the statute which requires that a person be a member of the political party for a certain period as a condition precedent before he can be nominated as a substitute.⁹⁹ Lastly, the substitute files his CoC not later than mid-day of the day of the election.¹⁰⁰

The rule has substantially changed its predecessor found in the 1971 Election Code, which allowed any voter legally qualified for the office to file a CoC in place of the original candidate. Previously, membership in a political party was only necessary if the original candidate was affiliated with

⁹⁶ *See* Aquino v. COMELEC, G.R. No. 120265, 248 SCRA 400, Sep. 18, 1995.

⁹⁷ *Jalosjos v. COMELEC*, G.R. No. 193237, 683 SCRA 1, Oct. 9, 2012.

⁹⁸ ELECT. CODE, § 77.

⁹⁹ *Sinaca v. Mula*, G.R. No. 135691, 315 SCRA 266, 279, Sept. 27, 1999.

¹⁰⁰ ELECT. CODE, § 77.

a political party.¹⁰¹ In Congressional records, it is argued that the proposal was necessary because the old rule, in effect, reopens the period of filing CoCs.¹⁰² The privilege is given only to political parties as a form of protection¹⁰³ and to ensure that the temptation to assassinate any candidate in order to reopen the period of filing CoCs would be reduced.¹⁰⁴ But in *Rulloda v. COMELEC*, the Court notes that there is more reason to allow the substitution for candidates where no political parties are involved than when political considerations or party affiliations reign.¹⁰⁵

It is only in cases of death, withdrawal, or disqualification that substitutions are allowed because of the maxim *expressio unius est exclusio alterius*. Thus, substitution is not allowed when a CoC is cancelled especially since this does not give rise to a valid candidacy.¹⁰⁶ COMELEC Resolutions impose further restrictions on substitutions. The following observations can be drawn when comparing provisions on substitutions found in COMELEC Resolutions from 2004-2022¹⁰⁷:

- From 2004-2013, substitutions due to withdrawal are allowed only until a set period. The rule was briefly changed in 2019 to allow for substitution due to withdrawal up to mid-day of election day provided that the candidate and the substitute have the same surnames. The old rule was reinstated in 2022.
- It was only in 2004 that the deadline for substitutions due to disqualifications was set at the same date as that of withdrawals.
- From 2004-2010, persons who have withdrawn their candidacy were not eligible as substitute candidates for any

¹⁰¹ ELECT. CODE (1971), § 34.

¹⁰² Batasang Pambansa Rpt., Second Reading Cabinet Bill No. 2 (June 6, 1985), at 54.

¹⁰³ Batasang Pambansa Rpt., Committee on Ad Hoc, Revision of Laws (May 20, 1985), at 64. *See also* Tagolino v. HRET, G.R. No. 202202, 693 SCRA 574, Mar. 19, 2013.

¹⁰⁴ Batasang Pambansa Rpt., Second Reading Cabinet Bill No. 2, (June 6, 1985), 54–55.

¹⁰⁵ G.R. No. 154198, 395 SCRA 535, 540, Jan. 20, 2003.

¹⁰⁶ *Miranda v. Abaya*, G.R. No. 136351, 311 SCRA 617, 624, July 28, 1999.

¹⁰⁷ *See* COMELEC Res. No. 6543 (2003), § 14; COMELEC Res. No. 7799 (2007), § 14; COMELEC Res. No. 8678 (2009) § 13; COMELEC Res. No. 9518 (2012), § 19; COMELEC Res. No. 9984 (2015) § 19; COMELEC Res. No. 10420 (2018), § 33; COMELEC Res. No. 10717 (2021) § 40.

other position after the deadline for the filing of CoCs. This rule was removed in succeeding elections.

