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**EN BANC**

[G.R. No. 263590; June 27, 2023]

**ATTY. ROMULO B. MACALINTAL,** *Petitioner, v.* **COMMISSION ON ELECTIONS and THE OFFICE OF THE PRESIDENT, through EXECUTIVE SECRETARY LUCAS P. BERSAMIN,** *Respondents*.

[G.R. No. 263673; June 27, 2023]

**ATTY. ALBERTO N. HIDALGO, ATTY. ALUINO O. ALA, ATTY. AGERICO A. AVILA, ATTY. TED CASSEY B. CASTELLO, ATTY. JOYCE IVY C. MACASA, and ATTY. FRANCES MAY C. REALINO,** *Petitioners*, *v.* **EXECUTIVE SECRETARY LUCAS P. BERSAMIN, THE SENATE OF THE PHILIPPINES, duly represented by its Senate President, JUAN MIGUEL ZUBIRI, THE HOUSE OF REPRESENTATIVES, duly represented by its Speaker of the House, FERDINAND MARTIN ROMUALDEZ, and THE COMMISSION ON ELECTIONS, duly represented by its Chairman, GEORGE ERWIN M. GARCIA,** *Respondents*.

## D E C I S I O N

**KHO, JR., *J.*:**

*The importance of the people's choice must be the paramount consideration in every election, for the Constitution has vested in them the right to freely select, by secret-ballot in clean elections, the men and women who shall make laws for them or govern in their name and behalf. The people have a natural and a constitutional right to participate directly in the form of government under which they live. Such a right is among the most important and sacred of the freedoms inherent in a democratic society and one which must be most vigilantly guarded if a people desires to maintain through self-government for themselves and their posterity a genuinely functioning democracy in which the individual may, in accordance*

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*with law, have a voice in the form of his government and in the choice of the people who will run that government for him.*

- *Geronimo v. Ramos*, 221 Phil. 130, 141 (1985)
[Per J. Gutierrez, Jr., *En Banc*]

Before Us are consolidated Petitions assailing the constitutionality of Republic Act No. (RA) 11935, entitled "*An Act Postponing the December 2022 Barangay and Sangguniang Kabataan Elections, Amending for the Purpose Republic Act No. 9164, As Amended, Appropriating Funds therefor, and for Other Purposes*."

The Petitions are as follows:

1. Petition for *Certiorari* and Prohibition with Extremely Urgent Prayer for the Issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Mandatory Injunction (WPMI) and for the Conduct of a Special Raffle of this Case[1] filed by petitioner Atty. Romulo B. Macalintal (Atty. Macalintal), docketed as **G.R. No. 263590**; and

2. Petition[2] for *certiorari*, prohibition, and *mandamus* with prayer for the issuance of a TRO and preliminary injunction filed by petitioners Attys. Alberto N. Hidalgo, Aluino O. Ala, Agerico A. Avila, Ted Cassey B. Castello, Joyce Ivy C. Macasa, and Frances May C. Realino (Atty. Hidalgo, *et al.*), docketed as **G.R. No. 263673.**

## THE FACTS

1. On October 10, 2022, President Ferdinand Romualdez Marcos, Jr. approved RA 11935, the salient portions of which include:

a. The postponement of the barangay and *sangguniang kabataan* elections (BSKE) scheduled on December 5, 2022 to a later date, *i.e.*, last Monday of October 2023; and

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1 *Rollo* (G.R. No. 263590), pp. 3–29

2 *Rollo* (G.R. No. 263673), pp. 3–30.

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b. The authority given to incumbent barangay and *sangguniang kabataan* (BSK) officials to remain in office until their successors have been duly elected and qualified, unless sooner removed or suspended for cause.

2. Pertinently, Sections 1 and 3 of RA 11935 read:

Section 1. Section 1 of Republic Act No. 9164, as amended, is hereby further amended to read as follows:

> SECTION 1. *Date of Election.* — There shall be synchronized barangay and *sangguniang kabataan* elections, which shall be held on the last Monday of October 2023 and every three (3) years thereafter.
>
> x x x x
>
> Section 3. *Hold-Over.* — Until their successors shall have been duly elected and qualified, all incumbent barangay and *sangguniang kabataan* officials shall remain in office, unless sooner removed or suspended for cause: *Provided*, That barangay and *sangguniang kabataan* officials who are *ex officio* members of the *sangguniang bayan, sangguniang panlungsod*, or *sangguniang panlalawigan*, as the case may be, shall continue to serve as such members in the *sanggunian* concerned, until the next barangay and *sangguniang kabataan* elections unless removed in accordance with their existing rules or for cause.

**G.R. No. 263590**

On October 17, 2022, Atty. Macalintal filed the Petition subject of **G.R. No. 263590**.[3] In his Petition, Atty. Macalintal argues that RA 11935, insofar as the barangay election is concerned, is unconstitutional, considering that:

***First,*** Congress has no power to postpone or cancel a scheduled election because this power belongs to the Commission on Elections (COMELEC) after it has determined that serious causes, as provided under Section 5 of *Batas Pambansa Blg.* 881, otherwise known as the "Omnibus Election Code of the Philippines" (OEC),[4] warrant such postponement. Thus, by enacting a law

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[3] *Rollo* (G.R. No. 263590), p. 3.

[4] (December 3, 1985).

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postponing a scheduled barangay election, Congress is in effect executing said provision of the OEC and has overstepped its constitutional boundaries and assumed a function that is reserved to the COMELEC.[5]

***Second***, the assailed law gives Congress the power to appoint barangay officials whose term, as provided for by RA 11462,[6] will expire on December 31, 2022 in the guise of postponing the scheduled December 5, 2022 barangay election and allowing the incumbent barangay officials to continue serving until their successors are duly elected and qualified. What Congress did is to make a "*legislative appointment*" of these barangay officials, circumventing the legal requirement that these barangay officials must be elected and not appointed.[7]

***Third***, by arrogating unto itself the power to postpone the barangay election, Congress effectively amended Section 5 of the OEC.[8] This is violative of the rule enshrined in the Constitution that every bill shall embrace only one subject which shall be expressed in the title thereof.[9]

***Fourth***, RA 11935 deprives the electorate of its right of suffrage by extending the term of incumbent barangay officials whose term of office is set to end on December 31, 2022.[10]

***Fifth***, while Congress has the power to fix the term of office of barangay officials, it has no power to extend the same.[11]

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5 *Rollo* (G.R. No. 263590), pp. 11–16.

6 ENTITLED "AN ACT POSTPONING THE MAY 2020 BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9164, AS AMENDED BY REPUBLIC ACT NO. 9340, REPUBLIC ACT NO. 10632, REPUBLIC ACT NO. 10656, REPUBLIC ACT NO. 10923, AND REPUBLIC ACT NO. 10952, AND FOR OTHER PURPOSES," approved on December 3, 2019.

7 *Rollo* (G.R. No. 263590), pp. 5 and 16–17.

8 Id. at 16.

9 Id., citing the CONSTITUTION, Art. VI, Sec. 26 (1).

10 See *rollo* (G.R. No. 263590), pp. 17–19.

11 Id. at 23–24.

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***Sixth***, RA 11935 violates the State's guarantee of equal access to opportunities for public service by postponing the barangay election and depriving those who seek to be elected of an opportunity to serve the public.[12]

***Finally***, RA 11935 violates the principle that barangay officials should not have a term longer than that of their administrative superiors. Under the assailed law, the term of the incumbent barangay officials would exceed five years.[13]

In support of his application for TRO/WPMI, Atty. Macalintal alleges that the COMELEC has already stopped its preparation for the December 5, 2022 BSKE. He argues that the President is expected to "*undertake measures to enforce [the law] by recognizing said barangay officials in holdover capacity and extending to them all emoluments and financial benefits due a regular elected barangay official*."[14]

Ultimately, the Petition in **G.R. No. 263590** prays that RA 11935 be declared unconstitutional; and that the COMELEC be directed to proceed with the BSKE on December 5, 2022, or on a date reasonably close to it.[15]

In a Resolution[16] dated October 18, 2022, the Court, *inter alia*: (*a*) required the respondents in **G.R. No. 263590**[17] to file a comment on the Petition and prayer for TRO/WPMI not later than 12:00 noon of October 21, 2022; and (b) set oral arguments at 3:00 p.m. of even date.

In its Comment,[18] the Office of the Solicitor General (OSG), on behalf of the respondents in **G.R. No. 263590**, primarily argues that

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12 Id. at 24–25.

13 Id. at 25.

14 Id. at 26.

15 Id. at 27–28.

16 Id. at 35–36.

17 Referring to the Commission on Elections and the Office of the President, through Executive Secretary Lucas P. Bersamin.

18 *Rollo* (G.R. No. 263590), pp. 59–109.

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in order to successfully invoke the Court's "expanded jurisdiction" under the Constitution, Atty. Macalintal must show that the assailed action was tainted with grave abuse of discretion. Here, the Petition contains no allegation of grave abuse of discretion.[19]

Additionally, the OSG argues that the fact that no grave abuse of discretion was alleged in the Petition should give the Court pause before it exercises its power of judicial review, in view of the fundamental principle of separation of powers, or the doctrine on "political questions" or to the "enrolled bill rule"[20]—more so in this case, where the fundamental requisite of grave abuse of discretion is missing.

Substantively, the OSG maintains that RA 11935 is valid and not unconstitutional. The OSG contends that:

***First***, the Congress' power to legislate is plenary in nature, and limitations thereto must be strictly construed to give due deference to the constitutional grant of legislative power. As such, it has the authority to pass laws relating to or affecting elections—including the setting of the dates of the conduct and the postponement of the BSKE—and to do so would not impinge on the COMELEC's powers emanating either from the Constitution or the OEC.[21]

***Second***, there is no infringement on the electorate's right of suffrage, considering that the postponement of the BSKE does not operate to deprive them of such right. Rather, it merely adjusted the date by which they shall exercise the same.[22]

***Third***, there is no denial of equal access to opportunities for public service as RA 11935 does not provide for any restrictions or conditions that would deprive any aspiring individual from joining the BSKE.[23]

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[19] Id. at 63–64.

[20] See OSG's Memorandum, id. at 248, citing Joaquin Bernas, S.J., THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER, 327 (2011).

[21] See id. at 67–90.

[22] Id. at 90–94.

[23] Id. at 94–99.

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***Fourth***, the hold-over provision in Section 3 of RA 11935 is not tantamount to a legislative appointment. In fact, the legality of hold-over provisions has already been upheld by various case law, explaining that the same is necessary to preserve continuity in the transaction of official businesses and to prevent a hiatus in government office.[24]

Anent the prayer for TRO/WPMI, the OSG argues that Atty. Macalintal has failed to prove his entitlement thereto.[25]

On October 21, 2022, the oral arguments for **G.R. No. 263590** proceeded as scheduled, and thereafter, the parties were instructed to submit their respective memoranda within 15 days from the adjournment of the oral arguments.[26] Both parties were able to submit their respective Memoranda[27] within such time.

**G.R. No. 263673**

Meanwhile, a day before the scheduled oral arguments for **G.R. No. 263590**, or on October 20, 2022, Atty. Hidalgo *et al.* filed the Petition subject of **G.R. No. 263673**. Procedurally, Atty. Hidalgo *et al.* assert that the requisites for the exercise by the Court of its judicial power of review are met. Particularly:

***First***, the actual case or controversy consists of the fact that the passage of RA 11935 into law, with its unconstitutional postponement of the BSKE, is tantamount to grave abuse of discretion on the part of Congress.

***Second***, as lawyers, taxpayers, and registered voters, petitioners have legal standing to file the Petition as RA 11935 renders their right to vote for barangay leaders practically inexistent.

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[24] Id. at 99–103.

[25] Id. at 103–105.

[26] See Resolution dated October 21, 2022; id. at 120–126.

[27] See Memorandum for Petitioner filed on November 3, 2022 (id. at 127–158) and Memorandum for Respondents filed on November 7, 2022 (id. at 234–307). See also Manifestation filed on November 8, 2022 (id. at 225–231).

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***Third***, the signing by the President of RA 11935 into law made it constitutionally ripe for adjudication.

***Fourth***, they raise the issue of unconstitutionality of RA 11935 at the earliest opportunity, that is, when the President signed RA 11935 into law.[28]

***Finally***, citing *Arellano v. Gatdula*,[29] they argue that a special civil action for *certiorari* is the proper remedy to assail actions of any instrumentality or branch of the government on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction.[30]

Substantively, Atty. Hidalgo *et al.* posit that while the Constitution vests upon the Congress the power to fix the term of office for barangay officials, such power does not include the power to postpone or suspend the BSKE as the same is constitutionally lodged with the COMELEC. They likewise claim that a postponement of the BSKE is tantamount to a term extension, which in turn, constitutes a violation of the electorate's right to choose their own leaders, albeit for a fixed period.[31]

As regards their prayer for the issuance of a TRO and preliminary injunction, Atty. Hidalgo *et al.* argue that the implementation of RA 11935 will cause grave and irreparable injury to them and to the general public as they will be unduly prevented from casting their votes in the BSKE which was scheduled on December 5, 2022.[32] Thus, Atty. Hidalgo *et al.* pray that RA 11935 be declared null and void for being patently unconstitutional, and that all persons acting on the basis thereof be ordered to permanently cease and desist from implementing the same.[33]

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[28] *Rollo* (G.R. No. 263673), pp. 12–13.

[29] 864 Phil. 879 (2019) [Per J. J.C. Reyes, Jr., Second Division].

[30] *Rollo* (G.R. No. 263673), pp. 13–14.

[31] Id. at 14–20.

[32] Id. at 21–23.

[33] Id. at 26.

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In a Resolution[34] dated October 21, 2022, the Court directed: (*a*) the respondents in **G.R. No. 263673**[35] to comment on the Petition and the prayer for TRO and preliminary injunction; and (*b*) the consolidation of **G.R. No. 263673** with **G.R. No. 263590**.

In its Comment,[36] the OSG, on behalf of the respondents in **G.R. No. 263673**, reiterates that the remedies of *certiorari* and prohibition are not available to Atty. Hidalgo *et al*. The OSG adds that the petition for *mandamus* is improper in this case because the remedy will lie only to compel the performance of *ministerial* acts; the act in question, the passage of RA 11935 in this case, is, however, not ministerial.

On the merits, the OSG maintains that RA 11935 is valid and not unconstitutional. Essentially reiterating its arguments in its Comment in **G.R. No. 263590**, the OSG asserts that due to the plenary nature of the Congress' legislative power, it can pass laws relating to or affecting elections. As such, it has the power to set or schedule, and suspend or postpone the BSKE, and that such power is separate and distinct from the constitutionally vested power to determine the term of office of barangay officials.[37]

In addition to the foregoing, the OSG points out case law instructing that the right to vote is not a natural right but a right created by law; and as such, the State may regulate the same, subject only to the requirement that any such regulations shall not impose literacy, property, or any other substantive requirement on the exercise of suffrage.[38]

Finally, the OSG contends in its Comment that while the postponement of the BSKE under RA 11935 has somehow an

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[34] Id. at 34–35.

[35] Referring to Executive Secretary Lucas P. Bersamin, the Senate of the Philippines, duly represented by its Senate President, Juan Miguel Zubiri, the House of Representatives, duly represented by its Speaker of the House, Ferdinand Martin Romualdez, and the Commission on Elections, duly represented by its Chairman, George Erwin M. Garcia.

[36] *Rollo* (G.R. No. 263673), pp. 71–131.

[37] Id. at 84–111.

[38] Id. at 111–113.

indirect or incidental effect on the electorate's right of suffrage, there is a compelling state interest behind the same. In particular, the OSG, citing the Sponsorship Speech of Senator Imee R. Marcos, points out that the postponement of the BSKE is principally for the purpose of allowing the Congress more time to review the present BSK systems, among other practical considerations. Moreover, the ten-month postponement of the BSKE (*i.e.*, from December 5, 2022 to the last Monday of October 2023) is the least restrictive means to protect such compelling state interest as it is narrowly tailored to accomplish the aforesaid purpose.[39] As for the prayer for TRO and preliminary injunction, the OSG similarly argues that Atty. Hidalgo *et al.* failed to show their entitlement thereto.[40]

## THE ISSUE BEFORE THE COURT

The **primordial issue** for the Court's resolution in this case is whether RA 11935—which, *inter alia*, postponed the BSKE scheduled on December 5, 2022 to the last Monday of October 2023—is unconstitutional.

## THE COURT'S RULING

### I

At the core of the controversy is the apparent clash between two fundamental interests in our democratic and republican society—one is the people's exercise of their constitutionally guaranteed right of suffrage, and the other is the Congress' exercise of its plenary legislative power, which includes the power to regulate elections.

Petitioners claim an undue violation of their right of suffrage by the Congress' act of postponing the BSKE. Respondents, on the other hand, invoke the Congress' plenary power to legislate all matters for the good and welfare of the people.

**The Court's task therefore is to cast a legally sound and pragmatic balance between these paramount interests.**

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[39] Id. at 115–120.

[40] Id. at 120–125.

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Preliminarily, a discussion on the constitutional right of the people to suffrage and the plenary power of the State to legislate through Congress is in order.

## II

### A. Sovereignty and the Right of Suffrage

***Sovereignty of the People***

The sovereignty of the people is the core foundation of the Constitution. It is for this reason that the First Principle in Article II, Section 1 of the 1987 Constitution on the Declaration of Principles and State Policies declares that " [*t*]*he Philippines is a democratic and republican state. Sovereignty resides in the people and all government authority emanates from them*."

Thus, by the very nature of our system of government as democratic and republican, supreme power and authority resides in the body of the people,[41] and for whom such authority is exercised.

In the 1886 case of *Yick Wo v. Hopkins* (*Yick Wo*),[42] the United States (US) Supreme Court (SCOTUS) declared that "*[s]overeignty itself is, of course, not subject to law, for it is the author and source of law; x x x sovereignty itself remains with the people, by whom and for whom all government exists and acts x x x.*"[43] To quote US President James Madison, ours is a "*government which derives all its power directly or indirectly from the great body of people; and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior*."[44] It is a government that derives "*its powers from*

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41 Joaquin Bernas, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY, 2003 Ed., p. 56., citing *Chisholm v. Georgia*, Dall. 429, 457 (US 1793).

42 118 U.S. 356 (1886).

43 Id.; italics supplied.

44 Joaquin Bernas, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY, 2003 Ed., p. 57., citing 1 Aruego, THE FRAMING OF THE PHILIPPINE CONSTITUTION 132 (1936); italics supplied.

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*the governed, always responsive to the will of the people and subject, at all times, to their authority as sole repositories of state sovereignty*."[45]

In our Constitution, there are many provisions that demonstrate the foregoing essential constitutional postulate as it mandates the Government "*to serve and protect the people*"[46] and for public officers to "*at all times be accountable to the people*."[47] In fact, no less than the Preamble explicitly recognizes that the Constitution came to be as it is because it was "*ordained and promulgated*" by us, the "*sovereign people*."[48]

Moreover, it is well to recall that the Constitutional Commission likewise enunciated, as did the First Principle in the Declaration of Principles of State Policies, that the Philippines is not only a republican, but also a democratic state. As explained during their deliberations, the addition of the word "*democratic*," while ostensibly redundant, was precisely to emphasize people power and the people's rights.[49]

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[45] RECORD, CONSTITUTIONAL COMMISSION 12 (June 18, 1986); italics supplied.

[46] CONSTITUTION, Art. II, Sec 4; italics supplied.

[47] CONSTITUTION, Art. XI, Sec. 1; italics supplied.

[48] See Associate Justice Minita V. Chico-Nazario's Dissenting Opinion in *Lambino v. COMELEC*, 536 Phil. 1 (2006) [Per J. Carpio, *En Banc*]; italics supplied.

[49] See RECORD, CONSTITUTIONAL COMMISSION 86 (September 18, 1986), particularly the following exchanges:

> MR. OPLE: I see that Section 1 is largely a repetition of the original text of the 1935 and the 1973 Constitutions, except for a few changes. The Committee added the word "democratic" to "republican," and, therefore, the first sentence states: "The Philippines is a republican and democratic state." In the second sentence, the same phrase from the 1935 and 1973 Constitutions appears:
>
> > Sovereignty resides in the people and all government authority emanates from them and continues only with their consent.
>
> May I know from the committee the reason for adding the word "democratic" to "republican"? The constitutional framers of the 1935 and

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On this score, it is likewise worth mentioning that the Articles of the Constitution were specifically arranged in such manner because the framers ultimately agreed to emphasize the primacy of the people over and above the government. In the words of the late eminent constitutionalist, Father Joaquin G. Bernas, S.J.:

FR. BERNAS: I would like to say a few words in support of the position of Commissioner Concepcion. I believe that it is true we should arrange the articles in rational order. But there are perhaps two ways of creating a rational order. One way would be on the basis of chronological operationalization of the articles. If we base it on chronological operationalization of the articles then we could begin with the government, because it is only usually after the government

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1973 Constitutions were content with "republican." Was this done merely for the sake of emphasis?

MR. NOLLEDO: Madam President, that question has been asked several times, out being the proponent of this amendment, I would like the Commissioner to know that "democratic" was added because of the need to emphasize people's power and the many provisions in the Constitution that we have approved related to recall, people's organizations, initiative and the like, which recognize the participation of the people in policy-making in certain circumstances. Also, this was added to assert our respect for people's rights as against authoritarianism or one-man rule. I know that even without putting "democratic" there, democracy is reflected in the characteristics of republicanism; namely, among others, the existence of the Bill of Rights, the accountability of public officers, the periodic elections and others.

MR. OPLE: I thank the Commissioner. That is a very clear answer and I think it does meet a need. I felt I should ask the question, however, because the meaning of democracy has been evolving since 1935. In the old days, it was taken for granted that democracy stood for liberal democracy. I think democracy has since expanded in its scope to include also concepts of national democracy which is what the National Democratic Front stands for—social democracy which is just a synonym for democratic socialism and liberal democracy which is the brand more immediately recognizable to many Filipinos.

Does the word "democracy" in this context accommodate all the nuances of democracy in our time?

MR. NOLLEDO: According to Commissioner Rosario Braid, "democracy" here is understood as participatory democracy.

MR. OPLE: Yes, of course, we can agree most wholeheartedly on that construction of the word.

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has acted that the Bill of Rights becomes operational as a check on the government. So in that sense, it would be a rational order.

**But there is also another way of rationalizing the order; namely, on the basis of the importance of the subjects of the article.**

**The two subjects are really people and government. We have repeatedly said here that this Constitution will be people-oriented. As far as we are concerned, people are more important, and the Bill of Rights speaks of protection for the people. So on the basis of that order, it should really go ahead of government.**[50] (Emphasis supplied)

But while sovereignty resides in the people, it should not be forgotten that our people ordained a republican government under which representatives are freely chosen by the people and who, for the time being, exercise some of the people's sovereignties and act on their behalf. As Associate Justice Isagani A. Cruz explained:

> A republic is a representative government, a government run by and for the people. It is not a pure democracy where the people govern themselves directly. The essence of republicanism is representation and renovation, the selection by the citizenry of a corps of public functionaries who derive their mandate from the people and act on their behalf, serving for a limited period only, after which they are replaced or retained, at the option of their principal. Obviously, a republican government is a responsible government whose officials hold and discharge their position as a public trust and shall, according to the Constitution, 'at all times be accountable to the people' they are sworn to serve. The purpose of a republican government it is almost needless to state, is the promotion of the common welfare according to the will of the people themselves.[51]

***The Right of Suffrage***

As a democratic and republican state, our governmental framework has for its cornerstone the electoral process through which government by consent is secured.[52]

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[50] RECORD, CONSTITUTIONAL COMMISSION 104 (October 10, 1986).

[51] See Associate Justice Reynato S. Puno's Concurring Opinion in *Frivaldo v. COMELEC*, 327 Phil. 521 (1996) [Per J. Panganiban, *En Banc*].

[52] See RECORD, CONSTITUTIONAL COMMISSION 41 (July 28, 1986), wherein the late Father Joaquin G. Bernas, S.J. noted during the constitutional

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In *Geronimo v. Ramos* (*Geronimo*),[53] the Court, through Associate Justice Hugo E. Gutierrez, Jr., declared that voting plays an important instrumental value in preserving the viability of constitutional democracy. Indeed, not only is the right to vote or the right of suffrage an important political right; the very existence of the "***right of suffrage is a threshold for the preservation and enjoyment of all other rights that it ought to be considered as one of the most sacred parts of the [C]onstitution***."[54]

As the SCOTUS recognized in *Yick Wo*, voting is a "*fundamental political right, because [it is] preservative of all rights*."[55] "*[N]o right is more precious in a free country than that of having a voice in the election of those who make the laws, under which, as good citizens, we must live.* ***Other rights, even the most basic, are illusory if the right to vote is undermined***."[56]

Unquestionably, thus, the right of suffrage is a treasured right in a republican democratic society: the right to voice one's choice in the election of those who make the laws and those who implement them is indispensable in a free country that its absence will render illusory other rights, even the most basic.[57] As the Court, in *Geronimo*, held:

Such a right is among the most important and sacred of the freedoms inherent in a democratic society and one which must be most vigilantly

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commission deliberations, "the sovereignty of the people is principally expressed in the elections process."

53 221 Phil. 130 (1985) [Per J. Gutierrez, Jr., *En Banc*].

54 See Associate Justice Reynato S. Puno's Dissenting Opinion in *Tolentino v. COMELEC*, 465 Phil. 385 (2004) [Per J. Carpio, *En Banc*]; emphasis and italics supplied.

55 118 U.S. 356 (1886); italics and underscoring supplied.

56 See *Wesherry v. Sanders*, 376 U.S. 1 (1964).

57 See also Armand Derfner and J. Gerald Herbert, "Voting Is Speech," 34 Yale L. & POL'Y REV. 471 (2016) p. 486, ft. 100 (last visited January 15, 2023), citing the following list of US voting rights cases since *Baker v. Carr* where voting is characterized as providing citizens with a "voice" in their democracy: *Clingman v. Beaver*, 544 U.S. 581, 599 (2005); *Miller v. Johnson*, 515 U.S. 900, 932, 937 (1995); *Shaw v. Reno*, 509 U.S. 630, 675 (1993); *U.S. Department of Commerce v. Montana*, 503 U.S. 442, 460

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guarded if a people desires to maintain through self-government for themselves and their posterity a genuinely functioning democracy in which the individual may, in accordance with law, have a voice in the form of his government and in the choice of the people who will run that government for him.[58]

Verily, by its very nature, the right of suffrage stands on a higher—if not distinct—plane such that it is accorded its own Article under the Constitution, separate from the other fundamental rights.

Because of the fundamental and indispensable role that the right of suffrage plays in the preservation and enjoyment of all other rights, it is protected in various international instruments.

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(1992); *Burdick v. Takushi*, 504 U.S. 428, 441 (1992); *Burson v. Freeman*, 504 U.S. 191, 199 (1992); *Chisom v. Roemer*, 501 U.S. 380, 398 n.25 (1991); *Bd. of Estimate of City of New York v. Morris*, 489 U.S. 688, 693 (1989); *Davis v. Bandemer*, 478 U.S. 109, 166 (1986) (Powell, J., concurring in part and dissenting in part); *Rogers v. Lodge*, 458 U.S. 613, 649 (1982) (Stevens, J., dissenting); *Ball v. James*, 451 U.S. 355, 371 (1981); *Democratic Party of U.S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 127, 134 (1981); *City of Rome v. United States*, 446 U.S. 156, 176 n.12 (1980); *City of Mobile v. Bolden*, 446 U.S. 55, 78 (1980); *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 76 (1978); *United Jewish Organizations of Williamsburgh, Inc. v. Carey*, 430 U.S. 144, 177 n.5 (1977); *City of Richmond v. United States*, 422 U.S. 358, 387 (1975); *Am. Party of Texas v. White*, 415 U.S. 767, 799 (1974); *Lubin v. Panish*, 415 U.S. 709, 721 (1974); *Kusper v. Pontikes*, 414 U.S. 51, 58 (1973); *Rosario v. Rockefeller*, 410 U.S. 752, 764 (1973); *Mahan v. Howell*, 410 U.S. 315, 321, 323 (1973); *Jenness v. Forston*, 403 U.S. 431, 442 (1971); *Whitcomb v. Chavis*, 403 U.S. 124, 141 (1971); *Oregon v. Mitchell*, 400 U.S. 112, 134 (1970); *Evans v. Cornman*, 398 U.S. 419, 422 (1970); *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 627 (1969); *Hadnott v. Amos*, 393 U.S. 904, 906 (1968); *Williams v. Rhodes*, 393 U.S. 23, 31 (1968); *Avery v. Midland County, Tex.*, 390 U.S. 474, 480 (1968); *Carrington v. Rash*, 380 U.S. 89 (1965); *Fortson v. Toombs*, 379 U.S. 621, 626 (1965) (Harlan, J., concurring in part and dissenting in part); *Roman v. Sincock*, 377 U.S. 695 (1964); *WMCA, Inc. v. Lomenzo*, 377 U.S. 633, 655 (1964); *Reynolds*, 377 U.S. at 576; *Wesberry*, 376 U.S. at 10, 17; *Gray v. Sanders*, 372 U.S. 368, 386 (1963).

[58] *Geronimo v. Ramos*, supra.

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Foremost of these instruments is the **Universal Declaration of Human Rights**[59] (UDHR) which, in Article 21 thereof, declares that "*[e]veryone has the right to take part in the government of his country, directly or through freely chosen representatives*." It also stresses that "*[t]he will of the people shall be the basis of the authority of government*" which "*shall be expressed in* ***periodic and genuine elections*** *which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures*."[60]

Similarly, the **International Covenant on Civil and Political Rights** (ICCPR), under Article 25 thereof, affirms the "*right and the opportunity [of every citizen], without any of the distinctions mentioned in article 2 and without unreasonable restrictions*" to "*take part in the conduct of public affairs, directly or through freely chosen representatives*."[61] Article 25 likewise guarantees the right to "***vote and to be elected at genuine periodic elections*** *which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors*."[62]

To clarify the coverage and limitations of the rights guaranteed under Article 25 of the ICCPR, the United Nations Committee on Human Rights adopted **General Comment No. 25**[63] on July 12, 1996, which pertinently declares to wit:

1. Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever

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[59] Proclaimed by the United Nations General Assembly in Paris on December 10, 1948 (General Assembly Resolution 217 A).

[60] See UDHR, Article 21 (1) and (3); emphasis and italics supplied.

[61] Adopted by the United Nations General Assembly on December 16, 1996 and entered into force on March 23, 1976. Signed by the Philippines on December 19, 1966, ratified on October 23, 1986, and took effect on January 1, 1987; italics supplied.

[62] Id.; emphasis and italics supplied.

[63] Adopted by the Committee on Human Rights at its 1510th meeting (fifty-seventh session) on July 12, 1996.

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form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have **an effective opportunity to enjoy the rights it protects**. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant. (Emphasis supplied)

Additionally, General Comment No. 25 emphasized that any conditions or restrictions to be imposed in the exercise of the rights protected by Article 25 should be based on "***objective and reasonable criteria***," and the suspension or exclusion from the exercise thereof should be founded "*only on grounds which are established by law and which are objective and reasonable*."[64]

As a further measure for the free and meaningful exercise of the right, General Comment No. 25 stressed, under its paragraph 9, that "***[g]enuine periodic elections*** *in accordance with paragraph (b) are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them*,"[65] and that **such genuine periodic elections "*must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors***."[66]

Finally, under paragraph 19 thereof, it reiterated that "*[i]n conformity with paragraph (b),* ***elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights***."[67]

Under the 1987 Constitution, international law can become part of the sphere of Philippine law either by **transformation** or **incorporation**.

The **transformation method** "requires that an international law be transformed into a domestic law through a constitutional

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64 Italics supplied.

65 Emphasis and italics supplied.

66 Emphasis and italics supplied.

67 Emphasis and italics supplied.

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mechanism such as local legislation."[68] In the case of treaties, they become part of the law of the land through transformation pursuant to Article VII, Section 21[69] of the Constitution, which requires Senate concurrence thereof. From then, they have the force and effect of a statute enacted by Congress.[70]

Meanwhile, the **incorporation method** applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law.[71] Article II, Section 2[72] of the Constitution declares that *generally accepted principles of international law* are adopted as part of the law of the land. "Generally accepted principles of international law" refer to norms of general or customary international law that are binding on all states.[73] Examples of these are renunciation of war as an instrument of national policy, the principle of sovereign immunity, a person's right to life, liberty and due process, and *pacta sunt servanda*, among others.[74]

In *Pangilinan v. Cayetano*,[75] the Court, speaking through Associate Justice (and eventual Senior Associate Justice) Marvic M.V.F. Leonen (Justice Leonen), explained that the term "generally accepted principles of international law" includes both

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[68] See *Razon, Jr. v. Tagitis*, 621 Phil. 536, 600 (2009) [Per J. Brion, *En Banc*], citing *Pharmaceutical and Health Care Association of the Philippines v. Duque III*, 561 Phil. 386, 397–398 (2007) [Per J. Austria-Martinez, *En Banc*].

[69] Section 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

[70] See *Pangilinan v. Cayetano,* G.R. No. 238875, March 16, 2021 [Per J. Leonen, *En Banc*], citing *Pharmaceutical and Health Care Association of the Philippines v. Duque III*, supra.

[71] See *Razon, Jr. v. Tagitis,* supra; and *Pangilinan v. Cayetano*, id.

[72] Section 2. The Philippines renounces war as an instrument of national policy, **adopts the generally accepted principles of international law as part of the law of the land** and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations. (Emphasis supplied)

[73] See *Razon, Jr. v. Tagitis,* supra.

[74] See *Pangilinan v. Cayetano*, supra, citing *Pharmaceutical and Health Care Association of the Philippines v. Duque III*, supra at 399–400.

[75] See *Pangilinan v. Cayetano*, id., citing *Rubrico v. Arroyo*, 627 Phil. 37, 80–81 (2010) [Per J. Carpio Morales, *En Banc*].

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"international custom" and "general principles of law"—both of which constitute distinct sources of international law under Article 38[76] of the Statute of the International Court of Justice. They form part of Philippine laws even if they are not derived from treaty obligations of the Philippines.

In *Razon, Jr. v. Tagitis*,[77] the Court, speaking through Associate Justice Arturo D. Brion (Justice Brion), explained that international custom pertains to "customary rules accepted as binding [and] result from the combination of two elements: the established, widespread, and consistent practice on the part of States; and a psychological element known as the *opinion juris sive necessitates* (opinion as to law or necessity). Implicit in the latter element is a belief that the practice in question is rendered obligatory by the existence of a rule of law requiring it."[78]

For these reasons, while the UDHR is not a treaty and may not have been originally intended to have legal binding force, it nonetheless has been recognized as reflecting customary international law or has gained binding character as customary law through the subsequent adoption of treaties and international instruments that reflect its

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[76] Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
   a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
   b. international custom, as evidence of a general practice accepted as law;
   c. the general principles of law recognized by civilized nations;
   d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

Adopted June 26, 1945 and entered into force on October 24, 1945. Philippines ratified on October 11, 1945.

[77] *Razon, Jr. v. Tagitis*, supra.

[78] Id. See also *Pangilinan v. Cayetano*, supra, citing Associate Justice Antonio T. Carpio's Dissenting Opinion in *Bayan Muna v. Romulo*, 656 Phil. 246, 325–326 (2011) [Per J. Velasco, *En Banc*].

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various principles. Indeed, this Court has recognized the UDHR as part of the generally accepted principles of international law, and therefore, binding on the State.[79] On the other hand, the Philippines ratified the ICCPR on October 23, 1986.[80] Thus, following Article VII, Section 21 of the Constitution, the ICCPR likewise has the force and effect of a statute enacted by Congress.

Accordingly, the recognition by the UDHR and the ICCPR of the people's right to *take part in the conduct of public affairs, directly or through freely chosen representatives* and participate in *genuine and periodic elections*, subject only to such *conditions or restrictions established by law based on objective and reasonable criteria* are deemed to be binding on the State and have the force of domestic law.

On this score, it is well to note that while the Constitution is silent as to the need to hold the elections periodically, the Constitutional Commission's deliberations reflect this intention.[81] Thus, there is an unquestionable imperative that for our government to be truly representative and democratic, elections must be held **periodically and at regular intervals**.

***Right to Vote and Freedom of Expression***

An important aspect that cannot be detached from any discussion on the exercise of the right of suffrage is the right to freedom of expression. In its essence, the right to free expression involves the freedom to disseminate ideas and beliefs, regardless of its subject

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[79] See *Poe-Llamanzares v. COMELEC*, 782 Phil. 292, 808 (2016) [Per J. Perez, *En Banc*].

[80] See <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN> (last visited June 23, 2023) and <https://chr.gov.ph/wp-content/uploads/2018/03/Denunciation-of-and-Withdrawal-from-International-Treaties-to-Re-impose-the-Death-Penalty.pdf> (last visited June 23, 2023).

[81] See RECORD, CONSTITUTIONAL COMMISSION 84 (September 16, 1986); and RECORD, CONSTITUTIONAL COMMISSION 86 (September 18, 1986).

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and tenor.[82] It includes the entire range of communication, from vocal or verbal expressions to expressive conduct or symbolic speech that incorporates both speech and non-speech elements, including inaction.[83] Freedom of expression is considered as the foundation of a free, open, and democratic society[84] and plays an indispensable role in assuring the fulfillment of our democratic and republican ideal of government.

Thus, in *Nicolas-Lewis v. COMELEC* (*Nicolas-Lewis*),[85] the Court, through Associate Justice Jose C. Reyes, Jr., expressly recognized that the right to participate in the electoral process, which includes not only the right to vote, but also the right to express one's preference for a candidate is intrinsically linked to the right to freedom of expression. Not only does the exercise of the freedom to express one's view on political matters assure individual self-fulfillment to attain the truth; it also secures participation by the people in social and political decision-making, and in maintaining the balance between stability and change. The Court said:

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[82] See Associate Justice Antonio T. Carpio's Separate Concurring Opinion in *Chavez v. Gonzales,* 569 Phil. 155, 236 (2008) [Per C.J. Puno, *En Banc*]. See also In *Thornhill v. Alabama*, 310 U.S. 88 (1940), citing The Continental Congress (Journal of the Continental Congress, 1904 ed., vol. I, pp. 104 and 108) in its letter sent to the Inhabitants of Quebec (October 26, 1774), it was held: "'**The last right we shall mention regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them whereby oppressive officers are ashamed or intimidated into more [honorable] and just modes of conducting affairs.**' x x x **Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period**." (Emphasis and underscoring supplied)

[83] See *The Diocese of Bacolod v. COMELEC*, 751 Phil. 301, 356 (2015) [Per J. Leonen, *En Banc*].

[84] See Associate Justice Antonio T. Carpio's Separate Concurring Opinion in *Chavez v. Gonzales*, supra at 235.

[85] 859 Phil. 560 (2019) [Per J. J.C. Reyes. Jr., *En Banc*].

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A fundamental part of this cherished freedom is the right to participate in electoral processes, which includes not only the right to vote, but also the right to express one's preference for a candidate or the right to influence others to vote or otherwise not vote for a particular candidate. This Court has always recognized that these expressions are basic and fundamental rights in a democratic polity as they are means to assure individual self-fulfillment, to attain the truth, to secure participation by the people in social and political decision-making, and to maintain the balance between stability and change.

Rightfully so, since time immemorial, "[i]t has been our constant holding that this preferred freedom [of expression] calls all the more for the utmost respect when what may be curtailed is the dissemination of information to make more meaningful the equally vital right of suffrage." In the recent case of *1-United Transport Koalisyon (1-UTAK) v. COMELEC*, the Court *En Banc* pronounced that any governmental restriction on the right to convince others to vote for or against a candidate—a protected expression—carries with it a heavy presumption of invalidity.[86]

Indeed, participation in the electoral process through voting constitutes "*an act of pure expression*" and "*one of the most consequential expressive acts in a persons' life, when a voice becomes an action, and those actions dictate how we are governed*."[87] In other words, the "*right to vote is the right to have a 'voice' in the elections*,"[88] As Associate Justice Antonio P. Barredo declared in his Concurring and Dissenting Opinion in *Gonzales v. COMELEC*,[89] "*suffrage itself would be next to useless if these liberties cannot be [untrammeled] whether as to degree or time*," *viz.*:

And in it is on this cornerstone that I hold it to be self-evident that **when the freedoms of speech, press and peaceful assembly and redress of grievances are being exercised in relation to suffrage or as a means**

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[86] *Id*. at 587; citations omitted.

[87] See (last visited January 15, 2023).

[88] Arrnand Derfner and J. Gerald Hebert, *Voting Is Speech*, 34 YALE L. & POL'Y REV. 471 (2016).

[89] See Associate Justice Antonio P. Barredo's Concurring and Dissenting Opinion in *Gonzales v. COMELEC*, 137 Phil. 471 (1969) [Per J. Fernando, *En Banc*].

**to enjoy the inalienable right of the qualified citizen to vote, they are absolute and timeless**. If our democracy and republicanism are to be worthwhile, the conduct of public affairs by our officials must be allowed to suffer incessant and unabating scrutiny, favorable or unfavorable, everyday and at all times. Every holder of power in our government must be ready to undergo exposure any moment of the day or night, from January to December every year, as it is only in this way that he can rightfully gain the confidence of the people. I have no patience for those who would regard public dissection of the establishment as an attribute to be indulged by the people only at certain periods of time. **I consider the freedoms of speech, press and peaceful assembly and redress of grievances, when exercised in the name of suffrage, as the very means by which the right itself to vote can only be properly enjoyed. It stands to reason therefore, that suffrage itself would be next to useless if these liberties cannot be [untrammeled] whether as to degree or time**.[90] (Emphasis and underscoring supplied)

***Right to Vote as an Exercise of the Right to Liberty***

Indispensably, as well, any consideration of the exercise of one's right to vote entails a consideration of the exercise of the right to liberty—of which one cannot be deprived without due process and equal protection of the law. Liberty is defined as the right to exercise the rights enumerated in the Constitution or under natural law.[91] It means "*freedom from arbitrary and unreasonable restraint upon an individual. Freedom from restraint refers to more than just physical restraint, but also the freedom to act according to one's own will*."[92]

Liberty is generally recognized in two aspects: civil and political liberty.

**Civil liberty** refers to "*the absence of arbitrary restraint and the assurance of a body of rights, such as those found in bills of rights, in statutes, and in judicial decisions*."[93]

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90 Id.

91 (last visited January 15, 2023).

92 See Legal Information Institute, (last visited January 15, 2023); italics supplied.

93 (last visited January 15, 2023); italics supplied.

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In *Rubi v. Provincial Board of Mindoro*,[94] the Court, through Associate Justice George A. Malcolm, explained further:

> Civil liberty may be said to mean that measure of freedom which may be enjoyed *in a civilized community*, consistently with the peaceful enjoyment of like freedom in others. The right to liberty guaranteed by the Constitution includes the right to exist and the right to be free from arbitrary personal restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. As enunciated in a long array of authorities including epoch-making decisions of the United States Supreme Court, liberty includes the right of the citizen to be free to use his faculties in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any avocation, and for that purpose, to enter into all contracts which may be proper, necessary, and essential to his carrying out these purposes to a successful conclusion. The chief [elements] of the guaranty are the right to contract, the right to choose one's employment, the right to labor, and the right of locomotion.
>
> In general, it may be said that liberty means the opportunity to do those things which are ordinarily done by free [persons].[95] (Underscoring supplied)

**Political liberty**, on the other hand, "*consists of the right of individuals to participate in government by voting and by holding public office*."[96] In simpler terms, it refers to **the right and opportunity to choose those who will lead the governed with their consent**.[97]

Based on these definitions, the exercise of the right to vote is not an empty, meaningless, rote ceremony. **It is the most**

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94 39 Phil. 660 (1919).

95 Citing *Cummings v. Missouri*, 4 Wall. 277 (1866); *Wilkinson v. Leland*, 2 Pet. 627 (1829); *Williams v. Fears*, 179 U.S. 274 (1900); *Allgeyer v. Louisiana*, 165 U.S. 578 (1896); *State v. Kreutzberg*, 114 Wis. 530 (1902). See 6 R. C. L., 258, 261.

96 <https://www.britannica.com/topic/liberty-rights#ref1252324> (last visited January 15, 2023); italics supplied.

97 Per Associate Justice Angelina D. Sandoval-Gutierrez's Concurring Opinion in *Tecson v. COMELEC*, 468 Phil. 421 (2004) [Per. J. Vitug, *En Banc*].

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**fundamental form of political expression and enjoyment of one's faculties**. It signifies the electorate's assent to the myriad ways by which the government may limit or restrict their freedoms through law. Thus, at its core, **it is the act of the people freely and consciously consenting to surrender a portion of their sacred rights and liberties to those who will temporarily exercise the powers that inviolably belong to them**.

Perceived in these lights, therefore, the exercise of the rights to vote and to liberty is necessarily reciprocal and complementary. The people's exercise of their right to vote is an exercise of the freedom to act according to their will, choose their representatives, and consent to surrender a portion of their sovereignty to their chosen representatives who, for the time being, have the authority to act for the common good and protection of the people's rights. At the same time, however, the exercise of the right to vote is the means by which the people can theoretically safeguard and guarantee to themselves the continued exercise of their fundamental rights and freedoms.[98]

### B. Plenary Power of the State to Legislate

Under our representative and democratic system of government, the totality of the sovereign power is voluntarily and expressly surrendered by the body politic to their chosen representatives, except to the extent expressly reserved to them by the Constitution. As a measure of checks and balances, the sovereign power is then divided and distributed into the three branches of government: the power to enact laws is lodged with the legislative; the power to execute the laws is lodged in the executive; and the power to interpret the law lies with the judiciary.[99]

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[98] See Associate Justice Reynato S. Puno's Dissenting Opinion in *Tolentino v. COMELEC*, supra note 54. See also James A. Gardner, "*Liberty, Community and the Constitutional Structure of Political Influence: A Consideration of the Right to Vote*," Pennsylvania Law Review (1997), Vol. 145: 893, p. 903, citing *Yick Wo v. Hopkins*, 118 U.S. 356 370 (1886); accord *Reynolds v. Sims*, 377 U.S. 533, 562 (1964).

