

Module 2: Electorate

Right of Suffrage

Qualification of Voters

System of Registration

Continuing Registration
for Overseas Voting

Voters' Rights on Election Day

Voters as Pollwatchers

Voters as Petitioners in Cases

Inclusion and Exclusion Cases

Annulment of Book of Voters

Challenges on Voters
(Illegal Voters and Illegal Acts)



ATENEIO DE MANILA UNIVERSITY
SCHOOL OF LAW

Fr Joaquin G Bernas SJ
Institute for Continuing Legal Education

Election Law for the 2022 Elections

MODULES

✓ **Elections and Candidates**
September 30, 2021 | 3pm, Thursday

Electorate
October 28, 2021 | 3pm, Thursday

Commission on Elections
November 25, 2021 | 3pm, Thursday

Campaign
December 16, 2021 | 3pm, Thursday

Electoral Procedure
January 27, 2022 | 3pm, Thursday

Election Contests and Offenses
February 24, 2022 | 3pm, Thursday

Atty. Alberto C. Agra
Ateneo Election Law Professor
Ateneo Political Law Bar Reviewer

Review of Module 1

1. Can Congress require all candidates for elective offices to be high school graduates?
2. Do we have candidates today?
3. Can an aspirant/ a would-be candidate be held liable for illegal campaign today?
4. What happens to a public official upon filing of his/ her CoC?
5. Can a Party-List Organization obtain a seat even if it only garners 1.5% of all 2nd votes?
6. When is the deadline for substitution?
7. Is position switching possible?
8. Can an independent candidate be substituted?
9. Is there material misrepresentation when a candidate in her CoC for Representative indicates “7 months” as residency in the district?
10. What happens to a proclaimed official if his disqualification case becomes final during his term of office?



No. 17
10.25.21

Dissecting the Definition of a *Candidate* in an Automated Election

(1) There are **no candidates today**, only candidates-in-waiting, aspirants, filers, would-be candidates or inchoate candidates.

(3) A would-be candidate shall become a full-fledged candidate, who can be held liable for unlawful acts or omissions, **only** at the start of the **campaign period**:

- February 8, 2022 for Nationally-Elected
- March 25, 2022 for Locally-Elected

“xxx Any person who **files his certificate of candidacy** within **this period** shall **only** be considered as a **candidate** at the **start of the campaign period** for which he filed his certificate of candidacy: *Provided, That, unlawful acts or omissions* applicable to a candidate shall **effect only upon that start** of the aforesaid **campaign period**: xxx” (*Section 15, RA 9369, Amended Automated Election Law*)

(2) A **full-fledged candidate** is one who:

1. Intends to seek public elective office;
2. Filed his/her CoC from October 1 to 8, 2021 (or within period of substitution);
3. Has a valid CoC; and
4. Possesses all the qualifications and none of the disqualifications; and where the campaign period has started (*Operative Fact*).

(4) From the date of COC-filing up to the start of campaign period, the following **rules are not yet applicable/ effective**:

- Maximum amount per voter
- Types and specifications of campaign collaterals
- Vote-buying
- Release of Public Funds
- Tri-Media Limits

3 Substitution Scenarios

- A filed Certificate of Candidacy (CoC) and Certificate of Nomination and Acceptance (CONA) from Political Party (PP) Z for **Position X** (10.01-08)
- B filed CoC with CONA from PP-Z for **Position Y** (10.01-08)
- C did not file any CoC and is not a member of PP-Z

Scenario 1 (*single switch*): A substitutes for B

- A withdraws CoC for Position X (10.09 to 11.15)
- B withdraws CoC for Position Y (10.09 to 11.15)
- A files CoC for Position Y (10.09 to 11.15)
- CONAs of A and B must be from PP-Z
- [B does not substitute for anyone]

Scenario 2 (*double switch*): A for B and B for A

- A withdraws CoC for Position X (10.09 to 11.15)
- B withdraws CoC for Position Y (10.09 to 11.15)
- A files CoC for Position Y (10.09 to 11.15)
- B files CoC for Position X (10.09 to 11.15)
- CONAs of A and B must be from PP-Z

Scenario 1 (*simple switch*) C substitutes for B

- B withdraws CoC for Position Y (10.09 to 11.15)
- C joins and must obtain CONA from PP-Z
- C files CoC for Position Y (10.09 to 11.15)

No. 8
10.09.21



Note: COMELEC, in its current resolutions, no longer prohibits “switching.”