- The rule has been consistent that candidates who died or suffered permanent incapacity may file their CoCs up to mid-day of election day. Candidates who have been disqualified have also been allowed to do so since the 2007 Elections. However, starting in 2010, the disqualification must be by final judgment.
- Since 2013, the official candidate may be substituted by a person belonging to the same coalition of political parties. The phraseology of the 2013 Resolution acknowledges that one may be an official candidate of a coalition of political parties but does not expressly state that the substitute may belong to, or be nominated, by the same coalition. This has been clarified in the 2016 Resolution and has been carried over in succeeding Resolutions.
- Since 2013, in cases of substitution due to death or disqualification by final judgment, the substitute may file a CoC up to mid-day of Election Day, provided that the substitute and the substituted candidate have the same surnames. The same surname requirement has been carried over in succeeding Resolutions.
- Since 2016, there has been an express recognition that substitution due to withdrawal must be done before a set date so that the name of the substitute will be reflected on the official ballots. The recognition has been expanded to include candidates who died or were disqualified, provided that the substitution occurs in the date set by COMELEC.

As this illustrates, there are certain deviations from the requisites under Section 77 which have been allowed under COMELEC Resolutions, specifically the setting of different deadlines for filing CoCs depending on the cause of the vacancy and the same surname requirement.

The Court discusses the validity of differing deadlines for filing CoCs depending on the cause of the vacancies in *Federico v. COMELEC*. The distinction between withdrawal and death or disqualification is clear. The former is a voluntary act of the candidate, who has had sufficient time to ponder on his candidacy, and to withdraw while the printing of the ballots has not yet started. If the candidate withdraws after the printing, the name

of the substitute can no longer be accommodated in the ballot and a vote for the substitute will just be wasted.¹⁰⁸

Meanwhile, Republic Act No. 9006 also provides that in case of valid substitutions after the official ballots have been printed, votes cast for substituted candidates shall be considered as stray votes. However, this rule does not apply if the substitute and the official candidate have the same surname.¹⁰⁹ The rationale for this rule is in order to obviate confusion.¹¹⁰ A space shall be provided in the official ballots where voters may write the name of the substitute if they are voting for him.¹¹¹ The appreciation of the votes cast in case of a late substitution of candidates can be considered an inequitable election practice which Congress sought to address to level the playing field among candidates. Thus, regulating the appreciation of votes in cases of substitutions can be considered as important in enhancing the holding of free, orderly, peaceful, and credible elections.¹¹²

With the passage of the Automated Election Law and the Court's pronouncement in *Federico*, the rule seems to be that for votes of the substitute to be counted when the substitution is made after the period of withdrawal of CoCs set by COMELEC, the substitute must bear the same surname as the substituted candidate since there is no other mechanism provided in the ballot to ascertain that the voter intended to vote for the substitute. If the substitute bears a different surname from the substituted candidate, the substitution must occur before the end of the period for withdrawal of CoCs.

B. Replacement

An office is considered vacant when there is no legally qualified person lawfully exercising its powers and perform its duties.¹¹³ Situations where permanent vacancies arise include death, permanent disability or incapacity, removal from office, voluntary resignation, refusal to assume office, and failure to qualify for office.¹¹⁴ Vacancies in elected offices may be

¹⁰⁸ G.R. No. 199612, 689 SCRA 134, 151, Jan. 22, 2013.

¹⁰⁹ Rep. Act. No. 9006 (2001), § 12. Fair Election Act.

¹¹⁰ *Federico*, 689 SCRA at 150.

¹¹¹ Rep. Act. No. 9006 (2001), § 12. Fair Election Act.

¹¹² *Giron v. COMELEC*, G.R. No. 188179, 689 SCRA 97, 105, Jan. 22, 2013.

¹¹³ HECTOR S. DE LEON & HECTOR M. DE LEON, JR. THE LAW ON PUBLIC OFFICERS AND ELECTION LAW 95 (2019).

¹¹⁴ See CONST. art. VII, § 8; LOC. GOV. CODE § 44. See also *Navarro v. CA*, G.R. No. 141307, 355 SCRA 672, Mar. 28, 2001.

filled through automatic succession¹¹⁵ but this is not always the case. Vacancies for Vice President, Members of Congress, and Members of the Local Sanggunians are not filled through automatic succession. These positions are filled either by appointment or through special election.

