Republic of the Philippines
Supreme Court
Manila

EN BANC

ATTY. ROMULO B. MACALINTAL,
Petitioner,

- versus -

COMMISSION ON ELECTIONS and THE OFFICE OF THE PRESIDENT, through EXECUTIVE SECRETARY LUCAS P. BERSAMIN,
Respondents.

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G.R. No. 263590

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,

- versus -

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,

G.R. No. 263673

Present:

GESMUNDO, *C.J.*,* Chairperson,
LEONEN, *Acting C.J.*,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, *JJ.*

* On official leave but left a vote.

duly represented by its Chairman,
GEORGE ERWIN M. GARCIA,
Respondents.

Promulgated:

June 27, 2023

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DECISION

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 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.*
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> - *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

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1 *Rollo* (G.R. No. 263590), pp. 3–29.

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

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:
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> 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.
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> 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.

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

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 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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3 *Rollo* (G.R. No. 263590), p. 3.
4 (December 3, 1985).
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.

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 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

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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.
19 Id. at 63–64.

"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]

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

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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.
24 Id. at 99–103.
25 Id. at 103–105.

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.

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]

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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).

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.

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]

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]

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32 Id. at 21–23.
33 Id. at 26.
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.

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

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.

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39 Id. at 115–120.
40 Id. at 120–125.

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 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]

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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*, 2 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.

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.

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]

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

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[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:
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> > Sovereignty resides in the people and all government authority emanates from them and continues only with their consent.
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> May I know from the committee the reason for adding the word "democratic" to "republican"? The constitutional framers of the 1935 and 1973 Constitutions were content with "republican." Was this done merely for the sake of emphasis?
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> 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.
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> 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.
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> Does the word "democracy" in this context accommodate all the nuances of democracy in our time?
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> MR. NOLLEDO: According to Commissioner Rosario Braid, "democracy" here is understood as participatory democracy.
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> MR. OPLE: Yes, of course, we can agree most wholeheartedly on that construction of the word.

> 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 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.
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> **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]

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

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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 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*]

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 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]

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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 *Wesberry 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 <https://ylpr.yale.edu/sites/default/files/YLPR/derfner_hebert_final_copy.pdf> (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 (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.

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.

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 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.**

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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.

> 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 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

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64 Italics supplied.
65 Emphasis and italics supplied.
66 Emphasis and italics supplied.
67 Emphasis and italics supplied.
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.

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 "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]

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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*].

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*].

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 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 and tenor.[82] It includes the entire range of

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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).

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)

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:

> 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.
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> 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.*

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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*].

86 Id. at 587; citations omitted.

87 See <https://www.article19.org/resources/statement-on-the-us-election/> (last visited January 15, 2023).

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

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 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.

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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*].

90 Id.

91 <https://definitions.uslegal.com/l/liberty/> (last visited January 15, 2023).

92 See Legal Information institute, <https://www.law.cornell.edu/wex/liberty#:~:text=As%20used%20in%20the%20Constitution,according%20to%20one's%20own%20will> (last visited January 15, 2023); italics supplied.

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]

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 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**

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

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-human-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*].

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]

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*

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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 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.

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 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]

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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.

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.

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 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]

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

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106 CONSTITUTION, Art. VI, Secs. 2 and 4.
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.
114 CONSTITUTION, Art. IX-C, Sec. 2 (1).

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, 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.

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[115] CONSTITUTION, Art. IX-C, Secs. 2 (2), (3), and (5); italics supplied.
[116] CONSTITUTION, Art. IX-C, Secs. 4 and 9.

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)

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.

(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 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 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

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

> 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 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*

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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*].

[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.

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, 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.

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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.
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.

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 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 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**.

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

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

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

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 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.

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.

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*

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

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

133 Id. at 361.

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 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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134 Id.; italics supplied.

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*].

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 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**.

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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 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)

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

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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 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, Sec. 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

expanded mode, which arose from the use and abuse of the political question doctrine during the martial law era under former President Ferdinand E. Marcos.[145]

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 ***non-constitutional situation*** where no

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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 (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*, 692 Phil. 64, 73 (2009) [Per J. Brion, *En Banc*]. See also *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, supra; and Associate Justice Arturo D. Brion's Separate Opinion in *Araullo v. Aquino III*, supra.

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 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]

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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 Court,* 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, they are nonetheless not prevented from resolving the same whenever warranted, 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 under the laws by which they were granted.

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.

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]

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 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

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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 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.

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]

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]

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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 <https://supreme.justia.com/cases/federal/us/343/579/> (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 <https://constitution.congress.gov/browse/essay/artIII_S2_C1_2_3/> (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.

[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.

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 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 of the controversy as to assure that concrete***

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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.

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 v. De la Fuente*, G.R. No. 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.

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 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.*"

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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.

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

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 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 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,

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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).

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.

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 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.

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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.

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.

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 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.

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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.

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

186 Id.; citations omitted.

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, 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:

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187 369 U.S. 186 (1962).

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

189 Id.

> 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 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 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]

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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].

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

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 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,

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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)

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 Section 5 hereof.**" (Emphasis supplied)

the Supreme Court is not a trier of facts and generally rules only on questions of law;[200] in 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 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

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200 See Article VIII, Sec. 5 (2) 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 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 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:
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> **(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:
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> (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)

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.

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 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) questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders

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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).

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.

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 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

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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*].

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, if: ***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]

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.

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214 See *Belgica v. Ochoa, Jr.*, supra note 155, at 522.
215 Id.

