



TOWARDS A CLEAN AND HONEST ELECTION  
JURISPRUDENCE ON ELECTION-  
RELATED OFFENSES:  
*Prospects for 2022 National Election  
and Beyond*

VICTORIA A.G HELER,  
DEPUTY CITY PROSECUTOR, ILOILO CITY  
&  
THEDA GRACE S. GUMBAN  
COLLEGE OF LAW, WEST VISAYAS STATE UNIVERSITY



**"Voting is not only our right; it is our power."**

**- LOUNG UNG**



**WVSU JOURNAL FOR LAW ADVOCACY**

Luna St., La Paz, Iloilo City

col\_journal@wvsu.edu.ph

## **TOWARDS A CLEAN AND HONEST ELECTION** Jurisprudence on Election-Related Offenses: Prospects for 2022 National Election and Beyond

Victoria A.G Heler  
*Deputy City Prosecutor, Iloilo City*  
✉

Theda Grace S. Gumban  
*College of Law, West Visayas State University*

“The vote is precious, almost sacred. It is the most powerful non-violent tool we have in a democratic society, and we must use it”<sup>1</sup>. Democracy thrives when people actively participate and take part in social and political reform. Pastor H.E Fosdick (cited in Stevensons 1937) reasoned that Democracy is based upon the conviction that there are extraordinary possibilities in ordinary people<sup>2</sup>.

The recently concluded May 09, 2022 Election is a testament to this conviction despite the still lingering threat of COVID-19. The Commission on Elections (COMELEC) mentioned that despite the lingering threat of COVID-19, at least 76.5 million registered to cast their ballots. This shows a clear indication that Filipinos are determined to exercise their right to vote.<sup>3</sup> A peaceful and effective method of

---

<sup>1</sup> John Lewis, Twitter post, July 2016, 3:39 a.m.,  
<https://twitter.com/repjohnlewis>

<sup>2</sup> Burton Egbert Stevensons. *The Home Book of Quotations, Classical and Modern.* (1937)

<sup>3</sup> As of December 14, 2021, the number shows that 65.7 Million are domestic voters and around 1.8 million pertain to overseas voters, a figure which could still increase. According to a poll body, 65.7 million or 56% of the voters in the country are between the ages of 18 to 41 which are considered the “prime movers” and there are considerably 12 million senior citizen voters on May 9, 2022. Statistics also show that there are more Filipinos registered to vote this year compared to the total registered voters in 2016 which was roughly around 54.3 Million during the national and local elections and around 61.8 Million in the 2019 midterm elections.

selecting political leaders is through an election. A nation's citizens elect its leaders through the democratic process of voting. As a result, citizens can influence political leadership. An election is the expression of the sovereign power of the people.<sup>4</sup> It is an embodiment of the popular will and Filipinos must turn out in huge numbers and understand the importance of elections in a democratic society.

To accomplish this, election laws are intended to effectively protect the sovereign right of every citizen, and in so doing, safeguard the ends of democracy. The Omnibus Election Code of the Philippines is the country's compiled codification of the fundamental laws on elections. Its primary objective is to protect the integrity of the elections and respect the will of the electorate by suppressing all evils that may vitiate its purity and sanctity. In short, the Omnibus Election Code is the basic law on elections but, the real concern is whether the code will be adequate to combat the current unlawful election practices, especially in this age of technology where almost everything is done online. This paper revisits the salient provisions of the OEC and provides a discussion on recent jurisprudence related to the most common election-related offenses as penalized by the code.

### ***The Omnibus Election Code***

The Omnibus Election Code (Batas Pambansa Blg.881) promulgated in 1985 sets forth the general provisions governing the conduct of elections of public officers and to the extent appropriate, all referenda and plebiscites. Article XXII of the said code enumerates the following prohibited acts which constitute election offenses<sup>5</sup>:

- i. Vote-buying and vote-selling;
- ii. Conspiracy to bribe voters;
- iii. Wagering upon the result of the election;

---

<sup>4</sup> O'Hara v. COMELEC, G.R. Nos. 148941-42 379 S.C.R.A. 247 (March 12, 2002) (Phil.)

<sup>5</sup> Omnibus Election Code, B.P. Blg.881, as amended (Phil.).

- iv. Coercion of subordinates; (repealed)
- v. Threats, intimidation, terrorism, use of a fraudulent device, or other forms of coercion;
- vi. Coercion of election officials and employees;
- vii. Appointment of new employees, creation of the new position, promotion, or giving salary increases;
- viii. Transfer of officers and employees in the civil service;
- ix. Intervention of public officers and employees;
- x. Undue influence;
- xi. Unlawful electioneering;
- xii. Prohibition against the dismissal of employees, laborers, or tenants;
- xiii. Appointment or use of special policemen, special agents, confidential agents, or the like;
- xiv. Illegal release of prisoners before and after the election;
- xv. Use of public funds, money deposited in trust, equipment, and facilities owned or controlled by the government for an election campaign;
- xvi. Deadly weapons;
- xvii. Carrying firearms outside residence or place of business;
- xviii. Use of armored land, water, or aircraft;
- xix. Wearing of uniforms and bearing arms;
- xx. Policemen and provincial guards acting as bodyguards or security guards;
- xxi. Organization or maintenance of reaction forces, strike forces, or other similar forces;
- xxii. Prohibition against release, disbursement or expenditure of public funds;
- xxiii. Prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices;
- xxiv. Suspension of elective provincial, city, municipal or barangay officer;

- xxv. Prohibition on:
  - (a) Registration of Voters;
  - (b) Voting;
  - (c) Canvassing;
  - (d) Those common to all boards of election inspectors and boards of canvassers;
  - (e) Candidacy and campaign;
- xxvi. Other prohibitions.