[99] See *Santiago v. Guingona*, 359 Phil. 276 (1998) [Per J. Panganiban, *En Banc*], citing *Javellana v. Executive Secretary*, 151-A Phil. 35 (1973) [Per

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The power of Congress to enact laws has been described as "broad, general and comprehensive." Indeed, case law provides that "*[t]he legislative body possesses plenary power for all purposes of civil government. Any power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress x x x. Except as limited by the Constitution, either expressly or impliedly, legislative power embraces all subjects and extends to all matters of general concern or common interest*."[100]

Concomitantly, it is settled that the legislature is vested by the Constitution with the power to "*make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the [C]onstitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same*."[101] Broad and plenary, the power of the Congress to legislate embraces the three inherent powers of the State: police power, eminent domain, and power of taxation. Of these three, police power has been described as "*the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State*"[102] that it "*virtually extends to all public needs*."[103]

In simpler terms, **the legislature has the broad and extensive power to regulate *all matters* which in its discretion are for the common good of the people**—including the maintenance of peace and order and protection of life and liberty—which the

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J. Concepcion, *En Banc*]. See also *Angara v. The Electoral Commission*, 63 Phil. 139 (1936) [Per J. Laurel, *En Banc*]; *Pangilinan v. Cayetano*, supra note 70.

[100] *Kida v. Senate of the Philippines,* 675 Phil. 316, 361 (2011) [Per J. Brion, *En Banc*]; italics supplied.

[101] See *Southern Luzon Drug Corporation v. The Department of Social Welfare and Development*, 809 Phil. 315, 338 (2017) [Per J. Reyes, *En Banc*]; italics supplied.

[102] Id. at 340; italics supplied. See also *Venus Commercial Co., Inc. v. Department of Health*, G.R. No. 240764, November 18, 2021 [Per J. Lazaro-Javier, First Division], citing *Gerochi v. Department of Energy*, 554 Phil. 563, 579–580 (2007) [Per J. Nachura, *En Banc*].

[103] *Southern Luzon Drug Corporation v. The Department of Social Welfare and Development*, id.; italics supplied.

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Constitution deems indispensable for the enjoyment by all the people of the blessing of democracy.[104]

***The Power to Legislate in Relation to Elections vis-à-vis the Power of the COMELEC to Administer the Electoral Process***

Among the matters that fall within the legislature's broad and extensive discretion pertain to **all aspects affecting the elections and the exercise of the right of suffrage insofar as the framers had not specifically spelled out the parameters thereof in the Constitution**.

Indeed, the Constitution is replete with such provisions that it can be logically inferred that the power of the Congress to legislate embraces, as well, the exercise of fundamental rights, **such as suffrage**. Foremost of these provisions is found under Article V on "Suffrage," Section 1 of which grants Congress with the authority to provide, by law, grounds to disqualify citizens from exercising the right of suffrage. Section 2, on the other hand, mandates the Congress to provide for "*a system for securing the secrecy and sanctity of the ballot*," "*absentee voting by qualified Filipinos abroad*," as well as a "*procedure for the disabled and the illiterates to vote without the assistance of other persons*."[105]

Under Article VI of the Constitution, the Congress is tasked to provide, by law, for the election at large by the qualified voters of the Philippines, of Senators, and change the commencement of the term of office thereof.[106] Article VI likewise authorizes the Congress to fix the number of members of the House of Representatives, provide for a party-list system of registered national, regional, and sectoral parties or organizations, as well as change the

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[104] See Section 5, Article II of the CONSTITUTION, which states that "[t]he maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy."

[105] Italics supplied.

[106] CONSTITUTION, Art. VI, Secs. 2 and 4.

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commencement of the term of office of such members.[107] Further, Article VI authorizes Congress to provide for a different date for the regular election of Senators and Members of the House of Representatives, as well as for the holding of special elections in case of vacancy in either house of Congress.[108] Finally, Article VI mandates Congress to provide for a system of initiative and referendum, including the exceptions, whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof.[109]

Article VII of the Constitution governing the Executive Department, on the other hand, authorizes Congress to provide for a different date for the regular election of, and for the determination of the authenticity and due execution of the certificates of canvass for President and Vice-President.[110] It also provides for "*the manner in which one who is to act as President shall be selected until a President or a Vice-President shall have qualified, in case of death, permanent disability, or inability of the officials*" specifically enumerated in the Constitution to act as such, as well as those "*who shall serve as President in case of death, permanent disability, or resignation of the Acting President*."[111]

Under Article IX-C of the Constitution, the Congress is authorized to provide for the manner of appointment of poll watchers by political parties, organizations, or coalitions registered in the party-list system.[112] While Article X of the Constitution tasks Congress with the duty to enact a local government code that shall provide for, among others, the qualifications and election of local officials, including the mechanisms of recall, initiative, and referendum, as well as the term of office of barangay officials.[113]

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[107] CONSTITUTION, Art. VI, Secs. 5 and 7.

[108] CONSTITUTION, Art. VI, Secs. 8 and 9.

[109] CONSTITUTION, Art. VI, Sec. 32.

[110] CONSTITUTION, Art. VII, Sec. 4.

[111] CONSTITUTION, Art. VII, Secs. 7 and 8, italics supplied.

[112] CONSTITUTION, Art. IX-C, Sec. 8.

[113] CONSTITUTION, Art. X, Secs. 3 and 8, emphasis supplied.

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In contrast with the Congress' broad and plenary powers with respect to aspects affecting the elections and the exercise of the right of suffrage, the COMELEC is specifically charged by the Constitution with the **administration, enforcement, and regulation of all laws and regulations** relative not only to the conduct of elections, but also to the conduct of plebiscite, initiative, referendum, and recall.[114] The power includes, among others, adjudicating all contests relating to "*the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction*," deciding "*all questions affecting elections*," as well as *registering* "*political parties, organizations, or coalitions*."[115] It also includes the limited authority to fix the election period in special cases, and to supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of public utilities during the election period.[116]

To the Court's mind, the foregoing comparison demonstrates, in clear terms, the expanse in scope and character of the power of Congress, *vis-a-vis* those of the COMELEC with respect to matters affecting the elections and the exercise of the right of suffrage. **While the latter is specifically created as the independent constitutional body charged with the administration and enforcement of elections and election laws—and whose very existence perforce is intricately and inseparably related to elections, the broad and plenary power of the Congress with respect to election matters is not automatically limited thereby.**

**On plainer perspective, matters that solely and distinctly pertain to election administration can be said to fall primarily within the power of the COMELEC. On the other hand,**

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[114] CONSTITUTION, Art. IX-C, Sec. 2 (1).

[115] CONSTITUTION, Art. IX-C, Secs. 2 (2), (3), and (5); italics supplied.

[116] CONSTITUTION, Art. IX-C, Secs. 4 and 9.

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**matters that intersect and transcend numerous constitutional interests and rights—beyond the strict confines of election matters and the right of suffrage—must generally be viewed as falling primarily within the broad and plenary power of the Congress**.

***The Power of Congress vis-à-vis the Power of the COMELEC to Postpone Elections***

Given the broad and plenary power of the Congress that encompasses, as well, matters affecting the elections and the exercise of the right of suffrage, it logically follows that its power extends to the postponement of elections, including at the barangay level.

As earlier intimated, the power and duty to determine the term of office of barangay officials is expressly vested in the Congress under Article X, Section 8 of the Constitution, *viz.*:

> SECTION 8. The term of office of elective local officials, **except barangay officials, which shall be determined by law**, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected. (Emphasis supplied)

Further, Article X, Section 3 of the Constitution mandates the Congress to enact a local government code which shall, among others, provide for the election of local officials, thus:

> SECTION 3. **The Congress shall enact a local government code which shall** provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and **provide for the** qualifications, **election**, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units. (Emphasis and underscoring supplied)

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On the other hand, the Constitution specified that the **administration of the electoral process** is lodged with the COMELEC. For this purpose, the COMELEC has been vested with executive, quasi-judicial, and quasi-legislative powers. Article IX-C, Section 2 of the Constitution reads:

**ARTICLE IX**

*Constitutional Commissions*

x x x x

C. *The Commission on Elections*

x x x x

SECTION 2. The **Commission on Elections shall exercise the following powers and functions**:

**(1)** **Enforce and administer all laws and regulations relative to the conduct of an election**, plebiscite, initiative, referendum, and recall.

**(2)** Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and **appellate jurisdiction over all contests** involving elective municipal officials decided by trial courts of general jurisdiction, or **involving elective barangay officials decided by trial courts of limited jurisdiction.**

Decisions, final orders, or rulings of the Commission on Elections contests involving elective municipal and barangay offices shall be final, executory, and not appealable.

**(3)** **Decide, *except those involving the right to vote*, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters**.

**(4)** Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections.

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> **(5)** Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.
>
> Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.
>
> **(6)** File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.
>
> **(7)** Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.
>
> **(8)** Recommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of or disobedience to its directive, order, or decision.
>
> **(9)** Submit to the President and the Congress a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall. (Emphasis, italics, and underscoring supplied)

Together, these powers were granted to the COMELEC with the intention to give it all the necessary and incidental powers for it to achieve its primary mandate to ensure the holding of

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free, orderly, honest, peaceful, and credible elections.[117] In turn, these constitutional powers of the COMELEC are refined and implemented by legislation through, among others, the powers expressly provided under the OEC, which the Congress enacted.

Specifically, the OEC authorizes the COMELEC, *motu proprio* or upon a verified petition, to postpone elections for such causes that would effectively render impossible the holding of a free, orderly, honest, peaceful, and credible elections **in any political subdivision**, thus:

> SECTION 5. *Postponement of election. — When* ***for any serious cause such as violence, terrorism, loss or destruction of election paraphernalia or records, force majeure*****, and other analogous causes of such a nature that the holding of a free, orderly and honest election should become impossible in any political subdivision**, the Commission, *motu proprio* or upon a verified petition by any interested party, and after due notice and hearing, whereby all interested parties are afforded equal opportunity to be heard, shall postpone the election therein to a date which should be reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause for such postponement or suspension of the election or failure to elect. (Sec. 6, 1978 EC)
>
> x x x x
>
> SECTION 45. *Postponement or failure of election. — When* ***for any serious cause such as violence, terrorism, loss or destruction of election paraphernalia or records, force majeure*****, and other analogous causes of such nature that the holding of a free, orderly and honest election should become impossible in any barangay**, the Commission, upon a verified petition of an interested party and after due notice and hearing at which the interested parties are given equal opportunity to be heard, shall postpone the election therein for such time as it may deem necessary.
>
> If, on account of *force majeure*, violence, terrorism, fraud or other analogous causes, the election in any barangay has not been held on the date herein fixed or has been suspended before the hour fixed by law for the closing of the voting therein and such failure or suspension of election would affect the result of the election, the Commission, on the

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[117] See *Maruhom v. COMELEC*, 387 Phil. 491 (2000) [Per J. Ynares-Santiago, *En Banc*].

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basis of a verified petition of an interested party, and after due notice and hearing, at which the interested parties are given equal opportunity to be heard shall call for the holding or continuation of the election within thirty days after it shall have verified and found that the cause or causes for which the election has been postponed or suspended have ceased to exist or upon petition of at least thirty percent of the registered voters in the barangay concerned.

When the conditions in these areas warrant, upon verification by the Commission, or upon petition of at least thirty percent of the registered voters in the barangay concerned, it shall order the holding of the barangay election which was postponed or suspended. (Emphasis, italics, and underscoring supplied)

As discussed, "**[a]ny power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress**" and unless limited by the Constitution, either expressly or impliedly, "legislative power embraces all subjects and extends to all matters of general concern or common interest."[118] Thus, while the power to postpone elections has not been expressly granted to the legislature, neither has it been expressly nor impliedly withheld therefrom.

Consequently, the power to postpone barangay election must be deemed to be inherently included, generally, in the Congress' broad and plenary power to legislate and specifically, in the Congress' constitutionally granted power to determine the term of office of barangay officials. **For these reasons, the Court cannot subscribe to the claim of petitioners that the powers granted to the COMELEC under Sections 2 (1), (2), and (3), Article IX-C of the Constitution vest in it the sole authority to postpone elections and that the power vested in the legislature under Section 8, Article X of the Constitution is limited to setting the term of office of barangay officials**.

On this point, it must be underscored that while the COMELEC is an independent constitutional body vested with such powers and functions to ensure the holding of free, orderly, honest, peaceful, and credible elections, it still is an administrative agency[119] vested

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[118] *Kida v. Senate of the Philippines*, supra note 100, at 361; emphasis supplied.

[119] See *Francisco v. COMELEC*, 831 Phil. 106, 121 (2018) [Per J. Velasco Jr., *En Banc*].

with powers that are intentionally and inherently administrative, quasi-judicial, and quasi-legislative. It bears emphasizing that under our system of government, the power to enact laws is lodged with the legislature, the power to execute the laws with the executive, and the power to interpret laws with the judiciary. Thus, when legislative or judicial power is exercised by a body or agency other than the legislature or judiciary, that power is essentially **partial**, having some but not all of the features of legislative or judicial power.

Case law defines **quasi-legislative power** as "*the power to make rules and regulations that results in delegated, legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers*."[120] **Quasi-judicial power**, on the other hand, refers to "*the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law*."[121] Meanwhile, **administrative power** pertains to "*administration, especially management, as by managing or conducting, directing or superintending, the execution, application, or conduct of persons or things*."[122]

In *Francisco v. COMELEC,*[123] the Court, through Associate Justice Presbitero J. Velasco, Jr., clarified that the powers vested in the COMELEC under Article IX-C, Section 2 (1) and (3) of the Constitution are administrative in nature, while the power vested in it under Article IX-C, Section 2 (2) of the Constitution is quasi-judicial. Moreover, with respect to the latter, the Court explicated that the "*COMELEC's adjudicative function over election contests is quasi-judicial in character since [it] is a governmental body,*

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[120] *The Chairman and Executive Director Palawan Council for Sustainable Development v. Lim*, 793 Phil. 690, 698 (2016) [Per J. Bersamin, First Division]; italics supplied.

[121] Id.; italics supplied.

[122] See *Limkaichong v. COMELEC*, 601 Phil. 751, 777 (2009) [Per J. Peralta, *En Banc*]; italics supplied.

[123] *Francisco v. COMELEC*, supra.

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*other than a court, that is vested with jurisdiction to decide the specific class of controversies it is charged with resolving*."[124]

In *Javier v. COMELEC,*[125] decided under the 1973 Constitution, the Court, through Associate Justice Isagani A. Cruz, defined "*contests*" as "*any matter involving the title or claim of title to an elective office, made before or after the proclamation of the winner, whether or not the contestant is claiming the office in dispute*." Therefore, postponement of barangay election does not constitute "*contests*" over which the COMELEC exercises its quasi-judicial powers under Article IX-C, Section 2 (2) of the Constitution.

As regards the power of the COMELEC to "decide questions affecting elections found in Section 2 (3), Article IX-C of the Constitution, the Court, speaking through Justice Leonen in *The Diocese of Bacolod v. COMELEC*,[126] explained that the phrase "*affecting elections*" does not imply that the COMELEC is empowered to decide any and all questions affecting elections. Indeed, a reading of Article IX-C, Section 2 (3) shows that the matters falling within the COMELEC's power to decide involves **the logistical details in the facilitation of the electoral process**, *i.e.*, the "*determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters*."[127] Thus, to interpret otherwise will not only unduly interfere with the ordered system of our government where the powers are divided among the three great branches; but moreover, it can render ineffective the system of checks and balances.

A further point that bears mentioning is that under the 1935[128] and 1973[129] Constitutions, the power of the COMELEC to decide questions was explicitly **limited to** "*administrative*

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[124] Id. at 121; italics supplied.

[125] 228 Phil. 193 (1986) [Per J. Cruz, *En Banc*].

[126] *The Diocese of Bacolod v. COMELEC*, supra note 83, at 326–327.

[127] Italics supplied.

[128] 1935 CONSTITUTION, as amended, Art. X Sec. 2.

[129] 1973 CONSTITUTION, as amended, Art. XII-C, Sec. 2 (3).

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*questions effecting elections*." While the term "*administrative*" was deleted from its current iteration, the constitutional intent to retain the administrative character of the COMELEC's power to decide questions affecting elections is all too evident such that the propriety of postponing the barangay election, including the reasons therefor, cannot justifiably be argued to fall under the COMELEC's administrative power to decide under Article IX-C, Section 2 (3) of the Constitution.

Finally, it is well to highlight that the OEC is a creation of Congress through its exercise of legislative power. As such, the COMELEC's power to postpone elections under Sections 5 and 45 of the OEC must be deemed to be delegated and subordinate in character. In fact, it is all too apparent that its power to postpone elections under Sections 5 and 45 of the OEC is **expressly limited in terms of *(i)* geographical scope and *(ii)* the gravity and the unforeseeable nature of the causes**.

As Sections 5 and 45 of the OEC explicitly state, the COMELEC may postpone the elections only for "***serious causes*** *such as* ***violence, terrorism, loss or destruction of election paraphernalia or records, force majeure, and other analogous causes of such a nature***" that would render impossible the holding of a free, orderly, honest, peaceful, and credible elections. Case law settles that the term "*analogous causes*" under Section 5, as reiterated in Section 45, of the OEC, shall be "***restricted to those unforeseen or unexpected events that prevent the holding of the scheduled elections***."[130] Outside of these enumerated causes, the COMELEC is without any basis to postpone an election.

Sections 5 and 45 of the OEC further limit the power of the COMELEC to postpone an election to "***political subdivisions***" only. "*Political subdivisions*," as defined under Article X, Section 1 of the Constitution, refer to "*the provinces, cities, municipalities, and barangays*." **Accordingly, the Court cannot accept the argument of petitioners that the COMELEC is empowered to postpone an election on a *nationwide* basis, especially when the legislature**

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[130] *Kida v. Senate of the Philippines*, supra note 100, at 371; emphasis supplied.

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**explicitly limited the exercise thereof by the COMELEC to political subdivisions, as defined in the Constitution.**

Verily, these express limitations reveal the legislative intention to grant the COMELEC only with the **limited power to postpone**, and retaining for itself **the broad and general power to postpone elections under any other circumstances, serious or otherwise, and regardless of the geographical scope beyond the boundaries of any political subdivision**.

On this note, it bears mentioning that, when asked by Chief Justice Alexander G. Gesmundo (Chief Justice Gesmundo) during the oral arguments on this case, COMELEC Chairperson George Erwin M. Garcia (Chairperson Garcia) appeared to share the Court's understanding of the dynamics between the powers of the Congress and the COMELEC with respect to the postponement of elections, *viz.*:

CHIEF JUSTICE GESMUNDO:

Thank you.

The petitioner harps on Section 5 of the [OEC] saying that the power to postpone [an] election is exclusively lodged with the COMELEC. Did you hear his arguments?

CHAIRPERSON GARCIA:

Yes, Your Honor.

CHIEF JUSTICE GESMUNDO:

Do you agree with that?

CHAIRPERSON GARCIA:

I strongly disagree, Your Honor.

CHIEF JUSTICE GESMUNDO:

Why do you disagree?

CHAIRPERSON GARCIA:

**Because the provision of Section 5 *Batas Pambansa Bilang* 881 is a delegated authority coming from Congress. Being a delegated authority, it can be taken, [modified] or even [reviewed] by Congress. Meaning to say that when Congress deemed it necessary**

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**to give us the power to postpone the election, the Congress limited such exercise of power to the causes as mentioned therein. Meaning, there is an urgency for the Commission to act on these matters. And that's why the limitation as given in Section 5 pertains to the causes mentioned therein and likewise pertaining to the subdivisions as mentioned likewise in the last part of the *Batas Pambansa Bilang* 881. And so therefore, Your Honor, when Congress said COMELEC can postpone the election based on these causes, Congress can likewise postpone the election based on any other causes other than those mentioned.**

CHIEF JUSTICE GESMUNDO:

Okay. I had an opportunity to work with the COMELEC and tell me if this is the situation contemplated in Section 5. Congress sets the date of the election whatever, local or national. So, on that date, COMELEC should conduct the election, right?

CHAIRPERSON GARCIA:

Right, Your Honor.

CHIEF JUSTICE GESMUNDO:

You cannot deviate from that?

CHAIRPERSON GARCIA:

That's right. Your Honor.

CHIEF JUSTICE GESMUNDO:

**But, on the day of the election the circumstances enumerated in Section 5 of the [OEC] happens, right?**

CHAIRPERSON GARCIA:

That's right, Your Honor.

CHIEF JUSTICE GESMUNDO:

**Terrorism, what have you... That is the time you have given the power to postpone the election, is that not correct?**

CHAIRPERSON GARCIA:

That's right, Your Honor.

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CHIEF JUSTICE GESMUNDO:

**To address that contingency that will prevent the conduct of a fair and honest election, COMELEC can unilaterally postpone the election, correct?**

CHAIRPERSON GARCIA:

**Yes, Your Honor, *motu proprio,* yes.**

CHIEF JUSTICE GESMUNDO:

**And this is different from the postponement, postponement under the law. Is that not correct?**

CHAIRPERSON GARCIA:

That's right, Your Honor, under Article X, Section 8 of the Constitution.

CHIEF JUSTICE GESMUNDO:

**So that Section 5 of the [OEC] simply tells you that when these happens, you are authorized to postpone?**

CHAIRPERSON GARCIA:

Yes, Your Honor.

CHIEF JUSTICE GESMUNDO:

**It does not cover the postponement which simply means that Congress resets the date?**

CHAIRPERSON GARCIA:

**Yes, Your Honor, only on the causes as mentioned.**[131] (Emphasis and underscoring supplied)

### C. The State's Plenary Power to Legislate is Subject to Limitations

Despite the broad, plenary, and ostensibly illimitable power of the State, however, the same is not without limitations. Case law is clear that the power of the State to legislate is subject to express and implied constitutional limitations.

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[131] TSN, October 21, 2022, pp. 145–147.

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It has been held that "*the primacy of the Constitution as the supreme law of the land dictates that where the Constitution has itself made a determination or given its mandate, then the matters so determined or mandated should be respected until the Constitution itself is changed by amendment or repeal through the applicable constitutional process. A necessary corollary [to this principle] is that none of the three branches of government can deviate from the constitutional mandate except only as the Constitution itself may allow. If at all, Congress may only pass legislation filing in details to fully operationalize the constitutional command or to implement it by legislation if it is non-self-executing; this Court, on the other hand, may only interpret the mandate if an interpretation is appropriate and called for*."[132]

The express constitutional limitations can be generally found in the Declaration of Principles and State Policies (Article II) and in the Bill of Rights (Article III). Other constitutional provisions, such as the initiative and referendum clauses of Article VI, Sections 1 and 32 and the local autonomy provisions of Article X, provide their own express limitations.[133] Meanwhile the implied limitations on Congress" power are said to be found "*in the evident purpose which was in view and the circumstances and historical events which led to the enactment of the particular provision as a part of organic law*."[134]

***Due Process Clause as the Principal Yardstick in Determining the Validity of Any Government Regulation***

The primordial and vital role the right of suffrage plays in our democracy ineluctably necessitates some form of State regulation to ensure the free, fair, credible, and honest exercise of this right and the safeguarding of the will of the people. "*To preserve the*

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[132] *Kida v. Senate of the Philippines*, supra note 100, at 365–366; emphasis and italics supplied; citations omitted.

[133] Id. at 361.

[134] Id.; italics supplied.

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*purity of elections, comprehensive and sometimes complex election codes are enacted, each provision of which — whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself — inevitably affects the individual's right to vote*."[135]

Nonetheless, the Court has consistently made it clear that any interpretation of the law or the rules that would have the effect of hindering, in any way, not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the results **is frowned upon**. As the right to vote in a free and unimpaired manner is preservative of other basic civil and political rights, "any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized."[136]

One of the principal yardsticks against which the power of the State to regulate the right of suffrage is measured is the **due process clause** found under Article III, Section 1 of the Constitution, which *guarantees the right of the people against deprivation of "life, liberty, or property without due process of law*." It includes two related but distinct restrictions on government, namely: "***procedural due process***"—or the method or manner by which the law is enforced; and "***substantive due process***"—which requires that the law itself, not merely the procedures by which the law would be enforced, is fair, reasonable, and just,[137] and free from any arbitrariness and unreasonableness.[138]

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[135] See Associate Justice Reynato S. Puno's Dissenting Opinion in *Tolentino v. COMELEC*, supra note 54; italics supplied.

[136] Id., citing *Reynolds v. Sims* 377 U.S. 533, 562 (1964). See also the U.S. cases of *Kramer v. Union Free Sch. Dist.*, 395 U.S. 621, 626 (1969) and *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 670 (1966) where the SCOTUS held that any abridgment of the right to vote must survive strict scrutiny (cited by James A. Gardner in "Liberty, Community and the Constitutional Structure of Political Influence: A Consideration of the Right to Vote," University of Pennsylvania Law Review, Vol. 145: 893, p. 894.

[137] See *Maynilad Water Services, Inc. v. The Secretary of the Environment and Natural Resources*, 858 Phil. 765, 849 (2019) [Per J. Hernando, *En Banc*]; citations omitted.

[138] See *Legaspi v. City of Cebu*, 723 Phil. 90, 106–107 (2013) [Per J. Bersamin, *En Banc*].

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With respect to **substantive due process**, it requires the concurrence of two requisites, namely:

1. the interests of the public generally, as distinguished from those of a particular class, require the interference of the State, referred to as the **lawful subject**; and
2. the means employed are reasonably necessary for the attainment of the object sought to be accomplished and not unduly arbitrary or oppressive upon individuals, referred to as the **lawful method**.[139]

In the determination of whether the two requisites of substantial due process exist, case law has developed **three levels of scrutiny** depending on the rights affected, including the level of constitutional protection accorded thereby and the degree of the law's interference with said rights, and the gravity of the governmental objective sought through the law.[140] These are the **strict scrutiny, the intermediate scrutiny, and rational basis tests**.

Notably pervading these levels of scrutiny are the basic requirements of legitimate government interest or purpose and reasonable necessity of the means employed to attain the government interest. These requisites correspond to the lawful subject and lawful means requisites of the substantive aspect

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[139] See *Venus Commercial Co., Inc. v. The Department of Health*, supra note 102; *Social Justice Society v. Atienza, Jr.* 568 Phil. 658, 702 (2008) [Per J. Corona, First Division].

[140] See *Venus Commercial Co., Inc. v. The Department of Health*, id. and *Social Justice Society v. Atienza, Jr.*, id. See also *City of Manila v. Laguio, Jr.*, 495 Phil. 289 (2005) [Per J. Tinga, *En Banc*], where the Court held:

> **Substantive due process, as that phrase connotes, asks whether the government has an adequate reason for taking away a person's life, liberty, or property. In other words, substantive due process looks to whether there is a sufficient justification for the government's action.** Case law in the United States (U.S.) tells us that **whether there is such a justification depends very much on the level of scrutiny used.** For example, if a law is in an area where only rational basis review is applied, substantive due process is met so long as the law is rationally related to a legitimate government purpose. But if it is an

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of the due process clause and therefore form the core of any valid legislative enactment. **Regardless of the level of scrutiny employed, the absence of either or both of these requisites renders a statute unconstitutional for violation of the due process clause**.

## III

### A. Power of the Court to Review the Constitutionality of RA 11935

***Power of the Court to Review the Constitutionality of RA 11935; the Requisites and its Exceptions***

Judicial power, which the Constitution vests in the Supreme Court and all other courts established by law,[141] has been described as the "totality of powers a court exercises when it assumes jurisdiction and hears and decides a case."[142] Under Article VIII, Section 1, of the Constitution, it includes "*the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government*."[143]

The definition of judicial power under the Constitution embodies two basic conceptions—*(i)* the **traditional mode**, which has been expressed in our organic laws since the time of the American occupation,[144] and *(ii)* the **expanded mode**, which arose from the

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area where strict scrutiny is used, such as for protecting fundamental rights, then the government will meet substantive due process only if it can prove that the law is necessary to achieve a compelling government purpose. (Emphasis supplied)

[141] CONSTITUTION, Art. VIII, Sec. 1 (1).

[142] See *Carpio Morales v. Court of Appeals*, 772 Phil. 672, 731–732 (2015) [Per J. Perlas-Bernabe, *En Banc*].

[143] Italics supplied.

[144] Note that while judicial power was not expressly defined in Philippine organic laws prior to the 1987 Constitution, it has been defined in jurisprudence as the "authority to settle justiciable controversies or disputes involving rights that

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use and abuse of the political question doctrine during the martial law era under former President Ferdinand E. Marcos.[145]

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are enforceable and demandable before the courts of justice or the redress of wrongs for violation of such rights." (See for example *Lopez v. Roxas*, 124 Phil. 168 [1966] [Per C.J. Concepcion]).

The Philippine Organic Act of 1902, entitled "AN ACT TEMPORARILY TO PROVIDE FOR THE ADMINISTRATION OF THE AFFAIRS OF CIVIL GOVERNMENT IN THE PHILIPPINE ISLANDS, AND FOR OTHER PURPOSES," simply provides that: "*the Supreme Court and the Courts of First Instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by the Government of said Islands, subject to the power of said Government to change the practice and method of procedure*."

The Jones law of 1916, entitled "AN ACT TO DECLARE THE PURPOSE OF THE PEOPLE OF THE UNITED STATES AS TO THE FUTURE POLITICAL STATUS OF THE PEOPLE OF THE PHILIPPINE ISLANDS, AND TO PROVIDE A MORE AUTONOMOUS GOVERNMENT FOR THOSE ISLANDS," on the other hand, similarly states: "the Supreme Court and the Courts of First Instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by law."

Meanwhile, the 1935 and 1973 CONSTITUTIONS similarly provides that the "Judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law."

Considering that our organic laws were largely patterned after the US Constitution, its Article III, See. 2 clause may likewise be considered, thus: "The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party;—to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects." *Adkins v. Children's Hosp.* (261 U.S. 525 [1923]) defined judicial power as "that power vested in courts to enable them to administer justice according to law," which includes "the duty to declare and enforce the rule of the supreme law and reject that of an inferior act of legislation which, transcending the Constitution, is of no effect and binding on no one." See also *Marbury v Madison*, 5 U.S. 137 (1803); *In re Pacific Railway Commission*. 32 Fed. 241 (1887).

[145] See *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 137–138

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Under **traditional judicial power**, the judiciary involves itself with ***controversies brought about by rights, whether public or private, which are demandable and enforceable against another***.[146]

On the other hand, **expanded judicial power** does not address the rights that a private party may demand of another party, whether public or private. It solely addresses the relationships of parties to any branch or instrumentality of the government, and the rights that a party may have against the latter in its exercise of discretion to the petitioning party's prejudice. It is a **direct but limited remedy against the government on the sole ground that a grave abuse of discretion on the part of government is alleged to have been committed**. Thus, the scope of this judicial power is very narrow, but its focus also gives it strength as it is a unique remedy specifically fashioned to actualize an active means of redress against an all-powerful government.[147]

There are two distinct situations where the exercise of both modes of judicial power may be sought. Each situation carries requirements distinct to the nature of each situation, which should be recognized in the specific remedy to be used under each situation.

The *first* is the ***constitutional situation*** where the constitutionality of acts is questioned. In the constitutional situation, the exercise of either the expanded or traditional mode of judicial power involves the exercise of the **power of judicial review**, or the power of the courts to test the validity of executive and legislative acts, including those of constitutional bodies and administrative agencies, for their conformity with the Constitution and through which the judiciary enforces and upholds the supremacy of the Constitution.[148] The *second* is the

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(2016) [Per J. Brion, *En Banc*] and *GSIS Family Bank Employees Union v. Villanueva*, 846 Phil. 30, 47 (2019) [Per J. Leonen, Third Division].

[146] Associate Justice Arturo D. Brion's Separate Opinion in *Araullo v. Aquino III*, 737 Phil. 457, 682–683 (2014) [Per J. Bersamin, *En Banc*].

[147] See id.

[148] See *Garcia v. Executive Secretary*, 602 Phil. 64, 73 (2009) [Per J. Brion, *En Banc*]. See also *Association of Medical Clinics for Overseas Workers, Inc.*

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***non-constitutional situation*** where no constitutional questions or violations are raised, but which may include challenges against acts amounting to grave abuse of discretion.[149]

Under the **traditional mode**, plaintiffs question the constitutionality of a governmental action through the cases they file before the lower courts or when the defendants interpose the defense of unconstitutionality of the law under which they are being sued.[150] A petition for *certiorari* (or prohibition) based solely under Rule 65 of the Rules of Court (in contrast

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*v. GCC Approved Medical Centers Association, Inc*., supra; and Associate Justice Arturo D. Brion's Separate Opinion in *Araullo v. Aquino III*, supra.

[149] See *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc*., id. at 152.

[150] See for example the case of *Ynot v. Intermediate Appellate Cour***t**, 232 Phil. 615 (1987) [Per J. Cruz, *En Banc*], involving an appeal from the Decision of the Intermediate Appellate Court, affirming the trial court's ruling which sustained the confiscation of petitioner Restituto Ynot's carabaos pursuant to E.O. No. 626-A (prohibiting the transportation of carabaos from one province to another). The Court declared:

> **This Court has declared that while lower courts should observe a becoming modesty in examining constitutional questions, <u>they are nonetheless not prevented from resolving the same whenever warranted,</u> subject only to review by the highest tribunal**. We have jurisdiction under the Constitution to "review, revise, reverse, modify or affirm on appeal or *certiorari*, as the law or rules of court may provide," final judgments and orders of lower courts in, among others, all cases involving the constitutionality of certain measures. This simply means that the resolution of such cases may be made in the first instance by these lower courts. (Emphasis and underscoring supplied)

See also *Casanovas v. Hord*, 8 Phil. 125 (1907) [Per J. Willard], involving an appeal from the lower court's ruling in an action brought by the plaintiff to recover the amount paid by him under protest as taxes on certain mining claims owned by him. The Court agreed with the plaintiff that Section 134 of Act No. 1189 (the Internal Revenue Act), on which the tax assessment against him was based, impairs the obligation of contracts under Section 5 of the Organic Act of 1902. The Court also held it void for violating Section 60 of the Organic Act which provides that all perfected concessions prior to April 11, 1899 shall be cancelled only by reason of illegality in the procedure by which they were obtained or for failure to comply with the prescribed conditions for their retention tinder the laws by which they were granted.

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to a *certiorari* petition filed to invoke the Court's expanded judicial power) may be raised against quasi-judicial actions (and ministerial in the case of a petition for prohibition) since acts or exercise of functions that violate, and therefore go beyond the contemplation of, the Constitution are necessarily committed with grave abuse of discretion.[151]

In contrast, Court rulings on the exercise of the **expanded mode** have allowed the filing of petitions for *certiorari* and prohibition—using Rule 65 of the Rules of Court as the procedural vehicle[152]—to question, for grave abuse of discretion, actions, or the exercise of a function on the part of any branch or instrumentality of the government that violate the Constitution. The governmental action may be questioned regardless of whether it is quasi-judicial, legislative, quasi-legislative, or administrative in nature.[153]

In the exercise of either modes of judicial power (*i.e.*, traditional or expanded modes) and regardless of the situation covered (*i.e.*, constitutional or non-constitutional situation), a fundamental and indispensable requisite is the presence of a ***case or controversy***.[154] Whether a case or controversy actually exists, on the other hand, depends on the party's allegations, following our basic procedural requisites, as influenced by the elements of standing and ripeness—including the related concepts of prematurity and the moot and academic principle.[155]

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[151] See *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, supra at 145.

[152] Id. at 138–139. See also *Araullo v. Aquino III*, supra; and *Private Hospitals Association of the Philippines, Inc. v. Medialdea*, 842 Phil. 747, 776–777 (2018) [Per J. Tijam, *En Banc*].

[153] See *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*. id. at 145.

[154] See *SPARK v. Quezon City*, 815 Phil. 1067, 1090–1091 (2017) [Per J. Perlas-Bernabe, *En Banc*]; *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, id. at 140-141; and *Private Hospitals Association of the Philippines, Inc. v. Medialdea*, supra at 782–784.

[155] See *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, id. With regard to the case or

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***i. Case or Controversy***

**Case or controversy** is a fundamental and indispensable requirement before judicial power may be exercised in view of the express constitutional command to only settle *actual controversies* and determine *grave abuse of discretion*.

This requirement proceeds too from the fundamental constitutional principle of having separate, but balanced, powers of the three branches of the government,[156] which therefore precludes courts from resolving hypothetical questions[157] that will effectively render them an advisory body to the political branches

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controversy requirement's relation to ripeness, see also *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education,* 841 Phil. 724 (2018) [Per J. Caguioa, *En Banc*]; and *Spouses Imbong v. Ochoa, Jr.* 732 Phil. 1 (2014) [Per J. Mendoza, *En Banc*].

See also *Falcis III v. Civil Registrar General*, 861 Phil. 388, 437 (2019) [Per J. Leonen, *En Banc*], citing *Belgica v. Ochoa, Jr.*, 721 Phil. 416 (2013) [Per J. Perlas-Bernabe, *En Banc*] in *Ocampo v. Enriquez*, 798 Phil. 227, 288 (2016) [Per J. Peralta, *En Banc*] declaring that "the expansion of this Court's judicial power is by no means an abandonment of the need to satisfy the basic requisites of justiciability."

[156] Under the separation of powers principle that underlies the Constitution, each of the three fundamental powers of the government have been distributed to its main branches, thus: to the legislative branch, through the Congress, belongs the power to make laws; to the executive branch, through the President, the power to enforce the laws; and to the judiciary, through the Court, the power to interpret the laws. Under this structure, each of these branches has exclusive cognizance of matters within its jurisdiction and is supreme within its own sphere. (See *Belgica v. Ochoa, Jr.*, id. at 534).

The principle of checks and balances complements the separation of powers doctrine whereby one department, acting within its own sphere and pursuant to its mandate, controls, modifies, or influences the action of another, as a deterrent measure and check against the arbitrary or self-interest assertions of another or others, to secure coordination in the workings of the various departments, and for the maintenance and enforcement of the boundaries of authority and control between them. (See *Francisco v. House of Representatives*, 460 Phil. 830 (2003) [Per J. Carpio Morales, *En Banc*]; *Belgica v. Ochoa, Jr.*, id. at 548; and *Alejandrino v. Quezon*, 46 Phil. 83 (1924) [Per J. Malcolm].

[157] See *Garcia v. Executive Secretary*, supra note 148; and *Falcis III v. Civil Registrar General*, supra.

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of the government (*i.e.*, the executive and legislative), or any other instrumentality, or agency of the government. This preclusion from rendering advisory opinions is particularly relevant to the Court which rulings form part of the legal system. In other words, the requirement pertains to conflicts susceptible of judicial resolution.[158]

Under the **traditional mode**, a case or controversy exists "*when the case presents conflicting or opposite legal rights that may be resolved by the court in a judicial proceeding*."[159]

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[158] See *Belgica v. Ochoa, Jr.*, supra at 519.
Note: The bar on advisory opinions can be traced to the 1793 "Correspondence of the Justices" involving the queries sent by Secretary of State Thomas Jefferson, of then newly-formed U.S. government led by President George Washington, to U.S. Supreme Court Chief Justice Jay and his fellow Justices. The questions concerned America's obligations to the warring British and French powers under its treaties and international law. Jefferson's letter requested "in the first place, their opinion, whether the public may, with propriety, be availed of their advice on these questions? The Jay Court refused to answer, reasoning that that it would be improper for them to answer legal questions "extrajudicially" in light of "[t]he Lines of Separation" between the branches and "their being in certain Respects checks on each other." (See Advisory Opinions and the Influence of the Supreme Court over American Policymaking, Harvard Law Review, 2011).

See also *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1992), citing Chief Justice Jay's response to Jefferson's Letter in the "Letter of August 8, 1793, 3 Johnston, Correspondence and Public Papers of John Jay (1891), 489 (last visited June 26, 2023), *viz.*:

> We exceedingly regret every event that may cause embarrassment to your administration, but we derive consolation from the reflection that your judgment will discern what is right, and that your usual prudence, decision, and firmness will surmount every obstacle to the preservation of the rights, peace, and dignity of the United States.

See further (last visited January 23, 2023.

[159] *GSIS Family Bank Employees Union v. Villanueva*, supra note 145, at 47; emphasis supplied. See also *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, supra note 145; *Belgica v. Ochoa, Jr.,* id.*; and Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*, supra note 155.

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In contrast thereto, the case or controversy requirement is simplified by the Court in **constitutional cases** handled under the **expanded mode** by merely requiring a ***prima facie*** **showing of grave abuse of discretion in the exercise of the governmental act**.[160] The grave abuse of discretion the Constitution contemplates must amount to lack or excess of jurisdiction on the part of the official whose action is being questioned or such capricious or whimsical exercise of judgment that is so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[161] Case law provides that a ***prima facie*** **showing of grave abuse of discretion exists when the assailed act is seriously alleged to have infringed the Constitution**.[162]

***ii. Standing***

Corollary to the element of case or controversy, the element of **standing** must likewise be present.

Broadly speaking, standing means "a right of appearance in a court of justice on a given question."[163] Specifically, it requires the party to have "*in its favor, the demandable and enforceable right or interest giving rise to a justiciable controversy after the right*

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[160] See *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, id.; *GSIS Family Bank Employees Union v. Villanueva*, supra note 145.

[161] See *Garcia v. Executive Secretary*, supra note 148.

[162] See *Tañada v. Angara*, 338 Phil. 546 (1997) [Per J. Panganiban, First Division]; *Province of North Cotabato v. Gov't. of the Republic of the Phils. Peace Panel on Ancestral Domain*, 589 Phil. 387 (2008) [Per J. Carpio Morales, *En Banc*]; *Private Hospitals Association of the Philippines, Inc. v. Medialdea,* supra note 152*; Spouses Imbong v Ochoa, Jr.*, supra note 155; and *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education,* supra note 155.

[163] *David v. Macapagal-Arroyo*, 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, *En Banc*]; and *Araullo v. Aquino III*, supra note 146, at 535.

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*is violated by the offending party*."[164] This element proceeds from the definition of judicial power that requires "actual controversies involving rights which are legally demandable and enforceable" or "grave abuse of discretion."[165] It is translated in civil actions into "real party in interest," "offended party" in criminal actions, and "interested party" in special proceedings.[166]

Under the **traditional mode**, the standing requirement is satisfied when a party alleges "***a personal and substantial interest*** *in the case such that [they have] sustained or will sustain direct injury as a result*"[167] or "*such* ***personal stake in the outcome***

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[164] *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, supra note 145, at 151; italics supplied.

[165] Id.

[166] Note that our Rules of Civil Procedure require a party to be a "real party in interest" to lodge an action, and for parties to have "a legal interest" in order to intervene. Section 2, Rule 3 thereof provides:

> Section 2. *Parties in interest*. – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

Section 1, Rule 19 thereof, on the other hand, provides:

> Section 1. *Who may intervene.* – A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

As regards criminal actions, jurisprudence has recognized the People of the Philippines as "the offended party" (see, for example, *People of the Philippines v. Santiago*, 255 Phil. 851 [1989] [Per J. Gancayco, First Division).

As to special proceedings, the Rules require the parties to have an interest in the proceeding initiated to establish a status, a right, or a particular fact.

[167] See *David v. Macapagal-Arroyo*, supra, citing *People v. Vera*, 65 Phil. 56 (1937) [Per J. Laurel, *En Banc*]; as well as *Custodio v. President of the Senate*, 42 Off. Gaz., 1243 (1945), *Manila Race Horse Trainers' Association*

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***of the controversy as to assure that concrete adverseness which sharpens the presentation of issues*** *upon which the court depends for illumination of difficult constitutional questions*."[168] It is based on the possession of rights that are demandable and enforceable or which have been violated, giving rise to damage or injury and to actual disputes or controversies between or among the contending parties.[169] Thus, under the traditional mode, standing requires the party to allege and sufficiently show an *actual and direct* injury or violation of rights, or *imminent or credible threat*[170] thereof.

There are, of course, recognized exceptions to the requirement of actual or threatened injury to satisfy the standing element under the traditional mode. Among these exceptions to standing is in the area of constitutional cases involving issues of "**transcendental importance**." In these cases, the Court justified the necessity for relaxation of procedural niceties in view of the perceived "*imminence and clarity of the threat to fundamental constitutional rights*"[171] which therefore warrants invocation of relief from

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*v. De la Fuente*, G.R. No. L-2947, January 11, 1959 [Per J. Tuason, *En Banc*], *Pascual v. Secretary of Public Works*, 110 Phil. 331 (1960) [Per J. Concepcion, *En Banc*], and *Anti-Chinese League of the Philippines v. Felix*, 77 Phil. 1012 (1947) [Per J. Feria, *En Banc*]. See also *Anak Mindanao Party-List Group v. The Executive Secretary*, 558 Phil. 338 (2007) [Per J. Carpio Morales, *En Banc*]; emphasis and italics supplied.

[168] *Belgica v. Ochoa, Jr.*, supra note 155, at 527; emphasis and italics supplied. See also *White Light Corporation v. City of Manila*, 596 Phil. 444 (2009) [Per J. Tinga, *En Banc*].

[169] CONSTITUTION, Article VIII, Sec. 1, par. 2. See also Associate Justice Arturo D. Brion's Separate Opinion in *Araullo v. Aquino III*, supra note 146.

