Includes 2016, 2017 up to September 2018 cases

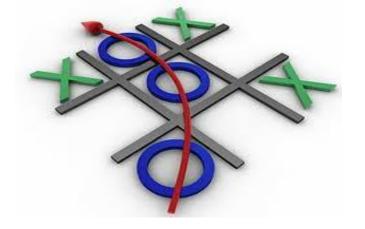
## Election Law Reviewer

Alberto C. Agra

Ateneo Law School

October 27,2018

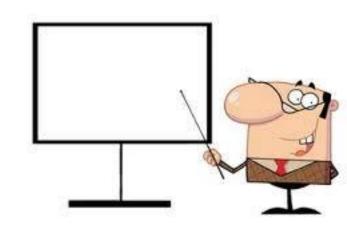
### **Election Laws**



- 1. 1987 Constitution
- Omnibus Election Code (B.P. 881)
- 3. Automated Election Law (R.A. 9369 amending R.A 8436)
- 4. Synchronized Elections Act (R.A. 7166)
- 5. 1991 Local Government Code (R.A. 7160)
- 6. Initiative and Referendum (R.A. 6735)
- 7. Party-List System Act (R.A. 7941)

- 8. Fair Election Act (R.A. 9006)
- 9. Voter's Registration Act of 1996 (R.A 8189)
- 10. Overseas Absentee Voting (R.A.10590 amending R.A. 9189)
- 11. Biometrics (R.A. 10367)
- 12. Lone Candidate in Special Elections (R.A. 8295)
- 13. Official Sample Ballots (R.A.7004)
- 14. Citizenship Retention and Reacquisition Act (R.A. 9225)

## **Topics for Discussion**



- —1) Philippine Elections
- 2) Commission on Elections and Election Tribunals
- 3) Voters and Voter Registration
- 4) Elective Officials and Candidates
- —4.1) Party-List System
- —5) Campaign

- 6) Contributions and Expenditures
- —7) Postponement and Failure of Elections
- 8) Automated Elections
- 9) Pre-Proclamation Cases
- —10) Post-Proclamation Cases
- —11) Election Offenses
- —12) Dispute Resolution

## 1) Philippine Elections



- General
- Free
- Direct
- Equal
- Secret
- Choices (Person & Policy)
- Automated (or Manual)
- All Levels
- Synchronized conduct
- Regular

- Plurality Formula (and proportional representation)
- Regulated by Law
- Supervised by Comelec
- Clean, Honest, Orderly,
   Peaceful and Free
- Regulated Contributions and Expenditures
- Participated in by Political Parties
- Public Disclosures



- Independent 7-Person Constitutional Body (administrative agency, public office, fixed term, permanent appointments)
- Plenary authority to decide all questions affecting elections except the question as to the right to vote (qualifications); commits grave abuse of discretion when it dismisses an initiative petition on the ground that there were no funds allocated for the purpose; has the power to determine whether the propositions in an initiative petition are within the powers of a concerned sanggunian to enact (2017)
- Enjoys Fiscal Autonomy



- Wide discretion in adopting means to carry out its mandate of ensuring CHOPFE (not straitjacketed by procedural rules), fix length and starting date of election period outside the 120-day default period, does not amount to undue delegation (2016)
- Enforcement Power: All election laws (persons and policies); exclusion of others; enforce, not amend laws (2016)
- Judicial Power: Qualifications and Election Contests (excludes Suffrage)
- Quasi-Legislative: RA 7166 uses the mandatory word "shall" to impose upon the COMELEC the duty to issue rules and regulations to implement the law (bearing of firearms) (2017)



- Control and Supervision: over BEIs and BOCs, over election officers since its agents (2016)
- Jurisdiction: Original (Regional, Provincial and City); and Appellate (Municipal, Barangay and Sangguniang Kabataan)
- Remedies: En Banc (MR, administrative) and Division (1st instance, judicial)
- Process: Division MR to En Banc then Certiorari to SC
- Contempt: Judicial Proceedings (not Administrative)



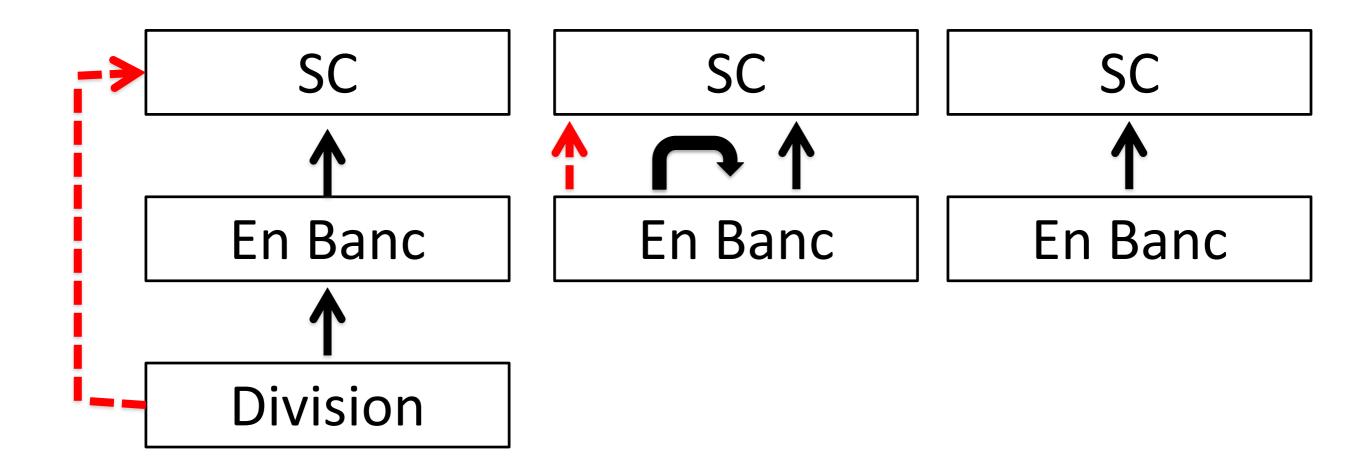
### **Judicial (Division)**

- Disqualification
- Election Protest
- Quo Warranto
- Pre-Proclamation
- Annulment of Proclamation
- Intra- and inter-party
- Cancellation of a certificate of candidacy
- Leadership (not expulsion of member)
- Registration of Political Parties