### ***Vote-buying and vote-selling***

Any person, be it the giver, offeror, or promisor of money or anything of value, is identified to be liable as principal in vote-buying. The giving or promising of money or anything of value, giving or promising any office or employment, franchise or grant either public or private, making or offering to make an expenditure, directly or indirectly, causing an expenditure to be made to any person, association, corporation, entity, or community. To achieve the purpose of inducing anyone or the public, in general, to vote for or against any aspirant, or withhold his vote in the election, or to vote for or against any aspirant for nomination or choice of a candidate in a convention, or similar selection process of a political party constitute vote-buying.

On the other hand, any person, association, corporation, group, or community, be it the solicitor, acceptor, recipient, or conspirator, are to be deemed liable as principals in vote-selling. This can be committed either through soliciting or receiving directly or indirectly, any expenditure or promise of any officer of employment, public or private, to vote for or against any aspirant for nomination or choice of a candidate in a convention or similar selection process of a political party.

In *Lozano vs. Comelec (1991)*, the Supreme Court emphasizes that a complaint for vote-buying must be

pursued against both the buyer and the seller because the law on vote-buying also penalizes vote-selling<sup>6</sup>.

To prove vote-buying, Section 28 of Republic Act No. 6646 considers the presentation of a complaint for vote-buying or vote-selling supported by affidavits of complaining witnesses attesting to the offer or promise by or of the voter's acceptance of money or other consideration from relatives, leaders or sympathizers of a candidate, as a sufficient basis for an investigation to be immediately conducted directly by the COMELEC, or through its duly authorized legal officers<sup>7</sup>. This provision exempts any person, otherwise guilty of either vote-buying or vote-selling, who voluntarily gives information and willingly testifies in any official investigation or proceeding, from prosecution and punishment for the offenses with reference to which his information or testimony was given.

In *Bernardo vs. Abalos* (2001), the Supreme Court ruled that in the absence of affidavits of complaining witnesses attesting to an offer of money, or other considerations or acceptance of such offer, self-serving statements and uncorroborated video and visual recordings and photographs showing father and son who treated public school teachers for free transportation, food, and drinks, during which it was announced that they will be given hazard pay and additional allowance, are insufficient to prove vote-buying against them<sup>8</sup>.

The Supreme Court enunciated in *Nolasco vs. Comelec* (1997), that affidavits sufficiently detailing admission of individuals who received money to vote for a candidate, apprehension of two individuals for attempting to vote even if not registered, possessing pay envelopes with unexplained money, and inscription to vote for a candidate, destined for

---

<sup>6</sup> Lozano v. COMELEC, GR No. 94626 (October 28, 1991) (Phil.)

<sup>7</sup> An Act Introducing additional Reforms in the Electoral System and for Other Purposes, Rep. Act No. 6646, (January 5, 1988) (Phil.)

<sup>8</sup> Bernardo v. Abalos, G.R. No. 137266, (December 5, 2001) (Phil.)

the teachers a day before elections, among others, are sufficient to disqualify a candidate against his mere denial<sup>9</sup>.

A voter is part of the electorate, considered the powerful one, in an ideal democratic setting. If a voter accepts money from vote-buying candidates, it would mean that the voter surrenders the power to shape the government by choosing leaders without external influences.

### ***Conspiracy to Bribe Voters***

Bribing voters is illegal. This said act is committed when two or more persons, whether candidates or not, who agree to commit vote-buying and vote-selling and decide to commit either buying or selling can be held guilty of the election offense of conspiracy to bribe voters. Conspiracy is presumed when at least one voter in different precincts representing at least (20%) of the total precincts in any municipality, city, or province has been offered, promised, or given money, valuable consideration or other expenditure by a candidate's relatives, leaders, and/or sympathizers to promote the election of such candidate constitutes a disputable presumption of conspiracy to bribe voters. There exist a disputable presumption of involvement of a candidate and of his principal campaign managers, where such proof affects at least 20% of precincts of the municipality, city, or province to which the public office aspired by the favored candidate relates.

As emphasized in *Comelec vs. Espanol (2003)*, Section 28 of R.A. No. 6646 governs the prosecution of the crimes of vote-buying and vote-selling. Under the last paragraph of the said provision, any person guilty of vote-buying and vote-selling who voluntarily gives information and willingly testifies on violations of paragraphs (a) and (b) of Section 261 of BP 881 shall be exempt from prosecution and

---

<sup>9</sup> *Nolasco v. COMELEC*, G.R. No. 122250 & 122258, 275 S.C.R.A.763 (July 21, 1997) (Phil.)



punishment for the offense with reference to which their information and testimony were given<sup>10</sup>.

### *Coercion of subordinates*

But take note that this particular section of the has been repealed by Republic Act 7890 correlates with Art. 286, of the Revised Penal Code, as amended<sup>11</sup>.

With the express repeal of Section 261(d), the basis for disqualifying Javier no longer existed. As held in *Jalosjos, Jr. vs. Commission on Elections* [t]he jurisdiction of the COMELEC to disqualify candidates is limited to those enumerated in Section 68 of the Omnibus Election Code. All other election offenses are beyond the ambit of COMELEC jurisdiction. They are criminal and not administrative in nature<sup>12</sup>. Pursuant to sections 265 and 268 of the Omnibus Election Code, the power of the COMELEC is confined to the conduct of preliminary investigation on the alleged election offenses for the purpose of prosecuting the alleged offenders before the regular courts of justice<sup>13</sup>.

---

<sup>10</sup> COMELEC v. Español, G.R. No. 149164-73, (December 10, 2003) (Phil.)