[170] See *Southern Hemisphere Engagement Network v. Anti-Terrorism Council*, 646 Phil. 452, 481 (2010) [Per J. Carpio Morales, *En Banc*], which recognized "credible threat of prosecution" as sufficient standing allegation. See also *List v. Driehaus*, 573 U.S. 149 (2014); *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010), *Babitt v. Farm Workers*, 442 U.S. 289 (1979); and *MedImmune, Inc. v. Genentech, Inc.*, 549 U S. 118 (2007).

[171] *Ang Nars Party-List v. The Executive Secretary*, 864 Phil. 607, 637 (2019) [Per J. Carpio, *En Banc*], citing *The Diocese of Bacolod v. COMELEC*, supra note 83, at 330–332. See also *Estrada v. Desierto*, 406 Phil. 1 (2001) [Per J. Puno, *En Banc*]; *Maza v. Turla*, 805 Phil. 736 (2017) [Per J. Leonen, Second Division]; and *Saguisag v. Executive Secretary*, 777 Phil. 280 (2016) [Per J. Sereno, *En Banc*]; italics supplied.

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the Court. Despite this characterization, it can be observed that the "transcendental importance" exception has not been clearly defined in case law, such that it has been used to relax not only the standing requirement, but also the case or controversy requirement, including the hierarchy of courts principle that led to petitions being filed before the Court at the first instance.

For example, in *Chavez v. Public Estates Authority*,[172] a petition for *mandamus* was filed by petitioner Francisco I. Chavez directly before the Court, asserting the citizen's constitutional right to information on matters of public concern which the Public Estates Authority allegedly violated by failing to disclose the sale of the reclaimed lands along Manila Bay to Amari Coastal Bay and Development Corporation. Notwithstanding the apparent lack of "actual or threatened injury" to petitioner himself, the Court, speaking through Associate Justice (and eventual Senior Associate Justice) Antonio T. Carpio (Justice Carpio), accepted the case declaring that the enforcement of constitutional rights to information and the equitable diffusion of natural resources are "matters of transcendental public importance" which clothe therein petitioner with "*locus standi*."

Case law has also recognized actual or threatened injury exceptions in constitutional cases through the allegation of "citizen," "taxpayer," "voter," and "legislator" standing, subject to satisfaction of certain requisites.[173] These requisites include: *(i)* for taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional; *(ii)* for voters, there must be a showing of obvious interest in the validity of the election law in question; *(iii)* for concerned citizens, there must be a showing that the issues raised are of transcendental importance

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[172] 433 Phil. 506 (2002) [Per J. Carpio, *En Banc*].

[173] See *David v. Macapagal-Arroyo*, supra note 163. In the US, "citizen" and "taxpayer" standing in public suits (or so-called citizen and taxpayer suits) have also been recognized. See for example *Beauchamp v. Silk*, 275 Ky. Ct. App. 1938; *Flast v. Cohen*, 392 U.S. 83 (1968). It has also recognized standing in "environmental suits" in *Sierra Club v. Morton*, 405 U.S. 727 (1972); *United States v. SCRAP*, 412 U.S. 669 (1973); and *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007).

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which must be settled early; and *(iv)* for legislators, there must be a claim that the official action complained of infringes upon their prerogatives as legislators.[174]

A related but distinct concept which case law has considered as an exception to the actual or threatened injury requirement is **third-party standing**.[175] Generally, a person may assert only his/her rights or interest in the litigation, and not challenge the constitutionality of a statute or governmental act based on its alleged infringement of the protected right of other or others. However, under the third-party standing, a person is permitted to bring actions on behalf of another or third parties not before the court.[176] To be permitted, a party asserting third-party standing must satisfy the following requisites: *(i)* the litigant must have suffered an "injury-in-fact," thus giving him or her a "sufficiently concrete interest" in the outcome of the issue in dispute; *(ii)* the litigant must have a close relation to the third party; and *(iii)* there must exist some hindrance to the third party's ability to protect his or her own interests.[177]

Based on these requisites, it is clear that the litigants or petitioners invoking third-party standing must show actual or

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[174] See *David v. Macapagal-Arroyo*, id. See also *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*, supra note 155.

[175] For example, see *White Light Corporation v. City of Manila*, supra note 168; and *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205 (2018) [Per J. Leonen, *En Banc*].

[176] See for example the following US cases: *U.S. Department of Labor v. Triplett*, 494 U.S. 715 (1990); *Singleton v. Wulff*, 428 U.S. 106 (1976); *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Eisentadt v. Baird*, 405 U.S. 438 (1972); *Doe v. Bolton*, 410 U.S. 179 (1973); *Planned Parenthood v. Danforth*, 428 Phil. 52 (1976); *Craig v. Boren*, 429 U.S. 190 (1976): *Caplin v. Drysdale, Chartered v. United States*, 491 U.S. 617 (1989); and *Barrows v. Jackson*, 346 U.S. 259 (1953).

[177] See *White Light Corporation v. City of Manila,* supra note 168, citing *Powers v. Ohio*, 499 U.S. 400 (1991), as well as *Griswold v. Connecticut,* 381 U.S. 479 (1965), and *Craig v. Boren*, 429 U.S. 190 (1976); and *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, supra.

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threatened injury to themselves before they can raise any alleged violation to the rights of others who are not before the court. In other words, the third-party standing does not really dispense with the requirement of an actual or threatened injury on the part of the litigants or petitioning parties who must still sufficiently allege the same before they may properly invoke the exercise of judicial power. Thus, conceptually, third-party standing does not accurately constitute as an exception to the standing requirement.

In contrast with the traditional mode, the Court has relaxed the standing requirement in **constitutional cases** under the **expanded mode** by simply requiring a *prima facie* showing that the questioned governmental act violated the Constitution. Under our democratic and republican system of government, it is the sovereign Filipino nation who approved the Constitution and endowed it with authority. As such, any act that violates the Constitution effectively disputably shows an injury to the sovereign Filipino nation, who, collectively or individually, may therefore question the same before the courts.[178]

***iii. Ripeness***

A third corollary element that is pertinent to both constitutional and non-constitutional situations, regardless of whether the case reaches the Court through the traditional mode or expanded mode, is **ripeness**. In cases involving administrative acts, ripeness is affected by the doctrine of exhaustion of administrative remedies, which requires the exhaustion of remedies within an agency's administrative process before external remedies can be applied.[179] Separately from ripeness, but intrinsically connected thereto, is the related concept of the **moot and academic** principle.[180] Both these concepts relate to the timing of the presentation of a controversy before the Court: ripeness — as affected by the exhaustion of remedies principle in administrative

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[178] See *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, supra note 145, at 152.

[179] Id. at 145.

[180] Id. at 146.

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cases—relates to its prematurity, while mootness relates to a belated or unnecessary judgment on the issues.[181]

The importance of timing in the exercise of judicial power highlights and reinforces the need for an actual case or controversy or an act that may violate a party's right. Without any completed action or a concrete threat of injury to the petitioning party, which the petitioner must sufficiently allege, the act is not yet ripe for adjudication. Thus, the question of ripeness asks whether: *(i)* an act had already been accomplished or performed by either branch of the government; and *(ii)* there is an immediate and actual or threatened injury to the petitioner as a result thereof[182] or the act was attended with grave abuse of discretion.

Conversely, an issue that was once ripe for resolution but which resolution, since then, has been rendered unnecessary because of some supervening event, needs no resolution from the Court, as it presents no actual case or controversy. In either situation, the case is vulnerable to dismissal as the issue presented is merely a hypothetical problem which, as discussed above, the Court is without power to resolve.[183]

***iv. Lis Mota***

A fourth requisite, essential only in constitutional situation (whether under the traditional or expanded modes), is the element of *lis mota,* which prevents the courts from passing upon the constitutionality of a governmental act unless the resolution of the question is unavoidably necessary to the decision of the case itself.[184] This means that "the Court will not pass upon a question of unconstitutionality, although properly presented, *if the case can be disposed of on some other ground, such as the application of the*

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[181] Id.

[182] See Associate Justice Alfredo Benjamin S. Caguioa's Separate Concurring Opinion in *Private Hospitals Association of the Philippines, Inc. v. Medialdea*, supra note 152, at 804, citations omitted.

[183] See *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, supra note 145, at 146–147.

[184] See *Francisco v. House of Representatives*, supra note 156.

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*statute or the general law*."[185] It proceeds from the rule that "every law has in its favor the presumption of constitutionality; to justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative, or argumentative."[186]

***Political Question Doctrine***

The foregoing requisites for the Court's exercise of its judicial review power, particularly the requirement of "an actual case or controversy," carry the assurance that "courts will not intrude into areas committed to the other branches of government," pursuant to the principle of separation of powers.

The requirement of an actual case or controversy, in essence, involves the legality of a particular measure or an allocation of constitutional boundaries. Thus, questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or with regard to which full discretionary authority has been delegated to the legislature or executive branch of Government, are beyond the pale of judicial review power. These are political questions, the resolution of which is dependent on the wisdom, not the legality, of a particular measure and therefore do not present an actual case or controversy.

As originally formulated in the US case of *Baker v. Carr*,[187] "the [political question] doctrine applies when there is found among others, 'a textually demonstrable constitutional commitment of the issue to a coordinate political department,' 'a lack of judicially discoverable and manageable standards for resolving it' or 'the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion.'"[188]

The foregoing notwithstanding, the Court, speaking through Associate Justice (and eventual Senior Associate Justice) Estela M. Perlas-Bernabe (Justice Perlas-Bernabe) in *Belgica v. Ochoa,*

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[185] See *Garcia v. Executive Secretary*, supra note 148, at 82.

[186] Id.; citations omitted.

[187] 369 U.S. 186 (1962).

[188] *Belgica v. Ochoa, Jr.*, supra note 155, at 525.

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*Jr.* (*Belgica*),[189] explicated that the constraining reach of the doctrine on the power of the Court has been greatly reduced under the 1987 Constitution by expanding the Court's power of judicial review to not only settle actual controversies involving rights which are legally demandable and enforceable, but also to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on any branch or instrumentality of the government. The Court said:

> Suffice it to state that the issues raised before the Court do not present political but legal questions which are within its province to resolve. **A political question refers to "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government. It is concerned with issues dependent upon the wisdom, not legality, of a particular measure."** The intrinsic constitutionality of the "Pork Barrel System" is not an issue dependent upon the wisdom of the political branches of government but rather a legal one which the Constitution itself has commanded the Court to act upon. **Scrutinizing the contours of the system along constitutional lines is a task that the political branches of government are incapable of rendering precisely because it is an exercise of judicial power. More importantly, the present Constitution has not only vested the Judiciary the right to exercise judicial power but essentially makes it a duty to proceed therewith. Section 1, Article VIII of the 1987 Constitution cannot be any clearer: "The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. [It] includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."** In *Estrada v. Desierto*, the expanded concept of judicial power under the 1987 Constitution and its effect on the political question doctrine was explained as follows:
>
> > To a great degree, **the 1987 Constitution has narrowed the reach of the political question doctrine when it expanded the power of judicial review of this court not only to settle actual controversies involving rights which are legally demandable**

[189] Id.

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> **and enforceable but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government.** Heretofore, the judiciary has focused on the "thou shalt not's" of the Constitution directed against the exercise of its jurisdiction. With the new provision, however, **courts are given a greater prerogative to determine what it can do to prevent grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government**. Clearly, the new provision did not just grant the Court power of doing nothing.[190] x x x (Emphasis supplied)

*Belgica* clarified that "'*when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; does not in reality nullify or invalidate an act of the legislature or the executive], but only asserts the solemn and sacred obligation assigned to it by the Constitution.*' *To a great extent, the Court is laudably cognizant of the reforms undertaken by its co-equal branches of government. But it is by constitutional force that the Court must faithfully perform its duty. x x x After all, it is in the best interest of the people that each great branch of government, within its own sphere, contributes its share towards achieving a holistic and genuine solution to the problems of society*."[191]

***Jurisdiction***

Inextricably linked to the exercise of judicial power is jurisdiction. It is defined as the authority to hear and determine cases or the right to act in cases of the general class to which the proceedings in question belong.[192] In order for a court or an

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[190] Id. at 526–527; citations omitted.

[191] Id. at 527; italics supplied; citations omitted.

[192] See *Radiowealth Finance Company, Inc. v. Pineda*, 837, Phil. 419, 423 (2018) [Per J. Perlas-Bernabe, Second Division]. See also *Mitsubishi Motors Philippines v. Bureau of Customs*, 760 Phil. 954, 960 (2015) [Per J. Perlas-Bernabe, First Division]; *Carpio Morales v. Court of Appeals*, supra note 142, at 730; *The Diocese of Bacolod v. COMELEC*, supra note 83, at 325; and *Zamora v. Court of Appeals*, 262 Phil. 298 (1990) [Per J. Cruz, First Division].

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adjudicative body to have authority to dispose of a case on its merits and thus, exercise judicial power, it must have jurisdiction over the subject matter. As case law settles, jurisdiction over the subject matter is conferred only by the Constitution or by law.[193]

The Supreme Court is the only court established by the Constitution whose powers and jurisdiction are likewise explicitly provided by it. By express constitutional mandate, such jurisdiction cannot be removed or withdrawn by Congress. All other lower courts are established by laws passed by the legislature;[194] their jurisdiction is defined, prescribed, and circumscribed by the laws that respectively created them.[195] However, by constitutional fiat,[196] the other lower courts established by law likewise become repositories of judicial power—that includes both the traditional and expanded modes—which they may fully exercise within the confines of their statutorily defined jurisdictions. Without such jurisdiction, any exercise by a court of judicial power is null and void. Thus, judicial power is the extent and totality of the powers courts exercise when they assume jurisdiction and rule on a case. Jurisdiction, on the other hand, is the prerequisite authority which permits courts to exercise judicial power in a specific case.

***Hierarchy of Courts Principle***

Another fundamental and distinctively correlated concept affecting the exercise of judicial power—that applies regardless of

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[193] CONSTITUTION, Art. VIII, Sec. 1, par. 1.

[194] CONSTITUTION, Art. VIII, Sec. 2, par. 1.

[195] See *Batas Pambansa Bilang* (BP) 129, as amended, (otherwise known as "THE JUDICIARY REORGANIZATION ACT OF 1980, approved on August 14, 1981) which established the Court of Appeals, Regional Trial Courts, and Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts; RA 1125 (entitled "AN ACT CREATING THE COURT OF TAX APPEALS," approved on June 16, 1954) which established the Court of Tax Appeals; and Presidential Decree No. (PD) 1486 (entitled "CREATING A SPECIAL COURT TO BE KNOWN AS 'SANDIGANBAYAN' AND FOR OTHER PURPOSES," approved on June 11, 1987) which established the Sandiganbayan.

[196] See Sec. 1, par. 1, Art. VIII of the CONSTITUTION, which states that "**judicial power shall be vested** in one Supreme Court **and in such lower courts as may be established by law**." (Emphasis and underscoring supplied)

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the mode and the situation under which the power is exercised—is the **principle of hierarchy of courts**. The principle recognizes the jurisdiction and the various levels of courts in the country as they are established under the Constitution and by law, and their relationship with one another.[197] It recognizes, too, the practical need to restrain parties from directly resorting to the Court when relief may be obtained before the lower courts in order to prevent "inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, as well as to prevent the congestion of the Court's dockets."[198]

Under the Constitution, the Supreme Court is designated as the highest court with irreducible powers,[199] whose rulings serve as precedent that other courts must follow because they form part of the law of the land. All other courts are established and given their defined jurisdictions by law. As a rule, the Supreme Court is not a trier of facts and generally rules only on questions of law;[200] in

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[197] See *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, supra note 145.

[198] See *Aala v. Uy*, 803 Phil. 36, 54 (2017) [Per J. Leonen, *En Banc*].

[199] Under Sec. 2, Art. VIII of the CONSTITUTION: "The Congress shall have the power to define, prescribe, and apportion the jurisdiction of various courts **but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Secton 5 hereof**." (Emphasis supplied)

[200] See Article VIII, Sec. 5 (2) of the CONSTITUTION, *viz.*:

> SECTION 5. The Supreme Court shall have the following powers:
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> x x x x
>
> (2) Review, revise, reverse, modify, or affirm on appeal or *certiorari,* as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
>
> (a) All cases in which the **constitutionality or validity** of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
>
> (b) All cases involving the **legality** of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
>
> (c) All cases in which the jurisdiction of any lower court is in issue.

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contrast to the Court of Appeals and other intermediate courts which rule on both questions of law and of fact. At the lowest level of courts are the municipal and the regional trial courts which also handle questions of fact and law at the first instance according to the jurisdiction granted to them by law.[201]

Pursuant to the foregoing structure and by its very essence, **the hierarchy principle** commands that cases must first be brought before the lowest court with jurisdiction, and not before the higher courts. These cases may ultimately reach the Supreme Court through the medium of an appeal or *certiorari*.[202] Considering that jurisdiction and the leveling of the courts are defined by law, the hierarchy should leave very little opening for flexibility (and potential legal questions), except for the fact that laws have conferred concurrent jurisdictions for certain cases or remedies to

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(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.
(e) All cases in which **only an error or question of law is involved.** (Emphasis supplied)

[201] See *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, supra note 145.

[202] See Sec. 5 (2), Art. VIII, of the CONSTITUTION, *viz.*:

SECTION 5. The Supreme Court shall have the following powers:

x x x x

**(2) Review, revise, reverse, modify, or affirm <u>on appeal or *certiorari*</u>, as the law or the Rules of Court may provide, final judgments and orders of lower courts** in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
(c) All cases in which the jurisdiction of any lower court is in issue.
(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.
(e) All cases in which only an error or question of law is involved. (Emphasis and underscoring supplied)

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courts at different and defined levels. Petitions for *certiorari* and prohibition fall under the concurrent jurisdiction of the regional trial courts and the higher courts, including the Supreme Court.[203] Nonetheless, it should be borne in mind that under the Constitution, the Court's power to revise, reverse, or modify final judgments on *certiorari* is subject to what "the law or the Rules of Court may provide."[204] Thus, despite the fact that the power to promulgate rules is constitutionally lodged in the Court, it is equally constitutionally precluded from arbitrarily assuming

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See also *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, id.

[203] See Sec. 5(1), Art. VIII of the CONSTITUTION which grants to the Supreme Court original jurisdiction "over petitions for *certiorari*, prohibition, *mandamus, quo warranto,* and *habeas corpus*." Section 9 (1), Chapter I and Section 21 (1), Chapter II of BP 129 similarly grants the Court of Appeals and the RTC, respectively, original jurisdiction to issue writs *of mandamus*, prohibition, *certiorari*, and *quo warranto.* See also *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, id.; and *Carpio Morales v. Court of Appeals*, supra note 142.

[204] See Sec. 5 (2), Art. VIII of the CONSTITUTION, *viz.:*

> SECTION 5. The Supreme Court shall have the following powers:
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> x x x x
>
> (2) **Review, revise, reverse, modify or affirm on** appeal or ***certiorari,*** **as the law or the Rules of Court may provide, final judgments and orders of lower courts** in:
>
> (a) All cases in which the **constitutionality or validity** of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
>
> (b) All cases involving the **legality** of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
>
> (c) All cases in which the jurisdiction of any lower court is in issue.
>
> (d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.
>
> (e) All cases in which **only an error or question of law is involved.** (Emphasis and underscoring supplied).

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jurisdiction over *certiorari* (including prohibition) petitions at the first instance in violation of the constitutional command.

Certainly, there are recognized exceptions to the general rule found in jurisprudence, particularly in constitutional situations invoking the Court's expanded judicial power. In these recognized exceptions, the Court allows direct filing of the cases before it based on its authority to relax the application of its own rules.[205] Among the recognized exceptions developed by case law include: (a) genuine issues of constitutionality that must be addressed at the most immediate time;[206] (b) transcendental importance;[207] (c) cases of first impression;[208] (d) constitutional issues which are better decided by the Supreme Court;[209] (e) time element or exigency in certain situations;[210] (f) a review an act of a constitutional organ;[211] (g) situations wherein there is no other plain, speedy, and adequate remedy in the ordinary course of law;[212] and (h)

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[205] See *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, supra note 145.

[206] See *The Diocese of Bacolod v. COMELEC*, supra note 83, at 331, citing *Aquino III v. COMELEC*, 631 Phil. 595 (2010) [Per J. Perez, *En Banc*]; *Magallona v. Ermita*, 671 Phil. 243 (2011) [Per J. Carpio, *En Banc*]. See also *Chavez v. National Housing Authority*, 557 Phil. 29 (2007) [Per J. Velasco, Jr., *En Banc*]; and *Cabarles v. Maceda*, 545 Phil. 210 (2007) [Per J. Quisumbing, Second Division], providing the exception of "compelling reasons or if warranted by the nature of the issues raised."

[207] See *The Diocese of Bacolod v. COMELEC*, id. at 332, citing *Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc. v. Power Sector Assets and Liabilities Management Corporation*, 696 Phil. 486 (2012) [Per J. Villarama, Jr., *En Banc*]; *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, 450 Phil. 744, 805 (2003) [Per J. Puno, *En Banc*].

[208] See *The Diocese of Bacolod v. COMELEC*, id. at 332–333, citing *Soriano v. Laguardia*, 605 Phil. 43, 99 (2009) [Per J. Velasco, Jr., *En Banc*]. See also *Mallion v. Alcantara*, 536 Phil. 1049, 1053 (2006) [Per J. Azcuna, Second Division].

[209] See *The Diocese of Bacolod v. COMELEC*, id. 333, citing *Drilon v. Lim*, 305 Phil. 146 (1994) [Per J. Cruz, *En Banc*].

[210] See *The Diocese of Bacolod v. COMELEC*, id. at 333–334.

[211] See id. at 334, citing *Albano v. Arranz* 114 Phil. 318 (1962) [Per J. J.B.L. Reyes].

[212] See *The Diocese of Bacolod v. COMELEC*, id. at 334.

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questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.[213]

**B. Petitioners have Satisfied the Requisites for the Exercise by the Court of its Judicial Review Power under Both Traditional and Expanded Modes**

Applying the foregoing parameters, the Court finds the exercise of its judicial review power proper in the case.

***Firstly***, the present consolidated Petitions have sufficiently established a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence, *i.e.*, the inherent power and duty of the legislature to enact laws regulating the elections in order to ensure the credible, honest, and peaceful conduct thereof *vis-à-vis* the fundamental right of the people to participate in the elections. Moreover, the consolidated Petitions have sufficiently presented *prima facie* showing of grave abuse of discretion when the assailed act is seriously alleged to have infringed the Constitution.

***Secondly***, petitioners, as voters, taxpayers, and citizens, have sufficiently alleged a personal and substantial interest in the case and such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the Court depends for illumination of difficult constitutional questions. Indeed, the postponement of the December 2022 BSKE constitutes an actual and direct violation of petitioners' right to participate in the BSKE, or at the very least, poses an imminent or credible threat of violation of their right of suffrage. Moreover, petitioners' arguments sufficiently presented

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[213] See *The Diocese of Bacolod v. COMELEC*, id. at 334–335, citing *Chong v. Dela Cruz*, 610 Phil. 725 (2009) [Per J. Nachura, Third Division]; *Chavez v. Romulo*, 475 Phil. 486 (2004) [Per J. Sandoval-Gutierrez, *En Banc*]; *COMELEC v. Quijano-Padilla*, 438 Phil. 72 (2002) [Per J. Sandoval-Gutierrez, *En Banc*]; and *Buklod ng Kawaning EIIB v. Zamora*, 413 Phil. 281 (2001) Per J. Sandoval-Gutierrez, *En Banc*].

a *prima facie* grave violation of the Constitution by the assailed governmental act.

***Thirdly***, the constitutional challenge against RA 11935 was raised at the earliest opportunity, *i.e.*, seven days (or on October 17, 2022) after its enactment on October 10, 2022, and the continued efficacy of the law constitutes an immediate and actual or threatened injury to petitioners as a result thereof. As the subsequent discussions will show, the unconstitutionality of RA 11935 is rooted in its violation of the fundamental right of the people to vote. **While the date of the December 2022 BSKE has already lapsed, the evident transgression on the people's right of suffrage continues until the BSKE is finally held**. What is more, as likewise will be discussed in detail below, the enactment of RA 11935 was blatantly attended with grave abuse of discretion amounting to a patent failure to act in contemplation of the law.

On this score, the Court stresses that despite the lapse of the originally scheduled date of the BSKE, *i.e.*, December 5, 2022, **the case has not been rendered moot as to preclude the exercise by this Court of its judicial review power**. To reiterate and emphasize, the law's transgression on the people's right of suffrage is **continuing and did not cease** upon the passing of the December 5, 2022 BSKE schedule. Thus, despite the intervening expiration of the previous election date, the case undoubtedly presents an actual case or controversy that justifies the continued exercise by this Court of its judicial review power.

Even on the assumption of mootness, case law expresses that "the moot and academic principle is not a magical formula that can automatically dissuade the Court in resolving a case."[214] The Court will decide cases, otherwise moot, ***first***, there is a grave violation of the Constitution; ***second***, the exceptional character of the situation and the paramount public interest is involved; ***third***, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and ***fourth***, the case is capable of repetition yet evading review.[215]

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[214] See *Belgica v. Ochoa, Jr.*, supra note 155, at 522.

[215] Id.

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All these exceptional situations that would justify the Court in deciding a case otherwise rendered moot are **blatantly evident** in the present consolidated Petitions.

***First***, as will be explained later on, a grave violation of the Constitution attended the enactment of RA 11935.

***Second***, the case calls for the resolution of a novel and unprecedented issue that affects the people's right of suffrage at the grassroots level.

***Third***, the constitutional issue raised under the circumstances surrounding this case is capable of repetition yet evading review; and thus, demands formulation of controlling principles to guide the bench, the bar, and the public.

***Fourth***, the resolution of the question involving the constitutionality of RA 11935 is unavoidably necessary to the decision of the present consolidated petitions.

***Lastly***, the consolidated Petitions assail the constitutionality of an act of a co-equal branch of government—the legislature. It involves a determination of the proper allocation and delineation between the Congress, on the one hand, and the COMELEC, on the other hand, of the power to postpone the BSKE. These matters undoubtedly require scrutiny of the "contours of the system along constitutional lines"[216] which precisely call for the exercise of judicial power by the Court.

## C. Constitutionality of RA 11935

### *RA 11935 Does Not Unconstitutionally Encroach on the Power of the COMELEC to Administer the Elections*

Applying the foregoing principles, the Court finds that RA 11935 does not unconstitutionally encroach on the power and functions of the COMELEC to administer the elections.

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[216] Id. at 526.

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To recall, the Congress has the plenary power to regulate *all matters* which, in its discretion, are for the common good of the people and which the Constitution deems indispensable for the enjoyment by all the people of the blessings of democracy.

Consequently, while the COMELEC is specifically created as the independent constitutional body charged with the administration and enforcement of elections and election laws—and whose very existence perforce is intricately and inseparably related to elections, the broad and plenary power of the Congress with respect to election matters is not automatically limited thereby. Indeed, "[a]ny power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress" and unless limited by the Constitution, either expressly or impliedly, "legislative power embraces all subjects and extends to all matters of general concern or common interest."[217] Thus, while the power to postpone elections has not been expressly granted to the legislature, neither has it been expressly nor impliedly withheld therefrom.

With this delineation, matters that solely and distinctly pertain to election administration fall primarily within the power of the COMELEC, while those that intersect and transcend numerous constitutional interests and rights must generally be viewed as falling primarily within the broad and plenary power of Congress. Concomitantly, therefore, the power to postpone barangay election must be deemed to be inherently included, generally, in the Congress' broad and plenary power to legislate and specifically, in the Congress' constitutionally granted power to determine the term of office of barangay officials.

For these reasons, **the Court cannot subscribe to the claim of petitioners that by enacting RA 11935, Congress has unconstitutionally encroached on the power of the COMELEC to postpone elections**. Accordingly, the challenge against the validity of RA 11935 on this ground must necessarily fail.

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[217] *Kida v. Senate of the Philippines*, supra note 100.

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***Nonetheless, RA 11935 Unconstitutionally Violates the Freedom of Suffrage for Failing to Satisfy the Due Process Requisites.***

**The foregoing notwithstanding, a judicious examination of the law and the records convinces the Court that RA 11935 unconstitutionally violates the freedom of suffrage for failing to satisfy the requisites of the substantive aspect of the due process clause of the Constitution.**

***Firstly***, the legislative measure **is not supported by a legitimate government interest or objective**. It also unconstitutionally exceeds the bounds of the power of Congress to legislate.

Principally, the law, as worded, does not provide any supporting reasons or justifications for the postponement of the elections. It is for this reason that the parties offer varying justifications for the postponement of the December 2022 BSKE that, while rationally plausible, raise serious doubts on the law's fairness and reasonableness.

In defending the law, the OSG points out that the postponement of the BSKE under RA 11935 is principally for the purpose of allowing Congress more time to review the present BSK systems, including the term of barangay officials, among other practical considerations.[218] Relatedly, the OSG made similar remarks during the oral arguments in **G.R. No. 263590**:

ASSOCIATE JUSTICE RICARDO R. ROSARIO:

Yes, good afternoon, Sir. One of the reasons cited for the postponement is election fatigue. Now, what is your basis for saying that the electorate is suffering from election fatigue? And is election fatigue a sufficient reason to postpone election, Sir?

SOLICITOR GENERAL MENARDO I. GUEVARRA:

Your Honor, my only reference material with respect to the purpose of the postponement of the barangay elections consists of the official

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[218] See *rollo* (G.R. No. 263590), pp. 60–66; *rollo* (G.R. No. 263673), pp. 113–120.

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records and journal of both Chambers of Congress. And as far as the journal of the House of Representatives would show, apparently issues pertaining to the budget, as well as proposed increases in the allowances for poll workers were among those that needed to be discussed. With respect to the records of the Senate, it would appear that the principal reason given by Congress, by the Senate in their desire also to postpone the barangay elections was to have enough or some more time to discuss electoral reforms that would also affect the forthcoming barangay elections. And we are made to understand that because of their current engagement about the General Appropriations Act, they are very busy with the GAA, they would need more time to consider possible electoral reforms that would also affect the barangay elections. So, as far as the records would concern... are concerned, Your Honors, this would appear to be the reasons. x x x[219]

Yet, COMELEC Chairperson Garcia disclosed during the oral arguments that, when he appeared before the House of Representatives, the reasons primarily given point to the realignment of the funds earmarked for the December 2022 BSKE towards funding other government projects, programs, or activities.[220]

For his part, Atty. Macalintal asserts that the enactment of RA 11935, and even the earlier BSKE postponement laws for that matter, have no valid reasons, and—because of the law's silence—even insinuates that "the reason for postponing the barangay election is but to fulfill a 'promise' by some candidates to get the support of incumbent barangay leaders to whom they make the promise to extend their (barangay leaders') term after the elections."[221] To Atty. Macalintal, this underlying reason constitutes the election offense of "vote-buying" under Section 261 (a) (1) of the OEC.

Meanwhile, Atty. Hidalgo *et al.* did not explicitly offer any reason behind the postponement under RA 11935. Nonetheless, it may be implied from their Petition that the same had no valid reason/s and/or justification/s when they argued that "[b]y enacting [RA] 11935,

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[219] TSN, October 21, 2022, p. 77.

[220] TSN, October 21, 2022, pp. 108–111.

[221] See *rollo* (G.R. No. 263590), p. 149.

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the Congress, based on their own whims and caprices, effectively decides when the Filipino people can vote and be voted upon in the [BSKE], thereby manipulating at will the constitutionally guaranteed right of the Filipino people to suffrage."[222]

In line with the requirement that there must be a legitimate government interest or purpose for the legislative act as a requisite for substantive due process, an explicit statement thereof would have helped dispel any doubt as to the legislature's intent and the law's purpose. Consequently, in view of the conflicting accounts and explanations given by the parties in this case, the Court is compelled to consider the history and records of RA 11935 to determine whether the law's objective is free from arbitrariness and unfairness.

Corollary thereto, the Court notes that House Bill No. (HB) 4673 (which, together with its Senate counterpart, became RA 11935) is equally silent as to its reasons which, in view of its legislative history, appears to have been purposely formulated so to portray a sense of legislative consensus. Interestingly, varying reasons were given in the Explanatory Notes of the various HBs[223] (43 in total)

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[222] See *rollo* (G.R. No. 263673), p. 15.

[223] The various reasons/justifications proffered in the bills tiled before the House of Representatives for the postponement of the December 2022 BSKE are summarized below:

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| HB 41 Explanatory Note (by Rep. Paul Ruiz Daza) | -Minimize the spread of the virus and prevent another surge;<br>-Allow newly elected national and local officials to improve upon the programs and projects that were already implemented since the outbreak of the pandemic;<br>-Allow the projected expense thereof to be utilized instead for other more pressing and critical programs, activities, and projects of the national government; and<br>-Relieve the COMELEC from the burden of having to conduct two elections in one year with only a six-month gap between them. |
| HB 121 Explanatory Note (by Rep. Juliet Marie De Leon Ferrer) | -Instead of spending on another electoral exercise, the government can direct its resources to COVID-19 related programs and help rebuild our economy;<br>-Continuity in the implementation of programs; and<br>-COMELEC will have more time for the BSKE if it will be postponed to 2023, in view of the recent conduct of the national and local elections. |

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filed before the Congress which sought for the postponement of the December 2022 BSKE. These include: realignment of the

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| HB 133 Explanatory Note (by Rep. Rachel Marguerite "Cutie" Del Mar) | -The national and local elections have just been concluded, and to conduct BSKE for the same year will lead to present division of electorates; and<br>-There will be additional expenditures for the conduct of the elections, it would be beneficial for the country to defer the BSKE to allow it to concentrate on other economic programs. |
| HB 333 Explanatory Note (by Rep. Michael L. Romero) | -The estimated cost for conducting the BSKE can be better utilized and should be redirected to various economic stimulus programs that can help alleviate the hardships of our countrymen resulting from the continuing effects of the COVID-19 pandemic and the war between Russia and Ukraine. |
| HB 398 Explanatory Note (by Rep. Gustavo S. Tambunting) | -To give extension for incumbent barangay officials to finish programs that they have started and ensure stability in barangay affairs. |
| HB 432 Explanatory Note (by Rep. Johnny Pimentel) | -Continuity in the implementation of barangay-level programs. |
| HB 480 Explanatory Note (by Rep. Gloria Macapagal-Arroyo) | -Conserve the resources and simply allocate the billions of pesos towards the pandemic response program of the national government; and<br>-Provide continuity in service since the national and local officials had just been elected. |
| HB 504 Explanatory Note (by Reps. Edvic G. Yap, Eric G. Yap, Paolo Z. Duterte, and Jeffrey Soriano | -Address the interruption in the term of incumbent BSK officials to allow them to efficiently deliver all ongoing programs, services, and projects in the community; and<br>-Allow a relief from the heavy social, economic, and political toll that the elections, particularly the presidential elections, entail. |
| HB 515 Explanatory Note (by Rep. Ramon Jolo E. Revilla III) | -[no reason/justification for postponement] |

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COMELEC's budget allocation for the December 2022 BSKE towards the government's COVID-19 response programs and

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| HB 937 Explanatory Note (by Rep. Richard I. Gomez) | -Rationalize the national expenditures to accommodate the most pressing challenges facing the Filipino people and serve as economic aid for small and medium-sized enterprises;<br>-Allow the barangay officials to continue and strengthen their efforts in fighting the COVID-19 virus; and<br>-Provide the people with the need respite from the exhaustion, animosity, and division that ensued with the recently concluded elections. |
| HB 949 Explanatory Note (by Rep. PM Vargas) | -Give the present officials a full five-year term and return the month of election in May; and<br>-Reasonable to prioritize the budget allocated for the December 2022 local elections to more programs on health, livelihood, education, and other social services. |
| HB 1035 Explanatory Note (by Rep. Francisco Jose F. Matugas III) | -Postponing the BSKE will free up more than PHP 8 Billion which can be used for pandemic response or as a financial aid to our countrymen; and<br>-Give more time to barangay officials to effectively implement their programs and plans for their constituents. |
| HB 1110 Explanatory Note (by Rep. Marvin C. Rillo) | -Re-allocate the supposed budget for the elections to support and fund the government's efforts towards economic recovery and termination of or actions against COVID-19; and<br>-Provide a measure of continuity in the national government's efforts to combat the ill-effects of the COVID-19 pandemic. |
| HB 1138 Explanatory Note (by Rep. Faustino "Inno" A. Dy V) | -Continuity in government response to the COVID-19 pandemic; and<br>-Use the funds initially allotted for BSKE to much-needed social programs for the people. |
| HB 1254 Explanatory Note (by Rep. Emmarie "Lolypop" Ouano-Dizon) | -Allow incumbent officials to continue to perform their functions and to achieve their goals set in their respective programs and long-term plan for their respective barangays; and<br>-To allow for effective use of all available resources for the transition to the new Administration. |
| HB 1367 Explanatory Note (by Rep. Cheeno Miguel D. Almario) | -The government can use the allocation for the 2022 BSKE instead for post-pandemic measures to keep its people safe, and help the economy bounce back;<br>-Newly elected officials will benefit from the experience of BSK officials in fighting the pandemic; and<br>-"To heal the wounds" brought by the recently concluded elections. |

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| HB 1696 Explanatory Note (by Rep. Edwin L. Olivarez) | -The budget for the BSKE may be utilized and located to resources and services necessary for the response and recovery of the nation from the COVID-19 pandemic; and<br>-Ensure continuity and effectiveness in the implementation of local and national plans and programs at barangay levels. |
| HB 1840 Explanatory Note (by Rep. Ron P. Salo) | -Give the COMELEC and other involved agencies additional time to prepare and ensure credible and effective barangay elections, and for registration of voters, particularly for first time voters; and<br>-Provide a political respite to the people after a highly divisive election. |
| HB 1932 Explanatory Note (by Rep. Mark O. Go) | -Postponement of the BSKE will result in government savings of PHP 8 Billion which can be diverted to economic stimulus and recovery packages that are much needed now as the country endeavors to move forward. |
| HB 1961 Explanatory Note (by Rep. Alfredo D. Marañon III) | -Need to ensure continuity of programs and projects in the barangay level; and<br>-Postponement bolstered by budgetary constraints. |
| HB 2057 Explanatory Note (by Rep. Francisco Paolo P. Ortega V) | -Focus the national and local officials' attention to strengthening and building strategies, programs, and projects to contain and address the global pandemic;<br>-The familiarity of the barangay officials will facilitate delivery of services; and<br>-COMELEC will be given ample time to prepare for the next BSKE since we have just concluded the national and local elections |
| HB 2071 Explanatory Note (by Rep. Jaime Eduardo Marc D. Cojuangco) | -The budgetary allocation for the BSKE may be utilized for a much-needed government endeavor. |
| HB 2185 Explanatory Note (by Rep. Ralph G. Recto) | -Savings to be generated amounting to PHP 8.4 Billion from the postponement of the BSKE would significantly contribute in funding the priority programs of the DA to ensure food security and sufficiency for the Filipinos. |

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| HB 2235 Explanatory Note (by Rep. Christopherson "Coco" M. Yap) | -Afford continuity in government operations at the grass-roots level and have ready access to the skills and expertise of incumbent barangay officials in implementing national programs and projects, pandemic response, and health protocols, among others; and<br>-The allocation for the BSKE could be tapped by the government for other programs aimed at hastening economic recovery and extending more financial support to those marginalized by the pandemic. |
| HB 2240 Explanatory Note (by Rep. Dean Asistio) | -Will create opportunities for incumbent BSK officials to continue their programs and projects already commenced, and further introduce improvement and remedial interventions to ongoing reforms. |
| HB 2476 Explanatory Note (by Rep. Florencio Gabriel "Bem" G. Noel) | -Incumbent barangay officials are better equipped to continue the implementation of national programs and projects during an ongoing pandemic; and<br>-Allow the national government to allocate a portion budget allocation for the BSKE to other matters of greater national concern. |
| HB 2494 Explanatory Note (by Rep. Ma. Theresa V. Collantes) | -Create enough time and opportunity for incumbent BSK officials to provide assistance and support to the newly elected national and local officials in designing and implementing measures that will ensure the effective delivery of government programs directly to the people. |
| HB 2576 Explanatory Note (by Rep. Florida P. Robes) | -Postponement of the BSKE will ensure continuity in government operations at the barangay level for the time being. |
| HB 2932 Explanatory Note (by Rep. Joseph "Jojo" L. Lara) | -The funds that will be saved form the postponement of the BSKE might as well be reallocated to paying our country's debt or in securing vaccines for the general population. |
| HB 2984 Explanatory Note (by Rep. Aurelio "Dong" D. Gonzales, Jr.) | -The budget for the BSKE would make the most significant impact on providing relief to our countrymen; and<br>-Continuity of service leads to effective implementation of programs, policies, and projects. |

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| HB 2985 Explanatory Note (by Rep. Salvador A. Pleyto, Sr.) | -To ensure continuity in government response; and<br>-Funds allocated for the BSKE can be channeled to the administration's priority program to help cushion the negative effect on the economy of the COVID-19 pandemic and the war between Russia and Ukraine. |
| HB 2986 Explanatory Note (by Rep. Nelson L. Dayanghirang) | -Ensure the thorough implementation of all programs and projects as well as efficient delivery of services at the barangay level despite the changes in the national and local leadership;<br>-Ease the burden of the COMELEC in conducting two elections in the same year; and<br>-Postponement of the BSKE will be of huge help to the government given the limited financial resources. |
| HB 3310 Explanatory Note (by Rep. Josefina B. Tallado) | -The cost of conducting the BSKE can be redirected to finance other equally important government initiatives to arrest the financial impact of the pandemic and substantial rise in the price of fuel and basic commodities.<br>-Alleviate the burden of the COMELEC in conducting another nationwide election in a span of only seven months while the pandemic is still prevalent; and<br>-Allow the incumbent BSK officials to continue the current COVID-19 response and provide much needed guide to new local chiefs in ensuring the effective and efficient governance at the barangay level. |
| HB 3324 Explanatory Note (by Rep. Jefferson F. Khonghun) | -Consistency in the performance of the roles and functions relative to the fight against the COVID-19 virus;<br>-Redirect budget allocation into addressing the needs of the citizens, particularly of the health sector; and<br>-Continuity in the implementation of the policies, plans, and projects of incumbent barangay officials. |
| HB 3384 Explanatory Note (by Rep. Mujiv S. Mataman) | -To generate savings and reallocate the same for economic stimulus and COVID-19 response programs for the benefit of the entire nation. |
| HB 3426 Explanatory Note (by Rep. Sittie Aminah Q. Dimaporo) | -The budget earmarked for the 2022 BSKE may be utilized by the new administration to jumpstart our economic recovery. |
| HB 3427 Explanatory Note (by Rep. Mohamad Khalid Q. Dimaporo) | -The budget earmarked for the 2022 BSKE may be utilized by the new administration to jumpstart our economic recovery. |

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to stimulate the country's economic recovery;[224] continuity of government service at the barangay level;[225] thwarting further divisiveness among the Filipino people;[226] providing a respite for the electorate, considering the recently concluded May 2022 national and local elections;[227] allowing the newly-elected national and local officials to benefit from the experience of the officials at the barangay level in implementing COVID-19 programs and policies;[228] preventing the further spread of COVID-19;[229] and aligning the BSKE schedule with the schedule originally provided under the Local Government Code.[230]

Despite these varied reasons, however, it is clear from a reading of the Committee Report[231] for HB 4673 and the various Explanatory Notes that the Congress essentially intended to realign the COMELEC's PHP 8.4 billion budget allocation for the December 2022 BSKE towards the government's COVID-19

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[224] In 33 out of the 43 HBs filed: HBs 41, 121, 133, 333, 480, 937, 949, 1035, 1110, 1138, 1254, 1367, 1696, 1932, 1961, 2057, 2071, 2185, 2235, 2476, 2932, 2984, 2985, 2986, 3310, 3324, 3384, 3426, 3427, 3603, 3673, 3717, and 4030.

[225] In 20 out of the 43 HBs filed: HBs 121, 398, 432, 480, 504, 937, 1035, 1110, 1138, 1254, 1696, 1961, 2057, 2235, 2240, 2476, 2576, 2984, 2985, 2986, and 3324.

[226] In 4 out of the 43 HBs filed: HBs 133, 1367, 1840, and 4199.

[227] In 9 out of the 43 HBs filed: HBs 41, 121, 504, 1367, 1840, 2057, 2986, 3310, and 3603.

[228] In 8 out of the 43 HBs filed: HBs 41, 1367, 2057, 2476, 2494, 2986, 3310, and 3717.

[229] In HB 41.

[230] In HB 949.

[231] Committee Report No. 33, September 12, 2022 for HB 4673 (submitted by the Committee on Suffrage and Electoral Reforms and the Committee on Appropriations) (In substitution of HBs 41, 121, 133, 333, 398, 432, 480, 504, 515, 937, 949, 995, 1035, 1110, 1138, 1254, 1367, 1696, 1840, 1932, 1961, 2057, 2071, 2185, 2235, 2240, 2476, 2494, 2576, 2932, 2984, 2985, 2986, 3310, 3324, 3384, 3426, 3427, 3603, 3673, 3717, 4030, 4199). It pertinently states: "*[t]o postpone the December 5, 2022 synchronized [BSKE] to the first Monday of December 2023 in order to allow the [COMELEC] and local government units to better prepare for it and for the Government to apply corrective adjustments to the honoraria of poll workers*." (Italics supplied)

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response programs and to stimulate the country's economic recovery.

The same observations can be gleaned from the Explanatory Notes of the bills filed before the Senate that equally sought to postpone the December 2022 BSKE, namely: Senate Bill No. (SB) 288, filed by Senator (Sen.) Francis G. Escudero; SB 453 filed by Sen. Jinggoy Ejercito Estrada; and SB 684, filed by Sen. Win Gatchalian, thus:

SB 288 Explanatory Note

This proposed measure seeks to bolster the stability and consistency of public service at the barangay level by postponing the [BSKE] from the fifth day of December 2022 to the second Monday of May 2024.