#### **Administrative (En Banc)**

- Failure of Elections
- Postponement of Elections
- Election Offense (filing of information)
- Annulment of Book of Voters
- Cancellation of certificate of candidacy based on final judgment of conviction with ancillary penalty of DQ
- Allocation of party-list seats
- Accreditation of Major Parties





Judicial

Administr Election Laws, Alberto E.gra Rule-Making





Branch	Public Office
Regular Courts	Supreme Court (judicial review over SET and HRET, 2016) Court of Appeals Regional Trial Court Municipal Trial Court
Tribunals	Presidential Electoral Tribunal Senate Electoral Tribunal (exclusive and only task, 2016) House of Representatives Electoral Tribunal (assumes jurisdiction when proclaimed and taken oath, 2016; can annul results in precincts, 2017)
COMELEC	National Board of Canvassers En Banc Division (can become final without en banc confirmation, 2016) Board of Canvassers Board of Election Inspectors Law Department
Executive	Department of Justice





	Elective Positions							
Cases	Pres/VP	Senators	District	Part-List	Regional	Provincial	City	Municipal
			Reps.	Reps.	Officials	Officials	Officials	Officials
Disqualification				Comelec	Division			
Proclamation	Congress	Comelec	Local/	Comelec	Comelec	Provincial	City	Municipal
		En Banc	District	En Banc	En Banc	Board of	Board of	Board of
			Board of			Canvassers	Canvassers	Canvassers
			Canvassers					
Annulment of	[Congress]	[Comelec	[Comelec	[Comelec	Comelec Division			
Proclamation		En Banc]	Division]	En Banc]				
Election	Presidential	Senate	House of Re	presentatives	Regional			Regional
Protests	Electoral	Electoral	Electoral	l Tribunal	Comelec Division Trial Cour			Trial Court
Quo <u>Warranto</u>	Tribunal	Tribunal						
Postponement								
of Elections	COMELEC En Banc							
Failure of								
Elections								
Election	[Immunity							
Offenses	after Proc.] (Comelec En Banc filing of Information; Regional Trial Court for Trial)							

## 3) Voters: Concepts



- --- What? Suffrage is a Right (not an obligation)
- Who? Qualifications defined in Constitution; Disqualifications defined in Statute; Allow Absentee Voting, Dual Citizens, Disabled and Illiterates to Vote
- How? Procedural Requirements allowed to be imposed, Substantive not allowed
- Distinguished from **Right to Register**

## 3) Voters: Qualifications



- Filipino Citizen
- At least 18 years of age on election day
- Resident in Philippines for at least 1 year prior to election day (domicile; permanent residency)
- Resided in place wherein propose to vote for at least
   6 months prior to election day (permanent or temporary)
- Free from Disqualifications
- In order to vote, must be a registered voter

## 3) Voters: Disqualifications



- Sentenced by final judgment imprisonment of 1 year or more
- Sentenced to suffer accessory penalty political rights
- —Adjudged by final judgment crime involving disloyalty
- Court-declared insane and incompetent persons

## 3) Voters: Registration



- Nature: Continuing
- Listing: Computerized List at all Levels
- Number: 200 Voter-Precinct (several precincts can be clustered)
- Biometrics: Mandatory for new; for registered voters, validation
- Changes: Permanent but subject to changes (+ or -)

## 3) Voters: Registration



### Addition (+)

- New Voters
- Transfer of Residence to
- Reactivation
- Inclusion

### **Deletion (-)**

- Cancellation (death)
- Transfer of Residence from
- Deactivation
- Exclusion
- Annulment of Book of Voters

## 3) Voters: Deactivation



- Disqualified to Vote
- Failed to Vote in 2 preceding elections
- Registration Excluded by the Court
- Lose Filipino Citizenship
- Failure to have biometrics taken (validation)

## 3) Voters: Opposition



- What? Applications not yet resolved
- Where Oppose? Election Registration Board
- Who may Oppose? Voter, Candidate or Political Party
- When? Specified Period
- How Oppose? File Written Opposition/ Challenge
- Why Oppose? Not Qualified, Fictitious
- Appearance? Mandatory if application opposed

# 3) Voters: Inclusion/ Exclusion



- What? Applications already acted upon
- Where File? MTC (not Comelec), then RTC (not Comelec), then SC (question of law)
- Grounds? Inclusion Disapproval or Name Stricken Out; Exclusion Not Qualified or Fictitious Voter

## 3) Voters: Annulment of Book of Voters



- Annul What? Book of Voters per precinct
- -- When Filed? Normally, after period to file inclusion/ exclusion lapses
- What Grounds? (1) Book Prepared Improperly, Preparation Attended with Vice or Fraud, and (2) Book contains Statistically Improbable Data (not on substantive, qualification of voters)

## 3) Voters: Election Day



#### **Illegal Voter**

Not registered; Use another name; Disqualified; Multiple Registrant (allowed to vote if properly identified)

### Illegal Act

Vote-Buying; Vote-Selling; Vote-Betting: Promise to induce or withhold vote (allowed to vote if take oath)

## 4) Officials: Elective



#### **National Office**

President; Vice-President; Senators (24; 1/2);Representatives (District and Party-List)

#### **Local Office**

LCE: Regional Governor, Provincial Governor, City or Municipal Mayor and Punong Barangay

VLCE: Vice-Governor and Vice-Mayor; Sanggunian Members

## 4) Officials: Elective



#### Number of Elective Positions to be Voted for National and Local Elections May 13, 2019

	Elective Position	Number
1	Senators	12
2	Party-List Representatives	59
3	Member, House of Representatives	238
4	Gövernor	81
5	Vice-Governor	81
6	Member, Sangguniang Panlalawigan	776
7	City Mayor	145
8	City Vice-Mayor	145
9	Member, Sangguniang Panlungsod	1,624
10	Municipal Mayor	1,489
11	Municipal Vice-Mayor	1,489
12	Member, Sangguniang Bayan	11,916
13	ARMM Regional Governor	1 -
14	ARMM Regional Vice-Governor	1
15	ARMM Member of Regional Assembly	24
	TOTAL SEATS	18,081

## 4.1) Types of Representatives



Features	District Representatives	Party-List Representatives
Candidate	Natural Person	Party or Organization
Personalities	Directly, Personalities	Indirectly, Personalities
Portion of House	80%	20%
Formula	Plurality	Proportional Representation
Nominee Qualifications	Natural-Born; 25 yo; Literate; 1 year residency; Registered in District	Same; except 25-30 if youth; registered anywhere