<sup>11</sup> An Act Amending Article 286, Section Three, Chapter Two, Title Nine of Act No. 3815, As Amended, Otherwise known as the Revised Penal Code (February 20, 1995) (Phil.), <https://www.officialgazette.gov.ph/1995/02/20/republic-act-no-7890>

<sup>12</sup> Javier v. COMELEC, G.R. No. 215847 (January 12, 2016) (Phil.)

<sup>13</sup> Blanco v. COMELEC, et al., 577 Phil. 622, 633 (2008), citing Codilla v. De Venecia, G.R. No. 150605, (December 10, 2002) (Phil)

***Appointment of new employees, creation of a new position, promotion, or giving salary increases***

These are all considered acts prohibited during the period of forty-five (45) days before a regular election and thirty (30) days before a Special Election. The possible offenders are the head, official, or appointing officer of a government office, agency, or instrumentality, whether national or local, including Government-owned and controlled Corporations (GOCC). The moment they appoint or hire any employee, whether provisional, temporary or casual, or create and fill any new position, except upon prior authority of the Commission or promote, or give any increase of salary or remuneration or privilege to any government official or employee, including those in the GOCC's, they are deemed guilty of the preceding offenses. This prohibition under this section does not apply if the appointment is intended to fill out a vacancy in a local elective position under the Local Government Code of 1991. What is prohibited are those appointments covered by the Civil Service Law.

Recapitulated in the case of *Ong vs. Martinez* (1990), the permanent vacancy for councilor exists and its filling up is governed by the Local Government Code while the appointment referred to in the election ban provision is covered by the Civil Service Law. For having satisfied the formal requisites and procedure for appointment as Councilor, which is an official position outside the contemplation of the election ban, the respondent's appointment is declared valid<sup>14</sup>.

Bear in mind that the word “appointment” does not include designation which connotes merely imposition by law, of additional duties of an incumbent official. It is considered only an acting or temporary appointment, which does not confer security of tenure on the person named<sup>15</sup>.

---

<sup>14</sup> *Ong v. Martinez*, G.R. No. 87743, (August 21, 1990) (Phil.)

<sup>15</sup> “COMELEC Resolution 10030: Prohibition against Appointment or Hiring of New Employees; Creation or Filling Up of New Positions; Giving Salary Increases; Transfer or Detail of Civil Service Employees;

Further, renewal of appointment of a temporary, casual, substitute, and contractual personnel are not covered by the prohibition and do not need prior authorization from the Commission. What is prohibited is the appointment of new employees, not a renewal of the appointment of old employees. The commission shall not grant the authority sought unless it is satisfied that the position to be filled up is essential to the proper functioning of the office or agency concerned and that the position shall not be filled in a manner that may influence the election.

### ***Intervention of public officers and employees<sup>16</sup>***

Any officer/employee in the civil service x x x who directly or indirectly intervenes in any election campaign or engages in any partisan political activity<sup>17</sup>, except to vote or to preserve public order, such as a peace officer.

It is pivotal to remember that due to constitutional and statutory prohibitions, government officers or employees are not permitted to campaign during the elections<sup>18</sup>.

### ***Use of public funds, money deposited in trust, equipment, and facilities owned or controlled by the government for an election campaign***

Incumbent elective officials who are running for a position or are candidates in the election are to refrain or

---

and Suspension of Elective Local Officials in connection with the May 09, 2016 National and Local Elections,” *CIVIL SERVICE GUIDE: A Compilation of Issuances on Philippine Civil Service*, Accessed July 9, 2022, <https://www.csguide.org/items/show/800>.

<sup>16</sup> Ibid

<sup>17</sup> COMELEC and Civil Service Commission (CSC) Joint Circular No. 001, series of 2016: Advisory on Electioneering and Partisan Political Activity  
<http://www.csc.gov.ph/phocadownload/userupload/irmoitd/comelec-csc%20joint%20circular%20no.%20001%20s.2016.pdf>

<sup>18</sup> CONST., (1987), Art. IX(B), Sec. 2, Par. 4 (Phil).

any partisan political activity. Incumbent or not, or any person for that matter is prohibited from using any printing press, radio, or television station or audio-visual equipment operated by the government or by its divisions, subdivisions, agencies or instrumentalities, equipment, vehicle, facility, apparatus, or paraphernalia owned by the government or by its political subdivisions, agencies. But incumbent officials may, for official functions, use these government equipment etcetera, during the campaign period, provided, it is purely limited to their official functions and not under any guise whatsoever, directly or indirectly, for any election campaign or for any partisan political activity.

Though it was opined that the line that separates official functions and campaign sorties is too thin and often blurred to make it difficult, if not impossible, to enforce this prohibition. In the absence of a sense of propriety of some incumbent officials who are candidates, whatever benefit or advantage such official functions give their candidacy may fall within inequity of the incumbent rule.

### ***Deadly weapon***

Another prohibition under the Omnibus Election Code is carrying any deadly weapon in the polling place, and within its 100-meter radius during voting, counting of votes, or preparation of election returns. A deadly weapon does not refer only to guns. It includes all types of bladed instruments, hand grenades, or other explosives<sup>19</sup>. During the election period, the Commission prohibits any person from bearing or transporting deadly weapons outside his or her residence or place of business, and in all public places, including any building, street, park, and in private vehicles or

---

<sup>19</sup> “COMELEC Resolution 10015: Rules and Regulations on: (1) The ban on the bearing, carrying or transporting of firearms and other deadly weapons; and (2) The employment, availment or engagement of the services of security personnel or bodyguards during the election period of the May 9, 2016 Synchronized National and Local Elections (November 13, 2015)

<https://comelec.gov.ph/index.html?r=2016NLE/Resolutions/res10015>

public conveyances<sup>20</sup>. The prohibition against deadly weapons is not absolute as it does not include pyrotechnics and bladed instrument in which possession is necessary to the occupation of the possessor or when it is a tool for a legitimate activity, or when authorized by the Commission.