This senate bill provides several distinct advantages. First, the postponement of the barangay and [*sangguniang kabataan* (SK)] elections affords continuity in government operations at the barangay level, particularly in providing basic social services and implementing national and local programs and projects. Second, the proposed measure gives ready access to the institutional memories of grassroots leaders, which could be used in formulating plans, programs and other interventions to adapt to the new normal and to return to the pre-pandemic growth trajectory of the Philippines. Third, **the postponement of the barangay and SK elections allows both the national government agencies and local government units to focus on interventions needed to recover from the pandemic and address the ongoing concerns over oil prices, inflation and poverty**. Finally, **the bill enables the government to realign a portion of the [PHP) 8.44 billion appropriations for the barangay and SK elections towards interventions aimed at sustaining the current momentum in addressing the coronavirus pandemic and achieving our collective socioeconomic objectives.** (Emphasis supplied)

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SB 453 Explanatory Note

The recently concluded national election, albeit successful, had caused much divisiveness among the Filipino electorate. The political atmosphere is very polarized that plunging Filipino voters to another situation of political toxicity in a close interval would not be beneficial to our national well-being.

Furthermore, our country is still in the midst of pandemic brought about by COVID-19. Our country has not yet fully recovered from

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the havoc brought about by the pandemic. **The budget in the amount of eight billion for the conduct of the said election can be used to fund economic programs and health services to ease the effects of pandemic to all Filipinos, particularly to those who were greatly affected**. (Emphasis supplied)

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SB 684 Explanatory Note

Given this continuing and current fiscal situation, the incoming administration must be provided with enough leeway to start things in a better light. Comelec Commissioner George Garcia related in a May 24, 2022 briefing that by June 2022, COMELEC will start preparing for the barangay election. He also said that registration of voters will start in July 2022, and that COMELEC will moreover start looking for equipment that will be used, especially in ballot printing, as the [BSKE] are conducted manually. He further said that they have not received the budget for the December 2022 barangay and SK polls.

**As there is a need to conserve our already constrained financial resources, the postponement of the December 5, 2022 Barangay and SK elections for just a year, or to December 4, 2023, is a prudent exercise to keep afloat amidst our country's dire budgetary limitations**.(Emphasis supplied)

Thus, while Committee Report No. 4[232] dated September 12, 2022 on SB 1306 (the Senate counterpart of HB 4673) is manifestly silent, **it is evident that one of the primary, if not animating, reasons for the postponement was to realign the COMELEC's budget allocation for the 2022 BSKE towards the government's other projects and programs. This is an unconstitutional consideration that therefore taints the law with arbitrariness and unreasonableness**.

Notably, Article VI, Section 25 (5) of the Constitution explicitly proscribes any transfer of appropriations except only in the situations and under the conditions specifically provided therein, *viz.*:

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[232] Submitted by the Committees on Electoral Reforms and People's Participation; Local Government; and Finance, in substitution of SBs 288, 453, 684.

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(5) No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to **augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations**. (Emphasis and underscoring supplied)

In *Sanchez v. Commission on Audit* (*Sanchez*),[233] the Court, speaking through Justice Dante O. Tinga, emphasized that the prohibition against the transfer of appropriation is explicit in the Constitution. While the Constitution affords certain flexibility in the use of public funds and resources, the leeway granted is limited and subject to such categorical restrictions and only by the persons specifically provided therein. The Court said:

Construing this provision, the Court ruled in the pre-eminent case of *Demetria v. Alba*:

> The **prohibition to transfer an appropriation for one item to another was explicit and categorical** under the 1973 Constitution. However, **to afford the heads of the different branches of the government and those of the constitutional commissions considerable flexibility in the use of public funds and resources, the constitution allowed the enactment of a law authorizing the transfer of funds for the purpose of augmenting an item from savings in another item in the appropriation concerned. The leeway granted was thus limited. The purpose and conditions for which funds may be transferred were specified, i.e. transfer may be allowed for the purpose of augmenting an item and such transfer may be made only if there are savings from another item in the appropriation of the government branch or constitutional body.**
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> x x x x

Clearly, there are two essential requisites in order that a transfer of appropriation with the corresponding funds may legally be effected. ***First*, there must be savings in the programmed appropriation of the**

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[233] 575 Phil. 428 (2008) [Per J. Tinga, *En Banc*], citing *Demetria v. Alba,* 232 Phil. 222 (1987) [Per J. Fernan, *En Banc*].

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**transferring agency. *Second*, there must be an existing item, project or activity with an appropriation in the receiving agency to which the savings will be transferred**.

Actual savings is a *sine qua non* to a valid transfer of funds from one government agency to another. The word 'actual' denotes that something is real or substantial, or exists presently in fact as opposed to something which is merely theoretical, possible, potential or hypothetical.

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The thesis that savings may and should be presumed from the mere transfer of funds is plainly anathema to the doctrine laid down in *Demetria v. Alba* as it makes the prohibition against transfer of appropriations the general rule rather than the stringent exception the constitutional framers clearly intended it to be. It makes a mockery of *Demetria v. Alba* as it would have the Court allow the mere expectancy of savings to be transferred.[234] (Emphasis supplied)

Thus, under Article VI, Section 25 (5) of the Constitution, **the transfer of appropriations or realignment is prohibited.** However, the Constitution authorizes the transfer only if made by the President, with respect to the Executive branch, the Senate President for the Senate, the Speaker for the House of Representatives, the Chief Justice for the Judiciary, and the Heads of the constitutional bodies, and **only with respect to their respective entities**.

Consequently, **the savings from one branch or constitutional body *cannot* be transferred to another branch or body**.[235] Moreover, as the Court stressed in *Sanchez*, a valid realignment requires: (1) the existence of savings in the programmed appropriation of the transferring agency; and (2) the existence of an item, project, or activity with an appropriation in the receiving agency to which the savings will be transferred.[236]

Pursuant to the strict constitutional limitations, the postponement of the December 2022 BSKE in order to realign

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[234] Id. at 452–454; emphasis and underscoring supplied, citations omitted.

[235] See Associate Justice Antonio T. Carpio's Separate Opinion in *Araullo v. Aquino III*, supra note 146.

[236] See also *Nazareth v. Villar*, 702 Phil. 319 (2013) [Per J. Bersamin, *En Banc*].

the COMELEC's budget allocation for the same under the 2022 General Appropriations Act to the executive's COVID-19 and economic recovery programs constitutes as an **impermissible transfer of appropriations**. As explicitly provided under Article VI, Section 25 (5) of the Constitution, this COMELEC allocation can only be constitutionally transferred by the COMELEC's chairperson, and only with respect to the COMELEC's "item, project, or activity with an appropriation." It cannot be transferred to another branch or constitutional body. Verily, this intended transfer by the legislature—no matter how well-intentioned it might have been—constitutes an arbitrary and unconstitutional consideration that renders RA 11935 unconstitutional.

***Secondly***, the means employed are unreasonably unnecessary for the attainment of the government interest or purpose sought to be accomplished and are unduly arbitrary or oppressive to the electorate's exercise of their right of suffrage.

To reiterate, the transfer or realignment of the COMELEC's budget allocation for the December 2022 BSKE to the Executive for its use in its programs or projects **cannot validly be accomplished without violating the explicit constitutional prohibition against the transfer of appropriations**. Accordingly, the postponement of the December 2022 BSKE to augment the Executive's funds for its programs and projects is not only an unlawful means to attain the legislative object of augmenting the government's budget for economic and social programs, it also arbitrarily overreaches the exercise of the right of suffrage.

All told, in failing to satisfy the substantive due process requisites of the Constitution, RA 11935 is unconstitutional as it unreasonably and arbitrarily infringed on the people's right of suffrage.

***Grave Abuse of Discretion Attended the Enactment of RA 11935***

Finally, the enactment of RA 11935 by the Congress was attended with **grave abuse of discretion** amounting to lack or excess of jurisdiction.

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As had been thoroughly discussed in this Decision, while the Congress is granted by the Constitution with the plenary power to "*make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same*," this power is not without limitations. Plenary as it is, however, the power of the Congress to legislate is subject to express and implied constitutional limitations.

As case law settles, the Constitution is the supreme law of the land and the powers of the three great branches of the government are only derived therefrom, except to the extent as the Constitution itself may allow. Indeed, "*the primacy of the Constitution as the supreme law of the land dictates that where the Constitution has itself made a determination or given its mandate, then the matters so determined or mandated should be respected until the Constitution itself is changed by amendment or repeal through the applicable constitutional process." "[N]one of the three branches of government can deviate from the constitutional mandate except only as the Constitution itself may allow*."[237]

In determining the existence of grave abuse of discretion, the Court looks at whether the exercise of discretion by the official or body amounts to such a capricious or whimsical exercise of judgment that is so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[238] ***Grave abuse of discretion also exists when the assailed act is manifestly shown to have infringed the Constitution.***

Here, as the Court has extensively discussed, the Constitution expressly protects the right of suffrage of all citizens of the Philippines who are not otherwise disqualified by law; and guarantees the right of every person against the deprivation of

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[237] *Kida v. Senate of the Philippines*, supra note 100, at 365–366; italics supplied.

[238] See *Garcia v. Executive Secretary,* supra note 148.

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their life, liberty, or property without due process of law, and of their freedom of expression. Additionally, Article VI, Section 25 (5) of the Constitution explicitly proscribes any transfer of appropriations except only in the situations and under the conditions specifically provided therein.

**For these reasons, the postponement of the 2022 BSKE by RA 11935 to augment the Executive's funds for its programs and projects violates the Constitution because *(i)* it unconstitutionally transgresses the constitutional prohibition against any transfer of appropriations, and *(ii)* it unconstitutionally and arbitrarily overreaches the exercise of the rights of suffrage, liberty, and expression.**

**As such, the Court is convinced that the Congress, in enacting RA 11935, gravely abused its discretion amounting to lack or excess of jurisdiction. In acting as it did, the Congress exercised its constitutionally granted authority and judgment in a patently gross manner as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law**.

Verily, the Court will not stand idle. However, in ruling as it does in this case and for avoidance of any misunderstanding, the Court is not at all asserting its power over Congress. Far from it. **Rather, the Court is simply performing its sacred duty of upholding the supremacy of the Constitution.**

## IV

## Effect of The Declaration of Unconstitutionality of RA 11935

At this juncture, the Court recognizes that the declaration of unconstitutionality of RA 11935 raises two critical questions that must be addressed in view of the legal and practical repercussions and consequences that this resulting conclusion entails:

***First***, what law will now govern the BSKE? In relation thereto, will RA 11462 be deemed revived?

***Second***, assuming that RA 11462 will be deemed revived, when will the next BSKE be held, considering that the date previously set by it, *i.e.*, December 2022, had already lapsed?

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***Effect of Declaration of Unconstitutionality of RA 11935: Rule; Exception.***

As a rule, a legislative or executive act that violates the Constitution is null and void. It produces no rights, imposes no duties, and affords no protection. It has no legal effect. It is, in legal contemplation, inoperative as if it has not been passed.[239] As such, it cannot justify an official act taken under it.[240] It is therefore stricken from the statute books and considered never to have existed at all. Not only the parties but all persons are bound by the declaration of unconstitutionality, which means that no one may thereafter invoke it, nor may the courts be permitted to apply it in subsequent cases. It is, in other words, a total nullity.[241]

The rule proceeds from the settled doctrine that the Constitution is supreme and provides the measure for the validity of legislative or executive acts.[242] It is likewise supported by Article 7 of the Civil Code, which provides:

> ART. 7. Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse or custom or practice to the contrary.
>
> **When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern**. (Emphasis supplied)

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[239] See *League of Cities of the Philippines v. COMELEC,* 663 Phil. 496 (2010) [Per J. Bersamin, *En Banc*], *Film Development Council of the Philippines v. Colon Heritage Realty Corporation*, 865 Phil. 384 (2019) [Per J. Perlas-Bernabe, *En Banc*]. Note that the statement was first formulated in *Norton v. Shelby County*, 118 U.S. 425 (1886). See also *Marbury v. Madison*, 5 U.S. 137 (1803).

[240] See *League of Cities of the Philippines v. COMELEC,* id.; and *Film Development Council of the Philippines v. Colon Heritage Realty Corporation*, id.

[241] *Republic v. Court of Appeals,* 298 Phil. 291 (1993) [Per J. Vitug, Third Division], quoting the treatise made by J. Cruz.

[242] See Associate Justice Enrique M. Fernando's Concurring Opinion in *Fernandez v. Cuerva*, 129 Phil. 332 (1967) [Per J. Zaldivar]. The Rule

Concomitantly, a law that has been declared unconstitutional is deemed not to exist and results in the revival of the laws that it has repealed. **Stated otherwise, an unconstitutional law returns us to the *status quo ante* and this return is beyond the power of the Court to stay**.[243]

By way of exception, the Court has recognized the legal and practical reality that a judicial declaration of invalidity may not necessarily obliterate all the effects and consequences of a void act occurring prior to such declaration.[244] Moreover, there may be situations that "may aptly be described as *fait accompli*," in that they "may no longer be open for further inquiry, let alone to be unsettled by a subsequent declaration of nullity of a governing statute."[245]

In these situations, the Court has declared that the "***actual existence of a statute**, prior to such a determination [of unconstitutionality], is **an operative fact** and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official*."[246]

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also proceeds from the principle of absolute retroactive invalidity (see *Chicot County Drainage Dist. V. Baxter State Bank*, 308 U.S. 371 [1940]).

243 See *Tatad v. Secretary of the Department of Energy*, 346 Phil. 321 (1997) [Per J. Puno, *En Banc*].

244 *Republic v. Court of Appeals*, supra.

245 Id.

246 *Commissioner of Internal Revenue v. San Roque Power Corporation,* 719 Phil. 137, 158 (2013) [Per J. Carpio, *En Banc*], citing *de Agbayani v. Philippine National Bank*, 148 Phil. 443 (1971) [Per J. Fernando]. See also *Chicot County Drainage Dist. V. Baxter State Bank*, 308 U.S. 371 (1940); and *Dobbert v. Florida*, 432 U.S. 282 (1977); italics supplied.

Note: It would appear that the operative fact doctrine proceeds from the theory that a statute which is declared unconstitutional is inoperative only from the lime of the decision and not from the time of its purported enactment (see Field, Oliver P. [1926] "Effect of an Unconstitutional Statute," Indiana Law Journal: Vol. 1: Issue No. 1, Article 1).

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The **doctrine of operative fact** recognizes the possibility that not all the effects and consequences of a void act prior to judicial declaration of invalidity may be obliterated or completely ignored. As a matter of equity and fair play, and in recognition of the undeniable reality that the act existed for the time being, there is an imperative necessity to leave the effects undisturbed despite the unconstitutionality of the law.

In *Commissioner of Internal Revenue v. San Roque Power Corporation*,[247] the Court, speaking through Justice Carpio, citing *de Agbayani v. Philippine National Bank*,[248] penned by Justice Enrique M. Fernando, extensively discussed the operative fact doctrine as follows:

**The doctrine of operative fact is an exception to the general rule, such that a judicial declaration of invalidity may not necessarily obliterate all the effects and consequences of a void act prior to such declaration**. In *Serrano de Agbayani v. Philippine National Bank*, the application of the doctrine of operative fact was discussed as follows:

> The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: 'When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution.' It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.
>
> **Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been**

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[247] Id.

[248] Id.

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**in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with**. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. **It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication**.

In the language of an American Supreme Court decision: '**The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official**.'[249]

x x x x (Emphasis supplied)

The Court, through Justice Perlas-Bernabe, reiterated the foregoing exposition in *Film Development Council of the Philippines v. Colon Heritage Realty Corporation*,[250] and further underscored the "realistic" consequences that the operative fact doctrine recognizes. The Court also highlighted the equity and "fair play" underpinnings of any discussion involving the operative fact doctrine, but added the caution that the effects must be carefully examined as the doctrine applies only to extraordinary circumstances, *viz.*:

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[249] *Commissioner of Internal Revenue v. San Roque Power Corporation,* supra at 157–158.

[250] 865 Phil. 384 (2019) [Per J. Perlas-Bernabe, *En Banc*].

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In *Commissioner of Internal Revenue v. San Roque Power Corporation*, citing *Serrano de Agbayani v. Philippine National Bank*, the Court had the opportunity to extensively discuss the operative fact doctrine, explaining the "realistic" consequences whenever an act of Congress is declared as unconstitutional by the proper court. Furthermore, the operative fact doctrine has been discussed within the context of fair play such that "[i]t would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to [its] adjudication [by the Court as unconstitutional]," x x x

x x x x

**The operative fact doctrine recognizes the existence and validity of a legal provision prior to its being declared as unconstitutional and hence, legitimizes otherwise invalid acts done pursuant thereto because of considerations of practicality and fairness. In this regard, certain acts done pursuant to a legal provision which was just recently declared as unconstitutional by the Court cannot be anymore undone because not only would it be highly impractical to do so, but more so, unfair to those who have relied on the said legal provision prior to the time it was struck down**.

However, in the fairly recent case of *Mandanas v. Ochoa, Jr.*, citing *Araullo v. Aquino III*, the Court stated that **the doctrine of operative fact** "**applies only to cases where extraordinary circumstances exist, and only when the extraordinary circumstances have met the stringent conditions that will permit its application**." The doctrine of operative fact "nullifies the effects of an unconstitutional law or an executive act by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences that cannot always be ignored. **It applies when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law." To reiterate the Court's pronouncement, "[i]t would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication**."

Therefore, **in applying the doctrine of operative fact, courts ought to examine with particularity the effects of the already accomplished acts arising from the unconstitutional statute, and determine, on the basis of equity and fair play, if such effects should be allowed to stand**. It should not operate to give any unwarranted advantage to

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parties, but merely seeks to protect those who, in good faith, relied on the invalid law.[251] (Emphasis and underscoring supplied)

Simply put, the operative fact doctrine operates on reasons of practicality and fairness. It recognizes the reality that prior to the Court's exercise of its power of judicial review that led to the declaration of nullity, the combined acts of the legislative and executive branches carried the presumption of constitutionality and regularity that everyone was obliged to observe and follow. And, in pursuance thereof, certain actions, private and official, may have been done which would be *unjust and impractical* to reverse. Thus, to simply declare RA 11935 as unconstitutional and therefore void from the beginning, without more, cannot be reasonably and fairly justified.

Nonetheless, in applying the doctrine, the Court is equally bound by justice and equity; and therefore, must act with prudence and restraint to prevent giving any unwarranted advantage to parties or unfairly impact the rights of those who relied on the law in good faith. Thus, the Court must carefully examine the particular relations, individual and corporate, and particular conduct, private and official, as well as rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, and of public policy in the light of the nature both of the statute and of its previous application.[252]

***The Operative Fact Doctrine Applies in this Case***

Proceeding from the foregoing premises, **the Court is of the view that the actual existence of RA 11935, prior to the judicial declaration of its unconstitutionality, is an operative fact which has consequences and effects that cannot be ignored and reversed as a matter of equity and practicality**.

***For one***, the declaration of unconstitutionality of RA 11935 results in the revival of RA 11462. The *proviso* of Section 1 thereof

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[251] Id. at 393–395; citations omitted.

[252] See *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371(1940).

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states that the BSKE "*shall be postponed to December 5, 2022*" with the subsequent synchronized BSKE to be "*held on the first Monday of December 2025 and every three (3) years thereafter*." Since December 5, 2022 has already lapsed, it is evident that the BSKE previously scheduled under RA 11462 can no longer proceed as such. Following Section 1 of RA 11462, therefore, it is apparent that the BSKE will have to be conducted "*on the first Monday of December 2025*" or close to seven years from the date of the last BSKE—which was held in May 2018.

Significantly, however, RA 11462, as well as RA 11935, explicitly states that the synchronized BSKE shall be held "every three [3] years" which therefore reflects the legislative intent to hold the BSKE at a regular and periodic interval, *i.e.*, every three years, consistent with the mandates of the Constitution. In fact, a survey of the laws that had amended RA 9164—the law that first provided for a synchronized BSKE—would readily reveal a similar legislative mandate that the BSKE "shall be held every three [3] years thereafter," *viz.*:

| **SCHEDULED ELECTIONS - HELD OR POSTPONED** | **LEGAL BASIS** | **TERM OF OFFICE PROVIDED UNDER THE LAW** |
|---|---|---|
| July 2002 - Synchronized BSKE held | RA 9164 | Provided for a term of office of 3 years; subsequent BSKE shall be held on the last Monday of October every 3 years |
| 2005 - Synchronized BSKE postponed | RA 9340, amending RA 9164 | "Subsequent synchronized [BSKE] shall be held on the last Monday of October 2007 and every three (3) years thereafter" |
| October 2007 - Synchronized BSKE held | | |
| October 2010 - Synchronized BSKE held | | |
| October 2013 – barangay election held, *sangguniang kabataan* election postponed | Postponed *sangguniang kabataan* election per RA 10632 | "Subsequent synchronized [BSKE] shall be held on the last Monday of October 2007 and every three (3) years thereafter;" |
| 2014 – *sangguniang kabataan* election postponed | Postponed *sangguniang kabataan* per RA 10656 | "Subsequent synchronized [BSKE] shall be held on the last Monday of October 2007 and every three (3) years thereafter'' |
| October 2016 – synchronized BSKE postponed to October 2017 | RA 10923 | "Subsequent synchronized (BSKE] shall be held on the second Monday of May 2022 and every three (3) years thereafter" |

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| | | |
|---|---|---|
| October 2017 - synchronized BSKE postponed to May 2018 | RA 10952 | "Subsequent synchronized [BSKE] shall be held on the second Monday of May 2022 and every three (3) years thereafter" |
| May 2018 - Synchronized BSKE held | | |
| 2020 Elections Synchronized BSKE postponed to December 5, 2022 | RA 11462 | "Subsequent synchronized [BSKE] shall be held on the first Monday of December 2025 and every three (3) years thereafter" |
| December 2022 - Synchronized BSKE postponed to October 2023 | RA 11935 | "and every three years thereafter." |

Moreover, it can be observed that none of these laws had amended the term of office originally provided under RA 9164 which, under Section 2 thereof, states that the "*term of office of all barangay and sangguniang kabataan officials after the effectivity of this Act shall be three (3) years*." Verily, there can equally be gleaned a legislative intention to set a period of only three years within which the elected BSK officials shall serve and discharge the functions of their office. Thus, while it is already established in case law that the word "term" is not synonymous with "tenure"—the difference of which shall be further addressed in the subsequent portions of this Decision—it is reasonably arguable that allowing the sitting BSK officials to serve as such for a period far longer than their term of office provided under the governing law when they were elected, would effectively defeat the legislative intention: ***that the BSK officials shall have a term—and therefore serve as such—of only three years and that the BSKE shall be held every three years***.

***Another***, December 5, 2022 had already lapsed without the BSKE scheduled under RA 11462 having been held. Moreover, the COMELEC had taken steps towards the preparation for the BSKE based on the schedule provided under RA 11935, *i.e.*, in October 2023. Certainly, it cannot be denied that the consequences of the postponement of the December 2022 BSKE pursuant to RA 11935 extend beyond the mere change in the date of the said elections. In the interim, the BSKE officials elected in May 2018 pursuant to RA 11462 continued to discharge the duties and responsibilities of the office in a hold-over capacity pursuant to the provisions of RA

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11935. In turn, the people have relied on the actions undertaken by them in the discharge of their functions as such officials, and have dealt with the latter in good faith, believing in their authority to act.

Based on these circumstances, it is evident that a refusal to recognize the consequences and effects of the existence of RA 11935 prior to its nullity—and absolutely demand a return to the *status quo* as if the law had never existed—will lead to an unnecessary and unwarranted application of the provisions of RA 11462 beyond the legislative intent.

To restate the obvious, RA 11462 explicitly set the schedule of the BSKE on December 5, 2022—which date had already lapsed. Therefore, to strictly adhere to the provisions of RA 11462 will lead to an incongruent situation where the next BSKE will have to be held in December 2025 or close to seven years from the date of the last BSKE (held in May 2018)—a period unnecessarily longer than "*every three [3]-year period*" intended by the legislature.

More importantly, such refusal will result in an unwarranted infringement on the right of suffrage. To the Court's mind, a strict adherence to the rule will deprive the electorate of their right to choose a new representative for an unreasonably longer period beyond the term which they agreed under RA 11462 that the representative will serve. So also, the electorate's freedom to choose their representative and to consent to temporarily surrender a portion of their sovereignty is effectively forcibly wrested in favor of individuals who may no longer truly represent their interests. Together, these constitute extraordinary circumstances that justify the application of the operative fact doctrine.

**For these reasons, while the Court hereby declares RA 11935 unconstitutional, it recognizes the legal practicality of proceeding with the holding of the BSKE on the last Monday of October 2023, as provided under RA 11935. Additionally, the sitting BSK officials shall continue to hold office until their successors shall have been elected and qualified. But, their term of office shall be deemed to have ended on December 31, 2022, consistent with the provisions of RA 11462. Further, the succeeding synchronized BSKE shall be held pursuant to**

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**the provisions of RA 11462, that is, "*on the first Monday of December 2025 and every three years (3) thereafter.*" Finally, the Congress is not precluded by these pronouncements from further amending the provisions of RA 9164, but the same shall be subject to the proper observance of the guidelines provided in the succeeding discussions**

***The Continuation in the Office of the Current BSK Officials in a Hold-over Capacity Does Not Amount to a Legislative Appointment***

In relation to the foregoing discussions, the Court finds it imperative to dispel any perceived notion that allowing the sitting barangay officials to continue serving in a "hold-over" capacity constitutes as an unconstitutional "legislative appointment."

Inarguably, the **"hold-over" principle** is not a novel concept and is primarily dictated by the necessity and interests of continuity in government service.

In *Civil Aviation Authority of the Philippines Employees' Union (CAAP-EU) v. Civil Aviation Authority of the Philippines*,[253] the Court, speaking through Associate Justice Martin S. Villarama, Jr., recognized that "the principle of [hold-over] is specifically intended to prevent public convenience from suffering because of a vacancy and to avoid a hiatus in the performance of government functions."[254] As the Court reasoned, "the law abhors a vacuum in public offices, and courts generally indulge in the strong presumption against a legislative intent to create, by statute, a condition which may result in an executive or administrative office becoming, for any period of time, wholly vacant or unoccupied by one lawfully authorized to exercise its functions."[255] Thus, in the absence of "an express or implied constitutional or statutory provision to the contrary, an officer is entitled to stay in office until

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[253] 746 Phil. 503 (2014) [Per J. Villarama, Jr., *En Banc*].

[254] Id. at 543, citation omitted.

[255] Id.

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his successor is appointed or chosen and has qualified."[256] Indeed, "**[t]he legislative intent of not allowing [hold-over] must be clearly expressed or at least implied in the legislative enactment, otherwise it is reasonable to assume that the law-making body favors the same**."[257]

Significantly, the Court in *Kida v. COMELEC*,[258] through Justice Brion, recognized the permissibility of hold-over for officials whose term of office are not explicitly provided for in the Constitution, as in the case of barangay officials. Nonetheless, it must be emphasized that that **the rule of hold-over can only apply as an available option where no express or implied legislative intent to the contrary exists; it cannot apply where such contrary intent is evident.**

Verily, therefore, a statute that provides for hold-over capacity of incumbent officials shall be given respect and full recognition by the Court in the absence of an express or implied constitutional or statutory provision to the contrary, or a clear and palpable grave abuse of legislative discretion.

In the same vein, the Court disagrees with the position advanced by Atty. Macalintal that the "hold-over" principle amounts to an extension of the *term* in public office of the incumbent barangay officials.

As the Court, through Justice Brion, explained in *Valle Verde Country Club, Inc. v. Africa* (*Valle Verde*),[259] the word "term" refers to **"the time during which the officer may claim to hold the office *as of right,*** and fixes the interval after which the several incumbents shall succeed one another."[260] It is fixed by statute and it does not change simply because the office may have become vacant, nor because the incumbent holds over in office beyond the end of the term due to the fact that a successor has not been

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[256] Id.

[257] Id.

[258] Supra note 100.

[259] 614 Phil. 390 (2009) [Per J. Brion, Second Division].

[260] Id. at 397.

elected and has failed to qualify.[261] Indeed, it is settled that "**a [hold-over] is not technically an extension of the term of the officer but a recognition of the incumbent as a *de facto* officer, which is made imperative by the necessity for a continuous performance of public functions**."[262] **Thus, the term of office is not affected by the hold-over.**

**The official's "term," however, should be contrasted with "tenure"** which refers to the **period during which the incumbent *actually holds office.*** Unlike the "term," the tenure may be shorter (or, in case of hold-over, longer) than the term for reasons within or beyond the power of the incumbent.[263] **In plainer terms, a hold-over essentially extends the tenure, or the actual holding of office, of the officer, not the term which should be deemed to have concluded at the appointed date**.

For these reasons, the Court cannot reasonably subscribe to the view that a hold-over provision in a law or rule postponing the barangay election will unjustifiably extend the previously determined term of office of an incumbent barangay official. As already declared by the Court in *Valle Verde,* while the tenure can be affected (and extended) by the holdover, the **term of office is not affected as it is fixed by the statute.**

Further, it should not be missed that no express or implied intent to the contrary exists either in the Constitution or in the laws with respect to the holding of barangay and SK positions in a hold-over capacity. Rather, what is extant at this point is a clear legislative intent to authorize incumbent barangay and SK officials to discharge the functions of the office in a hold-over capacity unless sooner removed or suspended for cause, evidently to preserve the continuity in the transaction of official business. Since the power to prescribe the term of office of barangay officials is expressly lodged in Congress by the Constitution, its decision to prescribe the new term of office of barangay officials, the commencement

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[261] Id.

[262] See *Kida v. COMELEC,* supra note 100, at 435; emphasis supplied.

[263] Id. at 373.

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thereof, as well as the manner of ensuring the continuity of service in the meantime, such as through hold-over of incumbents, are policy decisions that the Court will not lightly interfere with.

In this regard, it is well to underscore that the Court had in fact already upheld the validity of a hold-over provision involving BSK officials in at least three cases. In *Adap v. COMELEC*,[264] the Court, through Associate Justice Alicia Austria-Martinez, citing *Sambarani v. COMELEC*,[265] penned by Justice Carpio, held:

> Lastly, **petitioners' contention that it was grave abuse of discretion for the COMELEC *En Banc* to order herein private respondents to continue as *Punong Barangays* in a hold-over capacity until the holding of special elections, is likewise devoid of merit. In *Sambarani v. Comelec,* the Court already explained**, thus:
>
> x x x Section 5 of Republic Act No. 9164 ("RA 9164") provides:
>
> Sec. 5. *Hold Over.* – All incumbent barangay officials and *sangguniang kabataan* officials shall remain in office unless sooner removed or suspended for cause until their successors shall have been elected and qualified. The provisions of the Omnibus Election Code relative to failure of elections and special elections are hereby reiterated in this Act.
>
> RA 9164 is now the law that fixes the date of barangay and SK elections, prescribes the term of office of barangay and SK officials, and provides for the qualifications of candidates and voters for the SK elections.
>
> **As the law now stands, the language of Section 5 of RA 9164 is clear. It is the duty of this Court to apply the plain meaning of the language of Section 5. Since there was a failure of elections in the 15 July 2002 regular elections and in the 13 August 2002 special elections, petitioners can legally remain in office as barangay [chairpersons] of their respective barangays in a holdover capacity**. They shall continue to discharge their powers and duties as *punong barangay*, and enjoy the rights and privileges pertaining to the office. True, Section 43(c) of the Local Government Code limits the term of elective barangay officials to three years. **However, Section 5 of RA 9164 explicitly provides**

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[264] 545 Phil. 297 (2007) [Per. J. Austria-Martinez, *En Banc*].

[265] 481 Phil. 661 (2004) [Per J. Carpio, *En Banc*].

**that incumbent barangay officials may continue in office in a hold over capacity until their successors are elected and qualified.**

Section 5 of RA 9164 reiterates Section 4 of RA 6679 which provides that "[A]ll incumbent barangay officials x x x shall remain in office unless sooner removed or suspended for cause x x x until their successors shall have been elected and qualified." Section 8 of the same RA 6679 also slates that incumbent elective barangay officials running for the same office "shall continue to hold office until their successors shall have been elected and qualified."

**The application of the hold-over principle preserves continuity in the transaction of official business and prevents a hiatus in government pending the assumption of a successor into office.** As held in *Topacio Nueno v. Angeles,* cases of extreme necessity justify the application of the hold-over principle.

Clearly therefrom, **the COMELEC *En Banc* did not commit grave abuse of discretion in ordering those who have been elected and proclaimed in the barangay elections prior to the 2002 elections to continue as *Punong Barangays* in a hold-over capacity until the holding of special barangay elections**.[266] (Emphasis supplied)

The Court also upheld the validity of a hold-over provision involving barangay and SK officials in the earlier case of *Montesclaros v. COMELEC*,[267] also penned by Justice Carpio.

Considering the discussions and the circumstances of this case, the Court finds no reason to depart from these rulings.

## V

## Guidelines for the Bench, the Bar, and the Public

On this score, the Court finds it relevant to highlight the apparent trend in the actions of the legislature in postponing the BSKE–separately or concurrently—for varying reasons not explicitly stated in the law. Certainly, these matters are well-founded and established by public records which the Court can take judicial notice of.

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[266] *Adap v. COMELEC*, supra; other citations omitted.

[267] 433 Phil. 620 (2002) [Per. J. Carpio, *En Banc*].

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Accordingly, while this is the first instance wherein the constitutionality of a law postponing the BSKE has been challenged, **the Court finds it imperative to set forth guidelines and principles respecting the exercise by the Congress of its power to postpone elections**. The guidelines will likewise serve as a standard for future situations wherein the Court is called upon to intervene against the exercise of the Congress' power to postpone that purportedly violates the right of suffrage.

To recapitulate and emphasize, the right to vote is among the most important and sacred freedoms inherent in a democratic society and one which must be most vigilantly guarded if a people desires to maintain, through self-government, for themselves and their posterity, a genuinely functioning democracy **in which the individual may, in accordance with law, have a voice in the form of their government and in the choice of the people who will run that government for them**.[268]

Given the indispensable role that the right to vote plays in preserving and guaranteeing the viability of constitutional democracy, the exercise of this right indubitably creates a sacred contract between the chosen representatives and the people. Under this contract, the people consent to surrender a portion of their sovereignty, for a limited period previously fixed and determined in the statute prevailing at the time of the election, to the chosen representative in exchange for the latter's promise to serve the people and fulfill the duties and responsibilities of the office.[269] It

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[268] See *Geronimo v. Ramos,* supra note 53.

[269] See Associate Justice Reynato S. Puno's dissent in *Tolentino v. COMELEC*, supra note 54, where he traced the evolution of democracy, noting that during the 17th century, the theory of **popular sovereignty** revived an interest in democracy and that "the refinements of the grant of power by the people to the government led to the **social contract theory:** that is, **the social contract is the act of people exercising their sovereignty and creating a government to which they consent.**"

Among the theorists that greatly influenced the current understanding of democracy are: Thomas Hobbes, John Locke, Charles Montesquieu, and Jean-Jacques Rosseau. In his treatise *Leviathan*, Hobbes described a "state of nature" where all individuals were naturally equal and were free to do what

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is a mutual agreement, a concession of rights and responsibilities for the time being voluntarily entered into by the people and their representatives under the circumstances prevailing at the time of the election.

Nonetheless, it must be recognized that the right of suffrage does not exist in a vacuum. A free, clean, honest, orderly, peaceful, and credible election is an equally primordial consideration that must be zealously guarded both by the State and the electorate if the guarantee of protection of fundamental rights which the right of suffrage provides is to be fulfilled. For these reasons, state measures aimed at preventing fraud in an election is a necessary and indispensable reason to guarantee a truly democratic and republican system of government.

Viewed in this light, the postponement of an election may necessarily amount to a restriction on the right of suffrage as

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they needed to do to survive. There were no laws or anyone to enforce them. Consequently, everyone suffered from "continued fear and danger of violent death; and the life of man [was] solitary, poor, nasty, brutish, and short." And the only solution was for the people to create some supreme power to impose peace on everyone.

Borrowing from the English contract law. Hobbes asserted that the people agreed among themselves to "lay down their natural rights of equality and freedom and give absolute power to a sovereign" which "might be a person or group x x x who would make and enforce the laws to secure a peaceful society, making life, liberty, and property possible. Hobbes called this agreement the 'social contract" which is agreed only among the people.

Locke, on the other hand, while generally agreeing with Hobbes on the need for a social contract to assure peace, believed that the contract was not just an agreement among the people, but between them and the sovereign. He likewise argued that "natural rights such as life, liberty, and property existed in the state of nature and could never be taken away or even voluntarily given up by individuals" as these were "inalienable." These natural rights limited the power of the king and if violated, "the social contract was broken, and the people had the right to revolt and establish a new government."

For his part, Montesquieu theorized that the "main purpose of government is to maintain law and order, political liberty, and the property of the individual."

Meanwhile, Rousseau proposed that people should enter into a social contract where they "would give up all their rights, not to a king, but to 'the whole community," or all the people which he called the sovereign. "The people

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it can effectively operate to restrict the right of the people to choose a new representative within a pre-ordained period. The postponement may result in the extension of the exercise by the previously chosen representative of the rights, duties, privileges, and responsibilities of the office by virtue of a "hold-over" capacity, but which is shorn of the express consent of the people. In such situation, the postponement—and the concomitant extension—may ostensibly casts doubt on the legitimacy of the representative's continued claim to office. Thus, the postponement could foster a government that is not "democratic and republican" as mandated by the Constitution.

Given these considerations, **the postponement must be supported by sufficient government interest**. Examples of sufficient government interest include the need to guarantee the conduct of free, honest, orderly, and safe elections, the safeguarding of the electorate's right of suffrage, or of the people's other fundamental rights. Other similar justifications include being necessitated by public emergency, but only if and to the extent strictly required by the exigencies of the situation.[270]

In this regard, it is well to note that reasons, such as election fatigue, purported resulting divisiveness among the people, shortness of the existing term, or other superficial or farcical reasons, alone, may not serve as sufficient governmental interest to justify the postponement of an election. **To be sufficient, the reason for the postponement must primarily be justified by the need to safeguard the right of suffrage or other fundamental rights, required by a public emergency situation, or other similar important justifications**.

Additionally, the State must show that the postponement of the barangay election is **based on genuine reasons grounded only on**

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then exercised their 'general will' to make laws for the 'public good.'" (See Constitutional Rights Foundation (last visited January 15, 2023).

[270] See Article 25 of the ICCPR.

**objective and reasonable criteria**.[271] While not comprehensively illustrative, the fact that a localized postponement is not viable and will not serve the State's interest is a prime example. Necessarily, **any reason advanced for the postponement of the elections that will tend, directly or indirectly, to violate the Constitution cannot satisfy the genuine reason criteria.**

The Court recognizes that in cases involving the determination of the constitutionality of an act of the legislature, the Court generally exercises restraint in the exercise of its judicial power and accord due respect to the wisdom of its co-equal branches based on the principle of separation of powers. Policy decision is wholly within the discretion of Congress to make in the exercise of its plenary legislative powers and the Court cannot, as a rule, pass upon questions of wisdom, justice, or expediency of legislation done within the co-equal branches' sphere of competence and authority. It is only where their actions are attended with unconstitutionality or grave abuse of discretion that the Court can step in to nullify their actions as authorized by Article VIII, Section 1 of the Constitution.[272]

It is therefore in this sense that the Court may investigate the constitutionality of any reasons that the Congress may put forward in postponing elections, not necessarily with respect to the wisdom thereof, but to make sure that it has acted in consonance with its authorities and rights as mandated by the Constitution.[273] As the Court articulated in the 1910 case of *U.S. v. Toribio*,[274] penned by Justice Adam Clarke Carson, the legislative determination as to "what is a proper exercise of its [powers] is not final or conclusive, but is subject to the supervision of the courts." If after said review,

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[271] See Article 21 of the UDHR; Article 25 of the ICCPR; and General Comment No. 25 of the Office of the United Nations High Commissioner for Human Rights adopted on July 12, 1996.

[272] See *Imbong v. Ochoa, Jr.*, supra note 155.

[273] Id. at 120–121.

[274] 15 Phil. 85 (1910) [Per J. Carson], citing the Opinion of J. Brown in *Lawton v. Steele*, 152 U.S. 133 (1894).

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the Court finds no constitutional violations of any sort, then, it has no more authority of proscribing the actions under review.[275]

In addition to genuine reasons, the State must also demonstrate that **despite the postponement, the electorate is still guaranteed an effective opportunity to enjoy their right**[276] **to vote without unreasonable restrictions**.[277] An important factor that may be considered in determining the effectiveness of the opportunity to vote and reasonableness of the restriction is the length of the postponement and periodicity of the elections, despite the postponement.

**Periodic** is defined as "happening regularly over a period of time"[278] or something that is "occurring, appearing, or recurring at regular intervals."[279] Elections that occur at periodic intervals signifies regularity of the frequency and schedule thereof such that the people can justifiably expect its next occurrence. To overcome constitutional challenge, therefore, the state measure must **guarantee the holding of elections at regular periodic intervals**[280] **that are not unduly long, and which will ensure that the authority of the government continues to be based on the free expression of the will of the electors**.[281]

Finally, **any law or rule that purports to defer or postpone the exercise of the right of suffrage must be deemed as the**

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[275] See *Imbong v. Ochoa, Jr.*, supra note 155, at 121.

[276] See Par. 9 of the General Comment No. 25 of the Office of the United Nations High Commissioner for Human Rights adopted on July 12, 1996.

[277] See Article 25 of the ICCPR.

[278] See <https://www.britannica.com/dictionary/periodic> (last visited January 15, 2023).

[279] See <https://www.collinsdictionary.com/dictionary/english/periodic> (last visited January 15, 2023).

[280] See Article 21 of the UDHR; Article 25 of the ICCPR; and General Comment No. 25 of the Office of the High Commissioner for Human Rights adopted on July 12, 1996.

[281] See Par. 9 of the General Comment No. 25 of the Office of the High Commissioner for Human Rights adopted on July 12, 1996.

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**exception**; it must be resorted to only in exceptional circumstances and upon compliance with the foregoing parameters.

***Summary of the Guidelines***

**To summarize, the following criteria shall serve as guidelines in the determination of the validity of any future laws or rules postponing elections:**

1. The right of suffrage requires the holding of honest, genuine, regular, and periodic elections. Thus, postponement of the elections is the exception.
2. The postponement of the elections must be justified by reasons sufficiently important, substantial, or compelling under the circumstances:
    a. The postponement must be intended to guarantee the conduct of free, honest, orderly, and safe elections;
    b. The postponement must be intended to safeguard the electorate's right of suffrage;
    c. The postponement must be intended to safeguard other fundamental rights of the electorate; or
    d. Such other important, substantial, or compelling reasons that necessitate the postponement of the elections, *i.e.*, necessitated by public emergency, but only if and to the extent strictly required by the exigencies of the situation.
        i. Reasons such as election fatigue, purported resulting divisiveness, shortness of existing term, and/or other superficial or farcical reasons, alone, may not serve as important, substantial, or compelling reasons to justify the postponement of the elections. To be sufficiently important, the reason for the postponement must primarily be justified by the need to safeguard the right of suffrage or other fundamental rights or required by a public emergency situation.
3. The electorate must still be guaranteed an effective opportunity to enjoy their right of suffrage without

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unreasonable restrictions notwithstanding the postponement of the elections.

4. The postponement of the elections is reasonably appropriate for the purpose of advancing sufficiently important, substantial, or compelling governmental reasons.

   a. The postponement of the elections must be based on genuine reasons and only on objective and reasonable criteria.

   b. The postponement must still guarantee that the elections will be held at regular periodic intervals that are not unduly long.

      i. The intervals must still ensure that the authority of the government continues to be based on the free expression of the will of the electorate.

      ii. Holding the postponed elections at a date so far remote from the original elections date may serve as badge of the unreasonableness of the interval that may render questionable the genuineness of the reasons for the postponement.

   c. The postponement of the elections is reasonably narrowly tailored only to the extent necessary to advance the government interest.

5. The postponement must not violate the Constitution or existing laws.

## VI

## Summary

**In sum, the Court hereby declares RA 11935 unconstitutional for *(i)* violating the right to due process of law, and accordingly, infringing the constitutional right of the Filipino people to suffrage, and *(ii)* having been enacted in patent grave abuse of discretion.**

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Nonetheless, the Court recognizes the existence of the law as an operative fact which had consequences and effects that cannot be justifiably reversed, much less ignored. Thus, these pronouncements shall have the following effects:

1. The declaration of unconstitutionality of RA 11935 shall retroact to the date of its enactment, subject to the proper recognition of the consequences and effects of the law's existence prior to this ruling;
2. The BSKE set on the last Monday of October 2023 pursuant to RA 11935 shall proceed as scheduled;
3. The sitting BSK officials shall continue to hold office until their successor shall have been elected and qualified;
4. But the term of office of the sitting BSK officials shall be deemed to have ended on December 31, 2022, consistent with the provisions of RA 11462;
5. The succeeding synchronized BSKE shall be held pursuant to the provisions of RA 11462, that is, "*on the first Monday of December 2025 and every three years (3) thereafter*"; and
6. The Congress, however, is not precluded from further amending RA 9164, as amended, subject to the proper observance of the guidelines herein provided.

Finally, for the guidance of the bench, the bar, and the public, any government action that seeks to postpone any elections must observe the guidelines stated herein.

**ACCORDINGLY,** the instant consolidated Petitions are **GRANTED**. Republic Act No. 11935 is hereby declared **UNCONSTITUTIONAL**.

**SO ORDERED.**

*Hernando, Inting, M. Lopez, Gaerlan, Rosario, J. Lopez,* and *Marquez, JJ.,* concur.