## 4.1) Number of PL Seats



- 20% of House of Representatives
- All seats are "reserved" and must be filled up
- Formula: # of DRs/ 0.8 x 0.2
- So in 2019:

 $238/0.8 \times 0.2 = 59.5$  (59 or 60 seats)





National Parties/ Organizations	<ul> <li>need not be sectoral</li> <li>geographical presence/ track record</li> </ul>
Regional Parties/ Organizations	<ul> <li>need not be sectoral</li> <li>geographical presence/ track record</li> </ul>
Sectoral Parties/ Organizations	<ul> <li>principal advocacy</li> <li>no need to show track record</li> <li>represents 12 marginalized sectors</li> <li>list of 12 not exclusive</li> </ul>
Political Parties	<ul> <li>Register under system</li> <li>Not field district representatives</li> <li>If field district representatives, through sectoral wing</li> </ul>

## 4.1) Disqualified Parties



Religious Sect

Advocates Violence

Adjunct of, Funded by Government Foreign or Foreign-Assisted Party





2% of 2<sup>nd</sup> votes per seat

Maximum
3 seats (only 1
party)

Real Threshold: <2%

## 4) Officials: Qualifications



Enumeration: Set by the Constitution (national) and statutes (local)

- Citizenship (naturalized elsewhere: oath and renounce, 2016; foundling presumed natural-born unless proven otherwise, 2016; clerical error in date of notarization of Affidavit of Renunciation [dual citizenship] not fatal, 2017)
- Age
- Residency (physical presence may be broken; not require 24/7, 2016)
- Registered Voter
- Literacy
- Free from Disqualifications
- —Not perpetually disqualified (grave misconduct; repeated failure to file SOCE, 2017)
- —[Undertake Drug Test under CDDA OF 2002, unconstitutional]

**Procedure:** Electoral aspect of DQ (administrative proceeding): summary

## 4) Specific Qualifications



Elective Position	Qualifications						Term
	Citizenship	Age	Literacy	Voter	Residency	(Years)	Limit
President and	Natural-Born	40	Read and Write	Registered	10 years in Phl	6	P-1
Vice President							VP-2
Senator	Natural-Born	35	Read and Write	Registered	2 years in Phl	6	2
District	Natural-Born	25	Read and Write	Registered in	1 year in District	3	3
Representatives				District			
Party-List	Natural-Born	25	Read and Write	Registered	1 year in Phl	3	3
Representatives		( <u>if</u> youth: 25-30)					
ARMM Governor	Natural-Born	35	Read and Write	Registered in	5 years in	3	3
				ARMM	ARMM		
ARMM	Natural-Born	21	Read and Write	Registered in	5 years in	3	3
Legislators				District	District		
Local Officials	Citizen	Prov/HUC: 23	Read and Write	Registered in	1 year in Locality	3	3
		Other Mayor/	Filipino or Local	Locality			
		VM: 21	dialect				
		Others: 18					

# 4) Candidate: Evolution of Definition (under AES)



Automated Election Law RA No. 9369 (January 23, 2007)	Omnibus Election Code B.P. Bldg. 881 (December 3, 1985)	Comelec Resolution No. 9991 (October 2, 2015)	Comelec Resolution No. 10049 (February 1, 2016)	
<ol> <li>Filed Certificate of Candidacy (CoC)</li> <li>Start of campaign period</li> </ol>	1. Aspiring for elective office 2. Filed CoC	<ol> <li>Aspiring for elective office</li> <li>Filed CoC</li> <li>Not withdrawn CoC before start of campaign period</li> </ol>	<ol> <li>Seeking elective office</li> <li>Filed CoC</li> <li>Not died, withdrawn CoC</li> <li>Not disqualified or CoC cancelled or denied due</li> </ol>	
			course before start of campaign period	

## 4) Officials: Candidate



- Definition: Seeks public office *and* files certificate of candidacy *and* campaign period has started (under automated system); October 11 to 17, 2018 for May 13, 2019 elections (2019)
- Nature of CoC: only 1 CoC; announce and declare eligible (2016); if CoC void, candidate not considered a candidate even if cancelled after elections (2016); perpetual disqualification [guilty of grave misconduct] renders CoC void, cannot be re-elected (2017)
- Ministerial Duty: If filed in due form, ministerial duty to receive COC; Comelec may look into patent defects (appearing on the face) of CoCs
- Effect of Non-Filing: Not a candidate (not liable for unlawful acts and omissions before becoming a candidate; before start of campaign period)
- Effect of Filing: On Tenure of Incumbents (elective remain in office; appointive ipso facto resigned)

## 4) Officials: **Certificate of** Candidacy



#### Republic of the Philippines COMMISSION ON ELECTIONS

CERTIFICATE OF CANDIDACY FOR SENATOR

Affix Latest Photo Here

Annex "F"