### ***Carrying firearms outside residence or place of business***

Firearm refers to any handheld or portable weapon, whether a small arm or light weapon, that expels or is designed to expel a bullet, shot, slug, missile, or any projectile, discharged by means of the expansive force of gases from burning gunpowder or other forms of combustion or any similar instrument or implement. The barrel, frame, or receiver is considered a firearm.

The law also includes imitation firearms, toy guns, airguns, and airsoft guns in the definition of the term “firearms”. Imitation firearm refers to a replica of a firearm or other device that is so substantially similar in coloration and overall appearance to an existing firearm as to lead a reasonable person to believe that such imitation is a real firearm. An airsoft rifle or pistol includes battery-operated, spring and gas type powered rifles or pistols which discharge plastic or rubber pellets only as bullets or ammunition. This differs from replicas as the latter does not fire plastic or rubber pellet. It is a special type of air gun, which is restricted in its use only to sporting activities, such as war game simulation.

However, you may wonder why airguns or airsoft weapons are included in the definition of the term firearm. It is to avoid the possible use of recreational guns in sowing

---

<sup>20</sup> “COMELEC Resolution 10728: Rules and Regulations on (1) The ban on the bearing, carrying, or transporting of firearms and other deadly weapons; and (2) The employment, availment, or engagement of the services of security personnel or bodyguards during the election period of the May 9, 2022 Synchronized National and Local Elections (November 10, 2021)  
[https://comelec.gov.ph/plb-tps-attachments/2022NLE/Resolutions/com\\_res\\_10728.pdf](https://comelec.gov.ph/plb-tps-attachments/2022NLE/Resolutions/com_res_10728.pdf)

fear, intimidation, or terror during the election period for the reason that ordinary citizens may not be able to distinguish between a real gun and an airsoft gun. The objective is to hold free, orderly, honest, peaceful, and credible elections. Take note, however, as settled in the case of *Oreo vs. Comelec (2010)*, that replicas and imitations of airsoft guns and airguns are not included in the term firearm simply because they are not subject to regulation, unlike airsoft guns<sup>21</sup>.

Any permit to carry firearms outside residence and letter order, mission order duly issued by government authorities are automatically suspended, ineffective, and without force and effect at the onset of and during the election period. Only regular members or officers of the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP), and other government enforcement agencies may be authorized to carry possess firearms during the election period, provided, that when in possession of firearms, the deputized law enforcement officer must be in full uniform showing clearly and legibly his or her name, rank and serial number which remains visible at all times and in the actual performance of his or her election duty in the specific area designated by the Commission. They must be duly authorized to possess a firearm and to carry the outside of residence by virtue of a valid permit to carry or a valid mission order or letter order, in the actual performance of official law enforcement and/or security duty, or are going to or returning from his or her dwelling/barracks or official station and bearing, carrying or transporting a maximum of two (2) firearms.

Private individuals may also be authorized. But the law specifically enumerated who these private individuals are. They are cashiers and disbursing officers or persons who by nature of their official duties, profession, business, or occupation habitually carry large sums of money or valuables, including persons who are considered high-risk to bear, carry, and transport firearms and other deadly weapons may be granted authority. When possessing firearms, they

---

<sup>21</sup> *Orceo v. COMELEC*, G.R. No. 190779, (March 26, 2010) (Phil.)

must be currently employed under the conditions stated in his or her application, in the actual performance of his or her duties, specifically when transporting deposits, disbursing payrolls, or carrying large sums of money or valuables, in possession of the Certificate of Authority and other applicable firearm licenses, and carrying a maximum of two (2) firearms.

A person is considered high risk if his or her application is supported by credible evidence (i.e. threat assessment, police reports, etc.), the Committee on the Ban on Firearms and Security Personnel (CBFSP), after a careful background check and thorough evaluation finds sufficient and urgent reason to justify the grant of exemption.

Moreover, private security guards can be authorized to carry firearms, provided that they must strictly observe the following:

They must be:

- a. in their agency-prescribed uniform with the agency-issued identification card prominently displayed and visible at all times, showing clearly the name and position;
- b. in possession of a valid License to Exercise Security Profession with duty Detail Order, and valid firearms license of the agency/company where they are employed;
- c. deployed by the Private Security Agency (PSA) or Private Detective Agency (PDA) or Company Guard Force (CGF) duly licensed by the PNP;
- d. in the actual performance of official duty at his specified place or area of duty; and

- e. carrying one small firearm, unless specifically allowed otherwise under existing laws, rules, and regulations<sup>22</sup>.

There are several ways the Commission enforces a firearms ban, among others, it establishes at least one checkpoint in every city or municipality led by a regular member of the AFP or PNP with a rank of at least Lieutenant or Inspector to effectively implement the firearms ban during the election period. In cases where there is no available AFP Lieutenant or PNP Inspector, the highest ranking officer designates a lower ranking officer to act as team leader of the checkpoint. The Commission has broad power to provide details of who may bear, carry or transport firearms or deadly weapons, as well as define firearms, among others.

### ***Use any armored land, water or aircraft***

During the campaign period, the day before and on election day, any person is prohibited to use any armored land, water, or aircraft, provided with any temporary or permanent equipment or any other device or contraption for the mounting or installation of cannons, machine guns, and other similar high caliber firearms, including military-type tanks, half trucks, scout trucks, armored trucks, of any make or model, whether new, reconditioned, rebuilt or remodeled. However, banking or financial institutions and all business firms may use not more than two armored vehicles strictly for, and limited to, the purpose of transporting cash, gold bullion, or other valuables in connection with their business from and to their place of business, upon prior authority from the Commission.