Gesmundo, *C.J.,* on official leave but left a vote, see separate concurring opinion.

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*Leonen, Acting C.J.*, *Caguioa, Lazaro-Javier, Zalameda, Dimaampao,* and *Singh, JJ.,* concur, see separate concurring opinions.

**APPEARANCES OF COUNSEL**

*Antonio Carlos B. Bautista* for petitioner in G.R. No. 263590.

*The Solicitor General* for respondents.

**SEPARATE CONCURRING OPINION**

**GESMUNDO, *C.J.*:**

The instant consolidated petitions assail the constitutionality of Republic Act (*R.A.*) No. 11935, otherwise known as "An Act Postponing the December 2022 *Barangay* and *Sangguniang Kabataan* Elections, Amending for the Purpose Republic Act No. 9164, as Amended, Appropriating Funds Therefor, and for Other Purposes." Principally, both petitions argue that the Congress has no power to postpone or cancel a scheduled election as this power belongs solely to the Commission on Elections (*COMELEC*) pursuant to Section 5 of the Omnibus Election Code of the Philippines (*OEC*).[1]

I concur in the result, particularly as to the declaration of R.A. No. 11935 as unconstitutional. I write to respectfully share my views on the proper standard to test the validity of laws postponing *barangay* elections. I also put into perspective Sec. 5 of the OEC and its applicability to postponements of elections by the Congress.

***I. The Legislative Power to Postpone Elections vis-à-vis the COMELEC's Power under Sec. 5 of the OEC***

The consolidated petitions posit, among others, that the power to postpone elections belongs exclusively to the

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[1] Batas Pambansa Blg. 881; approved on December 3, 1985.

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COMELEC.[2] Petitioners based this proposition on the powers granted to the COMELEC under paragraphs 1 to 3, Sec. 2, Article IX-C of the 1987 Constitution:

> SECTION 2. The Commission on Elections shall exercise the following powers and functions:
>
> (1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.
>
> (2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.
>
> Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.
>
> (3) Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.

To buttress their position that the power to postpone elections belongs exclusively to the COMELEC, both petitioners also cite Sec. 5 of the OEC.

Addressing these points, the *ponencia* declared as follows:

> On plainer perspective, matters that solely and distinctly pertain to election administration can be said to fall primarily within the power of the COMELEC. On the other hand, matters that intersect and transcend numerous constitutional interests and rights—beyond the strict confines of election matters and the right of suffrage—must generally be viewed as falling primarily within the broad and plenary power of the Congress.[3]

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[2] Petitioner's Memorandum in G.R. No. 263590, pp. 16-21; and petitioner's Memorandum in G.R. No. 263673, pp. 7-10.

[3] *Ponencia*, p. 24.

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Given the broad and plenary power of the Congress that encompasses, as well, matters affecting the elections and the exercise of the right of suffrage, it logically follows that its power extends to the postponement of elections, including at the barangay level.[4]

The *ponencia* explained that any power deemed legislative by usage and tradition is necessarily possessed by Congress. Thus, the Congress' broad and plenary power to legislate inherently includes the power to postpone *barangay* elections. It, thus, rejected petitioners' claim that the powers granted to COMELEC under pars. 1 to 3, Sec. 2, Art. IX-C of the 1987 Constitution limits the power to postpone elections to the COMELEC alone.[5]

I agree with the clear explanation offered by the esteemed *ponente*. I also concur with the *ponencia*'s characterization of the powers granted to the COMELEC under pars. 1 and 3, Sec. 2, Art. IX-C of the 1987 Constitution as being administrative in nature while the power vested in it under par. 2 thereof is quasi-judicial.[6]

I find petitioners' argument that the power of the COMELEC under pars. 1 to 3 constitutes an exclusive grant to postpone elections to be misplaced. The power under par. 1 is merely administrative in nature; it speaks of the enforcement and administration of laws and regulations in relation to the conduct of an election, plebiscite, initiative, referendum, and recall. It does not contemplate the COMELEC postponing an election. Similarly, the power granted under par. 3 is administrative in nature since it refers to decisions as to logistical details in the facilitation of the electoral process.[7] The postponement of an election does not fall within this category. Meanwhile, par. 2 contemplates the COMELEC's quasi-judicial power to decide contests, whether in the exercise of its original or appellate jurisdiction. To my mind, none of these powers squarely allow for the postponement of elections by the COMELEC.

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4 Id.

5 Id. at 28.

6 Id. at 29.

7 Id.

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Indeed, the power of the COMELEC to postpone elections is not based on the Constitution; but rather, such power is merely statutory, based on Secs. 5 and 45 of the OEC:

SECTION 5. *Postponement of election.* — When for any **serious cause** such as **violence, terrorism, loss or destruction of election paraphernalia or records, *force majeure*, and other analogous causes of such a nature that the holding of a free, orderly and honest election should become impossible** in any **political subdivision**, the **Commission**, *motu proprio* or upon a verified petition by any interested party, and after due notice and hearing, whereby all interested parties are afforded equal opportunity to be heard, **shall postpone the election therein to a date which should be reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause for such postponement or suspension of the election or failure to elect**. (Emphases supplied)

x x x x

SECTION 45. *Postponement or failure of election.* — When for any **serious cause** such as **violence, terrorism, loss or destruction of election paraphernalia or records, *force majeure*, and other analogous causes of such nature that the holding of a free, orderly and honest election should become impossible** in any **barangay**, the Commission, upon a verified petition of an interested party and after due notice and hearing at which the interested parties are given equal opportunity to be heard, shall postpone the election therein for such time as it may deem necessary.

If, on account of *force majeure*, violence, terrorism, fraud or other analogous causes, the election in any barangay has not been held on the date herein fixed or has been suspended before the hour fixed by law for the closing of the voting therein and such failure or suspension of election would affect the result of the election, the Commission, on the basis of a verified petition of an interested party, and after due notice and hearing, at which the interested parties are given equal opportunity to be heard shall call for the holding or continuation of the election within thirty days after it shall have verified and found that the cause or causes for which the election has been postponed or suspended have ceased to exist or upon petition of at least thirty percent of the registered voters in the barangay concerned.

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When the conditions in these areas warrant, upon verification by the Commission, or upon petition of at least thirty percent of the registered voters in the barangay concerned, it shall order the holding of the barangay election which was postponed or suspended. (Emphases supplied)

On this score, Atty. Ruben E. Agpalo, in his Comments on the Omnibus Election Code (2004 Revised Edition), stated the following in relation to Sec. 5:

Section 5 of the Omnibus Election Code enumerates the grounds which may justify the COMELEC to postpone the election. Where after hearing, the Commission finds that there is extreme difficulty in conducting a free, orderly, honesty, peaceful, and credible election on the date set by law and there is need for close supervision by the Commission and effective military presence, which neither can definitely provide if elections were not postponed, the Commission may postpone the election **in the province or locality concerned**.

The setting of the special elections not later than thirty days after the cessation of the cause of the postponement of election or suspension of the election or failure to elect is directory depending upon the exigencies and peculiar circumstances attendant as determined by the Commission and its determination, in the absence of abuse of discretion, is binding.[8] (Emphasis supplied)

A plain reading of Secs. 5 and 45 reveals that the power of the COMELEC to postpone is limited to the specific instances or circumstances mentioned therein. Congress, in legislating these provisions, set out adequate guidelines or limitations[9] on the authority of the COMELEC to postpone an election.

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[8] Agpalo, R.E., *Comments on the Omnibus Election Code* (Revised Edition 2004), Quezon City: Rex Printing Company, Inc., pp. 27-28.

[9] In *ABAKADA GURO Party List v. Purisima*, 584 Phil. 246, 272 (2008), the Court held:

> Two tests determine the validity of delegation of legislative power: (1) the completeness test and (2) the sufficient standard test. A law is complete when it sets forth therein the policy to be executed, carried out or implemented by the delegate. It lays down a sufficient standard when it provides adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy and identify the conditions under which it is to be implemented.

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It may be surmised that the COMELEC may only postpone elections in any political subdivision, including a *barangay*, when there is serious cause in the nature of violence, terrorism, loss, or destruction of election paraphernalia or records, *force majeure*, and other analogous cases of such nature that would make it impossible to hold a free, orderly, and honest election.

As noted by Senior Associate Justice Josue N. Bellosillo, Associate Justice Jose Midas P. Marquez, and Atty. Emmanuel L.J. Mapili in their book entitled "2007 *Omnibus Election Code with Rules of Procedure and Jurisprudence in Election Law*," this power of COMELEC to postpone is limited to the enumerated causes in Sec. 5 of the OEC:

> ***Causes of Postponement.*** For a postponement to happen, there must be either one of the enumerated causes: *force majeure*, violence, terrorism, loss or destruction of election paraphernalia, and analogous causes. The cause would have to be serious and would make it *impossible* to have free and orderly elections. Comelec *en banc*, by a majority of its members, shall have the authority to declare the postponement of elections. It must be noted that the grounds must exist before voting. The postponement may be done *motu proprio* or upon verified petition. There is also a rule on notice and due process in Section 5 that must also be observed.[10]

The fact that Congress gave the COMELEC this power does not mean that it has given up its own power to postpone elections. The COMELEC, the constitutional body tasked with the enforcement and administration of all election laws and regulations, itself acknowledged that its power to postpone elections was delegated to it by the Congress, subject to Congress' review, and only for the causes mentioned therein. This is evidenced by the following exchange with COMELEC Chairperson George Garcia during the Oral Arguments held on October 21, 2022:

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[10] Agpalo, R.E., *Comments on the Omnibus Election Code* (Revised Edition 2004), Quezon City: Rex Printing Company, Inc., p. 29, citing *Sumbing v. Davide*, G.R. Nos. 86850-51, July 20, 1989.

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**CHIEF JUSTICE GESMUNDO:**
Thank you
The petitioner harps on Section 5 of the Omnibus Election Code saying that the power to postpone election is exclusively lodged with the COMELEC. Did you hear his arguments?

**CHAIRPERSON GARCIA:**
Yes, Your Honor.

**CHIEF JUSTICE GESMUNDO:**
Do you agree with that...

**CHAIRPERSON GARCIA:**
I strongly disagree, Your Honor.

**CHIEF JUSTICE GESMUNDO:**
Why do you disagree?

**CHAIRPERSON GARCIA**
**Because the provision of Section 5 *Batas Pambansa Bilang* 881 is a delegated authority coming from Congress. Being a delegated authority, it can be taken, [modified] or even [reviewed] by Congress. Meaning to say that when Congress deemed it necessary to give us the power to postpone the election, the Congress limited such exercise of power to the causes mentioned therein.** Meaning, there is an urgency for the Commission to act on these matters. And that's why the limitation as given in Section 5 pertains to the causes mentioned therein and likewise pertaining to the sub-divisions as mentioned likewise in the last part of *Batas Pambansa Bilang* 881. And so therefore, Your Honor, when Congress said COMELEC can postpone the election based on these causes, Congress can likewise postpone the election based on any other cause other than those mentioned.[11] (Emphasis supplied)

It is well-established that "[t]he legislative power of the Philippine Congress is plenary, subject only to such limitations, as are found in the Republic's Constitution. So that any power, deemed to be legislative by usage and tradition, is necessarily possessed by the Philippine Congress, unless the Organic Act has lodged it elsewhere."[12]

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[11] Transcript of Stenographic Notes of the Oral Arguments held on October 21, 2022, pp. 145-146.

[12] *Vera v. Avelino*, 77 Phil. 192, 212 (1946).

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As explained above, the 1987 Constitution has not lodged this power to postpone elections elsewhere. It is, in fact, Congress which delegated some measure of this power to the COMELEC through Secs. 5 and 45 of the OEC.

The Court is also aware of the following statement in Atty. Agpalo's Comments on the Omnibus Election Code (2004 Revised Edition):

> No other body or officer has the power to postpone or rest an election date except the Commission *en banc* itself. Hence, the postponement or resetting of the election date by the COMELEC Assistant Director or the COMELEC Special Action Team, not having any authority to do so, is invalid.[13]

It may be surmised from the foregoing statement that it was made in connection with a postponement or resetting of the election date by the COMELEC Assistant Director or the COMELEC Special Action Team. Said statement was made in relation to a different set of facts, which does not prevail in the instant case. Further, it must be emphasized that the power of the COMELEC to postpone is limited to the serious causes provided in Sec. 5, such as violence, terrorism, loss or destruction of election paraphernalia or records, *force majeure*, and other analogous causes of such nature that the holding of a free, orderly, and honest election should become impossible in any political subdivision. In this case, the postponement of the *barangay* elections was done by the Congress in the exercise of its plenary power to legislate, which is not restricted to the grounds provided by Sec. 5.

Nonetheless, it must be emphasized that the plenary power of Congress to legislate is not unbridled. The same is subject to review by the Court pursuant to a standard by which to measure its validity.

## *II. The Proper Standard to Test the Validity of Postponement of Elections*

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[13] Bellosillo, J.N., Marquez, J.M.P., and Mapili, E.L.J., *Omnibus Election Code with Rules of Procedure and Jurisprudence in Election Law*. Quezon City: Central Book Supply, Inc., p. 12.

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It is my humble opinion that, as a **general rule,** the proper standard to test the validity of laws postponing *barangay* elections should be the **rational basis test**. In presenting this position, I am guided foremost by the duty of this Court to balance the people's fundamental right to vote with the State's responsibility to maintain the sanctity and integrity of the electoral process.

To support my position, I undertake a review of jurisprudence in the Philippines and in the United States (*U.S.*) on the use of the three tests of judicial scrutiny in cases involving the right to vote or the electoral process.

**The Three Tests of Judicial Scrutiny**

A review of relevant Philippine case law demonstrates that the Court considers the application of three tests of judicial scrutiny when assessing the validity of laws and regulations on the basis of either substantive due process or the equal protection clause.[14] These are the **strict scrutiny test, intermediate scrutiny test**, and **rational basis test**.[15]

These three tests were adopted by our courts from jurisprudence developed in the U.S. As to their development in the U.S., it has been said that "[t]he origins of this formula and its proliferation... are neither well known nor easily traced."[16] It would appear that the tests evolved gradually via a number of different doctrinal cases throughout the 19th and 20th centuries.[17] With the rise of the

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[14] *White Light Corp. v. City of Manila*, 596 Phil. 444, 462-463 (2009).

[15] Id. at 462.

[16] Strict Judicial Scrutiny, 54 UCLA L. Rev. 1267, 1274.

[17] Id. at 1275.

> The rational basis test, with its presumption of constitutionality, is perhaps the oldest and default test, in use by U.S. courts in one form or another since the 19th century (Tears of Scrutiny, 57 Tulsa L. Rev. 341, 347). The strict scrutiny test has its foundations in footnote four of the 1938 case of *United States v. Carolene Products*, although it was not expressed as the formula that we know it today until the 1960s (Tears of Scrutiny, 57 Tulsa L. Rev. 341, 346-347 and Strict Judicial Scrutiny, 54 UCLA L. Rev. 1267, 1274). Finally, the intermediate scrutiny test—as well as the practice of choosing between the three tests—began in 1976, in the equal protection case of *Craig v. Boren* (Tears of Scrutiny, 57 Tulsa L. Rev. 341, 347-348).

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industrial age in the U.S. and a concomitant growth in the scope of governmental power, U.S. courts were more frequently faced with the need to ascertain the balance between governmental power and individual rights.[18] The tests of judicial scrutiny became effective tools by which courts could structure their analyses.[19]

As adopted by Philippine courts in due process and equal protection cases, the three tests can be summarized in the following manner:

The strictest test, aptly called the **strict scrutiny test**, is used when the law or regulation in question interferes with the exercise of a fundamental right, or operates to the peculiar disadvantage of a suspect class or persons accorded special protection by the Constitution.[20] Under this test, the law is presumed unconstitutional, and the government carries the burden to prove that the law is (1) necessary to achieve a **compelling** state interest and (2) the **least restrictive means** to protect such interest.[21]

Heightened review or the **intermediate scrutiny test** is used when the assailed law or regulation does not burden fundamental rights or suspect classes, but where some circumstance nevertheless exists which requires heightened scrutiny.[22] For example, the test is applied in freedom of speech cases, when the assailed regulation is content-neutral in that it regulates the time, place, or manner of speech, without restricting the subject matter of speech.[23] Under intermediate scrutiny, the government must show that the law or regulation (1) serves an **important** state interest and (2) is **substantially related** to serving that interest.[24]

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[18] The New Formalism: Requiem for Tiered Scrutiny? U. Pa. J. Const. L. 945, 948.

[19] Strict Judicial Scrutiny, 54 UCLA L. Rev. 1267, 1336.

[20] *Serrano v. Gallant Maritime Services, Inc.*, 601 Phil. 245, 282 (2009).

[21] Id.

[22] *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1113-1114 (2017).

[23] *Chavez v. Gonzales*, 569 Phil. 155, 238 (2008).

[24] *Serrano v. Gallant Maritime Services, Inc.*, supra at 282.

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Lastly, the **rational basis test** applies in all other cases not covered by the first two tests.[25] Under this test, the law or regulation will be upheld if it is (1) **rationally** related (2) to a **legitimate** state interest.[26]

### A. The Three Tests of Judicial Scrutiny in Cases Involving the Right to Vote in Philippine Jurisprudence

The application of the three tests of judicial scrutiny in cases involving laws and regulations affecting the right to vote or the electoral process varies. A review of select cases in order to gain insight into the Court's treatment of election-related cases, as well as the Court's reasoning behind the choice of test in each case, shows:

#### *i.* Strict Scrutiny Test

The Court applied the strict scrutiny test in *GMA Network v. COMELEC*[27] (*GMA Network*), *1-United Transport Koalisyon v. COMELEC*[28] (*1-UTAK*), and *Kabataan Party-List v. COMELEC*[29] (*Kabataan Party-List*).

*GMA Network* and *1-UTAK* both involved COMELEC resolutions on political campaigning. The use of strict scrutiny in these cases reflects the Court's stance, elucidated in the earlier case of *Mutuc v. COMELEC*, that "this preferred freedom [free speech] calls all the more for the utmost respect when what may be curtailed is the dissemination of information to make more meaningful the equally vital right of suffrage."[30]

In *GMA Network*, the Supreme Court applied the strict scrutiny test to review the COMELEC's imposition of aggregate-based

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[25] *Samahan ng mga Progresibong Kabataan v. Quezon City*, supra at 1114.

[26] *Serrano v. Gallant Maritime Services, Inc.*, supra at 282.

[27] 742 Phil. 174 (2014).

[28] 758 Phil. 67 (2015).

[29] 775 Phil. 523 (2015).

[30] *Mutuc v. Commission on Elections*, 146 Phil. 798, 805-806 (1970).

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airtime limits on political advertisements.[31] The Court reasoned there that:

> Political speech is one of the most important expressions protected by the Fundamental Law. "[F]reedom of speech, of expression, and of the press are at the core of civil liberties and have to be protected at all costs for the sake of democracy." Accordingly, the same must remain unfettered **unless otherwise justified by a compelling state interest**.[32] (Emphasis supplied; citation omitted)

Moreover, in striking down the affected COMELEC resolution, the Court had occasion to expound on the importance of the right to suffrage and the free communication of ideas. The Court said:

> The assailed rule on "aggregate-based" airtime limits is unreasonable and arbitrary as it unduly restricts and constrains the ability of candidates and political parties to reach out and communicate with the people. Here, the adverted reason for imposing the "aggregate-based" airtime limits—leveling the playing field—does not constitute a compelling state interest which would justify such a substantial restriction on the freedom of candidates and political parties to communicate their ideas, philosophies, platforms and programs of government.
>
> x x x x
>
> Fundamental to the idea of a democratic and republican state is the right of the people to determine their own destiny through the choice of leaders they may have in government. Thus, the primordial importance of suffrage and the concomitant right of the people to be adequately informed for the intelligent exercise of such birthright.[33]

In *1-UTAK*, the Court declared void several provisions in a COMELEC resolution prohibiting the posting of election campaign materials on public utility vehicles (*PUVs*) and in transport terminals.[34] The Court held that the assailed provisions "forcefully and effectively inhibited [owners of PUVs and transport terminals] from expressing their preferences" and unduly

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[31] *GMA Network, Inc. v. Commission on Elections,* supra at 230-238.

[32] Id. at 228.

[33] Id. at 230-232.

[34] *1-United Transport Koalisyon v. Commission on Elections*, supra at 104.

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infringed on the fundamental right of the people to freedom of speech.[35] The Court's use of strict scrutiny was explained thus:

> The right to participate in electoral processes is a basic and fundamental right in any democracy. It includes not only the right to vote, but also the right to urge others to vote for a particular candidate. The right to express one's preference for a candidate is likewise part of the fundamental right to free speech. Thus, **any governmental restriction on the right to convince others to vote for a candidate carries with it a heavy presumption of invalidity**.[36] (Emphasis supplied)

On the other hand, at issue in *Kabataan Party-List* was the mandatory voters' biometrics registration introduced by R.A. No. 10367.[37] The Court proceeded to apply the strict scrutiny test after due recognition that U.S. jurisprudence has expanded the scope of strict scrutiny to protect the right to suffrage.[38] That said, in upholding the validity of the law, the Court also reasoned that biometrics registration is a mere aspect of the registration procedure which the State has the right to regulate.[39] In fact, as the Court noted, biometrics registration was "precisely designed to facilitate the conduct of orderly, honest, and credible elections by containing—if not eliminating, the perennial problem of having flying voters, as well as dead and multiple registrants,"[40] thereby ensuring that "the results of the elections were truly reflective of the genuine will of the people."[41]

### *ii.* Intermediate Scrutiny Test

The Court employed the intermediate scrutiny test in *Osmeña v. COMELEC*[42] (*Osmeña*), *Nicolas-Lewis v. COMELEC*[43] (*Nicolas-*

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35 Id. at 85-86.

36 Id. at 78.

37 *Kabataan Party-List v. Commission on Elections*, supra at 539.

38 Id. at 551.

39 Id. at 550.

40 Id. at 552.

41 Id.

42 351 Phil. 692 (1998).

43 859 Phil. 560 (2019).

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*Lewis*), and *The Diocese of Bacolod v. COMELEC*[44] (*Diocese of Bacolod*). Notably, at issue in all these cases were regulations on political campaigning and political messages. In *Osmeña* and *Nicolas-Lewis*, these regulations were judged by the Court to be content-neutral in nature.

*Osmeña* involved a question relating to the validity of a provision in R.A. No. 6646 prohibiting mass media from giving print space or air time for campaigns or other political purposes, except to the COMELEC.[45] The Court held that the assailed provision simply regulated the place and time for the conduct of political campaigning, without interfering with the content of political campaigns.[46] As such, and in contrast to content-based regulations which must be supported by a compelling state interest, the subject regulation need only be supported by a "substantial government interest," and a "deferential standard of review" will suffice to test its validity.[47]

In addition, the Court emphasized in *Osmeña* that "the validity of regulations of time, place and manner, under well-defined standards, is well-nigh beyond question" and that the allocation of print space and air time was for the purpose of ensuring free, orderly, honest, peaceful, and credible elections.[48]

In *Nicolas-Lewis*, R.A. No. 9189 was assailed for prohibiting the engagement of any person in partisan political activities abroad during the 30-day overseas voting period.[49]

The Court began its discussion of the merits in this case by stressing the nature of freedom of expression as a preferred right and a fundamental principle of every democratic government.[50] Moreover, the Court affirmed that the right to

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44 751 Phil. 301 (2015).

45 *Osmeña v. COMELEC*, supra at 702.

46 Id. at 705-706.

47 Id. at 717-718.

48 Id. at 709.

49 *Nicolas-Lewis v. COMELEC*, supra at 578.

50 Id. at 586.

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participate in electoral processes, including the right to vote, is "[a] fundamental part of this cherished freedom."[51]

That said, the Court viewed its task in the case as one of balancing the freedom of expression with the State's duty to preserve the sanctity and integrity of the electoral process. We discussed:

> The Court is once again confronted with the task of harmonizing fundamental interests in our constitutional and democratic society. On one hand are the constitutionally-guaranteed rights, specifically, the rights to free speech, expression, assembly, suffrage, due process and equal protection of laws, which this Court is mandated to protect. On the other is the State action or its constitutionally-bounden duty to preserve the sanctity and the integrity of the electoral process, which the Court is mandated to uphold. It is imperative, thus, to cast a legally-sound and pragmatic balance between these paramount interests.[52]

The Court proceeded to rule that the prohibition in R.A. No. 9189 partook of a content-neutral regulation, merely regulating the time and place of political campaigning without affecting the actual content of campaign messages.[53] As such, the same should be tested using intermediate scrutiny.[54]

Finally, *Diocese of Bacolod* involved COMELEC's Notice to Remove Campaign Material issued on February 22, 2013, and the letter issued on February 27, 2013 regulating the size of election propaganda material.[55] While the Court ultimately found that the regulation involved was content-based, it subjected the same to intermediate scrutiny to showcase that it would not pass such lower standard.[56]

#### *iii.* Rational Basis Test

The Court appears to have applied the rational basis test in at least one election-related case.

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[51] Id.

[52] Id. at 581.

[53] Id. at 592-593.

[54] Id. at 594.

[55] *The Diocese of Bacolod v. Commission on Elections*, supra at 315-316.

[56] Id. at 377-382.

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In *Ang Ladlad LGBT Party v. COMELEC*,[57] the Court applied the rational basis test to review the COMELEC's refusal to accredit Ang Ladlad LGBT Party (*Ang Ladlad*) as a party-list organization.[58] Nevertheless, while the case discussed the freedom of expression and of association in relation to the organization of Ang Ladlad as a political group,[59] the Court did not enter into an extensive discussion as to why rational basis was the appropriate test to apply. Instead, the Court simply stated that "[r]ecent jurisprudence has affirmed that if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the classification as long as it bears a rational relationship to some legitimate government end."[60]

The foregoing review of jurisprudence leads me to make three observations regarding the use of the three tests of judicial scrutiny in Philippine cases involving elections or the right to vote.

*First*, the invocation of the right to vote or the right to freedom of expression does not by itself trigger the application of strict scrutiny. Instead, as in other due process or equal protection cases, **the Court chooses the appropriate test on a case-to-case basis, carefully assessing the impact of the assailed regulation on the rights invoked**.

*Second*, in cases involving elections or the right to vote, the Court gives due consideration to **two distinct interests**—that is, on the one hand, **the right of the people to vote and to participate in political affairs** and, on the other, **the duty of the State to preserve the sanctity and integrity of the electoral process**. The two are not opposed. Rather, the State's duty to regulate elections exists for the very purpose of protecting and upholding the right of the people to vote. Therefore, in every case involving election regulations, the Court must be mindful of its duty to balance both these interests.

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[57] 632 Phil. 32 (2010).

[58] Id. at 77-78.

[59] Id. at 79-86.

[60] Id. at 77.

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*Third*, Philippine jurisprudence applying the three tests of judicial scrutiny appears to be rich in cases involving laws or rules regulating political campaigns and political advertisements. As such, there is much to draw from with regard to the application of the three tests when the law in question affects political speech. It is my humble submission, however, that **a law changing the schedule of elections is a whole different animal, and it must be reviewed on parameters different from what the Court usually applies** in cases which directly affect the exercise of free speech.

I now turn to election-related cases in U.S. jurisprudence applying the three tests of judicial scrutiny.

**B. The Three Tests of Judicial Scrutiny in Cases Involving the Right to Vote in U.S. Jurisprudence**

**i. 20th Century Landmark Cases**

Early landmark cases in the U.S. involving the review of election-related laws and regulations are notable for their recognition of the right to vote as a fundamental right, as well as their consequent application of the strict scrutiny test. Indeed, these are the cases that the Court invokes when it applies the strict scrutiny test to review election regulations.

These cases follow the tone of *Yick Wo v. Hopkins*[61] (*Yick Wo*), an 1886 case where the U.S. Supreme Court expressed its view on the importance of the right to vote.[62] *Yick Wo* set forth:

> Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but, in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is, indeed, quite true that there must always be lodged somewhere, and in some person or body, the authority of final decision, and in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate

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[61] 118 U.S. 356 (1886).

[62] Id. at 369-370.

tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage. But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth "may be a government of laws, and not of men." For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life at the mere will of another seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself.

There are many illustrations that might be given of this truth, which would make manifest that it was self-evident in the light of our system of jurisprudence. The case of the political franchise of voting is one. Though not regarded strictly as a natural right, but as a privilege merely conceded by society according to its will under certain conditions, nevertheless **it is regarded as a fundamental political right, because preservative of all rights**.[63] (Emphasis supplied)

In *Reynolds v. Sims*,[64] the U.S. Supreme Court held that "any alleged infringement of the right of citizens to vote must be **carefully and meticulously scrutinized**."[65] Suit was brought in this case challenging the apportionment of the Alabama Legislature.[66] The Court considered apportionment as a matter affecting the right to vote, declaring that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."[67]

In *Harper v. Virginia Board of Elections*,[68] petitioners asked the U.S. Supreme Court to declare Virginia's poll tax unconstitutional.[69] The Court again held that "where fundamental

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[63] Id. at 370.

[64] 377 U.S. 533 (1964).

[65] Id. at 562.

[66] Id. at 537.

[67] Id. at 555.

[68] 383 U.S. 663 (1966).

[69] Id. at 664.

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rights and liberties are asserted. . . classifications which might invade or restrain them must be **closely scrutinized and carefully confined**."[70] (Emphasis supplied)

In *Kramer v. Union Free School Dist. No. 15*,[71] a New York law provided that residents could vote in the school district election only if they owned or leased taxable real property within the district, or if they were parents of children enrolled in local public schools.[72] Again, the U.S. Supreme Court held that the law must be given a "close and exacting examination" given the fundamental nature of the right to vote.[73] The U.S. Supreme Court went on to discuss:

> This careful examination is necessary because statutes distributing the franchise constitute the foundation of our representative society. Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government.
>
> Thus, state apportionment statutes, which may dilute the effectiveness of some citizens' votes, receive close scrutiny from this Court. No less rigid an examination is applicable to statutes denying the franchise to citizens who are otherwise qualified by residence and age. Statutes granting the franchise to residents on a selective basis always pose the danger of denying some citizens any effective voice in the governmental affairs which substantially affect their lives. Therefore, if a challenged state statute grants the right to vote to some *bona fide* residents of requisite age and citizenship and denies the franchise to others, **the Court must determine whether the exclusions are necessary to promote a compelling state interest**.
>
> x x x x
>
> Accordingly, when we are reviewing statutes which deny some residents the right to vote, **the general presumption of constitutionality afforded state statutes and the traditional approval given state classifications if the Court can conceive of a "rational basis" for the distinctions**

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[70] Id. at 670.

[71] 395 U.S. 621 (1969).

[72] Id. at 622.

[73] Id. at 626.

**made are not applicable**. The presumption of constitutionality and the approval given "rational" classifications in other types of enactments are based on an assumption that the institutions of state government are structured so as to represent fairly all the people. However, **when the challenge to the statute is, in effect, a challenge of this basic assumption, the assumption can no longer serve as the basis for presuming constitutionality**.[74] (Emphases supplied; citations omitted)

Further, in *Dunn v. Blumstein*,[75] the U.S. Supreme Court employed strict scrutiny to assess the validity of a Tennessee law imposing a residency requirement on voters.[76] *Dunn* declared that "if it was not clear then, it is certainly clear now that **a more exacting test is required for any statute that 'places a condition on the exercise of the right to vote.'**"[77] (Emphasis supplied)

That said, U.S. jurisprudence also emphasizes that "not every limitation or incidental burden on the exercise of voting rights is subject to a stringent standard of review."[78] In fact, the U.S. Supreme Court applied the rational basis test to assess the validity of candidate filing fees in *Bullock v. Carter*,[79] despite the recognition in that case that impositions on candidates also affect voters' rights.[80] The rational basis test was also applied in *McDonald v. Board of Election Commissioners*[81] after detainees in a county jail questioned their non-inclusion in Illinois' system of absentee voting.[82]

In the case of *Storer v. Brown*[83] (*Storer*), the U.S. Supreme Court recognized that the right to vote must accept substantial

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74 Id. at 626-628.

75 405 U.S. 330 (1972).

76 Id. at 342-343.

77 Id. at 337.

78 *Bullock v. Carter*, 405 U.S. 134, 143 (1972).

79 Id. at 149.

80 Id. at 143.

81 394 U.S. 802 (1969).

82 Id. at 809.

83 415 U.S. 724 (1974).

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regulation in order for the electoral process to be properly safeguarded.[84] Further, precisely because the right to vote should be balanced with the duty of the State to regulate elections, the process of arriving at the outcome in each case is highly sensitive to the attendant facts and circumstances. The U.S. Supreme Court discussed:

> In challenging § 6830 (d) (Supp. 1974), appellants rely on Williams v. Rhodes and assert that under that case and subsequent cases dealing with exclusionary voting and candidate qualifications, e.g., Dunn v. Blumstein x x x; Bullock v. Carter x x x; Kramer v. Union Free School District, x x x substantial burdens on the right to vote or to associate for political purposes are constitutionally suspect and invalid under the First and Fourteenth Amendments and under the Equal Protection Clause unless essential to serve a compelling state interest. These cases, however, do not necessarily condemn § 6830 (d) (Supp. 1974). It has never been suggested that the Williams-Kramer-Dunn rule automatically invalidates every substantial restriction on the right to vote or to associate. x x x [The Constitution] authorizes the States to prescribe "the Times, Places and Manner of holding Elections for Senators and Representatives." Moreover, as a practical matter, **there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes**. In any event, the States have evolved comprehensive, and in many respects complex, election codes regulating in most substantial ways, with respect to both federal and state elections, the time, place, and manner of holding primary and general elections, the registration and qualifications of voters, and the selection and qualification of candidates.
>
> It is very unlikely that all or even a large portion of the state election laws would fail to pass muster under our cases; and the rule fashioned by the Court to pass on constitutional challenges to specific provisions of election laws provides no litmus-paper test for separating those restrictions that are valid from those that are invidious under the Equal Protection Clause. **The rule is not self-executing and is no substitute for the hard judgments that must be made. Decision in this context, as in others, is very much a "matter of degree", very much a matter of "consider[ing] the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of**

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[84] Id. at 730.

**those who are disadvantaged by the classification." What the result of this process will be in any specific case may be very difficult to predict with great assurance.**[85] (Emphases supplied; citations omitted)

Since *Storer*, U.S. jurisprudence on the review of election laws appears to have progressed along at least two distinct lines.

The first line of cases deal specifically with laws affecting core political speech.[86] In these cases, courts apply what has come to be known as the "Meyer-Buckley Standard," whereby the courts resort directly to the strict scrutiny test.[87] In other words, following the Meyer-Buckley Standard, when a court finds that a law affects core political speech, that court will automatically apply the strict scrutiny test, regardless of the severity of the burden imposed by the law in question.[88]

The second line of cases apply the so-called "Anderson-Burdick Balancing Framework," whereby the appropriate test of judicial scrutiny depends to a large extent on the severity of the burden imposed by the election law, and will vary on a case-to-case basis.[89] The Anderson-Burdick Test applies when the law or regulation in question has the following two characteristics: (1) the law must burden a relevant constitutional right, such as the right to vote; and (2) the law must primarily regulate the mechanics of the electoral process, as opposed to core political speech.[90]

**ii. The Meyer-Buckley Standard**

As mentioned, in cases involving core political speech, U.S. courts typically opt for the more traditional approach of resorting directly to the strict scrutiny test. I will no longer discuss the history or nuances of the Meyer-Buckley Standard in detail. Instead, it

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[85] Id. at 729-730.

[86] *Lichtenstein v. Hargett*, 489 F. Supp. 3d 742 (M.D. Tenn. 2020).

[87] Id.

[88] Id.

[89] *Mazo v. New Jersey Secretary of State*, 54 F.4th 124 (3d Cir. 2022).

[90] Id.

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will suffice to touch upon the illustrative cases of *McIntyre v. Ohio Elections Commission*[91] (*McIntyre*) and *Meyer v. Grant*[92] (*Meyer*).

In *McIntyre*, petitioners questioned an Ohio law requiring campaign literature to contain the name and address of the issuing person or campaign official, effectively prohibiting anonymous campaign literature.[93] The U.S. Supreme Court held that the subject Ohio law was "a regulation of pure speech" as opposed to a regulation controlling "the mechanics of the electoral process."[94] As such, the Court proceeded directly to an application of "exacting scrutiny."[95] The Court pronounced that "[w]hen a law burdens core political speech, we apply 'exacting scrutiny,' and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest."[96]

In *Meyer*, the Court considered a law prohibiting the use of paid petition circulators (paid to circulate initiative petitions for the purpose of proposing constitutional amendments) as a direct imposition on political speech which, as in *McIntyre,* required "exacting scrutiny."[97] Notably, the Court defined "core political speech" in *Meyer*, subsequently reiterated in the case of *Buckley v. American Constitutional Law Foundation, Inc.*,[98] as "interactive communication concerning political change."[99]

**iii. The Anderson-Burdick Balancing Framework**

The Anderson-Burdick Balancing Framework, applicable in every case involving an election law not primarily directed at regulating political speech, has seen wide and varied

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91 514 U.S. 334 (1995).

92 486 U.S. 414 (1988).

93 *McIntyre v. Ohio Elections Commission*, supra at 334.

94 Id. at 345.

95 Id. at 334-335.

96 Id. at 347.

97 *Meyer v. Grant*, supra at 420.

98 525 U.S. 182, 186 (1999).

99 *Meyer v. Grant*, supra at 421-422; *Buckley v. American Constitutional Law Foundation, Inc.*, id. at 186.

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application.[100] It has been used by the U.S. Supreme Court to review all manner of laws and rules regulating the time, place, and manner of elections, including "notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns"[101] as well as "ballot access rules, regulation of party primaries, voter identification laws, and the content of ballots."[102]

The leading case of *Anderson v. Celebrezze*[103] (*Anderson*) consolidates and lays down the guidelines for the judicial review of election regulations not primarily directed at core political speech. In said case, petitioners challenged the constitutionality of an Ohio rule imposing an earlier deadline for independent candidates to file their statement of candidacy, as compared to major-party candidates.[104]

*Anderson* echoed the U.S. Supreme Court's statement in *Storer* that "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes."[105] The U.S. Supreme Court went on to say:

> To achieve these necessary objectives, States have enacted comprehensive and sometimes complex election codes. **Each provision of these schemes**, whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, **inevitably affects—at least to some degree—the individual's right to vote** and his right to associate with others for political ends. **Nevertheless, the State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions**.[106] (Emphases supplied)

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[100] *Mazo v. New Jersey Secretary of State*, supra.

[101] Id., citing *Smiley v. Holm*, 285 U.S. 355, 366 (1932).

[102] Id.

[103] 460 U.S. 780 (1983).

[104] Id. at 782-783.

[105] Id. at 789, citing *Storer v. Brown*, supra note 83, at 730.

[106] Id.

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Further, as in *Storer*, the U.S. Supreme Court in *Anderson* recognized the absence of a "litmus paper test" by which courts could automatically or quickly determine the validity of election regulations.[107] Instead, *Anderson* advised that courts must meet each challenge "by an analytical process that parallels its work in ordinary litigation."[108] Thus, *Anderson* laid down the following guidelines:

> [A court] must **first consider the character and magnitude of the asserted injury to the rights** protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must **identify and evaluate the precise interests put forward by the State** as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must **consider the extent to which those interests make it necessary to burden the plaintiffs rights**. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional. The results of this evaluation will not be automatic; as we have recognized, there is "no substitute for the hard judgments that must be made."[109] (Emphases supplied; citations omitted)

Expanding on *Anderson*, the case of *Burdick v. Takushi*[110] (*Burdick*), emphasized that the determination of the applicable standard of review in election-related cases depends, in part, on the **severity of the restriction** on the right to suffrage. The Court in *Burdick* discussed:

> [T]o subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest, as petitioner suggests, would tie the hands of States seeking to assure that elections are operated equitably and efficiently. x x x
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> Instead, as the full Court agreed in Anderson, **a more flexible standard applies**. A court considering a challenge to a state election law must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff

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[107] Id.

[108] Id.

[109] Id.

[110] 504 U.S. 428 (1992).

seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights."

Under this standard, **the rigorousness of our inquiry** into the propriety of a state election law **depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights**. Thus, as we have recognized **when those rights are subjected to "severe" restrictions, the regulation must be "narrowly drawn to advance a state interest of compelling importance." But when a state election law provision imposes only "reasonable, nondiscriminatory restrictions" upon the First and Fourteenth Amendment rights of voters, "the State's important regulatory interests are generally sufficient to justify" the restrictions**.[111] (Emphases supplied; citations omitted)

U.S. courts have come to describe the Anderson-Burdick Balancing Framework as a "sliding scale" approach.[112] For example, the U.S. Court of Appeals for the Ninth Circuit in *Ariz. Libertarian Party v. Hobbs*[113] explained:

There is an inevitable tension between a state's authority and need to regulate its elections and the First and Fourteenth Amendment rights of voters, candidates, and political parties. To harmonize these competing demands, we look to Anderson v. Celebrezze and Burdick v. Takushi which provide a "flexible standard" for reviewing constitutional challenges to state election regulations:

x x x x

We have described this approach as **a "sliding scale"—the more severe the burden imposed, the more exacting our scrutiny; the less severe, the more relaxed our scrutiny**. To pass constitutional muster, a state law imposing a severe burden must be narrowly tailored to advance "compelling" interests. On the other hand, a law imposing a minimal

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[111] Id. at 433-434.

[112] See *e.g. Ariz. Libertarian Party v. Hobbs*, 925 F.3d 1085 (9th Cir. 2019); *Libertarian Party v. Sununu,* 2020 U.S. Dist. LEXIS 133437 (D.N.H. 2020); *Fish v. Schwab*, 957 F.3d 1105 (10th Cir. 2020).

[113] Supra.

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burden need only reasonably advance "important" interests.[114] (Emphasis supplied; citations omitted)

Similarly, in *Fish v. Schwab*,[115] the U.S. Court of Appeals for the Tenth Circuit summarized the sliding scale nature of the Anderson-Burdick framework in this way:

Thus, **the scrutiny we apply will wax and wane with the severity of the burden imposed** on the right to vote in any given case; heavier burdens will require closer scrutiny, lighter burdens will be approved more easily.[116] (Emphasis supplied)

The Supreme Court of Missouri in *Peters v. Johns*[117] stressed the significance of the severity of the restriction as a factor in deciding which test to apply, to wit:

It is tempting to assume the application of strict scrutiny due to the implication of voting rights, regarded as "among our most precious freedoms." The Supreme Court has been clear, however, that "to subject every voting regulation to strict scrutiny . . . would tie the hands of States seeking to assure that elections are operated equitably and efficiently." "Accordingly, the mere fact that a State's system creates barriers tending to limit the field of candidates from which voters might choose does not of itself compel close scrutiny."

**Rather, it is the severity of the burden on the asserted constitutional rights that produces the level of scrutiny, and not the nature of the burdened right itself, as is often the case in traditional fundamental rights analysis. If the burden is severe, strict scrutiny applies. If the burden is *de minimis*, rational basis review applies.**[118] (Emphasis supplied; citations omitted)

Lastly, in *Chelsea Collaborative, Inc. v. Secretary of the Commonwealth*,[119] the Supreme Court of Massachusetts restated the rule as follows:

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[114] Id. at 1090.

[115] Supra.

[116] Id.

[117] 489 S.W.3d 262 (Mo. 2016).

[118] Id.

[119] 480 Mass. 27 (Mass. 2018).

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Because the right to vote is a fundamental one protected by the Massachusetts Constitution, a statute that **significantly interferes with that right is subject to strict judicial scrutiny**. x x x

By contrast, statutes that do not significantly interfere with the right to vote but **merely regulate and affect the exercise of that right to a lesser degree are subject to rational basis review** to assure their reasonableness.[120] (Emphases supplied; citations omitted)

### C. Application and Recommendations

Drawing from the review of both Philippine and U.S. jurisprudence, I respectfully submit the following:

*First*, **as a general rule**, in choosing the appropriate standard of review to test the validity of **regulations affecting the right to vote and the electoral process**, the Court should adopt a **flexible, case-to-case basis approach** akin to that espoused in *Anderson* and *Burdick*. I believe this approach accords the greatest respect to both the people's right to vote and the State's duty to regulate elections.

Some of my esteemed colleagues opined that when a law involves the right to suffrage, resort to the strict scrutiny test is necessary.[121] That being said, I respectfully submit that not every law or regulation involving a fundamental right automatically warrants the application of either intermediate or strict scrutiny.

Indeed, as to the sweeping application of the intermediate scrutiny test, it must be stated that the range of what constitutes an "indirect" effect is too vague and too broad; it does not operate as an effective limitation on the scope of the intermediate scrutiny test. One can stretch the point and argue, in fact, that even the lightest rules regulating the smallest details of the electoral process indirectly affect the right to vote. Similarly, one can argue that every election-related law not directly controlling the content

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[120] Id.

[121] Senior Associate Justice Marvic M.V.F. Leonen's Separate Concurring Opinion, pp. 1, 4-8; and Associate Justice Alfredo Benjamin S. Caguioa's Separate Opinion, pp. 4, 15-17.

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of political speech is a content-neutral regulation. To apply the intermediate scrutiny test in every case involving an "indirect effect" on the right to vote would unduly impair the ability of the State to regulate the conduct of elections.