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.

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.

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[216] Id. at 526.
[217] *Kida v. Senate of the Philippines*, supra note 100.

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.

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**:

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

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 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, the Congress, based on their own whims and caprices, effectively decides when the Filipino people

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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.

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) filed before the Congress which sought for the

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

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

HB 41 Explanatory Note (by Rep. Paul Ruiz Daza)	- Minimize the spread of the virus and prevent another surge; - Allow newly elected national and local officials to improve upon the programs and projects that were already implemented since the outbreak of the pandemic; - Allow the projected expense thereof to be utilized instead for other more pressing and critical programs, activities, and projects of the national government; and - 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; - Continuity in the implementation of programs; and - 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.
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 - 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

	- 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 - 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]
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; - Allow the barangay officials to continue and strengthen their efforts in fighting the COVID-19 virus; and - 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 - 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 - 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 - 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 - 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 - 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; - Newly elected officials will benefit from the experience of BSK officials in fighting the pandemic; and - "To heal the wounds" brought by the recently concluded elections.
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 - 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 ad ensure credible and effective barangay elections, and for registration of voters, particularly for first time voters; and - 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 - 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; - The familiarity of the barangay officials will facilitate delivery of services; and - 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.
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 - 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 - 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 - Continuity of service leads to effective implementation of programs, policies, and projects.
HB 2985 Explanatory Note (by Rep. Salvador A. Pleyto, Sr.)	- To ensure continuity in government response; and - 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; - Ease the burden of the COMELEC in conducting two elections in the same year; and - 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. - 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

postponement of the December 2022 BSKE. These include: realignment of the COMELEC's budget allocation for the December 2022 BSKE towards the government's COVID-19 response programs and 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

	- 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 performance of the roles and functions relative to the fight against the COVID-19 virus; - Redirect budget allocation into addressing the needs of the citizens, particularly of the health sector; and - 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.
HB 3603 Explanatory Note (by Reps. Ralph Wndel P. Tulfo and Jocelyn P. Tulfo)	- Give the COMELEC and the electorate ample time to prepare; - Realign the BSKE with the LGC which originally set these elections on the second Monday of May and every three years thereafter; and - "The national and local elections of May 9, 2022 pushed through, as scheduled, despite the COVID-19 pandemic. Thus a pandemic alone is not sufficient reason or basis for rescheduling any elections."
HB 3673 Explanatory Note (by Rep. Rolando M. Valeriano)	- Use the budget allocated for the 2022 BSKE for the new administration's plans and programs, especially for the continued pandemic response.
HB 3717 Explanatory Note (by Rep. Anthony R.T. Golez, Jr.	- Allow the government to tap on the expertise and training of the incumbent barangay leaders which could be valuable in formulating plans, programs and other interventions to adapt to the new normal and to spearhead recovery to pre-pandemic levels; - Enable the government to realign a portion of the apportions for the BSKE towards interventions aimed to address economy, peace and order, education, food security, and disaster resilience.
HB 4030 Explanatory Note (by Rep. Aniela Bianca D. Tolentino)	- The amount allocated for the 2022 BSKE can be used for the programs that will help the Philippines in its efforts to recover from the COVID-19 pandemic.
HB 4199 Explanatory Note (by Rep. Rufus B. Rodriguez)	- Holding another election in the same year will further divide the populace.

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.

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 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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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)

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 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)

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.

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

> 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 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.

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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*].

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.

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

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

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 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

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

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?

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

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]

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:

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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 time 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).

247 Id.

248 Id.

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.
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> **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 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**.
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> 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]
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> 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.*:

> 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
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> x x x x
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> **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.**
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> 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.**"

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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*].

> 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 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 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

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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).

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"
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	RA 11462	"Subsequent synchronized [BSKE] shall be held on the first Monday of

postponed to December 5, 2022		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 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 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 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

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253 746 Phil. 503 (2014) [Per J. Villarama, Jr., *En Banc*].
254 Id. at 543, citation omitted.
255 Id.
256 Id.
257 Id.
258 Supra note 100.
259 614 Phil. 390 (2009) [Per J. Brion, Second Division].
260 Id. at 397.

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 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 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.

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261 Id.

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

263 Id. at 373.

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 hold-over 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 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 states that incumbent elective barangay officials running for the same office "shall continue to hold office until their successors shall have been elected and qualified."

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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*].

> **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.

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-

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266 *Adap v. COMELEC*, supra; other citations omitted.
267 433 Phil. 620 (2002) [Per. J. Carpio, *En Banc*].

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 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.

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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 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 then exercised their 'general will' to make laws for the 'public good.'" (See Constitutional Rights Foundation <https://www.crf-usa.org/bill-of-rights-in-action/bria-20-2-c-hobbes-locke-montesquieu-and-rousseau-on-government.html> (last visited January 15, 2023).

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 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 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**

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[270] See Article 25 of the ICCPR.

[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.

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, 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.

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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).
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.

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 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

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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.

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 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.

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.

ANTONIO T. KHO, JR.
Associate Justice

WE CONCUR:

on official leave but left vote
concurring
ALEXANDER G. GESMUNDO
Chief Justice

See Separate Opinion

I concur. See separate opinion
MARVIC M.V.F. LEONEN
Acting Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

See Concurrence
RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

See Separate Concurring Opinion
RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

See Separate Concurring Opinion
JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

See Separate Concurring Opinion
MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court.

MARVIC M.V. F. LEONEN
Acting Chief Justice