---

<sup>22</sup> “COMELEC Resolution 8714: Rules and Regulations on the: (1) bearing, carrying or transporting of firearms and other deadly weapons; and (2) The employment, availment or engagement of the services of security personnel or bodyguards during the election period of the May 10, 2010 National and Local Elections (June 15, 2012) [https://comelec.gov.ph/ftp-tps-attachments/References/ComelecResolutions/Plebiscites/PlebiscitesCabuyaoLaguna/com\\_res\\_9458.pdf](https://comelec.gov.ph/ftp-tps-attachments/References/ComelecResolutions/Plebiscites/PlebiscitesCabuyaoLaguna/com_res_9458.pdf)



### ***Wearing of uniform and bearing arms***

The wearing of uniforms and bearing arms outside the immediate vicinity of his or her place of work during the election period, on the day before, and the very day of the election is prohibited. This covers any member of security or police organization or government agencies, commissions, councils, bureaus, offices, or GOCCs, or privately-owned or operated security, investigative, protective, or intelligence agencies. Security guards hired to secure the premises of offices or residences need to secure authority to carry firearms because their place of work or its immediate vicinity cannot be fixed with ease as they adjoin other offices or residences. But security guards assigned to secure all the houses in a subdivision, all offices in one compound, all factories within a complex, or all stores with a mall in which visible boundaries can easily be determined, need to secure authority only when the firearms are brought outside the subdivision, or compound, or complex, or mall.

### ***Policemen and provincial guards to act as bodyguards or security guards***

These enumerated employees are prohibited to act as bodyguards to any public official, candidate, or any other person for the whole duration of the election. Both sides can be held liable in this scenario. To clarify, members of the PNP can or may be assigned as security detail to private individuals subject to the following measure: no security or protective or intelligence agency is available in the area as certified by the PNP, and when there is a history of violence in the area which is among those considered as an area of concern, the applicant is considered a high-risk individual as evidenced by supporting documents such as but not limited to threat assessment, police reports, etc. and, those who are under the Witness Protection Program of the government.

***Prohibition against release, disbursement, or expenditure of public funds***

Release, disbursement, or expenditure of any and all kinds of public works are deemed prohibited except these:

- a. maintenance of existing and/or completed public works project;
- b. work undertaken by contract through public bidding held, or negotiated contract awarded before the 45-day period before the election;
- c. payment for the usual cost of preparation for working drawings, specifications, bills of materials, estimates, and other procedures preparatory to actual construction including the purchase of materials and equipment, and all incidental expenses for wages of watchmen and other laborers employed for such work in the central office and filed storehouses before the beginning of such period.
- d. emergency work necessitated by the occurrence of a public calamity, but such work shall be limited to the restoration of the damaged facility;
- e. Ongoing public works projects commenced before the campaign period or similar projects under foreign agreements;
- f. public works projects contracted through the Build-Operate-Transfer law since there are no public funds disbursed in these projects.

The Department of Social Welfare and Development (DSWD), and any other office in other departments of the government that are performing similar functions except salaries for the personnel and such other routine and normal expenses and such other expenses as may be authorized by the Commission.

Housing and any other office in any other department of the government performing similar functions except for salaries of personnel and for such other necessary administrative or other expenses as may be authorized by the Commission.

Moreover, during the 45-day prohibited period, no candidate or his or her spouse or relative within the second civil degree of affinity or consanguinity, participates, directly or indirectly, in the distribution of any relief or other goods to the victims of calamity and disaster. This is so, even if the candidate uses his or her resources. This prohibition is to avoid or prevent candidates from buying votes in the guise of charity. It is in the nature of a prohibited donation.

***Prohibition against the construction of public works, delivery of materials for public works, and issuance of treasury warrants and similar devices***

Any person can be held guilty of this offense if he or she undertakes the construction of any public works except for projects or works exempted in Section 261(v) of the OEC and the undertaking was done within the 45 days before elections, he or she issued, used or availed of treasury warrants or any device undertaking future delivery of money, goods, or other things of value chargeable against public funds and the issuance, use, and availing of the treasury warrant or device occurred within the 45-day period within elections.

***Suspension of elective provincial, city, municipal, or barangay officer***

The suspension mentioned here easily refers to the temporary forced removal from the exercise of the office. It includes suspension both as a penalty and preventive suspension. Any elective provincial, city, municipal or barangay officer cannot be suspended during the election period. The prohibition against the suspension, however, is

not absolute, as the elective official concerned may still be suspended upon prior approval of the Commission or when it is intended to apply the Anti-Graft and Corrupt Practices Act concerning suspension and removal of elective officials.

If there are prohibitions imposed upon public officials there are also those imposed upon the following:<sup>23</sup>

- i. Registration of Voters;
- ii. Voting;<sup>24</sup>
- iii. Canvassing;
- iv. Those common to all boards of election inspectors and boards of canvassers;
- v. Candidacy and campaign;

### ***Other prohibitions***

They are violated by:

- a. Any person who sells, furnishes, offers, buys, serves, or takes intoxicating liquor on the days fixed by law for the registration of voters in the polling place, on the day before the election, or on election day. Hotels and other establishments duly certified by the Department of Tourism as tourist-oriented and habitually in the business or catering to foreign tourists may be exempted for justifiable reasons upon prior authority of the Commission on Elections. Foreign tourists taking intoxicating liquor in said authorized hotels or establishments are exempted;

---

<sup>23</sup> Ibid

<sup>24</sup> Ibid

N.B.