1. *Appointment*

A vacancy in the Vice Presidency is filled by a Member of Congress nominated by the President. The nomination must be confirmed by a majority vote of all Members of both Houses, voting separately.¹¹⁶ This is a new rule introduced under the 1987 Constitution and is adapted from Amendment 25 of the U.S. Constitution.¹¹⁷ An attempt to limit President's choice to Senators was made on the argument that Senators are elected at large. This was defeated by the argument that a Member of the House may also have a national outlook and the same competency as that of a Senator.¹¹⁸

When automatic succession does not apply to fill permanent vacancies in the Sanggunian, appointments are made by:

- The President, for the Sangguniang Panlalawigan and Sangguniang Panlungsod of highly urbanized cities and independent cities
- The Governor, for the Sangguniang Panlungsod of component cities and the Sangguniang Bayan.
- The Mayor, for the Sangguniang Barangay, upon recommendation of the Sangguniang Barangay concerned.¹¹⁹

Except in the Sangguniang Barangay, if the local Sanggunian member causing the vacancy belongs to a political party, the appointment must comply with the following requisites:

- The appointee shall come from the same political party as that of the Sanggunian member who caused the vacancy.

¹¹⁵ See CONST. art. VII, § 7, 8, & 11 for the succession provisions involving the vacancy of the Office of the President. See LOC. GOV. CODE § 44 for succession provisions involving the vacancies in the offices of Governor, Vice Governor, Mayor, Vice Mayor, and Punong Barangay.

¹¹⁶ CONST. art. VII, § 9.

¹¹⁷ ISAGANI CRUZ & CARLO CRUZ, PHILIPPINE POLITICAL LAW 350 (2014).

¹¹⁸ 2 RECORD CONST. COMM'N 43, 441 (July 23, 1986).

¹¹⁹ LOC. GOV. CODE § 45.

- The appointee must have a nomination and a Certificate of Membership from the highest official of the political party concerned.¹²⁰

The rationale behind these requirements is to maintain party representation as willed by the people in the election.¹²¹

But if the Sanggunian member causing the vacancy does not belong to any political party, the local chief executive appoints a qualified person to fill the vacancy, upon the recommendation of the Sanggunian concerned. This applies the rule on vacancies in Sangguniang Barangay by analogy, since party affiliations for the latter are prohibited by law.¹²²

2. *Special Election*

Meanwhile, vacancies in the Senate and House of Representatives (House) may be filled by calling a for a special election.¹²³ At the House level, this rule only applies to district representatives since vacancies of party-list representatives are automatically filled by the next person in the party's list of nominees.¹²⁴ The most recent legislation on special elections is Republic Act No. 7166. This law amends the period for when the vacancies arise, the manner of calling for a special election,¹²⁵ and period to hold special

¹²⁰ *Damasen v. Tumamao*, G.R. No. 173165, 613 SCRA 49, 59, Feb. 17, 2010.

¹²¹ *Navarro v. CA*, G.R. No. 141307, 355 SCRA 672, 678, Mar. 28, 2001.

¹²² *Fariñas v. Barba*, G.R. No. 116763, 256 SCRA 396, 405–06, Apr. 19, 1996.

¹²³ CONST. art. VI, § 9.

¹²⁴ Rep. Act. No. 7491 (1995), § 16. Party-List System Act.