Passport Size

5.2 City/Municipality  5.3 Barangay  20. PROFESSION OR OCCUPATION:  21.    I AM A REGISTERED VOTER OF:   I WILL BE A REGISTERED VOTER OF:   VILL BE LEE, WITH THE OFTEN OF STANDARD OF STANDARD OFTEN OF	<ol> <li>File this in FIVE (5) LEGIBLE copies with the COMELEC Office concerned, during regular of on any day from October 1, 2015 to October 5, 2018.</li> <li>Attach to this certificate, the Certificate of Nomination and Acceptance (CONA), if any.</li> <li>This certificate shall be sworn before a notary public or any official authorized to administer oath, even in their capacities as Notary Public.</li> <li>No filing fee shall be imposed.</li> </ol>		
1. Last Name 1. Last Name 2. NICKNAME OR STAGENAME: (Indicate only one nickname or stage name) 2. NICKNAME OR STAGENAME: (Indicate only one nickname or stage name) 3. OFFICIALLY NOMINATED BY: (Attach Certificate of Nomination) 4. Name to appear on the Official Ballot not to exceed thirty (30) characters:	2019 National and Local Elections; and after having been sworn to in accord	of the Philippines, in ance with law, I her	the May 13, eby state the
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(Lost Name, Fire Name OR Neckspare and Acronym of Political Party Affiliation as stated in Borne 1 to 3) (In case of a legally merited (another), she has the option to choose other her malden name, married name or both)  5. RESIDENCE/ADDRESS:  5.1 Province  5.2 City/Municipality  5.3 Barangay  20. PROFESSION OR OCCUPATION:  21.  ADDRESS FOR ELECTION PURPOSES: (Could be the same as No.5)  PERIOD OF RESIDENCE IN THE PHILIPPINES UP TO THE DAY BEFORE MAY 13, 2019:  No. of Years  No. of Months  No. of Years  No. of Months  Province  1 I WILL BE A REGISTERED VOTER OF:  1 I WILL BE A REGISTERED VOTER OF:  21.  1 I AM A NATURAL BORN FELIPINO CITIZEN.  1 AN ON TO A PERMANENT RESIDENT OF, OR AN IMMIGRANT TO, A FOREIGN COUNTRY.  AND ALESCANDER OF COMMISSION, WITHIN THIRTY (30) DAYS AFTER ELECTION DAY, MY FIRL, TRUE  AND ITEMEDED STATEMENT OF CONTRIBUTIONS AND EXPENDITURES (SOCE) IN CONNECTION WITH THE ELECTION.  AND ALLEGACY. THE PROCESS OF THE COMMISSION, WITHIN THIRTY (30) DAYS AFTER ELECTION DAY, MY FIRL, TRUE  AND ALLEGACY. THERETO: I WILL GOET THE LAWS, ECCAL ORDERS AND DEVERSIBLY, WITHOUT MENTAL RESERVATION OR  ELECTION AND OTHER PURPOSES AS MAY BE PROVIDED BY LAW, SUCH AS B.P. BLG, 881 AND R.A. NO. 10173 ALSO KNOWN  AS THE DATA PROCESS AND OF THE LAWS, ECCAL ORDERS AND DEVERSIBLY, WITHOUT MENTAL RESERVATION OR  ELECTION AND OTHER PURPOSES AS MAY BE PROVIDED BY LAW, SUCH AS B.P. BLG, 881 AND R.A. NO. 10173 ALSO KNOWN  SIGNATURE OF CANNIGURATION STATES HERE BY THE COMMISSION, WITHOUT MENTAL RESERVATION OR  ELECTION AND OTHER PURPOSES AS MAY BE PROVIDED BY LAW, SUCH AS B.P. BLG, 881 AND R.A. NO. 10173 ALSO KNOWN  SIGNATURE OF CANNIGURATION STATES HERE BY THE COMMISSION OF THE ADDRESS PROVIDED BY LAW, SUCH AS B.P. BLG, 881 AND R.A. NO. 10173 ALSO KNOWN  SIGNATURE OF CONTRIBUTIONS AND OTHER PURPOSES AS MAY BE PROVIDED BY LAW, SUCH AS B.P. BLG, 881 AND R.A. NO. 10173 ALSO KNOWN  SIGNATURE OF CONTRIBUTION OF THE LAWS ELECTION STATES HERE BY THE COMMISSION OF THE ADDRESS PROVIDED BY LAW, SUCH AS B.P. BLG, 881 AND R.A. NO.		☐ Sinete ☐	- TO
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20. PROFESSION OR OCCUPATION:  5.4 House No./ Street / Subdivision  21.	5.1 Province		
21.  ADDRESS FOR ELECTION PURPOSES: (Could be the same as No.5)  PERIOD OF RESIDENCE IN THE PHILIPPINES UP TO THE DAY BEFORE MAY 13, 2019:  No. of Years  No. of Months  I AM A NATURAL BORN FILIPINO CITIZEN.  I AM NOT A PERMANENT RESIDENT OF, OR AN IMMIGRANT TO, A FOREIGN COUNTRY.  I AM NOT A PERMANENT RESIDENT OF, OR AN IMMIGRANT TO, A FOREIGN COUNTRY.  I AM HOLD A PERMANENT RESIDENT OF, OR AN IMMIGRANT TO, A FOREIGN COUNTRY.  I AM HOLD A PERMANENT RESIDENT OF, OR AN IMMIGRANT TO, A FOREIGN COUNTRY.  I AM HOLD A PERMANENT RESIDENT OF, OR AN IMMIGRANT TO, A FOREIGN COUNTRY.  I AM HOLD A PERMANENT RESIDENT OF, OR AN IMMIGRANT TO, A FOREIGN COUNTRY.  I AM HOLD A PERMANENT OF CONTRIBUTIONS AND EXPENDITURES (SOCE) IN CONNECTION WITH THE ELECTION.  AND ITEMIZED STATEMENT OF CONTRIBUTIONS AND EXPENDITURES (SOCE) IN CONNECTION WITH THE ELECTION.  AND ALLEGIANCE THERETO, I WILL OBEY THE LAWS, LEGAL ORDERS AND DECREES PROMILIGATED BY THE EAST THAT AND ALLEGIANCE THERETO, I WILL OBEY THE LAWS, LEGAL ORDERS AND DECREES PROMILIGATED BY THE EAST THAT AND ALLEGIANCE THERETO, I WILL OBEY THE LAWS, LEGAL ORDERS AND DECREES PROMILIGATED BY THE EXPENSION OR ELECTION AND OTHER PROPOSES AS MAY BE PROVIDED BY LAW, SUCH AS B.P. BIG. BIG. BILL AND R.A. NO. 19173 ALSO KNOWN  AS THE DATA PRIVACY ACT OF 2012, ANONG OTHERS.  SIGNATURE OF CRINICIPAL PROPOSES AS MAY BE PROVIDED BY LAW, SUCH AS B.P. BIG. BIG. BILL AND R.A. NO. 19173 ALSO KNOWN  AS THE DATA PRIVACY ACT OF 2012, ANONG OTHERS.  SIGNATURE OF CRINICIPAL PROPOSES AS MAY BE PROVIDED BY LAW, SUCH AS B.P. BIG. BIG. BILL AND R.A. NO. 19173 ALSO KNOWN  AS THE DATA PRIVACY ACT OF 2012, ANONG OTHERS.  SIGNATURE OF CRINICIPAL PROPOSES AS MAY BE PROVIDED BY LAW, SUCH AS B.P. BIG. BIG. BILL AND R.A. NO. 19173 ALSO KNOWN  AS THE DATA PRIVACY ACT OF 2012, ANONG OTHERS.  SIGNATURE OF CRINICIPAL PROPOSES AS MAY BE PROVIDED BY LAW, SUCH AS B.P. BIG. BIG. BILL AND R.A. NO. 19173 ALSO KNOWN  AS THE DATA PRIVACY ACT OF 2012, AND INCOMINENT OF CRINICIPAL PROVIDED BY LAW, SUCH AS B.P. BIG. BIG. BILL	5.2 City/Municipality 5.3 Barangay	-	
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## 4) Officials: Substitution