On the other hand, as to the sweeping use of the strict scrutiny test, it must be pointed out that the extent of statutes which the legislature may enact involving the right to suffrage are near limitless. The potential expanse of such enactments covers a whole gamut of subject matters, ranging from the lightest of regulations to the most burdensome. Thus, to rule, without exception, that any law involving the right to suffrage must be subjected to strict scrutiny is to unduly burden the capacity of the State to legislate and, in effect, regulate the conduct of elections. Such declaration is an unwarranted and unjustifiable restriction; it fails to balance the duty of the State to regulate elections with the right to vote. It must be stressed that "not every limitation or incidental burden on the exercise of voting rights is subject to a stringent standard of review."[122]

It is well-recognized that the impact of any law or rule regulating elections varies widely in nature and severity. In fact, this is true even if we restrict our attention to laws postponing elections. The effect, for example, of a single postponement of several months is vastly different from the effect of several consecutive postponements serving to delay the elections by 10 years or 15 years. The Court would not be according full respect to either the right to vote or the State's duty to regulate elections if these two vastly different situations were judged according to the same standard. **With every unique factor attendant in each case, the balance between the right to vote and the State's duty to regulate elections shifts, and the court must adjust accordingly.**

Following the example of U.S. jurisprudence, I humbly propose that regulations affecting elections or the right to vote may be

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[122] *Bullock v. Carter*, 405 U.S. 134, 143 (1972); *Rogers v. Corbett*, 468 F.3d 188 (3d Cir. 2006); *Barnesville Educ. Assoc. OEA/NEA v. Barnesville Exempted Vill. Sch. Dist. Bd. of Educ.*, 2007 WL 745095 (Ohio 2007).

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subject to the appropriate level of scrutiny after a consideration, among others, of the severity of the restriction imposed by the regulation on the right to vote.

*Second*, with respect in particular to the review of **laws postponing *barangay* elections**, I am of the modest view that the application of the **rational basis test** as a **general rule** is proper.

While the cases of *Osmeña and Nicolas-Lewis* applied the intermediate scrutiny test, it should be noted that these cases all deal with regulations relative to political campaigning and advertisements.[123] Furthermore, the "content-based" versus "content-neutral" analysis in *Osmeña* and *Nicolas-Lewis* draws directly from doctrine laid down in the U.S. cases of *United States v. O'Brien*[124] and *Turner Broad. Sys. v. FCC*,[125] which dealt with the regulation of speech.[126] Again, I respectfully submit that a law changing the schedule of elections is far too different from laws regulating political speech, such that the doctrine developed for the latter cannot squarely apply to the former.

In general, unlike laws and rules regulating political campaigns and advertisements, laws postponing elections are not intended to affect, control, limit, restrict, or regulate either the content or the incidents of political communication. Despite the postponement of elections, political aspirants and voters are free to engage in debates on the merits or demerits of incumbent or prospective elective officials, to enter into discussions of history or current events, and to voice their critique of governmental acts. Voters can

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[123] *Osmeña v. Commission on Elections*, supra note 42; *Nicolas-Lewis v. Commission on Elections*, supra note 43.

[124] 391 U.S. 367 (1968).

[125] 512 U.S. 622 (1994).

[126] In *United States v. O'Brien* (supra), petitioner O'Brien argued that a 1965 law penalizing the destruction of military registration certificates was unconstitutional as applied to him, because his act of burning his registration certificate was an act of protest and therefore protected speech. *Turner Broad. Sys. v. FCC* (supra) dealt with the validity of a law requiring "cable television systems to devote a portion of their channels to the transmission of local broadcast television stations."

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continue to discuss the relevant issues and express their opinion on prospective candidates involved in the delayed elections. In short, political discourse continues unimpeded despite the change in the schedule of elections.

It should also be remembered that incumbent *barangay* officials whose tenures are extended as a result of laws postponing *barangay* elections are, presumably, validly elected, and the delay in the conduct of the elections does not affect their continuing duty to serve and be accountable to the citizenry. The citizenry may, thus, continue to exercise their right to protest and to petition the government for the redress of grievances, although elections have been postponed for some limited measure of time. They may continue to resort to measures granted by law to complain or to express dissent against the actions of their *barangay* officials.

In addition to these observations, I note that laws postponing *barangay* elections, as a general rule and as we have so far encountered them in our jurisdiction, do not attempt to discriminate against any particular class of people, but apply in a uniform manner across the whole country. Last but not least, I stress the fact that the Constitution has left the determination of the term of *barangay* officials to the discretion of Congress.[127] Thus, in my opinion, this Court should accord full respect to this constitutionally granted prerogative by adopting a deferential mode of review to assess postponements of *barangay* elections.

Taking all these into consideration, I am of the view that the temporary delay (by postponement of less than a year or so) in the conduct of *barangay* elections constitutes a minor burden on the right to suffrage, such that it can be justified for so long as it bears a rational relation to a legitimate state interest.

Of course, and to emphasize, my position on the use of the rational basis test for postponements of *barangay* elections is without prejudice to the possibility that factors may exist in future cases which would warrant the application of stricter standards.

**WHEREFORE**, I vote to **GRANT** the petition.

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[127] 1987 CONSTITUTION, Art. X, Sec. 8.

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## SEPARATE CONCURRING OPINION

**LEONEN, *J.*:**

I concur in the result that the assailed statute is unconstitutional. However, in reviewing statutes that postpone elections, I submit that this Court must apply the strict scrutiny test; it is not sufficient that the assailed statute satisfies the requirements of substantive due process. Moreover, the assailed statute is unconstitutional because it tramples upon the Commission on Elections' independence and fiscal autonomy as a constitutional commission.

### I

This Court, by the exercise of its judicial power, bears a special burden of exercising judicial power while "remaining concerned, realistic, and alert to the political and social and even economic significance of what it is doing."[1] "While this Court should presume representation in the deliberative and political forums, it should not be blind to present realities."[2]

We must be mindful of the preparations required for the conduct of elections and the practical effects of postponing it.

The conduct of elections requires meticulous assessment and logistical planning, such as the preparing and procuring election paraphernalia and services, registering voters, processing certificates of candidacies of those seeking to run for public office, installing polling booths, training personnel, and monitoring election offenses, among others. The conduct of elections entails expenditures and therefore, the release of public funds to various stakeholders ahead of the date of elections.

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[1] JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 996 (2009).

[2] J. Leonen, Concurring Opinion in *GIOS-SAMAR, Inc. v. Department of Transportation and Communications*, 849 Phil. 120, 196 (2019) [Per J. Jardeleza, *En Banc*].

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Furthermore, the postponement of elections to another month or year is not inconsequential; it requires planning and has a range of anticipated consequences. As expounded during the oral arguments:

SENIOR ASSOCIATE JUSTICE LEONEN:
So, last year when they were considering the budget, they already knew. Congress already knew that there was a possibility. In fact they gave you the capability to actually conduct the elections on December 5, 2022. Is that not correct?

CHAIRPERSON GARCIA:
That is correct, your Honor, by giving us the money, your Honor.

SENIOR ASSOCIATE JUSTICE LEONEN:
Yes, and before you entered COMELEC as Chair, the COMELEC already knew, at least with the Acting Chair, I think it was Acting Chair Inting. They already knew that they were going to conduct after the National Elections, the Barangay and the Sangguniang Kabataan Elections, is that not correct?

CHAIRPERSON GARCIA:
That is correct, your Honor. We're already preparing by that time, your Honor.

SENIOR ASSOCIATE JUSTICE LEONEN:
So, by the time that you were conducting the National Elections, COMELEC was also looking forward because I know all of you to be very good managers and administrators. You were already looking forward preparing yourselves and your staff to conduct the Barangay Elections on December 5, is that right?

CHAIRPERSON GARCIA:
Yes, your Honor, because we need several months to prepare for the Barangay and SK Elections.

SENIOR ASSOCIATE JUSTICE LEONEN:
So, you had the will, you had the capability, you had the experience, you had the funds to actually do it by, let us say, June of this year, correct?

CHAIRPERSON GARCIA:
That is correct, your Honor.

SENIOR ASSOCIATE JUSTICE LEONEN:
By September of this year, you were also prepared to actually conduct it, correct?

CHAIRPERSON GARCIA:
That is right, your Honor.

SENIOR ASSOCIATE JUSTICE LEONEN:
And, the only thing that blocked you was not anything, was not your incapability, not your lack of management skill. Not your lack of experience, not the lack of budget but this law. Is that correct?

CHAIRPERSON GARCIA:
That is correct, your Honor.

SENIOR ASSOCIATE JUSTICE LEONEN:
In other words, the only thing that made it impossible for you to conduct the elections is this law that postponed it?

CHAIRPERSON GARCIA:
Yes, your Honor[.][3]

Commission on Elections Chairperson George Erwin Garcia (Garcia) narrated the activities done by the Commission upon signing of the assailed law and the logistical implications of postponing the elections:

Upon the signing by the President on October 10, 2022 of the [l]aw, we suspended the printing of the ballots simply because the ballot does not reflect the date that the election will be continued which will be on October 31 of next year, 2023. And if we are to count the number of ballots that have not been printed during this period, from October 10 to the present then if we are supposed to print 3 million ballots per day, twelve days then that will be about 36 million ballots, Your Honor. And from now to the conduct of election on December 5 almost at least 44 days. Definitely, Your Honor, we would not be able to finish printing the ballots. Now, as regards the other election paraphernalia such as for example indelible ink. We have been preparing for the procurement of indelible ink. But, however, indelible ink will be expiring by one year. And so if we'll proceed with the procurement of indelible ink even after the signing by the President on October 10 then there is already a law which said that the election is postponed then definitely by next year, all of these indelible ink will dry up. So, surely, we will not proceed with the procurement of the indelible ink. Such other election paraphernalia,

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[3] TSN, COMELEC Chairperson George Erwin Garcia, October 21, 2022, pp. 113–115.

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Your Honor, we have a legal issue and the legal issue is whether we can legally proceed with the procurement despite the postponement of the election. And so we instructed our Law Department, to inquire and to make a recommendation to the COMELEC *En Banc* what the COMELEC *En Banc* will be doing as regards the pending award of contracts, the pending notice to proceed. Because we do not want to violate any auditing rules, and we do not want that [the Commission on Audit] will be giving notices to the Commission as far as this award is concerned. So, we are in a dire predicament, Your Honors[.][4]

Notably, this was not the first time that the barangay elections have been postponed:

CHIEF JUSTICE GESMUNDO:

Okay. Thank you. May I ask one question or two questions with the petitioner?

How many times has Congress postponed Barangay elections?

ATTY. MACALINTAL:

Excuse me, Your Honor, I just look into my records, Your Honor.

Congress postponed barangay elections on the following years: No. 1, May 9, 1988. It was postponed to November 1988. The November 14, 1988 was postponed to 1989. The October 31, 2005 was postponed to 2007. The October 30, 2019 was postponed to 2017 (sic; should be October 31, 2016 was postponed to 2017 per Republic Act No. 10923). The October 29, 2017 was postponed to 2018. The May 12, 2020 was postponed to December 2022. In other words, 1, 2, 3, 4, 5, 6. Six already and if this Honorable Court will sustain Republic Act 11935, then it would be the seventh [7th] time.[5]

The postponement of elections also triggers the application of the holdover doctrine. While the term of incumbent public officers is not extended, their tenure, that is, the actual holding of public office, is effectively extended.

The *ponencia* explained that this Court frowns upon any interpretation of a law that "would have the effect of hindering,

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[4] TSN, COMELEC Chairperson George Erwin Garcia, October 21, 2022, pp. 44–45.

[5] TSN, Atty. Romulo B. Macalintal, October 21, 2022, p. 138.

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in any way, . . . the free and intelligent casting of votes in an election."[6] This being the case, quoting *Reynolds v. Sims*,[7] the *ponencia* stated that "any alleged infringement on the right of citizens to vote must be carefully and meticulously scrutinized."[8]

The *ponencia*, instead of applying the strict scrutiny test, utilized the two-prong requirements under the substantive due process clause, that is, the existence of a lawful subject and the employment of reasonable means.[9] Contrary to the position adopted by the majority, I submit that any legislative act that tends to impede, however lightly, the actual exercise of the right of suffrage and the State's concomitant obligation and duty to hold elections at regular intervals, must pass the strict scrutiny test, especially, when it is alleged to be unjustified and unconstitutional under the circumstances.

In *Samahan ng mga Progresibong Kabataan v. Quezon City*,[10] this Court established the three tests of judicial scrutiny used in reviewing statutes allegedly violative of fundamental rights and basic liberties. It enumerated:

> Philippine jurisprudence has developed three (3) tests of judicial scrutiny to determine the reasonableness of classifications. The strict scrutiny test applies when a classification either (i) interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or (ii) burdens suspect classes. The intermediate scrutiny test applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy. Lastly, the rational basis test applies to all other subjects not covered by the first two tests.[11] (Citations omitted)

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[6] *Ponencia,* p. 34.

[7] 377 U.S. 533 (1964).

[8] *Ponencia*, p. 34.

[9] *Id*.

[10] 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, *En Banc*].

[11] *Id*. at 1113-1114.

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In *Zafe III v. People,*[12] this Court discussed the application of the strict scrutiny test:

> Strict scrutiny applies when what is at stake are fundamental freedoms or what is involved are suspect classifications. It requires that there [b]e a compelling state interest and that the means employed to effect it are narrowly-tailored, actually-not only conceptually-being the least restrictive means for effecting the invoked interest. Here, it does not suffice that the government contemplated on the means available to it. Rather, it must show an active effort at demonstrating the inefficacy of all possible alternatives. Here, it is required to not only explore all possible avenues but to even debunk the viability of alternatives so as to ensure that its chosen course of action is the sole effective means. To the extent practicable, this must be supported by sound data gathering mechanisms.[13] (Citation omitted)

The danger of the propositions adopted by the *ponencia* is that it does not seem to acknowledge the importance of the right of suffrage in a democratic and republican society, as well as international covenants that require the Philippines to safeguard the right to cast a vote for a chosen elective local official at an expected time.

The right of suffrage is a basic fundamental, primordial, and constitutional right. It involves the right to vote, the right to choose government leaders, and registered voters should be able to exercise such right at certain intervals. Its importance was further discussed in *Pabillo v. Commission on Elections*:[14]

> On election day, the country's registered voters will come out to exercise the sacred right of suffrage. Not only is it an exercise that ensures the preservation of our democracy, the coming elections also embodies our people's last ounce of hope for a better future. It is the final opportunity, patiently awaited by our people, for the peaceful transition of power to the next chosen leaders of our country. If there is anything capable of directly affecting the lives of ordinary Filipinos so as to come within the ambit of a public concern, it is the coming elections[.][15] (Citation omitted)

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[12] G.R. No. 226993, May 3, 2021 [Per J. Leonen, Third Division].

[13] *Id*.

[14] 758 Phil. 806 (2015) [Per J. Perlas Bernabe, *En Banc*].

[15] *Id*. at 838.

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International covenants and agreements also emphasize the right of suffrage. The Universal Declaration of Human Rights states:

> Article 21
> 1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
> 2. Everyone has the right of equal access to public service in his country.
> 3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Meanwhile, Article 25 of the International Covenant on Civil and Political Rights provides:

> Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:
>
> (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
> (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
> (c) To have access, on general terms of equality, to public service in his country.

During the oral arguments, Justice Ramon Paul Hernando (Justice Hernando) highlighted the right of suffrage as embodied in these international instruments:

> ASSOCIATE JUSTICE HERNANDO:
> And, then we ratified it in 1986, and it's a convention that has been passed by the United Nations consistent with the universal declaration of human rights, and this involves the right to vote. The convention recognizes that every citizen has a right to take part in public affairs and the embodiment of the taking part is through the exercise of the will of the people through voting. And, the convention says that the right to vote includes: the right to vote, and to be elected a "*genuine periodic elections*."
>
> ATTY. MACALINTAL:
> Yes.

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ASSOCIATE JUSTICE HERNANDO:

"Genuine periodic elections." Well, it's a convention that's new to you but having heard that, how would you interpret that, petitioner Macalintal? "Genuine periodic elections"?

ATTY. MACALINTAL:

Well, I agree, Your Honor. "Genuine periodic election" which means that (*interrupted*)

ASSOCIATE JUSTICE HERNANDO:

This act of postponing does not or is transgressive of genuine periodic elections?...

ATTY. MACALINTAL:

I would say yes, Your Honor...

ASSOCIATE JUSTICE HERNANDO:

... to which the Philippines has acceded as a State party to the convention?

ATTY. MACALINTAL:

Yes, Your Honor, postponing and extending the term of office, Your Honor, is a violation of this principle of having a genuine periodic election. Precisely, all these laws on barangay elections, they contain specific term of office for the barangay officials to be elected but what has happened in the past and up to the present, they kept on changing and amending this period of elections and at the same time (*interrupted*)

ASSOCIATE JUSTICE HERNANDO:

Well, I guess, what you're trying to say to us is, '*yung* right to vote ng *isang tao* '*pag binoto ka, sabi ng tao sa iyo*, "*Eto hanggang* three years *ka lang*."

ATTY. MACALINTAL:

Yes, Your Honor, that is our contract.

ASSOCIATE JUSTICE HERNANDO:

... "*Kasi 'nung bumoto kami sa iyo, ito 'yung batas.*"

ATTY. MACALINTAL:

Yes, Your Honor. Precisely, I was saying that, "*Ito ang ating kontrata. When I wrote your name in the ballot, I know that I am only paying you for three years.*" The ballot does not say that you should be extended.

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Now, once the term is extended, that violates that contract between me and that particular candidate, Your Honor.[16] (Emphasis in the original)

Similar to the position adopted by Justice Hernando during the oral arguments, I submit that when registered voters do not know when they will be able to exercise their right to vote, it is almost the same as restricting the exercise of such a right:

CHAIRPERSON GARCIA:

Disenfranchisement would mean that voters will not be allowed to vote. When we reset the election, they would not be allowed to vote on the day of the election is supposed to be conducted. But, however, if there is a later date for the conduct of the election, then there is no disenfranchisement, Your Honor.

ASSOCIATE JUSTICE HERNANDO:

Based on the standards set out in the International Covenant on Civil and Political Rights, were there should be genuine periodic elections. Don't you think that that would constitute a form of disenfranchisement?

CHAIRPERSON GARCIA:

May I respectfully explain, Your Honor? Under the principle of transformation, definitely the International Covenant on Civil and Political Rights will form part of the law of the land. But, however, under the principle of, the Congress by itself will enact law, it would appear to be that international law on this case or this treaty will be subservient to what is provided for by the Constitution, and that is Article X, Section 8.

ASSOCIATE JUSTICE HERNANDO:

Of course, that is a given, domestic laws would always be given primacy over treaties and covenants that we are a state party to. But the thing is, that genuine periodic elections would go hand in hand with the right of suffrage of every individual. Kung *ipo-postpone mo yan*, very irregular, two years now, three years later, etcetera. *I think the effect on the stabilization that will have on electoral process is really very frightening. Instead of stabilizing, it destabilizes the process*. That's what we're just saying. (Emphasis supplied)[17]

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[16] TSN, Atty. Romulo B. Macalintal, October 21, 2022, pp. 93–95.

[17] TSN, COMELEC Chairperson George Erwin Garcia, October 21, 2022, pp. 151–152.

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It bears noting that the exercise of the right of suffrage is related to the freedom of expression. As stated in the *ponencia*, the right to participate in electoral processes is "one of the most consequential expressive acts in a person's life, when a voice becomes an action[.]"[18]

Seeing as what is at stake in the case at hand is the freedom of expression, a fundamental right guaranteed by no less than our Constitution,[19] I submit that the applicable test to determine the constitutionality of the assailed law is the strict scrutiny test.

Registered voters should have a reasonable expectation of when they would be able to exercise the right to vote. Thus, I disagree with Solicitor General Menardo Gueverra's submission that "the matter of postponing any election does not really have any effect on the right of suffrage"[20] and that "it's just that the timing of the exercise of that right is the one affected."[21] On the contrary, the regulation of the means, manner, date, and time of elections directly affects the constitutional right to suffrage.

**II**

Another reason why the questioned law should be declared unconstitutional is that it tramples upon the independence of the Commission on Elections as a constitutional commission.[22]

In *Macalintal v. Commission on Elections*,[23] this Court explained that the scope of legislative power is circumscribed by constitutional provisions such as Article IX-A, Section 1, which

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[18] *Ponencia*, p. 18. (Citation omitted)

[19] *White Light Corporation v. City of Manila*, 596 Phil. 444, 463 (2009) [Per J. Tinga, *En Banc*].

[20] TSN, Solicitor General Menardo Gueverra, October 21, 2022, p. 88.

[21] *Id*.

[22] Article IX-A (Common Provisions) of the Constitution states:

Section 1. The Constitutional Commissions, which shall be *independent*, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit. (Emphasis supplied)

[23] 453 Phil. 586 (2003) [Per J. Austria-Martinez, *En Banc*].

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mandates the independence of constitutional commissions like the Commission on Elections.

In *Araullo v. Aquino*,[24] this Court explained that the president is generally accorded flexibility in the execution of the General Appropriations Act, except for funds allocated to agencies with fiscal autonomy. Justice Alfredo Benjamin Caguioa pointed this out during the oral arguments:

ASSOCIATE JUSTICE CAGUIOA:
Now, can I call back, Mr. Chairman. Chairman I have a basic conundrum here. Article 9, Section 5 of the Constitution, speaking of Constitutional Commissions, says, "The Commission, and this includes the Commission on Elections shall enjoy fiscal autonomy, their approved annual appropriations shall be automatically and regularly released." Correct?

CHAIRPERSON GARCIA:
That is correct, your Honor.

ASSOCIATE JUSTICE CAGUIOA:
In common parlance, "Isang bagsakan lang ito, di ba?"

CHAIRPERSON GARCIA:
Tama po, your Honor.

ASSOCIATE JUSTICE CAGUIOA:
Kailan ito binagsak?

CHAIRPERSON GARCIA:
It was given to us, for this year, your Honor?

ASSOCIATE JUSTICE CAGUIOA:
Yes.

CHAIRPERSON GARCIA:
₱8.441 billion.

ASSOCIATE JUSTICE CAGUIOA:
When was it given?

CHAIRPERSON GARCIA:
It was given sometime, March of this year.

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[24] 737 Phil. 457 (2014) [Per J. Bersamin, *En Banc*].

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ASSOCIATE JUSTICE CAGUIOA:
March of this year?

CHAIRPERSON GARCIA:
Yes, your Honor.

ASSOCIATE JUSTICE CAGUIOA:
Therefore, the money is no longer with the Philippine Treasury, it is with you, correct?

CHAIRPERSON GARCIA:
That is correct, your Honor.

ASSOCIATE JUSTICE CAGUIOA:
And since you are a CFAG or a Constitutional Fiscal Autonomy Group, the alignment of these funds to fund social civic project or other public projects is not by legislature, correct?

CHAIRPERSON GARCIA:
That is not by Legislature.

ASSOCIATE JUSTICE CAGUIOA:
It's by you?

CHAIRPERSON GARCIA:
Yes, your Honor.

ASSOCIATE JUSTICE CAGUIOA:
Therefore, when they say that the money for this can be used for other projects, what are they talking about?

CHAIRPERSON GARCIA:
With all due respect, your Honor, I really do not know because as far as the law is concerned, it says, that the fund is subject to a continuing appropriation by the Commission on Elections.

ASSOCIATE JUSTICE CAGUIOA:
Exactly, and that fund is earmarked, correct?

CHAIRPERSON GARCIA:
Correct, your Honor.

ASSOCIATE JUSTICE CAGUIOA:
It's earmarked for elections?

CHAIRPERSON GARCIA:
That is right.

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ASSOCIATE JUSTICE CAGUIOA:
It cannot be used for any purpose other than election?

CHAIRPERSON GARCIA:
You are correct, your Honor.

ASSOCIATE JUSTICE CAGUIOA:
It cannot be realigned by the President, by the Supreme Court Chief Justice, by the Senate President. It cannot be realigned because they are not COMELEC?

CHAIRPERSON GARCIA:
Only by the COMELEC, your Honor.

ASSOCIATE JUSTICE CAGUIOA:
Only by you?

CHAIRPERSON GARCIA:
Yes, your Honor.

ASSOCIATE JUSTICE CAGUIOA:
Therefore, when you give as a reason for this law that, I, government, can use that 8.8 billion to fight the pandemic, that is not the correct reason, do you agree?

CHAIRPERSON GARCIA:
I would like to agree, your Honor.

ASSOCIATE JUSTICE CAGUIOA:
And, therefore, we are now faced with the situation with the law that says, it doesn't say what its reason is but the proposed reason coming from the proposals do not appear to be correct? Correct?

CHAIRPERSON GARCIA:
That may be the conclusion that will be derived from the series of questions.

ASSOCIATE JUSTICE CAGUIOA:
That is right. And, therefore, the Supreme Court can in fact look into this law, bakit nga ba? and say . . .

CHAIRPERSON GARCIA:
No doubt on the power of the Supreme Court to inquire into the validity and constitutionality of this law.

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ASSOCIATE JUSTICE CAGUIOA:
Okay. That is all. Thank you.[25]

This Court has had the opportunity to explain the meaning of the phrase "automatically and regularly released" in relation to fiscal autonomy granted by the Constitution to constitutional commissions:

> Webster's Third New International Dictionary defines "automatic" as "involuntary either wholly or to a major extent so that any activity of the will is largely negligible; of a reflex nature; without volition; mechanical; like or suggestive of an automaton." Further, the word "automatically" is defined as "in an automatic manner: without thought or conscious intention." Being "automatic," thus, connotes something mechanical, spontaneous and perfunctory. As such the [Constitutional Commissions] are not required to perform any act to receive the "just share" accruing to them from the national coffers[.]"[26]

*Bengzon v. Drilon*[27] defined the scope and extent of fiscal autonomy:

> As envisioned in the Constitution, the fiscal autonomy enjoyed by the Judiciary, the Civil Service Commission, the Commission on Audit, the Commission on Elections, and the Office of the Ombudsman contemplates a guarantee of full flexibility to allocate and utilize their resources with the wisdom and dispatch that their needs require. It recognizes the power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans of the government and allocate and disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions.
>
> Fiscal autonomy means freedom from outside control. If the Supreme Court says it needs 100 typewriters but DBM rules we need only 10 typewriters and sends its recommendations to Congress without even

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[25] TSN, COMELEC Chairperson George Erwin Garcia, October 21, 2022, pp. 108–111.

[26] *Civil Service Commission v. Department of Budget and Management*, 502 Phil. 372, 385 (2005) [Per J. Carpio Morales, *En Banc*].

[27] 284 Phil. 245 (1992) [Per J. Gutierrez, Jr., *En Banc*].

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informing us, the autonomy given by the Constitution becomes an empty and illusory platitude.

The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based. In the interest of comity and cooperation, the Supreme Court, Constitutional Commissions, and the Ombudsman have so far limited their objections to constant reminders. We now agree with the petitioners that this grant of autonomy should cease to be a meaningless provision.[28]

This was also discussed in a separate opinion in *Belgica v. Executive Secretary*:[29]

Fiscal autonomy means, among others, that the budget of the Judiciary must be released "automatically" after the General Appropriations Act becomes law. The President cannot reduce, withhold, delay, or in any manner tinker with, in the guise of budget execution, the appropriations for the Judiciary and the Constitutional Commissions. The President cannot amend, change, supplant, deduct, diminish or add to the budget of the Judiciary and Constitutional Commissions, as approved in the General Appropriations Act. The President cannot decide, as part of "budget execution," what purposes to fund, and by how much, after the General Appropriations Act becomes a law. To rule otherwise will compel the Chief Justice to lobby with the President to allocate specific amounts for specific purposes—the very evil that the fiscal autonomy provisions of the Judiciary, and of the Constitutional Commissions, were designed to prevent to preserve the very independence of the Judiciary and of the Constitutional Commissions.[30]

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[28] *Id*. at 268–269.

[29] 864 Phil. 461 (2019) [*Per Curiam*, *En Banc*].

[30] J. Carpio, Separate Opinion in *Belgica v. Executive Secretary*, 864 Phil. 461, 533–534 (2019) [*Per Curiam*, *En Banc*].

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By vesting itself with the powers to realign the appropriations for the elections towards other objectives, the Congress went beyond its constitutional authority and trampled upon the independence of the Commission on Elections. Under such a situation, this Court is left with no option but to withdraw from its usual reticence in declaring a provision of law unconstitutional.

**ACCORDINGLY**, I vote to **GRANT** the consolidated Petitions and to declare Republic Act No. 11935 **UNCONSTITUTIONAL**.

## SEPARATE OPINION

**CAGUIOA, *J.*:**

I concur that Republic Act (RA) No. 11935[1] (assailed law), which postpones the conduct of the 2022 Barangay and Sangguniang Kabataan Elections (BSKE) from December 5, 2022 to a later date, *i.e.*, the last Monday of October 2023, is unconstitutional. A law which has an invalid reason for its enactment is unreasonable and thus violates substantive due process. Moreover, laws which make classifications based only on present conditions, but not future ones, are unconstitutional for violating the equal protection clause.

***The reason for the enactment of the assailed law, as uncovered during the oral arguments, is unconstitutional which thereby renders the assailed law invalid.***

When the constitutionality of a law is assailed, an inquiry into the reasons behind its enactment may be inevitable. Indeed, courts have the power, if not the duty, to ascertain the legislative intent in the course of performing their constitutional duty to apply and interpret the law. To be sure, the reasonableness of the law goes

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[1] AN ACT POSTPONING THE DECEMBER 2022 BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9164, AS AMENDED, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES, October 10, 2022.

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into the very heart of whether such law complies with substantive due process.

In this case, the real reason for the law was brought to the fore during the oral arguments in this case—a reason that cannot be described as anything but unconstitutional. When the head of respondent Commission on Elections (COMELEC) Chairperson George Erwin M. Garcia (Chairperson Garcia) was confronted with the Explanatory Note provided by Senator Francis Escudero in Senate Bill (SB) No. 288, which states: ". . . the bill enables the government **to realign a portion of the ₱8.44 billion appropriations for the barangay and SK elections towards interventions aimed at sustaining the current momentum in addressing the coronavirus pandemic and achieving our collective socioeconomic objectives,**"[2] Chairperson Garcia admitted and confirmed that this was the very same reasoning advanced by Congress in the congressional hearings before the House of Representatives—that the funds earmarked for the BSKE were going to be realigned towards funding other projects, programs, or activities to address socioeconomic concerns brought about by the COVID-19 pandemic.[3] Thus:

**ASSOCIATE JUSTICE CAGUIOA:**

And I noticed that the reason that they give is economic. The reason is, that, in the word of Senator Escudero, finally, and I quote it "[F]inally the bill enables the Government to realign a portion of the 8.44 billion appropriations for the Barangay and SK elections towards interventions aimed at sustaining the current momentum in addressing the Corona Virus pandemic and achieving our collective socio-economic objectives." Do you confirm that is the reason?

. . . .

These are all downloaded from the website of the Senate. So, in the explanatory note for the proposal of Senator Estrada, he says, in paragraph 2, "Furthermore, our country is still in the midst of a pandemic brought about by Covid-19. Our country has not yet fully recovered from

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[2] Explanatory Note, Senate Bill No. 288, 19th Congress of the Philippines. Emphasis supplied.

[3] TSN, October 21, 2022, pp. 108–111.

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the havoc brought about by the pandemic. The budget in the amount of 8 billion for the conduct of the said election can be used to fund economic programs and health services to ease the effect of the pandemic to all Filipinos particularly to those who are greatly affected." Again, do we have any question that these are the reasons given for the passage of this bill

. . . .

**CHAIRPERSON GARCIA:**

When we appeared before the House of Representatives, as it would appear to be the reason given by the Members of the House, but when we appeared before the Senate, we were not given that particular reason, but since, your Honor, you have mentioned that, then it would appear to be the same reason given to us by the House of the Representatives.[4]

This rationale was also cited in SB No. 453, introduced by Senator Jinggoy Ejercito Estrada, as well as in SB No. 684, introduced by Senator Sherwin Gatchalian. These explanatory notes accompanying the original bills which were introduced by the bills' proponents are part of the public records, which the Court is mandated to take judicial notice of.[5] These explanatory notes and the admissions of Chairperson Garcia relate to the real reasons advanced by the legislators when the original bills were introduced in the houses of Congress and during their deliberations, and up to the passage of what is now the assailed law.

While the Office of the Solicitor General argues, in its Memorandum submitted after the Oral Arguments, that the reason for postponing the BSKE was to allow Congress to study, and perhaps enact, electoral reforms, given the numerous complaints

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[4] *Id*. at 105–106.

[5] Section 1, Rule 129 of the Rules of Court provides:

> SECTION 1. Judicial Notice, When Mandatory. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, **official acts of the legislative, executive and judicial departments of the National Government of the Philippines,** the laws of nature, the measure of time, and the geographical divisions. (Emphasis and underscoring supplied)

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which arose during the 2022 National and Local Elections,[6] and to "allow the [COMELEC] and local government units to better prepare for [the BSKE] and for the Government to apply corrective adjustments to the honoraria of poll workers"[7]—these are clear afterthoughts conjured after the bills were introduced and the law was already passed by Congress. These belatedly proffered reasons do not detract from the primary motive that impelled Congress to pass the legislation.

Thus, the *ponencia*'s declaration that the assailed law is unconstitutional for not being supported by a legitimate government interest or objective is accurate.[8]

Notably, this declaration of unconstitutionality of the assailed law rests upon the finding that the law fails to meet the two requisites of substantive due process:[9] the concurrence of a lawful subject[10] and a lawful method.[11] However, while the *ponencia* mentions the three levels of scrutiny at which the Court reviews the constitutionality of a law,[12] it is silent as to the appropriate level of scrutiny applicable in the present case. As I will discuss further below, it is imperative that the Court precisely determine the lens through which to examine the constitutionality of the assailed law.

Statutes which impose restrictions on the regular and periodic exercise of the constitutional right of suffrage must pass the test of **strict scrutiny**.[13] As such, the burden rests upon the State to prove that the restriction satisfies the following requisites:[14] (a) the presence of a **compelling** governmental interest; and (b) that

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6 *Rollo* (G.R. No. 263673), p. 194.

7 *Id*. at 194–195. Emphasis omitted.

8 *See ponencia,* pp. 54–64.

9 *Id*. at 35 and 54.

10 *Id*. at 54–63.

11 *Id*. at 63–64.

12 *Id*. at 35.

13 *See Kabataan Party List v. COMELEC*, 775 Phil. 523, 552 (2015) and *GMA Network, Inc. v. COMELEC*, 742 Phil. 174 (2014).

14 *See Kabataan Party List v. COMELEC*, id. at 552; *GMA Network, Inc. v. COMELEC*, id.

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the means employed are the **least restrictive** for achieving that interest.[15]

With respect to the first requisite, the *ponencia* aptly recognizes[16] what the interpellations during the Oral Arguments uncovered: that the real reason behind the passage of the law is to enable the government to realign a portion of the ₱8.44 billion appropriations for the BSKE towards governmental efforts to address the coronavirus pandemic and other socioeconomic objectives.[17] However, this reason—the realignment of the budget for the BSKE towards other objectives—simply cannot be considered as a valid reason to support the assailed law because it is illegal. Revealingly, Chairperson Garcia himself, during the Oral Arguments, candidly admitted to being confused by this claimed objective of Congress as he himself knew that the funds allocated for the BSKE were earmarked only for that purpose, and cannot legally be realigned by Congress.

As a matter of law, it is only the COMELEC that can realign the funds that have been allocated to it. This is a point of law that was brought to light during the Oral Arguments, thus:

**ASSOCIATE JUSTICE CAGUIOA:**
Now, can I call back, Mr. Chairman. Chairman I have a basic conundrum here. Article 9, Section 5 of the Constitution, speaking of Constitutional Commissions, says, "The Commission, and this includes the Commission on Elections[,] shall enjoy fiscal autonomy, their approved annual appropriations shall be automatically and regularly released." Correct?

**CHAIRPERSON GARCIA:**
That is correct, your Honor.

**ASSOCIATE JUSTICE CAGUIOA:**
In common parlance, "Isang bagsakan lang ito, di ba?"

**CHAIRPERSON GARCIA:**
Tama po, your Honor.

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[15] *Kabataan Party List v. COMELEC*, id.

[16] *See ponencia*, pp. 60–61.

[17] *See* Explanatory Note, Senate Bill No. 288, 19th Congress of the Philippines.

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**ASSOCIATE JUSTICE CAGUIOA:**
Kailan ito binagsak?

**CHAIRPERSON GARCIA:**
It was given to us, for this year, your Honor?

**ASSOCIATE JUSTICE CAGUIOA:**
Yes.

**CHAIRPERSON GARCIA:**
[₱]8.441 billion.

**ASSOCIATE JUSTICE CAGUIOA:**
When was it given?

**CHAIRPERSON GARCIA:**
It was given sometime, March of this year.

**ASSOCIATE JUSTICE CAGUIOA:**
March of this year?

**CHAIRPERSON GARCIA:**
Yes, your Honor.

**ASSOCIATE JUSTICE CAGUIOA:**
Therefore, the money is no longer with the Philippine Treasury, it is with you, correct?

**CHAIRPERSON GARCIA:**
That is correct, your Honor.

**ASSOCIATE JUSTICE CAGUIOA:**
And since you are a CFAG or a Constitutional Fiscal Autonom[ous] Group, the alignment of these funds to fund social civic project[s] or other public projects is not by legislature, correct?

**CHAIRPERSON GARCIA:**
That is not by Legislature.

**ASSOCIATE JUSTICE CAGUIOA:**
It's by you?

**CHAIRPERSON GARCIA:**
Yes, your Honor.

**ASSOCIATE JUSTICE CAGUIOA:**
Therefore, when they say that the money for this can be used for other projects, what are they talking about?

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**CHAIRPERSON GARCIA:**
With all due respect, your Honor, I really do not know because as far as the law is concerned, it says, that the fund is subject to a continuing appropriation by the Commission on Elections.

**ASSOCIATE JUSTICE CAGUIOA:**
Exactly, and that fund is earmarked, correct?

**CHAIRPERSON GARCIA:**
Correct, your Honor.

**ASSOCIATE JUSTICE CAGUIOA:**
It's earmarked for elections?

**CHAIRPERSON GARCIA:**
That is right.

**ASSOCIATE JUSTICE CAGUIOA:**
It cannot be used for any purpose other than election?

**CHAIRPERSON GARCIA:**
You are correct, your Honor.

**ASSOCIATE JUSTICE CAGUIOA:**
It cannot be realigned by the President, by the Supreme Court Chief Justice, by the Senate President. It cannot be realigned because they are not COMELEC?

**CHAIRPERSON GARCIA:**
Only by the COMELEC, your Honor.

**ASSOCIATE JUSTICE CAGUIOA:**
Only by you?

**CHAIRPERSON GARCIA:**
Yes, your Honor.

**ASSOCIATE JUSTICE CAGUIOA:**
Therefore, when you give as a reason for this law that, I, government, can use that [8.4] billion to fight the pandemic, that is not the correct reason, do you agree?

**CHAIRPERSON GARCIA:**
I would like to agree, your Honor.

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**ASSOCIATE JUSTICE CAGUIOA:**
And, therefore, we are now faced with the situation with the law that says, it doesn't say what [its] reason is but the proposed reason coming from the proposals do not appear to be correct? Correct?

**CHAIRPERSON GARCIA:**
That may be the conclusion that will be derived from the series of questions.

**ASSOCIATE JUSTICE CAGUIOA:**
That is right. And, therefore, the Supreme Court can in fact look into this law, bakit nga ba? [A]nd say. . .

**CHAIRPERSON GARCIA**
No doubt on the power of the Supreme Court to inquire into the validity and constitutionality of this law.[18]

These admissions of the head of respondent COMELEC completely align, and are, in fact, based on solid constitutional and statutory grounds. Section 25(5),[19] Article VI of the Constitution prohibits the intended postponement of the BSKE by Congress in order to realign the COMELEC's budget allocation to the Executive's COVID-19 and economic recovery programs as this constitutes an **impermissible cross-border transfer of appropriations**.[20]

What is more, a review of the nature of the COMELEC as an independent constitutional body, and the General Appropriations Act for the Fiscal Year 2022 (2022 GAA) itself, reveals how the underlying intentions behind the assailed law gravely offend the Constitution, and thus, can, on no account, or because of this, satisfy the requirement of a compelling state interest.

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[18] TSN, October 21, 2022, pp. 108–111.

[19] (5) No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and **the heads of Constitutional Commissions** may, by law, be authorized to **augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.** (Emphasis and underscoring supplied)

[20] *See Araullo v. Aquino III*, 737 Phil. 457 (2014).

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Under the 2022 GAA, the COMELEC was given a total budget of ₱8,441,280,000.00 for the BSKE, which were originally scheduled on December 5, 2022.

The COMELEC, endowed by the Constitution with fiscal autonomy, enjoys unbridled freedom from outside control and limitations, other than those provided by law. Indeed, this freedom to allocate and utilize funds granted by law carries with it the bounden duty to use it only in accordance with law.[21]

In line with the COMELEC's fiscal autonomy, no less than the Constitution, in Section 5, Article IX(A), mandates the automatic and regular release of the COMELEC's approved annual appropriations. Section 11, Article IX(C) reiterates this and provides that funds certified by the COMELEC as necessary to defray the expenses for holding regular and special elections, plebiscites, initiatives, referenda, and recalls, shall be provided in the regular or special appropriations and, once approved, shall be released automatically upon certification by the Chairperson of the COMELEC.

Indeed, the budget for the BSKE was released to the COMELEC, per the admission of Chairperson Garcia, as early as March of 2022.[22]

The unexpended funds appropriated and earmarked for the BSKE under the 2022 GAA were valid and available for obligation for conducting the BSKE until December 31, 2022, pursuant to Section 68[23] of the same law. Section 68 likewise

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[21] *See Commission on Human Rights Employees' Association v. CHR*, 486 Phil. 509, 531 (2004).

[22] TSN, October 21, 2022, pp. 108–109.

[23] **Sec. 68. Cash Budgeting System.** Appropriations authorized in this Act, including budgetary support to GOCCs, and financial assistance to LGUs, shall be available for release and obligation for the purpose specified, and under the same general and special provisions applicable thereto, until December 31, 2023. . . . .

Departments, bureaus, and offices of the National Government, including Constitutional Offices enjoying fiscal autonomy . . . shall strictly observe the validity of appropriations[.]

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enjoins the COMELEC to strictly observe the validity of this appropriation. **Thus, when the assailed law was passed, it was legally impossible to realign the said funds towards purposes other than the conduct of the BSKE.**

Parenthetically, it cannot also be pretended that the unexpended funds can be considered as savings under Section 75(a)[24] of the 2022 GAA because the BSKE was neither completed, finally discontinued, nor abandoned. It was simply postponed by the assailed law. In plain language, the BSKE funds cannot be realigned.

And even if, for the sake of argument, the funds can be considered as savings within the purview of Section 75 of the 2022 GAA, only the Chairperson of the COMELEC—to the exclusion of everyone else including Congress—is authorized to realign such savings of the COMELEC. And any such realignment must be for the purpose solely of augmenting actual deficiencies incurred for the same year in another item in the appropriations for the COMELEC, thus:

**Sec. 74. Authority to Use Savings.** The President of the Philippines, the President of the Senate of the Philippines, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, **the Heads of** the Civil Service Commission, the **Commission on Elections**, and the COA **are hereby authorized to declare and use savings in their respective appropriations to augment actual deficiencies incurred**

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[24] **Sec. 75. Meaning of Savings. Savings refer to portions or balances of any released appropriations in this Act which have not been obligated as a result of** any of the following:

(a) **completion, final discontinuance, or abandonment of a program, activity or project for which the appropriation is authorized; or**
(b) implementation of measures resulting in improved systems and efficiencies and thus enabled an agency to meet and deliver the required or planned targets, programs and services approved in this Act at a lesser cost.

In case final discontinuance or abandonment is used as basis in the declaration of savings, such discontinued or abandoned program, activity or project shall no longer be proposed for funding in the next two (2) fiscal years.

Allotments that were not obligated due to the fault of the agency concerned shall not be considered savings. (Emphasis supplied)

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**for the current year in any item of their respective appropriations**. (Emphasis supplied)

This authority is reiterated in paragraph 2 of the Special Provisions of the Appropriations for COMELEC in the 2022 GAA, thus:

2. **Use of Savings. The Chairperson of COMELEC is authorized to use savings** to augment actual deficiencies in accordance with Section 25(5), Article VI of the Constitution and the General Provisions of this Act. (Emphasis supplied)

In short, the funds allocated for the BSKE under the 2022 GAA cannot be legally realigned towards other purposes when the assailed law was passed, as the funds were then still valid and must be obligated solely in accordance with the purpose under the 2022 GAA. Even assuming that the same may be realigned as they already constitute savings, only the COMELEC Chairperson can undertake such realignment to augment the other items in the COMELEC's appropriations.

Again, the only conclusion that can be drawn is that the reason of Congress in passing the assailed law postponing the BSKE, *i.e.*, realigning the funds appropriated therefor under the 2022 GAA towards other purposes, is completely and totally flawed. It is a legal impossibility. It cannot thus, by any stretch, be taken as a compelling state interest to satisfy the strict scrutiny test.

And even if it were assumed further that the assailed law passes the requisite of having a compelling state interest, and that the unexpended funds of the COMELEC generated by the postponement of the BSKE can be redirected towards the purposes intended by Congress, such means of attaining this interest cannot still be said to be the least restrictive. As I extensively discussed during the deliberations of this case, the right of suffrage is the foundation of our republican democracy and is zealously protected by the Constitution. It is the exercise of this right that Congress delays and, to a great and grave extent, impairs, when it enacts a law that postpones the BSKE in order to supposedly fund other State activities. With due respect to the co-equal branches of this Court, there are other sources of funding available to the State,

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which it can legitimately and legally tap for this purpose—sources which do not bear on the constitutional powers of the COMELEC, and the correlative constitutional right of the people to choose their leaders during the BSKE.

***Contrary to the ponencia's findings, the assailed law extends the terms of offices of the incumbent barangay officials. Thus, the cases on the hold-over doctrine cited in the ponencia cannot apply.***

A review of the barangay elections conducted through the years, including the various laws that governed them, reveals that there have actually been only five sets of barangay officials that have been elected for the last two decades, or since 2002, which sets of officials had different terms and tenures through the years.