¹²⁵ Rep. Act. No. 6645 (1987), § 1. An Act Prescribing the Manner of Filing a Vacancy in the Congress of the Philippines. The provision states:

In case a vacancy arises in the Senate at least eighteen (18) months or in the House of Representatives at least (1) year before the next regular election for Members of Congress, the Commission on Elections, upon receipt of a resolution of the Senate or the House of Representatives, as the case may be, certifying to the existence of such vacancy and calling for a special election, shall hold a special election to fill such vacancy. If Congress is in recess, an official communication on the existence of the vacancy and call for a special election by the President of the Senate or by the Speaker of the House of Representatives, as the case may be, shall be sufficient for such purpose. The Senator or Member of the House of Representatives thus elected shall serve only for the unexpired term.

elections¹²⁶ stated in Republic Act No. 6645.¹²⁷ The present rule is that if a permanent vacancy occurs in the Senate or House at least 1 year before the expiration of the term, a special election should be held.¹²⁸ Records of Constitutional Commission's deliberations reveal the intent to omit a mandatory period for when the special elections should be held to allow for discretion to hold elections for vacancies in the Senate simultaneously with regular elections, considering the difference in financial considerations for a special election in one district versus a special election for the whole country.¹²⁹

However, there are challenges in harmonizing the interpretation of Republic Act No. 6645 and Republic Act No. 7166. In *Tolentino v. COMELEC*, the Court expressly states that Section 4, Republic Act No. 7166 amended Section 2, Republic Act No. 6645. The interpretation of the amended rule is that if a vacancy arises in Congress at least one year before the expiration of the term, COMELEC calls a special election by fixing the date of the special election and to give notice to the voters of the office/s to be voted for. The date of the special election should be not later than 60 days nor later than 90 days if the vacancy is in the House. Meanwhile, if the vacancy is in the Senate, the special election shall be held simultaneously with the next succeeding regular election.¹³⁰

Compliance with the notice requirement for special elections in the House is essential and mandatory for the election's validity because the law does not fix the time and place for holding the special election. However, it is not mandatory in special elections for the Senate because the statute expressly sets the date of the special election to be simultaneous with the next general elections, which operates as the call for the special election. The

¹²⁶ § 2. An Act Prescribing the Manner of Filing a Vacancy in the Congress of the Philippines. The provision states:

The Commission on Elections shall fix the date of the special election, which shall not be earlier than forty-five (45) days not later than ninety (90) days from the date of such resolution or communication, stating among other things the office or offices to be voted for; provided, however, that if within the said period a general election is scheduled to be held, the special election shall be held simultaneously with such general election.

¹²⁷ Rep. Act. No. 7166 (1991) § 39. An Act Providing for Synchronized National and Local Elections and For Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes.

¹²⁸ § 4.

¹²⁹ 2 RECORD CONST. COMM'N 37, 160-161 (July 23, 1986).

¹³⁰ G.R No. 148334, 420 SCRA 438, 455, Jan. 21, 2004.

law charges voters with knowledge of the time and place of the election. In case there is a failure to give notice, the test of a special election's validity is whether the lack of notice resulted in misleading a sufficient number of voters as would change the election's result. If a substantial number of voters were misled into wrongly believing that there was no special election, then it will be void.¹³¹

Even with the passage of Republic Act No. 7166, there is a perception that because of the use of the word “may” in Article VI, Section 9 of the 1987 Constitution and the applicability of Section 1, Republic Act No. 6645, the House has the discretion to decide the manner of filling a vacancy.¹³² As a result, the House has resorted to the practice of appointing a district caretaker. Resort to the practice is also partly attributed to the pronouncement in *Tolentino* expressly stating that only Section 2 of Republic Act No. 6645 was repealed.¹³³

The practice does not have any statutory basis, which makes it difficult to define and delimit.¹³⁴ According to reported practice, the tradition involves the appointment of a district caretaker for a vacant district representative position. While there is reportedly an order followed in selecting a district caretaker, practice shows that other factors such as partisanship and political leverage are considered in making these appointments.¹³⁵

But this perception that the Members of the House have the discretion to decide how to fill a vacant seat among their ranks should be considered erroneous. Republic Act No. 6645 has already been repealed.¹³⁶ Section 4 of Republic Act No. 7166 expressly states that in case of vacancies in the Batasang Pambansa, COMELEC decides on the calling of a special elections through a majority vote of its members.¹³⁷ This does away with the

¹³¹ *Id.* at 458.