- Grounds: (1) Death, (2) Withdrawal, and (3) Disqualification (not allowed if: (a) violate term limit; (b) not meet residency requirement; (c) CoC denied due course or cancelled (c.1) nuisance and (c.2) material misrepresentation); if invalid substitution not considered a candidate
- Who? Substitute must be Qualified; not allowed for independent candidate (PP/ Coalition can only nominate 1)
- When? Up to mid-day of election day (if withdrawal, not after November 29, 2018; death or final DQ decision, mid-day of May 13 provided same surname)
- **Substitute?** Qualified (not disqualified) and Same Party
- Limitations: Substituted candidate can still run for other elective positions; Withdrawal not affect liabilities

## 4) Officials: Disqualifications



- Purpose of DQ: prevent candidate from running, or if elected, from serving; DQ distinct from administrative case (2016)
- Lack qualifications/ possess some disqualifications
- ─ Violate Term Rule (1-2-3 terms)
- Commission of an election offense
- Nuisance Candidate
- Sentenced by Final Judgment (accessory penalty)
- Willfully Commits Material Misrepresentation
- —No valid, timely and properly filed certificate of candidacy
- —Grounds under the 1991 LGC, for local elective officials

## 4) Officials: Disqualifications



Lack of Qualifications (fact prevails over statements in CoC, 2016)

- Pleading? Petition to Disqualify a Candidate
- Grounds? Constitution or Statutes; for local officials under OEC and LGC (e.g. fugitives) (2016); suspension not a ground since law provides for removal (2017)
- Where File? Comelec Division
- When File? Before Proclamation
- Process? Summary, Due Process, requires a complaint/ petition; not motu propio unless there is final judgment
- If Not File? Quo Warranto



#### **Commission of Election Offenses**

- Pleading? Petition to Disqualify a Candidate
- What Offenses? Enumerated in Section 68 OEC (2 options DQ case or Election Offense criminal case): Vote-Buying, Terrorism, Unlawful Expenditures, Unlawful Campaign, Coercion of Subordinates, Threats, Prohibition against Release of Public Funds (other election offenses file EO case RTC hears)
- Where File? Comelec Division
- When File? Before Proclamation
- If Not File? Election Protest; Election Offense



#### **Nuisance Candidate**

- Petition? Petition to Declare a Candidate a Nuisance Candidate
- Who Is? Campaign Capability, Intention, Performance, Exposure, Platform, Party Affiliation, Organization, Profession, Income, Health, Education, Name
- Where File? Comelec Division (not HRET, 2016)
- When File? Within 5 days from Last Day Filing of Certificate of Candidacy
- If Not File? No remedy



#### Misrepresentation

— Pleading? Petition to Deny Due Course to or Cancel a Certificate of Candidacy

What? Misrepresentation must be Material (pertains to Qualifications and Disqualifications, also as to permanent residency (2016); knowing conviction of libel/ crime involving moral turpitude (2016); violation of 3-term rule [not petition to disqualify] (2017); not surname, profession, political party) and Willful/ Deliberate; Even if there is 'misrepresentation," if actually qualified, should not be disqualified

Where File? Comelec Division (summary nature, rule on patent misrepresentations, not make conclusions of law contrary to jurisprudence, 2016)

- When File? 25 days from Filing of CoC (2017)
- If Not File? Quo Warranto



#### Misrepresentation

Material Entries	Formal Entries
Qualification-related:	Non-Qualification-related:
1. Citizenship	1. Political Party
2. Residency	2. Profession
3. Registered Voter	3. Legitimacy or Illegitimacy
4. Age	4. Use of another surname
5. Literacy	5. Civil Status
<ul> <li>To be disqualified under Misrepresentation:</li> <li>1. The misrepresentation must be material, i.e., qualification-related</li> <li>2. The candidate had the intent to defraud the voters (deliberate)</li> <li>3. The candidate is not actually qualified</li> </ul>	

## 4) Compare and Contrast



		G	rounds		
Aspects	Lack of	Commission of an	Material	Nuisance	
	Qualifications, etc.	Election Offense	Misrepresentation	Candidate	
Pleading	Petition to Disqualify a	Petition to Disqualify a	Petition to Deny Due	Petition to Declare a	
	Candidate	Candidate	Course to or Cancel a Certificate of Candidacy (CoC)	Candidate as a Nuisance Candidate (or <u>Comelec</u> initiates)	
Allegations	<ol> <li>Candidate does not possess all qualifications</li> <li>Candidate possesses some or all of disqualifications</li> <li>Candidate violated rule on term limits</li> </ol>	Candidate committed any of enumerated election offenses:  1. Vote-Buying  2. Terrorism  3. Unlawful Expenditures  4. Unlawful Campaign  5. Coercion of Subordinates  6. Threats  7. Prohibition against Release of Public Funds  8. Failure to submit Statement of Contributions and Expenditures in at least 2 elections	<ol> <li>Misrepresentation is material, i.e., qualification-related</li> <li>Candidate intended to defraud the voters (deliberate)</li> <li>Candidate is not actually qualified</li> </ol>	CoC has been filed to:  1. put the election process in mockery or disrepute  2. cause confusion among the voters by the similarity of the names of the registered candidates  Candidate no bona fide intention since no/ not:  1. Campaign Capability  2. Bona fide intention to run for office  3. Track Record  4. Exposure  5. Platform  6. Party Affiliation  7. Funds  8. Good Health  9. Appropriate education	

## 4) Compare and Contrast



		Gr	ounds	
Aspects	Lack of	Commission of an	Material	Nuisance
	Qualifications, etc.	Election Offense	Misrepresentation	Candidate
Where File		Comel	ec Division	
When File	Any time before	Any time before	Within 25 days from	Within 5 days from Last Day
	proclamation	proclamation	Filing of CoC	Filing of Certificate of
				Candidacy
Who Files	Registered voter or	[Registered voter or	Registered voter or	Registered candidate for the
	registered political party	registered political party]	registered political party	same position
		Comelec Campaign Finance		
		Office, SEC-registered		
		NGOs and CSOs		
Remedy	Quo <u>Warranto</u> case	Election Offense	Quo <u>Warranto</u>	No remedy
After Period				
Substitution	Not allowed	Allowed	Not allowed	Not allowed
after				
Resolution				