The first law enacted specifically to institutionalize a synchronized BSKE was RA No. 9164,[25] which set them on July 15, 2002, with succeeding elections set on the last Monday of October and every three years thereafter. Subsequent laws enacted after RA No. 9164, however, have postponed the elections and, in doing so, effectively amended the individual terms of some barangay and Sangguniang Kabataan (SK) officials by providing for a different commencement date of such term than when it would have commenced under the preceding laws, as follows:

| Set of barangay and SK officials | Original Term (according to the law in effect at the time of elections) | Actual Term | Date of Elections Postponed by: |
|---|---|---|---|

[25] AN ACT PROVIDING FOR SYNCHRONIZED BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, AMENDING REPUBLIC ACT NO. 7160, AS AMENDED, OTHERWISE KNOWN AS THE "LOCAL GOVERNMENT CODE OF 1991," AND FOR OTHER PURPOSES, March 19, 2002.

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| | | | |
|---|---|---|---|
| First | August 15, 2002 to October 2005 | August 15, 2002 to November 30, 2007 (total of 5 years) | RA No. 9340[26] (enacted in 2005) |
| Second | November 2007 to October 2010 | November 2007 to November 30, 2010 | None |
| Third | November 2010 to October 2013 | November 2010 to November 30, 2013 | None |
| Fourth | November 2013 to October 2016 | November 2013 to June 30, 2018 (total of 4.5 years) | RA No. 10923[27] (postponed to October 2017); RA No. 10952[28] (further postponed to May 2018) |
| Fifth | June 2018 to May 2020 | June 2018 to November 30, 2023 (total of 5.5 years) | RA No. 11462[29] (postponed to December 5, 2022); RA No. 11935 (further postponed to October 2023 |

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[26] AN ACT AMENDING REPUBLIC ACT NO. 9164, RESETTING THE BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, AND FOR OTHER PURPOSES, September 22, 2005.

[27] AN ACT POSTPONING THE OCTOBER 2016 BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9164, AS AMENDED BY REPUBLIC ACT NO. 9340 AND REPUBLIC ACT NO. 10656, PRESCRIBING ADDITIONAL RULES GOVERNING THE CONDUCT OF BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS AND FOR OTHER PURPOSES, October 15, 2016.

[28] AN ACT POSTPONING THE OCTOBER 2017 BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9164, AS AMENDED BY REPUBLIC ACT NO. 9340, REPUBLIC ACT NO. 10632, REPUBLIC ACT NO. 10656, AND REPUBLIC ACT NO. 10925, AND FOR OTHER PURPOSES, October 2, 2017.

[29] AN ACT POSTPONING THE MAY 2020 BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9164, AS AMENDED BY REPUBLIC ACT NO. 9340, REPUBLIC ACT NO. 10632, REPUBLIC ACT NO. 10656, REPUBLIC ACT NO. 10923 AND REPUBLIC ACT NO. 10952, AND FOR OTHER PURPOSES, December 3, 2019.

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The terms of barangay and SK officials through the years have thus fluctuated from three to five years. The above laws have adjusted the terms—*not just the tenure*—of incumbent barangay and SK officials because the laws affected even the commencement of the term of the subsequent officials. RA No. 9340, for instance, set the date of the elections (originally scheduled on October 2005 under RA No. 9164) to "October 2007 and every three (3) years thereafter."[30] Instead, however, of keeping the original term of the incumbents, the law adjusted the same by providing that "[t]he term of office of the barangay and [SK] officials elected in the October 2007 election and subsequent elections shall commence at noon of November 30 next following their election."[31] To address the gap created by the postponement of the elections, the laws, such as RA No. 9340, have a "hold-over" provision which provides that "[a]ll incumbent barangay and all [SK] officials shall remain in office unless sooner removed or suspended for cause until their successors shall have been elected and qualified."[32]

That said, I disagree with the *ponencia* that the terms of offices of the incumbent barangay officials are unaffected by the assailed law because only their tenures are extended, referring to the "hold-over" provision in the law and to various decisions of the Court upholding the validity of hold-overs.[33] This stance disregards Section 2 of the assailed law which plainly and unequivocally states that the ***terms*** of those to be elected thereunder "shall commence at noon of November 30 next following their election."

To treat the terms of the incumbents as unmoved by the assailed law would lead to the absurdity that from noon of January 1, 2023 (the date of the expiration of their terms under the previous law, RA 11462) to November 30, 2023 (the start of the terms of those to be elected in the October 2023 elections under the assailed law), there were no existing barangay officials. During this gap in the terms, it is absurd to speak of tenures or hold-overs, which,

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[30] RA No. 9340, Section 1.

[31] RA No. 9340, Section 2.

[32] *See* RA No. 9340, Section 3.

[33] *Ponencia*, pp. 73–77.

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as defined by the *ponencia* itself and the several Court decisions it cites, means that the tenure extends beyond the official's term and thereby necessarily use up the successor's term. Under the assailed law, if one is to assume that the terms of the incumbents ended last January 1, 2023, and their successors' terms are to start on November 30, 2023, whose terms are the incumbents presently occupying?

Indeed, the only logical way to interpret Section 2 of the assailed law is to deem the terms of the incumbents as having been extended beyond their expiration last January 1, 2023. Thus, while I agree that the Court had settled the validity of hold-overs, by the very definition of the word—the extension of the tenure beyond the term, with the latter remaining fixed—the assailed law and, as mentioned above, its predecessor statutes, did not occasion holdovers. Despite the explicit language of the assailed law, its legal effect is not the hold-over that the Court, including the *ponencia*, had in mind. The jurisprudence cited therefore by the *ponencia* cannot apply in the present case.

***The assailed law, insofar as it extends the terms of the incumbent barangay officials, is likewise unconstitutional for violating the equal protection clause.***

To my mind, this practice of postponing scheduled elections and extending the terms of incumbent officials is unconstitutional.

It is true that providing for the possibility of hold-over—for positions in the government whose terms are not provided for in the Constitution—are not necessarily unconstitutional. This is not to say, however, that the legislature has unbridled discretion to provide for hold-over. Like all other matters that Congress legislates on, the power to provide for hold-overs must not contravene the Constitution. A review of the laws through the years, however, has revealed that Congress' exercise of its powers has gone outside constitutional bounds. In particular, the laws, including the presently assailed law, are unconstitutional because (1) they constitute legislative appointments, and (2) they violate the equal protection clause.

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*First*, as correctly pointed out by petitioner Atty. Romulo Macalintal, the laws were effectively legislative appointments which are constitutionally impermissible. While these laws, at first glance, appear to be regular exercises of legislative power, a closer look would clearly show how they have transgressed the Constitution. Take the case of RA No. 9164 and RA No. 9340. At the time the BSKE was held on July 15, 2002, under the regime of RA No. 9164, all voters were of the impression that they were electing officials for a three-year term.

In other words, the mandate of the electorate at the time that they cast their votes was for their elected officials to serve them only for three years. Sometime midway, however, Congress enacted RA No. 9340 which reset the scheduled BSKE in 2005 to 2007 and provided that the subsequent elected officials shall start their terms only on November 30 next following their election, thereby effectively extending the term of the incumbent officials by two years. This additional two years of both term and tenure source their validity not from the mandate of the electorate—which, to recall, was only for three years—but from the legislative enactment extending their term. The extension was not a permissible hold-over because it affected not just the tenure, but the very term itself of the incumbents. As early as in 1946, in the cases of *Guekeko v. Santos*[34] and *Topacio Nueno v. Angeles*,[35] the Court had already made it clear that:

> [T]he term of an office must be distinguished from the tenure of the incumbent. The term means the time during which the officer may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another. The tenure represents the term during which the incumbent actually holds the office. **The term of office is not affected by the hold over.**[36] (Emphasis and underscoring supplied)

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[34] 76 Phil. 237 (1946).

[35] 76 Phil. 12 (1946).

[36] *Guekeko v. Santos*, *supra* note 34, at 240, citing *Topacio Nueno v. Angeles*, *id*. at 21–22.

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The purpose of a constitutionally permissible hold-over is merely to "[preserve] continuity in the transaction of official business and [prevent] a hiatus in government pending the assumption of a successor into office."[37] It is not meant to meddle with the term of incumbent officials.

Simply put, while Congress can provide for hold-over, it cannot enact laws that *extend* the **term** of *incumbent* barangay and SK officials, for they are unconstitutional for violating both (1) the democratic underpinnings of our governmental system, wherein elective officials serve by virtue of winning an election, and (2) the separation of powers because "the power to appoint is essentially executive in nature."[38]

*Second*, the extension of terms of incumbent barangay officials violates the equal protection clause. To be clear, "the equal protection clause applies only to persons or things identically situated and does not bar a reasonable classification of the subject of legislation."[39] However, the classification, to be valid, must conform to the following requirements: "(1) it is based on substantial distinctions which make real differences; (2) [the classification is] germane to the purpose of the law; **(3) the classification applies not only to present conditions but also to future conditions which are substantially identical to those of the present**; [and] (4) the classification applies only to those who belong to the same class."[40]

The pattern of legislation relating to barangay and SK officials—including the assailed law—violates the third requirement above. In particular, the extensions of terms made through RA Nos. 9340, 10923, 10952, 11462, and the subject of this case, RA No. 11935, make classifications applicable only to the present conditions but not to future ones of a similar character. To illustrate the

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[37] *Sambarani v. Commission on Elections*, 481 Phil. 661, 675 (2004).

[38] *Kida v. Senate of the Philippines*, 675 Phil. 316, 374 (2011).

[39] *Ormoc Sugar Co., Inc. v. The Treasurer of Ormoc City*, 130 Phil. 595, 598 (1968).

[40] *Id*. at 598–599. Emphasis supplied.

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application of this requirement of the equal protection clause, it is well to revisit the case of *Ormoc Sugar Co., Inc. v. The Treasurer of Ormoc City*[41] (*Ormoc Sugar*).

In *Ormoc Sugar*, what was assailed was a tax measure levied "on any and all productions of centrifugal sugar milled at the Ormoc Sugar Company Incorporated, in Ormoc City."[42] While the Court upheld the power of the local government to impose the tax measure, it nevertheless struck down the ordinance as unconstitutional for violating the equal protection clause. The Court held:

> A perusal of the requisites instantly shows that the questioned ordinance does not meet them, for it taxes only centrifugal sugar produced and exported by the Ormoc Sugar Company, Inc. and none other. At the time of the taxing ordinance's enactment, Ormoc Sugar Company, Inc., it is true, was the only sugar central in the city of Ormoc. **Still, the classification, to be reasonable, should be in terms applicable to future conditions as well. The taxing ordinance should not be singular and exclusive as to exclude any** subsequently established sugar central, **of the same class** as plaintiff, from the coverage of the tax. As it is now, even if later a similar company is set up, it cannot be subject to the tax because the ordinance expressly points only to Ormoc Sugar Company, Inc. as the entity to be levied upon.[43] (Emphasis and underscoring supplied)

Applying the foregoing to the present case, the extensions of terms of barangay officials from time to time is thus unconstitutional. These extensions of terms handed out by RA Nos. 9340, 10923, 10952, 11462, and 11935 applied only to the incumbent officials at the time of the enactment of the statutes providing for them. Each of these laws thus created separate classes of barangay officials that served for four years to 5.5 years **without any reasonable distinction between them and the other sets of barangay officials**. It must be noted that each of these laws maintained that the term of barangay officials is only

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41 *Supra* note 39.

42 *Id*. at 597.

43 *Id*. at 599.

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three years, but all of them effectively made exceptions for the incumbent officials at the time of their enactment, who, in turn, effectively had longer terms.

It is patently clear, therefore, that these laws only legislated for present conditions and are not applicable for future ones. For this additional reason, the laws extending the terms of barangay officials, including the assailed law herein, are thus unconstitutional.

At this juncture, it is well to acknowledge that the Constitution, indeed, grants the legislature the power to fix the term of barangay officials.[44] It must be clarified, however, that this only gives the legislature the discretion to set the length of time for which these officials shall serve. Like all other exercises of discretion, it must be exercised within constitutional bounds. It cannot be exercised in violation of the separation of powers or the equal protection clause. Surely, like all laws, the legislature can repeal its previous enactments and change its mind on the term of barangay officials. For this not to offend the separation of powers or the equal protection clause, however, laws changing the term of barangay officials must be applied ***prospectively***—that is, to subsequent barangay officials who are to be elected under the new law. This way, voters are also well aware—***when they cast their votes on election day***—of the term of the officials they are voting into office.

***The guidelines in determining the validity of statutes postponing the exercise of the right to vote must be crafted through the lens of the strict scrutiny test.***

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[44] Section 8, Article X of the 1987 Constitution provides:

> SECTION 8. The **term of office of** elective local officials, except **barangay officials, which shall be determined by law**, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected. (Emphasis and underscoring supplied)

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Regrettably, the *ponencia* left undetermined the appropriate level of scrutiny to be applied in the present case.[45] In *City of Manila v. Laguio, Jr.*,[46] the Court recognized that the determination of whether the right to substantive due process is violated significantly depends on the level of scrutiny used:

> Substantive due process, as that phrase connotes, asks whether the government has an adequate reason for taking away a person's life, liberty, or property. In other words, **substantive due process looks to whether there is a sufficient justification for the government's action**. Case law in the United States (U.S.) tells us that **whether there is such a justification depends very much on the level of scrutiny used**.[47] (Emphasis supplied; citations omitted)

Indeed, a critical analytical tool in reviewing the constitutionality of a disputed law is the level of scrutiny that the Court shall apply in considering the case.[48] Thus, to my mind, it is imperative to establish a definitive ruling on the appropriate level of scrutiny to be used in cases involving the right to suffrage. Here, being that the assailed law interferes with the exercise of the people's constitutional right of suffrage which must be regular and periodic,[49] the same must be met with **strict scrutiny**.[50]

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[45] *See ponencia*, p. 35.

[46] 495 Phil. 289 (2005).

[47] *Id*. at 311.

[48] *C.J.* Gesmundo, Concurring and Dissenting Opinion in *Calleja v. Executive Secretary,* G.R. Nos. 252578, 252579 *et al.*, December 7, 2021.

[49] *See* Article 25 of the International Covenant on Civil and Political Rights, the pertinent portion of which reads:

> Article 25
>
> Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:
>
> . . . .
>
> (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors[.]

*See* Article 21 of the Universal Declaration of Human Rights, which reads:

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Any law which postpones the elections must pass the test of strict scrutiny—even if, as argued during the case deliberations, the same merely regulates the *time* of the elections—because suffrage is a primordial right that is required to be exercised in a manner that is regular, genuine, and periodic.[51] Thus, any infringement, **even if temporary**, on the sovereign people's constitutional right of suffrage demands that the Court review the legislation with strict scrutiny.

Accordingly, the guidelines in the *ponencia* should have adopted the framework of the strict scrutiny test, thus:

> 1. . . .
>
> 2. The postponement of the election must serve a **compelling state interest.**
>
> . . . .
>
> 3. . . .
>
> 4. The postponement of an election is **the least restrictive means for achieving the compelling state interest.**
>
> . . . .
>
> c. The postponement is narrowly-tailored, **being the least restrictive means and only** to the extent necessary to advance the **compelling state interest.**

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**Article 21**

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in **periodic and genuine elections** which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

[50] *See* Article 25 of the International Covenant on Civil and Political Rights and Article 21 of the Universal Declaration of Human Rights and *White Light Corp. v. City of Manila*, 596 Phil. 444, 463 (2009).

[51] *See id*.

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On this score, I believe that the Court should not shirk from ruling on the appropriate level of scrutiny to be used in assessing a challenged statute—more so when the assailed law allegedly infringes upon or denies a primordial constitutional right such as the right of suffrage.

Failing to definitively settle the issue on the test to be employed in this case, the guidelines in the *ponencia* confusingly appear to be the new applicable tool in determining the validity of any future laws or rules postponing elections. This, to my mind, negates, rather than supplements, the long line of jurisprudence establishing the three levels of judicial scrutiny under our jurisdiction.[52]

Still and all, and based on the premises discussed in this Opinion, I vote to **GRANT** the petitions and declare the assailed law unconstitutional for violating the due process and equal protection clauses of the Constitution.

## CONCURRENCE

**LAZARO-JAVIER, *J.*:**

The consolidated Petitions assail the constitutionality of Republic Act No. 11935[1] which essentially postpones the Barangay and Sangguniang Kabataan Elections (BSKE) scheduled on December 5, 2022 to a later date, i.e., the last Monday of October 2023; and grants the authority to incumbent barangay and Sangguniang Kabataan officials to remain in office until their successors have been duly elected and qualified, unless sooner removed or suspended for cause.[2] The core issue thus involves

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[52] *See Social Justice Society (SJS) Officers v. Lim*, 748 Phil. 25 (2014); *Serrano v. Gallant Maritime Services, Inc.*, 601 Phil. 245 (2009); *White Light Corp. v. City of Manila*, *supra* note 50; *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531 (2004).

[1] "An Act Postponing the December 2022 Barangay and Sangguniang Kabataan Elections, Amending for the Purpose Republic Act No. 9164, as amended, Appropriating Funds therefor, and for Other Purposes."

[2] *Ponencia*, p. 3.

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an *apparent clash* between the right of suffrage and the Congress' exercise of its plenary legislative power, which includes the power to regulate elections.[3]

In the main, the *ponencia* grants the Petitions declaring Republic Act No. 11935 unconstitutional and ordains, among others:

***First*,** the case has not been rendered moot to preclude the Court's exercise of its judicial review power despite the lapse of the original date of the BSKE on December 5, 2022;

***Second*,** while Republic Act No. 11935 does not encroach on the Commission on Election's (COMELEC) power to administer elections, it is unconstitutional because: (i) it fails to satisfy the substantive due process requisites for validity of laws, thereby encroaching on the right of suffrage; and (ii) the enactment thereof was attended with patent grave abuse of discretion amounting to lack or excess of jurisdiction;

***Third*,** the effects and consequences of Republic Act No. 11935, prior to the Court's declaration of its unconstitutionality, are considered operative facts and cannot be ignored and reversed as a matter of equity and practicality; and

***Finally*,** the continuation in the office of the current barangay and Sangguniang Kabataan officers in a hold-over capacity does not amount to a legislative appointment.

I humbly and respectfully express my concurrence.

Foremost, I agree with the *ponencia* inasmuch as it rules that the case has ***not*** become *moot and academic* despite the lapse of the scheduled date of the Barangay and BSKE, i.e., December 5, 2022. The good *Ponente* has expertly discussed the legal concept of mootness vis-à-vis the Court's fastidious power and responsibility to address the present and pressing issue—and I agree with every point in this regard.

Indeed, the determination of the constitutionality of Republic Act No. 11935 is *exigent* and *compelling* in view of the reality

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[3] *Id*. at 9.

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that postponements of the BSKE has become an *alarming trend* as pointed out by the good *Senior Associate Justice Marvic M.V.F. Leonen* during the oral arguments. Verily, to stay mum on the issue is *to renege* on the Court's *constitutional duty* to curtail any *grave abuse of discretion* on the part of *any* branch, department, or instrumentality of the government. This We cannot do.

As a general rule, the Court refrains from ruling upon the validity of the official acts of its co-equal branches, since the same, falling within their constitutionally-allocated sphere, must be accorded great respect. When, however, these acts are patently arbitrary, capricious, and without basis, the Court will not shy from striking down the same as unconstitutional, *as here.*

Notably, the issue at hand may also be viewed as one involving a balancing of interest between the plenary power of the Congress to legislate on one hand and the right of the people of suffrage on the other. On this score, may I raise the following points for consideration:

In determining the reasonableness or validity of any government regulation, the Court has utilized three tests of judicial scrutiny. These tests were adopted from guiding legal principles, both foreign and local, which the Court has developed further in deciding landmark issues.[4] The most restrictive of all, the **strict scrutiny test**, applies when the classification interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution or burdens suspect classes. The **intermediate scrutiny test**, on the other hand, applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as for classifications based on gender and legitimacy.[5] And finally, the **rational basis test** applies to all other subjects *not covered* by the first two tests.[6]

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[4] See *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1113 (2017) [Per *J.* Perlas- Bernabe, *En Banc*].

[5] *Id*. at 1113-1114.

[6] *Id*.

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Indeed, the issue posed before the Court requires a study of the levels of judicial scrutiny and a determination of which among these tests is applicable—and consequently, if the questioned legislation passes the appropriate test.

Upon deeper study of each of the varied erudite opinions of the learned Members of the Court, I got inspired to evaluate my personal take on the issue and respectfully join the esteemed Chief Justice Alexander Gesmundo in suggesting that the applicable test here, as a *general rule*, ought to be the **rational basis test** subject only to the existence of specific circumstances which require the application of a more stringent level of scrutiny.

I elucidate.

Whether the restraint is content-neutral or content-based is *relevant only* with respect to the umbrella of related rights under *freedom of expression*, i.e., of speech, of the press, to peaceably assemble, and to freedom of religion. It *does not extend* to cases where what is at stake is the *exercise of the right to vote,* ***except*** where only the right to engage in *partisan political activities,* e.g., campaigning, is affected. For such exercise falls under the protected category of *political speech*.

Thus, in *The Diocese of Bacolod v. COMELEC,*[7] the Court determined whether the COMELEC's size regulations, which ordered the removal of petitioner's tarpaulin containing the names of their chosen candidates to the elections, is content-based or content-neutral. In *Nicolas-Lewis v. COMELEC*,[8] the Court declared Republic Act No. 9189 as an impermissible *content-neutral* regulation for violating the free speech clause as it prohibited any person from engaging in partisan political activities abroad during the 30-day overseas voting period.

The right to cast votes, though intrinsically linked to the right to freedom of expression, being an assertion of one's political preference is itself a *separate, distinct,* and *cardinal* right. The

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[7] 789 Phil. 197 (2016) [Per *J.* Leonen, *En Banc*].

[8] 859 Phil. 560, 597 (2019) [Per *J.* Reyes, Jr., *En Banc*].

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will of the sovereign people expressed through suffrage, is a human right not only guaranteed by the Constitution, but also by the International Covenant on Civil and Political Rights to which the Philippines is a party.[9]

This *special variance* of the preferred right to free speech is exalted from the latter as the cornerstone of a republican state. Perceptibly, the very structure of the Constitution itself recognizes that *they are two* ***different*** *rights:* the freedom of expression is enshrined under Article III, while the right of suffrage is the entirety of Article V. Verily, whether the regulation is content-neutral, i.e., affecting only the time, place, and manner of exercising the right, is *irrelevant* when we speak of the very act of casting votes in the ballot.

I remain firm in my humble view, which I expressed before, that the act of casting a vote is *not separable* from the time, place, and manner of doing so. An individual simply cannot exercise his or her right to vote without any election. I, however, must reconsider that postponement of elections does not necessarily render the right to vote ineffective precisely because the people are *not completely* deprived of their opportunity to elect their representatives. As borne by history itself, elections were subsequently conducted as scheduled for every postponement legislated by Congress.

As it stands, therefore, the postponement of elections does not *directly* restrict the people's sacred right of suffrage but merely *shifts* the original date of such exercise to a much later date to exercise the essentially same acts, nay rights, that they would have at the earlier date. Otherwise stated, the people would still cast their votes and exercise their right but at a slightly later time. I thus concede that the strict scrutiny test, which I previously endorsed, may not be the proper applicable test in this case.

The strict scrutiny test and the intermediate test being inapplicable, jurisprudence ordains that We apply the rational basis test. I elaborate.

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[9] *Agcaoili v. Felipe*, 233 Phil. 348 (1987) [Per. *J.* Cortes, *En Banc*].

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The *ponencia* itself already acknowledged the Congress' inherent, broad, and general power to postpone elections on grounds apart from those expressly delegated to the COMELEC under Section 5 of the Omnibus Election Code.

Relevantly, the primordial doctrine of separation of powers dictates that each of the three great branches of the government has exclusive cognizance of and is supreme in matters falling within its own constitutionally-allocated sphere.[10] Thus, in enacting a law, it is the sole prerogative of Congress—not the Judiciary—to determine what subjects or activities it intends to govern limited only by the provisions set forth in the Constitution.

As the *ponencia* itself explained, it is thus outside the constitutional purview of this Court to encroach on the wisdom of Our co-equal branch in the government whenever it deems prudent and within the best interests of the honest, peaceful, and orderly conduct of elections to postpone the same sans any showing that it did so with grave abuse of discretion.[11]

Verily, the act of postponing elections *per se,* is an act that falls within the constitutionally-granted powers of Congress. It therefore enjoys a strong presumption of constitutionality. Aptly, the test to be applied in light of this strong presumption should therefore be the *most deferential standard*: the rational basis test.[12] As phrased by the former Chief Justice Artemio V. Panganiban in his dissenting opinion in *Central Bank Employees' Association, Inc. v. Bangko Sentral ng Pilipinas,*[13] regulations scrutinized under the rational basis test enjoy a strong presumption of constitutionality and, not being clearly arbitrary, could not therefore be invalidated.

So must it be.

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[10] See *Defensor-Santiago v. Guingona*, 359 Phil. 276 (1998) [Per *J.* Panganiban, *En Banc*].

[11] *Ponencia*, p. 80.

[12] See *White Light Corporation v. City of Manila*, 596 Phil. 444 (2009) [Per *J.* Tinga, *En Banc*].

[13] 487 Phil. 531 (2004) [Per *J.* Puno, *En Banc*].

## SEPARATE CONCURRING OPINION

**ZALAMEDA, *J.*:**

*"Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."*

-Justice Thurgood Marshall in *McCulloch v. Maryland*[1]

In a democratic republic country like ours, the Judiciary is assigned as the protector of individual liberties to balance the exercise of overwhelming powers by the Executive and the Legislative. In discharging this task, courts are guided by the Constitution, even though its words do not always expressly provide specific and detailed solutions to the myriad problems that arise from governance. This Court has applied different tests, in recognition of the varying weights and relevance of competing state and individual interests, to examine the validity of government acts against settled constitutional principles. I write this opinion to expound on and highlight the propriety of adopting an intermediate scrutiny analysis for controversies that do not involve outright transgressions of deeply rooted constitutional principles and freedoms.

### *1. Tests to determine the validity of laws originated from the Supreme Court of the United States*

The use of tests to determine validity of laws originates from decisions of the Supreme Court of the United States (SCOTUS).

In his majority opinion for the SCOTUS in the 1938 case of *United States v. Carolene Products (Carolene Products)*,[2] Justice Harlan F. Stone applied the "rational basis test" to economic legislation. The rational basis test presumes

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1 17 U.S. 316 (1819).

2 Id.

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the constitutionality of the challenged law, and tasks the party questioning it to definitively show its unconstitutionality. The assailed government act in *Carolene Products* involved a federal law that restricted shipments of milk. The SCOTUS held that the law was "presumptively constitutional" and within the legislature's discretion to enact. It was supported by public health evidence and was neither arbitrary nor irrational.

Footnote Four of the majority opinion in *Carolene Products*, however, introduced the idea that certain legislative acts should be subjected to a higher standard of review than that of the rational basis test. It read:

> There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten Amendments, which are deemed equally specific when held to be embraced within the Fourteenth. See *Stromberg v. California*, 283 U.S. 359, 369, 370, 51 S.Ct. 532, 535, 536, 75 L.Ed. 1117, 73 A.L.R. 1484; *Lovell v. Griffin*, 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949, decided March 28, 1938.
>
> It is unnecessary to consider now whether legislation that restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation. On restrictions upon the right to vote, see *Nixon v. Herndon*, 273 U.S. 536, 47 S.Ct. 446, 71 L.Ed. 759; *Nixon v. Condon*, 286 U.S. 73, 52 S.Ct. 484, 76 L.Ed. 984, 88 A.L.R. 458; on restraints upon the dissemination of information, see *Near v. Minnesota*, 283 U.S. 697, 713—714, 718—720, 722, 51 S.Ct. 625, 630, 632, 633, 75 L.Ed. 1357; *Grosjean v. American Press Co.*, 297 U.S. 233, 56 S.Ct. 444, 80 L.Ed. 660; *Lovell v. Griffin*, supra; on interferences with political organizations, see *Stromberg v. California*, supra, 283 U.S. 359, 369, 51 S.Ct. 532, 535, 75 L.Ed. 1117, 73 A.L.R. 1484; *Fiske v. Kansas*, 274 U.S. 380, 47 S.Ct. 655, 71 L.Ed. 1108; *Whitney v. California*, 274 U.S. 357, 373—378, 47 S.Ct. 641, 647, 649, 71 L.Ed. 1095; *Herndon v. Lowry*, 301 U.S. 242, 57 S.Ct. 732, 81 L.Ed. 1066; and see Holmes, J., in *Gitlow v. New York*, 268 U.S. 652, 673, 45 S.Ct. 625, 69 L.Ed. 1138; as to prohibition of peaceable assembly, see *De Jonge v. Oregon*, 299 U.S. 353, 365, 57 S.Ct. 255, 260, 81 L.Ed. 278.

Nor need we enquire whether similar considerations enter into the review of statutes directed at particular religious, *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070, 39 A.L.R. 468, or national, *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042, 29 A.L.R. 1446; *Bartels v. Iowa,* 262 U.S. 404, 43 S.Ct. 628, 67 L.Ed. 1047; *Farrington v. Tokushige*, 273 U.S. 284, 47 S.Ct. 406, 71 L.Ed. 646, or racial minorities. *Nixon v. Herndon*, supra; *Nixon v. Condon,* supra; whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry. Compare *McCulloch v. Maryland*, 4 Wheat. 316, 428, 4 L.Ed. 579; *South Carolina State Highway Department v. Barnwell Bros.,* 303 U.S. 177, 58 S.Ct. 510, 82 L.Ed. 734, decided February 14, 1938, note 2, and cases cited.

Clearly, Footnote Four described certain laws that should be subjected to a higher level of scrutiny: (1) appears on its face to violate a provision of the United States Constitution, such as the Bill of Rights; (2) restricts the political process that could repeal an undesirable law (such as restrictions on the right to vote, restraints upon the dissemination of information, interferences with political organizations, and prohibition on peaceable assembly); or (3) is directed at religious, national, or racial minorities, especially when prejudice against discrete and insular minorities curtails their ability to seek redress through political processes.

Apart from this, it is significant that Footnote Four signaled the end of the *Lochner*[3] era, during which the SCOTUS struck down various economic regulations on account of substantive due process. With the advent of Footnote Four, the SCOTUS exercised restraint, generally deferred to the Legislature, and employed specific tests to examine the validity of laws that regulate various freedoms. Footnote Four thus established two standards of judicial review: strict scrutiny for laws dealing with freedom of the mind

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[3] The Lochner era was coined from the case *Lochner v. New York,* 198 U.S. 45 (1905), where the SCOTUS struck down a New York law that prohibited bakers to work more than 60 hours a week or ten hours a day.

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or restricting the political process, and rational basis for economic legislation.[4]

The intermediate scrutiny test, on the other hand, was introduced in the 1976 case of *Craig v. Boren* (*Craig*).[5] The SCOTUS was asked to determine whether an Oklahoma statute that prohibited the sale of 3.2% beer to males under the age of 21 but allowed sale of the same to females over the age of 18 violated the Equal Protection Clause. In invalidating the law, the SCOTUS subjected it to a heightened level of scrutiny and held that a gender-based classification must serve and be substantially related to an important government objective.

The emergence of a mid-level test was both logical and inevitable. The SCOTUS acknowledged the necessity of having a middle ground test due to the implications of using either the strict or the rational basis test. The rational basis test weighs in favor of the government as it implements the presumption of constitutionality, and thus places on the objector the burden to show that the law is not imbued with a legitimate interest and/or that there is no rational connection between the law and the means employed to achieve the State's objectives.[6] The opposite is true when the court applies strict scrutiny, oftentimes described as "strict in theory, fatal in fact,"[7] wherein the presumption is reversed, and the government is burdened to establish a compelling governmental interest and that the means chosen to accomplish that interest are narrowly tailored. Some scholars believed that intermediate scrutiny, particularly as it is used in gender and affirmative action, was an inevitable progression from the two-tier

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4 *White Light Corp. v. City of Manila*, 596 Phil. 444 (2009).

5 429 U.S. 190 (1976).

6 *Plyler v. Moore*, 100 F.3d 365 (4th Cir. 1996); *Cornerstone Christian Schools v. University Interscholastic League*, 563 F.3d 127, 243 Ed. Law Rep. 609 (5th Cir. 2009); *Independent Charities of America, Inc. v. State of Minn.*, 82 F.3d 791 (8th Cir. 1996); *Bah v. City of Atlanta*, 103 F.3d 964 (11th Cir. 1997).

7 See Gerald Gunther, *The Supreme Court, 1971 Term - Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 Harvard Law Review, 1, 8 (1972)

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scrutiny tests, developed as a response to an "analogical crisis," or a time when there were cases which the SCOTUS cannot pigeonhole into either the strict scrutiny or rational basis track. Verily, gender discrimination and affirmative action cases resemble those involving race discrimination, but also have characteristics that distinguish them from each other.[8]

Before the formal inception of the intermediate scrutiny test in *Craig*, however, the SCOTUS has applied in various strands of free speech cases a middle-tier test or analysis, where both the strict or rational basis test seemed inappropriate.[9]

One such group of cases involve laws that regulate free speech but do not involve prior restraint. For instance, in *Schneider v. State*,[10] the SCOTUS declared unconstitutional city ordinances prohibiting the distribution of handbills on city streets and sidewalks. The SCOTUS ratiocinated that the State's legitimate interest in preventing litter was not sufficient to justify prohibiting the defendants from handing out literature to willing recipients. Likewise, in *Saia v. New York*,[11] the SCOTUS struck down an ordinance forbidding the use of sound amplification devices in public places except with the permission of the Chief of Police. After noting that the ordinance did not provide standards for its application, the SCOTUS held that the right to be heard was placed in the uncontrolled discretion of the Chief of Police. It explained that, in passing on the constitutionality of local regulations, "courts must balance the various community interests, [but] in that process they should be mindful to keep the freedoms of the First Amendment in a preferred position."

It can be gleaned from these cases that the SCOTUS did not presume these local laws as suspect nor did it summarily defer to the legislative bodies' authority, but proceeded to weigh competing

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[8] See Jay D. Wexler, *Defending the Middle Way: Intermediate Scrutiny as Judicial Minimalism*, in 66 George Washington Law Review 319 (1998).

[9] See Ashutosh Bhagwat, *The Test That Ate Everything: Intermediate Scrutiny in First Amendment jurisprudence*, 2007 U. Ill. L. Rev. 783 (2007).

[10] 308 U.S. 147 (1939).

[11] 334 U.S. 558 (1948).

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social and individual interests and examined the justifiability of the means adopted by the government to achieve its supposed objectives.

Another strand of free speech cases which mirrors the intermediate scrutiny test prior to its formal adoption is cases on regulations of symbolic conduct. In *United States v. O'Brien (O'Brien*),[12] which upheld a federal law prohibiting the knowing mutilation of draft cards, the SCOTUS explained that:

> [W]e think it clear that a government regulation is sufficiently justified if it is within the constitutional power of the Government; **if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression, and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest**. (Emphasis supplied)

The same means-end analysis was also applied to examine laws regulating speech of government employees. In *Pickering v. Board of Education*,[13] a public school teacher was terminated from employment on account of a letter he wrote to the editor at the Lockport Herald criticizing the school's allocation of more funds to athletics than academics. Applying the balancing of interests approach, the SCOTUS stated that it is imperative that there be a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.

Even in recent controversies, the SCOTUS has employed intermediate scrutiny in deciding cases involving laws that impose burdens or restrictions on freedom of speech. In *Packingham v. North Carolina*,[14] for example, the SCOTUS invalidated a State law which made it a felony for a registered sex offender to gain access to a number of websites, including commonplace social media

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[12] 391 U.S. 367 (1968).

[13] 391 U.S. 563 (1968).

[14] 582 U.S. 98, 137 S. Ct. 1730 (2017).

websites like Facebook and Twitter (now, X). The Court weighed the State's interest in protecting children from sex predators with the latter's First Amendment right, and found that the law was not narrowly tailored to serve the aforesaid "significant government interest." The Court noted that social media sites are also used to access and discuss relevant information, find employment, and in "otherwise exploring the vast realms of human thought and knowledge." With the ban in place, users are also deprived of such legitimate uses and benefits of internet sites.

Likewise, in *City of Austin v. Reagan Nat'l Adver. of Austin, LLC*,[15] the SCOTUS held that a city regulation which prohibited the construction and alteration of off-premises signs[16] but not on-premises signs is a content-neutral regulation which is not subject to the strict, but intermediate scrutiny test. The Court found that the city's regulation did not single out any topic or subject matter for differential treatment.

Beyond free speech cases, the intermediate scrutiny test has likewise been used by the SCOTUS in equal protection cases assailing laws that discriminate against mental disabilities,[17] the illegitimate status of children,[18] and occasionally, against aliens.[19] One of its most notable uses, however, was in adjudicating cases involving state action that differentiates on the basis of sex.[20]

For instance, in determining whether the all-male admission policy of Virginia Military Institute (VMI) violated the equal protection clause, the SCOTUS, through Justice Ruth Bader Ginsburg's majority opinion in *United States v. Virginia*,[21] ruled

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[15] 142 S. Ct. 1464 (2022).

[16] Off-premises signs are signs that advertise things that are not located on the same premises as the sign, as well as signs that direct people to offsite locations. An example of an off-premise sign is a billboard.

[17] See *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985).

[18] See *Clark v. Jeter*, 486 U.S. 456, 461 (1988).

[19] See *Plyler v. Doe*, 457 U.S. 202 (1982).

[20] *United States v. Virginia*, 518 U.S. 515 (1996); *Sessions v. Morales-Santana*, 582 U.S. 47 (2017).

[21] 518 U.S. 515 (1996).

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that parties defending a challenged classification must establish that it serves important governmental objectives which are exceedingly persuasive, and that the discriminatory means employed are substantially related to the achievement of those objectives. VMI's proffered justifications were analyzed: *first,* that single gender education contributes to diversity in educational approaches, and *second,* that VMI's unique method of education would have to be modified if it were to admit females. The SCOTUS found that, based on VMI's history and mandate, there is no evidence showing that it was established to implement the state policy of diversity in education. The SCOTUS did not find meritorious VMI's argument that admitting females would be radical or drastic, as to transform or destroy its program. Rather, it noted that this argument was based on "fixed notions concerning the roles and abilities of males and females." Ultimately, the SCOTUS ruled that VMI's goal of producing citizen soldiers is not substantially advanced by excluding females from admission.

In voting rights cases, the SCOTUS has also employed this careful balancing approach to determine permissible state regulations.

In *Anderson v. Celebrezze*,[22] the SCOTUS declared unconstitutional a state law that imposed early filing requirements on an independent presidential candidate who wished to appear on the general election ballot. In finding that the early filing deadline placed an unconstitutional burden on the voting and associational rights of the candidates' supporters, the SCOTUS explained the importance of careful consideration of the vital interests of both the State and the citizens in the courts' adjudication of validity of voting regulations, *viz.*:

> As a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." [**1570] *Storer v. Brown,* 415 U.S. 724, 730 (1974). To achieve these necessary objectives, States have enacted comprehensive and sometimes complex election codes. **Each provision of these schemes, whether it governs the**

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[22] 460 U.S. 780 (1983).

**registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects—at least to some degree—the individual's right to vote and his right to associate with others for political ends. Nevertheless, the State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions.**

Constitutional [***558] challenges to specific provisions of a State's election laws therefore cannot be resolved by any "litmus paper test" that will separate valid from invalid restrictions. Storer, supra, at 730. Instead, **a court must resolve such a challenge by an analytical process that parallels its work in ordinary litigation. It must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule**. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiffs rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional. See Williams v. Rhodes, supra, at 30-31; Bullock v. Carter, 405 U.S., at 142-143; *American Party of Texas v. White*, 415 U.S. 767, 780-781 (1974); [****18] *Illinois Elections Bd. v. Socialist Workers Party*, 440 U.S. 173, 183 (1979). The results of this evaluation will not be automatic; as we have recognized, there is "no substitute [*790] for the hard judgments that must be made." *Storer v. Brown*, *supra*, at 730. (Emphasis supplied)

The SCOTUS similarly used this flexible mid-level approach in determining the constitutionality of a state law prohibiting write-in voting. In *Burdick v. Takushi*,[23] the Court cautioned against the application of strict scrutiny on all regulations that affect citizens' right to free speech, as this would effectively tie the hands of states seeking to assure that elections are conducted equitably and efficiently. Thus, the SCOTUS declared that if the states merely impose reasonable and politically neutral restrictions upon individuals' right of speech, then important state objectives are generally sufficient to sustain the validity of said restriction. In

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[23] 504 U.S. 428, 112 S. Ct. 2059 (1992).

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that case, it found the State's interest in avoiding possibility of factionalism and party raiding at the general election sufficient to justify the minor burden resulting from the voting ban.

This moderately deferential style of judicial review was also adopted in determining the validity of state law requiring: (1) in-person voters to present government-issued identification;[24] and (2) enrollment of legitimate voters in a political party in a previous general election.[25] In these cases, the Court noted that strict scrutiny is not applicable because the restrictions imposed by the State are justified by important objectives and were not invidious or arbitrary.

*2. The Philippine Judiciary also uses the three-tiered analysis to determine validity of laws*

While the Philippine Judiciary has similarly relied on the three-tiered analysis developed by the SCOTUS, it has, in certain instances, diverged on the manner of its application.

For example, this Court has utilized the strict scrutiny test to evaluate laws that classify on the basis of income. In *Central Bank (now Bangko Sentral ng Pilipinas) Employee Association, Inc. v. Bangko Sentral ng Pilipinas*,[26] We struck down the last proviso of Section 15(c), Article II of Republic Act No. (RA) 7653[27] which maintained the bank's rank-and-file employees under the Salary Standardization Law (SSL), even when the rank-and-file employees of other governmental financial institutions had been exempted from the SSL by their respective charters.

The Court also applied the strict scrutiny test on a law which created a classification on the basis of period of employment contract. In *Serrano v. Gallant*,[28] We declared unconstitutional the clause "or for three months for every year of the unexpired

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[24] *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 128 S. Ct. 1610 (2008).

[25] *Rosario v. Rockefeller*, 410 U.S. 752, 93 S. Ct. 1245 (1973).

[26] 487 Phil. 531 (2004).

[27] Entitled: "THE NEW CENTRAL BANK ACT." Approved: 14 June 1993.

[28] 601 Phil. 245 (2009).

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term, whichever is less" in the 5th paragraph of Section 10 of RA 8042[29] because of the failure of the State to show any definitive governmental purpose served by the law.

These Philippine cases deviate from the ruling in *San Antonio Independent School District v. Rodriguez*,[30] where the SCOTUS upheld a Texas public education financing system under the rational basis test scrutiny after finding that education is not a fundamental right and discrimination on the basis of wealth is insufficient to trigger strict scrutiny.

Meanwhile, there are a few cases which adopted the balancing of interests approach, or intermediate scrutiny, in determining the constitutionality of state actions.

As early as the 1970 case *In re: Kay Villegas Kami, Inc.*,[31] this Court has already acknowledged the State's interest in the electoral process and the necessity of balancing the same with asserted individual rights, *viz.*:

> The first three grounds were overruled by this Court when it held that the questioned provision is a valid limitation on the due process, freedom of expression, freedom of association, freedom of assembly and equal protection clauses; for the same is designed to prevent the clear and present danger of the twin substantive evils, namely, the prostitution of electoral process and denial of the equal protection of the laws. Moreover, under the balancing-of-interests test, **the cleansing of the electoral process, the guarantee of equal change for all candidates, and the independence of the delegates who must be "beholden to no one but to God, country and conscience," are interests that should be accorded primacy.**[32] (Emphasis supplied)

Citing the SCOTUS opinion in *O'Brien*, this Court, in *Adiong v. COMELEC*,[33] looked into the relative weights of the interests of the government and individuals with regard to the implementation

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[29] Entitled: Migrant Workers and Overseas Filipinos Act of 1995. Approved: 7 June 1995.

[30] 411 U.S. 1, 93 S. Ct. 1278 (1973).

[31] 146 Phil. 429 (1970).

[32] Id. at 431.

[33] 207 SCRA 712, 722 (1992).

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of the Commission on Elections (COMELEC)'s ban on the use of campaign decals and stickers except in the COMELEC common poster area or billboard, at the campaign headquarters of the candidate or their political party, or at their residence. We found that the ban restricted property rights of individuals and their right to express their political preferences without a showing of a state interest it intends to address. Further, We ruled that the regulation was not related and did not further the supposed state interest, *viz.*:

> The constitutional objective to give a rich candidate and a poor candidate equal opportunity to inform the electorate as regards their candidacies, mandated by Article II, Section 26 and Article XIII, section 1 in relation to Article IX (c) Section 4 of the Constitution, is not impaired by posting decals and stickers on cars and other private vehicles. Compared to the paramount interest of the State in guaranteeing freedom of expression, any financial considerations behind the regulation are of marginal significance.[34]

Similarly, in *Osmeña v. COMELEC*,[35] this Court also examined the specific freedoms and state interests invoked and affected by Sec. 11(b) of RA 6646,[36] which prohibited mass media from selling or giving free of charge print space or airtime for campaign or other political purposes, except to the COMELEC. After finding that the statute merely regulated the **time, place, and manner** of political speech, We proceeded to acknowledge the substantial governmental interest justifying the restriction, which is to implement political equality, and weighed it against the supposed objection that the law violates the people's freedom of expression. Ultimately, the Court found that any resulting restriction on freedom of expression is only incidental and no more than is necessary to achieve the purpose of promoting equality.

Meanwhile, in *ABS-CBN v. COMELEC*,[37] We effectively applied the intermediate scrutiny test by using the following

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[34] Id. at 722.