- a. Any person who fails to cast his vote without justifiable excuse;  
*This provision has also been repealed by Section 1, Article V of the 1987 Constitution.*

- b. Any person who opens in any polling place or within a radius of thirty (30) meters thereof on election day and during the counting of votes, booths, or stalls of any kind for sale, dispensing, or display of wares, merchandise, or refreshments, whether solid or liquid or for any other purposes;
- c. Any person who holds on election day, fairs, cockfights, boxing, horse races, jai-alai, or any other similar sports;
- d. Any operator or employee of a public utility or transportation company operating under a certificate of public convenience, including government-owned or controlled postal service or its employees or deputized agents who refuse to carry official election mail matters free of charge during the election period. In addition to the penalty prescribed, such refusal shall constitute a ground for cancellation or revocation of certificate of public convenience or franchise; and
- e. Any person who operates a radio or television station who, without justifiable cause, discriminates against any political party, coalition, or aggroupment of parties or any candidate in the sale of air time. In addition to the penalty prescribed, such refusal shall constitute a ground for cancellation or revocation of the franchise.

Under Section 263 of the Omnibus Election Code, the principals, accomplices, and accessories as defined in the Revised Penal Code are criminally liable for election offenses. If one responsible be a political party or an entity, its president or head, the officials and employees of the same, performing duties connected with the offense committed, and its members who may be principals, accomplices, or accessories shall be liable, in addition to the liability of such party or entity.

Section 264 thereof provides that any person found guilty of an election offense is punished with, as a general rule, imprisonment of not less than one (1) year but not more than six (6) years and shall not be subject to probation but with exemptions on these cases:

- a. In case of illegal release of prisoners before and after the election, the offenders, if convicted by a competent court suffered the penalty of *prision mayor* in its maximum period if the prisoner/s so illegally released commits any act of intimidation, terrorism, or interference in the election;
- b. In case of the prohibition against warrantless arrest in connection with the election campaign, the offender is punished by imprisonment of not less than six years and one day nor more than 12 years, with the accessory penalties for election offenses;
- c. In case of the special election offense of electoral sabotage, the penalty imposed is life imprisonment (Section 27, Republic Act No. 6646 as amended by Section. 42, Republic Act No. 9369)<sup>25</sup>;
- d. In cases of prohibited acts under Sec. 29, RA 8436 as amended by Sec. 28 of RA 9369, which carry the penalty of imprisonment of eight years and one day to 12 years.

In addition, the guilty party is disqualified to hold public office and deprived of the right of suffrage. If the convict is a foreigner, he or she is deported after the prison term is served. If it is a political party, it is fined with not less than Php10,000 imposed upon such party after criminal action has been instituted where its corresponding officials have been found guilty.

---

<sup>25</sup> An Act amending Republic Act No. 8436, Entitled “An Act Authorizing the Commission on Elections to use an Automated election System in the May 11, 1998, National or Local Elections and in subsequent National and Local Electoral Exercises,...And for Other Purposes” (January 23, 2007) (Phil.)

All Election offenses shall prescribe after five (5) years from the date of their commission.

### ***Special Laws Governing Conduct of Election***

Aside from the Omnibus Election Code, there are Special Laws that govern the Conduct of Elections in the Philippines. However, these special laws do not sufficiently cover disinformation and campaign propaganda posted online which is an increasing problem in the conduct of free and fair elections in the Philippines.

1. Republic Act 6645- An Act Prescribing the Manner of Filling a Vacancy in the Congress of the Philippines, December 28, 1987;
2. Republic Act 7166- An Act providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor and for Other Purposes, November 26, 1991;
3. Republic Act 7941- The Party-List System Act, 03 March 1995;
4. Republic Act No. 8189- The Voter's Registration Act of 1996, 11 June 1996;
5. Republic Act No. 8436 -An Act Authorizing the Commission on Elections to Use an Automated Election In the May 11, 1998 National or Local Electoral Exercises, December 22, 1997
6. Republic Act No. 9006- Fair Election Act, 12 February 2001;
7. Republic Act 9189- The Overseas Voting Act of 2003 (February 14, 2003), as amended by RA No. 10590, May 27, 2013

8. Republic Act No. 9369 – An Act Amending RA No. 8436 entitled, An Act Authorizing the Commission on Elections To Use an Automated Election System in the May 11, 1998 National or Local Elections And In subsequent National and Local Electoral Exercises, To encourage Transparency, Credibility, Fairness, and Accuracy of Elections, Amending for the Purpose Batas Pambansa Blg 881, as amended, Republic Act No. 7166, and Other Related Elections Laws; 23 January 2007

### *Elections and the rise of disinformation networks*

This 2022 National Election has been under tremendous pressure due to the lingering Covid-19 crisis which has created new challenges for the government and pushed them to make changes to the voting process. Even though these aforementioned regulations exist to serve as frameworks for a peaceful and fair election, we currently face a pressing issue with social media being utilized to spread false information.

For the 6<sup>th</sup> straight year, the Philippines remains the top country worldwide whose citizens spend the most time on the internet and social media<sup>26</sup>, where 68% of the country's population has internet access, and over 92 million recorded social media users. Most certainly, social media has played a significant role in candidates' campaign strategies in the 2022 Elections. However, it has an alarming downside: it has made it possible for dishonest people to rapidly reach a sizable audience with their deceptive tactics. There are these so-called online political analysts who are allegedly paid to foster confusion and disinformation for the benefit of their candidates.