## 4) Effect of DQ

#### Succession or Special Elections

Commission of an election offense



#### "2nd Placer"

- Violation of 3-term limit
- Not a voter (inclusion denied with finality)
- Conviction of criminal offense involving moral turpitude
- Not a Filipino citizen
- Dual Citizen (2016)
- Final decision on DQ before elections

## 5) Campaign: Concept



- Definition: Act designed to *promote* the election or *defeat* of a candidate; satire of political parties on social issues not election propaganda (2016)
- Operative Act: Intent/ Design material (not all acts of beneficence are considered campaigning) and Period (start of campaign)
- Application: All Candidates for All Elective Offices
- Framework: Regulated but Liberalized
- Period: 90 days for nationally-elected and 45 days for locally-elected (February 12 and March 29 for May 13, 2019 elections)

# 5) Campaign: Allowable Forms



- Forming Organizations
- Holding Rallies
- Making Speeches
- Distributing Campaign Materials
- —Soliciting Votes
- —Publishing Advertisements

## 5) Campaign: Propaganda



- Paid Political Advertisements (Comelec debates could be live-streamed, 2016)
- Free Space and Airtime
- Use of Gadgets and Billboards
- Private Poster Areas
- Posting in Private Places, PUVs and terminals

## 5) Campaign: Forms



- —Printed Materials (8.5"W x 14"L)
- **Letters**
- Posters (2' x 3') in Poster Areas (12' x 16')
- —Rally Streamers (3' x 8')

## 5) Campaign: Paid Ads



- Print: 1/4<sup>th</sup> page in broadsheet; ½ in tabloid 3x a week
- Television: 120 minutes (for national); 60 minutes (for local) per station (not overall, 2016)
- -Radio: 180 minutes (for national); 90 minutes (for local)
- —(being in news not counted)

## 5) Campaign: Unlawful Acts



- Foreign Intervention
- Removal or Destruction of Lawful Propaganda
- Materials not Disclose Payor
- Exceed Limits (Time and Space)
- —Transportation, Foods and Drinks During Rallies
- Movie or Video of or by Candidate

#### 6) Prohibited Contributions



- All SEC-registered corporations
- FinancingInstitutions
- Public UtilityOperator
- Natural ResourcesExplorer
- GovernmentContractors

- Franchise Holders
- Donee Institution from Government (P100,000)
- Donee Educational Institutions (P100,000)
- Foreigners/ ForeignCorporations
- Civil Servants and AFP

#### 6) Other Prohibited Acts



- —Not reveal true name of contributor
- —Not report all contributions
- Exceed Limits (P10, P5, P3)
- Not file Statement of Contributions and Expenditures (perpetual DQ for repeated failure, 2016)
- Expenditures made by non-authorized persons

## 6) Lawful Expenditures



- —Use of Facilities
- - $\Box$ Travel
- Compensation
- Communications
- —Pollwatchers
- Office/ HQ

- -Advertisements
- Meetings/ Rallies
- —Counsel\*
- Copying of List of Voters\*
- —Sample Ballots\*
- Volunteers
- (\* not included in cap)

## 7) Postponement of Elections



- Grounds: (1) Force majeure, (2) Violence, (3)
   Terrorism, (4) Loss or Destruction of Election
   Paraphernalia, and (5) Analogous Causes
- **Extent:** Serious *and* Impossible to have free and orderly elections
- Conditions: Grounds must exist before end of voting/ transmission
- —Authority: Comelec en banc (petition or motu propio); not BEI or election officers
- Result: Special Elections within 30 days from cessation

#### 7) Failure of Elections



- Grounds: (1) Force majeure, (2) Violence, (3) Terrorism, (4) Fraud, and (5) Analogous Causes
- Extent: Failure to elect *and* affect results of elections; relates to entire elections (2016)
- Examples: Failure transfer of venue of counting without notice, ballots replaced/ burned; No Failure voting resumes after sporadic violence/ gun fire, fake ballots, landslide results, vote-buying, destruction of copies of ERs; convincing evidence showing will of people muted by causes (2016)
- Conditions: Election not held or suspended, After voting, During preparations or transmission of election returns, Canvassing
- Authority: Comelec en banc (petition)
- Result: Special Elections within 30 days from cessation (objective of declaration, 2016)





	Postponement of Elections	Failure of Elections				
Legal Bases	Section 5, Omnibus Election Code	Section 6, Omnibus Election Code				
	Section 4, RA No. 7166	Section 4, RA No. 7166				
Grounds	1. Force Majeure	1. Force Majeure				
	2. Violence	2. Violence				
	3. Terrorism	3. Terrorism				
	4. Loss or Destruction of Election Paraphernalia	4. Fraud				
	5. Analogous causes	5. Analogous causes				
Extent of	Serious and Impossibility to have free and orderly	Failure to elect and affect results of elections (illegality				
Cause	elections	must affect 50% of the votes)				
Basis	Expectancy/ potential Effect	Actual outcome/results				
Conditions	Grounds must exist before voting	Election not held or suspended				
		2. After voting or during preparation				
		3. Transmission				
		4. Canvassing				
Area	Any political subdivision	Any polling place				
Procedural	<ol> <li>Motu Propio or by Verified Petition</li> </ol>	1. Verified Petition				
Requirements	2. Notice and Due Process	2. Notice and Due Process				
Authority	Come	<u>lec</u> En Banc				
Effect if	Postpone elections	Declaration of failure of elections				
Petition	2. Conduct elections reasonable close to elections	2. Holding or continuation of elections reasonably close				
Granted	which was not held; but not later than 30 days	to elections which was not held; but not later than 30				
	from cessation of the cause	days from cessation of cause				

#### 8) Automated Elections



- When: 2<sup>nd</sup> Monday of election year (May 13, 2019)
- Statutory Bases: RA 9369 amending RA 8436
- Automated Election System: voting, counting, consolidating, canvassing, and transmission (not proclamation)
- Paper-Based or Direct Recording Election System: Ballots, Election Returns, Certificate of Canvass, Statement of Votes (25% shading threshold)
- Comelec Discretion: AES or AESs, Paper-Based or Direct Recording





Features: Use of Ballots, Stand-alone machine, with Audit Trails, Minimum Human Intervention and Security Measures

#### -Processes:

- Casting, Counting and Transmission at Precinct Level
- Consolidation and Proclamation at Canvassing Levels