No. 16.1
10.18.21

Comparing & Contrasting Cases vs. Candidates

Grounds – Requirements – Period – Effects

Aspects	Commission of an Election Offense	Deliberate Material Misrepresentation	Nuisance Candidate
<i>Pleading Caption</i>	Petition to Disqualify a Candidate	Petition to Deny Due Course or Cancel a Certificate of Candidacy (CoC)	Petition to Declare a Candidate a Nuisance Candidate
<i>Allegations/Particulars/Grounds</i>	<p>A. Candidate who engages in:</p> <ol style="list-style-type: none"> 1. Vote-Buying 2. Terrorism 3. Unlawful Expenditures 4. Unlawful Campaign 5. Coercion of Subordinates 6. Threats, Intimidation and Coercion 7. Unlawful release of public funds <p>B. Permanent Residency elsewhere</p>	<ol style="list-style-type: none"> 1. Misrepresentation 2. Material (<i>i.e., must be related to qualifications, commission of a crime of moral turpitude, and violation of term rule; not material if name, profession, affiliation</i>) 3. Deliberate intent to defraud voters (<i>trial must be conducted by COMELEC</i>) 4. Candidate not actually qualified 	<p>CoC filed to:</p> <ul style="list-style-type: none"> o put the election process in mockery or disrepute o cause confusion among the voters by the similarity of the names of the registered candidates <p>No bona fide intention to run for the office as clearly demonstrated in other acts or circumstances (<i>e.g., lack of capability, track record, health, exposure, age, funds, education and affiliations</i>)</p>



No. 16.2
10.18.21

Comparing & Contrasting Cases vs. Candidates

Grounds – Requirements – Period – Effects

Aspects	Commission of an Election Offense	Deliberate Material Misrepresentation	Nuisance Candidate
<i>Where file</i>	COMELEC Division then COMELEC En Banc then Supreme Court		
<i>Who files</i>	Any Registered Voter or Any Registered Political Party	Any Registered Voter or Any Registered Political Party	<ul style="list-style-type: none"> Any registered candidate for the same position If ground is similarity in names, by the Real Party-in-Interest (<i>i.e., candidate with similar name with nuisance candidate</i>)
<i>When file</i>	Not later than the date of proclamation	<ul style="list-style-type: none"> Within 5 days from last day for CoC filing of CoC (10.08 to 10.13); but Not later than 25 days from time of filing of subject CoC (10.01-08 to 10.26-11.02) 	<ul style="list-style-type: none"> Within 5 days from the last day for the filing of CoC (10.08 to 10.13)
<i>Substitution</i>	Allowed	Not allowed	Not allowed
<i>If proclaimed Respondent unseated while in office</i>	Succession (P/VP/ LGUs) or Special Elections (Congress)	If lack qualifications, 2 nd placer becomes the 1 st placer	2 nd placer becomes the 1 st placer or proclaimed nuisance stays in office

Module 2: Electorate

(1) Suffrage: Qs and As

Right or Obligation

1. What/ Who do we vote for?
2. Can a citizen be compelled to register? To Vote?
3. Can a citizen be penalized for not voting? Calling for a boycott of an election? Making the “wrong” choice?
4. Can a voter be imprisoned for vote-selling?
5. Can the vote of one carry more weight than others?

- 3 Ps:
 - Persons (*Natural and Juridical, Regular and Special Elections – Vacancy in Congress, Recall, Postponement and Failure of Elections*)
 - Policies (*Initiative and Referendum*)
 - Plebiscites (*LGU creation, dissolution, upgrade/ downgrade, conversion*)
- Suffrage is now a right
 - no longer an obligation
 - prior to the 1987 Constitution, not voting was an election offense
- Suffrage is Personal, a Free Exercise of one’s Political Right
- Vote-selling is an election offense
- Equal weight

(1) Suffrage: Who can Vote? Who can be a Registered Voter?