[35] 351 Phil. 692 (1998).

[36] Entitled: "The Electoral Reforms Law of 1987. Approved: 5 January 1998

[37] 380 Phil. 780 (2000) quoting *City Council v. Taxpayers for Vincent*, 466 U.S. 789, 805 (1984). See also *Adiong v. COMELEC*, supra.

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requirements: (1) [regulation must be] within the constitutional power of the government, if it furthers an important or substantial government interest; (2) if the governmental interest is unrelated to the suppression of free expression; and (3) if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest. In that case, the Court invalidated the COMELEC resolution which prohibited the conduct of exit polls as it unduly stifled the collection of exit poll data and their use for any purpose.

In the case of *Chavez v. Gonzales*,[38] this Court took the opportunity to expound on the rules governing restrictions to the right to free speech. We clarified that not all prior restraints on speech are anathema to the Constitution. Under the general umbrella of prior restraint on free speech, there is a sub-classification of state action, *viz*: content-based and content-neutral regulations. **Content-based restraint** or censorship is those regulations that are based on the subject-matter of the utterance or speech, while **Content-neutral regulations** are merely concerned with the incidents of the speech, or ones that merely control their time, place, or manner, and under well-defined standards. The categorization is material for purpose of determining the standards applicable to test the regulations' validity. Strict scrutiny is employed to test the validity of governmental action that restricts freedom of speech based on content, with the State bearing the burden to overcome the presumption of unconstitutionality. As for content-neutral regulations, intermediate scrutiny applies, which means that the Court will not merely rubber-stamp the validity of the law but will also inquire if the regulation is narrowly tailored to promote the important state interest that is unrelated to the suppression of speech.

The intermediate test was also employed, albeit with a different result, in *1-United Transport Koalisyon v. COMELEC (1-United)*.[39] The Court declared unconstitutional Section 7(g) items (5) and (6) of COMELEC Resolution No. 9615 which prohibited the posting or displaying of any election campaign

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[38] 569 Phil. 155 (2008).

[39] 758 Phil. 67 (2015).

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or propaganda material in public utility vehicles and public transport terminals. In *1-United*, We explained that content-neutral regulations are those which are merely concerned with the incidents of the speech, or those which merely control the time, place, or manner of its exercise. We also clarified that such regulations are constitutionally permissible, even if they may restrict the right to free speech, provided that the following requisites concur: *first,* the government regulation is within the constitutional power of the Government; *second*, it furthers an important or substantial governmental interest; *Third,* the governmental interest is unrelated to the suppression of free expression; and *fourth,* the incidental restriction on freedom of expression is no greater than is essential to the furtherance of that interest. Applying these requisites, We held that the intrusion into the fundamental right of expression was unnecessary to further the supposed state interest in ensuring equality of time, space, and opportunity for electoral candidates.

Citing *Chavez v. Gonzales*,[40] this Court, in *Nicolas-Lewis v. COMELEC (Nicolas-Lewis)*,[41] applied the intermediate scrutiny test in declaring a content-neutral election regulation unconstitutional. In that case, Section 36.8 of RA 9189,[42] as amended by RA 10590,[43] and Section 74(II) (8) of COMELEC Resolution No. 10035 sought to prohibit the engagement by any person in partisan political activities abroad during the 30-day overseas voting period. The Court concluded that the regulation was content-neutral since it merely regulated the time and place to exercise the right to express. Further, there was no showing that it was intended to discriminate based on the speaker's perspective, or to regulate the right to campaign. This Court then proceeded to apply the "intermediate test," enumerating the following requirements:

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[40] 569 Phil. 155, 195 (2008).

[41] *Nicolas-Lewis v. COMELEC*, 859 Phil. 560 (2019).

[42] Entitled: The Overseas Absentee Voting Act of 2003. Approved: 13 February 2003.

[43] Entitled: An Act Providing for a System of Overseas Absentee Voting by Qualified Citizens of the Philippines Abroad, Appropriating Funds Therefor, and for Other Purposes. Approved: 27 May 2013.

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Being a content-neutral regulation, we, therefore, measure the same against the intermediate test, *viz.*: (1) the regulation is within the constitutional power of the government; (2) it furthers an important or substantial governmental interest; (3) such governmental interest is unrelated to the suppression of the free expression; and (4) the incidental restriction on the alleged freedom of expression is no greater than what is essential to the furtherance of the governmental interest.[44]

We held that the regulation in *Nicolas-Lewis* is invalid as it did not pass the fourth requisite. The use of the word "abroad" in the assailed law and regulation would lead any intelligible reader to the conclusion that the prohibition was intended to also be extraterritorial in application. Hence, such sweeping and absolute prohibition against all forms of expression considered as partisan political activities without any qualification is more than what is essential to the furtherance of the contemplated governmental interest.

Parenthetically, past and active members of this Court have also voiced their respective opinions on the suitability of using this mid-tier analysis of laws in cases involving an organization composed of people who identify themselves as lesbians, gays, bisexuals, or transgender,[45] men who are victims of domestic violence,[46] COMELEC regulations on the size of political ads (content-neutral),[47] prohibition to engage in partisan political activity abroad during the campaign period,[48] and terrorism.[49] Common to these opinions is the recognition of

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[44] *Nicolas-Lewis v. COMELEC*, supra at 594.

[45] See Separate Concurring Opinion of J. Puno in *Ang Ladlad LGBT Party v. COMELEC*, 632 Phil. 32 (2010).

[46] See Separate Concurring Opinion of J. Leonardo-De Castro in *Garcia v. Drilon*, 712 Phil. 44 (2013).

[47] See Separate Opinions of J. Perlas-Bernabe and Brion in *The Diocese of Bacolod v. COMELEC*, 751 Phil. 301 (2015).

[48] See Separate Opinions of J. Perlas-Bernabe in *Nicolas-Lewis v. COMELEC,* G.R. No. 223705, 14 August 2019.

[49] See Separate opinion of C.J. Gesmundo in *Calleja v. Executive Secretary***,** G.R. Nos. 252578, 252579, 252580, 252585, 252613, 252623, 252624, 252646, 252702, 252726, 252733, 252736, 252741, 252747, 252755,

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equally valid and pressing interests of both the government and individuals, or certain marginalized groups. The Chief Justice's separate opinion in *Calleja v. Executive Secretary*[50] articulates it aptly:

> Terrorism is an evolving target. Accordingly, efforts to criminalize it have shifted towards the prevention of terrorism before acts of violence are committed. Prevention is carried out through the suppression of acts that, hitherto innocuous and innocent, enable the commission of violent acts of terrorism. The use of the internet for radicalization, recruitment and movement of warm bodies and logistical resources leading to the Marawi siege serve as concrete context for the necessity to adopt the preventative criminalization of terrorism in the Philippines. The ATA is the government response to this need.
>
> There are at present 19 universal/multilateral international legal instruments as well as several resolutions issued by the United Nations Security Council (UNSC) that make up an international legal regime on terrorism. Inter-state, bilateral and regional instruments on designation and proscription of terrorist persons and entities have been concluded. This regime creates certain binding state obligations regarding the criminalization of terrorism. The consequences for non-compliance with these binding obligations range from chokepoints in financial services, trade, and investment to designation as a state sponsor of terrorism.
>
> The foregoing history of the criminalization of terrorism and crystallization of an international legal regime governing counter-terrorism justify recourse to an intermediate level of judicial scrutiny.
>
> Moreover, even assuming that freedom of expression is incidentally implicated by any provision of the ATA, whether by Sec. 4 or Sec. 10 or Sec. 25, these measures are merely regulatory of the manner rather than content of the expression. In fact, Sec. 4 insulates "advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights" from criminalization, without qualifying that such expression must contain a particular perspective or ideology. Rather, Sec. 4 criminalizes the manner of exercising freedom

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252759, 252765, 252767, 252768, 16663, 252802, 252809, 252903, 252904, 252905, 252916, 252921, 252984, 253018, 253100, 253118, 253124, 253242, 253252, 253254, 254191 & 253420, 07 December 2021.

[50] Id.

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of expression that amounts to acts intended to cause death or serious bodily injury. The established rule is that content-neutral regulations that implicate protected speech are more appropriate for an intermediate level rather than strict level of judicial scrutiny."

A similar observation obtains in this case. There can be any number of events or grounds that can trigger a postponement of a scheduled election. This is apparent from the reasons given by members of the Legislature during the course of RA 11935's[51] legislative history. Incidentally, in addition to public health reasons like a pandemic, elections in other countries have also been delayed due to natural disasters,[52] budgetary and logistical constraints,[53] the death of a candidate,[54] or structural changes in the government.[55] The variety of these circumstances emphasize the necessity of allowing the other branches of government to swiftly respond using their political will and expertise. In my opinion, there is simply no necessity to make absolute categorizations of such reasons as legitimate or devious, absent full consideration of the facts in every case, and more importantly, their implications to settled constitutional principles and freedoms.

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[51] Entitled: An Act Postponing the December 2022 Barangay and Sangguniang Kabataan Elections, Amending for the Purpose Republic Act No. 9164. Approved 10 October 2022.

[52] In Papua New Guinea, elections were postponed due to the eruption of Mt. Ulawun, https://www.rnz.co.nz/international/pacific-news/393466/local-elections-postponed-in-volcano-affected-areas-of-png, last accessed on 01 August 2023; Haiti also postponed its 2020 elections due to an earthquake. last accessed on 01 August 2023.

[53] In 2019, Nigeria postponed elections due to logistical problems, last accessed on 01 August 2023.

[54] In Ireland, the death of independent candidate Marese Skehan resulted in the postponement of elections , last accessed on 01 August 2023.

[55] In 2021, Nepal postponed the parliamentary election following the reinstatement of the House of Representatives by the Supreme Court, last accessed on 01 August 2023.

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*3. The Intermediate Scrutiny Test should apply in the present set of cases*

Though RA 11935 undoubtedly affects the people's right of suffrage, the law merely regulates the time and manner, and does not frustrate its exercise.

*A. RA 11935 affects voting, which is a form of speech*

While there is a tendency to associate jurisprudential rules on freedom of speech and expression merely to the spoken word,[56] a cursory examination of jurisprudence would reveal this Court's recognition of voting as a form of expression, *viz.*:

> In the case before this court, there is a clear threat to the paramount right of freedom of speech and freedom of expression which warrants invocation of relief from this court. The principles laid down in this decision will likely influence the discourse of freedom of speech in the future, especially in the context of elections. The right to suffrage not only includes the right to vote for one's chosen candidate, but also the right to vocalize that choice to the public in general, in the hope of influencing their votes. It may be said that in an election year, **the right to vote necessarily includes the right to free speech and expression**. The protection of these fundamental constitutional rights, therefore, allows for the immediate resort to this court.[57] (Emphasis supplied)

Voting, like the spoken word, is a method of communication and is capable of conveying a message. Choosing and naming a political candidate for an elective position is an expression of one's preference of leaders and the political beliefs they represent. Voting to re-elect a leader may also reflect the people's satisfaction with the incumbent's governance. We have indeed, acknowledged that the right to freedom of expression applies to the entire continuum of speech, that is, from utterances made to conduct enacted, and even to inaction itself as a symbolic manner

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[56] See Armand Derfner & J. Gerald Hebert, Voting Is Speech, 34 Yale L. & Pol'y Rev. 471 (2016).

[57] *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301 (2015).

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of communication.[58] Voting in elections, as a mode of political participation and an expression of political views, is certainly covered by the protection of freedom of speech. By parity of reasoning, jurisprudential rules in adjudicating free speech cases apply to controversies involving regulations on the right to vote.

*B. RA 11935's postponement of the Barangay and Sangguniang Kabataan elections (BSKE) does not impose a direct burden on the right of suffrage*

In G.R. No. 263590, petitioner Romulo Macalintal (Macalintal) assails Sections 1 and 3 of RA 11935, *viz*:

> Section 1. Section 1 of Republic Act No. 9164, as amended, is hereby further amended to read as follows:
>
> SECTION 1. *Date of Election.* — There shall be synchronized barangay and *sangguniang kabataan* elections, which shall be held on the last Monday of October 2023 and every three (3) years thereafter.
>
> x x x x
>
> Section 3. *Hold-Over.* — Until their successors shall have been duly elected and qualified, all incumbent *barangay* and *sangguniang kabataan* officials shall remain in office, unless sooner removed or suspended for cause: Provided, That barangay and *sangguniang kabataan* officials who are ex officio members of the *sangguniang bayan, sangguniang panlungsod,* or *sangguniang panlalawigan*, as the case may be, shall continue to serve as such members in the *sanggunian* concerned, until the next *barangay* and *sangguniang kabataan* elections unless removed in accordance with their existing rules or for cause.

He argues that the law deprives the electorate of its right of suffrage by extending the term of incumbent *barangay* officials whose term of office is set to end on 31 December 2022. He claims that RA 11935 disenfranchises voters as they are denied of their fundamental right to elect their leaders. This argument is similar to objections against laws suppressing free speech, which trigger tiered judicial review.

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[58] Id.

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Contrary to Macalintal's argument, I submit that RA 11935 merely delayed, and did not defeat, the exercise of the right of suffrage. Indeed, the law is similar to content-neutral regulations in free speech cases which merely affect the time, manner, and place of exercise of the right. Moreover, there is nothing in the law which shows that it was crafted to prevent the exercise of the right to vote on account of political ideologies or affiliations.

*C. Intermediate scrutiny balances the interests of the government and the voting public*

Beyond the aforesaid legal discourse, my belief is that intermediate scrutiny fully implements the Court's purpose as a democratic institution in harmonizing its duty to respect a co-equal branch of the government, and as guardian of constitutional rights.[59]

The late SCOTUS Justice Ruth Bader Ginsburg, in a lecture, also pointed out how delicate balancing gives space for allowing future democratic deliberation and social education.[60] By not preliminarily tilting the scales of justice in favor of one party, litigants are given fairly equal opportunity to advocate for their interests or rights and adjust their future actions accordingly.

Moreover, in making a narrow ruling on the specific facts and arguments of the State and the citizens, both are allowed to explore the shape and extent of their rights, and advocate for their respective interests in the future. By applying the intermediate scrutiny test, the government would be allowed to rethink its methods and justifications to conform to the Constitution. In a similar vein, individual rightsholders are not only given judicial imprimatur but are also empowered to aim for its full realization.

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[59] See Jay D. Wexler, *Defending the Middle Way: Intermediate Scrutiny as Judicial Minimalism*, in 66 George Washington Law Review 334, 339 (1998).

[60] See Ruth Bader Ginsburg, *Speaking in a Judicial Voice*, 67 N.Y.U Law Review, p. 1204 (1992).

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For sure, I join my colleagues in finding that RA 11935 is unconstitutional because its postponement of the BSKE unduly burdened the exercise of the right of suffrage in order to make an impermissible transfer of appropriation. Nonetheless, such conclusion should not put Congress in a strait-jacket should the need to postpone local elections arise again in the future. Verily, Congress has submitted other significant reasons for RA 11935, *viz*: continuity of government service at the barangay level; thwarting further divisiveness among the Filipino people; providing a respite for the electorate considering the recently concluded May 2022 National and Local Elections; allowing the newly elected national and local officials to benefit from the experience of the officials at the barangay level in implementing COVID-19 programs and policies; preventing the further spread of the COVID-19 virus; and aligning the BSKE schedule with the schedule originally provided under the Local Government Code.[61] Respect for Congress authority should compel this Court to allow Congress to act on contingencies in the nation's interest without violating individual rights.

*4. Strict scrutiny is inapplicable to the cases at bar*

An article[62] written by Justice Lewis Powell of the SCOTUS succinctly explained the nature of strict scrutiny, which was largely derived from Footnote Four of *Carolene Products*, *viz.*:

> The fundamental character of our government is democratic. Our constitution assumes that majorities should rule and that the government should be able to govern. Therefore, for the most part, Congress and the state legislatures should be allowed to do as they choose. But there are certain groups that cannot participate effectively in the political process. And the political process therefore cannot be trusted to protect these groups in the way it protects most of us. Consistent with these premises, the theory continues, the Supreme Court has two special missions in our scheme of government:

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[61] See *ponencia*, p. 59.

[62] Lewis F. Powell, Jr., *"Carolene Products"* Revisited, 82 Columbia Law Review. 1087, 1088-1089 (1982).

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> First, to clear away impediments to participation, and ensure that all groups can engage equally in the political process; and
>
> Second, to review with heightened scrutiny legislation inimical to discrete and insular minorities who are unable to protect themselves in the legislative process.

From the history of the test, it is clear that strict scrutiny is an exception to the general judicial policy of deferring to the wisdom of the legislature. As Justice Powell expressed, strict scrutiny was meant to be exercised only in specific situations when there is dysfunction in democratic institutions. Certainly, such is not th case here. While there is no debate on the significance of the right to vote, there is no showing that the law was intended or had the effect of rendering the same nugatory, or that specific underprivileged or minority groups were unduly targeted by the same.

Relatedly, strict scrutiny carries with it a presumption against constitutionality and the imposition upon the State of the burden to prove a compelling governmental interest, and that the regulation is narrowly tailored and the least restrictive means to achieve that interest. Moreso, it would seem that the SCOTUS has further sharpened the test's "fatal" character in the recent case of *Students for Fair Admission, Inc. v. President and Fellows of Harvard College*,[63] where it held that private college institutions must not only establish that their race admission criteria are based on compelling interests, but also that those interests are coherent and measurable.

These principles on the strict scrutiny test, to my mind, run counter to Congress' authority to regulate the *barangay* elections. As the *ponencia* succinctly discussed, the power to postpone *barangay* elections is deemed inherently included not only in the legislature's power to fix the term of office of barangay officials but also proceeds from the legislature's broad and plenary power to legislate. Hence, this Court must also accord the legislature the leeway to regulate the BSKE as long

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[63] 600 U.S. 23-26 (2023).

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as Congress does not transgress cherished fundamental freedoms and constitutional boundaries.

*5. Conclusion*

The people's ability to direct the affairs of its nation is a hallmark of democracy. Voting confers power on the electorate and is considered a right from which other freedoms derive their existence and vigor. The aspiration to extend full and absolute protection to the right to vote is therefore justified not only by law, but by necessity. The Legislative, on the other hand, is constitutionally vested with a broad authority to legislate, including matters involving the term of office of barangay officials. Absent a definitive showing of attempts to revoke fundamental freedoms, this Court must resist the predisposition for generalizations and endeavor to harmonize equally compelling interests by carefully analyzing specific circumstances and concomitant consequences. Meaningful adjudication does not always require rigid inquiry, nor should it produce bright line rules for a myriad of complicated scenarios. Courts also fulfill their duty by allowing space for political deliberation and dialogue in society.

**ACCORDINGLY,** I vote to **GRANT** the Petition.

## SEPARATE CONCURRING OPINION

**DIMAAMPAO, *J.*:**

The pith of the controversy in the case at bench is whether Republic Act (RA) No. 11935,[1] which postponed the *Barangay* and *Sangguniang Kabataan* Elections (BSKE) scheduled on December 5, 2022 to the last Monday of October 2023, is unconstitutional.

In ruling that the enactment of RA No. 11935 was attended with patent grave abuse of discretion amounting to lack or

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[1] An Act Postponing the December 2022 *Barangay* and *Sangguniang Kabataan* Elections, Amending for the Purpose Republic Act No. 9164, as Amended, Appropriating Funds Therefor, and for Other Purposes, approved on October 10, 2022.

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excess of jurisdiction, the *ponencia* maintains the position that the intermediate scrutiny test is *apropos* since any law or rule deferring or postponing the BSKE may not necessarily constitute a direct and undue burden on the right of suffrage so as to require a strict scrutiny analysis. Particularly, the restriction on the right may be deemed incidental and regulating only the ***time*** of the exercise of the right to vote in the BSKE.[2]

While I agree in the result, I humbly offer a divergent viewpoint as to the proper level of scrutiny in resolving these consolidated cases. On this score, I join Senior Associate Justice Marvic M.V.F. Leonen, and Associate Justices Alfredo Benjamin S. Caguioa, Mario V. Lopez, and Maria Filomena D. Singh in their elucidation as to why the **strict scrutiny** test must apply in cases where the validity of laws postponing elections is questioned, for the reasons explicated hereunder.

Philippine jurisprudence has formulated three tests of judicial scrutiny to determine the reasonableness of classifications. *First,* the strict scrutiny test applies when a classification either (*i*) interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or (*ii*) burdens suspect classes. *Second,* the intermediate scrutiny test applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy. *Third,* the rational basis test applies to all other subjects not covered by the first two tests.[3]

Apart from the cases of *Samahan ng mga Progresibong Kabataan v. Quezon City*[4] and *Kabataan Party-List v. Commission on Elections*,[5] assiduously cited by Associate Justice Amy C. Lazaro-Javier, wherein the strict scrutiny test was applied given that fundamental rights were affected by the relevant statutes

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2 *Ponencia,* pp. 106-110.

3 See *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1113-1114 (2017).

4 Id.

5 775 Phil. 523 (2015).

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in each case, it is also worth noting that the same test has been applied in *Imbong v. Ochoa*[6] where the free exercise of religion by conscientious objectors was purportedly burdened by government legislation, and in *Philippine Stock Exchange, Inc. v. Secretary of Finance*,[7] involving regulations which were alleged to be violative of the fundamental right to privacy.

From the foregoing, it is plain as day that in the determination of the applicable level of scrutiny in cases involving the validity of laws postponing the BSKE, the focal query is **whether the exercise of a fundamental right has been *interfered with by reason of the passage and implementation* of such legislation.** Should the response be in the affirmative, then prevailing jurisprudence unambiguously dictates that the strict scrutiny test shall apply.

Upon careful reading, laws postponing the BSKE may appear facially neutral and incidental to the exercise of the right of suffrage, for they purport to regulate only the time when the right to vote shall be exercised. However, such regulation already constitutes an adequate interference or infringement on the right of suffrage that would suffice to warrant strict scrutiny. Moreover, what constitutes "an undue and unjustifiably prolonged restriction on the exercise of the right of suffrage"[8] that would subject the State measure to strict scrutiny appears to be a nebulous standard, open to various interpretations as to what constitutes a "prolonged restriction." In the same vein, the *ponencia* appears to propose a separate sub-test to determine when the strict scrutiny and intermediate scrutiny tests would apply in resolving challenges against statutes postponing elections.

Contrariwise, our case law has consistently laid down when the three tests of judicial scrutiny shall apply. They do not distinguish as to the level or intensity—be it direct or merely incidental—of the restriction on the fundamental right in question. Based on the doctrinal teachings enunciated by the Court, it is enough

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6 732 Phil. 1 (2014).

7 G.R. No. 213860, July 5, 2022.

8 *Ponencia*, p. 107.

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that the issuance "interferes with the exercise of a fundamental right."[9] Upon this point, I agree with Associate Justice Alfredo Benjamin S. Caguioa that "any impingement, **even if temporary,** of the sovereign people's constitutional right of suffrage demands that the Court review the legislation with strict scrutiny."[10]

In epitome, the right to vote is a most precious political right, as well as a bounden duty of every citizen, enabling and requiring him or her to participate in the process of government so as to ensure that the government can truly be said to derive its power solely from the consent of the governed.[11] Perforce, the exercise of such fundamental right falls within the Court's duty to safeguard and preserve through, *inter alia*, the application of the strict scrutiny test.

## SEPARATE OPINION

**SINGH, *J.*:**

Republic Act No. (**RA**) 11935,[1] which postponed the holding of the 2022 Synchronized Barangay and Sangguniang Kabataang Elections (**BSKE**), from December 5, 2022 to the last Monday of October 2023,[2] is undoubtedly unconstitutional and void, as its primary purpose, as found in the *ponencia*, of allowing a constitutionally impermissible reallocation or transfer of the Commission on Election's budget for the 2022 BSKE[3] would fail any tier of judicial scrutiny, even the least stringent standard of rational basis.

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9 *Supra* note 3, at 1116.

10 Reflections of Associate Justice Alfredo Benjamin S. Caguioa, p. 24.

11 See *Romualdez v. RTC, Branch 7, Tacloban City*, 297 Phil. 455 (1993).

1 Entitled "*An Act Postponing the December 2022 Barangay and Sangguniang Kabataan Elections, Amending for the Purpose Republic Act No. 9164, as amended, Appropriating Funds therefor, and for Other Purposes*."

2 RA 11935, Section 1.

3 *Ponencia*, pp. 53-64.

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Thus, the *ponencia* correctly ruled that the Court is possessed of the power, and is compelled by the duty, to end a continuing and continued denial of the right to vote and vindicate the public's right of suffrage.

I write this Separate Opinion for the purpose of stating my position that nothing less than strict scrutiny can suffice to protect so fundamental a right as the right of suffrage, and that the need to employ strict scrutiny is especially manifest in the context of an election postponement which cannot but be seen as a direct infringement, if not total abrogation, of the right to vote, in a manner that makes a mockery of the sacred trust reposed in our elected officials by the vote. Accordingly, I firmly believe that strict scrutiny is necessarily the proper standard by which to test the validity of an election postponement.

In addition, I also opine that the use of hold-over provisions in election postponements by legislative fiat, whereby *elective* officials are kept in office so as to bridge a gap or fill a vacuum that the postponement itself creates, further crystallizes and cements the use of strict scrutiny, lest we run the risk of allowing the very democratic and republican underpinnings of our nation to unravel.

In the first place, it is clear that this case presents a novel question, if not in the minds of the public, at least as posed before the Court in a proper justiciable controversy. It is thus, quite literally, unprecedented.

As indicated by the spirited deliberations and discussions that culminated in the Court's Decision, and which necessitated these Separate Opinions from the Members of the Court justifying varying standards of review, it should be evident that the issue of the appropriate standard of review to apply to election postponements cannot be readily and neatly dealt with by reference to jurisprudence, as there are no cases definitively on all fours with the one before the Court here, and therefore there is no clearly controlling judicial precedent to be relied upon.

I thus seek guidance in the prior doctrinal pronouncements of the Court, but first and foremost, in the one true beacon and touchstone that is the Constitution.

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*The Test of Strict Scrutiny*

The Court has previously ruled that strict scrutiny is the appropriate tier of judicial scrutiny for legislation that is assailed as violative of fundamental rights.[4]

In the landmark case of *White Light Corp. et al. v. City of Manila*[5] (***White Light***), the Court discussed the tiers of judicial scrutiny, and when these are to apply, in the following manner:

> The general test of the validity of an ordinance on substantive due process grounds is best tested when assessed with the evolved footnote 4 test laid down by the U.S. Supreme Court in *U.S. v. Carolene Products.* **Footnote 4 of the *Carolene Products* case acknowledged that the judiciary would defer to the legislature unless there is a discrimination against a "discrete and insular" minority or infringement of a "fundamental right." Consequently, two standards of judicial review were established: strict scrutiny for laws dealing with freedom of the mind or restricting the political process, and the rational basis standard of review for economic legislation**.
>
> A third standard, denominated as heightened or immediate scrutiny, was later adopted by the U.S. Supreme Court for evaluating classifications based on gender and legitimacy. Immediate scrutiny was adopted by the U.S. Supreme Court in *Craig*, after the Court declined to do so in *Reed v. Reed*. While the test may have first been articulated in equal protection analysis, it has in the United States since been applied in all substantive due process cases as well.
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> We ourselves have often applied the rational basis test mainly in analysis of equal protection challenges. Using the rational basis examination, laws or ordinances are upheld if they rationally further a legitimate governmental interest. Under intermediate review, governmental interest is extensively examined and the availability of less restrictive measures is considered. Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest.

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[4] See *White Light Corp. et al., v. City of Manila*, 596 Phil. 444 (2009).

[5] Id.

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**In terms of judicial review of statutes or ordinances, strict scrutiny refers to the standard for determining the quality and the amount of governmental interest brought to justify the regulation of fundamental freedoms. Strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection. The United States Supreme Court has expanded the scope of strict scrutiny to protect fundamental rights such as suffrage, judicial access and interstate travel**.[6] (Emphasis supplied and citations omitted)

The varying standards of review, and their roots in the guarantee of due process, are also discussed in *City of Manila v. Hon. Laguio, Jr.* (***Laguio***):[7]

**The constitutional safeguard of due process is embodied in the fiat "(N)o person shall be deprived of life, liberty or property without due process of law. . . ."**

**There is no controlling and precise definition of due process. It furnishes though a standard to which governmental action should conform in order that deprivation of life, liberty or property, in each appropriate case, be valid. This standard is aptly described as a responsiveness to the supremacy of reason, obedience to the dictates of justice, and as such it is a limitation upon the exercise of the police power**.

**The purpose of the guaranty is to prevent governmental encroachment against the life, liberty and property of individuals; to secure the individual from the arbitrary exercise of the powers of the government, unrestrained by the established principles of private rights and distributive justice**; to protect property from confiscation by legislative enactments, from seizure, forfeiture, and destruction without a trial and conviction by the ordinary mode of judicial procedure; and to secure to all persons equal and impartial justice and the benefit of the general law.

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6 Id. at 462-463 (2009).

7 495 Phil. 289 (2005).

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The guaranty serves as a protection against arbitrary regulation, and private corporations and partnerships are "persons" within the scope of the guaranty insofar as their property is concerned.

**This clause has been interpreted as imposing two separate limits on government, usually called "procedural due process" and "substantive due process."**

Procedural due process, as the phrase implies, refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. Classic procedural due process issues are concerned with what kind of notice and what form of hearing the government must provide when it takes a particular action.

**Substantive due process, as that phrase connotes, asks whether the government has an adequate reason for taking away a person's life, liberty, or property. In other words, substantive due process looks to whether there is a sufficient justification for the government's action. Case law in the United States (U.S.) tells us that whether there is such a justification depends very much on the level of scrutiny used. For example, if a law is in an area where only rational basis review is applied, substantive due process is met so long as the law is rationally related to a legitimate government purpose. But if it is an area where strict scrutiny is used, such as for protecting fundamental rights, then the government will meet substantive due process only if it can prove that the law is necessary to achieve a composing government purpose**.[8] (Emphasis supplied and citations omitted)

From the foregoing broad jurisprudential doctrines in *White Light* and *Laguio*, it is established that the test of strict scrutiny is used to examine acts that are assailed as violative of fundamental rights, and that the right to suffrage is undoubtedly one of these fundamental rights.

Further, the components or prongs of the test of strict scrutiny are laid down as follows:

Under the strict scrutiny test, a legislative classification that interferes with the exercise of a **fundamental right** or operates to the disadvantage of a suspect, class is presumed unconstitutional. Thus, **the government has the burden of proving that the classification (i) is necessary to**

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[8] Id. at 311-312.

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**achieve a compelling State interest, and (ii) is the least restrictive means to protect such interest or the means chosen is narrowly tailored to accomplish the interest**.[9] (Emphasis supplied and citations omitted)

*First Principles and the Fundamental Nature of the Right of Suffrage*

What is clear to me is that the choice of the appropriate standard of review is inextricably bound to our characterization of just how fundamental the right that we seek to protect is. This, to my mind, results in a simple formula: the more important the right, the greater the protection, and resultingly, the higher the scrutiny that ought to be applied to acts which violate or curtail that right.

It is thus my earnest belief that the very nature, importance, and fundamentality of the right to vote, certainly when infringed by an election postponement, must be afforded nothing less than the application of strict scrutiny.

To anchor a discussion as to how fundamental the right to suffrage is, we have but to return to the lodestar of all the efforts, not only of the Court, but of the Filipino people as a collective, to fashion a nation pursuant to our shared and common ideals: our Constitution. I thus return, quite literally, to first principles.

The first principle enunciated in the Constitution, first not only in number but in priority, is that "[t]he Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them."[10]

The *ponencia* devotes a substantial portion of its discussion to an exposition on the nature of sovereignty and the right of suffrage,[11] the length and content of which underscores just "how fundamental and primary the right to vote truly is. The right to

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[9] *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1116 (2017).

[10] CONSTITUTION, Article II, Section 1.

[11] *Ponencia*, pp. 19-28.

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suffrage is "preservative of all rights"[12] to such an extent that "[o]ther rights, even the most basic, are rendered illusory if the right to vote is undermined."[13]

Given how imperatively fundamental the right of suffrage is for any people who proclaim to live under the rule of democracy, I opine that, as a matter of course, the standard of strict scrutiny should be applied in the context of election postponements.

*The Presumption of unconstitutionality and the Role of the Court*

One issue that merits further discussion is the fact that the decision to apply the test of strict scrutiny carries with it a presumption of the invalidity or unconstitutionality of the act subject of scrutiny.

It has been raised that the general presumption in favor of the validity and constitutionality of laws should behoove the Court to engage in judicial restraint and refrain from applying so stringent a test to election postponements.

I thus hark back to the passage from *White Light*, which refers to what is perhaps the most seminal footnote in legal history, for in it lies the seeds that birthed the test of strict scrutiny, and which today serves as an invaluable jurisprudential bulwark for our most sacred of rights, and our most vulnerable of people: "Footnote 4 of the *Carolene Products* case acknowledged that the judiciary would defer to the legislature unless there is a discrimination against a 'discrete and insular' minority or infringement of a 'fundamental right.'"[14]

It can never be in doubt that the Constitution is the supreme law of the land, and that it is the standard and benchmark against which all things claimed to be lawful and legal are to be weighed and measured. While deference to the legislature will always be a hallmark of our legal system, it cannot countenance allowing

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[12] Id. at 12, citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

[13] Id. at 12, citing *Wesberry v. Sanders*, 376 U.S. 1 (1964).

[14] *White Light Corp. et al. v. City of Manila*, 596 Phil. 444, 462 (2009).

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a law that so deeply offends the constitutional order to survive a constitutional challenge before the Court.

It is thus my belief that, as the Court's first duty is to the Constitution, it is therefore our bounden duty to protect those rights which our Constitution, as the embodiment of the hopes and dreams of the Filipino people, so dearly cherish. I therefore espouse that the presumption of invalidity and unconstitutionality, if it should be applied at all to protect any of our fundamental rights, and especially those that are constitutionally enshrined, should without a shadow of a doubt be used to protect the right of suffrage.

I also refer to words penned nearly a century ago, on the role of the Court in settling judicial controversies involving the Constitution. Although made in the specific context of the issue of separation of powers, it should be remembered that a right draws a limitation what a power can and cannot touch. Thus, in *Angara v. Electoral Commission*:[15]

> But in the main, the Constitution has blocked cut with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. The overlapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say just where the one leaves off and the other begins. **In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers** between the several departments and among the integral or constituent units thereof.
>
> As any human production, our Constitution is of course lacking perfection and perfectibility, but as much as it was within the power of our people acting through their delegates to so provide, that instrument which is the expression of their sovereignty however limited, has established a republican government intended to operate and function as a harmonious whole, under a system of checks and balances, and **subject to specific limitations and restrictions provided in the said instrument. The**

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[15] 63 Phil. 139 (1936).

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**Constitution sets forth in no uncertain language the restrictions and limitations upon governmental powers and agencies. If these restrictions and limitations are transcended it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels, for then the distribution of powers would be mere verbiage, the bill of rights mere expressions of sentiment, and the principles of good government mere political apothegms. Certainly, the limitations and restrictions embodied in our Constitution are real as they should be in any living constitution**. In the United States where no express constitutional grant is found in their constitution, the possession of this moderating power of the courts, not to speak of its historical origin and development there, has been set at rest by popular acquiescence for a period of more than one and a half centuries. In our case, this moderating power is granted, if not expressly, by clear implication from section 2 of article VIII of our Constitution.

**The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution**.[16] (Emphasis supplied)

It has always been, and continues to be, the role of this Court to defend and preserve the Constitution. While this task is not exclusive to us, as it is indeed the mandate of everyone, it is upon the Court that falls the role of the "ultimate arbiter" as to what the Constitution intends, "[f]or whether or not laws passed by Congress comply with the requirements of the Constitution pose questions that this Court alone can decide. The proposition that

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[16] Id. at 158-159.

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this Court is the ultimate arbiter of the meaning and nuances of the Constitution need not be the subject of a prolix explanation."[17]

*Further Development on the Nature of the Right of Suffrage, and Suffrage and Elections as a Sacred Contract*

It has also been raised that even while this Court acknowledges the fundamental status of the right to suffrage, there may well be instances when a restriction or burden on suffrage can be deemed "incidental" and not "direct," as would justify a lower standard of review. It is suggested that the "time" of the holding of an election can, in certain instances, be deemed merely an incidental burden that can be met with a standard of review lower than strict scrutiny.

I find, however, that, unlike the right to free speech or expression, which is the focus of most jurisprudence delineating between an incidental versus a direct infringement of a fundamental right,[18] and where the "incidents" are the time, place, and manner of the exercise of the right, the right of suffrage "itself," or its "core," is not nearly so easily separated—if at all—from its "incidents," especially of "time."

I believe that the time when suffrage is exercised, which is necessarily the time when elections are held, is not a mere "incident" that can be made to stand apart from the "core" of suffrage. Rather, it is part and parcel so as to be nearly indistinguishable from the right of suffrage itself, and it cannot be gainsaid that the unhampered, *i.e.*, the timely, exercise of the right of suffrage is the very foundation for the democratic and republican character of our nation.

At the very least, I believe that election postponements, particularly when hold-over provisions are employed, cannot be considered anything other than a direct infringement on the right of suffrage. And this must perforce be met with strict scrutiny.

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[17] *Miranda v. Aguirre*, 373 Phil. 386, 398-399 (1999).

[18] See *Nicolas-Lewis v. Commission on Elections*, 859 Phil. 560 (2019), and *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301 (2015).

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The reason for this is, to me, self-evident: when the right to vote is hampered by an election postponement, and "elective" officials remain in power beyond the limited mandate given to them by virtue of duly held democratic elections, this is a breach of the sacred contract whereby the people surrender, for a duration specifically limited in time, a portion of their sovereign power.

In this vein, we have, from the dissent of then Associate Justice and later Chief Justice Reynato Puno in the case of *Tolentino v. Commission on Elections*,[19] the following passage:

> Elections serve as a crevice in the democratic field where voters, for themselves and. the public good, plant the seeds of their ideals and freedoms. *Yick Wo* is emphatic that voting is a fundamental right that preserves and cultivates all other rights. **In a republic undergirded by a social contract, the threshold consent of equal people to form a government that will rule them is renewed in every election** where people exercise their fundamental right to vote to the end that their chosen representatives will protect their natural rights to life, liberty and property. **It is this sacred contract which makes legitimate the government's exercise of its powers and the chosen representatives' performance of their duties and functions. The electoral exercise should be nothing less than a pure moment of informed judgment** where the electorate speaks its mind on the issues of the day and choose the men and women of the hour who are seeking their mandate.[20] (Emphasis supplied)

Thus, the holding of elections, and the exercise of the right to vote therein, constitutes a "sacred" contract. In keeping with the language of contract law, the fact that this contract is for a limited period reveals that time here is most certainly of the essence, and therefore postponement of elections is an unsanctioned delay[21] which prevents renewal of that contract. What occurs then when the right to vote is curtailed by an election postponement is, firstly, a breach of the agreement to hold elections, and

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[19] *Tolentino v. Commission on Elections*, 465 Phil. 385 (2004).

[20] Id. at 468-469.

[21] See Civil Code, Article 1169.

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concomitantly, a unilateral imposition or a new contract or the governed, but one utterly devoid of consent.

There is also the issue of "informed judgment" referred to by Chief Justice Puno, and I believe that this necessarily covers not only issues such as the selection of persons who the voters are placing in office, but also precisely, the issue of exactly *how long these persons are to be in power and a position of authority*, for, in the words once more of the Constitution, all government authority emanates from the people.

Thus, just as the surrendering of sovereignty *for a limited period*, in exchange for the promise of public service, constitutes the object of this far from ordinary contract, so too does a unilateral amendment of the terms of this accord constitute no ordinary breach—it is a contravention that threatens the very foundation upon which our democracy rests, which is consent by the governed.

Again, I find that the grave consequences of this breach are even more evident when considered in concert with the use of provisions authorizing hold-over for "elective" officials.

*The Requisite Strict Scrutiny for Hold-over of "Elective" Officials*

While the Court has previously validated the hold-over of barangay officials until their successors are qualified and elected, as stated in the *ponencia*,[22] I believe that when hold-over is employed to allow "elective" officials to remain in office well past the limited mandate given them by a proper exercise of suffrage, then this unquestionably calls for the strictest judicial scrutiny available.

Among other cases, the *ponencia* cites *Sambarani v. Commission on Elections*[23] (***Sambarani***) as having held that barangay officials are permitted to hold-over in office. In *Sambarani*, the Court held:

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[22] *Ponencia*, pp. 72-76.

[23] 481 Phil. 661 (2004).

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As the law now stands, the language of Section 5 of RA 9164 is clear. It is the duty of this Court to apply the plain meaning of the language of Section 5. x x x Section 5 of RA 9164 explicitly provides that incumbent barangay officials may continue in office in a hold over capacity until their successors are elected and qualified.

x x x x

The application of **the hold-over principle** preserves continuity in the transaction of official business and **prevents a hiatus in government** pending the assumption of a successor into office. As held in *Topacio Nueno v. Angeles,* **cases of extreme necessity justify the application of the hold-over principle**.[24] (Citations omitted and emphasis supplied)

I find that the reference to cases of "extreme necessity" needed to justify hold-over underscores the need to subject an election postponement to strict scrutiny. It must be emphasized that the governmental interests asserted to justify postponing elections cannot be anything short of "compelling," *precisely because it is the postponement itself that creates the very "hiatus" in government functions that the expediency of hold-over is called upon to remedy*. Two wrongs can hardly make a right.

In this regard, it should be noted that both *Sambarani* and the related case of *Adap v. Commission on Elections*,[25] which is likewise cited in the *ponencia*,[26] dealt with end validated the hold-over of barangay officials in the specific context of localized failures of election which necessitated the holding of special elections. In such a case, the "extreme necessity" justifying hold-over is manifest. It is only right, therefore, that an election postponement by legislative fiat be required to approximate the level of such an emergency situation or be motivated by equally urgent and "compelling" interests, as would justify resorting to the stopgap measure of hold-over, rather than the actual holding of democratic elections.

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[24] Id. at 675-676.

[25] 545 Phil. 297 (2007).

[26] *Ponencia*, pp. 74-76.

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*In any event, and beyond even the terminology employed, with regard to hold-over, term, and tenure, it is the naked continuance in power of "elective" officials who no longer serve by explicit mandate of the people, however, such continuance might be designated or attempted to be clothed, that lies at the very heart of the claim of disenfranchisement.*

Further, I believe that the foregoing discussion on the need to test election postponements which provide for hold-over with strict scrutiny can also address the notion that, as Congress is vested by the Constitution with the power to amend the terms of barangay officials,[27] this fact may somehow validate the use of a lower standard of scrutiny for the postponement of *barangay* elections specifically.

Again, the surrender of sovereignty through the mechanism of an election is temporary, and the duration of the mandate to govern, or more properly, to serve, is determined at the time the votes are cast. An amendment of the term of barangay officials should operate prospectively, so that voters are well aware, when they cast their votes, of the lengthened or shortened, as the case may be, duration of their parting with a portion of their sovereignty. This is not a situation where the maxim of "[w]hat cannot be legally done directly cannot be done indirectly"[28] can be read to mean "what can be legally done directly can be done indirectly." To subscribe to this view would be to sanction a subversion of the very nature of an *elective* office.

*Final Note*

To end, I, of course, acknowledge that there may very well arise events and circumstances of such compelling nature as would necessitate the postponement of an election and adequately justify imposing the requisite burden on the right to suffrage. To even begin to imagine otherwise would be to forget so readily, if not recklessly,

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[27] CONSTITUTION, Article X, Section 8.

[28] *Tawang Multi-purpose Cooperative v. La Trinidad Water District*, 661 Phil. 390, 398 (2011).

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the lessons of the very recent past, and I refer here to the upheaval in all aspects of life at the height of the COVID-19 pandemic.

But to demand anything less than a compelling state interest from a law that postpones the holding of democratic elections would be a travesty. While defining what exactly constitutes a "compelling" state interest, as opposed to the "important or substantial" governmental interest required to satisfy the intermediate scrutiny standard, may be difficult, the guidelines valiantly attempt to, at the very least, present a rubric for what may or may not possibly suffice as "compelling."

In any event, the evaluation of what constitutes a compelling state interest is akin to a variation of United States Supreme Court Justice Potter Stewart's famous line, with regard to what constitutes obscenity that cannot be regarded as constitutionally-protected expression, of "'I know it when I see it[.]'"[29] In the case of a compelling state interest, this is a matter where the Court, cognizant of the futility of anticipating all future situations within the realm of possibility, must simply profess to know when it does *not* see it.

And ultimately, I hold that the choice of the standard of review here is, at the end of the day, a value judgment as to whether we consider the right of suffrage, and all that it entails, to be truly of essence and truly of fundamental importance to our nation's avowed way of life.

All told, therefore, it is my firm belief the Court would be remiss in its constitutional duty were it to meet a curtailment of this most sacred of rights with anything less than the strictest of scrutiny. The Filipino people deserve as much if we truly hope to embody, in the immortal words of Abraham Lincoln, the aspiration of a "government of the people, for the people, by the people."[30]

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[29] *Madrilejos v. Gatdula*, 863 Phil. 754, 818 (2019), citing the Concurring Opinion of J. Stewart in *Jacobellis v. Ohio*, 378 U.S. 184 (1964).

[30] The Gettysburg address delivered by Abraham Lincoln Nov. 19 at the dedication services on the battlefield. Boston, Mass.: Published by M.T. Sheahan, Jan. 11. Photograph. Retrieved from the Library of Congress.

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It is for the foregoing reasons that I therefore vote to **APPROVE** the guidelines, as enunciated in the *ponencia*, to test the validity and constitutionality of any future election postponements, as these are crafted and informed by the appropriate standard of review of strict scrutiny.