---

<sup>26</sup> Kyle Chua, "PH remains top in social media, internet usage worldwide" *Rappler*, (January 28, 2021) <https://www.rappler.com/technology/internet-culture/hootsuite-we-are-social-2021-philippines-top-social-media-internet-usage/>



To regulate this, the poll body, as in every election, issues rules to implement the Fair Election Act, or RA No. 9006. The recently concluded 2022 election introduced the latest rules contained in COMELEC Resolution No. 10730<sup>27</sup>, which provides among others, the expanded social media regulations, that only websites, blogs, and social media pages registered by candidates and political parties may run campaign ads for the May 9, 2022 elections, and the poll body has issued a stern warning that the information in online campaign ads should be truthful, not misleading, and not cast doubt on the integrity of the electoral process.

One may ask, does social media affect the result of the election? The results of the May 2022 election indicate that it heavily influenced election turnout. Rappler reported that Marcos Jr. has the most well-coordinated network on Facebook among all the candidates.

*“His community operates in a vacuum, effectively drowning out content from sources other than those supportive of him”, that the big proportion of supporters in Marcos Jr.’s network indicates that the years-long information operations online have successfully created a massive echo chamber of Marcos family supporters<sup>28</sup>.*

If based on the role of social media in the 2016 presidential elections, it was found that Pres. Duterte’s online fans then were the most active, engaged, and networked<sup>29</sup>. With this obvious impact on the political activities in our country, social media companies are being challenged to act like the fifth pillar of democracy<sup>30</sup>, or the

---

<sup>27</sup> COMELEC Resolution 10730: Rules and Regulations Implementing R.A. 9006, Accessed August 11, 2022, [https://comelec.gov.ph/php-tpls-attachments/2022NLE/Resolutions/com\\_res\\_10730.pdf](https://comelec.gov.ph/php-tpls-attachments/2022NLE/Resolutions/com_res_10730.pdf)

<sup>28</sup> Pauline Macaraeg, “How candidates utilized social media for the 2022 elections, *Rappler*, (May 7, 2022) <https://www.rappler.com/nation/elections/study-how-candidates-utilize-d-social-media-2022-philippine-elections/>

<sup>29</sup> *Journal of East Asian Studies*, Volume 20, Issue 3, November 2020, pp. 353 – 374, Accessed: August 11, 2022, <https://doi.org/10.1017/jea.2020.11>

<sup>30</sup> Juju Baluyot, “ELECTIONS 2022: Should social media become the ‘fifth pillar’ of our democracy?” *Yahoo News*, (May 5, 2022),

Fifth Estate, and fully acknowledge the cruciality of its role in the development of the country.

Consequently, the current election laws must be strengthened so that social media becomes a significant tool for political communication and voter education. Elsewhere, we see countries such as Canada's *Elections Modernization Act* which has proven insufficient to control election advertising in the age of the Internet and social media, as gaps remain that the current law can be circumvented<sup>31</sup>. These aforementioned laws have been constantly amended or supplemented to provide proper direction for the current or coming elections but we must acknowledge the fact that, in addition to passing laws, Election Officials have a variety of efficient options at their disposal to fight disinformation brought about by the social media and to reinforce Voter's Education.

For example, establishing communication channels with the general public and important stakeholders such as community organizations, youth organizations, candidates, and the media to fact-check information before the publication of the material and launch them only through official sources is one way to increase the people's trust in the government. Developing plans and procedures for disseminating corrective information while keeping an eye out for false and misleading election-related information. Creating easy-access channels for citizens to report instances of such disinformation to stop it, nipping it one the bud, before it spreads like wildfire causing confusion and proliferation of lies. Implementing and monitoring laws that specifically punish those responsible for online election-related disinformation so people can finally be held accountable for what they irresponsibly share online.

---

<https://ph.news.yahoo.com/comment-should-social-media-become-the-fifth-pillar-of-our-democracy-philippines-032140726.html>

<sup>31</sup> Reepschlager & Dubois, "New Election Laws are no match for the internet", *Policy Options*, (January 2, 2019),

<https://policyoptions.irpp.org/magazines/january-2019/new-election-laws-no-match-internet/>

COMELEC, with the help of other agencies and the Local Government Units (LGU), should conduct regular community outreach, especially those in far-flung areas to create connections with regional media and officials to curb disinformation. By doing these, voters can discern truth from lies, exercise their right to vote freely, and increase their confidence in the outcome of the election.

In the Philippines, Election represents political freedom. The most notable aspect of it is that it gives ordinary people the power to exercise authority because, without it, democracy would undoubtedly be non-functional. As President Johnson proclaimed that "This right to vote is the basic right without which all others are meaningless. It gives people, people as individuals, control over their destinies<sup>32</sup>."

No less than the Constitution declares that sovereignty resides in the people and all government authority emanates from them<sup>33</sup>. This is a confirmation of the value and importance of each and every Filipino in nation-building. ■

---

<sup>32</sup> Lyndon Johnson, Voting Rights Act, 1965

<sup>33</sup> Ibid

## Bibliography

An Act Amending Article 286, Section Three, Chapter Two, Title Nine of Act No. 3815, As Amended, Otherwise known as the Revised Penal Code (February 20, 1995) (Phil.),  
<https://www.officialgazette.gov.ph/1995/02/20/rep-public-act-no-7890>

An Act Amending Republic Act No. 8436, Entitled “An Act Authorizing the Commission on Elections to use an Automated election System in the May 11, 1998 National or Local Elections and in subsequent National and Local Electoral Exercises, Providing Funds therefor And for Other Purposes” (January 23, 2007) (Phil.)

An Act Introducing additional Reforms in the Electoral System and for Other Purposes, Rep. Act No. 6646, (January 5, 1988) (Phil.)

Antonio M. Bernardo vs. Benjamin S. Abalos Sr. et al, GR No. 137266, (December 5, 2001) (Phil.)