Qualifications *(Section 1, Article V, 1987 Constitution; Section 9, RA 8189)*

1. Filipino Citizen (i.e., natural-born or naturalized)
2. At least 18 years of age on election day
3. Resident in the Philippines for at least 1 year prior to election day
4. Resided in the place wherein s/he proposes to vote for at least 6 months prior to election day
and
5. Free from any and all of the disqualifications
6. In order to vote, must be a registered voter

To vote: Eligible and Registered

(1) Suffrage: Who cannot Vote? Who cannot be a Registered Voter?

Disqualifications *(Section 9, RA 8189)*

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

Cannot vote:

- Ineligible
- Eligible but not registered

(1) Suffrage: Qs and As

Qualifications and Disqualifications

1. Can Congress require that voters must be High School Graduates and they must own the house/ lot they are residing in?
 2. Can COMELEC bar those residing under bridges/ expressways from voting?
 3. Can a law student who was born in X, lives with her parents in Y since she was 10 years of age, and rents an apartment in Z since 1st year, where the law school is located, can be a voter in all of the 3 places?
 4. Can an application for registration be approved even if he is not qualified at time of the application?
- Congress cannot impose substantive requirements (*e.g. literacy, property*).
 - Residency under the Constitution is physical, not legal.
 - The Law Student can be a registered in either X (domicile), Y (residence) or Z (temporary residence for at least 6 months); cannot be registered in > 1 at the same time (transfer allowed)
 - Reckoning Period
 - Right to Vote: Election Day
 - Right to Register: Before Election Day (during period to register) provided qualified on Election Day

(2) Voter Registration and Actions: *System*

Nature: Continuing (extended period: October 11 to 30, 2021)

Office: Election Registration Board ERB (COMELEC as Chair, DEPED and Registrar/ Treasurer as members)

Listing: Computerized List at all Levels

Compilation: All approved forms in Book of Voters

Voting Unit: Precinct

Number: 200 Voter-Precinct

Biometrics: Mandatory for new; for registered voters, validation (No Bio = No Boto)

Changes: Permanent but subject to changes (+ or -)

(2) Voter Registration and Actions: *+ and -*

Addition (+)

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

Deletion (-)

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

(2) Voter Registration and Actions: *Deactivation*

- Disqualified to Vote
- Failed to Vote in 2 preceding elections (2019 and 2016)
- Registration excluded by the Court
- Lose Filipino Citizenship
- Failure to have biometrics taken (validation)

Note: not permanent disenfranchisement; can apply for reactivation

(2) Voter Registration and Actions: *Opposition*

What? Applications not yet resolved

Where Oppose? ERB

Who may Oppose? Voter, Candidate or Political Party

When? For extended period, November 8, 2021

How Oppose? File Written Opposition/ Challenge

Why Oppose? Not Qualified, Fictitious

Appearance? Mandatory if application opposed

(2) Voter Registration and Actions: *Inclusion/ Exclusion*

What? Applications already acted upon by ERB by November 11, 2021

Where File? MTC (not COMELEC), then RTC (not COMELEC), then SC (question of law)

Grounds?

- Inclusion - Disapproval or Name Stricken Out (not failure to apply)
- Exclusion - Not Qualified or Fictitious Voter

When?

- Inclusion (<105 days before May 9 – August 21, 2021)
- Exclusion (<100 days before May 9 – August 16, 2021)

(2) Voter Registration and Actions: *Annulment of Book of Voters*

Annul What? Book of Voters per precinct

Where File? COMELEC

When Filed? After lapse of period to file inclusion/ exclusion cases

Who Files? Any Voter, EO or Party

What Grounds? (*procedural, not substantive/ qualification of voters*)

(1) Book improperly prepared, attended with vice/ fraud

(2) Book contains statistically improbable data

(2) Voter Registration and Actions: *Summary*

What Cases	When Raised	What Grounds	Where File	Effect if Granted	Effect if Denied
<i>Opposition</i>	Application pending	Not qualified Fictitious	ERB	Voter Excluded	Voter Included
<i>Inclusion</i>	Application Rejected	Disapproved Name stricken out	MTC to RTC to SC/ CA	Voter can vote	Voter cannot vote
<i>Exclusion</i>	Application Approved	Not qualified Fictitious	MTC to RTC to SC/ CA	Voter cannot vote	Voter can vote
<i>Annulment</i>	Pre-election day	Improper BoV preparation of	COMELEC	BoV annulled Voters cannot vote	BoV held true Voters can vote