¹³² See Juan Paolo Artiaga & Katrina Crista Artiaga, *Unconstitutional House Caretaking*, 94 PHIL. L.J. 892 (2021).

¹³³ *Id.* at 934–940.

¹³⁴ See *id.* at 919.

¹³⁵ See *id.* at 920–923.

¹³⁶ *Id.* at 919.

¹³⁷ Rep. Act. No. 7166 (1991), § 4. An Act Providing for Synchronized National and Local Elections and For Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes. The author agrees with the view posited by Artiaga & Artiaga, *supra* note 132, that Section 1, Republic Act No. 6646 should be considered repealed because of the

certification required under Republic Act No. 6645 and shifts the discretion to call a special election from Members of the House to COMELEC. Even if this is the case, the practice of legislative caretaking is still resorted to with increasing in frequency throughout the years.¹³⁸

There is also a mechanism in place in case only one qualified candidate files a CoC in a special election. Provided that the vacancy is for an elective position other than President and Vice President, the lone candidate shall be proclaimed elected to the position without holding a special election upon certification by COMELEC that he is the only candidate for the office.¹³⁹ The rationale for this is to provide people with adequate and constant governance and representation in public affairs by ensuring that, as much as practicable, every elective position in the executive and legislative branches of government is occupied at all times at the least cost to government.¹⁴⁰ However, for the candidate to assume office, there must be no lawful ground to cancel his CoC.¹⁴¹ There are also additional disqualifications imposed on the lone candidate.¹⁴²

While the law specifies that the procedure is followed for vacancies apart from the President and Vice President, vacancies for Senators are filled during regular elections, with the current practice being that the 13th placer

inclusion of special elections in the event of a vacancy under Section 4, Republic Act No. 7166.

¹³⁸ Artiaga & Artiaga, *supra* note 132, at 918.

¹³⁹ Rep. Act. No. 8295 (1997), § 2. An Act Providing for the Proclamation of a Lone Candidate for Any Elective Office in a Special Election, and for Other Purposes.

¹⁴⁰ § 1..

¹⁴¹ § 3.

¹⁴² § 4. The provision states:

In addition to the disqualifications mentioned in Secs. 12 and 68 of the *Omnibus Election Code* and Sec. 40 of Republic Act No. 7160, otherwise known as the *Local Government Code*, whenever the evidence of guilt is strong, the following persons are disqualified to run in a special election called to fill the vacancy in an elective office, to wit:

a) Any elective official who has resigned from his office by accepting an appointive office or for whatever reason which he previously occupied but has caused to become vacant due to his resignation; and

b) Any person who, directly or indirectly, coerces, bribes, threatens, harasses, intimidates or actually causes, inflicts or produces any violence, injury, punishment, torture, damage, loss or disadvantage to any person or persons aspiring to become a candidate or that of the immediate member of his family, his honor or property that is meant to eliminate all other potential candidate.

would fill the vacancy.¹⁴³ Meanwhile, vacancies in local Sanggunians are addressed under the Local Government Code. Other vacancies in local elective offices are addressed through succession provisions. Republic Act No. 8295 is also premised on the holding of a special election. Considering these laws, it seems that the rule on lone candidates only applies to vacancies in the House.

3. Distinctions

The rationale for the modes of filling vacancies may be understood and differentiated when considering the purpose and function of the office involved.

The Vice President is part of the Executive branch. He is elected to succeed the President in the event of the latter's death, permanent disability, removal, or resignation. The Vice President's appointment to a cabinet position is entirely dependent on the good graces of the President. Thus, it can be said that the Vice President also seeks the Presidency. To fill this position, electors choose a candidate they think can assume the Presidency if it becomes vacant.¹⁴⁴ Unlike other positions wherein the electorate considers the candidate's ability to fulfill the functions of the office which the latter seeks, the consideration for choosing a Vice President is his ability to fulfill an office which he may not assume.