Atty. Reynante B. Orceo vs. COMELEC, G.R. No. 190779, (March 26, 2010) (Phil.)

Baluyot, Juju, “ELECTIONS 2022: Should social media become the ‘fifth pillar’ of our democracy?” *Yahoo News*, May 5, 2022  
<https://ph.news.yahoo.com/comment-should-social-media-become-the-fifth-pillar-of-our-democracy-philippines-032140726.html>

COMELEC vs. Hon. Dolores Español, GR. No. 149164-73, 417 S.C.R.A. 554, (December 10, 2003) (Phil.)

“COMELEC Resolution 8714: Rules and Regulations on the: (1) bearing, carrying or transporting of firearms

and other deadly weapons; and (2) The employment, availment or engagement of the services of security personnel or bodyguards during the election period of the May 10, 2010 National and Local Elections (June 15, 2012) [https://comelec.gov.ph/php-tpls-attachments/References/ComelecResolutions/Plebiscites/PlebiscitesCabuyaoLaguna/com\\_res\\_9458.pdf](https://comelec.gov.ph/php-tpls-attachments/References/ComelecResolutions/Plebiscites/PlebiscitesCabuyaoLaguna/com_res_9458.pdf)

“COMELEC Resolution 10030: Prohibition against Appointment or Hiring of New Employees; Creation or Filling Up of New Positions; Giving Salary Increases; Transfer or Detail of Civil Service Employees; and Suspension of Elective Local Officials in connection with the May 09, 2016 National and Local Elections,” *CIVIL SERVICE GUIDE: A Compilation of Issuances on Philippine Civil Service*, accessed July 9, 2022, <https://www.csguide.org/items/show/800>.

“COMELEC Resolution 10015: Rules and Regulations on: (1) The ban on the bearing, carrying or transporting of firearms and other deadly weapons; and (2) The employment, availment or engagement of the services of security personnel or bodyguards during the election period of the May 9, 2016 Synchronized National and Local Elections (November 13, 2015) <https://comelec.gov.ph/index.html?r=2016NLE/Resolutions/res10015>

“COMELEC Resolution 10728: Rules and Regulations on: (1) The ban on the bearing, carrying or transporting of firearms and other deadly weapons; and (2) The employment, availment or engagement of the services of security personnel or bodyguards during the election period of the May 9, 2022 Synchronized National and Local Elections (November 10, 2021) [https://comelec.gov.ph/php-tpls-attachments/2022NLE/Resolutions/com\\_res\\_10728.pdf](https://comelec.gov.ph/php-tpls-attachments/2022NLE/Resolutions/com_res_10728.pdf)

“COMELEC Resolution 10730: Rules and Regulations Implementing R.A. 9006” Accessed August 11, 2022, [https://comelec.gov.ph/php-tpls-attachments/2022NLE/Resolutions/com\\_res\\_10730.pdf](https://comelec.gov.ph/php-tpls-attachments/2022NLE/Resolutions/com_res_10730.pdf)

Chua, Kyle, “PH remains top in social media, internet usage worldwide” *Rappler*, January 28, 2021, <https://www.rappler.com/technology/internet-culture/hootsuite-we-are-social-2021-philippines-top-social-media-internet-usage/>

De Leon, Hector S. & De Leon, Jr., Hector M., *The Law on Public Officers and Election Law*. Philippines: Rex Book Store, 2019

Edgardo Nolasco vs. COMELEC et al, GR No. 122250 & 122258, 275 S.C.R.A.763 (July 21, 1997) (Phil.)

Florentino P. Blanco v. COMELEC and Eduardo Alarilla, G.R. No. 180164, June 17, 2008, citing *Codilla v. De Venecia*, G.R. No. 150605, (December 10, 2002) 393 SCRA 639. (Phil)

Gov. Exequiel B. Javier v. COMELEC et al, G.R. No. 215847 (January 12, 2016) (Phil.)

Gujilde, Ferdinand G.S., *Frequently Asked Questions in Election Law*. Philippines: Rex Bookstore, 2018

[Journal of East Asian Studies](#), Volume 20, Issue 3, November 2020, pp. 353 – 374 Accessed: August 11, 2022, <https://doi.org/10.1017/jea.2020.11>

Lat, Igmidio Cuevas, *Notes and Cases on Election laws*, Quezon City: Central Book Supply, 2006.

Lewis, John, Twitter post, July 2016, 3:39 a.m., <https://twitter.com/rejohnlewis>

Lyndon, Johnson, *Voting Rights Act*, 1965

Macaraeg, Pauline, “How candidates utilized social media for the 2022 elections”, *Rappler*, May 7, 2022, <https://www.rappler.com/nation/elections/study-how-candidates-utilized-social-media-2022-philippine-elections/>

Oliver Lozano vs. COMELEC and Jejomar Binay, GR No. 94626 (October 28, 1991) (Phil.)

Omnibus Election Code, B.P. Blg.881, as amended (Phil.)

Reepschlager, Anna & Dubois, Elizabeth “New Election Laws are no match for the internet”, January 2, 2019, <https://policyoptions.irpp.org/magazines/january-2019/new-election-laws-no-match-internet/>

Robert F. Ong vs. Maria Terersita Herrera-Martinez et al, G.R. No. 87743, 188 S.C.R.A. 830 (August 21, 1990) (Phil.)

Stevensons, Burton Egbert. *The Home Book of Quotations, Classical and Modern*. (1937)

Teodoro O’hara vs. COMELEC et al, G.R. Nos. 148941-42 379 S.C.R.A. 247 (March 12, 2002) (Phil.)

1987 Philippine Constitution