(2) Voter Registration and Actions:

Overseas Voter Registration

Overseas Voter: a citizen of the Philippines who is qualified to register and vote, not otherwise disqualified by law, who is abroad on the day of elections

Where Apply:

- Embassies, consulates, foreign service establishments and other Philippine government agencies
- Field and mobile registration centers

System: Continuing

Cases: Inclusion and Exclusion cases

(2) Voter Registration and Actions: Qs and As?

Can COMELEC:

1. Issue a Resolution requiring that decisions of MTCs on Inclusion/Exclusion cases must be elevated to it on appeal?
2. Issue a Resolution allowing motu proprio the registration of voters?
3. Rule that a voter is not a Filipino citizen?
4. Annul a Book of Votes on the ground that voters are non-residents/fictitious?
5. Cluster precincts for purposes of voting?

- Under the Constitution, COMELEC cannot rule on right of suffrage (*i.e., to determine whether a voter is qualified or not*).
- Annulment of BoV deals with procedure, not substantive/qualifications of voters
- Registration cannot be done motu proprio (*i.e., application needed*)
- Clustering of Precincts for elections within mandate of COMELEC

(3) Voters' Rights and Responsibilities: *As Candidates*

Nationally-Elected:
Registered in any
LGU/ anywhere

Locally-Elected:
Registered in LGU
or LGU in District

Can be a substitute candidate provided same political party as original candidate

(3) Voters' Rights and Responsibilities:

As Petitioners or Representatives

Against Voters

- Opposition
- Inclusion
- Exclusion
- Annulment of Book of Voters

Against Candidates

- Material Misrepresentation
- Commission of Election Offense

On Election Day

- Voter
- Pollwatcher/ Challenger

During Campaign

- Campaign/ Candidate Supporter
- Contributor
- Staff
- Volunteer
- Organizer

Pre- and Post-Proclamation Cases

- Watcher
- Quo Warranto
- Election Offense

(3) Voters' Rights and Responsibilities: *Infractions on Election Day*

Illegal Voter

- Grounds: Not registered, Use another name, Disqualified, Multiple Registrant
- Effect: Not allowed to vote
(unless identified by BEI)

Illegal Act

- Grounds: Vote-Buying, Vote-Selling, Vote-Betting, Promise to induce or withhold vote
- Effect: Not allowed to vote
(unless take oath before BEI)

(3) Voters' Rights and Responsibilities:

Election Offenses of Voters

(1) Curtailing Suffrage

- Vote-Buying
- Vote-Selling
- Result-Waging
- Inducing others to Withhold Vote
- Coercing, Intimidating, Threatening and Terrorizing
- Undue Influencing
- Scheming to Know Votes of a Voter
- Detaining Another from Voting
- Sanctioning Employees
- Jamming Media Broadcast
- Unlawful Carrying of Firearms
- Organizing Reaction Forces
- Causing Confusion among Voters

(2) Tampering with Official Documents

- Making Untruthful Statements in Registration Application
- Using Registration Records of Another Voter
- Tampering Voters' List
- Defacing Certified List of Candidates
- Using Ballot of Another
- Destroying Election Paraphernalia

(3) Election Day

- Campaigning on Election Day
- Drinking Liquor on Election Day
- Unlawful Electioneering at Polling Place

(3) Voters' Rights and Responsibilities:

Penalties

Section 264 (BP 881) Penalties. — Any person found guilty of any election offense under this Code shall be punished with **imprisonment** of not less than **one year but not more than six years** and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer **disqualification to hold public office** and **deprivation of the right of suffrage**.

Penalties

- Imprisonment
 - $1 \text{ year} < x < 6 \text{ years}$
- DQ to hold public office
- Deprivation of right of suffrage



www.albertocagra.com



09175353823



alberto agra



alberto.c.agra@gmail.com

Thank you. Good luck to all.