Meanwhile, members of the legislature are elected to exercise legislative power conferred to them by the people according to republican constitutional theory.¹⁴⁵ Senators are elected at large by the national electorate¹⁴⁶ while district representatives are elected by legislative districts which are determined and apportioned on the basis of a uniform and progressive ratio of inhabitants.¹⁴⁷ The rationale for the apportionment is to achieve equality of representation by ensuring that representatives represent, as much as possible, an equal number of constituents.¹⁴⁸

¹⁴³ *See Tolentino v. COMELEC*, G.R. No. 148334, 420 SCRA 438, Jan. 21, 2004.

¹⁴⁴ *Borja, Jr. v. COMELEC*, G.R. No. 133495, 295 SCRA 157, 168, Sep. 3, 1998.

¹⁴⁵ JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 697 (2009).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 701.

¹⁴⁸ *Id.*

National legislative power is granted to Congress¹⁴⁹ and this power cannot be delegated,¹⁵⁰ except to local governments, which are allowed to legislate on purely local matters.¹⁵¹ Under the 1987 Constitution, local governments are given local autonomy¹⁵² and they shall have a more responsive and accountable local government structure instituted through a system of decentralization.¹⁵³ This structure must be sensitive to the needs of the locality, accountable to its electorate, and freed, as much as possible, from central government interference.¹⁵⁴ Legislative power in local government is delegated to a Sanggunian, which is a collegial body. Participation of all its members is required not only in representing the interests of their respective constituents but also in decision-making.¹⁵⁵ Considering the objectives of decentralization and the nature of the Sanggunian as a collegial body, it can be argued that there are distinct differences justifying why appointments are resorted to in the Sanggunian instead of holding special elections to fill a vacancy, unlike the other positions in the legislature.

III. SUBSTITUTION VS. REPLACEMENTS: IS THERE AN INFRINGEMENT OF THE RIGHT TO VOTE?

In determining whether substitution and replacements of vacancies without automatic succession infringe the right to vote, it is imperative to analyze these procedures using the principles derived from the characterization of the Philippines as a democratic and republican state as established in jurisprudence. The following questions consolidate the pertinent principles discussed in Part I:

1. Does the primary intent of the procedure align with the intent of elections, which is to elect persons into public office based on majoritarian rule and to ascertain and uphold the electorate's will in designating persons to public office?

¹⁴⁹ *Id.* at 679.

¹⁵⁰ *Id.* at 686-687.

¹⁵¹ *Id.* at 695.

¹⁵² CONST. art. X, § 2.

¹⁵³ CONST. art. X, § 3.

¹⁵⁴ BERNAS, *supra* note 145 at 1118.

¹⁵⁵ *La Carlota City v. Rojo*, G.R. No. 181367, 670 SCRA 482, 505, Apr. 24, 2012.

2. Do the persons selected as substitutes or replacements meet the rationale for selecting candidates for elective office as established in jurisprudence?
3. Does the process uphold public interest and safeguard against greater prejudice to the country's democratic institutions?

A. Substitution

Substitutions complying with the date set by COMELEC in case of withdrawals of CoCs aligns with the intent of elections since there is certainty as to whom the electorate is voting for. It is the substitute whose qualifications are ascertained by the electorate during the election period, and it is also the substitute's name indicated in the ballot among the qualified candidates for the position during election day. It is as if the substitute was the original candidate who filed the CoC.

However, if substitution occurs after the date for withdrawal of CoCs, there may be an infringement of the right to vote. Under the present rule, for votes in favor of the substitute to be counted, the substituted candidate and the substitute must share the same surname. The rule was introduced to ensure that the surname on the ballot, which is printed months prior to election day, is the same as the substitute's.¹⁵⁶

But the full name reflected on the ballot would be that of the original candidate's. The original candidate's reputation, competencies, and presence in the community may be different from that of the substitute's. While the substitute has to comply with the qualifications set by law, there is no guarantee that the electorate would be able to evaluate the candidate's qualifications and fitness personally and decide the candidate's merit for themselves. As explained in *Torayno v. COMELEC*, the residency requirement is not only to ensure that the candidate is familiar with the community's needs, but also so that the candidate would be familiar to the community, who would then evaluate his qualifications and fitness.¹⁵⁷ Still,

¹⁵⁶ Paterno Esmaguel II, *Comelec relaxes rules for substitution of candidates in 2019*. RAPPLER, Sep. 11, 2018, at <https://www.rappler.com/nation/elections/211669-comelec-relaxes-rules-candidate-substitution/>.