## 8) Vote-Counting Machines



#### 8) Automated Elections



- Precinct-Level Result: Printing of Elections Returns (30 copies) then Electronic Transmission to Board of Canvassers; Results loaded in Data Storage Devices
- Canvassing at BoC: Consolidation of Results in Data Storage Devices then Electronic Transmission to Comelec (Senate and Party-List) and Congress (President and Vice-President) and Proclamation
- Canvassing Periods: May 13 to 16, 2019 (city/municipal); May 17 to 19, 2019 (others)

#### 9) Pre-Proclamation Cases



- Aspects: BoC-related (BoC or Comelec division, concurrent) and Results-related (BoC)
- Allowed: Objections pertaining to Proceedings and Composition of BoC; Pollwatchers-related; Data-Storage Delayed, Destroyed, Falsified (before canvass)

#### Not Expressly Allowed:

- 1. Material Defects, Manifest Errors, Omission, Discrepancy (not allowed under Comelec Resolution for AES, allowed for manual)
- 2. Rules of Appreciation; Violence; Voting Procedure; Eligibility of Voters (whether manual or AES)

# 10) Post-Proclamation: Election Protests



- Grounds: Fraud and Irregularities in Casting, Counting and Canvassing
- **Documents in Question/ Evidence**: Ballots, ERs, CoCs and Data-Storage Devices
- Venue: P/VP (PET); Senators (SET); Representatives (HRET); Regional; Province; City (Comelec Division); Municipality (RTC); Barangay (MTC)
- Requirements: Filed by candidate; Within period; Protestee proclaimed; Payment of filing fee; Allegations of fraud; Identify precincts; Verified; Certificate of non-forum shopping
- Procedure: Revision; Trial; range of shading thresholds; objective of the revision process of mimicking or verifying/confirming how the VCMs read or counted the votes can be achieved by referring to the ERs generated by the VCMs; decrypted ballot images where the integrity of the ballots and the ballot box was not preserved (2018)
- If prosper: protestee removed, true winner proclaimed; rendered moot upon the occurrence of a subsequent election since it is impossible to assume office for the previous term (2018)

# 10) Post-Proclamation:Quo Warranto



Grounds: Disloyalty to Republic; Ineligibility

**Venue**: Same as Election Protest

If prosper: Respondent ousted; special elections or succession

Covers Impeachable Officers: quo warranto and impeachment can proceed independently and simultaneously; Constitution does not foreclose a quo warranto action against impeachable officers; To subscribe to the view that election of impeachable officers are outside judicial review is to cleanse their election of any possible defect pertaining to the Constitutionally-prescribed qualifications (2018)

# 10) Post-Proclamation: Annulment of Proclamation



- Grounds: Proclamation based on irregular and illegal canvass
- Period to File: 10 days from proclamation
- **Venue**: Comelec Division
- **Effect**: Proclamation annulled; re-canvass

## 11) Election Offenses



斑				ELE	CTION PERIOD							
PHASE	PRE-ELECTION DAY			ELECTIC	ON DAY	ELEC	TION DAY +1	POST-PROCLAMATION				
Ь	CAMPAIGN PERIOD	EVE	VOTING	CASTING	TRANSMISSION	CANVASSING	PROCLAMATION					
	VOTE BUYING / SELLING OR CONSE	PIRACY TO C	OMMIT ACT									
	W	AGERING	]									
	COERCION OF SUBORDINATES	TO INFLUEN	ICE VOTE				_					
	THREATS, FRAUD, OR TERRORISM											
	COERCION OF ELECTION OFFICIALS											
	CREATION OF NEW POSIT APPOINTMENT OF EMPLO PROMOTION, GIVING SAI INCREASE	YEES,										
	WITHIN 45 DAYS BEFORE ELEC	TION DAY										
OFFENSES			TRANSFER	OF EMPLOY	EES OR OFFICERS II	N CIVIL SERVICE						
FFE	CIVIL SERVICE	OFFICERS (	OR EMPLOYE	EES ENGAGIN	IG IN PARTISAN PO	LITICAL ACTIVIT	TIES					
	PROMISE/ SOLICIT EMPLOYEMENT	TO INFLUE	NCE VOTING	4								
ELECTION	UNLAWFUL ELECT											
LEC				-	-	S FOR REFUSING	G OR FAILING TO VO	TE FOR A CANDIDATE				
H	APPOINTMENT OR USE OF	SPECIAL PO	OLICEMEN, A			TON PRICOVERS						
				ILLEGAL R	ELEASE OF DETENT	TON PRISONERS	)					
	USE OF PUBLIC FUNDS FO						WITHIN 30 DAYS A	FTER ELECTION DAY				
	BEARING, CARRYIN	G, OR TRA	NSPORTING	FIREARMS O	UTSIDE RESIDENCE	OR BUSINESSES	EVEN WITH PERMI	Γ TO CARRY				
			CAI	RRYING DEA	DLY WEAPONS WIT	HIN RADIUS OF	100 METERS					
				USE OF A	ARMORED LAND, W	ATER, OR AIR C	RAFT					
	WEARING	UNIFORM	S AND BEAR	ING ARMS O	URSIDE VICINITY O	F WORK PLACE						
	USE	OF SECUR	ITY PERSON	NELS OR BO	DYGUARDS BY CAN	DIDATES, UNLES	SS AUTHORIZED					

## 11) Election Offenses



PHA	PRE-ELECTION DA	AY	ELECTION DAY			ELEC	TION DAY +1	POST-PROCLAMATION		
þ	 CAMPAIGN PERIO	D EV	VOTING	CASTING	TRANSMISSION	CANVASSING	PROCLAMATION			
	ORG	GANIZATION	OR MAINTENAN	NCE OF REACT	ION FORCES, STRIK	E FORCES, OR C	OTHER SIMILAR FOR	CES		
	RELEASE OF F FOR PUBLIC W WELFARE, CO HUMAN SE	VORKS, SOCIA MMISSION OF TTLEMENTS	MORE THAN ONCE OR IN SUBSTIT							
	CONSTRUCT DELIVERY OF M		R OF ME		OR STALLS FOR SAL OR REFRESHMENT FERS RADIUS	E				
OFFENSES	 WITHIN 45 DAYS BE	FORE ELECTION	HORSE		OCKFIGHTS, BOXING BY OTHER SIMILAR TS	G,				
)FFF		SUSP	ENSION OF ELE	CTIVE PUBLIC	OFFICIAL WITHOU	JT APPROVAL O	F COMELEC			
	•	ALTERA'	ION OF TERRIT	ORY OF A PRI	ECINCT OR ESTABLI	SHMENT OF A N	NEW PRECINCT			
JILL	GIVIN	IG DONATION	S OR GIFTS IN O	CASH OR IN K	IND					
FLECTION	CAMPAIGNING ON HOLY WEEK	SEL		NG, OFFERING INTOXICATI	G, BUYING, SERVING NG LIQUOR	<del>;</del> ,				
		GIV		G, FREE TRANS S OR THINGS	PORTATION, FOOD OF VALUE	),				
			(	CAMPAIGNING	3					
			SOLICITI NG VOTES OR BLACK PROPAGA NDA WITHIN							