¹⁵⁷ *Torayno v. COMELEC*, G.R. No. 137329, 337 SCRA 574, 584 & 587, Aug. 9, 2000.

substitutions in case of death or disqualification can occur even after the campaign period and on the election day itself. In this case, the electorate might rely on the reputation affiliated with the surname instead of the candidate's merits.

Additionally, should the candidates be affiliated by blood, this mechanism could be exploited to aid the perpetuation of dynastic politics. But there is no requirement that the substitute be related to the original candidate, the only requirement being that they share the same surname. But even if the original candidate and the substitute were mere strangers to each other, the public could perceive them to be affiliated due to the substitution.

Aside from similar surnames, the only other guaranteed connection between the original candidate and the substitute is their party affiliation. But the law does not impose a requirement as to the substitute's tenure in the party before he would be qualified to substitute another party member. This may be prone to abuse because there is no guarantee that the substitute aligns with or represents the party's political agenda.

In fact, the substitute may even join the party for the very purpose of substituting the original candidate. The Court attempted to address this issue in *Sinaca v. Mula* by noting that once a candidate is a member of a political party, he is obligated to pursue and carry out the party's ideology, political ideas, and platforms of government. He would also be bound by the party's rules and would represent the party, its principles, ideals, and objectives to the electorate.¹⁵⁸ But, given the prevalence of political turncoatism and the country's weak party system, relying on party affiliation alone to determine a candidate's ideology, political ideas, and platforms of government may be insufficient. Considering the period when the substitution can be made, there is also no guarantee that the electorate would be able to ascertain the candidate's political agenda themselves.

Lastly, there is no requirement that the public be informed of the substitution. This means that they could very well be casting their votes for the candidate listed in the ballot, believing in good faith that they are choosing such candidate. There is no mechanism integrated into the ballot to ascertain that the electorate is aware that they are voting for the substitute, not the original candidate, unlike that in Republic Act No. 9006.

¹⁵⁸ *Sinaca v. Mula*, G.R. No. 135691, 315 SCRA 266, 277, Sept. 27, 1999.

B. Replacements

Filling vacancies in Congress through a special election upholds the primary intent of elections and ascertains that the electorate has chosen the candidate to fill the vacancy. A replacement is elected in the similar manner as that of a candidate elected during a regular election, only with the caveat that the replacement will only serve the remainder of the term of the Member of Congress he is replacing.

While filling vacancies through special elections would not violate the right to vote, the other modes of filling vacancies may infringe on the right to vote.

The lone candidate rule infringes the right to vote but it provides a safeguard against greater prejudice to democratic institutions. The primary consideration of the law is ensuring that every elective position is occupied at the least cost to government. While the candidate may have the qualifications required by law, this is not a sufficient basis to ascertain that the public would have chosen him among a pool of candidates for the position. However, since there is only one candidate sought to be elected to the office, it would be of greater public interest to ensure that the vacancy is filled expediently and at least cost to government.

Resort to legislative caretaking is also an infringement on the right to vote. While the caretaker is also a duly elected Member of the House, he was not chosen specifically by the constituency of the district concerned. This defeats the purpose of the residency requirement because there is no guarantee that the caretaker is aware of the needs and conditions of the community he supposedly represents. Likewise, there is no guarantee that he would uphold the interests of that constituency, especially considering that he was elected by another constituency or sector that he is more closely affiliated with.

The manner of filling the vacancy in the Vice Presidency also infringes the right to vote. It neglects major distinctions between the Vice President and Members of Congress. Members of Congress are chosen based on their capacity to legislate and represent their constituency's interests in the legislative process while the Vice President is chosen because of his capacity to assume the responsibilities of the President, should the latter be incapacitated. The scope of the electorate voting for Vice President also differs from those voting for Members of the House.

Moreover, the President has the discretion to choose the Vice President. Notably, if both positions of President and Vice President are vacant, the Constitution provides for automatic succession.¹⁵⁹ But if only the Vice Presidency is vacant, the selection of his replacement becomes an exercise of discretion. Even if Congress must confirm the appointment, the provision's intent is geared towards upholding the President's interests as opposed to the electorate's. Giving the President the power to choose his Vice President neglects the political reality that Presidents and Vice Presidents are not voted as a pair in the Philippines, unlike in the United States. They are voted as separate positions so the President and the Vice President may not necessarily belong to the same party.

The Constitutional Committee's Deliberations also reveal that the intent in allowing the nominee to come from either chamber of Congress is so that the President has a wider scope of people to choose from. While the framers argue that Members of the House and the Senate are at the same level of competency, it cannot be denied that the electorate voting for these positions are different in scope. The considerations taken in choosing a district representative, who represents a smaller, distinct constituency are different from the considerations taken in choosing a national representative. Additionally, while a Member of the House's competency may be ascertained by the electorate voting for him, electorate of other legislative districts are not afforded the same opportunity. Thus, the provision skews favorably to upholding the President's, rather than the public's, interest.

Lastly, appointments to fill vacancies in the Sanggunian also infringe on the right to vote. Considerations of efficiency and responsiveness of local government and the principle of decentralization were prioritized over upholding the public mandate. In this situation, there is no express requirement that the appointee has to meet the qualifications required for the office he would be appointed to. Unlike in substitutions, where the substitute is required to file a CoC to manifest his qualifications for office, there is no requirement for an appointee in the Sanggunian to do so. All that is required is that the appointee has a Certificate of Nomination and a Certificate of Membership in a political party; these are not even required for independent candidates. There is also no opportunity for the electorate to appraise the fitness of the replacement for the position he will be occupying, as they would only be informed of the appointment when the replacement assumes office.

¹⁵⁹ CONST. art. VII § 8.

Appointments to vacancies based on party affiliations face the same challenges as those raised in the discussion on party affiliations in substitutions. While the intent was to preserve the proportion of party representation in the Sanggunian, this denies the political reality that members of the Sanggunian are voted as individuals and not necessarily as a party slate. Replacing one Member of the Sanggunian with another party member does not necessarily guarantee the same competencies, skill, and reputation which the public may have considered in choosing the elected Sanggunian Member.

The discretion given to the local chief executive to appoint a replacement for an independent Sanggunian Member may also be prone to abuse because of the lack of safeguards constraining this power. There are no guidelines in selecting an appointee or qualifications that he must meet. There is also no requirement for the local chief executive to automatically adhere to the recommendation of the Sanggunian concerned.

CONCLUSION

Voting in elections is the primary means by which citizens participate in the government. Because sovereign authority stems from the people, this practice must be highly safeguarded to fulfill the true essence of a republican and democratic government. Public office is conferred on candidates chosen by popular mandate through this process, after the public has evaluated their qualifications, merit, and fitness. This process is important because elected officials hold their positions in trust for the people who have selected them to carry out functions of government and exercise the sovereign authority granted to them. Any process that substitutes the majoritarian will of the electorate with the will of only a small portion of the population should be created with the larger goals of upholding public interest, the preservation of the country's democratic institutions, and the protection of such democratic institutions against opportunism and abuse in mind. While substitutions and filling vacancies not by automatic succession are allowed by law, these may be an infringement on the right to vote when the mechanisms through which they are implemented do not properly align with the intent of elections. These processes should be carefully implemented in a manner that is in conjunction with ascertaining and upholding the electorate's will and protecting the democratic institution.