Categories	Specific Cases
Electorate	<ul> <li>Opposition to Application for Registration</li> <li>Inclusion and Exclusion</li> <li>Annulment of Book of Voters</li> <li>Challenge on Election Day</li> <li>Election Offense</li> </ul>
Candidate	<ul> <li>Disqualification</li> <li>Quo Warranto</li> <li>Election Offense</li> </ul>
Election Integrity	<ul><li>Postponement of Elections</li><li>Failure of Elections</li></ul>
Pre-Proclamation	<ul> <li>BoC-related</li> <li>Consolidated Results-related</li> </ul>
Election Protests/ Post-Proclamation	<ul> <li>Annulment of Proclamation</li> <li>Election Protest</li> <li>Quo Warranto</li> </ul>
Election Offenses	<ul><li>Against Candidates</li><li>Against Non-Candidates and Voters</li></ul>



					Cases	/ Disputes				
Aspects	Annul Book of Voters	DQ of Candidates	Postpone Elections	Failure of Elections	Voter Challenges	Pre-Proc.	Annul Proclamation	Election Protest	Quo Warranto	Election Offenses
Grounds	Book Prepared Improperly, Preparation Attended with Vice or Fraud; Book contains Statistically Improbable Data	Lack of Qualifications; Material Misrep. in CoC; Nuisance; Commission of Election Offense	Impossible to have free elections due to: Force Majeure Violence Terrorism Loss or Destruction of Election Paraphernalia Analogous causes	Failure to elect and affect outcome of elections due to: Force Majeure Violence Terrorism Fraud Analogous causes	Illegal Voter Illegal Acts	Illegal Composition and Proceedings of Board of Canvassers Irregularities affecting authenticity of Election Returns/ Certificates of Canvass (Data- Storage Delayed, Destroyed, Falsified)	Anomalies in the Proclamation	Fraud or irregularities in election (whole process)	Disloyalty to the Republic; Ineligibility	Offenses enumerated in Election Laws



					Cases	Disputes				
Aspects	Annul Book of Voters	DQ of Candidates	Postpone Elections	Failure of Elections	Voter Challenges	Pre-Proc.	Annul Proclamation	Election Protest	Quo Warranto	Election Offenses
Period	Pre-election	Filing of CoC to Pre-Proc.	Pre-election	Election Day to Pre-Proc.	Election Day	During Canvassing	After Proclamation	After Proclamation	After Proclamation	Pre-and Post- Election
Jurisdiction (1 <sup>st</sup> Instance)	Comelec En Banc	Comelec Division	Comelec En Banc	Comelec En Banc	Board of Election Inspectors	1st: Board of Canvassers or Comelec Division 2nd: Board of Canvassers	Comelec Division	P/ VP: SET Senate: SET Reps: HRET Reg'l, Prov'l and City: Comelec Division Municipal: RTC	P/ VP: SET Senate: SET Reps: HRET Reg'l, Prov'l and City: Comelec Division Municipal: RTC	Comelec Law Dept. or Prosecutors Comelec En Banc (for filing of information)
Period to File	[no order to execute within 90 days before election]	Lack of Q and Election Offense: Before Proc. Material Misrep: Within 25 from CoC filing Nuisance: Within 5 days from CoC deadline	Before or on Election Day	Before Proclamation	Before Voter casts ballot	1 <sup>st</sup> : When ground apparent 2 <sup>nd</sup> : Before canvass of ER/ CoC	10 days from proclamation/ within period to file Election Protest	P/VP: 30 days from proclamation Senate: 15 days from proclamation Others: 10 days from proclamation	10 days from proclamation	5 years from commission



Aspects	Annul Book of Voters	DQ of Candidates	Postpone Elections	Failure of Elections	Voter Challenges	Pre-Proc.	Annul Proclamation	Election Protest	Quo Warranto	Election Offenses
Procedure	Petition and hearing	Petition and hearing	Motu propio or Petition and hearing	Petition and hearing	Challenge recorded	1st: Petition and hearing; canvassing suspended during pendency 2nd: verbal and written objections at the same time, then evidence within 24 hours	Petition and hearing	Petition, hearing and revision	Petition and hearing	Complaint, Finding of Probable Cause, Filing of Information and Trial before RTC
Petitioner	Voter, election officer or political party	Lack of Q, Election Offense and Material Misrep: Registered voter or registered political party Nuisance: Registered candidate Election Offense: Comelec Campaign Finance Office, NGOs	Any interested party	Comelec motu propio or any interested party	Voter or watcher	Any candidate or political party	Any candidate or political party	P/ VP/ Municipal:  2 <sup>nd</sup> or 3 <sup>rd</sup> placer Others: Any candidate	Any voter	Any interested party/ Any voter



					Cases	/ Disputes				
Aspects	Annul	DQ of	Postpone	Failure of	Voter	Pre-Proc.	Annul	Election	Quo	Election
	Book of	Candidates	Elections	Elections	Challenges		Proclamation	Protest	Warranto	Offenses
	Voters									
Effect if	Book of	Prevent	Elections will	Declaration	Not allowed	1st: BoC	Proclamation	True winner	Incumbent	Conviction
Granted	Voters	candidate	be postponed	of failure (no	to vote	reconstituted	annulled and	proclaimed	ousted	Imprisonment
	annulled	from running,	in political	winner can		or rectifies	canvassing			DiQ to hold
		or if elected,	subdivision;	be		proceedings	anew			public office
		from serving;	Special	determined)		2 <sup>nd</sup> : ER/ CoC				Deprivation
		Can be	elections will	in affected		set aside and				of right of
		substituted if	be held not	polling place;		corrected				suffrage
		DQ based on	later than 30	elections will						
		commission of	days from	be held not						
		election	cessation of	later than 30						
		offense	cause	days from						
				cessation of						
				cause						

#### THANK YOU. GOOD LUCK.